EUROPEAN
COMMISSION

Brussels, 5.12.2025
C(2025) 8630 final

SENSITIVE*

COMMISSION DECISION

of 5.12.2025

pursuant to Articles 73(1), 73(3) and 74(1) of Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services and amending Directive 2000/31/EC (Digital Services Act)

Cases DSA.100101, DSA.100102 and DSA.100103 – X (formerly Twitter)

(Only the English text is authentic)

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TABLE OF CONTENTS

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services and amending Directive 2000/31/EC (Digital Services Act),[1] and in particular Articles 73(1), 73(3) and 74(1) thereof,

Having regard to Commission Decision of 18 December 2023 initiating the proceedings ('the Decision Initiating the Proceedings') and Commission Decision of 12 July 2024 extending the proceedings ('the Decision Extending the Proceedings') adopted pursuant to Article 66(1) of Regulation (EU) 2022/2065 in this case,

Having regard to the Commission Preliminary Findings of 12 July 2024 ('the Preliminary Findings') adopted pursuant to Articles 73(2), 74(3) and 79(1) of Regulation (EU) 2022/2065 in this case,

Having regard to Commission Implementing Regulation (EU) 2023/1201 on detailed arrangements for the conduct of certain proceedings by the Commission pursuant to Regulation (EU) 2022/2065 of the European Parliament and of the Council ('Digital Services Act') ('the Implementing Regulation'), [2] and in particular Article 5 thereof,

Having given the provider of the very large online platform concerned the opportunity of being heard on the Preliminary Findings, including on any matter to which the Commission has taken objections pursuant to Article 79(1) of Regulation (EU) 2022/2065,

After consulting the European Board for Digital Services ('Board') pursuant to Article 66(4) of Regulation (EU) 2022/2065,

Whereas:

1. INTRODUCTION

(1) This Decision adopted pursuant to Articles 73(1), 73(3) and 74(1) of Regulation (EU) 2022/2065 is addressed to X Internet Unlimited Company ('XIUC', formerly Twitter International Unlimited Company 'TIUC'), X Holdings Corp., X.AI Holdings Corp.

[1] OJ L 277, 27.10.2022, pages 1-102.
[2] OJ L 159, 22.6.2023, pages 51-59.

and Mr. Elon Musk (hereinafter collectively referred to as 'the provider of X'). This Decision concerns the provider of X's failure to comply with Articles 25(1), 39 and 40(12) of Regulation (EU) 2022/2065 in relation to the provision of X in the Union.

2. PROCEDURE

(2) By Decision of 25 April 2023,[3] the Commission designated X (formerly Twitter) as a very large online platform pursuant to Article 33(4) of Regulation (EU) 2022/2065 (the 'Designation Decision'). The Designation Decision was addressed to TIUC, which, based on the information available to the Commission at that time, was a subsidiary belonging to the group of legal entities controlled by X Holdings Corp., as the main establishment of the provider of X (formerly Twitter) in the Union within the meaning of Article 56(1) of Regulation (EU) 2022/2065. A copy of the Designation Decision was also sent to X Holdings Corp. and X Corp. Pursuant to Articles 33(6) and 92 of Regulation (EU) 2022/2065, that Regulation started to apply to X as of four months after the notification of the Designation Decision, namely as of 28 August 2023.

(3) Since the Commission had not received a risk assessment report from the provider of X by 28 August 2023 as required under Article 42(4)(a) of Regulation (EU) 2022/2065, on 5 September 2023, the Commission sent that provider a letter containing a set of questions regarding the systemic risks stemming from the design and the functioning of the X service and its related systems in the Union, specifically in relation to their impact on civic discourse and electoral processes.[4] By letter of 20 September 2023, the provider of X replied to those questions.[5] On 14 September 2023, the provider of X submitted to the Commission the risk assessment report for X ('X's Risk Assessment Report').[6]

(4) By letter of 12 October 2023, the Commission addressed to the provider of X a simple request for information ('the first RFI') pursuant to Article 67(1) and (2) and Article 34(3) of Regulation (EU) 2022/2065, regarding that provider's compliance with Article 16, Article 26, Article 27, Article 28(2), Article 34, Article 35(1), Article 38, Article 39, Article 40(12), and Article 41 of that Regulation in relation to the provision of X in the Union.[7] By letters of 20 October 2023[8] and 17 November 2023,[9] the provider of X responded to the first RFI.

(5) On 18 December 2023, the Commission adopted, pursuant to Article 66(1) of Regulation (EU) 2022/2065, the Decision Initiating the Proceedings in cases DSA.100100, DSA.100101, DSA.100102 and DSA.100103 – X (formerly Twitter) with a view to the possible adoption of decisions pursuant to Articles 73 and 74 of

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3 Commission Decision C(2023) 2721 final.

4 DSA.100101, Doc ID 190; DSA.100102, Doc ID 248; DSA.100103, Doc ID 213.

5 Reply to letter concerning electoral processes (DSA.100101, Doc ID 193-1; DSA.100102, Doc ID 251-1; DSA.100103, Doc ID 216-1).

6 X's Risk Assessment Report (DSA.100101, Doc ID 27-1; DSA.100102, Doc ID 6-1; DSA.100103, Doc ID 9-1).

7 DSA.100101, Doc ID 182-2; DSA.100102, Doc ID 237-2; DSA.100103, Doc ID 194-2.

8 Reply to the first RFI, section I (DSA.100101, Doc ID 1; DSA.100102, Doc ID 1; DSA.100103, Doc ID 1).

9 Reply to the first RFI, sections II–VIII (DSA.100101, Doc ID 2; DSA.100102, Doc ID 2; DSA.100103, Doc ID 2).

Regulation (EU) 2022/2065.[10] By that decision, the Commission initiated proceedings in respect of TIUC's and X Holdings Corp.'s compliance with Article 34(1) and (2), Article 35(1), Article 16(5) and (6), Article 25(1), Article 39, and Article 40(12) of Regulation (EU) 2022/2065. The Decision Initiating the Proceedings was addressed to TIUC, which based on the information available to the Commission at that time was a subsidiary belonging to the group of legal entities controlled by X Holdings Corp., as the main establishment of the provider of X in the Union. A copy of the Decision Initiating the Proceedings was also sent to X Holdings Corp.

(6) On 22 December 2023, the Commission addressed to the provider of X a simple request for information ('the second RFI'), pursuant to Article 67(1) and (2) and Article 34(3) of Regulation (EU) 2022/2065, in cases DSA.100100, DSA.100101, DSA.100102 and DSA.100103 – X (formerly Twitter), regarding that provider's compliance with Article 16(5) and (6), Article 25(1), Article 34(1) and (2), Article 35(1), Article 39, and Article 40(12) of Regulation (EU) 2022/2065 in relation to the provision of X in the Union.[11] By letters of 26 January 2024,[12] 2 February 2024,[13] and 19 February 2024,[14] the provider of X responded to the second RFI.

(7) On 14 March 2024, the Commission addressed to the provider of X a simple request for information ('the third RFI'), pursuant to Article 67(1) and (2) and Article 34(3) of Regulation (EU) 2022/2065, in case DSA.100100 – X (formerly Twitter), regarding that provider's compliance with obligations related to the specific risks of the dissemination of content that was produced by generative artificial intelligence ('AI').[15] By letters of 5 April 2024,[16] and 26 April 2024,[17] the provider of X responded to the third RFI.

(8) By letter of 8 May 2024, the Commission addressed to the provider of X a simple request for information ('the fourth RFI'), pursuant to Article 67(1) and (2) and Article 34(3) of Regulation (EU) 2022/2065, in cases DSA.100100, DSA.100102 and DSA.100103 – X (formerly Twitter), regarding that provider's compliance with Article 16(5) and (6), Article 34(1) and (2), Article 35(1), Article 39, and Article 40(12) of Regulation (EU) 2022/2065 in relation to the provision of X in the Union.[18] By letters of 17 May 2024,[19] 24 May 2024,[20] 27 May 2023,[21] 14 June 2024,[22] and 3 July 2024,[23] the provider of X responded to the fourth RFI.

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10 Commission Decision C(2023) 9137 final.

11 DSA.100101, Doc ID 40; DSA.100102, Doc ID 11; DSA.100103, Doc ID 12.

12 Reply to the second RFI, section II, request 4; section III, request 5(c); sections V–VII (DSA.100101, Doc ID 164; DSA.100102, Doc ID 210; DSA.100103, Doc ID 163).

13 Reply to the second RFI, section II, request 2, 3; section III, question 4, 5(b), 5(d); section IV (DSA.100101, Doc ID 80; DSA.100102, Doc ID 246; DSA.100103, Doc ID 49).

14 Reply to the second RFI, section I, request 1, 2; section II, request 1; section III, request 1,2,3, 5(a) (DSA.100101, Doc ID 79; DSA.100102, Doc ID 58; DSA.100103, Doc ID 48).

15 DSA.100101, Doc ID 103-2; DSA.100102, Doc ID 137-2; DSA.100103, Doc ID 65-2.

16 Reply to the third RFI, section I (DSA.100101, Doc ID 105; DSA.100102, Doc ID 139; DSA.100103, Doc ID 67).

17 Reply to the third RFI, section II (DSA.100101, Doc ID 107; DSA.100102, Doc ID 141; DSA.100103, Doc ID 69).

18 DSA.100102, Doc ID 144-3; DSA.100103, Doc ID 72-3.

19 Reply to the fourth RFI, section III, requests 4, 12, 16(a)(b)(d); section IV, requests 24–26 (DSA.100101, Doc ID 146; DSA.100102, Doc ID 157; DSA.100103, Doc ID 69).

20 Reply to the fourth RFI, section I, requests 1, 2; section III, requests 16(c)(e)(f) (DSA.100101, Doc ID 148-2; DSA.100102, Doc ID 159-2; DSA.100103, Doc ID 97-2).

(9) By letter of 18 June 2024, the Commission addressed to the provider of X a simple request for information ('the fifth RFI') pursuant to Article 67(1) and (2) of Regulation (EU) 2022/2065 in cases DSA.100100, DSA.100101, DSA.100102 and DSA.100103 – X (formerly Twitter), regarding its corporate structure.[24] By the letter of 20 June 2024, the provider of X responded to the fifth RFI.[25]

(10) In addition to the aforementioned five RFIs addressed to the provider of X, the Commission has gathered information in cases DSA.100101, DSA.100102 and DSA.100103 – X (formerly Twitter) by conducting interviews, pursuant to Article 68(1) and (2) or Regulation (EU) 2022/2065 and by sending requests for information, pursuant to Article 67 of that Regulation, and by carrying out its own testing of the relevant systems of X's online interface. Moreover, on 11 January 2024, 9 April 2024, 23 April 2024, and 29 April 2024, the Commission held meetings with the representatives of the provider of X to discuss the suspected infringements under investigation.

(11) On 12 July 2024, the Commission adopted the Decision Extending the Proceedings to extend the scope of the investigations in cases DSA.100100, DSA.100101, DSA.100102 and DSA.100103 – X (formerly Twitter) to Mr. Elon Musk, who acquired X on 27 October 2022, and to all legal entities directly or indirectly controlled by the latter, as the provider of X in the Union.[26] In the Decision Extending the Proceedings, the Commission defined Mr. Elon Musk together with all the legal entities directly or indirectly controlled by the latter as the 'Musk Group', which does not constitute a registered legal entity in its own right.

(12) On 12 July 2024, the Commission adopted the Preliminary Findings in cases DSA.100101, DSA.100102 and DSA.100103 – X (formerly Twitter), pursuant to Articles 73(2) and 79(1) of Regulation (EU) 2022/2065, in which it took the preliminary view that the provider of X failed to comply with its obligations under Articles 25(1), 39, and 40(12) of Regulation (EU) 2022/2065.[27] In line with the Decision Extending the Proceedings, the Preliminary Findings were addressed to TIUC, as the main establishment of the provider of X in the Union, to X Holdings Corp., as the ultimate legal entity controlling TIUC, and to Mr. Elon Musk, as the natural person ultimately controlling the group of companies to which TIUC and X Holdings Corp. belong.

(13) On 15 July 2024, the Commission notified the Preliminary Findings to the provider of X with a deadline to submit its observations on those Preliminary Findings by 9 August 2024.[28]

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21 Reply to the fourth RFI, sections VI–VII (DSA.100101, Doc ID 149-2 and 156; DSA.100102, Doc ID 160-2 and 168; DSA.100103, Doc ID 98-2 and 106).

22 Reply to the fourth RFI, section I, requests 1, 2; section II, request 3; section III, request 5(b), 15–22, section V, requests 27–28, section VII (supplementary) (DSA.100101, Doc ID 159 and 194-2; DSA.100102, Doc ID 176 and 252-2; DSA.100103, Doc ID 109 and 217-2).

23 Reply to the fourth RFI, section III, request 5(a), request 6-14, request 23, section V, request 29 (DSA.100101, Doc ID 170-1 and 171-2; DSA.100102, Doc ID 223-1 and 224-2; DSA.100103, Doc ID 178-1 and 179-2).

24 DSA.100101, Doc ID 186-1; DSA.100102, Doc ID 241-1; DSA.100103, Doc ID 198.

25 Reply to the fifth RFI. DSA.100101, Doc ID 189-3; DSA.100102, Doc ID 247-3; DSA.100103, 212-3.

26 Commission Decision C(2024) 5087 final.

27 Commission Decision C(2024) 5087 final.

28 On 12 July 2024, an advance courtesy copy of the Preliminary Findings was provided by the Commission *via* email to TIUC, X Holdings Corp. and Mr. Elon Musk.

(14) On 16 July 2024, the Commission communicated by email a number of organisational points to the provider of X on access to file in the data room, should that provider decide to request access to all documents on the Commission's file, without any redactions, under terms of disclosure that were to be set out in a Commission decision, pursuant to Article 5(3) of Implementing Regulation (EU) 2023/1201.[29]

(15) On 23 July 2024, X Holdings Corp. and TIUC[30] informed the Commission that they had appointed external legal counsel, in relation to the Commission's proceedings covered by the Preliminary Findings. On the same date, the aforementioned external legal counsel sent a letter to the Commission on behalf of X Holdings Corp. and TIUC (the '23 July 2024 Letter') in which they criticised the Commission's procedure for access to the file, while broadly requesting (i) access to copies of non-confidential versions of all documents obtained, produced and/or assembled in the context of the investigation; (ii) access to the file through a physical data room procedure to be limited to what is strictly necessary; (iii) confirmation that the Commission's file is complete and includes minutes of all interviews and meetings between the Commission and third parties; and (iv) clarifications on the deadline to submit observations on the Preliminary Findings.[31]

(16) On 30 July 2024, the Commission replied to the 23 July 2024 Letter. In its reply, the Commission recalled the rules on access to file under Regulation (EU) 2022/2065 and Implementing Regulation (EU) 2023/1201. The Commission also recalled some elements pertaining to the concrete modalities of the exercise of the right to be heard, including on the number of external advisers and obtaining an advance copy of the data room index. The Commission confirmed that the information contained in the Commission's file for the proceedings comprised all documents which were obtained, produced and assembled during the Commission's investigation and that relate to the subject matter of that investigation. Lastly, the Commission provided some clarifications on the deadline for the provider of X to submit observations on the Preliminary Findings.[32]

(17) On 31 July 2024, the external legal counsels sent another letter to the Commission on behalf of X Holdings Corp. and TIUC (the '31 July 2024 Letter') specifically requesting (i) access to copies of non-confidential versions of all documents in the Commission's file outside of the data room, including those mentioned in the Preliminary Findings, pursuant to Implementing Regulation (EU) 2023/1201; (ii) clarifications on the data room procedure; (iii) a confirmation that the Commission's file is complete and includes minutes of all interviews and meetings between the Commission and third parties; and (iv) an extension of the deadline of X Holdings Corp. and TIUC to respond to the Preliminary Findings.[33] On the same date, X Holdings Corp. and TIUC informed the Commission which specified external legal and economic counsel and technical experts should be considered as 'Specified

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29 DSA.100101, Doc ID 204; DSA.100102, Doc ID 267; DSA.100103, Doc ID 231.

30 The external legal counsel was appointed by TIUC and X Holdings Corp. The power of attorney submitted by the provider of X did not cover Mr. Elon Musk, although the Preliminary Findings were addressed to the latter. (DSA.100101 Doc-ID 209-4; DSA.100102, Doc ID 287-4; DSA.100103, Doc ID 242-9).

31 DSA.100101, Doc ID 209-2, 209-4; DSA.100102, Doc ID 287-2, 287-4; DSA 100103, Doc ID 242-2, 242-4.

32 DSA.100101, Doc ID 209-1, 209-3; DSA.100102, Doc ID 287-1, 287-3; DSA.100103, Doc ID 242-1, 242-3.

33 DSA.100101, Doc ID 210-2; DSA.100102, Doc ID 294-2; DSA.100103, Doc ID 243-2.

External Advisers', in line with Implementing Regulation (EU) 2023/1201, for the purposes of the data room procedure. Although Mr. Elon Musk was identified as one of the addressees of the Preliminary Findings, he did not request access to the Commission's file pursuant to Article 5(1) of Implementing Regulation (EU) 2023/1201.[34]

(18) On 1 August 2024, the Commission replied to the 31 July 2024 Letter.[35] In its reply, the Commission granted X Holdings Corp. and TIUC an extension of the initial deadline to reply to the Preliminary Findings until 5 September 2024. On the same date, X Holdings Corp. and TIUC were granted access to the documents referred to in the Preliminary Findings pursuant to Article 5(2) of Implementing Regulation (EU) 2023/1201. On the same date, the Commission also adopted a decision pursuant to Article 5(3) of Implementing Regulation (EU) 2023/1201 addressed to X Holdings Corp. and TIUC in which it set out the terms of negotiated disclosure for the purpose of access to the Commission's file pursuant to Article 79(4) of Regulation (EU) 2022/2065 and Article 5 of Implementing Regulation (EU) 2023/1201 in cases DSA.100101, DSA.100102 and DSA.100103 (the 'Terms of Disclosure Decision').[36] According to that decision, access to the file pursuant to Article 5(3) and (4) of Implementing Regulation (EU) 2023/1201 in the aforementioned cases was provided to the Specified External Advisers in a data room for a period of five days and under the conditions set out in the data room rules. The list of the Specified External Advisers, the draft acknowledgement of the Terms of Disclosure Decision to be signed by the Specified External Advisers before accessing the data room, and the data room rules (the 'Data Room Rules') were annexed to the Terms of Disclosure Decision.

(19) The data room was accessible on the premises of the Commission's Directorate-General for Communications Networks, Content and Technology (DG CNECT), for five working days, from 5 August to 9 August 2024, between 9:00 and 18:00. The Specified External Advisers decided to access the data room for the entirety of the time available and did not ask for any extension of the duration of the data room access laid down in the Terms of Disclosure Decision. During access to the data room, the Specified External Advisers prepared a data room report as set out in the Terms of Disclosure Decision, Annex C, recitals 12 to 14 (the 'Data Room Report').[37] On 12 August 2024, the Commission shared the Data Room Report with the provider of X, after ensuring that that report did not contain any business secrets or other disaggregated confidential information, in line with the Terms of Disclosure Decision.

(20) On 9 August 2024, the Specified External Advisers sent, on behalf of X Holdings Corp. and TIUC, a letter to the Commission under the procedure foreseen by Article 5(6) of Implementing Regulation (EU) 2023/1201, requesting further access to documents with a view to making such documents directly available to the addressee arguing that the Commission's approach to access to the file presented a number of issues which significantly compromised X Holdings Corp.'s and TIUC's rights of defence (the 'Article 5(6) Implementing Regulation Request'). More specifically, the Specified External Advisers requested further access to non-confidential versions of all documents on the Commission's file with a view to making such documents directly available to X Holdings Corp. and TIUC, as well as their external advisers

[34] DSA.100101, Doc ID 210; DSA.100102, Doc ID 294; DSA.100103, Doc ID 243.
[35] DSA.100101, Doc ID 221-1; DSA.100102, Doc ID 297-1; DSA.100103, Doc ID 246-1.
[36] DSA.100101, Doc ID 234; DSA.100102, Doc ID 309; DSA.100103, Doc ID 259.
[37] DSA.100101, Doc ID 233; DSA.100102, Doc ID 308; DSA.100103, Doc ID 258.

outside the data room procedure. As a subsidiary request, the Specified External Advisers requested access, outside the data room procedure, to non-confidential versions of several specific documents consisting of (i) documents provided by a certain national authority; (ii) documents regarding the Commission's communications with a certain third party organisation; (iii) documents provided by a certain third party organisation during a meeting with the Commission; (iv) confidential versions of minutes of meetings with certain researchers; (v) draft intermediate versions of notes of meetings/interviews with researches, the final version of which was cited in the Preliminary Findings; (vi) notes of a meeting and following correspondence with certain researchers, which were not cited in the Preliminary Findings; (vii) the outline of questions asked by the Commission during interviews with researchers in the context of the Commission's investigation in Case DSA.100102; (viii) certain outputs from X's advertising repository, which were not cited in the Preliminary Findings; and (ix) copies of notes of any meetings between the commission and the provider of X in the context of the investigations covered by the Preliminary Findings. In addition, the Specified External Advisers requested (i) an extension of the deadline to respond to the Preliminary Findings, for a period of time equivalent to that lapsing between Article 5(6) Implementing Regulation Request and the date of the Commission's response to that request and (ii) that all of X Holdings Corp.'s and TIUC's external counsel be considered Specified External Advisers even if they did not actually access the data room or had not yet been identified as Specified External Advisers.[38]

(21) On 30 August 2024, and without prejudice to its position on the request made under Article 5(6) of Implementing Regulation (EU) 2023/1201, the Commission decided, pursuant to Article 5(11) of that Regulation, to provide X Holdings Corp. and TIUC with access to 33 documents in the case file of cases DSA.100101, DSA.100102 and DSA.100103, as an interim response to the Article 5(6) Implementing Regulation Request, in order to avoid a disproportionate delay or administrative burden. The aforementioned documents consisted of documents referred to in the following points of recital 20 above: (i) the documents provided by a certain national authority; (vi) final notes of a meeting with certain researchers, which were not cited in the Preliminary Findings; (vii) the outline of the questions asked by the Commission during interviews with researchers in the context of the Commission's investigation in case DSA.100102 and (viii) certain outputs from X's advertising repository, which were not cited in the Preliminary Findings. On the same date, the Commission granted the provider of X an extension of the deadline to reply to the Preliminary Findings until 26 September 2024.[39]

(22) On 20 September 2024, the Commission replied to the Article 5(6) Implementing Regulation Request.[40] In its reply, the Commission rejected the Specified External Advisers' requests under Article 5(6) of the Implementing Regulation (EU) 2023/1201 except for one request, namely that referred to in point (iii) of recital 20 above, which the Commission accepted.

(23) On 26 September 2024, TIUC and X Holdings Corp. submitted their reply to the Preliminary Findings (the 'Reply to the Preliminary Findings').[41] Mr. Elon Musk did not submit any observations to the Preliminary Findings. Since the Preliminary

38 DSA.100101, Doc ID 241; DSA.100102, Doc ID 318-1; DSA.100103, Doc ID 273-1.
39 DSA.100101, Doc ID 246; DSA 100102, Doc ID 323; DSA.100103, Doc ID 278.
40 DSA.100101, Doc-ID 252-1; DSA.100102, Doc-ID 331-1; DSA.100103, 284-1.
41 DSA.100101, Doc ID 233; DSA.100102, Doc ID 337-2; DSA.100103, Doc ID 289-2.

Findings were addressed to TIUC, X Holdings Corp. and Mr Elon Musk as the 'provider of X', this Decision refers to the arguments presented in the Reply to the Preliminary Findings as the arguments of the 'provider of X'.

(24) At a meeting held on 9 August 2024, the Board submitted its views on the Preliminary Findings pursuant to Article 66(4) of Regulation (EU) 2022/2065. The minutes of that meeting were approved without comments or amendments during the following Board meeting of 25 September 2024.[42]

(25) On 23 September 2024, pursuant to Article 42(4)(c) of Regulation (EU) 2022/2065, the provider of X submitted to the Commission its audit report performed under Article 37(4) of Regulation (EU) 2022/2065 (the 'Audit Report 2024').[43]

(26) On 25 February 2025, the provider of X submitted a letter to the Commission requesting '*prompt feedback or guidance in relation to the arguments and questions developed in the Observations submitted on 26 September 2024*'. In that letter, the provider of X also stated that *'[t]o the extent that, as reported by the press, the Commission may believe (wrongly) that there remains a risk of non-compliance with Articles 25(1), 39 and 40(12) DSA in spite of the arguments and evidence put forward in the Defendants' Observations, the Defendants would appreciate a confirmation and an opportunity to discuss this with the Commission*'.[44]

(27) On 27 February 2025, the Commission replied to the letter of 25 February 2025, stating that it will take note of the points raised in that letter and will examine them very carefully. In addition, the Commission stated that its investigation in cases DSA.100101, DSA.100102, and DSA.100103 was still ongoing and that it will continue to assess all relevant aspects in due course. Finally, the Commission stated that it has been and continues to be consistently available for discussions with the provider of X in relation to ongoing cases, should that provider so request.[45]

(28) On 26 March 2025, the provider of X informed the Commission that TIUC would be renamed 'X Internet Unlimited Company' ('XIUC') and that the change was expected to take place on or around 1 April 2025.[46] On 1 May 2025, the provider of X informed the Commission on its new corporate structure referred to in recital 40 below.[47]

(29) On 2 June 2025, the Commission sent a sixth simple request for information ('the sixth RFI') to the provider of X pursuant to Article 67(1) and (2) of Regulation (EU), 2022/2065 to enquire further about the corporate changes referred to in recital 40 below. By letter of 20 June 2025, the provider of X responded to the sixth RFI.[48]

(30) On 1 September 2025, pursuant to Article 42(4)(c) of Regulation (EU) 2022/2065, the provider of X submitted to the Commission its audit report performed under Article 37(4) of Regulation (EU) 2022/2065 (the 'Audit Report 2025').[49]

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42 European Board for Digital Services, https://digital-strategy.ec.europa.eu/en/policies/dsa-board.
43 DSA.100101, Doc ID 262; DSA.100102, Doc ID 341; DSA.100103, Doc ID 293.
44 DSA.100101, Doc ID 271-1; DSA.100102, Doc ID 371-1; DSA.100103, Doc ID 321-1.
45 DSA.100101, Doc ID 273-2; DSA.100102, Doc ID360-2; DSA.100103, Doc ID 304-2.
46 DSA.100101, Doc ID 282-1; DSA.100102, Doc ID 372-1; DSA.100103, Doc ID322-1.
47 DSA.100101, Doc ID 283; DSA.100102, Doc ID 373; DSA.100103, Doc ID 323.
48 DSA.100101, Doc ID 281; DSA.100102, Doc ID 367; DSA.100103, Doc ID 320.
49 DSA.100101, Doc ID 289-2; DSA.100102, Doc ID 382-2; DSA.100103, Doc ID 325-2.

(31) On 30 September 2025, the provider of X informed the Commission about a banner displayed on X's interface between 18 May 2025 and 23 September 2025 regarding the provider of X's blue check and verification policies.[50]

(32) On 28 November 2025, XIUC's and X Holdings Corp.'s new external legal counsel sent a letter to the Commission requesting access to the file in cases DSA.100101, DSA.100102 and DSA.100103 pursuant to Articles 5(2) and (11) of Implementing Regulation (EU) 2023/1201.[51] The basis for this request was the change in XIUC's and X Holdings Corp.'s legal representation. Additionally, in that same letter the external legal counsel requested feedback on the Reply to the Preliminary Findings and on '*Reinforced Compliance Measures*', such as the one mentioned in recital 31 above. On 4 December 2024, the Commission replied to the letter and rejected the external legal counsel's request.[52]

3. THE PROVIDER OF X IN THE UNION

3.1. The Commission's initial position

(33) In the Decision Extending the Proceedings, the Commission indicated that it considered Mr. Elon Musk and all legal entities directly or indirectly controlled by Mr. Musk, as the provider of X in the Union. That position was based on several elements provided by TIUC in response to the Commission's requests for information.

(34) More specifically, in response to the fourth RFI,[53] TIUC explained that it is a fully owned subsidiary of [redacted]., which is in turn fully owned by [redacted], which is fully owned by X Corp., which is a wholly owned subsidiary of X Holdings Corp. This ownership structure indicates that X Holdings Corp. exercises decisive influence over the conduct of TIUC in the Union. Moreover, in response to the fifth RFI,[54] TIUC explained that Mr. Elon Musk is the majority shareholder of X Holdings Corp., with a [redacted]% stake, while the remainder of X Holdings Corp. is ultimately owned by minority shareholders. In its reply, TIUC also stated that '*Elon Musk ultimately controls X Holdings Corp.*'[55] Finally, TIUC indicated to '*believe*' that Mr. Elon Musk additionally controls Space Exploration Technologies ('Space X'),[56] The Boring Company,[57] Neuralink Corporation ('Neuralink'),[58] and X.AI Corporation ('X.AI').[59]

(35) Based on this information, the Commission took the position that the provider of X in the Union consisted of TIUC, X Holdings Corp., and Mr. Elon Musk, together with all legal entities directly or indirectly controlled by Mr. Elon Musk, namely X Holdings Corp., Space X, The Boring Company, Neuralink Corporation, and X.AI, which the

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50 DSA.100101, Doc ID 288-1.
51 DSA.100101, Doc ID 232; DSA.100102, Doc ID 391; DSA.100103, Doc ID 334
52 DSA.100101, Doc ID 233; DSA.100102, Doc ID 392; DSA.100103, Doc ID 335
53 DSA.100101, Doc ID 148-2; DSA.100102, Doc ID 159-2; DSA.100103, Doc ID 97-2.
54 DSA.100101, Doc ID 189-3; DSA.100102, Doc ID 247-3; DSA.100102, Doc ID 212-3.
55 Response to the fifth RFI, question 3(b). DSA.100101, Doc ID 189-3; DSA.100102, Doc ID 247-3; DSA.100103, 212-3.
56 Space X is a spacecraft manufacturer, launch service provider, and defence contractor, and satellite communications company.
57 The Boring Company is a tunnel construction services and equipment company.
58 Neuralink is a neurotechnology company.
59 X.AI is a startup company active in the area of artificial intelligence.

Commission referred to as the 'Musk Group', which does not constitute a registered legal entity in its own right.

3.2. The arguments of the provider of X

(36) In its Reply to the Preliminary Findings, the provider of X put forward three arguments challenging the Commission's initial position on the provider of X in the Union.

(37) In the first place, the provider of X argued that, considering the Musk Group as the provider of X responsible for the alleged infringements of Regulation (EU) 2022/2065 runs counter the Designation Decision, Delegated Regulation (EU) 2023/1127, Commission Implementing Decision C(2023) 8187 final of 27 November 2023 determining the supervisory fee applicable to X for 2023 pursuant to Article 43(3) of Regulation (EU) 2022/2065, and Regulation (EU) 2022/2065 itself. First, the provider of X argued that, according to Article 288 TFEU, a 'decision which specifies those to whom it is addressed shall be binding only on them' and, since the Designation Decision was addressed only to TIUC (now, XIUC), that decision's binding effects apply exclusively to TIUC (now, XIUC). According to the provider of X, entities other than TIUC allegedly belonging to the 'Musk Group' cannot be accused of lack of compliance with the provisions of Regulation (EU) 2022/2065, absent a designation decision addressed to each of them. Second, the provider of X argued that, considering the Musk Group as the provider of X in the Union conflicts with the Delegated Regulation (EU) 2023/1127, since that Regulation defines 'provider of designated service or services' as any provider to whom one or more Commission decisions designating a very large online platform or a very large online search engine under Article 33(4) of Regulation (EU) 2022/2065 is addressed.[60] The provider of X also noted that TIUC (now, XIUC) was the sole addressee of the Designation Decision and of Commission Implementing Decision C(2023) 8187 final, which also determined the supervisory fee payable by the provider of X in light of the financial accounts of TIUC (now, XIUC). Third, the provider of X noted that Regulation (EU) 2022/2065 deliberately uses the term 'provider', rather than 'undertaking', asserting that these concepts are distinct and must be treated as such.[61]

(38) In the second place, the provider of X argued that considering the Musk Group as the provider of X in the Union misinterprets the notion of 'provider of intermediary services' and is at odds with legal and economic reality. First, the provider of X argued that the service provided as part of the X online platform is a 'hosting service' and, therefore, the obligations applicable to X can only be fulfilled by the entity concretely providing the service in the Union. The provider of X also noted that this holds true by looking at the e-Commerce Directive,[62] where no functional approach is promoted in relation to the notion of provider. The concept of 'provider of intermediary services', hence, cannot also encompass entities that are not concretely providing those intermediary services, as it would be the case for the entities included under the 'Musk Group'. Second, the provider of X argued that not only are the entities other than X Holdings Corp. allegedly forming part of the Musk Group active

60 Reply to the Preliminary Findings section 2, page 4 (DSA.100101, Doc ID 233; DSA.100102, Doc ID 337-2; DSA.100103, Doc ID 289-2).

61 Reply to the Preliminary Findings pages 6-7.

62 Reply to the Preliminary Findings page 9.

in markets unrelated to the X service, but also they did not even receive a request for information from the Commission in relation to their shareholding structure.[63]

(39) In the third place, the provider of X argued that, considering the Musk Group as the provider of X is based on a manifest misinterpretation and misapplication of the relevant case law. According to the provider of X, the Commission misinterpreted EU competition law cases when it argues that the conduct of a subsidiary can be imputed to its parent where the parent exercises a decisive influence on it. The provider of X observed that the EU Courts set limits to the application of this doctrine by referring to the judgement in *Sumal* (C-882/19, EU:C:2021:800). According to the provider of X, the Court of Justice ('CJEU') required the identification of a specific link in the economic activity of the entities at issue and the subject matter of the alleged infringements to prevent the possibility that '*a subsidiary within such a group could be held liable for infringements committed in the context of economic activities entirely unconnected to its own activity and in which they were in no way involved, even indirectly*'.[64] On this basis, the provider of X argued that the Commission did not investigate properly if there was a link between the entities being part of the 'Musk Group' nor between these entities and the subject matter of the investigation. The Commission, therefore, cannot rely on the concept of single economic entity to inform its interpretation of the notion of 'provider' in the present case.[65]

3.3. Developments subsequent to the Preliminary Findings

(40) On 1 May 2025, the provider of X informed the Commission of the following organisational changes to its corporate structure:[66]

(a) On March 28, 2025, X.AI Corp., an entity incorporated in Nevada, United States, and X Corp. became wholly owned sister companies under a single ultimate parent entity, X.AI Holdings Corp.

(b) X Corp. will continue to operate independently of X.AI Corp., and X Corp.'s direct corporate parent will not change as a result of the transaction mentioned under point (a) above.

(c) Additionally, X Corp. will remain the parent company of XIUC. The platform through which XIUC provides social networking services will continue to be called 'X'.

(d) XIUC will exercise exclusive decision-making authority over the provision of X in the Union.

(41) On 20 June 2025, the provider of X indicated in its reply to the sixth RFI that:[67]

(a) X.AI Holdings Corp. is the ultimate legal entity controlling (in order) X Holdings Corp., X Corp., and XIUC;

(b) [redacted]

63 Reply to the Preliminary Findings page 10.
64 Reply to the Preliminary Findings, paragraph 47.
65 Reply to the Preliminary Findings, page 10.
66 DSA.100101, Doc ID 283; DSA.100102, Doc ID 373; DSA.100103, Doc ID 323.
67 DSA.100101, Doc ID 281-1; DSA.100102, Doc ID 367-3: DSA.100103, Doc ID 320-1.

(c) [redacted]

3.4. The Commission's identification of the provider of X

(42) While Regulation (EU) 2022/2065 consistently uses the term 'provider' of an intermediary service as the economic operator to whom the obligations stemming from that Regulation are addressed and upon whom fines and periodic penalty payments may be levied for infringements of those obligations, that term is not defined in that Regulation. In accordance with the CJEU's case-law, the meaning and scope of a notion used in an instrument of EU secondary law which is not defined therein, must be determined in accordance with its usual meaning in everyday language, while also taking into account the context in which that notion occurs, the objectives pursued by the instrument in question, and the origins of that notion.[68]

(43) In its usual meaning, the term 'provider' refers, generally, to any person, company or economic entity that provides a particular service. This broad reading of the notion of 'provider' is confirmed by the context in which that notion is used, the objectives pursued by Regulation (EU) 2022/2065, and the origins of that notion.

(44) As regards the context in which that notion is used, Regulation (EU) 2022/2065 regulates a particular type of economic activity, namely the provision of intermediary services defined in Article 3(g) of that Regulation, a subcategory of information society services. The due diligence obligations laid down in Chapter III of Regulation (EU) 2022/2065 are focused on the manner in which a particular activity is exercised, rather than on the characteristics of the entities that exercise it. Provided that an activity consists of the provision of an intermediary service, the entities engaged in the provision of that service should be subject to those obligations, regardless of their legal status or the legal structure of any group to which they may belong.

(45) As regards the objectives pursued by Regulation (EU) 2022/2065, namely contributing to the proper functioning of the internal market and ensuring a safe, predictable and trusted online environment in which the fundamental rights enshrined in the Charter are duly protected, those objectives can only be effectively achieved if the due diligence obligations imposed on intermediary service providers apply to the entity engaged in the economic activity in question, irrespective of its legal status and structure. That is particularly the case where a subsidiary operates an online interface through which an intermediary service is provided, but that subsidiary is unable to determine independently all legal and technical conditions of the provision of that service, and rather implements the strategic decisions taken or the instructions given to it by its parent company. In such situations, ensuring compliance with the obligations laid down by Regulation (EU) 2022/2065 will require decisions to be taken at the level of the parent company.

(46) This interpretation is corroborated by the fact that a failure to comply with the due diligence obligations imposed by Regulation (EU) 2022/2065 must be sanctioned taking into account the '*economic capacity of the provider*' (recitals 86, 101 and 117, Article 51(5) of Regulation (EU) 2022/2065). This consideration is further reflected in Articles 52, 74 and 76 of Regulation (EU) 2022/2065, which refer to the annual

[68] Judgment of 14 July 2022, Porsche Inter Auto and Volkswagen, C-145/20, EU:C:2022:572, paragraph 88 and the case-law cited, and Judgment of 30 April 2024, Trade Express-L and DEVNIA TSIMENT, C-395/22 and C-428/22, EU:C:2024:374, paragraph 65.

worldwide turnover of the provider as the basis for the calculation of fines and penalties for infringements of the obligations imposed on providers under Regulation (EU) 2022/2065. Article 3, point (x), of that Regulation in turn defines the notion of 'turnover' as *the amount derived by an undertaking within the meaning of Article 5(1) of Council Regulation (EC) No 139/2004*.

(47) As regards the origins of the notion of 'provider' used in Regulation (EU) 2022/2065, the Commission's proposal did not use that notion consistently in relation to all categories of services covered by the act but rather used the notion of 'online platform', which was itself defined as a 'provider' of the relevant service (Article 2(h) of the proposal). During the legislative negotiations, most of the provisions were changed to be addressed to 'providers of online platforms' and 'providers of very large online platforms'. However, Article 33(1) of Regulation (EU) 2022/2065 still provides that the obligations laid down in Section 5 of Chapter IV of that Regulation '*apply to online platforms and online search engines which have a number of average monthly active recipients of the service in the Union equal to or higher than 45 million, and which are designated as very large online platforms or very large online search engines pursuant to paragraph 4.*' This confirms that what Regulation (EU) 2022/2065 regulates is the provision of a particular service, without consideration being given to the legal status or structure of the entities providing that service.

(48) Finally, the functional approach to the notion of 'provider', which encompasses every entity engaged in an economic activity, such as the provision of intermediary services, regardless of its legal status and the way in which it is financed, is in line with other areas of Union law.[69] Indeed, Union law recognises that different companies belonging to the same group may form an economic unit and therefore may constitute a provider within the meaning of Regulation (EU) 2022/2065, if the companies concerned do not determine independently their own conduct in the market.

(49) Consequently, the notion of 'provider' within the meaning of Regulation (EU) 2022/2065 should be understood to refer to any economic unit engaged in the provision of intermediary services, irrespective of its legal status or structure, which may consist of several legal entities constituting a single economic unit or even a controlling shareholder and those entities.

(50) Applied to the present case, the Commission observes that, while XIUC is legally a distinct company, X Holdings Corp. indirectly holds 100% of the shares of that company through fully owned subsidiaries (i.e. X Corp, which fully owns [redacted], which fully owns [redacted] which fully owns XIUC). As of 28 March 2025, X.AI Holdings Corp. holds 100% of X Holdings Corp.'s shares.[70] According to the case-law of the CJEU in competition cases, where one company has a 100% shareholding in another company, the former is in a position to exercise decisive influence over the latter and there is a rebuttable presumption that the former does in fact exercise such influence.[71] Moreover, it has been confirmed that the conduct of a subsidiary can also be imputed to its parent where the parent exercises a decisive influence over it, namely where that subsidiary does not decide upon its own conduct

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69 See, by analogy, Judgment of 19 February 2002, Wouters and Others, C-309/99, EU:C:2002:98, paragraph 46.

70 Reply to the sixth RFI, question 6, DSA.100101, Doc ID 281-1; DSA.100102, Doc ID 367; DSA.100103, Doc ID 320-1.

71 Judgment of 10 September 2009, Akzo Nobel and Others v Commission, Case C-97/08 P,ECLI:EU:C:2009:536, paragraph 60.

on the market independently, but carries out, in all material respects, the instructions given to it by its parent company.[72]

(51) As regards Mr. Elon Musk, the provider of X indicated that [redacted].[73] The Commission considers this sufficient to grant him effective control over X.AI Holdings Corp., X Holdings Corp. and, thus, XIUC. In addition, the following elements further demonstrate effective control exercised by Mr. Musk over X:

(a) X Holdings Corp.'s Articles of Association, as submitted in reply to the fourth RFI,[74] [redacted]. This has been confirmed again by the provider of X in reply to the sixth RFI[75];

(b) The latest available submission made by Twitter, Inc. to the United States Securities and Exchange Commission in 2022 (the 'SEC Submission'),[76] states that Twitter, Inc. entered into a merger agreement with X Holdings I, Inc., X Holdings II, Inc., a wholly owned subsidiary of X Holdings I, Inc. and with Mr. Elon Musk. The SEC Submission further indicates that X Holdings I, Inc. and X Holdings II, Inc. were affiliates of Mr. Elon Musk. According to the SEC Submission, the merger agreement provided that X Holdings II, Inc. would merge with and into Twitter, Inc., with the latter surviving the merger and becoming a wholly owned subsidiary of X Holdings I, Inc.;

(c) An order issued by the United States District Court for the Northern District of California of 1 November 2024 in case *Parag Agrawal, et al., v. Elon Musk, et al.*,[77] states that '*on April 25, 2022, Twitter and Musk, along with 'Musk's wholly owned entities X Holdings I Inc. and X Holdings II, Inc.,' entered into a merger agreement, under which Musk, acting through his above-referenced entities, 'agreed to buy Twitter.' Thereafter, Musk attempted to 'back out of the deal', Twitter filed a lawsuit 'seeking to force him to proceed with the deal',*

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72 See, by analogy judgments of 10 September 2009, Akzo Nobel and others v Commission, C-97/08 P, EU:C:2009:536, paragraph 61; of 1 October 2013, Elf Aquitaine v Commission, C-521/09 P, EU:C:2011:620, paragraphs 57 and 63; of 19 July 2012, Alliance One International and Standard Commercial Tobacco v Commission and Commission v Alliance One International and Others, joined cases C-628/10 P and C-14/11 P, EU:C:2012:479, paragraphs 43 and 46; of 8 May 2013, ENI v Commission, C-508/11 P, EU:C:2013:289, paragraph 47; of 16 November 2000, Sotra Kopparbergs Bergslags v Commission, C-286/98 P, EU:C:2000:630, paragraph 29; of 23 January 2014, Evonik Degussa et AlzChem v Commission, T-391/09, EU:T:2014:22, paragraph 77; of 11 July 2013, Commission v Stichting Administratiekantoor Portielje, C-440/11 P, EU:C:2013/514, paragraph 41.

73 Reply to the sixth RFI, question 9, DSA.100101, Doc ID 281-1; DSA.100102, Doc ID 367; DSA.100103, Doc ID 320-1.

74 Reply to the fourth RFI, question 2(a). DSA.100102, Doc ID 160-2; 160-5.

75 Reply to the sixth RFI, question 12, DSA.100101, Doc ID 281-1; DSA.100102, Doc ID 367; DSA.100103, Doc ID 320-1.

76 See https://www.sec.gov/Archives/edgar/data/1418091/000141809122000147/twtr-20220630.htm (last accessed on 17 February 2025). DSA.100101, Doc ID 292-4; DSA.100102, Doc ID 385-4; DSA.100103, Doc ID 328-4.

77 The order is available at this link: https://law.justia.com/cases/federal/district-courts/california/candce/3:2024cv01304/425731/73/ (last accessed on 17 February 2025). DSA.100101, Doc ID 293; DSA.100102, Doc ID 386; DSA.100103, Doc ID 329.

and, 'just days before the trial date,' Musk 'agreed to close the deal on its original terms'. 'The merger transaction closed on October 27, 2022', at which time Musk merged Twitter into X, the latter being a company of which he was, inter alia, the Chairman, Sole Director, and controlling shareholder; he also became the 'Administrator of the Plans.'

(d) Mr. Elon Musk has issued several posts on X suggesting that he exercises control over strategic decisions relating to the provision of the X service in the Union. For example, it was Mr. Musk who announced, on 25 November 2022, that Twitter would re-introduce blue-ribbon verification checkmarks alongside grey checkmarks for accounts of governments and gold checkmarks for accounts of companies (i.e., corporate accounts).[78] Similarly, in an earlier post of 1 November 2022, Mr. Elon Musk announced the introduction of a key change regarding the blue-ribbon verification checkmarks on the X service.[79]

(e) Likewise, on 2 February 2023, Mr. Elon Musk issued a post on Twitter,[80] suggesting personal involvement in the decision to restructure the Twitter API offering.[81] This restructuring included the discontinuation of the Twitter Academic API program.[82]

(f) More generally, in a post of 28 March 2025, Mr. Elon Musk announced the acquisition of X by '@xAI'. The Commission understands – as later confirmed by the provider of X in reply to the sixth RFI – that '@xAI' refers to X.AI Holdings Corp. and X refers to XIUC.[83]

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78 CNBC, https://www.cnbc.com/2022/11/25/elon-musk-says-twitter-to-launch-verified-service-next-week.html, accessed on 21 June 2024 (DSA.100101, Doc ID 161-190).

79 '*Twitter's current lords & peasants system for who has or doesn't have a blue checkmark is bullshit. Power to the people! Blue for $8/month'X website'*. X website, https://x.com/elonmusk/status/1587498907336118274, accessed on 21 June 2024 (DSA.100101, Doc ID 161-170).

80 '*Yeah, free API is being abused badly right now by bot scammers & opinion manipulators. There's no verification process or cost, so easy to spin up 100k bots to do bad things. Just ~$100/month for API access with ID verification will clean things up greatly.*' X Website, https://x.com/elonmusk/status/1621259936524300289?s=20, accessed on 21 November 2025 (DSA.100101, Doc ID 294-29; DSA.100102, Doc ID 387-29; DSA.100103, Doc ID 330-29).

81 '*Starting February 9, we will no longer support free access to the Twitter API, both v2 and v1.1. A paid basic tier will be available instead'* X Website, https://x.com/XDevelopers/status/1621026986784337922, accessed on 21 November 2025 (DSA.100101, Doc ID 294-33; DSA.100102, Doc ID 387-33; DSA.100103, Doc ID 330-33).

82 Under the Twitter Academic API program, academic researchers could obtain free of charge data access via the Twitter API following the submission of a successful application to the provider of Twitter. Politico, https://www.politico.eu/article/elon-musk-twitter-goes-to-war-with-researchers-api/, accessed on 19 June 2024 (DSA.100102, Doc ID 207-93).
See Nature, https://www.nature.com/articles/d41586-023-00460-z, accessed on 25 June 2024 (DSA.100102, Doc ID 207-42).
CNN Business, https://edition.cnn.com/2023/04/05/tech/academic-researchers-blast-twitter-paywall/index.html, accessed on 19 June 2024, (DSA.100102, Doc ID 207-85).
An overview of the application process for the Twitter Academic API program is available at DEV Community, https://dev.to/suhemparack/a-guide-to-teaching-with-the-twitter-api-v2-3n08, accessed on 19 June 2024 (DSA.100102, Doc ID 207-121).

83 '*@xAI has acquired @X in an all-stock transaction. The combination values xAI at $80 billion and X at $33 billion ($45B less $12B debt). Since its founding two years ago, xAI has rapidly become one of the leading AI labs in the world, building models and data centers at unprecedented speed and scale. X is the digital town square where more than 600M active users go to find the real-time source of ground truth and, in the last two years, has been transformed into one of the most efficient companies in the*

(52) Given Mr. Elon Musk's decisive influence over X.AI Holdings Corp., X Holdings Corp. and, consequently, over XIUC, the Commission concludes that the provider of X in the Union consists of XIUC, X Holdings Corp., X.AI Holdings Corp., and Mr. Elon Musk. None of the arguments put forward by the provider of X in its Reply to the Preliminary Findings call that conclusion into question.

(53) In the first place, the provider of X's claim that considering the Musk Group as the provider of X runs counter to the Designation Decision, Delegated Regulation (EU) 2023/1127, Commission Implementing Decision C(2023) 8187 final, and Regulation (EU) 2022/2065 misunderstands the objectives and purpose of those legal instruments and the scope of the Commission's investigatory powers when adopting the aforementioned decisions under those instruments.

(54) First, the provider of X's claim that TIUC (now, XIUC) is the sole addressee of the Designation Decision and that, therefore, the sole entity bound to comply with Regulation (EU) 2022/2065 disregards the fact that the purpose of the Designation Decision was to designate a particular service as a very large online platform as follows from Article 33(4) of that Regulation. That is why the Commission adopts designation decisions in relation to each of the intermediary services that meet the threshold laid down in Article 33(1) of Regulation (EU) 2022/2065, rather than decisions in relation to each of the providers of those services.[84]

(55) The aforementioned claim also disregards the fact that decisions adopted pursuant to Article 288 TFEU must be addressed to entities and cannot be addressed to single economic units. In this respect, it is important to recall, as observed in the Designation Decision, that the Commission '*lack[ed] the investigative powers prior to designation to obtain the necessary information to identify all legal entities forming the economic unit providing the service to be designated.*'[85] Prior to designation, the Commission may not rely on its power to request information pursuant to Article 67 of Regulation (EU) 2022/2065, which only applies after designation and only in circumstances where the Commission has a suspicion that the provider addressed by such a request has infringed that Regulation. At that stage, the Commission may only rely on Article 24(3) of Regulation (EU) 2022/2065, which only permits it to request the provider of online platform or of online search engine to provide it with information on the number of average monthly active recipients of its service in the Union and information as regards the method used to calculate that number, including explanations and substantiation in respect of the data used. That is why the Commission left open the possibility in the Designation Decision that the provider of X in the Union could be broader than TIUC (now, XIUC), but it did not consider it

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world, positioning it to deliver scalable future growth. xAI and X's futures are intertwined. Today, we officially take the step to combine the data, models, compute, distribution and talent. This combination will unlock immense potential by blending xAI's advanced AI capability and expertise with X's massive reach. The combined company will deliver smarter, more meaningful experiences to billions of people while staying true to our core mission of seeking truth and advancing knowledge. This will allow us to build a platform that doesn't just reflect the world but actively accelerates human progress. I would like to recognize the hardcore dedication of everyone at xAI and X that has brought us to this point. This is just the beginning. Thank you for your continued partnership and support.' X website, https://x.com/elonmusk/status/1905731750275510312 accessed 19 November 2025 (DSA.100101, Doc ID 292-2; DSA.100102, Doc ID 385-2; DSA.100103Doc ID 328-2).

84 It is in this manner than Regulation (EU) 2022/2065 differs from Regulation (EU) 2022/1925, which requires the Commission to adopt a decision designating a particular undertaking providing core platform services as a 'gatekeeper'.

85 Designation Decision, recital 8.

necessary to resolve that issue at that stage. The same is true for Commission Implementing Decision C(2023) 8187 final, since Delegated Regulation (EU) 2023/1127 gives no power to the Commission to request information from providers of designated services subject to an annual supervisory fee.

(56) The aforementioned claim equally disregards the fact that the Designation Decision was addressed to TIUC (now, XIUC) as the 'main establishment' of the provider of X in the Union within the meaning of Article 56 of Regulation (EU) 2022/2065. While Regulation (EU) 2022/2065 recognises in several recitals and provisions that a provider may have multiple establishments, both within and outside the Union, addressing the Designation Decision to TIUC (now, XIUC) as the 'main establishment' of the provider of X in the Union in accordance with the aforementioned provision, amounted to notifying that Designation Decision to a legal entity forming part of the single economic unit providing the X service in the Union and thus to that single economic unit. Indeed, the economic, organisational and legal links between TIUC and the entities directly and indirectly controlling TIUC mean that those entities were aware of the Designation Decision. In any event, copies of the Designation Decision were also sent to X Holdings Corp. and X Corp.

(57) Second, as regards the provider of X's claim that considering the Musk Group as the provider of X in the Union conflicts with Delegated Regulation (EU) 2023/1127 and the Commission's use of TIUC's financial statements for the calculation of its supervisory fee misunderstands Article 5(2) of that Delegated Regulation and misrepresents the decision the Commission has adopted setting the supervisory fee for X. Article 5(2) of Delegated Regulation (EU) 2023/1127 provides that, where a provider of a designated service has consolidated accounts, the consolidated worldwide profits of the group to which that provider belongs must be considered when determining the maximum overall limit of the supervisory fee. The Musk Group does not have consolidated accounts. That is why TIUC (now, XIUC) submitted the latest audited financial statements for the group level at which its accounts are consolidated, namely, X Corp. and not TIUC as the provider of X erroneously claims. However, this does not imply that X Corp. is the ultimate entity providing X in the Union and that ultimate responsibility for compliance with Regulation (EU) 2022/2065 should stop at that level. Rather, it merely reflects the role of X Corp. as the group entity at whose level TIUC's accounts are consolidated. This is further underscored by the distinction between the calculation of the supervisory fee, which is non-punitive in nature, and the calculation of fines under Regulation (EU) 2022/2065 since its Article 74 of Regulation (EU) 2022/2065 refers to the notion of turnover and links that notion to the concept of an 'undertaking' within the meaning of Regulation (EC) 139/2004 , as explained in recital 46 above.

(58) Third, the provider of X's claim that Regulation (EU) 2022/2065 does not use the notion of 'undertaking' when referring to the addressees of its obligations disregards the fact that that notion is specific to the field of EU competition law, whereas Regulation (EU) 2022/2065 does not concern itself with the competitive impact that the activity of undertakings or their concentrations with other undertakings may have on any specific market and/or on its structure. Regulation (EU) 2022/2065 regulates the provision of intermediary services in the Union. EU legislation regulating the provision of services generally refers to the notion of 'provider' in relation to that economic activity. That being said, that legislation defines that notion in disparate ways, sometimes referring to a natural person or legal entity providing the service and sometimes referring to a single economic unit providing the service. As explained in

recitals 42 to 48 above, in the absence of any definition in Regulation (EU) 2022/2065, the notion of 'provider' should be interpretated in accordance with its usual meaning in everyday language, while also taking into account the context in which that notion occurs, the objectives pursued by the instrument in question, and the origins of that notion.

(59) In any event, in the *Sumal* judgment, to which the provider of X refers, the CJEU held that the decisive condition to bring a follow-on damages action against a subsidiary is the existence of one single economic unit that comprises both the subsidiary and its parent entity, and not whether the subsidiary was an addressee of the Commission's decision.[86] While the judgment concerned subsidiaries' liability for antitrust infringements of their parents in the context of private enforcement, the CJEU clarified that the Commission may choose to fine any legal entity belonging to the same economic unit when at least one legal entity within that economic unit commits an antitrust infringement. The fact that a legal entity is not named as an addressee of such a Commission decision does not allow to argue that it was not part of the same economic unit. Therefore, in the present case, inasmuch as Mr. Elon Musk operates as part of the single economic entity providing X in the Union, alongside X.AI Holdings Corp., X Holdings Corp. and XIUC, they should all be held jointly and severally liable for infringements of Regulation (EU) 2022/2065.

(60) In the third place, the provider of X's claim that interpreting the notion of 'provider' broadly is at odds with legal and economic reality disregards the considerations set out in recital 45 above. Effective enforcement of Regulation (EU) 2022/2065 can only be achieved if the obligations laid down in that Regulation apply to the persons or entities that take the ultimate strategic and business decisions to ensure that the provision of the service in the Union complies with obligations stemming from that Regulation. In many cases, whether a particular service is provided in line with the obligations laid down in Regulation (EU) 2022/2065 will require decisions to be taken on the presentation and operation of the online interface through which that service is provided. As explained in recital 70 of that Regulation, the presentation and operation of an online interface lies at the heart of an online platform (which is a sub-category of an intermediary service) provider's business. Consequently, where an intermediary service is operated by a subsidiary forming part of a larger economic unit with one or more entities exercising decisive influence over the subsidiary actually operating such business, ensuring compliance with the obligations laid down by the Regulation will generally presuppose the existence of such decisive influence also over matters relating to the technology underlying that interface. That Mr. Elon Musk exercises such decisive influence over the provision of X in the Union is demonstrated by the elements listed in recital 51 above. Neither argument put forward by the provider of X in this respect warrants a different conclusion.

(61) First, the provider of X's reference to the definition of 'provider' in Directive 2000/31/EC is misplaced. As a preliminary matter, the definition of a notion used in one piece of EU legislation is not dependent on the definition of the same notion in another piece of EU legislation, unless the former explicitly refers to the latter. In any event, Directive 2000/31/EC gives expression, first and foremost, to the freedom of establishment and the freedom to provide services enshrined in Articles 49 and 56 of the Treaty on the Functioning of the European Union ('TFEU'), which form the legal

[86] Judgment of the Court 6 October 2021, Sumal, S.L. v Mercedes Benz Trucks España S.L., Case C-882/19, ECLI:EU:C:2021:800, paragraph 59.

basis for that directive. Only natural persons that are located in a Member State and legal entities established in a Member State may benefit from those freedoms. Those freedoms do not extend to companies from third countries, which do not have their registered office, central administration, or principal place of business within the Union.[87] In contrast, Regulation (EU) 2022/2065 is based solely on Article 114 TFEU, which allows the EU legislature to regulate the exercise of particular economic activities on the Union market regardless of the legal status of the entities performing those activities or the legal structure of any group to which those entities may belong.

(62) Second, the provider of X's claim that to establish liability there should be a specific link between the economic activity of the entities at issue and the subject matter of the alleged infringements takes the *Sumal* judgment on which it relies out of its proper context. In that judgment, the CJEU applied the 'single economic unit' doctrine to establish 'downward' liability for competition law infringements, allowing subsidiaries to face damages claims for infringements involving their parent companies. Such liability is contingent on two conditions: (i) the subsidiary and parent company must form part of a single economic unit; and (ii) there must be a specific link between the subsidiary's business activities and the subject matter of the alleged competition law infringements. The present case does not concern a follow-on action for damages and the establishment of downward liability of subsidiaries for an infringement of the competition laws by its parent company. Rather, in this Decision, the Commission is required to determine whether an infringement of Regulation (EU) 2022/2065 has occurred and whom to hold accountable for that infringement. Moreover, as part of that determination, the Commission seeks to establish upward liability, in relation to which the EU competition case law has been clear and consistent over time. In particular, the judgment in *Skanska* (C-724/17), rendered the same year as the *Sumal* judgment,[88] confirms that there is no requirement to identify a specific link between the activities of the parent company and the infringement when establishing 'upward liability', i.e. holding parent companies liable for competition law infringements of their subsidiaries.

(63) In light of the foregoing, given Mr. Elon Musk's decisive influence over X.AI Holdings Corp., X Holdings Corp. and, consequently, over XIUC, the Commission concludes that the provider of X in the Union consists of XIUC, X Holdings Corp., X.AI Holdings Corp., and Mr. Elon Musk.

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87 See recital 36 of Directive 2006/123: "*The concept of 'provider' should cover any natural person who is a national of a Member State or any legal person engaged in a service activity in a Member State, in exercise either of the freedom of establishment or of the free movement of services. The concept of provider should thus not be limited solely to cross-border service provision within the framework of the free movement of services but should also cover cases in which an operator establishes itself in a Member State in order to develop its service activities there. On the other hand, the concept of a provider should not cover the case of branches in a Member State of companies from third countries because, under Article 48 of the Treaty, the freedom of establishment and free movement of services may benefit only companies constituted in accordance with the laws of a Member State and having their registered office, central administration or principal place of business within the Community.*" See also the Explanatory Memorandum to the proposal of the e-Commerce Directive, page 19: *'"service provider" This definition is based on Articles 59 and 60 of the Treaty and their interpretation by the case law of the Court of Justice*'.

88 Judgment of 14 March 2019, Vantaan kaupunki v Skanska Industrial Solutions Oy and Others, Case C-724/17, ECLI:EU:C:2019:204.

4. NON-COMPLIANCE WITH ARTICLE 25(1) OF REGULATION (EU) 2022/2065

4.1. The legal framework

(64) Pursuant to Article 25(1) of Regulation (EU) 2022/2065, '*[p]roviders of online platforms shall not design, organise or operate their online interfaces in a way that deceives or manipulates the recipients of their service or in a way that otherwise materially distorts or impairs the ability of the recipients of their service to make free and informed decisions*.'

(65) Recital 67 of Regulation (EU) 2022/2065 clarifies that *'[d]ark patterns on online interfaces of online platforms are practices that materially distort or impair, either on purpose or in effect, the ability of recipients of the service to make autonomous and informed choices or decisions*.' More concretely, that recital explains that *'[p]roviders of online platforms should […] be prohibited from deceiving or nudging recipients of the service and from distorting or impairing the autonomy, decision-making, or choice of the recipients of the service via the structure, design or functionalities of an online interface or a part thereof. This should include, but not be limited to, exploitative design choices to direct the recipient to actions that benefit the provider of online platforms, but which may not be in the recipients' interests.*'

4.2. The relevant measures put in place by the provider of X

(66) In June 2009, the provider of Twitter launched the 'Verified Account' status to address the phenomenon of false identity or high-profile celebrity impersonations on Twitter, which were perceived as confusing for users and unwelcome by those being impersonated.[89] The Verified Account status, along with the blue-ribbon checkmark badge, was made available to a selection of widely known public figures who were considered to be at risk of impersonation. The purpose of the Verified Account status was to ensure that users could easily see which accounts known to the provider of Twitter actually belonged to, or were actually controlled by, the entity under whose name those accounts were operated. To obtain the Verified Account status, users were required, first, to apply for that status and, next, to undergo a vetting process in which they had to confirm their identity, the authenticity of their account, and their 'notability'. This meant that the provider of Twitter had been in contact with the person or entity the account was representing and verified that that person or entity was behind these accounts. While the content (i.e., the tweets) of such an account might not have been directly written or posted by the person in whose name the account had been set up and operated, the provider of Twitter verified that the account concerned was known to, and approved by, the real person or entity behind the account.[90]

(67) On 28 October 2022, Twitter was acquired by the provider of X. On 9 November 2022, the provider of X began to introduce fundamental changes to Twitter's account verification program, which also affected recipients of its service in the Union. Under a new policy, the Verified Account status became a paid feature widely available to paying subscribers who, in exchange for a monthly fee of USD 7.99, acquired access to various features linked to the 'Twitter Blue' subscription, including the 'verified'

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89 X website, https://blog.x.com/official/en_us/a/2009/not-playing-ball.html, accessed on 11 June 2024 (DSA.100101, Doc ID 161-126).

90 Mashable, https://web.archive.org/web/20090615040324/http://mashable.com/2009/06/11/twitter-verified-accounts-2, accessed on 5 June 2024 (DSA.100101, Doc ID 161-30).

status and blue-ribbon checkmark badge displayed next to the user in Twitter's online interface.[91]

(68) This new policy resulted in a reduced level of scrutiny for users receiving the 'verified' status compared to the scrutiny practiced prior to that new policy and led to an initial spike of widely reported high-profile impersonations, including public figures such as Donald Trump, Rudy Giuliani and LeBron James, and companies such as Eli Lilly and Valve.[92] These issues prompted the provider of X to pause its new 'verification' feature on 11 November 2022, only two days after its release.[93]

(69) On 25 November 2022, Mr. Elon Musk announced that Twitter would re-introduce blue-ribbon verification checkmarks alongside grey checkmarks for accounts of governments and gold checkmarks for accounts of companies (i.e., corporate accounts).[94]

(70) On 12 December 2022, the 'Twitter Blue' subscription service was made available again for purchase, with the additional requirements that users subscribing to that service would need an account that was at least 90 days old, not have recently changed their profile information, and have a *'verified phone number'* to sign up.[95] The provider of X also announced that *'subscribers with the blue checkmark will get priority ranking in search, mentions, and replies to help lower the visibility of scams, spam and bots.'*[96]

(71) On 24 March 2023, the provider of X announced that it was discontinuing its legacy verification program completely, meaning that legacy verified users that did not subscribe to and pay for the new service would lose their Verified Account status and the blue checkmark.[97]

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91 The Verge, https://www.theverge.com/2022/11/9/23448317/elon-musk-twitter-blue-verification-live-ios, accessed on 11 June 2024 (DSA.100101, Doc ID 161-94).

92 The Verge, https://www.theverge.com/2022/11/9/23450289/twitter-impersonators-official-mario-musk-jesus-valve, accessed on 11 June 2024 (DSA.100101, Doc ID 161-98); https://www.bbc.com/news/technology-63599553, accessed on 5 June 2024 (DSA.100101, Doc ID 161-74); Mashable, https://mashable.com/article/disney-junior-fake-account-twitter-verified, accessed on 5 June 2024 (DSA.100101, Doc ID 161-146); Reuters, https://www.reuters.com/technology/companies-wary-twitter-checkmark-policy-fuels-imposter-accounts-2023-05-02/, accessed on 5 June 2024 (DSA.100101, Doc ID 161-150); AP News, https://apnews.com/article/twitter-verification-blue-check-elections-elon-musk-5df36ed183d16ec3bf99446e6827bcdd, accessed on 5 June 2024 (DSA.100101, Doc ID 161-154); Politico, https://www.politico.com/news/2023/05/30/fake-aoc-twitter-account-musk-00099319, accessed on 5 June 2024 (DSA.100101, Doc ID 161-158).

93 CNBC, https://www.cnbc.com/2022/11/11/twitter-blue-subscription-disappears-from-app.html, accessed on 11 June 2024 (DSA.100101, Doc ID 161-102).

94 CNBC, https://www.cnbc.com/2022/11/25/elon-musk-says-twitter-to-launch-verified-service-next-week.html, accessed on 21 June 2024 (DSA.100101, Doc ID 161-190).

95 X website, https://blog.x.com/en_us/topics/product/2022/twitter-blue-update, accessed on 5 June 2024 (DSA.100101, Doc ID 161-90); The Verge, https://www.theverge.com/2022/12/12/23506335/twitter-blue-verified-checkmarks-return-impersonation, accessed on 21 June 2024 (DSA.100101, Doc ID 161-202).

96 X website, https://x.com/premium/status/1602426811656413189, accessed on 21 June 2024 (DSA.100101, Doc ID 161-178).

97 X website, https://x.com/verified/status/1639029459557679104, accessed on 21 June 2024 (DSA.100101, Doc ID 161-182).

(72) On 24 July 2023, 'Twitter' was rebranded as 'X', as a consequence of which the subscription service 'Twitter Blue' became 'X Premium'.[98]

(73) According to early reports from 17 August 2023, following the rebranding, the provider of X was working on an ID verification program[99] to help it enforce its policy against *'misleading and deceptive identities'*.[100] These reports were confirmed on 15 September 2023, with public sources detailing that the provider of X had partnered with the third-party service provider 'Au10tix' for identity verification using government-issued identity documents. The ID verification program was gradually made available globally, with the program being available in the Union at least as early as May 2024 – but it was and remains to-date voluntary for receiving the 'verified' status.[101]

(74) On 27 October 2023, the provider of X launched additional tiers to its subscription services, distinguishing between 'Basic', 'Premium', and 'Premium+' subscriptions. Each of those tiers included a successively larger 'reply prioritization', leading to higher visibility of the replies of subscribers to posts via algorithmic ranking. This means that replies by users with a paid subscription are more likely to be shown at the top of the reply feed under a given post. Only accounts with Premium and Premium+ subscriptions include the blue-ribbon checkmark 'verified' status in the online interface design, as well as the possibility of additional ID verification.[102]

4.3. The Commission's Preliminary Findings

(75) In its Preliminary Findings, the Commission reached the preliminary conclusion that the provider of X failed to comply with Article 25(1) of Regulation (EU) 2022/2065 because the visual and textual design of X's online interface in relation to accounts subscribed to the X Premium and Premium+ services, as well as the manner in which that interface is organised and operated, deceives recipients of the X service into believing that accounts with a 'verified' status on X are meaningfully vetted by that provider, thereby materially distorting or impairing their ability to make free and informed decisions regarding the authenticity and reliability of those accounts. That conclusion was based on the following considerations.

4.3.1. Misappropriating the historical meaning of the verification checkmarks of Twitter on the X service

(76) In the first place, since November 2022, the provider of X has made significant changes to the process for verifying whether users with a 'verified' status are the persons or entities that they claim to be on X, which make that process ineffective in confirming the identity or authenticity of such users as compared to the Verified

98 Financial Times, https://www.ft.com/content/a4330d6b-03cd-41a2-a391-a08d3580b3d1, accessed on 25 June 2024 (DSA.100101, Doc ID 161-38).

99 Engadget, https://www.engadget.com/x-may-soon-add-id-verification-for-preventing-impersonation-190422905.html, accessed on 21 June 2024 (DSA.100101, Doc ID 161-194).

100 X website, https://help.x.com/en/rules-and-policies/x-impersonation-and-deceptive-identities-policy, accessed on 11 June 2024 (DSA.100101, Doc ID 161-118).

101 TechCrunch, https://techcrunch.com/2023/09/15/x-launches-account-verification-based-on-government-id/, accessed on 11 June 2024 (DSA.100101, Doc ID 161-114); X website, https://help.x.com/en/rules-and-policies/verification-policy, accessed on 5 June 2024 (DSA.100101, Doc ID 161-70).

102 TechCrunch, https://techcrunch.com/2023/10/27/x-is-launching-new-premium-and-basic-subscription-tiers/, accessed on 21 June 2024 (DSA.100101, Doc ID 161-186); X website, https://help.x.com/en/using-x/x-premium, accessed on 5 June 2024 (DSA.100101, Doc ID 161-58).

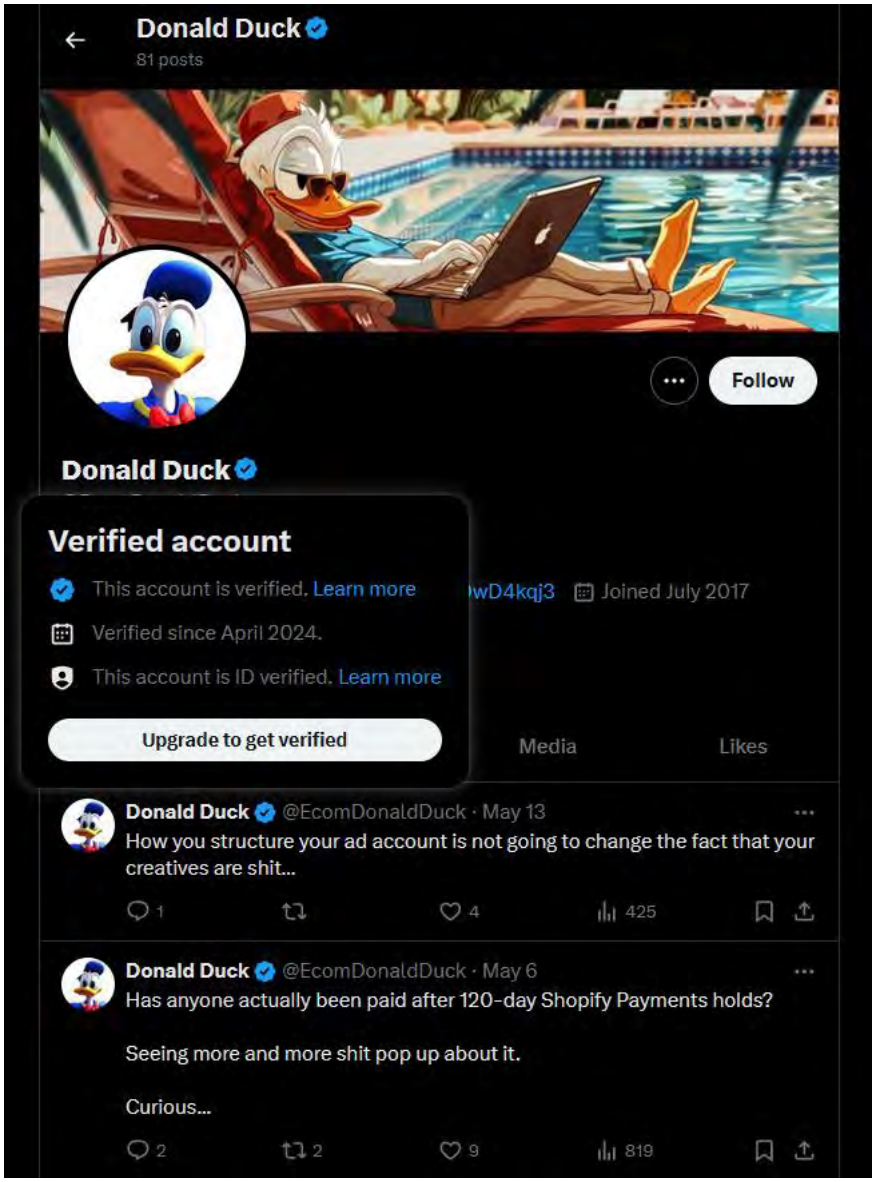
Accounts system that had previously been in place on Twitter, without, however, making any meaningful changes to the design of its online interface in relation to the 'verified' status.

(77) A comparison of the online interface design from 2009 (Figure 1) with the interface design at the time the Preliminary Findings were adopted (Figure 2) in relation to the 'verified' status demonstrates that the latter contains strong visual and textual signifiers that are largely copied from the legacy verification feature displayed in the former.

Figure 1: Original design of blue-ribbon badge with white checkmark from 2009 when Verified Accounts were first launched as a feature.

Source: Mashable, https://web.archive.org/web/20190416180545/https://mashable.com/2009/06/11/twitter-verified-accounts-2/, accessed on 5 June 2024 (DSA.100101, Doc ID 161-30).

Figure 2: Example of the textual and visual online interface design granted to X Premium subscribers. N.B.: The ID verification line is only granted to those who go through an additional verification process.



Source: X website, https://x.com/EcomDonaldDuck, accessed on 21 June 2024 (DSA.100101, Doc ID 161-162).

(78) For users subscribed to X's Premium and Premium+ services, X's online interface displays virtually the same blue-ribbon badge next to the username as that previously available under Twitter's Verified Accounts system – both when displaying the content of such users in the timeline and whenever another user visits that Premium or Premium+ subscribed user's account page.

(79) Moreover, clicking the blue-ribbon badge on the account page of any subscriber to X's Premium and Premium+ services opens a popup window with prominent textual features stating, among others, the following: '*Verified* account', 'This account is *verified*', '*Verified* since [date]', and 'Upgrade to get *verified*' [emphases added]. In its online interface design, the provider of X uses both '*verified*' and '*ID verified'* labels, both marked with the same blue-ribbon badge. Those X Premium and Premium+ subscribers who undergo the additional and voluntary ID verification process receive a line stating that 'This account has been *ID verified*' [emphasis added], the characters 'ID' being the only element allowing to differentiate ID verified accounts from those that not undergone the same process.

(80) However, while the design of X's online interface in relation to the 'verified' status has hardly changed since its introduction in 2009 by the provider of Twitter, the vetting standards and requirements that were previously used to confirm the 'verified' status of users under Twitter's Verified Accounts system have been dismantled and replaced by ineffective standards and requirements under X's Premium and Premium+ subscription services.[103] Instead of the pro-active and thorough up-front vetting process of all applications to attain 'vetted' status under Twitter's previous Verified Accounts system, the provider of X now relies on very limited and probabilistic up-front checks to verify the identity of an account holder when conferring the 'verified' status to subscribers of X's Premium and Premium+ services and, in some instance, on the *ex post* rectification of improperly 'verified' accounts.

(81) According to the provider of X, the system for verifying the authenticity of accounts subscribed to X's Premium and Premium+ services currently in place consists of (i) automated checks of profile pictures and names against existing 'verified' X accounts; and (ii) a manual review whereby '[redacted]' and the '[redacted] *look for signs of impersonation, including for example,* [redacted].' This review process is retriggered whenever a [redacted]'.[104] The provider of X implicitly admits that this initial vetting process cannot provide a clear and unequivocal affirmation of an account's identity or authenticity by simultaneously allowing and encouraging its users to report accounts for violations of its impersonation policy.[105] This means that the provider of X is aware that it cannot rely on its own initial verification process, irrespective of which it grants the 'verified' status to X's Premium and Premium+ services' recipients, including the historically significant blue ribbon checkmark and misleadingly affirmative textual elements such as 'this account is verified'.

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103 Xiao, Madelyne, Mona Wang, Anunay Kulshrestha, and Jonathan Mayer. 'Account Verification on Social Media: User Perceptions and Paid Enrollment.' arXiv, June 24, 2023. https://doi.org/10.48550/arXiv.2304.14939 (DSA.100101, Doc ID 122-1).

104 Reply to the second RFI, section V, request 1 (DSA.100101, Doc ID 164-9).

105 X website, https://help.x.com/en/safety-and-security/report-x-impersonation, accessed on 11 June 2024 (DSA.100101, Doc ID 161-130).

(82) Furthermore, according to the provider of X, between 28 August 2023 and 26 January 2023, '*X reviewed* [redacted] *new X Premium applications […] In addition, X reviewed* [redacted] *X Premium accounts based on profile changes.*' The provider of X further claims that '*all applications go through human review to a varying degree, including for impersonation review. The reviews are conducted by teams across the* [redacted] *functions comprising* [redacted] *individuals in total (*[redacted] *full-time employees and* [redacted] *contractors).*'[106] Under a conservative assumption that the individuals in charge of this task are in full-time employment and spend between 40 to 60 hours per week reviewing applications, this indicates that the review of each application to X's Premium and Premium+ subscription services took on average no more than 53-79 seconds per account in the period indicated above. Thus, even though the provider of X claims that human review is part of their new 'verification' process, the time allocated to reviewing an account does not appear sufficient to meaningfully claim the 'verified' status for such accounts.

(83) This new 'verification' process is thus a significant departure from the original Verified Accounts system that the provider of Twitter introduced in 2009 to address issues with celebrity impersonations, and which remained largely in place until the November 2022 changes. That system was based on a good-faith effort to thoroughly and proactively verify a user *before* granting the 'verified' status, as opposed to the current limited *ex ante* review coupled with a limited *ex post* sanctioning of impersonator accounts, once such accounts have been identified.[107] Under the previous system, noteworthy users were provided with the label 'Verified Account' and a blue-ribbon badge with a white checkmark (see Figure 1) to indicate that the provider of Twitter had pro-actively confirmed the identity of the real person (or entity, e.g., an undertaking in case of a corporate account) in whose name the account was set up or on whose behalf it was operated. The provider of Twitter had the ability to verify that the account and the content posted on it was known to and approved by that person or entity, including contacting the person or entity the account was representing.[108] While the feature continued to be improved over the years, the underlying pro-active and *ex ante* verification logic did not change until November 2022.[109] In combination with a virtually unchanged overall visual design, this means that, for more than 13 years, users of Twitter could rely on the blue-ribbon badge as a trustworthy indicator that accounts that were vetted by the Verified Accounts program were indeed who they claim to be.

(84) In addition to the reduced thoroughness of the new verification system, the provider of X has also changed the eligibility criteria for affording the 'verified' status from 'active, notable, and authentic' under the previous Twitter's Verified Accounts program to 'complete, active, secure, and non-deceptive' under the X Premium and

106 Reply to the second RFI, section V, request 2 (DSA.100101, Doc ID 164-9).

107 X website, https://blog.x.com/official/en_us/a/2009/not-playing-ball.html, accessed on 11 June 2024 (DSA.100101, Doc ID 161-126).

108 Mashable, https://web.archive.org/web/20190416180545/https://mashable.com/2009/06/11/twitter-verified-accounts-2/, accessed on 5 June 2024 (DSA.100101, Doc ID 161-30).

109 Xiao, Madelyne, Mona Wang, Anunay Kulshrestha, and Jonathan Mayer. 'Account Verification on Social Media: User Perceptions and Paid Enrollment.' arXiv, 24 June 2023. https://doi.org/10.48550/arXiv.2304.14939 (DSA.100101, Doc ID 122-1).

Premium+ subscription services.[110] The change of the 'authenticity' requirement to a 'non-deceptive' requirement marks a departure from the traditional meaning of the verification process. In particular, 'authentic' in the sense of 'representing the entity whose name the account claims' logically restricts the verification process to non-anonymous accounts. That is, an account named, for example, 'Anonymous Joe' could not be verified.[111] The 'non-deceptive' criterion, in contrast, explicitly allows anonymous or fictitious accounts to receive the 'verified' status, while only negatively prohibiting blatant impersonations. This deviates from the previous system – from which the provider of X copied the online interface design – under which recipients of the service had the guarantee that the 'verified' status was reserved for accounts belonging to or controlled by the entity under whose name the account was operated. The Commission considers that, by conferring the 'verified' status including its legacy design and the attached meaning to such anonymous or fictitious accounts, the provider of X lends the credible authenticity assurances of the historical verification program to accounts that cannot be confirmed to be authentic. That provider therefore deceives recipients of its service into believing that accounts with a 'verified' status are meaningfully vetted, thereby materially distorting or impairing their ability to make free and informed decisions regarding the authenticity of those accounts. The aforementioned Figure 2 provides an example of such a fictitious 'verified' user account on X.

(85) Whereas Twitter's Verified Accounts program was designed, organised and operated to provide assurance to recipients of the service that the user they were interacting with had been thoroughly vetted to be who they claimed to be, the 'verified' status for anonymous accounts under X's current verification system does not have the same value or meaning. Based on the current system, that status only means that an account has a verifiable phone number, credit card, and has not been detected by X to be impersonating an actual entity (see recitals 81 and 82 above). Moreover, while the different value of the 'verified' status might be obvious to the users of X for *some* fictitious accounts (e.g., Figure 2), the lenient requirements put in place by the provider of X to obtain that status opens the door to malicious actors – e.g., foreign governments trying to interfere in electoral processes – deceptively posing, for example, as regular citizens to deceive recipients of X's service about the authenticity of their content thereby materially distorting or impairing their ability to make free and informed decisions within the meaning of Article 25(1) of Regulation (EU) 2022/2065.

(86) Consequently, the Commission takes the view that, by combining a lenient vetting system that is significantly less rigorous than that previously in place with the same historical online interface design that used to indicate that the identity and authenticity of an account holder had been 'verified', the provider of X deceives the recipients of the X service into believing that accounts with a 'verified' status on X are meaningfully vetted by that provider thereby materially distorting or impairing their ability to make free and informed decisions regarding the authenticity and reliability of those accounts. In reality, the new vetting process of the provider of X is

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110 Xiao, Madelyne, Mona Wang, Anunay Kulshrestha, and Jonathan Mayer. 'Account Verification on Social Media: User Perceptions and Paid Enrollment.' arXiv, 24 June 2023. https://doi.org/10.48550/arXiv.2304.14939 (DSA.100101, Doc ID 122-1).

111 While limited exceptions to this might have existed previously due to the vagueness of the 'authenticity' concept, the Commission is not aware of any concrete cases and would consider such cases exceptions to the general rule.

fundamentally different and – for the reasons explained above – far less rigorous than its historical predecessor from which it assimilated the online interface design.

(87) That discrepancy between the historically acquired meaning of the 'verified' status and the new 'verified' status deceives the recipients of the X services as to the authenticity of the accounts that they encounter on X. A study conducted to explore user perceptions and discernment of the new meaning of the 'verified' status on X concludes that '*[t]he results demonstrate a significant mismatch between perceptions and reality: more than half of respondents misunderstand Twitter's blue check verification policies to still require proof of identity […]. Correlation analysis of survey responses suggests that people who are older or have lower digital literacy may be modestly more likely to misunderstand Twitter verification.*'[112]

(88) In other words, the 'verified' status that users subscribing to the X Premium and Premium+ services obtain is deceptive to recipients of X insofar as it suggests, or least does not avoid the suggestion, that the account has been 'verified' according to the same policy and requirements as those underlying Twitter's previous Verified Accounts programme. However, unlike that system, the current system does not provide the guarantee that accounts with the 'verified' status are authentic accounts of persons or entities on whose behalf they are operated, nor can they logically do so in the case of anonymous accounts. Even with the addition of minimal requirements for obtaining the 'verified' status that the provider of X put into place shortly after the initial launch of the X Premium and Premium+ subscription services – notably a confirmed phone number and valid credit card, a certain degree of review against X's impersonation policy, and the voluntary ID verification system put in place in September 2023 – the Commission takes the view that the way that X's online interface is designed, organised and operated is deceptive within the meaning of Article 25(1) of Regulation (EU) 2022/2065.

4.3.2. Misappropriating the meaning of cross-industry visual standards

(89) In the second place, the effective meaning of X's 'verified' status is not only fundamentally and deceptively at odds with the reliability of Twitter's original Verified Accounts program, but also at odds with wider cross-industry standards for similar account verification programmes. Figure 3 depicts various visual markers used by providers of comparable intermediary services to indicate different forms of verification and authenticity assurances. While the eligibility criteria, the precise meaning and purpose of the achieved status, and the linked vetting process might vary across these different services, each of them includes an 'authenticity' criterion and each of them has a generally more rigorous vetting process than that currently employed by the provider of X for the 'verified' status under the X Premium and Premium+ services. For example, while Meta has introduced a paid-for verification scheme for Facebook and Instagram users called 'Meta Verified creator subscriptions', unlike X's 'verified' status, that scheme requires an eligible government issued photo ID to benefit from the verification marker on the online interfaces of Facebook and Instagram.[113] Without prejudice to the question of compliance of those providers with Regulation (EU) 2022/2065, this illustrates that the provider of X is clearly and

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112 Xiao, Madelyne, Mona Wang, Anunay Kulshrestha, and Jonathan Mayer. 'Account Verification on Social Media: User Perceptions and Paid Enrollment.' arXiv, 24 June 2023. https://doi.org/10.48550/arXiv.2304.14939 (DSA.100101, Doc ID 122-1).

113 Meta website, https://help.instagram.com/2419286908233223?helpref=faq_content, accessed on 13 June 2024 (DSA.100101, Doc ID 161-134).

significantly departing from industry practices regarding according 'verified' status to users.

Figure 3: Screenshot of table from a pre-print paper comparing cross-industry interface designs and eligibility criteria for account verification. 'An asterisk denotes an aspect of a verification program that changed between the survey and publication: Twitter Verified Organizations became available for pay, and Meta both eliminated its 'Notable' and 'Unique' requirements and made verification available for pay. N.B. that 'Twitter Blue' was rebranded to X Premium and Premium+ subscriptions subsequently.

Platform	Program	Launch	Icon	Eligibility Criteria	Open	Requestable	Pay
Twitter	Legacy Verification	2009		"Active," "Notable," and "Authentic"	✗	✓	✗
Twitter	Blue	2022		"Complete," "Active," "Secure," and "Non-deceptive"	✓	✓	✓
Twitter	Verified Organizations	2022		Organizational account, additional criteria ambiguous	✓	✓	✗*
Twitter	Government	2022		Specified account types, additional criteria ambiguous	✓	✓	✗
Facebook	Verified Pages and Profiles	2013		"Notable," "Unique," and "Authentic"*	✓	✓	✗*
Instagram	Verified Badges	2014		"Notable," "Unique," and "Authentic"*	✓	✓	✗*
Snapchat	Snap Stars	2019		"Engagement," "Public Audience," "Authenticity," "Notability," and "Quality"	✓	✗	✗
Snapchat	Public Profiles for Businesses	2021		"Authentic" and "Notable"	✓	✓	✗
TikTok	Verified Accounts	2019		"Active," "Authentic," "Complete," "Notable," and "Secure"	✓	✓	✗
YouTube	Channel Verification	2022		"Authentic," "Complete," and 100,000 subscribers	✓	✓	✗

Source: Xiao, Madelyne, Mona Wang, Anunay Kulshrestha, and Jonathan Mayer. 'Account Verification on Social Media: User Perceptions and Paid Enrollment.' arXiv, June 24, 2023. https://doi.org/10.48550/arXiv.2304.14939 (DSA.100101, Doc ID 122-1).

(90) The study referred to in recital 87 above elaborates that '*major social media platforms have generally followed Twitter's model, offering account verification with similar terminology and check mark iconography [...] The primary purpose of account verification – a point of consistency over time and across platforms, with the sole exception of Twitter's recent changes – has been to address account impersonation by affirmatively and proactively confirming an account owner's identity. But verification quickly accumulated other meanings, including as a signifier of account importance and the credibility of content.*'[114] As explained in recitals 81 to 82 above, the provider of X departed from a system of pro-active and *ex ante* confirmation of identity towards a system under which the 'verified' status is distributed to anonymous paying subscribers, with an at least partially *post-hoc* reactive approach to impersonation abuses of the 'verified' status.

(91) The Commission therefore took the view that the design, organisation and operation of X's online interface is deceptive to X's recipients, since the provider of X materially changed the verification process as compared to cross-industry standards, while at the same time maintaining the visual and textual online interface design for 'verified' accounts under Twitter's Verified Accounts program, which was in line with those standards, thereby misappropriating the significance and assurance value of a cross-industry standard for representing accounts whose authenticity and identity has been verified.

4.3.3. Artificial algorithmic amplification in relation to user perception

(92) In the third place, the deceptive nature of the design, organisation and operation of X's online interface is further demonstrated by the combination of misappropriated visual

114 Xiao, Madelyne, Mona Wang, Anunay Kulshrestha, and Jonathan Mayer. 'Account Verification on Social Media: User Perceptions and Paid Enrollment.' arXiv, June 24, 2023. https://doi.org/10.48550/arXiv.2304.14939 (DSA.100101, Doc ID 122-1).

and textual design elements with an algorithmically amplified visibility of replies from X Premium and Premium+ subscribers. As one of its features, the provider of X offers such subscribers a 'reply prioritization' – i.e., an algorithmically curated higher visibility of their replies to posts on X's online interface – that increases in magnitude as a function of higher tier subscriptions. This prioritization means that replies to other users' posts by accounts having the 'verified' status in X's interface design are statistically more visible in replies to those posts.[115] This effectively allows any subscriber to 'pay for reach' or pay for higher visibility. Crucially, replies from X Premium and Premium+ subscribers enjoy increased visibility without the other recipients of the X service being informed that such higher visibility is due to a financial agreement between the subscriber and the provider of X (as is required in relation to advertising).

(93) For the reasons set out in recitals 94 to 96, the Commission took the view that boosting the visibility of replies from accounts wrongly presented as 'verified' is deceptive to X's recipients, and therefore strengthens the deceptive nature of the design, organisation, and operation of X's online interface regarding the 'verified status.

(94) First, the interface design in the reply-feed of X only shows the historical blue-ribbon badge, without any direct means for users to understand that its significance has changed from the original feature introduced in 2009. To 'Learn more' about the new meaning of this badge, users would need to go to the account page of individual 'verified' users whose post is shown in the reply feed, click on the blue-ribbon icon, and then, in a pop-up window, click on a hyperlink that leads to an explanatory page separate from X's main social media interface.

(95) Second, the selectiveness of the historical and cross-industry applicable standard for acquiring the 'verified' status, as reflected in the still widely applied 'notability' requirement for achieving such a status, means that posts from 'notable' verified accounts have, on average, higher engagement and reach due to the public standing of such accounts. The elimination of the 'notability' requirement follows the proclaimed vision of Mr. Elon Musk in making the 'verified' status accessible to a broader set of users.[116] Under Twitter's original Verified Accounts program, Verified Accounts were organically more visible to users due to their public standing and 'notability'. By artificially boosting content from *any* user that is willing to pay for a subscription, the provider of X *de facto* artificially simulates 'notability' for these users, thereby deceiving the recipients of its service about the significance of their content and therefore materially distorting or impairing their ability to make free and informed decisions regarding those accounts. By treating their content differently in their algorithmic ranking against remuneration, and without disclosing this transparently to the recipients of the X service, the provider of X deceptively suggests that that content is ranked more highly because of its standard recommender system features, such as engagement metrics. This deception impairs the ability of recipients of the X service to

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115 X website, https://help.x.com/en/using-x/x-premium, accessed on 5 June 2024 (DSA.100101, Doc ID 161-58).

116 See Mr. Elon Musk's post of 1 November 2022: '*Twitter's current lords & peasants system for who has or doesn't have a blue checkmark is bullshit. Power to the people! Blue for $8/month'X website*' – X website, https://x.com/elonmusk/status/1587498907336118274, accessed on 21 June 2024 (DSA.100101, Doc ID 161-170).

make free and informed decisions about the relevance and noteworthiness of the content that they are recommended when visiting the reply-feeds of individual posts.

(96) Third, the deceptive nature of this feature has already been recognised by the French *Commission nationale des comptes de campagne et des financements politique* (CNCCFP). The CNCCFP announced, on 13 July 2023, that, six months before an election, French political candidates would be prohibited from using the visibility boost from X's subscription services. As the CNCCFP explained, this decision was taken because the paid subscription services, which boosts the visibility of an account and its broadcasted messages, are essentially a new form of (undisclosed) sponsored advertising.[117]

4.3.4. Provider's awareness of the deceptive nature of the 'verified' status

(97) In the fourth place, there is evidence demonstrating that the provider of X was and remains aware of the deceptive nature of its online interface design, organisation, and operation for the 'verified' status of X Premium and Premium+ subscribers, but has deliberately chosen to ignore expert advice and has refused to remedy the situation.

(98) Based on publicly available information, Twitter employees conducted an in-depth risk assessment before the November 2022 changes to the verification system resulting in a '*lengthy document warning how the feature could be abused*', which was '*largely ignored*' by the provider of that service.[118] The Commission has interviewed a former Twitter employee who confirmed the content and the relevant aspects of the internal deliberation process. The same employee further explained that the aforementioned document was drafted with the involvement of various teams, including legal and site integrity teams, and was shared with relevant decision-makers before the launch of the 'Twitter Blue' subscription services. In that document, concerns were presented regarding the difference in meaning between the legacy verification program and the new feature, which was liable to confuse users, as well as concerns surrounding impersonations, especially in relation to civic discourse and electoral processes.[119]

(99) These key concerns raised by Twitter employees before the launch of the new subscription services remained valid after Regulation (EU) 2022/2065 started to apply to X and they remain valid to date. After the initial launch of those subscription services, the provider of X implemented certain mitigation measures against impersonation, which is only *one* of the risks identified the internal report mentioned in recital 98 above. The provider of X further explained to the Commission that the risk assessment in that report '*is about an earlier beta version of the X Premium (f.k.a. Twitter Blue) that was launched on November 10, 2022 […]*' and that '*Twitter Blue was relaunched on December 12, 2022 […] with improved mitigation measures in*

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117 X website, https://x.com/cnccfp_officiel/status/1679494305478483968, accessed on 21 June 2024 (DSA.100101, Doc ID 161-166); https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000023883001, accessed on 13 June 2024 (DSA.100101, Doc ID 161-142); https://www.cnccfp.fr/nos-faq/, point 3.1.1, accessed on 5 June 2023 (DSA.100101, Doc ID 161-78); https://www.euronews.com/next/2023/07/20/french-authorities-ban-twitter-blue-for-political-candidates-ahead-of-elections, accessed on 13 June 2024 (DSA.100101, Doc ID 161-138).

118 NPR, https://www.npr.org/2022/12/02/1140355862/twitters-former-safety-chief-warns-musk-is-moving-fast-and-breaking-things, accessed on 5 June 2024 (DSA.100101, Doc ID 161-82).

119 Non-confidential minutes of interview with former employee of Twitter, 26 January 2024 (DSA.100101, Doc ID 78-2); NPR, https://www.npr.org/2022/12/02/1140355862/twitters-former-safety-chief-warns-musk-is-moving-fast-and-breaking-things, accessed on 5 June 2024 (DSA.100101, Doc ID 161-82).

order to detect and prevent impersonation'.[120] However, as explained in recital 87 above, even with the introduction of these mitigation measures, the concern that the design of X's online interface in relation to the 'verified' status could continue to deceive users in relation to its actual meaning remains unaddressed by the provider of X.

(100) In parallel, in the documents supporting X's Risk Assessment Report, the provider of X acknowledges the risk of user confusion about the online interface design of the 'verified' status for X Premium and Premium+ subscribers in relation to democratic processes, civic discourse, and electoral processes. Although the provider of X claims that account profile labels and checkmarks '*promote authentic experiences and protect against impersonation*' and '*provide our users with confidence that the accounts they are interacting with are authentic and operated by the legitimate owner of an individual or organizational identity*' on its subscription products, it also acknowledges that '*checkmarks that come with subscriptions are intended to be an indicator that an account is real (i.e. that a real human operates an account). Some users may mistakenly interpret this as if the subscriber account's identities have been verified – which is not necessarily the case – and allow such accounts to have undue influence over their civic beliefs*'.[121] As already mentioned in recital 81 above, the provider of X has also implicitly acknowledged that its vetting process for the 'verified' status can never provide a clear and unequivocal affirmation as to the identity or authenticity of users.[122]

(101) Despite these acknowledgements, the provider of X explained to the Commission in response to the second RFI that: '*No research or A/B testing was conducted about user perception of blue checkmarks in relation to the authenticity of the user labelled as 'Verified account' and 'This account is verified' in X (sic) interface design*'.[123] This lack of internal research or testing is notable because the initial internal risk assessment was known to the provider of X and additional independent research on the deceptiveness of the 'verified' status existed prior to the application of Regulation (EU) 2022/2065 to X.[124]

(102) Based on the above, the Commission took the view that the provider of X was well aware of the deceptive nature of its online interface design, organisation, and operation for the 'verified' status of X Premium and Premium+ subscribers, even prior to when Regulation (EU) 2022/2065 started to apply to that service, and that it has taken insufficient action to remedy the situation.

4.3.5. Insufficient and ineffective information on meaning of 'verified' status

(103) In the fifth place, the way the provider of X informs recipients of its service of the value of the 'verified' status is not easily accessible and confusing, thus exacerbating the deceptive design of its online interface, given the historical meaning of the original

120 Reply to the second RFI, section II, request 4 (DSA.100101, Doc ID 164-9).

121 Reply to the first RFI, section VIII, request 9, annex, 'DSA Risk Assessment Actual or Foreseeable Negative Effects on Democratic Processes, Civic Discourse and Electoral Processes – August 2023', page 8 (DSA.100101, Doc ID 2-9).

122 X website, https://help.x.com/en/safety-and-security/report-x-impersonation, accessed on 11 June 2024 (DSA.100101, Doc ID 161-130).

123 Reply to the second RFI, section V, request 3 (DSA.100101, Doc ID 164-9).

124 Xiao, Madelyne, Mona Wang, Anunay Kulshrestha, and Jonathan Mayer. 'Account Verification on Social Media: User Perceptions and Paid Enrollment.' arXiv, June 24, 2023. https://doi.org/10.48550/arXiv.2304.14939 (DSA.100101, Doc ID 122-1).

verification program and the cross-industry standards. The 'Learn more' page, which provides recipients of the X service with that information, is three clicks, a pop-up window, and a separate help page away from the user's timeline experience.

(104) Consequently, the explanations given on the 'Learn more' page do not alleviate the aforementioned concerns regarding the deceptiveness of the 'verified' status but exacerbate them. In the timeline display of the blue-ribbon badge, which is where recipients of the X service spend most of their time, X's recipients are presented with only this historically charged visual 'verification' clue next to the username. Only if and when users visit the actual account indicated with a blue-checked name, can they access more information by clicking first on the blue-ribbon badge on the account page, which opens a popup window as depicted in Figure 2, and then on the 'Learn more' hyperlink displayed next to the textual 'verified' markers. After these three clicks, this hyperlink leads the user to a separate explanatory page detailing the meaning of the blue checkmark and 'verified' status, the policy change compared to the previous verification process, eligibility criteria to receive a blue checkmark, and under which conditions such a checkmark can be revoked.[125]

(105) This explanatory 'Learn more' page on the meaning of the 'verified' status states that the '*blue checkmark means that the account has an active subscription to X Premium and meets our eligibility requirements.*' It further explains that '*Starting April 1, 2023 we began winding down our legacy Verification program and accounts that were verified under the previous criteria (active, notable, and authentic) will not retain a blue checkmark unless they are subscribed to X Premium.*' The current eligibility criteria include the following: '*Complete: Your account must have a display name and profile photo*'; '*Active use: Your account must be active in the past 30 days to subscribe to X Premium*'; '*Security: Your account must have a confirmed phone number*'; '*Non-Deceptive: - Your account must have no recent changes to your profile photo, display name, or username (@handle), - Your account must have no signs of being misleading or deceptive – Your account must have no signs of engaging in platform manipulation and spam*'. Further down, the explanatory page elaborates that '*As a result of this change, X will no longer be accepting applications for the blue Verification checkmarks under the previous criteria (active, notable, and authentic).*'[126]

(106) While the provider of X enumerates its new eligibility criteria (see recital 84 above), it does not explain in meaningful terms that the 'verified' status has an entirely different meaning from what is generally understood and assumed in the industry under the notion of a 'verified' account of a social media platform. Moreover, the aforementioned succinct explanations are difficult to access for recipients of the X service. By leading them three clicks and separate pages away from the main user experience of the timeline, those explanations do not provide meaningful transparency to remedy the initial deception caused by the misappropriation of the legacy online interface design. Finally, the lack of efficiency of the 'Learn more' page is evidenced by the results of the study mentioned at recital 87 above, which shows that more than

[125] X website, https://help.twitter.com/en/managing-your-account/about-x-verified-accounts, accessed on 5 June 2024 (DSA.100101, Doc ID 161-66).

[126] X website, https://help.twitter.com/en/managing-your-account/about-x-verified-accounts, accessed on 5 June 2024 (DSA.100101, Doc ID 161-66).

half of users surveyed do not understand the new requirements and meaning of the 'verified' status.[127]

4.3.6. Risk of adversarial abuse of 'verified' status

(107) In the sixth place, there is evidence that motivated malicious or fraudulent actors benefit from the deceptive nature of the provider of X's 'verified' status for Premium and Premium+ subscribers which materially distorts or impairs the ability of those recipients to make free and informed decisions regarding the authenticity and reliability of those accounts. Exploiting the absence of effective verification standards by the provider of X, these actors can gain the deceptive veneer of authenticity via the 'verified' status to potentially harm recipients of X. For example, a recent analysis of a longitudinal dataset of 2.85 million X accounts, summarised in the study referred to in recital 87 above, shows that there is a significant number of 'verified' accounts boosting cryptocurrency content with potentially deceptive goals. According to that study, '*Twitter accounts […] boosting cryptocurrencies more commonly gain blue check verification after the changes. The cryptocurrency results in particular suggest* ***ongoing strategic exploitation of how people misunderstand verification*** *(emphasis added).*'[128]

(108) In addition, a leading industry expert with long-term experience in disrupting Advances Persistent Threats (APTs) indicated to the Commission that it is unsurprising that abuse of the 'verified' status remains a '*vector for financial crime and financial fraud, for example in relation to crypto scams, impersonations of financial services or businesses providing customer service.*' This is because '*[i]ncreasing the cost of an account on Twitter is one measure that* ***could*** *(emphasis added) be effective against a certain type of spam. It is widely acknowledged amongst experts that some of this activity is financially motivated. So, increasing the unit cost of spam by charging for an account, requiring a phone number, etc – it is not foolproof, but it drives up the costs. Adding an eight-dollar cost to an account does so in a very direct way. This is, however, insufficient to address authenticity questions on platforms like Twitter, because Twitter is a platform targeted by cost-insensitive actors, especially in the context of elections (for instance, there are national governments involved in manipulation campaigns and a $8 amount is trivial for them). Therefore, this does not appear to be a meaningful deterrent against some of the most civically significant forms of manipulation.*'[129]

(109) The view described above is shared and corroborated by a prominent cybersecurity firm that publicly warns that '*[f]raudsters are buying blue checkmarks to impersonate well-known brands on X (ex-Twitter) and scam users.*' It cautions that the '*blue checkmark next to a profile name basically means just one thing: this account has an active X Premium subscription […] the blue checkmark is no longer a guarantee that*

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127 Xiao, Madelyne, Mona Wang, Anunay Kulshrestha, and Jonathan Mayer. 'Account Verification on Social Media: User Perceptions and Paid Enrollment.' arXiv, June 24, 2023. https://doi.org/10.48550/arXiv.2304.14939 (DSA.100101, Doc ID 122-1).

128 Xiao, Madelyne, Mona Wang, Anunay Kulshrestha, and Jonathan Mayer. 'Account Verification on Social Media: User Perceptions and Paid Enrollment.' arXiv, June 24, 2023. https://doi.org/10.48550/arXiv.2304.14939 (DSA.100101, Doc ID 122-1).

129 Non-confidential minutes of interview with former employee of Twitter, 26 January 2024 (DSA.100101, Doc ID 78-2).

its owner can be trusted. It's just a premium account icon.'[130] These expert views are further corroborated by publicly documented cases of such activity that have regularly appeared on X since the introduction of the 'verified' status feature of the X Premium and Premium+ subscription services and that continue to appear after Regulation (EU) 2022/2065 started to apply to X. In addition to the initial spike of high-profile impersonations mentioned in recital 68 above,[131] there continue to be cases of financially motivated fraudulent abuse of the 'verified' status on X which through the deception distorts or impairs the ability of the recipients of the X service to make free and informed decisions. For example, a customer of a travel booking service complained on X about a missing refund to what they thought was the official account of the travel service provider, but which turned out to be a fake account with a 'verified' status that attempted to defraud users.[132]

(110) More systematically, despite the significantly reduced access to data for external researchers investigating such activities on X (as detailed in section 6 below), there is public evidence of failures of X's verification process to deter APTs and cases in which the deception as to the actual meaning of the 'verified' status feature led to abuse resulting from the distortion or impairment of recipients' ability to make free and informed decisions. For example, an independent researcher from the open-source intelligence ('OSINT') community has published six in-depth analyses of fraudulent activity making use of that feature between May 2023 and May 2024.[133] To give one example from those analyses, a number of 'verified' accounts uploaded what, according to the researcher, appears to be cryptocurrency spam posts in the style of seemingly promoted advertisements and often contained links to a variety of websites related to obscure cryptocurrency and non-fungible token ('NFT') projects of questionable legitimacy or financial value.[134]

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130 Kaspersky, https://www.kaspersky.com/blog/beware-of-twitter-blue-fake-accounts/49199/, accessed on 5 June 2024 (DSA.100101, Doc ID 161-174).

131 The Verge, https://www.theverge.com/2022/11/9/23450289/twitter-impersonators-official-mario-musk-jesus-valve, accessed on 11 June 2024 (DSA.100101, Doc ID 161-98); BBC, https://www.bbc.com/news/technology-63599553, accessed on 5 June 2024 (DSA.100101, Doc ID 161-74); Mashable, https://mashable.com/article/disney-junior-fake-account-twitter-verified, accessed on 5 June 2024 (DSA.100101, Doc ID 161-146); Reuters, https://www.reuters.com/technology/companies-wary-twitter-checkmark-policy-fuels-imposter-accounts-2023-05-02/, accessed on 5 June 2024 (DSA.100101, Doc ID 161-150); AP News, https://apnews.com/article/twitter-verification-blue-check-elections-elon-musk-5df36ed183d16ec3bf99446e6827bcdd, accessed on 5 June 2024 (DSA.100101, Doc ID 161-154); Politico https://www.politico.com/news/2023/05/30/fake-aoc-twitter-account-musk-00099319, accessed on 5 June 2024 (DSA.100101, Doc ID 161-158).

132 The Guardian, https://www.theguardian.com/technology/2023/aug/27/consumers-complaining-x-targeted-scammers-verification-changes-twitter, accessed on 5 June 2024 (DSA.100101, Doc ID 161-198).

133 Conspirador Norteño Blog, https://conspirator0.substack.com/p/inauthentic-activity-and-twitter, accessed on 5 June 2024 (DSA.100101, Doc ID 161-122); Conspirador Norteño Blog, https://conspirator0.substack.com/p/why-subscription-fees-are-not-a-magic, accessed on 5 June 2024 (DSA.100101, Doc ID 161-34); Conspirador Norteño Blog, https://conspirator0.substack.com/p/blue-checks-ads-and-crypto-spam, accessed on 5 June 2024 (DSA.100101, Doc ID 161-42); Conspirador Norteño Blog, https://conspirator0.substack.com/p/the-nine-thousand-dollar-botnet, accessed on 5 June 2024 (DSA.100101, Doc ID 161-46); Conspirador Norteño Blog, https://conspirator0.substack.com/p/tall-tales-and-fake-faces, accessed on 5 June 2024 (DSA.100101, Doc ID 161-50); Conspirador Norteño Blog, https://conspirator0.substack.com/p/diary-of-a-frosty-fraud, accessed on 5 June 2024 (DSA.100101, Doc ID 161-54).

134 Conspirador Norteño Blog, https://conspirator0.substack.com/p/blue-checks-ads-and-crypto-spam, accessed on 5 June 2024 (DSA.100101, Doc ID 161-42).

(111) The Commission therefore took the view that the evidence set out above further confirmed the deceptive nature of X's online interface design, organisation, and operation with regard to the 'verified' status and that these deceptive interface features impair the ability of recipients of the X service to make free and informed decisions about the authenticity, and in some cases also the security, of the content to which they are exposed on X.

4.3.7. Financial incentives for the provider

(112) In the seventh place, the Commission noted that the provider of X financially benefits from the deceptive nature of that service's online user interface. The provider of X derived revenue from subscriptions to its Premium and Premium+ services and deceptively uses the historical and cross-industry significance of the 'verified' status to drive up subscription numbers. As such, the deceptive design, organisation, and operation of X's online interface directly benefits the provider of X and is not in the interest of the recipients of the X service, insofar as the indiscriminate and deceptive use of the 'verified' status reduces their ability to make free and informed decisions about the authenticity of content on X. Consequently, the design of the interface and practices surrounding the organisation and operation of the 'verified' status additionally fit within the description of 'dark patterns' referred to in recital 67 of Regulation (EU) 2022/2065, which denotes that this '*should include, but not be limited to, exploitative design choices to direct the recipients to actions that benefit the provider of online platforms, but which may not be in the recipients' interests […].*'

4.4. The arguments of the provider of X

(113) In its Reply to the Preliminary Findings, the provider of X challenged the Commission's preliminary findings regarding its non-compliance with Article 25(1) of Regulation (EU) 2022/2065 on the following ten grounds, as set out below.[135]

(114) In the first place, the provider of X argues that there is a lack of legal clarity regarding the scope and meaning of Article 25(1) of Regulation (EU) 2022/2065, and that the Commission has not issued any guidelines on the interpretation of that provision. As set out in Article 25(3) of that Regulation, the Commission may issue guidelines on how Article 25(1) applies to specific practices. The provider of X argues that, instead of providing clearer guidelines or engaging in dialogue with providers, the Commission chose to open proceedings in this case.[136]

(115) Furthermore, referring to the Guidance on the interpretation and application of Directive 2005/29/EC of the European Parliament and of the Council concerning unfair business-to-consumer commercial practices in the internal market (the 'Guidance on Unfair Commercial Practices'), the provider of X argues that the Commission is stretching the notion of 'decisions' '*beyond its natural meaning and intended confines by extending it to textual and visual signifiers that may create a certain user perception, even in circumstances where users are not required to make any decisions or to engage in any behaviour'*. The provider of X argues that there is no precedent or support for the Commission's interpretation of the notion of 'decision' in Article 25(1) of Regulation (EU) 2022/2065, and that this '*would put at risk virtually every online interface implemented by every platform*'.[137] In the second place,

135 Reply to the Preliminary Findings. (DSA.100101, Doc ID 258-2).

136 Reply to the Preliminary Findings, paragraph 83 to 85.

137 Reply to the Preliminary Findings, paragraph 144.

the provider of X claims that the average user of X is aware of the meaning of the 'verified' status due to extensive media coverage on the changed policy, public announcements about this change by the provider of X, and the explanatory webpages where the provider of X elaborates on how the new policy differs from the historical verification program of Twitter. The provider of X argues that it has communicated the changes to its 'verification' and subscription services adequately to the public, as well as the ensuing changes to the meaning of the blue-ribbon checkmark 'verified' status. The provider of X argues that the wide-ranging public attention to these changes support the notion that the average recipient of the X service is aware of the changed meaning of the 'verified' status and that therefore no deception is taking place.[138]

(116) In the third place, the provider of X argues that the evidence put forward by the Commission is insufficient to substantiate a finding of non-compliance with Article 25(1) of Regulation (EU) 2022/2065, and that the Commission has '*failed to assess whether there is a real risk that the average EU X user may be deceived, manipulated or otherwise materially impaired from making any informed decisions*'.[139]

(117) The provider of X alleges that the '*Commission has not conducted any testing or meaningful examination of whether the design of X's online interface is liable to materially impair the ability of average EU X users to make free and informed decisions.*' The provider of X claims that case-law in other areas suggest that the assessment of deceptiveness '*must be conducted against the benchmark of an average consumer that is reasonably critical, conscious and circumspect*' and that the Commission did not conduct such an assessment.[140]

(118) In the fourth place, the provider of X questions the probative value of the survey study on 'Account Verification on Social Media' referred to in recital 87 above in support of the Commission's preliminary findings.[141] The provider of X claims that that study '*was written by three students together with their supervisor*' and '*has not been peer-reviewed nor published in any academic journal*'; is based on a small US-based sample; and was carried out before Regulation (EU) 2022/2065 became applicable and close to the initial release of the new 'verification' program. Substantively, the provider of X claims that the study also shows that a significant number of users were aware of the changed requirements for the 'verified' status of the new program. Furthermore, the provider of X claims that the Commission ignored an allegedly exculpatory study from that paper's bibliography that investigated the links between the perceived credibility of accounts and verification checkmarks.[142]

(119) In the fifth place, the provider of X argues that Twitter's legacy verification policy has always been subject to controversy and points out a November 2017 incident where the provider of Twitter paused the verification program because it caused confusion. The provider of X furthermore points towards an attempt by the provider of Twitter in

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138 Reply to the Preliminary Findings, paragraphs 102-103, see also paragraphs 94, 96-101, 110-111, 113, 115-140.

139 Reply to the Preliminary Findings, paragraphs 87-88.

140 Reply to the Preliminary Findings, paragraphs 145-146.

141 Xiao, Madelyne, Mona Wang, Anunay Kulshrestha, and Jonathan Mayer. 'Account Verification on Social Media: User Perceptions and Paid Enrollment.' arXiv, June 24, 2023. https://doi.org/10.48550/arXiv.2304.14939 (DSA.100101, Doc ID 122-1).

142 Reply to the Preliminary Findings, paragraphs 147-149.

May 2021 to expand the verification program to the general user base, which was halted due to high demand and some cases of verifying fake accounts.[143]

(120) In the sixth place, the provider of X argues that '*any verification system may have imperfections or be exposed to potential abuse by certain users*' and that it has put mitigation measures in place to reduce these risks. The provider of X claims that these efforts '*are inconsistent with any alleged intention to deceive users*'. Furthermore, in relation to abuses by X users, the provider of X stresses that '*X shall not be subject to general monitoring or active fact-finding obligations*' in accordance with Article 8 of Regulation (EU) 2022/2065.[144]

(121) In the seventh place, the provider of X argues that Regulation (EU) 2022/2065 does not require providers of very large online platforms to ensure the authenticity of users and that X's verification policy is a voluntary commitment to a '*trustworthy*' online environment. According to the provider of X, the aim of the policy change in November 2022 was to reduce fake and untrustworthy accounts.[145]

(122) In the eighth place, the provider of X claims that the Commission aims to impose a specific approach to verification and that there is no legal basis for this in Regulation (EU) 2022/2065. The provider of X argues that this would '*constitute an unwarranted breach of X's freedom to conduct its business and of general principles of freedom of expression of both X and its users.*'[146]

(123) In the ninth place, the provider of X argues that the Commission's reliance on statements from X's Risk Assessment Reports to substantiate findings of non-compliance with Regulation (EU) 2022/2065 sets adverse incentives for providers of very large online platforms and of very large online search engines to include less details in their risk assessment reports.[147]

(124) In the tenth place, the provider of X claims that the Commission '*does not seem to have taken into consideration the exculpatory information available in the case file.*'[148] The provider of X questions the objectiveness, thoroughness, and impartiality of the Commission's investigation.[149]

4.5. The Commission's assessment of the provider of X's arguments

(125) For the reasons set out in the following recitals, the Commission finds that the arguments put forward by the provider of X do not call into question the Commission's finding of an infringement of Article 25(1) of Regulation (EU) 2022/2065 by that provider, as set out in section 4.3 above.

4.5.1. The claims regarding a lack of legal clarity and guidance

(126) In the first place, the Commission considers that the provider of X's arguments regarding a lack of legal clarity and guidance in relation to Article 25(1) of Regulation (EU) 2022/2065 are unfounded.

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143 Reply to the Preliminary Findings, paragraphs 92-93.
144 Reply to the Preliminary Findings, paragraphs 152-157, 161-163.
145 Reply to the Preliminary Findings, paragraphs 90, 95-96.
146 Reply to the Preliminary Findings, paragraphs 104-106, 165-173.
147 Reply to the Preliminary Findings, paragraph 159.
148 Reply to the Preliminary Findings, paragraphs 88, 111-112.
149 Reply to the Preliminary Findings, paragraphs 89, 112, 139-140, 151, 164.

(127) First, as regards the provider of X's claim that the Commission should have issued guidelines on Article 25(1) of Regulation (EU) 2022/2065 before launching an investigation into its non-compliance with that provision, the Commission observes that Article 25(3) of that Regulation merely empowers, but does not oblige, the Commission to issue guidelines on the practical application of Article 25(1).

(128) Pursuant to Article 288 of the Treaty on the Functioning of the European Union, Regulation (EU) 2022/2065 has '*general application*' and is '*binding in its entirety and directly applicable in all Member States*'. By its very wording, Article 25(1) of Regulation (EU) 2022/2065, which is phrased as a prohibition, is self-executing and thus directly applicable. Article 25(1) of Regulation (EU) 2022/2065 as clarified by the related recitals, clearly set out the scope of the provider's obligations under that provision, as well as the intention of the Union legislature in adopting that provision. Consequently, the Commission's power to adopt guidelines on Article 25(1) of Regulation (EU) 2022/2065, as provided by Article 25(3) of that Regulation, does not preclude the direct applicability of that provision in the absence of such guidance, nor could it, since guidelines are non-binding instruments.

(129) The Commission considers that, were it required to issue guidance before taking any enforcement steps (*quod non*), it would be effectively prevented from enforcing obligations laid down by Regulation (EU) 2022/2065 for a substantial period of time, leading to a delay in the full achievement of the objectives that that Regulation aims to achieve. This would give rise to a risk of potentially allowing an online environment which threatens the fundamental rights provided for in the Charter to persist and develop.[150] In this regard, the Commission notes that the Union legislature attached particular importance to applying Regulation (EU) 2022/2065 as quickly as possible to providers of very large online platforms and of very large online search engines, as demonstrated by the advanced entry into force of that Regulation for those providers.[151]

(130) Second, as regards the provider of X's claim that the Commission's interpretation of Article 25(1) of Regulation (EU) 2022/2065 stretches of the notion of 'decisions' used in that provision, the Commission rejects that claim for following reasons.

(131) First of all, as stated in Article 25(2) of Regulation (EU) 2022/2065, the prohibition in paragraph 1 of that provision does not apply to practices covered by Directive 2005/29/EC. It therefore follows that the notion of 'decision' used in Article 25(1) of Regulation (EU) 2022/2065 necessarily covers a broader set of practices than the transactional economic behaviour covered by Directive 2005/29/EC, which is presumably what the provider of X means when it refers to the '*natural meaning and intended confines'* of the notion of 'decisions'.[152] As such, Article 25(1) of Regulation (EU) 2022/2065, unlike Directive 2005/29/EC, '*applies to all recipients of online platforms, irrespective of whether they are consumers, and safeguards their ability to make free and informed decisions in relation to all aspects of online platforms.*'[153]

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150 Order of the Vice President of the Court 24 March 2024, Amazon Services Europe v Commission, C-639/23, ECLI:EU:C:2024:277, paragraph 157.

151 Order of the Vice President of the Court, Amazon Services Europe v Commission, C-639/23, ECLI:EU:C:2024:277, paragraph 162.

152 Reply to the Preliminary Findings, paragraph 144 (DSA.100101, Doc ID 258-2).

153 Wilman, Folkert, et al. The EU Digital Services Act, Oxford University Press, Incorporated, 2024. ProQuest Ebook Central, http://ebookcentral.proquest.com/lib/europaeu/detail.action?docID=31531943, page 201.

This includes, but is not limited to, decisions of recipients on the authenticity of the accounts whose content they consume on a social media service advertising itself as a source for information and news, such as the service by the provider of X.

(132) In addition, while the Commission agrees that Article 25(1) of Regulation (EU) 2022/2065 should not be read as a general regulatory burden for any design element of minor relevance to the core functioning of a service and to how recipients use that service, in the present case, the deceptive character of the 'verified' status is of central relevance to what the provider of X claims is a core function of the X service as a source for news and information, where source verification is an integral part of the user experience and X's value proposition. Without prejudice to the crucial role that online anonymity plays in enabling dissenting voices to speak freely, *deceptive* claims as to the 'verified' status of accounts have the potential to deceive users about the authenticity of those accounts and the content they encounter on those accounts or in relation to them, which in turn distorts or impairs their ability to make free and informed decisions regarding the authenticity and reliability of those accounts.

4.5.2. The claims regarding alleged general awareness of new meaning of 'verified' status

(133) In the second place, the Commission considers that the provider of X's argument regarding the alleged awareness of the average X user regarding the changed meaning of the 'verified' status is unfounded.

(134) First, that argument rests on a false equivalence between a time-limited awareness in certain sections of the media and the general awareness of X's more than 100 million users in the Union. Neither the specific media articles, nor X's own public announcements to which the provider of X refers, can be assumed to have reached and to have been fully understood by the entirety or even a substantial part of the recipients of the X service.

(135) The Commission notes, in this regard, that those media articles and announcements are mostly in English, whereas the X service is potentially used in all 24 official languages of the Union. Moreover, both the announcements by the provider of X and the media attention given to the issue were largely limited to the time-period from 2023 to early 2024, whereas the deceptive design practices regarding the misleading 'verified' status persist to this day.

(136) Second, it is conceptually flawed to argue that time-limited media attention and linguistically limited one-off announcements by the provider of X on the 'verified' status could undo or mitigate the deceptive nature of the new 'verified' status in the light of Article 25(1) of Regulation (EU) 2022/2065. Were the Commission to accept such an argument, it would mean that *prima facie* deceptive practices that receive sufficient media attention would escape the prohibition in Article 25(1) of Regulation (EU) 2022/2065 and that limited corrective statements by the provider of an online platform could undo the *prima facie* deceptive nature of relevant elements of that platform's online interface design. This argument is particularly flawed, since media attention and the need for corrective statements might be a direct consequence of the blatantly deceptive character of the feature of the platform.

(137) The media articles to which the provider of X refers and the announcements made by that provider on the new 'verified' status in this respect are therefore largely irrelevant to assess that provider's compliance with the prohibition laid down in Article 25(1) of Regulation (EU) 2022/2065. New recipients of the X service, or those recipients that did not pay attention to either media coverage or announcements made by the provider

of X at the time, are left with nothing more than the provider of X's deficient disclaimers about the deceptive claim and design of the current 'verified' status.

(138) As regards the provider of X's help pages containing explanatory information on the new meaning of the 'verified' status, as described in recitals 103 to 105 above, the Commission has acknowledged the existence of these pages and found them to be inadequate to undo the *prima facie* deceptive nature of how that status is generally presented on X's online interface. The Commission has demonstrated that those pages are significantly removed from the actual user experience of the deceptive practice of the 'verified' status, so that the provider of X's extensive cataloguing and quoting of its various help pages is unable to call into question the Commission's preliminary findings.

4.5.3. The claims that the Commission's evidence is insufficient

(139) In the third place, the Commission considers that the provider of X's argument regarding the alleged lack of evidence establishing non-compliance with Article 25(1) of Regulation (EU) 2022/2065 is unfounded.

(140) Requiring the Commission to conduct statical consumer testing and/or to send requests for information to third parties on the risks of deception of the average EU user to establish an infringement of Article 25(1) of Regulation (EU) 2022/2065 in all cases would impose a disproportionate burden of proof in cases of straightforward infringements, as in the present case. As laid out in the Commission's assessment in section 4.3. above, it is obvious that conferring the 'verified' status to accounts that have, in fact, not been verified is a deceptive practice which materially distorts or impairs the ability of recipients of X's service to make decisions in relation to the authenticity of the content they are exposed to on that service. The publicly available and open-source information, referred to in section 4.3, is in itself sufficient to support the Commission's assessment of the existence of an infringement of Article 25(1) of Regulation (EU) 2022/2065 such as the one in the present case.

(141) Furthermore, the provider of X's claims are not supported by existing legal frameworks. As regards the Commission's assessment of the legal framework as described by the provider of X, recital 18 of Directive 2005/29/EC[154] expressly states that *'[t]he average consumer test is not a statistical test. National courts and authorities will have to exercise their own faculty of judgement, having regard to the case-law of the Court of Justice, to determine the typical reaction of the average consumer in a given case*'.[155] Furthermore, as stated in the Guidance on Unfair Commercial Practices *'[t]his means that national authorities and courts should be able to determine whether a practice is liable to mislead the average consumer exercising their own judgment by taking into account the general presumed consumers' expectations, without having to commission an expert's report or a consumer research poll.*'[156] In analogy to recital 18 of Directive 2005/29/EC, as read

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154 Recital 18 of Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65 of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('The Unfair Commercial Practices Directive'), OJ L 149, 11.6.2005.

155 Recital 18 of Directive 2005/29/EC Unfair Commercial Practices Directive.

156 Commission Notice on Guidance on the interpretation and application of Directive 2005/29/EC of the European Parliament and of the Council concerning unfair business-to-consumer commercial practices

in light of the aforementioned Guidance, the Commission maintains that the necessary scope and evidentiary benchmark for establishing a deceptive practice under Article 25(1) of Regulation (EU) 2022/2065 is dependent on the details of the specific case and proportionate to the infringement.

4.5.4. The claims questioning the probative value of the survey study

(142) In the fourth place, the Commission considers the provider of X's argument regarding the alleged lack of probative value from the survey study on 'Account Verification on Social Media' invoked in the Preliminary Findings is unfounded.

(143) First, some of the provider of X's claims are misguided insofar as they suggest that the probative value of evidence should be tied to academic seniority or that only evidence that has gone through the full academic peer review cycle is relevant for the assessment of whether a certain practice infringes Regulation (EU) 2022/2065. Rather, evidence should be weighed on the basis of its methodological soundness and factual relevance to the interpretation of Regulation (EU) 2022/2065.

(144) Second, while the Commission referenced the pre-print version of the aforementioned study in the Preliminary Findings, that study has since been accepted as a conference paper at the 'SEC '23: Proceedings of the 32nd USENIX Conference on Security Symposium' of 9 August 2023, which included a selective peer-review process, a public fact that the provider of X could have been aware of at the time of replying to the Preliminary Findings.[157]

(145) In any event, while any sample-based study on any issue has inferential limitations, the aforementioned study is of probative value insofar as it diligently summarises historical and cross-industry practices and provides a relevant statistical consumer test of relevance for the Commission's assessment of the provider of X's compliance with Article 25(1) of Regulation (EU) 2022/2065. Moreover, contrary to the suggestion by the provider of X, the study is only one of many pieces of evidence relied upon by the Commission to assess the provider of X's compliance with Article 25(1).

(146) As regards the provider of X's claim that the Commission wrongfully ignored a reference to another study from the bibliography of the aforementioned study,[158] it is irrelevant, since the referenced study is about whether users perceive content from verified accounts to be more credible. The Commission's assessment of X's 'verified' status feature under Article 25(1) of Regulation (EU) 2022/2065 does not deal with the credibility – or veracity – of the content posted by 'verified' accounts, but with the deceptiveness of the feature itself. Insofar as the present case is about the legitimacy of *authenticity* claims regarding the identity of a user account, the referenced study is irrelevant.

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in the internal market ("*Notice on the Unfair Commercial Practices Directive"*), OJ C 526, 29.12.2021, page 33.

157 Xiao, Madelyne, Mona Wang, Anunay Kulshrestha, and Jonathan Mayer. 2023. Account verification on social media: user perceptions and paid enrollment. In Proceedings of the 32nd USENIX Conference on Security Symposium (SEC '23). USENIX Association, USA, Article 174, 3099–3116. DSA.100101, Doc-ID 122-1.

158 Vaidya, Tavish, Daniel Votipka, Michelle L. Mazurek, and Micah Sherr. 2019. Does Being Verified Make You More Credible? Account Verification's Effect on Tweet Credibility. In Proceedings of the 2019 CHI Conference on Human Factors in Computing Systems (CHI '19). Association for Computing Machinery, New York, NY, USA, Paper 525, 1–13. https://doi.org/10.1145/3290605.3300755 DSA.100101, Doc ID 161.

4.5.5. The claims regarding alleged shortcomings of Twitter's legacy verification policy

(147) In the fifth place, as regards the imperfections of the previous verification program, the provider of X's arguments are unfounded and the facts about the legacy program the provider of X raised are ultimately inculpatory for the present case.

(148) The Commission never found that the provider of Twitter's legacy verification program was failure-proof, but rather that the provider of Twitter engaged in a good faith effort to reliably verify accounts to which it afforded the verified status. This stands in stark contrast to the minimal and ultimately ineffective requirements implemented by the provider of X's new approach to the 'verified' status. That contrast is elaborated in detail in the Commission's assessment in section 4.3 above.

(149) Furthermore, the fact that the provider of X mentions how Twitter rescinded its wider roll-out of the verification program in May 2021, due to scaling issues for providing a reliable vetting process that upholds the credibility of the 'verified' status, is further proof that the provider of X is aware of the serious risks and challenges related to a generalised public verification program. In the light of this awareness, it is even more concerning that, as laid out in recitals 80 to 83 above, the provider of X has not developed any meaningful processes or dedicated meaningful resources to reliably verify applications for its current 'verified' status program.

4.5.6. The claims regarding alleged inevitability of verification mistakes

(150) In the sixth place, the arguments of the provider of X as regards inevitable imperfections in any verification process, mitigation measures put in place and the prohibition of a general monitoring obligation are ineffective.

(151) In finding that the provider of X has infringed Article 25(1) of Regulation (EU) 2022/2065, the Commission is not imposing a general monitoring obligation on that provider. Rather, the Commission has assessed whether the 'verified' status feature is designed, organised or operated in such a way that deceives the recipients of X thereby materially distorting or impairing the ability of those recipients to make free and informed decisions regarding the authenticity and reliability of those accounts. The Commission's finding that it does, necessarily means that the Commission does not consider the so-called 'mitigation measures' the provider of X has put into place to remedy the deceptive design of the feature.

4.5.7. The claims regarding alleged benefits of X's approach to the 'verified' status

(152) In the seventh place, the provider of X's arguments regarding the alleged benefits of its 'verified' status are irrelevant to the present case.

(153) The Commission's preliminary findings regarding X's non-compliance with Article 25(1) of Regulation (EU) 2022/2065 do not stem from whether X has a verification policy in place, but whether the policy it has in place is designed in such a manner so as to deceive the recipients of X thereby materially distorting or impairing the ability of those recipients to make free and informed decisions regarding the authenticity and reliability of those accounts.

(154) Even if the provider of X's claim that the purpose of its policy was to reduce fake and untrustworthy accounts were true (*quod non*), that would only reduce the statistical likelihood of inauthentic accounts having a 'verified' status, without eliminating that possibility. Such a statistical reduction might be a reasonable and even desirable approach, but it is irrelevant to the Commission's assessment of the provider of X's compliance with Article 25(1) of Regulation (EU) 2022/2065. That assessment takes

issue with the policy's absolute and *ex ante* claim to authenticity of the 'verified' status, which is deceptive to the recipients of X insofar as fake and untrustworthy accounts are still able to receive the 'verified' status, as explained in the Commission's assessment in section 4.3 above.

(155) As such, the assessment of this policy under Article 25(1) of Regulation (EU) 2022/2065 in no way precludes the Commission's assessment of the 'verified' status in the context of the obligations to perform risk assessments and to put in place mitigation measures in relation to systemic risks to civic discourse and electoral processes pursuant to Article 34(1) and (2) and Article 35(1) of Regulation (EU) 2022/2065, which are the subject-matter of case DSA.100100.

4.5.8. The claims regarding alleged imposition of a specific approach to verification

(156) In the eighth place, the provider of X's claim that the Commission is trying to impose a specific verification approach is unfounded.

(157) The Commission's preliminary finding in the present case is that the provider of X infringed Article 25(1) of Regulation (EU) 2022/2065 by combining a lenient vetting system that is significantly less rigorous than that previously in place with the same historical online interface design that used to indicate that the identity and authenticity of an account holder was 'verified'. Such a finding does not impose an obligation to verify users, nor any specific approach to verification. In any event, the provider of X's freedom to conduct a business is not absolute. That freedom must, first, be viewed in relation to its function in society and, second, be weighed in the balance with other interests protected by the EU legal order and the rights and freedoms of others.[159] In any event, that freedom may be subject to prohibitions laid down by law which are necessary and proportionate, as is the case for the prohibition laid down in Article 25(1) of Regulation (EU) 2022/2065.

4.5.9. The claims regarding alleged adverse incentives of reliance on Risk Assessment Reports

(158) In the ninth place, the provider of X's arguments regarding potential adverse incentives stemming from the Commission's reliance on evidence from its risk assessment report are unfounded and irrelevant for the present case.

(159) At the outset, the Commission observes that it has not simply relied on the summary report of X's Risk Assessment Report, but has followed it up with several RFIs, asking both for supporting documentation pursuant to Article 34(3) of Regulation (EU) 2022/2065 and for replies in relation to specific concerns regarding compliance by the provider of X with Article 25(1) of that Regulation in relation to the 'verified' status. The Commission has therefore given the provider of X ample opportunity to dispel the Commission's concerns and/or to address shortcomings identified in its Risk Assessment Report.

(160) Next, the risk assessment performed pursuant to Article 34 of Regulation (EU) 2022/2065 provides an opportunity for providers of very large online platforms and of very large online search engines to document and communicate their compliance efforts, which is a crucial aspect for the effectiveness of Regulation (EU) 2022/2065. The provider of X has admitted in its Risk Assessment Report that it is aware of

[159] Case C-124/20, Bank Melli Iran, EU:C:2021:1035, paragraphs 80-83.

certain risks related to the 'verified' status, but it has failed to respond in a way that suggests that it is serious about addressing those concerns.

(161) Finally, prohibiting the Commission from taking into account a provider's risk assessment and a provider's explanations for the purposes of supervising and enforcing Regulation (EU) 2022/2065 would set perverse incentives for providers of very large online platforms and of very large online search engines to regard their obligations under Article 34 of Regulation (EU) 2022/2065 as a mere formality.

4.5.10. The claims regarding alleged exculpatory information and partiality of investigation

(162) In the tenth place, the provider of X's arguments on the alleged partiality of the Commission's assessment and the alleged omission of exculpatory information on file are unfounded and misleading.

(163) First of all, the alleged 'exculpatory information' is irrelevant to the case at hand. At a very early stage of the investigation, the Bundesnetzagentur ('BNetzA'), i.e. the German Digital Service Coordinator ('DSC'), informed the Commission that, in its cursory assessment of evidence specific for the situation in Germany, it had found a few cases of satirical accounts of German politicians that had the 'verified' status, but were clearly marked as satire. Because of the cursory and preliminary nature of the assessment, the Commission did not consider it relevant for the Preliminary Findings, also because the Commission's finding of an infringement of Article 25(1) of Regulation (EU) 2022/2065 is neither about satirical accounts nor impersonation issues as such.

(164) Furthermore, the BNetzA claimed that '*[i]n favour of IUC and X Holdings Corp. it has to be pointed out that the explanation on what the blue checkmark is and the requirements for the assignment are transparent. Information regarding this is freely accessible on the help centre pages. Additionally, the media has frequently discussed the subject, so that a certain awareness should be present*.' However, it also clearly stated that '*while BNetzA endeavours to support the proceedings by sharing relevant external information, it encourages the EU Commission to independently verify the accuracy of the provided details.*'[160]

(165) With appreciation for BNetzA's expeditious input to the investigation, the Commission indeed independently verified its initial suspicions and found in the Preliminary Finding that, considering the additional evidence gather by the Commission in the course of its in-depth investigation, as set out and discussed in the Preliminary Findings, the fact that some information on X's help pages is available is in itself insufficient to render the online interface design related to the 'verified' status non-deceptive. The Commission did not deem the mere mentioning of the help page by this early assessment of the BNetzA relevant enough to be considered 'exculpatory information' that ought to be included in the assessment, which already extensively discusses the presence and use of the help page information.

4.6. Conclusion

(166) For all the reasons set out in sections 4.3 and 4.5, the Commission concludes that the provider of X has failed to comply with Article 25(1) of Regulation (EU) 2022/2065 by designing, organising and operating X's online interface in relation to the 'verified' status feature of that service in a manner that deceives recipients of its service into

[160] DSA.100101, Doc ID 211.

believing that accounts with a 'verified' status on X are meaningfully vetted by that provider thereby materially distorting or impairing their ability to make free and informed decisions regarding the authenticity and reliability of those accounts. . This conclusion does not prejudge the outcome of the Commission's ongoing investigation into the compliance by the provider of X with its obligations stemming from Article 34(1) and (2), and Article 35(1) of Regulation (EU) 2022/2065 in case DSA.100100 – X (formerly Twitter), in relation to the risk assessment and the effectiveness of mitigation measures linked to subscription services, such as the X Premium and Premium+ subscription services.

5. NON-COMPLIANCE WITH ARTICLE 39 OF REGULATION (EU) 2022/2065

5.1. The legal framework

(167) Pursuant to Article 39(1) of Regulation (EU) 2022/2065, '[*p*]*roviders of very large online platforms and of very large online search engines that present advertisements on their online interfaces shall 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 the information referred to in paragraph 2, for the entire period during which they present an advertisement and until one year after the advertisement was presented for the last time on their online interfaces. They shall ensure that the repository does not contain any personal data of the recipients of the service to whom the advertisement was or could have been presented, and shall make reasonable efforts to ensure that the information is accurate and complete*.'

(168) Pursuant to Article 39(2) of Regulation (EU) 2022/2065, providers of very large online platforms and of very large online search engines are required to ensure that the advertising repository shall contain the following information to facilitate research and supervision by researchers and regulators: *'(a) the content of the advertisement, including the name of the product, service or brand and the subject matter of the advertisement; (b) the natural or legal person on whose behalf the advertisement is presented; (c) the natural or legal person who paid for the advertisement, if that person is different from the person referred to in point (b); (d) the period during which the advertisement was presented; (e) 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; (f) the commercial communications published on the very large online platforms and identified pursuant to Article 26(2); (g) 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.*'

(169) Recital 68 of Regulation (EU) 2022/2065 stresses the importance of transparency concerning online advertisements in the online environment noting that '[*o*]*nline advertising can contribute to significant risks, ranging from advertisements that are themselves illegal content, to contributing to incentives for publication or amplification of illegal or otherwise harmful content and activities online, or the discriminatory presentation of advertisements with an impact on the equal treatment and opportunities of citizens'*.

(170) Article 39 of Regulation (EU) 2022/2065 is one of several transparency obligations for providers of very large online platforms and of very large online search engines laid

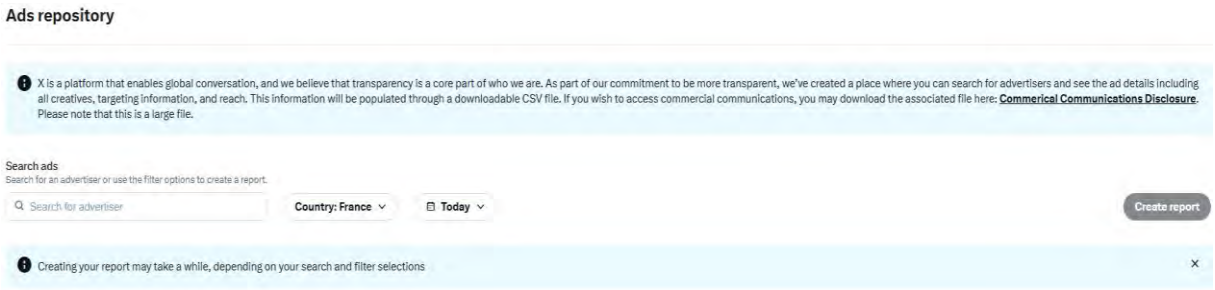
down in that Regulation, including transparency reporting,[161] the publication of risk assessment and risk mitigation measures reports[162] and independent audit report,[163] and data access for researchers.[164] Recital 40 of that Regulation emphasises that these obligations intend to ensure the safety and trust of the recipients of the service, the meaningful accountability of those providers, and the empowerment of recipients and other affected parties, while facilitating the necessary oversight by competent authorities.

(171) Recital 95 of that Regulation adds that advertising systems used by providers of very large online platforms and of very large online search engines pose particular risks, requiring '*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 that platform's or search engine's online interface'*. For that reason, providers of very large online platforms and of very large online search engines '*should ensure public access to repositories of advertisements presented on their online interfaces to facilitate supervision and research*'. This will facilitate the dual objective of facilitating supervision and research '*into emerging risks brought about by the distribution of advertising online, for example in relation to illegal advertisements or manipulative techniques and disinformation with a real and foreseeable negative impact on public health, public security, civic discourse, political participation and equality. Repositories should include the content of the advertisements, including the name of the product, service or brand and the subject matter of the advertisement, and related data on the advertiser, and, if different, the natural and legal person who paid for the advertisement, and the delivery of the advertisement, in particular where targeted advertisement is concerned. This information should include both information about targeting criteria and delivery criteria in particular when advertisements are delivered to persons in vulnerable situations, such as minors*.'

5.2. The relevant measures put in place by the provider of X

(172) To fulfil its obligations under Article 39 of Regulation (EU) 2022/2065, the provider of X made publicly available on a specific section of X's online interface a repository of advertisements displayed on X.[165] Figure 4 below provides a visual representation of that advertising repository.

Figure 4: The provider of X's advertising repository 14 February 2025.



Source: X website, https://ads.x.com/ads-repository, accessed on 19 June 2024, (DSA.100103 160-29).

161 Article 42, Regulation (EU) 2022/2065.
162 Article 42(4)(b), Regulation (EU) 2022/2065.
163 Article 37, Regulation (EU) 2022/2065.
164 Article 40, Regulation (EU) 2022/2065.
165 'DSA.100103' Technical Analysis, section 1.1 (DSA.100103, Doc ID 219-1).

(173) X's advertisement repository is accessible through a search interface that enables users to search for advertisements based on three criteria: (i) the advertiser's X handle; (ii) the individual Member State in which the advertisement was displayed; and (iii) the time frame during which the advertisement was active. Figure 4 above provides a visual representation of those search criteria.

(174) To generate an advertising report from the repository, all fields must be defined by the user.[166] That report is then generated and presented as a comma--separated values ('.csv') file which requires third-party software (such as Excel) to be viewed.[167] The .csv file generates the following fields: (i) the advertiser's name; (ii) the entity funding the advertisement; (iii) a link to the advertisement content; (iv) the start date of the advertisement campaign; (v) the end date of that campaign; (vi) the segments targeted; (vii) the segments excluded from targeting; (viii) advertisement impressions; and (ix) advertising reach.[168] Figure 5 below provides a visual representation of .csv file results.

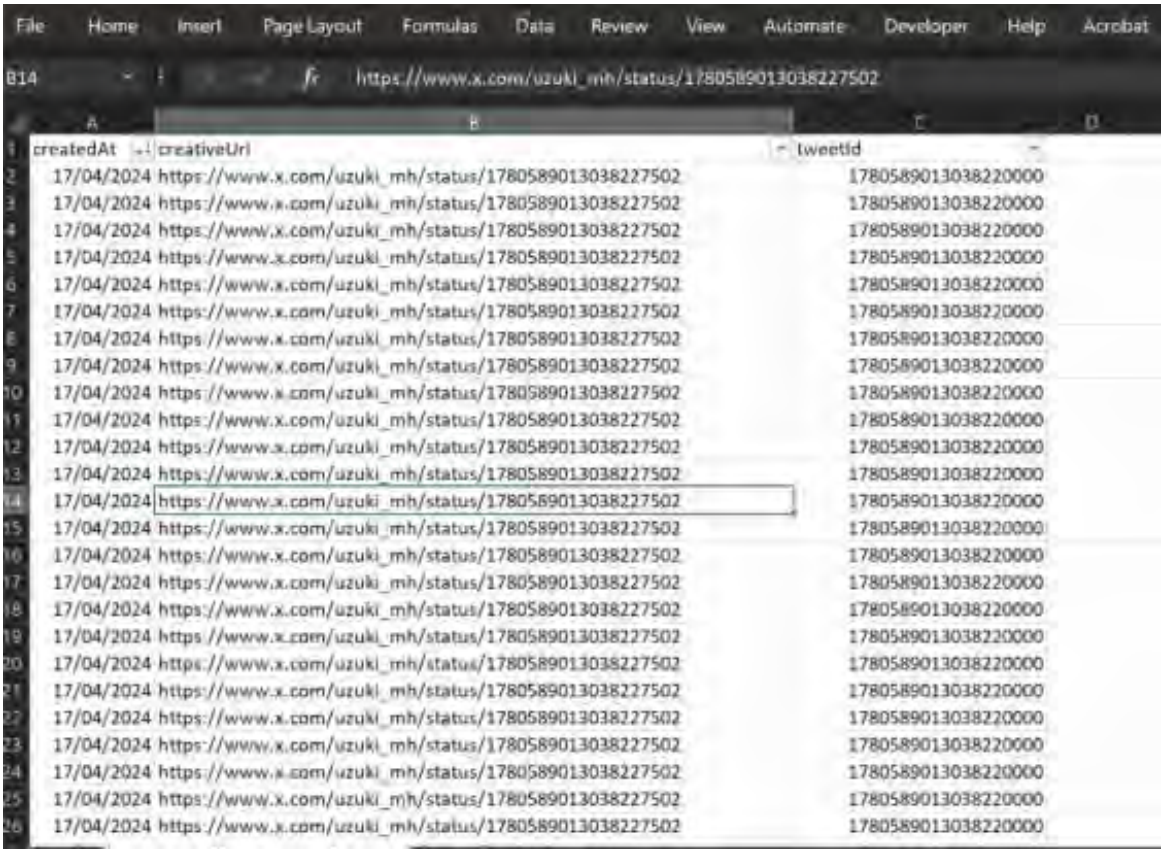
166 'DSA.100103' Technical Analysis, section 1.1 (DSA.100103, Doc ID 219-1).
167 'DSA.100103' Technical Analysis, section 1.1 (DSA.100103, Doc ID 219-1).
168 Reply to the Preliminary Findings, paragraph 184.

Figure 5: .csv file taken 19 June 2024.

Source: Csv from the provider of X's advertising repository https://ads.x.com/ads-repository (source: ECAT, last accessed 19 June 2024, DSA.100103, Doc ID 219).

(175) Information concerning commercial communications is not directly searchable through the main search tool made available on X's online interface. Instead, users must download a separate .csv file.[169] Figure 6 below provides a visual representation of the Commercial Communications .csv file.

Figure 6: Commercial communications .csv file taken 10 June 2024.

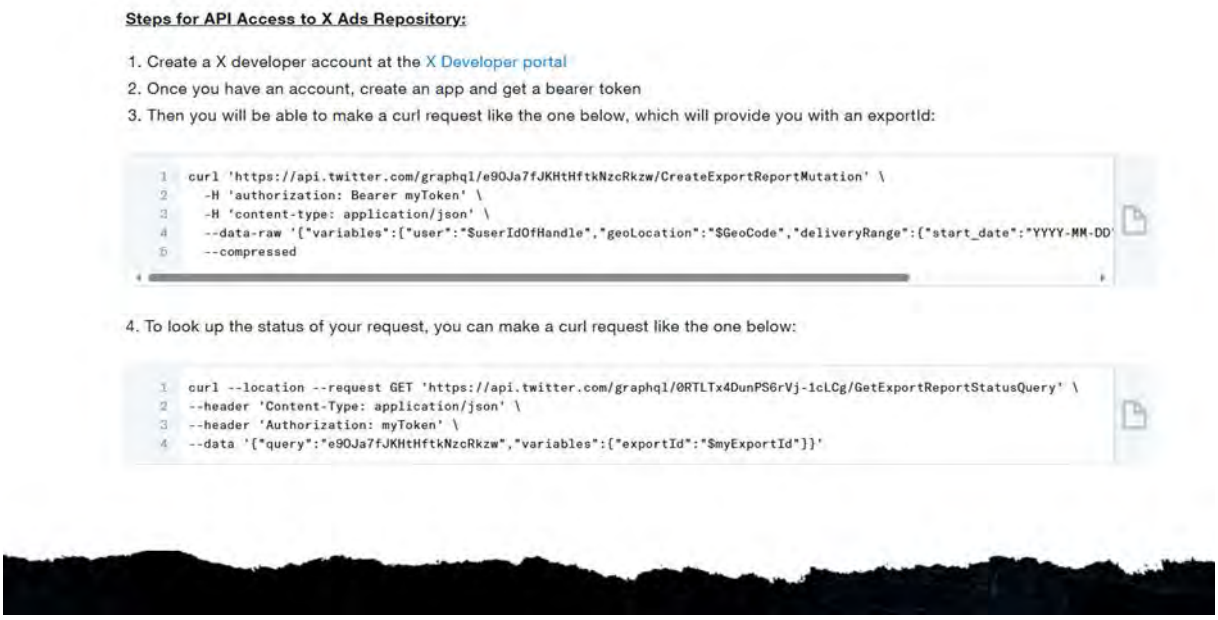


Source: X website, https://ads.x.com/ads-repository, accessed on 19 June 2024, (DSA.100103, Doc ID 219).

(176) Instructions on how to gain access to the information in the repository through an application programming interface ('API') are provided in a separate section of X's online interface.[170] Figure 7 below provides a visual representation of API access steps.

169 'DSA.100103' Technical Analysis, section 1.1 (DSA.100103, Doc ID 219-1).
170 'DSA.100103' Technical Analysis, section 1.2 (DSA.100103, Doc ID 219-1).

Figure 7: Steps for API access taken 14 February 2025.



Source: X website, https://business.x.com/en/help/ads-policies/product-policies/ads-transparency accessed 19 June 2024 (DSA.100103 Doc ID 219).

5.3. The Commission's Preliminary Findings

(177) In its Preliminary Findings, the Commission reached the preliminary conclusion that the provider of X failed to comply with Article 39 of Regulation (EU) 2022/2065 by failing to put in place an advertisement repository that meets the requirements set out in that provision. In particular, the advertisement repository put in place by the provider of X does not provide a searchable and reliable tool that allows multicriteria queries, nor an API enabling public access to all the information referred to in Article 39(2) of Regulation (EU) 2022/2065, in relation to advertisements that the provider presents on X's online interface. That conclusion was based on the following considerations.

5.3.1. X's advertising repository is not available through a searchable tool

(178) In the first place, the Commission considered that the tool[171] through which X has made its advertisement repository available ('the search tool') does not constitute a '*searchable […] tool that allows multicriteria queries*' within the meaning of Article 39(1) of Regulation (EU) 2022/2065.

(179) First, the search tool does not allow multicriteria queries in a way that would fulfil the objectives of that provision to facilitate supervision and research into emerging risks brought about by the distribution of advertising online. Trial interactions with X's advertisement repository conducted by the Commission[172] show that queries for downloading data on advertisements presented on X are limited to the following search fields: (i) the Member States where the advertisement was presented (a user must select one Member State, with no possibility to choose the whole of the Union); (ii) the X account of an advertiser (a user must select one advertiser from a drop-down list displayed); and (iii) the time frame within which the advertisement was presented.

171 X website, https://ads.x.com/ads-repository, accessed on 19 June 2024 (DSA.100103, Doc ID 160-29).
172 'DSA.100103' Technical Analysis, section 1.1 (DSA.100103, Doc ID 219-1).

This is also clear from Figure 7 above, which reproduces the interface to X's advertisement repository. To perform a search and obtain an advertisement report, all of the aforementioned search fields must be filled in, which means that it is not possible to search by selecting only one of those fields.

(180) To ensure compliance with Article 39(1) of Regulation (EU) 2022/2065, the search tool should allow multicriteria search queries covering at least all the information listed in Article 39(2) of that Regulation. Only in this manner can the repository serve its intended purpose of facilitating supervision and research into emerging risks brought about by the distribution of advertising online.

(181) Due to the way in which the search tool has been implemented by the provider of X, a user would not be able to directly perform multicriteria searches using X's repository based on:

(1) the content of the advertisement, including the name of the product, service or brand and the subject matter of the advertisement;

(2) the natural or legal person who paid for the advertisement;

(3) 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; or

(4) the commercial communications published on the service.

(182) At present, most of the information listed in Article 39(2) of Regulation (EU) 2022/2065 can only be obtained indirectly from X's advertisement repository by searching a single advertiser in a single Member State at a particular moment in time. This does not facilitate the supervision and research into emerging risks stemming from online advertisements concerning risks related to public security, civic discourse, political participation or equality, as required by that Article.

(183) Second, the way in which the results of the search query are displayed does not allow public scrutiny in line with the objectives of Article 39 of Regulation (EU) 2022/2065 to facilitate supervision and research into emerging risks brought about by the distribution of advertising online.

(184) More specifically, those search results are not presented in a specific section of X's online interface, as required by Article 39(1) of Regulation (EU) 2022/2065, but are only downloadable in a separate .csv file, whose search functionalities depend on the use of third-party software to open the file. The absence of a visual display of the query results in X's online interface with search and sorting functions further reduces the searchability of the tool, since search results can only be accessed with third-party software that opens the .csv file. This applies to information on commercial communications as well, which are excluded altogether from the tool's search functions and are only accessible through a separate .csv file.[173]

(185) These limitations to the search functionalities and the inadequate manner in which the results can be retrieved frustrate the purpose of Article 39 of Regulation (EU) 2022/2065 to facilitate supervision and research into emerging risks of online

[173] 'DSA.100103' Technical Analysis, section 1.1 (DSA.100103, Doc ID 219-1).

advertising. This is further corroborated by experts consulted by the Commission during its investigation into X's advertisement repository.

(186) For example, a representative from CheckFirst, a research company that together with the Mozilla Foundation published a report on [redacted] 2024[174] concerning advertisement repositories, pointed out that the requirement of a searchable and reliable tool set out in Article 39(1) of Regulation (EU) 2022/2065 should enable multicriteria searches to find advertisements that would otherwise remain undiscovered on the platform. In contrast, X's advertisement repository requires a user to have already identified the advertisement that they are looking for in order to perform a search query.[175] That representative further pointed out that providing results to a search query in a .csv file, instead of on the platform's user interface, limits the accessibility and ability to visualise those results. Similarly, a representative of Ravineo, a company that works on advertisement transparency, highlighted that the current absence of effective multi-criteria search query capacities in X's advertisement repository is a limiting factor in finding the information necessary to compare political advertisement campaigns, and contrasted X's advertisement repository with better alternatives that enable searches by advertising accounts or full-text queries.[176]

(187) An illustrative example of deceptive advertising that has been detected on Facebook and Instagram, but would not be detectable from X's advertisement repository due to its limited search functionality, is provided in a study by AI Forensics analysing disinformation campaigns, likely of Russian origin, on Meta ahead of EU parliamentary elections in 2024.[177] According to the aforementioned expert from CheckFirst, carrying out equivalent research on X would require to extend the searchability functions of X's advertisement repository to ensure that advertisement campaigns currently under the radar are discovered, possibly across several Member States.[178]

(188) Third, trials conducted by the Commission[179] demonstrate that X's search tool produces the .csv advertisement reports to each search query only after a response time of three minutes and twenty seconds. This very slow response time reduces the effectiveness of the search tool for its intended purpose to facilitate research and supervision into emerging risks from online advertising, making it de facto unusable in practice.

(189) The aforementioned trials provided no apparent technical reason or justification for this slow response time. The trials demonstrated that – with significant technical knowhow applied – each report could actually be obtained within a few seconds, showing that the slow response time is artificially increased.[180] The Commission

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174 Mozilla Foundation and CheckFirst, Full Disclosure: Stress testing tech platforms' ad repositories, 16 April 2024 (DSA.100103, Doc ID 171-1).

175 Non-confidential minutes of interview with a representative from CheckFirst, 15 May 2024 (DSA.100103, Doc ID 166-1).

176 Non-confidential minutes of interview with a representative from Ravineo, 22 April 2024 (DSA.100103, Doc ID 94-1).

177 Bouchaud, Paul, Marc Faddoul, and Raye Buse Çetin. No Embargo in Sight: Meta Lets Pro-Russia Propaganda Ads Flood the EU. 17 April 2024 (DSA.100103, Doc ID 218-1).

178 Non-confidential minutes of interview with a representative from CheckFirst, 15 May 2024 (DSA.100103, Doc ID 166-1).

179 'DSA.100103' Technical Analysis (DSA.100103, Doc ID 219-1).

180 The trials demonstrated that, once a .csv report is requested, the tool waits until the user browser has checked the report status exactly 100 times, whereas it checks for updates with a standard query rate of

considers that the excessively slow response time of the search tool, as compared also with other advertisement repositories and similar databases, stems from its design, and constitutes an unnecessary, intentional, additional barrier to access information on advertisements displayed on X.

(190) This assessment is also confirmed by the external representatives consulted by the Commission. The aforementioned expert from CheckFirst that had analysed and compared all the advertisement repositories of very large online platforms and of very large search engines[181] described X's design of the tool, with the browser side sending regular requests until the reports are produced, as inefficient and pointed out that this design is very unusual as compared to that of other advertisement repositories.[182] This was also noted in Mozilla's and CheckFirst's comparison of various advertisement repositories, as follows: '*our reliability test found that the csv took between five and 10 minutes to load, which is dramatically slower than all of the other platforms studied (most took seconds to respond to a query)*'.[183] The aforementioned representative of Ravineo also stated that, in its view, the constant response time of three minutes and twenty seconds independent of the size of the requested report is not due to technical limitations, but the intentional choice of the provider of X.[184] This view was also reflected by a representative of the Institut des Systèmes Complexes de Paris Ile de France ('ISC-PIF'), who pointed out that the slow response time for reports that are entirely empty seems excessive.[185]

(191) All three experts further expressed the view that the slow response time of X's search tool presents a major obstacle for researchers using the tool for supervision and research into emerging risks brought about by the distribution of advertising online. The representative of CheckFirst stated that the response time makes the scope of any research done on advertisements on X more limited than on other platforms.[186] The representative of Ravineo stated that the slow response time makes it very hard to use the tool to compare the advertisement campaigns of politicians.[187] The representative from ISC-PIF pointed out that long waiting times had impeded their assessment of the accuracy and completeness of X's advertisement repository.[188]

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two seconds. Only after exactly 100 times, corresponding to three minutes twenty seconds, a report is produced. Those trials further showed that if the query rate is manipulated by the recipient to send the 100 requests in a very short time, the same report can be obtained within a few seconds, demonstrating that the slow response time is artificially increased. This also holds true for requests that concern large online advertisers that ran several hundreds of advertisements on X. 'DSA.100103' Technical Analysis (DSA.100103, Doc ID 219-1).

181 Mozilla Foundation and CheckFirst, Full Disclosure: Stress testing tech platforms' ad repositories, 16 April 2024 (DSA.100103, Doc ID 171-1).

182 Non-confidential minutes of interview with a representative from CheckFirst, 15 May 2024 (DSA.100103, Doc ID 166-1).

183 Mozilla Foundation and CheckFirst, Full Disclosure: Stress testing tech platforms' ad repositories, 16 April 2024, page 41 (DSA.100103, Doc ID 171-1).

184 Non-confidential minutes of interview with a representative of Ravineo, 22 April 2024 (DSA.100103, Doc ID 94-1).

185 Non-confidential minutes of interview with a representative from the Institut des Systèmes Complexes de Paris Ile de France 3 May 2024 (DSA.100103, Doc ID 143-1).

186 Non-confidential minutes of interview with a representative from CheckFirst, 15 May 2024, (DSA.100103, Doc ID 166-1).

187 Non-confidential minutes of interview with a representative of Ravineo, 22 April 2024 (DSA.100103, Doc ID 94-1).

188 Non-confidential minutes of interview with a representative from CheckFirst, 15 May 2024, (DSA.100103, Doc ID 166-1).

(192) In the second RFI, the Commission asked the provider of X to confirm the excessive response time. In its response,[189] the provider of X admitted that:

- '*[…] based on the design of X's ads repository, each report a user requests should take 3.334 minutes to process, which was confirmed by internal testing and is monitored by the relevant engineering team.*
- *Depending on latency and the user's connection, that means the average user should receive their report between three minutes twenty seconds and three minutes forty seconds from the time of their request. This timeframe does not differ based on the number of ads, the country, or the timeframe selected. We do not otherwise maintain an average or median response time for users that would reflect their latency or connection speed for receiving the completed report'*.

(193) This response is contradicted by X's notice to users requesting a report according to which '*creating your report may take a while, depending on your search and filter selections.*'[190] Based on the aforementioned admissions, as well as on the expert testimonies and internal testing and monitoring referred to above, the Commission took the preliminary view that the unnecessarily long response times of the tool are a conscious design decision by the provider of X.

(194) Consequently, the Commission took the view that the provider of X intentionally designed and implemented the search tool of X's advertisement repository in a way that significantly limits the searchability of that repository and its practical usefulness.

5.3.2. X's advertising repository is not available through a reliable tool

(195) In the second place, the Commission considered that the provider of X has not put in place a 'reliable' tool to obtain all the information on advertisements displayed on X required by Article 39(2) of Regulation (EU) 2022/2065.

(196) First, the search tool of X's advertisement repository is not reliable insofar as it does not provide information on all advertisements displayed on X until one year after the advertisement was presented for the last time on X's online interface. Article 39(1) of that Regulation requires provider of very large online platform or online search engine to retain information on the advertisement in their advertisement repositories '*for the entire period during which they present an advertisement and until one year after the advertisement was presented for the last time on their online interfaces.*' (emphasis added)

(197) A report by ISC-PIF[191] demonstrates that, from a random sample of 250 advertisements shown to 151 users of X in France between 1 September 2023 and 18 April 2024, only 58% of those advertisements were found in X's advertisement repository results. According to the aforementioned report, this is largely due to the inability to retrieve information on advertisements from suspended or deleted accounts.

(198) Research carried out by the Commission confirms this reliability issue. In this context, different reports were retrieved from X's advertisement repository on all

189 Reply to the second RFI, section VI, request 1 (b), page 15 (DSA.100103, Doc ID 163-9).

190 'DSA.100103' Technical Analysis, Figure 2 (DSA.100103, Doc ID 219-1).

191 Bouchaud, Paul. X Ads Repository – Evaluating X Ads Repository (In)Completeness Under Article 39 of the Digital Services Act, 8 May 2024 (DSA.100103, Doc ID 100-1).

advertisements by a large advertiser displayed on X in Germany during the relevant period. While a report retrieved on 7 May 2024 still featured over 260 advertisements, a report retrieved on 13 June 2024 concerning the same time period was entirely empty.[192] This was the case, despite the fact that certain advertisements that appeared in the 7 May 2024 report were less than a year old on 13 June 2024, meaning that these advertisements should have additionally appeared in the 13 June 2024 report. These findings were further confirmed by the aforementioned representative from CheckFirst, who acknowledged that there seem to be gaps and inaccurate information if an advertisement has been displayed on X some time ago.[193]

(199) Second, the search tool of X's advertisement repository is not reliable insofar as it does not provide information on the content of the advertisement displayed on X, including the name of the product, service, or brand advertised, and the subject matter of the advertisement.

(200) The reports generated by the search tool include a column entitled '*Creative*', which provides a URL to a post presumably with the content of the advertisement.[194] The reference to such a URL does not amount to the provision of the required information for several reasons.

(201) First of all, the original advertisement may no longer be available under such a URL, as the owner of the post may have deleted or altered it. In addition, due to X's terms of service, a user of the repository may not scrape the URL of a post on X, for example to register the information in the post that allegedly represents the content of the advertisement to complement the downloaded report with this information.[195] Finally, even if a user were able to register the post from a URL, it would be prohibitively difficult to retroactively extract at scale the name of the product, service, or brand advertised and the subject matter of the advertisement, since such information may be contained in text, images, videos or the context of each advertisement. This is the case, in particular, where supervision and research into emerging risks from online advertising rely on the subject of advertisements at scale, for example to exhaustively identify all potentially illegal advertisements. The aforementioned expert from CheckFirst confirmed that the provision of URLs, instead of the actual content of the advertisement, makes it impossible to conduct research relying on the advertisement's content, since this would require an additional research technique or method in combination with a dataset retrieved from the online platform.[196]

(202) Third, the search tool of X's advertisement repository is not reliable insofar as it does not provide information to identify the natural or legal person who paid for the advertisement or, if that person is different, the natural or legal person on whose behalf the advertisement is presented, as required by Article 39(2)(b) of Regulation (EU)

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192 Repository output for advertisements by HeroWarsWeb in Germany between 28 August 2023 and 13 June 2024 (DSA.100103, Doc ID 206-1).

193 Non-confidential minutes of interview with a representative from CheckFirst, 15 May 2024, (DSA.100103, Doc ID 166-1). This may explains the contrast of the accuracy rate found in the report by the Mozilla and CheckFirst, who checked ten ads shown to one user in the repository the day after they were observed, and the accuracy rate calculated by the expert researcher from ISC-PIF based on a random sample of 250 ads out of 31,362 ads shown to a pool of 151 French users over a period of six months.

194 'DSA.100103' Technical Analysis, Figure 4 (DSA.100103, Doc ID 219-1).

195 X website, https://x.com/en/tos, accessed on 19 June 2024 (DSA.100103, Doc ID 160-65).

196 Non-confidential minutes of interview with a representative from CheckFirst, 15 May 2024, (DSA.100103, Doc ID 166-1).

2022/2065. As shown in Figure 8 below, [redacted] The representative of CheckFirst raised this issue in a meeting with the Commission,[198] and the Commission's own research confirmed similar results.[199]

[redacted]

Source: Reply to the second RFI, section VI, request 1(a), page 6 (DSA.100103, Doc ID 163-4).

(203) According to the provider of X's own Project Summary and Technical Design Document, that provider has closely monitored the provision of the funding entity through its advertisement repository through testing.[200] As of 5 April 2024,[201] the provider of X made available, in a separate section of its interface, a Google form, requiring a log in with a Google account to request the name of the person paying for a particular advertisement via credit card.[202] However, as of 14 June 2024, this form was no longer functional.[203] In any event, it cannot be considered as making the information on natural or legal person who paid for the advertisement publicly available through X's advertisement repository, as required by Article 39(2)(b) of Regulation (EU) 2022/2065. In this context, the Commission notes that the provision of reliable tools to access such information is crucial to supervision and research into emerging risks from online advertisement, including but not limited to activities that uncover coordinated disinformation or manipulative advertisements campaign that are financed by a single entity.

(204) Fourth, the search tool of X's advertisement repository is not reliable insofar as it does not provide information on commercial communications published on X and identified pursuant to Article 26(2) of Regulation (EU) 2022/2065. Until at least 25 October

197 Reply to the second RFI, section VI, request 1 (a) (DSA.100103, Doc ID 163-4).

198 Non-confidential minutes of interview with a representative from CheckFirst, 15 May 2024, (DSA.100103, Doc ID 166-1).

199 Repository outputs with missing or false information for advertisements in The Netherlands, 03 May 2024 (DSA.100103, Doc ID 134-1).

200 Reply to the second RFI, section VI, request 1 (a), page 9 (DSA.100103, Doc ID 163-6).

201 As of 05 April 2024, the form was not available: Archived X website from 5 April 2024, https://web.archive.org/web/20240405203138/https://business.x.com/en/help/ads-policies/product-policies/ads-transparency.html, accessed on 19 June 2024 (DSA.100103, Doc ID 160-53).

202 X website, https://business.x.com/en/help/ads-policies/product-policies/ads-transparency.html, accessed on 19 June 2024 (DSA.100103, Doc ID 160-33).

203 'DSA.100103' Technical Analysis, section 2.2.1 (DSA 100103, Doc ID 219-1).

2023, the repository did not provide any commercial communications.[204] Since 15 November 2023 at the latest, the repository offers a separate large .csv file that can be downloaded (see the infobox in Figure 9), but which is not searchable through the tool. This file of 13 GB, with at least 161 million entries, is artificially inflated, since every entry appears to be repeated at least 57 times, which makes it too large to be opened directly with conventional third-party tools.[205] It is therefore not reliably accessible or searchable for users.

(205) Fifth, the search tool of X's advertisement repository is not reliable, as it has serious, persistent overall issues with retrieving information through downloading the output .csv files. On 17 October 2023, WhoTargetsMe, a non-profit organisation working on the transparency of online advertising, pointed out on X that the search tool was dysfunctional[206] and hinted in response to the same post, on 19 October 2023, that the problem could be solved easily. On 19 October 2023, the provider of X was alerted in writing by CheckFirst about this dysfunctionality.[207] The Commission has confirmed that the dysfunctionality persisted until at least 27 October 2023 and concluded that it was due to an erroneous download link creation that is easy to fix with proper technical expertise.[208] Nevertheless, the outage lasted for a total of at least 10 days. Representatives from Ravineo and CheckFirst have independently further reported reliability issues in December 2023 and January 2024.[209] This evidence indicates a persistent, systemic malfunctioning of the search tool, rendering it unreliable and incompatible with the requirements of Article 39 of Regulation (EU) 2022/2065.

5.3.3. X's advertisement repository is not available through API

Figure 9: Error message from the API.

Source: ECAT (26 April 2024).

(206) In the third place, the Commission considered that X's advertisement repository does not allow queries through an API, as required in Article 39(1) of Regulation (EU) 2022/2065.

(207) In response to the second RFI,[210] the provider of X provided the Commission with public instructions on how to access the API in a separate section of X's online interface from the search in which X's advertisement repository is accessible.[211] These instructions require a potential user of X's advertisement repository to follow three steps. The first step requires the user to create a X Developer account, which includes agreeing to X's terms of service and X's Developer Agreement. The second step

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204 Archived X website from 25 October 2024, https://web.archive.org/web/20231025225603/https://ads.twitter.com/ads-repository, accessed on 19 June 2024 (DSA.100103, Doc ID 160-45).

205 'DSA.100103' Technical Analysis, section 3.3 (DSA 100.103, Doc ID 219-1).

206 X post, https://x.com/WhoTargetsMe/status/1714276498004435112, accessed on 19 June 2024 (DSA.100103, Doc ID 160-61).

207 Correspondence between CheckFirst and X (DSA.100103, Doc ID 173-1).

208 'DSA.100103' Technical Analysis, section 2.2.2. (DSA.100103. Doc ID 219-1).

209 Non-confidential minutes of interview with a representative from CheckFirst, 15 May 2024, (DSA.100103, Doc ID 166-1).

210 Reply to the second RFI, section VI, request 1 (b), page 15 (DSA.100103, Doc ID 163-9).

211 X website, https://business.x.com/en/help/ads-policies/product-policies/ads-transparency.html, accessed on 19 June 2024 (DSA.100103, Doc ID 160-33).

involves creating an application with the developer account and generating a bearer token for authentication with the API. The third step is described as querying the API endpoint 'CreateExportReportMutation', with the generated 'bearer token' in order to request an X account of an advertiser, the Member State in which the advertisement was presented, and the time frame within which the advertisement was presented, and a report, in which the user can allegedly obtain an exportId. The status of an exportId can then be allegedly regularly queried at a status API endpoint until the report becomes downloadable. The API endpoints provided by the provider of X are not a separate API, but identical to the technical infrastructure underlying the tool with the identical limitations to search functionalities and the provision of information.[212] This means that, in practice, API access does not provide any additional elements or functionalities to receive information instead of accessing the repository via the search tool of X's advertisement repository.

(208) Repeated trials conducted by the Commission[213] following these instructions show that the last step returns the following message with error code 453 ('*You currently have access to a subset of Twitter API v2 endpoints and limited v1.1 endpoints (e.g. media post, oauth) only. If you need access to this endpoint, you may need a different access level. You can learn more here: https://developer.twitter.com/en/portal/product.*') and links to a subscription page for paid API subscription products on X (this error message is reproduced in Figure 9 above). In addition to the fact that the underlying API endpoint is identical to the endpoint that underlies the freely and publicly accessible tool described above, the Commission confirmed in trials that even an authenticated account subscribed to API access, costing USD 100 per month, cannot obtain effective access to the API, since the access tokens created with such an account still do not have the necessary access right and return the same error message.

(209) Experts consulted by the Commission on the question of API access confirmed the absence of effective access to X's API. The aforementioned representative from CheckFirst alerted the provider of X in writing, on 8 November 2023, that the API was dysfunctional without remediation or answer until at least 15 May 2024.[214] Additionally, the aforementioned representative associated with ISC-PIF contacted the provider of X in its affiliation with AI Forensics on 27 April 2024 via the email 'EU-Questions@x.com' with the aforementioned error code, but received no response.[215] The aforementioned representative of Ravineo stated that it could not access the API even after purchasing an advanced subscription to X's API plans at USD 100 per

212 'DSA.100103' Technical Analysis, section 2.3 (DSA.100103, Doc ID 219-1).

213 Trials performed on 12 April 2023, 12 May 2023, 27 January 2024, 21 February 2024, 25 March 2024, and 14 June 2024; see 'DSA.100103' Technical Analysis, section 2.3 (DSA.100103, Doc ID 219-1). Technical Analysis on Unreliability of X Ad Repository API Access (DSA.100103, Doc ID 314, 315, 316, 317, 318, 319).

214 Non-confidential minutes of interview with a representative from CheckFirst, 15 May 2024, (DSA.100103, Doc ID 166-1).

215 Non-confidential minutes of interview with an expert researcher from the Institut des Systèmes Complexes de Paris Ile de France 3, 26 April 2024 (DSA.100103, Doc ID 142-1). Email exchange between X and an expert research associated with ISC-PIF from 27 April 2024, version of 13 June 2024, (DSA.100103, Doc ID 190-1).

month.[216] According to that last representative, the provider of X did not respond to its requests to resolve the issue.[217]

(210) In sum, the malfunctioning of the API access to X's advertisement repository has been repeatedly and consistently documented, and awareness of this has been communicated to the provider of X by researchers and stakeholders since at least 8 November 2023. Therefore, the Commission took the preliminary view that the provider of X has not acted upon information regarding malfunctions concerning its repository.

(211) The Commission further notes that, in addition to the advanced subscription of USD 100 per month for API access, the provider of X offers a subscription of USD 5000 per month and an option with a customed price for API access. Even if those subscriptions were to grant more extensive access to X's advertisement repository, which the Commission has not been able to verify, the Commission considers such costs prohibitive for ordinary users and researchers. Such costs render that API access de facto ineffective for the purpose of ensuring public access to the repository to facilitate supervision and research into emerging risks.

(212) The Commission deduces that, in any event, API access for the user through this subscription is ultimately equivalent to the free access provided through the search tool of X's advertisement repository (and therefore, without the API), including all the complications described above.[218]

5.4. The arguments of the provider of X

(213) In its Reply to the Preliminary Findings, the provider of X challenged the Commission's preliminary findings regarding its non-compliance with Article 39 of Regulation (EU) 2022/2065 on the following six grounds, as set out in below.[219]

(214) In the first place, the provider of X argues that the Commission failed to provide the necessary guidance on the application of Article 39 of Regulation (EU) 2022/2065 in advance. The provider of X claims that neither Article 39 itself, nor recital 95 of that Regulation, provide sufficient information on how to comply with the obligations contained in that provision. It notes that the Commission has not issued further guidance on the structure or functionalities of the repository, as envisaged by Article 39(3) of Regulation (EU) 2022/2065, and that, therefore, providers of very large online platforms have resorted to interpreting those obligations on their own.[220]

(215) In addition, the provider of X claims that the EU legislature, in different provisions of Regulation (EU) 2022/2065, has stressed the need for additional guidance on advertising on online platforms, including in Article 39(3) and Article 46 of that Regulation.[221]

(216) In the second place, the provider of X claims that the Commission has misconstrued and misinterpreted the main items of evidence on which it relies, namely a 'Stress Test

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216 Non-confidential minutes of interview with a representative of Ravineo, 22 April 2024 (DSA.100103, Doc ID 94-1).

217 Non-confidential minutes of interview with a representative of Ravineo, 22 April 2024 (DSA.100103, Doc ID 94-1).

218 'DSA.100103' Technical Analysis, section 2.3 (DSA. 100103, Doc ID 219-1).

219 Reply to the Preliminary Findings (DSA.100103, Doc ID 289-2).

220 Reply to the Preliminary Findings, paragraph 177 and 179.

221 Reply to the Preliminary Findings, paragraph 177.

Report' authored by the Mozilla Foundation and CheckFirst, along with corresponding meeting minutes. It claims that the finding of non-compliance with Article 39 of Regulation (EU) 2022/2065 is largely based on these two pieces of evidence.[222]

(217) The provider of X claims that the aforementioned Stress Test Report was not intended by the Mozilla Foundation and CheckFirst to be used to assess compliance with Article 39 of Regulation (EU) 2022/2065, but rather as a benchmarking exercise with the aim of promoting user friendliness and best practices in an environment characterised by significant legal uncertainty.[223] The provider of X bases its claims on draft minutes and a draft Stress-test report that were not cited in the Preliminary Findings, but were made available to it through the data room procedure.[224]

(218) In the third place, the provider of X claims that external independent auditors have recently concluded that '*X complies with the obligation to compile and make publicly available a repository of information about advertisements presented on its online interfaces*'. The provider of X notes that the independent auditors reached a positive conclusion regarding the obligations of Article 39 of Regulation (EU) 2022/2065.[225]

(219) In the fourth place, the provider of X claims that the search tool of X's advertisement repository is searchable.

(220) First of all, it argues that the Commission has neglected to define or provide guidance on the terms 'searchable', 'multicriteria queries', how to comply with the intended purpose of the provision, or when the delivery of a report is considered excessively slow pursuant to Article 39 of Regulation (EU) 2022/2065.[226]

(221) In addition, it claims that '*X (i) does allow users to search stored advertisements through multiple search criteria (including the name of the advertiser, the Member State where the ads were served and the date range within which the advertisement was presented), (ii) does display results in a .csv file that enables searches, filtering and complex data manipulation, and (iii) has made an effort to gradually reduce the response time to the minimum possible in light of existing technical constraints*.'[227]

(222) First, the provider of X claims that the search tool allows multicriteria queries to access X's advertisement repository. As regards multicriteria queries, the provider of X claims that the Commission's interpretation of Article 39 of Regulation (EU) 2022/2065 would appear to require the repository to provide at least one field of search for each of the items of information listed in Article 39(2) of that Regulation.[228] It claims that the key cause of the Commission's confusion is the attempt to incorrectly conflate the two paragraphs of Article 39, and that this interpretation has no apparent legal basis.[229] It argues that each paragraph of that provision governs difference aspects of the advertisement repository.

(223) On one hand, the provider of X claims that Article 39(1) of Regulation (EU) 2022/2065 is concerned with the functionality of the advertising repository and requires a 'searchable and reliable tool' with particular capacities, such as multicriteria

222 Reply to the Preliminary Findings, paragraph 190.
223 Reply to the Preliminary Findings, paragraph 191.
224 The Provider of X's claims regarding accessibility of such documents are discussed in section 7.
225 Reply to the Preliminary Findings, paragraphs 187 and 211.
226 Reply to the Preliminary Findings, paragraph 195.
227 Reply to the Preliminary Findings, paragraph 196.
228 Reply to the Preliminary Findings, paragraph 197.
229 Reply to the Preliminary Findings, paragraph 198.

queries. The emphasis is on how the repository operates, and the term 'searchable', relates to the system's ability to retrieve information based on multiple, undefined search criteria.[230] On the other hand, the provider of X claims that Article 39(2) of Regulation (EU) 2022/2065 is concerned with the substantive content that must be made available through the repository. According to the provider of X, the wording '*containing the information referred to in paragraph (2) in Article 39 of Regulation (EU) 2022/2065'* supports this proposed interpretation.[231]

(224) The provider of X further claims that the Commission's interpretation of Article 39 of Regulation (EU) 2022/2065 has no apparent support in academic literature,[232] the Stress Test conducted by the Mozilla foundation and CheckFirst, or from other independent guidelines or initiatives.[233]

(225) Finally, the provider of X claims that all other very large online platforms have interpreted Article 39 of Regulation (EU) 2022/2065 in a similar way to it, and that the central concern of Article 39 is about fulfilling the functionality requirements.[234]

(226) Second, the provider of X claims that the display of search results in a .csv file complies with Article 39 of Regulation (EU) 2022/2065, including the intended purpose of that provision. According to the provider of X, Regulation (EU) 2022/2065 does not require that search results are presented in a specific section of X's online interface. It claims that Article 39 of Regulation (EU) 2022/2065 necessitates the repository to be on an online interface, but that provision does not require the repository to be a 'search tool'. The search tool itself needs to be publicly available, rather than the results.[235]

(227) The provider of X further claims that Regulation (EU) 2022/2065 does not disallow it from displaying search results in a .csv file. The word 'compile' in Article 39 of Regulation (EU) 2022/2065 implies that a structured format should be used. Absent a technical standard specified by the Commission, X has chosen a file that is compatible with X's software.[236] The provider of X claims that a .csv file allows for control over the document and can be integrated into a data analysis tool allowing for data manipulation. It states that utilising a .csv file to display results is more secure against cyber-attacks and reduces risk of unauthorized access to potentially sensitive data.[237] The provider of X specifically references in this respect '*A Standard for Universal Digital Ad Transparency*'[238] and '*Access to Data and Algorithms: For an Effective*

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230 Reply to the Preliminary Findings, paragraph 198.
231 Reply to the Preliminary Findings, paragraph 198.
232 Reply to the Preliminary Findings, footnote 226.
233 Reply to the Preliminary Findings, paragraph 199.
234 Reply to the Preliminary Findings, paragraph 200.
235 Reply to the Preliminary Findings, paragraph 202.
236 Reply to the Preliminary Findings, paragraph 202.
237 Reply to the Preliminary Findings, paragraph 202: Users and researchers can determine who can access it, the storage, distribution and customization of the file. Online formats may be subject to the management of a provider, whereas a .csv file can be accessed independently, allowing for long-term persistence. This kind of file allows users to combine data sets and apply various filters. A .csv files can be accessed without an internet connection, and are secure against cyber-attacks, limiting the risk of unauthorized access.
238 Edelson, Laura, Jason Chuang, Erika F. Fowler, Michael M. Franz and Travis Ridout 'A Standard for Universal Digital Ad Transparency', Knight First Amendment Institute at Columbia University, (December 2021, https://knightcolumbia.org/content/a-safe-harbor-for-platform-research Accessed 29 January 2025. DSA.100103, Doc-ID 306.

DMA and DSA Implementation'[239] as academic references supporting the use of .csv files. As regards the Commission's finding that opening a .csv file requires the use of third-party software, the provider of X notes that accessing X's advertisement repository through an online interface also requires third party software, namely an internet browser.[240]

(228) Third, the provider of X claims that the response time to obtain a report from X's advertisement repository does not affect the searchability of the search tool and that it has made an effort to gradually reduce the response time to the minimum possible in light of existing technical constraints. It also claims that is has not made a deliberate and conscious decision to slow the response time of the search tool, and that there is no evidence to support this claim.[241] Finally, the provider of X claims that altering the basic IT architecture to have a near-instant response time for results would be costly, time consuming, with no guarantees of success and lead to possible inaccuracies.[242]

(229) In the fifth place, the provider of X claims that its advertisement repository is reliable.

(230) First, the provider of X claims that it has made reasonable efforts to ensure the reliability of the search tool and the API. It argues that the notion of 'reliability' used in Article 39(1) of Regulation (EU) 2022/2065 should be interpreted as an obligation applicable to the implementation process and the tools to meet regulatory requirements, rather than achieving a specific outcome.[243] It further contends that it has been making continuous engineering efforts to ensure reliability, accuracy, and completeness of its advertising repository.[244] It also states that it has made improvements by including additional data. According to the provider of X, all these efforts exceed the reasonable efforts required of providers under Article 39 of Regulation (EU) 2022/2065.[245] Second, the provider of X contends that its advertisement repository is complete and contains information on all the advertisements displayed on X's online interface. It claims that the Commission relied on a particular research study, referencing the ISC PIF report, that uses a 'very limited sample'. According to the provider of X, the aforementioned report is based on 151 users and 250 advertisements, and it solely concerns advertisements and users in France. Additionally, the provider of X states that this study was conducted at the beginning of the entry into force of Regulation (EU) 2022/2065 (between 1 September 2023 and 18 April 2024).[246]

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239 Edelson, Laura, Inge Graef, and Filippo Lancieri 'Access to Data and Algorithms: For an Effective DMA and DSA Implementation' Centre on Regulation in Europe (CERRE), page 50, March 2023, DSA.100103, Doc ID 395, Accessed 6 May 2025. DSA.100103, Doc-ID 305.

240 Reply to the Preliminary Findings, paragraph 202.

241 Reply to the Preliminary Findings, paragraph 205. The provider of X claims that tool and the API function are determined by X's technical architecture. This operates on [redacted] It is noted that the response time depends on the users' internet connection.

242 Reply to the Preliminary Findings, paragraph 206.

243 Reply to the Preliminary Findings, paragraphs 210, 211.

244 Reply to the Preliminary Findings, paragraph 211.

245 Reply to the Preliminary Findings, paragraph 212.

246 Reply to the Preliminary Findings, paragraph 213.

(231) The provider of X further claims that the Commission's research is focused on punctual malfunctions, rather than on evidence that could prove the accuracy of its search tool. The provider of X also contends that the Commission disregards a part of the Mozilla Foundation study invoked in the Preliminary Findings that confirms the accuracy of X's repository.[247] The provider of X claims that meeting minutes indicate that Ravineo also confirmed the completeness of the X's advertisement repository.[248]

(232) The provider of X then claims that Article 39 of Regulation (EU) 2022/2065 does not prevent advertising content being accessed through a URL in a .csv file, rather displaying it on a user interface. It further asserts that this allows users themselves to access and verify the information provided.[249] According to the provider of X, displaying a URL is a practical solution for several reasons. In the alternative, compiling and hosting advertising content in a repository would require '*a disproportionate amount of resources for storage and processing power'*, resulting in higher operational costs and a greater environmental impact.[250] The provider of X claims that this method of complying with Article 39 of Regulation (EU) 2022/2065 allows for the direct supervision and research of systemic risks, in line with recital 95 of that Regulation. It further argues that it does not hinder any research by providing a URL, but allows researchers to access a primary source.[251]

(233) Finally, the provider of X claims that if a user deletes or alters an advertisement, this is beyond its control, and Regulation (EU) 2022/2065 does not require from the provider of X to retain content if an advertiser has chosen to remove it on the online platform. The provider of X further claims that providers of very large online platforms must respect the advertisers' rights to delete content, in absence of an explicit requirement to the contrary.[252]

(234) Third, the provider of X argues that its advertisement repository allows users to identify the natural or legal person who paid for and on whose behalf the advertisement is presented. It further contends that it has made the legitimate choice of differentiating between the advertiser who paid for presentation of the advertisement via insertion order or credit line and those who paid [redacted].[253] The provider of X claims that due to privacy concerns, the only solution to avoid undermining fundamental rights is to allow advertisers to request the name of the person paying for the advertisement through a Google form.[254] Finally, the provider of X argues that a failure to respect the rights of third parties could negatively impact X's business interests and relationships with advertisers.[255] Without a clear legal obligation to disclose the identity of those persons, it claims not to have a sufficient legal basis to interfere with the privacy rights of third parties paying [redacted] and it cannot disclose their identity immediately.[256]

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247 Reply to the Preliminary Findings, paragraph 214.
248 Reply to the Preliminary Findings, paragraph 215.
249 Reply to the Preliminary Findings, paragraph 217.
250 Reply to the Preliminary Findings, paragraph 218.
251 Reply to the Preliminary Findings, paragraph 223.
252 Reply to the Preliminary Findings, paragraph 219.
253 Reply to the Preliminary Findings, paragraph 223.
254 Reply to the Preliminary Findings, footnote 254. It references judgment of 22 November 2022, WM and Sovim SA v Luxembourg Business Registers, C-37/20 and C-601/20, EU:C:2022:912, concerning the interference with fundamental rights.
255 Reply to the Preliminary Findings, paragraph 224.
256 Reply to the Preliminary Findings, paragraph 225.

(235) Fourth, the provider of X claims that information on commercial communications is easily accessible via the hyperlink 'Commercial Communications Disclosure' available on X's advertisement repository since November 2023. This results in the creation of a separate and completely searchable .csv file allowing researchers to filter and complete their own analysis.[257] The provider of X argues that the Commission never previously raised concerns about the size of the Commercial Communications report to X.[258]

(236) Fifth, the provider of X claims there are no serious or systemic issues compromising the reliability of the search tool of X's advertisement repository. It claims that the Commission's allegations regarding the reliability of that tool are based on isolated incidents, and that the Commission has failed to adduce evidence of persistent and systemic malfunctioning.[259]

(237) In the sixth place, the provider of X claims that X's advertisement repository can be accessed through an API, as required by Article 39 of Regulation (EU) 2022/2065. The provider of X claims that it has made its advertising repository available via its user interface (i.e. search tool) and an API, which relies on the same architecture, and that both give access to the same information.[260] The provider of X stresses that access to X's advertisement repository through the API is free of charge, available for all users,[261] and does not require a paid subscription.[262]

(238) The provider of X claims that *'[t]he sole reason why the Commission was unable to access the API's endpoint during the trials it conducted is because of a bug that was fixed as soon as X identified the issue and its cause (on 13 July 2024).*'[263] The provider of X claims that, contrary to what the Commission claims, the malfunctioning of X's public API has not been repeatedly and consistently documented and that the Commission's claim is based on solely on the Commission's trials and '*on the experience of the same two researchers on whose opinions the Commission bases all its allegations against X in relation to Article 39 DSA. Labelling the API as 'ineffective' and 'malfunctioning' based on such scant and insubstantial evidence is unwarranted and disproportionate*'.[264] The provider of X also claims that X has not been made repeatedly aware of any alleged dysfunctionalities by researchers and other stakeholders.[265]

5.5. The Commission's assessment of the provider of X's arguments

(239) For the reasons set out in the following subsections, the Commission finds that the arguments put forward by the provider of X are unable to call into question the Commission's finding of an infringement of Article 39 of Regulation (EU) 2022/2065 by that provider, as set out in section 5.3 above.

257 Reply to the Preliminary Findings, paragraph 226.
258 Reply to the Preliminary Findings, paragraph 227.
259 Reply to the Preliminary Findings, paragraph 230.
260 Reply to the Preliminary Findings, paragraph 232.
261 Reply to the Preliminary Findings, paragraph 233.
262 Reply to the Preliminary Findings, paragraph 234 and 235.
263 Reply to the Preliminary Findings, paragraph 236.
264 Reply to the Preliminary Findings, paragraph 237.
265 Reply to the Preliminary Findings, paragraph 238.

5.5.1. The claim that the Commission has failed to provide guidance

(240) In the first place, the Commission considers that the provider of X's claim of an alleged failure on the part of the Commission to provide guidance in accordance with Article 39(3) of Regulation (EU) 2022/2065 is ineffective. Article 39(3) of Regulation (EU) 2022/2065 allows but does not oblige the Commission to issue guidelines on structure, organisation, and functionalities of the repositories referred to in Article 39 of Regulation (EU) 2022/2065. Article 39 of that Regulation is, by its very terms, self-executing and directly applicable to providers of very large online platforms and of very large online search engines.

(241) The Commission considers that, were it required to issue guidance before taking any enforcement steps (*quod non*), it would be effectively prevented from enforcing obligations laid down by Regulation (EU) 2022/2065 for a substantial period of time, leading to a delay in the full achievement of the objectives that that Regulation aims to achieve. This would give rise to a risk of potentially allowing an online environment which threatens the fundamental rights provided for in the Charter to persist and develop.[266] In this regard, the Commission notes that the Union legislature attached particular importance to applying Regulation (EU) 2022/2065 as quickly as possible to providers of very large online platforms and of very large online search engines, as demonstrated by the advanced entry into force of that Regulation for those providers.[267]

5.5.2. The claim that the Commission allegedly misconstrued and misinterpreted main items of evidence on which it relies

(242) In the second place, as regards the provider of X's claim that the Commission allegedly misconstrued and misinterpreted the main items of evidence on which it relied to find an infringement of Article 39 of Regulation (EU) 2022/2065, it is based on the misconception that the Commission relied only, or even predominantly, on the Stress Test Report authored by the Mozilla Foundation and CheckFirst, along with corresponding meeting minutes, to substantiate that finding. As is clear from the Preliminary Findings, the Commission adduced an overall body of evidence to establish its finding of non-compliance with that provision, most importantly the trials conducted by the Commission demonstrating the shortcomings of X's advertisement repository.[268] Therefore, without undermining the importance of the Stress Test Report and the corresponding minutes, the provider of X's characterisations of these reports and those minutes as '*main items of evidence*', on which the Commission's assessment was '*largely based*', is misleading.

(243) The provider of X's claim also appears to be founded on the incorrect premise that, for the Commission to rely on a study conducted by a third party in its assessment of a provider's compliance with Regulation (EU) 2022/2065, that study must have the explicit objective to assess compliance with that Regulation. That is not the case as the Commission is able to rely on any pertinent item of evidence from which it may conclude that the provider has not complied with its obligations under Regulation

[266] Order of the Vice President of the Court 24 March 2024, Amazon Services Europe v Commission, C-639/23, ECLI:EU:C:2024:277, paragraph 157.

[267] Order of the Vice President of the Court, Amazon Services Europe v Commission, C-639/23, ECLI:EU:C:2024:277, paragraph 162.

[268] 'DSA.100103' Technical Analysis (DSA 100.103, Doc ID 219-1).

(EU) 2022/2065, even if the purpose of that evidence was not to establish such non-compliance.

(244) In any event, the provider of X is wrong to allege that the Commission drafted the minutes anything but faithfully to reflect what was discussed during the meeting. Earlier drafts of those minutes do not show otherwise. As the provider of X's specified external counsel was able to establish on the basis of the documents provided to it through the data room procedure, Mozilla Foundation requested five changes to be made to the minutes in light of its explicit desire to avoid the impression that the study was conducted with the aim of carrying out an assessment of X's compliance with Regulation (EU) 2022/2065. These changes did not in any way impact the substance of Mozilla Foundation's findings or contest the factual correctness of the minutes. The final non-confidential version of the minutes was approved by the Mozilla Foundation and CheckFirst and it is the only version considered in the Commission's investigation.

(245) The provider of X also misrepresents the Stress Test report when it claims there was no adherence to any legislative requirement. According to the meeting minutes, the representative of CheckFirst explained that '*the idea for the methodology was to perform twelve different tests, against the background of the DSA and Mozilla's principles mentioned before, for instance related to accuracy, reliability, and completeness*'.[269] Furthermore, the report states that the *'evaluation is based on a combination of the DSA's requirements for VLOPS in Article 39(1-2) and five guidelines written by Mozilla and other experts in 2019*'.[270] (emphasis added)

5.5.3. The claim regarding the conclusions of the independent audit

(246) In the third place, as regards the provider of X's claim that it received a positive conclusion in the audit conducted under Article 37 of Regulation (EU) 2022/2065 in relation to its compliance with Article 39 of that Regulation, such a positive conclusion does not prejudge of the provider's compliance nor precludes the Commission from exercising its supervisory and enforcement powers including in relation to that provision and from concluding that the provider of X has failed to comply with its obligations under that Regulation, also taking into account that its finding of non-compliance in the present case is based on a body of evidence. The purpose of the annual audit is to contribute and inform the Commission in its supervision and enforcement activities under Regulation (EU) 2022/2065. However, this does not mean that the Commission must accept at face-value the outcome of such an audit.[271]

(247) In any event, the Commission observes that according to the Audit Report 2024, the auditors were unable to access X's advertising repository through the API, despite the clear obligation in Article 39 of Regulation (EU) 2022/2065 to make the repository publicly available through API. This finding alone points to a lack of compliance with

269 Non-confidential minutes of interview with a representative from CheckFirst, 15 May 2024, (DSA.100103, Doc ID 166-1).

270 Mozilla Foundation and CheckFirst, Full Disclosure: Stress testing tech platforms' ad repositories, 16 April 2024 (DSA.100103, Doc ID 171-1).

271 The Audit Report 2025 does not include conclusions on obligations that are covered by the Commission's proceedings, see the Audit Report 2025, page 5 (DSA.100101, Doc ID 289-2; DSA.100102, Doc ID 382-2; DSA.100103, Doc ID 325-2).

that Regulation. This deficiency of X's advertising repository is further assessed in the section 5.5.4. below. [272]

5.5.4. The claim that the search tool is searchable

(248) In the fourth place, as regards the claim that the search tool of X's advertisement repository is searchable, the Commission finds that that claim is unfounded for the following reasons.

(249) First, the Commission notes that Article 39(1) of Regulation (EU) 2022/2065 obliges providers of very large online platforms and of very large online search engines to make a repository that contains specific information about advertisements available through a *'searchable'* tool that allows *'multicriteria queries'*. The Commission observes that, by imposing this requirement, the Union legislature has sought to enable public and regulatory scrutiny over vast amounts of advertisements that are presented on such platforms and search engines, including in relation to the dissemination of illegal advertisements.[273] The Commission considers that the requirement to provide a searchable tool that allows multicriteria queries to enable public access to advertisements should be construed in light of this objective.

(250) The provider of X appears to argue that it complies with this requirement by providing a tool that allows searching for a single advertiser in a single Member State at a particular moment in time. This limitation means that most of the information that is required to be made available through the tool is not searchable through a tool allowing multicriteria queries within the meaning of Article 39(1) of Regulation (EU) 2022/2064.

(251) The Commission takes the position that the provider of X, by providing such a tool, has failed to comply with the requirement to provide a *'searchable […] tool that allows multicriteria queries'* within the meaning of Article 39(1) of Regulation (EU) 2022/2065. The Commission considers that, were it to accept the provider of X's interpretation, the obligation to make information about advertisements available through a *'searchable […] tool that allows multicriteria queries'* would be rendered ineffective in achieving its express objective of enabling public and regulatory scrutiny on the risks stemming from online advertising.

(252) The requirement of a 'searchable tool' allowing for 'multicriteria queries' laid down in that provision serves a twofold purpose. On one hand, it facilitates broader research into societal risks stemming from online advertising. Recital 95 of Regulation (EU) 2022/2065 clarifies the EU legislature's intention to facilitate such research by recognising the risks that advertising systems used by very large online platforms and very large online search engines can pose. Such advertising systems require further public and regulatory supervision, which should be ensured through public access to an advertising repository to facilitate the necessary research into emerging risks.

(253) On the other hand, it may work to aid the competent authorities in supervising compliance with Regulation (EU) 2022/2065. The repository may, for example,

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272 '*An API function was not tested successfully. The documentation provided on the steps to query the API is not very clear, and during tests to validate the functionality of the API itself, an error was generated stating that the account did not have access to the reporting despite owning all account tiers as per DSA requirement and the X platform accounts page.*', the Audit Report 2024, page 255 (DSA.100103, Doc ID 293).

273 Recital 95 of Regulation (EU) 2022/2065.

inform the assessment of compliance with other provisions of that Regulation, including those not contained in Section 5 of Chapter III of the Regulation. Recital 68 of the Regulation clarifies that online advertising can contribute to significant risks, ranging from advertisements that are illegal to publish, that support financial incentives for publication, or that amplify illegal or harmful content, such as scam advertisements. In addition, Recital 95 provides for several examples of other risks as a result of online advertising, including manipulative techniques, disinformation, and the delivery of advertisements to persons in vulnerable situations, such as minors.

(254) Second, as regards the provider of X's claim that the different paragraphs of Article 39 of Regulation (EU) 2022/2065 govern different aspects of the advertisement repository, the Commission considers that this interpretation misconstrues the structure of that provision. Article 39(1) of Regulation (EU) 2022/2065 lays down the obligation to establish and '*make publicly available […] a repository containing the information referred to in paragraph 2*'. In addition, it specifies how providers of very large online platforms and search engines should provide access to that repository. Article 39(2) of Regulation (EU) 2022/2065 specifies the requirement laid down in the first paragraph, by detailing the (minimum) information that the repository must provide concerning the advertisements displayed on the very large online platform or online search engine. Therefore, instead of governing different aspects, Article 39(1) and Article 39(2) of Regulation (EU) 2022/2065 are directly interconnected.[274]

(255) As explained in recitals 249 and 250 above, the provider of X's flawed interpretation of the notion of 'multicriteria queries' in designing its tool prevents that tool from achieving the public and regulatory scrutiny which the Union legislature set out to achieve through the enactment of Article 39 of Regulation (EU) 2022/2065.

(256) The Commission observes in this regard that Article 39 of Regulation (EU) 2022/2065 does not merely require the advertisement repository to be made available through 'a reliable **search** tool', as the provider of X suggests, but rather through a '**searchable** and **reliable** tool'. Where certain information related to advertisements referred to in Article 39(2) of that Regulation is not directly searchable through the tool, the provider has failed to make the repository containing this information '*publicly available…through a searchable tool*' as required by Article 39(1) of the Regulation.

(257) As stated in recital 182 above, the search tool of X's advertisement repository only allows most of the information related to advertisements listed in Article 39(2) of Regulation (EU) 2022/2065 to be obtained indirectly by searching a single advertiser in a single Member State at a particular moment in time. This limitation means that most of the information that the provider of X is required to be made available through the search tool is not searchable nor searching such information is possible through multi-criteria queries. This also hinders research or supervision into emerging risks that stretches beyond a single advertiser in more than one Member State. Therefore, the provider of X has taken an overly restrictive interpretation of Article 39 of Regulation (EU) 2022/2065 which is not in line with the objective of that provision.

[274] This is further corroborated by the fact that Article 39(1) of Regulation (EU) 2022/2065 contains several additional obligations in relation to the information that must be included in the repository, including that the repository shall not contain any personal data of the recipients of the service to whom the advertisement was or could have been presented and that the provider of the very large online platform shall make reasonable efforts to ensure that the information is accurate and complete.

(258) As regards the provider of X's claim that other advertisement repositories contain the same or similar limited number of search criteria, the Commission recalls, leaving aside that every case must be assessed on its own merits, that an operator cannot claim that it has complied with its obligations by pointing to other operators that have failed to comply with their obligations.[275] In any event, the Commission notes that it has initiated investigations into the compliance of two other providers of very large online platforms with Article 39 of Regulation (EU) 2022/2065 and addressed requests for information to several other providers.[276]

(259) Third, as regards the provider of X's claim that that the display of search results in a .csv file complies with Article 39(1) of Regulation (EU) 2022/2065, the Commission observes that that provision requires that '*a repository containing the information referred to in paragraph 2*' shall be made '*publicly available in a specific section of [the provider's] online interface, through a searchable and reliable tool*'. (emphasis added) This means that relevant providers bound by this obligation are required to make publicly available an advertising repository through a tool that is searchable and that, consequently, has search results that can be viewed within the interface. Furthermore, the provision specifically refers to a 'searchable […] tool', not a 'search tool' as the provider of X suggests.

(260) Similarly, the provider of X's claim concerning platform independence for opening a .csv file is irrelevant, given that Article 39 of Regulation (EU) 2022/2065 requires the provider to make publicly available an advertisement repository that includes information that must be provided on an online interface.

(261) As regards the provider of X's claim that the use of third party software to access the .csv file does not amount to non-compliance with Article 39 of Regulation (EU) 2022/2065 by pointing to the fact that a user must use a third-party browser to access the advertisement repository, the Commission observes that the reference to an 'online interface' in that provision already presupposes the use of software that has the capability to display such an interface. The need for additional third-party software to open a .csv file constitutes an unnecessary barrier and requires special technical expertise, as opposed to a situation where the results are available on an online interface accessible via an internet browser.

(262) The Commission considers, in this regard, the provider of X's reference to 'A Standard for Universal Digital Ad Transparency'[277] as supporting the use of .csv files

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275 Judgment of 31 May 2018, Groningen Seaports v. Commission, Case T-160/16, EU:T:2018:317, paragraph 116.

276 The proceedings initiated under the DSA against AliExpress, TikTok and X related to alleged infringements to Article 39. See European Commission, 'Commission opens formal proceedings against TikTok under the Digital Services Act', available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_24_1485 See also European Commission, ' Commission opens formal proceedings against AliExpress under the Digital Services Act', available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_24_1485.
The Commission addressed requests for information to Amazon (https://digital-strategy.ec.europa.eu/en/news/commission-requests-information-amazon-under-digital-services-act), Pornhub, Stripchat, XVideos (https://digital-strategy.ec.europa.eu/en/news/commission-requests-information-under-digital-services-act-pornhub-stripchat-and-xvideos-their), Apple App store, Booking.com, Google designated services and Bing (https://digital-strategy.ec.europa.eu/en/news/commission-requests-information-under-digital-services-act-apple-bookingcom-google-and-microsoft).

277 Edelson, Laura, Jason Chuang, Erika F. Fowler, Michael M. Franz and Travis Ridout 'A Standard for Universal Digital Ad Transparency', Knight First Amendment Institute at Columbia University, (

to be irrelevant. That particular advertising standard does not consider the obligation in Article 39 of Regulation (EU) 2022/2065 that the advertisement repository must be made publicly available through the online interface. Rather, that standard notes that for the large volume of ads that it suggests being included, a .csv file might not be an appropriate method for displaying results.

(263) As to the provider of X's reference to 'Access to Data and Algorithms: For an Effective DMA and DSA Implementation', it does not explicitly mention the use of .csv files in any way. As regards advertisement repositories on an online interface, this document specifically recommends the use of a web portal. 'In practical terms, this means the development of both an API with specific characteristics for bulk access and a searchable web portal for ad-hoc access by less technically sophisticated parties…The DSA's overall purpose of increasing transparency over which ads are displayed, how they are targeted and whether there are any hidden risks in this targeting process is better served by a mechanism such as a web portal that is accessible to a wider range of European citizens'(emphasis added).[278]

(264) The same concern was highlight in X's Audit Report for 2024, in which the independent auditors note that 'the search output of this tool is overly challenging for the average user, as the specificity required in the search string to navigate the volume of this output is too complex and the alternative download option is increasingly impractical' (emphasis added).[279]

(265) Fourth, as regards the response time needed to obtain a report from X's advertisement repository, the Commission considers that there is no support for the claim by the provider of X that X's technical architecture prevents faster response times to obtain search results from X's advertising repository through the search tool. As explained in recital 189 above, the Commission's accelerated procedure to retrieve results from the provider of X's advertising repository demonstrated that reports can be delivered in 15 seconds rather than 200 seconds, and potentially faster, without any inaccuracies or other issues.

(266) In addition, the provider of X has confirmed that the technical system ('endpoints'), from which reports are downloaded, was functioning in 100 percent of cases.[280] This includes the period when the Commission obtained numerous reports while circumventing the intentional delay of 200 seconds and accelerating report creation to 15 seconds.[281] The accelerated delivery time did not create any inaccuracies or other issues to the system, which indicates that there should be no technical limitations to provide the reports much faster than in 200 seconds.

(267) More important, the Commission notes that the provider of X is bound by the obligation to make the advertisement repository publicly available through a searchable and reliable tool, as required in Article 39(1) of Regulation (EU) 2022/2065. This means that any technical architecture that the provider of the very large online platform or very large search engine in question puts in place to comply

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December 2021, https://knightcolumbia.org/content/a-safe-harbor-for-platform-research Accessed 29 January 2025. DSA.100103, Doc-ID 306

278 Edelson, Laura, Inge Graef and Filippo Lancieri, 'Access to Data and Algorithms: For an Effective DMA and DSA Implementation' Centre on Regulation in Europe (CERRE), page 50, March 2023, Accessed 6 May 2025, DSA.100103, Doc-ID 305

279 Audit Report 2024, section D.1, page 253 (DSA.100103, Doc ID 293).

280 Reply to the Preliminary Findings, footnote 207.

281 'DSA.100102' Technical Analysis (DSA.100103, Doc ID 219-1).

with such obligation has to be designed in such a way that compliance is *de facto* achievable, i.e., any possible limitations in that architecture are not a valid reason to excuse non-compliance with Article 39(1) of Regulation (EU) 2022/2065. If the architecture chosen by the provider hinders compliance with the legal obligation, it is for that provider, to implement the necessary changes. The legal obligations of Regulation (EU) 2022/2065 cannot be re-interpreted by the provider of a platform to fit the current technical architecture of the advertising repository.

(268) As a final point, the Commission clarifies that, as regards the performance of multicriteria searches through the tool, multicriteria search queries need to cover the categories in Article 39(2) of Regulation (EU) 2022/2065 in relation to advertisements, but do not need to cover commercial communications identified pursuant to Article 26(2), as referred to in Article 39(2)(f) of that Regulation. The Commission considers that this is the case because the information referred to in Article 39(2)(f) of that Regulation is, given its nature, not amenable to be included in a searchable tool allowing multicriteria queries designed to make information about advertisements available. Therefore, contrary to the preliminary finding presented in recital 181 above, the Commission considers that the exclusion of such commercial communications as a search option to perform multicriteria searches is not relevant for the purpose of establishing an infringement of Article 39 of Regulation (EU) 2022/2065. This however does not exempt the provider of X from the other obligations under Article 39 of that Regulation.

5.5.5. The claim that the search tool is reliable

(269) In the fifth place, the Commission rejects the provider of X's claims that the search tool is reliable on the following grounds.

(270) First, as regards the provider of X's claim that it has made reasonable efforts to ensure the reliability of the search tool, the Commission has already observed that Article 39 of Regulation (EU) 2022/2065 only refers to reasonable efforts on the part of the provider when it comes to ensuring *'that the information is accurate and complete*'. This simply means that the provider must make reasonable efforts to collect accurate and complete information from the advertiser. In contrast, no mention is made of 'reasonable efforts' in Article 39 of Regulation (EU) 2022/2065 when it comes to creating a 'reliable' tool to make the repository publicly available.

(271) Second, as regards the provider of X's claim that its advertisement repository is complete and contains information on all the advertisements displayed on X's interface, the Commission observes that Article 39(1) of Regulation (EU) 2022/2065 requires providers of online platforms to make certain information available '*for the entire period during which they present an advertisement and until one year after the advertisement was presented for the last time on their online interfaces'.* Pursuant to Article 39(1) of Regulation (EU) 2022/2065 this should contain the information listed in paragraph (2) of that Article, including *'the content of the advertisement*'. As explained in recitals 195 to 198 above, X's advertisement repository does not include information for a year after the advertisement was presented, nor does it contain information on the content of the advertisement.

(272) By requiring providers to make information available '*until one year after the advertisement was presented for the last time*', the EU legislature explicitly opted for the retention of such information after the advertisement is no longer being served and after it has been removed. This requirement ensures, for example, that bad faith actors are prevented from frustrating any supervision or research into, for example,

potentially illegal advertisements by removing their advertisements. Article 39(3) of Regulation (EU) 2022/2065 only contains a narrowly tailored exemption for the retention of certain information on advertisements that were removed or to which access was disabled based on alleged illegality or incompatibility with the provider's terms which is not relevant in this instance.[282]

(273) The Commission further notes that the provider of X already hosts all the advertising content required for the repository, namely for the very purpose of serving advertisements to recipients of the service, and finds that it would not require '*a disproportionate amount of resources for storage and processing power*' to include that information in X's advertisement repository, rather than a URL to that information. Therefore, providing the content of the advertisements in the repository that has already been presented cannot reasonably be held to impose an additional burden on the provider of X.

(274) Finally, the Commission considers the provider of X misrepresents the study conducted by a researcher at ISC-PIF. That report is based on a total of 31 362 advertisements presented to 151 X users based in France between 1 September 2023 to 18 April 2024.[283] The study used only advertisements that were served in France to reflect how X's tool only allows for the search of one Member State at a time. However, due to the lack of searchability and API access of the repository, the researcher was not able to retrieve all 31 362 advertisements that were served originally on X.[284] As a result, two subsamples were studied, the first one concerning 12 175 unique advertisements that were placed by 20 of the 200 largest advertisers in France. The researcher identified that the advertisements of one particular advertiser were not present in the repository search results at all, which narrowed the potential pool of advertisements to appear in the search results to 11 045. Ultimately, the researcher found that only 5 768 advertisements (i.e. 52.2%) were in the results. The study considered a second 'cross section' that consisted of 250 randomly drawn advertisements from 165 unique advertisers shown to the 151 users from the original total of 31 362 advertisements. In this 'cross section' sample, which is representative of the advertisements shown to the 151 users, ISC-PIF found that only 58% of ads were included in the repository search results. In conclusion, these samples demonstrate that roughly half of the advertisements that should have been included in X's advertisement repository pursuant to Article 39 of Regulation (EU) 2022/2065 were missing from the results. The provider of X only refers to one of the sub-samples of the study and neglects to mention the other sample which contributed to the Commission's preliminary findings.

(275) In addition, the provider of X claims that the Mozilla Foundation study confirms the accuracy of X's advertising repository and that the Ravineo meeting minutes indicate that Ravineo confirmed the completeness of X's advertisement repository, but that the Commission instead chose to rely on a study illustrating issues with X's repository. The Commission takes the view that the aforementioned study conducted by ISC-PIF is not comparable to the evidence from Mozilla Foundation and CheckFirst, along

282 See Article 39(3) of Regulation (EU) 2022/2065.

283 Bouchaud Paul, X Ads Repository – Evaluating X Ads Repository (In)Completeness Under Article 39 of the Digital Services Act, 8 May 2024 (DSA.100103, Doc ID 100-1) page 4.

284 Bouchaud Paul, X Ads Repository – Evaluating X Ads Repository (In)Completeness Under Article 39 of the Digital Services Act, 8 May 2024 (DSA.100103, Doc ID 100-1).

with the Ravineo meeting minutes. This is due to the differences in the study methodology and large sample size used in the ISC-PIF study.

(276) Third, as regards the provider of X's claim that it is cannot disclose the identity of natural persons who paid for or on whose behalf an advertisement is presented on X without infringing that person's right to privacy, the Commission observes that Article 39(2)(c) of Regulation (EU) 2022/2065 requires the repository to include 'the natural or legal person who paid for the advertisement', where that person is different from the natural or legal person on whose behalf the advertisement is presented.

(277) The Commission further observes that disclosure of the name of the natural person on whose behalf the advertisement is presented is already required under existing Union law, in particular under Article 6(b) of Directive (EU) 2000/31[285] and Article 26(1)(b) of Regulation (EU) 2022/2065.[286] Moreover, the Commission additionally notes that the disclosure of the natural or legal person who paid for the advertisement, if that person is different from the natural or legal person on whose behalf the advertisement is presented, is also required under Article 26(1)(c) of Regulation (EU) 2022/2065.

(278) The Commission also observes that the very argument regarding the protection of the privacy of natural persons raised by the provider of X has already been addressed and rejected by the President of the General Court in his orders in *Aylo Freesites v Commission* and *WebGroup Czech Republic v Commission*.[287] In the *Aylo Freesites* order, the President of the General Court found that '*the mere fact of being listed in the advertisement repository as a natural person does not necessarily make it possible to identify the nature of the activities and the personal involvement of the natural person in them*'.[288] It is settled case-law that '*the right to respect for private life with regard to the processing of personal data, recognised by Articles 7 and 8 of the Charter, concerns any information relating to an identified or identifiable individual.*'[289] It is therefore not the information disclosed *per se*, but its potential to identify the person concerned that makes it subject to the rights enshrined in Articles 7 and 8 of the Charter. Moreover, the Commission notes that, while the Union legislature explicitly recognised the potential impact on the rights to privacy and data protection of Article 39(1) of Regulation (EU) 2022/2065 by requiring providers to '*ensure that the repository does not contain any personal data of the recipients of the service to whom the advertisement was or could have been presented*', it did not consider it necessary to impose a similar obligation in relation to the personal data of advertisers.

(279) The provider of X does not explain in what way the information listed in Article 39(2)(c) of Regulation (EU) 2022/2065 in relation to third parties paying for advertisements [redacted] is sufficient to identify natural persons, the nature of

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285 Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce'), OJ L 178, 17.7.2000, pages 1-16.

286 *See* Order of the Vice President of the Court of 27 March 2024, Amazon Services, C-639/23 P(R), EU:C:2024:277, paragraph 100.

287 Order of the President of the General Court of 2 July 2024, Aylo Freesites LTD v Commission, C-511/24, ECLI:EU:T:2024:431; Order of the President of the General Court of 12 July 2024, Commission v. WebGroup Czech Republic Case T-139/24 R, EU:T:2024:475.

288 *See* Order of the President of the General Court of 2 July 2024, Aylo Freesites LTD v Commission, C-511/24, ECLI:EU:T:2024:431, paragraph 112.

289 Judgment of 9 November 2010, Volker und Markus Schecke and Eifert, joined Cases C-92/09 and C 93/09, EU:C:2010:662, paragraph 52.

their activities, and the personal involvement of those natural persons in those activities. The Commission observes, in this regard, that Article 39(2)(b) and (c) of Regulation (EU) 2022/2065 only requires the disclosure of personal data in specific circumstances,[290] and the amount of personal data that the providers of very large online platforms and very large online search engines are required to disclose is limited (i.e., only the name of the natural or legal person).

(280) Any concerns that the provider of X may have as regards the potential to violate the privacy rights of third parties through disclosure of their names in the advertisement repository, insofar as it claims that it has 'no legal basis to do so', are in any event unfounded. Article 39 of Regulation (EU) 2022/2065 itself provides the legal basis for such disclosure. Any possible interference with the right to privacy of natural persons has been considered by the Union legislature in enacting that provision and are deemed necessary and proportionate to meet the objective of general interest pursued by that provision, namely to ensure research and supervision into risks stemming from online advertising.[291] The Commission considers that public disclosure of the information required by Article 39(2)(b) and (c) of Regulation (EU) 2022/2065 pursues a legitimate aim, as it holds advertisers accountable for their messaging and practices. The Commission also considers that, when advertisers know that information about their advertisements, including their legal name, will be accessible to the public, they are more likely to adhere to regulations and guidelines regarding advertising. Public scrutiny can also deter advertisers from engaging in misleading or deceptive advertising tactics. As regards the relationship between Article 39(2)(b) and (c) of Regulation (EU) 2022/2065 and the provider of X's obligations under Regulation (EU) 2016/679, the Commission observes that to the extent those data include personal data, Article 39(2) of Regulation (EU) 2022/2065 provides for a legal basis for such disclosure.

(281) In addition, the Commission notes that natural persons that advertise on X do so in a professional capacity.[292] A diligent trader should be aware of the disclosure obligations to which a provider of online platform are subjected under Regulation (EU) 2022/2065. Consequently, if a natural person acting as a trader takes the deliberate choice not to set up a legal entity through which to conduct its professional activities, it has accepted that its name will be disclosed when advertising on an online platform. The Commission further notes that the provider of X has not specified how the disclosure of the name of natural persons that advertise on X will negatively impact its business interests and relationships with advertisers, in particular under circumstances where a large number of very large online platforms and search engines that provide advertising services are subject to the same obligation.

(282) Fourth, as regards the provider of X's claim regarding the availability of commercial communications on X's advertisement repository, the Commission recalls that the technical limitations related to creation of the .csv file concerning such communications have been set out in detail in recital 204 above. As regards the provider of X's claim that the Commission failed to communicate to it any concerns it

290 Most notably in circumstances where the person on whose behalf the advertisement is presented, or, if applicable, the person who paid for the advertisement is a natural person.

291 Order of the Vice-President of the Court of 25 February 2025, WebGroup Czech Republic, a.s. v Commission, C-620/24, ECLI:EU:C:2025:136, paragraph 39.

292 *See* Order of the President of the General Court of 2 July 2024 Aylo Freesites LTD v Commission, C-511/24, ECLI:EU:T:2024:431.

had in relation to the Commercial Communications file prior to 6 November 2023, the Commission recalls that X's advertisement repository did not provide information on any commercial communications until at least 25 October 2023. Moreover, the Commission notes that legal obligations are applicable to the addressee irrespective of a notification to their addressee. Therefore, obligations addressed to the provider of X as the provider of a designated very large online platform under Regulation (EU) 2022/2065 are applicable regardless of whether the Commission or any third party has made the provider of X aware of their individual application. In sum, the provider of X must provide the Commercial Communications file regardless of whether it was aware of this obligation or not.

(283) Additionally, the provider of X, when publishing the Commercial Communications file on 6 November 2023, clearly failed to perform basic sanity checks on the file, such as trying to download, open and check it for duplicate entries, since it would have become immediately obvious to that provider that that file was too large to open fully with standard third-party software and that each entry was repeated 57 times in the file.

(284) Fifth, as regards the provider of X's claim that there are no serious or systemic issues compromising the reliability of the search tool, the Commission notes that it has documented evidence of a wide range of issues concerning the provider of X's search tool, related to a persistent and systemic malfunctioning.[293] As explained in recitals 199 to 203 above, the information output is consistently unreliable, which confirms that X's search tool persistently and systemically malfunctions. Moreover, as explained in recital 204 above, there was a considerable downtime period in October 2023 due to a typo, in the download link for the output. The provider of X has entirely failed to respond to these allegations in its Reply to the Preliminary Findings.

5.5.6. The claim that X's advertising repository is available through an API

(285) In the sixth place, as regards the provider of X's claim that X's advertisement repository can be accessed through an API and that it has not been made aware of any alleged dysfunctionalities with that API, there was in fact no effective access to X's API during the testing period as shown by the technical trials conducted by the Commission and further explained in recital 208 above.[294] In addition, the provider of X's claim that the Commission was unable to access the API because of a bug that was fixed on 13 July 2024 is incorrect, since during subsequent trials conducted by the Commission on 6 February 2025 to access the API demonstrated that it was still malfunctioning.[295] Moreover, during the trials described in recital 208 above, the Commission found that, contrary to what the provider of X claims, the API does refer to subscription tiers when accessed according to the instructions provided by that provider. This finding has been subsequently confirmed by third parties, as explained in recital 209 above.

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293 X post, https://x.com/WhoTargetsMe/status/1714276498004435112, accessed on 19 June 2024 (DSA.100103, Doc ID 160-61). Correspondence between CheckFirst and X (DSA.100103, Doc ID 173-1). 'DSA.100103' Technical Analysis, section 2.2.2. (DSA.100103. Doc ID 219-1). Non-confidential minutes of interview with a representative from CheckFirst, 15 May 2024, (DSA.100103, Doc ID 166-1). Non-confidential minutes of interview with a representative from CheckFirst, 15 May 2024, (DSA.100103, Doc ID 166-1). See recital 205 above.

294 'DSA.100103' Technical Analysis (DSA.100103, Doc ID 219-1).

295 DSA.100103, Doc IDs 314, 315, 316, 317, 318 and 319.

(286) In addition, the provider of X's claim that its lack of awareness of the dysfunctional access to its API is factually incorrect. The Commission's decision to initiate proceedings on 18 December 2023 explicitly mentioned the failure to provide APIs to obtain all the information on advertisements presented on X's interface.[296] The provider of X acknowledged the receipt of this Decision on 22 December 2023. Similarly, as explained in recital 210 above, the provider of X is also wrong to claim that it was not made aware by third parties about the dysfunctionality of its API provision.

5.6. Conclusion

(287) For all the reasons set out in section 5.3 and 5.5. above, the Commission concludes that the provider of X has failed to comply with Article 39 of Regulation (EU) 2022/2065 by not providing a searchable and reliable tool that allows multicriteria queries of at least all the information in Article 39(2) of that Regulation, as well as by not providing an API to obtain all the information listed in Article 39(2) of Regulation (EU) 2022/2065 on such advertisements.

6. NON-COMPLIANCE WITH ARTICLE 40(12) OF REGULATION (EU) 2022/2065

6.1. The legal framework

(288) Pursuant to Article 40(12) of Regulation (EU) 2022/2065, '*[p]roviders of very large online platforms and of very large online search engines shall give access without undue delay to data, including, where technically possible, to real-time data, provided that the data is publicly accessible in their online interface by researchers, including those affiliated to not for profit bodies, organisations and associations, who comply with the conditions set out in paragraph 8, points (b), (c), (d) and (e) of that Article, 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)*' of that Regulation.

(289) As specified in Article 40(12) of Regulation (EU) 2022/2065, providers of very large online platforms and of very large online search engines shall make access available to publicly accessible data to all researchers, including those researchers affiliated to not for profit bodies, organisations and associations, provided that those researchers use the data for the purposes described above and that they fulfil the eligibility conditions laid down in Article 40(8), points (b), (c), (d) and (e) of that Regulation, namely that:

> *'(b) they are independent from commercial interests;*
>
> *(c) their application discloses the funding of the research;*
>
> *(d) they are capable of fulfilling the specific data security and confidentiality requirements corresponding to each request and to protect personal data, and they describe in their request the appropriate technical and organisational measures that they have put in place to this end'; and*
>
> *(e) their application demonstrates that their access to the data and time frames are necessary for, and proportionate to, the purposes of their research, and that the expected results of that research will contribute to the purposes laid down in paragraph 4.*'

[296] Commission Decision C (2023) 9137 final, paragraph 14.

Researchers that fulfil such conditions shall hereinafter be referred to as 'Qualified Researchers'.

(290) Recital 98 of Regulation (EU) 2022/2065 further clarifies that, '*where data is publicly accessible, providers of very large online platforms or of very large online search engines should not prevent researchers meeting an appropriate subset of criteria from using this data for research purposes that contribute to the detection, identification and understanding of systemic risks. They should provide access to such researchers including, where technically possible, in real-time, to the publicly accessible data, for example on aggregated interactions with content from public pages, public groups, or public figures, including impression and engagement data such as the number of reactions, shares, comments from recipients of the service. Providers of very large online platforms or of very large online search engines should be encouraged to cooperate with researchers and provide broader access to data for monitoring societal concerns through voluntary efforts, including through commitments and procedures agreed under codes of conduct or crisis protocols. Those providers and researchers should pay particular attention to the protection of personal data, and ensure that any processing of personal data complies with Regulation (EU) 2016/679. Providers should anonymise or pseudonymise personal data except in those cases that would render impossible the research purpose pursued.*'

6.2. The relevant measures put in place by the provider of X

(291) During the months preceding the moment at which Regulation (EU) 2022/2065 started applying to X, i.e. 28 August 2023, the provider of X took decisions to dismantle Twitter's Academic API program, which was available to researchers from 2021 until the Spring of 2023, without providing any alternative.[297] Prior to these changes, the provider of Twitter had been successfully providing researchers access to data since 2006. [298]

(292) On 9 November 2023, the provider of X implemented a new application process for researchers seeking data access under Article 40(12) of Regulation (EU) 2022/2065. Hence, the assessment of the compliance by the provider of X with that provision can

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297 See Nature, https://www.nature.com/articles/d41586-023-00460-z, accessed on 25 June 2024 (DSA.100102, Doc ID 207-42); Le Monde, https://www.lemonde.fr/sciences/article/2023/11/28/x-terrain-d-enquete-deserte-des-chercheurs_6202801_1650684.html, accessed on 25 June 2024 (DSA.100102, Doc ID 207-34); The Verge, https://www.theverge.com/2023/5/31/23739084/twitter-elon-musk-api-policy-chilling-academic-research, accessed on 19 June 2024 (DSA.100102, Doc ID 207-157); Fast Company, https://www.fastcompany.com/91040397/under-elon-musk-x-is-denying-api-access-to-academics-who-study-misinformation, accessed on 19 June 2024 (DSA.100102, Doc ID 207-105); Politico, https://www.politico.eu/article/elon-musk-twitter-goes-to-war-with-researchers-api/, accessed on 19 June 2024 (DSA.100102, Doc ID 207-93); CNN Business, https://edition.cnn.com/2023/04/05/tech/academic-researchers-blast-twitter-paywall/index.html, accessed on 19 June 2024, (DSA.100102, Doc ID 207-85).
One expert noted that X had well-functioning measures in place to provide researchers access to data prior to dismantling them in the spring of 2023.; See non-confidential minutes of interview with an expert, 10 January 2024 (DSA.100102, Doc ID 45-1).

298 Reply to the Preliminary Findings, footnote 286 (DSA.100102, Doc ID 337-2). This footnote mentions the EDMO report on researcher access to data; https://edmo.eu/wp-content/uploads/2022/02/Report-of-the-European-Digital-Media-Observatorys-Working-Group-on-Platform-to-Researcher-Data-Access-2022.pdf. This 2022 report contains a letter from Twitter which mentions that '*Since 2006, Twitter has had an open API allowing developers and researchers to use data from the public conversation to study diverse topics such as state-backed efforts to disrupt the public conversation, […]*' (DSA.100102, Doc ID 379).

be divided into two distinct time periods: the first from 28 August 2023 to 9 November 2023 and the second from 9 November 2023 onwards.

(293) For the period from 28 August 2023 to 9 November 2023, the provider of X claims to have put in place two solutions to provide Qualified Researchers with access to data pursuant to Article 40(12) of Regulation EU 2022/2065.[299] The first solution consisted in offering the possibility to subscribe to X's commercial '*developer API*' service.[300] The costs for each tier of that service ('*Free*', '*Basic*', '*Pro*', and '*Enterprise*') varied depending on the scope of the API access. This data access was not specifically offered by the provider of X to researchers for the purposes of complying with that provider's obligations under Article 40(12) of Regulation (EU) 2022/2065, but it was rather available to any commercial client who would be willing to pay for such access. The second solution consisted in the alleged possibility for researchers to request access from the provider of X via the email address EU-Questions@x.com, which was published on the EU-specific section of X's Help Center and presented as the general point of contact for all 'additional queries' that cannot be resolved only by consulting the Help Center.[301]

(294) For the period from 9 November 2023 onwards,[302] the provider of X – following the first RFI, in which the Commission noted that provider's apparent lack of willingness to give researchers access to publicly available data in accordance with Article 40(12) of Regulation (EU) 2022/2065 – implemented a new process which was meant to give access to eligible researchers through a dedicated application form for data access requests made pursuant to Article 40(12) of Regulation (EU) 2022/2065.[303] The provider of X claims that that application form (hereafter referred to as the '40(12) application form') was introduced '*to make it easier to intake applications from researchers while continuing to comply with the requirements of the DSA*'.[304] The provider of X claims that, upon approving a request for data access, it provides the researcher access to the X API to a level commensurate with the needs of the request.[305] The provider of X claims to provide approved researchers the '*Pro*' tier Developer API access level, the second-most extensive access scope,[306] free of

299 Reply to the second RFI, request 2 of section VII (DSA.100102, Doc ID 210-9).

300 The 'X Developer API' ('X API') can be used to programmatically retrieve and analyse X data, it is accessible to any individual or entity paying the costs set by the provider of X and accepting the relevant terms of service.; see https://developer.x.com/en, accessed on 21 June 2024 (DSA.100102, Doc ID 207-165).

301 This information was communicated to the Commission on 17 November 2023 in the reply to the first RFI, section 5 in parallel to the launch of the new application process discussed in recital 294 (DSA.100102, Doc ID 2-11).

302 The launch of the 40(12) application form coincided with the reply to the first RFI on 17 November 2023. The first RFI explicitly enquired about the specific dispositions of the provider of X to provide researchers access to data in accordance with Article 40(12) of Regulation (EU) 2022/2065 (DSA.100102, Doc ID 2-11).

303 Reply to the second RFI, request 2 of section VII (DSA.100102, Doc ID 210-9).

304 Reply to the second RFI, request 2 of section VII (DSA.100102, Doc ID 210-9).

305 Reply to the first RFI, section 5 (DSA.100102, Doc ID 2-11).

306 The Commission however notes that the superior 'Enterprise' tier, which starts at USD 42 000 per month, is a bespoke offering. This implies that an array of possible offerings allow for more extensive access than the 'Pro Tier'; See X Developer Platform, https://developer.x.com/en/products/twitter-api/enterprise/enterprise-api-interest-form, accessed on 19 June 2024 (DSA.100102, Doc ID 207-66).

charge.[307] In the first two months after introducing the form, the provider of X received 151 requests for access via the 40(12) application form.[308]

(295) The provider of X further claims that, from 9 November 2023 onwards, it has continued to improve its internal review process for requests made pursuant to Article 40(12) of Regulation (EU) 2022/2065 by: *'(1) preparing internal guidelines for the X employees in charge of reviewing the applications, (2) moving potentially eligible applications to a ticketing system for tracking correspondence, (3) working to understand and operationalize the Art. 40 criteria while waiting for further guidelines from the European Commission*'.[309]

(296) On [redacted] 2024, the first approval of researchers via the application process launched on 9 November 2023 took place, as [redacted] researchers saw their application being approved by the provider of X.

(297) As of 8 May 2024, the provider of X had received [redacted] requests through the process established on 9 November 2023. Out of those [redacted] requests, the provider of X had approved [redacted] requests, while it had rejected [redacted] requests, and [redacted] requests were still under review.[310]

(298) Over the entire relevant period from 9 November 2023 onwards, section 4 of X's terms of service stipulated the following : '*You may not do any of the following while accessing or using the Services: […] (iii) access or search or attempt to access or search the Services by any means (automated or otherwise) other than through our currently available, published interfaces that are provided by us (and only pursuant to the applicable terms and conditions), unless you have been specifically allowed to do so in a separate agreement with us (NOTE: crawling or scraping the Services in any form, for any purpose without our prior written consent is expressly prohibited)*'.[311] On 15 November 2023, the provider of X updated the X Developer Agreement, to include a reference to Article 40 of Regulation (EU) 2022/2065.[312] The X Developer

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307 Reply to the second RFI, request 7 and 9 of section VII (DSA.100102, Doc ID 210-9).

308 This number corresponds to the period from 9 November 2023 to 9 January 2024 - See the table provided in reply to the fourth RFI, Request 32)b) (DSA.100102, Doc ID 160-5).

309 Reply to the second RFI, request 2 of section VII (DSA.100102, Doc ID 210-9).

310 See reply to the fourth RFI, request 32, including the relevant documents provided (DSA.100102; ID 160-2; 160-5; 168).

311 See X's terms of service: https://x.com/en/tos, accessed on 19 June 2024 (DSA.100102, Doc ID 207-46).

312 The X Developer Agreement are terms of service applying specifically to holders of '*X developer accounts*'. Accepting the X Developer Agreement is necessary to use the X API. Developer accounts are not necessary to use the X service, and as such, users are not required to accept the Developer Agreement to access the service. ; See Open Terms Archive, https://github.com/OpenTermsArchive/pga-versions/commit/c63b906e573f9f103649430a31a8080d2f7544e3#diff-2d91701cdd46e3d6db2a5cac7bd6531c806a0723a4f01ca8a1a6075eb98b533aR90, accessed on 19 June 2024 (DSA.100102, Doc ID 207-153). The added language reads: '***Digital Services Act***. *Notwithstanding anything to the contrary in this Agreement, to the extent you are provided access to the Licensed Material pursuant to the procedures described in Article 40 of the Digital Services Act (The Digital Services Act) ("DSA"), your access and use of the Licensed Material is limited solely to performing research that contributes to the detection, identification and understanding of systemic risks in the European Union and only to the extent necessary for X to comply with its obligations under the DSA. Any such use of the Licensed Material is non-commercial as described in Section III(B) of this Agreement. You may not disclose, reproduce, license, or otherwise distribute the Licensed Material (including any derivatives thereof) that you retrieve through the X API to any person or entity outside the persons within your organization necessary to perform the research, unless (i) the information is*

Agreement solely applies to holders of X developer accounts, which are necessary to access the X API, in contrast to the X Terms of Service, which seemingly apply to anyone using X.

6.3. The Commission's Preliminary Findings

(299) In its Preliminary Findings, the Commission reached the preliminary conclusion that the provider of X, both before and after 9 November 2024, failed to comply with the obligation laid down in Article 40(12) of Regulation (EU) 2022/2065 to provide access to data that are publicly accessible on X's online interface to Qualified Researchers. This conclusion was based on the following considerations.

6.3.1. Period between 28 August 2023 and 9 November 2023

(300) As regards the period between 28 August 2023 and 9 November 2023, the provider of X claims to have put two solutions in place to provide Qualified Researchers with access to its publicly available data pursuant to Article 40(12) of Regulation EU 2022/2065. The first solution consisted in offering the possibility to subscribe to X's commercial 'developer API' service.[313] The second solution consisted in the possibility for researchers to request access via the email address EU-Questions@x.com.[314] In the Preliminary Findings, the Commission took the view that neither of those two solutions complied with Article 40(12) of Regulation (EU) 2022/2065.

(301) As regards the first solution, the Commission took the view that the practice of granting Qualified Researchers access to X's data through the purchase of X's commercial 'developer API' offering[315] deprived them of the ability to access data pursuant to Article 40(12) of Regulation (EU) 2022/2065.

(302) As reflected in Figure 10 below, the costs to access the 'developer API' amounted to USD 5 000 per month for the second most extensive 'Pro' access tier. While the provider of X also offered 'Free' and 'Basic' access tiers,[316] these lower tiers only allowed access to zero and 10 000 posts per month, respectively, which is a volume of data largely insufficient to provide a meaningful basis for most legitimate research projects conducted into systemic risks to which very large online platforms could give rise, considering that the average daily number of posts on X is estimated to be several hundred millions. Indeed, research related to large social media platforms regularly features large sample-sizes due to the significant quantities of content and underlying metrics (such as pertaining to engagement) associated with large social media

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disclosed to the Digital Services Coordinator or other party specifically permitted by the DSA pursuant to the 'vetted researcher' status and procedures described in Article 40, or (ii) disclosure is required by law.'.

313 The 'X Developer API' ('X API') can be used to programmatically retrieve and analyse X data, it is accessible to any individual or entity paying the costs set by the provider of X and accepting the relevant terms of service.; see https://developer.x.com/en, accessed on 21 June 2024 (DSA.100102, Doc ID 207-165).

314 Reply to the second RFI, request 2 of section VII (DSA.100102, Doc ID 210-9).

315 The pricing of the 'X's Developer API' offering applies indiscriminately to for-profit business clients of the provider of X and public interest researchers, see Figure 10 below for an overview of the various API offerings. See also X Developer Platform, https://developer.x.com/en, accessed on 21 June 2024 (DSA.100102, Doc ID 207-165); X Developer Platform, https://developer.x.com/en/docs/twitter-api/getting-started/about-twitter-api, accessed on 19 June 2024 (DSA.100102, Doc ID 207-58).

316 An overview of the relevant access tiers is provided in Figure 10; The 'Free' access tier only permits uploads, and does not permit downloads.

platforms.[317] In this respect, the ability to access 10 000 post per month under the 'Basic' access tier is insufficient to enable any meaningful research associated with the study of social media platforms.[318]

(303) The Commission further observes that, for some research projects, even the scope of 'Pro' access tier is insufficient,[319] thus resulting in even higher costs associated with subscribing to the 'Enterprise' access tier, which starts at USD 42 000 per month.[320]

(304) The introduction of the aforementioned tier structure by the provider of X led to the documented cessation or cancellation of over a hundred research projects from April to November 2023.[321] Those documented projects represent only a fraction of all the research being performed on services from the provider of X. Cancelled or halted projects included long-term research projects which were recipients of Union funding (including European Research Council grants), and had been designed based on the ability to access X's publicly accessible data.[322] The Commission observes that the researchers who may have eventually regained access to the X API would not have been able to entirely make up for the time lost, since the data relevant for performing

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317 See for example the following research papers, which rely on the analysis of hundreds of thousands, or and even millions of individual posts as well as other underlying metrics.
Barberá, Pablo, et al. 'Tweeting from left to right: Is online political communication more than an echo chamber?.' Psychological science 26.10 (2015): 1531-1542. (DSA.100102, Doc ID 256-1).
Vosoughi, Soroush, Deb Roy, and Sinan Aral. 'The spread of true and false news online.' science 359, no. 6380 (2018): 1146-1151. (DSA.100102, Doc ID 254-1).
Renault, Thomas, David Restrepo Amariles, and Aurore Troussel. 'Collaboratively adding context to social media posts reduces the sharing of false news.' arXiv preprint arXiv:2404.02803 (2024). (DSA.100102, Doc ID 255-1).

318 See non-confidential minutes of interview with researchers, 23 February 2024 (DSA.100102, Doc ID 78-1): '*Since the academic API was discontinued by X, the researchers have paid for the 'Basic' tier of the X API, which costs USD 100 per month and only enables them to 'scope' potential research projects, but not to conduct the research.*'.
See non-confidential minutes of interview with a researcher, 16 February 2024 (DSA.100102, Doc ID 103-1): '*Since then, he has been paying about a hundred euros a month for accessing the 'basic' tier of the API, which is only enough to conduct 'a skeleton of research', not more. He notes that this API tier does not allow him to gather data on a scale sufficient to conduct research, for which he would at minimum need access to the 'Pro tier' of the X API. However, he notes that paying for the 'Pro Tier' is simply not possible for him unless he obtained a large grant.*'.
See also testimony provided by a researcher, 26 February 2024 (DSA.100102, Doc ID 112-4): '*the official API is unaffordable, […] [redacted organisation name], like other civil society organizations and researchers which do not have a business model centred on selling data, simply cannot afford this.*'.

319 The suitability of the 'Pro Tier' for performing research on systemic risks is further examined in section 6.3.2.3.2. below.

320 The costs for 'Enterprise' API access are referenced in the following webpage: X Developer Platform, https://developer.x.com/en/products/twitter-api/enterprise/enterprise-api-interest-form, accessed on 19 June 2024 (DSA.100102, Doc ID 207-66).

321 This is a conservative estimate, based on the non-confidential results of a survey provided by a researcher, 26 February 2024 (DSA.100102, Doc ID 63-1).
See also Reuters, https://www.reuters.com/technology/elon-musks-x-restructuring-curtails-disinformation-research-spurs-legal-fears-2023-11-06/, 6 November 2023, accessed on 11 June 2024 (DSA.100102, Doc ID 184-1).

322 For concrete examples of how the discontinuation of this program by the provider of X affected researchers, see the non-confidential minutes of interviews with researchers on 19 March 2024, 1 March 2024, 23 February 2024, 26 February 2024, 22 January 2024, 8 February 2024 (DSA.100102, IDs 174-1; 116-1; 78-1; 86-1; 36-1; 133-1).

research on systemic risks is regularly deleted within weeks of publication (e.g. data related to disinformation, hate speech, inauthentic accounts).[323]

(305) In addition, a large number of researchers have publicly and privately declared that they were unable to sustain the financial costs associated with accessing X's 'developer API' product in a manner compatible with performing research and had to halt or cancel ongoing and upcoming research projects.[324] Finally, the Commission notes that the providers of other very large online platforms whose core features involve publicly accessible data give Qualified Researchers free of charge access to existing commercial APIs or to new APIs rolled out by those providers specifically for Qualified Researchers.[325]

Figure 10: comparing the access tiers available under the commercial offering of the 'X Developer API' Note: The Enterprise tier starts at USD 42 000 per year.

	Free	Basic	Pro	Enterprise
Getting access	Get Started	Get Started	Get Started	Get Started
Price	Free	$100/month	$5000/month	
Access to X API v2	✔ (Only Post creation)	✔	✔	
Access to standard v1.1	✔ (Only Media Upload, Help, Rate Limit, and Login with X)	✔ (Only Media Upload, Help, Rate Limit, and Login with X)	✔ (Only Media Upload, Help, Rate Limit, and Login with X)	
Project limits	1 Project	1 Project	1 Project	
App limits	1 App per Project	2 Apps per Project	3 Apps per Project	
Post caps - Post	1,500	3,000	300,000	
Post caps - Pull	✘	10,000	1,000,000	
Filtered stream API	✘	✘	✔	
Access to full-archive search	✘	✘	✔	
Access to Ads API	✔	✔	✔	

Source: X Developer Platform, https://developer.x.com/en/docs/twitter-api/getting-started/about-twitter-api, accessed on 19 June 2024 (DSA.100102, Doc ID 207-58).

(306) For these reasons, the Commission took the preliminary view that, between 28 August 2023 and 9 November 2023, the costs associated with obtaining access to publicly available data, in particular in the absence of any dedicated alternative for accessing such data, suppressed the ability of Qualified Researchers to access and use data that is

323 Non-confidential minutes of interviews with researchers, 1 March 2024 (DSA.100102, Doc ID 116-1).

324 Non-confidential minutes of interviews with researchers, 1 March 2024, 26 February 2024, 22 January 2024, 23 February 2024, 22 January 2024, 16 February 2024 (DSA.100102, Doc ID 116-1; 86-1; 36-1; 78-1; 40-1; 103-1).
Non-confidential testimony of a researcher, 27 February 2024 (DSA.100102, Doc ID 91-1).

325 EU-US Trade and Technology Council, Status Report: Mechanisms for Researcher Access to Online Platform Data, 5 April 2024, pp 12-17 (DSA.100102, Doc ID 185-1); See for instance the cases of YouTube, Facebook, Instagram, TikTok, LinkedIn.

publicly accessible in X's online interface to conduct research contributing to the detection, identification and understanding of the systemic risks in the Union, in clear contravention of Article 40(12) of Regulation (EU) 2022/2065.

(307) As regards the second solution the provider of X claims to have put in place to ensure access to data from 28 August 2023 to 9 November 2023, the Commission took the preliminary view that the possibility for researchers to request access to data via the email EU-Questions@x.com,[326] was ineffective, since it was not communicated by the provider of X to the potential beneficiaries of that solution. In the absence of any public communication, researchers were effectively deprived of the ability to benefit from their right to data access under Article 40(12) of Regulation (EU) 2022/2065.

(308) The absence of a public communication from the provider of X contrasts with the extensive media coverage on the discontinuation of the Twitter Academic API program, which drew wide public criticism from the research community.[327] Before November 2023, the provider of X made public statements that pointed all prospective users of the X API (including researchers) to access data through the commercial developer API subscription and did not provide any subsequent information regarding the introduction of a research-specific access to data, instead of issuing any form of clear communication about the possibility to apply for access pursuant to Article 40(12) of Regulation (EU) 2022/2065.[328] This is also illustrated by the fact that none of the researchers interviewed by the Commission was aware of any way to apply for

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326 This information was communicated to the Commission on 17 November in the reply to the first RFI, section 5 in parallel to the launch of the new application process on 9 November 2023 (DSA.100102, Doc ID 2-11).

327 See Nature, https://www.nature.com/articles/d41586-023-00460-z, accessed on 25 June 2024 (DSA.100102, Doc ID 207-42).
Le Monde, https://www.lemonde.fr/sciences/article/2023/11/28/x-terrain-d-enquete-deserte-des-chercheurs_6202801_1650684.html, accessed on 25 June 2024 (DSA.100102, Doc ID 207-34).
The Verge, https://www.theverge.com/2023/5/31/23739084/twitter-elon-musk-api-policy-chilling-academic-research, accessed on 19 June 2024 (DSA.100102, Doc ID 207-157).
Fast Company, https://www.fastcompany.com/91040397/under-elon-musk-x-is-denying-api-access-to-academics-who-study-misinformation, accessed on 19 June 2024 (DSA.100102, Doc ID 207-105).
Politico, https://www.politico.eu/article/elon-musk-twitter-goes-to-war-with-researchers-api/, accessed on 19 June 2024 (DSA.100102, Doc ID 207-93).
CNN Business, https://edition.cnn.com/2023/04/05/tech/academic-researchers-blast-twitter-paywall/index.html, accessed on 19 June 2024, (DSA.100102, Doc ID 207-85).

328 X announced its revamped commercial API offering on 30 March 2023. At the time, the provider of X did not announce any researcher access channel to replace the 'Academic API' access. To the knowledge of the Commission, the provider of X did not make any additional communications to researchers until November of 2023, when it updated one of its webpages.
In its announcement of the new API offering on 30 March 2023, the provider of X mentioned that '*For Academia, we are looking at new ways to continue serving this community. In the meantime Free, Basic and Enterprise tiers are available for academics. Stay tuned to @TwitterDev to learn more*.'; See X post from the official 'X Developer', https://x.com/XDevelopers/status/1641222788911624192, accessed on 19 June 2024 (DSA.100102, Doc ID 207-74).
See also this blog, which analyses the new offering launched in the Spring of 2023 and mentions that '*There are no special access plans for researchers and academics at this time*.'; Superface AI, https://superface.ai/blog/twitter-api-new-plans, accessed on 19 June 2024 (DSA.100102, Doc ID 207-109).
See examples of researchers seeking information since the Spring of 2023 in the 'academic research' tab of X's online developer forums. Developers working for Twitter/X regularly replied to researchers on these forums under the Twitter Academic API program but have stopped doing so between the spring of 2023 and the Preliminary Findings; X developers, https://devcommunity.x.com/c/academic-research/62, accessed on 29 May 2024 (DSA.100102, Doc ID 181-1; 182-1; 183-1).

free API access for research purposes until the provider of X made an online form available on 9 November 2023.[329] This is further corroborated by media coverage of the introduction of the 40(12) application form on 9 November 2023, which was widely perceived as a decision by the provider of X to resume the intake of researcher applications in November 2023 for the first time since discontinuing the Twitter Academic API program.[330]

(309) The Commission therefore took the preliminary view that, between 28 August 2023 and 9 November 2023, the alleged possibility to apply via EU-Questions@x.com was never effectively communicated by X to researchers, thereby depriving researchers of the chance to benefit from it and rendering it ineffective. Over the relevant period, the only effective possibility for Qualified Researchers to access X's data was therefore to purchase access to X's 'developer API' service which, however, for the reasons explained above, did not meet the requirements of Article 40(12) of Regulation (EU) 2022/2065.

(310) Finally, as regards both solutions, the Commission took the view that the provider of X did not have any defined process in place for assessing applications pursuant to Article 40(12) of Regulation (EU) 2022/2065 between 28 August 2023 and 9 November 2023. The very first version of the internal workflow provided by the provider of X regarding the assessment of researcher applications pursuant to Article 40(12) of Regulation (EU) 2022/2065 dates from November 2023.[331] Furthermore, the version of the processes dating back to November 2023 appears to be only partially drafted, as it was for instance lacking any clear process to approve applications and onboard applicants, signalling the company's unpreparedness to do so.[332] A more definitive and comprehensive version of this workflow was finalized only in January 2024.[333] This observation is further corroborated by the fact that none of the 143 applications submitted by researchers between 9 November 2023 and 31 December 2023 were approved by the provider of X before 26 January 2024.

(311) For all the foregoing reasons, the Commission took the preliminary view that the provider of X failed to comply with Article 40(12) of Regulation (EU) 2022/2065 during the period 28 August 2023 to 9 November 2023.

6.3.2. Period following 9 November 2023

(312) As regards the period after 9 November 2023, the Commission took the preliminary view that the changes implemented by the provider of X to receive and assess

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329 The interviews of researchers conducted by the Commission show that until the possibility to apply via the 40(12) application form became known only from late November 2023, researchers were not aware of any possibility to access the X API as researchers other than paying for the commercial access tiers; See for instance the non-confidential minutes of interviews with researchers on 19 March 2024, 1 March 2024, 23 February 2024, 26 February 2024, 22 January 2024, 16 February 2024, 8 February 2024, 28 February 2024 (DSA.100102, Doc ID 174-1; 116-1; 78-1; 86-1; 36-1; 103-1; 133-1; 113-1). See also the non-confidential version of the testimony provided by a researcher, 26 February 2024 (DSA.100102, Doc ID 112-4).

330 See for example TechCrunch, https://techcrunch.com/2023/11/17/change-in-xs-terms-indicate-eu-researchers-will-get-api-access/, accessed on 19 June 2024. (DSA.100102, Doc ID 207-89); X Post by Mathias Vermeulen, https://x.com/mathver/status/1729894799954600411, accessed on 19 June 2024 (DSA.100102, Doc ID 207-117).

331 See the templates provided in reply to the second RFI, request 5, section VII (DSA.100102, Doc ID 210-9; 210-7; 210-8).

332 Annexes provided in reply to the second RFI, Request 5 of section VII (DSA.100102, Doc ID 210-9).

333 See also section 6.3.2.2.1 below.

researcher applications, and to subsequently provide access to Qualified Researchers, did not bring the provider of X in compliance with the obligation laid down in Article 40(12) of Regulation (EU) 2022/2065.

(313) More specifically, the Commission noted significant shortcomings in the processes put in place by the provider of X to receive and assess researchers' 40(12) applications as of 9 November 2023, as well as to give Qualified Researchers adequate access to data via the X API in a manner which would allow performing research contributing to the detection, identification and understanding of the systemic risks stemming from the design and functioning of X in the Union. As explained below, these shortcomings exist at all stages of the process implemented by the provider of X to give Qualified Researchers access to data: (i) prior to the application; (ii) at the submission stage; (iii) at the assessment stage; (iv) at the outcome stage; and (v) in relation to providing adequate access to successful applicants.

6.3.2.1. Overly restrictive interpretation of the eligibility requirements set out in Article 40(12) of Regulation (EU) 2022/2065

(314) In the first place, the Commission took the preliminary view that the provider of X interpreted the eligibility requirements set out in Article 40(12) of Regulation (EU) 2022/2065 in an overly restrictive manner, thus restricting access for some of the eligible beneficiaries pursuant to that Article.

6.3.2.1.1. Eligible use of publicly accessible data

(315) First, the provider of X has an overly restrictive interpretation of the requirement that researchers use the data 'solely' for performing research that contributes to the detection, identification and understanding of systemic risks in the Union within the meaning of Article 34(1) of Regulation (EU) 2022/2065.

(316) As of 8 May 2024, [redacted] out of [redacted] applications for data access rejected by the provider of X were rejected on the basis that '*it does not appear that* [the researchers'] *proposed use of X data is solely for performing research that contributes to the detection, identification and understanding of systemic risks in the EU as described by Article 34 of* [Regulation (EU) 2022/2065]'.[334]

(317) This restrictive interpretation is corroborated by evidence collected by researchers affiliated with the European New School and the Weizenbaum Institute in their ongoing survey of the research community in relation to platforms' data access mechanisms.[335] The survey report identifies the repeated use of this argument by the provider of X to reject applications and notes that '*while this wording is found in Article 40(12), it is an unnecessarily narrow interpretation of the provision to restrict data access by claiming a request is not specific enough without further explanations*'.

(318) When deciding to escalate an application (i.e., asking the applicant for additional information),[336] which is part of the provider of X's mandatory approval track and

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334 See the table provided in reply to the fourth RFI, Request 32)b) (DSA.100102, Doc ID 160-5); This search can be reproduced by filtering Column R to only include reasons which include 'Research outside scope'.

335 Weizenbaum Institute, https://www.weizenbaum-library.de/items/39a490c3-f3c1-42a7-a530-318b17e9de49, April 2024, in particular 'Sample Case 1' on Page 5, and page 6 of the report (DSA.100102, Doc ID 128-1).

336 Annex provided in reply to the second RFI, Request 5 of section VII; Pages 9 and 10 of the 'Version 2.0' Checklist (DSA.100102, Doc ID 210-9; 210-7; 210-8).

happens only if '*the initial information provided in the form seems legitimate and to warrant API access*', the guidance for X staff in charge of assessing whether the scope of research fits the criteria recommends them to '*ensure we have enough information about the research to confirm that the data will be used solely* [underlined in the original internal document] *for the purposes permitted in Articles 34 and 40*'. The emphasis placed on 'solely' in this document suggests that the internal instruction for X employees is to be particularly strict on this specific requirement when assessing requests.

(319) To support its Preliminary Findings, the Commission provided a non-exhaustive list of 12 specific examples of applications that were ultimately rejected by the provider of X on the unique ground that the applicant's proposed use of X data was allegedly not solely for '*performing research that contributes to the detection, identification and understanding of systemic risks in the EU as described by Article 34',* which in fact appeared to fulfil this requirement.[337] The Commission conducted an in-depth analysis of 4 of these 12 rejections,[338] including by scrutinising the internal documents of the provider of X containing the reasoning (or lack thereof) of its technical staff to reject these 4 applications, which had never been fully communicated to the rejected applicants. [339]

(320) In response to the Commission's enquiry into the relevant qualifications of employees of the provider of X in charge of assessing applications, the provider of X mentioned only three employees working part - time on assessing data access requests.[340] These employees were claimed to possess [redacted], [redacted] and [redacted] years of 'relevant work experience', yet no indication was provided of their familiarity with the state of the art of research on systemic risks in the Union, which contrasts with the expertise of the researchers whose applications they were in charge of assessing. This mismatch of expertise is corroborated in the Commission's Technical Analysis of 4 specific applications supporting the Preliminary Findings on DSA.100102 ('the Technical Analysis'), which points to important flaws in the internal arguments[341] of the provider of X's staff to deny applications based on their scope. In addition, a majority of researchers who have been rejected by the provider X on this basis and who were in contact with the Commission disagreed with that provider's claims that the research project described in their applications did not fulfil this specific requirement.

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337 Namely Applicants [redacted]; See the 'DSA.100102' Technical Analysis which provides an analysis of specific rejections, including in relation to research projects which were recipients of EU funding; 'DSA.100102' Technical Analysis (DSA.100102, Doc ID 257-1) and the table provided in reply to the fourth RFI, Request 32)b) (DSA.100102, Doc ID 160-5).

338 'DSA.100102' Technical Analysis (DSA.100102, Doc ID 257-1).

339 The shortcomings related to the lack of effective substantiation of rejections by the provider of X are further discussed in section 6.3.2.2.2.

340 Based on the reply to the second RFI, request 6)f of section VII: '*X currently has three employees involved in the day-to-day review of applications and in the ensuing correspondence with researchers'. The time devoted by these employees to the review of applications 'varies day-to-day', as these employees perform other duties in parallel within TIUC. These three employees consist in a* [redacted] *as well as a* [redacted] *and an* [redacted] *supporting the X Developer API*' (DSA.100102, Doc ID 210-9).

341 These arguments were internal to the provider of X and were never disclosed to rejected applicants. They are discussed extensively in section 6.5.3.1 of this document. See also 'DSA.100102' Technical Analysis (DSA.100102, Doc ID 257-1).

(321) The Commission observes that the notion '*solely*' to which Article 40(12) of Regulation (EU) 2022/2065 refers should not be understood as referring to the scope of the research project or scope of data to which access is to be granted, but to the purpose of such access, i.e., '*performing research that contributes to the detection, identification and understanding of systemic risks in the Union pursuant to Article 34(1)'* of Regulation (EU) 2022/2065. Therefore, the wording of that provision does not require that the scope of the specific research project in question be limited to the detection, identification and understanding of systematic risks in the Union, so long as the final use of the data in question is solely for the purpose of performing research that contributes to the detection, identification and understanding of systemic risks in the Union pursuant to Article 34(1) of Regulation (EU) 2022/2065. The Commission takes the view that this interpretation is further supported by the requirement that the research 'contributes' to this purpose, which can be accomplished by a broad set of research projects and by a broad use of data samples.

(322) Even when it does not lead to a rejection of the applicants, the restrictive interpretation of Article 40(12) of Regulation (EU) 2022/2065 adopted by the provider of X artificially restricted the scope of the research projects. In fact, in this respect, one of the [redacted] successful applicants as of 8 May 2024 explained to the Commission that they were cognizant of the provider of X's very restrictive interpretation regarding acceptable data use. Considering this, they claim to have built their data access request in a very '*conservative*' manner that would be '*impossible for X to reject*'.[342] The researcher did so by formulating a proposal to study the prevalence and the amplification of misinformation in the context of [redacted]. During the application review process, the provider of X requested, on three consecutive occasions, that researcher to reaffirm and provide evidence that the applicant's proposed research would indeed focus on '*misinformation in the context of the elections as opposed to misinformation more broadly*'. This exemplifies that the restrictive interpretation by the provider of X also had an impact on the formulation of research proposals, namely by incentivising researchers to limit the scope of their projects further than initially planned and beyond what would be strictly needed to be granted access to data by the provider of X, had the latter properly applied Article 40(12) of Regulation (EU) 2022/2065.

(323) For all these reasons, the Commission took the preliminary view that the provider of X reviewed and rejected certain applications based on an overly restrictive interpretation of the requirement that data be used *'solely for performing research that contributes to the detection, identification and understanding of systemic risks in the Union pursuant to Article 34(1)'.* By doing so, the provider of X has therefore failed to comply with Article 40(12) of Regulation (EU) 2022/2065.

6.3.2.1.2. Restrictions based on the geographic location of the researchers

(324) Second, the provider of X rejected researchers on the sole basis that they were established outside the Union, whereas Article 40(12) of Regulation (EU) 2022/2065 does not allow for such a restriction.

(325) The Commission is specifically aware of two such instances in which the provider of X rejected data access requests coming from researchers established outside the Union on the sole basis of the establishment of those researchers (using language such as '*X*

[342] See the non-confidential minutes of interviews with a researcher on 28 February 2024 (DSA.100102, Doc ID 113-1).

will limit API access under Art. 40(12) to organizations located in the EU. Accordingly, your application has been denied.'), despite the fact that the subject-matter of these requests was concerned with performing research that contributes to the detection, identification and understanding of systemic risks in the Union. Moreover, the provider of X rejected those applications after having asked those researchers for extensive additional information supporting their requests, despite being aware that those researchers were affiliated to non-EU universities since the very first moment that they applied, and having failed to reply to both applicants for more than a month after they had provided the additional information requested by the provider.[343]

6.3.2.1.3. (Non-)Affiliation to a research organisation

(326) Third, the application form implemented by the provider of X features two mandatory fields related to the researchers' organisation[344] and internal documents submitted to the Commission by the provider of X instructs employees to deny applications when applicants are not affiliated to a '[redacted]'.[345] However, Article 40(12) of Regulation (EU) 2022/2065 does not require Qualified Researchers to be affiliated to an organisation, body or association, in contrast to Article 40(4) of that Regulation where the Union legislature explicitly required researchers to be affiliated to a research organisation to obtain the status of 'vetted researcher' and submit reasoned requests to access data under Article 40(8) of that Regulation. The mandatory nature of those fields in the application form, and the internal guidelines to reject applicants on the basis of their affiliation thus entail a restriction that goes further than the scope of beneficiaries defined in Article 40(12) of Regulation (EU) 2022/2065.[346]

6.3.2.1.4. Disclosure of funding and independence from commercial interests

(327) Fourth, the Commission took the view that the application form of the provider of X requires the provision of information going beyond what is needed to verify the subset of criteria laid down in Article 40(12) of Regulation (EU) 2022/2065. This often leads the provider of X to request information from researchers that is not required to assess whether the researcher fulfils the conditions for data access under Article 40(12) of Regulation (EU) 2022/2065.

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343 See in table provided in reply to the fourth RFI, request 32)b) (DSA.100102, Doc ID 160-2; 160-5).
Applicant [redacted] provided additional information on [redacted] 2024 and did not receive a reply from the provider of X until [redacted] 2024, despite asking for updates. His request was denied on the basis that '*until we receive any contrary legislation or guidance, X will limit API access under Art. 40(12) to organizations located in the EU. Accordingly, your application has been denied*.'. The applicant complained that this was not stated earlier and that the provider of X made him reply to several waves of questions over the course of four months. He insisted that his request focused on systemic risks to the European Union.
Applicant [redacted] provided additional information on [redacted] 2024 and did not receive a reply until [redacted] 2024. His request was also rejected on the sole basis that '*Based on your application, it appears your organization is outside of the European Union*.', after the applicant had been asked additional information by X, and as is proposed research focused on assessing the prevalence of hate speech in the EU.

344 Namely, the '*Name of Organization*' and '*Organization Affiliation*' fields.

345 'V2.2 DSA Art 40(12) Research access checklist', page 3, provided in reply to the fourth RFI, request 33 (DSA.100102, Doc ID 160-2; 168-604).

346 To be granted the vetted status pursuant to Article 40(4) of the Digital Services Act, researchers have to be affiliated to a research organisation as defined in Article 2, point (1), of Directive (EU) 2019/790.

(328) The provider of X claims that its '*40(12) Application form tracks the requirements*' listed in Article 40(12) of Regulation (EU) 2022/2065,[347] namely that the researchers fulfil '*the criteria in Article 40(8), points (b), (c), (d) and (e), and that they will 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)*'. However, the provider of X has interpreted the conditions in Article 40(8) point (b) ('independence from commercial interests') and point (c) ('disclosing the funding of the research') to require the provision of extensive information related to the researcher's organisation and its board, [348] as well as information going beyond the funding of the research. [349]

(329) While the affiliation of an applicant to a specific organisation may be relevant to assess whether that applicant is entitled to request access to data pursuant to Article 40(12) of Regulation (EU) 2022/2065, there is nothing in that provision which would justify requesting mandatory information about the organisation's board members, membership, shareholders, grant recipients, or information about the 'indirect funding'[350] of researchers. Requesting that information is therefore designed to discourage meaningful scrutiny of the systemic risks to which a service gives rise. In a public blog post, Brandon Silverman, former CEO and co-founder of CrowdTangle,[351] who is a leading expert in providing researchers access to platform data, noted that these questions about '*indirect funding sources […] and detailed information about an organization's board members and directors*' go '*beyond traditional industry norms for researcher vetting for public data on social media*'. [352] In parallel, two researchers interviewed by the Commission shared their concerns that the provider of X was using this application form to map who is funding the research field as a whole. [353] This is particularly relevant in light of recent lawsuits in which the provider of X sued several critical civil society researchers. [354] Internal documents provided by the provider of X

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347 Reply to the second RFI, request 4 of Section VII (DSA.100102, Doc ID 210-9).

348 The "Commercial Interests" box of the 40(12) application form requests applicants to disclose information, "including but not limited to […] (i) purposes and mission (ii) information about your board members, officers, and individuals with access to X data, (iii) previously published research, (iv) affiliation with other organizations, networks, or causes, and (v) the organization's membership, shareholders or grant recipients"; See https://docs.google.com/forms/d/e/1FAIpQLSdo0O-D6Kxa3cV4g1JLz2T_0Sk3hdEnTdv8dJmibagCnzJ7kg/viewform, accessed on 19 June 2024 (DSA.100102, Doc ID 207-70).

349 The 'Funding' box of the '40(12) Application form' requests applicants to disclose the 'funding of your research, including amounts raised and direct and indirect sources of funding.', https://docs.google.com/forms/d/e/1FAIpQLSdo0O-D6Kxa3cV4g1JLz2T_0Sk3hdEnTdv8dJmibagCnzJ7kg/viewform, accessed on 19 June 2024 (DSA.100102, Doc ID 207-70).

350 The '40(12) application form' implemented by the provider of X requires that applicants provide information on '*direct and indirect sources of funding*' (emphasis added) where 'indirect funding' appears to be ill defined and goes beyond the requirement set out by Article 40(8)(c) (namely, that the "application discloses the funding of the research"). ; See https://docs.google.com/forms/d/e/1FAIpQLSdo0O-D6Kxa3cV4g1JLz2T_0Sk3hdEnTdv8dJmibagCnzJ7kg/viewform, accessed on 19 June 2024 (DSA.100102, Doc ID 207-70).

351 CrowdTangle was a social monitoring tool, eventually acquired by Meta, that was used by thousands of civil society groups around the world to monitor public content on social media.

352 Mozilla Foundation, https://foundation.mozilla.org/en/blog/EU-Digital-Services-Act-and-The-State-of-X-Transparency/, accessed on 19 June 2024 (DSA.100102, Doc ID 207-161).

353 Non-confidential minutes of interview with researchers, 22 January 2024 (DSA.100102, Doc ID 40-1).

354 Washington Post, https://www.washingtonpost.com/technology/2024/03/25/musk-x-lawsuit-slapp-center-digital-hate/, accessed on 25 June 2024 (DSA.100102, Doc ID 207-38).

at the request of the Commission [355] contain language about the need to particularly scrutinise the commercial interests of non-academic organizations, '*because many of these are subject to commercial interests*'. However, the Commission notes that the form implemented by the provider of X for the purposes of researchers' applications under Article 40(12) of Regulation (EU) 2022/2065 contains these questions regardless of whether those applications originate from academic or non-academic researchers, which further indicates that some of the information requested in this form are disproportionate.

6.3.2.2. Shortcomings in the application review processes and in communicating outcomes to applicants

(330) In the second place, the Commission took the preliminary view that the processes set up by the provider of X to review applications to access publicly accessible data via the X API pursuant to Article 40(12) of Regulation (EU) 2022/2065, as well as to communicate outcomes to applicants, presented significant shortcomings.

6.3.2.2.1. Failure to give access to data without undue delay

(331) First, the Commission took the view that the provider of X repeatedly failed to assess applications and to give applicants access to data via the X API *without undue delay*, as required by Article 40(12) of Regulation (EU) 2022/2065.

(332) As explained in recital 310 above, the internal review procedures of the provider of X were only partially finalised in January 2024 at the earliest, which was more than four months after Regulation (EU) 2022/2065 started to apply to X. This contributed to significantly delaying the ability of Qualified Researchers to access data via the X API, and therefore their ability to perform research on systemic risks.

(333) According to internal documents, 'Version 1.0'[356] of the procedure to assess applications and provide access to successful applicants (used from November 2023 to January 2024) lacked a clear and defined process to approve applications and onboard applicants, which only appears in Version 2.0 (implemented from January 2024 onwards), signalling an unpreparedness to do so. This is consistent with the fact that, despite the launch of a new process to receive applications on 9 November by the provider of X, not a single application was approved before 26 January 2024, almost 5 months after Regulation (EU) 2022/2065 became fully applicable to the provider.[357]

(334) In addition, the procedure put into place by the provider of X to review applications regularly leads to unnecessary delays and therefore fails to give access to applicants *without undue delay* as required by Article 40(12) of Regulation (EU) 2022/2065.

(335) More specifically, the provider of X repeatedly failed to reply to applicants for more than a month and sometimes failed to reply until applicants enquired about the absence of updates.[358] In addition, the [redacted] researchers to whom the provider of X granted

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355 Annexes provided in reply to the second RFI, Request 5 of Section VII (DSA.100102, Doc ID 210-9).

356 Annexes provided in reply to the second RFI, Request 5 of section VII (DSA.100102, Doc ID 210-9).

357 Table provided in reply to the fourth RFI, Request 32)b) (DSA.100102, Doc ID 160-2; 160-5).

358 See for instance applications [redacted] (in particular document TIUC-1331); [redacted] (in particular document TIUC-242 and -465); [redacted] (in particular document TIUC-1014); 24-42 (in particular document TIUC-1145); [redacted] (in particular document TIUC-367); [redacted]; [redacted]; [redacted]; [redacted] in the documents provided in reply to the fourth RFI, request 32 (DSA.100102, Doc ID 160-5; 168). See JIRA tickets provided in reply to the fourth RFI, Request 34, in particular: document TIUC-1739 – comment written on 3 January 2024 'Applicant [redacted] will receive an email on [redacted] 2024 informing them that their application is under review.' (DSA.100102, Doc ID 160-5; 168).

API access (the [redacted] successful applicant received data via a file transfer) were all informed of their approval on the same two dates,[359] pointing to inefficiencies in the workflow implemented by the provider of X for the application review process.

6.3.2.2.2. Explanations to rejected applicants do not properly substantiate the alleged shortcomings

(336) Second, the explanations provided by the provider of X to rejected applicants lacked detail, thus preventing applicants from understanding the reasons leading to their rejection, which has the effect of hindering their ability to challenge their rejection or to adapt their application with a view of obtaining access pursuant to Article 40(12) of Regulation (EU) 2022/2065 in the future.

(337) In the large majority of rejection emails sent by the provider of X to researchers, that provider adopted generic language pointing to an alleged incompleteness of the request or a failure to fulfil one of the applicable requirements.[360] Figure 11 below, demonstrates that the reply templates used by the provider of X[361] by default did not include space for any additional or specific feedback to the rejected researcher except for referencing alleged shortcomings with regard to one of the eligibility criteria laid down in Article 40(12) of Regulation (EU) 2022/2065. In fact, only [redacted] out of [redacted] rejected applicants received a 'custom' rejection message deviating from the generic wording contained in that template.[362]

(338) The emails that the provider of X sent to researchers when rejecting their applications included a note explaining that '*responses to this email are not monitored*', whereas in previous steps of the application process, researchers interacted with the provider of X by replying to emails using the same address as the one used to ultimately send the rejection ([redacted]@x.com).

(339) Recital 98 of Regulation (EU) 2022/2065 clarifies that providers '*should not prevent*' researchers meeting an appropriate subset of criteria from using publicly accessible data for research purposes that contribute to the detection, identification and understanding of systemic risks. The provider of X's failure to disclose to researchers meaningful indications as to the reasons for which their requests have been rejected is likely to deter such researchers from making use of their right.[363] In this respect,

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359 Out of the [redacted] successful applicants who obtained access to the X API as of 8 May 2024, [redacted] decisions to grant access were communicated to applicants on [redacted] 2024 and [redacted] were communicated on [redacted] 2024. The [redacted] researcher who has been granted access saw their request approved on [redacted] 2024, their case differs from the [redacted] others as [redacted]. See the table provided in reply the fourth RFI, Request 32)b) (DSA.100102, Doc ID 160-2; 160-5).

360 As per the table provided in reply to the fourth RFI, request 32)b) only [redacted] out of [redacted] rejected applicants received a 'custom' denial (this can be replicated by filtering column R) (DSA.100102, Doc ID 160-2; 160-5). See the specific examples provided in the 'DSA.100102' Technical Analysis (DSA.100102, Doc ID 257-1).

361 See 'Version 2.0' of the research access checklist provided in Annex to the reply to the second RFI, Request 5 of section VII ; page 14 (DSA.100102, Doc ID 210-8). See also the reply to the second RFI, request 6)e) of section VII (DSA.100102, Doc ID 210-9).

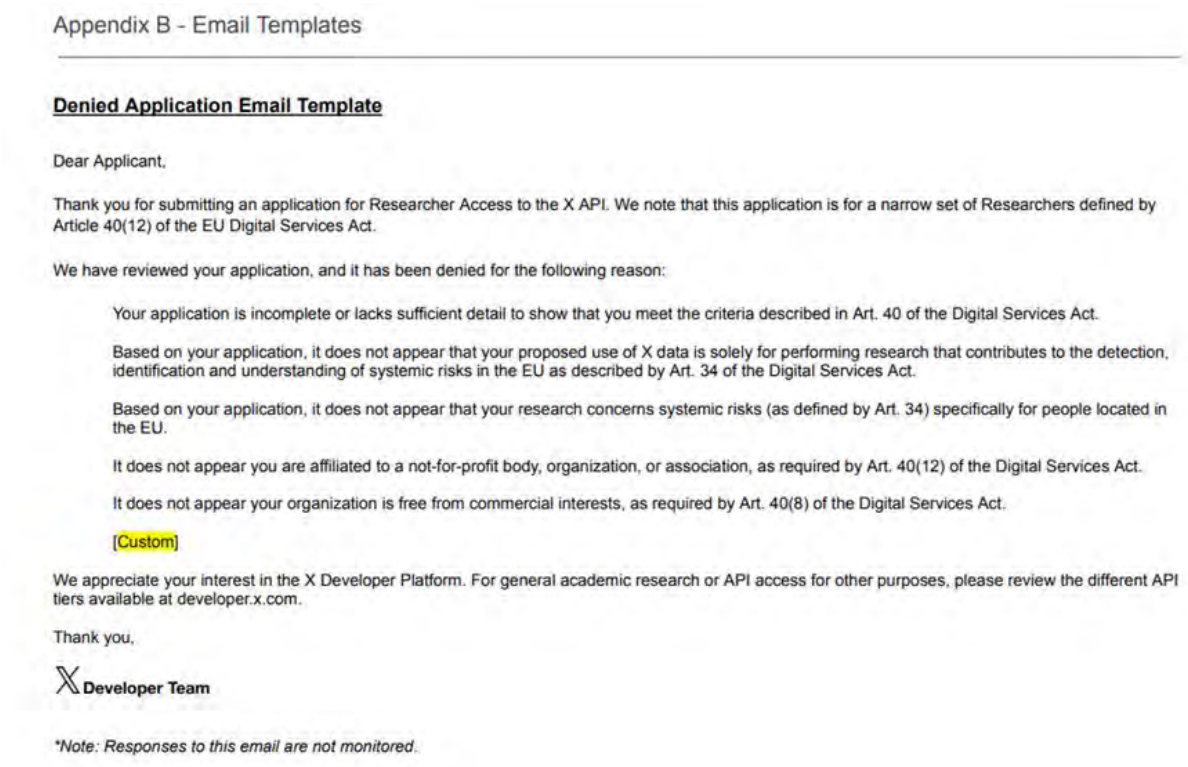
362 As per the table provided in reply to the fourth RFI, request 32)b). This search can be replicated by filtering column R) of the table (DSA.100102, Doc ID 160-2; 160-5).

363 See non-confidential minutes of interview with a researcher, 6 February 2024 (DSA.100102, Doc ID 193-1): '*YY explains that this rejection deters him from applying again as he does not want to waste his time.*'
Non-confidential minutes of interview with researchers, 22 January 2024, (DSA.100102, 40-1): '*When asked by COM if they would try applying again to X's researcher API access, they explain that 'they*

providing meaningful explanations is particularly important where applicants appear to fulfil the criteria set out in Article 40(8), points (b), (c), (d) and (e) of Regulation (EU) 2022/2065 to which Article 40(12) of this Regulation refers.

(340) By failing to properly substantiate the rejections of applications under Article 40(12) of Regulation (EU) 2022/2065, the provider of X has hindered researchers' ability to understand the shortcomings of their applications *alleged* by the provider. In turn, this has undermined researchers' ability to challenge rejections and address potential concerns of the provider of X with the view of obtaining access in the future. Consequently, the failure to meaningfully substantiate rejections undermines the ability of researchers to access data via the X API to perform research on systemic risks in the Union.

Figure 11: Email template used by the provider of X to inform applicants of the denial of their applications.



Appendix B - Email Templates

Denied Application Email Template

Dear Applicant,

Thank you for submitting an application for Researcher Access to the X API. We note that this application is for a narrow set of Researchers defined by Article 40(12) of the EU Digital Services Act.

We have reviewed your application, and it has been denied for the following reason:

Your application is incomplete or lacks sufficient detail to show that you meet the criteria described in Art. 40 of the Digital Services Act.

Based on your application, it does not appear that your proposed use of X data is solely for performing research that contributes to the detection, identification and understanding of systemic risks in the EU as described by Art. 34 of the Digital Services Act.

Based on your application, it does not appear that your research concerns systemic risks (as defined by Art. 34) specifically for people located in the EU.

It does not appear you are affiliated to a not-for-profit body, organization, or association, as required by Art. 40(12) of the Digital Services Act.

It does not appear your organization is free from commercial interests, as required by Art. 40(8) of the Digital Services Act.

[Custom]

We appreciate your interest in the X Developer Platform. For general academic research or API access for other purposes, please review the different API tiers available at developer.x.com.

Thank you,

Developer Team

**Note: Responses to this email are not monitored.*

Source: Annex to reply to the second RFI, request 5 of section VII (DSA.100102, Doc ID 210-8).

6.3.2.3. Insufficient data access quotas & durations for Qualified Researchers

(341) In the third place, the Commission took the preliminary view that the processes devised by the provider of X to obtain data access suppressed the ability of Qualified Researchers to obtain sufficient access duration and access quotas to allow them to perform research that contributes to the detection, identification and understanding of

are not entirely sure the game is fair', also noting that some of their colleagues also had their applications rejected, and that no one they knew had a successful application.'
Non-confidential minutes of interview with a researcher, 6 February 2024 (DSA.100102, 179-1): '*In a recent conference, all researchers he spoke with had been rejected by X. Some researchers he knew explained that they would not apply because they thought it would be a waste of time and resources.'.*

the systemic risks to which X gives rise in the Union, pursuant to Article 40(12) of Regulation (EU) 2022/2065.

(342) The standard access duration and quotas offered by the provider of X are, in fact, substantially inferior to the access that researchers were previously provided under the Twitter Academic API program, to the point of being unusable for some of the research on systemic risks eligible for access pursuant to Article 40(12) of Regulation (EU) 2022/2065.[364] To the knowledge of the Commission, these standard limitations are not conveyed to applicants at any point before or during the application process implemented by the provider of X to grant access to data pursuant to Article 40(12) of Regulation (EU) 2022/2065, but are only communicated at the moment of granting access following a successful application.

6.3.2.3.1. Access durations

(343) First, the provider of X systematically limits successful applicants' API access to a period of 6 months. That is so irrespective of the numerous detailed questions asked by the provider of X during the application process regarding the researchers' data needs and research duration,[365] and irrespective of the fact that the provider of X may have been informed by the researcher that access is needed for a longer period.

(344) As a result, the provider of X systematically provides successful applicants with shorter access periods than requested in their applications,[366] with uncertain extensions.[367] Furthermore, applicants are only informed about applicable data access

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364 Default access quotas are ten times smaller than under the Twitter Academic program, while default access duration is now 6 months as opposed to indefinite or tailored durations under the Twitter Academic program.; See the following archived webpages: The Internet Archive, Twitter API for Academic Research | Products | Twitter Developer Platform, capture of the website as it appeared on 12 February 2023, accessed on 19 June 2024 (DSA.100102, Doc ID 207-141); The Internet Archive, https://web.archive.org/web/20230212182612/https:/developer.twitter.com/en/use-cases/do-research/academic-research/resources, accessed on 19 June 2024 (DSA.100102, Doc ID 207-145).; GitHub maintained by a Twitter/X developer dating from March 2021: GitHub, https://muhark.github.io/python/scraping/tutorial/2021/03/25/getting-started-with-academic-twitter.html, accessed on 19 June 2024 (DSA.100102, Doc ID 207-125).
See also figures 12 and 13 below.

365 See non-confidential minutes of interview with a researcher, 19 March 2024 (DSA.100102, Doc ID 174-1).

366 The provider of X provides access to successful applicants only for approximately 6 months after their application was accepted, irrespective of the project length for which researchers have applied Out of the [redacted] successful applicants who obtained access to the X API, [redacted] decisions to grant access were communicated to applicants on 26 January 2024 and [redacted] were communicated on 22 April 2024. These two sets of successful applicants were granted access until 30 June 2024 and 31 October 2024 respectively. See the table provided in reply to the fourth RFI, request 32)b) (DSA.100102, Doc ID 160-2; 160-5); See in particular rows which correspond to instances where the provider of X did not provide access for the requested period despite assessing that the applicants fulfilled the conditions to be granted access. See also minutes of interview with a researcher, 19 March 2024 (DSA.100102, Doc ID 174-1): 'YY regrets that he was only provided access until 30 June 2024 without any explanation by X despite requesting access until September 2026 (i.e. the end of his project). YY explained that he intended to resubmit an application to X later in 2024 for his access to continue, but that this would cost him time'.

367 See the table provided in reply to the fourth RFI, request 32)b) (DSA.100102, Doc ID 160-2; 160-5); The Commission notes that the column S of the table provided in reply to the fourth RFI, request 32(b) refers to the 'initial duration' of the access granted to researcher. However, the 'Application Approved' email template (different versions in documents TIUC-1771, 1780, 1798, 1818) ; used by the provider of X to inform researchers of the duration of their access mentions 'we will provide you access to the X

quotas when they are granted access by the provider of X. This means that any follow-up discussion between successful applicants and the provider of X regarding an extension of the quotas happens during that 6-month period during which researchers have been granted access by the provider of X, potentially further reducing the effective access period.[368] This hinders the ability of Qualified Researchers to conduct research on the systemic risks to which X gives rise in the Union by creating uncertainty as to the duration and feasibility of the research. This is particularly burdensome for longitudinal studies,[369] because researchers are required to reapply regularly to the provider of X for data access, without indications from that provider of how that re-application process will work.

6.3.2.3.2. Access quotas

(345) Second, according to researchers interviewed by the Commission, the access provided by default to all Qualified Researchers, namely the 'Pro' API access tier, is insufficient in terms of rate limits and data access quotas to conduct some research projects on systemic risks related to the provision of X in the Union.[370] The 'Pro' tier of the X API allows researchers to access 1 million tweets per month, which is inferior by a magnitude of 10 to the standard access that was formerly provided free of charge to thousands of academics to the Twitter v2 API under the Twitter Academic API program.[371] As reflected in Figures 12 and 13 below, prior to the Spring of 2023, the provider of Twitter was providing more extensive access to data free of charge to thousands of researchers under the Twitter Academic API program (as opposed to only 12 researchers in total who were granted access between 28 August 2023 and 8 May 2024).

(346) Furthermore, to the knowledge of the Commission, the public resources of the provider of X do not mention the existence of this standard quota, fostering an information asymmetry and hindering the ability of Qualified Researchers to tailor

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Developer API (Pro Tier) until [date]', making no mention that this duration is an initial duration, causing uncertainty for the feasibility of the research. (DSA.100102, Doc ID 168).

368 See for instance the non-confidential minutes of interview with a researcher, 19 March 2024 (DSA.100102, Doc ID 174-1): who has obtained access on 26 January but was still negotiating to obtain larger quotas with X where his initial access was close to its end on 30 June 2024. To the knowledge of the Commission, the provider of X explained this delay only once in its interactions with researchers ("*Additionally, for newly approved researchers with longer term projects, we provide an initial term of access and then reassess on a periodic basis to ensure the access continues to be necessary and proportional to the research. We'll then provide an extension assuming that the researcher still meets the Article 40 criteria.").*; See documents provided in reply to the fourth RFI, request 32)c) (DSA.100102, Doc ID 160-2; 160-5; 168); in particular document TIUC-1085, where a researcher who was granted access asked for follow-up and received information from X.

369 A longitudinal study involves repeated observations of the same variables over long periods of time.

370 See for instance the non-confidential minutes of interviews with researchers on 19 March 2024, 1 March 2024, 28 February 2024 (DSA.100102, Doc ID 174-1; 116-1; 113-1). See the non-confidential testimonies of researchers, 27 February 2024 (DSA.100102, Doc ID 91-1).

371 Figures 12 and 13 provide an overview of the applicable limits on the retrieval of tweets under Twitter/X's past and current data access offerings. Currently, under the Pro API, the limit is at 1M tweets per month, whereas under the free Twitter Academic API program discontinued in Spring 2023, the limit was at 10M per month with no historical restriction, which means that there has been a ten-fold decrease of this limit. For current X API offerings, see https://developer.x.com/en/docs/twitter-api/getting-started/about-twitter-api, accessed on 19 June 2024 (DSA.100102, Doc ID 207-58).For past API offerings, see The Internet Archive, https://web.archive.org/web/20230212083710/https:/developer.twitter.com/en/products/twitter-api/academic-research, accessed on 19 June 2024 (DSA.100102, Doc ID 207-141).

their application to request sufficient data from the beginning of their access period. These practices of the provider, at the very least, add undue delay to the ability of Qualified Researchers to obtain adequate data access quotas to perform research on systemic risks of X in the Union,[372] which is particularly damaging since the standard access quotas provided to successful applicants appear to be insufficient for some types of research on systemic risks in the Union.

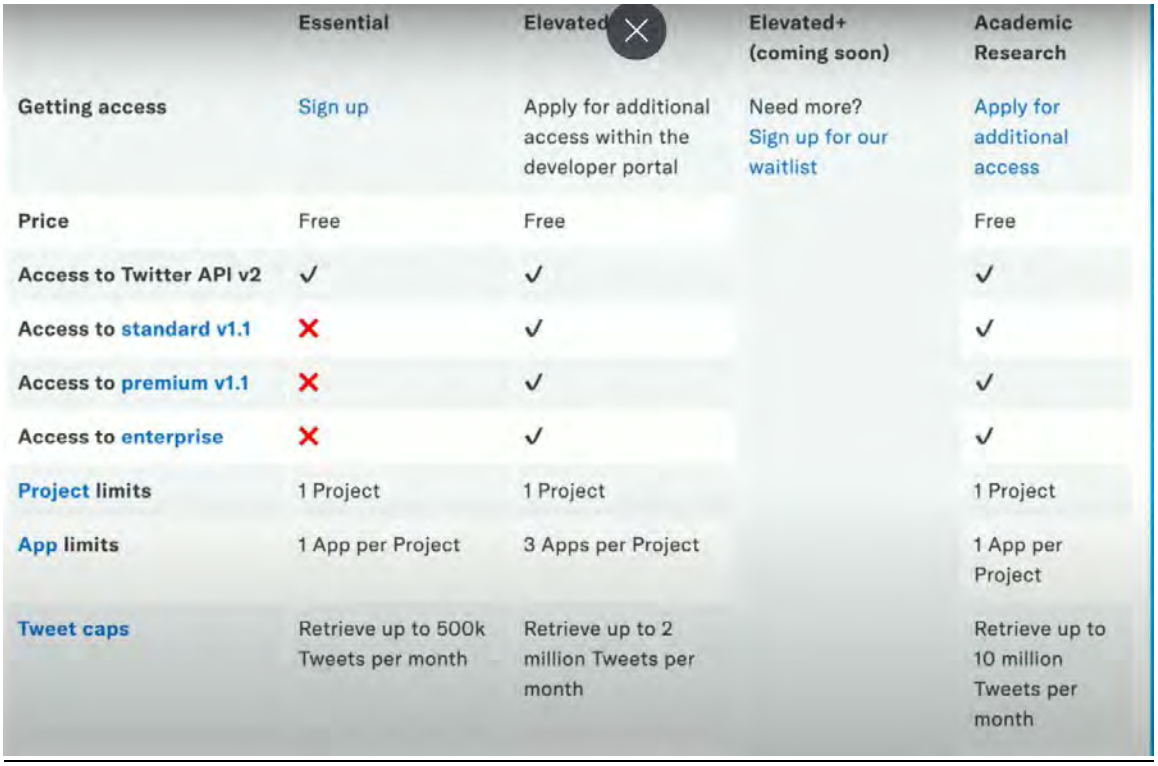
(347) Furthermore, evidence from the ■ researchers whose requests were approved by the provider of X indicates that that provider has so far refused to provide higher access quotas even when it was requested by researchers upon the initial approval of their application[373] and where, according to an industry specialist, it would not be complicated nor costly for the provider of X to increase such quotas where needed.[374]

372 Example in non-confidential minutes of interview with a researcher, 19 March 2024 (DSA.100102, Doc ID 174-1): who has obtained access on 26 January but was still negotiating to obtain larger quotas with X where his initial access was close to its end on 30 June 2024. To the knowledge of the Commission, the provider of X explained this delay only once in its interactions with researchers; See documents provided in reply to the fourth RFI, request 32)c) (DSA.100102, Doc ID 160-2; 160-5; 168); in particular document TIUC-1085, where a researcher who was granted access asked for follow-up and received information from X '*Additionally, for newly approved researchers with longer term projects, we provide an initial term of access and then reassess on a periodic basis to ensure the access continues to be necessary and proportional to the research. We'll then provide an extension assuming that the researcher still meets the Article 40 criteria.'*.

373 At the time of the Preliminary Findings, not a single researcher had obtained access to larger quotas than the standard quotas under the 'Pro' access tier, while ■ of the ■ successful applicants explicitly requested such larger quotas following the approval of their application. According to an analysis of the documents provided in reply to the fourth RFI, request 32)b) (DSA.100102, Doc ID 160-2; 160-5; 168-96; 168-110).

374 Non-confidential minutes of interview with an expert, 10 January 2024 (ID 45-1).

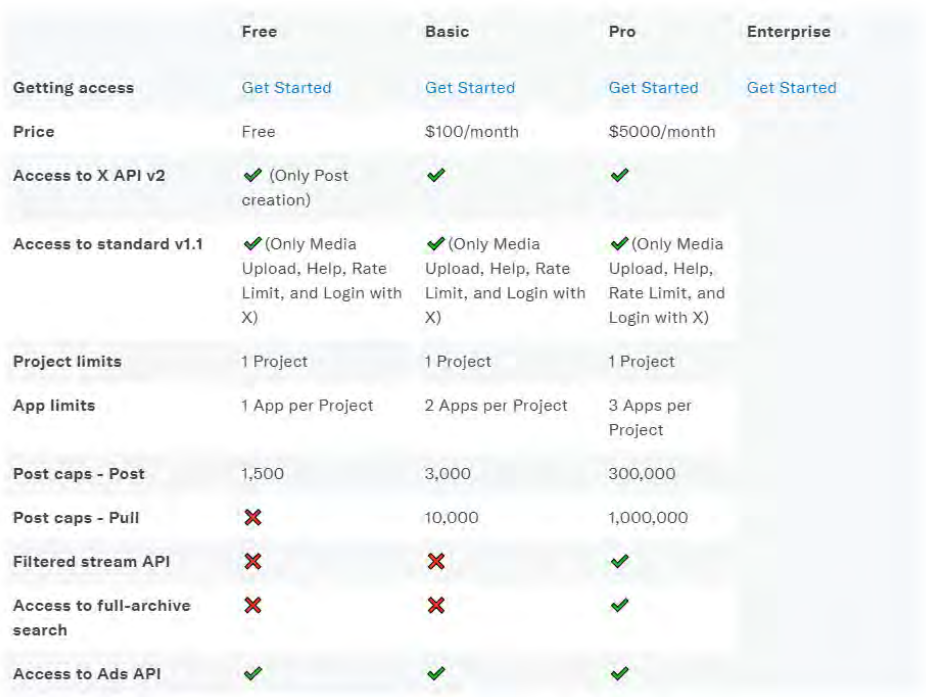
Figure 12: Tables featuring the API access tiers available before the spring of 2023. The free of charge Academic Access tier, which allowed researchers to retrieve up to 10 million tweets per month is on the right-hand side.



	Essential	Elevated	Elevated+ (coming soon)	Academic Research
Getting access	Sign up	Apply for additional access within the developer portal	Need more? Sign up for our waitlist	Apply for additional access
Price	Free	Free		Free
Access to Twitter API v2	✓	✓		✓
Access to standard v1.1	✗	✓		✓
Access to premium v1.1	✗	✓		✓
Access to enterprise	✗	✓		✓
Project limits	1 Project	1 Project		1 Project
App limits	1 App per Project	3 Apps per Project		1 App per Project
Tweet caps	Retrieve up to 500k Tweets per month	Retrieve up to 2 million Tweets per month		Retrieve up to 10 million Tweets per month

Source: Public presentation given by Twitter in 2022 (DSA.100102, Doc ID 207-145).

Figure 13: Table featuring the API access tiers available from 9 November 2023 onwards, the 'Pro' Tier priced at USD 5 000 per month allows to retrieve a maximum of 1M posts per month.



	Free	Basic	Pro	Enterprise
Getting access	Get Started	Get Started	Get Started	Get Started
Price	Free	$100/month	$5000/month	
Access to X API v2	✔ (Only Post creation)	✔	✔	
Access to standard v1.1	✔ (Only Media Upload, Help, Rate Limit, and Login with X)	✔ (Only Media Upload, Help, Rate Limit, and Login with X)	✔ (Only Media Upload, Help, Rate Limit, and Login with X)	
Project limits	1 Project	1 Project	1 Project	
App limits	1 App per Project	2 Apps per Project	3 Apps per Project	
Post caps - Post	1,500	3,000	300,000	
Post caps - Pull	✗	10,000	1,000,000	
Filtered stream API	✗	✗	✔	
Access to full-archive search	✗	✗	✔	
Access to Ads API	✔	✔	✔	

Source: X Developer Platform, https://developer.x.com/en/docs/twitter-api/getting-started/about-twitter-api, accessed on 19 June 2024 (DSA.100102, Doc ID 207-58).

6.3.2.4. Unnecessary obstacles in the processes set by the provider of X to grant access to data pursuant to Article 40(12) of Regulation (EU) 2022/2065

(348) In the fourth place, several decisions of the provider related to its data access processes add unnecessary obstacles for researchers to apply and obtain access to publicly accessible data via the X API pursuant to Article 40(12) of Regulation (EU) 2022/2065.

6.3.2.4.1. Degradation of the information available to researchers about the possibility to access data

(349) First, the information made available by the provider of X for prospective applicants is considerably degraded compared to the information made available under the Twitter Academic API program until the Spring of 2023. This is despite the fact that the current X API and the Twitter v2 API are almost identical from a technical perspective, meaning that updating these resources would require minimal work. The provider of X/Twitter previously maintained public pages containing comprehensive information for researchers, including a simple description of eligibility conditions as well as the data available to academics. The provider of X/Twitter also provided access to extensive tutorials for research use cases, as well as links to third party resources such as relevant Python Libraries for academic research based on X/Twitter data.[375]

(350) After the Spring of 2023, however, the provider of X took down most of the public pages containing these resources, even when they would still be relevant to support Qualified Researchers under the current program, and the remaining pages appear to be scarcely maintained.

(351) The possibility to apply for access to data pursuant to Article 40(12) of Regulation (EU) 2022/2065 is under-referenced in X's online pages for prospective researchers. At present, the provider of X maintains two information pages for researchers interested in conducting research based on X data (the 'Do Research' page and the 'Academic Research' page[376]) which include considerably less information than in early 2023,[377] when the provider of X terminated its Twitter Academic API program. In particular, the 'Academic Research' page only contains a 'dead' link to an academic research project and a link to X's now mostly inactive academic forums. The 'Do Research' information page features very little information for researchers apart from a link to apply via the 40(12) application form and a reference to three old research projects conducted under Twitter's now-discontinued Twitter Academic API program.

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375 Examples : Archived Twitter page, https://web.archive.org/web/20230212182612/https:/developer.twitter.com/en/use-cases/do-research/academic-research/resources, accessed on 19 June (DSA.100102, Doc ID 207-145); Archived Twitter page, https://web.archive.org/web/20230212083710/https:/developer.twitter.com/en/products/twitter-api/academic-research, accessed on 19 June (DSA.100102, Doc ID 207-141).

376 'Do Research' https://developer.x.com/en/use-cases/do-research and 'Academic Research' https://developer.x.com/en/use-cases/do-research/academic-research, accessed on 19 June 2024 (DSA.100102, Doc ID 207-62).

377 Examples : Archived Twitter page, https://web.archive.org/web/20230212182612/https:/developer.twitter.com/en/use-cases/do-research/academic-research/resources, accessed on 19 June (DSA.100102, Doc ID 207-145); Archived Twitter page, https://web.archive.org/web/20230212083710/https:/developer.twitter.com/en/products/twitter-api/academic-research, accessed on 19 June (DSA.100102, Doc ID 207-141).

(352) The Commission also notes that, before Regulation (EU) 2022/2065 started applying to X, staff of the provider of Twitter regularly attended academic conferences to present the API in great detail to academic researchers, in addition to making free courses available.[378] To the knowledge of the Commission, the provider of X has not engaged in similar outreach exercises since Regulation (EU) 2022/2065 started applying to X.

6.3.2.4.2. Unnecessary friction resulting from the application form

(353) Second, the application form put in place by the provider of X to fulfil its obligations under Article 40(12) of Regulation (EU) 2022/2065 is designed and implemented in a manner creating unnecessary friction for applicants. The provider of X is at least partially aware of this friction, yet has not taken any steps to effectively reduce it.

(354) Prior to the Spring of 2023, the provider of X allowed researchers to apply directly from their individual free Twitter developer account for access to the Twitter Academic API program.[379] At present, researchers may only submit their applications to the X API via a Google form.[380] This form and the accompanying design choices by the provider of X have several shortcomings that de facto restrict researchers' access to public data under Article 40(12) of Regulation (EU) 2022/2065.

(355) Several researchers interviewed by the Commission services complained that they had no possibility to retrieve their application once it had been submitted via the dedicated Google form set up by the provider of X. One researcher was able to obtain a copy of an application from the provider of X only fifteen days after requesting it, while several other researchers requested copies of their application from the provider of X without success.[381] The Commission notes that Google Forms provide an option to automatically 'send responders a copy of their response',[382] but the provider of X did

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378 Examples: YouTube, https://www.youtube.com/watch?v=Uv4pGP1jZxE, accessed on 19 June 2024 (DSA.100102, Doc ID 207-149); GitHub repository, https://muhark.github.io/python/scraping/tutorial/2021/03/25/getting-started-with-academic-twitter.html, accessed on 19 June 2024 (DSA.100102, Doc ID 207-125).

379 Overviews of the old process to apply for Twitter API Academic Access: DEV Community, https://dev.to/suhemparack/a-guide-to-teaching-with-the-twitter-api-v2-3n08, accessed on 19 June 2024 (DSA.100102, Doc ID 207-121); YouTube, https://www.youtube.com/watch?v=Uv4pGP1jZxE, accessed on 19 June 2024 (DSA.100102, Doc ID 207-149); Archived Twitter Page, https://web.archive.org/web/20230212182612/https:/developer.twitter.com/en/use-cases/do-research/academic-research/resources, accessed on 19 June 2024 (DSA.100102, Doc ID 207-145).

380 See https://docs.google.com/forms/d/e/1FAIpQLSdo0O-D6Kxa3cV4g1JLz2T_0Sk3hdEnTdv8dJmibagCnzJ7kg/viewform, accessed on 19 June 2024 (DSA.100102, Doc ID 207-70).

381 In one of the cases brought to the attention of the Commission, one researcher asked for a copy of his application on 6 December 2023 and received it 13 days later, on 19 December 2023; X was therefore aware of this issue as early as December 2023 and did not change the setting in order for applicants to automatically receive a copy of their application. See non-confidential minutes of interview of researcher, 26 February 2024 (DSA.100102, Doc ID 86-1) as well as documents TIUC-274, 1438 and 1649 provided in reply to request 32)c) and 34 of the fourth RFI (DSA.100102, Doc ID 160-2; 160-5; 168).
In other instances, researchers requested that a copy of their application be provided, and never obtained a reply from X. See documents TIUC-002, 1231, 1260 provided in reply to the fourth RFI, request 32)c) (DSA.100102, Doc ID 160-2; 160-5; 168).

382 For an overview of the process to enable respondents to a Google Form to obtain a copy of their submission: https://support.google.com/docs/thread/202090575/google-forms-copy-of-responses-not-received?hl=en#:~:text=If%20you%20selected%20When%20requested,not%20get%20a%20response%

not enable that option. Researchers have further explained, in this respect, that the provider of X's practice of not sharing a copy of the research applications by default has detrimental consequences on the ability of researchers to build upon their first application if and when the provider of X asks for additional information at a later stage (which is part of the provider of X's standard review process for applications that pass the first screening).[383] One researcher also regretted that the current form used by the provider of X did not allow it to upload supporting files, such as a CV. In addition, the provider of X does not[384] send an acknowledgment of receipt by email when researchers submit their applications and does not provide researchers with a copy of their application. Instead, that provider only sends researchers a first email around 7 days after receiving their application, which is either a rejection of the request or a notification that the request is under review. [385]

(356) In the Preliminary Findings, the Commission took the preliminary view that the absence of such basic insights into the application process suggests, at the very least, a lack of mechanisms for the provider of X to take researcher feedback into account and iteratively improve its process to give access to data without undue delay in accordance with its obligations under Article 40(12) of Regulation (EU) 2022/2065.

6.3.2.5. Discouraging effect on researchers

(357) Finally, in the Preliminary Findings, the Commission took the preliminary view that the cumulative effects of the shortcomings mentioned in sections 6.3.2.1 to 6.3.2.4 above have *not only* overly restricted access for the [redacted] researchers who applied through the mechanism implemented by the provider of X on 9 November 2023, but have also functioned as a deterrent and discouraging factor to researchers with regards to applying to obtain access to data pursuant to Article 40(12) of Regulation (EU) 2022/2065.

(358) Researchers that were interviewed by the Commission in the context of its investigation explained that the new data access program implemented by the provider of X was widely perceived by the research community as opaque and having a very high number of rejections, meaning that they had very low chances of being approved.[386] Several researchers explained to the Commission that they did not intend to apply again under the current program, while others explained that they had not even tried applying after hearing from colleagues about the opacity of the process and the very high rate of rejections.[387] The actions of the provider of X thus *de facto*

20receipt and https://www.youtube.com/watch?v=eSAfPZRJ3CU, accessed on 19 June 2024 (DSA.100102, Doc ID 207-77; 207-81).

383 See non-confidential minutes of interviews with researchers, 19 March 2024, 22 January 2024, 8 February 2024 (DSA.100102, Doc ID 174-1; 40-1; 133-1).

384 See for instance the non-confidential minutes of the interviews of researchers, 8 February 2024, 22 January 2024 (DSA.100102, Doc ID 133-1; 36-1).

385 See for instance the dates in the table provided in reply to the fourth RFI, request 32)b) (DSA.100102, Doc ID 160-2; 160-5).

386 See for instance non-confidential minutes of interview with a researcher, 6 February 2024 (DSA.100102, 179-1): '*In a recent conference, all researchers he spoke with had been rejected by X. Some researchers he knew explained that they would not apply because they thought it would be a waste of time and resources.'*.

387 See non-confidential minutes of interview with a researcher, 6 February 2024 (DSA.100102, Doc ID 193-1): '*YY explains that this rejection deters him from applying again as he does not want to waste his time.*'
Non-confidential minutes of interview with researchers, 22 January 2024, (DSA.100102, 40-1): '*When asked by COM if they would try applying again to X's researcher API access, they explain that 'they*

deterred researchers from even attempting to obtain access to X's API to conduct research on systemic risks in the Union pursuant to Article 40(12) of Regulation (EU) 2022/2065.

6.3.3. Prohibiting independent access to data during the entire relevant period

(359) In the Preliminary Findings, the Commission took the preliminary view that the provider of X, by largely prohibiting Qualified Researchers from *independently* accessing X's publicly accessible data, including by automated means such as data crawling and data scraping, has contributed to prevent Qualified Researchers from accessing and using data publicly accessible in X's online interface to perform research contributing to the detection, identification and understanding of the systemic risks within the meaning of Article 34(1) of Regulation (EU) 2022/2065, in contravention of Article 40(12) of that Regulation.

(360) To comply with its obligations under Article 40(12) of Regulation (EU) 2022/2065, the provider of X should not only give Qualified Researchers access to data publicly accessible in X's online interface by means of the X API, but should also refrain from prohibiting Qualified Researchers from independently accessing X's publicly available data, including by means of data scraping. This is clarified in recital 98 of Regulation (EU) 2022/2065, which states that '*where data is publicly accessible, […] providers [of very large online platforms or of very large online search engines] should not prevent researchers meeting an appropriate subset of criteria from using this data for research purposes that contribute to the detection, identification and understanding of systemic risks*' (emphasis added).

(361) The Commission noted that independent access techniques, including automated techniques such as scraping and crawling, are crucial to enable Qualified Researchers to perform specific types of research on systemic risks in the Union within the meaning of Article 34(1) of Regulation (EU) 2022/2065. For instance, independent access is necessary to perform research into the design and functioning of X's recommender systems.[388] In addition, independent access to data is necessary to audit the quality of the data provided through the X API.

(362) In response to the Commission's request to provide additional information regarding its relevant terms of service and policies in relation to independent access to publicly accessible data under Article 40(12) of Regulation (EU) 2022/2065, the provider of X stated that '*Section 4 of X's Terms of Service imposes restrictions on misusing the service*'.[389] Section 4 of X's terms of service stipulate the following: '*You may not do any of the following while accessing or using the Services: […] (iii) access or search or attempt to access or search the Services by any means (automated or otherwise) other than through our currently available, published interfaces that are provided by us (and only pursuant to the applicable terms and conditions), unless you have been*

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are not entirely sure the game is fair', also noting that some of their colleagues also had their applications rejected, and that no one they knew had a successful application.'
See also the non-confidential minutes of interviews with researchers, 8 February 2024, 6 February 2024, 1 March 2024 (DSA.100102, 133-1; 116-1).

388 For instance, independent access to publicly accessible data enables Qualified Researchers to test how certain actions influence user timelines mediated by recommender systems, which can be an important factor influencing systemic risks. Article 34(2)(a) of Regulation (EU) 2022/2065 unequivocally references '*the design of [their] recommender systems*' as an influence factor on systemic risks. The X API currently does not allow this type of research.

389 See the reply to the second RFI, request 3 of section VII (DSA.100102, Doc ID 210-9).

specifically allowed to do so in a separate agreement with us (NOTE: crawling or scraping the Services in any form, for any purpose without our prior written consent is expressly prohibited);'.[390] In the same reply, the provider of X also explained to the Commission that *'Researchers who access data by either subscribing to a Developer API access tier or by applying via the Art.40(12) Application form are not bound by this restriction in X's Terms of Service, but instead are bound by the terms in the X Developer Agreement*'. The Commission notes that the 40(12) application form was implemented by the provider of X on 9 November 2023 and that the X Developer Agreement mentioned was updated on 15 November 2023 to include language related to Article 40 of Regulation (EU) 2022/2065.[391]

(363) Therefore, from 28 August to 9 November 2023, the only contractual terms relevant to Qualified Researchers' independent access to X's publicly accessible data was section 4 of X's Terms of Service, which includes a general prohibition of independent access to data[392] without prior written approval of the provider of X. X's terms of service do not include any exception to this general prohibition, which is therefore indiscriminately applicable to all recipients of X, including Qualified Researchers. During this period, the provider of X had no effective process in place for Qualified Researchers to obtain the prior written approval referred to in X's terms of service,[393] effectively preventing such researchers from independently accessing X's publicly accessible data without infringing those terms of service, in contravention of Article 40(12) of Regulation (EU) 2022/2065.

(364) On 15 November 2023, the provider of X modified the language of its Developer Agreement by adding a reference to 'Article 40 of [Regulation (EU) 2022/2065]'. [394] However, the Commission considered that this addition does not provide Qualified Researchers with sufficient clarity regarding their ability to independently access data.

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390 See X's terms of service: https://x.com/en/tos, accessed on 19 June 2024 (DSA.100102, Doc ID 207-46).

391 Open Terms Archive, https://github.com/OpenTermsArchive/pga-versions/commit/c63b906e573f9f103649430a31a8080d2f7544e3#diff-2d91701cdd46e3d6db2a5cac7bd6531c806a0723a4f01ca8a1a6075eb98b533aR90, accessed on 19 June 2024 (DSA.100102, Doc ID 207-153).
The added language in the X Developer agreement stipulates the following: '***Digital Services Act***. *Notwithstanding anything to the contrary in this Agreement, to the extent you are provided access to the Licensed Material pursuant to the procedures described in Article 40 of the Digital Services Act (The Digital Services Act) ('DSA'), your access and use of the Licensed Material is limited solely to performing research that contributes to the detection, identification and understanding of systemic risks in the European Union and only to the extent necessary for X to comply with its obligations under the DSA. Any such use of the Licensed Material is non-commercial as described in Section III(B) of this Agreement. You may not disclose, reproduce, license, or otherwise distribute the Licensed Material (including any derivatives thereof) that you retrieve through the X API to any person or entity outside the persons within your organization necessary to perform the research, unless (i) the information is disclosed to the Digital Services Coordinator or other party specifically permitted by the DSA pursuant to the 'vetted researcher' status and procedures described in Article 40, or (ii) disclosure is required by law.*'.

392 The Commission notes that this general prohibition of accessing publicly accessible data in X's online interface includes prohibiting Qualified Researchers from manually (i.e. by means of copy pasting) or automatically extracting necessary passages of text or media data from the X online interface.

393 In line with the elements put forward in section 6.3.1. above.

394 Open Terms Archive, https://github.com/OpenTermsArchive/pga-versions/commit/c63b906e573f9f103649430a31a8080d2f7544e3#diff-2d91701cdd46e3d6db2a5cac7bd6531c806a0723a4f01ca8a1a6075eb98b533aR90, accessed on 19 June 2024 (DSA.100102, Doc ID 207-153).

Since the provider of X has not amended the wording prohibiting independent access in section 4 of its terms of service, it maintains an ambiguity as regards the prohibition of independent access for Qualified Researchers, who might not fall under the Developer Agreement. The provider of X has not addressed this ambiguity despite the Initiation of Proceedings Decision explicitly referring to the prohibition of scraping by Qualified Researchers in X's terms of service constituting a suspected infringement of Article 40(12) of Regulation (EU) 2022/2065.

(365) This persistent ambiguity in X's terms and conditions[395] in relation to independent access has led to negative consequences for Qualified Researchers. In particular, research projects relying on independent access are unlikely to receive a positive opinion from institutional review boards or from academic journals, given the contractual violation such access would present. [396]

(366) In light of the foregoing, the Commission took the preliminary view that the provider of X prevents Qualified Researchers from independently accessing X's publicly accessible data and thereby undermined their ability to perform research that contributes to the detection, identification and understanding of systemic risks in the Union within the meaning of Article 34(1) of Regulation (EU) 2022/2065, in contravention of Article 40(12) of that Regulation.

6.4. The arguments of the provider of X

(367) In the Reply to the Preliminary Findings, the provider of X challenges the Commission's preliminary findings in relation to its alleged non-compliance with Article 40(12) of Regulation (EU) 2022/2065 in the Union on several grounds which the Commission has summarised into seven categories.

(368) In the first place, the provider of X claims that, in the absence of a Commission delegated act and guidance, it has struck a reasonable balance between its legitimate interests and other applicable rules when assessing data requests by researchers.

(369) First, the provider of X notes that access to publicly accessible data pursuant to Article 40(12) of Regulation (EU) 2022/2065 is conditional on applicants meeting five cumulative requirements, namely the four conditions set out in Article 40(8), points (b), (c), (d), and (e) of that Regulation and the requirement to 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) of Regulation (EU) 2022/2065.[397] According to the provider of X, the '*PF's narrative seems to suggest*

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395 For the purposes of this document, 'terms and conditions' mean all clauses, irrespective of their name or form, which govern the contractual relationship between the provider of intermediary services and the recipients of the service, in line with Article 3(u) of Regulation (EU) 2022/2065.

396 See non-confidential minutes of interviews of researchers, 18 March 2024 (DSA.100102, Doc ID 122-1): '*YY is reluctant to scrape as it currently means that his research would be going against X's terms of service, causing ethical review boards to be reluctant to approve his research. When asked to clarify, YY explains that X's terms of service seem to prohibit scraping, and that ethical review boards are unlikely to approve research projects that violate platforms' terms*'.
Non-confidential minutes of interview with an expert, 10 January 2024 (DSA.100102, Doc ID 45-1): '*He noted that researchers are also dissuaded by X to collect data via other means, such as scraping'*.
See also application 23-128, contained in the table and documents provided in reply to the fourth RFI, request 32)b) (DSA.100102, Doc ID 160-2; 160-5; 168): In cell J132, the applicant justified its request by explaining that '*This data is currently not available to us as the academic API is not functional anymore and the X platform prohibits scraping of its content.'*.

397 Reply to the Preliminary Findings, paragraph 245.

that access to data under Article 40(12) DSA shall be granted to applicants almost automatically, overlooking the applicability of those requirements.'[398]

(370) Second, the provider of X argues that '*the Commission and several Member States have failed to adopt the necessary measures for researchers to be able to seek access to data pursuant to these provisions*', meaning both Article 40(4) and Article 40(12) of Regulation (EU) 2022/2065. According to the provider of X, the '*Commission has failed to adopt the delegated acts required for this regime to be enforceable, and several Member States have failed to appoint Digital Services Coordinators*'.[399] The provider of X further claims that '*the Commission has always been well aware of the need to specify and clarify the content of Article 40 DSA and, therefore, expressly envisaged, already in the DSA proposal, that the Commission 'shall' adopt delegated acts laying down the specific conditions governing the sharing of data with researchers. The EU legislator retained this wording in the final text*', namely in Article 40(13) of Regulation (EU) 2022/2065.[400] According to the provider of X, Article 40(13) '*imposes an unequivocal mandate on the Commission*' to adopt delegated acts, which the Commission has not yet done,[401] '*choosing instead to prioritize bringing and publicizing an unwarranted case against X'*.[402] The provider of X argues that the delegated act is also '*applicable to access requirements under Article 40(12) DSA, since they are virtually the same as those applicable to vetted researchers under Article 40(4). In particular, the requirements set out in points (b), (c), (d) and (e) of Article 40(8) DSA are indistinctly applicable to both vetted and Qualified Researchers*'.[403]

(371) The provider of X also interprets Article 93 of Regulation (EU) 2022/2065[404] as mandating the adoption of delegated acts pursuant to Article 40(13) of that regulation by 16 November 2022 and accuses the Commission of being '*in breach of its legislative duties [...] at the very least since that date*'.[405] For the provider of X, the '*necessary consequence of the Commission's failure to comply with its obligation under Article 40(13) DSA is that the DSA data access regime remains not only unclear, but also incomplete and not fully functional or unenforceable'.*[406]

(372) Third, the provider of X argues that the eligibility requirements under Article 40(12) of Regulation (EU) 2022/2065 are unclear, meaning that, for the data access regime to operate as intended, the Commission must provide clarity and guidance, notably as regards its interaction with Regulation (EU) 2016/679. Without such guidance, the provider of X considers that its approach has been '*prudent and lawful*'.[407] The

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398 Reply to the Preliminary Findings, paragraph 246.

399 Reply to the Preliminary Findings, paragraph 240.

400 Reply to the Preliminary Findings, paragraph 248 and 249.

401 The Commission published the draft delegated regulation on 28 October 2024 for public consultation; https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13817-Delegated-Regulation-on-data-access-provided-for-in-the-Digital-Services-Act_en. The provider of X did contribute to this public consultation on 10 December 2024 : https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13817-Delegated-Regulation-on-data-access-provided-for-in-the-Digital-Services-Act/F3499020_en.

402 Reply to the Preliminary Findings, paragraph 249 and 250.

403 Reply to the Preliminary Findings, paragraph 251.

404 Article 93 of Regulation (EU) 2022/2065 mentions that '*Article 40(13) [...] shall apply from 16 November 2022'.*

405 Reply to the Preliminary Findings, paragraph 252.

406 Reply to the Preliminary Findings, paragraph 253.

407 Reply to the Preliminary Findings, paragraph 256.

provider of X claims that any other course of action could '*seriously impact the fundamental rights of users who have placed their trust in X*', and states that it has interpreted Article 40(12) of Regulation (EU) 2022/2065 in the light of recital 97 of that regulation, which mentions that '*[a]ll requests for access to data under that framework should be proportionate and appropriately protect the rights and legitimate interests, including the protection of personal data, trade secrets and other confidential information, of the very large online platform or of the very large online search engine and any other parties concerned, including the recipients of the service*.'[408] The provider of X argues that a lax application of the requirement could lead to granting access to '*researchers who, under the pretext of seeking to analyze systemic risks in the Union stemming from the design or functioning of a given VLOP, may in reality wish to gather information to use (or to share) with businesses or hostile governments seeking to capitalize on information about X users or to manipulate public opinion during an election campaign*', which would counter the DSA's purpose.[409] The provider of X claims that this alleged lack of legal clarity places very large online platforms in a difficult position regarding compliance with the GDPR and is incompatible with the general principle of legal clarity.[410]

(373) The provider of X then argues that '*even publicly accessible data can reveal information and insights that may be of a sensitive nature*', citing posts deleted by users or because of a court order, as well as insights derived from the analysis of large volumes of data.[411] The provider of X also notes that publicly accessible data can be used by third parties to gain significant commercial or strategic advantages, referring to Directive (EU) 2016/943 ('the Trade Secrets Directive'). The provider of X then points to World Trade Organisation (WTO) rules, which establish that the '*protection against unfair competition*' is a lawful reason for preventing information from being disclosed.[412] The provider of X claims that these considerations are the reason for which Article 40(12) of Regulation (EU) 2022/2065 requires that access be granted only to researchers *'capable of fulfilling the specific data security and confidentiality requirements corresponding to each request*'.[413]

(374) In the second place, the provider of X claims to have put two solutions in place from 28 August 2023 to 9 November 2023 to provide Qualified Researchers with access to its publicly available data pursuant to Article 40(12) of Regulation EU 2022/2065. The first solution consisted in offering the possibility to subscribe to X's commercial 'developer API' service.[414] The second solution consisted in the possibility for researchers to request access via the email address EU-Questions@x.com, which is published on the EU-specific section of X's Help Center and presented as the general

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408 Reply to the Preliminary Findings, paragraph 257.

409 Reply to the Preliminary Findings, paragraph 258.

410 Reply to the Preliminary Findings, paragraph 261.

411 Reply to the Preliminary Findings, paragraph 263 and 264.

412 In particular, Article 39 TRIPS, which *'allows natural and legal persons "the possibility of preventing information lawfully within their control from being disclosed [...] without their consent in a manner contrary to honest commercial practices" so as to ensure "effective protection against unfair competition".*'; World Trade Organization Agreement on Trade-Related Aspects of Intellectual Property Rights of 15 April 1994 ('TRIPS'), TRT/WTO01/001.

413 Reply to the Preliminary Findings, paragraph 265.

414 The 'X Developer API' ('X API') can be used to programmatically retrieve and analyse X data, it is accessible to any individual or entity paying the costs set by the provider of X and accepting the relevant terms of service.; see https://developer.x.com/en, accessed on 21 June 2024 (DSA.100102, Doc ID 207-165).

point of contact for all 'additional queries' that cannot be resolved only by consulting the Help Center.[415]

(375) First, the provider of X insists that the aforementioned email address was displayed on X's interface and notes that the EU-Specific section of its Help Center '*displays, prominently, a link to the Commission's dedicated official DSA website explaining any and all rights arising out of the DSA, including in relation to researcher access to data*'.[416] This email address was presented by the provider of X as the general point of contact for all '*additional queries*' that cannot be resolved only by consulting the Help Center.[417] The provider of X also claims that, over this period, it provided '*guidance for researchers, including researchers' communities and tailored get starting guides*'.

(376) Second, the provider of X argues that the absence of a documented, systematic process to review applications does not imply that a request would not have been handled correctly.[418] The provider of X claims that if researchers had asked for access through this channel and had been successful in obtaining such access, the provider of X would have given such access for free.[419]

(377) Third, according to the provider of X, payment for access to data for research purposes is so widespread and accepted that usually specific funding is granted for such purposes.[420] The provider of X references one example of such a grant.[421]

(378) In the third place, the provider of X claims that its interpretation of the applicable requirements for data access was the correct one.

(379) First, the provider of X disagrees with the Commission's interpretation set out in recital 321 above, emphasising that '*the use of the term solely emphasises exclusivity in purpose is legitimate (i.e. the use of the data shall directly and exclusively contribute to the detection, identification and understanding of systemic risks within the Union*)' (emphasis added).[422] The provider of X argues that the Commission's interpretation departs from the wording of Article 40(12) of Regulation (EU) 2022/2065, arguing that the legislative intent behind using the word *solely* is to restrict the use of data access under that provision only to specific purposes that contribute to the understanding of systemic risks. According to the provider of X, '*the use of the term 'contributes' supports this interpretation and imposes an additional requirement that the use of the data must be useful or effective in achieving the intended purpose. For this reason, any data usage under this provision needs to demonstrably advance the purpose of the research, ensuring that activities are not only compliant in form but also substantive in contributing to the intended outcomes. This requirement adds a layer of accountability, compelling researchers to demonstrate the practical relevance and impact of their data usage, aligning it directly with the regulatory goals*'

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415 This information was communicated to the Commission on 17 November in the reply to the first RFI, section 5 in parallel to the launch of the new application process discussed in paragraph 294 (DSA.100102, Doc ID 2-11); The provider of X reiterated this information in the Reply to the Preliminary Findings, paragraph 266.

416 Reply to the Preliminary Findings, paragraph 266.

417 Reply to the Preliminary Findings, paragraph 266.

418 Reply to the Preliminary Findings, paragraph 323.

419 Reply to the Preliminary Findings, paragraph 321.

420 Reply to the Preliminary Findings, paragraph 321.

421 Reply to the Preliminary Findings, footnote 378 - University of [redacted], '[redacted] Grant', available at: [redacted]

422 Reply to the Preliminary Findings, paragraph 285.

(emphasis added).[423] The provider of X emphasises that its '*cautious interpretation*' of the term solely is even more important with regards to preventing misuse of personal and confidential information contained in the data.

(380) The provider of X further claims that the Commission did not *'conduct any assessment of whether non-accepted applications should in fact have been accepted*'.[424] The provider of X also argues that the in-depth discussion of rejections provided in the Commission's technical analysis is '*incapable of supporting any preliminary finding of infringement*'.[425] Firstly, the provider of X argues that the sample of applications analysed in-depth was too small to be relevant, and had no representative value since the Commission had chosen these applications '*where it appeared that processes and reasoning from the provider to deny applications were particularly flawed*' (quoting the technical analysis).[426] Secondly, the provider of X challenges the observation that these specific applications were wrongfully denied.

(381) The provider of X criticises the validity of the survey report published by the European New School and the Weizenbaum Institute, which criticised that provider's interpretation of the scope of eligible research projects as being too narrow. [427] The provider of X argues that this report does not support the view that it would have systematically failed to comply with Article 40(12) for three reasons.[428] Firstly, the report relies on a tracker to which researchers could voluntarily submit data about their applications to different providers pursuant to Article 40(12) and was not intended to serve as evidence for systematic conclusions about possible breaches of the Regulation. The provider of X also claims that the study does not consider whether the applications themselves had deficiencies. Secondly, the report does not disclose its sample size and the distribution of applications across providers and is likely to suffer from selection bias due to its reliance on crowdsourcing. Thirdly, the report was intended to analyse trends on the early implementation of the Regulation, and to highlight points for improvements, one of which was to encourage the Commission to issue delegated acts pursuant to 40(13) and develop guidelines for Article 40(12).

(382) Second, the provider of X claims that it has not systemically rejected non-EU researchers based solely on their location, giving the example of application [redacted] where an EU researcher was allegedly granted access in relation to an application including other non-EU researchers.[429] The provider of X claims that the [redacted] applications referenced by the Commission as rejected on the basis that the applicants were established outside the Union were actually rejected because of provider's standard review processes to ensure that the proposed research has an '*EU Nexus*' (in the provider's words).[430]

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423 Reply to the Preliminary Findings, paragraph 286.

424 Reply to the Preliminary Findings, paragraph 277.

425 Reply to the Preliminary Findings, paragraph 279.

426 Reply to the Preliminary Findings, paragraph 280; 'DSA.100102' Technical Analysis (DSA.100102, Doc ID 257-1), paragraph 2.

427 Weizenbaum Institute, https://www.weizenbaum-library.de/items/39a490c3-f3c1-42a7-a530-318b17e9de49, April 2024, in particular 'Sample Case 1' on Page 5, and page 6 of the report (DSA.100102, Doc ID 128-1): '*it is an unnecessarily narrow interpretation of the provision to restrict data access by claiming a request is not specific enough without further explanations*'.

428 Reply to the Preliminary Findings, paragraph 278.

429 Reply to the Preliminary Findings, paragraph 288.

430 Reply to the Preliminary Findings, paragraph 287.

(383) In parallel, the provider of X argues that the legal text supports its interpretation of Article 40(12) of Regulation (EU) 2022/2065 that it is justified to reject researchers solely because they are established or located outside the Union.[431] For that provider, the fact that Regulation (EU) 2022/2065 applies to intermediary services offered to recipients established in the Union implies that its data access provisions are limited to researchers established in the Union. The provider of X further argues that EU-based research organisations should in any case be favoured, in order to promote research on systemic risks in the Union and to ensure that research complies with EU standards for data protection.[432] In particular, that provider insists on its intention to minimise risks arising out of international data transfers.[433] The provider of X also claims that it took its decision to restrict access to EU-based organisations in the absence of guidance in the form of a delegated regulation from the Commission, and argues that its interpretation is shared by other stakeholders, quoting mainly other providers and texts that were published prior to and during the call for evidence on the delegated acts pursuant to Article 40(13) of Regulation (EU) 2022/2065 launched in May 2023, which pre-dates the entry into force of that Regulation.[434]

(384) Third, the provider of X argues that the Commission does not put forward evidence that it may have rejected in practice researchers who are not affiliated with a not-for-profit body, organisation or association.[435] The provider of X also claims that the specific reference to '*researchers affiliated to non-for-profit bodies, organizations, and associations'* is indicative of a deliberate choice by the EU legislature to exclude researchers who are not affiliated to any not-for-profit body, organisation or association.

(385) Fourth, the provider of X argues that, in absence of guidance from the Commission regarding the requirements set out in Article 40(8), points (b) and (c) of Regulation (EU) 2022/2065,[436] should some fields of its application not be strictly necessary in the Commission's view to carry out the assessment of the requirements of Article 40(12) of that Regulation, it would not constitute an element of non-compliance. [437] In relation to the mandatory '*Commercial Interest*' field of its application form, the provider of X argues that '*X's application form includes a list of elements that, although not mandatory, may be useful for researchers in order to demonstrate that 'they are independent from commercial interest', as required by Article 40(8), point (b)'*.[438] In relation to the requirement for applicants to disclose '*the funding of [their] research, including amounts raised and direct and indirect sources of funding*', the provider of X argues that it is following the trends in other EU regulations, which

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431 Reply to the Preliminary Findings, paragraph 289.

432 Reply to the Preliminary Findings, paragraph 289.

433 Reply to the Preliminary Findings, paragraph 290.

434 EC Call for evidence on the Delegated Regulation on data access provided for in the Digital Services Act (Spring 2023), https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13817-Delegated-Regulation-on-data-access-provided-for-in-the-Digital-Services-Act_en.
Summary of the contributions to the Call for evidence on the Delegated Regulation on data access provided for in the Digital Services Act https://ec.europa.eu/newsroom/dae/redirection/document/100331, accessed on 17 June 2025 (DSA.100102, Doc ID 366); The provider of X did not submit a direct contribution to this call for evidence.

435 Reply to the Preliminary Findings, paragraph 297.

436 Reply to the Preliminary Findings, paragraph 293.

437 Reply to the Preliminary Findings, paragraph 294.

438 Reply to the Preliminary Findings, paragraph 295.

impose strict funding transparency requirements, such as regulations to counter money laundering or on foreign subsidies. The provider of X claims to be open to adapting its process based on Commission guidance, but that no infringement of Regulation (EU) 2022/2065 can be established on the basis of this specific conduct. [439]

(386) In the fourth place, the provider of X claims that its process to assess applications and grant Qualified Researchers access to data did not suffer from significant shortcomings after 9 November 2023.

(387) First, the provider of X claims to always indicate to rejected applicants which specific requirement(s) of Article 40(12) of Regulation (EU) 2022/2065 their application does not meet. In particular, that provider explains that '*to further streamline the process, ensure a timely and effective assessment and reduce any risk of 'undue delay', X set up a staggered approach procedure entailing a first review of the applications as part of which only those which 'clearly' did not meet the Article 40(12) DSA requirements were rejected. All other applications were considered to be potentially eligible for access; consequently, X's Developer Team engaged in a dialogue with the researchers at issue to verify that they fulfilled the relevant requirements*'.[440] The provider of X also claims that its processes *'usually involves a back-and forth of emails with applicants to explain what the application is lacking and to assist them throughout the application process'.* That provider further argues that it has '*provided all applicants with an explanation for why the application was not accepted, and the Commission has failed to explain why this explanation is insufficient*'. That provider also argues that '*[n]owhere in the DSA is it stated that VLOPs have to provide researchers with more detailed grounds for the rejection of their application*'. [441]

(388) Second, the provider of X claims that its processes, including prior to January 2024, exceed what is legally required under Article 40(12) of Regulation (EU) 2022/2065 and that the fact that it gradually enhanced its processes does not indicate non-compliance.[442] The provider of X describes the January 2024 update of its processes as encompassing '*a newly designed internal ticket escalation process to significantly improve correspondence traceability, applications assessment, and overall efficiency of the application system; a self-imposed* [redacted] *deadline to review service level agreements ('SLAs'); and two more email templates through which researchers could obtain more tailored responses (not only on rejection grounds)*'.[443]

(389) Third, the provider of X maintains that it responds to applicants in less than [redacted] days for 96.4% of the applications and that it '*repl[ies] to almost all-follow up emails from non-rejected applicants in less than* [redacted] *days*'.[444]

(390) Fourth, the provider of X disagrees with the Commission's assessment that the design and implementation of the 40(12) application form created unnecessary friction for applicants. That provider argues that Article 40(12) of Regulation (EU) 2022/2065 does not mandate any specific mechanism to be implemented to enable researchers to request access, and that that Regulation does not issue any guidance on this specific topic.[445] In addition, that provider argues that it is under no obligation to automatically

439 Reply to the Preliminary Findings, paragraph 296.
440 Reply to the Preliminary Findings, paragraph 269.
441 Reply to the Preliminary Findings, paragraph 301.
442 Reply to the Preliminary Findings, paragraph 298 and 299.
443 Reply to the Preliminary Findings, paragraph 270.
444 Reply to the Preliminary Findings, paragraph 300 and 315.
445 Reply to the Preliminary Findings, paragraph 315.

provide researchers with an acknowledgment of receipt and a copy of their request, contrasting Article 40(12) of Regulation (EU) 2022/2065 with the obligations laid down in Article 16 of that Regulation in relation to the notice and action mechanism. The provider of X also argues that '*researchers have been generally provided with a copy of their applications if they request a copy*' and that it has contacted most applicants within [redacted] days following the submission of applications. [446]

(391) Fifth, in relation to the information made publicly available about the possibility to obtain access to data, the provider of X claims that any comparison with Twitter's prior academic data access program is irrelevant, and that the only benchmark should be whether the current processes comply with Regulation (EU) 2022/2065. The provider of X claims that by taking voluntary past practices as a reference point for enforcement purposes, the Commission could create a disincentive for providers to voluntary exceed their legal obligations. The provider also claims that the Regulation does not oblige data providers to train researchers nor to make available specific resources and argues argued that it was '*working with researchers to explain relevant information, such as which kind of data can be extracted*', which was not considered in the Preliminary Findings.[447]

(392) In the fifth place, the provider of X claims that it provided adequate access quotas and durations to Qualified Researchers after 9 November 2023.

(393) As regards access quotas, the provider of X claims that giving access to 1 000 000 posts per month satisfies the requirement set out pursuant to Article 40(12) of Regulation (EU) 2022/2065. That provider references application [redacted], where applicants requested access to 250 000 posts per month.[448] That provider claims that other providers of very large online platforms impose much stricter quotas on Qualified Researchers.[449] The provider of X also claims that the fact that it provided much more extensive access under the former Twitter Academic API program does not prove that the current quota contravenes Article 40(12) of Regulation (EU) 2022/2065.[450] Lastly, that provider claims that it has considered granting quota extensions when requested by applicants and has proactively enquired whether its quotas were sufficient.[451]

(394) As regards access durations, the provider of X claims that an initial access period of 6 months is proportionate and complies with Article 40(12) of Regulation (EU) 2022/2065, noting that some applicants requested 6 months of access or less. That provider considers that Article 40(8), point (e), of that Regulation places on researchers the burden of proving that the time frames requested are necessary and proportionate for the purposes of their research. In the alleged absence of guidance, that provider argues that access durations must be determined on a case-by-case basis.[452]

(395) The provider of X also claims that even if it has established an initial 6-month duration for data access, it is amenable to extend this period where necessary for and proportionate to the purposes of the research. That provider claims to have '*clearly*

446 Reply to the Preliminary Findings, paragraph 318.
447 Reply to the Preliminary Findings, paragraph 314.
448 Reply to the Preliminary Findings, paragraph 311.
449 Reply to the Preliminary Findings, paragraph 311.
450 Reply to the Preliminary Findings, paragraph 312.
451 Reply to the Preliminary Findings, paragraph 313.
452 Reply to the Preliminary Findings, paragraph 304.

disclosed this information to newly accepted researchers', to '*invite justifications on the need for longer access*',[453] and to have proactively sent follow-up emails to Qualified Researchers to offer extensions to data access when the initial period was close to expiring.[454] The provider of X also claims that it grants provisional access duration extensions to Qualified Researchers while it reviews their extension requests.[455] Lastly, the provider of X argues that it has granted extensions to '*all four researchers that requested additional access, as they continued to meet the requirements in Article 40(12)',* which happened after the Commission issued Preliminary Findings.[456]

(396) In the sixth place, the provider of X claims that the Commission fails to prove that its practices have a dissuasive effect on researchers.[457]

(397) In the seventh place, the provider of X claims that it does not prohibit scraping to Qualified Researchers, has legitimate reasons not to allow indiscriminate scraping, and that Regulation (EU) 2022/2065 does not prevent providers of very large online platforms from prohibiting scraping

(398) First, the provider of X claims that the Commission has misinterpreted the wording of X's Terms of Service, which '*do not impose an absolute ban on scraping*'. That provider insists that section 4 of its terms prohibits '*crawling and scraping'* '*unless you have been specifically allowed to do so in a separate agreement with us'*, and that nothing prevents independent researchers to reach such an agreement.[458] The provider of X also notes that at the date of its reply to the Preliminary Findings, it had not received any request from researchers to scrape data that is publicly accessible in X's interface.[459]

(399) Second, the provider of X argues that its prohibition of independent access (such as by means of scraping) complies with Union law and that providers of online platforms have legitimate reasons to prohibit scraping. The provider of X claims that the Preliminary Findings mandate '*indiscriminate access to scrapers*' and that mandating providers of very large online platforms to allow scraping would *'constitute an unjustifiable interference with their right to property and their freedom to conduct their business'.*[460]

(400) According to the provider of X, allowing '*indiscriminate data scraping would significantly harm X, its systems and its ecosystem*', as scraping generates '*millions or even billions of requests, straining the capacity of X's servers and disrupting the experience of legitimate users*', as opposed to access through X's APIs, which are '*optimised for high-volume automated requests*'.[461] That provider also argues that scraping '*can lead to the emergence of fake accounts, spam proliferation, and real-time surveillance threats that compromise user privacy*'. In addition, '*indiscriminate access to scrapers, as mandated by the PF, could also result in lost revenue from*

453 Reply to the Preliminary Findings, paragraph 305.
454 Reply to the Preliminary Findings, paragraph 306.
455 Reply to the Preliminary Findings, paragraph 307.
456 Reply to the Preliminary Findings, paragraph 308.
457 Reply to the Preliminary Findings, paragraph 319.
458 Reply to the Preliminary Findings, paragraph 325.
459 Reply to the Preliminary Findings, paragraph 326.
460 Reply to the Preliminary Findings, paragraph 327.
461 Reply to the Preliminary Findings, paragraph 328 and 329.

developers who might otherwise purchase legitimate API Access'.[462] The provider of X gives examples of such abuse, such as '*unqualified researchers seeking greater data access for research that does not comply with Article 40(12) DSA or that pursues hidden commercial interests, businesses desiring unrestricted API access for direct message solicitations or selling increased follower counts, or governments seeking unrestricted API access to monitor public opinion'.*[463]

(401) The provider of X also argues that '*bot presence, fake profiles and data scrapers damage X's trust with its users, who expect X to enforce its policies on privacy and content authenticity. Bots create privacy and security risks, expose users to spam, degrade user experience, and risk users leaving the platform. This, in turn, threatens X with the loss of content, data, and other benefits from a large, active user base*'. That provider cites the cases of Clearview and MegaFace AI, in which private companies scraped large amounts of social media data for commercial purpose without permission from users and service providers.[464] For the provider of X, '*the most efficient way*' to counteract abuse is through '*contractual relationships with third parties and consistent enforcement of access requirements under Article 40(12)*', which it implements by mandating in its Terms of Service that a permission be obtained by any third party engaging in independent access.[465]

(402) Third, the provider of X argues that Regulation (EU) 2022/2065 does not prevent providers of very large online platforms from prohibiting scraping. The provider of X claims that '*the legal debate in the EU has not questioned platforms' right to prohibit this practice through their terms and conditions; it concerns rather the conditions in which this prohibition becomes legally binding on third parties*', pointing to a legal judgment issued in relation to the aviation sector.[466]

(403) The provider of X contests the Commission's claim that independent access is crucial to enable Qualified Researchers to perform specific types of research on systemic risks, such as auditing recommender systems of very large online platforms, which in the case of X cannot be achieved only by accessing data by means of the X API. In challenging that claim, that provider argues that the Regulation does not contain such an obligation, and that the '*interests at stake are so important as to require a public debate before the imposition of any legal obligations'*. It points to the Commission's call for evidence of the Spring of 2023 in that respect, where some stakeholders pointed out that questions remained as to '*under which conditions and procedures*' scraping may fall under Article 40(12) of Regulation (EU) 2022/2065.[467]

(404) For the provider of X, Article 40(12) of Regulation (EU) 2022/2065 '*does not create a right to scrape data publicly accessible at VLOPs' interfaces*', but only stipulates the conditions under which researchers can access data. According to that provider, that provision establishes a '*controlled and purpose-specific access',* in stark contrast with '*data scraping practices, which often involve automated and indiscriminate extraction of vast amounts of data*'. For that provider, the position of the Commission contradicts the objective of Regulation (EU) 2022/2065, namely, to foster a safer and more

462 Reply to the Preliminary Findings, paragraph 328.
463 Reply to the Preliminary Findings, paragraph 331.
464 Reply to the Preliminary Findings, paragraph 332.
465 Reply to the Preliminary Findings, paragraph 330.
466 The provider of X cites judgment of 15 January 2015, Ryanair v PR Aviation, C-30/14, EU:C:2015:10.
467 Reply to the Preliminary Findings, paragraph 341.

transparent online environment, since data scraping '*can comprise privacy, intellectual property, image rights and security*'.[468]

(405) The provider of X argues that in previous Union law, '*when data scraping has been authorized, it has been under well-defined and specific conditions*', such as was done by the text and data mining exemptions set out in Articles 2 and 3 of Directive (EU) 2019/790 ('the Copyright Directive'). While that provider notes that the Copyright Directive provides for '*an exception or limitation to certain intellectual property rights*', it argues that '*such an exception has not been established with regards to personal data nor to image rights*'.[469]

(406) The provider also claims that the Commission '*incorrectly interprets recital 98 DSA as a legal basis for a limitless authorization allowing scraping of VLOPs content*', where it merely establishes the conditions under which publicly accessible data can be used for research pursuant to Article 40(12).[470]

(407) First of all, the provider argues that recital 98 of Regulation (EU) 2022/2065 makes clear that access rights are conditional upon the researchers meeting the applicable requirements, meaning that '*preventing X from prohibiting scraping on its general terms and conditions is equivalent to forcing X to grant access to all of its content to everyone indiscriminately*'.[471]

(408) In addition, the provider notes that recital 98 of Regulation (EU) 2022/2065 contains language referring to examples of data that should be provided, namely '*for example, on aggregated interactions with content from public pages, public groups, or public figures*'. For the provider, this reference to aggregated data implies '*a specific type of data handling where individual data points are combined to form a summary for analysis*', thus reducing privacy risks and '*contrasting with the invasive nature of direct data scraping, which typically involves accessing detailed, potentially identifiable data*'.[472]

(409) Finally, the provider of X also notes that recital 98 of Regulation (EU) 2022/2065 also requires providers to '*anonymise or pseudonymise personal data except in those cases that would render impossible the research purpose pursued*'. For the provider of X, this requirement underscores the importance of protecting personal data and minimising risks of re-identification. That provider argues that anonymization and pseudonymization are '*fundamentally incompatible with the typical goals and methods of scraping, where data is often collected in its most raw and identifiable form*', meaning that '*Recital 98 does not endorse unfettered scraping',* but rather *'promotes a controlled, ethical approach to data access that prioritises user privacy and the integrity of personal data*'.[473]

6.5. The Commission's assessment of the provider of X's arguments

(410) For the reasons set out in the following subsection, the Commission concludes that the arguments set out in section 6.4 are unable to call into question the Commission's

468 Reply to the Preliminary Findings, paragraph 335.
469 Reply to the Preliminary Findings, paragraph 336.
470 Reply to the Preliminary Findings, paragraph 337.
471 Reply to the Preliminary Findings, paragraph 338.
472 Reply to the Preliminary Findings, paragraph 339.
473 Reply to the Preliminary Findings, paragraph 340.

findings that the provider of X failed to comply with Article 40(12) of Regulation (EU) 2022/2065 as set out in section 6.3 above.

6.5.1. The claims that the provider strikes a reasonable balance with its legitimate interests and other applicable rules in the absence of Commission delegated acts and guidance

(411) In the first place, the claim that data access under Article 40(12) of Regulation (EU) 2022/2065 requires researchers to fulfil the cumulative requirements laid down in that provision does not contradict the Commission's findings in this regard. Contrary to what the provider of X appears to suggest, the Commission never claimed that the requirements of Article 40(12) of Regulation (EU) 2022/2065 are not cumulative, nor does it point to any paragraph of the Preliminary Findings where this is stated or implied.

(412) In the second place, the provider of X's claim that the legal framework governing Article 40(12) of Regulation (EU) 2022/2065 is incomplete and non-operational in the absence of delegated acts is unfounded. Article 40(12) of Regulation (EU) 2022/2065 is a self-standing provision, which sets out clear, directly applicable obligations. It does not require further specification through guidelines or delegated acts for its application.

(413) In its argumentation, the provider of X conflates Article 40(4) and Article 40(12) of Regulation (EU) 2022/2065. It reasons that, since the access mechanism mandated by Article 40(4) of that Regulation is not yet fully operational, the entire data access framework of Article 40, including that of Article 40(12), is rendered unenforceable. That line of reasoning is unfounded. Article 40(4) of Regulation (EU) 2022/2065 entails the creation of a new vetting procedure, relying on national Digital Services Coordinators, to ensure vetted researchers are granted unprecedented access to the non-public data of very large online platforms and of very large online search engines. Conversely, the obligation laid down in Article 40(12) of Regulation (EU) 2022/2065 concerns granting access to publicly accessible data. It does not necessitate any intermediation by Digital Services Coordinators.

(414) In fact, the Commission observes that while, pursuant to Article 40(13) of Regulation (EU) 2022/2065, the Commission is empowered to issue delegated acts laying down the *technical* conditions under which providers '*are to share data pursuant to paragraphs 1 and 4*' of that provision, that empowerment does not extend to Article 40(12) of that Regulation. This confirms that Articles 40(4) and 40(12) of Regulation (EU) 2022/2065 provide for two distinct legal obligations and two different data access mechanisms, which operate independently from one another.

(415) The Commission has reiterated this position to the provider of X, including in its requests for information addressed to that provider on 12 October 2023 [474] and in requests for information sent to 17 providers of very large online platforms and of very large online search engines on 18 January 2024,[475] as well as in its public announcements of its decisions to initiate proceedings related to suspected non-

[474] DSA.100102, Doc ID 237-2.

[475] The Commission publicly communicated on these 17 requests for information in relation to Article 40(12). See https://digital-strategy.ec.europa.eu/en/news/commission-sends-requests-information-17-very-large-online-platforms-and-search-engines-under.

compliance with Article 40(12) of Regulation (EU) 2022/2065 by the providers of five other very large online platforms.[476]

(416) Given that, for the reasons explained above, the obligation to adopt a delegated act does not extend to obligations covered by Article 40(12) of Regulation (EU) 2022/2065, the provider of X's claims that Article 93 of Regulation (EU) 2022/2065 obliges the Commission to adopt delegated acts pursuant to Article 40(13) by 16 November 2022 are equally ineffective. In any event, even if that obligation were to extend to Article 40(12) of Regulation (EU) 2022/2065 (quod non), the arguments advanced by the provider of X are incorrect for the following reasons.

(417) First, Article 93(2) of Regulation (EU) 2022/2065 provides that: '*This Regulation shall apply from 17 February 2024. However, Article 24(2), (3) and (6), Article 33(3) to (6), Article 37(7), Article 40(13), Article 43 and Sections 4, 5 and 6 of Chapter IV shall apply from 16 November 2022*' (emphasis added). In parallel, Article 40(13) of Regulation (EU) 2022/2065 provides: '*The Commission shall, after consulting the Board, adopt delegated acts supplementing this Regulation by laying down the technical conditions under which providers of very large online platforms or of very large online search engines are to share data pursuant to paragraphs 1 and 4 and the purposes for which the data may be used. […]'*. Article 93 of Regulation (EU) 2022/2065 does not require these delegated acts to be in place from the moment of entry into force of that Regulation. It merely sets the earliest date (i.e., 16 November 2022) at which any delegated act supplementing Regulation (EU) 2022/2065, including those pursuant to Article 40(13) thereof, can be issued.

(418) This is confirmed by Article 87(2) of Regulation (EU) 2022/2065, which provides that the delegation of power referred to in Article 40 '*shall be conferred on the Commission for five years starting from 16 November 2022*'. Furthermore, the Commission notes that any delegated act adopted pursuant to Article 40(13) of Regulation (EU) 2022/2065 may not, in practice, be adopted by 16 November 2022. This is so because the exercise of such empowerment requires, in accordance with Article 40(13) of Regulation (EU) 2022/2065, that the Commission consults the European Board for Digital Services prior to adopting delegated acts. However, pursuant to Article 49(3) of that Regulation, Members States only had to designate their Digital Services Coordinators by 17 February 2024, meaning that the Board for Digital Services could not reasonably be expected to have been in place by 16 November 2022. This further demonstrates the absurdity of the provider of X's interpretation of Article 93 of Regulation (EU) 2022/2065, and clearly disproves the claim that the Commission is in breach of its legislative duties by having failed to issue delegated acts by 16 November 2022.

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476 In addition to X, these investigations relate to Facebook, Instagram, AliExpress, TikTok and Temu. These proceedings were respectively opened on 30 April 2024, 30 April 2024, 14 March 2024, 19 February 2024 and 31 October 2024.
https://ec.europa.eu/commission/presscorner/detail/en/ip_24_2373;
https://ec.europa.eu/commission/presscorner/detail/en/ip_24_1485;
https://ec.europa.eu/commission/presscorner/detail/en/ip_24_1485;
https://ec.europa.eu/commission/presscorner/detail/en/ip_24_926;
https://ec.europa.eu/commission/presscorner/detail/en/ip_24_926;
https://digital-strategy.ec.europa.eu/en/news/commission-opens-formal-proceedings-against-temu-under-digital-services-act.

(419) Second, as already stated above, Article 40(12) of Regulation (EU) 2022/2065 contains a self-executing and directly applicable obligation, with which the provider of X has had to comply since 28 August 2023. Therefore, the provider of X must comply with that provision, regardless of whether the Commission planned to issue any delegated act or guidance on any topic covered by Article 40 of Regulation (EU) 2022/2065.

(420) In the third place, the provider of X's claim that, absent the necessary Commission guidance, it is striking a reasonable balance between granting access to researchers, and other legitimate interests and applicable rules, is unfounded.

(421) As noted by the provider of X, some of the requirements laid down in Article 40(12) of Regulation (EU) 2022/2065 also apply to vetted researchers, namely points (b), (c), (d) and (e) of Article 40(8) of Regulation (EU) 2022/2065.[477] The Commission observes that those requirements refer to well-established practices in the industry, including with regards to providing access to publicly accessible data to researchers, and their presence can therefore be verified by providers of very large online platforms and of very large online search engines without the adoption of a delegated act or any additional guidance by the Commission.

(422) First, as regards the eligibility requirements laid out in points (b) and (c) of Article 40(8) of Regulation (EU) 2022/2065, namely that the researchers are independent from commercial interests and that their application discloses the funding of the research, they largely pre-date the entry into force of Regulation (EU) 2022/2065 and are widely applied to researchers in practice,[478] such as during peer review processes, or when conducting clinical trials. It is therefore no basis for the provider of X to claim that shortcomings in relation to implementing these requirements, such as those referenced in the Preliminary Findings, result from an absence of guidance.

(423) Second, the requirements laid out in points (d)[479] and (e)[480] of Article 40(12) of Regulation (EU) 2022/2065 also build upon well-established practices upon which the provider of X may rely to comply with its obligations under that provision. The Commission notes, in this respect, that many of the applications rejected by the provider of X included extensive considerations and safeguards related to data security and confidentiality safeguards, data protection, as well as research ethics[481] that are in line with those that were already implemented by researchers and research organisations.

(424) Third, access to the publicly accessible data of online platforms is hardly a novel practice. The provider of X can effectively build upon two decades of experience in this respect. Indeed, the provider of X itself pointed to the report of the European

477 Reply to the Preliminary Findings, paragraph 251.

478 For instance, an expert quoted by the Commission in the Preliminary Findings noted that the information asked by the provider of X regarding their funding and organisation '*go beyond traditional industry norms for researcher vetting for public data on social media*', indicating that the eligibility requirements laid out in points (b) and (c) of Article 40(8) of Regulation (EU) 2022/2065 are far from new. ; Mozilla Foundation, https://foundation.mozilla.org/en/blog/EU-Digital-Services-Act-and-The-State-of-X-Transparency/, accessed on 19 June 2024 (DSA.100102, Doc ID 207-161).

479 Namely, for researchers to demonstrate that they are capable of fulfilling data security, confidentiality and personal data protection requirements.

480 Namely, for researchers to demonstrate that their access to the data is necessary for and proportionate to the purposes of their research, and that they expected results will contribute.

481 See an overview of such measures in columns H and K of the table provided in reply to the fourth RFI, Request 32)b) (DSA.100102, Doc ID 160-5).

Digital Media Observatory's (EDMO) Working Group on Platform-to-Research Data Access, released in May 2022 and in which the provider of Twitter participated,[482] to insist that the sharing of data must take place in a manner ensuring an appropriate level of protection for user data. At the time that report was published, the provider of Twitter was providing access to publicly accessible data to thousands of researchers, demonstrating that giving researchers access to data can be reconciled with a serious and constructive approach to ensure compliance with Regulation (EU) 2016/679. In 2023, the provider of X stopped participating in the work of EDMO in relation to researcher access to data, when it withdrew from the Code of Practice against Disinformation, soon after putting an end to the Twitter Academic API program.

(425) The provider of X refers to specific risk scenarios in which researchers could use the pretext of studying systemic risks to gain access to personal or confidential information and then share this information with malicious actors, such as competing businesses or hostile governments, which could then use it to manipulate X's service or its users.[483] However, past public statements from the provider of X demonstrate that it considered research an effective mitigation measure precisely against risks of online platform manipulation by malicious actors.[484] Additionally, to this day, the provider of X continues to provide access to the X API to customers for a fee. Undeniably, the potential risk factors and malicious actors referenced by the provider of X are also very relevant in the context of the X commercial API, as competing businesses and hostile States would naturally have the financial capacity to pay for commercial access. In addition to these specific risk scenarios, the scope of data shared with customers of the commercial API includes the scope of data that is shared with researchers who successfully undergo X's application process, with the same level of granularity and thus a similar likelihood to contain personal or confidential information.

(426) The fact that the provider of X continues to provide API access to commercial customers to this day suggests that it has a degree of confidence in the effectiveness of its measures to ensure data security and confidentiality, to protect its economic interests against unfair competition resulting from the processing of the data requested, and to prevent infringements of the rights to privacy and personal data protection. Therefore, similar verifications could easily be extended to screen and prevent potential abuse of the access granted to the X API under Article 40(12) of Regulation (EU) 2022/2065.

(427) Should the provider of X reasonably suspect or demonstrate the existence of a risk for the protection of personal data or confidential information emanating from a specific application, including by relying on its existing security processes, it would be able to

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482 Reply to the Preliminary Findings, footnote 286. This footnote mentions the EDMO report on researcher access to data ; https://edmo.eu/wp-content/uploads/2022/02/Report-of-the-European-Digital-Media-Observatorys-Working-Group-on-Platform-to-Researcher-Data-Access-2022.pdf. This 2022 report contains a letter from Twitter which mentions that '*Since 2006, Twitter has had an open API allowing developers and researchers to use data from the public conversation to study diverse topics such as state-backed efforts to disrupt the public conversation, […]'* . (DSA.100102, Doc ID 379).

483 Reply to the Preliminary Findings, paragraph 258.

484 Reply to the Preliminary Findings, footnote 286. This footnote mentions the EDMO report on researcher access to data; https://edmo.eu/wp-content/uploads/2022/02/Report-of-the-European-Digital-Media-Observatorys-Working-Group-on-Platform-to-Researcher-Data-Access-2022.pdf. (DSA.100102, Doc ID 379).

reject the relevant application for failing to fulfil the eligibility requirements set out in Article 40(12) of Regulation (EU) 2022/2065, which, as the provider of X itself recognises, already accounts for such risks. However, to the Commission's knowledge, the provider of X has not implemented even its existing screening processes to applicants seeking access pursuant to that provision, since it has systematically encouraged unsuccessful applicants instead to '*review the different* [commercial] *API tiers available at developer.x.com*', indicating that *prima facie*, it considered such applicants eligible to access its commercial offerings.[485]

(428) Fourth, only a minor share of the rejections issued by the provider of X explicitly invoke concerns related to the measures proposed by researchers to ensure the protection of privacy, security and confidentiality, including the protection of the provider's trade secrets,[486] as opposed to what the provider of X claims.[487] As a matter of fact, that provider's rejection templates, from which it rarely deviates, do not even include standard scripts explicitly pointing to such concerns.[488] In practice, the large majority of the rejections issued by the provider of X contained no more detail than a generic reference to either (i) a lack of sufficient details in the application (which is the primary reason used by the provider of X to reject applicants after the preliminary screening of applications and was not singled out by the Commission), or that (ii) the proposed use of the data was not solely for performing research that contributes to the understanding of systemic risks in the Union, where the Commission argues that the provider of X had an overly restrictive interpretation of the scope of eligible research.[489]

(429) Fifth, and more generally, the EU legislature has clearly established in Article 40(12) of Regulation (EU) 2022/2065 that research contributing to '*the detection, identification and understanding of systemic risks in the Union pursuant to Article 34(1)*' has an important value for the public interest and is a legitimate reason for accessing and processing publicly accessible data. The EU legislature integrated safeguards in that provision in the form of access requirements referring to privacy, data security and confidentiality safeguards, including for the protection of the provider's trade secrets, as well as to the principles of necessity and proportionality of the access with regards to the research objectives. Article 40(12) of Regulation

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485 This text is included in the standard email to inform applicants about the denial of their request. See 'Version 2.0' of the research access checklist provided in Annex to the reply to the second RFI, Request 5 of section VII (DSA.100102, Doc ID 210-8).

486 Out of the [redacted] applications assessed by the provider of X as of 8 May 2024, only [redacted] out of [redacted] rejected requests explicitly referred to a failure to comply with privacy and security standards, namely in the cases of applications ID [redacted], [redacted] and [redacted], while only [redacted] out of [redacted] rejected requests explicitly referred to concerns regarding the funding and the commercial interests of the applicants, namely in the cases of applications [redacted], [redacted], and [redacted]. See the table provided in reply to the fourth RFI, Request 32)b) (DSA.100102, Doc ID 160-5). This search can be replicated by filtering column R to only include relevant reasons for rejection.

487 Reply to the Preliminary Findings, paragraph 265.

488 Documents TIUC-1771, 1780, 1798, 1818 provided in reply to 'fourth RFI', request 34 (DSA.100102, Doc ID 160-2; 168).

489 See the table provided in reply to the fourth RFI, Request 32)b) (DSA.100102, Doc ID 160-5); The relevant search can be replicated by filtering column R to include reasons for rejections referring to 'insufficient details' and to 'research outside scope', [redacted] out of [redacted] applications assessed as of 8 May 2024 were rejected on these bases.
The Commission discusses the provider's interpretation of the requirement that data be used solely for performing research on systemic risks in the Union in section 6.5.3.1. As of 8 May 2024, this argument had been used in [redacted] out of [redacted] rejections issued by the provider of X.

(EU) 2022/2065 is unambiguous when it comes to publicly accessible data: where researchers fulfil the applicable conditions and where the data is necessary and proportional to conduct the research contributing to the understanding of systemic risks in the Union, then providers have a legal obligation to give access to publicly accessible data. More practically, where the provider of X claims that '*the aggregation and analysis of large volumes of data can reveal complex patterns or trends containing sensitive information*' which can reveal insights that are of a sensitive nature,[490] the Commission notes that an understanding of such complex patterns is often precisely necessary to shed light on the systemic risks stemming from the functioning and the use made of very large online platforms. In such cases, the first solution is not to automatically prevent researchers from accessing data, but rather to ensure that the access takes place under modalities that minimise risks while enabling Qualified Researchers to contribute to the objective of the legal provision, namely the understanding of systemic risks in the Union.

(430) The provider of X notes that recital 97 of Regulation (EU) 2022/2065 contains language requiring access to data be proportionate and appropriate to protect the rights and legitimate interests of very large online platforms, as well as of any party concerned, such as recipients of the service.[491] The provider of X claims that this part of recital 97 advocates for a strict interpretation of the access requirements, without clearly stating what such a strict application entails in practice. However, the Commission considers that recital 97 in fact stresses the importance and legitimate interest of the objective of enabling research on systemic risks in the Union and it ensures that the consideration of the commercial interests of providers should not lead to a refusal to provide access. Indeed, the same recital indicates that, '*whilst without prejudice to Directive (EU) 2016/943',* where the provider of X has reasonable concerns about its trade secrets, it should '*ensure appropriate access for researchers, including, where necessary, by taking technical protections'.*[492] Additionally, the Commission notes that recital 97 primarily relates to access to non-public data for vetted researchers pursuant to Article 40(4) of Regulation (EU) 2022/2065. The excerpt relied upon by the provider of X is particularly relevant in relation to the possibility for providers of very large online platforms to request amendments to reasoned requests for access, based on security and confidentiality considerations pursuant to Article 40(5) of that Regulation, which is exclusive to the vetting process established pursuant to Article 40(4) of that Regulation.

(431) Recital 98 of Regulation (EU) 2022/2065, by contrast, which specifically relates to access pursuant to Article 40(12) of that Regulation, clearly explains that '*when data is publicly accessible, […] providers should not prevent researchers meeting the relevant criteria from using the data for research purposes that contribute to the detection, identification and understanding of systemic risks'*. Recital 98 further explains that '*providers should anonymise or pseudonymise personal data except in*

490 Reply to the Preliminary Findings, paragraph 263 and 264.

491 Reply to the Preliminary Findings, paragraph 257.

492 According to recital 97 of Regulation (EU) 2022/2065: '[…] *to ensure that the objective of this Regulation is achieved, consideration of the commercial interests of providers should not lead to a refusal to provide access to data necessary for the specific research objective pursuant to a request under this Regulation. In this regard, whilst without prejudice to Directive (EU) 2016/943 of the European Parliament and of the Council, providers should ensure appropriate access for researchers, including, where necessary, by taking technical protections such as through data vaults.'* (emphasis added).

those cases that would render impossible the research purpose pursued'. This shows that data protection safeguards should be appropriate to the scope of the research and should not be used as a means of restricting access to the necessary data. Lastly, recital 98 also encourages providers '*to cooperate with researchers and provide broader access to data for monitoring societal concerns through voluntary efforts*', which, to the knowledge of the Commission, the provider of X has not done since 28 August 2023.

(432) In sum, the Commission considers that the eligibility requirements applicable to access data pursuant to Article 40(12) of Regulation (EU) 2022/2065 build upon well-established practices, as well as upon more than a decade of providing researchers access to publicly accessible data. Those requirements establish safeguards for privacy, data security and confidentiality, including for the protection of the provider's trade secrets. Had the provider of X been truly concerned with user privacy or the confidentiality of the data requested, it should have explored the possibility to implement safeguards, such as those to which recital 98 of Regulation (EU) 2022/2065 refer, instead of refusing access on grounds that are not explicitly related to privacy and confidentiality. Contrary to what the provider of X implies, the majority of shortcomings identified by the Commission cannot reasonably result from such concerns.

(433) The Commission observes, in this respect, that the provider of X had a readily available API with a proven track record at the time that Regulation (EU) 2022/2065 started to apply to its service, while it also had a long history of providing researchers and customers access to its data. Consequently, the provider of X was perfectly able to comply with Article 40(12) of Regulation (EU) 2022/2065. The provider of X's claim that the alleged absence of guidance from the Commission forced it to strike a balance not only fails to alleviate the responsibility of that provider with regards to the shortcomings identified by the Commission, it also hints at a strategy that aims at escaping its obligation to provide access to researchers pursuant to Article 40(12) of Regulation (EU) 2022/2065 and undermining the independent scrutiny of its service.

6.5.2. *The claims that the provider of X did provide free access to the X API to Qualified Researchers from 28 August 2023 to 9 November 2023*

6.5.2.1. The claim that the provider of X was transparent regarding the alleged possibility to request access via 'EU-questions@X.com'

(434) In the first place, the provider of X's claim that it was transparent regarding the alleged possibility to request access via 'EU-questions@X.com' is factually incorrect. None of the resources referenced by the provider of X made a single reference to the possibility for Qualified Researchers to request access via EU-Questions@x.com.

(435) First, the guidance documents mentioned by the provider of X, other than the two web pages mentioned in the Preliminary Findings,[493] were either related to X's commercial API offering or appear to be remnants of the Twitter Academic API program. The latter were largely left unattended by the provider of X, as explained in the Preliminary Findings. For instance, over the relevant period, the researcher communities referenced by the provider of X were largely comprised of researchers trying to

[493] Namely the 'Do Research' page and the 'Academic Research' page https://developer.x.com/en/use-cases/do-research and 'Academic Research' https://developer.x.com/en/use-cases/do-research/academic-research, accessed on 19 June 2024 (DSA.100102, Doc ID 207-62).

understand why their access had been discontinued and asking whether they could still request access. To the knowledge of the Commission, the provider of X did not reply to any of the numerous enquiries originating from researchers over this period, deviating from former practices during the legacy program.[494]

(436) Second, the provider of X only resumed posting in its online academic public discussion boards (or 'forums') in the summer of 2024,[495] namely after the Preliminary Findings were sent to the provider of X. Over the relevant period, the only actions of the provider of X on its academic forums consisted in force-closing a few forums in which researchers were asking for updates about possibilities to access X's data.[496] Likewise, the various '*tailored get starting guides*' available over the period were either dead links, outdated resources related to the terminated academic program, or refer to general (i.e., not '*tailored*') resources made available for clients of the commercial API.

(437) Third, the juxtaposition of a link to general information concerning Regulation (EU) 2022/2065 with an email address presented as the general venue for all '*additional queries*' under that Regulation falls considerably short of constituting effective communication to the research community regarding the possibility to request access to data pursuant to Article 40(12) of that Regulation via this address.

(438) In light hereof, the Commission maintains its finding that, between 28 August 2023 and 9 November 2023, the alleged possibility to apply via EU-Questions@x.com was never effectively communicated by the provider of X to researchers, thereby depriving them of the chance to benefit from it and rendering it ineffective. This is also confirmed by the provider of X's own admission that it did not receive a single request for data access pursuant to Article 40(12) of Regulation (EU) 2022/2065 between 28 August 2023 and 9 November 2023, whereas it received [redacted] requests in the first two months after the introduction of the 40(12) application form. That admission disproves the provider of X's claims that it did provide free access to researchers during this period and that the reason why it did not receive any requests during the relevant period was because applicants simply '*did not apply using the adequate means*'.[497]

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494 See examples of researchers seeking information since the Spring of 2023 in the 'academic research' tab of X's online developer forums. Developers working for Twitter/X regularly replied to researchers on these forums under the Twitter Academic API program but have stopped doing so between the spring of 2023 and the Preliminary Findings, while force-closing some academic forums where researchers asked for updates ; X developers, https://devcommunity.x.com/c/academic-research/62, accessed on 29 May 2024 (DSA.100102, Doc ID 181-1; 182-1; 183-1).

495 From the summer of 2024 onwards, the newly resumed activity of the provider of X on its academic forums consisted in mentioning the possibility to apply via the form launched on 9 November 2023; See https://devcommunity.x.com/c/academic-research/62, accessed on 8 October 2025. These forums had been referenced in the Preliminary Findings, see X developers, https://devcommunity.x.com/c/academic-research/62, accessed on 29 May 2024 (DSA.100102, Doc ID 181-1; 182-1; 183-1).

496 X developers, https://devcommunity.x.com/c/academic-research/62, accessed on 29 May 2024 (DSA.100102, Doc ID 181-1; 182-1; 183-1).

497 Reply to the Preliminary Findings, paragraph 321.

6.5.2.2. The claim that the absence of a defined process to assess researcher applications and give access to data does not imply that a request would not have been handled correctly

(439) In the second place, as regards the provider of X's claim that the absence of a defined process to assess researcher applications and to give access to data does not imply that a request would not have been handled correctly, it is impossible to verify this claim due to the lack of effective communication by the provider of X of the possibility to apply via EU-Questions@x.com.

(440) However, the Commission recalls that the provider of X's initial attempt at establishing a process in November 2023 resulted in a partial draft and did not lead to granting access to a single applicant before 26 January 2024. Furthermore, the process established from November 2023 onwards suffered from significant shortcomings, as explained in section 6.3, casting doubt on the fact that should a researcher ever had requested access via EU-Questions@x.com (which was not shown to have ever happened), it would have indeed been able to access data within the relevant period.

6.5.2.3. The claim that no infringement can be inferred from the fact that the provider of X charged researchers a fee for access through its API

(441) In the third place, the provider of X's claim that the lack of compliance with Article 40(12) of Regulation (EU) 2022/2065 cannot be inferred from the fact that the provider of X charged researchers a fee for access through its API is unfounded. The Commission responds as follows.

(442) First, as clarified in recital 96 of Regulation (EU) 2022/2065, the objective of Article 40 of that Regulation is to empower *'investigations by researchers on the evolution and severity of online systemic risks* [since they] *are particularly important for bridging information asymmetries and establishing a resilient system of risk mitigation, informing providers of online platforms, providers of online search engines, Digital Services Coordinators, other competent authorities, the Commission and the public.'* Accepting the imposition of a cost on a tool that has as its objective the establishment of *resilient system of risk mitigation* would endanger the existence of such a tool. Contrary to the provider of X's claim,[498] the mere absence of the specification that providers must bear the costs that are related to the application of the provision does not, in itself, mean that the provider has the right to introduce such a fee. It is clear, for instance, that Digital Service Coordinators and the Commission would not have to pay a fee to access data pursuant to Article 40(1) of Regulation (EU) 2022/2065 even though the provision does not specify whether a fee would be acceptable. The prohibition of the imposition of a cost on qualified researchers is also confirmed by the wording of Article 40 (12) of that Regulation which mandates that providers of very large online platforms or of very large online search engines *'shall give'* access to the relevant data. The choice of the words *'shall give',* without any indication of reciprocity and understood in their usual meaning, indicates that the access given to data must be without any imposition of financial, or otherwise, exchange.

(443) Second, the provider of X's claim that '*no infringement of Article 40(12) DSA can be inferred from the fact that X charged for researchers' access through its API*' because *'in fact, payment for access to data for research purposes is so widespread and*

498 Reply to the Preliminary Findings, paragraph 321.

accepted that usually specific funding is granted for such purposes'[499] is irrelevant to the imposition of a fee on researchers accessing data pursuant to Article 40(12) of Regulation (EU) 2022/2065. In the first place, the grant brought forward by the provider of X as a proof of the widespread existence of grants dedicated to finance access to data for research purposes[500] is actually offered to all researchers irrespective of whether their research concerns or contributes to the detection, identification and understanding of systemic risks in the Union under Regulation (EU) 2022/2065 referred to in Article 40(12) of that Regulation. There is no reason to believe that a grant offered by [redacted] that is located in [redacted] and therefore outside of the Union would specifically and exclusively address research relative to systemic risks in the Union. As such, the provider of X has simply proven that such grants exist *in general* and outside of research falling under Article 40(12) of Regulation (EU) 2022/2065.

(444) In addition, even if this grant was also offered to researchers that perform their research within the scope of Article 40(12), it would only reflect that *in practice* researchers have to pay a fee to the provider of X rather than indicate the legality of such practice.

(445) Finally, even if imposing a fee to researchers was deemed an acceptable practice under Article 40(12) of Regulation (EU) 2022/2065 (quod non), the fee that was charged by the provider of X would still be in violation of the provision. The level of the fees charged by the provider of X was disproportionate and so high that they prevented Qualified Researchers from accessing and using publicly accessible data to conduct research on systemic risks in the Union, as confirmed by the testimonies of several researchers[501] and by survey data documenting the cessation or cancellation of over a hundred research projects from April to November 2023 following the termination of the Twitter Academic API program that left researchers with no choice but to pay for commercial API access.[502] It is worth noting that the grant mentioned by the provider of X in its reply to the Preliminary Findings is of [redacted][503] and would only cover 1,5 months of access to the 'Pro' tier of the X API (each month of access costing USD 5 000), which is insufficient for the majority of studies on systemic risks in the Union, including for instance the large majority of the twelve projects which the provider of X considered eligible for access pursuant to Article 40(12) of Regulation

499 Reply to the Preliminary Findings, paragraph 321.

500 Reply to the Preliminary Findings, footnote 378 - [redacted], [redacted] Grant', available at: [redacted]

501 Non-confidential minutes of interviews with researchers, 1 March 2024, 26 February 2024, 22 January 2024, 23 February 2024, 22 January 2024, 16 February 2024, 8 February 2024, 6 February 2024, 18 March 2024 (DSA.100102, Doc ID 116-1; 86-1; 36-1; 78-1; 40-1; 103-1; 133; 179; 122).
See the non-confidential testimonies of researchers, 27 February 2024 (DSA.100102, Doc ID 91-1).

502 The termination of the Twitter Academic API program, leaving researchers with no choice but to pay for commercial access to the X API led to the documented cessation or cancellation of over a hundred research projects from April to November 2023 This is a conservative estimate, based on the non-confidential results of a survey provided by a researcher, 26 February 2024 (DSA.100102, Doc ID 63-1).
See also Reuters, https://www.reuters.com/technology/elon-musks-x-restructuring-curtails-disinformation-research-spurs-legal-fears-2023-11-06/, 6 November 2023, accessed on 11 June 2024 (DSA.100102, Doc ID 184-1).

503 Reply to the Preliminary Findings, footnote 378 - [redacted], "[redacted] Grant", available at [redacted]

(EU) 2022/2065.[504] To this end, if it was indeed permissible to charge a fee to researchers for access granted to them under Article 40(12) of Regulation (EU) 2022/2065 (*quod non*), such a fee cannot be part of a provider's commercial strategy nor go beyond covering the costs associated with accessing the data requested. The provider of X did not provide any specific price-range for researchers but rather required for them to request the relevant data through its commercial API under the same conditions and for the same prices as any other third party. As mentioned by the provider of X in its response, the X API has a commercial interest and represents a source of commercial revenue.[505] Finally, and to this end, the Commission notes that other providers of very large online platforms whose core features involve publicly accessible data give Qualified Researchers, free of charge, access to existing commercial APIs or to new APIs rolled out specifically for Qualified Researchers.[506]

6.5.3. The claims that the provider of X's interpretation regarding the applicable requirements for data access was justified

6.5.3.1. Eligible use of publicly accessible data

(446) In the first place, as regards the provider of X's claim that the Commission has failed to establish that its interpretation of the requirement that the data be used solely for performing research that contributes to the detection, identification and understanding of systemic risks in the Union was overly restrictive, the Commission responds as follows.

(447) First, systemic risks are identified in Article 34(1) of Regulation (EU) 2022/2065 as '*any systemic risks in the Union stemming from the design or functioning of very large online platforms and very large online search engines, or from the use made of these services*' (emphasis added). The same Regulation lists four main categories of systemic risks, identified in Article 34(1) of that Regulation, which providers of very large online platforms and of very large online search engines shall include in their service-specific risk assessments. Based on this definition, in practice, a large array of research fields,[507] types, scopes and methodologies[508] can contribute to the detection, identification and understanding of systemic risks in the Union.

(448) Second, the provider of X's criticism of the content of the technical analysis suffers from the same shortcomings as its initial assessment of the applications, displaying a flawed and overly restrictive interpretation of the scope of eligible research pursuant to Article 40(12) of Regulation (EU) 2022/2065, leading the provider to unduly restrict this access. The Commission's technical analysis includes an in-depth review of 4 abusive rejections issued by the provider of X and lists 8 other examples of rejections

504 See the table provided in reply to the fourth RFI, request 32)b). This search can be replicated by filtering column Q) to only visualize researchers approved by the provider, and then by consulting column K) which contains the requested access timeframes (DSA.100102, Doc ID 160-2; 160-5). ; See also paragraph 13 of the 'DSA.100102' Technical Analysis (DSA.100102, Doc ID 257-1).

505 Reply to the Preliminary Findings, paragraph 328.

506 EU-US Trade and Technology Council, Status Report: Mechanisms for Researcher Access to Online Platform Data, 5 April 2024, pp 12-17 (DSA.100102, Doc ID 185-1); See for instance the cases of YouTube, Facebook, Instagram, TikTok, LinkedIn.

507 Including but not limited to political science, media studies, economics, psychology, public health, medicine, computer science, gender studies, sociology, law, ethics, linguistics, education, criminology.

508 This includes both quantitative and qualitative methodologies, large-n as well as small-n studies, comparative studies, descriptive, inductive, or explorative studies. Eligible research projects may for instance focus on specific platforms features, use patterns, specific risk areas, to the extent that they contribute to the understanding of systemic risks in the Union.

that appeared unjustified.[509] These 12 rejected applications explicitly referenced by the Commission as being abusive are to be put in perspective with the total of [redacted] applications that were approved by the provider of X between 28 August 2023 and 8 May 2024.

(449) The technical analysis is particularly relevant because the Commission requested, on 8 May 2024, that the provider of X produce the documents underpinning its internal assessment leading to the denial of the four applications covered in the analysis.[510] All 4 applications addressed in the technical analysis were rejected with the exact same generic motive, namely '*Based on your application, it does not appear that your proposed use of X data is solely for performing research that contributes to the detection, identification and understanding of systemic risks in the EU as described by Art. 34 of the Digital Services Act*', without explanation of how this conclusion was reached in relation to each of the respective applications. More specifically, the Commission assessed the provider of X's internal reasoning for each of these specific rejections, which was not effectively communicated to applicants at the time.[511]

(450) **Application** [redacted] relates to a research project [redacted]. This large-scale project is a recipient of funding under the [redacted] Programme[513] and had previously obtained access to data pursuant to Article 40(12) of Regulation (EU) 2022/2065 from other providers of very large online platforms. According to internal documents of the provider of X, the application was rejected because it '*only appear[ed] to pertain to misinformation, but [did] not seem to focus on misinformation around any systemic risk in the EU*'. In its reply to the Preliminary Findings, the provider of X attempted to provide a new justification for its decision, claiming that '[redacted] *primarily concerns* [redacted]*; for research on* [redacted] *to fall within Article 40(12), the researchers at issue should have established some link between the* [redacted] *under investigation and X's structural and operational systems characteristics, such as its algorithms or amplification mechanisms. Absent any direct link, research focusing on* [redacted] *generally would not meet the criteria for systemic risk analysis established in the DSA, falling out of the scope of Article 40(12)*'.[514]

(451) In this argumentation, the provider of X displays its flawed interpretation of the scope of eligible research, and of what constitute systemic risks in the Union, while failing to bring forth any new argument that is not already dispelled in the technical analysis provided by the Commission. The internal justification suggests that the provider of X did not consider '*misinformation*' (in the words of the provider) campaigns to be a relevant systemic risk in the EU in and of itself (while also failing to take into account the fact that the proposed research also focused on disinformation, defined as being intentional, which is typically the case of narratives spread using [redacted]

509 See the examples included in the 'DSA.100102' Technical Analysis (DSA.100102, Doc ID 257-1).

510 See in particular documents TIUC-1633 to 1741 provided in reply to 'fourth RFI', request 34 (DSA.100102, Doc ID 160-2; 168).

511 As discussed in sections 6.3.2.2.2., 6.5.4.1. and in the 'DSA.100102' Technical Analysis (DSA.100102, Doc ID 257-1).

512 [redacted]

513 This was explicitly mentioned by the applicants to the provider of X.

514 Reply to the Preliminary Findings, paragraph 281.

[redacted] and is clearly referenced in recital 84 of Regulation (EU) 2022/2065 as a systemic risk factor).

(452) Finally, as regards the *post-facto* justification put forward by the provider of X that for the project in question to be eligible, applicants '*should have established some link between* [redacted] *and X's structural and operational systems characteristics, such as its algorithms or amplification mechanisms'* (emphasis added), the Commission once more recalls that pursuant to Article 34(1) of Regulation (EU) 2022/2065, systemic risks are identified as stemming from the design or functioning of very large online platforms and very large online search engines, or from the use made[515] of these services. The provider of X omits to mention that systemic risks are defined as also potentially stemming from the use made of the service, which contradicts the provider's claims that research into systemic risks cannot possibly entail the review of user content. In addition, coordinated manipulations of the relevant services are referenced in Article 34(2) of Regulation (EU) 2022/2065 as well as in its recitals 83, 84 and 104 as a factor of systemic risks. Therefore, the argument of the provider of X is not justified and it demonstrates that provider's flawed and overly restrictive interpretation of the scope of eligible research pursuant to Article 40(12) of Regulation (EU) 2022/2065.

(453) **Application** [redacted] relates to a project [redacted]. According to internal documents of the provider of X, the application was rejected because it '*only tangentially relates to 'civic discourse and electoral processes*''. After becoming aware of the technical analysis, the provider of X again stood by its rejection and elaborated on the rather short reasoning contained in internal documents: '[redacted]. *The applicant's research topic relates to* [redacted] *rather than to structural risks directly arising from X's design or operation. For the study of* [redacted] *to fall within the scope of Article 40(12), it would have been necessary for the applicant to demonstrate that their research focused on whether X's structure or operation leads to* [redacted]*, but the applicant failed to provide any information on this point.'*

(454) As noted by the Commission in the technical analysis,[516] research pertaining to [redacted] is largely acknowledged in the research community as relevant to understand the impact of social media on democratic processes. In addition, contrary to the claim of the provider of X, it was clear from the application that the research project in question did purport to understand whether X's systems contribute to [redacted]. Indeed, where a specific platform service relies on recommender systems to personalize content seen by users, such as what is done by the provider of X, any study aiming to [redacted] will inherently study [redacted]. Regardless of this, as described in recital 452 above, systemic risks do not only stem from the design and functioning of the relevant services, but also from the use made of

515 Reply to the Preliminary Findings, paragraph 276.

516 'DSA.100102' Technical Analysis (DSA.100102, Doc ID 257-1).

these services,[517] meaning that establishing a link between the research project and X's structure or operation was not even necessary to qualify for access.

(455) **Application** [redacted] consisted of a project analysing [redacted]. According to internal documents of the provider of X, the application was rejected because '*this research is out of scope. It doesn't pertain to dissemination of illegal content, but rather* [redacted] *as they describe it. It also doesn't pertain to systemic risk of actual or foreseeable negative effects that* [redacted]. *Instead, the research focuses on misinformation generally,* [redacted]'. The provider of X noted that it still stands by the internal assessment of its Developer Team. After becoming aware of the Commission's technical analysis, the provider of X attempted to rationalize its decision *post-facto* by adding the argument that the application was rejected as the researchers explained that their analysis would also include [redacted].[518]

(456) The original internal assessment of the provider of X which led to the rejection as well as that provider's attempt at finding a justification *post-facto* point to a flawed and restrictive interpretation of the scope of eligible research pursuant to Article 40(12) of Regulation (EU) 2022/2065 and point to a deliberate decision to avoid compliance with the obligations stemming from that provision. The initial argument of the provider of X was already addressed in the Commission's technical analysis,[519] including by showing that the applicants had provided extensive and unambiguous justifications on the relevance of their work for the purposes laid down in Article 40(12) of Regulation (EU) 2022/2065 on several occasions, including in their original application. The researchers clearly linked their research to understanding the systemic risk identified in Article 34(1)(c) of that Regulation, related to civic discourse and electoral processes, noting that [redacted] did concern politics. The researchers notably requested access to the X API to retrieve posts which [redacted]. The researchers also explicitly argued that their research would provide useful data for the provider's future risk assessment reports, noting that they had already presented early findings to the team of X engineers developing [redacted], who '*confirmed the robustness and usefulness'* of the project in writing. The researchers noted that according to Regulation (EU) 2022/2065, [520] when assessing systemic risks, providers of very large online platforms should consider how their content moderation processes affect these systemic risks. Applicants also referenced the ongoing Commission investigations related to Articles 34 and 35 of Regulation (EU) 2022/2065, which clearly cover the provider's assessment of systemic risks related to civic discourse and electoral processes and the effectiveness of [redacted] in relation to mitigating such risks, proving that their research was in scope of Article 40(12) of Regulation (EU)

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517 In the Reply to the Preliminary Findings, the provider of X distorts the legal text by omitting to mention the systemic risks stemming from the use made of the service. This dispels the point of the provider of X that research into systemic risks cannot possibly entail the review of user content or user behaviour; Reply to the Preliminary Findings, paragraph 276.

518 Reply to the Preliminary Findings, paragraph 281.

519 'DSA.100102' Technical Analysis (DSA.100102, Doc ID 257-1).

520 Notably Article 34(2)(b) of Regulation (EU) 2022/2065.

2022/2065. Importantly, [redacted], meaning that they present a specific risk of being abused by coordinated actors. The study proposed by applicants would have therefore contributed to the understanding of systemic risks and was therefore in scope of Article 40(12) of Regulation (EU) 2022/2065.

(457) The provider's *post-facto* claim that the research was out of scope because it considered [redacted] as part of its research sample is also flawed. Indeed, it is justified for a research project to also consider wider geographical contexts where this is necessary to strengthen the contribution of the study for the understanding of systemic risks in the Union, knowing in this case that [redacted] Lastly, as this claim was only formulated by the provider *post*-facto, the provider of X never informed the applicants that it considered part of the public data requested to be out of scope, which may have enabled applicants to challenge this argument, or to revise their application.

(458) **Application** [redacted] relates to a cross-platform research project tracking [redacted]. The project was carried out by a civil society organisation who is a member of the [redacted] as well as a signatory of [redacted] and [redacted].

(459) In this case, a review of the internal documents of the provider of X showed that no arguments had even been formulated prior to issuing the generic denial template to the applicant. The rejection also included an encouragement for the researcher to re-scope their research project to only focus on [redacted] implying that for the provider of X, research on mis- and disinformation on X does not qualify for access under Article 40(12) of Regulation (EU) 2022/2065 unless it is focused on a relevant event.

(460) Such interpretation of Article 40(12) of Regulation (EU) 2022/2065 is incorrect as the risks to civic discourse, public security and public health resulting from mis- and disinformation are evidently not limited to specific time periods, such as [redacted]. The Commission also stresses that cross-platform, [redacted] studies are extremely valuable for the understanding of systemic risks across the Union, in particular since risk mitigation measures may be less advanced in [redacted], and since threats may vary across member states. In its reply to the Preliminary Findings, the provider of X claimed that '*the research focused on tracking disinformation trends without a direct connection to how X's structural elements could contribute or not to these trends'*.[521] Again, this claim demonstrates a clear misunderstanding of the scope of the access requirement as well as of the concept of systemic risks, which is not limited to the design or functionalities of the relevant services, but also to how these services are used, meaning that the research topic does not need be directly connected to *'X's structural elements*' (in the words of the provider) to be eligible. Regardless, [redacted] necessarily interacts with structural elements of the relevant social media, insofar as the

[521] Reply to the Preliminary Findings, paragraph 281.

recommender systems and moderation policy necessarily affect the dissemination of content.

(461) All the applicants covered in the technical analysis of the Commission had complied in a cooperative spirit with the repeated requests made by the provider of X asking them for supporting documents as part of the application process and had provided the provider of X with evidence that they satisfied the eligibility criteria for data access pursuant to Article 40(12) of Regulation (EU) 2022/2065.[522]

(462) Despite challenging the Commission's assessment and supplementing the initial reasoning of its staff in charge of reviewing applications with entirely new arguments *post facto*, the provider of X admits that the 4 applications '*could, at most, potentially point to a small number of isolated alleged errors in the evaluation of a few applications among the many that X received*'.[523] However, the Commission notes that, while the provider of X tries to minimise its errors in assessing the applications covered by the technical analysis, these errors were actually significant, and pointed to a deeply flawed interpretation of the scope of eligible research pursuant to Article 40(12) of Regulation (EU) 2022/2065.

(463) In the second place, in addition to this in-depth analysis, the Commission's finding of an infringement of Article 40(12) of regulation (EU) 2022/2065 is underpinned by a wide base of evidence, including but not limited to exchanges with more than 20 researchers and experts, including interviews with more than 15 of them, as well as by an extensive review of internal documents of the provider of X and of publicly available evidence, all of which are quoted in section 6.3.2.1.1, in the Commission's technical analysis,[524] and throughout this Decision. In gathering evidence in relation to the specific grievance presented in this section, the Commission has privileged researchers and experts with solid credentials and extensive expertise in studying systemic risks in the Union pursuant to Article 34(1) of Regulation (EU) 2022/2065,[525] who nevertheless saw their applications rejected, often with generic explanations. The Commission has never claimed that the provider of X could not reject applications and the Commission's investigation focused on how the provider of X has failed to provide access to data to the group of legitimate beneficiaries pursuant to Article 40(12) of Regulation (EU) 2022/2065, thus preventing them to conduct research on systemic risks in the Union in relation to the provision of X, and hindering the independent scrutiny of its service. The Commission also notes that it interviewed [redacted] applicants approved by the provider of X as of 8 May 2024,[526] and that approved applications were therefore overrepresented in the sample of researchers it has interviewed compared to the entire pool of applicants.[527] This evidence therefore allows the Commission to conclude on the existence of several shortcomings,

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522 See the examples included in the 'DSA.100102' Technical Analysis (DSA.100102, Doc ID 257-1).

523 Reply to the Preliminary Findings, paragraph 283.

524 'DSA.100102' Technical Analysis (DSA.100102, Doc ID 257-1).

525 I.e. more than 20 researchers and experts, including 7 academic professors, the technical director of a research laboratory comprising more than 30 researchers, as well as the founder of a widely known tool to access platform data.

526 Namely applicants [redacted] and [redacted]; See the non-confidential minutes of interviews with researchers on 19 March 2024, 28 February 2024 (DSA.100102, Doc ID 174-1 ; 113-1).

527 As of 8 May 2024, the provider of X had received [redacted] applications and had determined an outcome for [redacted] applications. The provider of X stated that it had approved [redacted] of these [redacted] applications (4.7% of the total), while it had rejected [redacted] applications (95.3% of the total). See reply to the fourth RFI, request 32, including the relevant documents provided (DSA.100102; ID 160-2; 160-5; 168).

including the provider of X's restrictive interpretation of the requirement discussed in this section. This specific shortcoming is further confirmed by the clarifications and arguments formulated by the provider of X in its response to the Preliminary Findings, including the provider's attempts to justify some of its rejections post-facto, addressed in recitals 452, 455, 457 and 460 as well as the provider's clarification of its interpretation of the requirement that the data be used '*solely for performing research that contributes to the detection, identification and understanding of systemic risks in the Union*', addressed in recitals 465 to 469.

(464) In the third place, as regards the validity of the survey report published by the European New School and the Weizenbaum Institute, which criticised the provider's interpretation of the scope of eligible research projects as being too narrow,[528] the Commission insists that this report has evidentiary value for the present case. The independent study further corroborates the findings of the Commission. First, regardless of the initial intent of the authors regarding the use of their study for enforcement purposes, the report considers the implementation of Article 40(12) of Regulation (EU) 2022/2065 across all providers of very large online platforms and is therefore a relevant piece of evidence. Second, while the report may have sampling biases and a small sample size, it does not invalidate its specific findings that X appears to often rely on one specific explanation for rejecting applications[529] and that the wording of these rejections is unnecessarily narrow and lacks specific explanations.

(465) In the fourth place, by insisting that the use of data provided pursuant to Article 40(12) of Regulation (EU) 2022/2065 shall directly and exclusively contribute to the understanding of systemic risks in the Union, and that any data usage under the provision needs to demonstrably advance the purpose of the research (emphasis added), the provider of X distorts the meaning of that provision and undermines its objective, which is to enable research that *contributes to the understanding of systemic risks in the Union*.

(466) The Commission notes that the eligibility requirement laid down in Article 40(8)(f) of Regulation (EU) 2022/2065 is not included among the applicable requirements to qualify for access pursuant to Article 40(12) of that Regulation, whereas it is one of the applicable requirements for *vetted* access pursuant to Article 40(4) of that Regulation. In that context, Article 40(8)(f) of Regulation (EU) 2022/2065 strengthens the requirement relating to the use of the data to understand systemic risks in the Union, by extending it to '*planned research activities*' of the applicant.

(467) In contrast to Article 40(8)(f) of Regulation (EU) 2022/2065, Article 40(8)(e) of that Regulation sets out the conditions under which access pursuant to Article 40(12) of that Regulation can be considered necessary and proportionate and requires that the '*expected results of the research will contribute to the purposes* [of detecting,

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528 Weizenbaum Institute, https://www.weizenbaum-library.de/items/39a490c3-f3c1-42a7-a530-318b17e9de49, April 2024, in particular 'Sample Case 1' on Page 5, and page 6 of the report (DSA.100102, Doc ID 128-1): '*it is an unnecessarily narrow interpretation of the provision to restrict data access by claiming a request is not specific enough without further explanations*'.

529 This was confirmed by the table provided in reply to the fourth RFI, Request 32)b) (DSA.100102, Doc ID 160-5); Indeed, as of 8 May 2024, 123 out of 243 applications for data access rejected by the provider of X were rejected on the basis that '*it does not appear that* [the researchers'] *proposed use of X data is solely for performing research that contributes to the detection, identification and understanding of systemic risks in the EU as described by Article 34 of* [Regulation (EU) 2022/2065]'.

identifying and understanding systemic risks in the Union]' (emphasis added). Therefore, by contrasting these two provisions, only the latter of which is applicable to researchers accessing data pursuant to Article 40(12) of Regulation (EU) 2022/2065, it transpires that the interpretation of the provider of X, namely that applicants should not only demonstrate that their research will contribute to the understanding of systemic risks in the Union, but also demonstrate that any data usage will directly and exclusively advance the purpose of the research, is too restrictive.

(468) Additionally, the Commission notes that the requirement for researchers to make research results publicly available which stems from Article 40(8)(g) of Regulation (EU) 2022/2065 is not included among the applicable requirements to qualify for access pursuant to Article 40(12) of that Regulation. This supports the interpretation that access pursuant to Article 40(12) of Regulation (EU) 2022/2065 should not necessarily be conditioned on the publication of any research, but could also serve for exploratory activities, for instance to help preparing a request for vetted access pursuant to Article 40(4) of that Regulation. However, in practice, the provider regularly asks applicants to reply to questions or provide documents which presuppose that the project be at a relatively advanced stage,[530] such as requesting a research proposal.

(469) The Commission observes that, contrary to what is claimed by the provider of X, the requirement that the data be used '*solely for performing research that contributes to the detection, identification and understanding of systemic risks in the Union*' presupposes the fulfilment of two conditions, namely that: (i) the data are used solely for conducting research (as opposed to any secondary purpose, such as commercial purposes, like training a commercial AI or malicious purposes); and (ii) the research mentioned in point (i) contributes to the understanding of systemic risks in the Union.

6.5.3.2. Geographic location of the researchers

(470) In the second place, as regards the provider of X's claims that it did not systematically reject applications on the sole basis that applicants were established outside the Union, and that it is justified to reject researchers solely because they are established or located outside the Union, the Commission observes the following.

(471) First, in its reply to the Preliminary Findings, the provider of X obfuscates the distinction between the requirement that the research contributes to the understanding of systemic risks in the Union (assessed in section 6.5.3.1), and the requirement that researchers be established in the Union, which is not listed as part of the subset of criteria laid down in Article 40(8), points (b), (c), (d) and (e), of Regulation (EU) 2022/2065, as required in Article 40(12) of that Regulation for Qualified Researchers, nor as part of the remaining conditions listed in Article 40(8) of that Regulation applicable to vetted researchers.

(472) The two research projects referenced in the Preliminary Findings were clearly focused on systemic risks in the Union, and were rejected on the latter basis, which does not exist in the Regulation. Indeed, this is clearly confirmed by the rejection letters sent to these applicants, for instance: '[…] *X will limit API access under Art. 40(12) to*

[530] Relevant examples include applications [redacted].; (DSA.100102, Doc ID 160-5; 168).

organizations located in the EU.' [531] Internal data of the provider further confirms that the two applications were not rejected due to a failure to fulfil the '*EU Nexus*' requirement referenced by the provider of X, which would correspond to the claim in the provider's reply to the Preliminary Findings, but rather that applicants were rejected due to a requirement labelled '*Affiliated Organization outside EU*'. [532]

(473) Second, where the provider of X claims that it has approved application [redacted] which allegedly included '*non-EU researchers*' (in that provider's words),[533] it must be noted that all applicants were in reality affiliated with EU universities, unlike what is claimed by the provider of X. Furthermore, in relation to the application referenced by the provider of X, only one of the applicants (an [redacted] national affiliated to a [redacted] university) was effectively granted API access, after having waited 4 weeks following the notification that their application had been accepted.[534] The provider of X refused to grant access to a second researcher (a second [redacted] national affiliated to a [redacted] university) who was part of this application and had also requested access.

(474) In apparent deviation from its previous claims that it did not systematically deny access to researchers established outside the Union, the provider of X also argues that the legal text supports '*X's interpretation*', namely that it is justified to reject researchers solely because they are established or located outside the Union.[535]

(475) The Commission notes in this regard that Article 40(12) of Regulation (EU) 2022/2065 only imposes a geographical requirement in relation to the scope of the research itself, as providers of very large online platforms and of very large online search engines are required to give access to publicly accessible data to Qualified Researchers using 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) [of Regulation (EU) 2022/2065*'.

(476) Third, the Commission observes that researchers located outside of the Union or affiliated to an institution located outside of the Union can indeed perform research that contributes to the detection, identification and understanding of systemic risks in the Union within the meaning of Article 34(1) of Regulation (EU) 2022/2065 and are therefore eligible to access publicly accessible data, insofar as they fulfil all the requirements set out in Article 40(8), points (b), (c), (d) and (e), of that Regulation.

(477) Where Qualified Researchers outside the Union request access to personal data and such access includes a transfer of personal data outside the Union, the provider of X must ensure that such transfers comply with Regulation (EU) 2016/679, most notably Chapter V of that regulation. However, the Commission notes that the provider of X

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531 See in table provided in reply to the fourth RFI, request 32)b) (DSA.100102, Doc ID 160-2; 160-5); Applicant [redacted]'s request was denied on the basis that '*until we receive any contrary legislation or guidance, X will limit API access under Art. 40(12) to organizations located in the EU. Accordingly, your application has been denied*.'.
Applicant [redacted] provided additional information on 17 January 2024 and did not receive a reply until 20 February 2024. His request was also rejected on the sole basis that '*Based on your application, it appears your organization is outside of the European Union*.'.

532 See the table provided in reply to the fourth RFI, request 32)b) (DSA.100102, Doc ID 160-2; 160-5).; in particular column R which contains X's internal labels corresponding to the reasons invoked for denying access.

533 It is unclear whether 'non-EU researcher' designates researchers who are citizens of a non-EU state, or researchers that are established outside of the EU.

534 See Doc TIUC-465 provided in reply to 'fourth RFI', request 34 (DSA.100102, Doc ID 160-2; 168).

535 Reply to the Preliminary Findings, paragraph 289.

made no mention of such concerns when denying applications on the basis of their geographical location.[536] As a matter of fact, the applicants rejected by the provider of X on this basis [redacted].[537] The Commission also notes that the provider of X provides commercial access to the X API to clients established outside of the Union, indicating that it has procedures in place to ensure that international data transfers are carried out in compliance with applicable regulations.

(478) For all these reasons, the provider of X's claim that it can deny applications solely on the basis that they originate from researchers established outside of the Union is clearly in contravention of Article 40(12) of Regulation (EU) 2022/2065. In two of the rare instances where applicants established outside of the Union passed the first screening,[538] the provider of X rejected them on the sole basis of their geographical location despite repeatedly requiring them to provide extensive additional information, whereas it was aware of the country of establishment of researchers since the very beginning of the process. Such practices do not only contradict the objectives of Regulation (EU) 2022/2065 and of its Article 40(12) in particular, but also contribute to the opacity and perceived arbitrariness of the processes set by the provider of X. In its Preliminary Findings, the Commission referred to these cases and clarified that the Regulation did not allow for such a restriction.

6.5.3.3. Affiliation to a research organisation

(479) In the third place, as regards the provider of X's claim that, while its internal documents may point to guidance to reject researchers who are not affiliated with a not-for-profit body, organisation or association, it has not implemented them in practice,[539] the Commission responds as follows.

(480) First, accepting this argument would mean that the Commission must wait for the provider of X to implement a flawed data access policy before enforcing the Regulation, which is absurd.

(481) Second, Article 40(12) of Regulation (EU) 2022/2065 does not distinguish Qualified Researchers based on their institutional affiliation or lack thereof. For that reason, Article 40(12) of Regulation (EU) 2022/2065 prohibits providers of very large online platforms and very large online search engines from denying access to publicly accessible data to Qualified Researchers solely based on their (non-)affiliation. This is particularly relevant not only because of the internal guidelines of the provider discussed above, but also since the application form implemented by the provider of X features two mandatory fields related to the organisation to which the researchers are affiliated, [540] as explained in the Preliminary Findings.

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536 See footnote 531 above.

537 [redacted]; see applications [redacted] and [redacted] the table provided in reply to the fourth RFI, request 32)b) (DSA.100102, Doc ID 160-2; 160-5), in particular column H summarising the applicable data security and confidentiality safeguards.

538 As of 8 May 2024, only [redacted] out of [redacted] applications had passed the first screening; See in table provided in reply to the fourth RFI, request 32)b) (DSA.100102, Doc ID 160-2; 160-5).

539 Reply to the Preliminary Findings, paragraph 297.

540 Namely, the '*Name of Organization*' and '*Organization Affiliation*' fields.

6.5.3.4. Disclosure of funding and independence from commercial interests

(482) As regards the claim of the provider of X that its application form did not contravene the requirements of Article 40(12) of Regulation (EU) 2022/2065, and that the elements singled out by the Commission, namely the information listed as part of the '*Funding*' and '*Commercial Interest*' fields of X's application form, were not mandatory, the Commission considers that this specific conduct of the provider of X is not relevant for the purpose of establishing an infringement of Article 40(12) of Regulation (EU) 2022/2065.

(483) The Commission notes, however, that the '*Commercial Interest*' field of the 40(12) application form is mandatory, and that the provider's instructions for the field are ambiguous as to the optional nature of providing the detailed information singled out in the Preliminary Findings. [541] In addition, researchers are regularly asked to disclose their funding sources and demonstrate their independence from commercial interests, for instance in conflict-of-interest forms or prior to publishing in an academic journal. However, such processes typically do not require researchers to disclose detailed information about their organisation(s) board, its membership, shareholders or grant recipients, as is done by the provider of X. Furthermore, the expert quoted by the Commission in the Preliminary Findings had extensive experience of the vetting of such requirements, supporting the relevance of their comments regarding fact that some of the information requested by the provider of X appeared unusual.[542]

6.5.4. The claims that the provider of X's process to assess applications and grant Qualified Researchers access to data did not suffer from significant shortcomings after 9 November 2023

6.5.4.1. The claim that the provider provided all applicants with the reasons for which their application was not accepted, and that the Commission has failed to explain why this explanation is insufficient

(484) As regards the provider of X's claim that it provided all applicants with reasons for which their application was not accepted, and that the Commission has failed to explain why those explanations were insufficient, the Commission responds as follows.

(485) First, that claim fails to address the Commission's preliminary finding that the provider of X's systematic practice of providing generic explanations for its denials prevents researchers from understanding the reasons why their applications were denied, to challenge their rejection, and/or to adapt their application, thereby hindering their ability to make use of their right pursuant to Article 40(12) of Regulation (EU) 2022/2065. Indeed, the provider's failure to provide meaningful explanations to applicants aggravates the effect of the shortcoming observed in section 6.3.2.1.1, namely the provider's flawed interpretation of the requirement that researchers use the

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[541] The instructions for this mandatory field ask applicants to '*provide detailed evidence that substantiates [their] answer. […] 'relevant information includes but is not limited to […] (i) purposes and mission (ii) information about your board members, officers, and individuals with access to X data, (iii) previously published research, (iv) affiliation with other organizations, networks, or causes, and (v) the organization's membership, shareholders or grant recipients*' (emphasis added). See https://docs.google.com/forms/d/e/1FAIpQLSdo0O-D6Kxa3cV4g1JLz2T_0Sk3hdEnTdv8dJmibagCnzJ7kg/viewform, accessed on 19 June 2024 (DSA.100102, Doc ID 207-70).

[542] Mozilla Foundation, https://foundation.mozilla.org/en/blog/EU-Digital-Services-Act-and-The-State-of-X-Transparency/, accessed on 19 June 2024 (DSA.100102, Doc ID 207-161).

data solely for performing research that contributes to the detection, identification and understanding of systemic risks in the Union, insofar as it obfuscates the reasoning of the provider (or lack thereof) and impedes the scrutiny of the [redacted] rejections issued on this basis as of 8 May 2024.[543] For instance, for the four wrongly denied applications analysed in detail by the Commission on the basis of internal documents, the provider of X's assessment displayed critical shortcomings, including a failure to formulate clear arguments internally as discussed in section 6.5.3.1.[544] However, in such cases the applicants received generic denial emails which did not contain more information than a reference to the fact that their proposed use of data was not eligible for access pursuant to Article 40(12) of Regulation (EU) 2022/2065, in line with the horizontal practices of the provider, hindering their ability to challenge the rejections, and to exercise their right to access data.

(486) Second, the interaction described as a '*back-and-forth*' by the provider of X only happens when an applicant passes the first screening and generally consists in the provider asking additional questions without providing any meaningful feedback. When applicants fail to pass the first screening, which was the case in [redacted] out of the [redacted] applications assessed as of 8 May 2024, they only receive a succinct rejection generally containing a generic reference to the failure to fulfil one of the requirements, or to the incompleteness of the application, stating that X will *not* monitor replies, which contradicts the assertion of the provider that there is '*usually*' a back-and-forth with applicants.[545]

(487) Third, in several instances, applicants tried to seek explanations following their rejection by the provider of X or offered to provide further clarity. However, to the knowledge of the Commission, the provider of X did not reply to those requests.[546]

6.5.4.2. The claim that the provider's processes exceeded what is legally required, including prior to January 2024

(488) As regards the provider of X's claim that its processes for granting access to publicly accessible data exceeded what is legally required, including prior to January 2024, that claim is belied by the evidence presented throughout this section and section 6.3, and in particular by the empirical fact that not a single application was approved by the provider of X before 26 January 2024,[547] almost 5 months after Regulation (EU) 2022/2065 became fully applicable to that provider, demonstrating the ineffectiveness of X's internal processes, which at the very least led to undue delays in granting access to Qualified Researchers until January 2024.

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543 As of 8 May 2024, [redacted] out of [redacted] rejections issued by the provider of X were justified on this basis. ; See the table provided in reply to the fourth RFI, Request 32)b) (DSA.100102, Doc ID 160-5); This search can be reproduced by filtering Column R to only include reasons which include 'Research outside scope'.

544 See also 'DSA.100102' Technical Analysis (DSA.100102, Doc ID 257-1).

545 According to the table provided in reply to the fourth RFI, request 32)b) only [redacted] out of [redacted] rejected applicants received a 'custom' denial (this can be replicated by filtering column R) (DSA.100102, Doc ID 160-2; 160-5). See the specific examples provided in the 'DSA.100102' Technical Analysis (DSA.100102, Doc ID 257-1).

546 See for instance applications [redacted] This search can be replicated by filtering column T of the table provided in reply to the fourth RFI, request 32)b), (DSA.100102, Doc ID 160-2; 160-5).

547 Table provided in reply to the fourth RFI, Request 32)b) (DSA.100102, Doc ID 160-2; 160-5).

6.5.4.3. The claim that the provider has swiftly replied to applicants

(489) As regards the provider of X's claim that it has swiftly replied to applicants, that claim must be contextualised, insofar as its first reply to applicants is usually an acknowledgment of receipt, which the provider has decided not to automatically send upon the submission of applications.[548]

(490) From January 2024 onwards, when applicants failed to pass the first screening by the provider of X, that provider has indeed generally communicated denials to applicants at the same time as it acknowledged receipt of their applications, approximately 7 days after the applications' submission.[549] However, for the [redacted] (out of [redacted]) applicants that passed the provider's first screening and were asked to provide additional information,[550] the first reply constituting a meaningful step forward in the application process, namely the provider's request for additional documents, regularly took longer than seven days, with subsequent interactions regularly taking place over several weeks. For instance, all [redacted] applicants approved on 22 April 2024 had applied more than 2 months prior.[551]

(491) The Commission also recalls the facts laid out in the Preliminary Findings, namely that the provider of X has repeatedly failed to reply to applicants for more than a month, and sometimes only replied when applicants enquired to the provider about the absence of a reply to their previous email.[552] In contrast, the provider of X imposes a two-week deadline to applicants to reply to all its communications, failing which it considers an application withdrawn.

(492) In addition, the [redacted] researchers to whom the provider of X granted API access (the [redacted] successful applicant received data via a file transfer) were all informed of their approval on the same two dates,[553] pointing to the fact that the provider of X artificially delays the processing of at least some applications, a practice that represents an undue delay in providing data to qualified researchers.

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548 See section 6.5.4.4.

549 According to the data covering the period until 8 May 2024, [redacted] out of [redacted] applications were rejected after the first screening, and most frequently with a very succinct explanation (see the following section).; See in table provided in reply to the fourth RFI, request 32)b) (DSA.100102, Doc ID 160-2; 160-5).

550 As of 8 May 2024, only [redacted] out of [redacted] applications had passed the first screening; See in table provided in reply to the fourth RFI, request 32)b) (DSA.100102, Doc ID 160-2; 160-5).

551 Table provided in reply to the fourth RFI, Request 32)b) (DSA.100102, Doc ID 160-2; 160-5). ; Search can be replicated by filtering columns A (Application date), L (Date – Acknowledgment of Receipt sent to applicants), M (Date – Additional information requests sent to applicants), O (Date – additional information sent by Applicants) and P (Date – Decision on Application).

552 See for instance applications [redacted] (in particular document TIUC-1331); [redacted] (in particular document TIUC-242 and 465); [redacted] (in particular document TIUC-1014); [redacted] (in particular document TIUC-1145); [redacted] (in particular document TIUC-367); [redacted] in the documents provided in reply to the fourth RFI, request 32 (DSA.100102, Doc ID 160-5 ; 168). See JIRA tickets provided in reply to the fourth RFI, Request 34, in particular: document TIUC-1739 – comment written on [redacted] 2024 'Applicant [redacted] will receive an email on [redacted] 2024 informing them that their application is under review.' (DSA.100102, Doc ID 160-5; 168).

553 The [redacted] successful applicants who obtained access to the X API, [redacted] decisions to grant access were communicated to applicants on [redacted] 2024 and 6 were communicated on [redacted] 2024, despite applicants having applied on different dates. The [redacted] researcher who has been granted access saw their request approved on [redacted] 2024, their case differs from the [redacted] others as [redacted]. See the table provided in reply the fourth RFI, Request 32)b) (DSA.100102, Doc ID 160-2; 160-5).

(493) As for the provider's claim that it replies to '*almost all follow-up emails from non-rejected applicants in less than three days*',[554] its wording is at best unclear,[555] and appears to be false regardless of how one is to interpret the sentence, including for the reasons highlighted previously in this section.

(494) More generally, the Commission observes that researchers need visibility and predictability to be able to conduct research and delays in the provision of data may jeopardise the research. Indeed, research has a time-sensitive component, for example in cases where their research concerns risks related to specific events, such as elections or crisis situations. In these specific cases, a delay in the provision of the data hampers and sometimes renders meaningless the performance of such research. Additionally, research, which in practice is often a collaborative and highly coordinated effort, relies on meeting set timelines, both vis-à-vis funding entities and research collaborators.

6.5.4.4. The claim that the provider's application form did not create unnecessary friction

(495) As regards the provider of X's claim that its 40(12) application form does not create unnecessary friction, the Commission considers that this specific conduct of the provider is not relevant for the purpose of establishing an infringement of Article 40(12) of Regulation (EU) 2022/2065.

(496) However, the Commission notes that enabling applicants to obtain a timestamp of the submission of their application, as well as a copy of their application after submitting it, are easily implementable and standard Google Form features.[556] The provider of X nevertheless chose not to implement those features into its application process, despite the fact that some researchers asked for a copy of their application, which, in one case took several days to obtain or sometimes was never even obtainable.[557]

6.5.4.5. The claim that any comparison with the level of information available to researchers under the Twitter Academic API is irrelevant

(497) As regards the provider of X's claim that any comparison with the level of information available to researchers under the Twitter Academic API program is irrelevant, the Commission considers that this specific conduct of the provider is not relevant for the purpose of establishing an infringement of Article 40(12) of Regulation (EU) 2022/2065.

(498) However, the Commission notes that the Twitter Academic API program constitutes an example of good practices, applied by the very provider subject to the investigation. Under the Twitter Academic API program, the provider of X had extensive guidance and resources readily available for researchers, which would have led to minimal costs to maintain in place. The provider of X not only eliminated some resources, but it also

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554 Reply to the Preliminary Findings, paragraph 300.

555 The Commission is uncertain whether 'follow-up email' means an email containing a question to the provider of if it means any follow-up email exchanged after the initial application.

556 For an overview of the process to enable respondents to a Google Form to obtain a copy of their submission: https://support.google.com/docs/thread/202090575/google-forms-copy-of-responses-not-received?hl=en#:~:text=If%20you%20selected%20When%20requested,not%20get%20a%20response%20receipt and https://www.youtube.com/watch?v=eSAfPZRJ3CU, accessed on 19 June 2024 (DSA.100102, Doc ID 207-77; 207-81).

557 In the example mentioned by the provider, namely that of Application [redacted], the researcher waited 13 days to obtain a copy of their application after requesting it ; Doc TIUC-1646 ; See also the cases of applicants [redacted] and [redacted] who requested a copy and seemingly never obtained it; Docs TIUC-02, TIUC-1259; (DSA.100102, Doc ID 160-5; 168).

maintained dead links in its current pages destined to researchers,[558] meaning that any researcher enquiring about the possibilities to access data would likely find poorly maintained pages crowding out the few resources that the provider of X claims to have made available to applicants.[559]

(499) Exchanging emails with applicants after the submission of an application is not an alternative to maintaining public resources facilitating the formulation and submission of such applications. That is particularly true in the present case, since the provider of X rejects a majority of applications after the initial screening, without offering rejected applicants the possibility to ask for explanations, as explained in section 6.5.4.1.

(500) Most important, and independently of any comparison with past practices, the Commission notes that the degradation of the information made available by the provider of X must be understood in the context of the successive shifts in X's data access practices which have occurred between the spring of 2023 and early 2024.[560] In such a context, providing clear information to the potential beneficiaries of access[561] is particularly important for a provider of very large online platform to fulfil its legal obligation to give access to data pursuant to Article 40(12) of Regulation (EU) 2022/2065.

6.5.5. The claims that the provider of X has provided adequate access quotas and durations to Qualified Researchers after 9 November 2023

(501) The shortcomings discussed in this section concern the [redacted] researchers who qualified for access to X data pursuant to Article 40(12) as of 8 May 2024[562] according to the provider's overly restrictive interpretation of the applicable requirements. Therefore, suppressing the ability of these Qualified Researchers to access necessary and proportionate data volumes and durations is an infringement of the DSA

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558 'Do Research' https://developer.x.com/en/use-cases/do-research and 'Academic Research' https://developer.x.com/en/use-cases/do-research/academic-research, accessed on 19 June 2024 (DSA.100102, Doc ID 207-62).

559 The lack of usefulness of which has already been discussed in sections 6.3.2.4.1 and 6.5.2.1.

560 For instance, the standard access duration and quotas offered by the provider of X are, substantially inferior to the access that researchers were previously provided under Twitter's academic data access program. To the knowledge of the Commission, these limitations are not conveyed to applicants at any point before or during the application process implemented by the provider of X to grant access to data pursuant to Article 40(12).
Default access quotas are ten times smaller than under the Twitter Academic program, while default access duration is now 6 months as opposed to indefinite or tailored durations under the Twitter Academic program;
See the following archived webpages: The Internet Archive, Twitter API for Academic Research | Products | Twitter Developer Platform, capture of the website as it appeared on 12 February 2023, accessed on 19 June 2024 (DSA.100102, Doc ID 207-141); The Internet Archive, https://web.archive.org/web/20230212182612/https:/developer.twitter.com/en/use-cases/do-research/academic-research/resources, accessed on 19 June 2024 (DSA.100102, Doc ID 207-145).; GitHub maintained by a Twitter/X developer dating from March 2021: GitHub, https://muhark.github.io/python/scraping/tutorial/2021/03/25/getting-started-with-academic-twitter.html, accessed on 19 June 2024 (DSA.100102, Doc ID 207-125).

561 Such as by informing researchers about the standard applicable data access quotas and durations prior to their application, enabling them to justify the need for potential extensions of these standard requirements, which the provider of X did not do, as discussed in section 6.3.2.3.

562 As of 8 May 2024, the provider of X had received [redacted] applications and had determined an outcome for [redacted] applications. The provider of X stated that it had approved [redacted] of these [redacted] applications (4.7% of the total), while it had rejected [redacted] applications (95.3% of the total). See reply to the fourth RFI, request 32, including the relevant documents provided (DSA.100102; ID 160-2; 160-5; 168).

(502) In this respect, the Commission notes that the objective of Article 40(12) of Regulation (EU) 2022/2065 is not the access to data in itself but rather access whose purpose is to perform research that contributes to the detection, identification and understanding of systemic risks in the Union pursuant to Article 34(1) of that Regulation. To this end, it is indispensable that providers of very large online platforms and very large online search engines give access, at the least, to the data that is necessary for the performance of this research where access to such data is proportionate. This is also confirmed by Article 40(8)(e) of Regulation (EU) 2022/2065, which requires the researchers to demonstrate that the data and the time frames requested are '*necessary for, and proportionate to, the purposes of their research*'. The requirement for researchers to be able to provide such an assessment, combined with the objective of Article 40(12) of Regulation (EU) 2022/2065, indicate, indeed, that providers of very large online platforms and very large online search engines must give access to all publicly accessible data that are necessary for, and proportionate to, the purposes of their research.

(503) Therefore, where Qualified Researchers demonstrate to the provider of X that the requested data and timeframes of access are necessary for and proportionate to the purposes of their research, that provider is obliged to grant them the access to the requested data for the timeframes necessary in order to fulfil its obligations under Article 40(12) of Regulation (EU) 2022/2065.

6.5.5.1. Access quotas

(504) As regards the provider of X's claim that it provided adequate access quotas to Qualified Researchers, the Commission responds as follows.

(505) First, as explained in recitals 502 and 503, Article 40(12) of Regulation (EU) 2022/2065 requires providers of very large online platforms and very large online search engines to give access to, at least, the data that are necessary for and proportionate to research projects that respect the conditions set out in the same Article. Quotas are limitations of the amount of data that can be accessed by Qualified Researchers during a given timeframe via an API.[563] As such, where quotas impede the pursuit of research pursuant to Article 40(12) of Regulation (EU) 2022/2065 by not providing all the necessary data for the purpose of a given research project that effectively results in the access to data that are publicly accessible on X's online interface and are necessary for the research's purpose not being granted to researchers in contravention of Article 40(12) of Regulation (EU) 2022/2065.

(506) As explained in recital 393, the provider of X claims that its horizontal imposition of quotas amounting to 1 000 000 posts per month is not contrary to Article 40(12) of Regulation (EU) 2022/2065 because (i) some researchers requested significantly less data than the quotas permit; (ii) providers of other very large online platforms and very large online search engines have more restrictive quotas than X; (iii) the provider of X *'has considered granting quota extensions, when so requested'*; and (iv) the provider of X has '*proactively asked researchers whether the access quota provided was sufficient*'.

(507) These claims are not of a nature to call into question the Commission's finding. Indeed, the existence of research that requires less data than the provider's standard

[563] The level of access provided by default to all Qualified Researchers, namely the 'Pro' API access tier, allows researchers to access 1 million tweets per month, as explained in section 6.3.2.3.2.

quota limitations allow for[564] is not an indication that *all* eligible research is possible within the scope of such a quota. In fact, the self-declared willingness of the provider of X to consider '*granting quota extensions, when so requested'* and to '*proactively [ask] researchers whether the access quota provided was sufficient*' indicates that the provider of X is admitting that it is possible that more data are necessary for some research projects carried out on the basis of access granted pursuant to Article 40(12) of Regulation (EU) 2022/2065.

(508) Similarly, while it is true that some providers of other very large online platforms and very large online search engines might have even more restrictive quotas in place, it is also true that each online platform has a specific design and features, which significantly impact user experience, but also affect the different types of research projects that can be conducted across services. For this reason, comparing standard data access quotas applied by other providers of very large online platforms, as done by the provider of X, is of limited relevance. In any event, the provider of X's claims regarding the data access mechanisms of other providers of very large online platforms contains some factual errors.[565] Moreover, some of those providers are currently also under investigation for suspected non-compliance with Article 40(12) of Regulation (EU) 2022/2065 by the Commission.[566]

(509) Finally, the provider of X claims[567] to have considered quota extensions when requested by applicants and to have proactively asked Qualified Researchers whether the access provided was sufficient to conduct their research are factually incorrect. The only example (i.e. application [redacted]) referenced in that regard is an instance where the Qualified Researcher initiated the request for higher quotas themselves.[568] As

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564 The example of application [redacted] used by the provider was that of a study focusing on [redacted]. As explained in the Preliminary Findings, some applicants clearly explained to the provider that higher quotas were necessary to fulfil their research objectives. In such cases, when the applicants' claims are properly substantiated with regards to the objective of conducting the research, failing to grant sufficient data access quotas is in contravention of Article 40(12).

565 The provider of X seems to refer to the data access programs related to TikTok and to YouTube, which respectively offer access to '*1,000 requests per day across their APIs, allowing up to 100,000 records per day*' for TikTok, and to '*a quota of 10,000 units per day*' for the YouTube API. As regards the TikTok API, the limit is 1,000 requests per day, covering 100,000 records per day, and therefore 3 million of records per month. The provider of X also presents the limit of the YouTube API as being '10,000 units per day', (emphasis added) but fails to mention that the notion of 'unit' represents a number of specific queries to the YouTube API rather than a specific number of pieces of content retrieved via the API. The provider of X also fails to mention that the alleged quotas of the YouTube API that are referenced in its reply to Preliminary Findings correspond to the free tier of access to the YouTube API, which is granted to any applicant, not just to Qualified Researchers. Researchers can request quota increases to the provider of YouTube to exceed the limit referenced by the provider of X.

566 In addition to X, the Commission opened proceedings regarding compliance with Article 40(12) of Regulation (EU) 2022/2065 in relation to Facebook, Instagram, AliExpress, TikTok and Temu. These proceedings were respectively opened on 30 April 2024, 30 April 2024, 14 March 2024, 19 February 2024 and 31 October 2024.
https://ec.europa.eu/commission/presscorner/detail/en/ip_24_2373;
https://ec.europa.eu/commission/presscorner/detail/en/ip_24_1485;
https://ec.europa.eu/commission/presscorner/detail/en/ip_24_1485;
https://ec.europa.eu/commission/presscorner/detail/en/ip_24_926;
https://ec.europa.eu/commission/presscorner/detail/en/ip_24_926.

567 Reply to the Preliminary Findings, paragraph 313.

568 Part of the exchange between applicant [redacted] and the provider of X is available in Annex 1.1 of Reply to the Preliminary Findings, pages 2-10 (DSA.100102, Doc ID 337-1).

explained in the Preliminary Findings, the relevant Qualified Researcher was interviewed by the Commission. According to that researcher, it first reported the issue of insufficient quotas to the provider of X on 3 March 2024 and enquired on whether [redacted]'. That researcher subsequently underwent a series of detailed questions from the provider of X requiring explanations on the necessity of a quota extension. In its response, that researcher reiterated several times that [redacted]. At the request of the provider of X, the researcher then provided [redacted]. However, it seems that, despite the responsiveness of the applicant to the repeated inquiries of the provider of X over several months and according to the correspondence annexed by the provider of X to the Reply to the Preliminary Findings sent on 26 September 2024,[570] the provider of X did not appear to have taken a decision on the extension request at that date, despite the fact that the researcher requested a quota extension on [redacted] 2024.

(510) Second, Article 40(12) of Regulation (EU) 2022/2065 requires that access to data must be given to qualified researchers *without undue delay*. This requirement is not limited to access to *some* data but to all the publicly accessible data that are necessary for and proportionate to the purpose of the research. As such, the undue delays identified in granting quota extensions must be considered as undue delays in giving access to data within the meaning of Article 40(12) Regulation (EU) 2022/2065 and therefore results in the lack of compliance by the provider of X with that provision.

(511) When giving access to publicly accessible data to Qualified Researchers, the provider of X does not assess whether the necessary data would exceed the quota *ab initio,*[571] nor does it do so soon after initial access is granted. As a result, and as explained above, the provider of X relies on individual Qualified Researchers requesting a specific extension of the quota after first obtaining access to the 'Pro' API access tier. This additional and unnecessary procedural step *de facto* adds a procedural and decisional delay to data access pursuant to Article 40(12) of Regulation (EU) 2022/2065 that is not justified by any objective necessity. As such, it unduly delays the process of granting access to data for Qualified Researchers.

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569 I.e. the standard quotas granted by the provider of X.

570 Part of the exchange between applicant [redacted] and the provider of X is available in Annex 1.1 of Reply to the Preliminary Findings, pages 2-10.

571 During the application review, the provider of X enquires about applicant's data needs. At the end of this process, according to X's internal guidelines as well as based on empirical evidence, the provider always grants successful applicants access to the 'Pro' API tier regardless of the specificities of their application. ; See V2.2 DSA Art 40(12) Research access checklist', page 10 & 18, provided in reply to the fourth RFI, request 33 (DSA.100102, Doc ID 160-2; 168-604).
The provider's regularly takes more than 2 months to grant Qualified Researchers access to the X API following an application for access to data pursuant to Article 40(12) of Regulation (EU) 2022/2065. For instance, all [redacted] applicants approved on [redacted] 2024 had applied more than 2 months prior. See the table provided in reply to the fourth RFI, Request 32)b) (DSA.100102, Doc ID 160-2; 160-5). ; Search can be replicated by filtering columns A (Application date), L (Date – Acknowledgment of Receipt sent to applicants), M (Date – Additional information requests sent to applicants), O (Date – additional information sent by Applicants) and P (Date – Decision on Application).

(512) The existence of this undue delay is further confirmed by the example brought by the provider of X.[572] Indeed, a Qualified Researcher that had requested a quota extension had not received a final reply to its request for over [redacted] months. To the Commission's knowledge, it was the only case of such a quota extension request being lodged and the extreme delay experienced by the Qualified Researcher indicates that the provider of X lacks internal mechanisms allowing the processing of quota extension requests without undue delay irrespective of the whether the applicant would receive the extension or not.

(513) The effect of this undue delay is also compounded by the lack of mention of the existence of the standard quota limitations by the provider of X, as well as the fact that the Twitter Academic API program had 1000% larger quotas than the mechanism that the provider of X has currently put in place to comply with its obligations under Article 40(12) of Regulation (EU) 2022/2065.[573]

6.5.5.2. Access durations

(514) As regards adequacy of the access duration, the Commission responds as follows.

(515) In light of the explanations by the provider of X in its Reply to the Preliminary Findings, the Commission considers that the existing duration of access granted by the provider of X, in and of itself, does not result in the lack of compliance with Article 40 (12) of Regulation (EU) 2022/2065 by that provider.

(516) As the provider of X also argues, the duration of access should be decided on a case-by-case basis in light of the specific needs of the research in question.

6.5.6. The claim that the Commission fails to prove that the practices of the provider discouraged researchers from using their rights pursuant to Article 40(12) of Regulation (EU) 2022/2065

(517) As regards the discouraging effect that the practices of the provider of X have had on Qualified Researchers, the Commission considers that that effect cannot be proven in isolation, since it could also be due to the conduct described in this Decision's remaining sections concerning the provider of X's failures to comply with Article 40(12) of Regulation (EU) 2022/2065.

6.5.7. The claim that the provider of X does not prohibit scraping to Qualified Researchers, has legitimate reasons not to allow indiscriminate scraping and that the Regulation (EU) 2022/2065 does not prevent providers of very large online platforms from prohibiting scraping

(518) As regards the provider of X's claim that it has legitimate reasons not to allow scraping and that Regulation (EU) 2022/2065 does not prevent providers of very large online platforms and of very large online search engines from prohibiting scraping on their services, the Commission responds as follows.

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572 Part of the exchange between applicant [redacted] and the provider of X is available in Annex 1.1 of Reply to the Preliminary Findings, pages 2-10.

573 Under the 'Pro' API access tier, researchers can access 1 million tweets per month, under the free Twitter Academic API program discontinued in Spring 2023, the limit was at 10 million per month, which means that there has been a ten-fold decrease of this limit. For current X API offerings, see https://developer.x.com/en/docs/twitter-api/getting-started/about-twitter-api, accessed on 19 June 2024 (DSA.100102, Doc ID 207-58). For past API offerings, see The Internet Archive, https://web.archive.org/web/20230212083710/https:/developer.twitter.com/en/products/twitter-api/academic-research, accessed on 19 June 2024 (DSA.100102, Doc ID 207-141).

(519) In the first place, obstacles to independent automated access to data can be separated into two distinct categories. Both *technical* and *contractual* barriers can be erected by providers of online platforms and online search engines to prevent independent automated access to data. Contractual barriers are often included in the terms and conditions, and condition the usage of the online platform or online search engine to the acceptance of a contractual commitment not to independently access data in an automated manner. Such contractual barriers can be found in X's terms and conditions[574] as discussed in section 6.3.3.

(520) In the second place, Article 40(12) of Regulation (EU) 2022/2065 requires providers of very large online platforms and of very large online search engines not only to *give* Qualified Researchers access to the data that is publicly accessible in their online interfaces, for example by means of specific tools or infrastructures, such as APIs or data transfers, but also to refrain from *contractually preventing* Qualified Researchers from independently accessing data available on their public interface, including by automated means (such as data scraping or crawling), and subsequently using the data for the purposes laid down in Article 40(12) of Regulation (EU) 2022/2065. This is clarified by recital 98 of Regulation (EU) 2022/2065, which states that '*where data is publicly accessible, […] providers [of very large online platforms and very large online search engines] should not prevent researchers meeting an appropriate subset of criteria from using this data for research purposes that contribute to the detection, identification and understanding of systemic risks. They should provide access to such researchers including, where technically possible, in real-time, to the publicly accessible data, for example on aggregated interactions with content from public pages, public groups, or public figures, including impression and engagement data such as the number of reactions, shares, comments from recipients of the service.*' (emphasis added).

(521) In this context, independent access includes manual data access techniques, such as manually copying and pasting from the publicly accessible user interface, as well as automated data access techniques such as scraping or crawling. Automated independent access techniques enable researchers to automatically retrieve all types of publicly available data,[575] in real-time and at a granular level, as it appears in X's online interface, without dedicated actions or infrastructure provided for by the provider of X.

(522) As such, a contractual prohibition to independently access data would result in preventing Qualified Researchers from using data that is already publicly accessible and is, therefore, in direct contradiction with Article 40(12) of Regulation (EU) 2022/2065. Even if that was not the case (quod non), automated independent access techniques, such as data scraping and crawling, are indispensable tools for researchers

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574 For the purposes of this document, 'terms and conditions' mean all clauses, irrespective of their name or form, which govern the contractual relationship between the provider of intermediary services and the recipients of the service, in line with Article 3(u) of Regulation (EU) 2022/2065.

575 For instance, the X API currently does not allow to retrieve all publicly available data (for instance data related to sensitive content interstitials or to the fact that some posts have 'restricted engagement' restrictions, as well as to new features which may not yet be covered by the API). The provider of X admits that '*[t]he X API is designed to replicate all the data publicly available on the platform, but it does not have 100% parity with all public data points. For example, we have not yet completed builds to enable API access to all data related to X Jobs […] or Communities*'. On the other hand, independent access techniques enable to retrieve all data that is publicly accessible.; See the reply to the second RFI, request 8 of section VII (DSA.100102, Doc ID 210-9).

to perform specific types of research on systemic risks in the Union within the meaning of Article 34(1) of Regulation (EU) 2022/2065. Independent automated data access techniques are not comparable with data access through X's API because independent automated access technique uniquely enable Qualified Researchers to access data necessary to study X's recommender and advertising systems and the risks they pose in relation to a variety of systemic risks as defined by Regulation (EU) 2022/2065, notably by probing those systems and observing how they react to specific stimuli, which is instrumental in understanding systemic risks stemming from the design or the functioning of these systems.

(523) In the third place, the provider of X misinterprets the Commission's preliminary findings by considering that the Commission requires an indiscriminate authorisation to scrape the public interfaces of very large online platforms and very large online search engines. The provider of X claims in this respect that not imposing contractual obligations on Qualified Researchers through its terms and conditions would '*allow indiscriminate scraping*', but this is far from what the Commission argued in its Preliminary Findings. Indeed, Article 40(12) of Regulation (EU) 2022/2065 does not mandate an *indiscriminate* access to data but clearly limits it to Qualified Researchers (i.e., only those users who can benefit from Article 40(12) of Regulation (EU) 2022/2065). The imposition of an ex-ante permission in the provider's terms and conditions means that, should these Qualified Researchers independently access data that is publicly accessible in X's online interface, they would be effectively contractually liable towards the provider of X and that in order not to be exposed to such liability they should have requested an ex ante authorisation from that provider even though Article 40(12) of Regulation (EU) 2022/2065 grants them the right to access this data.

(524) The Commission has never denied the provider's right to protect its service against malicious or illegitimate actors, such as commercial and State actors. In fact, a targeted elimination of the prohibition of independent access for Qualified Researchers in X's terms and conditions would not undermine any of the provider's protections against malicious or illegitimate actors. *A fortiori*, such a clarification of X's terms and conditions would precisely differentiate legitimate beneficiaries of access pursuant to Article 40(12) of Regulation (EU) 2022/2065 from third parties which are not eligible for access. For instance, the commercial actors referenced by the provider of X[576] will undoubtedly fail to fulfil the requirements laid out in Article 40(12) of Regulation (EU) 2022/2065. As a result, the number of Qualified Researchers is considerably smaller in size and is different in nature to the numerous third parties mentioned by the provider of X when justifying the necessity for contractual limitations on scraping and crawling. Article 40(12) of Regulation (EU) 2022/2065 does not preclude providers from carrying out technical checks to identify users that are in the process of scraping and are not Qualified Researchers. Therefore, independent automated access for Qualified Researchers would not result in the functional and financial issues that X claims *indiscriminate access* would cause.

(525) The provider of X also claims that independent access could result in *'lost revenue from developers who might otherwise purchase legitimate API Access (as access would not be limited to qualified researchers only)'*.[577] When used to justify the

[576] The provider of X references the cases of Megaface and Clearview; Reply to the Preliminary Findings, paragraph 332.

[577] Reply to the Preliminary Findings, paragraph 328.

exclusion of Qualified Researchers from independent access, and since there is no reason to not limit the contractual exemption to Qualified Researchers, this claim would necessarily mean that the provider of X relies on the contractual prohibition from independent automated access for Qualified Researchers to promote the access granted through its paid API.

(526) In the fourth place, the provider of X asserts that an obligation to not prevent researchers from independently accessing publicly accessible data is contradictory to the obligation to provide '*for example, on aggregated interactions with content from public pages, public groups, or public figures*' (emphasis added) pursuant to recital 98 of Regulation (EU) 2022/2065. This assertion does not hold for two reasons.

(527) First, the fact that the provider of X has an obligation to provide certain data points or even to '*anonymise or pseudonymise personal data except in those cases that would render impossible the research purpose pursued'* (as stated in recital 98 of Regulation (EU) 2022/2065) represents specific obligations linked to its obligation to provide data to researchers, but does not exclude an obligation to '*not prevent researchers meeting an appropriate subset of criteria'* from using the data that is already publicly available, nor from using automated means to retrieve data that is publicly available. In effect, the obligations of providers differ depending on whether they have to act in order to give access to data or they have to simply not prevent data from being used.

(528) Second, the provider of X claims that '*[t]he mention of aggregated data implies a specific type of data handling where individual data points are combined to form a summary for analysis',* but recital 98 in fact clarifies that the elements quoted are *examples* among others of data points that are to be provided and do not represent an exhaustive list of types of data that have to be provided nor can be used to infer a set of criteria that would serve to restrict the data that researchers could access. The provider of X's reasoning contradicts Article 40(12) of Regulation (EU) 2022/2065, which does not impose conditions on the data to be rendered accessible other than the fact that they are publicly accessible on the very large online platform's online interface.

(529) Third, even if it was considered that the providers' obligations were the same when the provider is actively providing publicly accessible data and when the provider is simply not preventing the use of such data (quod non), recital 98 clarifies that anonymization or pseudonymization as means of ensuring data protection must be applied proportionally and should be limited to the extent that they do '*not render impossible the research purpose pursued*.' As explained in the previous recital, independent automated access to data is an indispensable tool for researchers to perform specific types of research on systemic risks in the Union. Consequently, such access is justified pursuant to Article 40(12) of Regulation (EU) 2022/2065.

(530) In the fifth place, the provider of X claims that it would allow Qualified Researchers to scrape its service after they have sought, and obtained, access through a separate agreement with the provider of X. In other words, the provider of X claims that it is amenable to grant exemptions to the contractual prohibition against scraping that it imposes on users in its own terms and conditions.[578] Since an exemption limited

[578] Section 4 of X's Terms of Service stipulate the following: '*You may not do any of the following while accessing or using the Services: […] (iii) access or search or attempt to access or search the Services by any means (automated or otherwise) other than through our currently available, published interfaces that are provided by us (and only pursuant to the applicable terms and conditions), unless*

exclusively to Qualified Researchers can easily be put in place by adjusting X's terms and conditions and since the imposition of an additional step represents an obstacle to access data that necessarily results in a loss of time, the Commission considers this additional step to represent an undue delay to access to data within the meaning of Article 40(12) of Regulation (EU) 2022/2065 in light of the fact that Qualified Researchers can, in practice, independently access publicly accessible data in X's online interface without an intervention of the provider of X (such as by manually collecting data or by automatically scraping such data).[579] In this regard, the imposition of an ex-ante permission in the provider's terms and conditions effectively means that Qualified Researchers independently (and autonomously) accessing data that is publicly accessible in X's online interface may be contractually liable to the provider of X should they not have requested a permission ex-ante. A contractual exemption within the terms and conditions that would specifically be addressed to Qualified Researchers would in practice only apply to researchers that would be entitled to receive this exemption following the provider of X's review of their request for a permission to independently access publicly available data. Arguing the opposite would necessarily mean that the provider of X reserves itself the right to not grant this exemption to researchers that fulfil the conditions set out in Article 40(12) of Regulation (EU) 2022/2065. As a result, conditioning independent automated access to a prior authorisation from the provider of X represents an unnecessary step resulting in the failure to provide access to data *without undue delay* and is consequently non-compliant with Article 40(12) of Regulation (EU) 2022/2065.

(531) In any event, if granting such ad hoc permissions were sufficient to comply with Article 40(12) of Regulation (EU) 2022/2065 (*quod non*), the provider of X would still be in breach of that provision, since its process to assess applications for access pursuant to Article 40(12) of Regulation (EU) 2022/2065 suffers from critical shortcomings, as discussed in section 6.5.3, 6.5.4 and 6.5.5 indicating an inability to adequately and systematically address such requests for permission.

(532) Additionally, the provider of X has not advertised the possibility of requesting such permission nor any process in place for Qualified Researchers to request it. Indeed, X's Terms of Service[580] are ambiguous regarding the possibility for Qualified Researchers to obtain ad hoc authorisations to independently access X's publicly accessible data, including by means of data scraping. The terms containing the general prohibition of independent access, including by automated means, such data scraping

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you have been specifically allowed to do so in a separate agreement with us (NOTE: crawling or scraping the Services in any form, for any purpose without our prior written consent is expressly prohibited);'
See X's terms of service: https://x.com/en/tos, accessed on 19 June 2024 (DSA.100102, Doc ID 207-46).

579 Conversely, an intervention of the provider of X is operationally necessary to grant Qualified Researchers to the X API, notably with regards to granting them API access credentials.

580 Section 4 of X's Terms of Service stipulate the following: '*You may not do any of the following while accessing or using the Services: […] (iii) access or search or attempt to access or search the Services by any means (automated or otherwise) other than through our currently available, published interfaces that are provided by us (and only pursuant to the applicable terms and conditions), unless you have been specifically allowed to do so in a separate agreement with us (NOTE: crawling or scraping the Services in any form, for any purpose without our prior written consent is expressly prohibited);'*
See X's terms of service: https://x.com/en/tos, accessed on 19 June 2024 (DSA.100102, Doc ID 207-46).

and crawling, do not contain a reference to any process for Qualified Researchers to seek and obtain an exception to this prohibition from the provider of X. In addition, the language added by the provider of X in its developer agreement in relation to data access by Qualified Researchers, and to which researchers must consent when submitting an application to the provider of X via the 40(12) application form, [581] does not appear to create any process for Qualified Researchers to access data independently, as it references '*Licensed Material (including any derivatives thereof) that you retrieve through the X API.'* (emphasis added). The fact that the provider of X has '*not received any request to allow scraping or similar techniques under Article 40(12) DSA*' as confirmed in its Reply to the Preliminary Findings, [582] is an indication that the opacity of its processes actively dissuades researchers from requesting such permission.

6.6. Conclusion

(533) For all the foregoing reasons, the Commission concludes that the provider of X failed to comply with Article 40(12) of Regulation (EU) 2022/2065. Between 28 August 2023 and 9 November 2023, the fees associated with gaining access to data which were publicly accessible on X's online interface under Article 40(12) of Regulation (EU) 2022/2065, in particular in the absence of any alternative for accessing such data, constituted an infringement of Article 40(12) of Regulation (EU) 2022/2065 by the provider of X. The changes implemented by the provider of X after 9 November 2023 did not bring that provider in compliance with the obligation laid down in Article 40(12) of Regulation (EU) 2022/2065, since the processes implemented by that provider to take in and assess researchers' '40(12) applications' suffered from significant shortcomings. The Reply to the Preliminary Findings did not refer to meaningful changes to the practices that infringe on Article 40(12) of Regulation (EU) 2022/2065 by the provider of X. Consequently, the identified infringement persists. Finally, during the entire relevant period, the provider of X has prohibited Qualified Researchers from *independently* accessing X's publicly accessible data, thus failing to comply with Article 40(12) of Regulation (EU) 2022/2065.

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581 The provider of X clarified to the Commission that *'Researchers who access data by either subscribing to a Developer API access tier or by applying via the Art.40(12) Application form are not bound by this restriction in X's Terms of Service, but instead are bound by the terms in the X Developer Agreement*'. The X Developer Agreement stipulates the following: '***Digital Services Act***. *Notwithstanding anything to the contrary in this Agreement, to the extent you are provided access to the Licensed Material pursuant to the procedures described in Article 40 of the Digital Services Act (The Digital Services Act) ('DSA'), your access and use of the Licensed Material is limited solely to performing research that contributes to the detection, identification and understanding of systemic risks in the European Union and only to the extent necessary for X to comply with its obligations under the DSA. Any such use of the Licensed Material is non-commercial as described in Section III(B) of this Agreement. You may not disclose, reproduce, license, or otherwise distribute the Licensed Material (including any derivatives thereof) that you retrieve through the X API to any person or entity outside the persons within your organization necessary to perform the research, unless (i) the information is disclosed to the Digital Services Coordinator or other party specifically permitted by the DSA pursuant to the "vetted researcher" status and procedures described in Article 40, or (ii) disclosure is required by law.*'
See the reply to the second RFI, request 3 of section VII (DSA.100102, Doc ID 210-9); Open Terms Archive, https://github.com/OpenTermsArchive/pga-versions/commit/c63b906e573f9f103649430a31a8080d2f7544e3#diff-2d91701cdd46e3d6db2a5cac7bd6531c806a0723a4f01ca8a1a6075eb98b533aR90, accessed on 19 June 2024 (DSA.100102, Doc ID 207-153).

582 Reply to the Preliminary Findings, paragraph 326 (DSA.100101, Doc ID 233; DSA.100102, Doc ID 337-2; DSA.100103, Doc ID 289-2).

7. ALLEGED PROCEDURAL ERRORS IN THE ADOPTION OF THE DECISION

7.1. The allegations of the provider of X

(534) The provider of X argues that the Commission's investigative procedure leading to the adoption of the Decision suffers from severe flaws that undermine its rights of defence. According to that provider, there appears to be a discrepancy between the gravity of the allegations outlined in the Preliminary Findings and the procedural restrictions imposed on the provider of X. According to the provider of X, many of the issues stem from the Commission's own procedural rules, such as those in Implementing Regulation (EU) 2023/1201 and the data room rules, which prioritise administrative convenience over procedural fairness.

(535) The provider of X argues that, despite its repeated objections, these shortcomings have significantly hindered its ability to defend itself, warranting the annulment of any non-compliance decision based on the Preliminary Findings.[583]

(536) The provider of X has grouped its procedural objections into three clusters: (a) access to file issues; (b) incompleteness of the Commission's file and its unreliability; and (c) breach of rights of defence through the Commission's Decision on the Article 5(6) Implementing Regulation Request. These objections are set out in more detail in the subsections below.

7.1.1. Access to file and data room process

(537) According to the provider of X, the Commission has systematically denied it proper access to exculpatory materials in its investigation, severely restricting its ability to build a defence. In that respect, access was only granted to the Specified External Advisers under a highly restrictive data room procedure, which limited their ability to review and analyse evidence. The provider of X's employees were barred from accessing the data room, which was open for only five consecutive working days with rigid entry and exit rules. The process was further hindered by practical issues, such as the unavailability of internet-connected laptops and temporary system crashes.

(538) Additionally, the provider of X argues that the access to the file procedure provided limited time for preparation and forced that provider's Specified External Advisers to juggle multiple procedural requirements in parallel. Moreover, the Commission's restrictions extended beyond access limitations. Legal privilege was disregarded, as the Commission's officials monitored the data room, preventing the provider of X's Specified External Advisers from freely discussing defence strategies. Many documents provided in the data room contained unjustified redactions, and the vast majority of the file did not include confidential information that would justify such restrictions. Despite multiple objections from the provider of X's Specified External Advisers and requests for broader access, the Commission refused to meaningfully justify its approach.

(539) The provider of X cites case law establishing that excessively restricted access to case files constitutes a procedural error that violates the rights of defence. According to the provider of X, the Commission's approach in the present case breaches due process principles by withholding exculpatory evidence and imposing unnecessary procedural barriers.[584]

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583 Reply to the Preliminary Findings, paragraphs 47-49.

584 Reply to the Preliminary Findings, paragraphs 50-53.

7.1.2. Incompleteness of the Commission's file and its unreliability

(540) The provider of X argues that the Commission is required to compile a complete and accurate case file to ensure a fair and impartial investigation. That provider alleges that, in the present case, the Commission selectively curated its case file to support a finding of infringement, rather than conducting an objective and thorough inquiry.

(541) A key concern of the provider of X is the Commission's reliance on interviews instead of formal requests for information when gathering third-party evidence. Unlike requests for information, which carry legal penalties for providing misleading or incomplete information, interviews afford the Commission significant flexibility to steer discussions and draft post-factum notes that may not fully reflect the interviewees' statements. According to the provider of X, this issue would be exemplified by email exchanges and interview notes where third parties had to push back against the Commission's attempt to frame their input as evidence of an infringement when, in reality, the discussions had a different purpose. Further concerns allegedly arise from the Commission's misleading characterisation of its investigative efforts. Despite claiming to have conducted multiple interviews with former employees, the evidence suggests that only a single interview took place.

(542) Additionally, during the data room procedure, the provider of X's Specified External Advisers would have discovered that key documents were missing from the case file, including confidential versions of non-confidential documents and other relevant evidence. The provider of X contends that this raises serious doubts about whether additional exculpatory materials were omitted, either inadvertently or deliberately. Despite prior assurances from the Commission that the case file contained all collected and created documents, the provider of X argues that these omissions place an undue burden on it to identify gaps in the evidence.[585]

7.1.3. Breach of rights of defence through the Commission's Decision on the Article 5(6) Implementing Regulation Request.

(543) The provider of X claims that the Commission's actions in handling its Article 5(6) Implementing Regulation Request underscore the arbitrary approach to access to the file and a continued overreliance on the restrictive data room procedure. This left the provider of X at a significant procedural disadvantage.[586]

(544) Specifically, the provider of X argues that the vast majority of documents in the Commission's file, including those specifically requested under Article 5(6) of Implementing Regulation (EU) 2023/1201, are not confidential, making the entire data room and Article 5(6) procedures unnecessary burdensome. Rather than granting direct access from the outset, the Commission took six weeks to reject nearly all of the provider of X's requests. The provider of X claims that the Commission's request to prove that each document was indispensable to their defence would contradict due process. The Commission is not in a position to determine what is indispensable for the defence of the provider of X and requiring it to justify its requests at such early stage would be impractical and unlawful.

(545) The provider of X also contends that the Commission's handling of access to documents was inconsistent and arbitrary. In particular, that provider notes that the Commission granted access to 33 documents under Article 5(11) of Implementing

585 Reply to the Preliminary Findings, paragraphs 54-61.

586 Reply to the Preliminary Findings, paragraphs 62-71.

Regulation (EU) 2023/1201, but denied access to 34 other documents covered by the requested submitted to it under Article 5(6) of Implementing Regulation, without providing any explanation as to the reasons for treating these documents differently. The sole document to which access was provided under Article 5(6) of Implementing Regulation was one that should have been disclosed earlier under Article 5(2) of that Regulation, further highlighting procedural failures.

(546) The provider of X also claims that the Commission based its refusals on irrelevant factors, such as that provider's failure to request an extension of the data room duration, even though an extension would not have resolved the underlying issue of restricted access. The fact that the provider of X's Specified External Advisers could summarise some documents did not negate the need for direct access, as reviewing full documents would provide additional insights. Additionally, the Commission arbitrarily denied the request to classify all of the provider of X's external advisers as Specified External Advisers under the data room rules.

(547) Finally, the provider of X submits that the shifting deadlines further compounded the unfairness of the process. The Commission granted additional time to submit the Reply to the Preliminary Findings on 30 August 2024, but only after the provider of X had worked towards a 5 September 2024 deadline for nearly a month, disrupting its ability to plan their Reply to the Preliminary Findings effectively. All these procedural failures would have significantly undermined the provider of X's rights of defence.[587]

7.2. The Commission's response to the provider of X's allegations

(548) For the reasons set out below, the provider of X's claims relating to the access to file procedure followed in this case should be dismissed. The Commission considers that the procedural aspects raised by the provider of X do not amount to procedural errors infringing that provider's rights of defence.

7.2.1. Access to file and data room process

(549) In the first place, contrary to the provider of X's claim that '[the] *highly restrictive terms of access* [to the file] *have prevented the Defendants from properly reviewing and providing their views on the evidence on the Commission's file*',[588] the Commission in fact fully upheld the provider of X's rights of defence and granted full access to the entirety of the file, acting in full compliance with Implementing Regulation (EU) 2023/1201 and with the Terms of Disclosure Decision adopted pursuant to it.

(550) First, upon the provider of X's request of 31 July 2024 to access the file under Article 5(2) of Implementing Regulation (EU) 2023/1201, the Commission promptly gave access to all documents mentioned in the Preliminary Findings the day after the request, *i.e.*, on 1 August 2024. On the same date, the Commission adopted, pursuant to Article 5(3) of Implementing Regulation, the Terms of Disclosure Decision, setting out the terms and conditions for the Specified External Advisers appointed by the provider of X to have access to all documents in the Commission's file, through the set-up of a dedicated data room. Access to the data room was granted on 5 August 2024.

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587 Reply to the Preliminary Findings, paragraphs 72-79.

588 Reply to the Preliminary Findings, paragraph 51.

(551) Second, the data room procedure was conducted in accordance with Article 5(3)(c) of Implementing Regulation (EU) 2023/1201, which itself balances the objective of safeguarding the right of defence of the provider of the very large online platform or the very large online search engine in question, while respecting third-party rights and ensuring that the Commission meets its obligation to protect confidential information, and those stemming from Article 84 of Regulation (EU) 2022/2065 and Article 339 TFEU in particular. This is also clarified in recital 5 of Implementing Regulation, which states that '*[w]hile the addressee of the Preliminary Findings should always obtain from the Commission the non-confidential versions of all documents mentioned in the Preliminary Findings, the Commission should be able to decide on a case-by-case basis on the appropriate procedure for access to further information in the file. When granting access to the file, the Commission should ensure the protection of business secrets and other confidential information*' (emphasis added).

(552) While the provider of X claims that '*the Commission has consistently refused to provide the Defendants with access to exculpatory material on its investigation file and has only allowed certain specified external advisers of the Defendants access to much of this material on a highly restrictive basis that necessarily impedes the Defendants' ability to effectively exercise their defence rights*',[589] the manner in which the Commission provided access to the file in the present case, including by providing access to the entirety of the file only to specified external advisers was consistent with the regulatory framework set out in Implementing Regulation (EU) 2023/1201. In fact, Article 5(3)(c) of Implementing Regulation provides that *'[p]ersons listed as specified external legal and economic counsel and technical experts shall not, at the date of the Commission decision setting out the terms of disclosure, be in an employment relationship with the addressee or in a situation comparable to that of an employee of the addressee.*' Indeed, Article 5(3) of Implementing Regulation guarantees that the addressee of the Preliminary Findings has access to the investigation file via its specified external advisers, while direct access by the addressee of the Preliminary Findings is foreseen in Article 5(2) of Implementing Regulation and pertains all documents explicitly cited in the Preliminary Findings. Article 5(3) of Implementing Regulation provides for the possibility for the addressee's specified external advisers to access all other documents, including confidential versions of documents which might have been redacted pursuant to Article 6 of that Regulation, thereby enabling the review of all evidence underpinning the investigatory file. These advisers, who are bound by strict confidentiality obligations pursuant to the Terms of the Disclosure Decision, can review the full case file, while ensuring the protection of sensitive business information, and third-party confidentiality rights. Moreover, in exceptional circumstances and upon a reasoned request, the Commission may pursuant to Article 5(6) of the Implementing Regulation grant access to a non-confidential version of any document on the Commission's file not already provided to the addressee under Article 5(2) of the Implementing Regulation, with a view to making such non-confidential version available to the addressee, provided such access is indispensable for the proper exercise of the addressee's right to be heard.

(553) Based on the above, the Commission considers that the provider of X, alongside their specified external advisers, were not only aware of the procedural framework based on Implementing Regulation (EU) 2023/1201 – which was adopted on 21 June 2023 and

[589] Reply to the Preliminary Findings, paragraph 50.

published the day after in the Official Journal of the European Union[590] – but they were also informed in advance about the access-to-file process, including the data room setup.[591] In fact, a draft version of the Data Room Rules and of the acknowledgement of the Terms of Disclosure Decision was shared with the provider of X already on 16 July 2024, ensuring transparency and allowing for the necessary preparations.

(554) In the second place, the claim that the data room was made available only for five working days is also misleading. The Specified External Advisers had the opportunity to request an extension before the closure of the data room, but they decided not to do so. Similarly, the rule that the Specified External Advisers could only re-enter the data room during the next session does not constitute an undue limitation but a safeguard meant to prevent unsupervised information flow outside that room, thereby ensuring compliance with the duty of professional secrecy and the ensuing protection of confidential information

(555) In the third place, the provider of X's claim that several hundred documents were only made available for the first time in the data room misrepresents the fact that only documents not mentioned in the Preliminary Findings were subject to this process. In accordance with Article 5(2) of Implementing Regulation (EU) 2023/1201, all the documents mentioned in the Preliminary Findings had already been provided in the first step of the access to file process and they could have been made available by the Commission directly to the provider of X even earlier than 1 August 2024, if only that provider had requested this.

(556) In accordance with Article 5(3) of Implementing Regulation (EU) 2023/1201, all the documents gathered by the Commission until the adoption of the Preliminary Findings in relation to cases DSA.100101, DSA.100102, and DSA.100103 (*i.e.*, in addition to those mentioned in the Preliminary Findings, which had already been provided to the provider of X) were made available for the first time in the data room. Should the provider of X have wished to access these documents earlier, it was open to that provider to submit a request for access earlier. In that connection, in accordance with Article 5(1) of Implementing Regulation, the Commission shall grant access to the file to the addressee of the Preliminary Findings '*upon request*'. The appointment of specified external advisers is only a prerequisite for accessing all the documents in the Commission's file under Article 5(3) of the Implementing Regulation, *i.e.*, not only the documents mentioned in the Preliminary Findings – access to which is governed by Article 5(2) of the Implementing Regulation, but all those – confidential and, without prejudice to Article 5(4) of Implementing Regulation, non-confidential – included in the Commission's investigation file.

(557) The provider of X only specifically requested access to the file – both to documents cited in the Preliminary Findings in accordance with Article 5(2) of the Implementing Regulation (EU) 2023/1201 and to the whole file pursuant to Article 5(3) of that Regulation – for the first time after that provider had appointed its external legal advisers, i.e. eight days after the Commission had notified the provider of X of the Preliminary Findings and invited it to request access to the file. The provider of X therefore had the time it considered necessary to prepare its request for access to the file. As soon as a request pursuant to Article 5(2) of the Implementing Regulation

590 OJ L 159, 22.6.2023, pages 51-59.

591 DSA.100101, Doc ID 204; DSA.100102, Doc ID 267; DSA.100103, Doc ID 231.

(EU) 2023/1201 was submitted to the Commission, on 31 July 2024, the Commission granted access to the documents cited in the Preliminary Findings on 1 August 2024 and this was the first step of the access to file in accordance with Article 5(2) of Implementing Regulation. As mentioned above, the provider of X could have already requested direct access to the documents cited in the Preliminary Findings under Article 5(2) of the Implementing Regulation immediately after their notification, as granting such access by the Commission does not require the appointment of specified external advisers.

(558) In the fourth place, the provider of X's claim that '*The Data Room Report had to be submitted at an early stage in the Defendants' preparation of their observations on the PF, when necessarily the Defendants and their advisers were still assessing the PF and the supporting evidence and when their views on how to defend themselves were still developing*'[592] is without merit. The provider of X's Specified External Advisers had ample opportunity to ensure that all relevant information was included in the Data Room Report before the data room's closure, as *per* the Terms of Disclosure Decision. Moreover, the necessity to prepare the Article 5(6) Implementing Regulation Request concurrently with the data room procedure was a function of established rules under Article 5(6) Implementing Regulation (EU) 2023/1201, which the Commission duly followed.

(559) In the fifth place, the provider of X's contention that there was no possibility for the Specified External Advisers to review confidential versions of the Data Room Report or documents at a later stage is also unfounded. The conditions of access were explicitly outlined in the Data Room Rules which specifically stipulate that '*The Data Room Report must only contain non-confidential information relevant for the exercise of the Addressee's right to be heard in the context of cases DSA.100101 – DSA.100102 – DSA.100103 – X (formerly Twitter). Data, information or documents from the Data Room shall only be included in the Data Room Report in a summarised, paraphrased and aggregated form not allowing conclusions as to the identity of the information provider, even if such data information or documents do not contain business secrets or other confidential information.*'[593] The responsibility was on the Specified External Advisers to ensure that all necessary information was captured before the data room closed or, alternatively, they could have requested an extension of the duration of the data room.

(560) The data room is designed to include all documents not mentioned in the Preliminary Findings and not only documents which can be classified as confidential. This approach serves to streamline and expedite the process by ensuring that the addressee of the Preliminary Findings has direct access to the non-confidential versions of documents relied upon in the Commission's assessment outlined in the Preliminary Findings, while all the other documents – both confidential and non-confidential – are made available to the specified external advisers in a swiftly manner but under strict confidentiality obligations. This framework allows granting the external advisers broader access to the case file than would typically be available under other EU procedural frameworks, such as those governing antitrust[594] and merger control.[595] The

592 Reply to the Preliminary Findings, paragraph 51, sixth bullet point.

593 Data Room Rules, paragraph 14.

594 Pursuant to Article 15 of Regulation (EC) No 773/2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty, the right of access to the file shall not extend to business secrets, and other confidential information. Therefore, access to the file is limited to

rationale behind this system is also reflected in recital 4 of Implementing Regulation (EU) 2023/1201, which emphasizes the need to reconcile the efficiency and effectiveness of the proceedings, on one hand, and the possibility to exercise the right to be heard, on the other.[596]

(561) In the sixth place, the provider of X's claim regarding redactions to certain documents in the file is also misleading. Out of approximately 3,800 documents made available in the data room, only five contained limited redactions. The Commission also provided the Specified External Advisers with the opportunity to review printed unredacted versions upon request, which they declined.

(562) In the seventh place, as regards the provider of X's claim that '*[t]he Commission made available in the data room only four laptops, which were not connected to the internet, to the EC's network or to each other. Two of the four laptops temporarily crashed during the first two days of the data room procedure*',[597] the limited technical issues were resolved almost instantly,[598] causing no significant disruption to the process.

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non-confidential information, while confidential information cannot be accessed by either the addressee of a statement of objections or its external advisers (not even within the safeguarded boundaries of a data room).

595 Pursuant to Article 17 of Regulation (EU) No 2776/2024 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings, the right of access to the file shall not extend to confidential information.

596 In this context, the Commission refers to the Order in Commission v. Amazon (Case C-639/23 P(R), EU:C:2024:277), in which the Vice-President of the Court of Justice held that '*it must be emphasised that Regulation 2022/2065 is a central element of the policy developed by the EU legislature in the digital sector. In the context of that policy, that regulation pursues objectives of great importance, since it seeks, as is apparent from recital 155 thereof, to contribute to the proper functioning of the internal market and to ensure a safe, predictable and trusted online environment in which the fundamental rights enshrined in the Charter are duly protected.*' (para. 155). The Vice-President also underlined the need for speedy application of the Regulation: '*not applying certain obligations laid down by that regulation will lead to a delay, potentially for several years, in the full achievement of those objectives. Not applying those obligations will therefore give rise to a risk of potentially allowing an online environment which threatens the fundamental rights provided for in the Charter to persist and develop*.' (para. 157). These considerations were also emphasized in subsequent Orders of the President of the General Court in Commission v. Aylo Freesites LTD (Case T-138/24 R, EU:T:2024:431, paragraphs 113 and 115) and in in Commission v. WebGroup Czech Republic (Case T-139/24 R, EU:T:2024:475, paragraphs 126 and 128). Therefore, taking this assessment into account, it is also necessary that the process of granting access to the file is conducted as efficiently as possible, which is done, inter alia, by granting the addressee of the Preliminary Findings access to documents that have not been referenced in the Preliminary Findings, i.e., both confidential and non-confidential documents, through its external advisers in a data room.

597 Reply to the Preliminary Findings, paragraph 51, tenth bullet point.

598 The Commission notes that, in both separate instances, its IT support entered the data room two minutes after the technical incidents occurred and verified that the laptops were correctly working again. The Commission stresses that the laptops provided to the Specified External Advisers were brand-new, purchased specifically for that occasion, and they were tested before the start of the data room. In the first instance of laptop-crash, the following day, in the presence of the Specified External Advisers, the Commission's IT support ran a check of the laptop that briefly crashed and confirmed it was an issue related to the memory hardware. The agreement with the Specified External Advisers was that they would continue using the laptop, with more frequent backups and savings of their work. In the second instance of laptop-crash, the Commission's IT support was unable to identify the exact issue, but the Specified External Advisers indicated that they had not lost any work. In both instances, the Commission indicated to the Specified External Advisers that, if the issue had persisted with the same laptops, it would have provided swiftly new laptops. This is documented in the Commission's own reporting about the data room (DSA.100101, Doc ID 284, DSA.100102, Doc ID 377, DSA.100103, Doc ID 324).

Moreover, the availability of four laptops is standard, as was the absence of an internet connection.[599] In accordance with Implementing Regulation (EU) 2023/1201, the primary purpose of the data room is to allow for the review of the Commission's case file in its entirety, while ensuring confidentiality and preventing external communications. These conditions align with standard practice and do not constitute any irregularity or unfair restriction. Similarly, the prohibition on the Specified External Advisers to discuss data room documents outside of the data room and the Commission's right to inspect materials created during the procedure are safeguards to ensure compliance with confidentiality requirements.[600]

(563) In the eighth place, as regards the provider of X's claim that '*[t]he data room procedure did not respect legal privilege. First, the specified external advisers (all lawyers) attending the data room were prevented from discussing the documents made available to them in the data room. Second, Commission officials were constantly present in the data room making it impossible to freely discuss legal strategy or defence arguments*',[601] the Commission observes that the Specified External Advisers had the option to request a breakout room for discussion, and there is no rule in the Terms of Disclosure Decision nor in the Implementing Regulation prohibiting such requests. However, the provider of X's Specified External Advisers did not make any such request. Additionally, within the data room framework, it is essential to ensure that the specified external advisers do not remove any notes or documents containing information reviewed in the data room. This justifies the Commission's right to inspect documents, notes, and other materials. This does not violate legal professional privilege, as erroneously claimed by the provider of X, since the Commission cannot rely on any of these materials in its investigation.

(564) In the ninth place, as regards the provider of X's claim that '*according to the case-law, overreliance on the data room procedure that leads to 'excessively restricted access to the file' is a procedural error that breaches the rights of defence of the defendant(s)*',[602] the Commission observes that that case-law pertains to competition law proceedings under Article 102 of the TFEU, and the reliance on the data room in the case which gave rise to the judgment to which the provider of X refers[603] was done on an a case-by-case basis without there being any specific legal act providing for the procedure of negotiated access to the file, as the one set out in Implementing Regulation (EU) 2023/1201.[604]

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599 For instance, in the Standard Data Room Rules made available on the Commission's website in the context of antitrust and merger control proceedings, it is indicated that '*PC workstation[s] [is/are] made available […] No external storage medium will be available […] and a local network connecting the PC workstations and the printer will also be made available.*' No connection to the internet is mentioned. See: https://competition-policy.ec.europa.eu/document/download/f94afeca-0fa8-49e1-8a11-59cbb9dc136a_en?filename=data_room_rules_en.pdf (last accessed on 5 February 2025).

600 For instance, in the Standard Data Room Rules made available on the Commission's website in the context of antitrust and merger control proceedings, it is indicated that '*All printouts and notes may be reviewed by DG Competition's officials at any time*'. See: https://competition-policy.ec.europa.eu/document/download/f94afeca-0fa8-49e1-8a11-59cbb9dc136a_en?filename=data_room_rules_en.pdf (last accessed on 5 February 2025).

601 Reply to the Preliminary Findings, paragraph 51, twelfth bullet point.

602 Reply to the Preliminary Findings, paragraph 52.

603 Case T-136/19, *Bulgarian Energy Holding v Commission*, paragraph 1216.

604 In any event, the case-law referred to by the provider of X is currently under appeal by the Commission (Case C – 14/14 P Commission v Bulgarian Energy Holding and Others).

(565) In sum, the Commission's approach in the present case ensured that the provider of X had access to all relevant documents to prepare its defence, while protecting sensitive business information and third-party confidentiality rights and ensuring the efficiency and effectiveness of the proceedings.

7.2.2. Completeness and reliability of the Commission's file

(566) The provider of X's claim that the Commission's file is incomplete and unreliable, due to the lack of requests for information sent to third parties, overlooks the Commission's investigatory discretion under Article 68 of Regulation (EU) 2022/2065. The Commission indeed has discretion to decide whether to use interviews, requests for information, and/or inspections, as appropriate to the investigation before it. In the present case, the Commission primarily relied on gathering its own evidence, as the alleged infringements were self-explanatory.

(567) The provider of X's claim that the minutes of an interview with CheckFirst and the Mozilla Foundation[605] underwent multiple revisions before finalisation and that the Commission influenced their content to strengthen its case is unsubstantiated. Moreover, as explained in recital 244 above, this claim has no bearing on the evidentiary value of those minutes. The draft minutes of the interview are provided because Article 5(3) of Implementing Regulation (EU) 2023/1201 obliges the Commission to grant access to the entire file, which – in the present data room – included drafts and intermediary versions of documents. This further underscores the high level of transparency throughout the process, fully upholding the provider of X's rights of defence.

(568) The provider of X's claim that certain documents were omitted from the file, potentially including exculpatory evidence, is misleading. Out of approximately 3 800 documents, only around 15 were added to the file during the data room process. These additions primarily consisted of draft versions of minutes and a confidential research report. The Commission added these documents promptly, upon identification of the documents by the provider of X's Specified External Advisers, and, in any event, could not and did not rely on them in the Preliminary Findings or its investigation, as they were either drafts or confidential documents. The Commission's investigation is strictly based on final, approved, non-confidential documents.

7.2.3. The Commission's Response to the Article 5(6) Implementing Regulation Request

(569) On the last day of the data room, the provider of X's Specified External Advisers submitted the Article 5(6) Implementing Regulation Request, whereby they requested: (i) further access to non-confidential versions of documents on the Commission's file (in addition to those cited in the Preliminary Findings and already made directly available under Article 5(2) of Implementing Regulation (EU) 2023/1201 with a view to making such documents available to the provider of X as well as the Specified External Advisers outside the data room procedure; and, as a subsidiary request (ii) that all of the provider of X's external counsel be considered Specified External Advisers even if they have not actually accessed the data room or have not been identified as Specified External Advisers. The Commission rejected those requests because they were excessive and inconsistent with the procedural safeguards laid down in Implementing Regulation (EU) 2023/1201.

605 Non-confidential minutes of interview with representatives from CheckFirst and Mozilla Foundation, [redacted] 2024, (DSA.100103, Doc ID 166-1).

(570) In the first place, the Commission handled the provider of X's Article 5(6) Implementing Regulation Request diligently and in accordance with the established legal framework. The provider of X criticizes the Commission for taking too long to provide a response on that request. However, Article 5(6) of Implementing Regulation (EU) 2023/1201provides that '*additional access* [to non-confidential versions of documents made available for the first time in the data room and not under Article 5(2) of Implementing Regulation (EU) 2023/1201] *may only be granted exceptionally and provided that it is indispensable for the proper exercise of the addressee's right to be heard*'. Given that the concept of 'indispensability' was being assessed for the first time in the context of the enforcement of Regulation (EU) 2022/2065, a careful review of the provider's request was necessary. While the provider of X argues that all documents requested under Article 5(6) of Implementing Regulation were non-confidential and access should have been granted, doing so 'in bulk' would have circumvented the procedural framework set up by Article 5(3) of that Regulation, which requires that such documents be made available through the data room process rather than direct access.

(571) In the second place, contrary to the provider of X's claim, the Commission did not determine what is indispensable for the defence of the provider of X. Conversely, it was for the Specified External Advisers to put forward a reasoned request and provide for the reasons for which they considered the additional direct access to the addressee indispensable. They failed to demonstrate such indispensability in relation to the document for which they sought access as their request was overly broad. Nevertheless, in order to avoid a disproportionate delay or administrative burden the Commission granted access to 33 documents under Article 5(11) of Implementing Regulation (EU) 2023/1201, even though in its request under Article 5(6) of Implementing Regulation (EU) 2023/1201 the Specified External Advisers did not demonstrate why the documents to which access was sought were indispensable for the addressee's right to be heard. The late provision of one document that should have been disclosed under Article 5(2) of Implementing Regulation (EU) 2023/1201 was an isolated clerical error that the Commission promptly rectified.

(572) In the third place, as regards the provider of X's claim that the Commission's refusal to consider all their external advisers as Specified External Advisers was arbitrary,[606] it ignores the fact that the option to extend the list of initially Specified External Advisers is only available while the data room is open, as specified in Article 5(6) of Implementing Regulation (EU) 2023/1201. The Specified External Advisers were aware of these rules and failed to act within the required timeframe. It had been expressly asked beforehand to provide an exhaustive list of the specified external advisers, and the Terms of Disclosure Decision required that the specified external advisers be listed and sign the Data Room Rules, committing them to confidentiality obligations and procedural safeguards. Nevertheless, the provider of X requested that, not only those external advisers who had signed the Data Room Rules and the acknowledgement of the Terms of Disclosure Decision before entering the data room, but also all those external advisers belonging to the same law firm of the Specified External Advisers, should be able discuss the documents in the Commission's file, which were made accessible securely by the Commission in the data room.

606 Reply to the Preliminary Findings, paragraph 77.

(573) In the fourth place, the provider of X's suggestion that the Commission is '*learning by doing*' and failing to apply a lenient approach to the provider of X's compliance obligations is unfounded. The procedural timeline was clearly communicated, and the provider of X was given multiple opportunities to engage with the Commission regarding its obligations. The Commission's actions were guided by legal and procedural requirements, rather than by any intent to penalise the provider of X unfairly. The procedural framework was applied consistently, ensuring that the provider of X had a fair opportunity to exercise their rights of defence.

(574) In conclusion, the Commission's approach to access to file, the data room procedure, and the Article 5(6) Implementing Regulation Request was in compliance with Regulation (EU) 2022/2065 and Implementing Regulation (EU) 2023/1201. The provider of X's claims of unfairness, procedural breaches, and arbitrary decisions are unsubstantiated by the facts and the legal framework governing the proceedings.

8. DURATION OF THE PROVIDER OF X'S NON-COMPLIANCE

8.1. Non-compliance with Article 25(1) of Regulation (EU) 2022/2065

(575) The Commission finds that the provider of X's non-compliance with Article 25(1) of Regulation (EU) 2022/2065 which the Commission has established in sections 4.3 and 4.5 above commenced on the date when that provision became applicable to it that is on 28 August 2023 which is four months after the notification of the Designation Decision.

(576) On 5 June 2025, the Commission observed that the provider of X started to display a one-off disclaimer to recipients of its service at the top of the 'For You' timeline when loading the main website, reiterating the same information about the meaning of the blue-ribbon checkmark it displays on its help pages to which the disclaimer links as well.[607] On 30 September 2025, the provider of X informed the Commission that *'[a]s the Commission is aware, from 18 May 2025 to 23 September 2025, X displayed a prominent banner to all existing and new users in the EEA to ensure, once again, maximum possible user awareness about our blue check and verification policies.*' According to the provider of X *'[t]he banner was translated into all EEA languages and presented to users accordingly. During the period it was displayed, the banner received over 90 million unique impressions.*'

(577) While the additional one-off disclaimer on top of the "For You" timeline provides additional information to the recipients of X, the Commission considers that it does not appear to alter the misleading online interface design recipients continue to encounter in relation to the use of the 'verified' status feature, in particular because the disclaimer in question was displayed by the provider of X only for a limited period of time and it was shown to recipients only once when they logged in to the service. Therefore, the Commission considers that the aforementioned one-off disclaimer does not *prima facie* appear to terminate the infringement of Article 25(1) of Regulation (EU) 2022/2065, as set out in Section 4 of this Decision.

(578) The Commission therefore finds that the provider of X's non-compliance with Article 25(1) of Regulation (EU) 2022/2065 is still ongoing at the date of adoption of this Decision.

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607 X website, https://x.com, accessed on 5 June 2025 (DSA.100101, Doc ID 278).

8.2. Non-compliance with Article 39 of Regulation (EU) 2022/2065

(579) The Commission finds that the provider of X's non-compliance with Article 39(1) of Regulation (EU) 2022/2065 which the Commission has established in section 5.3 and 5.5 above commenced on the date when that provision became applicable to it, that is on 28 August 2023 which is four months after the notification of the Designation Decision. By the date of adoption of this Decision, the provider of X has not introduced any material changes to the measures described in section 5.2 above. The Commission therefore concludes that the aforementioned non-compliance is still ongoing at the date of adoption of this Decision.

8.3. Non-compliance with Article 40(12) of Regulation (EU) 2022/2065

(580) The Commission finds that the provider of X's non-compliance with Article 40(12) of Regulation (EU) 2022/2065 which the Commission has established in section 5.3 and 5.5 above commenced on the date when that provision became applicable to X that is 28 August 2023 which is four months after the notification of the Designation Decision. By the date of adoption of this Decision, the provider of X has not introduced any material changes to the measures described in section 6.2 above. The Commission therefore concludes that the aforementioned non-compliance is still ongoing at the date of adoption of this Decision.

9. MEASURES TO ENSURE COMPLIANCE WITH THIS DECISION

9.1. Principles

(581) Pursuant to Article 73(3) of Regulation (EU) 2022/2065, where the Commission finds that the provider of the very large online platform or of the very large online search engine concerned does not comply with one or more of the relevant provisions of Regulation (EU) 2022/2065, it shall by decision order that provider to take the necessary measures to ensure compliance.

(582) A decision pursuant to Article 73(1) of Regulation (EU) 2022/2065 shall include an order to '*take the necessary measures to ensure compliance with the decision pursuant to* [Article 73] *paragraph 1 within a reasonable period specified therein and to provide information on the measures that the provider intends to take to comply with the decision*'.

(583) Pursuant to Article 73(4) of Regulation (EU) 2022/2065, the provider of the very large online platform or of the very large online search engine concerned shall provide the Commission with a description of the measures it has taken to ensure compliance with the non-compliance decision pursuant to paragraph (1) of that Article upon their implementation.

(584) Pursuant to Article 75(1) of Regulation (EU) 2022/2065, when adopting a decision pursuant to Article 73 of that Regulation in relation to an infringement by a provider of a very large online platform or of a very large online search engine of any of the provisions of section 5 of Chapter III, the Commission shall make use of the enhanced supervision system laid down in that Article.

(585) Pursuant to Article 75(2) of Regulation (EU) 2022/2065, the Commission shall require the provider of the very large online platform or of the very large online search engine concerned to draw a detailed action plan to remedy any effect of the infringement for the future and communicate such action plan, within a reasonable period specified by the Commission, to the Digital Services Coordinators, the Commission and the Board.

(586) Pursuant to Article 75(3) of Regulation (EU) 2022/2065, the Commission, taking into account the opinion of the Board, shall decide whether the measures set out in the action plan are sufficient to terminate or remedy the infringement, taking also into account whether adherence to relevant code of conduct is included among the measures proposed. The Commission shall also subsequently monitor measures taken by the provider of a very large online platform or of a very large online search engine concerned in the implementation of the action plan, taking into account also an independent audit of the provider. Pursuant to Article 75(4) of Regulation (EU) 2022/2065 if, following the implementation of the action plan, the Commission still considers that the infringement has not been fully remedied, or if the action plan has not been provided or is not considered suitable, the Commission shall be able to use any investigative or enforcement powers pursuant to Regulation (EU) 2022/2065, including the power to impose periodic penalty payments and initiating the procedure to disable access to the infringing service.

9.2. Application to this case

9.2.1. Measures to comply with Article 25(1) of Regulation (EU) 2022/2065

(587) As set out in recital 577 above, the Commission considers that the changes implemented by the provider of X between 18 May and 23 September 2025 to the measure described in Section 4.2 do not prima facie appear to terminate that provider's non-compliance with Article 25(1) of Regulation (EU) 2022/2065. It is therefore necessary for the provider of X to bring the non-compliance with Article 25(1) of Regulation (EU) 2022/2065 established in section 4 of this Decision to an end within 90 days from the notification of this Decision. It is also necessary to ensure that the provider of X refrains from repeating any conduct having the same or an equivalent object or effect to the non-compliance established in this Decision.

(588) In order to ensure compliance with Article 25(1) of Regulation (EU) 2022/2065, the Commission considers, pursuant to Article 73(3) of that Regulation, that the provider of X should ensure that X's online interface does not deceive recipients of that service as to the identity, authenticity and notability of accounts carrying the blue-ribbon checkmark. To that end, the Commission considers that the following changes should be made to the measures described in Section 4.2:

(a) refraining from textually claiming that users are verified when no reliable verification process has in fact taken place;

(b) more prominently and directly providing clear and non-misleading information about the meaning of the blue-ribbon checkmark in X's online interface;

(c) refraining from misleading algorithmic amplification of accounts carrying the blue-ribbon checkmark; and

(d) publicly announcing and promoting to recipients of X's service these changes to the blue-ribbon checkmark to ensure transparency.

(589) Pursuant to Article 73(3) of Regulation (EU) 2022/2065 the provider of X shall provide the Commission, with a description of the measures it intends to take to ensure compliance with this Decision, and in particular to terminate or remedy tits non-compliance with Article 25(1) of Regulation (EU) 2022/2065 identified in section 4 of this Decision within 60 working days from the date of notification of this Decision and bring that infringement effectively to end within 90 working days from the date of notification of this Decision.

(590) In addition to terminating the infringement identified in section 4 of this Decision, the provider of X should implement measures that prevent the recurrence of that infringement. When submitting its proposed measures, the provider of X should ensure that its proposal is sufficiently reasoned and detailed to enable the Commission to assess whether the proposed measures will ensure that the recurrence of the non-compliance is avoided and thus that it will be effectively brought to an end.

9.2.2. Measures to comply with Article 39 of Regulation (EU) 2022/2065

(591) It is necessary for the provider of X to bring its non-compliance with Article 39 of Regulation (EU) 2022/2065 established in section 5 of this Decision to an end under the procedure set out in Article 75 of that Regulation. It shall also refrain from repeating any act of conduct having the same or equivalent object or effect to the non-compliance established in this Decision.

(592) In order to ensure compliance with Article 39 of Regulation (EU) 2022/2065, the Commission considers that the provider of X should ensure that X's advertisement repository includes a searchable and reliable tool that allows meaningful multicriteria queries, including through fully functional and effective APIs, allowing supervision and research into emerging risks by the distribution of advertising online. To that end, the Commission considers that the action plan that the provider of X will be obliged to draw up and communicate to the Commission, in accordance with Article 75(2) of Regulation (EU) 2022/2065 and as specified in recital 597 below, should consider the following changes to the measures described in Section 5.2:

(a) changing the design and implementation of X's advertisement repository in a way that allows multicriteria queries based on at least all the information related to advertisements listed in Article 39(2) of Regulation (EU) 2022/2065;

(b) providing search results in a way that they are accessible in a specific section of X's online interface without relying on a third-party software;

(c) changing the design and implementation of X's advertisement repository in a way that the response time of the online interface is reduced such that the tool is searchable;

(d) changing the design and implementation of X's advertisement repository in a way that the search results provided by the search tool are reliable and provide at least all the information listed in Article 39(2) of Regulation (EU) 2022/2065 for the entire period during which they present an advertisement and until one year after the advertisement was presented for the last time on the provider of X's online interface; and

(e) changing the design and implementation of X's advertisement repository in a way that there are no technical or contractual limitations that prevent the availability of information on that repository through APIs.

9.2.3. Measures to comply with Article 40(12) of Regulation (EU) 2022/2065

(593) It is necessary for the provider of X to bring its non-compliance with Article 40(12) of Regulation (EU) 2022/2065 established in section 6 of this Decision to an end under the procedure set out in Article 75 of that Regulation. It shall also refrain from repeating any act of conduct having the same or equivalent object or effect to the non-compliance identified in this Decision.

(594) In order to ensure compliance with Article 40(12) of Regulation (EU) 2022/2065, the Commission considers, pursuant to Article 73(3) of that Regulation, that the provider

of X should take all the necessary steps to give Qualified Researchers access without undue delay to data, including where technically possible, real-time data, that is publicly accessible in X's online interface in a manner that effectively enables Qualified Researchers to carry out research that contributes to the detection, identification and understanding of systemic risks in the Union pursuant to Article 34(1). To that end, the Commission considers that the action plan that the provider of X will be obliged to draw up and communicate to the Commission, in accordance with Article 75(2) of Regulation (EU) 2022/2065 and as specified in recital 597 below, should consider the following changes to the measures described in Section 6.2:

(a) refraining from imposing eligibility requirements preventing Qualified Researchers from accessing data that is publicly accessible in X's online interface, in particular by:

(1) refraining from rejecting data access applications without assessing them based on an adequate and up-to-date expertise of the state of the art of research contributing to the detection, identification and understanding of systemic risks in the Union pursuant to Article 34(1) of Regulation (EU) 2022/2065;

(2) refraining from imposing eligibility requirements related to the institutional affiliation and geographic location of researchers which go beyond the requirements of Article 40(12) of Regulation (EU) 2022/2065;

(b) giving Qualified Researchers free-of-charge access to the X API without undue delay, including by refraining from aligning the timelines of applications submitted on different dates;

(c) giving Qualified Researchers access without undue delay to the volumes of data that are necessary and proportionate for the purposes of their research, including by stating publicly the standard API quotas granted to successful applicants by default, thus enabling applicants to request extensions of these quotas in their initial applications, and by swiftly assessing the need for such extensions when they are requested;

(d) refraining from contractually prohibiting Qualified Researchers from independently accessing data that is publicly accessible in X's online interface, such as by means of data scraping, including by adapting the wording of X's terms of service.

9.2.4. Enhanced supervision system of remedies to address infringements of obligations laid down in section 5 of Chapter III of Regulation (EU) 2022/2065

(595) In accordance with Article 73(4) of Regulation (EU) 2022/2065, the provider of X shall provide the Commission with a description of the measures it has taken to ensure compliance with Articles 25, 39 and 40(12), as set out in sections 4, 5 and 6 of this Decision, upon their implementation.

(596) In addition, in accordance with Article 75(2) of Regulation (EU) 2022/2065, the provider of X shall draw up and communicate to the Digital Services Coordinators, the Commission, and the Board, an action plan setting out the necessary measures which are sufficient to terminate or remedy the infringements of Articles 39 and 40(12) of that Regulation. Those measures shall include a commitment to perform an independent audit in accordance with Article 37(3) and (4) of Regulation (EU)

2022/2065 on the implementation of the other measures, and shall specify the identity of the auditors, as well as the methodology, timing and follow-up of the audit.

(597) The aforementioned action plan shall be communicated to the Digital Services Coordinators, the Commission, and the Board within 90 working days as from receipt of this Decision.

10. FINES

10.1. Principles

(598) Pursuant to Article 74(1), point (a), of Regulation (EU) 2022/2065, the Commission may impose by decision fines on the provider of a very large online platform or of a very large search engine where it finds that that provider intentionally or negligently fails to comply with the relevant provisions of that Regulation. Fines under Regulation (EU) 2022/2065 are ultimately aimed at ensuring effective compliance by providers of very large online platforms or of very large search engines with their obligations under applicable laws and the prevention of non-compliant conduct that could undermine the objectives of applicable law (i.e., in the present case Regulation (EU) 2022/2065).

(599) Pursuant to Article 74(4) of Regulation (EU) 2022/2065, in fixing the amount of the fine, the Commission shall have regard to the nature, gravity, duration, and recurrence of the infringement. In general, fines shall be effective, proportionate, and dissuasive.[608] The Commission must ensure that any aggravating or mitigating circumstances are also reflected in the fines imposed. In doing so, the Commission must set the fines at a level sufficient to ensure deterrence.

(600) Any fine imposed by the Commission shall not exceed 6% of the provider's total worldwide annual turnover in the preceding financial year. Pursuant to Article 3, point x, of Regulation (EU) 2022/2065, the notion of turnover is to be understood as the amount derived by an undertaking within the meaning of Article 5(1) of Council Regulation (EC) No 139/2004. Additionally, the Commission must ensure that its fines are compatible with the principles of equal treatment and proportionality,[609] while having, at the same time, the necessary deterrent effect.[610]

10.2. Intent or negligence

(601) As mentioned in recital 598 above, a fine may be imposed on a provider of a very large online platform or of a very large search engine that '*intentionally or negligently*' infringes the relevant provisions of Regulation (EU) 2022/2065.

10.2.1. The Commission's Preliminary Findings

(602) In its Preliminary Findings, the Commission found that the conduct described in sections 4.2, 5.2 and 6.2 above constitutes three separate infringements of Regulation (EU) 2022/2065 and that, therefore, fines should be imposed on the provider of X for

608 Judgment of 8 July 2020, *VQ v European Central Bank*, Case T 203/18, EU:T:2020:313, Judgment of 8 July 2020, *CA Consumer Finance v European Central Bank*, Case T-578/18, EU:T:2020:306 and Judgment of 8 July 2020, *Crédit Agricole v European Central Bank*, Case T-576/18, EU:T:2020:304.

609 See, for instance and by analogy, Judgment of 9 September 2015, Case T-92/13, *Philips v Commission*, EU:T:2015:605, paragraph 194 and the case-law cited therein.

610 See, for instance and by analogy, Judgment of 13 July 2011, Case T-59/07, *Polimeri Europa v Commission*, EU:T:2011:361, paragraph 243 and the case-law cited therein.

each of these infringements separately in accordance with Article 74(1), point (a), of Regulation (EU) 2022/2065.

(603) As follows from the descriptions in sections 4.3, 5.3 and 6.3 above, the provider of X has acted intentionally or at the very least negligently in relation to each of the infringements identified in those sections. The provider of X could not have been unaware that the measures described in sections 4.2, 5.2 and 6.2 above do not, at first sight, comply with the requirements laid down in Articles 25(1), 39 and 40(12) of Regulation (EU) 2022/2065 respectively. Despite clear obligations stemming from these provisions and the fact that the provider of X is comprised of large entities with experience in compliance and capable of asking for legal advice, the provider of X took the conscious decisions to adopt the measures described in sections 4.2, 5.2 and 6.2 above, which fall short of its legal obligations under Regulation (EU) 2022/2065.

10.2.2. The arguments of the provider of X

(604) In its Reply to the Preliminary Findings on the matter of intent or negligence, the provider of X does not specifically address each non-compliance preliminarily established in the Preliminary Findings, but rather argues in general that Articles 25(1), 39 and 40(12) of Regulation (EU) 2022/2065 do not contain clear obligations, at least in respect of the alleged infringements covered by the Preliminary Findings. In particular, the provider of X argues that: (i) the wording of these provisions is often vague; (ii) the Commission stretches the provisions *'well beyond their natural meaning*'; (iii) there is an absence of case-law or decisional practice; and (iv) the Commission has provided no substantive guidance.[611] The provider of X contests that it has relevant compliance experience that would justify a fine as Regulation (EU) 2022/2065 is a new tool.[612] The provisions at stake would allow for different interpretations and compliance solutions, as confirmed by the Audit Report for X.[613] The provider of X further argues that it has '*always acted in good faith*' and continues to have '*all the reasons to believe*' that its practices were in full compliance with Regulation (EU) 2022/2065.[614] Even if the provider of X had acted intentionally or negligently (quod non), the novelty of the instrument should refrain the Commission from imposing fines.[615]

10.2.3. The Commission's assessment of the provider of X's arguments

(605) The arguments put forward by the provider of X do not call into question the Commission's preliminary finding that the provider of X acted intentionally or at the very least negligently in relation to the infringements identified in this Decision.

(606) The provider of X's unfounded claims that the obligations at stake lack clarity and that the Commission has failed to provide guidance have been addressed in sections 4.5, 5.5 and 6.5 above. As regards the novelty of Regulation (EU) 2022/2065, it in no way excludes the intentional or at the very least negligent behaviour of the provider of X. In any event, compliance with new legislation requires regulated entities to carefully assess their new obligations and to ensure compliance with them from the moment they start to apply. If the provider of X's argument on this point were accepted, it

611 Reply to the Preliminary Findings, paragraph 348 (DSA.100101, Doc ID 233; DSA.100102, Doc ID 337-2; DSA.100103, Doc ID 289-2).

612 Reply to the Preliminary Findings, paragraph 349.

613 Reply to the Preliminary Findings, paragraph 350.

614 Reply to the Preliminary Findings, paragraph 352.

615 Reply to the Preliminary Findings, paragraph 356.

would effectively delay the full entry into application of Regulation (EU) 2022/2065, contrary to the will of the Union legislature to apply that regulation as quickly as possible to very large online platforms and very large online search engines.[616] While the novelty of Regulation (EU) 2022/2065 can be taken into account as a mitigating factor when setting the level of fines, this circumstance alone does not bar the Commission from imposing fines in the first place. The Audit Report for X also does not change the Commission's conclusions on the provider of X's intent or at the very least negligence. As pointed out in recital 246 above, the purpose of the annual audit is to contribute and inform the Commission in its supervision and enforcement activities under Regulation (EU) 2022/2065. However, this does not mean that the Commission must accept at face-value the outcome of such an audit. particularly when an audit does not include conclusions on obligations that are covered by the Commission's proceedings. Lastly, the provider of X has close to two decades of experience in providing researchers access to publicly accessible data, so it should not have been difficult for it to assess what measures would ensure compliance with Article 40(12) of Regulation (EU) 2022/2065.[617]

(607) It follows that the provider of X could not have been unaware that it was infringing Articles 25(1), 39 and 40(12) of Regulation (EU) 2022/2065 and that it acted intentionally or, at the very least, negligently in doing so.

10.3. Calculation of the fine

10.3.1. Nature of the infringements

10.3.1.1. The Commission's Preliminary Findings

(608) In its Preliminary Findings, the Commission found that the nature of the infringements of Articles 25(1), 39 and 40(12) of Regulation (EU) 2022/2065 by the provider of X is particularly serious.

(609) As regards Article 25(1) of Regulation (EU) 2022/2065, while the provider of X significantly weakened the verification process that the provider of Twitter had initially put in place for users to obtain a 'verified' status, it intentionally maintained the design features of the 'verified' status put in place by the provider of Twitter so as to deceive the recipients of X in relation to the identity, notability and authenticity of 'verified' accounts.[618] As regards Article 39 of Regulation (EU) 2022/2065, the provider of X intentionally designed and implemented the search tool of its advertisement repository in such a way that significantly weakens the searchability of that repository and its practical usefulness.[619] As regards Article 40(12) of Regulation (EU) 2022/2065, the provider of X took the deliberate decision to dismantle the Twitter Academic API program, which was available to academic researchers until the spring of 2023, without providing for an adequate replacement, and failed to give Qualified Researchers access to data that is publicly accessible in X's online interface.

10.3.1.2. The arguments of the provider of X

(610) In its Reply to the Preliminary Findings, the provider of X claims that the Commission's preliminary finding of 'particular seriousness' regarding the nature of

616 See Order in Case C-639/23 P(R), *Commission v Amazon Services Europe*, EU:C:2024:277, paragraph 162.

617 See in particular recitals 291, 422 to 427, 433 above.

618 See recitals 97 to 102 above.

619 See recitals 177 to 212 above.

the infringements lacks context and quantification.[620] The provider of X argues that the Commission merely described the infringements which would be insufficient to assess their nature.[621] The provider of X also states that there is no internal ranking of seriousness within Regulation (EU) 2022/2065 and that the Preliminary Findings do not argue that the allegedly infringed substantive provisions of the DSA are somehow more important than others.[622]

10.3.1.3. The Commission's assessment of the provider of X's arguments

(611) Contrary to what the provider of X claims, the Commission's assessment of the nature of the infringements does not lack context or quantification. Article 74 of Regulation (EU) 2022/2065 is inspired by Article 23 of Regulation 1/2003 and the decisional practice of the Commission in antitrust cases. Consequently, when determining the appropriate amount of fine to be imposed on providers of very large online platforms and of very large online search engines for infringements of Regulation (EU) 2022/2065, the Commission relies by analogy on a well-established methodology construed by Union courts in the field of Union competition law, including fines for infringements of the obligations set out in Regulation 139/2004 on the control of concentrations between undertakings.[623] Those courts have already clarified that, in the absence of guidelines, the Commission fulfils its obligation to state reasons by showing clearly and unequivocally the factors taken into account when imposing a fine.[624] The Commission recalls in this respect that the seriousness of an infringement has been considered as a parameter to ascertain the nature of an infringement in its decisional practice in antitrust proceedings.[625]

(612) The assessment of seriousness is a qualitative, rather than quantitative, assessment and it plays in relation to establishing both the nature and the gravity of the infringements. In this context, by describing the specific infringements the Commission illustrated the manner in which they negatively affect the objectives pursued by Regulation (EU) 2022/2065. Regulation (EU) 2022/2065 is a central element of the policy developed by the Union legislature in the digital sector. In the context of that policy, Regulation (EU) 2022/2065 pursues objectives of great importance, since it seeks, as is apparent from Article 1 thereof, to contribute to the proper functioning of the internal market and to ensure a safe, predictable and trusted online environment that facilitates innovation and in which fundamental rights enshrined in the Charter are effectively protected.[626] With Regulation (EU) 2022/2065, the Union legislature considered that very large online platforms and very large online search engines play an important role

620 Reply to the Preliminary Findings, paragraph 357.

621 Reply to the Preliminary Findings, paragraph 359.

622 Reply to the Preliminary Findings, paragraph 359.

623 Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings ("Merger Regulation") OJ L 24, 29.1.2004, pp. 1–22.

624 *See* judgements of 18 May 2022, Canon v. Commission, T-609/19, EU:T:2022:299, paragraph 435 and the case-law cited; and of 17 December 2014, Pilkington Group and Others v Commission (T-72/09, not published, EU:T:2014:1094, paragraphs 247 and 248 and the case-law cited).

625 *See e.g.*, Case AT.40178 – CAR EMISSIONS, paragraph 223; Case M.8181 MERCK / SIGMA-ALDRICH, paragraph 473; Case M.7993 - ALTICE / PT PORTUGAL, paragraph 573; Case M.8228 - FACEBOOK / WHATSAPP, paragraph 97; Case M.4994 - ELECTRABEL / COMPAGNIE NATIONALE DU RHONE, paragraph 188.

626 Order of the Vice President of the Court of 27 March 2024 in Case C-639/23 P(R), European Commission vs. Amazon Services Europe, EU:C:2024:277, paragraph 155. See also Order of the President of the General Court of 2 July 2024 in Case T-138/24 R, Aylo Freesites Ltd. vs. European Commission, EU:T:2024:431, paragraph 113.

in the digital environment and that they may give rise to risks for society which differ, in terms of their scale and impact, from those attributable to smaller online platforms.[627]

(613) Deceiving recipients of X in relation to the identity, notability and authenticity of 'verified' accounts undermines the effectiveness of Regulation (EU) 2022/2065. Article 25(1) of Regulation (EU) 2022/2065 constitutes one of the few express prohibitions of specific behaviour in that Regulation. This prohibition is justified by the harmfulness of dark patterns for the autonomy, decision-making, or choice of the recipients of the service, which is detrimental to a safe, predictable and trusted online environment. While Article 25(1) of Regulation (EU) 2022/2065 is addressed to all providers of online platforms, its infringement by the provider of a very large online platform has direct negative effects on a particularly large number of recipients of the service. The resulting uninformed decisions of those recipients can further compound the harm. This direct harm to recipients of the service increases the seriousness of the nature of the infringement of Article 25(1) of Regulation (EU) 2022/2065.

(614) Designing and implementing the search tool of X's advertisement repository in such a way that significantly weakens the searchability of that repository and its practical usefulness equally undermines the effectiveness of Regulation (EU) 2022/2065. An infringement of Article 39 of Regulation (EU) 2022/2065 negatively affects the transparency on the advertisement practices of very large online platforms and of very large online search engines. As clarified in Recital 95 of Regulation (EU) 2022/2065, advertising systems used by very large online platforms and very large online search engines pose particular risks and 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 that platform's or search engine's online interface.[628] The resulting lack of transparency impairs public scrutiny of the advertising market and gives the provider of X an undue advantage as compared to those providers of very large online platforms and of very large online search engines that comply with Article 39 of Regulation (EU) 2022/2065. While Article 39 of Regulation (EU) 2022/2065 is of a procedural nature and its infringement causes indirect harm to recipients of the service, it causes direct harm to those involved in research and supervision.

(615) Rejecting the applications of Qualified Researchers, failing to give Qualified Researchers adequate access without undue delay, and contractually prohibiting Qualified Researchers from independently accessing publicly accessible data also undermine the effectiveness of Regulation (EU) 2022/2065. An infringement of Article 40(12) of Regulation (EU) 2022/2065 hinders research that contributes to the detection, identification, and understanding of systemic risks in the Union. The potential harm resulting from the stifling of legitimate research projects can negatively impact the ability to study and ultimately address such systemic risks. The increased risk profile of very large online platforms and of very large online search engines warrants that they are subject to this increased scrutiny by Qualified Researchers.

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627 Order of the Vice President of the Court of 27 March 2024 in Case C-639/23 P(R), European Commission vs. Amazon Services Europe, EU:C:2024:277, paragraph 159.

628 Order of the Vice President of the Court of 27 March 2024 in Case C-639/23 P(R), European Commission vs. Amazon Services Europe, EU:C:2024:277, paragraph 160. See also Order of the President of the General Court of 2 July 2024 in Case T-138/24 R, Aylo Freesites Ltd. vs. European Commission, EU:T:2024:431, paragraph 117.

Recital 96 of Regulation (EU) 2022/2065 clarifies that the Union legislature considered that "*[i]nvestigations by researchers on the evolution and severity of online systemic risks are particularly important for bridging information asymmetries and establishing a resilient system of risk mitigation*", informing providers, regulators and the public. The objective of this provision is to offer transparency, an overall goal of Regulation (EU) 2022/2065, and scrutiny over the risk management obligations of providers of very large online platforms and of very large online search engines. An infringement of Article 40(12) of Regulation (EU) 2022/2065 undermines the effectiveness of that Regulation as it hampers effective research into the systemic risks in the Union pursuant to Article 34(1) of that Regulation, which can in turn inform and advance the public debate around the risks that stem from the services of very large online platforms and of very large online search engines and the supervisory work of the regulators. An infringement of Article 40(12) of Regulation (EU) 2022/2065 by rejecting the applications of Qualified Researchers and, at the very least, fostering ambiguity regarding the application of a contractual prohibition of independent data access to Qualified Researchers, while knowingly maintaining an application review process that regularly lead to undue delays, frustrates the Union legislature's objective to effectively enable researchers to contribute to a resilient system of risk management. While Article 40(12) of Regulation (EU) 2022/2065 is of a procedural nature and its infringement therefore causes indirect harm to recipients of the service, it causes direct harm to those involved in research and supervision.

(616) Based on the aforementioned considerations, the Commission finds that the nature of the infringement of Article 25(1) of Regulation (EU) 2022/2065 by the provider of X is particularly serious as it violates the prohibition of a specific behaviour that causes direct harm to the recipients of the service and undermines the effectiveness of that Regulation, while the nature of the infringements of Articles 39 and 40(12) of Regulation (EU) 2022/2065 by the provider of X are at least serious as they undermine the effectiveness of that Regulation.

10.3.2. Gravity of the infringements

10.3.2.1. The Commission's Preliminary Findings

(617) In its Preliminary Findings, the Commission found that the gravity of the infringements of Articles 25(1), 39 and 40(12) of Regulation (EU) 2022/2065 by the provider of X is particularly serious and that such infringements can undermine the objectives and effectiveness of that Regulation.

(618) As regards Article 25(1) of Regulation (EU) 2022/2065, the provider of X deceptively designed, organised and operated the 'verified' status for X, an online platform with particular relevance for the political discourse and at a time with multiple consequential elections in the Union. As regards Article 39 of Regulation (EU) 2022/2065, the provider of X intentionally chose to design its advertisement repository in a manner that significantly weakens its searchability and its practical usefulness, thus frustrating the legislature's pursuit of its objective. As regards Article 40(12) of Regulation (EU) 2022/2065, the provider of X has prevented oversight and scrutiny of the systemic risks posed by X in the Union by rejecting the applications of eligible researchers, failing to give Qualified Researchers adequate access without undue delay, and contractually prohibiting Qualified Researchers from independently accessing publicly accessible data.

(619) For all three infringements, their gravity is increased by the widespread use of X in the Union and the fact that the relevant conduct by the provider of X was the same across

the entire Union. The number of active recipients of X in the Union is more than the double the threshold for designation as a very large online platform or as a very large search engine within the meaning of Article 33(1) of Regulation (EU) 2022/2065 (*i.e.*, 45 million active recipients). In fact, X is a social media platform with one of the widest reaches in the Union, as it had over 109 million (109 191 304) average monthly active recipients in the Union and, according to X's transparency report of April 2024, a significant user base proportionate to the population of each Member State in the majority of Member States at the time the Preliminary Findings were adopted.[629] X not only functions as an important source of news and entertainment for its users who upload content and interact with each other, it also offers a relevant forum for political dialogue. Therefore, the infringements of the aforementioned provisions of Regulation (EU) 2022/2065 by the provider of X have a serious impact on a large number of recipients of the service in the Union.

10.3.2.2. The arguments of the provider of X

(620) In its Reply to the Preliminary Findings, the provider of X argues that the Commission simply listed the general objectives of Regulation (EU) 2022/2065 and did not explain how the infringements undermine its effectiveness.[630] The provider of X also considers that the number of users in the Union is not an appropriate reference to assess the gravity of the infringements because this reasoning would presumably apply to '*any provider*' covered by the substantive obligations of Regulation (EU) 2022/2065.[631]

10.3.2.3. The Commission's assessment of the provider of X's arguments

(621) Contrary to what the provider of X claims, the impact of the infringements of Articles 25(1), 39 and 40(12) of Regulation (EU) 2022/2065 on the effectiveness of that Regulation are of central importance for setting the level of fines. The Commission has already addressed these aspects above in relation to the nature of the infringements. The gravity of the infringement is closely linked to the nature of the infringement and should be read in combination with the considerations set out in the preceding paragraphs. For the reasons explained in section 10.3.1.3 of this Decision the Commission finds that the nature of the infringement of Article 25(1) of Regulation (EU) 2022/2065 by the provider of X is particularly serious while the nature of the infringements of Articles 39 and 40(12) of Regulation (EU) 2022/2065 by the provider of X are at least serious as they undermine the effectiveness of that Regulation.

(622) In addition, the infringements of Articles 25(1), 39 and 40(12) of Regulation (EU) 2022/2065 by the provider of X are multifaceted and intentional or, at the very least, negligent. The infringement of Article 25(1) of Regulation (EU) 2022/2065 identified in section 4 of this Decision deceives recipients of the X service in a manner that materially distorts or impairs their ability to make free and informed decisions when they are active online, and not only on the X online platform, thus impacting a central objective of that regulation, namely ensuring a safe, predictable and trusted online environment. The infringement of Article 39 of Regulation (EU) 2022/2065 identified in section 5 of this Decision leads to a lack of advertisement transparency in relation to

629 X, DSA Transparency Report – April 2024, https://transparency.x.com/dsa-transparency-report-2024-april.html, accessed on 7 May 2025 (DSA.100101, Doc ID 195; DSA.100102, Doc ID 258; DSA.100103, Doc ID 222).

630 Reply to the Preliminary Findings, paragraph 360.

631 Reply to the Preliminary Findings, paragraph 360.

X. The infringement of Article 40(12) of Regulation (EU) 2022/2065 identified in section 6 of this Decision harms the oversight and scrutiny of a wide range of systemic risks in the Union in relation to X. The resulting negative impact on the supervision and enforcement of the provider of X's compliance with the obligations in Articles 34 and 35 of Regulation (EU) 2022/2065 increases the seriousness of the infringement of Article 40(12) of that Regulation.

(623) The reach of a service is a relevant element when assessing the gravity of the infringements at stake, as it is an indicator of the level of due diligence that a provider should exercise for its service and of the magnitude of the harm caused by an infringement of that provider's obligations under Regulation (EU) 2022/2065. As already stated in the Preliminary Findings, X is one of the largest social media platforms in the Union with a significant user base across the Union. The service constitutes an important source of news and entertainment and a relevant forum for political dialogue. Even among the very large online platforms designated by the Commission, X has a particularly large user base within the Union that by far surpasses the threshold of 45 million average monthly active recipients. X's transparency reports of October 2024 and April 2025 indicate similar numbers, amounting respectively to over 105 million (105 271 027) and 94 million (94 830 300) average monthly active recipients in the Union.[632] A higher reach also increases the relevance of advertisement transparency and independent research on the risks posed by a specific service. Additionally, while Article 25(1) of Regulation (EU) 2022/2065 applies to all providers of online platforms, irrespective of their number of recipients, the gravity of the infringement increases where more users are deceived and thereby harmed through the actions of a provider. This harm to a particularly large user base within the Union and the potential amplification of posts by malicious actors to a large audience increases the seriousness of the gravity of the infringement of Article 25(1) of Regulation (EU) 2022/2065.

(624) When assessing the gravity of the infringement, the Commission also needs to consider the deterrent effect of fines. The overall fines must have a sufficient deterrent effect in relation to the provider of X, but also in relation to other regulated services to avoid future breaches of Regulation (EU) 2022/2065. In the case of an undertaking of the size and financial capacity of the single economic entity ultimately controlled by Mr. Elon Musk,[633] the amount of the fine must be significant to ensure a deterrent effect.[634] Additionally, the potential economic benefits that the provider of X could draw from non-compliance with Articles 25(1), 39 and 40(12) of Regulation (EU)

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632 X, DSA Transparency Report – October 2024 and DSA Transparency Report – April 2025, https://transparency.x.com/en/reports/dsa-transparency-report, accessed on 7 May 2025 (DSA.100101, Doc ID 295; DSA.100102, Doc ID 388; DSA.100103, Doc ID 331).

633 *See* judgment of 13 February 2025, ILVA A/S, C-383/23, ECLI:EU:C:2025:84, paragraph 36: *'The concept of 'undertaking' must also be taken into account in order to assess the actual or material economic capacity of the recipient of the fine and thus to ascertain whether the fine is at the same time effective, proportionate and dissuasive.'*.

634 The EU Courts have established that the financial strength and size of the company may be taken into account when imposing a fine. *See e.g.*, judgement of 12 December 2012, Electrabel, T-332/09, paragraph 282: '*in determining the amounts of fines, the Commission is entitled to take into account the need to ensure that fines have a sufficient deterrent effect […]. Furthermore, the link between, on the one hand, undertakings' size and global resources and, on the other, the need to ensure that a fine has a deterrent effect cannot be denied. Accordingly, when the Commission calculates the amount of the fine it may take into consideration, inter alia, the size and the economic power of the undertaking concerned*.'.

2022/2065 must be duly considered. Such economic benefits can be seen in any revenues generated by making the Verified Account status available to paying subscribers, the potential undue increase of advertisement business due to a lack of advertisement transparency and due to the obstruction of Qualified Researchers' oversight and scrutiny of the systemic risks posed by X in the Union, as well as additional revenues generated through the fees charged to Qualified Researchers in the absence of free access to publicly accessible data under Article 40(12) of Regulation (EU) 2022/2065.

(625) Based on the above, in relation to the infringements of Articles 25(1), 39 and 40(12) of Regulation (EU) 2022/2065 by the provider of X identified in this Decision the Commission finds each of those infringements to be at least serious.

10.3.3. Duration of the non-compliance

10.3.3.1. The Commission's Preliminary Findings

(626) In its Preliminary Findings, the Commission found that the provider of X's infringements of Articles 25(1), 39, and 40(12) of Regulation (EU) 2022/2065 started on 28 August 2023, that is the date on which all the obligations stemming from the aforementioned provisions of Regulation (EU) 2022/2065 started to apply to that provider in relation to the provision of X in the Union. With regard to the infringement of Article 40(12) of Regulation (EU) 2022/2065, the fact that the additional tools described in recitals 294 to 298 above were put in place after 9 November 2023 does not alter the Commission's finding that the provider of X's infringement of Article 40(12) of Regulation (EU) 2022/2065 is ongoing. At the time of the adoption of the Preliminary Findings, the Commission considered all of the infringements to be ongoing.

10.3.3.2. The arguments of the provider of X

(627) The provider of X did not comment on the duration of the infringements beyond its general denial that such infringements occurred.

10.3.3.3. The Commission's assessment of the provider of X's arguments

(628) In light of the findings in section 8 above and given the lack of arguments put forward by the provider of X contesting the duration of the infringements, the Commission concludes that the provider of X's non-compliance with Articles 25(1), 39 and 40(12) of Regulation (EU) 2022/2065 lasted for at least 27 months.

10.3.4. Recurrence of the infringements

(629) The recurrence factor is not relevant in the present case, since this is the first decision addressed to the provider of X pursuant to Article 73(1) of Regulation (EU) 2022/2065. To date, no other decision pursuant to Articles 73(1) or 74 of Regulation (EU) 2022/2065 has been adopted in relation to the provider of X.

10.3.5. Aggravating circumstances

(630) The Commission considers that there are no aggravating circumstances in this case.

10.3.6. Mitigating circumstances

(631) The Commission considers that the novelty of Regulation (EU) 2022/2065 and the fact that the present Decision is the first non-compliance decision adopted under that Regulation constitutes a mitigating factor for calculating the fines imposed on the provider of X for the three infringements at stake. Regulation (EU) 2022/2065 has

established a new framework governing the provision of intermediary services in the internal market, including the obligations applicable to very large online platforms and to very large online search engines. The Commission considers that this should be taken into account when assessing the level of the fine for the provider of X's non-compliance with Articles 25(1), 39 and 40(12) of Regulation (EU) 2022/2065 at this point in time. The Commission therefore takes this factor into account when calculating the fine.

10.3.7. Conclusion

(632) In view of the above, the Commission considers that the provider of X has intentionally or, at the very least, negligently infringed Articles 25(1), 39 and 40(12) of Regulation (EU) 2022/2065. These infringements are of a serious nature in relation to Articles 39 and 40(12) of Regulation (EU) 2022/2065 and of a particularly serious nature in relation to Article 25(1) of that Regulation, and of a serious gravity and of a medium duration for all infringements. Finally, the Commission has taken into account the mitigating circumstance that this Decision is the first non-compliance decision adopted under Regulation (EU) 2022/2065.

10.4. The relevant turnover

(633) Pursuant to Article 74(1) of Regulation (EU) 2022/2065, where the Commission finds that a provider of a very large online platform or of a very large online search engine, intentionally or negligently, infringes the relevant provisions of this Regulation, the fine that it imposes for the infringement shall not exceed 6% of the total worldwide annual turnover of the provider in the preceding financial year. Article 3, point x, of Regulation (EU) 2022/2065 defines the notion of 'turnover' as the amount derived by an undertaking within the meaning of Article 5(1) of Council Regulation (EC) No 139/2004. Accordingly, Article 5(1) of Council Regulation (EC) No 139/2004, turnover shall *'comprise the amounts derived by the undertakings concerned in the preceding financial year from the sale of products and the provision of services falling within the undertakings' ordinary activities after deduction of sales rebates and of value added tax and other taxes directly related to turnover'*.

(634) Article 5(4) of Council Regulation (EC) No 139/2004 further elaborates on the notion of aggregate turnover of the undertaking concerned indicating that it '*shall be calculated by adding together the respective turnovers of the following: (a) the undertaking concerned; (b) those undertakings in which the undertaking concerned, directly or indirectly: (i) owns more than half the capital or business assets, or (ii) has the power to exercise more than half the voting rights, or (iii) has the power to appoint more than half the members of the supervisory board, the administrative board or bodies legally representing the undertakings, or (iv) has the right to manage the undertakings' affairs; (c) those undertakings which have in the undertaking concerned the rights or powers listed in (b); (d) those undertakings in which an undertaking as referred to in (c) has the rights or powers listed in (b); (e) those undertakings in which two or more undertakings as referred to in (a) to (d) jointly have the rights or powers listed in (b).*'

(635) By referring to the notion of turnover of the undertaking concerned employed in Council Regulation (EC) No 139/2004, Regulation (EU) 2022/2065 incorporates, for the purpose of imposing a fine, a concept already established by competition law as interpreted by the Union courts. This incorporation requires the Commission, when determining the total worldwide annual turnover of the provider for the 6% ceiling that apply when levying a fine, to consider that provider as an undertaking, including as a

single economic unit,[635] within the meaning of Articles 101 and 102 TFEU, as construed by the case law of the Union courts.[636]

(636) The provider of X argues in its Reply to the Preliminary Findings that only TIUC is the addressee of the Designation Decision and that therefore the only entity relevant for the purpose of calculating the ceiling of a potential fine is that subsidiary, just as it was the relevant entity for the determination of the supervisory fee.[637] That argument contradicts the explicit reference to the notion of 'turnover' in Article 3(x) of Regulation (EU) 2022/2065 and its reference to the notion of 'undertaking concerned' within the meaning of Article 5(1) of Council Regulation (EC) No 139/2004.[638] With the use of that notion and that reference, the Union legislature made clear that the ceiling for any fine imposed pursuant to Article 74 of Regulation (EU) 2022/2065 should take into account the financial capacity of the single economic unit providing the intermediary service in the Union and not just that of the legal entity of that unit operating in the Union. That argument also misrepresents the determination of the supervisory fee for X,[639] which follows a different methodology as set out in Commission Delegated Regulation (EU) 2023/1127. Not only can that methodology for determining the ceiling for the supervisory fee, set out in Article 43 of Regulation (EU) 2022/2065 not inform the calculation of the ceiling for the imposition of fines pursuant to Article 74 of Regulation (EU) 2022/2065, but the provider of X is also wrong to claim that it ceiling was determined on the basis of TIUC's consolidated net profit. Finally, contrary to the provider of X's claim, relying on the notion of 'undertaking' for calculating the 6% ceiling that applies to fines is not '*arbitrary, unfair and disproportionate*',[640] but mandated by Regulation (EU) 2022/2065.

(637) As explained in section 3 above, the Commission considers the provider of X to be the single economic unit ultimately controlled by Mr. Elon Musk. Since the notion of single economic unit is transposable to the notion of undertaking used in competition law and referenced in Article 3(x) of Regulation (EU) 2022/2065, the Commission considers that the relevant turnover for the purposes of calculating the 6% ceiling laid down in Article 74 of Regulation (EU) 2022/2065 is the total worldwide turnover of the single economic unit ultimately controlled by Mr. Elon Musk.

(638) In response to the sixth RFI, the provider of X only supplied information on the consolidated turnover of X Holdings Corp., which that provider considers to constitute the relevant undertaking for the purposes of Article 3(x) of Regulation (EU) 2022/2065. That turnover amounted to USD [redacted][641] (approx. EUR [redacted])[642] in 2024.

(639) Despite having been requested to do so, the provider of X did not provide any information on the total worldwide annual turnover for the single economic unit ultimately controlled by Mr. Elon Musk. Nor did it provide information on the total

635 *See* judgment of 13 February 2025, ILVA A/S, C-383/23, ECLI:EU:C:2025:84, paragraph 22.

636 Similarly, the Court of Justice has already clarified that for the specific context of the calculation of administrative fines imposed pursuant the General Data Protection Regulation, the concept of undertaking is to be understood within the meaning of Articles 101 and 102 TFEU. *See* judgment of 13 February 2025, ILVA A/S, C-383/23, ECLI:EU:C:2025:84, paragraph 21 and the case-law cited.

637 Reply to the Preliminary Findings, paragraph 365.

638 *See* judgment of 13 February 2025, ILVA A/S, C-383/23, ECLI:EU:C:2025:84, paragraph 36.

639 Article 63 of Regulation (EU) 2022/2065.

640 Reply to the Preliminary Findings, paragraph 364.

641 Reply to the sixth RFI, question 14.

642 ECB exchange rate for 2024 is on average USD 1 = EUR 0.9239.

worldwide annual turnover of X.AI Holdings Corp. for that matter. None of this information is in any event publicly available either.

(640) This absence of information should be considered when determining whether the amount of the fine remains within the limits of the maximum fine cap of 6 % of the total worldwide annual turnover for the single economic unit ultimately controlled by Mr. Elon Musk.

10.5. Amount of the fine

(641) In view of the criteria described in recitals 601 to 632 above, the Commission considers it appropriate to impose fines pursuant to Article 74(1), point (a) of Regulation (EU) 2022/2065 representing

– EUR 45 000 000 for the infringement of Article 25(1),

– EUR 35 000 000 for the infringement of Article 39, and

– EUR 40 000 000 for the infringement of Article 40(12) of Regulation (EU) 2022/2065.

(642) X Holdings Corp.'s total worldwide annual turnover in 2024, the financial year preceding the adoption of this Decision, was USD [redacted] [643] (approx. EUR [redacted])[644]. The total worldwide annual turnover of the single economic entity ultimately controlled by Mr. Elon Musk is likely to lay far above this amount. None of the individual fines imposed for the three infringements of Regulation (EU) 2022/2065 surpasses 6% of the total worldwide annual turnover of the single economic unit ultimately controlled by Mr. Elon Musk, which is the maximum fine that can be imposed pursuant to Article 74(1) of Regulation (EU) 2022/2065, let alone 6% of the total worldwide annual turnover of X Holdings Corp.

(643) The total level of the fine for each infringement is also proportionate, since it represents a relatively small proportion of the total worldwide annual turnover of the single economic unit ultimately controlled by Elon Musk, let alone X Holdings Corp.'s total worldwide annual turnover (approx. [redacted]% for the infringement of Article 25(1), [redacted]% for the infringement of Article 39 and [redacted]% for the infringement of Article 40(12) of Regulation (EU) 2022/2065). At the same time, the fine can still be considered sufficiently deterrent in relation to the single economic entity ultimately controlled by Mr. Elon Musk.

(644) In any event, the total amount of the three fines together, i.e. EUR 120 000 000 , does not exceed the 6% of the total worldwide annual turnover of the single economic unit ultimately controlled by Elon Musk or that of X Holdings Corp, even though the ceiling should be applied to the fine imposed for each of the three infringements individually.

11. PERIODIC PENALTY PAYMENTS

11.1. Principles

(645) Pursuant to Article 76(1), point e, of Regulation (EU) 2022/2065, the Commission may adopt a decision imposing on the provider of the very large online platform or of the very large online search engine concerned periodic penalty payments not

643 Reply to the sixth RFI, question 14.

644 ECB exchange rate for 2024 is on average USD 1 = EUR 0.9239.

exceeding 5% of their average daily income or worldwide annual turnover in the preceding financial year per day, calculated from the date appointed by that decision, in order to compel them to comply with a decision pursuant to Article 73(1) of that Regulation, including where applicable the requirements it contains relating to the action plan referred to in Article 75 of that Regulation.

(646) Pursuant to Article 75(4) of Regulation (EU) 2022/2065, when making use of the enhanced supervision system, the Commission may adopt periodic penalty payments where: (a) the provider of the very large online platform or of the very large online search engine concerned fails to provide any action plan, the audit report, the necessary updates or any additional information required, within the applicable period; (b) the Commission rejects the proposed action plan because it considers that the measures set out therein are insufficient to terminate or remedy the infringement; or (c) the Commission considers, on the basis of the audit report, any updates or additional information provided or any other relevant information available to it, that the implementation of the action plan is insufficient to terminate or remedy the infringement.

11.2. Application to this case

(647) In view of the seriousness of the provider of X's infringements of Articles 25(1), 39, and 40(12) of Regulation (EU) 2022/2065, as established in this Decision, and considering that the infringements of Articles 25(1), 39 and 40(12) of that Regulation have been found to be ongoing, the Commission concludes that it is necessary to impose periodic penalty payments pursuant to Article 76(1) of that Regulation on the provider of X, if that provider fails to: (i) implement measures that bring the infringement of Article 25(1) of that Regulation effectively to an end within 90 working days from the date of notification of this Decision; (ii) notify the Commission within 60 working days from the date of notification of this Decision of the specific measures by means of which the provider intends to bring the infringement of Article 25(1) of that Regulation effectively to an end and prevent the recurrence of that infringement; and (iii) draw up and communicate to the Digital Services Coordinators, the Commission, and the European Board for Digital Services within 90 working days from the date of notification of this Decision an action plan setting out the necessary measures which are sufficient to terminate or remedy the infringements of Articles 39 and 40(12) of that Regulation.

(648) Concerning the infringements of Articles 39 and 40(12) of Regulation (EU) 2022/2065, the Commission also concludes that it is necessary to impose periodic penalty payments on the provider of X, if that provider fails to take the steps listed in Article 75(4) of that Regulation relating to the action plan.

(649) The provider of X raises the same arguments against the imposition of periodic penalty payments as it does against the imposition of fines. However, Regulation (EU) 2022/2065 pursues objectives of great importance. Each day of continued non-compliance by the provider of X with Articles 25(1), 39 and 40(12) of Regulation (EU) 2022/2065 further compounds the resulting harm for society. Consequently, the imposition of periodic penalty payments is warranted.

(650) Any periodic penalty payment that may be definitively set should be sufficient to ensure compliance by the provider of X with this Decision and may take account of the provider of X's significant financial resources (see recital 637 of this Decision).

HAS ADOPTED THIS DECISION:

Article 1

The provider of X has not complied with Article 25(1) of Regulation (EU) 2022/2065 by deceptively designing, organising and operating X's online interface in relation to the 'verified' status feature of that service in a manner that materially distorts or impairs the ability of recipients of that service to make free and informed decisions regarding the authenticity and reliability of accounts on that service. Such non-compliance has commenced on 28 August 2023 and is ongoing.

Article 2

The provider of X has not complied with Article 39 of Regulation (EU) 2022/2065 by not providing an advertising repository, publicly available in a specific section of its online interface, through a searchable and reliable tool that allows multicriteria queries and through an application programming interface pursuant to Article 39(1) of Regulation (EU) 2022/2065 to obtain all the information on advertisements required by Article 39(2) of that Regulation for the entire period during which they present an advertisement and until one year after the advertisement was presented for the last time on its interface. Such non-compliance has commenced on 28 August 2023 and is ongoing.

Article 3

The provider of X has not complied with Article 40(12) of Regulation (EU) 2022/2065 by not giving access, without undue delay, to data that is publicly accessible on X's online interface to researchers qualifying for access pursuant to that provision. Such non-compliance has commenced on 28 August 2023 and is ongoing.

Article 4

For the infringement referred to in Article 1, a fine of EUR 45 000 000 is imposed on X Internet Unlimited Company jointly and severally with X Holdings Corp., X.AI Holdings Corp., and Mr. Elon Musk.

For the infringement referred to in Article 2, a fine of EUR 35 000 000 is imposed on X Internet Unlimited Company jointly and severally with X Holdings Corp., X.AI Holdings Corp., and Mr. Elon Musk.

For the infringement referred to in Article 3, a fine of EUR 40 000 000 is imposed on X Internet Unlimited Company jointly and severally with X Holdings Corp., X.AI Holdings Corp., and Mr. Elon Musk.

The fines shall be credited, in euros, within three months from the date of notification of this Decision, to the following bank account held in the name of the European Commission:

[redacted]

After the expiry of that period, interest shall automatically be payable at the interest rate applied by the European Central Bank to its main refinancing operations on the first day of the month in which this Decision is adopted, plus 3.5 percentage points.

Where an action pursuant to Article 263 of the Treaty is brought before the Court of Justice of the European Union against this Decision, the fines shall be covered by their due date, either by providing an acceptable financial guarantee or by making a provisional payment of the fines in accordance with Article 108 of Regulation (EU, Euratom) 2024/2509 of the European Parliament and of the Council.[645]

Article 5

The provider of X shall bring effectively to an end the infringements referred to in Articles 1, 2 and 3 in so far as it has not already done so.

The provider of X shall refrain from repeating any act or conduct described in Articles 1, 2 and 3, and from any act or conduct having the same or an equivalent effect.

Article 6

As regards the conduct described in Article 1, the provider of X shall (i) notify the Commission, within 60 working days from the date of notification of this Decision, of the specific measures through which it intends to comply with this Decision; and (ii) bring the infringement effectively to an end and prevent the recurrence of that infringement within 90 working days from the date of notification of this Decision.

Article 7

As regards the conducts described in Articles 2 and 3, the provider of X shall draw up an action plan setting out the necessary measures which are sufficient to terminate or remedy the infringements in accordance with Article 75(2) of Regulation (EU) 2022/2065.

The provider of X shall communicate the aforementioned action plan to the Digital Services Coordinators, the Commission, and the Board within 90 working days from the date of notification of this Decision.

Article 8

If the provider of X fails to comply with the orders set out in Articles 5, 6 or 7, it shall incur periodic penalty payments not exceeding the limit laid down in Article 76(1) of Regulation (EU) 2022/2065 from the date on which it is required to effectively comply with the orders set out in Articles 5, 6, or 7 until the date on which it complies with this Decision.

Article 9

This Decision is addressed to:

(a) X Internet Unlimited Company, One Cumberland Place, Fenian St, Dublin 2, D02 AX07, Ireland;

[645] Regulation (EU, Euratom) 2024/2509 of the European Parliament and of the Council of 23 September 2024 on the financial rules applicable to the general budget of the Union (OJ L 2024/2509, 26.9.2024).

(b) X Holdings Corp., 800 N STATE ST STE 304, DOVER, DE 19901-3925, United States of America;

(c) X.AI Holdings Corp., 1450 Page Mill Road, Palo Alto, California 94304, United States of America; and

(d) Mr. Elon Musk, as the natural person ultimately controlling the group of companies to which X Internet Unlimited Company, X Holdings Corp. and X.AI Holdings Corp. belong, Excession LLC, 2110 Ranch Road 620 South, #341886, Austin TX 78734, United States of America.

This Decision shall be enforceable pursuant to Article 299 of the TFEU.

Done at Brussels, 5.12.2025

For the Commission

Henna Virkkunen
Executive Vice-President

CERTIFIED COPY
For the Secretary-General

Martine DEPREZ
Director
Decision-making & Collegiality
EUROPEAN COMMISSION