

Cases C-496/23 P and C-497/23 P

Meta Platforms Ireland Ltd, formerly Facebook Ireland Ltd
v
European Commission

(Appeal – Competition – Article 102 TFEU – Abuse of a dominant position – Data market – Administrative procedure – Regulation (EC) No 1/2003 – Article 18(3) – Decision to request information – Necessity of the information requested – Proportionality – Right to respect for private life – Virtual data room – Principle of good administration – Professional secrecy)

Introduction

1. By its appeals, Meta Platforms Ireland Ltd (‘the appellant’) seeks annulment of the judgments of the General Court of the European Union of 24 May 2023, *Meta Platforms Ireland v Commission* (T-452/20, ‘the first judgment under appeal’, EU:T:2023:277), and *Meta Platforms Ireland v Commission* (T-451/20, ‘the second judgment under appeal’, EU:T:2023:276), by which the General Court dismissed its applications for the annulment of European Commission decisions requesting information under Article 18(3) and Article 24(1)(d) of Regulation (EC) No 1/2003, (2) concerning the provision of internal documents of the appellant held by its senior staff produced over a number of years and identified on the basis of the search terms set out in those decisions (‘the decisions at issue’). (3)
2. The present appeals invite the Court to clarify the extent of the Commission’s power to request information from undertakings by means of electronic searches based on a combination of search terms, including personal or confidential commercial information.

Legal framework

3. Article 18 of Regulation No 1/2003, entitled ‘Requests for information’, states in paragraphs 1 to 3:
 - ‘1. In order to carry out the duties assigned to it by this Regulation, the Commission may, by simple request or by decision, require undertakings and associations of undertakings to provide all necessary information.
 2. When sending a simple request for information to an undertaking or association of undertakings, the Commission shall state the legal basis and the purpose of the request, specify what information is required and fix the time limit within which the information is to be provided, and the penalties provided for in Article 23 for supplying incorrect or misleading information.

3. Where the Commission requires undertakings and associations of undertakings to supply information by decision, it shall state the legal basis and the purpose of the request, specify what information is required and fix the time limit within which it is to be provided. It shall also indicate the penalties provided for in Article 23 and indicate or impose the penalties provided for in Article 24. It shall further indicate the right to have the decision reviewed by the Court of Justice [of the European Union].’

The background to the dispute and the judgments under appeal

4. Following the first two series of requests for information, to which the appellant had replied on a number of occasions, (4) the Commission adopted, on 4 May 2020, the two initial Facebook Marketplace and Facebook Data decisions ordering the appellant to provide it with the requested information, failing which a penalty payment for failure to provide the complete and accurate information requested would be imposed. (5)

5. On 15 July 2020, the appellant brought actions against those decisions before the General Court and, separately, applied for interim measures, following which the President of the General Court, after ordering the implementation of those decisions to be suspended until the date of the orders terminating the proceedings for interim relief, made orders dated 29 October 2020 requiring the implementation of those decisions to be suspended, in so far as the obligation set out in those decisions related to documents which did not relate to the appellant’s business activities and which contained sensitive personal data (‘the protected documents’), for as long as the virtual data room procedure envisaged in those orders had not been put in place. (6)

6. On 11 December 2020, the Commission adopted the amending Facebook Marketplace and Facebook Data decisions, which, in addition to ordering the appellant to provide it with the requested information, failing which a penalty payment would be imposed, incorporated the virtual data room procedure envisaged in the orders for interim measures as regards the production of protected documents.

7. On 8 February 2021, the appellant, on the basis of Article 86 of the Rules of Procedure of the General Court, modified its applications to take into account the adoption of those decisions.

8. By the judgments under appeal, the General Court dismissed the actions brought by the appellant in their entirety, thereby rejecting the three pleas in law on which it had relied alleging, first, a failure to state reasons, second, an infringement of Article 18 of Regulation No 1/2003, of the rights of the defence and a misuse of powers and, third, infringements of the right to respect for private life, the principle of proportionality and the right to good administration.

The procedure before the Court of Justice and the forms of order sought by the parties

9. On 3 August 2023, the appellant lodged two appeals against the judgments under appeal. It claims that the Court should, first, set aside the judgments under appeal, second, set aside the contested decisions or, in the alternative, refer the cases back to the General Court and, lastly, order the Commission to pay the costs.

10. The Commission contends that the Court should dismiss the appeals and order the appellant to pay the costs.

11. The parties presented oral argument and answered the questions put to them by the Court at the hearing held on 26 November 2025.

Analysis

12. The appellant relies on three grounds of appeal in support of its two appeals, alleging, in essence, that the General Court erred in law, first, by holding that certain search terms complied with the principle of necessity, second, by failing to criticise the absence of an overall assessment of compliance by the Commission with the principle of necessity and, third, by holding that the Commission could request documents which contained both personal information and information relating to the

appellant's business activities ('mixed documents'), without providing any safeguards or filter for the personal information. (7)

Preliminary observations

13. In the first place, I note that Article 18(1) of Regulation No 1/2003 enables the Commission, by simple request or by decision, to require undertakings and associations of undertakings to provide *all necessary information* in order to carry out the duties assigned to it by that regulation. (8) Article 18(3) of that regulation provides inter alia that the Commission must state the legal basis and the purpose of the request, specify what information is required and fix the time limit within which it is to be provided.

14. More particularly, according to the Court's case-law, the obligation to state the *purpose of the request for information*, which is a crucial factor in assessing the need for the information, implies that the Commission must necessarily indicate the subject of its investigation in its request, and therefore to identify the alleged infringement of competition rules. However, the Commission is not required to communicate to the addressee of a such a decision all the information at its disposal concerning the presumed infringements, or to make a precise legal analysis of those infringements, providing it clearly indicates the suspicions which it intends to investigate. (9)

15. In that regard, the Commission is entitled to require the disclosure only of information which may enable it to investigate presumed infringements which justify the conduct of the investigation and are set out in the request for information. (10) However, having regard to the broad powers of investigation conferred on it by Regulation No 1/2003, it is for the Commission to decide whether a particular item of information is necessary to enable it to bring to light an infringement of the EU competition rules. (11)

16. In the second place, I note that the judicial review exercised by the EU Courts of the Commission's finding that an item of information is necessary must be judged in relation to the purpose stated in the request for information, namely the suspected infringement which the Commission intends to investigate. The requirement that a correlation must exist between the request for information and the suspected infringement is satisfied if the Commission can reasonably suppose, at the time of the request, that the information may help it to determine whether the infringement has taken place. (12)

17. More specifically, the Court is, first, supposed to assess, in the light of the principle of necessity, whether the correlation between the putative infringement and the information requested is sufficiently close to justify the Commission's request and must, second, in accordance with the principle of proportionality, determine whether or not the efforts required from an undertaking are justified in the public interest and not excessive. (13) To that end, it is necessary to weigh the public interest which justifies the Commission's investigation, and the necessity for that institution of receiving information enabling it to perform the tasks assigned to it by the FEU Treaty against the workload generated for an undertaking by a request for information. (14)

18. In the third and last place, I should point out that the assessment of the facts does not constitute, save where the clear sense of the evidence produced before the General Court is distorted, a question of law which is subject, as such, to review by the Court of Justice, (15) which it is for the appellant to establish, by identifying precisely the elements which were distorted by the General Court and by showing the errors of analysis in the General Court's assessment which led it to such distortion. (16)

19. I shall examine the substance of the appellant's arguments in the light of that case-law.

The first grounds of the appeals, relating to the assessment of the necessity of the information requested by the Commission in the decisions at issue

20. The first grounds of appeal of the two appeals (17) allege that the General Court erred in law in finding that the search terms referred to in the judgments under appeal complied with the principle of necessity enshrined in Article 18(1) and (3) of Regulation No 1/2003. (18) Those grounds of appeal are divided, respectively, into three and four parts. (19)

The relevance of the search terms used by the Commission

21. By the first and second parts of the first ground of appeal in Case C-496/23 P, and by the first and third parts of the first ground of appeal in Case C-497/23 P, the appellant submits that the General Court erred in considering that all the search terms identified in the appeal as ‘Everyday Search Terms’ could be presumed to be necessary to the investigations which led to the decisions at issue (‘the investigations at issue’). (20)

22. In the judgments under appeal, the General Court examined, in essence, the purpose stated in the request for information, namely the suspected infringements which the Commission intended to investigate, (21) and concluded that, having regard to the findings referred to by the Commission, which were not disputed by the appellant, that institution, by asking the appellant to produce the documents resulting from the application of the search terms examined, could reasonably suppose, at the time of the contested decisions that that information could help it to determine whether the conduct referred to took place. (22) The General Court also ruled out the possibility that the search terms examined might not be consistent with the principle of necessity because of the high number of documents identified by applying those terms. (23)

23. In that regard, I would point out, first of all, that the General Court’s assessment of the necessity of the request for information does not constitute, within the meaning of the case-law stated in point 18 of the present Opinion, save where the clear sense of the evidence produced before the General Court is distorted, a question of law which is subject, as such, to review by the Court of Justice. In the present case, it seems to me that the appellant is not submitting – or a fortiori demonstrating – that the General Court distorted the facts or evidence when it established, first, that the search terms were defined by the Commission in the light of the evidence at its disposal and in relation to the suspected infringements which were the subject of the investigations at issue and, second, that the mere fact that the application of the search terms examined causes numerous documents to be captured does not call into question the lawfulness of the decisions at issue.

24. In any event, although the arguments developed by the appellant may be rejected as inadmissible on that basis alone, I do, however, consider it appropriate to examine their substance.

25. As regards, in the first place, the necessity of the search terms examined, I note that although, as the appellant submits, according to the case-law of the Court of Justice stated in point 16 of the present Opinion, a mere connection between a document and the alleged offence is not sufficient to establish that the request is necessary, that case-law also states that such a connection is established where the Commission may reasonably suppose, at the time of the request, that the documents captured by the search terms at issue could help it to determine whether the alleged infringement took place, which the General Court stated in the present case and which was not disputed by the appellant. (24)

26. In the second place, I note that the appellant’s line of argument is, in essence, based on the fact that the search terms, owing to their generic nature, would inevitably lead to the capture of a significant number of documents which were irrelevant to the investigations at issue, a situation which it views as being contrary to the principle of proportionality. (25)

27. In that regard, I note, first, that, in order for a request for information based on search terms to meet the criteria laid down in Article 18(1) of Regulation No 1/2003, it is not necessary for all the documents captured – or even a significant number of them – to be of use to the investigation. (26) On the contrary, the fact that some, or even most, of the documents captured may prove to be irrelevant to the investigation is not sufficient, as such, to make a finding that the search terms in question have no correlation with the infringement suspected by the Commission. (27) The examination of the necessity (and of the proportionality) of the request for information cannot be based on a purely quantitative or statistical criterion. (28)

28. Second, in view of the finding made in the previous point of the present Opinion, the appellant’s arguments based on specific examples according to which certain search terms used by the Commission captured a number of documents which were not relevant to the investigation (29) should be rejected as being ineffective, a finding which the appellant does not dispute but which is still not sufficient to call into question the General Court’s assessment. (30)

29. Third, the fact that the Commission could have used more specific terms (or combinations of terms) or more proportionate searches, or have formulated requests so as to more reasonably target relevant documents, or even have provided for filters or other safeguards, cannot call into question that conclusion. Having regard to the case-law of the Court of Justice referred to in point 15 of the present Opinion, it is for the Commission to define its investigation techniques and to decide, in the light of the available evidence, how to obtain information which is useful to its investigation. Therefore, regardless of whether it is possible to formulate more limited requests for information, if it is established that the Commission could reasonably suppose that the information requested might help it to investigate the presumed infringement, its request cannot be challenged. (31)

30. Similarly, I note, as the Commission submits, and which is not disputed by the appellant, that the judgments under appeal refer to the safeguards which apply to the request for information, in accordance, first, with the amending decisions, (32) next, to the obligation of professional secrecy (33) and, last, to the confidentiality of communications between lawyers and clients and the Commission's best practices. (34)

31. In conclusion, it appears that the appellant has not succeeded in demonstrating that the search terms used by the Commission were not such as to capture documents relevant to the investigation, which is, according to the Court's case-law, the decisive criterion for establishing a correlation between a request for information and the presumed infringement. Those terms therefore meet the conditions laid down in Article 18(1) of Regulation No 1/2003, notwithstanding the fact that they may generate a large number of documents irrelevant to the investigation, which is not sufficient to call into question the abovementioned conclusion. (35)

32. Therefore, I propose that the first part of the first ground of appeal in both appeals and the second part of the first ground of appeal in Case C-496/23 P and the third part of the first ground of appeal in Case C-497/23 P should be rejected as being inadmissible or unfounded.

Failure to state reasons for the need to limit the scope of the request for information

33. By the second part of the first ground of appeal in Case C-497/23 P, the appellant complains that the General Court infringed its obligation to state reasons when it rejected the argument alleging that the Commission ought to have limited the scope of its request. (36)

34. However, it seems to me that, contrary to the appellant's assertion, paragraph 136 of the second judgment under appeal is not decisive. The General Court's reasoning is set out in paragraphs 137 and 138 of that judgment, from which it follows, in essence, that the appellant could not maintain that the Commission ought to have limited the scope of its request given that (i) it was already limited to two custodians and that the period was the same as the period covered by the investigation and (ii) the Commission could reasonably suppose, at the time of the Facebook Data decision, that the information requested could be of use to the investigation. (37)

35. Therefore, I propose that the second part of the first ground of appeal in Case C-497/23 P should be rejected as being unfounded.

The lack of safeguards equivalent to those laid down for inspections

36. By the third part of the first ground of appeal in Case C-496/23 P and the fourth part of the first ground of appeal in Case C-497/23 P, the appellant criticises the General Court for rejecting its argument in the judgments under appeal that the Commission infringed the principle of necessity in that it requested the production of documents without putting in place filters or safeguards at least equivalent to those granted to undertakings in the context of inspections carried out under Article 20 of Regulation No 1/2003. (38)

37. In the judgments under appeal, the General Court stated that it was not for the General Court, when hearing an action for annulment of a decision requesting information, to review the lawfulness of such a decision by comparison with the legal framework applicable to decisions adopted on different legal bases, such as inspection decisions. It also referred to the safeguards which it considered to be

appropriate for a request for information based on search terms, such as that submitted in the present case. (39)

38. However, the appellant does not dispute the adequacy of the safeguards referred to by the General Court, (40) or succeed in demonstrating that the General Court erred in law in holding that it was not required to ascertain whether the safeguards applied in the present case were equivalent to those provided for in the context of inspections.

39. There are important differences between a request for information under Article 18 of Regulation No 1/2003 and an inspection based on Article 20 of that regulation. While, in the course of an inspection, which is by its very nature regarded as more invasive than a request for information, (41) the undertakings concerned enjoy certain procedural safeguards, (42) those safeguards are not necessarily identical to those applicable to a request for information.

40. More particularly, in the context of a request for information based on search terms, the addressee has sufficient time to capture the identified documents and examine them with the assistance of its lawyers before providing them to the Commission. (43) That request is generally preceded by informal contacts between the Commission and the addressee undertaking or its external lawyers. (44) The Commission may also put in place additional safeguards for certain sensitive documents, such as the virtual data room procedure established in the present case, or provide that those documents be transmitted in a redacted form, by removing the names of the individuals concerned and any information allowing them to be identified. Moreover, the period between the notification of the request for information and the deadline for communication of the documents provides the addressee of that request with the possibility of challenging it before the General Court and applying in good time for interim measures, which did actually occur in the present case. Lastly, the undertaking under investigation can not only refuse to disclose documents covered by legal professional privilege, but also submit to the Commission a reasoned request for irrelevant documents to be returned and, in the event of refusal, challenge that decision.

41. Therefore, I propose that the third part of the first ground of appeal in Case C-496/23 P and the fourth part of the first ground of appeal in Case C-497/23 should be rejected as being unfounded and, consequently, that the first grounds of appeal in both of those appeals should be rejected in their entirety.

The second grounds of the appeals, relating to the overall assessment of the principle of necessity

42. By the second grounds of appeal of the two appeals, (45) the appellant alleges, in essence, that the General Court made two errors of law in holding, first, that an overall assessment of compliance by the Commission with the principle of necessity was not appropriate, even if it were possible, without giving any reasoning as to the feasibility of such an assessment, (46) and, second, that only the search terms specifically challenged by the appellant could be reviewed by the General Court as to whether the principle of necessity had been observed. In Case C-497/23 P, the appellant also criticises the General Court, as a third error of law, for having failed to examine whether certain search terms referred to in the application at first instance were necessary.

43. In the judgments under appeal, the General Court stated, in essence, that an overall assessment of compliance by the Commission with the principle of necessity was not appropriate, even if it were possible, and that only the search terms specifically challenged by the appellant could be reviewed by the General Court as to whether the principle of necessity had been observed. (47)

44. In that regard, I note that the appellant challenged only some of the search terms used by the Commission, that is to say, around 130 and 250 for the two respective sets, which gave rise to close to 590 and 2 500 combinations. (48) However, it seems to me difficult to argue that the General Court could, on the basis of that number of terms, carry out the overall assessment of necessity as required by the appellant. (49) In other words, even if the number of search terms challenged by the appellant were held to be overly broad and insufficiently targeted, which cannot be so in the present case, (50) it would not be possible to presume that all the terms, including those which were not challenged, ought to have been considered in the same way. (51)

45. That conclusion cannot be called into question by the fact, stated by the appellant, that the Commission had requested the disclosure of all the documents, without exception, held respectively by five and three custodians, and by their predecessors and successors, over a period, respectively, of five and seven years, identified by means of searches relating to a certain number of allegedly ubiquitous or very common terms. In so far as the Commission could reasonably suppose, at the time of the request, that the information based on the search terms examined might help it to determine whether the infringement criticised took place, (52) the (indeed limited) number of custodians and the relevant period (which is not disproportionate in the light of the average duration of competition investigations) do not appear to me to affect the necessity of the request, taking into account also the safeguards put in place, in particular the virtual data room procedure. (53)

46. Moreover, as regards the fact that, in the second judgment under appeal, the General Court did not examine the necessity of certain search terms, (54) it seems to me that it is clear from the application at first instance that the appellant did not claim that the search terms were overly broad and untargeted, but merely stated that they captured some irrelevant documents, which, in the light of my analysis set out in points 26 and 27 of the present Opinion, cannot be sufficient to call into question the lawfulness of the judgments under appeal.

47. Consequently, I propose that the second ground of appeal in both appeals should be rejected as being unfounded.

The third grounds of appeal, concerning the processing of mixed documents

48. By the third grounds of appeal of the two appeals, (55) the appellant maintains that the General Court erred in law in holding that the Commission could request mixed documents without providing for any safeguards or protection measures for the personal information. (56) Those grounds of appeal are divided into three parts. (57)

49. As a preliminary point, I note that the processing of personal data by the Commission is necessary and inherent to its activity where it fulfils tasks assigned to it as a public authority enforcing EU competition rules. In that regard, Article 5(1)(a) of the EUDPR provides that processing of personal data is lawful only if and to the extent that, in particular, such processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the Union institution or body. (58)

The fact that the General Court's analysis was limited to Article 9 of the GDPR and Article 10 of the EUDPR

50. By the first part of the third grounds of appeal of both appeals, the appellant submits, in essence, that the General Court erred in law in finding that the exclusion of mixed documents from the virtual data room was necessary and proportionate, limiting its examination to the mixed documents cited as examples and only to whether those documents contained 'sensitive' personal data covered by Article 9(1) of the GDPR and Article 10(1) of the EUDPR, as well as by holding that they did not, (59) without extending its examination to the alleged infringement of the fundamental rights to the protection of privacy enshrined in Article 7 of the Charter of Fundamental Rights of the European Union ('the Charter') and Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 ('the ECHR'). (60)

51. In the judgments under appeal, the General Court, in order to examine the compatibility of the decisions at issue with Article 7 of the Charter, assessed whether those decisions fulfilled the conditions laid down in Article 52(1) thereof, including that of the proportionality of the interference with privacy. (61) To the latter end, the General Court examined whether the interference with regard, in particular, to the exclusion of certain categories of documents from the virtual data room procedure was necessary. (62) Having observed that it was for the appellant to assess whether a document containing sensitive personal data was connected to its commercial activities, the General Court considered that there was no possibility that the documents referred to in the application contained sensitive personal data within the meaning of Article 9(1) of the GDPR and Article 10(1) of the EUDPR, before stating that the appellant could not infer from the mere adoption of the contested decision that the production of documents which were not examined in the virtual data room infringed its right to privacy and that of the individuals concerned. (63)

52. In that regard, first of all, I would point out that, contrary to the appellant's assertions, the General Court did not consider that Article 9(1) of the GDPR and Article 10(1) of the EUDPR created an 'exhaustive regime for the protection of the rights to privacy' but merely that those provisions were relevant for assessing whether the contested decisions satisfied the principle of proportionality within the meaning of Article 52(1) of the Charter. (64)

53. Second, I note that the General Court examined whether the mixed documents cited by way of example in the applications contained sensitive personal data, as defined in Article 9(1) of the GDPR and Article 10(1) of the EUDPR, and concluded that those documents did not have to be subject to the virtual data room procedure, in accordance with the orders for interim measures, (65) which was not challenged by the appellant in its two appeals. (66)

54. Last, in my view, the fact that a document does not contain sensitive personal data covered by Article 9(1) of the GDPR and by Article 10(1) of the EUDPR and that it is not subject to the virtual data room procedure does not mean that that document does not receive appropriate protection. (67) Besides, while the orders for interim measures do not provide explicit clarification, it appears to me that the virtual data room procedure is justified only in respect of documents which, pursuant to the GDPR and EUDPR, ought not, in principle, to be processed, that is to say in respect of document containing sensitive personal data as provided for in those regulations. However, it is inevitable that the Commission will have access to mixed documents, despite, in the view of the appellant, the 'highly private or personal information' that they contain, in so far as those documents are also presumed to contain information useful to the investigation and in so far as that they are processed in compliance with the rights of the persons concerned. (68)

55. That conclusion cannot be called into question by the judgment of 4 October 2024, *Bezirkshauptmannschaft Landeck (Attempt to access personal data stored on a mobile telephone)*, (69) or by the two Opinions of Advocate General Medina in Joined Cases *Imagens Médicas Integradas and Others*, (70) relied on by the appellant at the hearing. First, the guidance provided in that judgment – which makes the possibility of accessing personal data contained in a mobile phone in connection with criminal offences subject to a prior review by a court or an independent administrative body, except in cases of duly justified urgency – does not appear to me to be transposable to competition investigations. (71) Second, those Opinions confirm the lawfulness of the seizure of emails between the managers and employees of an undertaking on the basis of an inspection taken in the course of an investigation relating to a suspected infringement of Articles 101 and 102 TFEU, since that decision guarantees, in particular, that the collection of personal data and access to that data, even in an ancillary manner in searches for business information, are limited to what is strictly necessary for the subject matter of, and solely dedicated to the purposes of, the investigation. (72)

56. Therefore, I propose that the first part of the third grounds of appeal in both appeals should be rejected as being unfounded.

Whether there are mixed documents containing protected data

57. By the second part of the third ground of appeal of the two appeals, the appellant submits that the General Court applied an incorrect legal test when ruling out the possibility that the mixed documents examined in the judgments under appeal could contain personal information protected by Article 7 of the Charter and by Article 8(1) ECHR. (73)

58. In that regard, it must be recognised that, in the judgments under appeal, the General Court did not find that the documents did not contain personal data within the meaning of the provisions relied on by the appellant. It did, however, hold that those documents did not contain *sensitive* personal data within the meaning of Article 9(1) of the GDPR and Article 10(1) of the EUDPR and that, therefore, they were excluded from the virtual data room procedure.

59. In addition, contrary to the appellant's assertions, it appears clear that the General Court assumed that the obligation to provide mixed documents constituted (or, at least, could constitute) an interference with the right to privacy, which led it to examine whether the decisions at issue complied with Article 7 of the Charter and satisfied the conditions laid down in Article 52(1) thereof. (74)

60. Therefore, I propose that the second part of the third grounds of appeal in the two appeals should be rejected as being unfounded.

The absence of safeguards in respect of mixed documents

61. By the third part of the third ground of appeal of the two appeals, the appellant maintains that the decisions at issue did not provide adequate safeguards for the protection of personal information contained in the documents examined, respectively, in paragraphs 181 to 183 and 229 to 237 of the judgments under appeal, and that the interference with the right to privacy was neither proportionate nor necessary to any legitimate objective. (75)

62. In that regard, I note that (i) the fact that the Commission could have made greater use of the virtual data room procedure (or that the General Court could have required greater use of that procedure) has no bearing on whether the protection afforded to the mixed documents was sufficient (76) and (ii) the fact that some, if not most of, the documents captured on the basis of the Commission's request for information might prove to be irrelevant for the investigations at issue does not, in itself, affect the necessity and proportionality of that request. (77)

63. Therefore, I propose that the third part of the third grounds of appeal in the two appeals should be rejected as being unfounded and, therefore, that the third grounds of appeal in those two appeals should be rejected in their entirety.

Conclusion

64. In the light of all the foregoing considerations, I propose that the Court should dismiss the two appeals.

¹ Original language: French.

² Council Regulation of 16 December 2002 on the implementation of the rules on competition laid down in Articles [101 and 102 TFEU] (OJ 2003 L 1, p. 1).

³ These are, first, Decision C(2020) 3013 of 4 May 2020 (Case AT.40684 – Facebook Marketplace) ('the initial Facebook Marketplace decision'), as amended by Decision C(2020) 9229 of 11 December 2020 ('the amending Facebook Marketplace decision') (together, 'the Facebook Marketplace decision'), and, second, Decision C(2020) 3011 of 4 May 2020 (Case AT.40628 – Facebook Data-related practices) ('the initial Facebook Data decision'), as amended by Decision C(2020) 9231 of 11 December 2020 ('the amending Facebook Data decision') (together, 'the Facebook Data decision').

⁴ Those requests gave rise to the adoption of two separate decisions, one under Article 18(3) of Regulation No 1/2003 and the other under Article 18(2) of that regulation. The first contained over 100 questions relating to various aspects of the appellant's business and product offering, while the second contained 83 questions regarding Facebook Marketplace, social networking and online classified advertisement providers.

⁵ On the same date, the Director-General of the Commission's Directorate-General (DG) for Competition sent the appellant a letter proposing a separate procedure for the production of sensitive documents which, according to the appellant, contained only personal information wholly unconnected with its commercial activities. The Director-General also stated that those documents would be placed on the file only after having been examined in a 'virtual data room'.

⁶ Orders of 29 October 2020, *Facebook Ireland v Commission* (T-451/20 R, EU:T:2020:515), and 29 October 2020, *Facebook Ireland v Commission* (T-452/20 R, EU:T:2020:516) (together, 'the orders for interim measures'). By the virtual data room procedure, which was based on the proposal of the Directorate-General of the DG for Competition, referred to in the previous footnote of the present Opinion, the appellant identified the documents containing the data concerned, which were provided to the Commission on a separate electronic medium and then placed in a virtual data room which was accessible to as limited a number as possible of members of the team responsible for the investigation, in the (virtual or physical) presence of an equivalent number of the appellant's lawyers. The members of the team responsible for the investigation examined and selected the documents in question, while giving the appellant's lawyers the opportunity to comment on them before the documents considered relevant were placed on the file. In the event of disagreement regarding the classification of a document, the appellant's lawyers were entitled to

explain the reasons for their disagreement and, in the event of continuing disagreement, the appellant was able to ask the Director for Information, Communication and Media at the Commission's DG for Competition to resolve the disagreement.

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- [7](#) Unlike the protected documents referred to in point 5 of the present Opinion, mixed documents are not subject to the virtual data room procedure.
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- [8](#) As stated in recital 23 of Regulation No 1/2003, the Commission should be empowered throughout the Union to require such information to be supplied as is necessary to detect any practice prohibited by Articles 101 and 102 TFEU.
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- [9](#) See, to that effect, judgment of 10 March 2016, *HeidelbergCement v Commission* (C-247/14 P, EU:C:2016:149, paragraphs 20 and 21 and the case-law cited). As the Commission submits, that is all the more true where, as in the present case, the request for information is at an early stage of the proceedings since, at the preliminary investigation stage, the Commission cannot be required to – besides the putative infringements it intends to investigate – the evidence, that is to say the information leading it to consider that Articles 101 and 102 TFEU may have been infringed, in so far as such an obligation would upset the balance struck by the case-law between preserving the effectiveness of the investigation and upholding the defence rights of the undertaking concerned (see, to that effect, judgment of the General Court of 14 March 2014, *Cementos Portland Valderrivas v Commission*, T-296/11, EU:T:2014:121, paragraph 37).
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- [10](#) See, to that effect, judgment of 10 March 2016, *HeidelbergCement v Commission* (C-247/14 P, EU:C:2016:149, paragraph 23).
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- [11](#) Therefore, even if it already has evidence, or indeed proof, of the existence of an infringement, the Commission may legitimately take the view that it is necessary to request further information enabling it better to define the scope of the infringement, determine its duration or identify the circle of undertakings involved (see judgment of 28 January 2021, *Qualcomm and Qualcomm Europe v Commission*, C-466/19 P, ‘the judgment in *Qualcomm*’, EU:C:2021:76, paragraph 69 and the case-law cited).
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- [12](#) See the judgment in *Qualcomm* (paragraph 70 and the case-law cited). More particularly, the Court referred to paragraph 21 of the judgment of 19 May 1994, *SEP v Commission* (C-36/92 P, EU:C:1994:205), which refers back to point 21 of the Opinion of Advocate General Jacobs in *SEP v Commission* (C-36/92 P, EU:C:1993:928), which stated, in essence, that a mere relationship between a document and the alleged infringement is not sufficient to justify a request for disclosure of the document; the relationship must be such that the Commission could reasonably suppose, at the time of the request, that the document would help it to determine whether the alleged infringement had taken place.
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- [13](#) See, to that effect, Opinion of Advocate General Wahl in *Buzzi Unicem v Commission* (C-267/14 P, EU:C:2015:696, point 48).
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- [14](#) See, to that effect, Opinion of Advocate General Wahl in *Buzzi Unicem v Commission* (C-267/14 P, EU:C:2015:696, point 100). He stated, as regards the public interest, that the more harmful a suspected infringement is to competition, the more the Commission ought to be entitled to expect an undertaking to make an effort to provide the information requested, in fulfilment of its duty of active cooperation and, as regards the workload generated, that the greater it is and the more it diverts the attention of the undertaking's staff from their normal business tasks, adding extra costs, the more excessive the request for information might be considered.
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- [15](#) In accordance with Article 256 TFEU, the first paragraph of Article 58 of the Statute of the Court of Justice of the European Union and Article 168(1)(d) of the Rules of Procedure of the Court of Justice. According to the Court's settled case-law, where the General Court has established or assessed the facts, the Court of Justice has jurisdiction, under Article 256 TFEU, solely to review their legal characterisation and the legal conclusions which were drawn from them (see, in particular, the judgment in *Qualcomm*, paragraph 42 and the case-law cited).
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- [16](#) In addition, that distortion must be obvious from the documents in the Court's file, without there being any need to carry out a new appraisal of the facts and the evidence (see, in particular, the judgment in *Qualcomm*, paragraph 43 and the case-law cited). Therefore, an appeal which, without even including an argument specifically identifying the error of law allegedly vitiating the judgment under appeal, merely repeats or reproduces verbatim the pleas in law and arguments previously submitted to the General Court, including those based on facts expressly disregarded by that Court, fails to satisfy the requirements under the provisions cited above. Such an appeal amounts in reality to no more than a request for re-examination of the application submitted to the General Court, which the Court of Justice does

not have jurisdiction to undertake (see, in particular, the judgment in *Qualcomm*, paragraph 45 and the case-law cited).

[17](#) Those grounds of appeal correspond, respectively, to the second subdivision of the first part of the first plea in law of the action at first instance in Case C-496/23 P and to the second subdivision of the first part of the second plea in law of the action at first instance in Case C-497/23 P.

[18](#) See, respectively, paragraphs 87 to 108 and 132 to 155 of the judgments under appeal.

[19](#) Those parts concern, in essence, the lack of relevance of the search terms used by the Commission (first and second parts of the first ground of appeal in Case C-496/23 P, and first and third parts of the first ground of appeal in Case C-497/23 P), a defective statement of reasons as regards the existence of other, more proportionate, search options (second part of the first ground of appeal in Case C-497/23 P) and the fact that the General Court did not find that safeguards comparable to those applicable to inspection decisions also applied to requests for information (third part of the first ground of appeal in Case C-496/23 P and fourth part of the first ground of appeal in Case C-497/23 P).

[20](#) The first part of the first ground of appeal in the two cases alleges that the General Court erred in finding that the Commission could reasonably suppose that the search terms could help it to determine whether the contested conduct took place, while the second part of the first ground of appeal in Case C-496/23 P and the third part of the first ground of appeal in Case C-497/23 P allege that the General Court erred in finding that documents could be regarded as irrelevant to the investigation only after the search terms have been applied to the appellant's databases. More specifically, the appellant submits that the General Court erred in law in holding, in essence, in paragraphs 92 to 95, 99 and 103 of the first judgment under appeal and paragraphs 134, 138, 140, 143 and 146 of the second judgment under appeal, that the principle of necessity had been complied with merely in so far as the Commission could reasonably suppose that the search terms could help it to determine whether the conduct for which the Commission made criticisms in the decisions at issue took place. The General Court failed to give any (alternatively sufficient) weight to the fact that the unduly general search terms the Commission had selected, when applied across all the addressees' documents over the entire period concerned, inevitably led to the capture of a significant number of documents which were irrelevant to the investigations at issue (many of which contained sensitive personal or commercial information), in circumstances where the Commission was aware in advance that its approach was bound to produce such results.

[21](#) See paragraphs 89 to 97 of the first judgment under appeal, which refer to recitals 1 and 2 of the Facebook Marketplace decision, and paragraphs 134 to 147 of the second judgment under appeal, which refer to recital 4(i) and (iii) of the Facebook Data decision. More specifically, in the first judgment under appeal, the General Court describes, in essence, how, according to the Commission, the search terms examined related to the Facebook Marketplace investigation (see, in particular, paragraph 89 of that judgment concerning the terms '*marketplace + advertising*', '*marketplace & grow**', '*marketplace + insight**', '*marketplace + advantage*' and '*marketplace + looked at*', '*marketplace + quality*' and '*commerce + advantage*', as well as paragraph 93 of that judgment concerning the term '*commerce + awareness*'). Similarly, in the second judgment under appeal, the General Court stated how the search terms at issue related to the Facebook Data investigation (see, in particular, paragraph 134 of that judgment concerning the term '*big question*' and paragraphs 139 to 147 of that judgment concerning the terms '*for free*', '*shut* down*' and '*not good for us*').

[22](#) See paragraphs 92, 95 and 96 of the first judgment under appeal, and paragraph 138 of the second judgment under appeal (to which paragraphs 140, 143 and 146 of that judgment refer).

[23](#) See, respectively, paragraphs 99 and 154 of the judgments under appeal, where the General Court stated, in particular, that the mere fact that applying search terms causes numerous documents to be captured, some of which subsequently prove not to be relevant to the investigations at issue, is not sufficient, in itself, to make a finding that the search terms in question have no correlation with the infringement suspected by the Commission.

[24](#) Conversely, the appellant recognises, in essence, that the criterion adopted by the Court's settled case-law in order to establish the necessity of the information is that the Commission can reasonably suppose, at the time of the request, that the information will help the Commission to determine whether the suspected infringement has taken place, and not that all the documents resulting from that request are necessary to the investigations at issue.

[25](#) Moreover, the General Court, it argues, erred in law (respectively, in paragraphs 99 and 150 of the judgments under appeal) in holding that documents could be regarded as irrelevant to the investigation only after the search terms had been applied to the appellant's databases.

[26](#) Furthermore, contrary to the arguments put forward by the appellant, it is not apparent from the judgments under appeal that the General Court considered that *all the documents* containing the search terms used by the Commission could be presumed to be necessary to the investigations at issue. As the Commission states, the appellant's argument is, incorrectly, based on the idea that a request for information based on search terms complies with the requirement of necessity set out in Article 18 of Regulation No 1/2003 only *if all the documents captured* (or otherwise most or a certain specific number of them) can be expected to be useful for the Commission's investigation.

[27](#) See paragraph 99 of the first judgment under appeal. As the Commission contends, the fact that some, or even a majority, of the documents captured may turn out not to be useful to the investigations at issue is indeed a normal feature of any investigation. A different approach would unduly limit the powers of an investigating authority. For example, as the Commission states, in the context of information for the purpose of tax investigations within the framework of Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC (OJ 2011 L 64, p. 1, and corrigendum OJ 2013 L 162, p. 15), as amended by Council Directive 2014/107/EU of 9 December 2014 (OJ 2014 L 359, p. 1), the Court held that the concept of 'foreseeably relevant information' is intended to enable the requesting authority to request and obtain any information that it may reasonably consider will prove to be relevant for the purposes of its investigation, the only limit being that that authority cannot request information that is of no relevance to that investigation, since the national court is required to establish that the information in question is not manifestly devoid of any foreseeable relevance (see, to that effect, judgment of 6 October 2020, *État luxembourgeois (Right to bring an action against a request for information in tax matters)*, C-245/19 and C-246/19, EU:C:2020:795, paragraphs 110 to 116 and the case-law cited). The Court also stated that the fact that some of the foreseeably relevant information referred to in a request for information ultimately proves to be irrelevant for the purposes of the investigation in no way affects the lawfulness of that request (see, to that effect, paragraphs 121 to 123 of that judgment).

[28](#) Moreover, when questioned at the hearing, the appellant replied that it was not, in its view, possible to define a quantitative criterion for determining whether a request for information is proportionate.

[29](#) By those examples, the appellant seeks to demonstrate, in Case C-496/23 P, that the fact that the Commission identified three studies containing the word '*insight*' does not mean that *any document* that contains the words '*marketplace + insight**', regardless of the topic or timing of the other documents over a five-year period could help the Commission to determine whether the conduct criticised took place and that the use of other search terms (namely '*commerce + advantage**' and '**commerce + awareness*') also produced a large number of documents irrelevant to the investigation. In Case C-497/23 P, it claims that the General Court, first, wrongly considered the search term 'big question' to be necessary, since the two custodians were two public figures occupying very important positions within the appellant, and therefore a search for that term across all their documents over several years would inevitably lead to the capture of a significant number of irrelevant documents (paragraph 137 of the second judgment under appeal) and, second, disregarded the evidence showing, before any search was made, that the search term 'big question' would lead to the capture of a significant number of documents.

[30](#) Moreover, as stated in point 17 of the present Opinion, the balancing, on the one hand, of the public interest justifying the Commission's investigation and its obligation to obtain information enabling it to perform the tasks assigned to it by the FEU Treaty, against, on the other hand, the workload generated for an undertaking by a request for information requires an assessment of the possible difficulties for the appellant due to the excessive number of documents to be produced, difficulties which the appellant has not demonstrated.

[31](#) Moreover, the appellant does not claim that the use of search terms is intrinsically unlawful and acknowledges that the fact that the use of such terms may inevitably lead to documents being captured which are not relevant to the investigation does not rule out the existence of a correlation between the request for information and the presumed infringement.

[32](#) See, respectively, paragraphs 159 and 217 of the judgments under appeal. The amending decisions provide in particular that protected documents may be provided in a redacted form, by removing the names of the individuals concerned and any information allowing them to be identified, through a virtual data room accessible only to as limited a number as possible of members of the investigating team in the (virtual or physical), presence of an equivalent number of the appellant's lawyers.

[33](#) See, respectively, paragraphs 200 and 255 of the judgments under appeal. Commission officials and servants are, in general, subject to strict obligations of professional secrecy which prohibit them from disclosing confidential information obtained in response to a request for information, including after leaving the service, and from using it for purposes other than those for which it was obtained.

- [34](#) See, respectively, paragraphs 107 and 154 of the judgments under appeal. The undertaking concerned by the investigation has the possibility of refusing to disclose documents covered by legal professional privilege. In addition, it may also submit to the Commission a reasoned request for irrelevant documents to be returned, in which case the Commission would be required to examine such a request and, as appropriate, return the irrelevant documents, in accordance with the Commission notice on best practices for the conduct of proceedings concerning Articles 101 and 102 TFEU (OJ 2011 C 308, p. 6).
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- [35](#) See point 27 of the present Opinion. Moreover, as regards the appellant's argument alleging that the General Court, in paragraph 89 of the first judgment under appeal, merely adopted the Commission's reasoning, without examining the argument that the search terms indicated by the Commission would inevitably lead to the identification of a considerable number of documents irrelevant to the investigation or providing explanations in that regard, it must be stated that, as is clear from paragraph 90 of that judgment, the General Court limited itself to finding that the Commission's statements regarding the relevance of the search terms examined were not disputed by the appellant. In addition, as regards the argument that the Commission's explanations summarised in paragraph 89 of that judgment, which the appellant did not dispute at first instance, were provided only at the stage of the defence, it should be recalled that while, in a decision requesting information under Article 18(3) of Regulation No 1/2003, the Commission is required to state the purpose of its investigation and therefore to identify the alleged infringement of competition rules, it is not required to communicate to the addressee of a request for information all the information at its disposal concerning presumed infringements or to make a precise legal analysis of those infringements, providing it clearly indicates the suspicions which it intends to investigate (see, to that effect, the case-law of the Court of Justice stated in point 16 of the present Opinion).
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- [36](#) The appellant refers, in that regard, to paragraph 136 of the second judgment under appeal, and to paragraphs 140, 143 and 146 thereof, which merely refer back to paragraph 136 of that judgment.
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- [37](#) In addition, paragraphs 140, 143 and 146 of the second judgment under appeal expressly refer back to paragraphs 137 and 138 of that judgment. Furthermore, in so far as the appellant, in its reply, submits that paragraphs 137 and 138 of that judgment do not explain how it cannot maintain that the Commission ought to have limited its request to the emails referring to or in connection with the initial email, or significantly limited its request in other respects, it must be stated that that argument is inadmissible, since it is a new plea raised by the appellant which, moreover, seeks to challenge not a failure to state reasons but rather the substance of those reasons. In any event, that argument can be rejected under the same logic as the argument set out in point 29 of the present Opinion.
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- [38](#) See, respectively, paragraphs 105 and 106 and 152 and 153 of the judgments under appeal.
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- [39](#) See, respectively, paragraphs 107 and 154 of the judgments under appeal.
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- [40](#) See point 30 of the present Opinion.
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- [41](#) In the context of those inspections, Commission officials carry out checks at the undertaking's premises without warning and can obtain a large number of documents which may be relevant, sometimes going as far as copying the entirety of the computers hard discs of certain employees of the undertaking concerned.
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- [42](#) By way of illustration, documents of a non-business nature are excluded from the scope of the Commission's investigation and undertakings under inspection may receive legal assistance (see, in particular, the orders for interim measures, paragraph 45 and the case-law cited).
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- [43](#) Moreover, as stated, respectively, in paragraphs 107 and 154 of the judgments under appeal, the undertaking's lawyers have the possibility of refusing to disclose documents covered by legal professional privilege, without having to resort to the sealed envelope procedure provided for by the case-law arising from the judgment of the General Court of 17 September 2007, *Akzo Nobel Chemicals and Akros Chemicals v Commission* (T-125/03 and T-253/03, EU:T:2007:287, paragraphs 83 and 84).
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- [44](#) The undertaking concerned, or its external lawyers, may, in particular, hold prior discussions with the Commission on the scope of the request and the choice of search terms, and also request from the Commission an extension of the deadline to reply or the subsequent amendment of the decision.
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- [45](#) Those grounds of appeal correspond to the first subdivision of the first part of the first pleas in law of the two actions at first instance, the examination of which took place, respectively, in paragraphs 71 to 86 and 116 to 131 of the judgments under appeal.

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- [46](#) It states, in particular, that it was impossible to demonstrate, in an application for annulment limited to 50 pages (in accordance with the Practice Rules for the Implementation of the Rules of Procedure of the General Court), that each and every search term requires the production of unnecessary and irrelevant information.
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- [47](#) See, respectively, paragraphs 75 to 79 and 120 to 124 of the judgments under appeal. The General Court also stated that the fact that certain search terms may be too vague had no bearing on the fact that other search terms may be sufficiently precise or targeted and could lead only to an annulment in part of the decisions at issue.
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- [48](#) Moreover, by the arguments raised in the first part of its first and second pleas in law at first instance, the appellant, in essence, limited itself to submitting that the initial decision infringed Article 18(3) of Regulation No 1/2003, in so far as it required the production of numerous documents which were irrelevant to the investigations at issue. The second part of the first grounds of the appeal, alleging a failure to carry out an overall assessment, is merely a development of those arguments in response, respectively, to paragraphs 71 to 79 and 116 to 124 of the judgments under appeal, which come under the heading ‘The scope of the applicant’s arguments and the identification of the contested search terms’ and which do not respond to particular complaints but serve as a sort of premiss for the General Court’s answer to the first part of the first and second pleas in law.
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- [49](#) While the appellant maintains, in essence, that it ought to be permitted to challenge the lawfulness of the approach adopted by the Commission overall and not only the lawfulness of the specific search terms, I do not see how the lawfulness of such an overall approach could be called into question merely by relying on specifically challenged search terms, in particular where, as the General Court stated, the Commission could reasonably suppose, at the time of the request, that the documents captured by the search terms in question were capable of helping it to determine whether the infringement alleged took place (see point 25 of the present Opinion). In my view, the situation could be otherwise only if it were demonstrated that the Commission could reasonably have foreseen that the search terms used would not produce any result of use to the investigations at issue.
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- [50](#) As follows from the analysis of the first grounds of appeal of the present appeals, the appellant has not demonstrated that the General Court erred in law in rejecting those pleas in law in respect of the search terms it was challenging.
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- [51](#) Moreover, as the Commission has observed, it is plausible that the appellant chose to contest the search terms which it regarded as the broader and less targeted of the terms overall. As regards, lastly, the impediment raised by the appellant, due to the limit on the number of pages allowed for an application for annulment laid down in paragraph 105 of the Practice Rules for the Implementation of the Rules of Procedure of the General Court applicable *ratione temporis* (which corresponds to paragraph 156 of the text currently in force), it must be stated that that limit is not absolute, as paragraph 106 of those provisions (corresponding to paragraph 157 of the text currently in force) authorises those maximums to be exceeded in cases involving particularly complex legal or factual issues.
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- [52](#) See point 16 of the present Opinion.
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- [53](#) In addition, the appellant does not submit that the request for information imposed on it a disproportionate workload (see point 17 of the present Opinion).
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- [54](#) Those terms are, more specifically, referred to in footnotes 95, 97 and 99 to the application at first instance.
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- [55](#) Those grounds of appeal correspond, respectively, to a subdivision of the first part of the second and third pleas in law of the actions at first instance.
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- [56](#) See, respectively, paragraphs 177 to 185 and 224 to 239 of the judgments under appeal.
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- [57](#) The first of those parts alleges, the first alleges that the General Court’s analysis was limited to Article 9 of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ 2016 L 119, p. 1, and corrigendum OJ 2018 L 127, p. 2; ‘the GDPR’), and Article 10 of Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ 2018 L 295, p. 39; ‘the EUDPR’), the second alleges that there were mixed documents containing protected data and the third alleges failure to provide safeguards for mixed documents.
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[58](#) In addition, as the General Court stated, respectively in paragraphs 200 and 255 of the judgments under appeal, it should be noted that Commission officials and servants are subject to strict obligations of professional secrecy under Article 339 TFEU and Article 28 of Regulation No 1/2003, and are bound by Article 17 of the Staff Regulations of Officials of the European Union, which prohibits their making, including after leaving the service, any unauthorised disclosure of information received in the line of duty, unless such information has already been made public or is accessible to the public.

[59](#) See, respectively, paragraphs 180 to 183 and 228 to 232 of the judgments under appeal.

[60](#) More specifically, by its five arguments, it states, first, (first and second arguments), that there is nothing to suggest that Article 9(1) of the GDPR and Article 10(1) of the EUDPR created an exhaustive regime for the protection of the rights to privacy, or that, under Article 52(1) of the Charter, the GDPR or the EUDPR are intended to limit the scope of the rights to respect for private life protected by the Charter; and, second, (third to fifth arguments), that the case-law of the European Court of Human Rights and the case-law of the Court of Justice demonstrate that the protection of the right to respect for private life extends well beyond the specific categories of personal data set out in Article 9(1) of the GDPR, and that compliance with the rules on data processing is distinct from the protection of fundamental rights.

[61](#) The General Court examined, first, whether there was a legal basis for the interference with privacy (respectively, paragraphs 137 to 147 and 184 to 194 of the judgments under appeal), second, whether objectives of general interest recognised by the European Union were pursued (respectively, paragraphs 148 to 151 and 195 to 198 of those judgments), third, whether the essence of the right to privacy had been observed (respectively, paragraphs 152 and 199 of those judgments) and, fourth, whether the interference with privacy was proportionate (respectively, paragraphs 153 to 196 and 200 to 251 of those judgments). It also examined, fifth, the appellant's arguments that the obligation of professional secrecy was inadequate or insufficient to ensure effective protection of the privacy of the individuals concerned by the investigations at issue and their personal data (respectively, paragraphs 197 to 209 and 252 to 264 of the judgments under appeal).

[62](#) More particularly, as regards the proportionality of the interference, the General Court examined, in the first place, whether the interference was appropriate (respectively, paragraphs 155 and 202 of the judgments under appeal), in the second place, whether that interference was necessary in the light, first, of the inadequate level of protection provided by the virtual data room procedure (respectively, paragraphs 157 to 176 and 204 to 223 of those judgments), second, of the exclusion of certain categories of documents from the virtual data room procedure (respectively, paragraphs 177 to 185 and 224 to 239 of those judgments) and, third, the allegedly disproportionate burden imposed by the virtual data room procedure (respectively, paragraphs 186 to 190 and 240 to 244 of those judgments) and, in the third place, the alleged failure to weigh the needs of the investigation against the protection of the appellant's rights (respectively, paragraphs 191 to 196 and 245 to 251 of the judgments under appeal).

[63](#) See, respectively, paragraphs 179 to 184 and 226 to 238 of the judgments under appeal.

[64](#) See, respectively, paragraphs 166 and 213 of the judgments under appeal.

[65](#) See, respectively, paragraphs 180 to 183 and 228 to 237 of the judgments under appeal.

[66](#) Moreover, the appellant has not brought an action against those orders, which established the virtual data room procedure.

[67](#) See, respectively, paragraphs 184 and 238 of the judgments under appeal. However, the appellant's initial premiss is that, if a document is not placed in the virtual data room, it will not receive adequate privacy protection, without even challenging (or still less demonstrating) the General Court's assessment (respectively, in paragraphs 197 to 210 and 252 to 264 of the judgments under appeal), that mixed documents continued to receive adequate protection in view of the obligation of professional secrecy imposed on Commission officials under Article 339 TFEU and Article 28(1) of Regulation No 1/2003.

[68](#) Moreover, in so far as the appellant submits that those documents are 'wholly irrelevant to the investigation', assuming that that were demonstrated, it should be noted that, in accordance with the assessment of the first grounds of appeal of the two appeals, the fact that some, or even most, of the documents captured may prove to be irrelevant to the investigations at issue is not sufficient to demonstrate that the decisions at issues are vitiated by errors of law (see, in particular, point 27 of the present Opinion). The same applies to the appellant's argument that the concept of 'privacy' is broader than that of 'sensitive personal data' and encompasses certain professional or business activities or premises, which does not prevent the information requested (in so far as it contains professional or business

information connected to the subject matter of the investigation at issue) from being examined by Commission agents in the performance of their duties.

[69](#) C-548/21, EU:C:2024:830.

[70](#) C-258/23 to C-260/23, EU:C:2024:537 and EU:C:2025:814.

[71](#) In that regard, I agree with the reasoning of Advocate General Medina in her Opinion in Joined Cases *Imagens Médicas Integradas and Others* (C-258/23 to C-260/23, EU:C:2025:814, points 39 to 44).

[72](#) See Opinion of Advocate General Medina in Joined Cases *Imagens Médicas Integradas and Others* (C-258/23 to C-260/23, EU:C:2025:814, point 33 and the case-law cited). She also stated, in the same point, that, if the investigation uses computer investigation software, the indexing procedure which precedes the search for business information relevant to the investigation must be conducted using keywords which have been rigorously determined in comparison with the pre-defined subject matter of the investigation.

[73](#) See, respectively, paragraphs 180 to 183 and 228 to 237 of the judgments under appeal.

[74](#) See, respectively, paragraphs 136 and 183 of the judgments under appeal, and the analysis set out, respectively, in paragraphs 137 to 210 and 176 to 265 of those judgments.

[75](#) In particular, it submits, first, that mixed documents were not subject to the virtual data room procedure, which would have provided some protection for the personal information contained in those documents, and, second, that most of the documents captured by the search terms used by the Commission concerned matters which were irrelevant to the investigations at issue.

[76](#) Moreover, the appellant does not dispute the General Court's assessment relating to the alleged inadequacy or insufficiency of professional secrecy (see, respectively, paragraphs 197 to 209 and 252 to 264 of the judgments under appeal, as well as footnote 58 to the present Opinion).

[77](#) See point 27 of the present Opinion.