

CALL FOR EVIDENCE FOR AN INITIATIVE (without an impact assessment)

This document aims to inform the public and stakeholders about the Commission's work, so they can provide feedback and participate effectively in consultation activities.

We ask these groups to provide views on the Commission's understanding of the problem and possible solutions, and to give us any relevant information they may have.

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| TITLE OF THE INITIATIVE | Delegated Regulation on data access provided for in the Digital Services Act |
| LEAD DG – RESPONSIBLE UNIT | DG CNECT – CNECT F2 |
| LIKELY TYPE OF INITIATIVE | Delegated Regulation |
| INDICATIVE TIMING | April 2024 |
| ADDITIONAL INFORMATION | Delegated Regulation as provided for in the Digital Services Act – in the field of a Europe for the Digital Age |

This document is for information purposes only. It does not prejudge the final decision of the Commission on whether this initiative will be pursued or on its final content. All elements of the initiative described by this document, including its timing, are subject to change.

A. Political context, problem definition and subsidiarity check

Political context [max 10 lines]

Over the past years, online intermediaries, in particular the ones having millions of users, have become key facilitators of exchange of information and economic transactions; their actions can have an enormous impact on the safety of citizens or the fairness of businesses' commercial activities online.

On 16 November 2022, the Digital Services Act (DSA) came into force, providing a general legal framework applicable to all online intermediary services in Europe to create a safer digital space, in which the fundamental rights of all users of digital services are protected. The DSA includes a special set of obligations for providers of very large online platforms (VLOPs) and very large online search engines (VLOSEs), with more than 45 million monthly users in the EU.

As part of these obligations, the DSA contains provisions that help better monitor risks and actions taken by VLOPs and VLOSEs to tackle disinformation, illegal content, such as hate speech, and other societal risks. This responds to the observation that access to information on platforms' design and system management has been limited, particularly regarding their algorithmic systems, which frequently determine what users see and engage with online. Until now, most of the data allowing independent research on systemic risks has come from voluntary initiatives by online platform providers themselves. This resulted in limited research possibilities for third parties to analyse and monitor the impact of platform providers' choices on the online ecosystem.

Article 40 of the DSA addresses this by providing a new legal framework for researchers: VLOPs and VLOSEs will be required to provide access to their data for the purpose of conducting research that contributes to the detection, identification and understanding of systemic risks in the Union.

The impact of this provision is twofold: researchers will benefit from access to previously undisclosed or under-disclosed data, opening up new avenues for research and increasing the potential of generating knowledge for the benefit of all. At the same time, these insights will contribute to the regulator's work in its assessment of the measures implemented by platform operators to meet DSA requirements.

While the main conditions for accessing data and the obligations of the actors involved are set out in the DSA, the Commission is empowered to adopt delegated acts laying down the conditions under which providers of VLOPs and VLOSEs are to provide data. The aim is also to design an easy, practical and clear process for data access, which will protect the rights and interests of those involved – while containing adequate safeguards against abuse.

The Commission is gathering stakeholders' views as part of the preparations of the delegated act. This call for evidence is part of this exercise.

Problem the initiative aims to tackle [max 25 lines]

As defined in Article 40 of the DSA, **data access will be possible** for:

- Digital Services Coordinators or the Commission, who can request access for monitoring purposes and to assess compliance with the DSA;
- Vetted researchers, to conduct research contributing to the detection, identification and understanding of systemic risks in the Union that stem from the design or functioning of large platforms or search engines and related systems, including algorithmic ones.
- Researchers that meet the relevant conditions to gain access to publicly available data, as per paragraph 12 of Article 40.

The Commission is working on the design of an efficient data access mechanisms for all actors concerned, within the legal boundaries set by Article 40 of the DSA. To ensure that all relevant experiences and initiatives are taken into account, it invites stakeholders to provide their views, in particular on the following questions.

1) Data access needs:

- a) What types of data, metadata, data governance documentation and other information about data and how it is used can be useful to DSC's for the purpose of monitoring and assessing compliance and for vetted researchers for conducting research related to systemic risks and mitigation measures?
- b) What sort of analysis and research might DSC's and vetted researchers conduct for the purposes of monitoring and assessing compliance and conducting research related to systemic risks and mitigation measures?

2) Data access application and procedure:

- a) Digital Services Coordinators (DSCs) in the Member States will play a key role in assessing researchers' applications and they will act as intermediaries with the platforms. How should the application process be designed in practice? How can the vetting process ensure efficient exchanges between researchers and platform providers?
- b) Article 40(8) exhaustively defines criteria for vetting researchers. How can a consistent assessment across DSCs be ensured, while still taking into consideration the specificities of each request?
- c) What additional provisions or specifications could be useful to help balance the new data access rights and the protection of users' and business' rights, e.g. related to data protection, confidential information, including trade secrets, and security?
- d) What kind of safeguards can be put in place to assure that data gathered under Article 40 is used for the purposes envisaged and to minimise the risk of abuses?
- e) Article 40(13) introduces the possibility of an independent advisory mechanisms to support the management of data access requests and vetting of researchers. What would be the added value of such a mechanism?

3) Data access formats and involvement of researchers:

- a) What technical specifications could be considered for data access interfaces, which takes into account security, data protection, ease of use, accessibility, and responsiveness (e.g. APIs, data vaults and other machine-readable data exchange formats)?
- b) What capacity building measures could be considered for the research community to take advantage of the opportunities provided by Article 40?
- c) Would it be desirable and feasible to establish a common and precise language for DSCs, vetted researchers, VLOPs and VLOSEs to use when communicating about data access, e.g. by formulating a standard data dictionary and/or business glossary? How might this be implemented?

4) Access to publicly available data:

- a) Not only vetted researchers will have greater opportunities for accessing data, all researchers meeting the conditions set out in Article 40(12) will be able to get direct access to publicly available data. What processes and mechanisms could be put in place to facilitate this access in your view?

Basis for EU action (legal basis and subsidiarity check) [max 10 lines]

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| <p>The legal basis for EU action is set out in Article 40(13) of the DSA, which is an EU legislation</p> <p>In particular, data access requests will often relate to cross-border situations, which would make an EU-level action more effective and efficient than actions taken by individual Member States.</p> |
| <p>Legal basis</p> |
| <p>Article 40(13) of Regulation (EU) 2065/2022 (The DSA)</p> |
| <p>Practical need for EU action</p> |
| <p>Article 40 of the DSA enables specific actors to access data for research that could contribute to identifying and understanding societal risks and sets out the conditions and procedures to gain access to data. Further specification for a fit-for-purpose mechanism needs to be set out in a delegated act. Acting at EU level in this respect will ensure that a coherent procedure for data access is implemented across Member States, thus allowing researchers and platforms' providers to benefit from a clear framework.</p> <p>This call for evidence will allow the Commission to gather views of all interested actors, learn from existing experiences and build upon their expertise to provide the necessary further specifications.</p> |
| <p>B. What does the initiative aim to achieve and how [max 25 lines]</p> |
| <p>This delegated act will supplement the EU legislative framework on intermediary services, in particular by setting out:</p> <ul style="list-style-type: none"> • The procedures for Digital Services Coordinators to manage requests and vet researchers and if necessary, the possibility of an independent advisory mechanisms in support of providing access to data. • The purposes for which the data may be used; • The specific conditions for providing researchers with access to data, in particular the provision of access to data in compliance with the GDPR, accounting for the rights and interests of providers of VLOPs and VLOSEs and users concerned, the protection of confidential information and maintaining the security of services and the relevant indicators. • The technical conditions under which providers of very large online platforms and very large online search engines are to provide access to data to the Commission and the Digital Services Coordinators of establishment and with vetted researchers. <p>The preparation for the delegated act should build on the best possible technical sources of information and learnings from precedents on existing and proposed data access schemes, as well as topic-specific voluntary measures. These include learnings from the EDMO report on platform-to-researcher data access under Article 40 of the General Data Protection Regulation (GDPR) and the Code of Practice on Disinformation.</p> |
| <p>Likely impacts</p> |
| <p>The delegated act will ensure a well-functioning process for the provision of access to data in full respect of the rights and interests of those concerned. This should result in increased transparency and a better understanding of VLOPs and VLOSEs.</p> |
| <p>Future monitoring</p> |
| <p>The Commission will supervise and enforce the compliance of VLOPs and VLOSEs with their obligations under Article 40 of the DSA, in line with its general competences under the DSA. In addition, the Commission will monitor the application of this article by all other actors involved to ensure that there is a well-functioning and uniform system for providing data access.</p> |
| <p>C. Better regulation</p> |
| <p>Impact assessment</p> |
| <p>No impact assessment is planned, because the DSA already includes, in Article 40, the main conditions and the procedure for providing access to data. The delegated act is meant to set out the technical and procedural conditions for data access. This call for evidence will gather information of existing practices and technical specifications, including data formats and possible templates, that could be useful as part of the preparatory work for the delegated act. In addition, the Commission is working closely in cooperation with the European Centre for Algorithmic Transparency and with experts in the field to analyse proposed and existing data sharing mechanism and their legal implications and will consult the research community, national authorities and a wide range of stakeholders.</p> |

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| Consultation strategy |
| Stakeholders are invited to give their views and provide input through this ‘call for evidence’. In addition to this, the Commission will organize other outreach activities to continue receiving stakeholders’ feedback during the course of 2023. It will also seek feedback from Member States during the meetings of the expert group on digital services. It will also consult the European Digital Media Observatory (EDMO) and its hubs in view of their particular expertise and experience in the domain. |
| Why we are consulting? |
| <p>This call for evidence will ensure that the Commission takes account of the stakeholders’ perspective by transparently gathering their views, arguments and underlying information and analysis on risks, gaps and measures required at EU level. Particularly to shape the implementation of the rules in the Regulation in a way that is practical for stakeholders.</p> <p>In particular, the Commission welcomes any input regarding the 8 specific issues outlined in Section A and any other reflections that will be useful in the preparation of the implementation of Article 40 and the subsequent delegated act.</p> |
| Target audience |
| <p>The consultations are addressed to a wide range of public and private stakeholders, including from:</p> <ul style="list-style-type: none">• Research organisations• Civil society organisations• Fact-checkers• National authorities, particularly potential Digital Services Coordinators and other competent authorities, as well as relevant ministries• EDMO and its hubs• Potential providers of very large online platforms and very large online search engines |