

Feedback on the draft EU Delegated Regulation on data access provided for in the Digital Services Act

Consultation response from the

Centre for Competition Policy

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This consultation response has been drafted by named academic members of the Centre, who retain responsibility for its content.

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As an academic research centre, we welcome explicit citation and sharing of this consultation response and the research cited within it. If you would like to discuss the evidence in more detail, please feel free to contact the centre or the named academics.

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Response to the consultation on the draft EU Delegated Regulation on data access provided for in the Digital Services Act - Ares(2024)7652659

We welcome the opportunity to respond to this consultation on the Draft Delegated Regulation on Data Access under the Digital Services Act. In responding we draw on the findings of our CERRE Report on [Cross-cutting Issues for DSA Systemic Risk Management: An Agenda for Cooperation](#). This delegated regulation is a vital step towards enabling research to investigate these cross-cutting issues and to contribute to the iterative learning about risk mitigation that is needed for the DSA's risk management approach to be effective. We particularly welcome the tight deadlines included in the Draft Delegated Regulation and the assurances that research access will not be subjected to limits in relation to data storage and the use of analytical tools.

As we have pointed out in our report, the ability to look at data on mitigations across designated services and over periods of time are important for learning and continued improvement in mitigating systemic risks, so some researchers will need to be able to work with data from multiple data providers acquired through multiple requests.

Our report identifies specific issues that we consider as key areas for the meta-analysis of systemic risks across services:

- a. Advertising business models: Effects of targeting and effectiveness of ad libraries;
- b. Temporality features of digital content and possible correlation with malign use
- c. Use of automated cross-posting tools;
- d. The impact of very large influencers and related mitigations;
- e. Effectiveness of control and incentive mechanisms, and combinations thereof, in mitigating specific sources of risk;
- f. Recommender systems: Transparency and effects of ranking signals and algorithmic curation decisions on user behaviour and collective outcomes;
- g. Inauthentic use and generative AI;
- h. Data sharing, data agglomeration, and common critical technical vulnerabilities;
- i. The roles of users, third parties and common resources or assets in content moderation.

We appreciate that Recital 12 provides several examples of data needed to investigate these issues and notes that data needed may change over time. Adding further examples from the list above could indicate that these issues and associated data should generally justify a reasoned request. We suggest that Recital 12, our list, and other inputs be used to create a regularly updated 'whitelist' that shall justify a reasoned request. As recommended in our report, the Digital Services Board and the Commission should lead an inclusive, cooperative process to set priorities among the risk areas for meta-analysis, which could result in the aforementioned whitelist. This may help with achieving the deadlines set out in the Delegated Act and help researchers garner funding for the projects for which they would need data access.

It will be also important that researchers, DSCs and data providers have information on unsuccessful reasoned requests and on required amendments, including the reasons and justifications as well as the changes made. This is to enable learning by researcher, especially those planning to make reasoned requests, and the transparency required for effective oversight. We therefore suggest that Article 3, 11, or 12 require such details be published through the DSA Portal about unsuccessful or amended requests.

The Draft does not seem to consider any mechanism that would allow researchers to issue a complaint if they find that the data that they received is insufficient in terms of quality (for example, regarding the granularity or the completeness of the data) or otherwise does not enable the research for which the request was made. This could undermine the effectiveness of data access, when data providers make data available in response to a reasoned request, but the provided data does not align with the requirements formulated in the reasoned request.

In addition, we note no definition of “trade secrets” is given. As the response from the Forum in Information and Democracy has pointed out, this has been a frequent justification for refusing access to researchers. We support the response of the FID and suggest that the Delegated Regulation’s Article 2 also include a definition that references Directive 2016/943, and that Article 9(2) note that Digital Services Coordinators should also take into account the public interest, the nature of the risk area(s) related to the request, and the interests of the researchers.

Finally, we enthusiastically support the plan set out in the Delegated Regulation and Annex to have a publicly accessible interface of the DSA Portal. For the research resulting from reasoned requests by vetted researchers to contribute to the effective implementation of the DSA and evaluation of that implementation pathways for findings to enter into public and stakeholder discussions are needed. We therefore suggest that Article 3(1) includes an additional purpose of the portal related to the publicizing of findings from the research. Ideally, the portal would include short, accessible summaries of the findings resulting from reasoned requests with hyperlinks to published papers that could be updated by the researchers as needed. This would contribute to the development of expertise and capabilities addressed in Article 64 of the DSA. Although it may not be appropriate to include it in the Delegated Act or the Annex, we would like to see the Commission and the Board organising an annual dissemination event for vetted researchers within 2-3 years of the first requests being granted.