



11 May 2023
2023 - 6017
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Denmark's response to the Call for Evidence on Delegated Regulation on data access provided for in the Digital Services Act

The Danish Government fully supports the aim of the Digital Services Act to create a more responsible digital economy, where the biggest online platforms and online search engines will have to take more responsibility in creating a safer online environment.

The Danish Government welcomes the provisions on access to data for researchers and the Digital Services Coordinator provided for in the Digital Services Act and appreciates the opportunity to comment on the Commission's Call for Evidence.

The Danish Government considers it particularly important that the delegated act to the greatest extent possible supports and ensures access to data. This includes setting clear guidelines for access and establishing uniform processes.

In this regard, the Danish Government highlights that:

- Transparency and access to data is a prerequisite for research on systemic risks.
- Access to data and the data itself should be based on recognised technical standards and equipment, software and services generally available in the market for researchers. Moreover, access to data should be given in a timely and effective manner and without undue delay.
- Consistent assessments for vetting researchers across Digital Services Coordinators is essential. The Danish Government suggests using standard templates during the application process.
- Rules on transparency should respect the protection of the rights and legitimate interests of the very large online platform or the very large online search engine, including trade secrets or confidential information.

Transparency is a corner stone in creating a well-balanced and effective legal framework, which will ensure a safer online environment for recipients and protect fundamental rights. For instance, data on algorithmic systems of very large online platforms and very large online search engines will enable research into the impact of such systems on our citizens and society as such. Access to data is a prerequisite for being able to analyse and assess systemic risks and for establishing a resilient system of risk mitigation.

Access to data could enable research on the possible detrimental effects on the democratic dialogue and freedom of speech. For example, it can enable research into potential consequences of algorithms that give extra weight to content prompting emotional reactions, and where such content as a consequence is more prominently ranked. Another example could be research on the societal effects of a prolonged timespan from notification of illegal content until removal of the content. Data and analysis on the evolution and severity of systemic risks of the very large online platforms or very large online search engines are particularly important, and the delegated regulation should enable access to data on unknown future systemic risks.

The Danish Government underlines that access to data and the data itself should be available and based on recognised standards to prevent unreasonable or disproportionate barriers to access such data. For example, access to data should not be conditional on the acquisition of special proprietary equipment with the sole function of providing access to data from a specific service provider. Equipment, software and services that are prerequisites for access to and processing of such data should thus be generally available in the market for researchers.

It is important for the Danish Government that access to data is given in a timely and effective manner and without undue delay. Article 40 in the Digital Services Act sets out that providers of very large online platforms or of very large online search engine shall provide access to data within a reasonable period specified in the request. The timeframe is not further elaborated. The Danish government is of the opinion that the understanding of and parameters for determining what a ‘reasonable period’ is, should be specified in the delegated act in order to provide legal certainty. Such specification should – among other things – be made with due regard to the difficulty in retrieving the relevant data on one hand and the deadlines for and timeliness of the research on the other hand.

The Danish Government supports that the Digital Services Coordinator, in specific requests and with reference to article 40, can specify the technical means or the interfaces through which providers shall provide access to the very large online platform or very large online search engine's databases or algorithmic systems. In this connection, and in order to ensure effectiveness, the Danish Government is of the opinion that it should be underlined, that transmission of documents, databases or any other information to and from the Digital Services Coordinator should take place by digital means.

Regarding the specific data access needs, and as response to question 1 in the Call for Evidence, the Danish Government refers to the attached annex.

The Danish Government stresses the need for a consistent assessment across Digital Services Coordinators when assessing the conditions to be certified as vetted researchers. In order to promote a consistent assessment it could be considered to require that applications from researchers according to article 40(8) are based on a standard template. This will ensure that all information is submitted initially and will ease the communication amongst Digital Services Coordinators and the Commission and facilitate comparability. Also, already established mechanisms, such as the Information Sharing System in article 85, could be used for communicating names of persons or entities to which the Digital Services Coordinator has awarded the status of 'vetted researcher' according to article 40(11). Lastly, ambiguities in article 40(8) should be clarified. For instance, it should be elaborated and clarified under what conditions a researcher is no longer independent from commercial interests according to article 40(8)(b).

The Danish Government supports establishing an independent advisory mechanism to support researchers in their applications for data access. The advisory mechanism should assist researchers in their application process and support them in complying with rules on data protection and confidentiality.

Finally, the Danish Government underlines that rules on transparency should respect the protection of the rights and legitimate interests of the very large online platform or the very large online search engine. This includes protection of trade secrets or confidential information – including algorithms – of the very large online platform and the very large online search engine. At the same time, the Danish government finds it important

to specify when information is considered trade secrets or confidential, as ambiguities in this regard may result in misuse. For example, providers should not be able to reject all requests with reference to confidentiality.