



Case no.
2024 - 3549

Doc no.
111513

Date
10-12-2024

Annex to the written response of Denmark to the draft of The Delegated Regulation on data access provided for in the Digital Services Act

In the following, technical comments to specific sections of the delegated regulation are presented.

Article 7, para 1 og 2

Pursuant to Article 7, para. 1, the Digital Services Coordinator (DSC) to which the data access application has been submitted, shall within 5 working days from the receipt of the application confirm to the principal researcher, that the application contains the information and supporting documentation listed in Article 8, or indicate if this is not the case.

It is not clear to us how thorough the assessment of the DSC receiving the application should be. Is it merely a superficial check that the applicant has actually submitted some information and some documentation, which is referred to as the information and documentation listed in Article 8, or is the DSC receiving the application obliged to conduct a check of the actual content of the information and the documentation. If the latter is the case, how does the check of this DSC differ from the check, which should be conducted by the DSC of establishment, cf. to Article 8, which speaks of an obligation for the DSC of establishment to *verify* the submitted information and documentation?

Our immediate view would be that the check performed by the DSC of establishment is far more thorough than that of the receiving DSC. However, in recital 8 it says that: *"...the Digital Services Coordinator to which the data access application was submitted, should verify that the data access application includes the relevant information and supporting documentation."* I. e. in recital the wording "verify" is applied to the receiving DSC whereas the word "verify" is used about the DSC of establishment in Article 8.

Even if the check carried out by the DSC receiving the application is rather formal and superficial, 5 working days is a very short deadline, which can prove impossible to meet especially if the DSC receives many applications within a few days.

Since it is not clear how thorough the assessment of the DSC receiving the application should be, it is not possible to assess whether the deadline in Article 7, para 1, is realistic. It is however important that the deadline is proportional to the size of the obligations.



Moreover, we are unsure whether the DSC's "*confirmation that the application contains the information and supporting documentation listed in Article 8*" according to Article 7, para 1, corresponds to "*the initial assessment*" referred to in DSA, Article 40, para 9. We strongly advise that this will be clarified within the text.

If that is *not* the case, we have to stress the importance of clarifying the obligation to perform an initial assessment. In the absence of such clarity it is not possible for DSC's to make sure that they have the right competencies and sufficient resources to perform their tasks in accordance with Article 40, para 9.

Article 12, para 6

We believe it should read "Digital Services Coordinator of establishment" in Article 12, para 6, as is the reading in Article 12, para 1 to 5.

Article 14, para 1

Should it not read "Digital Services Coordinator of establishment" in Article 14, para 1, as the provision has to do with "reasoned request" which are only formulated by DSCs of establishment.

Article 14, para 3, point a

We suggest having a definition of "financial and personal ties" in the delegated act or a reference to a definition in another legal act, if that applies.

If there is no such definition, and a definition is inserted in Article 2, it should be considered, whether indirect ties – as well as direct ties (financial and personal) – should disqualify an expert.

Article 9, para 3

In Article 9, para 3, it reads that Digital Services Coordinators of establishment shall consult the relevant supervisory authorities in questions related to GDPR. We suggest to make a reference to "Digital Services Coordinators of establishment" in the corresponding recital 17 instead of "Digital Services Coordinators" in general.

Recital 19

We suggest that the delegated act determines the exact structure of the reasoned requests.

Recital 23 and 24

We believe that in recital 23 and 24 the correct wording should be "Digital Services Coordinators of establishment" instead of "Digital Services Coordinators" as the corresponding Article 14 refers to only "Digital Services Coordinators of establishment."