UCD Centre for Digital Policy
Ionad um Bheartas Digiteach UCD

Submission to Public Consultation on the draft Delegated Act on Article 40

JOINT SUBMISSION BY

UCD CENTRE FOR DIGITAL POLICY
AND
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Submission

GENERAL COMMENTS

The Draft Delegated Act on Article 40 (Delegated Act) represents a significant step forward by assigning national Digital Service Coordinators (DSCs) the responsibility of representing and protecting the interests of European Union citizens in research on systemic risks to society posed by Very Large Online Platforms and Very Large Online Search Engines (VLOPSEs). This marks a crucial shift, as VLOPSEs themselves have previously played this DSC role in practice, creating challenges for conducting independent studies on systemic risks to EU societies without the influence of VLOPSEs' interests.

We greatly value the inclusion of examples of shared datasets and access modalities in the Delegated Act. These examples provide much-needed clarity and guidance for stakeholders involved in the data-sharing process. **To further strengthen the Act, we recommend extending this approach by including examples specific to systemic risks, given their central importance to data access applications. Such additions would enhance the Act's effectiveness in facilitating meaningful research and ensuring transparency in addressing systemic risks.**

Furthermore, **we propose the development of a dataset categorisation system, along with the safeguards and data access modalities suggested for each data category.** This would help researchers and DSCs converge on the safeguards and data modalities appropriate for each category, while ensuring that the rights of data providers and the rights and privacy of their users are preserved. Then, data providers would be able to participate in the discussion of data modalities that are appropriate for each data category at the abstract level of data categories, rather than specific applications. For each category of dataset, there should be listed suggested safeguards and data access modalities, to streamline the application process of researchers and the decision-making process of DSCs. This categorisation could be provided by DSCs in the DSA data access portal and by VLOPSEs together with their data inventories to support researchers in adequately determining the level of sensitivity of the data. For a particular application, researchers and DSCs could determine the most fitting data category and use this as a starting point. A mention of such a categorisation could be provided in Recital 13 (see our specific suggestion below).

We further commend the inclusion of provisions that address data sharing modalities, particularly the emphasis on "legal conditions determining access to the data." The reference in Recital 13 to data access agreements and non-disclosure agreements as examples of such safeguards is a vital and commendable step. These agreements will undoubtedly play a pivotal role in ensuring the success of the DSA's objectives by providing clear and secure frameworks for data sharing.

However, we recognise that the negotiation and finalisation of formal agreements between data providers and applicant researchers can often be a lengthy and complex process. This complexity could pose challenges for all stakeholders involved, including the DSCss potentially hindering the timely and efficient implementation of the DSA.

To address this challenge, we believe the Delegated Act could be further strengthened by designating DSCs to develop standardised formal agreements at the EU level which can then be adapted for use by national DSCs . Such standardisation would greatly enhance efficiency by streamlining communication and negotiations across all stages of the data-sharing process, including data access applications, reasoned requests, amendment requests, and mediation procedures. Establishing standardised agreements would not only reduce administrative burdens but also foster greater consistency and trust among stakeholders, thereby reinforcing the effectiveness of the DSA.

SPECIFIC COMMENTS ON RECITALS AND ARTICLES

Recital 2: We have two suggestions here: one is to **provide further specific examples of systemic risks** in order to develop a shared understanding of what these entail. This includes, for example, research to understand polarisation, radicalisation, the reconfiguration of political communication, forms of toxic and divisive contents that are not illegal, and patterns of misinformation beyond factually incorrect information. Secondly, we suggest **broadening the scope of which data are available** to researchers in order to study patterns of interactions and communications that offer important insights into how society works. While the Act refers to accessing data to study systemic risks and the effectiveness of measures to tackle them, there is a need to access platform data for social scientific research beyond the effectiveness of the DSA. **The Act should broaden its scope to include reasoned requests for studying these patterns of communications**.

Recital 9: Independence from commercial interests: are researchers funded by platforms in the form of grants considered independent? Some **clarity concerning the criteria and degrees of independence** would be welcome here.

Recital 6 and Article 6(4) emphasise the importance of documenting data inventories, which will be essential for reducing the review burden on DSCs and data providers. Accessing an existing dataset from an inventory is significantly faster and more straightforward than responding to requests for novel datasets that are not yet documented. However, the Delegated Act does not require data providers to present a comprehensive overview of all datasets in their inventory. This omission could lead to incomplete and inconsistent documentation of data inventories, undermining the efficiency of the process.

To address this, **we suggest strengthening the Delegated Act by amending Article 6(4).** Specifically, the phrase *"including examples of available datasets and suggested modalities to access them"* could be replaced with ***"listing all available datasets and suggested modalities to access them, in a way that preserves the privacy of VLOP users and protects VLOP trade secrets."*** Additionally, replacing the term *"overview of data inventory"* (which appears twice in the draft Delegated Act) with simply ***"data inventory"*** would further **enhance clarity and encourage more complete and systematic documentation of datasets. These refinements would ensure greater transparency and usability of data inventories while safeguarding key privacy and commercial interests.**

Recital 12: Additional examples could include: **data used to train content moderation algorithms**

Recital 13: The provided list of examples of access modalities/safeguards is very helpful. We suggest adding another example: **user consent requests, formulated either as opt-in or opt-out requests. That said, this modality should be required only for requests of the most sensitive private data of individual users' communications, as we suggest below.**

The list further references "data access agreements and non-disclosure agreements." We propose enhancing this Recital by adding the following statement:

"***Such access modalities can be complex and time-consuming to evaluate and negotiate. To address this, DSCs will collaborate with data providers and applicant researchers to categorise and standardise these modalities, including data access agreements and non-disclosure agreements. For example, user consent requests could be reserved for the most sensitive reasoned requests involving private data about individual users' communications, while data access agreements could be applied more broadly***."

This addition would provide clarity and ensure a more streamlined and efficient approach to managing access modalities.

Article 7: The timeline for DSCs to review and vet research proposals is currently set at 21 days, which may need to be extended, especially in the initial period. While we acknowledge the importance of maintaining clear deadlines to ensure research is conducted in a timely manner, it is likely to take some time to establish fair and efficient procedures for determining appropriate data modalities and safeguards for key or frequently requested datasets.

During this initial phase, DSCs will likely require additional time to assess proposals effectively. **We suggest that the Delegated Act acknowledge this by introducing flexibility in the timeline during an initial transition period, such as the first year of implementation.** After this period, when standard practices and processes have been

established, the timeline can be formalised, with firmer deadlines that DSCs will be expected to adhere to. This approach would balance the need for timely research with the practical realities of establishing robust procedures.

Article 9 (2): It is not clear what criteria/guidance will be available to DSCs to determine whether data 'sensitivity' questions should be prioritised. **We suggest that decisions on data sensitivity and the criteria and rationale behind them should be transparent.**

Article 9(4) (b): What mechanisms are there for researchers to request supplementary data if necessary? Can a data access application and/or a reasoned request be updated or will a new application and request be submitted whenever such a need arises? **To address this point we propose that requests are active for the estimated duration of the research project to which they are linked.**

Article 10 (1)(b): As with Article 9, it is unclear whether researchers can extend their access to data. Some datasets may require continuous updating and may need to be collected for many years. **We therefore suggest that it should be made possible to specify in the request to extend data access for the duration of the research project to which they are linked, without any overhead, as long as all vetting conditions are met by the researchers requesting access.**

Articles 10 (1)(d) and 11 (1)(a): The text in these two places mentions "Article 8, point (i)" as a reference for 'summary of the data access application', but the correct reference is "**Article 8, point (9)".**

Article 13(1): It should be possible to initiate the mediation process by researchers, not only platforms. This is important for the cases where a VLOPSE stipulates conditions that researchers should comply with, e.g., a VLOPSE may require researchers to sign an unreasonable data sharing agreement inconsistent with the local jurisdiction of the researcher's university.

Article 14: Independent experts/advisory mechanisms: there is a need to ensure transparency in terms of who these experts are and what their role is. **We suggest the creation of a body of experts with clear areas of expertise (methodological, conceptual, disciplinary, data protection, etc.) much in the way that the EDMO envisaged Independent Intermediary Body is designed to operate.**