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Data Science Lab

Implementing Data Access of the Digital Services Act

Collaboration of European Digital Service Coordinators and Researchers in Building Strong Oversight over Social Media Platforms

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#DSA
#DigitalServicesAct
#Research
#DataAccess
#EuropeanUnion

#DigitalGovernance

The EU Digital Service Acts signals a move away from self-regulation towards co-regulation of social media platforms within the European Union. To address online harms and rising platform power the DSA clarifies responsibilities of platforms and outlines a new technology regulatory framework to increase oversight. One key oversight instrument constitutes Article 40 of the DSA, which lays out data access for vetted researchers, who add value to regulators and the broader public as creators of knowledge, educators, advisors, innovators, and watchdogs. Currently, the EU Commission and national governments make important decisions regarding Digital Service Coordinators (DSCs) that play a key role in implementation.

Based on expertise on European public administration and political science we lay out key challenges and success factors of DSCs that will play a role in promoting successful cooperation between DSCs and researchers. We provide three recommendations: First, we recommend to strengthen transfer of scientific knowledge into policy-making by processing publicly accessible publications within public administrative bodies. To this end, capacities of DSCs need to be increased. In addition, we also point towards the database of vetted researchers collected by the Board of DSCs as important resource in order to strengthen knowledge transfer. Second, the DSC network requires agile institutions with fast response time in order to enable researchers to play a constructive role in implementation. This also includes institutional procedures between DSCs and the Intermediary Body and Data Protection Agencies. To avoid delay in implementation agile institution-building needs to start now. Finally, institutional safeguards will help to avoid strategic choice of companies of the DSC of establishment. At the same time, the Irish DSC's capacity should be strengthened compared to other national DSCs since most large intermediary services providers have their European headquarters in Ireland.

1   Introduction

Social media are criticized for spreading false information and hate speech, polarizing public debate, promoting dissatisfaction and distrust among citizens, and even threatening peace and stability. In an effort to manage the disruptive elements of social media, a consensus has emerged among European policymakers that self-regulation has to move towards co-regulation. On October 19, 2022, the European Parliament and the Council of Ministers passed the Digital Services Act/Digital Market Acts Package. This new policy promotes a procedural approach toward regulating social media platforms. In addition to clarifying the responsibilities of platforms, the DSA outlines a new technology regulatory framework to increase oversight. As one of the most potent oversight instruments, the DSA grants data access under certain conditions to vetted researchers, including university researchers and NGOs (Article 40(8)).

Data access will help to overcome the current *knowledge gap* between platforms, policymakers, and society. This asymmetry of knowledge emerged because social media platform companies such as Google, Meta, and Twitter provided little information on platforms' internal processes and decisions and limited data access to the broader public posed limitations on the ability of researchers to draw conclusions about societal and political consequences of content posted by users on platforms. For The scandal involving Facebook and the consultancy firm Cambridge Analytica highlighted the potential ethical misuse of personal data upon accessing third parties and the risks of socio-psychological targeting (Zarouali et al., 2022). Furthermore, social media platforms are associated with decreased democratic quality in many established democracies (Lorenz-Spreen et al.,

2022). However, systemic empirical research is hampered by lacking access to research data and changing research API access. As illustrated by the announcement of the closure of Twitter's research API after the purchase by Elon Musk, access to needed data still depended on the good-will of platform companies. The DSA aims to overcome this lack of transparency and a continued asymmetry of knowledge by granting "vetted researchers" access under specific conditions outlined in DSA Article 40 under the GDPR privacy protection framework. The combination of data access with other oversight instruments, most essential risk assessments (Article 34), independent audits (Article 37), and fines (Article 52(3)) provides the new tech regulatory structure composed of Digital Service Coordinators with potentially powerful instruments for oversight (Article 51).

With the start of the implementation phase, European member states are currently choosing existing or building new domestic institutions as Digital Service Coordinators (DSCs) to become part of a more extensive European network of tech regulators. Yet there is currently little connection between policy and academic debates, although the meaningful use of data access will require constructive collaboration between public administrators and researchers. Here, we outline why cooperation between Digital Services Coordinators and researchers is vital for successfully implementing the DSA. Based on expertise in European public administration, we then outline the challenges and success factors of Digital Service Coordinators that, in the view of the Center for Digital Governance at the Hertie School, play a crucial role in promoting successful cooperation between DSCs and researchers. Our broader goal is to link academic and policy debates to contribute to the successful policy implementation of the DSA and promote European social media governance for public well-being.

2 Envisioned Structure for European Digital Service Coordinators

According to media reporting, European Commissioners Margarethe Vestager and Thierry Breton are on a tight schedule to implement the DSA, coming into effect by February 27, 2024. The European Union has three main goals for implementing the DSA/DMA package: 1) to better protect consumers and their fundamental rights online; 2) to establish robust transparency and a clear accountability framework for online platforms; and 3) to foster innovation, growth, and competitiveness within the single market.[2] Article 40 of the DSA falls within the second goal since it is a powerful instrument to overcome the knowledge gap between the platforms, policymakers, and society (Cowls et al., 2020). Besides data access, the DSA contains many instruments, including, for example, user-complaint mechanisms and requirements for transparency of algorithmic recommender systems, which will require platforms to change their internal organization to fulfill legal obligations within the jurisdiction of the European Union. Thus, the European approach toward social media governance constitutes a process-based approach (Stockmann, 2023; Klausa, 2023).

The DSA differentiates between two kinds of platforms: very large online platforms (VLOPs) with over 10 percent of users within the European Union (45 million as of 2023) and online platforms (OPs) with less than 10 percent of users. According to user data provided by platforms as required by February 17, 2023, Facebook, Instagram, Twitter, and TikTok have well-above 45 million monthly users, but also companies like Booking.com

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[2] European Commission, "The Digital Services Act: ensuring a sage and accountable online environment", https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/europe-fit-digital-age/digital-services-act-ensuring-safe-and-accountable-online-environment_en, accessed March 2, 2023.

and Zalando classify as VLOPs. The European Commission defines users not only as registered users and non-registered monthly website visitors.[3] In addition, the DSA is also relevant for intermediary service providers, and hosting services are obliged to facilitate further obligations and underlie more scrutinous oversight.

To ensure internal and external oversight of compliance with the new rules, the DSA lays out a structure of Digital Service Coordinators (DSCs) (Wilman 2022:15). *Internal oversight* ought to be established via a compliance department within the organization of the service providers, and Article 23-33 of the DSA define obligations for risk assessment for VLOPs. *External oversight* will be established based on annual, external, and independent audits regarding procedures put in place for risk assessment (Article 37 DSA). Audits will likely be executed by consulting companies that receive access to data and algorithmic systems. Their main aim is to check only whether the risk assessment procedures announced by tech companies have been put in place. One aspect yet to be clarified is whether researchers will have a chance to observe and/or evaluate auditing methods.

Perhaps the most powerful instrument for oversight constitutes data access given independently of audits to so-called "vetted researchers" confirmed by supervisory authorities within the DSC framework. If these oversight instruments uncover non-compliance the EU Commission has the right to impose fines of up to 6% of companies' global turnover. A group of 82 experts invited to discuss these oversight instruments evaluated data access in combination with audits as most important for enforcing oversight (see Figure 1).
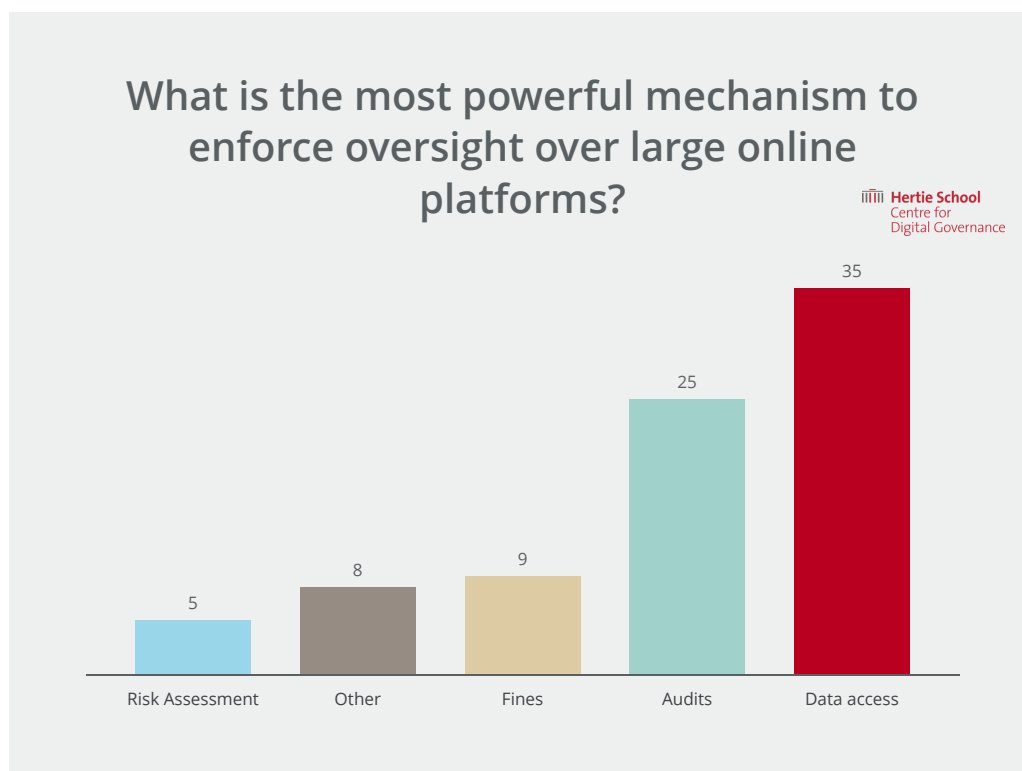

Figure 1: Expert Survey Results at the Research Workshop "How to Build a European Regulator to Govern Social Media Platforms?", Hertie School, February 21, 2021.

The new European tech regulator in charge of enforcing the above oversight instruments is composed of a network of DSCs nominated by each member state (deadline: February 17, 2024 (Article 49)). At the European level the DSCs are represented as European Board for Digital Service, tasked with assisting the Commission in supervising online platforms. The Commission is envisioned to get primarily involved to serve as a last resort enforcer if

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[3] European Commission, "DSA: guidance on the requirement to publish user numbers", https://digital-strategy.ec.europa.eu/en/library/dsa-guidance-requirement-publish-user-numbers, accessed March 6, 2023.

DSCs recommend the Commission to investigate issues regarding enforcement of the additional obligations for VLOPs. Decision-making is based on simple majority, excluding the Commission (Article 62, Article 36).

The envisioned structure connects a number of players, as depicted in Figure 2. For data access the European Digital Media Observatory (EDMO) strongly recommended installing an intermediary board in its working group's report on platform-to-researcher data access from May 2022.[4] Article 40 of the DSA also refers to DSCs being able to rely on the assessment of a third-party body for vetting researchers. In addition, in some cases needed research to understand systemic risks will also require pre-agreement with Data Protection Commissions/Authorities (DPC) that use of data will be compliant with General Data Protection Regulations (GDPR). Figure 2 illustrates how these institutions could be integrated into the vetting process such that they support DSCs in the vetting procedure by providing needed confirmation on GDPR compliance without taking part in the decision-making process.
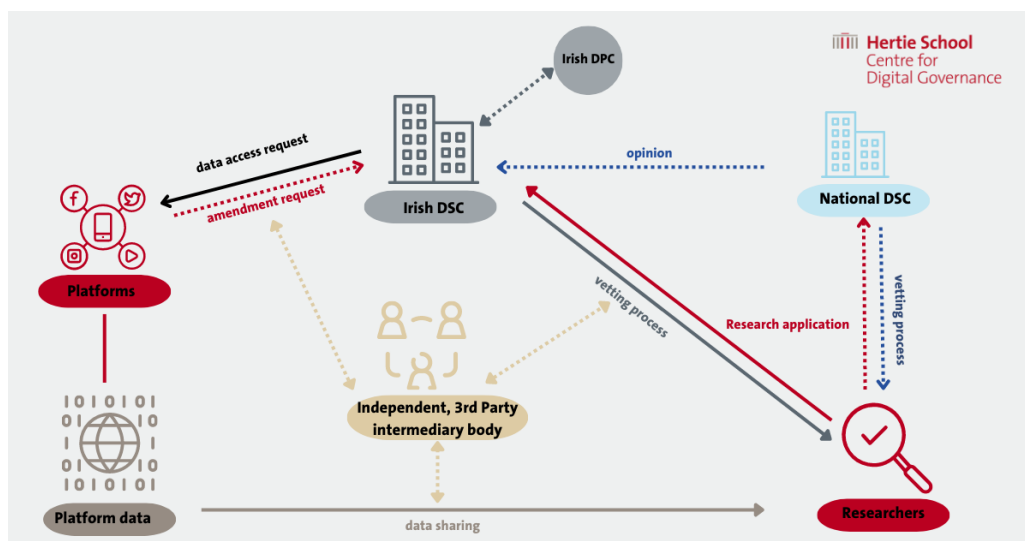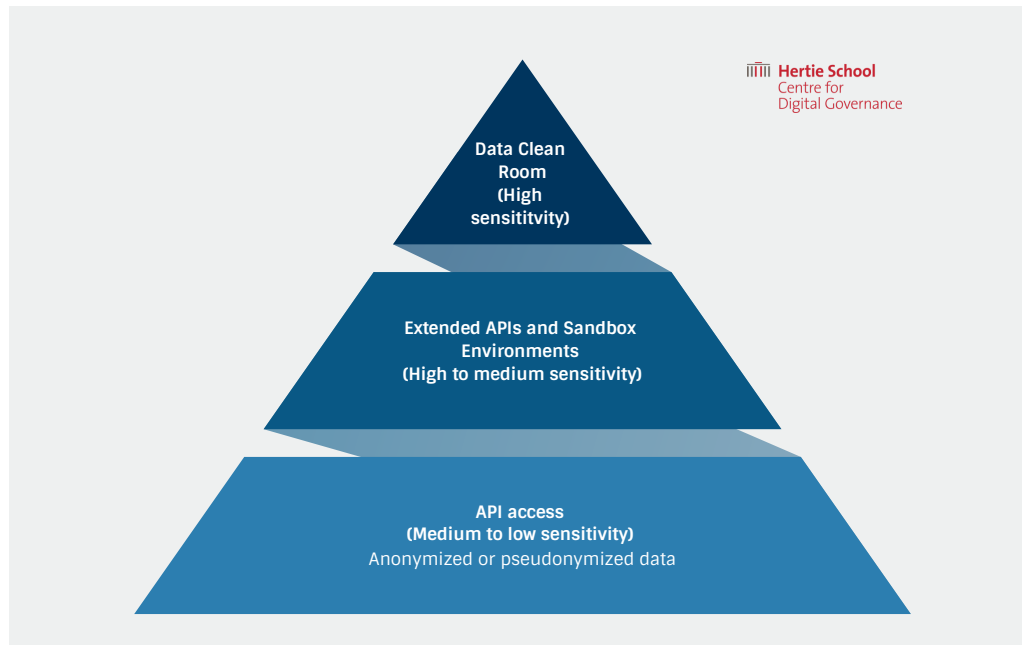

Figure 2: Network of Digital Service Coordinators under the Digital Services Act.

According to the DSA, vetted researchers ought to be affiliated with academic institutions in the EU, independent from commercial interests. Non-profit bodies, organizations, and associations also qualify as 'vetted researchers.' In applications, researchers are required to disclose research funding and make research results publicly available free of charge. Further application requirements relate to the substance of the DSA, ethical and legal provisions protecting user privacy, and technical conditions to demonstrate ethical data management. Regarding substance, the research must contribute to the risk assessment Article 34 and risk mitigation Article 35 DSA. As such, the scope has been designed broadly for the early implementation phase and may be subject to be broadened when needed when the DSA will be revised. Researchers are envisioned to play an essential role in policy evaluation within the scope of risks defined in the DSA.

In terms of ethical, legal, and technical requirements, researchers need to demonstrate that they can fulfill the specific data security and confidentiality requirements to protect personal data. Article 40 refers to a code of conduct, whereby data access will be layered depending on the sensitivity of the involved data (see Figure 3). Gabriela Zanfir-Fortuna, a leading expert on GDPR, concludes in the report by the EDMO Working Group on

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[4] European Digital Media Observatory Working Group on Platform-to-Researcher Data Access, 31 May, 2022, https://edmoprod.wpengine.com/wp-content/uploads/2022/02/Report-of-the-European-Digital-Media-Observatorys-Working-Group-on-Platform-to-Researcher-Data-Access-2022.pdf, accessed March 31, 2023.

Platform-to-Researcher Data Access that research data access under the DSA is possible.[5] It needs to comply with the framework set by GDPR and the fundamental right to the protection of personal data in Article 8 of the EU Charter of Fundamental Rights. The EDMO Working Group on Platform-to-Researcher Data Access differentiates between different levels of data access, whereby the highest data protection requires specific technical security measures, such as constant monitoring of the researcher gaining access, protection for interference by third parties, etc. In light of tendencies among some platforms, like Twitter, to reduce data access for researchers, the DSA constitutes a powerful regulatory instrument to maintain access to needed information over time.

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Data Clean
Room
(High
sensititvity)

Extended APIs and Sandbox
Environments
(High to medium sensitivity)

API access
(Medium to low sensitivity)
Anonymized or pseudonymized data

Figure 3: Multi-tiered Research Data Access Based on a Research Project's Privacy Sensitivity.

In the vetting process shown in Figure 2 researchers apply to either the DSC in their member state or the DSC where the platform is registered within the EU. In practice, this will be Ireland in most cases, although Zalando is registered in Germany, Booking.com in the Netherlands, and Amazon in Luxembourg. The Board is envisioned to keep records of the names and contact information of vetted researchers. This data base provides an opportunity for policy-makers and public administrators to engage in knowledge transfer.

Overall, the DSA envisions an important role for researchers in the implementation of the DSA. Scientific knowledge helps increase transparency and overcome the knowledge gap for policymakers and civil society. Data access procedures specifically ask for information related to societal risks of platform content and handling of content by platforms.

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[5] European Digital Media Observatory Working Group on Platform-to-Researcher Data Access, 31 May, 2022, https://edmoprod.wpengine.com/wp-content/uploads/2022/02/Report-of-the-European-Digital-Media-Observatorys-Working-Group-on-Platform-to-Researcher-Data-Access-2022.pdf, accessed March 31, 2023.

3 Why is a cooperation between Digital Services Coordinators and researchers important for the successful implementation of the DSA?

In European policy-making researchers are primarily brought in as advisors during the policy design and evaluation stages. DSA data access paves the way for a new form of collaboration between public administrators and societal actors. Data access constitutes a form of co-production, defined by Ostrom (1996) as "the process through which inputs used to produce a good or service are contributed by individuals who are not 'in' the same organization." These individuals simultaneously produce public services while also benefiting from them. A consensus among policymakers has emerged that they cannot decrease the knowledge gap alone; public administrative bodies need to cooperate with societal actors, including researchers and non-profit organizations, to provide required skills and technical capacity to further scientific understanding and decrease the existing knowledge asymmetry between platforms and policymakers. At the same time, misuse of the access to personal data by public administrators and societal actors is being protected by ethical and legal requirements written into the DSA and requirements for independence for DSCs, vetted researchers, and the third intermediary. Based on this logic, organizations and individuals need to collaborate constructively to implement data access as a vital oversight instrument to succeed.

While the DSA narrows down the role of researchers to providing information about societal risks of the platforms and policy evaluation, we propose that researchers will play the most constructive role in successful implementation of the DSA when they are able to exercise their roles as creators of knowledge, educators, policy advisors, watchdogs, and social innovators. Below we mostly focus on the role of academics, but many civil society organizations that also qualify as vetted researchers assume similar roles.

Researchers as creators of knowledge and educators: Most academics see themselves as independent from political and commercial interests with the exception of bad apples exposed, for example, during the Cambridge Analytica scandal. However, most researchers affiliated with academic institutions play an important role in creating knowledge for the broader public, such as the positive and negative consequences of digital platforms for public well-being. In addition, academics also play an important role in educating a new generation of students with expertise on these issues who will assume important positions in public administration, companies, and civil society. These two roles cannot be separated from each other: teaching and research connect different generations of scholarship in collaborative knowledge creation.

Researchers as policy advisors: Researchers contribute to the policy process in direct and indirect ways. In terms of direct interaction, governments consult researchers formally in commissions, expert groups, and reports, as well as in informal meetings and individual conversations. In addition, researchers also publish in media and provide policy-relevant information via policy briefs or academic publications. In doing so, researchers provide needed information and empirical evidence for policy decisions that inform policymakers and the broader public. As such, researchers serve as policy advisors at municipal, national and supranational levels.

Researchers as policy watchdogs: Researchers and non-profit organizations such as think tanks and NGOs act as policy watchdogs by analyzing potential lobbying influences and negative consequences of policies. Moreover, they may promote perspectives of marginalized groups often underrepresented in policy decisions.

Researchers as social innovators: Yet researchers do not only examine negative consequences. As independent observers, they also point towards positive outcomes of platforms for society. They provide balanced information on policy outcomes by identifying both advantages and disadvantages. By integrating contextual knowledge, research often forms the basis for social innovation by pointing toward new solutions to policy-relevant problems.

Researchers already take on the above roles with important implications for liberal democracy. The DSA provides an opportunity to strengthen these roles to promote public well-being. However, the design of public administration will be crucial to enable researchers to take on these roles.

4 What are the challenges and success factors for Digital Service Coordinators to enable successful cooperation between DSCs and researchers?

Establishing data access for researchers in regulation has been practiced in finance and environmental protection areas. In those areas, two key challenges have been identified: 1) an incentive problem on the side of the regulated entities (corporations) and 2) data protection issues related to data sharing (Ausloos and Leerssen, 2020). Best practices to address these challenges have included binding rules, independent institutions, including an intermediary institution to verify requests and pre-process data, a tiered regulation of data access to multiple governance perspectives, proactive support for researchers, and public transparency by default. Building on these best practices, we have identified challenges and risks concerning structural and institutional factors, as well as on a practical level, e.g., concerning capacities. Many solutions to challenges on data access have already been written into the DSA. Thus, our focus here is on additional challenges which we identified as open issues for European public administration.

Creating Feedback Loops from Researchers back to Policy-Making and Policy Implementation: To overcome the knowledge gap policy-makers and public administrators need to actively engage with academic publications. The DSA was intentionally designed to make scientific knowledge available open access to benefit society as a whole. Yet public administrative unites also often lack human resources to collect and process information that is created as a result of the newly created data access. Media is not the primary outlet for researchers to disseminate information. Therefore, staff needs to dedicate time and resources to read and process scientific information. A useful resource to engage in more direct communication constitutes the data base of vetted researchers collected by the Board of DSCs.

Agility and Fast Response Time: Many member states, including Hungary, Greece, Portugal, Malta, Sweden, Lithuania, Austria, the Netherlands, and Finnland, are in the process of establishing a DSC based on national media / telecommunications regulatory authorities.[6] For example, in France, ARCOM has been created in January 2022 as a merger of the High Audiovisual Council (CSA) and the High Authority for the Distribution of Works and Protection of Rights on the Internet (Hadopi). In Germany, the Bundesnetzagentur is under discussion with earliest possible legal announcement in the summer of 2023.

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[6] Deutscher Bundestag, Drucksache 20/5426, January 27, 2023.
https://dserver.bundestag.de/btd/20/054/2005426.pdf, accessed March 31, 2023.

Another group of countries, such as Luxembourg and Denmark, are considering national consumer protection and competition authorities.

Apart from political independence, these institutions also require organizational shifts such that communication and decision-making processes can work agile and fast. Digital transformation proceeds at a fast pace. While the DSA was designed with the intention to regulate platforms such as Twitter and Facebook, Meta is already shifting towards virtual reality on the Metaverse. In order to be able to adjust to fast digital innovation the DSA was intentionally designed vague. To take advantage of vague legal formulations, the institutional oversight structures need to be able to adjust easily and respond with short overturn rates.

Balancing Capacities of DSCs within the DSC Network: Companies often strategically choose countries due to favorable legal regulations or lack of enforcement. The importance of the "DSC of establishment" in the vetting process provides opportunities for platforms to register strategically in EU member states where platforms expect favorable treatment. While at present low taxation provides incentives for companies to remain registered in Ireland, changes in taxation or lax DSA enforcement in other member states may shift the cost-benefit analysis on the side of companies. Thus, capacities across EU member states need to be balanced as institutional safeguard. At the same time, as explained earlier, the Irish DSC plays an essential role in the vetting process since most VLOPs are registered in Ireland. As a result, the Irish DSC's capacity should be strengthened compared to the average DSC.

5 Policy recommendations

In acknowledgment of the identified challenges, we distill the following policy recommendations for a safe and effective research data access regime under the DSA.

5.1 Enable Researchers to Reduce the Knowledge Gap

Researchers play an important role as knowledge creators, educators, policy advisors, watchdogs, and social innovators. To improve transfer of scientific knowledge from societal actors into policy-making we recommend collecting and processing publicly accessible publications within public administrative bodies. In addition, the database collected by Board of DSCs constitutes an important resource that public administrators and policy-makers can draw on for knowledge transfer. Possible channels include events, workshops, and conferences, but also involvement of researchers as independent observers in audits. Finally, senior researchers should be able to involve junior researchers in research projects since knowledge creation and education are connected to each other.

5.2 Build Agile Institutions with Fast Response Time

The DSA envisions co-production between researchers and public administrators, which requires the building of agile institutions that enable researchers to engage in knowledge creation. The higher the quality and speed of knowledge creation, the higher the quality and speed of policy-response to systemic risks within the EU. To this end DSCs need to have the technical and human capacities to allow for fast response time and to process publications in order to ensure knowledge transfer. Collaboration with the intermediary body written into Article 40 and Data Protection Agencies also needs to accommodate the fast pace of digital transformation. To this end, EU member states have to move fast: In case of the Regulation on Addressing the Dissemination of Terrorist Content Online 22 out of 27 member states had *not* announced relevant public administrative bodies by the deadline. To make the DSA deadline for establishing the DSC Board of February 17, 2024 member states need to act now.

5.3   Put in Place Institutional Safeguards

Companies often strategically choose countries due to favorable taxation policies or lack of legal enforcement. Changes in taxation or lax DSA enforcement in other member states may shift the cost-benefit analysis on the side of companies. To this end the capacities of DSCs need to be balanced in order to avoid strategic choice of the DSC of establishment. At the same time, the Irish DSC's capacity needs to be strengthened compared to the average DSC since most large intermediary services providers currently have their European headquarters in Ireland.

6   Conclusion

Research data access is incremental to overcome the knowledge gap between social media platforms, policymakers and society. The DSA outlines the process for data access as a co-production between public administrators and researchers. Researchers can play the most constructive role in successfully implementing data access when they serve as knowledge creators, educators, policy advisors, watchdogs, and social innovators. The design of the new tech regulatory institutions for social media governance in Europe should be based on a vetting process that enables researchers to reduce the knowledge gap. This involves building of agile institutions with fast response time and putting in place institutional safeguards. These features will produce necessary conditions to ensure successful implementation of data access as an important tool of oversight over digital platforms. In doing so, research data access will enable a better understanding of the challenges of social media platforms to public well-being.

References

Ausloos, Jef, and Paddy Leerssen. "Operationalizing Research Access in Platform Governance What to Learn from Other Industries?," 2020.

Cowls, Josh, Philipp Darius, Valentina Golunova, Sunimal Mendis, Erich Prem, Dominiquo Santistevan, and Wayne Wei Wang. "Freedom of Expression in the Digital Public Sphere – Strategies for Bridging Information and Accountability Gaps in Algorithmic Content Moderation," November 30, 2020. https://doi.org/10.5281/zenodo.4292408.

Jaursch, Julian. "Wie die deutsche Plattformaufsicht aufgebaut sein sollte," 2022, 44.

Klausa, Torben. "Graduating from 'New-School' – Germany's Procedural Approach to Regulating Online Discourse." *Information, Communication & Society* 26, no. 1 (January 2, 2023): 54–69. https://doi.org/10.1080/1369118X.2021.2020321.

Lorenz-Spreen, Philipp, Lisa Oswald, Stephan Lewandowsky, and Ralph Hertwig. "Digital Media and Democracy: A Systematic Review of Causal and Correlational Evidence Worldwide." SocArXiv, November 22, 2021. https://doi.org/10.31235/osf.io/p3z9v.

Ostrom, Elinor. "Crossing the Great Divide: Co-production, Synergy, and Development." *World Development* 24, no. 6 (June 1, 1996): 1073–87. https://doi.org/10.1016/0305-750X(96)00023-X.

Stockmann, Daniela. "Tech Companies and the Public Interest: The Role of the State in Governing Social Media Platforms." *Information, Communication & Society* 26, no. 1 (January 2, 2023): 1–15. https://doi.org/10.1080/1369118X.2022.2032796.

Wilman, Folkert. "The Digital Services Act (DSA) - An Overview." SSRN Scholarly Paper. Rochester, NY, December 16, 2022. https://doi.org/10.2139/ssrn.4304586.

Zarouali, Brahim, Tom Dobber, Guy De Pauw, and Claes de Vreese. "Using a Personality-Profiling Algorithm to Investigate Political Microtargeting: Assessing the Persuasion Effects of Personality-Tailored Ads on Social Media." *Communication Research* 49, no. 8 (December 1, 2022): 1066–91. https://doi.org/10.1177/0093650220961965.

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