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Forwarding of the response of the Member State notifying a draft (Germany) to request for supplementary information (INFOSUP) of Commission.

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6. The questions submitted by the EU Commission (TRIS/(2021) 00832) are reproduced below in full. The answer to each question follows afterwards.

Question 1: The German authorities are asked to clarify how they intend to assess the proportionality, adequacy and necessity of the "qualified information" required by the researchers in accordance with § 5a(2). What kind of information can be expected, and under what parameters? What would the German authorities wish to cover under the 'legitimate interests' of the service provider under paragraph 5?

To ensure the proportionality of research requests:

Compliance with the suitability, necessity and adequacy of the qualified information requested by researchers is ensured by § 5a(3) to (5) NetzDG-E. Section 5a(3) NetzDG-E states that information may only be requested to the extent that the project pursues scientific research in the public interest on the nature, scope, causes and effects of public communication in social networks and on the handling of the providers and the information is necessary for this purpose. This ensures that the information provided serves exclusively scientific purposes. Research must also be in the public interest. The assumption of a public interest may be supported by the fact that the research contributes to the achievement of the legislative objectives. A public interest may be deemed not to exist if, due to dependencies on a contracting authority, it appears, in a specific case, that no unbiased research is being conducted. In addition, public interest may be deemed not to exist if there are indications that research is to be carried out for economic or political purposes. Finally, the research purposes that can be considered are limited to research on the nature, scope, causes and impacts of public communication on social networks and on how providers deal with this.

Compliance with the interests of the provider to be taken into account and the interests of third parties to be taken into account is ensured by the legally ordered submission of a protection concept pursuant to § 5a(4) NetzDG-E. The social network provider may refuse to provide information until the protection concept has been submitted. The protection concept shall be transmitted to the competent data protection supervisory authority at the same time as the request for information. This is of particular importance since the provision of information by the providers may also affect the interests of third parties, such as users.

Furthermore, the information pursuant to § 5a(5) NetzDG-E must not conflict with the overriding interests of the providers of social networks that are worthy of protection. This would be the case if conflicting interests of the providers, which are worthy of protection, would significantly outweigh the public interest in the research. The same applies when the public interest in the research does not outweigh the confidentiality interest of the people concerned (users).

Regarding the type of information requested (qualified information):

The information which can be the subject of research requests according to § 5a NetzDG-E is mentioned in § 5a (2)(1) and (2) NetzDG-E.

Researchers can request information about the use and specific functioning of procedures for the automated detection of content to be removed or blocked, in particular about the nature and scope of technologies utilised and the purposes, criteria and parameters for their programming as well as about the data used.

In addition, the dissemination of content which has been subject of complaints about illegal content or which has been removed or blocked by the provider, in particular the corresponding content as well as information about which users have interacted with the content in what way, can be the subject of requests for information.

Personal data may only be transmitted under the conditions of § 5a(6) NetzDG-E. The data must be transmitted anonymously or at least pseudonymised, insofar as this is possible without endangering the research purpose.

Regarding legitimate interests of network providers:

The information pursuant to § 5a NetzDG-E must not be provided without reservation. In accordance with § 5a(5) NetzDG-E, the provider of a social network can refuse to provide information when legitimate interests worthy of protection significantly outweigh the public interest in the research or when the legitimate confidentiality interest of the data subjects worthy of protection outweighs the public interest in the research. A conflicting interest of the provider worthy of protection can be considered when data access would unduly affect the provider's confidentiality interests resulting from fundamental rights.

Question 2: The German authorities are asked to clarify whether they have conducted a survey on existing methods, tools and examples, how researchers can collect similar or equivalent data for scientific research purposes and what gaps have been identified.

Improved access to data for science and research is a constant demand from the scientific community. [See Amelie Heldt, among others, at <https://verfassungsblog.de/the-sorrows-of-scraping-for-science/> and Konrad Lischka at <https://www.konradlischka.info/2018/06/blog/mitmachen-was-muss-medienaufsicht-ueber-digitale-oeffentlichkeit-wissen-und-welche-daten-braucht-dafuer-10fragen/>. In its statement on data trusteeships, the RfI also expresses itself decisively on the necessity of access rights for the scientific community <http://www.rfi.de/download/rfi-stellungnahme-zu-datentreuehandstellen/>. During the public hearing regarding the Federal Government's data strategy on 21.01.20, Prof. Regina Riphahn, in her role as Chairperson of the Council for Social and Economic Data, also pointed out the "problem area of lack of access to data", <https://www.bundesregierung.de/resource/blob/975226/1726084/f84b0fb9049daaed50f782c1070ca71a/2020-02-27-transkript-anhoerung-datenstrategie-data.pdf?down>

This also applies to improved access to information related to the dissemination and interaction with illegal content. [For the required access of science to data from platforms, also refer to B. Stark et al., Are Algorithms a Threat to Democracy? The Rise of Intermediaries: A Challenge for Public Discourse and M. Cornils, Designing platform governance: A normative perspective on needs, strategies, and tools to regulate intermediaries, AlgorithmWatch, May 26, 2020; <https://algorithmwatch.org/en/governing-platforms/>]

According to researchers, research in this area is limited by no access to information and/or, in some cases, only limited access to information. Among other things, this was the result of the public hearing of the Committee for Legal Affairs and Consumer Protection/Bundestag held on 17.06.20.

The evaluation of the Code of Conduct on Hate Speech Online, published on 27 September 2019, also highlighted the need for more research in the field of hate speech. Voluntary commitments, such as access of science provided for in the Code of Practice on Disinformation, have been assessed as insufficient for various reasons in the evaluation published on 10 September 2020.

Question 3: The German authorities are asked to clarify the objectives pursued by the additional obligations and the way in which they envisage their enforcement.

The communication process taking place in the digital environment and in social media is now of considerable importance for the formation of public opinion. The improved access for research should take into account the significant public interest in enabling more transparency on the functioning of the respective platforms and the process of disseminating content there, as well as independent research findings on this.

The enforcement of the provisions of § 5a NetzDG-E is implemented within the framework of the supervisory function of the Federal Office of Justice introduced by the Act amending the Network Enforcement Act (notification procedure 2021/39/D).

Question 4: The German authorities are asked to clarify which competent data protection authority is referred to in the second sub paragraph of Section 5a(4), and whether this is the authority responsible for the research institution or the provision of information by the provider of social networks. Also about whether these competent data protection authorities could also be data protection authorities in other EU Member States and, finally, about what the data protection authority should do with the security concept.

The envisaged procedure for the submission of a protection concept ensures compliance with the concerns to be taken into account in accordance with § 5a NetzDG-E. The competent data protection supervisory authority referred to in § 5a(4) NetzDG-E is the data protection supervisory authority which is responsible for the researcher. The competent authority will be determined by the location of the researchers. It is not excluded that this is the data protection authority of another Member State when the researcher is based in that Member State but the facts of the case nevertheless have a sufficient connection to Germany. The submission of the protection concept enables the authority to examine data protection measures if necessary. On the other hand, no approval or endorsement of the concept is foreseen.

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