



DATA DISCLOSURE ORDERS UNDER THE DIGITAL SERVICES ACT

ARTICLE 10

Digital Services Act (**DSA**) establishes **common rules** on the **content and format** of orders to provide information (**data disclosure orders**) issued by competent authorities directly to providers offering intermediary services in the EU

NATIONAL ORDERS

Disclosure orders directed at an intermediary service provider established or represented in the Member State (MS) of the authorities issuing the order.

CROSS-BORDER ORDERS

Disclosure orders directed at a service provider established or represented in the territory of another EU MS.



Article 10 of the DSA does not give **any new powers to national authorities**. It **does not provide itself the legal basis** for the issuing of data disclosure orders, which must exist under EU laws (e.g. Electronic Evidence Regulation) or national law and in compliance with EU law!

WHO CAN ISSUE THE ORDER?

Authorities of any MS as determined by the relevant national or EU laws: **national judicial, but also administrative authorities**, including law enforcement authorities.

WHAT DATA CAN BE REQUESTED?

Specific information (data) about specific **individual recipients** (users) of the service concerned who are identified in the order for the purposes of determining their compliance with applicable EU or national rules.

Data aimed at user identification.

Data within provider's control.

Data that is already collected.

MINIMUM CONDITIONS

At the moment the order is sent to the provider, all orders must at minimum **include**:

- reference to the **legal basis** for the order (relevant EU or national law);
- identification of the **issuing authority** (including the contact details of a contact point within that authority where appropriate);
- information enabling the provider to **identify the user** (e.g. account name, e-mail address);
- **statement of reasons**, including the objective for which the information is required and why the requirement to provide the information is necessary and proportionate to determine compliance by the users with applicable EU or national law;
- information about **redress mechanisms** for the provider and the users concerned; and
- information about the **authority to receive the service provider's follow-up**, if different from the issuing authority.

Statement of reasons should not be included (or should be adapted) when this information must be kept confidential under the applicable law for reasons of prevention, investigation, detection and prosecution of criminal offences!



DIGITAL SERVICE COORDINATOR

The issuing authority must **transmit the disclosure order and any information received** from the provider regarding the effect given to that order **to the Digital Services Coordinator from the MS** of the issuing authority who must then **forward a copy of the order to all Digital Services Coordinators**.

This obligation might not apply in the context of criminal proceedings or might have to be adapted in accordance with the applicable national criminal procedural law!



DSA itself does not oblige the service provider that receives the disclosure order to comply with it and to disclose the requested information to the authorities. **Disclosure orders may only be rendered binding and enforced** (in case of non-compliance) **through national laws or *lex specialis* EU legislation!**



ORDER TRANSMISSION

The order must be sent to the **electronic point of contact** designated by the provider of intermediary services.

It must be in one of the **official languages** of the MS in which the provider is established or represented or in another official language of the MS bilaterally agreed on by the issuing authority and the provider. The order may also be drafted in the language of the issuing authority but it must be accompanied by a translation of its most significant elements into the above indicated official MS language.



USER NOTIFICATION

Providers of intermediary services must **inform the user concerned by the data disclosure order of the order itself and the effect given to it** at the latest when effect is given to the order, or, where applicable, at the time provided by the issuing authority in its order. The notification must also include a statement of reasons and the possibilities for redress. In the context of criminal proceedings, the user notification obligation can be delayed.



Authorities should specifically include a **non-disclosure order and confidentiality requirements** when the order must be kept confidential under the applicable law!



OBLIGATIONS OF PROVIDERS OF INTERMEDIARY SERVICES

Upon receipt of a data disclosure order, provider of intermediary services must **without undue delay inform the issuing authority of its receipt and any follow-up** (if and when effect was) given to the order.

