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Dr. Vivian Kube, LL.M. (EUI, Florence)] Lawyer Dr.
Benjamin Lück| Lawyer
Hannah Vos| Lawyer
David Werdermann, LL.M. (Amsterdam)| Lawyer

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Berlin District Court II
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10589 Berlin

via beA

Eiltl Submit immediately!

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Our sign: 014/25

Berlin, February 4,

2025

Application
for the **issuance of** a **temporary injunction**

1. Democracy Reporting International gGmbH, represented by the managing directors with sole power of representation

Applicant 1,

authorized representative: KM8 Rechtsanwältinnen & Rechtsanwälte
Moosdorfstrasse 7 - 9
12435 Berlin,

2. [redacted]

Applicant to 2,

Authorized representative: KM8 Attorneys at Law
Moosdorfstrasse 7 - 9
12435 Berlin,

vs.

VAT ID no. (VAT ID): DE361266810

Twitter International Unlimited Company, represented by the authorized representatives Fai Cheung, Diego De Lima Gualda and Mohit Bhargava, One Cumberland Place, Fenian Street, Dublin 2, D02 AX07, Ireland,

Defendant,

because of: Access to research data
Preliminary amount in dispute: EUR 6000

We hereby indicate that we represent the interests of the applicants. In the name of and on behalf of the applicants, we request - due to particular urgency without an oral hearing - the issuance of the following preliminary injunction:

> The defendant is ordered to grant the applicant 1 and the applicant 2 unrestricted access to all publicly available data of the platform "X", including real-time data, via its online interface from now until February 25, 2025.

Delivery instructions
Should the court deem it necessary, we that the application and, in the event of an oral hearing, the summons to the defendant be served directly by post in accordance with Art. 18 Regulation (EU) 2020/1784. A translation of the application is not necessary as the defendant understands German.

The respondent denies the applicants access to the publicly available data on its platform. It is thus violating its obligation under Art. 40 para. 12 of the Digital Services Act (Regulation 2022/2065, **DSA**) to provide the data "without undue delay".

The applicants are researching political discourse on social media platforms in the run-up to elections in Europe as part of a larger research project. This includes the upcoming Bundestag elections on February 23, 2025. In order to investigate the political discourse on the respondent's platform "X" in the run-up to the Bundestag elections, the applicants urgently need access to the publicly available data on the platform. The applicants are entitled to this data for their research in accordance with Art. 40 para. 12 DSA. Although the applicants all eligibility requirements, the respondent has not yet granted them access to research data and is thus violating its legal obligation under Art. 40 para. 12 DSA. In addition, several proceedings are already underway against the respondent at the European Commission for violations of the DSA, including explicitly the violation of Art. 40 para. 12 DSA. It is not yet clear when and what measures the European Commission will take. Further delay jeopardizes

the applicants' research project view of the ever-closer Bundestag elections. For this reason, it is not possible to wait for the main proceedings.

The right to access research data in accordance with Art. 40 para. 12 DSA plays a central role in preventing election interference and disinformation campaigns. Elections preceding the upcoming federal elections, in particular the presidential elections in Romania in 2024, have already impressively demonstrated the considerable influence social media platforms can have on elections and political discourse. The DSA assigns researchers an important role in researching these risks in order to prevent damage to society as a whole. In order for researchers to fulfill this role, it is essential that platforms fulfill their legal obligation and grant access to research data. The procedure is decisive for whether the claim under Art. 40 para. 12 DSA can be effectively enforced in court. As access must be granted "without undue delay", effective legal protection can only be achieved in summary proceedings.

In detail:

A. PROPERTY

1 The applicants request the defendant to grant them access to public data, including data in real time, pursuant to Art. 40 para. 12 DSA.

I. THE PARTIES

1. TO APPLICANT NO. 1

2 Applicant 1 is a non-profit organization headquartered in Berlin that is dedicated to research on and the promotion of democratic governance. In particular, it undertakes research projects on elections. Applicant 1 maintains country offices in DR Congo, Lebanon, Tunisia, Sri Lanka and Ukraine.

Credibility: Extract from the commercial register dated January 23, 2025

Appendix ASt01

Corporate income tax assessment dated June 4, 2024

Appendix ASt02

3 The charitable status of applicant 1 is also validated by the Charities Aid Foundation (CAF). CAF is a British organization that audits charitable organizations to ensure that donations are used for charitable purposes. Certification is preceded by an extensive review of the legal status, purpose, structure and governance of the certified charitable organization.

Credibility: Certificate of the Charities Aid Foundation

Appendix ASt03

Verification guidelines of the Charities Aid Foundation

Appendix ASt04

4 The work of applicant 1 focuses on development aid. It places a particular focus on democratic governance. The object of the company is therefore in particular the organization of scientific events and research projects on democratic developments. Applicant 1 researches political elections, the exercise of political rights, democratic constitutions and the influence of parliaments.

Credibility: Extract from the commercial register dated January 23, 2025

Appendix ASt01

5 Applicant 1 has already analyzed the available social media data for research purposes in a large number of elections worldwide. In the so-called monitoring of social networks, the applicant re 1 not only focuses on hate speech and disinformation, but also analyzes general trends in discourse in order to contribute to political analysis. analysis and to more transparency in online debates

to contribute. Through this approach, the research of applicant 1 was able to identify existing and impending negative effects of social media on civil discourse and electoral processes.

Credibility Online application for research data access dated January 22 2025

Appendix ASt05

Affidavit Michael Meyer

Appendix ASt06

s Applicant 1 is mainly financed (around 94%) by project-related and general funding and donations. In 2023, the organization's total revenue amounted to EUR 6,682,960, with government agencies and private foundations being the most important donors. The most important donors include the German Federal Foreign Office, the European Union, the Dutch Ministry of Foreign Affairs and the Mercator Foundation. The remaining six percent is generated by applicant 1 through contracts for work and services.

Credibility° Online application for research data access dated January 22, 2025

Appendix ASt05

Excerpt on the finances from the annual report of applicant no. 1, available at https://democracyreporting.s3.eu-central-1.amazonaws.com/pd f/66ec18ee7a048.pdf, p. 68 ff.

Appendix ASt07

It should already be pointed out here that the research project in dispute is financed exclusively by Stiftung Mercator (see para. 12).

2. **TO APPLICANT NO.** 2

Credibility: [redacted]

Appendix ASt08

3. ABOUT THE DEFENDANT

s **X group structure.** The defendant is a subsidiary of the US company X Corp, formerly Twitter Inc. It operates the social network "X", formerly "Twitter", in the European Union. It is registered with the Companies Registration Office of the Republic of Ireland under company number 503351.

Credibility: Imprint X, available at https://legal.x.com/de/imprint.html

Annex ASt09 Extract from the Irish Companies Registration Office

Appendix ASt10

0 X as a VLOP. By decision of April 25, 2023 (C(2023) 2721 final), the European Commission classified the defendant's social network "X" as a so-called *very large online platform* (VLOP) pursuant to Art. 33 (4) DSA. The decision has not revoked in the meantime.

Credibility: Decision of the European Commission of April 25, 2023

Appendix ASt11

Ongoing proceedings of the European Commission against X. The European Commission initiated formal proceedings against the respondent on December 18, 2023. The background to this are possible violations of the DSA by the respondent, in particular the right to access to research data under Art. 40 para. 12 DSA, which is also the basis of the present proceedings. On July 12, 2024, the

The European Commission sent the defendant its preliminary finding that the defendant is in breach of numerous provisions of the DSA. In the ongoing proceedings, the European Commission initiated additional investigations against the defendant on January 17, 2025.

Credibility: Press release of the European Commission dated 18. December 2023, available at https://ec.europa.eu/commission/presscorner/detail/de/ip_23_6709

Annex ASt12

Press release of the European Commission of July 12, 2024, available at https://ec.europa.eu/commission/presscorner/detail/de/ip_24_3761

Annex ASt13

European Commission press release dated January 17, 2025, available at https://germany.representation.ec.europa.eu/news/gesetz-over-digital-services-commission-initiates-additional-investigations-against-x-in-current-2025-01-17_en

Annex ASt14

II. THE RESEARCH PROJECT

12 The applicant to 1 initiated 2023 the research project "access://democracy", which is coordinated in Berlin. The subject of the three-year project is the empirical investigation of political discourse on social media platforms in the run-up to elections in EU member states and the election for the European Parliament. The project is funded by the Mercator Foundation. A budget of EUR 875,000 is available for the entire project period. As part of the research project, applicant 1 already collected data on the parliamentary elections in Spain and Poland in 2023. In 2024, she examined the elections to the European Parliament and in Austria as part of the project.

In 2025, the elections to the German Bundestag are to be empirically tracked. This part of the research project, the research in the run-up to the Bundestag elections, forms the basis of the applicants' application.

Credibility: Online application for research data access dated 22. January 2025

Appendix ASt05

Presentation of the project at the website of applicant no. 1, available at https://democracy-reporting.org/en/office/global/publications/introducing-accessdemocracy-tech-transparency-and-accountability-during-european-elections

Annex ASt15

Affidavit Michael Meyer

Appendix ASt06

13 As part of the project, the applicants are data from several social networks. The aim of the project is to identify general election trends and topics in online debates across the European Union, as well as country-specific examples of hate speech, disinformation and potential information manipulation manipulation. Using advanced social media monitoring and analysis techniques, such as topic analysis, the applicants will examine the main topics that emerge during each political campaign, as well as the presence of hate speech and violent content on Facebook and Instagram. They will also investigate the use of generative artificial intelligence in social networks during the election campaign. election campaign. The applicants have in the within the already conducted case studies on the European Parliament elections as part of the research project. These "Case Studies on Digital Discourse in the 2024 EP Elections" focused on digital discourse, particularly on Facebook and Instagram, during the 2024 European elections in eight European countries (Italy, France, Germany, Hungary, Romania, Sweden, Spain and Poland). The study focused on contributions political actors, media, civil society

organizations and other non-institutional actors to identify the degree of toxic language and formative narratives in the discussions during the election campaign.

Credibility: Summary of the case studies on the website of the Applicant re 1, available at https://democracy-reporting.org/en/office/global/publications/local-insights-european-trends-case-studies-on-digital-discourse-in-the-2024-ep-elections

Annex ASt16

14 In order to conduct their research on the Bundestag elections, the applicants require the data publicly accessible on the respondent's platform immediately for the period up to February 25, 2025. Access to this data in the four weeks before the federal election is essential for the research project. Especially in the period directly before the election, posts on social media platforms focus on parties and candidates as well as topics related to the election campaign. This research cannot be carried out after the general election. It is to be feared that conspicuous posts and accounts will be deleted during the election campaign and immediately after the general election. In this respect, there are already considerable reports.

Credibility: Anonymous insider report by an employee of X of January 11, 2025, available at https://theconcernedbird.substack.com/p/elon-musks-and-xs-role-in-2024-election

Annex ASt17

Report by Correctiv from January 23, 2025, available at https://correctiv.org/faktencheck/russische-desinformation/2025/01/23/angriff-aus-russland-auf-bundestagswahl-deepfake-ki/

Annex ASt18

Report by Correctiv from November 13, 2024, available at https://correctiv.org/faktencheck/russische-

disinformation/2024/11/13/propaganda-disinformation-russia-research-lays-double-ganger-campaign-paralyzed/

Annex ASt19

15 The applicants intend to inform both the respondent and the competent authorities immediately if they identify systemic risks on platform "X" during the research for the 2025 federal election.

Credibility: Affidavit Michael Meyer

Appendix ASt06

16 The applicants have also taken strict organizational and technical precautions to ensure data protection and data security in their research projects and guaranteed. Their data management systems operate in closed environments to which only authorized members of the research team have access and which are regularly monitored and audited. They also use SharePoint servers as a secure and centralized platform for data storage and collaboration. Access controls and the management of permissions ensure that only authorized people have access to research data. In addition, their SharePoint servers are regularly with the latest security patches and -protocols, to potential vulnerabilities to eliminated. The applicants have also established a two-factor authentication system for access. In addition, the data stored in their systems is encrypted. This ensures that even in the unlikely event of a data breach, the information is incomprehensible to unauthorized persons and thus its confidentiality is maintained. In the publications, the applicants anonymize personal data of users who are not public persons in order to maintain their confidentiality and protect sensitive data.

Credibility: Online application for research data access dated 22. January 2025

III. RESEARCH DATA ACCESS AT X

17 The defendant refers to the following on its website under the heading "Developer Policy" on access to research data under the DSA. It states:

18 "DSA Researchers: If you need to contact X relating to access under Art. 40 of the Digital Services Act, please contact EU-Questions@X.com. If you wish to apply for researcher access, please submit an application."

Credibility: 19 Excerpt Website DSA Researchers, retrievable under https://developer.x.com/en/developer-terms/policy

Appendix ASt20

20 The word "application" contains a link to an online form.

Credibility: 21 Online form, available at https://docs.google.com/forms/d/e/1FAIpQLSdo0O-D6Kxa3cV4g1JLz2T_0Sk3hdEnTdv8dJmibagCnzJ7kg/viewform.

Appendix ASt21

22 In order to obtain data, researchers must complete this form as a first step. The exact procedure for granting access in the event of approval by the defendant is not known to the applicants or the applicants' representatives. The defendant does not make the technical process transparent. As far as the applicants' authorized representatives are aware, researchers whose applications are approved receive an email explaining the technical procedure. Technically, access is probably granted via an API key, which is provided with authorization to retrieve data. API stands for application programming interface, i.e. a programming or application interface, the of a software system others

programs for connection to the system. The authorization is decisive for whether and to what extent data is accessible. This is because data can only be obtained in the API through specific requests (e.g. request to the API to output all posts that use a specific word).

23 The defendant also offers commercial access to its API for a monthly fee. The defendant grants four different types of access, which differ in particular in the scope of the data that can be retrieved:

- Free (up to a total of 1,500 posts per month)
- Basic (up to 3,000 posts per month and profile; 50,000 posts per month in total)
- Pro (up to 1 million posts per month in total)
- Enterprise (individual agreements)

Credibility: X Declaration of various API accesses, available at https://docs.x.com/x-api/introduction

Appendix ASt22

24 Depending on the agreement, Enterprise access also enables data retrieval, which is unlimited in terms of the amount of data that can be retrieved. Enterprise products include, in particular, the retrieval of real-time data and unlimited access to the platform's entire archive of public data.

Credibility: X Enterprise Access, available at https://developer.x.com/en/products/x-api/enterprise

Appendix ASt23

25 The access provided by the respondent for research purposes under Art. 40 para. 12 DSA corresponds, according to the knowledge of the applicants' legal representatives, to pro-access, in other words: Even researchers only receive budgeted access to a volume of 1 million posts per month. This limit can already be exceeded with

of a single query, as the limit is based on the number of posts retrieved. If authorized users send a data retrieval request to the API (e.g. all posts from the previous day that contain the word "trump"), which a data set of one million posts in response, the maximum monthly limit is already reached with a single request. The researchers would then not be able to request further data. Furthermore, the output of 1 million posts does not have to correspond to the actual number of posts available. If more than 1 million posts are available, only 1 million will be output due to the limit. X has significantly restricted its access to the API compared to the former Twitter: Twitter still allowed researchers to retrieve 10 million posts per month (before the takeover by Elon Musk and before the DSA came into force).

IV. PRELIMINARY HISTORY: REFUSAL OF ACCESS TO RESEARCH DATA FOR THE ENTIRE PROJECT

26 Last year, the applicants applied for access to research data for the entire "access://democracy" project. On April 17, 2024, the applicants submitted the online form provided by the respondent on its website to grant access to data in accordance with Art. 40 para. 12 DSA. In the application, the applicants disclosed in detail the origin of their organization, their funding, their data protection concept and their research concerns. In addition, the applicants provided information on the scope of the data requested and the period for which data access was to be granted.

Credibility: Online application dated April 17, 2024 and confirmation

Annex ASt24

27 By email dated May 20, 2024, the respondent informed the applicants that the application had been reviewed. However, the respondent requested additional information from the applicants. The respondent set a deadline of June 3, 2024 to respond to the queries.

Credibility: E-mail communication from 20. May 2024 until 28.

November 2024

Appendix ASt25

28 On June 3, 2024, the applicants submitted a three-page document with additional and detailed information. In it, they provided the requested information.

Credibility: E-mail communication from 20. May 2024 until 28. November 2024

Appendix ASt25

Attachment to the e-mail dated June 3, 2024

Appendix ASt26

29 On June 17, 2024, the applicants received a further email from the defendant. In it, the respondent confirmed that it had checked the additional information. In the same letter, the respondent asked the applicants to clarify the extent to which the requested data contained illegal content.

Credibility: E-mail communication from 20. May 2024 until 28. November 2024

Appendix ASt25

30 The applicants sent the requested information by e-mail dated June 24, 2024.

Credibility: E-mail communication from 20. May 2024 until 28. November 2024

Appendix ASt25

Attachment to the e-mail dated June 24, 2024

Appendix ASt27

31 On July 5, 2024, the defendant confirmed by email that the documents were now complete in its view and held out the prospect of a further review.

Credibility: E-mail communication from May 20, 2024 to May 28, 2024.
November 2024

Appendix ASt25

32 After the claimants had heard nothing more from the respondent, they inquired about the status of the proceedings by email dated November 21, 2024. The respondent replied by email dated November 28, 2024 that it would not grant access to the data.

Credibility: E-mail communication from 20. May 2024 until 28. November 2024

Appendix ASt25

33 On December 13, 2024 and January 9, 2025, the defendant contacted the claimant 1 again. The employee of the respondent, or according to his email signature as
is employed by the defendant, inquired about the
on behalf of the respondent's *Government* Affairs *Team* about whether his team could support the applicants during the 2025 Bundestag election campaign.

Credibility: Emails dated December 13, 2024 from January 9, 2025

Appendix ASt28

34 The applicants initially had to discuss this initiative internally, as it came as a surprise to them. In particular, it was not clear to them from the email whether there was a connection to the research data access that was finally rejected just a few weeks ago. In their response, the applicants made it clear that they were still concerned about access to research data.

Credibility: E-mail dated January 13, 2025

Appendix ASt29

35 On January 21, 2025, the employee of the defendant and the managing director of claimant 1, Michael Meyer, then spoke on the phone, and the managing director of applicant 1, Michael Meyer, and an employee of the

Applicant no. 1, with each other without result. In particular, the employee of the respondent was unable to provide any information as to why access to the data was still not being granted.

Credibility: Affidavit Michael Meyer

Appendix ASt06

V. NEW APPLICATION SPECIFICALLY FOR THE FEDERAL ELECTION

36 On January 22, 2025, the applicants again submitted an application for research data access, limited to research into the 2025 Bundestag elections. The background to the new application was that the respondent had complained about being contacted by its employee.

has shown cooperation with regard to this election. For this application, the applicants again used the online form provided by the respondent. The applicants once again provided comprehensive information on their finances, their data protection concept, the purpose of the research and the scope of the required data access.

GJaubhaftmachung: Online request for research data access from 22. January 2025

Appendix ASt05

az Also on January 22, 2025, the applicants sent an email to the email address api-researchers@x.com. The respondent used this email address to communicate in the proceedings regarding the previous application. In the email, the applicants out the urgency of the matter in view of the upcoming elections and the wording of Art. 40 para. 12 DSA ("without undue delay"). In view of the urgency, the applicants also set the respondent a deadline of January 27, 2025 to decide on the application in the email.

Credibility: E-mail dated *January* 22, 2025

Appendix ASt30

38 To date, the respondent has not granted the applicants' application. On January 29, 2025, it notified the applicants by email that the application was being reviewed. In the obviously automated email, the respondent did not address the applicants' concerns and, in particular, did not specify the duration of the review, although the urgency is clearly evident from the applicants' online application and the research project itself.

Credibility: Automated confirmation email dated January 29, 2025

Appendix ASt31

VI. WARNING LETTER FROM THE DEFENDANT

39 After the defendant continued to fail to respond to the request despite being given a deadline, the applicants sent the defendant a warning letter dated January 29, 2025, setting a deadline of February 3, 2025, 11:00 a.m. to provide access to the research data. The warning letter was sent to three different email addresses: The support email address for Germany, the email address of the Respondent's API team and to the email address shown for questions about research data access on the Respondent's website. The latter is also the central contact point for users in accordance with Art. 12 para. 1 DSA. Service of the authorized representative by fax to the US fax number of the defendant stated in the legal notice failed several times.

Credibility: Attorney's e-mail dated January 29, 2025

Appendix ASt32

Warning letter dated January 29, 2025

Appendix ASt33

Imprint X, available at https://legal.x.com/de/imprint.html

Appendix ASt09

Excerpt from the DSA Researchers website, available at https://developer.x.com/en/developer-terms/policy

Appendix ASt20

40 The defendant granted access via the support address and via the contact address for research data access in each case by e-mail dated January 29, 2025 confirmed.

Credibility: Confirmation of receipt Support address dated January 29 2025

Appendix ASt34

Access confirmation contact address research data access from January 29, 2025

Appendix ASt35

41 The defendant did not respond to the warning letter until the end and did not grant the applicants access to research data.

42 In view of the defendant's refusal to fulfill the asserted claim, it is now necessary to seek judicial assistance in order to obtain the data in time to carry out the research project.

B. LEGAL CONSIDERATIONS

43 The application is admissible and well-founded.

I. PERMISSIBILITY

44 The application is admissible, in particular the Regional Court of Berlin II has international jurisdiction pursuant to Art. 7 No. 2 of the Regulation on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters (Regulation 1215/2012, **EuGVVO**).

45 International jurisdiction is governed by the Brussels I Regulation, as this a civil and commercial matter. Despite the public interest pursued with the research project, classification as a public-law dispute is out of the question because none of the parties a public authority within the meaning of the Brussels I Regulation,

> see ECJ, judgment of October 1, 2002 - C-167/00 - *Henkel*, para. 26.

46 In addition to the general place of jurisdiction (Art. 4 para. 1 Brussels I Regulation), German courts also have jurisdiction pursuant to Art. 7 no. 2 Brussels I Regulation. Accordingly, within the scope of application of the Brussels I Regulation, the court of the place where the harmful event occurred or may occur has international jurisdiction if a tortious act or an act assimilated to tortious act or if claims arising from such an act form the subject matter of the proceedings.

47 According to the ECJ, the term "tort" is to be interpreted autonomously and refers to all actions "in which the defendant is held liable for damages and which are not linked to a contract within the meaning of Article 5(1) [now Article 7(1) Brussels I Regulation]",

> ECJ, judgment of September 27, 1988 - C-189/87 - *Kalfelis*, para. 18; Lazić/Mankowski, The Brussels *I-Bis* Regulation, para. 2.156 f.

48 There are therefore two requirements: Firstly, it must not be a contractual claim pursuant to Art. 7 No. 1 Brussels I Regulation, to which an exclusivity relationship exists . Secondly, must it it is a "Liability for damages".

49 At the same time, the second criterion is of very little importance. Rather, the majority of case law deals with the distinction between contractual and tort law claims,

> see *Geimer*, in Geimer/Schütze, European Civil Procedure Law, 4th edition 2020, Brussels I Regulation Art. 7,
> para. 208.

50 Claims that are not of a contractual nature are regularly assigned to tort law jurisdiction, even if they are far removed from the German understanding of a tortious act. Only in a few individual cases was jurisdiction denied on the basis of the second criterion,

> see Lazić/Mankowski, The Brussels *I-Bis* Regulation, para. 2.184 for the view that the second criterion is de facto irrelevant.

1. NO CONTRACTUAL DISPUTE UNDER ART. 7 NO. 1 EUGVVO

51 The claim under Art. 40 para. 12 DSA exists irrespective of whether a contractual relationship exists between the researcher and the relevant platform, so that the claim does not qualify as contractual within the meaning of Art. 7 no. 1 Brussels I Regulation.

2. LIABILITY FOR DAMAGES WITHIN THE MEANING OF ART. 7 NO. 2 EUGVVO

52 The claim pursuant to Art. 40 (12) DSA is subject to liability for damages pursuant to Art. 7 No. 2 Brussels I Regulation.

2.1 UNDERSTANDING OF LIABILITY FOR DAMAGES

53 As already explained, the concept of liability for damages has hardly any significance of its own. Even if Art. 7 No. 2 Brussels I Regulation is to be interpreted narrowly overall, this does not apply to the criterion of the "harmful event", which is to be interpreted broadly,

> ECJ, judgment of October 1, 2002 - C-167/00 - *Henkel* , para. 42; *Gottwald*, in MüKo-ZPO, 6th edition 2022, Brussels Ia Regulation Art. 7, para. 49; *Geimer*, in Geimer/Schütze, Europäisches Zivilverfahrensrecht, 4th edition 2020, Brussels Ia Regulation Art. 7, paras. 204, 209.

54 This is also reflected in the case law of the ECJ. It has assigned various actions to Art. 7 No. 2 Brussels I Regulation without requiring specific damages (2.1.1). It also assigns actions to Art. 7 No. 2 Brussels I Regulation, even if they are not aimed at restitution (2.1.2).

2.1.1 BROAD UNDERSTANDING OF DAMAGE

55 Even if the ECJ continues to refer terminologically to the concept of liability for damages, it goes far beyond a strict requirement for the existence of damage in its decision-making practice. This begins with the fact that no damage must have occurred. Impending damage - now also based on the wording of Art. 7 No. 2 Brussels I Regulation - is sufficient,

> see ECJ, judgment of October 1, 2002 - C-167/00 - *Henkel*, para. 48.

56 Furthermore, the concept of damage is to be understood broadly. No individual damage is required. Rather, environmental damage and attacks on the legal system also fall under Art. 7 No. 2 Brussels I Regulation,

> ECJ, judgment of October 1, 2002 - C-167/00 - *Henkel* , para. 42 and ECJ, judgment of November 30, 1976, C- 21/76 - *Mines de Potasse d'Alsace*.

57 Furthermore, a large number of claims are also subsumed under Art. 7 No. 2 Brussels I Regulation, which are far removed from the German understanding of (imminent) damage. These include, among others, claims for sacrifice, compensation claims for lawful interference, unjust enrichment, culpa in contrahendo and the French action directe,

> See *Dörner*, in Saenger, ZPO, 10th edition 2023, EUGVVO Art. 7, para. 29.

2.1.2 TYPES OF APPLICATION

58 The ECJ also does not limit Art. 7 No. 2 Brussels I Regulation to actions which are intended to achieve financial or material compensation. This understanding is confirmed by Art. 7 No. 3 Brussels I Regulation. While it specifically states "an action for damages or for restitutio in integrum", the situation" is called contains Art. 7 No. 2 Brussels I Regulation such a such a restriction.

59 Accordingly, the ECJ has assigned (negative) declaratory actions and (preventive) injunctions to Art. 7 No. 2 Brussels I Regulation,

> *Geimer*, in Geimer/Schütze, European Civil Procedure Law, 4th edition 2020, Brussels I Regulation Art. 7, para. 235.

60 The provision also covers claims for information as ancillary claims,

> BGH, judgment of November 27, 2014 - I ZR 1/11, para. 26.

2.2 ART. 40 ABS. 12 DSA AS LIABILITY FOR DAMAGES

61 Accordingly, Art. 40 para. 12 DSA is also to be understood as liability for damages. This follows firstly from its meaning in the context of systemic risks (2.2.1) and secondly from its specific form (2.2.2). This result is underlined by the ratio of Art. 7 No. 2 Brussels I Regulation (2.2.3).

2.2.1 ART. 40 ABS. 12 DSA SERVES TO PREVENT DAMAGE

62 The provisions of the fifth section of the third chapter of the DSA (Art. 33-43) establish special obligations for VLOPs. The core of these special obligations the regime of loss prevention in the area of so-called systemic risks. This takes account of the fact that the operation of very large platforms can potentially result in social and economic damage (see recital 79 DSA). It is therefore precisely about the prevention of damage within the meaning of Art. 7 No. 2 Brussels I Regulation.

63 This is also underlined by the examples of systemic risks listed in Art. 34 para. 1 DSA: firstly, the dissemination of illegal content, secondly, negative effects on the exercise of fundamental rights, thirdly negative effects on democratic processes, the social debate and electoral processes and on public safety, and finally, fourthly, negative effects on the protection public health or minors, for the physical and mental well-being of a person or in in relation gender-specific violence. If these risks materialize and

the corresponding actions are - at least predominantly - subject to Art. 7 No. 2 Brussels I Regulation.

64 In line with the case law of the ECJ, which has also assigned actions for preventive injunctions against harmful acts and (negative) declaratory actions regarding the unlawfulness of acts to Art. 7 No. 2 Brussels I Regulation, the regime for the prevention of systemic risks must therefore also be assigned to the area of tort,

> cf. *Geimer*, in Geimer/Schütze, European Civil Procedure Law, 4th edition 2020, Brussels I Regulation Art. 7, para. 235.

65 In addition to the obligations to assess (Art. 34 DSA) and mitigate (Art. 35 DSA), the system for the prevention of systemic risks also consists of the data access requirements set out in Art. 40 DSA. These are aimed at "eliminating information asymmetries, ensuring a resilient risk minimization system and providing information [...]" (Recital 96 DSA). They thus serve precisely the functions that in other contexts are assigned to claims for information in the context of acts of damage , case law also assigns to Art. 7 No. 2 Brussels I Regulation,

> BGH, judgment of November 27, 2014 - I ZR 1/11, para. 26.

66 Due to the technical complexity of recommendation systems, for example, but also the complexity of social contexts, such information claims alone are not sufficient to identify the systemic risks of platforms. Research is therefore needed to further identify systemic risks and prevent the associated damage.

67 The claims of Art. 40 DSA thus supplement the other investigative powers of the DSA (see Art. 49 et seq. DSA). First of all, this access to data by the authorities in accordance with Art. 40 para. 1 DSA.

68 However, the data access claims for researchers in Art. 40 para. 4 and para. 12 DSA are also directly related to research and thus the prevention of systemic risks. This already follows from

their requirements: Art. 40 para. 12 DSA only grants researchers a right of access to data if the data is used exclusively for research purposes that contribute to the detection, identification and understanding of systemic risks. All permitted research is therefore related to the risks (or damage) that Art. 33 et seq. DSA are intended to prevent. Research that is not related to these risks is not privileged in the context of access to research data.

2.2.2 ART. 40 ABS. 12 DSA CONTAINS AN OBLIGATION TO CEASE AND DESIST

69 In addition, Art. 40(12) DSA is also dogmatically assigned to the area of tort (and assimilated acts) under Art. 7(2) Brussels I Regulation due to its structure.

70 The legislative process initially envisaged that the DSA would only include an obligation for VLOPs to refrain from preventing research,

> see Art. 31 para. 4c DSA-E of November 18, 2021, available at https://eur-lex.europa.eu/legal-content/DE/TXT/PDF/?uri=CONSIL:ST_13203_2021_INIT.

71 This is the typical form of conduct obligations, the breach of which can lead to a claim in tort. Art. 40 para. 12 DSA goes beyond this proposal and not only protects researchers from detrimental conduct by the platforms, but also gives them a subjective right to immediate access to data. This is an extension of the proposed regulation, meaning that the initially proposed duty of conduct is still covered by Art. 40 para. 12 DSA,

> cf. *Kaesling*, in Hofmann/Raue, Digital Services Act, 2023, Art. 40, para. 92.

72 Recital 98 DSA also makes this clear:

> Furthermore, where such [research] data are publicly available, such providers should not prevent researchers who meet an appropriate subset of criteria , from using , this data .

research purposes to use, if these for detection, identification and understanding of systemic risks.

2.2.3 RATIO OF ART. 7 NO. 2 EUGVVO ARGUES FOR COVERAGE OF ART. 40 ABS. 12 DSA

73 Art. 7 No. 2 DSA serves not only equity aspects (the injured party is not expected to follow the tortfeasor to his place of residence) but also the proximity of evidence and the law,

> *Geimer*, in Geimer/Schütze, European Civil Procedure Law, 4th edition 2020, Brussels I Regulation Art. 7, para. 202.

74 In the present case, too, considerations of equity already speak in favor of the jurisdiction of German courts. By operating X as a VLOP, the defendant creates various systemic risks that can have an impact throughout the European Union and thus also in Germany. In the comparable area of product liability, international jurisdiction is recognized pursuant to Art. 7 No. 2 Brussels I Regulation,

> *Geimer*, in Geimer/Schütze, European Civil Procedure Law, 4th edition 2020, Brussels I Regulation Art. 7, para. 211.

75 The fact that the risks created by the defendant are not limited to individual damages, but can also become socially significant, suggests that it can be held liable a fortiori in other countries as well,

> See also ECJ, judgment of November 30, 1976, C-21/76 - *Mines de Potasse d'Alsace.*

76 Furthermore, it cannot be surprising for the defendant to be used in Germany. In particular, it has also geared its service towards the population in Germany - through German-language designs, advertising aimed at the German market and 69 German-speaking presenters,

> see the last DSA Transparency Report of the defendant, available at

https://transparency.x.com/dsa-transparency-report.html.

77 It has therefore specifically decided to be active in Germany, so that it must expect to be held liable in Germany.

78 The purposes of evidentiary and legal proximity also speak in favor of the international jurisdiction of German courts. As a regulation, the DSA applies directly in all EU Member States. However, there may be special features in individual Member States, particularly with regard to systemic risks. As the investigation of systemic risks is a prerequisite for a claim, the respective member state courts are particularly suited to answer questions on relevance in the national context. For example, a German court is much better placed to assess possible systemic risks in relation to the upcoming German federal election than an Irish court, which probably has no understanding of German electoral law or the current social debates and national peculiarities in online behavior.

79 The same applies to legal proximity. For example, one systemic risk mentioned in Art. 34 para. 1 DSA concerns the dissemination of illegal content. However, the DSA itself does not determine what is unlawful, but national law does. National courts are therefore much better placed to determine whether the content under investigation is to be classified as unlawful.

80 This is also confirmed by the ECJ's decision on representative actions in accordance with the Directive on Contractual Clauses (Directive 93/13/EEC). The effectiveness of the injunctions provided for therein would have been considerably impaired if such actions could only have been brought in the state of establishment. Accordingly, the ECJ affirmed a place of jurisdiction pursuant to Art. 7 No. 2 Brussels I Regulation,

ECJ, judgment of October 1, 2002 - C-167/00 - *Henkel* , para. 43.

81 This is also the case here. The right under Art. 40 para. 12 DSA is specifically designed to establish rapid access to data for individual researchers. Art. 40 para. 12 DSA itself states that data must be provided "without delay",

cf. *Kaesling*, in Hofmann/Raue, Digital Services Act, 2023, Art. 40, para. 91.

82 The assertion of claims in a legal system, in particular in a procedural law that is unknown to the researchers, means that access to data can only be obtained with considerable delays. It is therefore not possible to seek advice from lawyers in Germany. Instead, experts in foreign procedural law must first be found in Germany or contact must be established with lawyers abroad. Contact with the latter may also be delayed, as it will not be possible to meet in person without further ado.

83 In addition, it is to be feared that access to data will even be completely thwarted, as researchers will shy away from asserting claims abroad.

84 This results from the group of persons who are authorized to conduct research into systemic risks. These are researchers who are affiliated with a university, research institute or other comparable institution (see Art. 40 para. 8 lit. a DSA, Art. 2 no. 1 Directive (EU) 2019/790) or who are affiliated with non-profit institutions, organizations or associations. It cannot be assumed that either these persons or the corresponding institutions will regularly enforce claims legally abroad. The first group, for example, consists of academic researchers, including doctoral and post-doctoral students. However, it cannot be assumed that they will choose topics for their theses whose researchability depends on legal enforcement abroad and the associated potential delays and financial risks. Nor can it be assumed that other researchers at university institutions a sufficient budget to obtain the legal advice associated with conducting proceedings abroad. This applies all the more to researchers associated non-profit institutions. Even in the case of large-budget research projects, the funds are regularly earmarked for a specific purpose, meaning that high consultancy and legal costs cannot be borne.

s Nor it be assumed that the relevant institutions and facilities have a sufficient budget to conduct legal proceedings abroad.

c It is true that legal advice and enforcement costs are also incurred in Germany. However, institutions and facilities are better positioned to monitor and minimize these costs. For example, German universities legal departments, which with the German legal system.

a7 There is also no other way for researchers to defend themselves against an unlawful omission of data access. In particular, they do not have the right to lodge a complaint under Art. 53 DSA. This is limited to "users and any institutions, organizations or associations with the exercise of the rights conferred by this Regulation".

88 If of the claim according to Art. 40 para. 12 DSA were not subject to Art. 7 no. 2 ECHR, this would mean that research work with public data could hardly be carried out, or at best by researchers from the platform's country of establishment - as long as the platform does not voluntarily the data with researchers. This would undermine the objective of Art. 40 para. 12 DSA.

3. GERMANY AS THE WHERE THE HARMFUL EVENT OCCURRED OR IS LIKELY TO OCCUR

89 It can be left open whether the defendant's Europe-wide orientation means that damage threatens to occur wherever systemic risks could also turn into damage,

> see *Stadler/Krüger,* in Musielak/Voit, ZPO, EuGVVO Art. 7, para. 20b.

90 In any case, Germany and specifically Berlin is to be regarded as the place where the applicants have the center of their interests. Applicant 1 is registered here (para. 2, Annex ASt01) and the research activities associated with the application are also coordinated in Berlin (para. 12, Annexes ASt05, ASt06

see ECJ, judgment of October 25, 2011 - C-509/09 and C-161/10 - *eDate Advertising and Martinez*, para. 48 et seq.

91 In addition, systemic risks in connection with the Bundestag election also specifically relate to systemic risks for Germany.

II. FOUNDATION

92 The application is also well-founded. The claim for an injunction and the grounds for an injunction exist.

1. RIGHT TO AN INJUNCTION (ART. 40 PARA. 12 DSA)

93 There is a right of disposal.

94 Pursuant to Art. 40 para. 12 DSA, the applicants are entitled to access data that is publicly accessible via the online interface of the defendant.

95 According to Art. 40 para. 12 DSA, VLOP providers shall provide access to data without delay, including - where technically feasible - to data in real time. Art. 40 para. 12 DSA requires that the data is publicly accessible to researchers, including researchers affiliated with non-profit institutions, organizations and associations, via the providers' online interface. In addition, they must meet the conditions set out in Art. 40 para. 8 lit. b, c, d and e DSA and use the data exclusively for research purposes that contribute to the detection, identification and understanding of systemic risks in the Union in accordance with Art. 34 para. 1 DSA.

96 Art. 40 para. 12 DSA contains in the relationship to the claim from Art. 40 para. 4 DSA a special regulation for access to data that is publicly accessible via the online interface of the providers of very large online platforms or very large online search engines. Art. 40 para. 12 DSA gives the entitled persons a subjective right to data access,

Kaesling in Hofmann/Raue, Digital Services Act, 2023, Art. 40, para. 78.

97 As the provider of a VLOP (para. 10, Annex ASt11), the respondent is the addressee of the obligation under Art. 40 para. 12 DSA. The applicants meet all the eligibility requirements.

1.1 ACTIVE LEGITIMATION

98 The applicants have active legitimacy.

99 According to Art. 40 para. 12 DSA, researchers are eligible. According to the wording of the standard, this also includes researchers who are affiliated with non-profit institutions, organizations and associations. Art. 40 para. 12 DSA thus extends the group of beneficiaries in comparison to the entitlement under Art. 40 para. 4 DSA,

> *Henn,* in Müller-Terpitz/Köhler, Digital Services Act, 2024, Art. 40, para. 43 f.

100 The applicant re 2 (para. 8, Annex ASt08) of claimant 1, which is a non-profit organization (para. 2 f., Annex ASt01, ASt02, ASt03, ASt04). As a non-profit organization, applicant 1 can also assert the claim under Art. 40 para. 12 DSA itself

101 According to Art. 40 para. 11 DSA, not only individual natural persons conducting research are eligible, but also institutions,

> see *Oster,* in BeckOK InfoMedienR, 46th edition (as of November 1, 2024), DSA, Art. 40, para. 20.

402 Art. 40 para. 11 DSA clarifies - with regard to the right to data access under para. 4, which, in contrast to para. 12, always requires a connection to a research institution - that both natural persons and institutions can be granted the status of "approved researcher".

'aa In the interests of a uniform understanding of the term, this must apply equally to the **claim under** paragraph 12. A narrower interpretation than in paragraph 4 would be diametrically opposed to the idea that Art. 40 para. 12 DSA is intended to expand the group of beneficiaries in comparison to the claim under Art. 40 para. 4 DSA. Also in

In practical terms, it is necessary for institutions, organizations and associations to be able to claim access. Research projects are regularly designed to be permanent, whereas the personnel associated with the project can often change at short notice. If a new application for access had to be submitted every time there was a change in personnel without any other aspect of the project \changing, this would make the jeopardize the implementation of research projects.

I.2 ASSERTION OF ACCESS TO RESEARCH DATA

104 In contrast to Art. 40 para. 4 DSA, Art. 40 para. 12 DSA does not for a formalized application procedure. An informal request is sufficient,

> *Kaesling* in Hofmann/Raue, Digital Services Act, 2023, Art. 40, para. 62.

105 The request was made on January 22, 2025, when the applicants filled out and submitted the online form provided by the respondent for data access pursuant to Art. 40 para. 12 DSA (para. 17 et seq., Annex ASt20, ASt21) (para. 36, Annex ASt05).

1.3 PREREQUISITES

106 The applicants also fulfill the conditions specified in Art. 40 para. 12 in conjunction with Art. Art, 40 para. 8 lit. b, c, d, and e DSA.

1.3.1 INDEPENDENCE FROM COMMERCIAL INTERESTS

407 As a non-profit organization (para. 2 f., Annex ASt01, ASt02, ASt03, ASt04), the applicant re 1 is independent of commercial interests in the within the meaning of Art. 40 para. 12 in conjunction with. Para. 8 lit. b DSA. The applicant re 2 [redacted] (para. 8, Appendix ASt08).

1.3.2 INFORMATION ON THE FINANCING OF RESEARCH

08 Art. 40 para. 8 lit. c DSA refers in principle to the application for data access pursuant to Art. 40 para. 4 DSA and in this respect requires that the application must provide information about the funding of the research. However, since a formal application for the claim under Art. 40 para. 12 DSA is not

is necessary, it is sufficient to create transparency about the financing in the informal request,

> *Kaesling*, in Hofmann/Raue, Digital Services Act, 2023, Art. 40, para. 85.

109 In the application form submitted by the defendant on January 22, 2025, the applicants extensive statements on financing (para. 6 f., para. 36, Annex ASt05, ASt07).

1.3.3 REQUIREMENTS FOR DATA SECURITY, CONFIDENTIALITY AND DATA PROTECTION

110 The applicants also fulfill the conditions of Art. 40 para. 12 i.V.m. para. 8 lit. d DSA. Accordingly, researchers must be able to comply with the specific data security and confidentiality requirements associated with each request and protect personal data. They must also describe in their request the appropriate technical and organizational measures they have taken to this end.

111 In the context of the right under Art. 40 para. 12 DSA, the requirements are less strict than for access under paragraph 4, as data access is limited to public data from the outset,

> *Kaesling*, in Hofmann/Raue, Digital Services Act, 2023, Art. 40, para. 86.

112 The applicants have taken extensive technical and organizational measures to ensure data security, confidentiality and the protection of personal data. They described these measures in detail in the application form dated January 22, 2025 (para. 16, Annex ASt05).

1.3.4 RESEARCH PURPOSE

113 In addition, the requirements for the use of data pursuant to Art. 40 para. 12 DSA (a)) and for proof pursuant to Art. 40 para. 12 in conjunction with Art. 40 para. 8 lit. e DSA (b)) are met. para. 8 lit. e DSA (b)) are fulfilled.

a) USE OF DATA TO DETECT, IDENTIFY AND UNDERSTAND SYSTEMIC RISK IN THE EU

114 The applicants use the data exclusively for research purposes that contribute to the detection, identification and understanding of systemic risks in the European Union, in particular the adverse effects on social debate and electoral processes pursuant to Art. 34 para. 1 subpara. 2 lit. c DSA. In addition, the research also concerns the dissemination of illegal content via the respondent's services (Art. 34 para. 1 subpara. 2 lit. a DSA) and any actual or foreseeable adverse effects on the exercise of fundamental rights (Art. 34 para. 1 subpara. 2 lit. b DSA).

115 Systemic risks within the meaning of Art. 34 DSA are hazards that - in contrast to individual breaches of the law and dangers, which are on individual affected parties are limited - an overarching quality that affects public interests. Art. 34 para. 1 DSA therefore addresses risks to society as a whole, which cannot be dealt with solely within the framework of, for example, reporting and remedial procedures, i.e. through standards focused on individual users,

> See *Kaesling*, in Hofmann/Raue, Digital Services Act, 2023, Art. 34, para. 1.

116 They are systemic because the structure and functioning of very large online platforms or very large online search engines contribute to the fact that individual threats regularly develop a wide range or that a risk arises from a large number of infringements, which takes on a systemic significance beyond the sum of the individual cases,

> *Beyerbach*, in Müller-Terpitz/Köhler, Digital Services Act, 2024, Art. 34, para. 14; cf. *Kaesling*, in Hofmann/Raue, Digital Services Act, 2023, Art. 34, para. 56.

117 Systemic risks can insofar as structural dangers of the platform or search engine operation,

> *Beyerbach*, in Müller-Terpitz/Köhler, Digital Services Act, 2024, Art. 34, para. 15.

118 Art. 34 para. 1 subpara. 2 DSA contains four categories of systemic risks, which are to be understood as non-exhaustive examples of rules,

> *Beyerbach*, in Müller-Terpitz/Köhler, Digital Services Act, 2024, Art. 34, para. 18; *Kaesling*, in Hofmann/Raue, Digital Services Act, 2023, Art. 34, para. 57.

119 The applicants' research project serves exclusively to investigate such risks. The focus is on researching the adverse effects on the social debate and on electoral processes in accordance with Art. 34 para. 1 subpara. 2 lit. c DSA.

120 The research project aims to monitor the upcoming elections in the EU Member States and analyze the online discourse during these elections. The project focuses on the regular collection of data on online debates on six elections in the European Union between 2023 and 2025, including in particular research on disinformation campaigns as well as hate speech and violent content in online public discourse and political campaigns around the elections. The elections within the scope of the research project also include the Bundestag elections on February 23, 2025, to which the applicants' application for access to research data refers (para. 12 ff., Annex ASt05, ASt06, ASt15, ASt16).

121 In addition to researching the adverse effects on social debate and electoral processes (Art. 34 para. 1 subpara. 2 lit. c DSA), the applicant's research also concerns the risk categories listed in Art. 34 para. 1 subpara. 2 lit. a and lit. b DSA. In the context of the upcoming Bundestag elections, the applicant would also like to research the dissemination of illegal content on the respondent's platform and the negative effects of online discourse on the exercise of fundamental rights such as freedom of expression and information, non-discrimination and human dignity (para. 12 et seq., Annex ASt05, ASt06, ASt15, ASt16).

b) PROOF

122 The applicants have demonstrated (Art. 40 para. 12 in conjunction with para. 8 lit. e DSA) that the access to the publicly accessible data of the respondent requested by February 25, 2025 is necessary and

is proportionate and the expected results will contribute to the stated research purposes.

123 Since Art. 40 para. 8 lit. e DSA also applies originally to the data access claim under para. 4, the standard must be interpreted and applied in the context of para. 12,

> cf. *Kaesling*, in Hofmann/Raue, Digital Services Act, 2023, Art. 40, para. 81.

124 Thus, the purposes are not to be based on paragraph 4, but on the purposes stated in paragraph 12,

> *Kaesling*, in Hofmann/Raue, Digital Services Act, 2023, Art. 40, para. 87.

125 The requirements for proof in the context of paragraph 12 are lower than for a claim under paragraph 4. Plausible explanations of the planned research work are sufficient. This is primarily supported by the fact that, according to the express wording, access to research data must be granted immediately ("without undue delay"), i.e. no time-consuming examination of a research concept is required. Rather, this is intended enable rapid access, particularly in crisis situations,

> *Kaesling*, in Hofmann/Raue, Digital Services Act, 2023, Art. 40, para. 3 and para. 81; *Löber*, ZD-Aktuell 2022, 01420.

126 Furthermore, the legal consequence of the claim is limited from the outset to publicly available data, which is less worthy of protection than the data potentially obtainable under paragraph 4. In addition, no formal application is required under Art. 40(12) DSA (see para. 104 above).

127 The applicants met these requirements for proof on January 22, 2025 (para. 36, Annex ASt05). In the respondent's application form, they described the research project in a sufficiently precise and comprehensible manner and plausibly explained that they need the respondent's publicly available data for their research. The applicants have access until February 25, 2025, i.e. until shortly after the Bundestag elections on February 23, 2025,

in order to be able to adequately investigate the election day itself.

1.4 PUBLICLY ACCESSIBLE DATA

128 Pursuant to Art. 40 para. 12 DSA, the respondent is obliged to grant the applicants immediate access to all publicly accessible data on its platform.

129 According to Art. 40 para. 12 DSA, the object of the claim is access to *all* public data.

130 First of all, Art. 40 para. 12 DSA can be seen as an explorative claim to data, which is primarily intended to serve as a basis for further research projects based on Art. 40 para. 4 DSA,

> *Husovec*, How to Facilitate Data Access under the Digi- tal Services Act, 19. May 2023, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4452940.

131 However, the exploratory character can only be realized if all publicly available data is accessible to those entitled to it. The fact that Art. 40 para. 12 DSA should initially be designed as an obligation to refrain,

> see Art. 31 para. 4c DSA-E of November 18, 2021, available at https://eur-lex.europa.eu/legal-content/DE/TXT/PDF/?uri=CONSIL:ST_13203_2021_INIT,

132 undoubtedly shows that the legislator also extended the duty to an obligation to act in the course of the legislative process,

> *Kaesling*, in Hofmann/Raue, Digital Services Act, 2023, Art. 40, para. 92,

133 had comprehensive access to publicly available data in mind and did not intend any restrictions.

134 A restriction of the publicly accessible data to a certain number of retrievals, as it in the commercial offers the

This is not provided for in Art. 40 para. 12 DSA and is also not appropriate for reasons of proportionality. The provision of pro-access, as the respondent has apparently practiced towards researchers to date (para. 23, para. 25, Annex ASt22), therefore does not meet the requirement of Art. 40 para. 12 DSA.

135 Moreover, from a purely practical perspective, retrieving just one million posts per month is not enough to effectively research systemic risks. This is because this retrieval limit can already be exhausted by a single request to the API. The number of posts issued for a request to the API will be particularly high if the systemic risk to be investigated is particularly high. For example, if researchers request posts that contain a certain keyword from a disinformation campaign and this is particularly virulent, their monthly budget may already be exhausted with this one request and they will not receive any more data to continue their research in the coming weeks. Depending on the request, not even all posts are output if more than one million posts the keyword searched for. This applies in particular to the applicants' planned research into systemic risks in relation to the Bundestag elections. In this respect, the restriction as currently practiced by the respondent stands in the way of effective research. The European Commission also investigating the respondent for inadequate implementation of Art. 40 para. 12 DAS (para. 11, Annex ASt12, ASt13, ASt14).

136 In addition, such a restriction is also not technically necessary. This is shown in particular by the platform's previous practice. Before Elon Musk took over the platform and renamed it X, it was possible to access ten million posts,

> see *Metha*, Twitter's restrictive API may leave researchers out in the cold, TechCrunch, February 14, 2023, available at https://techcrunch.com/2023/02/14/twitters-restrictive-api-may-leave-researchers-out-in-the-cold/.

137 The defendant also offers commercial enterprise access, which is agreed individually. The enterprise products include the retrieval of real-time data and unlimited access to the

entire archive of public data on the platform (para. 23 f., Annex ASt22, ASt23). The technical requirements for granting researchers unlimited data access via the API are therefore met.

2. REASON FOR THE ORDER

138 A ground for the issuance of an interim performance order exists if the applicant urgently needs immediate fulfillment of a claim, the act owed, if it is not to lose its meaning, is to be performed at such short notice that obtaining a title in ordinary proceedings no longer appears possible, the applicant
*The disadvantages threatened by the non-performance are severe and disproportionate to the damage that the defendant may suffer,

> *Huber/Braun*, in Musielak/Voit, ZPO, 21st ed. 2024,
> § Section 940 para. 14 with further references from case law.

2.1 URGENCY

139 The urgency will regularly be affirmed in the case of data access claims pursuant to Art. 40 para. 12 DSA (2.1.1). Even if this were not the case, there is at least urgency in the present case (2.1.2).

2.1.1 regular urgency under art. 40 ABS. 12 DSA

140 In the case of data access claims pursuant to Art. 40 para. 12 DSA, urgency will generally be affirmed. This is supported in particular by the meaning and purpose as well as the legislative assessment of the provision (a)). In the present case, this rule has not been refuted; in particular, the applicants have not waited too long (b)).

a) regular urgency

141 Art. 40 para. 12 DSA an exploratory claim, which is also intended to open up the possibility of exploring further research projects,

> *Husovec*, How to Facilitate Data Access under the
> Digi- tal Services Act, 19. May 2023, available at
> https://papers.ssrn.com/sol3/papers.cfm?
> abstract_id=4452940.

142 In many cases, this is therefore only the preliminary stage to the actual research. This, in turn, is not an end in itself, but serves - as does research in accordance with Art. 40 para. 12 DSA - to understand and thus avert systemic risks. If lengthy legal proceedings were to become necessary on a regular basis at the level of research pursuant to Art. 40 para. 12 DSA, this would at least significantly slow down the possibility of adequate research into systemic risks, and potentially even prevent it altogether. The latter arises from the fact that systemic risks are not static, but are constantly evolving or emerging. However, due to the potentially far-reaching and intensive effects, it will be necessary to be able to record and research these changes as quickly as possible.

143 The European legislator has also recognized this and deliberately geared data access under Art. 40 para. 12 DSA towards speed. There is no authorization or application procedure, as is the case with Art. 40 para. 4 et seq. DSA is the case. Instead, an informal request is sufficient,

> *Kaesling* in Hofmann/Raue, Digital Services Act, 2023, Art. 40, para. 82.

144 Moreover, the need for rapid regulation is also expressed in the wording of Art. 40 para. 12 DSA, according to which access must be granted *without delay*. The legislator has thus made it clear that the timeliness of the data is of particular importance,

> cf. *Kaesling*, in Hofmann/Raue, Digital Services Act, 2023, Art. 40, para. 3 and para. 81; *Löber* ZD-Aktuell 2022, 01420.

145 Effective legal protection for the enforcement of Art. 40 para. 12 DSA is also regularly only possible without delay, i.e. in urgent legal protection. Art. 40 para. 12 DSA is therefore comparable to situations in which there is a written presumption of urgency or in which urgency is generally assumed.

146 The former exists for example in the area of competition law (Section 12 (1) UWG) and in trademark law (Section 140 (3) MarkenG). Here, too, the legislator has recognized that it is generally not possible to wait for the main proceedings and has developed specific legal rules for this purpose.

created. The European legislator has also done this by making the claim under Art. 40 para. 12 DSA immediate. A more far-reaching approach by the European legislator - for example by introducing a procedural presumption of urgency - was not to be expected, however, as the European legislator is subject to restrictions due to different procedural rights and competences.

147 In addition, there are also areas of national German law in which urgency generally assumed even without a written presumption. This is particularly the case in the area of personality rights and the right to make statements.

> KG, decision of March 22, 2019 - 10 W 172/18, para. 9; OLG Stuttgart, judgment of September 23, 2015 - 4 U 101/15, para. 86; see e.g. OLG Nuremberg, decision of November 13, 2018 - 3 W 2064/18, para. 19.

148 Some of this case law has also been transferred to the area of activating accounts in social networks.

> For a transfer KG, decision of March 22, 2019 - 10 W 172/18, para. 9; OLG Dresden, decision of October 4, 2021 - 4 W 625/21, para. 8; OLG Dresden, decision of March 22, 2019 - 10 W 172/18, para. 9; against a transfer OLG Celle, judgment of May 19, 2022 - 5 U 152/21, para. 19 et seq.; OLG Hamm, Decision of April 27, 2021 - 21 U 37/21, para. 5; OLG Frankfurt, decision of March 27, 2023 - 17 W 8/23.

149 This argument is based on the fast-moving nature of the internet. This applies all the more to research into systemic risks, which must be investigated as quickly as possible.

b) NO SELF-REINFORCEMENT

150 The applicants have also not refuted the urgency themselves. In particular, the applicants have not waited too long. According to the case law of the Court of Appeal, this is the case if more than two months have elapsed,

see KG, decision of May 12, 2021 - 5 U 1091/20, para. 23.

151 On January 22, 2025, the applicants applied for access to research data for research into the Bundestag elections in Germany (para. 36, Annex ASt05). As the Bundestag elections were drawing ever closer, the respondent was given a deadline of
January 27, 2025 (para. 37, Annex ASt30). On January 29, 2025, the defendant was warned out of court (para. 39 et seq., Annex ASt32, ASt33, ASt09, ASt20, ASt34, ASt35) and then on February 4, 2025, the application for an interim injunction was filed. In total, there were less than two weeks between the application for access to research data and the application for urgent legal protection.

2.1.2 URGENCY IN INDIVIDUAL CASES

152 Even if urgency could not be assumed as a rule in the case of Art. 40 para. 12 DSA, at least the present proceedings are highly urgent.

153 Pursuant to Section 935 ZPO, interim injunctions are permissible if there are concerns that the realization of a party's right could be frustrated or made significantly more difficult by a change in the existing situation.

154 This is the case. The applicants intend to conduct research into systemic risks in connection with the German parliamentary elections (para. 12 et seq. Annex ASt05, ASt06), which will take place on February 23, 2025. Waiting for the main proceedings would mean that the research could no longer be started before the election.

155 This in turn would seriously jeopardize the research objectives.

156 Firstly, it is to be feared that the data in dispute will no longer be available in its original form after the Bundestag elections. Due to the structure of the platform, the data covered by the claim is dynamic data that is subject to constant change. The data in dispute includes content that has been changed and deleted by users and also deleted by the defendant.

can be removed from the platform. Furthermore, some of the data changes due to the ongoing operation of the platform, such as data on the number of accesses to content or reactions of other users to content.

157 In the context of the Bundestag elections, it should also be noted that there have already been many attempts to influence the last elections via platforms. These include fake accounts, which - using AI, for example - are intended to influence the public debate and - at least in part - spread false information. These accounts - and the associated content - are often deleted after the election. So far, evidence of such manipulation has been limited to anonymous statements by whistleblowers and journalistic research (para. 14, Annex ASt17, ASt18, ASt19). An empirical investigation is therefore necessary in order to obtain reliable results.

158 One aspect of the applicants' project is to provide empirical evidence of the quantity and quality of these attempts to exert influence. In order to achieve meaningful results, they are particularly dependent on the completeness of the desired data. Waiting for the main proceedings would lead to a considerable impairment of the quality of the results of the planned research project in view of the dynamics described above.

159 Secondly, the applicants intend to contact the respondent and the supervisory authorities immediately (para. 15, Annex ASt06) if they become aware of indications, for example, of manipulation attempts or disinformation campaigns during their research. This preventive aspect of the project would be completely thwarted if data access were only granted after the Bundestag elections.

2.2 ANTICIPATION OF THE MAIN ISSUE

160 The fundamental prohibition of anticipation of the main proceedings does not preclude the issuance of the requested preliminary injunction.

161 The interim injunction procedure serves to guarantee effective legal protection. This can justify that the interests of applicants are already met in summary proceedings.

162 This is particularly the case if the act owed is to be performed within a certain period of time at such short notice that it is not possible to obtain an enforcement order in the ordinary proceedings and referring the creditor to bring an action in the main proceedings would in practice be tantamount to a denial of justice,

> OLG Munich decision of December 12, 2018 - 18 W 1873/18, BeckRS 2018, 36728 marginal no. 25, *Vollkommer*, in Z
> öller, ZPO, 35th edition 2024, Section 940, para. 6 with further references, *Bruns*, in Stein/Jonas, 23rd edition 2020, ZPO before Section 935, para. 51, *Elzer/Mayer*, in BeckOK ZPO, 55th edition (as of December 1, 2024), Section 938, para. 14.

163 These requirements are met. As already explained, the intended research project is related to the German parliamentary elections and is therefore not feasible without the issuance of the requested preliminary injunction. Waiting for the main proceedings would therefore render the claim under Art. 40 para. 12 DSA virtually worthless and also frustrate its purpose of enabling research into systemic risks in connection with electoral processes in the public interest in order to be able to take protective measures in good time if necessary.

164 In addition, the applicants can be granted their claim if it is clear that this claim exists without objection, even with the limited possibilities of obtaining preliminary injunctive relief. This is because the enforcement of an interim injunction may create facts, but it can be ruled out with sufficient certainty that these facts contradict the legal situation,

> KG, judgment of August 18, 2020 - 21 U 1036/20 -, para. 23, juris.

165 This is also the case. It is not clear what additional findings a main proceedings would bring. The evidence requirements of Art. 40 para. 12 DSA are deliberately kept to a minimum in order to enable a quick assessment and a rapid start to the research work. The applicants have sufficiently demonstrated in their application to the defendant that they meet these requirements. It is also already clear to the court on the basis of the

The requirements of Art. 40 para. 12 DSA can be verified using the attached annexes.

166 Finally, granting access to the data does not constitute an unreasonable burden on the defendant. On the contrary, it is legally obliged to grant researchers access to the data in dispute. As this is public data, the platform does not suffer any unreasonable disadvantages as a result. By granting the requested access to research data, the respondent does not expose itself to any claims for damages from users in particular, as the claim is limited to public data. Nor does the respondent suffer any unreasonable disadvantages from a technical point of view. The data is provided via an - already established - API interface (para. 23 et seq., Annex ASt22, ASt23). The enterprise access provided commercially by the respondent shows that the technical precautions for unlimited access to publicly available data, including real-time data, have already been taken. It is easily possible for the defendant to make this existing infrastructure available to researchers.

167 Research into systemic risks is also in the interests of the defendant. The DSA pursues an approach that is characterized by an interplay different actors, authorities, platforms, researchers and civil society, a safe online environment. In this sense, studies by researchers on the development and importance systemic online risksof particular importance, especially to provide information for providers of online platforms,

see recital 96 DSA.

168 Consequently, the applicants' research also serves to support the defendant in fulfilling its obligations under the DSA.

Once the preliminary injunction has been issued, please notify us by telephone so that we can arrange for the defendant to be served immediately (telephone: +49 (0)30-75438516).

Should the court nevertheless consider holding an oral hearing or rejecting the application, or if a protective letter been filed, please also contact the undersigned by telephone.

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Law