GESELLSCHAFT FÜR FREIHEITSRECHTE

Strengthening Research Access to Platform Data Across the EU

A German Court Recognises Jurisdiction to Enforce Art. 40 DSA

On May 13, 2025, the Berlin Regional Court II issued a ruling that strengthens legal protection for researchers working in academia and civil society. It significantly impacts how researchers across the EU can assert Art. 40 of the Digital Services Act (DSA).

Background

X had refused to disclose publicly available data such as the reach or number of likes and shares of posts to Democracy Reporting International (DRI) around the time of the German federal elections in February. The organization wanted to use the data to research potential election influence on X and thus make the digital space more transparent.

DRI, supported by the Society for Civil Rights (GFF), filed for interim measures, requesting immediate access to the data. While this request was ultimately denied based on a lack of urgency, the court did affirm its ability to hear a case against X, even though X operates (within Europe) out of Ireland (international jurisdiction according to Art. 7(2) of the Brussels I bis Regulation). Read more about the case and find all related documents on our website.

Why is this important?

This jurisdictional clarification is relevant beyond Germany. It offers a legal avenue that could be pursued across the entire EU.

This ruling – if upheld by other courts – will enable researchers to enforce their access to research data on the basis of Art. 40 DSA vis-à-vis platforms in the jurisdiction where they conduct their research.

Online hate speech, disinformation, and election interference can thus be researched and addressed more effectively.

Why this Info-Paper?

We're sharing an English translation of the court's reasoning on international jurisdiction to highlight a practical legal tool for enforcing Art. 40 DSA across the EU.

If you are conducting research with platform data or intend to do so, or if you support researchers in asserting their rights, this case and the Berlin court's interpretation may serve as a valuable reference in your jurisdiction.

The court set out the following reasoning on its international jurisdiction:

> The Berlin Regional Court II has international jurisdiction pursuant to Art. 7(2) Regulation (EU) No 1215/2012 of the European Parliament and of the Council (Brussels I bis Regulation), as the plaintiffs are asserting liability based on tort or quasi-tort within the meaning of the aforementioned article in the local court district.

The special jurisdiction pursuant to Art. 7(2) of the Brussels I bis Regulation applies if tort, delict or quasi-delict, form the subject matter of the proceedings. In such cases, legal action may be brought before the court of the place where the harmful event occurred or may occur. In this regard, Art. 7(2) of the Brussels I bis Regulation applies to all types of legal action, such as actions for performance and declaratory judgments but also to actions for an injunction against unlawful acts that have already commenced.

This case is presenting a tort, delict or quasi-delict, within the meaning of the provision. The term "tort, delict or quasi-delict," is autonomous and must be interpreted broadly ((...)Judgment of 24 November 2020, Wikingerhof, C-59/19, EU:C:2020:950, paragraph 25 et seq.; (...) Judgment of 1 October 2002, Henkel, C-167/00, EU:C:2002:555, paragraph 35 with further references). According to the established case law of the ECJ, the phrase "tort, delict or quasi-delict," within the meaning of Art. 7(2) of the Brussels I bis Regulation refers to any action by which liability for damages is sought against the defendant and which is not based on "matters relating to a contract" within the meaning of Art. 7(1)(a) of the Brussels I bis Regulation ((...) Judgment of 12 September 2018, Löber, C-304/17, EU:C:2018:701, paragraph 19 with further references; Judgment of 13 March 2014, Brogsitter, C-548/12, EU:C:2014:148, paragraph 18 et seq.; Judgment of 27 September 1988, Kalfelis v Schröder and Others, C-189/87, EU:C:1988:459, paragraph 18), i.e., it is not based on a legal obligation that one person has voluntarily entered into towards another (Judgment of 10 September 2015, Holterman Ferho Exploitatie and Others, C-47/14, EU:C:2015:547, paragraph 52; Judgment of 20 January 2005, Engler, C-27/02, EU:C:2005:33, paragraph 51). If a plaintiff invokes in his statement of claim the rules on liability in tort , delict or quasi-delict, i.e., a breach of a legal obligation, and it does not appear essential to examine the content of a contract concluded with the defendant in order to assess whether the conduct alleged against the defendant is lawful or unlawful, since that obligation of the defendant exists independently of that contract, a tort, delict or quasi-delict constitutes the subject matter of the action within the meaning of Art. 7(2) of the Brussels I bis Regulation (Judgment of 24 November 2020, C-59/19, EU:C:2020:950, paragraph 33). The wording of Art. 7 (2) Brussels I bis Regulation thus opens a broad scope of application for the place of jurisdiction, since, in addition to torts and delict, it expressly emphasizes quasi-delicts. This means that all (alleged) infringements of subjective rights, legal interests, and property interests are considered, including, for example, injunctive relief (...). In particular the term "harmful event" must also be interpreted broadly (Judgment of 1 October 2002, Henkel, C-167/00, EU:C:2002:555, paragraph 26 with further references). These requirements are met in this case. This is apparent both regarding a possible claim under Art. 40(12) DSA (a.) and regarding a claim under Art. 54, 40(12) DSA in conjunction with Section 823(2) German Civil Code (b.). Furthermore, the place where the harmful event occurred or may occur is within the jurisdiction of this court (c.).

a. In the present proceedings, the plaintiffs invoke a claim under Art. 40(12) DSA for access to data and thus a legal obligation. This is not a legal obligation voluntarily entered into by the defendant. In this respect, it is not necessary to examine the content of any contract between the parties, but only the obligation to grant access to data resulting from Art. 40(12) DSA.

With the claim under Art. 40(12) DSA, the plaintiffs also demand – contrary to the view of the defendants – "liability for damages" within the meaning of Art. 7(2) Brussels I bis Regulation. Art. 40(12) DSA also contains an obligation to refrain from certain behavior. By asserting an Art. 40(12) DSA claim, the plaintiffs are also seeking an order requiring the defendant to cease hindering access to the desired data. The original proposal for Art. 40(12) DSA only included the obligation for providers of very large online platforms, to refrain from restricting or hindering access to public data for researchers, which was then extended to a duty to act (...). This is also evident in recital 98 of the DSA, according to which providers of very large online platforms must not prevent researchers who meet the criteria from using this data for research purposes if it contributes to the detection, investigation, and understanding of systemic risks. In fact, Art. 40(12) DSA is less a right of access than a right not to be prevented from accessing data (...). The subject of the right of access is therefore the obligation of providers to not prevent researchers who are entitled to access under Art. 40(12) from using the data and, as far as possible, to make it available to them in real time (...). In addition, pursuant to Art. 40(12) DSA, there is a subjective right to data access. In the present case, too, the plaintiffs' request for access to data is equally

concerned with repelling the alleged attack on the legal order by the defendant, namely the failure to comply with the obligation to act under Art. 40(12) DSA to grant access to data without delay, and thus enforcing the non-prevention of access. The refusal to grant data access, in particular by rejecting the original application of the plaintiffs by the defendant by email dated November 28, 2024, therefore constitutes, in the opinion of the plaintiffs, an infringement of their right to data access. There is a causal link between the refusal to grant access to the requested data, the resulting lack of access to the requested data as damage and the assertion of the claim to access to the data pursuant to Art. 40(12) DSA. The plaintiffs are therefore responding to what they consider to be the tort of the defendant by asserting the claim for access to data by way of an application for injunctive relief, and are asserting liability based on tort and quasi-tort in this respect. In the opinion of the plaintiff, the defendant should be obliged to grant access to the data and thus refrain from preventing access.

b. In addition, the assertion of liability based on tort and quasi-tort can also be based on Art. 40(12) in conjunction with Art. 54 DSA and Section 823(2) of the German Civil Code, so that the scope of application of Art. 7(2) of the Brussels I bis Regulation is also given in this respect.

As a secondary claim, Art. 54 DSA includes a right to compensation, according to which compensation may be sought from providers of intermediary services for infringements of their due diligence obligations under the DSA. This private-law claim for damages is an imperfect liability standard, which, according to its wording, is to be applied "in accordance with Union and national law." The background to this is that the DSA lays down special due diligence obligations between intermediary services and the recipients of the service, but does not fully harmonize the underlying contractual relationship, leaving it otherwise unaffected; its further details are therefore determined by national law applicable to the contractual relationship (...). Although there is usually a contractual obligation between recipients of the service and the intermediary service, this may not be the case in individual cases under the applicable law, so that the (recipients-related) special due diligence obligations under Chapter III of the DSA (Art. 11 et seq. DSA) then have the effect under German law that a special non-contractual relationship may arise (...). In addition to the requirements of Art. 54 DSA, the requirements of the compensation provision of the applicable national law must also be taken into account, whereby Art. 54 DSA then shares the legal nature of these compensation provisions and, depending on the contractual relationship between the recipients of the service and the intermediary service, Art. 54 DSA constitutes a contractual, (quasi)-contractual or tortious claim for damages (...). In this respect, Section 823(2) of the German Civil Code and Sections 280(1) and 241 of the German Civil Code are decisive if the establishment of a legal obligation is assumed. At least Section 823(2) of the German Civil Code is applicable in accordance with EU law in the event of a breach of all obligations under the DSA (...). The due diligence obligations under the DSA fulfill the requirement of being a protective law within the meaning of Section 823(2) of the German Civil Code if the violated norm also serves, at least in part, to protect individuals or specific groups of individuals against the violation of a specific legal interest (...) which is the case here, so that a (tortious) claim for damages is possible in the present case, opening up the applicability of Article 7(2) of the Brussels I bis Regulation. Although Art. 54 DSA does not directly contain a claim for injunctive relief, Art. 54 DSA shows that the DSA does not preclude private enforcement, so that it is in line with the spirit of the DSA if, under German law, claims for injunctive relief are based on Sections 12, 862, 1004 of the German Civil Code in conjunction with Section 823(2) of the German Civil Code (...). Under EU tort law too, there exists restitution in kind (i.e., restoration of the original state) as a legal consequence, which may consist in the ordering of a specific act or omission (...). By way of restitution in kind, the claim for damages under Art. 54 DSA may also oblige the defendant to withdraw a decision or to take action, for example to restore the situation by reversing a deletion (...). In addition, the restoration of the previous status can be obtained as simple compensation by reference to national tort law; EU law is therefore quite open to supplementary national rules on claims for damages in the form of restitution in kind (...).

Consequently, the plaintiffs can also invoke Art. 54 DSA. However, it should be noted that the claim for damages can only be asserted by recipients of intermediary services within the meaning of Art. 3 lit. b DSA if the latter have violated recipient-related due diligence obligations of the DSA (...). Third parties who do not use the

intermediary service to obtain or make information accessible are not entitled to claim damages. According to Art. 3 lit. b DSA, a recipient of the service is any natural or legal person who uses an intermediary service, in particular for the purposes of seeking information or making it accessible. Providers and recipients do not have to be contractually linked, and the term receiving is defined very broadly, covering any use of an intermediary service (...). The basis for liability is then a breach by the intermediary service of its specific obligations under the DSA, in particular the due diligence obligations set out in Chapter III. The claim for damages is only applicable in cases where the intermediary service violates recipients-related obligations under the DSA, i.e., due diligence obligations that have been imposed on it specifically in relation to recipients (...). Regarding obligations that also exist towards third parties, the obligation to pay damages is limited to situations that affect recipients. As researchers, however, the plaintiffs in the present case are also recipients of the intermediary services within the meaning of Art. 3 lit. b DSA. They want to use the online platform "X" of the defendant precisely in order to obtain information so that they can then examine it. In this respect, use is to be made precisely as a recipient. Furthermore, the defendant's infringement of Art. 40(12) DSA in question constitutes a breach of a specific obligation under the DSA, which in the present case is also recipient-related. A breach of the obligation to grant data access to the plaintiffs affects them as potential recipients. Therefore, Art. 54 DSA and Section 823(2) of the German Civil Code, as the standard for damages under national law for the legal relationship between the parties, can be invoked for the breach of the obligation under Art. 40(12) DSA. As a legal consequence, restitution in kind and thus the ordering of a specific action or omission may be demanded, in this case – in the opinion of the plaintiffs – the granting of data access or the omission of preventing data access. In this respect, the plaintiffs' claim is also based on liability based on tort and quasi-tort.

c. The place of damage or the place where damage is imminent is located in the local court district. With regard to the possibility of bringing an action at "the place where the harmful event occurred or may occur," both the place where the damage occurred and the place where the event causing the damage occurred are meant, so that, at the plaintiff's discretion, legal action may be brought before the court of either of these two places (Judgment of 12 September 2018, Löber, C-304/17, EU:C:2018:701, paragraph 22). According to the case law of the European Court of Justice, the place where the damage occurred is the place where the alleged damage actually manifests itself. The plaintiff No. 1 in the injunction proceedings, has its headquarters and the plaintiff No. 2 in the injunction proceedings, has its place of residence in Berlin, as the latter has sufficiently demonstrated, so that the place of the harmful event is also in Berlin. The research project is coordinated and carried out by them in Berlin. By not granting or preventing the plaintiffs from accessing the data, they are unable to conduct their research in Berlin. The damage therefore manifests in the local court district.