

GIGAEurope targeted comments on the draft State Treaty on the modernisation of media legislation in Germany

GIGAEurope welcomes the opportunity to provide feedback to the Commission on the notification of *“Article 1, Sections 1, 2, 18, 19, 22, 74, 78 to 96, 117, paragraph 1, sentence 2, subparagraphs 2, 16, 21 to 44 and Article 2 of the draft State Treaty on the modernisation of media legislation in Germany”* (2020/0026/D - SERV30).

GIGAEurope’s comments refer specifically to §80 of the notified draft (“Signal integrity, overlays and scaling”) which is intended to transpose Article 1(12) and Recital 26 (the “signal integrity” provision) of Directive 2018/1808.

We consider that §80 of the notified draft is not in line with the revised AVMS Directive and it could, if adopted as currently drafted, be unfairly detrimental to our member companies who play a major role in ensuring the distribution of high-quality audio-visual content to a significant part of the EU population.

According to §80 (2) (b) *“overlays or scaling are permitted for the purpose of using services of individual communication or if they are initiated by the user in individual cases”*. We believe that this wording falls short of recital 26 of the revised AVMSD which waves from the prohibition not only overlays that are “initiated” by the user but also overlays that are “authorised” by the user. In our view, limiting overlays solely to situations where they are “initiated” by the user unduly restricts the legitimate interests of the TV provider without catering for the legitimate interests of users who may desire to provide such authorisation to their providers, for example, via pre-settings in their profiles.

The Commission should be particularly cautious when assessing draft laws implementing the “signal integrity” provision. Firstly, this provision found its way into the AVMSD without any impact assessment. Secondly, the AVMSD requires Member States, when specifying the regulatory details, including exceptions, not only to safeguard the legitimate interests of the media service providers but also to take the legitimate interests of users into account.

While carrying out its assessment, the Commission should caution against national interpretations which would ultimately unduly interfere in the way distributors promote and increase the findability of content available on their platforms. Such interpretations, as the one at hand, could, in turn, prevent operators from offering innovative services and undermine media diversity and pluralism which are principles underpinning the AVMSD itself.



Recital 26 is also clear in specifying that signal integrity measures should be necessary to meet general interest objectives and should also be proportionate in the interest of legitimate public policy considerations. Excessively restrictive interpretations of the “signal integrity” provision would not meet the criteria of necessity and proportionality required by the directive. They could also set a negative precedent for other Member States who are currently in the process of transposing the directive.

Finally, in order to ensure legal certainty, GIGAEurope considers that the final version of the draft State Treaty should clarify that §80 on “Signal integrity, overlays and scaling” will apply both to current commercial agreements as well as to future agreements, unless the parties agree otherwise.

Therefore, we urge the European Commission to carry out an in-depth review of the German draft rules, and require the German legislator to make the amendments that are required to bring the State Treaty into conformity with the AVMSD as well as the Treaty rules on free movement of goods and services in the areas set out in this paper. We will remain available for further questions and a personal exchange at any time.

For more information please contact:

Irina Varlan, Managing Director, GIGAEurope, irina.varlan@gigaeurope.eu

About GIGAEurope

GIGAEurope is an industry organisation that brings together private operators who build, operate and invest in the gigabit communications networks that enable Europe’s digital connectivity. Our members offer world-class products and services, including converged fixed and mobile communications. GIGAEurope’s members serve around 40 million fixed broadband customers and 130 million mobile customers spanning across Europe.

This paper represents the views of the full members of GIGAEurope, and not necessarily those of our associate members, partners or affiliates.