



EUROPEAN COMMISSION

Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs

Single Market Enforcement

Notification of Regulatory Barriers

Notification Number : 2021/0159/D (Germany)

Statutes of the State media authorities on the Regulation of media intermediaries pursuant to Article 96 of State Media Treaty

Date received : 16/03/2021

End of Standstill : 17/06/2021 (17/07/2021)

Message

Message 002

Communication from the Commission - TRIS/(2021) 00990

Directive (EU) 2015/1535

Translation of the message 001

Notification: 2021/0159/D

No abre el plazo - Nezahajuje odklady - Fristerne indledes ikke - Kein Fristbeginn - Viivituste perioodi ei avata - Καμμία έναρξη προθεσμίας - Does not open the delays - N'ouvre pas de délais - Non fa decorrere la mora - Neietekmē atlikšanu - Atidėjimai nepradedami - Nem nyitja meg a késéket - Ma' jiftaħ il-perijodi ta' dawmien - Geen termijnbegin - Nie otwiera opóźnień - Não inicia o prazo - Neotvorí oneskorenia - Ne uvaja zamud - Määräaika ei ala tästä - Inleder ingen frist - He ce предвижда период на прекъсване - Nu deschide perioadele de stagnare - Nu deschide perioadele de stagnare.

(MSG: 202100990.EN)

1. MSG 002 IND 2021 0159 D EN 16-03-2021 D NOTIF

2. D

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4. 2021/0159/D - SERV30

5. Statutes of the State media authorities on the Regulation of media intermediaries pursuant to Article 96 of State Media Treaty

6. - Information society services in accordance with Article 2(a) of Directive 2000/31/EC

- Media intermediaries

7. -

8. The statutes to be notified (MIS-E) are intended to specify the provisions for the regulation of media intermediaries provided for in Articles 91-95 of the State Media Treaty (MStV) (see also Article 1 para 1 MIS-E). Regulatory addressees are (according to Article 2 para 2 No 16 MStV) primarily search engines and social networks as well as micro-blogging



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services.

Article 1 para 2 MIS-E refers to the protection objective of the regulation and the specific statutes. It serves to ensure diversity of opinion by guaranteeing transparency and non-discrimination.

According to Article 91 para 1 No 1 MStV, media intermediaries (MI) are subject to regulation if they reach more than one million users on average over six months in Germany. Article 2 para 2 MIS-E specifies the regulatory threshold making the sum of unique users the determining factor in the calculation.

Article 3 MIS-E sets out requirements on the obligation to appoint an authorised agent under Article 92 MStV. The designation must be easily recognisable in accordance with Article 92 MStV in the offer and be made in a directly accessible manner. Article 3 para 3 MIS-E stipulates that these requirements are met if the authorised agent is listed in the imprint.

Articles 4 to 6 MIS-E specify the transparency obligation pursuant to Article 93 MStV. Article 4 MIS-E clarifies that the purpose of the transparency obligation is to ensure diversity of opinion. Users of MI should be able to use it in an informed way, e.g. with regard to the criteria used for the selection and presentation of opinion-forming content. Article 5 MIS-E specifies the formal requirements for easy recognition, immediate perceptibility and constant availability of the information to be made transparent, as provided for in Article 93 para 1 MStV. For this purpose, standard examples are established in Article 5 para 1-5 MIS-E.

Article 6 MIS-E contains a non-exhaustive catalogue of information to be made transparent within the meaning of Article 93 paras. 1 to 3 MStV. According to Article 6 para 1 MIS-E, for example, information on technical or content-related hurdles that may be set up by the provider of an MI to access content to its offer must be communicated. According to Article 6 para 2 MIS-E, a description of the criteria used for aggregation, selection and presentation must be made transparent. In addition, any personalisation, for example, of news feeds, must be reported (Article 6 para 2 No 6 MIS-E).

Articles 7 to 9 MIS-E lay down details of the freedom from discrimination provided for in Article 94 MStV. For this purpose, Article 7 para 2 MIS-E, inter alia, specifies parameters with which a “particularly high influence” on the perceptibility of journalistic-editorial content of MI within the meaning of Article 94 para 1 MStV can be determined. Articles 8 para 5, 9 para 4 MIS-E also establish framework conditions for the balancing of interests required under Article 94 para 2 MStV (“unreasonable”, “substantially justified reason”). A comprehensive balancing of interests is necessary, taking into account the protection objective of ensuring diversity of opinion.

Finally, Articles 10-13 MIS-E contain procedural provisions. Article 13 para 2 MIS-E lays down, inter alia, a procedure for the protection of any trade and business secrets concerned. According to Article 14, an evaluation of the statutes shall take place every three years.

9. The statutes notified herewith specify the provisions of the State Media Treaty on media intermediaries on the basis of a corresponding competence in Article 96 of the State Media Treaty. The statute has a legally binding effect vis-à-vis the regulatory addressees concerned.

The federal state media authorities thoroughly analysed the comments of the European Commission on the State Media Treaty – in particular those concerning matters of ensuring diversity – in what was then notification procedure No 2020/26/D and incorporated them when drafting the statute.

Taking this into account, the statute does not go beyond the regulatory content of the underlying provisions of the State Media Treaty. On the other hand, it provides an interpretation in line with European law of those parts of the State Treaty, which the European Commission has identified as worthy of criticism in its observations.

One of the core tasks of the media institutions from the very beginning, and even more so since the establishment of the Commission on Concentration in the Media (KEK), has been the practical application of the basic idea of ensuring diversity in the media. The present statute and the underlying State Media Treaty now provide a clear legal basis for this



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regulatory task of the media institutions, which ensures diversity. A synopsis of the State Media Treaty with the statute makes it clear overall that the legal framework in Germany with regard to media intermediaries exclusively pursues purposes that safeguard diversity, is in this respect in line with European law and, moreover, is also limited to this area by the statutory mandate of the media institutions.

The media institutions take the liberty of attaching a corresponding expert opinion to this notification which supports these statements.

10. Reference to basic texts: State Treaty on the modernisation of media legislation in Germany

Basic texts have been submitted as part of an earlier notification: 2020/26/D

11. No

12. -

13. No

14. No

15. -

16. TBT Agreement

NO - The draft has no significant impact on international trade.

SPS Agreement

NO - The draft has no significant impact on international trade.

European Commission

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