



EUROPEAN COMMISSION

Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs
Single Market Enforcement
Notification of Regulatory Barriers

Notification Number : 2020/0813/D (Germany)

State Media Treaty

Date received : 17/12/2020

End of Standstill : 18/03/2021 (closed)

Message

Message 002

Communication from the Commission - TRIS/(2020) 04585

Directive (EU) 2015/1535

Translation of the message 001

Notification: 2020/0813/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 késéseket - Ma' jiftaħx 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: 202004585.EN)

1. MSG 002 IND 2020 0813 D EN 17-12-2020 D NOTIF

2. D

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4. 2020/0813/D - SERV30

5. Statute of the federal state media authorities specifying the provisions of the State Media Treaty on media platforms and user interfaces

6. - Information Society services in accordance with Article 2(a) of Directive 2000/31/EC
- media platforms, user interfaces

7. -

8. The provisions of the notified statute serve to ensure diversity of opinion on media platforms and user interfaces.

In the State Media Treaty, the term 'media platform' (§ 2(2)(14) MStV) addresses telemedia that, for example, combine broadcasting programmes or 'online press' into a single overall offer. This covers TV cable network providers and OTT live streaming portals in particular.



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The term 'user interface' (§ 2(2)(15) MStV) also covers display and control levels of or for media platforms, insofar as they aid in orientation and directly enable the selection of offers. In particular, the visual user interfaces of cable network platforms and smart TVs are covered.

In addition to procedural provisions (§§ 12 et seq.), the statute of the federal state media authorities notified here essentially includes specifics on the regulatory thresholds (§ 1) provided for in § 72 MStV, on the provision concerning the protection of signal integrity under § 80 MStV (§ 3) and on access and navigation regulation under §§ 82 to 84 MStV (§§ 5 to 10).

Regarding the individual core elements:

- § 78 MStV contains quantitative regulatory thresholds in the form of the principle of proportionality. According to these thresholds, media platforms and user interfaces are only covered if they have more than 20 000 actual daily users per average month (§ 78(2)(2) MStV). In § 1, the statute specifies the standards and metrics to be applied in determining these regulatory thresholds (§ 1(5)).
- In accordance with § 80 MStV, providers of media platforms and user interfaces may only cross-fade programmes with the consent of the broadcaster, unless the user has initiated the cross-fade. In addition, § 80(1)(1) MStV prohibits the substantive or technical modification of broadcasting programmes, including HbbTV signals. § 3(1) of the statute clarifies that it is considered a technical modification if, for example, HbbTV signals are not forwarded by media platform providers but are (actively) suppressed. Technical interoperability or an installation obligation is expressly not intended. In addition, § 3(2) of the statute clarifies that it is also considered an overlay requiring consent when linear broadcasting programmes are overlaid by pre-rolls following selection by the user.
- Pursuant to § 82 MStV, providers of media platforms are obliged to ensure that the conditions for accessing the platform are non-discriminatory and based on equal opportunities. In addition to the specification of these principles in §§ 5 to 7, § 8(1) of the statute clarifies that the platform provider's financial specifications (e.g. fees and tariffs) and technical specifications must also comply with these principles. The assessment in practice is to be based on an overall weighing of interests in the light of ensuring diversity of opinion (cf. § 6(2)).
- Pursuant to § 85 MStV, media platforms and user interfaces must, in particular, make transparent the criteria for selecting broadcasting programmes to form a single overall offer. § 11 of the statute specifies the requirements for the manner in which transparency is to be provided. To this end, the terms 'readily perceptible', 'immediately accessible' and 'permanently available' are clarified (§ 11(3) to (5)).

9. The statute notified herewith specifies the provisions of the State Media Treaty on media platforms and user interfaces on the basis of a corresponding competence in § 88 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. Secondly, it provides an interpretation in conformity with European law of those passages of the State Treaty which the European Commission identified in its comments as being worthy of criticism.

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 diversity-ensuring regulatory task of the media institutions. A synopsis of the State Media Treaty with the statute makes it clear overall that the legal framework in Germany with regard to media platforms and user interfaces 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.



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10. Reference(s) to basic text(s): State Treaty on the modernisation of media legislation in Germany

The basic texts were forwarded with an earlier notification: 2020/26/D

11. No

12. -

13. No

14. No

15. -

16. TBT aspect

No - the draft has no significant impact on international trade.

SPS aspect

No - the draft has no significant impact on international trade.

European Commission

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