As at: 15 March 2021

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**Statute on the Regulation of Media Intermediaries pursuant to § 96 of the State Media Treaty**

 **(MI Statute)**

**of …**

On the basis of § 96, sentence 1 of the State Media Treaty (MStV) from 14 to 28 April 2020 (... reference), the [name of the federal state media authority], in agreement with the other federal state media authorities, hereby enacts the following statute:

**Section 1: General provisions**

**§ 1**

**Purpose and objective**

(1) Pursuant to § 96 MStV, this statute shall regulate details on the substantive and procedural specification of the legal provisions for the regulation of media intermediaries and providers of media intermediaries (§§ 91 to 95 MStV).

(2) This statute serves to safeguard the diversity of opinions (diversity of offering and provider).

(3) The guiding role of media intermediaries for the respective user groups shall be taken into account when applying this statute.

**§ 2**

**Scope of application**

(1) 1The scope of application of the statute includes media intermediaries, integrated media intermediaries and their providers. 2The term ‘integrated media intermediary’ pursuant to § 91(1) MStV covers any integration of an intermediary function in the offerings of third parties, which enables users of the third-party offerings to use the intermediary function.

(2) The number of users pursuant to § 91(2), subparagraph 1 MStV is the sum of the monthly unique users.

(3) If the provider of a media intermediary refers to the regulation in § 91(2), subparagraph 1 MStV, it shall, upon request of the competent federal state media authority, present and substantiate the number of users within one month and submit the documents and information required for the examination.

(4) If the intermediary function has not yet been offered or has been offered for less than six months, the provider of the media intermediary shall, at the request of the competent federal state media authority, make a forecast of the progression of user numbers within the meaning of § 91(2), subparagraph 1 MStV and provide credible evidence and also submit the documents and information required for the examination.

**§ 3**

**Authorised agent**

(1) An authorised agent may be a natural or legal person.

(2) 1Natural persons must have their domicile or habitual residence, legal persons must have the registered office of their principal place of business in the Federal Republic of Germany. 2A summonable address shall be indicated.

(3) The requirements pursuant to § 92, sentence 1, second half-sentence MStV are usually fulfilled if the authorised agent is designated within the scope of the information required by § 5(1) of the Telemedia Act (TMG) and § 18(1) MStV.

**Section 2: Transparency**

**§ 4**

**Purpose and objective**

1The provisions of this section are intended to ensure that appropriate transparency is created for users of media intermediaries with regard to the information listed in § 93(1) MStV and § 6 (information to be made transparent). 2In particular, this should enable an informed use of the media intermediary with regard to aggregation, selection and presentation of journalistic-editorial content. 3They also address the providers of journalistic-editorial content.

**§ 5**

**Formal requirements**

(1) Information pursuant to § 93(1) MStV, amendments pursuant to § 93(3) MStV and information pursuant to § 6 must be made transparent in German.

(2) 1Information to be made transparent is easily perceptible within the meaning of § 93 MStV, if it is placed in a clearly perceptible position for an average user, taking into account the typical usage situation of the media intermediary. 2This is usually the case if the information to be made transparent is obviously distinguishable from the rest of the content and it is directly related to input or navigation options essential for the use of the media intermediary. 3When using a web link referring to the information to be made transparent, the above requirements apply accordingly.

(3)1Information to be made transparent is immediately accessible within the meaning of § 93 MStV, if it is perceptible to the user without significant intermediate steps. 2This is especially not the case if the information is accessible with more than two web links and/or the retrieval of the information is made dependent on prior registration or a log-in.

(4) Information to be made transparent is always available within the meaning of § 93 MStV, if the user can access it at any time.

(5) Information to be made transparent is provided in an understandable language within the meaning of § 93 MStV, if it can provide the average user with the basic understanding of the circumstances referred to in § 93(1) MStV required for informed use of the media intermediary.

(6) If the use of the media intermediary is predominantly voice-driven, the information to be made transparent should also be reproduced acoustically at the user's request, whereby an acoustic indication of where the information to be made transparent is provided is sufficient.

**§ 6**

**Information obligations**

(1) 1The provider of a media intermediary is obliged to make transparent the criteria which determine the access of content to a media intermediary and its retention (§ 93(1), subparagraph 1 MStV). 2For this purpose, the provider of a media intermediary must in particular supply the following information:

1. A description of the technical, economic, provider-related, user-related and content-related conditions determining whether content is made perceptible through a media intermediary,
2. in the event that certain content is filtered or downgraded or upgraded in terms of perceptibility when accessing and remaining in the media intermediary, in particular also through the use of automatic systems, the category of content concerned and the objectives pursued by the filtering or grading shall be indicated and
3. information on whether and, if so, how access to and retention of content in the media intermediary is or can be influenced by payments or other direct or indirect benefits in kind

(2) 1The provider of a media intermediary is obliged pursuant to § 93(1), subparagraph 2 MStV to make transparent the central criteria for aggregation, selection and presentation of content and their weighting, including information on the functioning of the algorithms used. 2For this purpose, the provider of a media intermediary must in particular supply the following information:

1. a description of the central criteria for aggregation, selection and presentation used by the media intermediary provider,
2. a description of the relative weighting of the central criteria in relation to each other and in relation to non-central criteria, without making the latter transparent,
3. a description of the optimisation objectives pursued by the central criteria,
4. information on whether and, if so, how the findability of content in the media intermediary is or can be influenced by payment of fees or other direct or indirect remuneration considerations,
5. a description of the basic process steps underlying the aggregation, selection and presentation of content, including which personal and other data are included in the aggregation, selection and presentation,
6. information on the type and extent of personalisation used and whether, and, if so, how content is assessed for relevance to the respective user,
7. information on whether and, if so, in what way user behaviour in the media intermediary can influence the aggregation, selection and presentation of content, including indications of the possibilities of influence available to the user through settings and partial functions and
8. information on whether and, if so, how the provider of a media intermediary treats its own content, content of an affiliated company (§ 15 of the Stock Corporation Act (AktG)) or content of cooperation partners in a special way during aggregation, selection and/or presentation.

(3) 1Important amendments to the criteria to be made transparent pursuant to § 93(1) MStV shall be made immediately perceptible. 2For this purpose, the provider of a media intermediary shall keep available an overview showing the significant changes made over time. 3All other amendments to the criteria to be made transparent pursuant to § 93(1) MStV shall be disclosed at least every four months from the entry into force of this statute. § 5 shall apply accordingly.

**Section 3: Non-discrimination**

**§ 7 General provisions**

(1) The obligation of a media intermediary pursuant to section 94(1) MStV also includes definable parts and contributions of a journalistic-editorial offering.

(2) 1In determining a particularly high influence within the meaning of § 94 (1) MStV, the influence of the media intermediary on the perceptibility of journalistic-editorial content within the opinion-forming process is decisive. 2The assessment may take into account in particular

1. the position of the media intermediary in the respective relevant markets;
2. an overall view of the use, for example on the basis of the available range of use, user numbers, duration and activity of users or number of views per user.

**§ 8
 Systematic deviation according to § 94(2), first alternative MStV**

(1) Decisive for the assessment of whether an infringement of § 94(2), first alternative MStV applies

1. are the criteria and the information on the weighting of the criteria which the media intermediary provider publishes in order to fulfil its obligation pursuant to § 93(1) MStV or
2. the criteria and the information on the weighting of the criteria which the media intermediary provider would have to publish in order to fulfil its obligation pursuant to § 93(1) MStV.

(2) A deviation within the meaning of § 94(2), first alternative MStV shall be deemed to exist in particular if the provider of a media intermediary

1. does not apply the published criteria or criteria other than those to be published pursuant to § 93(1), subparagraph 1 and 2 MStV, or
2. deviates from the published weighting of the central criteria of an aggregation, selection and presentation of content.

(3) 1Whether a deviation within the meaning of § 94 (2), first alternative MStV is systematic shall be determined on the basis of an overall view of all circumstances. 2In particular, the duration, regularity, repetition and scheduling of the deviation shall be taken into account.

(4) A deviation is justified if this is due to an objectively justified reason. Reasons for this may be in particular

1. legal prohibitions or legal obligations;
2. technical conditions in the presentation to the user;
3. requirements to protect the integrity of the service.

(5) Whether there is an objectively justified reason is assessed after weighing up the interests of the parties involved, taking into account the objective of the MStV of ensuring diversity of opinion.

**§ 9**

**Unreasonable obstruction according to § 94(2), second alternative MStV**

(1) An obstruction within the meaning of § 94(2), second alternative MStV is the direct or indirect impairment in terms of access to or findability of a journalistic-editorial offering.

(2) § 8(1) applies accordingly.

(3) 1Whether an obstruction within the meaning of § 94(2), second alternative MStV is systematic is to be determined on the basis of an overall view of all circumstances. 2The duration, regularity, repetition and regularity of the obstruction must be taken into account.

(4) 1The unreasonable nature of an obstruction shall be assessed on the basis of a balance between the interests of the parties, taking into account the objective of the MStV of safeguarding diversity of opinion. 2The unreasonable nature of an obstruction may arise from individual criteria or from the cumulative interaction of several criteria.

**Section 4: Procedure and investigation**

**§ 10**

**Competence of the ZAK**

(1) For the tasks to be performed within the framework of this statute, the Commission on Licensing and Supervision (ZAK) of the competent federal state media authority serves as a suitable organ (§ 104(2) sentence 1 No 1, § 105(1) sentence 1 No 10 MStV in conjunction with the ZAK rules of procedure – GVO ZAK).

(2) 1The competent federal state media authority shall immediately forward complaints to the ZAK via the Joint Office pursuant to § 11 and inform it of ex officio examinations. 2The ZAK conducts the proceedings until the decision is ready.

**§ 11**

**Non-discrimination procedure**

(1) The competent federal state media authority shall examine through the ZAK, on the basis of a complaint or in obvious ex officio cases, whether the provider of a media intermediary is violating the provisions of § 94(1) and (2) MStV or §§ 8 and 9.

(2) Entitlement to appeal within the meaning of § 94(3), sentence 1 MStV is granted to

1. providers of journalistic-editorial content and
2. providers of media platforms and user interfaces, insofar as they are complaining about discrimination against the packages of journalistic-editorial content they offer.

(3) 1The complainant shall give reasons for their appeal. For this purpose, appropriate proof shall be provided from which sufficient evidence for the alleged discrimination of its journalistic-editorial content within the meaning of § 94(2) MStV or §§ 8 and 9 will emerge. 2In particular, the following may be submitted:

1. evaluations of the findability of own journalistic-editorial content in the media intermediary and
2. suitable studies.

3In addition, the complainant shall, where possible, provide suitable proof from which there is sufficient evidence of the particularly high influence of the media intermediary on the perceptibility of journalistic-editorial content within the meaning of § 94(1) MStV.

(4) An obvious case pursuant to § 94(3), sentence 2 MStV and (1) exists if the facts underlying the infringement of the prohibition of discrimination are clearly identifiable for third parties.

**§ 12**

**Rectification**

1If the competent federal state media authority determines through the ZAK that the provider of a media intermediary is violating §§ 92 to 94 MStV or provisions of this statute, the provider of the media intermediary shall immediately rectify the media intermediary. 2The provider of the media intermediary is obliged to provide evidence of the rectification to the competent federal state media authority in a suitable and comprehensible manner.

**§ 13**

**Information and submission of documents**

(1) 1In order to verify a possible infringement, the provider of a media intermediary is obliged to supply all necessary information, to make information available and to submit documents. 2The competent federal state media authority may in particular

1. demand the submission of all documentation which proves the criteria within the meaning of § 93(1), subparagraph 1 MStV or the central criteria and their weighting sand also the functioning of the algorithms used within the meaning of § 93(1), subparagraph 2 MStV;
2. hear as witnesses the employees of the media intermediary provider involved in the definition, technical implementation and modification of the criteria within the meaning of § 93(1), subparagraph 1 MStV or central criteria and their weighting and also the algorithms used within the meaning of § 93(1), subparagraph 2 MStV;
3. require from the media intermediary provider an affidavit regarding the information to be made transparent pursuant to § 93(1) MStV and § 6;
4. require the submission of contractual agreements, commitments or other obligations which are objectively related to the access and retention of content to the media intermediary, in particular insofar as they concern the inclusion, presentation and retention of journalistic-editorial content.

(2) 1When submitting documents referred to in paragraph 1, the media intermediary provider shall mark those parts of the documents that contain business or trade secrets. 2In this case, they must additionally submit a version that, from their point of view, can be viewed by third parties without disclosing business or trade secrets. 3If this is not done, the federal state media authority may assume consent to inspection, unless it is aware of special circumstances which do not justify such a presumption. 4If the federal state media authority considers the marking of the documents as trade or business secrets to be unjustified, it must give the provider the opportunity to comment before deciding whether to grant access to third parties.

**Section 5: Final provisions**

**§ 14**

**Evaluation**

The ZAK shall review this statute at least every three years, taking particular account of

1. the experience gained from the practical application of this statute;
2. technical and economic developments in the regulatory field;
3. the importance of individual media intermediaries for public opinion formation;
4. co-regulatory developments such as industry-wide commitments;
5. the development of research on transparency and discrimination;
6. the development of research and science in the field of data analysis, artificial intelligence and machine learning.

**§ 15**

**Entry into force**

1This statute shall enter into force on 1 September 2021. 2If, by 31 August 2021, corresponding statutes have not been enacted and published by all federal state media authorities, this statute shall become obsolete. 3The chairman of the Conference of Directors of the Federal State Media Authorities (DLM) shall publish on the internet under the umbrella brand "die medienanstalten" whether all federal state media authorities have enacted and published corresponding statutes within the period specified in sentence 2.[[1]](#footnote-1)

1. Notified in accordance with Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (OJ L 241, 17.9.2015, p. 1). [↑](#footnote-ref-1)