

As at: 17/03/2021

Statute specifying the provisions of the State Media Treaty on media platforms and user interfaces¹

(MB Statute)

of ...

By virtue of §§ 84(8), 88 State Media Treaty (MStV) of 14 to 28 April 2020 (... reference), the [name of the federal state media authority], in agreement with the other federal state media authorities, hereby issues the following statute:

Section 1: General provisions

§ 1

Purpose, field of application

(1) ¹Pursuant to §§ 84(8), 88 MStV, this statute regulates details of the substantive and procedural specification of the statutory provisions of Section 5(2) of the MStV concerning media platforms and user interfaces (§§ 78 to 88 MStV). ²It serves to positively safeguard diversity of opinion (diversity of offerings and providers).

(2) ¹The provisions of this statute apply to media platforms and user interfaces. ²With the exception of §§ 1, 2, 3, 12 et seq. of this statute, they shall not apply to media platforms and user interfaces whose importance for the diversity of offerings and opinions is low. ³This is generally the case if the media platform or user interface falls below the thresholds provided for in § 78(2)(1) and (2) MStV.

(3) ¹A media platform is infrastructure-bound when the provider of the media platform also controls the transmission infrastructure from the entry point to the network termination point. ²Control may also be exercised on the basis of a contractual agreement between the provider and the owner of the transmission infrastructure.

(4) The determination of connected housing units for cable-networked media platforms and their user interfaces pursuant to § 78(2)(1) MStV shall be carried out in accordance with the following provisions:

1. All attributable networks of a provider of a cable-network-based media platform are considered together.
2. In the case of cable-network-based media platforms, connected housing units as referred to in § 78(2)(1) MStV are housing units in which there is a physical network termination point at

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 September 2015, p. 1).

which an end-user is provided with access to a cable network, insofar as an agreement exists for the network termination point according to which the end-user is entitled to receive broadcasting programmes.

(5) The following provisions shall apply to the determination of actual daily users as referred to in § 78(2)(2) MStV:

1. Actual daily users of a non-infrastructure-bound media platform or user interface are users who visit the media platform or user interface in a day. Multiple instances of access by a user are easy to count (unique user);
2. The decisive factor is the access at the first selection level of a media platform or a user interface. If, on the other hand, the media platform is a delimitable part of a mixed offering, the unique user figures of the delimitable function are the decisive factor.
3. If the access to broadcasting programmes, broadcasting-like telemedia or telemedia as referred to in § 19(1) MStV is made exclusively dependent on registration or log-in, the access to the first selection level that is accessible after registration or log-in shall be decisive for the measurement of unique users.
4. Where no information on actual daily users can be provided, the number of devices sold is used as a basis for user interfaces.
5. The above calculations of the monthly average are based on a period of six months.

(6) The provider shall demonstrate the presence of the requirements pursuant to § 78(2)(1) and (2) MStV.

§ 2 Notification

(1) ¹Providers who wish to offer a media platform or user interface must notify the responsible federal state media authority at least 1 month prior to commissioning. ²Insofar as the commissioning of the offer is not the provider's responsibility, the obligation to notify in accordance with sentence 1 shall be based on the time at which the offer is placed on the market.

(2) In the context of the notification, the following information and documents in particular shall be provided:

1. presentation of the offer, including information on the infrastructure-bound nature of the media platform or information on whether it is a user interface of an infrastructure-bound media platform;
2. designation of the natural or legal person of the provider of the media platform or user interface as well as their place of residence or registered office;
3. submission of a legal certificate of good conduct for submission to an authority or a comparable foreign document for the person of the provider of the media platform or user interface or the person legally or statutorily representing it, said certificate not being older than six months at the time of submission. In the case of several legal or statutory representatives, the submission of a document as referred to in sentence 1 shall be sufficient for those representatives who are responsible for the selection of the offers or the design of the overview;

4. information on the technical and expected range of use. This includes, in particular, the information required for the review of § 78(2) MStV and § 1(4) to (6) of this statute.

(3) If the provider of the media platform or user interface does not have its place of residence or registered office in Germany, another Member State of the European Union or another State party to the Agreement on the European Economic Area, it shall name an authorised representative pursuant to § 79(1)(2) MStV within the scope of the notification and submit a document pursuant to paragraph (2)(3).

(4) In addition, the competent media authority may request the submission of further documents and information required for the assessment of the notification.

§ 3 Signal integrity, overlays and scaling

(1) A technical change as referred to in § 80(1)(1) MStV also exists if technically provided HbbTV signals are not forwarded by media platform providers.

(2) Acoustic or visual overlays that occur immediately after the user's selection and before the start of the broadcasting programme (pre-roll) shall be deemed equivalent to an overlay as referred to in § 80(1)(2) MStV.

(3) ¹ Inducement in an individual case as referred to in § 80(2)(2) and (3) MStV is effected by a clear action on the part of the user, which voluntarily states, for the specific usage situation and unambiguously, that the user wishes to trigger the overlay or scaling. ²This is in particular the case if the user uses appropriately marked visual or acoustic controls to trigger the cross-fade or scaling.

Section 2: Occupancy requirements

§ 4 Occupancy requirements for infrastructure-based media platforms

Appropriate consideration of offerings pursuant to § 81(2)(1)(1)(b) and (c) MStV as well as § 81(3)(1)(1)(b) MStV requires:

1. evidence showing that the capacity for occupancy pursuant to § 81(2)(1)(1) MStV is not sufficient to fully meet the dissemination obligations pursuant to § 81(2)(1)(1) MStV and § 81(3)(1)(1) MStV;
2. counting programmes disseminated in different standards only once;
3. disseminating programmes pursuant to § 81(2)(1)(1) MStV and § 81(3)(1)(1) MStV that are not legally designated for the respective area of dissemination in a subordinate manner to programmes pursuant to § 81(2)(1)(1)(b) and (c) MStV and § 81(3)(1)(1)(b) MStV;
4. not completely suppressing services pursuant to § 81(2)(1)(1)(b) and (c) MStV as well as § 81(3)(1)(1)(b) MStV.

Section 3: Conditions of access for media platforms

§ 5

Equal opportunities

(1) Providers of media platforms shall offer access to their media platforms in such a way that the dissemination or marketing of offerings within the scope of § 82(2) MStV is not unreasonably impeded directly or indirectly.

(2) The unfairness of an impediment shall be determined by comprehensively weighing the interests of the parties involved and taking into account the objectives of MStV and this statute aimed at ensuring diversity of opinion and offerings.

(3) An unfair impediment shall be deemed to exist in particular if media platforms do not offer a realistic chance of access within the realm of what is technically possible and economically reasonable, or if the access conditions lead to a structural disadvantage for offerings pursuant to § 82(2) MStV.

§ 6

Non-discrimination

(1) ¹Providers of media platforms may not treat offerings as referred to in § 82(2) MStV differently from similar offerings without an objectively justified reason. ²This is the case in particular if a provider of a media platform offers access to media platforms to an offer pursuant to § 82(2) MStV under different access conditions than to an undertaking that is attributable to the provider of the media platform, unless there is an objectively justifiable reason for this. ³Companies with which providers of media platforms are directly or indirectly affiliated through participation or in any other way shall be attributable. § 62 MStV shall apply by analogy.

(2) The objectively justifiable reason for unequal treatment shall be valid in the light of the guiding principle of ensuring diversity of opinion.

§ 7

Conditional access systems

(1) A conditional access system is:

1. any technical measure;
2. any authentication system; and/or
3. any device;

that, for example, makes access to a protected radio or television programme in unencrypted form subject to a subscription or other form of prior individual authorisation.

(2) In the case of conditional access systems as defined in § 82(2)(1) MStV, all entitled parties shall be enabled to use the technical services required for the use of these systems and shall be provided

with the necessary information on conditions that are reasonable, non-discriminatory and based on equal opportunities.

§ 8 Access conditions

(1) The form of the access conditions as referred to in §§ 82(2)(4) and 83(2) MStV shall include, in particular, the manner in which a media platform provider determines, by means of financial and technical specifications, access to the media platform by an offer as referred to in § 82(2) MStV.

(2) ¹If a broadcaster requests access to a media platform, the examination of non-discrimination and equal opportunities shall include all services of monetary value that are exchanged or intended to be exchanged in direct or indirect material connection with the access. These include, in particular:

1. fees and tariffs charged or to be charged by the provider of a media platform to broadcasters requesting access;
2. remuneration paid or contractually to be paid by the provider of a media platform to the broadcaster on the basis of signal provision, including returns in HD-CPS models.

(3) ¹To the extent necessary to assess the access situation, agreements on the granting and remuneration of rights that the provider of a media platform concludes or intends to conclude with the broadcaster on the basis of copyright or trademark rights may also be included in the required overall assessment. ²The provisions of the Copyright and Related Rights Act (UrhG), the Act on the Administration of Copyright and Related Rights by Collecting Societies (VGG) and the Act against Restraints on Competition (GWB), as well as the responsibilities associated therewith shall remain unaffected.

§ 9 Disclosure

(1) Media platform providers shall:

1. if the regulatory thresholds specified in § 78 MStV are exceeded, disclose access conditions as referred to in § 82(2) MStV and § 8
2. in the case of § 81(2)(2) MStV, disclose information on the total capacity available for the digital dissemination of television programmes or radio broadcasting to the competent federal state media authority upon request.

(2) The disclosure shall be done by submitting appropriate documents.

(3) In particular, the disclosure shall include information on the following:

In the case of paragraph 1(1):

1. all technical parameters and technical framework conditions, knowledge of which is required to assess access pursuant to § 82(2)(1) and (2) MStV;
2. the fees and tariffs charged by media platform providers, together with the data and business assumptions underlying the calculation thereof;
3. a description of the remuneration system used.

In the case of paragraph 1(2):

1. information regarding which options have been used for efficient use of the capacities;
2. whether a programme is disseminated and in which different distribution standards it is disseminated.

Section 4: Regulations for user interfaces

§ 10

Findability in user interfaces

(1) ¹The sorting, arrangement and presentation of offers and content as well as other textual, visual and acoustic forms of presentation that aid in findability are decisive for the findability of offers and content in user interfaces. ²Offers are individual broadcasting programmes, broadcast-like telemedia, telemedia pursuant to § 19(1) MStV as well as software-based applications that are essentially used to directly control the aforementioned offers in their entirety. ³Content is delimitable, in particular separately named or perceptible parts of offers such as broadcasts.

(2) With regard to the requirements for findability in and the operation of user interfaces, the understanding of an average user who does not have specific technical knowledge shall be decisive in the following regulations.

(3) ¹Similar offers or content must be findable in a non-discriminatory manner and on the basis of equal opportunities. ²Unequal treatment shall only be permitted if there is a verifiable objective reason for it that does not conflict with the objective of ensuring diversity. ³Permissible criteria for the sorting or arrangement of offers and content are in particular:

1. alphabetical order;
2. genres such as information, education, culture, local or entertainment; or
3. range of use.

⁴The possibility of further developing the criteria remains unaffected. ⁵Discrimination shall be deemed to exist in particular if the provider of the user interface deviates from its own permissible criteria. ⁶The provider must guarantee the federal state media authorities the verifiability of the criteria and compliance with them and must in particular explain in detail which criteria are used and which information is used as a basis for this. ⁷As a rule, the following shall not be permitted:

1. sorting or arrangement influenced by remuneration or a similar consideration; or
2. the preferential treatment of offers and content of the user interface provider, unless a fee is paid for use.

(4) ¹User interfaces shall offer the possibility to search the entirety of all offers for specific offers (search function). ²The result of the search, including search suggestions made during the search process (e.g. by an autocomplete function), shall be non-discriminatory. ³In addition, a user interface may also provide the possibility of searching for content; paragraph 3(1) applies accordingly.

(5) ¹Offers shall be deemed to be easy to find in user interfaces if they are easy and quick to find, for example because they are presented at the forefront or highlighted, for example by a separate

button. ²The manner in which findability can be guaranteed in individual cases depends on the type, scope and design of the user interface as well as the specific illustration or other presentation of offers and content. ³In general, it is necessary but not sufficient for the easy findability of the relevant offers for them to be as easy and quick to find as the rest of the offers.

(6) ¹The following shall be easy to find in user interfaces:

1. At the first selection level, the broadcasting in its entirety, unless only radio programmes are selectable at this level;
2. within the broadcasting, the legally determined contribution-financed programmes, the radio programmes, the window programmes (§ 59(4) MStV) and the private programmes, which make a particular contribution to the diversity of opinions and offers in the federal territory; and
3. at selection levels that only or predominantly present broadcast-like telemedia or software-based applications used to directly control them, the telemedia offers and software-based applications pursuant to § 84(4) MStV.

²It must be possible to reach the broadcasting in its entirety at the first selection level without significant intermediate steps, in general via only one action. ³If radio programmes are reproduced or acoustically conveyed, which window programmes have to record (§ 59(4) MStV), in the area for which the window programmes are approved or legally determined, the main programmes with window programmes are compared to the main programme broadcast without a window programme and to the window programmes that are permitted for other areas or are legally intended to be given priority.

(7) ¹Regardless of the default settings, it shall be possible to sort and arrange offers and content easily and quickly by the user himself (e.g. by means of a list of favourites). ²As a rule, offers or content can be sorted or arranged easily and quickly if this is obvious or explained in an easily understandable way. ³The sorting or arrangement carried out by the user may only be changed by him and especially not by updates.

(8) ¹Paragraphs 4 to 7 do not apply if the provider of the user interface proves that implementation is technically impossible or only possible with disproportionate effort. ²Disproportionate effort is determined based on an overall assessment that takes into account, in particular, the financial capacity of the provider, the effort required for other findability functions of the user interface, and the nature and extent of the infringement committed in the event of non-implementation. ³The effort shall be deemed disproportionate only in the case of a gross disproportion.

Section 5: Transparency requirements

§ 11 Transparency

(1) ¹Providers of media platforms and user interfaces shall make the information referred to in § 85 MStV. ²The information shall be provided in German in such a way that it is easily perceptible to the user, immediately accessible and permanently available.

(2) The understanding of an average user who does not have specific technical knowledge shall be decisive with regard to the requirements for the implementation of the transparency requirements.

(3) ¹Information shall be deemed easily perceptible if it can be found easily and quickly when using the media platform or user interface, for example, because it is highlighted and identified by an unambiguous term. ²The concrete design for ensuring easy perceptibility shall be done in the light of the nature, scope and other ways the service is designed. ³If the use of the service is predominantly voice-controlled, the information should also be played back acoustically at the user's request, whereby an acoustic indication of where the information is located is sufficient.

(4) ¹Information shall be deemed immediately accessible if it is made available in such a way that it can be accessed within the media platform or user interface without any significant intermediate steps. ²If the service is used via the Internet, this can also be done by means of a link.

(5) Information shall be deemed permanently available if it is made available on a permanent basis and without any time limit.

Section 6: Procedural provisions

§ 12 ZAK

(1) ¹The Commission on Licensing and Supervision [Kommission für Zulassung und Aufsicht – ZAK] shall serve as the organ of the competent federal state media authority for the tasks to be fulfilled within the scope of this statute (§ 104(2)(1)(1), § 105(1)(1)(8) and (9) MStV in conjunction with the ZAK rules of procedure).

²§ 81(5)(3) in conjunction with § 105(2)(1)(2) MStV remains unaffected.

(2) ¹The competent federal state media authority shall immediately forward notifications pursuant to § 2 and complaints pursuant to § 14 to the ZAK via the joint office and inform the ZAK of ex officio examinations. ²The competent federal state media authority shall conduct the procedure until a decision is reached.

§ 13 Procedures

(1) The competent federal state media authority shall examine whether the provider of a media platform or user interface violates the provisions of §§ 79 to 85 MStV or §§ 2 to 6 and 10, 11 of this statute through the ZAK on the basis of a complaint by a rightful claimant pursuant to § 14 or ex officio.

(2) If there are concrete indications of a violation, the provider of a media platform or user interface shall be obligated to immediately submit the information and documents required for the review to the competent federal state media authority.

(3) ¹If the competent federal state media authority finds a violation through the ZAK pursuant to paragraph 1, it may give the provider of the media platform or user interface the opportunity to rectify the violation and set a reasonable deadline for doing so. ²If the legal requirements are still not met, the competent federal state media authority shall take the necessary measures pursuant to § 109(1) MStV by resolution of the ZAK and, in the case of § 81(5)(3) MStV, by resolution of the GVK.

§ 14

Complaints within the framework of supervision

(1) ¹Providers of broadcasting, broadcast-like telemedia or telemedia pursuant to § 19(1) MStV are entitled to file a complaint if they:

1. are disseminated on a media platform; or
2. request access to a media platform in order to offer or market broadcasting, broadcast-like telemedia or telemedia pursuant to § 19(1) RStV; or
3. are themselves affected by the presentation in user interfaces as referred to in § 2(2)(15) MStV.

²Respondents to the complaint may be providers of media platforms pursuant to § 2(2)(19) MStV and providers of user interfaces pursuant to § 2(2)(20) MStV.

(2) Parties entitled to lodge a complaint pursuant to paragraph 1 may lodge a complaint in writing with the competent federal state media authority, stating specific indications of the existence of a violation of the provisions of §§ 80 to 84 MStV or §§ 3 to 6 and 10 of this statute and describing the underlying facts.

(3) When filing the complaint, entitled parties shall state and credibly demonstrate that they have worked towards clarifying the disputed position with the provider of the media platform or user interface.

(4) ¹The competent federal state media authority may first attempt to work towards an appropriate solution among the parties involved. ²In the cases specified in § 83(3) MStV, the competent federal state media authority shall conduct mediation prior to the complaint procedure.

(5) Insofar as conditional access systems and interfaces for application programs are concerned, the competent federal state media authority shall forward the complaint for which the procedure shall be conducted to the Federal Network Agency (BNetzA) within the framework of the procedure agreed upon with the Federal Network Agency (procedural description of 20 April 2010).

(6) ¹The complaint shall be addressed to the federal state media authority to which the media platform or user interface has been notified. ²If no notification exists at the time of the complaint, § 106(1) MStV shall apply mutatis mutandis to nationwide offers.

§ 15

Issuance of a clearance certificate according to § 87 MStV

(1) ¹If an application for a certificate of clearance pursuant to § 87(1) MStV is filed, the competent federal state media authority shall inform the providers of the offers privileged pursuant to § 84(3)(2) and (4) MStV about the initiation of the procedure. ²The information may be provided by electronic means.

(2) ¹I The competent federal state media authority shall forward the application to ZAK via the joint office. The competent federal state media authority shall conduct the procedure until a decision is reached.

(3) ¹During the term of the clearance certificate, the provider of the media platform or user interface shall inform the competent federal state media authority of any significant changes made to the media platform or user interface. ²The competent federal state media authority shall review ex officio whether the requirements of the clearance certificate continue to be met.

Section 7: Final provisions

§ 16

Accessibility

Providers of user interfaces and providers of media platforms should support barrier-free access to television programmes and telemedia comparable to television within the scope of their technical and financial possibilities (§ 21 MStV).

§ 17

Entry into force, abrogation

(1) ¹This statute shall enter into force on 1 June 2021. ²The chairman of the Directors' Conference of the Federal State Media Authorities (DLM) shall publish a statement on the Internet under the umbrella brand 'die medienanstalten' saying whether all federal state media authorities have issued and published concordant statutes by that time. ³By way of derogation from sentence 1, § 10(5) to (7) of this statute shall enter into force on 1 September 2021.

(2) At the same time, the statute on freedom of access to digital services and on platform regulation pursuant to § 53 of the State Treaty on Radio Broadcasting of 14 December 2016 shall cease to have effect.