Message 201

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Forwarding of the response of the Member State notifying a draft (Germany) to request for supplementary information (INFOSUP) of European Commission.

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2. Germany

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4. 2025/0777/DE - SERV30 - Media

5.

6. Germany thanks you for the opportunity to provide supplementary information on the draft 'Ninth State Treaty Amending State Treaties on Media Law' notified on 19 December 2025 (hereinafter referred to as the 'notified draft').

Regarding the specific questions submitted by the European Commission, we would like to elaborate as follows:

1. In the notification message concerning the Ninth State Treaty Amending State Treaties on Media Law, the German authorities specify that the obligation stipulated in the draft, for online platforms to provide at least one interface, prohibits any obstruction of media oversight. Furthermore, the authorities state that this obligation takes precedence over the mechanisms of Regulation (EU) 2022/2065 and Article 28b(1) of Directive 2010/13/EU, according to which online platforms or video-sharing platform providers may be required, under certain conditions, to take action against certain content themselves.

a. The German authorities are requested to clarify the meaning of the term 'take precedence' in the notification. Is it used to indicate importance (i.e., 'surpasses in rank, preference, or significance'), or is it used to indicate timing (i.e., 'earlier than')?
For general context, it should first be noted that media service providers are obligated under national law, specifically in Section 109(4) of the Interstate Media Treaty and Section 21(3) of the Interstate Treaty on the Protection of Minors in the Media, to grant media regulators access to their content, which may, for example, be behind paywalls. These standards also aim to ensure effective oversight.
Unlike offers from media service providers, in the case of online platforms, user-generated content is involved, and with it, data protection-relevant issues concerning personal user data. The notified standard is intended to specifically define the media regulator's access to content and data on online platforms through automated procedures. In particular, the standard is intended to ensure that proportionate means are used in media supervision.
In its notification, Germany pointed out that the provision provided for in Section 109a(9) of the notified draft 'take precedence' the mechanisms of Regulation (EU) 2022/2065 and Article 28b(1) of Directive 2010/13/EU. '|Take precedence' in this sense does not express a ranking of the standard, in particular, there is no priority over European

regulations. Nor is a chronological sequence implied. The term 'take precedence' is intended to emphasise the following:
- According to its core idea, Section 109a(9) does not impose an obligation on online platforms to take proactive action, but rather a 'requirement to remain inactive'. The standard addresses the fact that some online platforms proactively block their services from automated access. AI tools used in media oversight to detect illegal content in the vast amount of content on the internet are based on automated processes; their use is prevented by blocking online platforms.
The German media regulator, as the European Commission is aware, is already working with an AI tool ('KIVI') to detect illegal content; the tool is reportedly also being tested by media regulators in other member states. The tool replicates the search process traditionally performed manually by employees using a keyword and link-based search, and thus represents a scraping mechanism. While the tool can be used on platforms such as YouTube, TikTok, Twitter and Telegram, its use is prohibited on Meta's services (Instagram and Facebook).
The aim of the legal regulation – in addition to generally outlining the use of AI tools in supervision – is to ensure that the use of legitimate media supervision tools by the platforms is permitted or not proactively prevented.
With regard to any legitimate interests of the platforms to generally protect their services from unauthorised access ('scraping') for reasons of data protection, the legal regulation, in the sense of a proportionate approach, does not require a general opening, but merely an interface; general technical restrictions such as scraping protection can therefore be easily maintained by the platform. At the same time, the legal standard legitimises the opening of access to the platform for media regulators (and only for them).
- Insofar as the new regulation formally constitutes an 'obligation' (specifically as an obligation to refrain from certain actions or to provide at least an interface), it is a less intrusive requirement than other obligations that encourage online platforms to take measures themselves regarding the content they distribute. Article 28b of Directive (EU) 2010/13/EU requires Member States to require video-sharing platforms to take appropriate measures against content that is harmful to development, that promotes violence or that is criminally sanctioned. Regulation (EU) 2022/2065 provides for mandatory remedial measures for service providers within the framework of notification procedures, as well as measures to mitigate structural risks. All these obligations are directed towards active measures by the platforms to combat illegal content on the platforms and thus go beyond the requirements of Section 109a(9) of the notified draft, since it does not impose an obligation on the online platform itself to take care of illegal content in any way.
The 'obligation' resulting from Section 109a(9) of the notified draft serves solely to review individual content in the sense of effective and efficient media supervision. Depending on the outcome of its review, the media regulator can take supervisory measures against the content provider in question. There is neither oversight of the online platform itself, nor do the media regulator's supervisory procedures result in any measures against the online platform. The media regulator would only be obligated, within the framework of the notification and remedy procedures provided for in Articles 16 et seq. of Regulation (EU) 2022/2065, to forward information on unlawful content to the platforms.

b. If this term indicates that German law takes priority over the (national implementation of the) AVMS Directive, the Commission services would welcome further information on the planned interaction between the notified draft and the national rules implementing the AVMS Directive.
No priority is intended to be expressed. Reference is therefore made to the answer to letter (a).

2. The Commission services would like to know more precisely whether the provisions of the notified draft are intended to apply to providers of information society services within the meaning of Directive 2000/31/EC.
The answer to this question is 'yes'. According to its wording, the standard obligates providers of 'online platforms within the meaning of Regulation (EU) 2022/2065'. These are, according to the definition in Article 3(g) of Regulation (EU) 2022/2065, ‘information society services’.
In the affirmative, the Commission services would like to receive further information on:

a) whether the notified draft would apply to providers of information society services established in the territory of Member States other than Germany;
Directive (EU) 2010/13/EU requires Member States, within their territorial competence, to exercise effective media supervision over the services covered by the Directive. Such oversight can no longer be guaranteed in times of new distribution channels via online platforms without the support of automated tools. As previously explained in the notification, technical aids can also contribute to impartial and non-discriminatory supervision within the meaning of Article 30(2) of Directive (EU) 2010/13/EU, as well as to employee protection.

The provision of Section 109a(9) of the notified draft is intended to ensure the supervision of media providers and content that are subject to German media supervision or for which supervision by the German media supervisory authority must be ensured in accordance with the provisions of Directive (EU) 2010/13/EU. Limiting the scope of Section 109a(9) of the notified draft to only online platforms established in Germany would not do justice to this.
The requirement of Section 109a(9) of the notified draft also applies to online platforms established in a third country or in another EU Member State.
A concrete obligation to act, which only arises upon request from the media regulator, relates only to data from content providers that are subject to media regulation. Therefore, a specific requirement of the state media authority towards an online platform located in another Member State is contingent upon, or limited by, the fact that content providers subject to German media supervision are active on the online platform in question.

b) if so, how the German authorities intend to comply with the requirements of Article 3(4) of Directive 2000/31/EC, in particular with regard to the case law of the Court of Justice in Case C-376/22;
From Germany's point of view, the question raised by the Commission regarding the conditions of Article 3(4) of Directive 2000/31/EC can only arise once the scope of application of Directive 2000/31/EC has been opened up in the first place. However, Article 3(4) of Directive 2000/31/EC shall only apply insofar as there is no existing sectoral exclusion under Article 1(6) of Directive 2000/31/EC.
In case C-366/24 (Amazon EU), the ECJ classified Article 1(4) of the Services Directive as a 'genuine' sectoral exclusion and this understanding is expressly recognised also for Article 1(6) ECLR (see Recitals 42 and 43 therein). The Court of Justice did not follow the opinion of the Advocate General (see Recital 65 therein), who observed in Article 1(4) only a possible justification for a restriction of the freedom to provide services. The ECJ bases its decision on its Judgement of 7 September 2022 (C-391/20 – Cilevičs), in which the comparable Article 1(4) of the Services Directive was already implicitly classified as a 'genuine' sectoral exclusion (see Recitals 39 and 40 therein).
National measures to promote cultural and linguistic diversity and to protect pluralism remain unaffected by Directive 2000/31/EC. Germany considers the notified standard to be a regulation that falls under the measures referred to in Article 1(6) of the ECLR and therefore does not fall within the scope of Directive 2000/31/EC.
The media order created by the German states within their legislative competence through the Interstate Media Treaty and the Interstate Treaty on the Protection of Minors in the Media serves to fulfil their duty, derived by the Federal Constitutional Court from Article 5(1) of the Basic Law in its established case law, to safeguard the free formation of opinion on the basis of independent and diverse media and communication spaces. This includes, to a very significant extent, standards of editorial responsibility and the prevention of the dissemination of illegal content. Effective and efficient media oversight forms part of that.
Notwithstanding the existing sectoral exclusion, the notified regulation nevertheless also meets the essential requirements, in particular the principle of proportionality, of Article 3(4) of Directive 2000/31/EC.
- There are no general, abstract measures.
In the case C-376/22 cited in the question, the ECJ held that Member States may not restrict the free movement of information society services from other Member States by taking general and abstract measures relating to a broadly defined category of certain information society services. Such a general and abstract measure in the sense of an obligation for providers of information society services is not provided for in the notified draft. According to Section 109a(9) of the notified draft, a provider is not subject to a general obligation, but only has to provide an interface in individual cases 'upon request of the competent state media authority'.
- Section 109a(9) also constitutes a measure to protect public order.
The public order referred to in Article 3(4)(a)(i), first indent, also includes ensuring media diversity and, with it, ensuring effective media supervision.
The wording of the addition 'in particular' indicates that the listed measures define 'public order' as defined by the standard in an exemplary manner, but are not intended to be exhaustive. The measures taken by law enforcement are those that serve to safeguard the functioning of the judiciary and fall within the competence of the Member States. This indicates that public order encompasses high-ranking public interests that touch upon essential core pillars of the state. The Court has repeatedly recognised the protection of media pluralism as a legitimate aim of the public interest and has stated the following in this regard: The Court has ruled that the safeguarding of the freedoms protected by Article 11 of the Charter of Fundamental Rights, which in paragraph 2 mentions the freedom and pluralism of the media, is indisputably an objective in the general interest, the importance of which cannot be overstated in a democratic and

pluralistic society (see, to that effect, Judgement of 22 January 2013, Sky Österreich, C 283/11, EU:C:2013:28, Recital 52 and the case law cited therein).
Protocol No 29 on public service broadcasting in the Member States, annexed to the EU and TFEU Treaties, also refers to media pluralism and states that 'public service broadcasting in the Member States is directly linked to the democratic, social and cultural needs of each society and to the need to maintain media pluralism.'
- Section 109a(9) is proportionate to its protective objectives.
The requirement for an interface that can only affect one specific service provider at a time is tied to the purpose of media supervision: The use of potential AI tools by media regulators is – in view of the fundamental rights-sensitive context – specifically limited by Section 109a(1) of the notified standard to tasks of media regulators and to the matching of data in terms of functionality. The tasks that the media regulator performs with this tool represent an important task that safeguards democracy.
To uphold the principle of proportionality, the use of AI tools is legally limited to one interface and is additionally contingent on the provision of the interface being 'technically and economically reasonable' for the platform provider.
The interface shall only make available the data required for supervision, which are defined in more detail by law in Section 109a(2) to (8) of the notified standard (see also the explanations already given regarding the question of the first point (2)(a) as well as below regarding the question in point (4).
The intended measure is therefore proportionate to the protection objective. It is suitable for ensuring effective media oversight. No equally effective, even milder means is apparent; the cooperation of the platforms is limited to the necessary minimum. The standard takes into account the economic burdens on the affected services. The underlying business model of the platforms remains completely unaffected.
Section 109a(9) of the notified standard would therefore be a legitimate measure within which an exception to the country of origin principle is also justified.

c) what specific obligations from the notified draft would arise for these service providers;
The aim of the standard is to ensure that media regulators have access to data that breaks through the general blockage of 'scraping'. For this purpose, an API (Application Programming Interface) is suitable, i.e., a defined access point that enables automated, secure data exchange and communication between different software applications.
As already stated, the provider is only required to grant access to certain, objectively limited, publicly accessible data (see also Section 109a(3) of the notified standard).
The provider is not obligated to take any action against the content it distributes. The standard does not impose any monitoring or enforcement obligations on the provider towards content providers. Its (limited) liability for content it distributes, as determined by Regulation (EU) 2022/2065 or Directive 2000/31/EC, remains unaffected.

d) what system would be used to monitor compliance with and enforcement of the aforementioned obligations for information society services, and in particular whether any non-compliance would result in the imposition of fines or other types of sanctions or penalties.
The draft does not include any fines. If the provider fails to comply with its obligation, the media regulator would have to obtain a court order under general administrative law.

2. The Commission services assume that the notified draft would apply to providers of intermediation services, including online platforms, within the meaning of Regulation (EU) 2022/2065.
In this respect, if confirmed, the Commission services would welcome further information on:

a) the specific obligations for providers of online platforms within the meaning of Regulation (EU) 2022/2065 arising from the notified draft and, in particular, from Section 109a(9);

b) the intended interaction between the notified draft and Regulation (EU) 2022/2065 with regard to its maximum harmonisation effect and, in particular, with regard to Article 40(1).
It should be noted that, according to its explicit wording, the standard (only) obligates providers of 'online platforms within the meaning of Regulation (EU) 2022/2065'.
For the answers to the questions under (a) and (b), reference is made to the answer to the question in the first point (2) and there to (c).

3. Could the German authorities describe the interaction of Section 109(9) of the notified draft with Articles 9 and 10 of Regulation (EU) 2022/2065, in particular the requirement of the competent state media authority for providers of online platforms to provide suitable interfaces for the use of the technical means referred to in Section 109a(1) of the notified draft?

Articles 9 and 10 of Regulation (EU) 2022/2065 address orders to take action against one or more specific unlawful contents. There are no points of contact insofar as Section 109a of the notified draft does not refer to specific users or specific unlawful content, but rather to the fact that the media regulator can exercise its supervision over an indefinite number of media contents distributed on the online platform.

4. The Commission services request clarification on how the possibility of using the technical means referred to in Section 109a(1) of the notified draft relates to access to data that is publicly available via the online interface of very large online platforms and search engines pursuant to Article 40(12), of Regulation (EU) 2022/2065.
In particular, the Commission services request further information on whether the purpose of the notified draft is consistent with the purpose of Article 40(12), of Regulation (EU) 2022/2065 and whether it would also cover the research contributing to the detection, identification, and understanding of systemic risks in the Union, as referred to in Article 34(1) of Regulation (EU) 2022/2065.

There is no connection.
First, it should be noted that the 'interface' to be provided pursuant to Section 109a(9) of the notified draft is not an 'online interface' within the meaning of Section 40(12), and other provisions of Regulation (EU) 2022/2065. The term 'interface' refers to an API that enables media regulators to access publicly available data on the platform, thereby circumventing protection mechanisms against automated access (see in particular the explanations to the question of the first point (2),(c).
It should also be noted that search engines are not covered by Section 109a(9) of the notified draft.
The purpose of Article 40(12), of Regulation (EU) 2022/2065 is not covered by the notified standard. In particular, the legally defined tools may only be used for specific supervisory purposes, not for research.
Section 109a(9) of the notified standard concerns exclusively data that are relevant and necessary for the supervision of media content. This includes, on the one hand, the media content itself, and on the other hand, data such as the date of publication of the media content, the geographical location or links in the offer, which provide information about the content provider and the publication and are therefore relevant for the supervisory proceedings against the content provider. These are all data that are publicly available and necessary for finding, assessing, or taking regulatory action against specific unlawful content. Information that serves to 'detect, identify and understand systemic risks' is not covered by the purpose limitation of Section 109a of the notified standard. In particular, no data relating to the functioning of online platforms has been collected.
Tools that, based on Section 109a(1) of the notified standard, are used solely for 'automatically comparing text, image, audio and video content... for potential infringements' (see paragraph 1) and are only permitted to process offer- and provider-related data in the event of a potential infringement, serve exclusively as tools for finding unlawful content or offers and thus relate to a completely different scope of application than Article 40(12), of Regulation (EU) 2022/2065. In particular, the aim is to make it easier to find illegal content such as pornography, glorification of violence or incitement to hatred amidst the abundance of content available on the internet.
Regardless of the specific use of relevant tools, results from media oversight can, as before, generally contribute to obtaining indications of possible systemic risks, for example based on identified case numbers. However, this is more of a possible side effect, not the goal of using the tools.
The harmonising provisions of Regulation (EU) 2022/2065 remain generally unaffected by the notified standard; this also follows from the fact that the intended standard does not address liability or due diligence obligations of providers of online platforms, which are already regulated by Regulation (EU) 2022/2065. The non-hindering of media regulators in monitoring content providers is, in fact, a necessary requirement, also arising from the AVMS Directive, without which the extensive exemption of the platform from its own liability for the content it distributes cannot be justified.

5. The Commission services would welcome further clarifications on:

a) What system would be used to monitor compliance with and enforcement of the aforementioned obligations for providers of online platforms, and in particular whether any non-compliance would result in the imposition of fines or other types of sanctions or penalties, and what the intended interaction with Chapter IV of Regulation (EU) 2022/2065 would look like.
For the answer to the question reference is made to the answer to the question in the first point (2) (c).

The notifying bodies are happy to answer any additional questions or to discuss the matter further.

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