[DE] Bundestag adopts Digital Services Law and strengthens media regulators' powers

IRIS 2024-5:1/21

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On 21 March 2024, the *Bundestag* (German federal parliament) adopted the draft *Digitale-Dienste-Gesetz* (Digital Services Law – DDG) to regulate the single market for digital services and promote fairness and transparency for business users of online intermediation services. The *Bundestag* vote followed a recommendation by the *Ausschuss für Digitales* (Committee on Digital Affairs). The DDG aims to bring German legislation into line with the EU Digital Services Act (DSA) and clarify some outstanding questions regarding its implementation. The DSA and DDG are primarily designed to combat illegal online content more effectively and improve consumer protection on the Internet.

The legislative package comprises several parts. Firstly, the *Telemediengesetz* (Telemedia Act – TMG), which until now has largely implemented the E-Commerce Directive and certain provisions of the Audiovisual Media Services Directive (AVMSD), has been completely repealed, along with parts of the *Netzwerkdurchsetzungsgesetz* (Network Enforcement Act). Both this and the entry into force of the DSA mean that numerous other legislative amendments are also necessary. However, the key element is the introduction of a new DDG that brings together, in a single piece of legislation, the previous provisions of the TMG, the new provisions required to implement the DSA and new rules on the implementation of Regulation (EU) 2019/1150. Regarding the implementation of the DSA, the DDG regulates the responsibilities of and cooperation between the relevant authorities, as well as sanctions. The draft bill was first debated by the *Bundestag* in January (IRIS 2024-2:1/25). The final version incorporates significant amendments that are mainly aimed at involving media regulators more closely and ensuring consistency with media regulation.

Article 3 DDG (with reference to the previous Article 3 TMG) clarifies the country-of-origin principle enshrined in the DSA, AVMSD and E-Commerce Directive, in particular the possible exceptions that are also provided for in these EU instruments. According to Article 12(1) DDG, the *Bundesnetzagentur* (Federal Network Agency), Germany's new Digital Services Coordinator as required under the DSA, will work with the other member states, the European Board for Digital Services and the European Commission. In accordance with the recommendation of the Committee on Digital Affairs, which was debated in the *Bundestag*, the position of the *Landesmedienanstalten* (state media authorities) in general and the *Kommission für Jugendmedienschutz* (Commission for the Protection of Minors

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in the Media – KJM) in particular will also be strengthened through the implementation of the DSA. Although responsibility for enforcing Articles 14(3) and 28(1) of the DSA with regard to structural preventive measures is entrusted to the *Bundeszentrale für Kinder- und Jugendmedienschutz* (Federal Office for the Protection of Children and Young People in the Media – BzKJ), this does not include measures taken under the *Jugendmedienschutz-Staatsvertrag* (State Treaty on the Protection of Minors in the Media – JMStV) in the version of 14 December 2021. Responsibility for these measures will be assumed by the bodies designated under the media law provisions of the *Länder* to implement Article 28(1) of the DSA. Although this is a static reference to the JMStV in the version of 14 December 2021, responsibility for the individual measures governed by Article 28(1) of the DSA remains with the bodies designated under the media law provisions of the *Länder* in accordance with the *Jugendmedienschutz-Staatsvertrag* in the sense of a dynamic reference. Such individual measures and content regulation are designed to combat unlawful or illegal content. Individual content is verified to see whether it is unlawful or illegal and whether administrative proceedings should be instigated to remove it.

Änderungen durch den Bundesrat

https://dserver.bundestag.de/btd/20/102/2010281.pdf

Amendments by the Bundesrat

Gesetzentwurf der Bundesregierung

https://dserver.bundestag.de/btd/20/100/2010031.pdf

Federal government draft

Beschlussempfehlung und Bericht des Ausschusses für Digitales

https://dserver.bundestag.de/btd/20/107/2010755.pdf

Committee on Digital Affairs recommendation and report

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