[DE] European Commission criticises planned reform of youth media protection law in Germany

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In April 2024, on the basis of the notification obligations provided for in Directive (EU) 2015/1535, the German *Länder*, as the competent legislative body, notified the European Commission of a draft amendment to the *Jugendmedienschutz-Staatsvertrag* (State Treaty on the Protection of Minors in the Media – JMStV). However, in its opinion of 1 July 2024, the European Commission was critical of the draft. Although it shared the objective of providing children and young people with safe access to online content and protecting them from harmful content, the Commission considered that, as far as online platforms were concerned, this was already achieved by the new provisions of Regulation (EU) 2022/2065 (Digital Services Act – DSA), which did not need to be transposed into national law.

The proposed reform of the JMStV at *Bundesland* level is designed to provide children and young people with maximum access to online content, while at the same time protecting them from harmful content. As well as amending provisions applicable to all telemedia (a concept that essentially includes all online media apart from broadcasting and telecommunications), it places certain obligations on providers of operating systems commonly used by children and young people. They are required to introduce child protection systems, including age verification systems that can be used to limit access to apps and search engines. App stores will also need to be included in the age classification system provided for under German law.

In its opinion, the European Commission criticised not only the planned amendments, but the JMStV as a whole, which is currently applicable law in Germany (the state legislators had included the whole of the JMStV in its notification rather than just the proposed amendments). It referred in particular to the country-of-origin principle established in the e-Commerce Directive and the Audiovisual Media Services Directive. For example, the German provisions required telemedia (which included information society services such as video-sharing platforms) to introduce safety measures (e.g. age verification mechanisms) to protect children and young people from content that could harm their development. The Commission considered this a general, abstract obligation that applied to all providers, wherever they were established. However, this did not fall under any of the derogations listed in Article 3(4) of the e-Commerce Directive, as had been clarified in recent ECJ case law. The German authorities'

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suggestion in the notification procedure that these measures were designed to promote linguistic and cultural diversity, i.e. falling within the scope of Article 1(6) of the e-Commerce Directive, was also criticised by the Commission: even if such an objective were inherent in the regulations, the country-of-origin principle would still apply because Article 1(6) of the e-Commerce Directive only served to underline the importance of this objective.

The European Commission also referred to the DSA's full harmonisation effect on the regulation of online intermediary services. Provisions such as Articles 28 and 35(i) DSA were particularly designed to protect minors and would override national regulations regarding technical protection mechanisms, for example, but not provisions determining what type of content was illegal. The JMStV was also criticised in relation to the ban on general monitoring obligations contained in Article 8 DSA, since it would mean, for example, that intermediary services would need to monitor content on their platforms as a result of their age categorisation obligations. Finally, as regards the proposed rules for operating systems, the European Commission referred to their impact on fundamental freedoms and the need for proportionate regulation.

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