[DE] Statute on the regulation of media intermediaries comes into force

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The statute on the regulation of media intermediaries (MI statute), which the state media authorities had initially failed to adopt unanimously due to a drafting error, came into force in Germany on 1 January 2025. The statute regulates in detail the provisions and procedures laid down in Articles 91 to 95 of the *Medienstaatsvertrag* (state media treaty – MStV), which govern media intermediaries. In particular, it covers the transparency requirements and rules on discrimination that apply to media intermediaries in Germany.

The MStV defines a media intermediary as any telemedia (essentially online media, excluding broadcasting or telecommunication) that also aggregates, selects and presents third-party journalistic/editorial content in a way that is accessible to the general public without combining it into an overall offering. This therefore includes search engines, social networks and video-sharing platforms. The MStV contains special rules for the providers of such services. In particular, they must appoint a service representative based in Germany (Article 92) and ensure that information about the criteria for access to as well as the aggregation, selection and presentation of content (including the functionality of the algorithms used) is transparent (i.e. easy to find, directly accessible and permanently available) (Article 93). They may not discriminate against journalistic/editorial content on whose perceptibility they have a particularly high level of influence (Article 94). The MI statute, which was developed by the state media authorities on the basis of their statutory powers, explains these obligations in detail.

Firstly, the statute points out that its provisions also apply to so-called integrated media intermediaries, i.e. any integration of an intermediary function into third-party offerings that enables users of such offerings to use the intermediary function. With regard to the transparency obligation, it also states that information must be provided in German and be “easy to find” for the average user in a typical usage situation. This requirement is normally met if the information clearly stands out from other content and is directly linked to essential input or navigation processes. Information is only “directly accessible” in the legal sense if it can be found by the user without significant intermediate steps. This is not the case if more than two clicks (i.e. the use of more than two web links) and/or prior registration or log-in are required to find it. The statute also contains significant provisions regarding the transparency of the criteria

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themselves. Transparency of access criteria, for example, means that the media intermediary makes transparent all (technical, economic, provider-related, user-related and content-related) conditions that determine access. This includes the use of automatic filter systems and information on whether payments have any influence on access or visibility (e.g. sponsored content). With regard to (algorithmic) content prioritisation, intermediaries should, among other things, provide information about their optimisation goals, the impact of payments or other considerations and personalisation, as well as individual process steps.

As far as preventing discrimination is concerned, the MI statute begins by defining what constitutes a media intermediary's "high level of influence" on the perceptibility of journalistic content. While the opinion-forming process should be central to this, the media intermediary's position in the relevant marketplaces and an overall view of usage (usage reach, user numbers, duration of use and user activity) may also be taken into account. Prohibited discrimination is deemed to exist in particular if the media intermediary deviates from its usual prioritisation criteria (which must be made transparent in accordance with Article 93) with regard to certain providers or applies other criteria for no objective reason. Objective reasons for different treatment may include legal obligations, technical aspects of presentation to the user or requirements designed to protect the integrity of the service.

The MI statute also explains the procedures for monitoring and enforcing the rules for intermediaries, as well as investigative powers and information obligations.

Satzung zur Regulierung von Medienintermediären

https://www.die-medienanstalten.de/service/rechtsgrundlagen/satzung-zur-regulierung-von-medienintermediaeren/

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