[DE] Federal states propose new digital media treaty

IRIS 2025-8:1/19

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On 4 June 2024, the *Rundfunkkommission* (Broadcasting Commission) of the federal states adopted proposals for a reform of the *Medienstaatsvertrag* (state media treaty – MStV). The new *Digitale Medien-Staatsvertrag* (digital media state treaty – DMStV-E) is intended to provide a package of measures to safeguard the communication-related foundations of a free and democratic society in Germany. The first part, which focuses on the implementation and transposition of the European Media Freedom Act (EMFA), the Regulation on Transparency and Targeting of Political Advertising (TTPA) and the Artificial Intelligence Act (AI Act), has already been published. It primarily defines the powers of the state media authorities and clarifies the relationship between the MStV and EU law.

Part 1 of the draft does not fully transpose the aforementioned provisions of EU law. In particular, it does not (yet) contain substantive rules – partly due to open questions regarding the final regulatory nature of the aforementioned EU regulations – while the federal government is responsible for transposing other rules. This applies in particular to Article 4 EMFA and large sections of the TTPA and AI Act, which, as soon as they have been regulated at federal level, will also trigger a need for the DMStV to be adapted in order to create coherence.

With regard to the EMFA, the implementation of Article 6(2) will be regulated in a new Article 60(8) DMStV-E. In future, the *Kommission zur Ermittlung der Konzentration im Medienbereich* (Commission on Concentration in the Media – KEK) will maintain the database on relevant ownership and shareholding arrangements in the media sector. The KEK already maintains an online media database containing information on ownership and shareholding structures in radio, television, press and the online sector. This will be adapted to the requirements of the EMFA. Article 89 MStV, which has set out requirements for the findability of broadcasting and telemedia in user interfaces in Germany since 2020, will be retained. However, a reference to Article 20 EMFA will be added, setting out, among other things, rules on default settings and transparency for manufacturers, developers and importers of user interfaces. These rules will apply in parallel in future. The same applies to the ban on media intermediary discrimination against journalistic-editorial providers, enshrined in Article 94 MStV. This remains in place, but reference is made to the supplementary application of Article 18 EMFA to media privilege on very large online platforms. The terms "media intermediary" and "online platform" overlap, but have different

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meanings. Finally, against the background of Article 17(3) EMFA, the draft also indicates that the state media authorities can take into account the opinions of the European Board for Media Services in their decisions. Moreover, the state media authorities are designated as competent authorities not only under Article 7 EMFA, but also under Article 25(3) EMFA with regard to monitoring the allocation of public funds for state advertising and supply or service contracts.

Meanwhile, regarding the TTPA, a conflict-of-law rule (Article 1 (10) DMStV-E) is created, under which the TTPA takes precedence when there is a conflict or overlap. This applies to the extent that its provisions on transparency and targeting of political advertising conflict with national law. In all other respects, however, the MStV remains applicable to broadcasting and telemedia. The concept of political advertising used in the regulation is not adopted. Instead, the German term "*Werbung politischer Art*" (advertising of a political nature), which is not congruent with the EU term, is retained. The ban on advertising of a political nature for broadcasting and the corresponding transparency requirement for telemedia are also retained. The other provisions of the TTPA essentially concern supervisory powers. The state media authorities are designated as competent authorities pursuant to Article 22 (3) and (4) TTPA, insofar as broadcasters and providers of telemedia (which are not also intermediary services) are concerned. It is further clarified that the special supervision of data protection for public service broadcasters also applies within the TTPA. The (internal) broadcasting data protection officer, who monitors compliance with data protection here instead of the data protection authorities, is also the competent "data protection authority" pursuant to Article 22(1) sentence 1 TTPA.

With regard to the AI Act, the main issue is the allocation of responsibility. The state media authorities will also be responsible for implementing Articles 5(1)(a) and (b) and 50(1), (2), (4) and (5) of the AI Act. A joint representative is to be appointed to cooperate with other competent authorities and the Commission. A new Article 109a DMStV-E also clarifies the conditions under which the state media authorities can use technical means for their supervisory activities. They already use the "KIVI" AI tool, which provides automated support for the detection of illegal content on online platforms. The use of such AI tools is to be outlined in law due to the sensitive nature of this field in relation to fundamental rights.

Pressemitteilung der Rundfunkkommission

https://rundfunkkommission.rlp.de/digitale-medien-staatsvertrag

Press release of the Broadcasting Commission

https://rundfunkkommission.rlp.de/digitale-medien-staatsvertrag

Entwurf für einen Digitale Medien-Staatsvertrag (Teil 1)

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https://rundfunkkommission.rlp.de/fileadmin/rundfunkkommission/Dokumente/DMStV_1/DMStV_Synopsen/Diskussionsentwurf_Synopse_Anhoerung_9_MAEStV.pdf

Draft digital media state treaty (Part 1)

https://rundfunkkommission.rlp.de/fileadmin/rundfunkkommission/Dokumente/DMStV_1/DMStV_Synopsen/Diskussionsentwurf_Synopse_Anhoerung_9_MAEStV.pdf

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