[DE] *Bundesländer* demand revision of youth protection bill

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At its meeting on 27 November 2020, the Bundesrat (Federal Council), through which the German *Länder* participate in federal legislation and matters relating to the European Union, criticised the federal government's bill amending the *Jugendschutzgesetz* (Youth Protection Act) on the grounds that it had failed to achieve its purpose of creating a convergent and coherent system for protecting young people in the media. In its statement concerning the bill, it mainly addressed questions relating to legal competence and substantive issues, and called for a fundamental revision of the document.

The federal government bill amending the *Jugendschutzgesetz* is primarily designed to protect children from the dangers posed by interaction with others on the Internet, such as mobbing, sexual harassment or financial scams. It makes provision for standard age rating symbols to guide parents, professionals and young people. Amending the act should help ensure that its provisions can also be enforced in relation to foreign providers whose services are particularly popular with young people. Media legislation in Germany is the responsibility of the *Länder,* which, in the *Medienstaatsvertrag* (State Media Treaty) and *Jugendmedienschutz-Staatsvertrag* (State Treaty on the Protection of Minors in the Media – JMStV), have already created and recently reformed a regulatory framework that has been further extended to include more Internet-based services. The Bundesrat fears that the proposed new regulations at federal level will threaten the convergence of these rules at state level.

Regarding legal competence, the Bundesrat particularly points out that the plan to expand the scope of protection offered by the *Jugendschutzgesetz* at federal level to include telemedia goes against the key points that were agreed in the federal government's coalition agreement for the 19th legislative period. Under that agreement, a future-oriented, coherent legal framework for the protection of children and young people in the media was to be created, taking into account the legal jurisdiction of the *Länder*. In its statement, however, the Bundesrat claimed that the protection of young people in electronic media was already fully guaranteed by the JMStV and was regularly analysed to check whether any amendments were necessary. It did not think that regulation at state level resulted in inconsistent application of the law or put German providers at a disadvantage, as the federal government had suggested in its bill. Rather, the plan to expand the scope of federal provisions to include telemedia and the

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creation of new supervisory structures would lead to double regulation and, therefore, inconsistent application of the law. In particular, the Bundesrat pointed out that the definition of the scope of application of the proposed law and its relationship with obligations under the JMStV were unclear, and that the diversity of media formats had not been taken into account, since broadcasting services in particular were excluded.

The Bundesrat added that the proposed Bundeszentrale für Kinder- und Jugendmedienschutz (Federal Office for the Protection of Children and Young People in the Media), which was to be set up under the bill, would also result in double regulation in relation to the supervisory structures established under the JMStV and other national laws (in particular the *Telemediengesetz* (Telemedia Act) and the *Netzwerkdurchsetzungsgesetz* (Network Enforcement Act), both of which regulate online providers) and would lead to fragmentation. There would also be constitutional and European law concerns if an independent federal body was to hold supervisory responsibilities in an area with strong links to media law. Both the AVMSD and fundamental rights required such supervision to be carried out by an independent, non-state authority.

Stellungnahme des Bundesrats zum Entwurf eines Zweiten Gesetzes zur Änderung des Jugendschutzgesetzes, Drucksache 618/20

https://www.bundesrat.de/SharedDocs/drucksachen/2020/0601-0700/618-20(B).pdf?__blob=publicationFile&v=1

Federal Council statement on the Second Bill amending the Youth Protection Act, doc. 618/20

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