[DE] German media regulators issue statement on DSA and DMA

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On 30 March, the 14 German media regulatory authorities issued a joint statement explaining their views on the proposed Digital Services Act (DSA) and Digital Markets Act (DMA) as part of the European Commission's consultation process. They stressed, in particular, that a general legal framework for global online services must take into account the specific needs of the media. The media authorities expressed particular concern about a lack of practical detail and the proposed supervisory structures.

In the German regulators' view, the Commission's proposals are based on a starting position that does not fully reflect reality. They are founded, in particular, on false assumptions concerning a situation of conflict between regulatory authorities at European level, competence-related difficulties at member state level and a lack of harmonisation between protective purposes in different sectors. This means that the proposed rules are problematic. In concrete terms, the media authorities would like to see improvements to the orders provided for in Articles 8 and 9 of the DSA and to the supervisory structure.

In relation to possible orders against foreign service providers, the media authorities warn that the regulation of key requirements is either non-existent or unclear. In particular, they believe that it is necessary to clarify what illegal content is in this context, how such orders are to be delivered and the legal consequences for providers that do not comply with them. The fact that orders must be drafted in the language declared by the provider is also an unreasonable barrier, according to the media regulators. They also consider that the fundamental right to the freedom of expression is threatened by Article 12 DSA, which enables intermediaries to include, in their terms and conditions, restrictions on the use of their services outside statutory regulations. Where journalistic media services are concerned, this could lead to the dual control of content (which is already monitored by the media regulators) by the platforms.

As regards to the proposed supervisory structures, the media authorities support the Europeanisation of these structures, but harbour concerns about the creation of Digital Services Coordinators and a European Board for Digital Services. They believe it would be better, at least where the distribution of media-relevant content is concerned, to rely on existing structures, competences and forms of media regulation, which should in any case not be impaired by horizontal

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solutions. For effective cross-border law enforcement, sufficiently clear rules of procedure and stable sectoral networks are required. In the media sector, such structures already exist within the European Regulators Group for Audiovisual Media Services (ERGA) created under the AVMSD. In connection to this, the media authorities are also critical of the extended discretionary powers given to the Commission to monitor very large online platforms. They call for the sovereignty of the authorities, in receiving countries, to be protected in spite of the Commission's involvement, and for response timeframes to be (more) significantly shortened by the Commission.

Stellungnahme der deutschen Medienanstalten zu Digital Services Act und Digital Markets Act

https://www.die-medienanstalten.de/fileadmin/user_upload/die_medienanstalten/Ueber_uns/Positionen/20210330_DSA_DMA_Stellungnahme_DLM_final.pdf

Statement of the German media authorities on the Digital Services Act and Digital Markets Act

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