[DE] State media authorities issue further rules on state media treaty

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The 14 German *Landesmedienanstalten* (state media authorities) have jointly drafted further rules to implement the provisions of the new *Medienstaatsvertrag* (state media treaty – MStV). The boards of the individual media regulators are now gradually approving these rules, clearing the way for them to enter into force. Following the entry into force of an initial series of rules designed to implement the MStV's provisions on exemption from prior authorisation, advertising and competition (see IRIS 2021-4/12), the latest rules concern, among other things, European productions (Article 77 MStV), the MStV's provisions on media platforms and user interfaces, and the arbitration body (Article 99 MStV).

Under Germany's federal system, legislative competence in the broadcasting field lies with the *Länder*, with regard to content provided by other significant mass communication providers. It was on this basis that the *Länder* adopted the MStV, which came into force on 7 November 2020. Through provisions such as Articles 77 and 99, which form the basis for two of the sets of rules discussed here, the MStV implements the EU Audiovisual Media Services Directive (AVMSD), which was amended in 2018. However, it also contains provisions applicable at national level aimed at modernising the media system in relation to new stakeholders that are significant for media diversity, including media platforms, which are the subject of the third set of rules.

According to the *Telemediengesetz* (Telemedia Act), providers of so-called video-sharing services are obliged to set up a complaints procedure so users can report illegal content. As part of this procedure, the *Landesmedienanstalten* will create an arbitration body to which users can refer disputes over the outcome of the complaints process. Such disputes could arise if, for example, a user disagreed with a service provider's decision to delete a video they had shared, or if a service provider failed to remove potentially illegal content despite receiving complaints about it. The rules on the arbitration body to be set up pursuant to Article 99 of the MStV define both its membership and the principles of the arbitration procedure itself. They came into force on 15 April 2021.

Meanwhile, the rules implementing the MStV's provisions on media platforms and user interfaces cover not only media platforms such as traditional cable networks or so-called OTT services, but also user interfaces such as smart TVs. They reflect

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how media usage has changed and are designed to safeguard media pluralism (diversity of both content and providers) in the digital age. These rules clarify, for example, the MStV's provisions on notification and transparency requirements relating to a future or current media platform or user interface, protection against overlaying of advertising, the allocation of channels on media platforms, the accessibility of media platforms, and the findability of programmes and content in user interfaces. Once they enter into force on 1 June 2021, the rules, which also contain procedural regulations, will therefore provide broadcasters with equal, non-discriminatory access to media platforms and user interfaces.

According to the MStV, European works must constitute at least 30% of the content made available by television-like telemedia, in particular video-on-demand services. This obligation, based on the AVMSD and extending a rule that has existed for television channels for many years, is designed to protect the diversity of audiovisual media in German-speaking and European countries, as well as strengthen European film and television production. The rules on European productions specify, for example, what constitutes a European work, how the quota is calculated and how appropriate prominence should be given to European works in VoD catalogues. Quota exemptions for providers with low turnovers or viewer figures, as well as for certain categories of television-like telemedia, are also explained. The rules, which also clarify procedural matters, will enter into force on 1 July 2021.

Satzung über die Schlichtungsstelle gemäß § 99 Medienstaatsvertrag

https://www.die-medienanstalten.de/fileadmin/user_upload/Rechtsgrundlagen/Satzungen_Geschaefts_Verfahrensordnungen/20201120_VSD-Satzung_final.pdf

Rules on the arbitration body pursuant to Article 99 of the state media treaty

Satzung zur Konkretisierung der Bestimmungen des Medienstaatsvertrags über Medienplattformen und Benutzeroberflächen

https://www.die-medienanstalten.de/fileadmin/user_upload/Rechtsgrundlagen/Satzungen_Geschaefts_Verfahrensordnungen/Satzungsentwuerfe_MStV/20210317_MB-Satzung_final.pdf

Rules implementing the provisions of the state media treaty on media platforms and user interfaces

Satzung zu europäischen Produktionen gemäß § 77 Medienstaatsvertrag

https://www.die-

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medienanstalten.de/fileadmin/user_upload/Rechtsgrundlagen/Satzungen_Geschaefts_Verfahrensordnungen/Satzungsentwuerfe_MStV/20210315_EU-Quoten_final.pdf

Rules on European productions pursuant to Article 77 of the state media treaty

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