

[DE] Calls for tender to determine offers that must be easy to find on user interfaces in accordance with “public value” rules

IRIS 2021-9:1/22

*Dr. Jörg Ukrow
Institute of European Media Law (EMR), Saarbrücken/Brussels*

On 1 September 2021, the 14 German *Landesmedienanstalten* (state media authorities) published calls for tender pursuant to Article 84 of the *Medienstaatsvertrag* (state media treaty – MStV) in order to determine offers that must be easy to find in user interfaces. Separate calls for tender for video and audio services must be organised in accordance with Article 3(1)(2) of the state media authorities’ *Public-Value-Satzung* (public value rules). They mark the start of the process described in Article 84(5) MStV for determining so-called public value offers of private media (i.e. those that make a significant contribution to the diversity of opinions and offers) which, under the new provisions of the MStV, must be “directly accessible and easy to find” in user interfaces. The calls for tender deliberately leave a degree of flexibility, especially with regard to the individual parts of the application and the documentation that must be submitted under Article 4 of the *Public-Value-Satzung*. This particularly reflects the wide variety of expected applicants (broadcasters, broadcast-like telemedia, telemedia pursuant to Article 2(2)(14)(b) MStV and software-based applications that serve to control them).

The media authority responsible for the determination process is the *Landesanstalt für Medien NRW* (North-Rhine Westphalia media authority). The *Kommission für Zulassung und Aufsicht* (Commission on Licensing and Supervision – ZAK) helps it to fulfil this task in accordance with Articles 105(1)(9) and 104(2)(2) MStV.

According to Article 4(2) of the *Public-Value-Satzung*, in their application for public value status, applicants must include documents that can be used to verify the contribution made, by the audio or video offer, to the diversity of opinions or offers. The *Landesanstalt für Medien NRW* checks the applications, ensuring that the conditions for determining the offer under the *Public-Value-Satzung* are met. For each audio or video offer, the ZAK makes a decision on whether the relevant conditions are met. Its findings are valid for three years from the date recorded in the administrative decision of the *Landesanstalt für Medien NRW*. In accordance with Article 9 of the *Public-Value-Satzung*, the audio and video offers that are awarded public value status are published in a list on the *Landesmedienanstalten* website (“die medienanstalten”) for implementation by providers of user

interfaces.

According to Article 7(1) of the *Public-Value-Satzung*, when determining the audio and video offers in accordance with Article 84(3)(2) and 84(4) MStV, only the criteria listed in Article 84(5) MStV should be taken into account. These are: 1. the amount of time spent reporting on political and historical events, 2. the amount of time spent reporting on regional and local information, 3. the ratio between in-house productions and programme content produced by third parties, 4. the quota of accessible offers, 5. the ratio between trained employees and employees who still need to be trained, involved in creating the programme, 6. the quota of European productions, and 7. the quota of offers for young target groups. The definitions contained in Article 7(2) of the *Public-Value-Satzung* apply, unless different definitions are used in the *Medienstaatsvertrag*. An overall view is taken in accordance with the principles enshrined in Article 8 of the *Public-Value-Satzung*.

The deadline for submitting applications is 30 September 2021. A longer deadline would have meant delaying the decision on which private offers should be easy to find. With the obligation to make subsidised public offers easy to find entering into force on 1 September 2021, any such delay should be avoided.

Ausschreibungen der Landesmedienanstalten zu Public-Value-Inhalten

<https://www.die-medienanstalten.de/ausschreibungen>

State media authority calls for tender for public value content

