[DE] Draft second state media treaty amendment adopted

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On 22 October 2021, the heads of the governments of the German *Länder* adopted the draft *2. Medienänderungsstaatsvertrag* (second amendment to the state media treaty – 2. MÄndStV), known as the *Barrierefreiheitsstaatsvertrag* (state accessibility treaty), which transposes Directive (EU) 2019/882 of the European Parliament and of the Council of 17 April 2019 on the accessibility requirements for products and services, and therefore strengthens the provisions of the *Medienstaatsvertrag* (state media treaty – MStV) to protect people with disabilities from discrimination. The federal government had already met its obligation to transpose the directive, known as the European Accessibility Act (EAA), within its area of jurisdiction, by adopting the *Barrierefreiheitsstärkungsgesetz* (Act to improve accessibility – BFSG) of 16 July 2021.

Under the state accessibility treaty, two new concepts will be defined in the state media treaty: Article 2(2)(30) of the draft MStV defines an “accessible service” as “a service that can be found, accessed and used normally by people with disabilities, using the latest technological disability aids, without any particular difficulties and without the help of others.” Meanwhile, in Article 2(2)(31), a “service providing access to audiovisual media services” is defined as a telemedia service that is used “to identify, select, receive information on, and view television programmes and television-like telemedia, as well as any features provided as a result of the implementation of measures to make services accessible, as referred to in Articles 7 and 76 MStV, i.e. barrier-free, including electronic programme guides”.

The requirements that such telemedia services have to meet under the EAA will be set out in an additional 5th subsection of section V, “Special provisions for individual telemedia services”, which will constitute Articles 99a to 99e MStV. As a result of this change, the current Article 21 MStV, which states that “Telemedia providers should support unencumbered access to television services and television-like telemedia within the framework of their technical and financial means”, will be deleted.

Accessibility requirements are set out in Article 99a of the 2. MÄndStV, which deals with the issue of disproportionate burdens. Services providing access to

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audiovisual media services must take various measures to offer their services barrier-free. This accessibility obligation includes the requirements set out in Annex I Sections III and IV(b) of the EAA. Such measures can include, for example, presenting information in an understandable way, such as by using a large font or an alternative presentation of non-textual content. Support services such as help desks are also mentioned in Annex I Section III. Websites, including the related online applications, and mobile device-based services, including mobile applications, must be made accessible in a consistent and adequate way by making them perceivable, operable, understandable and robust. According to Annex I Section IV(b), services providing access to audiovisual media services must, firstly, provide electronic programme guides (EPGs) which are perceivable, operable, understandable and robust and provide information about the availability of accessibility, and secondly, ensure that the accessibility components (access services) of the audiovisual media services, such as subtitles for the deaf and hard of hearing, audio description, spoken subtitles and sign language interpretation, are fully transmitted with adequate quality for accurate display, and synchronised with sound and video, while allowing for user control of their display and use. Article 99b of the draft amendment contains rules on assessing a service's conformity with these requirements.

These obligations do not generally apply to microenterprises as defined in Article 3(23) of Directive (EU) 2019/882, nor if they result in the imposition of a disproportionate burden on providers of services providing access to audiovisual media services, as defined in Annex VI of the directive, nor if they require a significant change in the service that results in the fundamental alteration of its basic nature. According to the draft state treaty, the service provider itself should be able to assess whether compliance with the requirements would impose such a disproportionate burden or introduce a fundamental alteration; such an assessment must be renewed at least every five years, when the service is altered, or at the request of the state media authority responsible. If a service provider receives funding from other sources than its own resources, whether public or private, for the purpose of improving accessibility, it may not rely on a disproportionate burden.

According to Article 99c of the draft MStV, providers of services providing access to audiovisual media services must, in their terms and conditions or in another clearly perceptible way, indicate to the general public in an accessible manner how they are meeting their accessibility obligations under Article 99a(1).

From a procedural point of view, these substantive provisions, compliance with which is monitored by the *Landesmedienanstalten* (state media authorities), are made more effective by consumer protection rules (including the right for associations to initiate proceedings, enshrined in Article 99d(2)): according to Article 99d(1), a consumer whose use of a service providing access to audiovisual

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media services is prevented or limited, as the result of a breach of Articles 99a and 99c, can ask the relevant state media authority to take measures to guarantee compliance with these provisions. Under Article 99d(2), the consumer can then appeal to an administrative court, either to contest the media authority's decision, which must be ratified by the *Kommission für Zulassung und Aufsicht* (Commission on Licensing and Supervision – ZAK), or if the media authority fails to take a decision.

The special role played by broadcasters in breaking down discrimination will also be highlighted through the addition to the general programming principles set out in Article 3(2) MStV of the requirement that services "should not hinder the eradication of discrimination against people with disabilities". The various barriers that prevent people with different disabilities participating in the broadcasting process will also be taken into account through an addition to Article 7 MStV.

The 2. MÄndStV also contains necessary amendments to the *Jugendmedienschutz-Staatsvertrag* (state treaty on the protection of young people in the media), bringing it into line with the latest amendment of the federal *Jugendschutzgesetz* (Youth Protection Act), including changes to the indexing procedure.

The draft must be ratified by all the state parliaments in order to enter into force by 28 June 2022, the deadline for transposition of the EAA. The Minister-Presidents of the *Länder* are expected to begin signing the amended treaty on 9 December 2021.

Entwurf des zweiten Medienänderungsstaatsvertrages

https://www.land.nrw/sites/default/files/asset/document/beschluss_-_rundfunkthemen_-_zweiter_medienanderungsstaatsvertrag_-_anlage.pdf

Draft second amendment to the state media treaty

Beschluss der Ministerpräsidenten zu den Rundfunkthemen in der Jahreskonferenz vom 20. – 22. Oktober 2021

https://www.land.nrw/sites/default/files/asset/document/beschluss_-_rundfunkthemen_-_zweiter_medienanderungsstaatsvertrag.pdf

Decision taken by the Minister-Presidents concerning broadcasting matters at their annual congress held from 20 to 22 October 2021

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