[DE] Second state media treaty amendment enters into force

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On 30 June 2022, the amendments to the *Medienstaatsvertrag* (state media treaty, MStV) that were brought in under the *Zweite Medienänderungsstaatsvertrag* (second state treaty amending the state media treaty, 2. MÄndStV) entered into force following their ratification by the parliaments of the 16 German *Länder* (federal states). The amendments are mainly designed to implement 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 further strengthen the provisions of the MStV, aimed at reducing discrimination against people with disabilities. They also include new provisions concerning reporting obligations in the context of European works enshrined in Articles 13(4) and 16(3) of the Audiovisual Media Services Directive (AVMSD).

With regard to accessibility, two new concepts are defined in the amended treaty: Article 2(2)(30) of the amended 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 existing accessibility obligations of broadcasters and television-like telemedia (including on-demand audiovisual media services) under Articles 7 and 76 MStV are extended in order to take account of the needs of people with different disabilities. These particularly cover the transmission of announcements under state law, which must be accessible. A separate section containing special provisions for individual telemedia services is also added in Articles 99a to 99e MStV, replacing the general requirement for unencumbered access enshrined in Article 21 MStV. Article 99a MStV sets out accessibility requirements and deals with the issue of disproportionate burdens. Services providing access to audiovisual media services must offer their services barrier-free, list content in an understandable way and ensure they are easy to use. Reference is made to the exemptions that apply if a disproportionate burden is created or if the service

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needs to be fundamentally altered, as defined in Annex VI of Directive (EU) 2019/882, as well as to the requirements in Annex I Sections III and IV(b) of the same directive, which describe specific measures that must be taken to ensure accessibility. If a service provider receives funding from sources other than its own resources, whether public or private, for the purpose of improving accessibility, it may not rely on a disproportionate burden. Service providers must assess the proportionality of their accessibility measures, keep a record of them and assess them again if they alter their services. Article 99b contains a presumption of conformity (if services comply with harmonised standards or parts thereof, the references of which have been published in the Official Journal of the European Union, or meet technical specifications as defined in Article 15(3) of Directive (EU) 2019/882 or parts thereof) and reporting obligations for service providers. In addition, Article 99c MStV requires providers, in their terms and conditions, or in another clearly perceptible way, to 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 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. The consumer can then appeal to an administrative court if the media authority fails to take a decision.

A new Article 15(4) is added to the MStV in relation to Germany's reporting obligations concerning European works. It obliges the public service broadcasters, if requested, to provide the responsible authorities defined in Article 111a with the information and documents required for reporting under Article 16(3) of the AVMSD. The same applies to private television broadcasters, which must, on request, provide the information and documents to the responsible state media authority, which then forwards them to the responsible authority defined in Article 111a. Under a new Article 77 sentence 5 MStV, the same rule also applies to television-like telemedia (on-demand services) in the context of Article 13(4) AVMSD. The new Article 111a states that the heads of government of the *Länder* should appoint one or more bodies to coordinate legally binding reporting obligations vis-à-vis EU authorities, intergovernmental institutions and international organisations.

With the 2. MÄndStV, the amendments to the *Jugendmedienschutz-Staatsvertrag* (State Treaty on the Protection of Minors in the Media - JMStV) needed to bring it into line with the latest amendment to the federal *Jugendschutzgesetz* (Youth Protection Act) which also entered into force.

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Zweiter Medienänderungsstaatsvertrag

https://www.revosax.sachsen.de/vorschrift_gesamt/19614/44239.html

Second state treaty amending the state media treaty

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