[DE] German media regulator urges YouTube to comply with transparency obligations

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On 28 June 2023, the *Medienanstalt Hamburg/Schleswig-Holstein* (Hamburg/Schleswig-Holstein media authority – MA HSH), as the responsible media regulator, called on the company Google Ireland Ltd. to meet its new obligations under the German *Medienstaatsvertrag* (State Media Treaty – MStV). In its decision, it accused Google of failing to meet its legal obligation to ensure transparency for users on its YouTube platform by informing them about why they were being shown particular content. It is the first time a German media regulator has taken action against a global media intermediary on the basis of rules that entered into force in 2020.

In 2020, the interfederal regulatory framework previously known as the *Rundfunkstaatsvertrag* (State Broadcasting Treaty) was completely overhauled and renamed the *Medienstaatsvertrag*. As well as new rules for video-sharing platforms based on the transposition of the EU Audiovisual Media Services Directive (AVMSD), which was revised in 2018, new provisions were brought in for media intermediaries, user interfaces and media platforms. According to the legal definition, a media intermediary is any telemedia (i.e. essentially online media that are not broadcasting or telecommunications services) that also aggregates, selects and generally presents third-party journalistic-editorial offers without combining them into an overall offer. Under Article 93 MStV, such media intermediaries have to meet certain transparency obligations. In order to protect diversity of opinion, they must make certain information easily understandable, directly accessible and continuously available. This includes the central criteria of an aggregation, selection and presentation of content and the weighting thereof, including information about the functionality of the implemented algorithms in plain language.

The MA HSH does not think YouTube meets these requirements. In particular, it notes that the information that YouTube provides about its content recommendation systems can only be accessed by users in a roundabout way, after several clicks. Whether and how users can find information about the aggregation, selection and presentation of content, and the algorithms on which these are based, is also unclear. The requirement that such information should be easily understandable and directly accessible is not met, and users are therefore denied the opportunity to understand how the services they are using work, which

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is important for ensuring media diversity. YouTube is not considered as a video-sharing platform within the meaning of the AVMSD and the MStV – even though it clearly should be – but rather as a media intermediary.

Before issuing its decision, the regulator consulted both Google and the *Kommission für Zulassung und Aufsicht* (Commission on Licensing and Supervision – ZAK), a central organ of the German state media authorities with responsibility for online platforms. The complaint that Google was failing to meet its transparency obligations under the MStV in relation to YouTube was submitted along with a request for improvements to be made. Google was invited to rectify the situation within four weeks of being notified of the decision.

Pressemitteilung der ZAK vom 04. Juli 2023

https://www.die-medienanstalten.de/service/pressemitteilungen/meldung/medienaufsicht-fordert-nachbesserung-der-transparenzangaben-bei-youtube

ZAK press release of 4 July 2023

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