

[DE] Reform of State Treaty on the Protection of Minors in the Media: strengthening law enforcement and obligations for operating systems

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At their conference on 12 December 2024, the heads of government of the German federal states adopted an amended version of the *Jugendmedienschutz-Staatsvertrag* (State Treaty on the Protection of Minors in the Media - JMStV), which will be transposed through the *Sechste Medienänderungsstaatsvertrag* (Sixth State Treaty Amending the State Media Treaty). Key innovations include new obligations for operating systems to incorporate youth protection measures and new powers for the state media authorities to enforce the law, especially in the online sector, including by improving the effectiveness of blocking mechanisms in relation to so-called 'mirror sites' and service demonetisation.

In addition to adjustments in the area of technical youth media protection, in particular youth protection programmes, a key aspect of the reform concerns law enforcement changes, including in relation to the country-of-origin principle. As before, the JMStV continues to apply to providers that are not based in Germany but whose services are intended for use in Germany. However, the country-of-origin principle enshrined in Articles 3 and 4 of the Audiovisual Media Services Directive (AVMSD) also applies to audiovisual media services. Compliance with the country-of-origin principle that is also expressly provided for in Article 3 of the e-Commerce Directive (Directive 2000/31/EC) is no longer required under the latest reforms. Instead, a detailed provision has been added, stipulating that measures may be taken against providers of telemedia or operating systems based in another member state if they are necessary to protect certain tasks of general public interest (e.g. protection of minors, combating disparaging discrimination, human dignity), if a service impairs or seriously threatens to impair these objectives, if they are proportionate and if the procedures under the e-Commerce Directive are complied with. With these amendments, the federal states are responding to criticism expressed by the European Commission during the notification procedure for this state treaty. The Commission had claimed that the requirements of the AVMSD and e-Commerce Directive had not sufficiently been taken into account.

Meanwhile, the law enforcement and sanctioning powers of the state media authorities will be strengthened. The state media authorities can already, as a last resort, block content that is harmful to minors, as they have done in particular in

relation to pornography platforms without age verification mechanisms and, recently, the Lebanon-based provider Al-Manar, which was being used as a propaganda tool for the Islamist Hezbollah. Network blocking will be more effective since it will also apply to services “whose content is wholly or essentially identical to that of services already subject to a blocking order”. This rule is aimed at so-called ‘mirror sites’, which mirror blocked sites with only a few changes to the original URL and thus paralyse the time-consuming law enforcement process. These provisions will also apply to supervisory measures based on the State Media Treaty, e.g. in the area of advertising regulation.

The supervisory authorities will also be given new law enforcement powers that are already being used to regulate the gambling industry. In the event of certain violations of the JMStV, they will be able to prohibit companies involved in payment transactions (in particular credit and financial services companies) from processing payments for services that are harmful to minors without first having to contact the service provider itself.

In addition, new rules contained in Articles 12 *et seq.* JMStV apply to operating systems. An operating system is defined as a software-based application that controls the basic functions of the hardware or software of a terminal device and enables the execution of software-based applications. Article 12 JMStV sets out new requirements for providers of operating systems that are “commonly used” by children and young people. The *Kommission für Jugendmedienschutz* (Commission for the Protection of Minors in the Media – KJM), a body of the state media authorities, will assess which systems (e.g. Windows, Android, iOS, etc.) this applies to. These providers will need to ensure that the operating system has a ‘youth protection device’, i.e. a type of child protection mode, which the provider must also point out when the system or the youth protection device itself is first switched on or when its functions are changed. Essentially, it should be possible to set an age limit that automatically limits use of the browser and apps. The browser should only provide access to online search engines with a secure search function or to which unsecured access has been enabled individually and in a secure manner. Apps may only be installed via sales platforms (app stores) that contain age ratings and use a rating system recognised by the KJM or voluntary self-regulation bodies. Apps should only be usable if they comply with the age rating in the child protection mode or have been activated individually (e.g. by parents). Finally, the youth protection device should ensure that use of the browser and apps can be individually and securely deactivated, for example in the form of a parental control system. Failure to comply with these requirements will constitute an administrative offence punishable with a fine of up to EUR 2 million.

The treaty is due to come into force on 1 December 2025 once it has been ratified by the parliaments of the 16 German federal states.

Angenommener Entwurf des Sechsten Medienänderungsstaatsvertrags

<https://www.ministerpraesident.sachsen.de/ministerpraesident/TOP-10-Sechster-Medienaenderungsstaatsvertrag.pdf>

Draft Sixth State Treaty Amending the State Media Treaty

