

## Transparency obligations

### Summary

<b>Law</b>	<ul style="list-style-type: none"> <li>Sec. 85 Interstate Media Treaty ("MStV")</li> <li>Sec. 11 of the Statute Specifying the Provisions of the MStV on Media Platforms and User Interfaces ("Guidelines")</li> </ul>				<b>Effective date:</b>		<ul style="list-style-type: none"> <li>Law: 7 November 2020</li> <li>Guidelines: 1 June 2021</li> </ul>				
<b>Applies to:</b>	Social networks	Search engines	Game distribution platforms	VoD platforms	App stores	Video games	Movies and shows	Video-sharing platforms	Media compilation apps and services	Smart devices/connected devices	Messenger services
									Yes	Yes	
<b>Content of the regulation — quick overview</b>											
<ul style="list-style-type: none"> <li>The law introduces the service provider categories of "media platform" and "user interfaces," which in practice apply in particular to media compilation services and smart or connected devices that provide access to or sort third-party media services</li> </ul>				<ul style="list-style-type: none"> <li>Providers have to make information on the selection and organization of the included media services publicly available. The information needs to be provided in German in a manner that is easily perceivable, directly accessible and constantly available.</li> </ul>				Applies to abroad companies?		Yes	
								EU/EEA country of origin principle respected?		No	

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### I. Who is affected by this regulation?

- Providers that qualify as "**media platforms**" are affected by the regulation.
  - Media platforms are online services that compile the following into an overall offering determined by the provider:
    - broadcasts (e.g., regular TV channels, radio channels or live streams if they qualify as broadcasts)
    - online services similar to broadcast (e.g., VoD services and music streaming services)
    - online press services (e.g., news and press websites)
    - apps that provide access to the aforementioned services.
  - Compiled services have to be **third-party services**.
  - Media platforms that compile services from one of the categories above will also be affected by the regulation.
  - The key requirement is that the included services have to be **determined/selected by the media platform provider**, i.e., open platforms/services are not caught by the regulation (e.g., app stores, search engines or social networks).

- However, **mixed services** fall under the regulation to the extent individual parts of the service meet the aforementioned requirements (e.g., if a generally open platform includes by default preselected services/apps determined by the platform provider or if an otherwise open platform has a section of services/apps selected by the platform).
- The requirements also apply to **infrastructure-based platforms/services that conduit** the above-mentioned services.
- **Examples of media platforms:**
  - **smart and connected devices** that provide a typical app-based user interface, where the service provider **preselects** certain apps, which often include preinstalled VoD apps, music streaming services, TV channel apps, radio apps or news/press apps, e.g., smartphones, tablets, connected cars, smart TVs, smart receivers, e-readers, TV sticks/boxes and other media players
  - **smart speakers/voice assistants**, which often provide access to music streaming and news services that were preselected by the device operator
  - **media compilation apps and services** that compile, for instance, different preselected third-party VoD services, music streaming services, TV channel apps, radio channels, news and press services. Operators of media compilation apps and services often (but not necessarily) compile third-party services and their own services together, which does not affect the applicability of the regulation (see mixed services above). Examples include various **digital media players** and **news tab services**.
  - **digital cable network operators** (infrastructure-based media platforms, see above), which conduit TV and radio channels and determine which channels are passed through to the end consumer
- The regulation also applies to providers of so-called **user interfaces**.
  - A user interface is any textual, visual or audible presentation of the media services (e.g., VoD services, broadcasts, music streaming services and online press services) or content of an individual or multiple media platforms, which serves as a means of orientation and allows the direct selection of the media services, content or apps that provide access to media services.
  - Put simply, user interfaces are typical menus that help users to navigate audio, audiovisual or online press content either preselected by the user interface operator or a third party. Interfaces for open platforms are not covered (e.g. social networks).
  - **Examples:**
    - electronic program guides (EPG)
    - **interfaces of smart and connected devices** that provide access to preinstalled VoD apps, music streaming services, TV channel apps, radio apps or news/press apps, e.g., interfaces of smart TVs, TV sticks/boxes, connected cars, smartphones, tablets, smart receivers and e-readers
    - the **acoustic navigation system of smart speakers and voice assistants** (it is sufficient if only individual program offers or content from an overall program offer can be navigated acoustically)
  - User interfaces can also be media platforms. This applies in particular to smart devices and media compilation apps where the provider determines the default composition of the media services included in the service. The default composition as included in the user interface constitutes a media platform and falls under the media platform regulation. However, at the same time, an interface that helps users navigate preselected services constitutes a user interface and falls under the user interface regulation.

- However, user interfaces do not have to be part of a media platform. A standalone user interface (e.g., a website or app) providing navigation for media platforms or digital TV channels (provided by digital cable network provider) will also fall under the regulation.

### Exemptions:

- Media platforms with generally **fewer than 20,000 actual daily users on a monthly average** are exempted. This exemption does not apply to infrastructure-based media platforms such as digital cable network operators.
- **Platform providers that only compile their own services** (i.e., services they have editorial control over) or services that are operated by other companies within the same group of companies are exempted from the media platform regulation, e.g., media libraries of broadcasters (*Mediatheken*). However, the exemption does not apply if third-party services are compiled in addition to their own services/content (see mixed services above).
- **Analog cable network operators** are exempted from media platform regulation.
- Infrastructure-based media platforms (e.g. digital cable network operators), including their user interfaces with fewer than 10,000 connected residential units are exempted.

### Companies outside of Germany:

- With regard to the media platform and user interface regulation, the law establishes a marketplace principle.
- This means the regulation applies to media platforms and user interfaces that are intended for use in Germany.
- A service is deemed to be intended for use in Germany if:
  - users in Germany are targeted by the service, which is determined based on an overall assessment, considering, for instance, the service's language, the content offered or marketing activities
  - the service generates a significant portion of its revenue in Germany
- EU/EEA country of origin principle:
  - The regulation **applies regardless of the EU/EEA country of origin**.
  - Whether Germany's marketplace approach constitutes a violation of the EU/EEA country of origin principle is currently subject to debate.
  - The European Commission requested during the legislative process that Germany examine the compatibility of the law with compliance with the EU/EEA country of origin principle. However, the European Commission has not imposed any obligation to change the regulation. Germany did not amend the law in the subsequent legislative process.
  - Several German legal experts take the view that the regulation violates the EU country of origin principle.
  - As doubts about the compatibility with EU law remain, courts will have to decide whether the application to companies established in other EU/EEA countries is lawful. Until the question has been resolved by a court, robust arguments exist to take the position that the law violates EU laws. However, service providers that take this position have to factor in that they might be sanctioned by German regulators and will have to defend their position in court.

## II. Requirements

### 1. Which information needs to be made transparent?

- The **underlying criteria for the selection of media services** (e.g., broadcasts, VoD services, etc. See list above under I.) included in a media platform or user interface must be made transparent by the provider.
- Furthermore, information on the organization of the included media services needs to be made transparent. This includes:
  - how media services are **sorted, arranged and presented**,
  - how the sorting or arrangement of media services can be **customized by the user**,
  - the criteria on which basis **recommendations** are made to the user (e.g. if certain media services are recommended)
  - the conditions under which linear radio or TV broadcasts and audio or audiovisual on-demand services are **not presented in their original form or format** (e.g., if technical changes are made or additional advertisements are added)
- Providers are not required to provide information regarding the selection and organization of services other than the above mentioned media services, or to disclose trade secrets.

### 2. How must the information be made transparent?

- The information has to be made available to users in **German** in a manner that is **easily perceivable, directly accessible and constantly available**.
- The information must be
  - easy and quick to find, e.g. by highlighting and identifying it with an unambiguous term,
  - accessible without much effort
- It is recommended that the information is not more than two clicks away. Requiring the user to take additional steps, such as an individual request by email, mail or telephone does not meet the requirements. However, links to the information are allowed, provided they meet the aforementioned requirements (i.e., are not hidden etc.).
- If the use of the service is predominantly **voice-controlled**, the information should be given acoustically at the user's request. However, an acoustic indication of where the information is available is sufficient.

## III. Enactment

- The MStV came into force on 7 November 2020.
- The Guidelines, as agreed on by the state media authorities, came into force on 1 June 2021.

## IV. Sanctions and Enforcement

- The competent state media authority has the right to request variety of information from service providers.
- Services included in a user interface or media platform have the right to access information on the sorting, order and display of content and the use of their metadata.
- To enforce the provision, the competent state media authority may impose necessary measures such as objections, prohibitions or blocking orders on the service.
- Fines of up to EUR 500,000 can be imposed for noncompliance.

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