

Requirement to take care that postings generated by social bots are labelled

Summary

Law	<ul style="list-style-type: none"> Sec. 93 (4), 18 (3) Interstate Media Treaty ("MStV") Statute on the Regulation of Media Intermediaries ("Guidelines") 				Effective date:		<ul style="list-style-type: none"> Law: 7 November 2020 Guidelines: 1 September 2021 (EU notification procedure currently at a standstill until 17 September 2021) 				
Applies to:	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			
Content of the regulation — quick overview											
<ul style="list-style-type: none"> Content providers have an obligation to label social media postings that were generated by a social bot if the account gives the impression that it is operated by a natural person. 				<ul style="list-style-type: none"> Social networks and video-sharing platforms have to "take care" that content providers comply with the obligation. 				Applies to abroad companies?		Yes	
								EU/EEA country of origin principle respected?		No	

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I. Who is affected by this regulation?

- Social networks
- Video-sharing platforms (which typically qualify as social networks)

Exemptions:

The provision does not apply to services that:

- reach an average of less than one million unique users per month in Germany over a six-month period or will not exceed this number according to their forecasted development
- specialize in the aggregation, selection and presentation of content related to goods or services (e.g., online shops and marketplaces, price comparison websites)
- serve exclusively private or family purposes

Companies outside of Germany:

- With regard to the media intermediaries (including social networks and video-sharing platforms), the law establishes a marketplace principle.

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- This means the regulation applies to media intermediaries 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 regard to its compliance with the EU/EEA country of origin principle. However, no obligation has been imposed by the commission to change the regulation. Germany did not amend the law in the subsequent 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.
 - **Recent update (June 2021):** As part of the mandatory notification procedure, the EU Commission has been notified of the Guidelines and they were initially at a standstill until 17 June 2021. However, the EU commission extended the standstill period until 17 September 2021, most likely because it continues to see a violation of the EU country of origin principle. Germany now has the opportunity to lodge additional arguments.

II. Requirements

- **Background:**
 - Under the new law, content providers on social networks (i.e., not social networks themselves) are obliged to indicate if they automatically create content or messages by means of a computer program (i.e., by using **social bots** that automatically post content/messages on the social network). However, the obligation only applies in cases where the user account that is used for the activity **gives the impression that it belongs to an actual natural person.**
 - Posts created by social bots must be accompanied by or preceded with a **clearly legible notice** stating that the post was automatically generated (including the automatic use of pre-prepared posts) and sent using a computer program controlling the user account.
 - The law is supposed to tackle automated **fake news** and campaigns on social networks that have the potential to influence the public opinion (e.g., in light of an election, etc.) by giving the impression that the statements have been given by a large number of natural persons.
- **How does this relate to social networks and video-sharing platforms?**
 - Social networks have an obligation to "take care" that content providers who use **social bots** as described above label the relevant posts to indicate that they were generated by a social bot.

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- The specific manner in which the "take care" obligation has to be fulfilled is deliberately not specified in the law. However, the provision is not intended to introduce an obligation on the part of the social network to prosecute and sanction violations of the content provider obligation to label social bot postings.

III. Enactment

- The MStV came into force on 7 November 2020.
- The Guidelines, as agreed on by the state media authorities, are scheduled to come into force on 1 September 2021. However, due to the EU notification procedure, there is a standstill period until 17 September 2021 — during which the Guidelines cannot be adopted.

IV. Sanctions and enforcement

- The competent state media authority has the right to request a variety of information from service providers.
- 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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