

## Requirement to notify the state media regulator of the operation of a user interface and media platform

### Summary

<b>Law</b>	<ul style="list-style-type: none"> <li>Sec. 78, 79 Interstate Media Treaty ("MStV");</li> <li>Sec. 2 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 of media platforms and/or user interfaces have to notify the state media regulator of the operation of the service.</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 only one of the categories above will still be affected by the regulation.

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- 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, 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)

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- 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:

- **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 regulations.

### 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 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 further 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.

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### II. Requirements

- Service providers who intend to offer a media platform or user interface have to notify the competent state media regulator at least one month prior to its launch.
- The notification must include the following, among other things:
  - a description of the service
  - information on the natural or legal person operating the media platform or user interface and – in the case of an operator established outside of the EU/EEA – information on who represents the operator
  - a legal certificate of good conduct for submission to an authority or a comparable foreign document for the person operating or representing the provider, which is not older than six months
  - the anticipated technical means and reach of the service (including information on the amount of connected residential units and daily users)

### 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 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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