

Berlin, 12 December 2025

Position paper by the German media authorities on the revision of the Audiovisual Media Services Directive (AVMSD)

1 Needs for adaptation Background

The Audiovisual Media Services Directive (AVMSD) is at the core of European media regulation. Since its revision in 2018, the media landscape has been constantly changing, particularly with regard to the digital space.

The German media authorities therefore suggest using the upcoming revision of the AVMSD to further develop the existing regulation in view of the changing media market and new forms of media use, and to clarify the interaction between the individual European regulatory frameworks. The primary objective should be to create technology- and provider-neutral content regulation under the AVMSD to address emerging digital media business models, ensure coherence across European legal acts, and guarantee effective law enforcement through existing and proven supervisory structures.

2 Statement

The statement by the German media authorities is based on the following **three basic assumptions**:

Federal systems safeguard democratic orders because, unlike centralised systems, they are more difficult to polarise and radicalise. The federal media order of the German legal system has therefore proven itself to be a guarantor of democracy. In order for the federal German media order to remain relevant and effective, further centralisation of powers at European level must be viewed critically. It could increasingly undermine the democratic structure of the European media system and should therefore be avoided.

Comprehensive executive powers for national regulatory authorities are an essential means of effective law enforcement, including in the digital space. The Media State Treaty (MStV) and the Youth Media Protection State Treaty (JMStV) grant German media authorities powers that distinguish them from most of their European counterparts. Against this backdrop, it is understandable that new laws at European level, such as the European Media Freedom Act (EMFA) or the Digital Services Act (DSA), seek to close this gap in effectiveness that exists in other countries. However, as this vacuum of competence does not exist in the robust German legal system, centralised European supervisory systems in Germany always complement the existing competences of the media regulatory authority. In order to

prevent further bureaucratisation in European media supervision and to avoid undermining well-functioning systems, responsibility for supervising compliance with the AVMSD should remain with the Member States.

Information is the most effective antidote to disinformation. To make informed decisions, citizens need a balanced and varied range of media services. However, journalistic and editorial news and information can only be provided if they can be refinanced. Ensuring such refinancing requires a level playing field among services operating in the media market, which is currently lacking.

The German media authorities therefore see an urgent need for action in the following areas.

3 Choice of legal instrument

Based on the following four considerations, the AVMSD should retain its legal character as a directive and should not be transformed into a regulation or integrated into an existing regulation.

Effectiveness of law enforcement and reduction of bureaucracy: Content control is part of the day-to-day business of national regulatory authorities and requires a large number of individual cases to be examined and addressed immediately and locally in the interests of effective risk prevention. A functioning infrastructure for this purpose already exists in most Member States; where this is not the case, it must be established on the basis of the AVMSD and the EMFA. With regard to very large online platforms (VLOPs) alone, the media authorities currently identify around 4,000 cases per year. Each individual case is processed in cooperation with the law enforcement authorities within two weeks. In addition to dealing with illegal content on VLOPs, the media authorities also enforce the other provisions of the AVMSD as part of its national implementation. This means that, despite – or perhaps because of – their federal structure, the media authorities demonstrate the highest level of effectiveness and efficiency among member state structures in a European comparison. This must not be jeopardised by additional bureaucratic hurdles. Instead, European regulations must support existing processes by defining clear responsibilities and avoiding unnecessary double checks. Only in this way can law enforcement be quick, effective and focused on user protection.

Media supervision independent of the state: A structure independent of the state at Member State level is necessary for both dogmatic and political reasons. Centralised structures are far more susceptible to influence by (geo)political conditions. The decentralised supervisory system of the AVMSD has, in particular, proven to be a powerful means of safeguarding the independence of media content supervision and protecting the overall system from radicalisation. However, both the EMFA and the DSA demonstrate the European Union's increasing commitment to centralising and fully harmonising media law.

Balance between internal market regulation and the cultural sovereignty of Member States: As services in the European internal market, media services are also (at least partially) subject to internal market regulation. Any regulation must

therefore respect, on the one hand, the legitimate interest in minimum harmonisation of these economic services and, on the other, the media and cultural sovereignty of the Member States. The AVMSD has struck a reasonable balance in this regard, which must be maintained.

Cultural sovereignty of Member States and the principle of subsidiarity: The European Union has only very limited regulatory powers in the areas of media and culture, as these competences are assigned to the Member States and are therefore governed by the principle of subsidiarity. Sovereignty over content regulation, in particular, must therefore remain with the Member States.

The German media authorities therefore call for the AVMSD to remain (entirely) a directive in order to preserve the necessary balance between, on the one hand, harmonised minimum standards for content, and, on the other the cultural sovereignty of the Member States.

4 Interplay with other European regulations, in particular the DSA

Although the AVMD Directive and the DSA pursue similar objectives, they differ fundamentally with regard to their intended addressees as well as the choice of instruments and remedies. **While the AVMD Directive focuses on individual illegal content, the DSA focuses on securing the entire system (systemic risks).**

This logic should be reinforced in any revision of the AVMSD. With regard to overlaps with the DSA¹, the following should be considered: one of the core objectives of the AVMSD is the protection of the public from illegal or developmentally harmful media content. **The AVMSD is thus the only European legal framework that creates provisions for individual media content.** By contrast, the DSA aims to create framework conditions for intermediary services that enable the safe and responsible use of their services. **The DSA thus focuses primarily on systemic risks of digital services.**

A conflict between these two approaches might be assumed, particularly in the context of Article 28b of the AVMSD (regulations on VSPs) and Articles 28(1), 34 and 35 of the DSA. However, such a conclusion would be false. The complementary relationship between the regulations becomes evident when the provisions of the AVMSD are divided into three categories: (1) provisions that are based on individual content or that define conditions under which otherwise prohibited individual content may be made available in exceptional cases, (2) provisions aimed at safeguarding media pluralism, and (3) provisions that, in deviation from the Directive's core subject matter, impose obligations of a more systemic nature that overlap with the DSA.

The provisions of categories (1) and (2) must remain within the competence of the Member States. Category (3) contains constellations in which an amendment to the AVMSD could be considered in order to avoid legal uncertainty and ensure better coherence between European regulations (e.g. the establishment of a noti-

¹ The market-specific or pluralistic provisions of the AVMSD do not conflict with the provisions of the DSA (e.g. provisions on investment obligations for European works).

fication system for VSPs in accordance with Article 28b(3)(d) AVMSD). In this respect, an evaluation in line with the European Commission's Staff Working Document² on the interaction between the DSA and other legal acts would be appropriate.

Nevertheless, it is essential that the DSA and AVMSD continue to complement each other in the area of youth protection on VSPs. The youth protection provisions of the AVMSD are, and will remain, indispensable for the effectiveness of the DSA and to the effective mitigation of any content-related risks to children and young people.

The German media authorities call for European regulations to be evaluated with regard to their interdependence. Measures concerning content regulation and media pluralism are exhaustively regulated in the AVMSD and must not, under any circumstances, be interpreted or included within the scope of a regulation.

5 Cross-border law enforcement and reduction of bureaucracy

The supervisory practices of media authorities have shown that supervisory measures in cross-border proceedings continue to face considerable obstacles. Any amendment of the AVMSD should therefore aim to ensure the most effective enforcement of the law possible. In this context, the conclusions of the European Council should also be taken into account.

5.1 Handling services from third countries

Both the AVMSD and the EMFA contain provisions that are relevant to cross-border enforcement in relation to services from third countries. **In order to ensure effective supervisory measures, the European legislator should link these provisions.**

First, the jurisdiction criteria set out in Article 2(4) of the AVMSD should be revised, as they create legal uncertainty with regard to the identification of the country of origin. Overall, this provision enables third-country providers to benefit from the protection of the country of origin principle without significant human or financial expenditure and without participating in the European internal market, which the country of origin principle is intended to safeguard. These provisions should not make it easier for third-country providers to slip under the protection of the country of origin principle. Rather, the purpose of the technical criteria is to establish the legally certain jurisdiction of a state in the EU when enforcement activities are directed against the distributor. To that end, jurisdiction for a service could be made dependent, first, on the establishment of the satellite operator and, only subsequently, on the location of the satellite ground station. In addition, it must be ensured that online distribution is also covered by the scope of application in a legally secure manner. The term 'retransmission' in Article 3 para. 1 of the AVMSD is therefore ambiguous and could be replaced by the term 'use'.

² EU-KOM: Staff Working Document on the application of Article 33 on Regulation 2022/2065 and the interaction of that Regulation with other legal acts; <https://digital-strategy.ec.europa.eu/en/library/report-application-article-33-regulation-eu-20222065-dsa-and-interaction-regulation-other-legal>.

In addition, the AVMSD should be more closely aligned with the EMFA. The EMFA empowers the Media Board to issue opinions on coordinated action against broadcasters from third countries. The enforceability of the recommendations contained in such opinions must be ensured. This could be achieved, for example, by introducing an exception to the country of origin principle in the AVMSD in cases where the Media Board has already issued a corresponding opinion. Furthermore, the AVMSD should clarify that the authority in the country of origin of a service can also take action on the basis of the assessment by two other Member States or the Media Board if no violations of the law of the country of origin have (yet) been identified.

5.2 Standard non-compliance procedure for all services

Currently, two different cooperation and derogation procedures apply to services covered by the AVMSD: one for audiovisual media services under Article 3 AVMSD, and another for video-sharing platform services which – pursuant to Article 28a para. 5 AVMSD – refers to Article 3 of the E-Commerce Directive. **In order to ensure effective enforcement and reduce bureaucracy, a uniform derogation procedure should be established for all services in the AVMSD (based on the model of the E-Commerce Directive).**

The EMFA, in turn, introduces a number of bilateral cooperation mechanisms. These mechanisms open up an escalation mechanism in which the Media Board acts as mediator. **These cooperation mechanisms should be linked to the procedures in the AVMSD.**

Together, these proposed adjustments would help to simplify and standardise the cooperation and derogation procedures under the AVMSD.

The German media authorities support the retention of the country of origin principle. In order to uphold this principle while ensuring effective law enforcement, particularly in the digital sphere, the media authorities call for minimally invasive adjustments to be made in the areas of third countries and cooperation and derogation procedures from the country of origin principle.

6 Level-Playing-Field and simplification

The 2018 revision of the AVMSD has already contributed significantly to achieving a level playing field: advertising and content rules now apply largely equally to linear and non-linear services.

However, there is no level playing field, particularly in the existential area of re-financing options for services: Advertising regulations and individual content requirements currently only apply to linear services. This leads to an imbalance in the regulation of linear and non-linear services (see appendix: Illustrations of the level playing field in advertising regulations).

A level playing field could now be achieved either by legislators tightening the regulations for on-demand services and VSPs or by deregulating individual provisions for linear services. In any case, the regulations for linear services should not

be further tightened, nor should content restrictions be extended to other product categories.

The overarching objective should be to create a fair market environment for all market participants. This requires an assessment of the areas in which the level of regulation can be reduced without significantly affecting user interests, as well as those in which more stringent regulation of on-demand services and video-sharing platform services may be justified. In this context, quantitative advertising restrictions in particular no longer appear appropriate. Such restrictions were originally intended to safeguard the journalistic pluralism mandate of broadcasting and to protect other media competitors from excessive and disruptive advertising by broadcasters. These regulatory objectives were based on the long-standing role of traditional broadcasting as the primary source of information for citizens. Digitalisation has significantly expanded the range of alternative providers, fundamentally transforming competition in the media market and prompting a reassessment of whether the traditionally assumed need for protection continues to justify such extensive regulatory interventions.

The German media authorities therefore advocate a stronger focus on creating a level playing field in the media market and on further developing the AVMSD, particularly with regard to refinancing options for media services in relation to international online platforms.

7 Flexibility in the definition of ‘audiovisual media service’

The AVMSD currently applies only to providers of audiovisual media services – both linear and on-demand – and to video-sharing platforms (VSPs). As a result, certain digital services are yet not covered by the Directive, even though regulation of these services appears increasingly necessary in view of recent developments in the media market.

In the German legal system, the term ‘telemedium’ was introduced even before the AVMSD entered into force, and applies to all online media that contain image or text elements. This also includes simple websites and, in some circumstances, social media profiles (‘influencers’) if, in exceptional cases, these cannot be classified as on-demand audiovisual media services (e.g. due to a lack of moving images). Building on this tradition, the German legal system, with its technology-neutral approach, has proven to be particularly effective in addressing emerging business models for media on the internet.

Such a broad approach would also facilitate the legally secure classification of services as audiovisual media services across Europe. In cross-border cooperation, the narrow national definitions resulting from the AVMSD lead to difficulties with regard to national competences.

The German Media Authorities therefore suggest making the definition of ‘audiovisual media service’ in the AVMSD more flexible so that it does not exclusively cover on-demand media services and broadcasting. The main aim should be to

further develop the AVMSD into a technology- and provider-neutral content regulation in order to also address emerging media business models, especially in the digital space.

8 Findability regulation under Article 7a of the AVMSD

While linear broadcasting was the main source of information a few years ago, information gathering is increasingly shifting to the digital space and to online platforms. These platforms aggregate, distribute and monetise content without – in most cases – investing in the production of the content themselves. This development poses significant challenges for providers of journalistic and editorial content, particularly with regard to producing and distributing such content in an economically sustainable manner. At the same time, the availability of a wide variety of content increases the need for professionally researched, balanced content that complies with journalistic due diligence requirements, as well as regional and local information for balanced information gathering.

To be effective, the findability regulation requires greater minimum harmonisation: First, providers of user interfaces, VSPs and other online platforms (including their recommendation systems) must be covered by the AVMSD as addressees of the regulation, as they are key players in the distribution of media content. Supervision of the implementation of findability (e.g. placement within the service) on digital services should be the responsibility of the competent regulatory authority in the country of origin. However, the creation of national listings and the supervision thereof must remain the responsibility of the respective country of destination due to cultural and media sovereignty. To this end, a specific exception to the country of origin should be created within the AVMSD, obliging the addressees of the regulation to implement the listings determined in the respective Member State, consisting of media services of general interest, into their (national) catalogues.

Furthermore, in light of changing user habits, consideration should be given to extending findability regulations to individual content (e.g. with a focus on news/information) from services of general interest (e.g. on social media platforms/online platforms). In this way, a revised AVMSD could contribute to fair media markets and a wide range of information sources, including in the digital space.

The German media authorities encourage greater minimum harmonisation in the area of findability regulation under Article 7a of the AVMSD. In addition, they encourage an assessment of whether, and to what extent, extending findability obligations to individual content is appropriate in light of evolving information gathering practices.

9 Special case: Handling audio services

The scope of the AVMSD currently does not cover audio services. However, given the continuously changing media market, audio services should be considered when further developing regulations. In this context, it should be carefully examined which regulations are actually transferable to the audio market. **This market is particularly shaped by national and cultural characteristics – arguably even**

more so than the audiovisual media sector – which should remain protected from undue internal market regulation.

If an extension to audio services is to be considered, it must in any case be ensured that this extension only affects areas that are cross-border in nature. There is a need to harmonise the provisions with regard to local and regional radio services only if these are to be given the necessary visibility on multinational services.

An extension of the scope of application would be conceivable in two areas:

9.1 Inclusion of podcasts

The inclusion of cross-border podcasts would facilitate supervisory measures. However, the effects on the market must be analysed comprehensively. No additional obligations, such as quota regulations for national audio service providers, should be introduced.

9.2 Regulation of the findability of services of general interest

In order to ensure a fair media market for journalistic and editorial audio services, these services should be included in the scope of the Directive with regard to the findability rules in Article 7a of the AVMSD.

The German media authorities suggest extending the AVMSD to include podcasts and the applicability of the findability regulation under Article 7a to audio services.

10 Appendix: Illustration of the level playing field in advertising rules

Provision	Applies to linear service	Applies to on-demand service	Applies to VSPs
Article 5 – Transparency regarding the provider	✓	✓	✗
Article 6 – No incitement to violence or hate speech	✓	✓	(✓) No direct reference, but covered by Art. 28b(1)(b)
Article 6a - Impairment of development	✓	✓	(✓) Para. 1 via 28b
Article 7 - Accessibility	✓	✓	✗
Article 7a – Public value	✓	✓	✗
Article 9 – Requirements for audiovisual commercial communications	✓	✓	(✓) Para. 1 via 28b
Article 10 - Sponsoring	✓	✓	✗
Article 11 – Product placement	✓	✓	✗
Article 13 – European works on on-demand services (30% quota; investment obligation)	✗	✓	✗

Article 14 – Events of significant social importance	✓	✗	✗
Article 16 – European works in television programmes ('a major part')	✓	✗	✗
Article 17 – Sub-quota for independent producers	✓	✗	✗
Article 19 – Labelling in television advertising and teleshopping	✓	✗	✗
Article 20 – Frequency of advertising slots	✓	✗	✗
Article 21 – Prohibition of teleshopping for medicinal products	✓	✗	✗
Article 22 – Criteria for advertising alcoholic beverages	✓	(✓) Para. 9	✗
Article 23 – Broadcasting time allocated to advertising	✓	✗	✗
Article 24 – Teleshopping slots	✓	✗	✗
Article 25 – Special provisions for teleshoppers and self-promotion	✓	✗	✗
Article 28 – Right to counter-statement in television programmes	✓	✗	✗
Article 28b – Due diligence obligations for VSPs	✗	✗	✓

die medienanstalten

Gemeinsame Geschäftsstelle
Friedrichstraße 60
10117 Berlin

Tel. +49 (0)30 2064690-0

info@die-medienanstalten.de

www.die-medienanstalten.de

Shareholder

Landesanstalt für Kommunikation Baden-Württemberg (LFK)
Bayerische Landeszentrale für neue Medien (BLM)
Medienanstalt Berlin-Brandenburg (mabb)
Bremische Landesmedienanstalt (brema)
Medienanstalt Hamburg/Schleswig-Holstein (MA HSH)
Medienanstalt Hessen
Medienanstalt Mecklenburg-Vorpommern (MMV)
Niedersächsische Landesmedienanstalt (NLM)
Landesanstalt für Medien NRW
Medienanstalt Rheinland-Pfalz
Landesmedienanstalt Saarland (LMS)
Sächsische Landesmedienanstalt

Medienanstalt Sachsen-Anhalt
Thüringer Landesmedienanstalt (TLM)