

## **Internal draft**

### **of the Federal Ministry of Economic Affairs and Energy**

#### **Act amending the Telemedia Act and other acts**

##### **A. Problem and objective**

Directive (EU) 2018/1808 of 14 November 2018, which amended Directive 2010/13/EU (Audiovisual Media Services Directive – AVMSD), is to be implemented into German law by 19 September 2020. The AVMS Directive imposes content-related and business-related requirements for audiovisual media services and video sharing platform services, some of which are to be implemented in federal law. The business-related requirements of the AVMSD were provided for in the Telemedia Act (TMG), meaning that the relevant changes made by Directive (EU) 2018/1808 must also be implemented in the TMG (see Article 1).

The provisions on audiovisual commercial communication in the field of tobacco products, electronic cigarettes and refill containers for electronic cigarettes were also adapted in the revision of the AVMSD. Since the previous provisions of the AVMSD have been implemented in § 20 of the Tobacco Products Act (TabakerzG), this must be adapted to the new provisions (see Article 2).

The main substantive requirements of the AVMSD for broadcasting and audiovisual media were provided for in the Deutsche Welle Act (DWG), meaning that the changes made by Directive (EU) 2018/1808 must also be implemented in the DWG (see Article 3).

##### **B. Solution**

In order to implement Directive (EU) 2018/1808 into federal law and to adapt the arrangement on cooperation between Deutsche Welle and third parties, the TMG, the TabakerzG and the DWG must be amended.

##### **C. Alternatives**

None.

##### **D. Budgetary expenditure excluding compliance costs**

The additional material and staffing requirements, amounting to EUR 424.10 on a one-time basis and EUR 162.50 annually will be compensated for in Individual Plan 04 in terms of funds and jobs.

## **E. Compliance costs**

### **E.1 Compliance costs for citizens**

None.

### **E.2 Compliance costs for businesses**

On the whole, the companies affected by the regulations only incur minor compliance costs due to the 1:1 implementation of the business-related requirements of the AVMSD. Video sharing platform providers are likely to incur low costs for the initial provision and permanent provision of a procedure for reporting and remedying user complaints ('Notice & Action' procedure, §§ 10a and 10b TMG) and for the amendment of their general terms and conditions (§ 10c TMG). Additional compliance costs arise in particular from reviewing and resolving user complaints (removal of illegal content or blocking access to it). In addition, the video sharing platform providers are obliged to provide a function for identifying audiovisual commercial communication (§ 6 (3) TMG).

#### **Of which administrative costs due to obligations to provide information**

The companies concerned incur minor bureaucracy costs from information duties due to the 1:1 implementation of the business-related requirements of the AVMSD. For example, service providers under the TMG, i.e. providers of information society services, are obliged to provide information in the event of a request for information from the competent authority (§ 2b TMG). Audiovisual media service providers and video sharing platform providers have an obligation to provide information to the competent authority, particularly in connection with the creation of the respective provider list in accordance with § 2c (1) TMG. Audiovisual media service providers are also subject to an expanded legal notice obligation (§ 10b TMG). Video sharing platform providers also incur bureaucracy costs due to information requirements in connection with the procedure to remedy user complaints in accordance with § 10b TMG: For example, they are required

1. to save and store illegal content which has been decided to be removed for evidentiary purposes (§ 10b(2)(3) TMG),
2. to inform the complainant and the user for whom the contested content was saved of the decision (§ 10b(2)(4) TMG),
3. to inform the complainant and the user for whom the contested content has been saved of the possibility of participating in an impartial arbitration procedure (§ 10b (2)(5) TMG) and
4. document every complaint and the measures taken to remedy it (§ 10b (2) (7) TMG).

Finally, the video sharing platform providers incur bureaucracy costs due to the obligation to label audiovisual commercial communication (§ 10d TMG).

### **E.3 Administrative compliance costs**

The Federal Government incurs minor additional expense (one-off compliance costs of EUR 424.10 and annual compliance costs of 162.50 EUR) due to the new responsibility of the highest federal authority competent for culture and media for the lists of audiovisual media service providers and video sharing platform providers as per § 2c(3) TMG.

The additional material and staffing requirements will be compensated for in Individual Plan 04 in terms of funds and jobs.

## **F. Additional costs**

No significant impacts are expected on unit prices and price levels, in particular consumer price levels.

# **Draft Act of the Federal Ministry of Economic Affairs and Energy**

## **Act amending the Telemedia Act<sup>1)</sup> and other Acts<sup>2)</sup>**

**Dated ...**

The Federal Parliament has adopted the following Act:

### **Article 1**

#### **Amendment to the Telemedia Act**

The Telemedia Act of 26 February 2007 (Federal Law Gazette I p. 179), last amended by Article [...] of the Act of [...] (Federal Law Gazette I p. ...), is amended as follows:

### **Article 2**

#### **Amendment to the Tobacco Products Act**

The Tobacco Products Act of 4 April 2016 (Federal Law Gazette I p. 569), as amended by Article 1 of the Act of 29 April 2019 (Federal Law Gazette I p. 514), is amended as follows:

### **Article 3**

#### **Amendment to the Deutsche Welle Act**

The Deutsche Welle Act in the version published on 11 January 2005 (Federal Law Gazette I p. 90), last amended by Article 41 of the Act of 20 November 2019 (Federal Law Gazette I p. 1626), is amended as follows:

1. In the table of contents, the specification '7' for Section 1 Subsection 2 is replaced by the specification '7a'.
2. In § 5(1), first sentence, the word 'broadcasts' is replaced with 'offers'.

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<sup>1)</sup> This Act serves to implement Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) in view of changing market realities (OJ L 303, 28.11.2018, p. 69).

<sup>2)</sup> Article 3 (Amendment to the Deutsche Welle Act) notified in accordance with Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (OJ L 241, 17.9.2015, p. 1).

3. § 6a is amended as follows:

a) The following Paragraph 4 is inserted after Paragraph 3:

‘(4) Deutsche Welle must provide users with sufficient information about content that could impair the physical, mental or moral development of children or adolescents.’ To do so, it shall use a system that describes the potential harmfulness of the offers.’

b) The previous Paragraphs 4 to 9 become Paragraphs 5 to 10.

c) In the new Paragraph 10, the words ‘Paragraph 1 applies’ is replaced with the words ‘Paragraphs 1 and 4 apply’.

4. The following § 7a is inserted after § 7:

‘§ 7a

Accessibility

(1) Deutsche Welle shall continuously and gradually provide further barrier-free offers for people with disabilities within its technical and financial possibilities.

(2) Deutsche Welle shall report to the Broadcasting Council every three years, beginning on November 1, 2022, on the measures taken in the field of accessibility and shall forward the report to the highest federal authority in charge of culture and the media. The highest federal authority shall then send the report to the European Commission.’

5. § 8(1) is amended as follows:

a) In sentence 1, the words ‘making its broadcasts’ are replaced by the words ‘fulfilling their task and achieving its goals’.

b) Sentence 2 is to read as follows:

‘It arranges the cooperation with the domestic public service broadcasters in public service contracts.’

6. The following sentence is added to § 9(2):

‘In its range of on-demand audiovisual media services, as defined by § 2(1)(8) of the Telemedia Act, Deutsche Welle ensures that the proportion of European works corresponds to at least 30 percent and that such works are highlighted.’

7. § 10 is amended as follows:

a) The following Paragraphs 1 and 2 are added:

‘(1) Advertising is any statement that serves the direct or indirect promotion of the sale of goods and services, including immovable objects, rights and obligations, or the appearance of natural persons or legal entities who are engaged in a business activity, and is undertaken in exchange for a fee or similar compensation, or as self-promotion on the radio or telecommunications medium. In particular, advertising is radio advertising, sponsoring and product placement.

(2) Advertising may not violate human dignity or include or promote discrimination based on gender, race or ethnic origin, nationality, religion or belief, disability, age or sexual orientation.'

b) The previous Paragraphs 1 to 14 become Paragraphs 3 to 16.

c) The following sentence is added to the Paragraph 3:

'Advertising is therefore not allowed to

1. include direct calls to children or adolescents to purchase or rent goods or services which take advantage of their inexperience and gullibility,
2. directly call on children or adolescents to persuade their parents or third parties to purchase the advertised goods or services,
3. to take advantage of the special trust that children or adolescents have in parents, teachers and other persons, or
4. present children or adolescents in dangerous situations without justified reason.'

d) In the new Paragraph 6, the point in sentence 5 is replaced by a semicolon and the following sentence is added:

'The same applies to the assumption of product placements contained in broadcasts.'

e) In the new Paragraph 16, the words 'Paragraphs 1 to 13' will be replaced with the words 'Paragraphs 2 to 15':

8. § 11 is amended as follows:

a) In Paragraph 1, a comma and the words 'in the provision of telemedia' are inserted after the words 'broadcasting activities' and the words 'of telemedia or' are inserted after the word 'financing'.

b) In Paragraph 2, sentence 1, the words 'broadcasts' is replaced by the word 'offers'.

c) In Paragraph 3, the words 'a sponsored broadcast' are replaced by the words 'a sponsored offer'.

d) In Paragraph 4, the word 'broadcast' is replaced by the word 'offer'.

e) Paragraph 5 is deleted.

f) The previous Paragraph 6 becomes Paragraph 5 and the word 'broadcasts' is replaced by the word 'offers'.

g) The previous Paragraph 7 becomes Paragraph 6, and the specification '6' is replaced by '5'.

9. § 23 is amended as follows:

a) The following sentence is added to Paragraph 1:

‘Furthermore, Deutsche Welle has to make the following information easily, immediately and continuously accessible within the scope of its overall offer:

1. name and address,
2. information that enables quick and direct contact and efficient communication, including e-mail address,
3. the statement that Deutsche Welle is subject to the jurisdiction of the Federal Republic of Germany, and
4. information on the competent supervisory authority.’

b) Paragraph 2 is amended to read as follows:

‘(2) Deutsche Welle shall provide the highest federal authority in charge of culture and the media with the information it needs to fulfil its information and reporting duties in accordance with the following regulations:

1. Article 16(3) of Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (OJ L 95 of 15.4.2010, p. 1, L 263 of 6.10.2010, p. 15), amended by Directive (EU) 2018/1808 (OJ L 303 of 28.11.2018, p. 69), and
2. Article 6(2) in conjunction with Article 19 of the European Convention on Transfrontier Television of 5 May 1989 (Federal Law Gazette 1994 II p. 638), amended by the European Council Protocol of 9 September 1998 (Federal Law Gazette 2000 II p. 1090), which entered into force on March 1, 2002.’

## **Article 4**

### **Promulgation authorisation**

The Federal Ministry of Economics and Energy may publish the text of the Telemedia Act in the version valid as of ... [insert: date of entry into force as per Article 5 of this Act] in the Federal Law Gazette.

## **Article 5**

### **Entry into force**

This Act shall enter into force on the day following its promulgation.

## **Explanatory statement**

### **A. General part**

Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive – AVMSD) entered into effect on 18 December 2018, in light of changing market circumstances (OJ L 303 of 28 November 2018, p. 69). The Directive must be transposed into German law by 19 September 2020.

Directive (EU) 2018/1808 updates the provisions of Directive 2010/13/EU for audiovisual media services and creates new provisions for video sharing platform services. The background to the current changes is, among other things, the increasing importance of video sharing platform services, i.e. internet platforms on which uploaded broadcasts or user-generated videos are offered by users. In addition, the market for audiovisual media services has developed considerably as a result of the increasing convergence of television and internet services and the associated shift in reception from traditional radio content to online offerings. The changes are designed to take market developments into account and strike a balance between access to online content services, consumer protection and competitiveness (Recital 1 of the Directive).

The Directive changes requirements for telemedia, such as audiovisual media services and video sharing platform services. In accordance with the existing federal state agreements on media regulations, these requirements - to the extent that they are business-related - must be implemented in the Telemedia Act (TMG). This is because the TMG contains business-related provisions for telemedia, among other things for the implementation of the business-related provisions of Directive 2010/13/EU.

The provisions of the Directive on audiovisual commercial communication in the field of tobacco products, electronic cigarettes and refill containers for electronic cigarettes were also adapted as part of the revision of the AVMSD. In addition, the scope of application of the Directive is expanded to include video sharing platforms. The provision in § 20 Tobacco Products Act (TabakerzG) has to be adapted accordingly.

In addition, the Directive changes the content-related requirements for broadcasting and telemedia and must therefore also be implemented in the Deutsche Welle Act (DWG). The draft bill thus serves to implement the AVMSD amended by Directive (EU) 2018/1808 with regard to content-related provisions for television and audiovisual media services on demand, to the extent that there are provisions on them in the DWG.

In addition to the changes that become necessary due to the amendment to the AVMSD, the arrangement in § 8 DWG (cooperation with third parties) must also be adapted to the arrangement in the Interstate Broadcasting Treaty (in particular § 11(3) Interstate Broadcasting Treaty) in order to further heighten the binding nature the cooperative fulfilment of duties between public service broadcasters and Deutsche Welle for the purpose of increasing efficiency.

With regard to the VAT-related assessment of cooperations between public service broadcasters, the amendment also aims to avoid additional burdens in the financing of Deutsche Welle and increases legal certainty in this area.

Further provisions of the Directive, in particular with regard to content-related requirements for telemedia, will be implemented in the draft of the Interstate Treaty for the



Modernisation of Media Regulations in Germany, in particular in the draft of a new interstate media treaty of the federal states (MStV) of 5 December 2019. The legal framework for telemedia is based on existing agreements that the federal and state governments made in 2004 to further develop media regulations.

## **I. Objective of and need for the regulations**

The draft serves to implement the AVMSD amended by Directive (EU) 2018/1808 with regard to the business-related provisions for on-demand audiovisual media services and video sharing platform services. Among other things, the provisions on the definitions, country of domicile, country of origin and information requirements must be adapted. In addition, new provisions must be made for video sharing platform providers. Furthermore, the provision on cooperation with third parties as per § 8 DWG must be adapted to § 11(3) of the Interstate Broadcasting Treaty.

## **II. Main content of the draft**

In order to implement the AVMSD for video sharing platform providers, the draft provides for the establishment and maintenance of a procedure for reporting user complaints due to illegal content, as well as a procedure for reviewing and remedying such user complaints.

The competent authority can also request information from service providers. For example, the providers of audiovisual media services and video sharing platform providers can be requested to notify the competent authority of the facts necessary for determining the country of domicile. This is a practical requirement for the Directive's obligation for Member States to provide the Commission with lists of audiovisual media service providers and video sharing platform providers under their jurisdiction. Finally, the draft will adapt the provisions on tobacco advertising in the TabakerzG as well as the content-related requirements for radio and audiovisual media in the DWG to the new provisions in the AVMSD.

## **III. Alternatives**

None.

## **IV. Legislative powers**

With regard to Article 3 (amendment of the DWG), the exclusive legislative competence of the Federal Government results from Article 73(1)(1) of the Constitution (Grundgesetz – GG) – foreign affairs.

For Article 1 (amendment to the TMG), the legislative competence results from Article 74(1)(11) GG – business law. The legislative competence on the sanctioning of individual provisions follow from Article 74(1)(1) GG. For Article 2 (amendment to the TabakerzG), the legislative competence results from Article 74(1)(11) GG – business law – and Article 74(1)(20) GG – law on drink and tobacco. The Federal Government is entitled to legislate in this area of concurrent legislation if and to the extent that the establishment of equal living conditions throughout the federal territory or the preservation of legal or economic unity in the national interest makes a nationally uniform regulation necessary (Article 72(2) GG).

In addition to the business-related requirements of the AVMSD, the TMG also included Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on

certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (OJ L 178 of 17 July 2000, p. 1 – (Directive on electronic commerce), the requirements of which are also directed primarily at services that are offered in connection with business activities.

The amendment of the business-related requirements of the AVMSD by the Directive (EU) 2018/1808 necessitates an amendment of the TMG. These changes are therefore only possible on a nationwide level. They are necessary to preserve economic unity as defined by Article 72(2) GG.

The aim of § 20 TabakerzG is to contribute to the effective protection of the population, especially children and adolescents, from health damage that can be caused by tobacco consumption. This can only be achieved if there are uniform provisions for audiovisual commercial communication in the field of tobacco products, electronic cigarettes and refill containers for electronic cigarettes throughout Germany. The new arrangement of § 20 TabakerzG is intended to create uniform federal law and ensure a consistent practice on the part of the administrative and supervisory authorities for the federal territory as a whole so as to avoid unequal treatment of the economic operators in question and, hence, considerable disadvantages for the economy as a whole.

## **V. Compatibility with European Union law and international treaties**

The provisions are in harmony with European Union law and international treaties concluded by the Federal Republic of Germany. Article 1 (amendment to the Telemedia Act) and Article 2 (amendment to the Tobacco Products Act) of this Act implement the 1:1 (primarily business-related) requirements of the AVMSD. The provisions in Articles 1 and 2 for the implementation of these requirements are therefore not subject to notification according to Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 on an information procedure in the field of technical provisions and the provisions for the Information Society services. On the other hand, a notification obligation must be assumed for the provisions in Article 3 (amendment to the Deutsche Welle Act), since some of the changes are not limited to a 1:1 implementation. In particular, the provisions of the AVMSD on the liberalisation of advertising regulations, such as those in the field of product placement, have not been fully incorporated into the amendment act.

## **VI. Legal consequences**

### **1. Legal and administrative simplification**

The draft does not serve the purpose of legal and administrative simplification.

### **2. Sustainability aspects**

The draft is in harmony with the guiding principles of the Federal Government regarding sustainable development as defined by the German Sustainability Strategy. In particular, the provisions are sustainable on the long term from the perspectives of economic performance and social responsibility. One aim of the draft is to counter punishable content on videosharing platforms (§§ 10a and 10b TMG), such as incitement to violence, portrayal of violence or the distribution of child pornography, which fulfil the criteria of § 10a Paragraph 3 TMG (§§ 10a and 10b TMG), in order to ensure peaceful coexistence to promote in a free, open and democratic society. This objective in harmony with the guiding principles of the Federal Government regarding sustainable development as defined by the German Sustainability Strategy. This is because sustainability aims at social cohesion.

The draft is also in harmony with the guiding principles of the Federal Government regarding sustainable development as defined by the German Sustainability Strategy in light of its provision on barrier-free accessibility (§ 7a DWG). In its 'Principles of Sustainable Development' (under 5.), the German Sustainability Strategy describes that to strengthen social cohesion, everyone should be able to fully participate in social, cultural and political life without discrimination. The definition of Deutsche Welle's goal of increasingly including barrier-free offers for people with disabilities beyond its existing commitment within the scope of its technical and financial possibilities acts on this guiding principle.

The new rules on the prohibition of audiovisual commercial communication pursuant to § 20 TabakerzG is also in line with the central government's guiding principles on sustainable development in the sense of the National Sustainability Strategy. The rules should reduce avoidable risks to human health. The indicator 'leading a longer and healthier life' is thereby taken into account. In particular, it aims at the goal of lowering the smoking rate among young people. The goal of reducing premature mortality is also pursued by making an important contribution to reducing overall smoking rates. The provision thus serves to improve the state of health of the population. Indirectly, the provision also helps to increase economic performance by reducing the smoking rate by eliminating the indirect costs of smoking due to mortality losses, incapacity to work, losses due to cigarette breaks, early retirement and loss of production due to rehabilitation.

### **3. Budgetary expenditure excluding compliance costs**

The Federal Government incurs minor additional expense (one-off compliance costs of EUR 424.10 and annual compliance costs of 162.50 EUR) due to the new responsibility of the highest federal authority in charge of culture and media as per § 2c(3) TMG.

The additional material and staffing requirements, amounting to EUR 424.10 on a one-time basis and EUR 162.50 annually will be compensated for in Individual Plan 04 in terms of funds and jobs.

### **4. Compliance costs**

#### **a) Compliance costs for citizens**

This Act has no effects on the compliance costs for private citizens.

#### **b) Compliance costs for businesses**

On the whole, the companies affected by the regulations only incur minor compliance costs due to the 1:1 implementation of the business-related requirements of the AVMSD. Video sharing platform providers are likely to incur low costs for the initial provision and permanent provision of a procedure for reporting and remedying user complaints ('Notice & Action' procedure, §§ 10a and 10b TMG) and for the amendment of their general terms and conditions (§ 10c TMG). Additional compliance costs arise from reviewing and remedying user complaints (i.e. removing or blocking access to content) and potentially through the subsequent reinstatement of the unlawful content or circumvention of the blocking of access to it. In addition, the video sharing platform providers are obliged to provide a function for identifying audiovisual commercial communication (§ 6 (3) TMG).

- Provision of a function for the identification of audiovisual commercial communication by video sharing platform providers as per § 6(3) TMG: [Request to LMA / associations: Please specify the number of video sharing platform providers]

- Establishment and maintaining of a notification procedure by video sharing platform providers as per § 10a(1) and (2) TMG: [Request to LMA / associations: Please specify the number of video sharing platform providers]
- Establishment and maintaining of a remedial procedure by the video sharing platform provider as per § 10b TMG: [Request to LMA / associations: Please specify the number of video sharing platform providers and the respective number of users]
  - Review and remediation of the complaint (§ 10b(2)(1) in conjunction with Number 2 TMG)
  - Securing the illegal content and storing it for evidentiary purposes (§ 10b(2)(3) TMG)
  - Notification of the complainant and the user for whom the objectionable content has been saved, user affected by the complaint (including justification and citation of the legal basis) (§ 10b(2)(4) and (5) TMG)
  - Review of the decision upon request and transmission of the (justified) result to the complainant and the user for whom the contested content was saved (§ 10b(2)(6) and (7)),
  - Documentation of every complaint, the remedial measures taken and their review (§ 10b(2)(8) TMG).
- Adaptation of the terms and conditions by video sharing platform providers according to § 10c TMG: [Request to LMA / associations: Please specify the number of video sharing platform providers]

No additional compliance costs are to be expected as a result of the amendment to the TabakerzG. § 20 TabakerzG already contains a comprehensively formulated prohibition of audiovisual commercial communication for tobacco products, electronic cigarettes and refill containers or in favour of companies whose main activity is the manufacture or sale of tobacco products. Regardless of this, advertising for tobacco products, electronic cigarettes and refill containers on the Internet has been generally prohibited in accordance with § 19(3) TabakerzG (Federal Court of Justice 05.10.2017 - I ZR 117/16 – tobacco advertising on the internet).

#### Bureaucratic costs arising from obligations to provide information:

The companies concerned incur minor bureaucracy costs from information duties due to the 1:1 implementation of the business-related requirements of the AVMSD. For example, service providers under the TMG, i.e. providers of information society services, are obliged to provide information in the event of a request for information from the competent authority (§ 2b TMG). Audiovisual media service providers and video sharing platform providers have an obligation to provide information to the competent authority, specifically in connection with the creation of such a provider list in accordance with § 2c (1) TMG. For instance, they must inform the competent authority upon request of all the facts necessary to determine whether Germany is or is deemed to be their country of domicile in accordance with § 2a(2) to (5) TMG. At the same time, the competent authority can require audiovisual media service providers and video sharing platform providers to inform them immediately if any of these facts change. Audiovisual media service providers are also subject to an expanded legal notice obligation (§ 10b TMG). In addition, the video sharing platform providers incur bureaucracy costs through information obligations in connection with the remedial procedure pursuant to § 10b TMG: For instance, they are obliged to secure and save the content for evidentiary purposes (§ 10b(2)(3) TMG), to

inform the complainant and the user for whom the contested content was saved of both the decision (§ 10b(2)(4) TMG) and of the possibility of participating in an impartial arbitration procedure (§ 10b(2)(5) TMG), and to document every complaint and the measures taken to remedy it (§ 10b(2)(7) TMG). Finally, the video sharing platform providers incur bureaucracy costs due to the obligation to label audiovisual commercial communication (§ 10d TMG).

- Disclosure by service providers at the request of the authority as per § 2b TMG: [Request to LMA / associations: Please specify the number of service providers pursuant to the TMG (provider of information society services) including host providers, access and caching providers, audiovisual media service providers, video sharing platform providers, etc.), in particular the obligation to provide information according to § 2b TMG for audiovisual media service providers and video sharing platform providers with regard to the determination of German jurisdiction in accordance with § 2a(2) to (5) TMG incl. updating obligation: [Request to the LMA / associations: Please specify the number of audiovisual media service providers]
- Expanded legal notice obligation of audiovisual media service providers as per § 5(1)(8) TMG: [Request to the LMA / associations: Please specify the number of audiovisual media service providers]
- Information duties of the video sharing platform providers in connection with the remedial procedure as per § 10b TMG [Request to LMA / associations: Please specify the number of video sharing platform providers and the respective numbers of users]:
  - Securing and storing the content for evidentiary purposes (§ 10b(2)(3) TMG)
  - Informing the complainant and the user for whom the contested content was saved about the decision with justification and, if applicable, the legal basis (§ 10b(2)(4) TMG)
  - Informing of the possibility of participating in an impartial arbitration procedure (§ 10b(2)(5) TMG)
  - Documentation of the complaint and the action taken (§ 10b(2)(7) TMG).
- Identification obligation for audiovisual commercial communication of the video sharing platform providers as per § 10d TMG: [Request to LMA / associations: Please specify the number of video sharing platform providers and the respective number of users]

**c) Administrative compliance costs**

States:

- Notification of the European Commission by the competent authority about disagreements on jurisdiction according as per § 2a(6) TMG: [Request to the States: Please specify the resulting compliance costs]
- Requests for information by the competent authority to the service providers as per § 2b TMG: [Request to the States: Please specify the resulting compliance costs]
- Creation and updating of the list of audiovisual media service providers and the list of video sharing platform providers as per § 2c(1) TMG (if applicable, provision of a questionnaire with the criteria for jurisdiction – see justification for number 5):

[Request to the States: Please specify the resulting compliance costs itemised by creation and updating as well as audiovisual media service providers and video sharing platform providers]

- Transfer of the lists and updates thereof by the competent authority to the highest federal authority in charge of culture and media as per § 2c(3) TMG: [Request to the States: Please specify the resulting compliance costs itemised by transferring and updating as well as audiovisual media service providers and video sharing platform providers]
- Monitoring duties and, if applicable, imposition of fines pursuant to § 16(2) TMG [Request to the States: Please specify the resulting compliance costs by type of violation]:
  - Violation of the disclosure obligation pursuant to § 2b TMG
  - Violation of the obligation to provide information pursuant to § 5(1)(8) TMG
  - Violation of the obligation to maintain a notification and remedial procedure pursuant to §§ 10a(1) and 10b TMG
  - Violation of the GTC usage obligation pursuant to §10c TMG

#### Federal Government:

The provision in § 2c TMG creates a one-off compliance fee of EUR 424.10 for the highest federal authority in charge of culture and media. This consists of a total of one hour of mid-level staff work (hourly rate of EUR 31.70) for the letter from the States with a request for the lists to be sent (approx. 20 minutes), the compilation of the responses and the forwarding (approx. 20 minutes) and filing of the documents (approx. 20 minutes) and approx. six hours of high-level staff work (hourly rate EUR 65.40; 6 x EUR 65.40 = EUR 392.40) for checking the table for plausibility and transfer to the European Commission.

On top of this is an additional annual compliance cost of EUR 162.50. This consists of one hour of mid-level staff work (hourly rate EUR 31.70) for inquiring about any updates (approx. 20 minutes), compiling and forwarding the deliveries of the States (approx. 20 minutes) and the filing (approx. 20 minutes) and an average of about two hours of high-level staff work (hourly rate EUR 65.40; 2 x EUR 65.40 = EUR 130.80).

The additional material and staffing requirements will be compensated for in Individual Plan 04 in terms of funds and jobs.

#### **5. Additional costs**

No noticeable effects are to be expected on individual prices or price levels, in particular with regard to the consumer price level.

#### **6. Other legal consequences**

The proposed changes are neutral with regard to gender equality policy. No demographic effects are expected to occur.

#### **VII. Time limit; assessment**

A limitation of the provisions that serve to implement the requirements of the AVMSD does not seem opportune. In accordance with Article 33(3) AVMSD, the EU-law

provisions on which much of this Act is based will be reviewed by the European Commission on or before 19 December 2026.

## **B. Specific part**

### **Re Article 1 (Amendment to the Telemedia Act)**

### **Re Article 2 (Amendment to the Tobacco Products Act)**

### **Re Article 3 (Amendment to the Deutsche Welle Act)**

#### **Re Number 1**

Due to the insertion of § 7a DWG, the table of contents has been editorially adapted.

#### **Re Number 2**

In § 5(1)(1) DWG, the term 'broadcasts' is replaced by the broader term 'offers', which encompasses both radio and telemedia.

#### **Re Number 3**

##### **Re (a)**

Paragraph 4, newly added to § 6a DWG, implements the stipulations of Article 6a(3) AVMSD and stipulates that Deutsche Welle must provide users with sufficient information about content of the offer that could potentially harm the development of children or adolescents. The description of these offers' potential for harm must be made in a systematic form. According to Recital 19 of the AVMSD, this can be done by such means as a system of content descriptors, an audible warning, optical marking, or other means that describes the type of content.

##### **Re (b)**

Subsequent editorial change due to the insertion of Paragraph 4.

##### **Re (c)**

The new addition to Paragraph 4 also requires a change to Paragraph 10. In the original version, Paragraph 10, in accordance with § 5(6) of the Interstate Treaty on the Protection of Minors from Harmful Media (Jugendmedienschutz-Staatsvertrag), contained an exception to the distribution restrictions of § 6a(1) DWG for news programmes, broadcasts on political events on the radio and comparable offers in telemedia. The reason for the exception is that, in certain news situations, the population's need for information outweighs the protection of minors. However, it is necessary that the offers are not presented in a lurid form; instead, there must be a legitimate general interest in the specific presentation or reporting being made. This regulation objective also applies with regard to the newly added information obligation in Paragraph 4, so that Paragraph 10 also refers to Paragraph 4. The exception to the basic information obligation in Paragraph 4 is otherwise in harmony with the AVMSD. Recital 61 of the AVMSD expressly states that freedom of expression and freedom of information must be respected for every measure of the AVMSD. Recital 62 once again underscores the indispensability of the right to access political news programmes in order to fully and adequately safeguard the fundamental right to information and viewer interests in the Union.

#### **Re Number 4**

§ 7a DWG is added. Paragraph 1 of the provision is used to implement the requirements from Article 7(1) AVMSD to improve barrier-free access to Deutsche Welle's offers. The provision is based on § 3(2) of the Interstate Broadcasting Treaty and takes into account the concerns of Deutsche Welle to the extent that barrier-free access must always be continuously improved within the scope of the technical and financial possibilities. The creation of an action plan to be submitted to the highest federal authority in charge of culture and the media to improve barrier-free access by Deutsche Welle would be a suitable means of achieving a measurable success in this area without interfering with Deutsche Welle's decision on prioritising the measures. Associations representing the interests of people with disabilities should be involved in drawing up such an action plan.

Paragraph 2 implements the requirements of Article 7(2) AVMSD and stipulates the duty of Deutsche Welle to regularly report to the Broadcasting Council, as its competent supervisory body, on the progress of the measures taken pursuant to Paragraph 1. The report is then to be forwarded to the highest federal authority in charge of culture and the media and to be transferred by the latter to the European Commission.

#### **Re Number 5**

The amendment to § 8 DWG serves to arrange the cooperation between Deutsche Welle and the public service broadcasters in a more binding manner. First, it is made clear that this cooperation is not only being conducted to create broadcasts, but for the general fulfilment of Deutsche Welle's tasks and for the achievement of its goals. This general expansion of the cooperation mandate strengthens Deutsche Welle's non-commercial cooperation, in particular with the ARD state broadcasters and the ZDF, for example in the fields of production, programme exchange and programme acquisition, as well as in technical and infrastructural fields, such as information technology and the use of networks, as well in the field of general administration. It is also added that cooperation with domestic public service broadcasters is conducted on the basis of public service contracts. The more binding arrangement of the cooperation is intended to promote synergy effects and thus also prevent a financial burden on the federal budget from which Deutsche Welle is financed, as regards VAT status. The provision corresponds to § 11(3) of the Interstate Broadcasting Treaty (Rundfunkstaatsvertrag). Apart from that, the deletion of the original sentence 2 of the provision is of editorial nature and is due to the fact that the regulatory content of this sentence is already sufficiently covered by sentence 1.

#### **Re Number 6**

The change in § 9(2) DWG serves the 1:1 implementation of Article 13 AVMSD. Article 13(1) AVMSD requires the introduction of a quota system under which audiovisual on-demand service providers must ensure that their catalogues contain at least 30 percent European works.

#### **Re Number 7**

##### **Re (a)**

The definition of 'advertising' implements the definition of 'audiovisual commercial communication' as per Article 1(1)(h) AVMSD. The regulation has a clarifying function and now expressly defines advertising as being independent of the distribution channel. The term therefore encompasses both radio advertising and commercial statements in telemedia. The content includes classic spot advertising as well as sponsoring and product placement.



§ 10(2) DWG corresponds to § 7(1)(1) and (2) of the Interstate Broadcasting Treaty and implements the prohibition of violations of human dignity and the prohibition of discrimination in audiovisual commercial communication from Article 9 (1)(c)(i) and (ii) AVMSD.

**Re (b)**

Editorial change due to the addition of the new Paragraphs 1 and 2.

**Re (c)**

§ 10(3)(4) DWG implements Article 9(1)(g) AVMSD, thereby substantiating the general rule already contained in § 10(3)(2) and (3) DWG that advertising may not cause physical or mental harm to minors nor take advantage of their inexperience.

**Re (d)**

The provision serves to facilitate cooperation between Deutsche Welle, the ARD state broadcasters and the ZDF. The aim of the regulation is to ensure that product placements are permitted on an exceptional basis if they are contained in a manner permitted under broadcasting law in programme sections which Deutsche Welle has acquired from the ARD state broadcasting corporations or the ZDF as part of its programme cooperation. There is still no general permission for product placement in the Deutsche Welle Act. The scope allowed for this by Article 11 AVMSD is not being used.

**Re (e)**

Editorial consequential amendment due to the renumbering of the paragraphs referred to as well as additional reference to the newly added Paragraph 2, which also contains a provision on advertising regulation.

**Re Number 8**

The changes in § 11 DWG implement the requirements of Article 10 AVMSD. The changes aim at a technology-neutral extension of the sponsorship regulation taking into account telemedia. For this purpose, the definition of 'sponsoring' is expanded in § 11 Paragraph 1 DWG, and in the other provisions of the standard the terms 'broadcast' are replaced by 'offer'. Paragraph 5 of the provision is repealed without replacement so as not to duplicate the provisions of the Tobacco Products Act and the Medicinal Products Advertising Act.

**Re Number 9**

§ 23(1)(2) DWG serves to implement Article 5 AVMSD and makes it easier for users of Deutsche Welle's offers to contact Deutsche Welle, in particular in the form of electronic communication. § 23(2) DWG contains editorial changes. Firstly, the text 'the Federal Government Commissioner for Culture and the Media' is replaced by 'the highest federal authority in charge of culture and the media' in order to have a gender-neutral text. Secondly, the reference in Paragraph 2 is adapted to the current version of the Directive.

**Re Article 4 (Authorisation to promulgate)**

The numerous amendments introduced since 2007 call for a recodification of the TMG. The provision contains the authorisation required for this.

**Re Article 5 (Entry into force)**

Article 5 governs the entry into force of the Act. In light of the deadline for implementation of the Directive, the Act should enter into force on the day after its promulgation.