

VATM e. V. • Frankenwerft 35 • 50667 Cologne

By email:

GROW-E3@ec.europa.eu

Roberto.VIOLA@ec.europa.eu

European Commission

DG GROW

DG Connect

N105 5/25

1049 Brussels

Contact

Email

Tel

Date

Jeffrey Al-Ali

ja@vatm.de

0221 37677-60

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**SUBJECT: Communication Commission – TRIS/(2025) 1793
Notification No. 2025/0360/DE – GERMANY – Second State Treaty
Amending the State Treaty on Gaming 2021 (2nd GlüÄndStV 2021)**

Here: Position of Verband der Anbieter auf dem Digital und Telekommunikationsmarkt (VATM) e.V.

Dear Sirs and Madams,

As the Association of Providers in the Digital and Telecommunications Market, we would like to comment on Notification 2025/0360/DE. Some of our member companies are internet access providers and are therefore particularly affected by the planned amendment to the Second State Treaty on Gaming 2021 (2.GlüÄndStV 2021). As an association, we therefore feel obliged to respond to the proposals of the Federal Republic of Germany. The proposed regulations directly affect the obligations and responsibilities of our members. As a representative of the interests of the telecommunications and digital industry, it is therefore our goal to highlight the possible practical and legal consequences of these changes and to contribute constructively to the further decision-making process.

I. Background

The Federal Republic of Germany intends to significantly expand the legal basis for "IP blocking" measures with the planned amendment to the 2nd GlüÄndStV 2021. To this end, Section 9 (1) No. 3 Sentence 5 2nd GlüÄndStV 2021 is to be amended so that the previous criterion of responsibility is waived. This would then allow internet access providers to be covered by the measures, even if they are not responsible for the content of the website.

In addition, the amendment would also mean that would have to remove individual illegal content in future (see Article 1(3)(a) 2. GlüÄndStV 2021-E). In our view, these amendments raise enormous concerns under EU law and regulatory law, as they contradict the principles of the internal market, the Digital Services Act (DSA) and the case law of the European Court of Justice (ECJ).

II. Contradiction with case law and disregard for the principle of subsidiarity

Furthermore, the European Commission had already expressed concerns in 2011 in the context of the notification of a similar draft regulation. These were formulated in the opinion of 18 July 2011 – C [2011] 5319 – and concerned the compatibility of such blocking regulations with the principles of free movement of goods and services and freedom of establishment. These concerns have since been confirmed by the case law of the ECJ.

On 19 March 2025, only the Federal Administrative Court also ruled (see BVerwG, ruling of 19 March 2025, 8 C 3.24) that it was unlawful to issue IP blocking orders against internet service providers who were not responsible. Now, with the amendment to Section 9 (1) No. 3 Sentence 5 2. GlüÄndStV 2021, the intention is to retroactively legalise the practice objected to by the Federal Administrative Court.

In its ruling of 13 October 2022 (Ref. I ZR 111/21), the Federal Court of Justice explained the requirements for network blocking and clearly reaffirmed the principle of subsidiarity in this regard. Network blocking by the access provider should only be ordered as a last resort, after all reasonable measures against the operator and the host provider have been exhausted. The planned amendment to the State Treaty effectively abolishes this review and thus clearly contradicting the highest court rulings and the principle of proportionality. Meanwhile, the current practice of the Joint Gaming Authority of the German States (GGL) shows considerable potential for abuse. We believe that their DNS blocking measures appear to be driven primarily by fiscal interests. The planned weakening of the principle of subsidiarity would further reinforce this tendency and significantly increase the risk of disproportionate intervention.

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III. Concerns under EU law

1. Violation of fundamental freedoms

The planned regulation disproportionately restricts the free movement of services and the freedom of establishment (Articles 56 and 49 TFEU). EU law does not allow internet access providers who, under the DSA, bear no responsibility for transmitted content to be held directly liable. On the contrary, the ECJ has repeatedly ruled that network blocks are only permissible as a last resort and in strict compliance with fundamental rights (UPS Telekabel Wien, C-314, MX Fadden, C-484/14). This is not guaranteed. The German federal states are violating the obligation under the DSA to coordinate the desired blocks with the DSC in Germany and other Member States. It has therefore already been proven that the desired blocking measures are not being implemented as a last resort, as the fundamental procedural requirements are not being complied with. Instead, Germany is implementing the blocks on its own and, contrary to this, claims that measures at international level would not be successful. Furthermore, the removal of the principle of subsidiarity in the draft amendment also contradicts Article 8(3) of Directive 2001/29/EC, according to which blocking orders are only permissible after other legal remedies have been exhausted. The proposed amendment would circumvent this established principle of review under EU law.

2. Limited effectiveness of IP blocks

Since IP blocks are technically easy to circumvent, e.g. by using VPNs, they are only effective to a limited extent in removing content from the internet. There are enough known cases from practice that prove that attempts to block pornographic websites such as xhamster.com, for example, have been ineffective. In light of the proportionality test, the required suitability and necessity of the "IP blocking" measure can therefore only be denied.

3. Violation of the DSA

The behaviour of the Federal Republic of Germany appears to be inconsistent and incoherent in several respects and is violating the DSA. In particular, the planned amendment to Section 9 (1) No. 3 Sentence 5 2nd GlÜÄndStV contradicts the coordination and procedural mechanisms of the DSA (Regulation (EU) 2022/2065). In the past, the German Gambling Supervisory Authority (GGL) has repeatedly taken action against host providers and platforms.

This was done without following the procedure provided for in the DSA and without consulting the responsible Digital Service Coordinators (DSC) of other Member States. Furthermore, no effective legal basis under EU law were specified, and measures (e.g. against Google) were taken outside of a formal administrative procedure. Therefore, the planned amendment would enshrine the GGL's anti-EU approach in law. This constitutes a violation of Art. 9 ff. DSA and the procedural rights of the companies concerned, which are guaranteed under EU law.

IV. Impact on the internal market

The planned amendments would significantly impede the free movement of services in the internal market. Providers from other Member States would be unlawfully prevented from accessing the German market. In addition, the amendment would mean that internet access providers and host providers could be obliged to take measures that conflict with their obligations under EU law under the DSA. Furthermore, the implementation of national measures without sufficient European coordination would jeopardise the coherence of the digital single market and undermine the EU principle of harmonisation.

V. Risk of overblocking

Furthermore, it should be noted critically that the current wording of the amendment creates considerable uncertainty regarding the scope of the blocking claim. This wording carries the specific risk of so-called *overblocking*.

Although the Federal Network Agency enforces strict proportionality and freedom of information requirements in other areas of regulation, such as copyright-related blocking, the planned amendment to the State Treaty does not include such review mechanisms. Under the proposed amendment, even if only part of a website contains illegal content, the entire website could be blocked. This would allow the entire website to be blocked, even if only a small part contains illegal content. Such a practice would violate fundamental rights and raise liability issues.

This leads to a problematic legal situation for internet service providers: if they comply with a corresponding official order, they run the risk of being held civilly liable by both the website operators concerned and their end customers. At the same time, there is also a risk that the implementation of such blocking measures may conflict with the principles of net neutrality.

VI. Summary

In summary, we believe that there are still significant concerns under EU law regarding the planned amendment to the 2nd GlüÄndStV 2021. The intended extension of the blocking measures in Section 9(1)(3) sentence 5 2nd GlüÄndStV 2021 appears disproportionate and incompatible with the DSA. This violates fundamental principles of the European internal market and leads to inadmissible market foreclosure.

The VATM is calling on the European Commission to carefully examine the compatibility of the planned changes, particularly in light of the Federal Court of Justice ruling (Ref.: I ZR 111/21) and the principle of subsidiarity. These principles ensure that network blocks may only be used as a last resort and in compliance with fundamental rights. In view of these concerns, the VATM is urging the European Commission to critically examine the amendments submitted by the Federal Republic of Germany for their compatibility with EU law. Furthermore, we call on the Commission to urge the Federal Republic of Germany to ensure that future IP blocking measures are carried out exclusively in compliance with the procedures provided for in the DSA. Finally, the Commission should point out to the Federal Republic of Germany that national intervention in the existing communications infrastructure is only permissible in close coordination with the DSCs of other Member States. This is the only way to ensure the coherence of the Digital Single Market Regulation under EU law.



Jeffrey Al-Ali
Head of Legal & Regulatory Affairs

VATM represents Germany's leading telecommunications companies, uniting around 180 network operators, service providers, and suppliers — many of them active at the regional level. The association also speaks for key investors driving the rollout of fibre networks across Germany. VATM members serve 80 per cent of all fixed-line customers and nearly all mobile customers outside Deutsche Telekom. Since the liberalisation of the market in 1998, competitors in both fixed and mobile segments have invested around €127 billion. Today, they are the principal investors in the fibre-to-the-home (FttH) deployment in Germany, providing 86 per cent of all gigabit-capable connections currently in use.

Association of Providers in the Digital and Telecommunications Market (VATM) e.V.
Frankenwerft 35 • 50667 Cologne • Tel.: 0221 3767725 • Email: vatm@vatm.de

Presidium: Valentina Daiber (President), Wolfram Rinner (Vice-President), Timm Degenhardt, Markus Hendrich, Michael Jungwirth, Michael Martin, Carina Panek, Karsten Rudloff, Rickmann v. Platen • Managing Directors: Dr Frederic Ufer

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