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Draft

Federal Act establishing civil legal and civil procedural measures to combat hate on the Internet (Combating Hate on the Internet Act [Hass-im-Netz-Bekämpfungs-Gesetz – HiNBG])

The National Council (Nationalrat, the lower house of the Austrian Parliament) has decided the following:

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Article 1
Amendment to the Austrian Civil Code

The Austrian Civil Code [Allgemeinen bürgerlichen Gesetzbuch – ABGB], JGS No 946/1811, last amended by the Federal Act published in Federal Law Gazette I No 16/2020, is amended as follows:

1. The following § 17a, including its heading, is inserted after § 17:

‘Exercise of personal rights

§ 17a. (1) Personal rights are non-transferable.

(2) Consent to the impairment of a personal right is only permissible if it is not contrary to accepted principles of morality. Unless otherwise stipulated by law and unless permissible commercial exploitation of personal rights is in the foreground, consent may only be given by the decision-making bearer of personal rights themselves.

(3) The protection of personal rights does not end upon death. Unless otherwise stipulated by law, consent to the impairment of a personal right of the deceased in order to preserve their memory can only be granted by close relatives.’

2. § 20, including its heading, reads as follows:

‘Right to injunction and removal

§ 20. (1) Anyone whose personal rights have been violated or has reason to fear such a violation can bring an action for an injunction and for the removal of the illegal situation. Under the conditions of § 17a(3), close relatives can also bring an action.

(2) If an employee’s reputation or privacy is violated in a medium in connection with an employee’s activities and this behaviour is likely to not insignificantly impair the employer’s ability to deploy the employee or seriously damage the employer’s reputation, regardless of the employee’s right, they have their own right to injunction and removal. The assertion of the employer’s right is not linked to the employee’s consent. There is no obligation for the employer to assert a judicial claim with regard to the violation of personal rights affecting the employee, in particular due to the duty of care under labour law.

(3) If the person who has committed a violation of personal rights or who is threatened with such a violation uses the services of an intermediary, action can also be brought against them for injunction and removal. If the intermediary meets the requirements for exclusion from liability in accordance with §§ 13–17 of the ECG, action can only be brought against them after being issued a warning.’

3. The following § 20a, including its heading, is inserted after § 20:

‘Weighing of interests

§ 20a. (1) A violation of personal rights can be justified if its nature was suitable and proportionate to the pursuit of an overriding legitimate interest.

(2) When disseminating information about the bearer of the personal right, a balance must be achieved between the privacy protected by Article 8 of the ECHR and the freedom of expression protected by Article 10 of the ECHR.’

4. The following sentence is be added to § 1328a(2):

‘This does not apply, however, if it concerns violations of privacy caused by content that is published or distributed by a user via an electronic communication network without the intervention of a party responsible under media law.’

5. The following paragraph 15 is added to § 1503:

‘(15) § 17a, § 20, § 20a and § 1328a(2), as amended by the Federal Act published in Federal Law Gazette I No #/2020, shall enter into force on 1 January 2021. § 20(2) and § 1328a(2) apply to cases in which the infringing act was made after 31 December 2020.’

Article 2
Amendment to the Court Jurisdiction Act

The Court Jurisdiction Act, Imperial Law Gazette No 111/1895, last amended by the Federal Act published in Federal Law Gazette I No 61/2019, is amended as follows:

1. § 49(2)(6) is amended to read as follows:

‘6. Disputes under § 549 of the ZPO;’

2. The current content of § 59 now contains the paragraph number ‘(1)’; the following paragraph 2 is appended:

‘(2) In the case of actions for injunction pursuant to § 549 of the ZPO, the amount in dispute shall be EUR 5 000.’

3. The following Fourth Part, including its heading, is inserted after § 122:

‘Fourth Part

Entry into force, final and transitional provisions

§ 123. §§ 49 and 59, as amended by the Federal Act published in Federal Law Gazette No XX/2020, shall enter into force on 1 January 2021 and are to be applied in this version to actions that are brought after 31 December 2020.’

Article 3 Amendment to the Code of Civil Procedure

The Code of Civil Procedure [Zivilprozessordnung – ZPO], Imperial Law Gazette No 113/1895, last amended by the Federal Act published in Federal Law Gazette I No 109/2018, is amended as follows:

1. At the end of subparagraph 4 of § 502(5), the full stop shall be replaced with a semicolon and the following subparagraph 5 added:

‘5. for disputes under § 549.’

2. The following Section Two, including its headings, is inserted after § 548:

‘Section Two

Mandate procedure

Proceedings for violations of human dignity on an electronic communication network

§ 549. (1) In legal disputes relating to actions in which rights to injunction due to a violation of human dignity on an electronic communication network are exclusively asserted, the court shall, at the request of the plaintiff, issue an injunction without prior oral proceedings and without hearing the defendant if the alleged infringement can be conclusively derived from the information in the action. Evidence from the electronic communication network that shows the infringing content or makes it visible must be included in the action.

(2) The injunction order must contain the title ‘injunction order’ and state that the defendant will refrain from further dissemination of the infringing content and pay the costs determined by the court or, if they contest the asserted right, must raise objections against the order within a fortnight. It is to be instructed that the injunction order can only be overridden by raising objections and that in the case of raising objections, the ordinary proceedings regarding the action will take place.

(3) The injunction order is to be served on the defendant with the action. Objections to the injunction order can only be raised within a time limit of fourteen days from service of process. It is sufficient if the document shows the intent to raise objections. The decision on the apportionment of costs contained in the injunction order can be challenged with an appeal. §§ 556(5), 557(2)–(6) and 558 shall apply *mutatis mutandis*.

(4) At the request of the plaintiff, the court may grant the injunction order provisional enforceability if the continued effect of the alleged infringing act is unreasonable or associated with considerable disadvantages for the plaintiff or is incompatible with the legally protected values of a democratic constitutional state. The provisional enforceability arises as soon as the decision on the awarding thereof has been served and continues to apply until the final decision of the proceedings. Appeals against this decision are not permitted.

(5) The Federal Minister for Justice is authorised to issue a form for the action and the application for an injunction order and to keep it available on the Internet on the website of the Ministry of Justice (www.justiz.gv.at).’

3. The section name ‘Section Two’ prior to § 555 is removed.

4. The following Seventh Part, including its heading, is inserted after § 618:

‘Seventh Part

Entry into force, final and transitional provisions

§ 619. §§ 502, 549 and the amendments to the section names, as amended by the Federal Act published in Federal Law Gazette I No XX/2020, shall enter into force on 1 January 2021. §§ 502 and 549 shall be applied in this version to actions that are brought after 31 December 2020. § 502(5)(5), as amended by the Federal Act of XX/2020, shall cease to be valid on 31 December 2030 and shall no longer be applied to proceedings in which the action is brought after 31 December 2030.’

Article 4
Amendment to the Enforcement Code

The Enforcement Code, Imperial Law Gazette No 791896, last amended by the Federal Act published in Federal Law Gazette I No 16/2020, is amended as follows:

In § 1(2), the words ‘mandate and’ and the words ‘as well as in official liability proceedings’ are removed, and the phrase ‘, as well as injunction orders under § 549 of the ZPO against which objections were not raised in due time or which were granted provisional enforceability’ is inserted at the end before the semicolon.

Article 5
Amendment to the Lawyers’ Fees Act

The Lawyers’ Fees Act [Rechtsanwaltstarifgesetz – RATG], Federal Law Gazette No 189/1969, last amended by the Federal Act published in Federal Law Gazette I No 19/2020, is amended as follows:

1. In § 10(6), the phrase ‘§ 20 and’ is inserted after the word ‘under’.

2. In § 26a, the following paragraph 3 is be appended:

‘(3) § 10, as amended by the Federal Act published in Federal Law Gazette I No #/20##, shall enter into force on 1 January 2021.’

Article 6
Amendment to the e-Commerce Act

The e-Commerce Act [E-Commerce-Gesetz – ECG], Federal Law Gazette I No 152/2001, last amended by the Federal Act published in Federal Law Gazette I No 34/2015, is amended as follows:

1. The following paragraph 4a is inserted after § 18(4):

‘(4a) The right in accordance with § 18(4) shall be asserted in proceedings, except in cases of dispute, before the court of first instance appointed to exercise jurisdiction in commercial matters.’

2. The following paragraph 3 is added to § 28:

‘(3) § 18(4a), as amended by the Federal Act published in Federal Law Gazette I No #/20##, shall enter into force on 1 January 2021 and shall not apply to disputes that were pending before this Federal Act enters into force.’

Article 7
Amendment to the Court Fees Act

The Court Fees Act, Federal Law Gazette No 501/1984, last amended by the Federal Act published in Federal Law Gazette I No ##/20##, is amended as follows:

1. In § 16(1)(1), the following point e is inserted after point d:

‘e) Mandate proceedings under § 549 of the ZPO;’

2. In fee item 12(c), subparagraph 1 reads:

|  |  |  |  |
| --- | --- | --- | --- |
| Fee item | Object | Standard for the assessment of fees | Amount of fees |
|  | ‘1. Proceedings for a right to information in accordance with § 18(4a) of the ECG, |  | EUR 82’ |

3. In fee item 13(a), the words ‘with the exception of applications under § 71(1), second sentence of the StPO’ are inserted after the words ‘criminal proceedings’.

4. In Article VI, the following subparagraph 71 is added after subparagraph 71:

‘71. § 16(1), fee item 12(c)(1) and fee item 13(a), as amended by the Federal Act published in Federal Law Gazette I No #/20##, shall enter into force on 1 January 2021. § 31a shall be applied to the fees newly created with this Federal Act with the proviso that the starting point for the redefinition is the final index number published for March 2017 of the consumer price index published by Statistics Austria.’