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151. Federal Act: Communication Platforms Act and amendment to the Austrian Communications Authority Act (Lower House: legislative session XXVII, government bill 463, committee report 509, p. 69; Upper House: 10457, committee report 10486, p. 917)

151. Federal Act adopting a Communication Platforms Act and amending the Austrian Communications Authority Act

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

Article 1

Federal Act on measures to protect users on communication platforms (Communication Platforms Act [Kommunikationsplattformen-Gesetz – KoPl-G])

Section 1

General Provisions and Definitions

Object and scope of application

§ 1. (1) This Federal Act serves to promote the responsible and transparent handling of user reports on the following content on communication platforms and the immediate handling of such reports.

(2) This Federal Act applies to domestic and foreign service providers that offer communication platforms (§ 2(4)) for profit, unless:

1. the average number of users in Austria authorised to access the communication platform by means of registration was less than 100 000 people in the previous calendar year; and

2. the turnover achieved with the operation of the communication platform in Austria was less than EUR 500 000 in the previous calendar year.

(3) Service providers of communication platforms:

1. that are only used to broker or sell goods or services and to broker real estate or job advertisements; or

2. whose main purpose is the provision of non-profit:

a) online encyclopaedias; or

b) education and learning platforms for imparting knowledge; or

3. that are offered by media companies (§ 1(1)(6) of the Media Act [MedienG], Federal Law Gazette No 314/1981) in direct relation to their journalistically crafted content;

are exempt from the obligations under this Federal Act in any case.

(4) Service providers of video sharing platforms (§ 2(12)) shall be exempt from the obligations of this Federal Act with regard to the broadcasts (§ 2(9)) and user-generated videos (§ 2(7)) they provide.

(5) At the request of a service provider, the supervisory authority must determine whether they fall under the scope of this Federal Act.

(6) The supervisory authority shall keep and duly publish a register of the service providers falling under this Federal Act. The register shall be updated annually and shall de declaratory. If, in the performance of its duties, the supervisory authority finds that the details in the register no longer reflect the facts, it shall make the appropriate corrections.

Definitions

§ 2. For the purposes of this Federal Act the following meanings shall apply:

1. Commercial premises: a permanent place of business through which a service provider’s activities are carried out in whole or in part;

2. Information society service: a service usually provided electronically, at a distance and for a fee upon individual request by the recipient (§ 1(1)(2) of the Notification Act 1999 – NotifG 1999, Federal Law Gazette I No 183/1999), in particular the online sale of goods and services, online information offers, online advertising, electronic search engines and data retrieval possibilities, as well as services that transmit information via an electronic network that provides access to such or store a user’s information (§ 3(1) of the E-Commerce Act – ECG, Federal Law Gazette I No 152/2001);

3. Service provider: the natural or legal person who offers a communication platform;

4. Communication platform: an information society service, the main purpose or an essential function of which is to enable the exchange of messages or presentations with intellectual content in written, aural or visual form between users and a larger group of other users by way of mass dissemination;

5. Parent company: a company that controls one or more subsidiaries within the meaning of § 244 of the Austrian Corporate Code [Unternehmensgesetzbuch – UGB], Imperial Federal Law Gazette p. 219/1897;

6. User: any person who uses a communication platform, regardless of whether the person is registered on the communication platform;

7. User-generated video: a set of moving images, with or without sound, that is an individual item regardless of its length, is created by a user and is uploaded to a video sharing platform by this or another user;

8. Illegal content: Content that objectively constitutes one of the following offences and is not justified: Coercion (§ 105 StGB, Federal Law Gazette No 60/1974), dangerous threat (§ 107 StGB), persistent persecution (§ 107a StGB), ongoing harassment by means of telecommunications (§ 107c StGB), accusation of a judicial criminal act that has already been dismissed (§ 113 StGB), insult (§ 115 StGB), unauthorised recordings (§ 120a StGB), blackmail (§ 144 StGB), disparagement of religious teachings (§ 188 StGB), pornographic representations of minors (§ 207a StGB), initiation of sexual contact with minors (§ 208a StGB), terrorists organisation (§ 278b StGB), instructions for committing a terrorist offence (§ 278f StGB), encouragement to commit terrorist offences and approval of terrorist offences (§ 282a StGB), incitement to hatred (§ 283 StGB), § 3d, § 3g or § 3h of the Prohibition Act, State Law Gazette No 13/1945;

9. Broadcast: a single, self-contained part of an audiovisual media service that consists of a set of moving images, with or without sound and regardless of its length, constituting an individual item within a schedule or a catalogue established by a media service provider; in particular, this term covers feature-length films, video clips, sports events, situation comedies, documentaries, news, art and culture broadcasts, children’s broadcasts and original productions;

10. Subsidiary: a company controlled by a parent company within the meaning of § 244 of the Commercial Code [UGB], Imperial Federal Law Gazette p. 219/1897, including any subsidiary controlled indirectly by a parent company;

11. Group of companies: a parent company of a service provider, all of its subsidiaries and all other companies economically and legally affiliated with them;

12. Video sharing platform: a service as per Articles 56 and 57 of the Treaty on the Functioning of the European Union that has the principle purpose, a separable part or an essential function involving the provision of broadcasts (point 9) or user-generated videos (point 7) or both, for which the platform provider bears no editorial responsibility, to the public over electronic communication networks within the meaning of Article 2(1) of Directive (EU) 2018/1972 of the European Parliament and of the Council establishing the European Electronic Communications Code (OJ L 321/36, 17.12.2018) in order to inform, entertain or educate, and whose organisation – including automated means or algorithms, in particular by indication, marking and arrangement – is determined by the platform provider.

Section 2

Requirements for communication platforms

Reporting and review procedures

§ 3. (1) Service providers must set up an effective and transparent procedure for dealing with and processing reports on allegedly illegal content available on the communication platform.

(2) Such a process must in any case be designed in such a way that, by means of functionalities on the communication platform that are easy to find, constantly available and easy to use, users:

1. are able to report content, including the information required for an assessment, to the service provider;

2. receive an explanation of how their report will be dealt with and what the result of the procedure in question was; and

3. are informed immediately of the main reasons for the decision on dealing with the relevant report including the possible time of removal or blocking and of the option to apply for a review procedure (paragraph 4) and to participate in an complaints procedure (§ 7). This information shall also be sent to all users for whom the content in question was stored on the communication platform.

(3) In addition, service providers shall, by configuring the internal organisation of the reporting procedure:

1. ensure that reported content:

a) insofar as its illegality is already evident to a legal layperson without further investigation, is either removed or access to it is blocked with immediate effect but no later than 24 hours after receipt of the report;

b) if its illegality becomes apparent only after a detailed examination, it is removed or access to it is blocked with immediate effect after completion of this examination but no later than within 7 days of receipt of the report;

2. in the event of blocking or deletion back up the content concerned, the time of its creation and the data required to identify the user for whom the content in question was stored on the communication platform, for evidence purposes, including for purposes of criminal prosecution, and to store it for a maximum of 10 weeks; this time limit may be exceeded in individual cases in the case of an express request from a law enforcement authority if the preservation of evidence would otherwise be thwarted; the data shall be erased if the grounds for processing no longer apply.

(4) Service providers shall also ensure that an effective and transparent procedure is in place to review their decision to disable or delete reported content (paragraph 3(1)). A review must take place if

1. in the event that content is not blocked or deleted, the user who submitted the report submits an application (paragraph 3(2)) to review this decision within 2 weeks of receiving the decision;

2. in the event that content is blocked or deleted, the user for whom the content was stored on the communication platform submits an application (paragraph 3(2)) to review this decision within 2 weeks of receiving the decision.

The service provider shall expeditiously inform the users named in subparagraphs 1 and 2 of the result of the review. The review procedure shall be completed within 2 weeks of the application.

(5) Personal data about the person making the report may only be disclosed to this person.

(6) The service provider is not obliged to carry out a reporting or review procedure if, due to the type or frequency of the reports received, it can assume with a probability bordering on certainty that the reports were either automated or otherwise initiated in an improper manner.

(7) The supervisory authority may issue an ordinance adopting additional provisions on the reporting procedure, in particular on the minimum standards for the reporting form used for this.

Reporting obligation

§ 4. (1) Service providers are obliged to prepare a report on the handling of reports of alleged illegal content on an annual basis (on a semi-annual basis for communication platforms with over one million registered users). They shall submit this report to the supervisory authority no later than 1 month after the end of the period covered in the report and make it permanently available and easily accessible on their own website at the same time as it is sent.

(2) The report shall contain the following points:

1. General information on the efforts a service provider undertakes to prevent illegal content on the platform;

2. Descriptions of the design and the user-friendliness of the reporting procedure (§ 3(1) to (3)) as well as the decision-making criteria for the deletion or disabling of illegal content, including the steps taken to determine whether there is illegal content or whether contractual provisions between the service provider and the user have been violated;

3. Descriptions of the number of reports of alleged illegal content received during the reporting period;

4. Overview of the number of reports of alleged illegal content that led to the deletion or blocking of the content complained about during the reporting period, including information on which step of the examination (point 2) led to the deletion or blocking, as well as a summary description of the type of content;

5. Overview of the quantity, content and result of the review procedures (§ 3(4));

6. Description of the organisation, personnel and technical equipment, technical competence of the staff responsible for processing reports and review procedures, as well as the education, training and supervision of the persons responsible for processing reports and reviews;

7. Overview of the periods between the receipt of the report by the service provider, the start of the review and deletion or disabling of illegal content, broken down into the periods ‘within 24 hours’, ‘within 72 hours’, ‘within 7 days’ and ‘at a later point in time’;

8. Overview of the number and type of cases in which the service provider has refrained from carrying out a reporting and review procedure (§ 3(7)).

(3) The supervisory authority shall issue more detailed provisions on the structure of the reports and the scope of the reporting obligation by ordinance in order to ensure the informative value and comparability of the reports.

Responsible representative and authorised recipient

§ 5. (1) Service providers must appoint a person who meets the requirements as per § 9(4) of the Administrative Penal Act [Verwaltungsstrafgesetz – VStG] 1991, Federal Law Gazette No 52/1991. This person must:

1. guarantee compliance with the provisions of this Federal Act;

2. have the authority to issue orders required for compliance with the provisions of this Federal Act;

3. have the knowledge of the German language required for cooperation with authorities and courts; and

4. have access to the resources needed to perform the required duties.

(2) The contact details of the responsible representative must be easily and directly accessible at all times. Responsible representatives shall ensure that the supervisory authority can reach them at all times.

(3) The responsible representative shall register for delivery by a delivery service within the meaning of § 28b and 35 of the Delivery Act [Zustellgesetz – ZustG], Federal Law Gazette No 200/1982, and indicate when registering that there are no periods within which delivery is to be excluded.

(4) The service provider shall appoint a natural person or legal entity as the representative authorised to accept service from the authorities and the courts. Paragraph 1(3), the first sentence of paragraph 2, and paragraph 3 shall apply.

(5) The supervisory authority must be informed promptly of the identity of the responsible representative and the authorised recipient.

Enforcement

§ 6. (1) If a service provider does not meet its obligation to appoint a responsible representative or authorised recipient on its own initiative, the authority shall request in writing that it appoint one within a period of 7 days. If a service provider does not have a registered office, branch office or any other permanent establishment in Austria, and it turns out that a legally effective delivery of this request abroad is not feasible or cannot be carried out within a reasonable time period, the request shall be published on the supervisory authority’s website. The summons is deemed to have been served to the service provider at the time of publication. The publication must also contain a note indicating that further rulings by the authority are deemed to have been delivered if they are filed with the authority and made available for collection.

(2) If the service provider does not comply with the supervisory authority’s request directed at the appointment of a responsible representative or authorised recipient, the supervisory authority shall impose a fine on it (§ 10(1)). If the service provider does not have a registered office, branch office or any other permanent establishment in Austria and has not appointed a responsible representative or authorised recipient to whom delivery is possible in a legally effective manner, notices or other orders from the supervisory authority must be filed with the supervisory authority. The service provider shall be informed of the filing on the supervisory authority’s website. It must also indicate the start and duration of the collection period as well as the effect of the filing (paragraph 3).

(3) The filed document shall be kept available for collection for at least 2 weeks. This period begins on the day the notice is published on the website. Filed documents are deemed to have been served on the first day of this period.

(4) The enforceability of decisions in the case of service providers domiciled in Austria is determined by the provisions of the Administrative Enforcement Act [Verwaltungsvollstreckungsgesetz – VVG] 1991, Federal Law Gazette No 53/1991. If the service provider does not have a registered office, branch office or any other permanent establishment in Austria, notices from the supervisory authority on the imposition of fines according to this Federal Act can also be enforced in such a way that the known debtors of the service provider and the companies affiliated with it (paragraph 5) are prohibited from, by means of a notice, paying the service provider or to a company affiliated with it. Companies that have a regular business relationship with the service provider or with this affiliated company (paragraph 5) for the purposes of marketing or selling commercial communication in Austria are considered debtors within the meaning of the preceding sentence. A monetary claim that is subject to an interdiction of payment in this way shall be transferred to the supervisory authority with the effect that the debtor is exempt from payment to the service provider or the relevant affiliated company. The sums received in this way are to be recorded in a separate account. If the total of the amounts received exceeds the amount of the enforceable fine, the remaining amount must be transferred to the service provider or the affiliated company.

(5) The following are considered to be affiliated with a service provider within the meaning of paragraph 4:

1. its parent company;

2. any subsidiaries;

3. any other company from the service provider’s group of companies; and

4. any company that conducts regular business activities in Austria, that is, has a stable and effective link with the domestic economy and is in such a business relationship with a service provider or a company affiliated with it within the meaning of points 1 to 3, in particular by marketing or selling commercial communication for publication on the communication platform.

Complaints procedure

§ 7. (1) In the event of complaints about the inadequacy of the reporting procedure according to § 3(2)(1) to (3), or the inadequacy of the review procedure according to § 3(4), users can contact the complaints office. The prerequisite for calling the complaints office is that the user has previously contacted the service provider and either has not received an answer or the two parties in the dispute have not been able to reach a settlement for the dispute. The complaints office shall bring about an amicable solution by developing a proposed solution or inform the user and the service provider of their opinion on the case brought up.

(2) After hearing the supervisory authority, the complaints office shall lay down guidelines for the implementation of this procedure, whereby in particular deadlines for the termination of the procedure adapted to the respective situation shall be established. The guidelines shall be based on the principles of § 6(2) and (6)(1), § 7(1), § 8(1)(1) and (2) and § 8(2) of the Alternative Dispute Settlement Act [Alternative Streitbeilegung-Gesetz – AStG], Federal Law Gazette I No 105/2015, and are to be published in a suitable form.

(3) The complaints office shall prepare an annual report on the pending cases, which shall be published as part of the activity report pursuant to § 19(2) of the KommAustria Act [KommAustria-Gesetz – KOG], Federal Law Gazette I No 32/2001. In addition, the complaints office shall provide the supervisory authority with a monthly summary of the number, type and content of the concluded complaints and of the new complaints.

Section 3

Oversight and penalties

Supervisory authority, complaints office, financial contributions

§ 8. (1) The supervisory authority within the meaning of this Federal Act is the Austrian communications authority established in accordance with § 1 KOG.

(2) KommAustria’s administrative support in matters relating to this Federal Act and the function of the complaints office shall be incumbent on RTR-GmbH under the responsibility of the managing director for the media department.

(2a) With the support of the complaints office, as part of the activity report to be prepared for 2022 (§ 19(2) KOG), the supervisory authority shall evaluate the effectiveness of the measures and rules of conduct provided for in this Federal Act and the corresponding developments over the 2 preceding calendar years.

(3) Financial contributions from the service providers covered by this Federal Act and funds from the federal budget in a ratio of 2:1 shall serve to finance the expenses incurred in fulfilling the tasks of KommAustria and RTR-GmbH regulated in this Federal Act. For this purpose, a subsidy of EUR 80 000 from the income from the fees according to § 3(1) of the Broadcasting Fee Act [Rundfunkgebührengesetz – RGG], Federal Law Gazette I No 159/1999, in addition to the contribution to be transferred annually on 30 January according to § 35(1) KOG. The third and last sentences of § 35(1) KOG shall apply.

(4) The amount of the financial contributions as per the first sentence of paragraph 3 is calculated by all service providers contributing to the financing of the part of the estimated expenses to be covered by financial contributions in proportion to their domestic sales from commercial communications. The provisions of § 35(4) to (14) of the KOG apply to the procedure for determining and prescribing the financial contributions. If the service provider does not have a registered office, branch office or any other permanent establishment in Austria, the procedure for enforcing the payment of the financial contribution shall be determined in accordance with § 6(4).

Supervisory procedure

§ 9. (1) If the complaints office receives more than five well-founded complaints (§ 7) within 1 month regarding the inadequacy of the measures taken by a service provider, the supervisory authority shall examine whether these measures were appropriate to meet the requirements set out in § 3.

(2) If, based on the frequency and nature of the complaints, the results of previous supervisory procedures, a notification from the complaints office or its own preliminary assessment, the supervisory authority comes to the conclusion that the obligations set out in this federal law are being violated, the supervisory authority shall initiate a supervisory procedure and:

1. except in the cases of subparagraph 2, instruct the service provider to restore the lawful state of affairs and take suitable precautions to avoid future legal violations; the service provider shall comply with this notification within the 4-week period set by the supervisory authority and report to the supervisory authority via the responsible representative;

2. in cases in which a service provider has already been notified more than once in accordance with point 1 or, if the service provider does not comply with a decision in accordance with point 1, impose a fine in proceedings pursuant to § 10.

(3) When assessing appropriateness and when ordering suitable precautions, the supervisory authority shall take into account that the measures required of the service provider under this Federal Act must not result in a general prior check of the content. The imposed precautions and the associated required measures must be suitable and proportionate for achieving the intended goals – such as, in particular, increasing the efficiency of the protective mechanisms for users, protecting the general public from illegal content and safeguarding the interests of the persons in question – taking into account the service providers’ legal interests.

Monetary penalties

§ 10. (1) Any person who is competent, either individually or as part of a body, to represent a service provider in dealings with third parties or who is authorised to take decisions on behalf of the service provider in a management position, and who fails – despite a request from the supervisory authority (§ 6(1)) – to meet the obligation to appoint a responsible representative as per § 5(1) or to appoint an authorised recipient as per § 5(4) shall be subject to a fine of up to EUR 1 million. The supervisory authority shall not impose a penalty if a fine has already been imposed on the legal entity within the meaning of paragraph 2 for the same infringement, unless special circumstances prevent waiving the penalty.

(2) In accordance with § 9(2), the supervisory authority shall impose a fine of up to EUR 10 million on a service provider, depending on the severity of the violation, if:

1. the service provider:

a) contrary to § 3(2)(1) to (3), does not provide a reporting procedure or provides such a system, but it does not have all the functionalities pursuant to § 3(2)(1) to (3);

b) contrary to § 3(3)(1), does not take any measures to assess illegal content and block or remove it based on this;

c) contrary to § 3(3)(2), does not ensure that content affected by deletion or blocking is backed up and stored for evidence purposes;

d) contrary to § 3(4), does not provide a review procedure or provides such a system, but it is not designed to be effective and transparent pursuant to § 3(4);

e) provides information to other persons contrary to § 3(5);

f) contrary to § 4(1) and (2), fails to meet its reporting obligation in a complete and timely manner;

g) contrary to § 5(1), fails to appoint a responsible representative; or

h) contrary to § 5(4), fails to appoint an authorised recipient;

and

2.

a) the responsible representative; or

b) where a responsible representative is not appointed contrary to § 5(1), a person who is competent, either individually or as part of a body, to represent a service provider in dealings with third parties or who is authorised to take decisions on behalf of the service provider in a management position;

fails, in the exercise of their command and control authority, to ensure compliance with the obligations indicated in point 1.

(3) When assessing the amount of the fine as per paragraph 1 or 2, the following circumstances must be taken into account in particular:

1. the financial power of the service provider, as can be seen, for example, from its total turnover;

2. the number of registered users of the platform;

3. previous violations;

4. the extent and duration of the negligence on the part of the service provider in complying with the obligation stipulated;

5. the contribution to establishing the truth; and

6. the extent of the precautions taken to prevent a violation or the instruction of employees to behave in accordance with the law.

(4) Any responsible representative who:

1. contrary to § 5(2), first sentence, fails to ensure that their contact details are always easily and directly accessible; or

2. contrary to § 5(2), second sentence, fails to ensure that the supervisory authority can reach them; or

3. does not comply with the obligation regulated in § 5(3);

is committing an administrative offence and shall be punished by the supervisory authority with a fine of up to EUR 10 000.

(5) Any authorised recipient who:

1. contrary to § 5(2), first sentence, in conjunction with paragraph 4, fails to ensure that their contact details are always easily and directly accessible; or

2. fails to meet the obligation set out in § 5(3) in conjunction with the second sentence of paragraph 4;

is committing an administrative offence and shall be punished by the supervisory authority with a fine of up to EUR 10 000.

(6) Any service provider that fails to meet the following obligations despite notification:

1. provision of information to determine its status as a service provider under this Federal Act; or

2. provision of information and access to inspect records and accounts (§ 8(4) in conjunction with § 35(13) KOG);

is committing an administrative offence and shall be punished by the supervisory authority with a fine of up to EUR 58 000.

Complaints

§ 11. Complaints against decisions on fines and against decisions pursuant to § 9(2)(1) have no suspensory effect contrary to § 13(1) of the Administrative Court Procedure Act [Verwaltungsgerichtsverfahrensgesetz – VwGVG], Federal Law Gazette I No 33/2013. The Federal Administrative Court may grant suspensive effect in the relevant proceedings on application if, after consideration of all the interests involved, the execution of the decision would result in serious and irreparable damage for the complainant.

Section 4

Final provisions

References and terms

§ 12. (1) References to other federal acts made in this Federal Act shall be to their latest versions. Unless otherwise specified in this Federal Act, the provisions of the Audiovisual Media Services Act [Audiovisuelle Mediendienste-Gesetz – AMD-G], Federal Law Gazette I No 84/2001, and the ECG are unaffected.

(2) All gender-specific terms used within this Federal Act shall apply equally to male and female persons.

(3) The fines imposed under this Federal Act shall accrue to the federal government. Legal notices are executory titles. In total, RTR-GmbH shall transfer half of the annual sum of the imposed fines as a financial contribution to the performance of the duties of the supervisory authority and complaints office as provided for in this Federal Act.

Enforcement

§ 13. The Federal Chancellor is entrusted with the implementation of this Federal Act.

Entry into Force and Transitional Provisions

§ 14. This Federal Act shall enter into force on 1 January 2021. The service providers covered by its provisions at the time this Federal Act comes into force must have implemented the obligations provided for in this Federal Act by 31 March 2021. Service providers added at a later point in time must have implemented them within 3 months of starting their activities.

Article 2

Amendment to the Austrian Communications Authority Act

The Federal Act establishing an Austrian Communications Authority [KOG], Federal Law Gazette I No 32/2001, last amended by the Federal Act in Federal Law Gazette I No 24/2020, is hereby amended as follows:

1. The full stop at the end of § 2(1)(14) is now replaced with a semicolon and the following point 15 is added:

‘15. Performance of the duties under the Communication Platforms Act [KoPl-G], Federal Law Gazette I No 151/2020.’

2. At the end of line 9 of § 2(3), the full stop shall be replaced with a comma, and the following line 10 added:

‘10. assurance of effective and transparent measures by communication platform service providers.’

3. The full stop at the end of § 13(4)(1)(m) is now replaced with a semicolon and the following point n is added:

‘n) duties of the supervisory authority as per KoPl-G.’

4. The full stop at the end of § 17(6a)(3) is now replaced with a semicolon and the following point 4 is added:

‘4. complaints office as per KoPl-G.’

5. The following point d is added to § 19(3)(5a):

‘d) complaints office as per KoPl-G;’.

6. The following paragraph 25 is added to § 44:

‘(25) § 2(1) and (3), § 13(4), § 17(6a) and § 19(3) as amended by the Federal Act in Federal Law Gazette I No 151/2020 shall enter into force on 1 January 2021.’

Van der Bellen

Kurz