

**Act improving law enforcement on social networks  
(Network Enforcement Act – NetzDG)**

**Of 1 September 2017**

The Bundestag has adopted the following Act:

**Article 1**

**Act improving law enforcement on social networks  
(Network Enforcement Act)**

**§ 1 Scope**

(1) <sup>1</sup>This Act shall apply to telemedia service providers which, for profit-making purposes, operate internet platforms, which are intended for users to share any content with other users or to make such content available to the public (social networks). <sup>2</sup>Platforms offering journalistic or editorial content, the responsibility for which lies with the service provider itself, shall not constitute social networks within the meaning of this Act. <sup>3</sup>The same applies to platforms intended for individual communication or for the dissemination of specific content.

(2) The provider of a social network shall be exempt from the obligations stipulated in Sections 2 and 3 if the social network has fewer than two million registered users in the Federal Republic of Germany.

(3) Unlawful content shall be content within the meaning of paragraph 1 which fulfils the elements of an offence described in Sections 86, 86a, 89a, 91, 100a, 111, 126, 129 bis 129b, 130, 131, 140, 166, 184b in conjunction with 184d, 185 bis 187, 201a, 241 or 269 of the Criminal Code and are not justified.

**§ 2 Reporting obligation**

(1) <sup>1</sup>Social network providers that receive more than 100 complaints about unlawful content in a calendar year shall be obliged to produce half-yearly German-language reports on the handling of complaints regarding unlawful content on their platforms, covering the points enumerated in paragraph 2, and shall be obliged to publish these reports in the Federal Gazette and on their own website no later than one month after the half-year concerned has ended. <sup>2</sup>The report published on their own website shall be easily recognisable, directly accessible and permanently available.

(2) The report shall at least cover the following points:

1. general observations outlining the efforts undertaken by the provider of the social network to eliminate criminally punishable activity on the platform,
2. a description of the mechanisms for submitting complaints relating to unlawful content and the criteria applied in deciding whether to delete or block unlawful content,
3. the number of incoming complaints relating to unlawful content in the reporting period, broken down according to whether the complaints were submitted by complaints bodies or by users, and according to the reason for the complaint,

4. organisation, personnel resources, specialist and linguistic expertise in the units responsible for processing complaints, as well as training and support of the persons responsible for processing complaints,
5. membership of industry associations with an indication as to whether these industry associations have a complaints office,
6. the number of complaints for which an external body was consulted in preparation for making the decision,
7. the number of complaints in the reporting period that resulted in the deletion or blocking of the content at issue, broken down according to whether the complaints were submitted by complaints bodies or by users, according to the reason for the complaint, whether there was a case of Section 3, paragraph 2, subparagraph 3, point a), whether in this case a forwarding to the user took place and whether a delegation to a regulated self-regulation body recognised in accordance with Section 3, paragraph 2, subparagraph 3, point b) took place,
8. the time between complaints being received by the social network and the unlawful content being deleted or blocked, broken down according to whether the complaints were submitted by complaints bodies or by users, according to the reason for the complaint, and according to the periods “within 24 hours”/“within 48 hours”/“within a week”/“at a later point”,
9. measures to inform the person who submitted the complaint, and the user for whom the content at issue was saved, about the decision on the complaint.

### **§ 3 Handling of complaints regarding unlawful content**

(1) <sup>1</sup>The provider of a social network shall maintain an effective and transparent procedure for handling complaints relating to unlawful content in accordance with paragraphs 2 and 3. <sup>2</sup>The provider shall supply users with an easily recognisable, directly accessible and permanently available procedure for submitting complaints relating to unlawful content.

(2) The procedure shall ensure that the provider of the social network

1. takes immediate note of the complaint and checks whether the content notified in the complaint is unlawful and subject to removal or whether access to the content must be blocked,
2. removes or blocks access to content that is manifestly unlawful within 24 hours of receiving the complaint; this shall not apply if the social network has reached agreement with the competent law enforcement authority on a longer period for deleting or blocking any manifestly unlawful content,
3. removes or blocks access to all unlawful content immediately, as a rule within seven days of receiving the complaint, the seven-day time limit may be exceeded if:
  - (a) the decision on the unlawfulness of the content depends on the falseness of a factual claim or, in an easily recognisable manner, on other factual circumstances; in such cases, the social network may give the user the opportunity to comment on the complaint before taking a decision;
  - (b) the social network shall, within seven days of receipt of the complaint, delegate the decision on unlawfulness to a regulated self-regulation body recognised in accordance with paragraphs 6 to 8 and subscribe to its decision;
4. in the case of removal, retains the content as evidence and stores it for this purpose within the scope of directives 2000/31/EC and 2010/13/EU for a period of 10 weeks,

5. immediately notifies the complainant and the user about any decision, while also providing them with reasons for its decision.

(3) The procedure shall ensure that each complaint, along with the measure taken to redress the situation, is documented within the scope of directives 2000/31/EC and 2010/13/EU.

(4) <sup>1</sup>The handling of complaints shall be monitored via monthly checks by the social network's management. <sup>2</sup>Any organisational deficiencies in dealing with incoming complaints shall be rectified immediately. <sup>3</sup>The social network's management shall offer the persons tasked with the processing of complaints training courses and support programmes delivered in the German language on a regular basis, this being no less than once every six months.

(5) The procedures in accordance with paragraph 1 may be monitored by an agency tasked to do so by the administrative authority named in Section 4.

(6) A body shall be recognised as a regulated self-regulation body within the meaning of this Act if:

1. the independence and competence of its auditors are guaranteed,
2. appropriate equipment and expeditious examination within seven days are ensured,
3. there are rules of procedure that govern the scope and conduct of the examination and the obligations of affiliated social networks to refer and provide for the possibility of reviewing decisions;
4. a complaints body is established; and
5. the body is supported by several providers of social networks or institutions that ensure proper equipment. <sup>2</sup>It must also be open to the accession of other providers, in particular social networks.

(7) The decision on the recognition of a regulated self-regulation body shall be taken by the administrative authority referred to in § 4.

(8) The recognition may be revoked, in whole or in part, or be accompanied by ancillary provisions if the conditions for recognition are subsequently removed.

(9) The administrative authority in accordance with Section 4 may also provide that a provider of social networks shall not be able to delegate decisions under paragraph 2(3)(b) for a limited period of time if it is to be expected that the fulfilment of the obligations under paragraph 2(3) by this provider is not guaranteed by a connection to regulated self-regulation.

#### **§ 4 Provisions on regulatory fines**

(1) A regulatory offence shall be deemed to have been committed by any person who, intentionally or negligently,

1. in contravention of Section 2(1) sentence 1, fails to produce a report, to produce it correctly, to produce it completely or to produce it in due time, or fails to publish it, to publish it correctly, to publish it completely, to publish it in the prescribed form or to publish it in due time,
2. in contravention of Section 3(1) sentence 1, fails to provide, to provide correctly or to provide completely, a procedure mentioned therein for dealing with complaints submitted by complaints bodies or by users whose place of residence or seat is located in the Federal Republic of Germany,

3. in contravention of Section 3(1) sentence 2, fails to supply a procedure mentioned therein or to supply it correctly,
4. in contravention of Section 3(4) sentence 1, fails to monitor the handling of complaints or to monitor this correctly,
5. in contravention of Section 3(4) sentence 2, fails to rectify an organisational deficiency or to rectify it in due time,
6. in contravention of Section 3(4) sentence 3, fails to offer training or support or fails to offer this in due time,
7. in contravention of Section 5, fails to name a person authorised to receive service in the Federal Republic of Germany, or fails to name a person in the Federal Republic of Germany authorised to receive information requests, or
8. in contravention of Section 5, paragraph 2, second sentence, as the person authorised to receive information requests, does not react to requests for information.

(2) <sup>1</sup>In the cases under paragraph 1 points 7 and 8, the regulatory offence may be sanctioned with a regulatory fine of up to €500,000 and, in the other cases under paragraph 1, with a regulatory fine of up to €5 million. <sup>2</sup>Section 30 (2) sentence 3 of the Regulatory Offences Act shall apply.

(3) The regulatory offence may be sanctioned even if it is not committed in the Federal Republic of Germany.

(4) <sup>1</sup>The administrative authority within the meaning of Section 36(1) point 1 of the Regulatory Offences Act shall be the Federal Office of Justice. <sup>2</sup>The Federal Ministry of Justice and Consumer Protection, in agreement with the Federal Ministry of the Interior, the Federal Ministry of Economic Affairs and Energy and the Federal Ministry of Transport and Digital Infrastructure, shall issue general administrative principles on the exercise of discretion by the regulatory fine authority in initiating regulatory fine proceedings and in calculating the fine.

(5) <sup>1</sup>If the administrative authority wishes to issue a decision relying on the fact that contents which have not been removed or blocked is unlawful within the meaning of Section 1(3), it should first obtain a judicial decision establishing such unlawfulness. <sup>2</sup>The court with jurisdiction over the matter shall be the court that rules on the objection to the regulatory fine order. <sup>3</sup>The application for a preliminary ruling shall be submitted to the court together with the social network's statement. <sup>4</sup>The application can be ruled upon without an oral hearing. <sup>5</sup>The decision shall not be contestable and shall be binding on the administrative authority.

## **§ 5 Person authorised to receive service in the Federal Republic of Germany**

(1) <sup>1</sup>Providers of social networks must designate a person authorised to receive service in the Federal Republic of Germany and draw attention to it on their platform in an easily recognisable and directly accessible manner. <sup>2</sup>Service may be effected on this person in proceedings pursuant to § 4 or in court proceedings before German courts for the distribution of unlawful content. <sup>3</sup>This also applies to the service of documents that initiate such proceedings.

(2) <sup>1</sup>To enable the receipt of requests for information from German law enforcement authorities, a person in the Federal Republic of Germany who is authorised to receive such requests shall be named. <sup>2</sup>The person authorised to accept service is obliged to reply to requests for information in accordance with the first sentence within 48 hours after receipt. <sup>3</sup>If

the request for information is not answered with exhaustive information, the reasons for this must be stated in the reply.

## **§ 6 Transitional provisions**

(1) The first issue of the report pursuant to Section 2 shall be due for the first time by the first half of 2018.

(2) <sup>1</sup>The procedures pursuant to Section 3 shall be introduced within three months of the entry into force of this Act. <sup>2</sup>If the provider of a social network meets the requirements of Section 1 only at a later date, the procedures referred to in Section 3 must be introduced three months after that date.

## **Article 2**

### **Amendment of the Telemedia Act**

The Telemedia Act of 26 February 2007 (Federal Law Gazette I p. 179, 251), last amended by Article 1 of the Act of 21 July 2016 (Federal Law Gazette I p. 1766), shall be amended as follows:

1. The following (3) to (5) are added to § 14:

‘(3) In addition, the service provider may, on a case-by-case basis, provide access to subscriber data in so far as this is necessary for the enforcement of civil law claims for infringement of strictly protected rights on the basis of unlawful content covered by Section 1(3) of the Network Enforcement Act.

(4) The provision of the information referred to in paragraph 3 shall be subject to a prior court order on the admissibility of the provision of information, which must be applied for by the injured party. The Regional Court has jurisdiction to issue this order regardless of the value of the claim. Territorial jurisdiction lies with the court in whose district the injured party is domiciled, has its registered office or a branch. The decision is taken by the Civil Chamber. The procedure shall be governed by the provisions of the Law on proceedings in family matters and matters subject to non-contentious proceedings. The costs of the court order shall be borne by the injured party. An appeal may be lodged against the decision of the Regional Court.

(5) The service provider shall be involved as a party to the procedure referred to in paragraph 4. It may inform the user of the initiation of the procedure.’

2. In Section 15(5), the fourth sentence is worded as follows:

‘§ 14 Paragraphs 2 to 5 shall apply *mutatis mutandis*.’

## **Article 3**

### **Entry into force**

This Act shall enter into force on 1 October 2017.

The constitutional rights of the Bundesrat are preserved.

The Act stipulated above is hereby executed. and shall be published in the Federal Law Gazette.

Berlin, 1 September 2017

The Federal President of Germany

Steinmeier

The Federal Chancellor

Dr Angela Merkel

Federal Minister for Justice and Consumer Protection

Heiko Maas