

# TELECOMMUNICATIONS LAWS OF THE WORLD

Austria



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# AUSTRIA



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## OVERVIEW OF LEGAL LANDSCAPE

In Austria, the field of telecommunications is strongly influenced by European requirements. The European legal framework was implemented through the Telecommunications Act (*Telekommunikationsgesetz - TKG 2021*). With this Act, regulation has developed from sector-specific regulation towards a more general competition law approach. In the TKG 2021, the regulatory authorities have been assigned new tasks, such as, for example, a number of authorisations to issue ordinances. Regulation and monitoring of the Austrian telecommunications market is undertaken by the Telekom-Control-Commission (TKK) and the Regulatory Authority for Broadcasting and Telecommunications (RTR).

The purpose of the TKG 2021 is to promote competition in the field of electronic communications in order to provide reliable, low-cost, high-quality and innovative communications services and to protect consumers.

The key features of the TKG 2021 are:

- According to the principle of general authorisation any person is entitled to provide communications networks and services. The intended provision, its modifications and its termination have to be notified to the regulatory authority.
- Due to universal service obligations, a minimum set of public services has to be provided to all users at an affordable price regardless of their place of residence or work.
- The regulatory authority is obligated to enforce all the objectives of the TKG 2021 as they are laid out in Sec I TKG 2021, especially in respect of the regulation of competition.
- The Federal Ministry of Agriculture, Regions and Tourism administers the frequency spectrum as well as the Austrian rights of use and orbital positions of satellites. The Ministry must take appropriate measures to ensure efficient and interference-free use.
- Minimum contract duration regarding radio frequencies: The regulatory authority awards frequencies for the duration of 15 or 20 years (or more). In case of 15 years, the possibility to extend for another 10 years is provided.
- Cooperation agreements and co- investments: Cooperation (between operators) and co- investments shall be facilitated concerning the competition law in order to promote innovation, in particular for smaller companies, and to facilitate the broadband network expansion in undersupplied regions.
- Universal service: Adaption of the effective regulations to technological development: the universal service will incorporate the access to an internet access service with appropriate broadband and to voice communication services, irrespective of the service provided is wireless or grid- bounded.



- Emergency calls: The operator of the emergency number 112 has to conduct a central infrastructure pursuant to European standards for text based emergency calls and to enable other operators of emergency services the usage of those services via a standardised interface for the purpose for emergency call handling.
- Public warning system: Operators may be obliged to warn their customers in case of danger.
- Protective regulations for consumers.

The regulatory authority is responsible for providing efficient structuring and administration of the communications parameters in their entirety.

## KEY TELECOMMUNICATIONS LAWS, REGULATIONS AND POLICIES

All laws and ordinances mentioned below can be found [here](#).

### Laws

- Telecommunications Act (*Telekommunikationsgesetz 2021* – TKG 2021)
- E-Commerce Act (E-Commerce-Gesetz - ECG)
- The Act on Market Supervision for Radio Equipment (*Funkanlagen-Marktüberwachungsgesetz* – FMaG 2016)
- KommAustria Act (*KommAustria-Gesetz* - KOG)
- Telephone Rates Act (*Fernmeldegebührengesetz*)
- Digital Signature and Trust Service Act (*Signatur- und Vertrauensdienstegesetz* - SVG)
- Data Protection Act (*Datenschutzgesetz* - DSGVO)
- Unfair Competition Act (*Bundesgesetz gegen den unlauteren Wettbewerb* - UWG)
- Law on Alternative Dispute Resolution in Consumer Affairs (*Alternative-Streitbeilegung-Gesetz* – ASStG)

### Ordinances of RTR

- Ordinance on Notification on Data to the Central Information Point for Infrastructure Data (*ZIS Einmeldung von Daten an die Zentrale Informationsstelle für Infrastrukturdaten* - ZIS-V 2019)
- Ordinance on Notification on Data to the RTR-GmbH as Central Information Point for Broadband Coverage (*Verordnung der Rundfunk und Telekom Regulierungs-GmbH (RTR-GmbH) über die Übermittlung von Informationen an die RTR-GmbH als Zentrale Informationsstelle für Breitbandversorgung* – ZIB-V)
- The Communication Parameters, Fees and Value-Added Services Ordinance 2009 (*Kommunikationsparameter-, Entgelt- und Mehrwertdiensteverordnung 2009* - KEM-V 2009)
- Itemised Billing Ordinance (*Einzelentgeltnachweisverordnung*- EEN-V)
- Ordinance on Special Communications Parameters (*Spezielle Kommunikationsparameter-Verordnung 2012* – SKP-V 2012)
- Cost Control Ordinance (*Kostenbeschränkungsverordnung* - KostbeV)

- Information Requirement Ordinance (*Mitteilungsverordnung - MitV*)
- Number Porting Ordinance 2022 (*Nummernübertragungsverordnung 2022 - NÜV 2022*)
- Telecommunications Markets Ordinance (*Telekommunikationsmärkteverordnung- TKMVO*)
- Telecommunications Reference Rate Ordinance (*Telekom-Richtsatzverordnung- TRV*)
- Special Communication Parameters Ordinance 2012 (*Spezielle Kommunikationsparameter Verordnung 2012 – SKP-V 2012*)
- Ordinance on Telecom Network Safety 2020 (*Telekom- Netzsicherheitsverordnung – TK-NSiV 2020*)
- Ordinance on Telecommunication Basis Reference Amount 2019 (*Telekom-Richtsatzverordnung – TRV 2019*)
- Impairment Guideline Rates Ordinance (*Wertminderungs- Richtsätze Verordnung 2019 – WR-V 2019*)
- Ordinance on Central Number Database (*Zentrale Rufnummern-Datenbank Verordnung – ZR-DBV*)

#### **Federal Ministry Ordinances**

- Ordinance on use of frequencies (*Frequenznutzungsverordnung 2013 - FNV 2013*)
- Ordinances on Radio and Telephone Systems and Telecom Terminal Equipment (*Betriebsfunkverordnung - BFV, Erteilung genereller Bewilligungen, Funkanlagen und Endgeräte - Verordnung – FEV,*)
- Telecommunications Fee Ordinance (*Telekommunikationsgebührenverordnung - TKGv*)
- Ordinance on Statistical Enquiries 2022 (*Kommunikations-Erhebungs-Verordnung 2022 - KEV 2022*)
- Ordinance on Surveillance of Telecommunications (*Überwachungsverordnung– ÜVO*)
- Identification Ordinance (*Identifikationsverordnung - IVO*)
- Ordinance of the Federal Ministry of Transport, Innovation and Technology regarding general authorisations (*Verordnung der Bundesministerin für Verkehr, Innovation und Technologie, mit der generelle Bewilligungen erteilt werden*)

## **REGULATORY BODIES OR AUTHORITIES**

### **Austrian Regulatory Authority for Broadcasting and Telecommunications**

The Austrian Regulatory Authority for Broadcasting and Telecommunications (RTR) carries out government duties as a legal entity owned and controlled by the Austrian federal government. It also provides telecommunications-related operational support for the Telekom-Control Commission.

In providing operational support for the Telekom-Control-Commission, RTR is mainly responsible for the fields of site sharing, approvals of general terms and conditions of business, electronic signatures, frequency assignment procedures, competition regulation and statistical surveys.

Additional activities at RTR include alternative dispute resolution, the administration of the Austrian Digitisation Fund and Television Fund, dispute settlement for retail customers, and the administration of communications parameters (e.g. numbering).

RTR's objectives and duties are defined in Sec 194 TKG 2021, which stipulates that RTR must perform all duties conferred upon the regulatory authority by the TKG 2021 and by any ordinances issued under that act, unless the Telekom-Control-Commission is responsible for such duties pursuant to Sec 195 TKG 2021.

As for its government duties, RTR mainly performs tasks related to the administration of communications parameters (allocation of telephone numbers by official decision) under Sec 114 of the TKG 2021. Moreover, RTR was also granted the power to issue various types of ordinances in the TKG 2021 (see list of ordinances Laws and regulations).

RTR additionally has the power to issue:

- Ordinances with regard to service quality
- Subscriber notifications
- Information obligations regarding contracts
- Communication network procedures
- Objections to providers' T&Cs

### **Telekom-Control-Commission (TKK)**

The Telekom-Control-Commission (TKK) is a panel authority with the powers of a court which is managed by the RTR (Sec 195 TKG 2021). In their activities on behalf of the TKK, RTR's staff members are bound by the instructions of the TKK's chairperson or the TKK member designated in the authority's rules of procedure.

Members of the TKK are not bound by any instructions in the performance of their official duties (Sec 20 Par 2 of the Federal Constitutional Act). Appeals against TKK decisions can be submitted to the Federal Administrative Court. Further appeals against decisions by the Federal Administrative Court may be submitted to the Austrian Administrative Court and the Austrian Constitutional Court.

TKK's responsibilities include:

- Competition regulation
- Frequency allocation procedures
- Network cooperation
- Monitoring network neutrality
- Supervisory body for electronic signatures

RTR-GmbH and TKK operate from the same address (Mariahilfer Straße 77-79, 1060 Wien) and share a website.

### **Telecommunications Office**

The Telecommunications Office ("Fernmeldebüro") supervises all communication services.

This includes:

- issuing and monitoring radio licenses,
- frequency coordination and frequency planning,
- market surveillance of radio equipment,
- administrative criminal proceedings regarding unsolicited messages,

- examinations in the amateur radio, aeronautical radio, marine radio service and inland waterway service.

It has seven local branches, each acting for the Telecommunications Office in their designated local area.

## **TYPES OF TELECOMMUNICATIONS ACTIVITIES AND/OR PERSONS WHICH ARE SUBJECT TO LEGAL AND REGULATORY REQUIREMENTS**

The provision of a public communications network or service, as well as its modifications and its termination, is regulated and shall be notified to the regulatory authority prior to the start of operation, modification or termination.

Under Austrian law, a 'public communications network' means a communications network used wholly or mainly for the provision of publicly available communications services that enable transmission of information between network termination, whereas a 'telecommunications service' means a communications service with the exception of radio and television broadcasting.

## **OVERVIEW OF CONSENTS, LICENCES AND AUTHORISATIONS REQUIRED PRIOR TO THE COMMENCEMENT OF TELECOMMUNICATIONS ACTIVITIES**

Communication providers have general authorisation to operate in Austria and do not require a licence, permit, consent etc. This concept of general authorisation is derived from the European Authorisation Directive which has been implemented in EU Member States. However, providers must notify the RTR prior to start of operations, for any modification or for termination of the services.

The notification must be in writing and provide details of the provider, the legal structure of the undertaking, a short description of the network or service and the anticipated date of the start of operation, modification or termination of the service (Sec 6 TKG 2021). This does not apply to number-independent interpersonal communication services.

## **DOMICILE RESTRICTIONS PREVENTING THE OPERATION OF CERTAIN TELECOMMUNICATIONS ACTIVITIES BY NON-DOMICILED ENTITIES**

From a telecoms regulatory perspective, there are no requirements for a communications provider to be domiciled in Austria prior to or during the provision of services.

## **EXISTENCE OF RELEVANT INTERCONNECTION/ROAMING REGULATIONS**

Every operator of a public communications network shall be under the obligation to make an offer for interconnection to other operators on request. All parties involved shall strive to achieve the objective of enabling and improving communication of the users of different public communications networks, the access to services offered by another entity offered and the interoperability of services.

The regulatory authority may require an undertaking with significant market power to publish a reference offer. The undertaking shall provide in the reference offer sufficiently unbundled subservices, with a breakdown of the relevant offerings into components according to market needs, and state the associated terms and conditions (including prices). Such reference offers shall be submitted to the regulatory authority. Agreements on network access are to be submitted to the regulatory authority upon its request.

If no agreement is reached between an operator of a public communications network or service specifically with significant market power and another operator of a public communications network or service, or an undertaking which specifically benefits from access obligations within six weeks of receipt of the application (despite negotiations), either party involved may have recourse to the regulatory authority. The regulatory authority may fix tariffs.

Roaming is based on the EU Roaming Directive.

## **TELECOMMUNICATION LAWS AND REGULATIONS AFFECTING CONSUMERS**

The TKG 2021 contains a number of consumer specific provisions. In this regard, consumers are persons who use or request a publicly available communication service for other than commercial purposes.

Contracts for communications services between operators and consumers may not exceed an initial minimum contract duration of 24 months. Additionally, every subscriber must have the option of concluding a contract of no more than 12 months minimum duration for each communications service (Sec 135 Par I TKG 2021). Furthermore, operators must provide certain information to consumers, such as operator name, contract terms and statutory warranty rights (Sec 129 TKG 2021).

Where, in case of consumers, a bundle product contains at least an internet access service or a number-based interpersonal communication service and also includes further services or terminals, certain user rights apply to all elements of the package, including those elements that otherwise would not be covered by those provisions (Sec 136 TKG 2021).

In case a consumer changes their residence, the internet access service provider must provide their services at the consumer's residence without changing the agreed contract term and the other contents of the contract (Sec 135 Par II TKG 2021).

Apart from that, general Austrian consumer protection provisions apply.

## **REGULATORY TAXES AND FEES**

Radio operators must pay a notification fee for the commencement of operating a radio system (Sec 36 TKG 2021). There are also fees for other notifications, authorisations and approvals.

For notifications, the assignment of frequency usage rights and other administrative activities, there are one-off fees. For the use of frequencies, periodic fees must be paid which are defined in the Telecommunications Fee Ordinance.

All operators/providers of public communications services are generally subject to financing contribution requirements (Sec 34 of the KommAustria Act). The annual fee is imposed for the financing of the regulatory authority, which is financed partially from the federal budget and partially from the contributions of the communication services and networks operators.

The operators' contributions are calculated on the basis of the net turnover for all services provided in Austria. A turnover threshold is set at EUR 300 (calculated fee, not turnover) as adapted for inflation; contributions which are below this threshold are not payable.

## **KEY SANCTIONS AND PENALTIES IN THE CASE OF CONTRAVENTION OF TELECOMMUNICATIONS LAWS AND REGULATIONS**

If a person who is or was involved in operators' activities, discloses, without authorisation, the fact or the contents of the telecommunications traffic of specific persons to an unauthorised person or gives such person the opportunity to perceive facts himself that are subject to the obligation to maintain secrecy, or if a person falsifies, incorrectly relates, modifies, suppresses or incorrectly conveys a communication or withholds it from the intended recipient without authorisation, this constitutes a violation of user rights.

These persons are sanctioned by the court with a prison sentence of up to three months or a fine up to 180 times the daily rate (Sec 187 TKG 2021).

Further to the above-mentioned criminal penalty, there are administrative fines for various breaches (Sec 188 TKG 2021). The fines are divided into several degrees, and can amount to up to EUR 1,000, EUR 5,000, EUR 10,000, EUR 50,000 or a prison sentence up to six weeks, EUR 75,000 or a prison sentence up to six weeks or EUR 100,000 or a prison sentence up to six weeks, depending on how severe the offense is.

Furthermore, Cartel law sanctions, Unfair Competition law sanctions as well as Data Protection infringement sanctions may be imposed.

## **KEY CONTACTS**



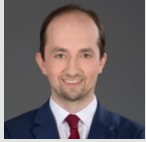
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