TELECOMMUNICATIONS LAWS OF THE WORLD

Austria vs France



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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 1 TKG 2021, especially in respect of the regulation of competition.
- The Federal Ministry of Agriculture, Regions and Tourism administers the frequency spectrum as

FRANCE



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OVERVIEW OF LEGAL LANDSCAPE

Subject to a handful of discrete exemptions (notably concerning the use of spectrum or numbering resources), electronic communications operators do not require an authorization, licence, permit, consent, etc.

Since 28 May 2021, France does not longer require electronic communications operators to file a prior declaration with the telecoms regulator – the Autorité de *Régulation des Communications Electroniques et des Postes* or Authority of Electronic communications and Posts (ARCEP).

The roles and responsibilities of ARCEP are codified in the Code on Posts and Electronic Communications (CPEC). ARCEP regulates all electronic communications services including fixed line telecoms, mobiles, plus the airwaves over which wireless devices operate, and postal services. 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 coinvestments 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

KEY TELECOMMUNICATIONS LAWS, REGULATIONS AND POLICIES

All primary legislation governing the telecommunications sector in France is codified into the CPEC.

European Directive 2018/1972 establishing the European Electronic Communications Code, which repealed several

- 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 (Signaturund Vertrauensdienstegesetz - SVG)
- Data Protection Act (Datenschutzgesetz DSG)
- Unfair Competition Act (Bundesgesetz gegen den unlauteren Wettbewerb - UWG)
- Law on Alternative Dispute Resolution in Consumer Affairs (Alternative-Streitbeilegung-Gesetz – AStG)

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-

directives adopted in 2002, was transposed into French law by Ordinance n° 2021-650 of May 26, 2021.

ARCEP regularly enacts decisions or recommendations on more specific regulatory matters, such as frequency planning, value added services regulations, tariffs regulation, etc.

In addition, the following legislation (as well as the subordinate legislation and regulations sitting underneath) may also impact the provision of electronic communications services and the operation of electronic communications networks:

- Law No. 2021-1755 of December 23, 2021 for the reinforcement of the environmental regulation of the digital sector by ARCEP
- Law No. 2019-486 of May 22, 2019 on the growth and transformation of business
- Law No. 2016-1321 of October 7, 2016 for a Digital Republic
- Law No. 2015-990 of August 6, 2015 for growth, activity and equal economic opportunities
- Law No. 2008-776 of August 4, 2008, on the modernisation of the economy
- Law No. 2008-3 of January 3, 2008, on the development of competition in favour of consumers
- Law No. 2004-575 of June 21, 2004, on the confidence in digital economy
- Law No. 78-17 of January 6, 1978, on data processing, data files and individual liberties

The key targets and features of the primary legislation applicable to telecommunications, as codified in the CPEC, are the following:

- Measures aimed at ensuring fair competition between operators and an efficient regulation of the electronic communications sector, notably via the specific missions and rights granted to ARCEP and warranties to ensure its independence
- Regulating the management and allocation of radio frequencies and telephone numbers (including premium rate telephone services) to

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 (Telekomunikationsmärkteverordung- 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)

operators

- Protecting consumers and personal data, including for example, requirements to provide specific information to consumers, to provide notice in case of security breach, and to protect the content of their communications from unauthorised disclosure
- Empowering ARCEP to hear disputes between operators (although referral to ARCEP does not preclude the bringing of court proceedings)

- 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

REGULATORY BODIES OR AUTHORITIES

Autorité de Régulation des Communications Electroniques et des Postes - ARCEP

Address: 14 rue Gerty Archimède, 75012 Paris

www.arcep.fr

ARCEP is an independent authority that has jurisdiction over all electronic communications services and all electronic communications operators as defined under the CPEC. 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.

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

The CPEC notably regulates the operation of electronic communications networks and of electronic communication services.

An 'electronic communication network' is defined under the CPEC as any installation or any set of transmission or broadcasting installations as well as, where applicable, the other means ensuring the routing of electronic communications, in particular switching or routing means. The following are considered as electronic communications networks in particular: satellite networks, terrestrial networks, systems using the electrical network insofar as they are used for the routing of electronic communications and networks used for broadcasting or used for the distribution of audiovisual communication services.

An 'electronic communications service' means a service provided via electronic communications networks, which encompasses at least one of the following types of services: internet access service, interpersonal communications service and services consisting wholly or mainly in the conveyance of signals such as transmission services used for the provision of machine-to-machine services and for broadcasting. Services providing, or 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 exercising editorial control over, content transmitted using electronic communications networks and services do not fall within the scope of this definition.

ARCEP also regulates the allocation of radio frequency blocks and telephone numbers in France.

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

Operators, defined as undertakings operating an electronic communications network or providing public electronic communications service, do not require an authorization, licence, permit, consent, etc.

While until 28 May 2021, France required operators to file a prior declaration with the ARCEP before the effective launch of their activities in France, such obligation does not longer currently apply.

Any operator wishing to operate a mobile communications network and/or to provide mobile communications services using scarce resources (i.e. radio frequencies or numbering) shall be granted with an authorisation from the ARCEP.

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

From a telecoms regulatory perspective, there are no requirements for an electronic communications operator to be domiciled in France. Advice should however be sought from a tax perspective.

EXISTENCE OF RELEVANT INTERCONNECTION/ROAMING REGULATIONS

A specific agreement providing for the technical and financial conditions applicable to the interconnection or the national roaming services, must be entered into between the two operators at issue and disclosed to ARCEP upon request. 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

In certain circumstances, and notably to foster competition between operators, ARCEP may impose on its own initiative or upon the request of one of the parties, technical and/or financial conditions for the interconnection or roaming, in an objective, transparent and non-discriminatory way.

With regards to interconnection:

- The CPEC requires all public electronic communications network operators to provide interconnection services to other public electronic communication network operators (including operators established in another EU Member State or a state party to the Agreement on the European Economic Area). A request for interconnection cannot be rejected if it is justified considering the needs of the requesting operator and the capacities of the hosting operators to satisfy such needs.
- Where ARCEP has found that one operator has a 'significant influence' on a relevant market, such operator will be bound by additional obligations with respect to interconnection, including notably the obligation to publish an interconnection offer, in compliance with ARCEP's specific regulations and guidance.
- Interconnection agreements must include several mandatory provisions and notably details on the measures taken by both operators to ensure the security and integrity of the networks, services interoperability and data protection.
- Since I July 2021, the EU Commission Regulation 2021/654 sets maximum termination rates that operators are allowed to charge each other for mobile and fixed termination services respectively, directly applicable to Union operators. Such rates supersede the maximum termination rates as previously defined by ARCEP.

ARCEP also has jurisdiction over any disputes between operators in relation to interconnection or roaming.

TELECOMMUNICATION LAWS AND REGULATIONS AFFECTING CONSUMERS

The CPEC contains a number of consumer specific provisions. A 'consumer' is defined as someone who uses or requests a service for non-business use.

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 1 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 I35 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 Specific obligations relating to consumers include:

- The requirement to include certain mandatory terms in consumer contracts
- Conditions relating to term and termination
- The requirement to make certain information available to the customer, including a description of the services offered and the standard tariffs
- Availability of number portability
- Restrictions on sales and marketing activities

In addition to specific telecoms regulations and codes, provisions of general consumer law also apply such as rules concerning unfair consumer terms.

REGULATORY TAXES AND FEES

The following basic taxes and fees are payable by electronic communications operators:

Tax on services

Electronic communications operators must pay to the tax authorities an annual tax set at 1.3% of all turnover earned from their electronic communications activities in France which is over EUR 5 million (taxes, interconnection and access fees excluded).

Tax for the funding of the universal service

Electronic communications operators must pay an annual tax for the funding of the universal service, which will be calculated pro-rata to their annual turnover (taxes, interconnection and access fees, and radio/TV

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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Tax on the use of scarce resources

Any operator which has been granted with scarce resources, whether spectrum or numbering, shall pay a specific annual fee.

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

ARCEP is notably in charge of ensuring that operators fully comply with their obligations pursuant to the CPEC and other applicable regulations.

Where ARCEP identifies a breach, it may, upon its discretion or following a claim, send a prior notice to a non-compliant operator and require it to take the necessary steps to rectify the breach. If the operator does not remedy the breach within the specified time, ARCEP may notably, after an inter partes procedure:

- Suspend the rights of the operator in relation to its activities (for a maximum duration of three years), or
- Levy a fine which will be proportionate to the seriousness of the breach and to the benefits drawn from such breach by the operator (within the limits of 3% of its net annual turnover increased to 5% in the event of a new breach of the same obligation, or EUR 150,000 in the event its previous annual turnover cannot be assessed, increased to €375,000 in the event of a new breach of the same obligation)

ARCEP may also require entities to provide certain information relating to ARCEP's regulations or to their networks and/or services.

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