

Unofficial translation

32. Federal Act issuing the Federal Act on the establishment of an “Austrian Communications Authority” (“KommAustria”) and a Federal Communications Board as well as amending the Cable and Satellite Broadcasting Act, the Broadcasting Act, the Television Signal Act, the Telecommunications Act, the Access Control Act, the Signature Act and the 2001 Federal Finance Act

The National Assembly has resolved

Article I

Federal Act on the establishment of an Austrian Communications Authority (“KommAustria”) and a Federal Communications Board (KommAustria Act – KOG)

Part 1

Austrian Communications Authority and Federal Communications Board

Section 1

- (1) In order to administer matters pertaining to the regulation of broadcasting, the Austrian Communications Authority shall be set up.
- (2) In order to control the administration of matters pertaining to the regulation of broadcasting and to supervise the Austrian Broadcasting Corporation, the Federal Communications Board shall be set up.

Tasks and objectives of KommAustria

Section 2

- (1) Administration within the meaning of Section 1 para. 1 comprises the tasks assigned to KommAustria by special federal regulations, in particular:
 1. to issue broadcasting licences,
 2. to issue licences for operating the technical equipment required for broadcasting,
 3. to supervise private broadcasters.
- (2) The activities of KommAustria are to achieve the following objectives:
 1. to promote the market access of new providers;
 2. to ensure diversity of opinion and promote the quality of broadcasting programmes, including the technical requirements for their dissemination;
 3. to develop technical and economic schemes for a dual broadcasting market in Austria;
 4. to ensure the observance of European minimum standards by providers of contents, in particularly for the benefit of the protection of children, young persons and consumers;
 5. to optimise the use of the frequency spectrum for broadcasting;
 6. to provide expert knowledge in the field of the convergence of audio-visual media and telecommunication as well as to promote the development of markets in the audio-visual and telecommunications sectors;
 7. to create and maintain a modern and high-quality communications infrastructure for promoting locational quality at a high level.

Organization of KommAustria

Section 3

- (1) KommAustria shall consist of one Director and the requisite number of staff.
- (2) The appointment of the Director and the Deputy Director shall be preceded by a public invitation to apply for the position in accordance with Section 3 of the Public Tender Act of 1989.
- (3) KommAustria is an authority directly subordinate to the Federal Chancellor. As regards its external business practices, it is an independent authority. All communications by the authority shall be designated “Kommunikationsbehörde Austria (KommAustria)”.
- (4) The seat of KommAustria shall be Vienna.

The Broadcasting Advisory Council

Section 4

- (1) For counselling KommAustria, an Advisory Council shall be set up which must be given an opportunity to render its opinion before the granting of licenses.

- (2) The Advisory Council shall consist of six members who are appointed by the Federal Government for a term of six years. In respect of the appointment of one member, the Federal Government must obtain proposals from the *Laender*. The members must have sufficient knowledge in the fields of law, business administration, technology or communication science.
- (3) The Advisory Council shall perform its activities on an honorary basis. Travel expenses of the members shall be refunded. The costs of the Advisory Council shall be borne by RTR-GmbH (Section 5).
- (4) From among its members, the Advisory Council shall elect a Chairman and a Deputy Chairman for a term of six years.
- (5) The Advisory Council shall adopt its own Rules of Procedure. Its business shall be managed by RTR-GmbH. Meetings are not public.
- (6) Decisions of the Advisory Council shall be adopted by simple majority with half of the members present.
- (7) The Advisory Council shall be convened by the Director of KommAustria.

Operational structure

Section 5

- (1) In order to provide administrative support to KommAustria and the Telecom Control Commission, a limited-liability company shall be set up. The seat of this company shall be Vienna. The company shall be a non-profit company. The company's name shall be "Broadcasting and Telecommunications Regulatory Authority" (RTR-GmbH). The company shall have two managing directors, one for the broadcasting and one for the telecommunications sectors. The managing director of the broadcasting sector will be appointed by the Federal Chancellor and the managing director of the telecommunications sector by the Federal Minister for Transport, Innovation and Technology. As regards the specific matters of each of these sectors, the respective managing director shall bear the sole responsibility while all other matters of the company shall be managed by both directors together. Any increases in capital shall be effected in consultation between the Federal Chancellor, the Federal Minister for Transport, Innovation and Technology and the Federal Minister of Finance. 100% of the shares of the company shall be reserved for the Federal Government. The administration of the federal portfolio shall be the task of the Federal Chancellor acting in consultation with the Federal Minister for Transport, Innovation and Technology.
- (2) The Telecom-Control GmbH, set up under the Telecommunications Act, Federal Law Gazette No. 100/1997, as amended in Federal Law Gazette I No. 26/2000, shall be merged by operation of the law (Section 96 para. 1(1) of the Private Limited Companies Act) with RTR-GmbH as the acquiring company. With the entry into force of this Federal Act, the legal effects provided for under Section 225a para.3 of the Public Limited Companies Act in conjunction with Section 96 para.2 of the Private Limited Companies Act shall become effective. The Managing Board of the acquiring company shall notify the Commercial Register of the merger of the two companies. Sections 220 to 225 of the Public Limited Companies Act shall not be applied to this merger.
- (3) RTR-GmbH has the following objectives:
 1. execution of the tasks assigned to RTR-GmbH under the Telecommunications Act, Federal Law Gazette I No. 100/1997,
 2. execution of the tasks under the Signature Act, Federal Law Gazette I No. 190/1999,
 3. execution of the tasks of the operational structure of KommAustria,
 4. conduct of proceedings for the settlement of disputes (Section 8),
 5. development and management of a competence centre, in particular with regard to issues of the convergence of media and telecommunications.
- (4) RTR-GmbH shall make all arrangements in order to be able to accomplish its tasks and to enable KommAustria as well as the Telecom Control Commission to accomplish their tasks.
- (5) In its capacity as employer, RTR-GmbH can negotiate collective agreements.
- (6) RTR-GmbH shall be exempt from corporate taxation.
- (7) The supervisory board of RTR-GmbH shall include one representative each of the Federal Chancellery and the Federal Ministry for Transport, Innovation and Technology.

Supervision

Section 6

- (1) Notwithstanding the rights of the General Assembly under the Private Limited Companies Act, Reichs Law Gazette No. 58/1906, supervision of the activities of RTR-GmbH, as far as they concern broadcasting matters, shall lie with the Federal Chancellor and as far as they concern telecommunication matters with the Federal Minister of Transport, Innovation and Technology. In

exercising the right of supervision, each of the supreme organs may issue well-founded instructions in writing to RTR-GmbH

- (2) The Managing Board of RTR-GmbH shall submit to the supreme organs referred to in para. 1 within the framework of their rights of supervision all the information they require to fulfil their functions and shall provide them with the appropriate documentation.
- (3) Within the framework of their activities for the Telekom Control Commission, the staff of RTR-GmbH shall be bound by the technical instructions of the Chairman or the member designated in the Telekom Control Commission's Rules of Procedure.
- (4) Within the framework of their activities for KommAustria, the staff shall be bound by the technical instructions of the Director of this authority.
- (5) The Federal Minister for Transport, Innovation and Technology may revoke the appointment of the Managing Director of the telecommunications sector if he fails to comply with his instruction under para. 1 or fails to provide information in accordance with para. 2. The Federal Chancellor may revoke the appointment of the Managing Director of the broadcasting sector if this Managing Director fails to comply with his instruction under para. 1 or an instruction given by the Director of KommAustria or fails to provide information in accordance with para. 2. This shall not affect Section 16 of the Private Limited Companies Act.

Transparency

Section 7

- (1) Decisions of fundamental significance by KommAustria and the Federal Communications Board (Section 11) and instructions under Section 6 para. 1 shall be publicized in an appropriate manner, due account being taken of the provisions of the Data Protection Act.
- (2) The Managing Board of RTR-GmbH shall prepare an annual activity report. This report shall deal, in particular, with the duties performed, staff developments and the financial resources used. In consultation with the Federal Minister for Transport, Innovation and Technology, the Federal Chancellor shall submit the report to the National Assembly and, in addition, shall publish the report in an appropriate manner.

Settlement of disputes

Section 8

- (1) In matters where federal law provides for the settlement disputes by RTR-GmbH, RTR-GmbH shall hear the parties to the dispute and investigate the underlying facts. If one of the parties to the dispute refuses to participate in the hearing, the records shall show that no amicable settlement has been reached.
- (2) As soon as possible, but not later than within a period of four weeks, RTR-GmbH shall mediate between the parties to the dispute, submit proposals for the settlement of the issues in dispute and endeavour to reach an amicable settlement between the parties to the dispute. It shall determine the mode of conduct to be applied in such cases. If one of the parties to the dispute is granted access to the files, Section 17 para. 3 of the General Administrative Procedures Act shall be applied. A settlement shall be refused if RTR-GmbH comes to the conclusion that such a settlement cannot be implemented successfully. The parties to the dispute shall be informed of the refusal by means of a short explanatory statement without delay, but at any rate within a period of two weeks.
- (3) If no amicable settlement is reached, RTR-GmbH shall make a well-founded recommendation for settling the dispute before expiry of the four-week deadline referred to in para.2 and shall inform the parties to the dispute thereof.
- (4) The course and the outcome of the settlement proceedings shall be described in a summary report. Each of the parties to the dispute shall be furnished with a copy.
- (5) RTR-GmbH shall lay down guidelines for the conduct of such proceedings. They shall be publicized in an appropriate manner.
- (6) The possibility to resort to due legal process shall not be affected.
- (7) Sections 66 and 116 of the Telecommunications Act shall not be affected.

Competence centre

Section 9

- (1) Within the framework of the available financial resources, RTR-GmbH fulfils the function of a competence centre for matters pertaining to the sectors of audio-visual media and telecommunication, taking due account of the principles of efficiency, economy and expediency.

- (2) In this context, RTR-GmbH shall commission scientific analyses to be conducted in respect of matters connected with the tasks of the regulatory authorities assisted by it, in particular with regard to issues of frequency planning and frequency optimisation quality, price, customer service and the access to services, the employment of new technologies and services as well as market conditions and shall take appropriate measures to make information available to the general public.

Financing and administration of financial resources

Section 10

- (1) The expenditure of RTR-GmbH shall be financed by receipts from licensing fees (Section 17 para. 1 of the Telecommunications Act) as well as by financial contributions.
- (2) Financial contributions shall be assessed and levied on the basis of the turnover of Austrian-based broadcasters, license holders pursuant to the Telecommunications Act and service providers who supply a public telecommunication service on the basis of another license under the Telecommunications Act, taking account of and in relation to the pertinent turnover share of the enterprise in the total turnover of the specific sector (para. 3), the inner-Austrian market being taken as the locally relevant market. To calculate the turnover of the enterprise, earnings shall be taken into account from broadcasting, with the exception of programme fees (Section 20 of the Broadcasting Act), as well as receipts from the provision of telecommunication services that are subject to licensing or other approval. The sum total of the receipts from the levied financial contributions and licensing fees shall, if possible, correspond to the expenditure required for financing the tasks of RTR-GmbH. Any surpluses or deficits of the preceding year shall be taken into account when the financial contributions are determined in the subsequent year.
- (3) The financial contribution to be paid by an enterprise to the sectoral expenditure of RTR-GmbH shall be calculated on the basis of the proportion of the enterprise's turnover to the sectoral total turnover. The sectors are considered to be broadcasting, on the one hand, and the provision of telecommunication services which are subject to licensing or other approval, on the other.
- (4) RTR-GmbH shall estimate the sectoral expenditure on the basis of the principles of efficiency, economy and expediency by 31 January of each year. Likewise, RTR-GmbH shall estimate the expected turnover of the sectors' enterprises (sectoral total turnover). These estimates shall be publicized in an appropriate manner. The actual expenditure as well as the actual total turnover shall be determined by RTR-GmbH by 30 September of each subsequent year.
- (5) Before publicizing the estimated as well as actual expenditure and the estimated as well as the actual sectoral total turnover pursuant to para. 4, the enterprises concerned shall in due time be given an opportunity for comment.
- (6) The enterprises shall themselves calculate the financial contributions with the help of the estimates publicized by RTR-GmbH on the basis of their expected turnover and shall pay them to RTR-GmbH in four equally high instalments at the end of each quarter. After the figures of the actual expenditure and the actual total turnover are available (para. 4), RTR-GmbH shall credit the financial contributions already paid or request subsequent payment, if necessary.
- (7) If an enterprise fails to comply with the obligation to pay the financial contribution or does not comply in an orderly fashion, KommAustria, if the enterprise is a broadcaster, or the Telekom Control Commission, if the enterprise is a provider of telecommunication services, shall prescribe the payment of the financial contribution by decree.
- (8) To determine the financial contributions, RTR-GmbH, KommAustria, the Telekom Control Commission as well as the auditors commissioned by them must, at their request, be furnished with information and in justified cases and only to the absolutely required extent be granted access to documents and books.
- (9) Receipts under para.1 shall go to RTR-GmbH.
- (10) When the receipts (para. 1) from various sectors are used, consideration must be given to the fact that they are utilized, as far as possible, to cover the sectoral expenditure of RTR-GmbH and are brought to account separately. When receipts are used, attention must be paid to the principles of efficiency, economy and expediency.
- (11) As regards the employees of KommAustria, RTR-GmbH shall repay the entire expenditure for their activities, including other incidental expenses. Such expenditure shall be taken into account in the determination of the financial contributions for the broadcasting sector. As regards the civil servants working for KommAustria, the Federal Government shall in addition pay a contribution to cover pension payments of 31.8 per cent of the expenditure for active service pay. Active service pay consists of all emoluments qualifying for a pension contribution. The pension contributions retained from the civil servants shall be credited. In the case of a future modification of the amount of the pension contribution of civil servants under Section 22 of the Pay Act of 1956, the percentage of the contribution margin shall change accordingly.

Part 2

Federal Communications Board

Tasks

Section 11

- (1) To control the decisions of KommAustria and supervise the Austrian Broadcasting Corporation, the Federal Communications Board shall be set up at the Federal Chancellery.
- (2) The Federal Communications Board shall decide as the highest appellate authority:
 1. on appeals against decisions of KommAustria, with the exception of appeals in administrative penal cases,
 2. on complaints, requests and in proceedings concerning violations of administrative regulations on the basis of the provisions of the Broadcasting Act.
- (3) The decisions of the Federal Communications Board are not subject to revocation or amendment by administrative action. Appeals against decisions of the Federal Communications Board may be filed with the Administrative Court.
- (4) In matters concerning KommAustria, the Federal Communications Board is the superior authority within the meaning of the regulations governing the proceedings.
- (5) The seat of the Federal Communications Board shall be Vienna.

Composition and membership

Section 12

- (1) The Federal Communications Board shall consist of five members three of whom must belong to the judicature. In the exercise of their function, the members of the Federal Communications Board shall be independent and not bound by instructions and orders. The Federal Communications Board shall elect one Chairman and one Deputy Chairman from among the members belonging to the judicature.
- (2) The members of the Federal Communications Board shall be appointed by the Federal President upon proposal of the Federal Government for a term of six years. For each member, a substitute shall be appointed who takes the place of a member if the member is prevented from fulfilling his obligations.
- (3) For the appointment of each of the three judicial members (substitute members), the Federal Government shall be bound by proposals consisting of three persons belonging to the judicature listed in alphabetical order, namely
 1. one proposal for appointment submitted by the President of the Supreme Court,
 2. two proposals for appointment submitted by the President of the Court of Appeal in whose district the Federal Communications Board has its seat.

The submission of a proposal for appointment under subpara. a shall be preceded by a public invitation of applications to be announced by the President of the Supreme Court for the Supreme Court, that for the submission of proposals for appointment under subpara. b by the President of the Court of Appeal in his operational area. The invitations shall be publicized in the official section of the daily newspaper *Wiener Zeitung*. The time limit for submitting applications shall be two weeks from the date of publication. The proposals for appointment shall be submitted without delay. The submission of the proposals for appointment to be made by the Federal Government for two further members shall be preceded by a public invitation of applications to be announced by the Federal Chancellor. The time limit for the submission of applications shall be two weeks from the date of publication. The appointment proposals shall be submitted without delay.
- (4) Persons that may be appointed members of the Federal Communications Board must have completed their law studies and must have several years of experience in the fields of public administration, legal practice, science or in matters coming within the executive powers of the Federal Communications Board.
- (5) Members of a general representative body, persons who work in a body of the Austrian Broadcasting Corporation, who are partners of another broadcaster or persons who are in a close legal relationship with anyone who makes use of an activity of the Federal Communications Board or is affected by such activity as well as employees of KommAustria or RTR-GmbH may not be members of the Federal Communications Board.
- (6) If a member of the Federal Communications Board has failed to comply with invitations to three successive meetings without good cause or if a ground for the exclusion of a member in accordance with para. 5 subsequently comes to light, the Federal Communications Board shall conduct a hearing and adjudicate accordingly. If the Board finds against the member, the member shall lose his membership.

- (7) If a member dies, resigns voluntarily or leaves prematurely in accordance with para. 6, the respective substitute shall become member of the Federal Communications Board and a new substitute shall be appointed on the basis of paras 2, 3 and 4 for the time the original member had left to serve.
- (8) The members of the Federal Communications Board may claim appropriate travel and cash expenses and an attendance fee to be determined by ordinance by the Federal Government, taking account of the significance and the scope of the functions performed by the Federal Communications Board.

Decision-making

Section 13

With all members present, the Federal Communications Board takes its decisions by a two-thirds majority. Abstentions are not admissible.

Rules of procedure

Section 14

- (1) KommAustria, the Federal Communications Board, the Telekom Control Commission and RTR-GmbH shall apply the General Administrative Procedures Act and – in administrative penal proceedings - the Code of Administrative Offences and the Law on Administrative Proceedings unless otherwise provided for in the federal laws they have to execute.
- (2) In proceedings before the Federal Communications Board, in so far as such proceedings are based on the provisions of the Broadcasting Act, the Director General of the Austrian Broadcasting Corporation or a representative designated by him shall be a party to the proceedings to protect the rights of the Austrian Broadcasting Corporation.
- (3) In the case of complaints filed with the Federal Communications Board, the days required for delivery by mail shall not be included in the time limit.

Administrative fines

Section 15

Whoever fails to comply with the obligation to furnish information and to grant access to records and books in accordance with Section 10 para. 8 despite being requested to do so commits a violation of administrative regulations and shall be fined up to € 58,000 by KommAustria if the enterprise is a broadcaster, and by the Telekom Control Commission if the enterprise is a provider of telecommunication services. The fines shall go to the Federal Government.

References

Section 16

If reference is made in this Federal Act to provisions of other federal acts and not explicitly to a specific version, these provisions shall be applied in their applicable versions.

Entry into force

Section 17

- (1) This Federal Act shall enter into force on 1 April 2001.
- (2) The measures with regard to organization and staff required for KommAustria, the Federal Communications Board and RTR-GmbH to commence their activities may already be taken before this Federal Act enters into force. The preparatory measures shall be taken by the Federal Chancellor.
- (3) Until the Director of KommAustria is appointed, the Federal Chancellor shall provisionally entrust an employee of the Federal Chancellery with the function as director of the authority.
- (4) Until the Managing Directors are appointed in accordance with Section 5 para. 1, the Federal Chancellor shall provisionally appoint a Managing Director for the broadcasting sector and the Federal Minister for Transport, Innovation and Technology a Managing Director for the telecommunication sector.
- (5) In matters pertaining to the Telekom Control GmbH, which devolved on RTR-GmbH as a result of the merger and which relate to circumstances prevailing before the entry into force of this Federal Act and which must be decided by the General Assembly, the function of the General Assembly shall, by way

of derogation from Section 5 para. 1 last sentence, be exercised by the Federal Minister for Transport, Innovation and Technology.

Execution

Section 18

The execution of this Federal Act shall, unless it is entrusted to the Federal Government or the Federal Minister for Transport, Innovation and Technology, lie with the Federal Chancellor. The execution of Section 5 para. 2 shall lie with the Federal Minister of Finance.