

COMMUNICATIONS REPORT

2022

Austrian Regulatory Authority for Broadcasting and Telecommunications

(Rundfunk und Telekom Regulierungs-GmbH)

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Preface

Dear reader,

our highest priority is to ensure transparency, and thereby trust, in the interests of the informed public and all our stakeholders. This applies equally to our regulatory efforts within the domains of media, postal services and telecommunications, and trust services, as well as to fund administration.

This Communications Report for 2022 provides you with comprehensive insights, especially into our business activities. It also gives details relating to our regularly updated website, media relations, and information activities in social media, while also reporting on numerous expert events and regulatory publications. As the core product resulting from our reporting activities, it is aligned with our statutory reporting requirements as set out in the KommAustria Act and the Telecommunications Act. Encompassing over 270 pages, this report is the most comprehensive one of its kind published since the regulatory institutions were established. This is largely due to the numerous responsibilities recently entrusted to us by policymakers.

The Communications Report for the 2022 reporting year opens with the RTR business report, along with the financial statement for the year ending 31 December 2022. In sections 2 and 3 below, we describe the regulatory and funding activities of media authority KommAustria and also present KommAustria's detailed reports on these issues: the protection of minors in relation to media products, accessibility, media range and market shares, digitalisation of broadcasting systems, self-regulation in commercial communication, and evaluation of measures under the Austrian Communications Platforms Act.

Section 4 provides details on the work of the Media Division, including the annual report by the complaints board for communications platforms, as well as reports on grant administration, especially relating to the Digitisation Fund, the funds dedicated to promoting broadcasting and the Fund for the Promotion of Digital Transformation.

Section 5 provides an overview of the procedures completed and decisions handed down by the Telekom-Control-Kommission (TKK) in its role as regulatory authority for telecommunications. Market analysis procedures and cases involving spectrum are particularly prominent examples in this connection. The TKK also serves as the supervisory body for trust services, thereby contributing to security and reliability in the digital sphere.

Section 6 provides information about the activities of the Telecommunications and Postal Services Division during the reporting year, covering an array of topics including conciliation activities on behalf of consumers, network security and number administration, as well as infrastructure rights and the single information points for infrastructure.

Section 7 presents details of postal market regulation, a responsibility falling under the remit of the Post-Control-Kommission (PCK) and the Telecommunications and Postal Services Division. The main topics include the monitoring of postal service points, the issuing of licences, and reviews of general terms and conditions and postal rates.

Here we also provide information about our work as a highly active member of numerous international bodies such as ERGA, EPRA, BEREC, ENISA and ERGP. Through our participation, we are able to closely follow, and in some cases actively shape, international developments.

In the last two sections of this report, we focus on our activities in the capacity of competence centre and then present a brief analysis of the trends in the specific markets falling under our regulatory mandate.

We thus hope to have aroused your interest in our responsibilities and areas of work.

Vienna,
June 2023

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Chairperson
Austrian Communications Authority
(KommAustria)

Mag. Wolfgang Struber
Managing Director
Austrian Regulatory Authority for
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Media Division

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Dr. Klaus M. Steinmaurer, MBA
Managing Director
Austrian Regulatory Authority for
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Telecommunications and Postal Services Division

Why we don't want to share the dinosaurs' fate

"The stars now stand in disarray, the comet's course I would withstand [...] We cower and tremble at it all, the world is surely doomed to fall, [...]"

Comet Song from Lumpazivagabundus, Johann Nestroy, 1835

The stars now stand in disarray; is a pretty good approximation of current events as we look around us at the world today. Haven't we just survived a global pandemic only to then find war breaking out on Europe's very borders – and we have no idea how it will all end or, more importantly, what we can then expect? A million people are camped along the North African coastline and we look away in fear of the storm brewing there. What will happen to the creature comforts we have become accustomed to? And above all, what will happen to our environment and climate?

Truth be told, we've come to feel rather secure since the fall of the Iron Curtain and the Berlin Wall in 1989. As the new millennium dawned, it could only get better, we thought. Progress was being driven by digitalisation, prosperity by trade. Looking back a century, though, we find ourselves in the same place. Just read the first chapter of Stefan Zweig's autobiography *The World of Yesterday*, which bears a portentous heading: *A Safe and Secure World*. We know all too well what came next.

Since then, we've learned that those who blindly put their faith in safety and security will most likely face a rude awakening.

We should finally realise that our world is actually unsafe and insecure. This uncertainty tends to be most prevalent in the places where our analogue lives connect with the digital realm. When we use the word 'security' in a digital context, it's important to know exactly what we mean by it. One aspect is of course the simple physical security of our infrastructure. Everything starts with a network. One of the key factors contributing to the strength of the defence mounted by Ukraine was the sheer speed with which they were able to bring their destroyed or at least heavily damaged communications infrastructure back online. Help was also provided by the private sector, in the form of satellite infrastructure. During the first few weeks of the invasion, this was a particularly important topic that we also addressed as telecoms regulators at EU level. To be perfectly honest, we must confess that we previously overlooked this problem on our radars. Another example is the heightened attention paid in the meantime to how the electricity grid and telecommunications networks interact. In a crisis situation, communications between decision-makers obviously must be maintained, but lines of communication to others affected also need to be safeguarded. A project envisaged by the most recent Telecommunications Act in Austria, in which we at RTR are playing an active role, aims to establish a public warning system and therefore take a crucial step towards decisively improving our security in a crisis situation. All those involved are working toward achieving a status quo in Austria that will prevent the kind of emergency most recently experienced in the Ahr valley in Germany in 2021.

Physical security is complemented by the logical security of operational networks. Everything is networked using an internet that was never designed for this level of complexity and is therefore vulnerable to outside attack. Our communications networks are powered by vast software along with many external interfaces that potentially offer weak spots for cyberattacks. Back in 2019, awareness was already being raised about the security risks posed by the future introduction of 5G, alongside the many benefits of this new mobile standard. This discussion, originating in the US, was also driven by economic and geopolitical concerns. Europe followed suit, acting to address the issue with specific pieces of legislation such as the 5G Toolbox or the NIS II Regulation. Steps were also taken to properly account for cluster risks relating to security policy, which had developed in particular at the network infrastructure level. We at RTR are also making an active contribution here, not only with the network Security advisory board and our regular industry sector risk analyses, but also as a certification body for trust services and as a member of EU-level working groups.

As networks expand and become tighter, criminal incursions into the level above infrastructure reciprocally become more frequent, potentially affecting each of us personally. The latest figures speak volumes here: while there were around 10,000 cybercrime cases reported in Austria in 2012, this figure had risen to 60,000 by 2022 and the trend shows no sign of weakening. The explanation is very simple: the more potential unleashed by digitalisation, the more potential for crime.

To return to the Nestroy quote, the 'comet' that he speaks of might relate nowadays to something we need to be discussing in the context of digital opportunities and security. I'm talking about generative artificial intelligence, of which ChatGPT is probably the most famous example at the moment, and its potential to further add to the considerable degree of 'disarray' that we are currently having to come to terms with. This particular comet has already made its impact, and from a regulatory perspective we need to act quickly to establish order. Perhaps the 'impact crater' it has left behind will in fact lead even to some positive developments if we can get the right regulatory frameworks in place in time. At a global level, of course. The chances of this happening don't look too bad as of now, as even those working in the field of generative AI consider regulation to be both necessary and appropriate. Europe has taken a leading role here and we should make every effort to get rapid results.

Simply having blind faith that the latest advances in technology will always be beneficial to humankind is not only naive but demonstrably false. That much history tells us. Especially in the digital realm, you are safest when you feel insecure. This is the only way to resolve your vulnerabilities before others find and exploit them. Our network infrastructure, and everything built on it, today forms the central nervous system of both our economy and our civil society. This digital CNS must be protected at all costs. Considering everything that happens within and using these networks, a forward-looking, transparent and future-oriented approach to regulatory practice is an important enabler rather than a barrier. While of course striving to do our part, we at RTR realise that there can be no single point of regulatory responsibility within a cross-cutting issue as complex as security within the digital domain. So we call on anyone and everyone working in the field of regulation to share their expertise, with the aim of achieving a safe and secure world even in these uncertain times. By so doing, the world is by no means 'doomed to fall'.

Dr. Klaus M. Steinmaurer, MBA
Managing Director
Austrian Regulatory Authority for Broadcasting and Telecommunications (RTR)
Telecommunications and Postal Services Division

Transformation, AI and responsibility

The establishment of the Fund for the Promotion of Digital Transformation at RTR Media was a major milestone that for our organisation dominated 2022. As was formulated in the proposal to the Council of Ministers when the legislation was introduced, this fund is intended to ensure an independent and pluralistic media landscape in Austria to compete with online giants. The 'Transformation Fund' promotes the urgent work required to build and expand the digital service offerings of domestic broadcasting and print media. These have involuntarily become enmeshed in a kind of global competition that is drawing off substantial value creation from the Austrian media market and exerting a powerful influence on media consumption. This, combined with a challenging economic situation, has put the media industry under pressure to innovate. Yet this cannot be achieved quickly enough using only market financing. A glance at the revenue of the Federal Ministry of Finance from digital tax and advertising tax makes this quite clear.

From 2021 to 2022, revenue from the 5% digital tax jumped by EUR 16 million to reach EUR 96 million. Just this growth of EUR 16 million means for the transatlantic media giants an increase from the previous year of EUR 320 million in net advertising revenue – and that in Austria alone. The total EUR 96 million in digital tax revenue results from net advertising expenditures by the domestic economy in the amount of roughly EUR 2 billion for online advertising at Google, Facebook, Amazon and the like. This is just short of the total net advertising revenue collected by all domestic media in the same year. Beyond this, the Ministry of Finance's revenue from advertising resulting from advertisements in domestic media has been declining for years, which highlights how urgently a digital transformation of Austrian media is needed. For the first time, we have included in this Communications Report a comparison, based on the digital tax, of the net advertising investments in domestic media with those in digital media outside Austria. This can be found in the section on the Austrian communication and advertising market starting on page 224.

The competitiveness of Austrian media offerings is essential for securing their future, as well as the future a democratic discourse that is characterised by a diversity of opinions and is based on content produced here in Austria. The Private Broadcasting Fund and the Non-Commercial Broadcasting Fund of RTR Media, with their emphasis on promoting content, thus stand alongside the AUSTRIAN TELEVISION FUND as indispensable supplements to the Transformation Fund. Consistent with this approach, current legislative efforts aim to promote high-quality journalism and improve the regulation of digital offerings in line with the standards in place across Europe. This could soon generate new responsibilities for KommAustria and thereby also for RTR as its operative arm.

It would seem beneficial, perhaps even urgently necessary, for our media companies to make use of artificial intelligence in order to efficiently generate content or for example to supply consumers with individualised and targeted information that is of particular interest to them. However, what distinguishes our established media channels and distinguishes them from social media and the much-discussed filter bubbles found there is the selection of reliable, relevant information curated by professionals. This credibility must be preserved. Exactly what opportunities AI may present along the overall media value chain is far from clear at this time, but the situation is currently being analysed by RTR Media in cooperation with academia.

Self-learning AI is more than a primitive algorithm. AI can help compose texts and create images, yet it can also imitate voices and alter videos in unnoticeable but significant ways. Soon it will even be able to adapt to us and our needs on an emotional level without, however, having emotions itself, said historian and progressive thinker Yuval Noah Harari of the Hebrew University of Jerusalem in late April 2023 in Montreux at the Frontiers Forum, an annual event dedicated to transformative science. AI will therefore be able to manipulate us, says Harari, and will be capable of altering our convictions and cultural conceptions with virtual empathy, in our own language and using images, texts and ideas produced by AI itself. The current need is therefore to draft regulation on the use of AI, says Harari. The first and most important point is to require AI to consistently

identify itself as such. In an interview with Die ZEIT, also in April 2023, Canadian computer scientist Yoshua Bengio, one of the pioneers of machine learning, explained why he is calling for a temporary stop to the development of powerful artificial intelligence models until fundamental rules governing their use can be clarified. Bengio formulated the demand in a letter published together with other prominent voices – including Yuval Harari and Elon Musk.

The fact that in Austria media is being increasingly consumed online can also be seen from the results of the Video Survey that we have produced annually since 2017 in cooperation with the Teletest working group. We are eager to see what role our Online Audio Monitor Austria will play when we present it for the first time in 2023. It is clear that these developments call for a population that possesses media literacy. In an effort to promote this, we presented the Digital Skills Austria study and our Media Literacy report for the first time in 2022. Updates will follow in a 2023 report focusing on education.

The digital transformation of our media is a matter of survival: not only for media but for our culture and democracy – in other words for us all. To achieve this, an awareness of our responsibility is needed, as well as a regulatory system that supports progress without allowing it to slip out of our control.

Mag. Wolfgang Struber
Managing Director
Austrian Regulatory Authority for Broadcasting and Telecommunications (RTR)
Media Division



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RTR and the regulatory authorities

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01 RTR and the regulatory authorities

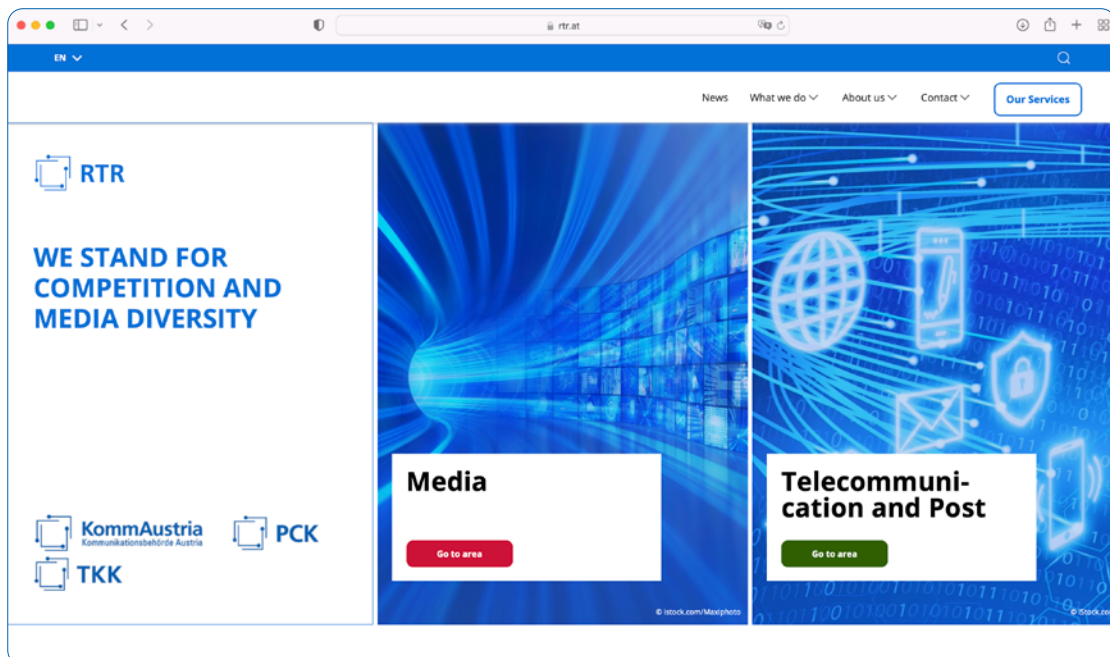
1.1 Our company: we stand for competition and media diversity

The Austrian Regulatory Authority for Broadcasting and Telecommunications (RTR) is wholly owned by the Republic of Austria. RTR's core mandate is to promote competition in the broadcasting, telecommunications and postal markets, while achieving the goals set out in the KommAustria Act and the Telecommunications Act. RTR is headed by two managing directors and is structured into two specialist divisions: the Media Division, and the Telecommunications and Postal Services Division. RTR also serves as an administrative agency, providing support to the Austrian Communications Authority (KommAustria), the Telekom-Control-Kommission (TKK) and the Post-Control-Kommission (PCK). RTR uses the funds under its administration to support projects in the broadcasting and media sectors. The two specialist divisions within RTR additionally offer alternative dispute resolution services, including via RTR's officially recognised conciliation bodies for consumers.

In the 2022 reporting year, Oliver Stribl prematurely terminated his duties as Managing Director of the Media Division. Following an interim period under Roland Neustädter, Wolfgang Struber permanently assumed responsibilities as Managing Director as of 1 September 2022. Klaus Steinmaurer was the Managing Director of the Telecommunications and Postal Services Division during the year under review.

As a public corporation, RTR follows the requirements of the 2017 Federal Public Corporate Governance Code, which takes into account the special responsibility and duty to exercise the diligence owing upon public authorities – as owners of state property – towards such property and thus towards the public. The RTR Corporate Governance Report is published (in German) on the RTR website at www.rtr.at/de/rtr/Aufsichtsrat.

Further information on RTR can be viewed at www.rtr.at.



RTR staff members: specialists competent in their areas of expertise

The table below shows the distribution of staff among the two specialist divisions and the service area.

Figure 01: Service departments, media division, and telecommunications and postal services division, average FTEs in 2022



As seen from the table below, the number of Media Division employees rose slightly, mostly due to recruiting new entrants for the recently established Fund for the Promotion of Digital Transformation. The minor fluctuations among personnel in the Telecommunications and Postal Services Division are largely because of employees on parental leave, who in some cases were replaced by temporary contract staff. Practically no fluctuations were seen among service staff in 2022.

Table 01: RTR Staff size 2020–2022

Average staff levels (FTEs)	2020	Percentage	2021	Percentage	2022	Percentage
Telecommunications and Postal Services Division	55.721	53.67%	54.860	51.55%	52.717	47.88%
Media Division	30.744	29.61%	34.542	32.46%	40.079	36.41%
Service	17.354	16.72%	17.017	15.99%	17.292	15.71%
Total for RTR	103.819	100.00%	106.419	100.00%	110.088	100.00%

RTR as employer moves forward in step with the times

Introduced as part of the initial COVID-19 measures in March 2020, working from home proved to be highly effective for RTR as well as the authorities KommAustria, PCK and TKK, and since then it has been well integrated as part of normal procedures. Even back in 2021, a works agreement covering the framework conditions for working from home was agreed between the management and the works council. In the year under review, the agreement on working from home was adapted to reflect the new electronic time tracking system. This agreement, along with a new works agreement on flexible working hours also reached in 2022, now allows RTR in its role as employer to offer staff an exceptional level of working time flexibility, in line with current expectations.

Ongoing digitisation of RTR services

A major step forward in digitising RTR services was the launch of the new digital HR tool, which was successfully implemented as of the beginning of 2022, the year under review. Functions previously distributed over multiple applications were merged to create the new tool, resulting in substantial simplification of administrative workflows in the HR department. Migration to the new software proved easy, not least due to its intuitive operation. After the successful launch, the next steps in digitisation followed, to allow even greater usability of the HR tool in the coming year.

Advanced training and knowledge exchange: getting fit for a digital working world

The expertise of our staff members is the defining quality of RTR's work as a regulatory authority. Correspondingly, both the personal and the professional dimensions of staff development play a key role at RTR. In the reporting year, 78 employees made use of a total of 233 working days for education and training, with numerous events being offered online.

To ensure that RTR's staff members are well equipped for the digital working world, RTR has defined requisite digital skills, so that for each role criteria have been defined for the necessary skills. This allows a description of each employee's digital skills, and tailoring of future training in line with needs.

Internal workshops, meetings and other events during the year under review were held either on site or as hybrid or online events, again reflecting the lasting changes to our meeting culture that were necessarily brought on by the COVID-19 digitisation wave. A digital information point for distributing staff bulletins as well as a digital pinboard for the exchange of staff information are now established tools within RTR's hybrid working world.

To become acquainted with working at RTR, three summer interns took the opportunity to spend a month with us during the year under review, as did an employee with the Federal Administrative Court as part of a job rotation scheme.

IT team at RTR drive day-to-day digitisation

Again in 2022, the IT team ensured RTR's ability to smoothly meet the demands RTR faces as a digital regulator. The focus of activities in 2022 was the scheduled upgrading of client infrastructure. To enhance security, a two-factor authentication system for remote access via VPN was introduced as part of the upgrade. To better support hybrid workflows, the IT team converted the basic platform software to Microsoft 365 and Teams. In the event of any technical issues, the IT helpdesk is always there to provide the customary rapid support to co-workers.

The Media Division received support from the IT team in implementing the new media grants for digital transformation. In accordance with legal requirements, the Fund for the Promotion of Digital Transformation became operative as of mid-April 2022, with initial applications being accepted starting from May 9. After that, and on down to the initial funding decisions in November, all requests were processed exclusively in a digital environment.

Together with the Telecommunications and Postal Services Division, the IT team was involved in planning a Public Warning and Alert System for Austria, a project set for implementation in 2023.

Besides other activities, the IT team provided ongoing website support to the two divisions, also adding improvements to the rtr.at home page and the website search engine.

Occupational health at RTR

Employee health, and not just at work, is a vital concern at RTR. Together with St John Ambulance in Austria, first aid courses were held in RTR's facilities in 2022. Twelve staff members completed basic first aid training, while another twelve participated in a refresher course.

The health and safety officers at RTR organised appointments for staff members to take advantages of services offered by RTR's occupational health specialist. Besides FSME and influenza vaccinations, these mostly included medical check-ups and workplace inspections to provide ergonomic advice.

RTR participated in the Business Challenge once again in 2022. The aim of the event, organised by the Economic Chamber, is to encourage a company's staff to accumulate as many activity points as possible within a seven-week period, with each minute recorded by an app. This means that people can participate in the Business Challenge digitally, independent of location and even while working from home. And added value is created for the environment: for every company that registers and for every 1000 activity minutes, one tree is planted. In all, 28 RTR staff members actively participated in the Business Challenge from October 1 to November 19, 2022. During these 50 days, they clocked up 89,023 activity minutes on behalf of RTR. Within Austria overall, RTR ranked 32nd within a field of 101 firms, and was placed twelfth in Category 4 (firms having 50 to 250 employees). Thanks to the activity minutes collected by RTR employees as part of the 2022 Business Challenge, 90 trees were planted.

Equality at RTR

RTR is committed to equal opportunity and equal treatment for all staff members, regardless of age, gender, ethnic or national origin, religion, any physical or mental challenges, and sexual orientation.

Equality work at RTR is founded upon this commitment and is stipulated in a works agreement. The agreement requires an equality and family support policy to be drawn up every two years, to define personnel and organisational measures for promoting equality. The equality policy includes a guideline on gender-appropriate language, an income equality report and the promotion of career opportunities for women, as well as regulations on the reconciliation of work and family life, and education and training measures. These agendas are supported by the role of equal opportunities officer, which is re-awarded every three years, most recently in 2021.

During the year under review, a memorandum of understanding on gender-sensitive language was adopted, while the 2022 equality and family support policy was signed between the management and the equal opportunities officer. The policy is publicly available on the RTR website.

Activities in 2022 included an in-house event on accessibility in May and, on November 15, traditionally a school holiday in Vienna and Lower Austria, in a bid to support parents in their duties, childcare was offered for the first time to employees with young children.

1.2 RTR's financial statements for 2022

The external auditors at Confida Wirtschaftstreuhandges mbH have issued an unqualified audit certificate confirming RTR's financial statements for the 2022 business year (1 January to 31 December 2022). The financial statements presented below were prepared in accordance with the Austrian Commercial Code (UGB) as amended.

The profit and loss account and balance sheet, as shown in RTR's financial statements, are presented below. RTR is funded by various sources, depending on the areas of activity in question. Market participants are required by law to assume a portion of the financing, while public funding is also tapped. The financial contribution is calculated using the planned revenues of each company in relation to the total revenues of the sector. Once the actual revenues have been determined, the actual financial contributions are calculated and compared with the estimated financial contributions. To simplify administration, entities falling below a certain revenue limit, or threshold, are not required to pay financial contributions.

In 2022, RTR received federal funds amounting to EUR 2.364 million to finance media regulation; the share for financing the market was 48.54%, equivalent to EUR 2.230 million. For duties relating to the supervision of communication platforms, RTR received a subsidy of EUR 82,000. Market participants had to pay a 41.48% share, corresponding to EUR 58,000. The federal government made EUR 67,000 available for the supervision of video-sharing platforms, in consideration of the fact that, with only two companies participating in the market, few activities were required, so that costs were not passed on to market participants.

Public funds totalling EUR 2.857 million were awarded for the regulation of the telecoms market; market participants contributed EUR 5.18 million, which corresponds to 64.46%. An additional EUR 10,000 were earmarked as a contribution to network security. For postal service regulation, EUR 0.238 million was allocated from the federal budget, with the remaining expenditure, amounting to EUR 0.535 million or 69.20% of the total, contributed by market participants.

Public financing covers the Digitisation Fund, the Austrian Television Fund, the Private Broadcasting Fund, the Non-Commercial Broadcasting Fund and the Fund for the Promotion of Digital Transformation, as well as the supervisory body for trust services.

More information is available at www.rtr.at.

RTR closed the business year running from 1 January to 31 December 2022 with a balanced result.

Table 02: Profit and loss account for the 2022 business year (1 January to 31 December 2022)

	EUR	EUR	2021 in EUR thousands	2021 in EUR thousands
1. Net income		15,544,857.95		14,874
2. Other operating income				
a) Income from the disposal of fixed assets (excluding financial assets)	8,074.91		3	
b) Income from the release of provisions	6,944.32		13	
c) Other	687,182.66	702,201.89	619	634
3. Personnel expenses				
a) Salaries	-8,327,515.42		-8,120	
b) Social expenses				
ba) Pension insurance expenses	-291,721.88		-267	
bb) Severance pay expenses and contributions to staff provision funds	-156,253.25		-122	
bc) Statutory social insurance contributions as well as payroll-related fees and mandatory contributions	-1,968,381.03		-1,970	
bd) Other	-126,409.72	-10,870,281.30	-107	-10,586
4. Amortisation and write-downs of intangible assets, depreciation and write-downs of tangible assets				
a) Depreciation, amortisation and write-downs	-735,759.46		-706	
b) Release of investment grants	49,693.56	-686,065.90	50	-656
5. Other operating expenses				
a) Other	-4,647,877.13	-4,647,877.13	-4,227	-4,227
6. Subtotal of items 1 to 5		42,835.51		39
7. Income from other securities held as long-term investments		9,445.00		25
8. Other interest and similar income		2,048.98		
9. Expenses for financial assets				
Write-downs	-62,631.90	-62,631.90	-13	-17
10. Interest and similar expenses		-9,360.44		-11
11. Subtotal of items 7 to 11		-60,498.36		-3
12. Result before taxes		-17,662.85		36
13. Taxes on income		-1,287.71		-10
14. Result after taxes/net annual income		-18,950.56		26
15. Release of profit reserves				
Release of free reserves		18,950.56		0
16. Appropriation to profit reserves				
Appropriation to free reserves		0.00		-26
17. Net result		0.00		0

Sector-specific expenditure in RTR's specialist divisions

In the annual financial statements submitted by RTR, funding use is not reported by division. For this reason, table 03 lists the main items of RTR's profit and loss accounts broken down by the Telecommunications and Postal Services Division and the Media Division (as specified in Art. 19 Par. 3 no. 3 KommAustria Act, KOG).

Table 03: RTR's income and expenses by division

EUR thousands	Telecommunications and Postal Services	Media	Total
Net income	8,996	6,549	15,545
Other operating income	91	611	702
Personnel expenses	-6,839	-4,031	-10,870
Depreciation, amortisation and write-downs	-427	-259	-686
Other operating expenses	-1,793	-2,855	-4,648
Operating result	28	15	43
Financial result	-33	-27	-60
Result before taxes	-5	-12	-17
Taxes on income	-1	-1	-2
Result after taxes/annual surplus or deficit	-6	-13	-19
Appropriation to/release of profit reserves	6	13	19
Net result	0	0	0

RTR's income and expenses for the individual areas of activity within each division are presented in the annex to the annual accounts as at 31 December 2022 as adopted by the general assembly. The individual areas within the Telecommunications and Postal Services Division are: telecoms regulation, supervisory body for trust services, and postal services regulation. The areas within the Media Division are: media regulation, supervision of communications and media-sharing platforms, Digitisation Fund, Austrian Television Fund, broadcasting funds and the Fund for the Promotion of Digital Transformation (refer to www.rtr.at).

Table 04: Balance sheet as at 31 December 2022 – assets

	2022-12-31		2021-12-31	
	EUR	EUR	EUR thousands	EUR thousands
A) Fixed assets				
I. Intangible assets				
1. Industrial property and similar rights	922,612.39		1,078	
2. Prepayments	22,541.55	945,153.94	0	1,078
II. Tangible assets				
1. Buildings on third-party land	39,766.48		122	
2. Other assets, operating and office equipment	391,302.74	431,069.22	349	471
III. Financial assets				
Long-term securities		1,854,081.26		1,917
		3,230,304.42		3,466
B) Current assets				
I. Receivables and other assets				
1. Trade receivables (With a maturity >1 year EUR 0; previous year: EUR 0)	975,776.60		1,305	
2. Other receivables and assets (With a maturity >1 year EUR 57,617.19; previous year: EUR 17 thousand)	109,534.11	1,085,310.71	69	1,374
II. Cash at bank and in hand		3,250,987.73		3,375
		4,336,298.44		4,749
C) Prepaid expenses		188,263.97		139
D) Trustee accounts – funds		47,163,827.81		26,531
		54,918,694.64		34,885

Table 05: Balance sheet as at 31 December 2022 – liabilities

	2022-12-31		2021-12-31	
	EUR	EUR	EUR thousands	EUR thousands
A) Equity capital				
I. Called-up and paid-in nominal capital	3,633,641.71		3,634	
II. Capital reserves				
Committed	1,924.59		2	
III. Profit reserves				
Other reserves / free reserves	49,190.70		68	
IV. Net result	0.00		0	
Profit carried forward (previous year: EUR 0)	0.00	3,684,757.00	0	3,704
B) Special item: investment grant		24,846.69		74
C) Provisions				
1. Provisions for severance pay	190,050.00		158	
2. Other provisions	737,277.40	927,327.40	1,516	1,674
D) Liabilities				
1. Trade payables	639,394.10		724	
(With a maturity <1 year EUR 639,394.10; previous year: EUR 724 thousand; with a maturity >1 year EUR 0; previous year: EUR 0)				
2. Other liabilities	2,271,824.66	2,911,218.76	2,036	2,760
(With a maturity <1 year EUR 2,271,824.66; previous year: EUR 2,036 thousand; with a maturity >1 year EUR 0; previous year: EUR 0; due to taxes EUR 514,021.664; previous year: EUR 304 thousand; due to social security obligations EUR 224,908.95; previous year: EUR 196 thousand)				
D) Trustee obligations – funds		47,370,544.79		26,673
		54,918,694.64		34,885

1.3 National regulatory authorities KommAustria, TKK and PCK

One of RTR's main responsibilities is to serve as the administrative agency for the national regulatory authorities KommAustria, TKK and PCK, introduced briefly below.

Austrian Communications Authority (KommAustria)

The Austrian Telecommunications Authority (KommAustria) is Austria's independent and autonomous regulatory and supervisory authority with responsibility for electronic audio and audiovisual media. This mandate includes supervision of the Austrian Broadcasting Corporation (ORF) and its subsidiaries. KommAustria also grants funding to print media and fulfils mandates under the Act on Transparency in Media Cooperation and Funding (MedKF-TG) and the Exclusive Television Rights Act (FERG). The make-up, duties and objectives of KommAustria are set forth in the KommAustria Act (KOG).

KommAustria consists of five members who are nominated by the federal government and appointed by the Austrian president for a term of six years. The five members of the regulatory authority serving hitherto were confirmed in December 2022 for an additional six-year term. Michael Ogris served as chair of KommAustria during the reporting year and Susanne Lackner served as deputy chair.

Details on KommAustria, including rules of procedure and distribution of duties, are published (in German) at https://www.rtr.at/medien/wer_wir_sind/KommAustria/KommAustria.de.html.

Telekom-Control-Kommission (TKK)

The TKK has been responsible for regulating the telecommunications market in Austria since 1997. The tasks and responsibilities of this independent regulatory institution are laid down in detail in the 2021 Telecommunications Act (TKG 2021). Among other things, it is responsible for regulation of competition, frequency assignment procedures and network cooperation, as well as monitoring net neutrality. The TKK also serves in another central capacity, as supervisory body for trust services.

The TKK consists of three main members and three substitute members who are appointed by the federal government for a five-year term. Nikolaus Schaller, justice at the Vienna Regional Court (Oberlandesgericht), held the position of TKK chair until 4 November 2022. Barbara Nigl, justice at the Vienna Regional Court, was then appointed to chair the TKK for the current term of office (5 November 2022 to 4 November 2027).

Details on the TKK are published (in German) at https://www.rtr.at/TKP/wer_wir_sind/tkk/TKK.de.html.

Post-Control-Kommission (PCK)

The PCK has been responsible for regulating the postal market in Austria since 2008. The tasks and responsibilities of this independent regulatory institution are laid down in detail in the Postal Market Act. Among other things it is responsible for measures relating to the universal service provider, licences or approvals of specified sets of general terms of business, and the fees charged by postal service providers. RTR serves as the administrative agency of the PCK. The PCK consists of three main members and three substitute members who are appointed by the federal government for a five-year term. Nikolaus Schaller, justice at the Vienna Regional Court (Oberlandesgericht), held the position of PCK chair until 4 November 2022. Barbara Nigl, justice at the Vienna Regional Court, was then appointed to chair the PCK for the current term of office (5 November 2022 to 4 November 2027).

Details on the Post-Control-Kommission are published (in German) at https://www.rtr.at/TKP/wer_wir_sind/pck/startseite.de.html.



Activities of KommAustria

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02 Activities of KommAustria

2.1 Access to media markets

KommAustria regulates access to media markets, specifically by assigning broadcasting frequencies, issuing broadcasting licences, accepting and reviewing notifications from cable broadcasters and other providers of audiovisual media services, and by reviewing new services prior to launch by the ORF or its subsidiaries. This work also includes the issuing of multiplex licences to radio and television broadcasters.

2.1.1 Private radio broadcasting licences

The licensing procedures by KommAustria during the period under review were conducted in response to applications for creating new coverage areas or expanding existing ones, as well as to officially invite tenders for licences due to expire at the end of the legal term. In addition, numerous licences were granted for radio event broadcasting and educational broadcasting.

2.1.1.1 Nationwide radio broadcasting

Since December 2014, KRONEHIT Radio BetriebsgmbH has been the (renewed) holder of a nationwide private terrestrial broadcasting licence limited to ten years. The network broadcasts KRONEHIT, an adult contemporary radio format, in most of Austria.

KRONEHIT Radio BetriebsgmbH had been assigned authorisation for a total of 168 frequencies and twelve tunnel radio systems, as of the end of this reporting period.

A second nationwide licence had been awarded for the first time in early 2019, to Antenne „Österreich“ and Medieninnovationen GmbH (now Radio Austria GmbH). Under this licence, the Radio Austria network has been on air since November 2019.

On issue of the licence, Radio Austria GmbH had originally been assigned 48 frequencies, potentially allowing coverage of 61% of the resident population. To expand and improve coverage under the licence, three additional permits for single-frequency broadcasting systems were assigned to the licence during 2022, while two procedures for awarding further transmission capacities were pending at the end of the reporting period. Radio Austria GmbH returned eight frequencies in the reporting period.

2.1.1.2 Regional and local radio broadcasting

In the local and regional terrestrial broadcasting sector, a total of 20 licensing procedures were carried out in 2022, ten of which had not yet been completed by the end of the reporting period.

Licences were issued as follows:

Table 06: Licenses issued in 2022, by licence holder and licence area

Licence holder	Coverage area	Licence assignment final
AGORA – Verein Arbeitsgemeinschaft offenes Radio – Avtonomno gibanje odprtega radia	'Leutschach'	Yes
Radio Helsinki, Verein Freies Radio Steiermark	'Graz 92.6 MHz'	Yes
Soundportal Graz GmbH	'Graz und Teile der West- und Oststeiermark' (Graz and parts of Western and Eastern Styria)	Yes
NRJ Digital Radio GmbH	'Stadt Salzburg (94.0 MHz)' (City of Salzburg (94.0 MHz))	Yes
Antenne Salzburg GmbH	'Stadt Salzburg 106.6 MHz und Teile des Innergebirges' (City of Salzburg and parts of interior mountainous regions)	Yes
Verein Freies Radio B138	'Kirchdorf an der Krems'	Yes
WELLE SALZBURG GmbH	'Mittel- und Unterkärnten' (Central and Lower Carinthia)	Yes

A total of three licensing procedures were pending at the end of the reporting period: each of these is to be reassigned by means of an official invitation to tender, following licence expiry.

Seven other licensing procedures, in response to requests filed by parties for launching new coverage areas, were pending at the end of the reporting period.

In a number of other instances, parties requested frequencies to expand existing coverage areas or improve coverage in existing areas. In these cases, frequencies as listed below were assigned through a total of four decisions:

- 'SEMMERING 2 (Hirschenkogel) 107.8 MHz' to Radio Eins Privatrado GmbH,
- 'HORN 3 (Steindlberg) 103.0 MHz' to Radio Arabella GmbH,
- 'MAYRHOFEN 3 (Ahorn – Panorama Funkstation) 91.20 MHz' to T-ROCK GmbH, and
- 'EBBS 2 (Oberbuchberg) 92.2 MHz', 'PAISSLBERG 92.2 MHz' and 'WOERGL 4 (Werlberg) 92.2 MHz' to T-ROCK GmbH.

Six procedures for expanding coverage areas or to improve coverage in existing coverage areas were still pending at the end of the reporting period.

2.1.1.3 Event radio and educational radio licences

An event radio broadcasting licence is granted for a maximum of three months, authorising broadcasting in the vicinity of and simultaneously with an independent public event. Licences were granted for a total of 18 event radio broadcasts in 2022.

Educational radio licences are granted to education or training institutions, authorising them to locally broadcast radio formats related in function to the duties of the particular institution. Such licences can be granted for a maximum of one year. Five educational radio licences were granted in 2022.

2.1.1.4 Procedures under telecommunications law

To simplify administration, the Telecommunications Act 2021 (TKG 2021) empowers KommAustria as a kind of 'one-stop shop' additionally authorising it to issue permits under telecommunications law that are required for the radio equipment used in broadcasting. Permits under telecommunications law are issued either in conjunction with a permit under broadcasting law or with no direct reference to broadcasting law, in the latter case solely on the basis of an application under telecommunications law. These latter cases usually involve technical changes planned for radio systems, such as the use of new transmitter antennas, the relocation of transmission sites or increased transmission power.

In 2022, KommAustria approved twelve changes to radio equipment, three applications to increase power output and two applications allowing private radio broadcasters to conduct test transmissions. During the reporting period, several applications were also received for approval to set up and operate tunnel radio systems.

In addition, KommAustria approved 20 requests for permission to operate radio systems within broadcasting frequency bands but for non-broadcasting purposes (for example to cover drive-in cinemas, conferences and similar events).

2.1.1.5 Radio broadcasting spectrum assigned to the ORF

As part of its responsibility for assigning radio broadcasting spectrum and for issuing corresponding permits under telecommunications law, KommAustria also plays a role in cases where the ORF uses radio transmission systems.

In this context, a total of seven procedures were carried out in 2022, of which six related to the extension or modification of radio systems already assigned to ORF. One procedure related to the reassignment of radio systems as a result of inadequate coverage across one municipality in Styria.

2.1.1.6 Nationwide digital radio

In the reporting period, no station line-up changes were approved in relation to the nationwide MUX I multiplex platforms, although one change to a telecommunications licence was approved.

At the end of 2022, the overall station line-up comprised 16 stations but no ancillary services.

With 14 broadcasting systems in operation, DAB+ achieved a technical coverage rate of 84% of the Austrian population in 2022.

2.1.1.7 Regional and local digital radio

In the period under review, no licences were issued for operating new regional multiplex platforms for digital terrestrial radio. Accordingly, as of the end of the reporting period, only one valid licence had been issued for operating a regional multiplex platform, providing service to around 2.2 million people in greater Vienna.

The station line-up comprised 15 stations and two ancillary services at the end of 2022, with no stations launched or discontinued in 2022.

2.1.1.8 Licences for satellite radio

KommAustria issued one licence for satellite radio in 2022.

2.1.1.9 Radio stations subject to notification requirements

In the 2022 reporting period, KommAustria was notified of three new cable radio stations.

2.1.2 Approvals and notifications relating to audiovisual media services and multiplex platforms

2.1.2.1 Nationwide television

During the reporting period, no changes to channel line-ups were requested for the nationwide multiplex platforms A and B, while a total of three changes to channel line-ups were approved for the multiplexes D, E and F.

The multiplexes D, E and F were again put to tender in 2022, with procedures not yet completed by the end of the reporting year.

2.1.2.2 Regional and local television

In the period under review, six licences for operating regional multiplex platforms (multiplex C) were issued.

As of the end of the period under review, 15 licences to operate local multiplex platforms were valid, covering roughly 64% of the Austrian population.

Overall, three changes to channel line-ups were approved in this area.

2.1.2.3 Television pilot projects

The '5G broadcast' pilot project, which had run since 2019, was extended and expanded to cover additional frequencies. A channel line-up change was also approved for the '5G broadcast' project. Meanwhile, no further extension was requested for the 'UHD' pilot project, which had run since 2020.

The local pilot project for trialling the general business and technical feasibility of broadcasting digital terrestrial television in the vicinity of Turracher Höhe was not extended, because of the fact that a regular licence could instead be approved.

2.1.2.4 Satellite television licences

KommAustria issued licences for eight satellite television channels in 2022.

2.1.2.5 Media services subject to notification requirements

The following notifications were received by KommAustria in the 2022 reporting period: sixty-five notifications of on-demand audiovisual media services, eleven notifications of cable television channels and five notifications of television channels broadcast over the internet. In addition, 13 applications for assessment in accordance with Art. 9 Par. 8 of the Audiovisual Media Services Act (AMD-G) were received.

2.1.2.6 Approvals and notifications of new ORF services

In the 2022 reporting year, the ORF notified no changes to service plans.

Back in 2014, the ORF had utilised a prior evaluation procedure to request a change in the service plan for the oe3.ORF.at online offerings, namely an extension to include the Ö3-Live/Visual service. This request was rejected in a non-final decision, KOA 11.266/15001, which was issued on 18 February 2015. Because this decision was lifted by the Federal Administrative Court (BVwG) following a chain of appeal lasting several years, the prior evaluation procedure was once again pending before KommAustria in the 2022 reporting period.

A prior evaluation procedure relating to the service plan for a public online classical music platform (www.myfidelio.at) was rejected in a non-final decision issued during the reporting year.

2.2 Legal supervision

2.2.1 Commercial communications

In the reporting period, evaluations of 50 audiovisual media services and radio stations were carried out as part of monthly advertising monitoring duties. Five procedures were also conducted on the authority's initiative. For the 2022 reporting year, evaluations of broadcasts and content focused on the regional content programming offered by the ORF's nationwide television channels.

ORF radio stations were evaluated as follows in 2022: the regional stations Radio Salzburg, Radio Burgenland, Radio Niederösterreich, Radio Kärnten, Radio Steiermark and Radio Tirol were evaluated once each, while the national radio stations Ö3 and Ö1 were evaluated twice, and FM4 once. On the basis of the evaluations, procedures were initiated in two cases that have yet to be completed with final effect.

In terms of ORF's national television channels, ORF 1 was monitored four times and ORF 2 on nine occasions (seven involving separate regional-content programmes). On the basis of the evaluations, procedures were initiated in six cases that have yet to be completed with final effect.

In the private radio segment, the stations of twelve broadcasters were evaluated. In four cases, procedures were initiated due to infringements of advertising regulations, with these procedures yet to be completed with final effect.

In the private television segment, seven channels were evaluated. In six cases, procedures were initiated due to infringements of advertising regulations, of which one has been completed with final effect.

Broadcasts offered by seven providers of on-demand audiovisual media services were evaluated. No procedures were initiated here in response to infringements of advertising regulations.

2.2.2 Programming principles

In their television and radio programmes, broadcasters are required to uphold the principles of objectivity and diversity of opinions.

Similar principles are set forth in the ORF Act (ORF-G) for the Austrian Broadcasting Corporation (ORF), which in all of its service offerings is required to strive for quality, innovation, integration, equal rights and mutual understanding. Information must be comprehensive, independent, impartial and objective, and help the public freely form opinions and so contribute to democratic discourse.

Based on its public service remit, the ORF is also obliged to reflect the diversity of opinions represented in public life and to respect human dignity, personality rights and individual privacy rights. Commentaries, analyses and presentations must be objective and based on verifiable facts.

A total of 13 procedures involving complaints of alleged breaches of programming principles by the ORF were initiated in the period under review. The cases mostly involved alleged breaches of the principles of objectivity and impartiality in ORF reporting. In three complaints procedures, KommAustria ruled that the complaints were to be rejected as unjustified owing to some aspects of these complaints, as inadmissible owing to other aspects and in some cases to be dismissed as a result of lateness. In one complaints procedure, the complaint against the ORF was confirmed. In three cases, the complaints were dismissed on the grounds that the complaints lacked legitimacy. In two cases, the complaints were dismissed due to failure to comply with the order to remedy deficiencies. In one case, the complaint was withdrawn during the course of the investigation. KommAustria was forced to dismiss one case as it involved an obviously baseless complaint. Two complaints procedures that had been initiated could not be completed in the reporting year.

As part of legal supervision of private broadcasters, a total of three procedures for an ex officio review of a private television broadcaster regarding infringements of programming principles were initiated during the reporting period. These were in response to a statement of facts submitted a year previously as well as requests from viewers that did not result in complaints procedures. During the period under review, KommAustria completed one of the three procedures, finding that programming principles pursuant to AMD-G Art. 41 Par. 1 had been infringed in a total of five separate broadcasts by this private television broadcaster. The two other procedures, relating to a review of compliance with programming principles in other broadcasts by the private television broadcaster, had not been completed by the end of the reporting year.

During the reporting period, other requests for an ex officio review of two other private television broadcasters regarding infringements of programming principles were submitted, with an ex officio review procedure being initiated in one case that was pending completion by the end of the year under review.

2.2.3 Conciliation procedures in media

The RTR Media Division acts on behalf of KommAustria among other things as the conciliation body for complaints relating to communications networks and services used in broadcasting, in accordance with the TKG 2021. The main prerequisite for a conciliation procedure is a previously unsuccessful attempt by the customer and operator or provider to reach an agreement. In the course of a conciliation procedure, RTR attempts to negotiate a mutually agreeable solution or informs the participants of its position on the case in question. The conciliation body was submitted 127 complaints in the period under review. Details about conciliation cases are available in the annual conciliation report.

For other RTR Media Division conciliation and complaints procedures, see [section 6.1](#).

2.2.4 Specific supervision of the ORF and its subsidiaries

2.2.4.1 Purpose of business, public mandate and bodies

KommAustria carried out two prior evaluation procedures in the 2022 reporting period. The service plan originally not approved by KommAustria for the Ö3-Live/Visual online service was, following the rejection of the corresponding objection lodged with the BVwG by the ORF, referred back to KommAustria for a new decision in the reporting year following a successful appeal made by the ORF to the Austrian Administrative Court (VwGH). The procedure was conducted anew but had not been completed by the end of the reporting year. The planned service requested in 2021 for a public online classical music platform (www.myfidelio.at) was rejected following the completion of a prior evaluation procedure during the reporting year.

In the year under review, KommAustria completed two infringement procedures on account of suspected overstepping of the permitted limits to providing supplementary programme content in public online services, one case involving TVthek.ORF.at and the other tirol.ORF.at, determining in each of these cases that the service plans had overstepped limits and infringements had occurred.

In the reporting year, KommAustria dismissed due to a lack of competence two complaints lodged by representative organisations after alleged violations of the ORF Act (ORF-G) due to the appointment of certain Audience Council members by the Federal Minister for Women, Family, Integration and Media.

In addition, one infringement procedure was initiated ex officio in the reporting year owing to a suspicion that use of the video content supplied by the ORF TVthek was being restricted by ad blockers. The initial suspicion was not confirmed and the procedure was dropped. KommAustria also conducted an ex officio review of compliance with service plan limits as well as youth protection provisions in afternoon programming from ORF III. This review did not identify any infringements in the reporting period.

Furthermore, a complaint was lodged with regard to the potential interactive use of an ORF radio station that was solely restricted to platforms operated by the Meta company. This was dismissed by KommAustria owing to a failure to comply with the order to remedy deficiencies.

Lastly, KommAustria also dismissed a request made to the ORF in accordance with the Federal Environmental Information Act (UIG), due to a lack of competence.

Also in the reporting period, KommAustria initiated a procedure to review the procedure, based on Art. 4a ORF-G, for defining and revising the quality assurance system for the years 2019–2020, hereby determining that the ORF had indeed fulfilled its obligations in this respect.

A total of five statements of fact and complaints were also filed against the ORF in the year under review. However, these did not make reference to any particular provision of the ORF Act and so did not result in any concrete procedures.

2.2.4.2 Supervision of business activities

As part of supervising the ORF's business activities, during the 2020 reporting year KommAustria audited the consolidated financial statements and the individual financial statements as at 31 December 2021. In the end, the KommAustria audit commission issued audit reports with unqualified audit certificates.

A key part of the supervision of ORF business activities involves a business audit to ascertain whether ORF management is complying with the principles of economy, efficiency and expediency. In the year under review, the business audit for the 2021 business year was materially concluded with the issuing of an audit report by the audit commission covering a total of eight audit areas.

The procedure for setting the new programme fees, effective 1 February 2022, had already been completed in the year prior to the year under review.

During the reporting period, KommAustria also carried out three procedures, pursuant to Art. 38b ORF-G, to confiscate revenues from the economic advantage the ORF gained by breaching advertising provisions, issuing a decision to complete one of the procedures in the period under review. Two procedures to confiscate revenues from the economic advantage gained by breaching advertising provisions were also initiated with regard to radio. These procedures could not be completed in the reporting period.

2.2.5 Specific supervision of private providers

One main area of KommAustria's responsibilities in the way of legal supervision involves monitoring ownership of private broadcasters and media service providers as well as multiplex operators.

The aim here is to ensure consistent compliance with the legal prerequisites for broadcasting or for providing a media service even after a licence is issued or a service notified. Such prerequisites include professional, financial and organisational qualifications, absence of grounds for disqualification, and safeguarding a diversity of opinions (by avoiding excessively concentrated media ownership). Any breach of or failure to adhere to these (licensing) conditions constitutes grounds for revoking the broadcasting licence or for prohibiting broadcasts.

With regard to (direct and indirect) ownership or membership shares, with effect from 1 January 2021 the Private Radio Act (PrR-G) and Audiovisual Media Services Act (AMD-G) require broadcasters to submit up-to-date information relating to direct and indirect ownership, address and representative authorisation, on an annual basis by 31 December each year. Changes in ownership or membership shares after the licence or notification date must be reported to KommAustria by the broadcaster within four weeks after the change takes legal effect, where the change could affect whether the broadcaster continues to comply with requirements pursuant to Art. 10 AMD-G or Art. 7 et seq. PrR-G, or whether the broadcaster is established in Austria, pursuant to Art. 3 AMD-G.

During the 2022 reporting year, seven procedures, initiated in the context of the amendments, due to belated or missing notifications of changes in ownership were completed. Five of these procedures involved the legal situation before 1 January 2021 and two the legal situation after this date.

KommAustria further identified one infringement due to tardy compliance or non-compliance with requirements to report ownership changes in the reporting period under the legal situation prior to 1 January 2021.

In those cases where new partners acquire more than 50% of the shares in a broadcaster, prior to the transfer of shares, an official decision must be obtained from KommAustria to determine whether the relevant legal prerequisites for broadcasting will still be met under the new conditions. In the 2022 reporting period, two procedures were carried out pursuant to the PrR-G and AMD-G, respectively.

Another area of activity under the legal supervision of KommAustria is the option for radio broadcasters to request an assessment decision from KommAustria to determine whether a planned programming change actually represents a fundamental change of the programme format. Whether a change in programme format is fundamental to be decided based on the original licence decision. No official approval is necessary for implementing the programming change in cases where in its decision KommAustria does not identify any resulting fundamental change of the programme format. The broadcaster is required to obtain official approval, though, if KommAustria determines that a planned change does in fact constitute a fundamental change in programming. One such station change was approved for a radio broadcaster during the period under review.

Under the AMD-G, holders of broadcasting licences for satellite television and digital terrestrial television channels also have the option of applying for approval of major changes to television channels they broadcast via satellite or digital terrestrial transmitter. As these licences are not issued by way of a competitive selection procedure, more flexible options for channel changes are available. Two such procedures were initiated during the reporting year.

Holders of licences for multiplex platforms similarly have the option of making changes to the channel line-up they broadcast. They can request a decision to determine whether the prerequisites for the licence to operate a multiplex platform will continue to be met after making the change. KommAustria conducted and completed two such procedures in the 2022 reporting year.

Three administrative penal procedures due to a late notification of a distribution mode change were completed in the reporting period.

In the 2022 reporting year, KommAustria also initiated a procedure resulting from the late submission or non-submission of recordings requested for a broadcast. This procedure is still pending. Two administrative penal procedures due to the late submission or non-submission of recordings requested for a broadcast were completed in the period under review.

With regard to broadcasting without a licence, KommAustria completed two infringement procedures and initiated another in the reporting period. Also in this context, two administrative penal procedures were completed and another initiated during the period under review.

KommAustria also concluded a procedure resulting from a breach of the principle of objectivity in the 2022 reporting year. This procedure is now before the BVwG. Two further procedures addressing breaches of the principle of objectivity and journalists' duty to exercise care were also initiated in the period under review.

2.3 Public communications networks and services

Operators and providers must notify to KommAustria any planned provision of a public communications network or offer of a public communications service used to transmit broadcasts (radio and television programmes), or any offer of additional broadcasting services, as well as any changes to or discontinuation of such services. This notification requirement applies to providers who offer such communications networks or services in Austria, regardless of their domicile. After receiving a complete notification report, KommAustria issues a confirmation (general authorisation) pursuant to Art. 6 Par. 3 in conjunction with Art. 199 Par. 2 No. 1 TKG 2021.

In practice, this notification requirement is especially significant in the case of broadcasting activities by cable network operators and IPTV providers. On the basis of the legal opinion of the European Court of Justice (ECJ) and its ruling of 30 April 2014 in case C-475/12, UPC DTH, certain services are additionally considered broadcasting services and thus subject to notification requirements pursuant to the TKG 2021. Such services consist in detail of providing payable access rights to a package of programmes that contains radio and television broadcast services and is transmitted via satellite or cable.

Notification was made of two new broadcasting networks during the reporting period, while four broadcasting networks were discontinued.

Additional information can be found on the regulatory authority's website at https://www.rtr.at/medien/was_wir_tun/mediendienste/bewilligung_neuer_angebote/linfrastruktur/infrastruktur.de.html (in German).

2.4 Market regulation

2.4.1 Ex ante regulation under TKG 2021

Pursuant to the TKG 2003, and now the TKG 2021, KommAustria is also responsible for regulating competition among public communications networks and services used for radio and TV broadcasting. In a related case involving Österreichische Rundfunksender GmbH & Co KG and ORS comm GmbH & Co KG (ORS), KommAustria issued a non-final decision on 31 January 2018, ruling that there was effective competition within the wholesale 'market for access to transmission systems and the digital terrestrial transmission of television signals to end users', and that no further need for sector-specific regulation existed. Later, in a procedure also involving ORS, KommAustria published a decision on 1 August 2018 declaring the wholesale market

for 'analogue terrestrial transmission of FM radio broadcasting signals to end users' to be a relevant market subject to sector-specific regulation. In the 2022 reporting year, KommAustria also reviewed ORS' adherence with imposed obligations relating to the wholesale market for FM radio in 2021, specifically with regard to the cost accounting system and the question of whether the rates offered were in line with the costs of efficient service provision.

Also in the 2022 reporting year, a new procedure was initiated: to identify the relevant markets subject to sector-specific regulation within the meaning of Art. 199 Par. 1 No. 2 of the TKG 2021, i.e. particularly those for broadcasting activities in accordance with the Federal Constitutional Act on Broadcasting (BVG-Rundfunk) or ancillary services; to determine whether one or more undertakings have significant market power or, alternatively, effective competition prevails in those markets; and whether specific obligations are to be withdrawn, maintained, amended or imposed. This procedure had not yet been completed at the end of the reporting period.

2.4.2 Merger procedures

As part of competition monitoring conducted by the Federal Competition Authority (BWB), KommAustria is given the opportunity to issue an opinion on cases involving competition in the media sector.

In this context, the BWB communicated to KommAustria 25 instances where registration of company mergers affected media services in 2022. For eleven of these registrations, KommAustria conducted an assessment of the impact of the merger on media diversity and the editorial independence of the companies involved in these mergers. In all of these cases, no substantiated risk of a significant impairment to these protected aspects was identified.

2.5 Platform regulation

The amendment to the AMD-G (FLG I No. 151/2020) and the new Communications Platforms Act (KoPI-G, *ibid.*) introduced regulations on 1 January 2021 that apply to certain digital platforms of public relevance in Austria. The AMD-G codifies certain obligations relating to consumer and youth protection for video-sharing platform services established in Austria, while the KoPI-G requires certain measures for protecting users to be put in place by larger platforms, whether established here or abroad, whose services in Austria have more than 100,000 users or turnover greater than EUR 500,000 (both figures relating to the previous year).

Since 1 March 2022, KommAustria has also been the supervisory authority for larger online platforms established in Austria whose services are used to share content that is protected under copyright and other intellectual property laws (Art. 18c, 89c Federal Copyright Act (UrhG)). Art. 89b UrhG sets out a series of obligations for these providers that were to be fulfilled by 1 April 2022. These obligations include a prohibition on filter measures that have the effect of preventing the platform from making available works uploaded by users that do not infringe copyright (protection against 'over-blocking') as well as the establishment of a platform-internal complaints procedure to handle the unjustified blocking of access to works uploaded by users.

2.5.1 Communications platforms

KoPI-G sets out provisions requiring providers of larger communications platforms to implement certain measures to prevent unlawful content while also supporting user rights.

Pursuant to Art. 1 Par. 6 KoPI-G, KommAustria is obliged to maintain an up-to-date directory of service providers subject to the KoPI-G. This directory, which is to be updated on an annual basis, can be accessed

from the regulatory authority's website at https://www.rtr.at/medien/service/verzeichnisse/plattformen/Verzeichnis_Kommunikationsplattform.de.html (in German). In the reporting period, two communications platforms were added that fulfil the criteria pursuant to Art. 1 Par. 2 KoPI-G.

By 2021, four of the service providers listed by KommAustria in the directory had already requested clarification, pursuant to Art. 1 Par. 5 KoPI-G, of their potential exemption from the provisions of KoPI-G. In all four cases, the authority ultimately determined that the communications platforms in question did indeed fall under the KoPI-G. Complaints were duly filed against these decisions. In three of its rulings, the BVwG confirmed the applicability of the KoPI-G to these platforms.

The three service providers affected lodged appeals with the VwGH against the BVwG rulings confirming the original assessment decisions. Two of the platform operators requested a suspensory effect, which was approved by the BVwG. As a consequence, the VwGH requested the European Court of Justice (ECJ) to review the fundamental issues in the procedures to determine compatibility with Union law.

As a result, the fourth procedure pending before the BVwG was suspended by this court.

The above-mentioned procedures focus on the question of whether the KoPI-G is compatible with Union law, specifically Art. 3 of the E-Commerce Directive, which assigns Member States competence for the regulation of information society services in accordance with the principle of the territorial establishment of the service provider; another issue is the compatibility of KoPI-G provisions with the country-of-origin principle, which also applies as set out in the Audiovisual Media Services Directive.

As a consequence, KommAustria discontinued the penal procedures against those service providers who had appealed to the VwGH in the assessment procedure as well as the procedure against the service provider whose assessment procedure had been suspended by the BVwG.

Without prejudice to these procedures, the service providers in question generally fulfil their obligations under the KoPI-G.

In the context of legal supervision of the KoPI-G, a total of 20 administrative penal procedures were initiated, of which 6 were discontinued and 12 suspended (as a result of the procedure before the ECJ) by KommAustria. Penal procedures and supervisory procedures due to non-compliance with the provisions of the KoPI-G were initiated against two service providers established outside the EU. In these cases, the procedural papers could not be served, even with the help of the Austrian diplomatic representation in the affected country. Accordingly, substitute services were therefore initiated as envisaged by Art. 6 KoPI-G. Enforcement procedures were not initiated due to the entry into force of the Digital Services Act (DSA) in the reporting period.

2.5.2 Video sharing platforms

The directory of video-sharing platform providers to be maintained pursuant to Art. 54c Par. 5 AMD-G can be accessed from the KommAustria website at https://www.rtr.at/medien/service/verzeichnisse/plattformen/Verzeichnis_Video-Sharing-Plattform.de.html (in German). As of 31 December 2022, this list comprised two service providers domiciled in Austria.

One service provider lodged a complaint against an infringement decision issued by KommAustria in 2021 due to non-notification of the video-sharing platform service, since this provider argued that their services did not qualify as a video-sharing platform. This complaint was rejected by the BVwG on 22 November 2022.

2.6 Media transparency

The main objective of the Act on Transparency in Media Cooperation and Funding (MedKF-TG) is to ensure full transparency when public authorities award advertising contracts or funding (cf. government bill in annex 1276 to the shorthand verbatim records of the National Council, 24th legislative period). The MedKF-TG consequently requires certain legal entities to provide KommAustria with quarterly reports of expenses resulting from advertising placed in periodical media and from grants awarded to media owners, specifically all legal entities that under constitutional and ordinary legal provisions are subject to business auditing by the Court of Audit. As the independent recipient of the reports, KommAustria has the duty of verifying compliance with reporting requirements.

Towards achieving full transparency of advertising contracts and funding, the MedKF-TG sets out two disclosure measures.

Firstly, KommAustria publishes quarterly lists classifying legal entities under those that have fulfilled their reporting obligations by the regular reporting deadline and those that have not. The second measure is to disclose, here again on a quarterly basis, the data reported by the legal entities. This involves data on those media products that were actually awarded advertising contracts, as well as details of the specific (legal) persons who received media funding.

This information can be viewed (in German) at www.rtr.at/medien/was_wir_tun/medientransparenz/veroeffentlichungen/veroeffentlichungen.de.html.

Reports have been submitted for a total of 42 quarters since the MedKF-TG entered into force on 1 July 2012. After a clear trend towards increasing reporting discipline in the initial quarters, the reporting rate has in recent years reached a consistently high level, also seen in 2022. On annual average, more than 99.9% of the legal entities required to report had complied. In 2022, 17 administrative penal procedures resulting from a failure to report were carried out, of which eight have since been completed with final effect. In addition to this, two penal procedures due to reports having obvious inaccuracies or being incomplete were completed with final effect. Another ten procedures resulting from applications to determine exemptions from reporting requirements according to the MedKF-TG were conducted during 2022.

An analysis of recent quarters also revealed that about 80% of the regularly examined legal entities had submitted zero reports. The majority of these cases involve municipal associations (sewage treatment associations, water supply associations, district social and healthcare bodies, citizenship associations, register office associations, and planning associations). Municipal associations account for just under 2,000 of the roughly 5,300 legal entities currently required to file.

2.7 Administration and coordination of broadcasting frequencies

The spectrum for terrestrial broadcasting used for receiving radio and television via antenna is managed in Austria by the KommAustria media authority. These services include analogue radio (FM), digital radio (TDAB+) and digital television (DVB-T2 and DVB-T). The authority is supported in this work – which includes licence award procedures and international spectrum coordination – by the department for broadcasting frequency management within the Media Division (RFFM) at RTR.

In relation to the T-DAB+ digital radio system, most coordination requests were received from the neighbouring countries of Czechia, Germany and Switzerland. One notable development here is the recent rapid expansion of T-DAB+ multiplexes in Czechia. Germany and Switzerland have been very active for many years in the coordination and commissioning of T-DAB+ broadcasting systems.

In-depth spectrum negotiations in the context of T-DAB+ were conducted with Croatia, Hungary, Slovenia and Slovakia.

In relation to FM radio, 2022 again saw numerous international coordination procedures initiated by Austria with neighbouring countries. Most foreign requests concerning FM broadcasting systems were received from Czechia.

In the context of international coordination work and frequency negotiations, digital television (DVB-T/T2) was not a major topic in the reporting year. Whether in Austria or in its neighbouring countries, there is currently no need for any significant changes to the existing DVB-T/T2 broadcasting networks.

The continuation of the 5G broadcast pilot in Vienna required, once again in the reporting year, temporary use of TV channels to be coordinated with neighbouring countries.

Specifically, this relates to TV channels 42 and 45, with an additional 2 MHz from channel 46 being used at the Vienna Liesing site to facilitate test broadcasts of 10 MHz bandwidth there.

The future of the terrestrial UHF broadcasting frequency band 470–694 MHz, which is used for DVB-T2 and DVB-T, was again the subject of intense discussion at international level during the reporting year. Essentially, the question here is whether the UHF broadcasting sector requires less spectrum in the future, which would imply the release of additional spectrum for mobile services. Since this topic will be an agenda item at the next World Radio Conference, to be held in 2023 (WRC23), related activities were therefore intensified at international level. In preparation for this conference, many working groups met up in various international contexts. Austria has also been preparing for the conference, which necessarily involved holding many meetings, particularly with the Telecommunications Directorate at the Federal Ministry of Finance (BMF), which is responsible for representing Austria in international bodies handling radio spectrum. For its part, Austria made submissions to several international working parties, with these documents requiring prior preparation and consultation in detail.

2.7.1 Collaboration in licensing and assignment procedures

The RFFM department contributes spectrum evaluation reports to decisions made by KommAustria regarding licences for the use of broadcasting frequencies. In accordance with the remit, these reports must evaluate certain aspects in connection with issuing new broadcasting licences or expanding or consolidating existing licences, foremost the technical feasibility, the extent of population coverage and the usage options for the spectrum to be put to tender.

Spectrum evaluation reports must always be prepared for invitations to tender and award procedures managed by KommAustria. The section below provides a number of details from the procedures in 2022.

Evaluation reports on new invitations to tender and award procedures for expired licences were prepared for the coverage areas of Central and Lower Carinthia, the City of Salzburg 106.6 MHz, Salzburg 94.0 MHz, Hollabrunn district and parts of Mistelbach district. The coverage area of Graz and parts of Western and Eastern Styria was also put out to tender for licence renewal and once again assigned. In the independent radio segment, the Radio B138 coverage area in the Kirchdorf a. d. Krems region was again assigned. The evaluation reports also recalculated current ranges of coverage using the latest population figures from Statistics Austria.

Wide-ranging evaluation reports were also required in relation to the tendering of coverage areas in Vienna with the broadcast location WIEN 11 (Simmering) including the three new frequencies 99.1 MHz, 106.5 MHz and 96.4 MHz, each covering more than 1 million inhabitants.

Another point of focus was the expansion of Vienna's single-frequency FM network to include the three broadcasting sites of RECHNITZ 2, POYSDORF and MISTELBACH using the 102.5 MHz frequency, which was supported by comprehensive and challenging international coordination procedures. This single-frequency FM network on the 102.5 MHz frequency now includes a total of nine broadcasting stations that offer a level of single-frequency coverage which is unique within Europe.

Spectrum evaluation reports were also prepared in relation to one-year licence extension procedures for the educational radio stations at BG/BRG Freistadt, in Deutschlandsberg, Vösendorf, in St. Pölten (on the St. Pölten campus) and at WIFI on Währinger Gürtel in Vienna.

For ORF's Ö2 Steiermark and Hitradio Ö3 stations, the new FM frequencies 105.1 MHz and 106.2 MHz were approved for the KLOECH broadcasting location, with the aim of resolving coverage problems occurring in this area.

For the Radio 88.6 station, transmission power was increased for the S VALENTIN 101.6 MHz frequency, which has since ensured improved coverage for the largely hilly coverage area served by this broadcaster. A spectrum evaluation report was also prepared as part of work on the site relocation of the WAIDHOFEN YB 4 106.6 MHz frequency to the newly developed location of WAIDHOFEN YB 7.

Numerous other, smaller FM expansion, consolidation and re-planning projects, especially in western Austria, were also coordinated and supplied with evaluation reports.

A large number of successively organised event radio broadcasts also needed reviewing for Vienna and Lower Austria. For the event radio broadcasts in Lower Austria, new frequencies were utilised that required both expert review as well as international coordination.

Licences for FM tunnel radio equipment, which had expired after ten years, needed to be processed and renewed.

For the telecommunications office, there were again many requests from FM low-power broadcasters, for applications ranging from drive-in cinema to cultural events and civil defence exercises. Before licensing by the RFFM department, the frequencies used by these applications had to be evaluated to exclude any chance of disruption to existing radio broadcasting stations.

2.7.2 Focus activities in digital television

Evaluation reports were again prepared in 2022 as part of new invitations to tender for local multiplex C television coverage areas.

This involved evaluating the invitations to tender and the issuing of new licences for Vorarlberg, Vienna, Strudengau and Ennstal as part of the award procedure. New, ten-year licences were also awarded for the coverage areas of Unterinntal and Wipptal plus Turracher Höhe, which also required the preparation of the corresponding evaluation reports.

2.7.3 Focus activities in digital radio

A switch from a half- to full-capacity antenna was made in relation to some transmission capacities for the national T-DAB+ multiplex MUX I, which achieved lower energy costs as a result of the increase in antenna gain. The corresponding spectrum evaluation reports were prepared for each of the requests made in this context.

2.7.4 Frequency coordination procedures and frequency usage

The following table lists for the reporting year the number of international broadcasting frequency coordination procedures that were completed with Austria as a participant:

Table 07: Number of international broadcasting frequency coordination procedures in 2022

Country	Analogue radio	Digital radio	Digital television
Austria	43	2	6
Bosnia	1		
Germany	4	48	2
Italy	2		
Poland	4		1
Switzerland	4	27	
Slovakia	1	4	1
Slovenia	1		1
Czechia	18	17	3
Hungary	1		
TOTAL	79	98	14

In the course of the year, multiple international negotiation rounds concerning T-DAB+ assignment planning took place in eastern Europe, in which Austria also participated. These rounds focused on improvements to frequency usage in eastern and southern Austria, and participating countries. These cross-border changes to the Assignment Plan can now be better implemented in future T-DAB+ multiplexes, while also safeguarding equal rights of access to spectrum, and were for the most part completed during the course of 2022. A bilateral agreement has already been signed with Slovakia in this context, with agreements with Austria's other eastern and southern neighbours to follow in the coming year.

Meetings addressing frequency coordination for T-DAB+ on the German/Austrian border were also held with the spectrum administration team at the German Federal Network Agency.

2.7.5 Measurement projects

As part of the expansion to the single-frequency FM network in Burgenland mentioned earlier, FM test broadcasts, as well as joint measurements conducted with the Hungarian media authority (NMHH), were also conducted in border areas. As a result of these measurements, coordination of the RECHNITZ 2 102.5 MHz broadcasting transmitter was successfully completed and an increase in transmission power was also assessed as feasible for a Hungarian broadcaster.

FM coverage measurements were also conducted in Salzburg's Flachgau region for a commissioned evaluation report.

In relation to T-DAB+, for example, coverage and interference measurements were conducted along the Slovakian border, in Mürztal and around Amstetten, to ensure a better evaluation of calculations made as part of frequency negotiations with neighbouring countries.

Work also included DVB-T2 measurements conducted together with the Austrian telecommunications authority. Several measurements in the TDAB+ and DVB-T/T2 spectrum were also conducted around Vienna, so as to record the impact of foreign broadcasters in practice.

2.7.6 Frequency register

The frequency register and transmitter map currently lists over 1,400 radio transmitters in the FM band, with power output ranging from less than 1 W to 100 kW.

The ORF accounts for roughly 850 frequencies, while the remaining frequencies, more than 550, are used by private broadcasters. In terms of the power classes of individual frequencies, most of the high-power spectrum can be ascribed to ORF stations.

In the 470 to 694 MHz television frequency band, at the end of 2022, the currently approved DVB-T/T2 transmitters in the frequency register were distributed among the individual multiplex platforms as shown here (see table below).

Table 08: Approved DVB-T/T2 transmitters (as of 31 December 2022)

Multiplex	Number of broadcasting transmitters
DVB-T2 multiplex A (ORS multiplex)	317
DVB-T2 multiplex B (ORS multiplex)	43
DVB-T/T2 multiplex C (regional/local multiplex platforms)	36
DVB-T2 multiplex D (ORScomm multiplex)	43
DVB-T2 multiplex E (ORScomm multiplex)	43
DVB-T2 multiplex F (ORScomm multiplex)	43

The 36 base stations in the DVB-T/T2 multiplex C platform are operated by a total of 15 other licence holders in addition to ORScomm.

In VHF band III, which is reserved for DAB+, the following DAB+ multiplexes were approved as at the end of 2022:

Table 09: Approved DAB+ transmitters (as of 31 December 2022)

Multiplex	No. of transmitters
DAB+ Multiplex I (ORS comm)	14
DAB+ Multiplex II (RTG Radio Technikum GmbH)	1

Data on approved broadcasting transmitters are available to the public on the regulatory authority's website (www.rtr.at) in the form of a transmitter map as well as tables.

2.7.7 Contributions to working groups under international organisations

In the year under review, the organisation of working group meetings started to move back to hybrid events rather than online-only video conferences. This made physical participation in working groups possible in some cases, and international colleagues could once again be met in person.

The broadcasting frequency management team sent delegates to the following working groups:

2.7.7.1 PTD project team of the European Conference of Postal and Telecommunications Administrations (CEPT)

Three meetings of this international working group were held at European level, in which preliminary documents for WRC23 were prepared. The vast majority of these documents focus on the impact on broadcasting and radio microphones from a potential change to the assignment of the 470–694 MHz spectrum band.

2.7.7.2 Task group 6/1 (TG 6/1) at the International Telecommunication Union (ITU)

The last session of the TG 6/1 task group, attended by delegates from all over the world, was held in Geneva in September 2022. The work of this temporary group, set up by the ITU in order to prepare for WRC23, included developing a shared perspective on the topic of the future use of the current UHF television band. However, no shared consensus could be achieved here on the key issues, as a result of differences of opinion and conflicts of interest expressed by some countries. As a result, the future dedication of the UHF television band in the context of the International Telecommunication Convention remains entirely undecided as of now, with the final decision ultimately to be taken at WRC23, to be held in Dubai in November 2023.

2.7.7.3 Study group 6 (SG 6) at the ITU

This study group meets regularly twice a year, and is attended by members of frequency administration teams and broadcasting experts from around the world. This group focuses primarily on the creation and development of standards for the planning and distribution of terrestrial broadcasting. In relation to technical planning parameters for 5G broadcast, one highlight concerned initial findings from pilot operations conducted in Europe and China. One sub-working group also submitted an initial interim report on the topic of future visions for the technical distribution of broadcasting content.

2.7.7.4 RSPG sub-working group ‘UHF beyond 2030’

This working group concentrates on long-term considerations of potential scenarios that could realistically be proposed for UHF broadcasting frequencies in future, i.e. from 2030 onwards. The problem here is that in countries in northern Europe, linear broadcasting is increasingly being shifted to the internet, thereby freeing up spectrum, while this trend is not apparent in many other countries, most particularly in southern Europe.

In mid-2023, the RSPG working group will be offering preliminary findings from its work for public consultation. By taking this step, the aim is to derive recommendations for future European spectrum policy.

2.8 International activities

2.8.1 KommAustria and ERGA

In 2022, KommAustria further expanded its international engagement as a member of ERGA. This was required for a number of reasons, including negotiations concerning and/or the entry into force of several legislative initiatives at EU level that affect the competence of ERGA members. This includes the DSA and the DMA, which entered into force on 16 November 2022 and 1 November 2022, respectively. The proposed EMFA was submitted to the European Commission on 16 September 2022 and negotiations were ongoing in the period under review. ERGA, which the EMFA envisages transforming into a European media services body, and whose competences are therefore to be expanded considerably, was therefore increasingly consulted

by the European Commission on the handling of these matters. Despite these additional tasks, ERGA's work programme was again completed in full in 2022. Engagement from the Austrian team in this work has also ensured that the interests and goals of Austrian media services stakeholders will be taken into account.

Finally, at the final ERGA plenary meeting, the ERGA work programme for 2023 was agreed, with Giacomo Lasorella, Director of the Italian AGCOM regulatory authority, also elected ERGA chair for the 2023 term of office. KommAustria, represented by Dr Susanne Lackner, was also unanimously elected to the five-member ERGA Board.

In the following, we report on activities and results of the individual work groups.

2.8.1.1 Subgroup for the consistent implementation and enforcement of the European framework for audiovisual media services

Several priorities were set in this working group during the period under review. One of these priorities was a comparative overview of the transposition of the Audiovisual Media Services Directive by Member States. One aspect addressed here was the transposition of provisions for video-sharing platform services from Art. 28b of the Audiovisual Media Services Directive, particularly measures relating to youth protection, protection against the incitement of hate and violence, and protection against child pornography. The group also worked on self-/co-regulation, and measures intended to strengthen the same, as well as the role of cooperation between regulatory authorities.

Another key topic was the comparison of measures for the promotion of European works in the context of Art. 13 of the Audiovisual Media Services Directive, addressing in particular the effectiveness of algorithms and the use of recommendation systems.

In continuing its activities from 2021, the working group also addressed the audiovisual materials offered on video-sharing platform services that are presented as on-demand services (vlogging). Spearheaded by KommAustria, a further analysis paper making recommendations for the regulation of this area was also submitted, which focused on provisions regarding commercial communications as well as measures to standardise the flagging of advertisement content.

2.8.1.2 Subgroup for the completion of the EU regulatory framework for media

Three core topics were essentially addressed by this working group. Most of the work was dedicated to the planned EMFA legislation. The EMFA envisages making far-reaching changes to ERGA, which therefore required preparatory work to be initiated in light of these changes.

In relation to the DSA, the concluding consultations carried out between the European Parliament, European Council and European Commission were observed, and addressed from the perspective of media regulatory authorities.

This group had a particularly heavy workload in terms of ongoing negotiations, since it was required to respond flexibly to proposed changes, and submit an analysis and response on very short notice.

2.8.1.3 Disinformation work group

In this working group, ERGA developed insights obtained by the subgroup in 2021, to further address the topics of disinformation, political advertising and other matters in the context of the European Democracy Action Plan. To this end, the subgroup engaged in close collaboration and consultation to prepare several short strategy papers and position papers (such as on planned legislation for political advertising). As envisaged in the (new) 2022 Code of Practice on Disinformation, the subgroup also provided advice and assistance to the European Commission in monitoring its implementation by the platforms.

2.8.1.4 Action group on internal procedures

This action group has focused on the evaluation and development of implementation and compliance with the rules of the ERGA Memorandum of Understanding (MoU) adopted in 2020. The ERGA MoU facilitates the provision of cross-border support and guidance between regulatory authorities, especially in cases where national options for action on the part of regulatory authorities are restricted by the country-of-origin principle. This group has devised a uniform set of practical rules, standards, approaches, and response times and templates for use in such international cooperation. Thanks to frequent application of the MoU during 2022, the work of this group therefore primarily focused on ensuring that its impact and practical insights could be utilised for improvements.

2.8.2 KommAustria and EPRA

As a platform extending beyond the borders of the European Union, the EPRA takes in 55 media regulatory authorities from 47 countries. The platform concentrated on the following points during efforts in 2022:

- Empowering and protecting minors
- Dis/misinformation, plurality and trust
- NRAs in a digital environment

KommAustria also cooperated actively within EPRA, contributing towards achieving the outcomes that resulted from implementing the 2022 EPRA work programme.

2.8.2.1 Regulatory topic ‘Empowering and protecting minors’

This topic reflects a key regulatory subject that is present across all jurisdictions and which faces the challenge of striking a balance between the protection of a vulnerable audience and respecting children's rights. Current challenges include: minors and advertising (e.g. advertising targeting minors and the impact of influencers, advertising for products high in fat, sugar or salt, and research on advertising literacy); age restrictions for minors (e.g. to what extent age labelling can, should or must be transposed in an online environment, which affects, among other things, age assurance mechanisms); and protecting minors from pornographic online content.

2.8.2.2 Regulatory topic ‘Dis/misinformation, plurality and trust’

Since 2016, the development of strategies to tackle dis-, mal- and misinformation have been part of the core work programme at EPRA. Ensuring media plurality and trustworthy content is not only more relevant than ever, but its significance has been further enhanced by its treatment in the public consultation on the European Media Freedom Act, and the ongoing study on media plurality and diversity online.

2.8.2.3 Regulatory topic ‘National regulatory authorities in a digital environment’

In response to a broadening scope of media regulation, changes in the audiovisual market and the make-up of global players, media regulatory authorities have begun to design or adopt new working methods. This approach not only requires resources but also a strengthening of international cooperation well beyond the borders of the European Union.

As can be seen, KommAustria's efforts within the scope of international cooperation extend well beyond the borders of the European Union and the European Economic Area, since media services are not confined within geopolitical boundaries but are accessible on a truly global scale.

2.8.3 KommAustria and cooperation with consumer authorities

KommAustria is the competent consumer protection authority for cooperation with consumer authorities at EU level. To enforce decisions on intra-EU (cross-border) infringements of certain significant consumer protection regulations – in terms of media services, these are the regulations on commercial communication – a corresponding network of consumer protection authorities has been set up, with the aim of addressing and preventing harmful practices.

KommAustria regularly fulfilled its duties in this context during the year under review.

2.9 Funding by KommAustria

The federal press and journalism subsidies are direct support measures in the form of financial contributions. Decisions on the allocation of subsidies are made by KommAustria. The Press Subsidies Commission and the Journalism Subsidies Advisory Board have been set up as bodies to advise on these matters. The legal bases for the allocation of grants are the Press Subsidies Act 2004 (PresseFG 2004), the press subsidies guidelines published annually by KommAustria, and Section II of the Press Subsidies Act (PubFG). Rules for the funds-sourced grants for self-regulation of the press are also set out in Art. 12a PresseFG 2004.

The promotion of self-regulation in the area of commercial communication (Art. 33 KommAustria Act, KOG) and, since 2021, self-regulation for the protection of minors (Art 32b KOG) also fall within KommAustria's scope of responsibility. No provision has been made for an advisory body to promote these self-regulation bodies. The legal bases for the allocation of grants are the aforementioned statutory provisions and the respective funding guidelines published by KommAustria.

2.9.1 Press subsidies

In 2022, KommAustria received 101 applications for subsidies in accordance with the PresseFG 2004. KommAustria awarded funding in 99 cases, while two applications had to be rejected for not meeting the legal requirements.

The groups eligible for subsidies under the PresseFG 2004 are as follows:

- Publishers of daily and weekly newspapers
- Institutions for training journalists
- Research projects relating to the press sector
- Press clubs
- A self-regulation body for the press sector

Table 10: Press subsidies – grant amounts, applications and approval rates, 2018–2022

Year	Grant amount (EUR)	Requests	Approvals	Approval rate in %
2018	8,863,000.00	110	108	98.18
2019	8,863,000.00	115	111	96.52
2020	27,452,664.00	243	205	84.36
2021	8,881,000.00	108	104	96.30
2022	7,992,101.10	101	99	98.02

Notes:

- 1) This list also includes fund-sourced grants for the Austrian Press Council as similarly set out in the PresseFG 2004, as in previous years.
- 2) The total amount for 2020 encompasses the following types of special COVID-19 aid, in addition to the normal press subsidies: increase in distribution subsidies for daily and weekly newspapers under Art. 17 Par. 8a PresseFG; contribution to printing costs for free and paid-for daily newspapers under Art. 12b PresseFG; and extraordinary funding for free and paid-for weekly newspapers, paid-for magazines, regional newspapers and online newspapers under Art. 12c PresseFG 2004.
- 3) Concerning the volume of funding provided (distribution and special subsidies) in 2022, it should be noted that, as a result of pending legal proceedings filed against the Republic of Austria, only those funds that are indisputably available may be paid out at the present time. Depending on the outcome of this litigation, the 'reserved' funds will either be paid to the plaintiff as an applicant or paid out proportionally to the other applicants as a follow-up payment.

The following amounts and applications were allotted to the individual funding areas:

Table 11: Total press subsidies 2021 by funding areas

Total press subsidies in 2022	Funding (EUR)	Requests	Granted
Distribution subsidies under Section II PresseFG 2004 (dailies and weeklies)	3,700,973.70	45	44
Special subsidies under Section III PresseFG	2,558,127.40	5	4
Promotion of quality and securing the future of journalism under Section IV PresseFG	1,560,000.00	50	50
Self-regulation in matters relating to the press / Austrian Press Council	173,000.00	1	1
Total	7,992,101.10	101	99

Details on grant awards have been published on the website www.rtr.at.

2.9.2 Journalism subsidies – promotion of print periodicals

Section II of the Federal Act on Subsidies for Political Education and Journalism 1984 (PubFG) provides for the promotion of periodicals that serve the purpose of educating citizens by contributing high-quality analysis of relevant issues stemming from the spheres of policymaking, culture and world views. Taken as a whole, the periodicals that receive funding represent a broad spectrum of content. The publications range from feminist periodicals to journals that are centred on religious topics or discuss political and scientific issues. Also included are periodicals by associations that are active in the fields mentioned above and are familiar with the topics through practical experience.

In 2022, KommAustria received 70 applications for funding of a print periodical in accordance with Section II PubFG 1984, complying with 69 requests while rejecting one due to failure to meet statutory funding requirements.

KommAustria decides the level of funding on a case-by-case basis, giving due consideration to recommendations made by the Journalism Subsidies Advisory Board as well as to the scope, circulation, resources and financial situation of the relevant print periodical. By law, grants may be no less than 0.4% and no more than 4% of the funds designated for this purpose in the Federal Finance Act (BFG). As in previous years, EUR 340,000.00 was available for this funding in 2022. The subsidy amounts ranged from EUR 1,360.00 to EUR 12,863.30.

Table 12: Journalism subsidies – grant amounts, applications and approval rates, 2018–2022

Year	Grant amount (EUR)	Requests	Approvals	Approval rate in %
2018	340,000	80	74	92.5
2019	340,000	75	73	97.3
2020	340,000	77	72	93.5
2021	340,000	75	73	97.3
2022	340,000	70	69	98.6

Details on grant awards have been published on the website www.rtr.at.

2.9.3 Funding for self-regulation of the press

Funding from the Fund for the Promotion of Self-Regulation of the Press (*Fonds zur Förderung der Selbstkontrolle der Presse*) may be allocated to a recognised self-regulatory body within the Austrian press. The objectives are to ensure the independence of the body in question, to ensure that the body carries out the duties set forth in its articles of association, and to help effectively enforce its decisions and resolutions.

As the only party applying for funding, the Austrian Press Council requested from KommAustria a cost contribution of EUR 173,000 for 2022, which was subsequently approved.

In 2022, the Austrian Press Council processed 435 cases. A total of 433 cases were submitted to the Press Council from outside parties, while in two cases the body's senates reviewed cases arising from its own monitoring activities. This is the second-highest number of cases in the history of the Press Council. According to the Press Council, this unusually high number of cases in 2021 was primarily due to Covid (e.g. greater incidence of fake news or at least dubious reporting).

Of Austria's dailies, only Kronen Zeitung has not recognised the Press Council's arbitrator status. An amendment to the statutes made at the end of 2021 created the option of allowing the Press Council to additionally assume the duties of a media ethics arbitrator for a number of non-commercial private radio and TV broadcasters (see Art. 29 KOG). This was done at the behest of the respective broadcasters, with nine having made use of this option to date.

Table 13: Press Council – number of cases handled and cost contributions, 2018–2022

Year	Cases	Cost contribution (EUR)
2018	302	176,000
2019	297	196,000
2020	418	196,000
2021	647	194,000
2022	435	173,000

2.9.4 Funding for self-regulation of commercial communication

The Fund for the Promotion of Self-Regulation in Commercial Communication has been allocated EUR 75,000 each year since 2021 (previously EUR 50,000 a year). Pursuant to Art 33 KOG, this amount can be granted to a recognised self-regulatory body in the field of media commercial communication.

The objectives of this kind of financial support, which was set up in 2009, are to ensure the independence of the body in question, to ensure that the body carries out the duties set forth in its articles of association, and to help effectively enforce its decisions and resolutions.

Starting with 2021, the granting of the full amount of the funds available became dependent on a self-regulatory body's conduct guidelines, including provisions with regard to inappropriate audiovisual commercial communication relating to alcoholic drinks, and for audiovisual commercial communication that is unsuitable for children and relates to foodstuffs and drinks containing nutrients or substances with a nutritional or physiological effect, in particular those such as fat, trans-fatty acids, salt/sodium and sugars, excessive intakes of which are not recommended as part of the overall diet.

As the sole applicant, the Österreichische Gesellschaft zur Selbstkontrolle der Werbewirtschaft – Österreichischer Werberat received all funding in 2022. A total of 503 complaints were submitted to the Austrian Advertising Council and 264 decisions were handed down in 2022.

Table 14: Press Council – number of cases handled, 2018–2022

Year	Cases	Cost contribution (EUR)
2018	316	50,000
2019	338	50,000
2020	411	50,000
2021	413	75,000
2022	503	75,000

2.9.5 Promotion of self-regulation for the protection of minors

An option for promoting a self-regulatory body for the protection of minors was set up as of 1 January 2021. The corresponding fund is provided with EUR 75,000 a year. This amount can be granted to a representative self-regulatory body for the protection of minors pursuant to Art. 32b KOG, to ensure the independence of the body in question, to ensure that the body carries out the duties set forth in its articles of association, and to help effectively enforce its decisions and resolutions.

In addition to the formal requirements in Art. 32a Par. 2 KOG, in order to allow funds to be allocated for promoting a self-regulatory body in this area, the body's conduct guidelines must contain criteria defining a minimum level of information that allows viewers to assess the potential harmfulness of content for minors, based on a description of content type in easily understood terms.

The only applicant to date has been the Verein zur Selbstkontrolle audiovisueller Medienangebote zum Schutz von Minderjährigen (Association for the Protection of Minors through Self-Regulation of Audiovisual Media Products and Services; in brief: Jugendmedienschutzverein), which was founded in June 2021.

The first cases were processed in 2022. These involved suspected infringements of access control systems, labelling requirements and rules on broadcasting times. The first three decisions have already been published on the Jugendmedienschutzverein website.

For the 2021 funding period (start-up phase), a total of EUR 35,971.32 was paid out during two application periods.

For the 2022 funding period, EUR 13,054.59 was paid out following the first submission deadline (funding period 1 January to 15 July 2022). The second submission deadline for 2022 is 31 March 2023. Funds will be calculated and paid out after this date.



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03 KommAustria Reports

3.1 Requirements for the protection of minors and subsequent implementation

3.1.1 General information

In relation to the protection of minors from audiovisual content that may impair their development, a number of changes were introduced by Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) in view of changing market realities.

The previous system for protecting minors from content that may impair their development, which was for the most part mandatory only for television broadcasters, was extended to providers of on-demand services. Also applicable to all media services was a new requirement to provide viewers with sufficient information for assessing the potential harm posed to minors by content, by providing viewers with an easily comprehensible description of the nature of such content. The EU Directive also encouraged Member States to make use of co-regulation and to support the promotion of self-regulation by means of an industry code of conduct when transposing the requirements. To ensure an appropriate level of protection, a uniform set of criteria to be fulfilled by self-regulatory bodies was also defined.

The Austrian legislative framework was amended (Federal Law Gazette I No. 150/2020) to incorporate these EU provisions. Core provisions set out the protection to be guaranteed for minors by providers of audiovisual media services and the corresponding duties of the self-regulatory body. These provisions are found in Art. 39 of the Audiovisual Media Services Act (AMD-G) and Art. 10a of the ORF Act (ORF-G). Regulations pertaining to self-regulatory bodies and the funding of a self-regulatory body for the purposes of youth protection by the Republic of Austria have been specified in Art. 32a and Art. 32b of the KommAustria Act (KOG).

Based on these provisions, a self-regulatory body was for the first time tasked with implementing and verifying compliance with the industry-wide youth protection system as based on the aims of the EU Directive. The effectiveness of this self-regulatory system is then subjected to a subsequent audit by KommAustria.

To facilitate such a follow-up audit, the legislation specifies the reporting requirements listed below.

Pursuant to Art. 32a Par. 2 No. 5 KOG, a self-regulatory body is to prepare an annual report on its activities, its established goals, and the measures and decisions taken in accordance with No. 3 and 4, and publish this report in a suitable format (activity report).

Pursuant to Art. 32b Par. 4 KOG, an annual report addressing the effectiveness of the provisions of the conduct guidelines, as well as the type, number and outcome of complaints, must be submitted to KommAustria by 31 March of the following year. KommAustria is to publish an activity report (Art. 19, activity report) presenting its assessment of and recommendations for effectiveness.

Pursuant to Art. 39 Par. 5 AMD-G, a self-regulatory body for the protection of minors (Art. 32a in conjunction with Art. 32b KOG) is to provide the regulatory authority with a report, describing the progress made toward achieving compliance with the obligation of media service providers to use references to inform the public (Art. 4 and Art. 32a Par. 2 No. 5 KOG). In its activity report, the regulatory authority is to present the current status in meeting the obligation described in Par. 4. The regulatory authority can attach to this report an evaluation suggesting improvements on how information is made available.

The conditions governing both the organisation and the specific activities of the self-regulatory body for youth media protection in audiovisual media (TV and on-demand services) were finalised when the body was set up

on 2021. A system for self-regulation was developed that specifies stricter standards than previously for the protection of minors when consuming audiovisual media. The system was implemented by the Association for the Protection of Minors through Self-Regulation of Audiovisual Media Products and Services (hereinafter: association), which has worked with the industry to develop uniform guidance on conduct and procedure, and also set up a complaints system. In the second year since its formation, activities at the association focused very strongly on the further implementation of the self-regulation project.

The association submitted its activity report and its effectiveness report for 2022 in February and March 2023, respectively.

In the following sections, the regulatory authority provides, on the basis of the reports it has duly received, a short overview of the general legal framework for self- and co-regulation in relation to the protection of minors, and a synopsis of the self-regulatory body (the association), together with its conduct guidelines and rules of procedure and their effectiveness. The authority then describes the progress achieved in meeting the obligation to provide guidance, and concludes by presenting its assessment of and recommendations for improving the effectiveness of the self-regulation system.

3.1.2 Legal framework for co- and self-regulation in relation to the protection of minors in Austria

A system of self-regulation is characterised by the fact that the economic operators concerned directly specify their own conduct guidelines, based on the general legislative framework, and are also directly responsible for the effective sanctioning of breaches of these conduct guidelines.

While self-regulation is encouraged as a supplementary approach to transposing the provisions of the Directive, it does not exempt national policymakers from their duty to transpose the Directive. Austrian policymakers therefore envisaged a number of new provisions on the relationship between self-regulation and state legal supervision in the areas addressed by the Directive since, as required by Recital 14 of the EU Directive, "*[c]o-regulation should allow for the possibility of state intervention in the event of its objectives not being met.*" (Cf. explanatory notes to government bill 462, enclosure to stenographic record of National Council, 27th legislative period, General Part and Special Part, on Art. 1 No. 39.)

In accordance with the concept of co-regulation as supported by the Directive, Art. 39 Par. 4 to 7 AMD-G accordingly contains provisions that initially call on the industry to directly establish this kind of system and submit regular reports on implementation. Par. 5 utilises the powers granted by Art. 4a Par. 3 of the EU Directive, according to which the evaluation of effectiveness may be transferred to the regulatory authority in order to create a legal relationship between the self-regulatory body and national policymakers. For the hypothetical case that the industry itself fails to set up such a system within legal time limits, the regulatory authority is granted powers by Art. 39 Par. 6 and 7 AMD-G to issue an ordinance enforcing a corresponding youth protection system, preceded by a consultation period with representative stakeholders. These powers were not used in the reporting period.

The relevant provisions of the AMD-G are as follows:

"Article 39. (1)–(3)

(4) Taking into consideration existing conduct guidelines of a self-regulation body for the protection of minors, media service providers shall issue and comply with guidelines on how to make available to viewers sufficient information to assess the potential harmfulness of content for minors by describing the nature of the content listed in Par. 1 by means of references that are easily understandable for users.

To ensure uniform conduct guidelines across Austria, media service providers shall support and contribute to initiatives to establish and improve the efficiency of self-regulation (Art. 32a KOG).

(5) A self-regulation body for the protection of minors (Art. 32a in connection with Art. 32b KOG) shall report to the regulatory authority on the current state regarding implementation of the obligation to make information available by means of references (Art. 4 and Art. 32a Par. 2 No. 5 KOG). The regulatory authority shall present the current state regarding the implementation of the obligation described in Par. 4 in its activity report (Art. 19 KOG). The regulatory authority can attach to this report an evaluation suggesting improvements on how information is made available.

(6) If the regulatory authority finds that within six months of entry into force of the Federal Act promulgated in Federal Law Gazette I No. 150/2020 no self-regulation body for the protection of minors as referred to in Art. 32a in conjunction with Art. 32b KOG has been established in the scope of self-regulation (Art. 32a KOG), and, within a period of another two months, also no conduct guidelines have been issued that are used by a representative group of media service providers, including the Austrian Broadcasting Corporation, the regulatory authority shall specify, by way of an ordinance issued within six months of the finding, the manner in which all media service providers shall make available to viewers sufficient information to assess the potential harmfulness of content for minors, specifically how the nature of the content listed in Par. 1 is to be described by means of references that are easily understandable for users.

(7) Before an ordinance as referred to in Par. 6 is issued, the relevant interest groups in the field of audiovisual media services and youth welfare as well as the Federal Ministry of Education, Science and Research, the Federal Ministry of Labour, Family and Youth, the Federal Ministry of Social Affairs, Health, Care and Consumer Protection and the Federal Ministry of Justice shall be given the opportunity to submit statements. The aforementioned entities shall make proposals to the regulatory authority on how to indicate harmful content. The regulatory authority shall verify at regular intervals, but at least every two years, whether there is a continued need for issuing an ordinance. If, after having consulted the aforementioned federal ministries, the regulatory authority comes to the conclusion that sufficient and efficient measures have been taken in the scope of self-regulation in accordance with the requirements of Art. 32a KOG, the regulatory authority shall set aside the ordinance."

Austrian legislation also requires the ORF to support and contribute to self-regulation initiatives, in accordance with Art. 10a Par. 3 ORF-G:

"Protection of minors

Article 10a. (1)–(2) ...

(3) [...] The Austrian Broadcasting Corporation shall support and contribute to initiatives of self-regulation bodies (Art. 32a KOG) to ensure uniform conduct guidelines throughout Austria. Art. 39 Par. 4 to 6 AMD-G shall be applied with the proviso that, by way of derogation from Par. 5 first sentence, the Austrian Broadcasting Corporation must report on measures to identify and describe content in its annual report."

On the basis of the provisions from EU legislation, Art. 32a KOG codifies standards for recognised self-regulatory bodies of this kind, so as to safeguard the effectiveness of self- and co-regulation measures, particularly those aimed at protecting consumers and protecting public health.

"Self-regulatory bodies

Article 32a. (1) The activities of recognised self-regulatory bodies may be granted funding in order to help achieve the goal of ensuring compliance with minimum European standards on the part of content providers.

(2) A recognised self-regulatory body is defined as a body with legal personality that:

- 1. guarantees a broad representation of the providers concerned, and comprehensive transparency in respect of decision-making criteria, procedures and the enforcement of decisions;*
- 2. defines conduct guidelines and rules of procedure that are generally recognised by the primary stakeholders and which clearly define the goals of self-regulation;*
- 3. ensures the periodic and transparent monitoring and assessment of the fulfilment of these goals, exclusively by an external and independent entity;*
- 4. ensures that complaints are effectively handled and that its decisions are enforced, including the imposition of effective and proportionate sanctions in the event of breaches of the conduct guidelines;*
- 5. prepares a report concerning its activities, its established goals, and the measures and decisions taken in accordance with No. 3 and 4, and publishes this report in a suitable format.*

(3) Sanctions within the meaning of Par. 2 No. 4 include in particular:

- 1. the publication of a decision by the self-regulatory body;*
- 2. the publication of a recommendation for future conduct by the self-regulatory body;*
- 3. the revocation of a quality seal or positive designation granted in accordance with the body's guidelines;*
- 4. potential identification of a breach or warnings in accordance with the body's legal framework.*

(4) Every four years, the self-regulatory body shall provide the regulatory authority with a report on the body's structure and working practice that illustrates its contribution to the goal of achieving compliance with minimum standards on the part of content providers."

In co-regulation, regulatory functions are shared between interest groups and the national regulatory authorities. The remit of the competent public authorities includes officially recognising the co-regulation programme, auditing its procedures as well as programme funding. (Cf. explanatory notes to government bill 462, enclosure to stenographic record of National Council, 27th legislative period, on Art. 2 No. 19.) Consequently, by means of Art. 32b KOG, Austrian policymakers established a basis for funding a self-regulatory body for the protection of minors:

“Funding of self-regulation for the protection of minors

Article 32b. (1) To provide financial support to the self-regulatory body in its activities relating to the classification of content that could impair the physical, psychological or moral development of minors (Art. 39 AMD-G), EUR 0.075 million of fee income collected pursuant to Art. 3 Par. 1 of the Broadcasting Fees Act (RGG) is to be remitted to KommAustria by 31 January of each year, in addition to the amount to be paid pursuant to Art. 35 Par. 1; Art. 35 Par. 1 third and last sentence shall apply. Art. 33 Par. 1 last sentence, Par. 2, 3 and 4 shall apply.

(2) In addition to the formal requirements in Art. 32a Par. 2, in order to allow funds to be allocated for promoting a self-regulatory body in this area, the body’s conduct guidelines must contain criteria defining a minimum level of information that allows viewers to assess the potential harmfulness of content for minors, based on a description of content type in easily understood terms.

(3) When drafting the conduct guidelines, the relevant interest groups in the field of audiovisual media services and youth welfare as well as the Federal Ministry of Education, Science and Research, the Federal Ministry of Labour, Family and Youth, the Federal Ministry of Social Affairs, Health, Care and Consumer Protection and the Federal Ministry of Justice shall be given the opportunity to submit statements.

(4) A report addressing the effectiveness of the provisions of the conduct guidelines, as well as the type, number and outcome of complaints, must be submitted to KommAustria by 31 March of the following year. KommAustria shall publish an activity report (Art. 19) presenting its assessment of and recommendations for effectiveness.”

3.1.3 Association for the Protection of Minors through Self-Regulation of Audiovisual Media Products and Services

3.1.3.1 Establishment, articles of association and internal organisation

The conditions governing both the organisation and the specific activities of the association in its role as self-regulatory body for youth media protection in audiovisual media (TV and on-demand services) were finalised when the body was set up on 2021.

The Association for the Protection of Minors through Self-Regulation of Audiovisual Media Products and Services (Verein zur Selbstkontrolle audiovisueller Medienangebote zum Schutz von Minderjährigen; hereinafter: association) was established on 17 June 2021, thus in advance of the legal target date (30 June 2021). The association was entered under 1686796152 in the Central Register of Associations (ZVR). The association is based in Vienna.

In accordance with its articles of association, the association’s primary objective is to ensure effective self-regulation so as to protect minors from content in audiovisual media services that could impair their physical, psychological or moral development and which falls within the remit of the Austrian regulatory authorities under applicable legal provisions.

In pursuit of this overarching goal, in accordance with provisions of law and its articles of association, the association acts as follows:

- Establishment of a legal entity that meets the requirements for a self-regulatory body as defined by Art. 32a KOG, first and foremost by ensuring a broad representation of media service providers who have committed to the protection of minors.
- Drafting and adoption of conduct guidelines and rules of procedure that are generally recognised by the primary stakeholders – and therefore the providers of audiovisual media services who have committed to the protection of minors – and which unambiguously define the goals of self-regulation.
- Ensuring the proper treatment of complaints and the enforcement of decisions, including the imposition of sanctions in the case of breaches of the conduct guidelines, by establishing an administrative office for handling complaints and by appointing an independent experts council to decide on such complaints.
- Guaranteeing full transparency in respect of decision-making criteria, procedures and the enforcement of decisions.
- Reporting fully on activities and the effectiveness of the measures taken, in accordance with legal requirements.
- Communicating with authorities, ministries and other state and non-state actors, as well as with international associations or organisations pursuing similar goals.

At the association's first general assembly, which was held in August 2021, the following organisations and companies were admitted as ordinary members:

- Fachverband der Telekommunikations- und Rundfunkunternehmen in der Wirtschaftskammer Österreich (Association for Telecommunications and Broadcasting Companies within the Austrian Federal Economic Chamber)
- Österreichischer Rundfunk (Austrian Broadcasting Corporation)
- Verband Österreichischer Privatsender (Austrian Association of Private Broadcasters)

Other members – both ordinary and extraordinary – may be admitted on the terms of the association's constitution. The association presents its articles on its website (<https://www.jugendmedienschutz.at>).

The articles of association assign leadership responsibilities to a management board. The board is tasked with managing the association's business and organisational operations as well as reporting duties, in particular the preparation of and the formal decision to adopt the conduct guidelines and rules of procedure as required by Art. 39 AMD-G. The board also handles the establishment of and appointments to the experts council as a complaints body, as well as the handling of objections to decisions that impose sanctions on media service providers as a result of breaches of the conduct guidelines.

Current members of the management board are Helga Tieben (President), Corinna Drumm (Treasurer) and Dr Klaus Kassai (Secretary).

During the general assembly, Gerhard Ettl (ORF) and Barbara Karl (Association for Telecommunications and Broadcasting Companies) were appointed as the association's auditors.

Dr Alice Krieger-Schromm was appointed head of the administrative office in 2021. Key duties in this role include providing support to the management board in its association activities while managing the association's office and ongoing business activities, as well as handling specific tasks as delegated by the management committee, with one particular duty here being to ensure the effective management of procedures and complaints in accordance with the rules of procedure.

During 2022, extensive negotiations within the association were required for the establishment and operation of a fully functional self-regulatory system recognised by the industry as a whole (these activities included the creation of a graphical representation of the complaints system, funding, documentation and reporting requirements, and a privacy policy). The association was able to start routine operations during that year, with the commencement of business activities.

3.1.3.2 Experts council

In line with the association's rules of procedure, the experts council (cf. Article 14(2) of the articles of association) makes decisions on such complaints as may be filed as a result of alleged breaches of the conduct guidelines on the part of media service providers. The following individuals have been appointed members of the experts council:

- Lisa Golda, ProSiebenSat.1 PULS 4 GmbH, legal counsel (until December 2021)
- Pia Bambuch, ProSiebenSat.1 PULS 4 GmbH, director legal & regulatory affairs (since December 2021)
- Frank Holderied, ServusTV, head of programming, purchasing and in-house fiction content productions
- Claudia Horvath-Polak, ORF, film and series youth protection/member of the Youth Media Commission
- Andreas Ney, Austrian Federal Economic Chamber/Association for Telecoms/Broadcasting, deputy managing director
- Lisa Zuckerstätter, ORF, access services – youth protection officer

In 2022, the association focused in particular on CPD activities for the experts council. In April 2022, the administrative support office drafted an internal guideline for the experts council that is intended to offer guidance for processing complaint cases. The four-page booklet defines the correct procedure to follow once a complaint is received.

In this context, the complaints system used for self-regulation was also fitted with a graphic interface to allow visualisation. In 2022, a workshop was also held to practice working through the complaints procedure and coordinating the case within the experts council.

To further help members of the experts council develop relevant skills, jointly with experts from the German FSF (voluntary television industry self-regulatory body), the association's administrative office organised a certification course, which was held as a two-day workshop in October 2022. This workshop gave members of the experts council the opportunity to engage in dialogue with their German counterparts, gain valuable insights into day-to-day activities at the FSF, examine specific types of cases or problems encountered in detail, and discuss some best-practice examples. A similar kind of dialogue workshop is planned again for 2023.

3.1.4 Conduct guidelines

To give the relevant youth protection institutions in Austria the opportunity to contribute to the process of drafting the conduct guidelines and designing the information system, the self-regulatory body was required to submit the conduct guidelines to a consultation with interest groups working in the field of youth protection and those federal ministries that the act designates to oversee youth protection programmes. This consultation was completed by the association in 2021. Some of the comments submitted led to modifications of the conduct guidelines as presented in the following.

The conduct guidelines as of August 2021 can be viewed on the association's website (<https://www.jugendmedienschutz.at/verhaltensrichtlinien/>).

In accordance with the provisions of EU law and Austrian legislation, the conduct guidelines aims to establish an effective and uniform nationwide system for the protection of minors from content in audiovisual services (broadcasting and on-demand services) that has the potential to impair their development. This system should be easily understood by viewers – especially by minors and their legal guardians – and should be recognised and implemented by as many providers as possible.

The guidelines specify (minimum) requirements for the protection of minors in the context of audiovisual services. In cases where providers wish to offer a higher level of protection on a voluntary basis, the guidelines make recommendations for ensuring such initiatives are as uniform as possible.

Content potentially impairing the development of minors must be offered by providers in such a way as to prevent it from being generally viewable or consumable by minors. As part of meeting this requirement, television broadcasters must choose appropriate broadcasting times. Providers of on-demand services must use suitable measures to achieve a level of protection comparable to that offered by broadcasting time slots, either by also restricting the daily accessibility of content potentially impairing development, or through other appropriate measures.

Certain content potentially impairing development is not prohibited by law but is to be classified as particularly harmful, such as the casual depiction of sexual acts (hardcore pornography and other pornographic material that does not meet the criteria for being considered content prohibited by law). Such content may be provided only if measures such as age verification systems or comparable access control measures are in place to ensure that minors are not generally able to use it. News broadcasts and party political broadcasts are exempted from these obligations.

If broadcasts that should typically not be viewed by minors are made freely accessible by television broadcasters during broadcasting times that are less suitable for scheduling such broadcasts from a youth protection perspective, such broadcasts must be identified accordingly (announcement by means of an acoustic signal or the application of a visual identifier throughout the entire broadcast; the ORF must comply with stricter standards that require identification with acoustic signals and visual identifiers throughout the entire broadcast).

In addition to the identification requirement, all media service providers are also required to present viewers with sufficient information for assessing the potential harm posed to minors by the content. Media service providers must describe the nature of the potentially harmful content using references that are easily understood by viewers. Details of these new duties to present information ('information system') are given in the conduct guidelines.

To ensure that programme content potentially impairing development cannot generally be viewed by the minors who are to be protected, television broadcasters undertake to comply with the following broadcasting time slots (depending on the age classification of the programme in question):

- Daytime television, 6 am to 8 pm: Content in programmes broadcast during the day must be suitable for (young and older) children. Accordingly, all programmes broadcast must have content suitable for children in the 12 and under range or, in isolated cases (and if this does not impair the well-being of younger minors), 12 and over (but not 16 and over). All daytime programmes with an age classification of 12 and over must comply with labelling requirements.
- Evening television, 8 to 10 pm: During the evening television slot, programmes are broadcast that fall under the 12 and over category or a lower category or, in isolated cases (and if this does not impair the well-being of younger minors), the 16 and over (but not 18 and over) category. All programmes with an age classification of 16 and over must comply with labelling requirements.
- Late evening television, 10 to 11 pm: During the late evening television slot, programmes are broadcast that fall under the 16 and over category (with labelling) or a lower category.
- Night-time television, 11 pm to 6 am: Programmes falling under any age category can be broadcast during the night-time slot. All programmes falling under the 16 and over or 18 and over age category must comply with labelling requirements.

The self-regulatory body has stated that the guidelines are modelled (and expand) on accepted practice in youth protection in the industry to date, especially as regards questions of selecting broadcasting times or time periods in which content potentially causing harm should be shown or made available, and established practice regarding acoustic and/or visual labelling.

The conduct guidelines also recommend the voluntary provision of additional information (supplementing the recommended age classification and notes on the potential harm) on the part of television broadcasters, which is to be included in information sources accompanying their programming such as EPGs, teletext or specialised online services. However, broadcasters are not required to present such information.

Rules for television programming

As mentioned above, the information system for television broadcasters pursues the goal of presenting viewers – and parents and minors in particular – with sufficient information, in a simple and easily comprehensible format, that allows them to assess the potential harm posed to minors by content.

Specifically, the submitted conduct guidelines require television broadcasters who broadcast freely accessible programmes outside the recommended broadcasting time slots – thus potentially impairing the development of minors – to offer at the start of the programme simple and easily understood references to the recommended age classification (age reference) and the nature of the potential harm posed by the programme that follows (harm reference or label).

The age references use the international age limits (which have also been applied in Austria for many years) and are oriented toward the classifications from the FSK (voluntary film industry self-regulatory body) and the FSF (voluntary television industry self-regulatory body). Five separate age categories are defined:

- Content is not suitable for minors: 18 and over
- Content is suitable for minors of at least age 16: 16 and over
- Content is suitable for minors of at least age 12: 12 and over
- Content is suitable for children/minors of at least age 6: 6 and over
- Content is suitable for children/minors of any age: 0 (no restrictions)

A classification system provides objective definitions of the type of content considered unsuitable for the individual age categories, since this content has the potential to impair the development of children and minors.

According to the conduct guidelines, content potentially impairing development is further subdivided into the four harm categories of 'violence', 'anxiety', 'inappropriate behaviour' and 'sex'. Harm guidance must further be presented so that, at the start of the programme and as an adjunct to the age warning, at least one of these harm categories is specifically indicated using a visual overlay with a text identifier ('violence', 'anxiety', 'inappropriate behaviour' and/or 'sex').

Before the start of each programme subject to a labelling requirement, the age and harm reference are shown in easily legible lettering of an appropriate size along the top edge of the screen for at least three seconds.

In line with the conduct guidelines, broadcasters are free to supplement the harm reference with more detailed descriptions of the potential harm, but must ensure that these details do not compromise the easy comprehensibility of the reference. It is recommended that broadcasters include easily accessible age/harm references in the information sources that accompany their programming (such as the EPG, teletext or website).

To ensure that the youth media protection system in Austria is as uniform as possible, a set of assessment standards is required. Accordingly, the conduct guidelines define uniform standards and assessment criteria for each age category. These assessment standards and criteria have been developed while taking the greatest possible account of established assessment criteria recommended by recognised youth protection bodies.

Summing up, it can be stated that, according to the code of conduct, a relevant potential harm is always present in cases where the audiovisual content presents types of behaviour or value systems as positive or acceptable that are incompatible with generally shared social values or in breach of Austrian laws. Both

in television programming and within audiovisual media services in general, youth protection does not pursue the objective of pigeonholing certain topics as taboo but instead aims to determine the core values or message conveyed by a particular service (in whole or in part) and to assess their potential impact on children or adolescents.

Rules for on-demand services

As is the case for television broadcasters, providers of on-demand services must also ensure that programmes potentially impairing the physical, psychological or moral development of minors are provided in a way that prevents them being generally viewable or consumable by minors.

Like television broadcasters, providers of on-demand services must also set up an appropriate information system that allows their users to make informed decisions about the content to be viewed. In line with the conduct guidelines, the age classification system and assessment standards apply *mutatis mutandis* to on-demand services.

The conduct guidelines states that on-demand services may provide the required level of protection for minors by deploying an effective control system secured by access codes. If a control system based on time of access (effectively modelled on the broadcasting time slots used in television) is used, then service providers must use age references and programme-specific harm labelling to designate programmes subject to labelling requirements (based on age category and access time). Additional information provided in support of programming is also recommended but is not mandatory.

3.1.5 Youth protection at the ORF

In accordance with Art. 10a ORF-G, the ORF summarised its youth protection activities in its television and internet divisions as well as ORF TELETEXT as part of its 2022 annual report.

In this report, the ORF as a public media company underlined the fact that youth protection has from the outset been a priority concern and integral part of day-to-day operations. Throughout its programming, the ORF makes the most of opportunities to protect minors, with the aim of avoiding any impairment to the physical, psychological or moral development of minors:

- As part of programme commissioning or production
- As part of programme editing
- By exercising due care in the design and scheduling of programme trailers
- By ensuring programming observes scheduling slots
- By employing labels and references

Each broadcast is checked by the responsible editorial team at the production and/or commissioning stage(s). When determining the suitability of a specific programme for a specific age category, the ORF may base such decisions on the recommendations of the Austrian Youth Media Commission (JMK) at the Federal Ministry of Education, Science and Research, and on age classifications used by the German FSK (voluntary film industry self-regulatory body) and German FSF (voluntary television industry self-regulatory body).

Cooperation with the JMK is a key aspect of the support provided to editorial decision-making. Since 2002, the ORF has used the option of submitting programmes to a review committee to obtain a recommended classification.

In accordance with the new legal provisions and the conduct guidelines adopted by the above-mentioned association, the ORF has evaluated and significantly expanded its existing youth protection activities. These include the following:

▪ Scheduling by broadcasting time slots

As was the case even before the ORF-G amendment, ORF ensures that programme content potentially impairing development is scheduled to comply with strict time slots that are coordinated to the developmental stages of minors. Due attention to this scheduling ensures that any programme content potentially impairing development is broadcast only at times when this content cannot normally be viewed or consumed by minors.

To this end, the ORF applies broadcasting time slots as mentioned above:

- Before 8 pm: All programmes broadcast normally must have content suitable for children in the 12 and under range or, in isolated cases (and if this does not impair the well-being of younger minors), 12 and over (but not 16 and over).
- From 8 pm: From this time onwards, the ORF considers parents and legal guardians to share responsibility for the viewing habits of their young and adolescent children. During the evening television slot (8 to 10 pm), programmes with a higher age classification (12+ and 16+) may be broadcast but not programmes falling under the 18 and above category. Programmes falling under the 18+ age category may be broadcast only during the night-time slot (11 pm to 6 am).
- From 11 pm: Programmes falling under any age category can be broadcast during the night-time slot (11 pm to 6 am).

▪ A new labelling and information system

The ORF's programme labelling for the protection of children and adolescents dates back to 1 January 1999. As a result of the ORF-G amendment and with the aim of achieving a uniform industry-wide solution, the existing labelling system was adapted and expanded to include reference to the nature of the harm involved.

While films and series had been identified as 'X – Not for children' and 'O – Adults only' (as appropriate) from 10 pm onwards, an age reference (12+, 16+ or 18+) is now displayed during the entire programme.

In linear television, programmes falling under the 16+ or 18+ age category are always labelled as such regardless of their broadcast time. Programmes falling under the age category of 12+ are labelled as such only during daytime television (6 am to 8 pm).

At the start of a labelled programme – this applies in most cases to feature films and series broadcast after 10 pm – the age reference is supplemented by an acoustic signal and a reference to the nature of the harm involved. These references and/or labels may signify 'violence', 'anxiety', 'inappropriate behaviour' or 'sex'. The information is shown for three seconds at the top edge of the screen.

News programmes and party political broadcasts are exempted from any requirement to display such labelling.

▪ Youth protection in ORF online services and ORF TELETEXT

Programmes falling under the 12+, 16+ or 18+ age category are always labelled with the respective age reference in the ORF-TVthek, on Flimmit and tv.ORF.at, and in ORF TELETEXT (regardless of their actual TV broadcasting time slot). A reference to the nature of the potential harm ('violence', 'anxiety', 'inappropriate behaviour' or 'sex') is also shown at all times, either below the player window or in the immediate vicinity of the media title.

Aside from the new activities, youth protection measures have been in place in the ORF-TVthek since 2016: By agreement with the competent main ORF departments, certain series or productions are made available as video-on-demand items in the ORF-TVthek only between 8 pm and 6 am or 10 pm and 6 am.

Users of the ORF-TVthek are informed appropriately about these restricted viewing times when they click to select the corresponding programme. In addition to these arrangements, no advertising is permitted during children's programming.

3.1.6 Complaints and sanctioning procedures (rules of procedure)

The conduct guidelines, formally designated the association's 'rules of procedure', defines the process for handling complaints and the adoption of decisions on complaints by the experts council. The conduct guidelines also address the possibility of objecting to the council's decisions, the enforcement of such decisions and the imposition of appropriate sanctions on media service providers. The rules of procedure can be accessed from the association's website (see <https://www.jugendmedienschutz.at>).

The self-regulatory body publishes an annual activity report that informs the general public about a number of topics, including the measures and decisions adopted by the body in the reporting year, as well as the sanctions imposed as a result of breaches of the conduct guidelines.

See [section 3.1.8.3](#) for a report on complaints received by the association in 2022.

3.1.7 Recognition of the conduct guidelines and rules of procedure

The provisions of Austrian youth protection legislation require the widest possible acceptance of the conduct guidelines and rules of procedure ("*rules of procedure that are generally recognised by the primary stakeholders*"; Art. 32a KOG). To achieve this level of acceptance, the association's founding members took care from the outset to ensure that industry representatives were involved as closely as possible in drafting procedures.

Beyond the practical involvement of industry representatives, formal recognition (in the form of a documented proof of recognition) of the conduct guidelines and rules of procedure was also required. With reference to their individual obligation as broadcasters or on-demand service providers to create and comply with specific conduct guidelines (cf. Art. 39 Par. 4 AMD-G), media service providers were advised to fulfil their legal duties by publishing a youth protection declaration on their website, in which they formally recognise and agree to be bound by the conduct guidelines and the rules of procedure set out by the self-regulatory body.

According to reporting by the association (Jugendmedienschutzverein) in 2022, a large part of its work in this, its first year of routine operations, concentrated on further improving industry acceptance of its conduct guidelines and rules of procedure, and supporting their implementation in practice.

The administrative office therefore spent 2022 focusing on obtaining more youth protection declarations from industry representatives and improving acceptance of the association. Figures from the report show that the association's written and phone-based advocacy work resulted in improved acceptance, with 75 on-demand

service providers and 63 television broadcasters having formally recognised the conduct guidelines and rules of procedure as of 31 December 2022 (end of 2021: 43 on-demand service providers and 58 television broadcasters).

The administrative support office followed up these official announcements of recognition of the self-regulatory body's conduct guidelines and rules of procedure by visiting the websites maintained by media service providers to confirm that these declarations had indeed been published. All of the 75 on-demand service providers and 63 television broadcasters who formally notified the association of their recognition of the code of conduct and rules of procedure have also published and/or linked to the youth protection declaration or the conduct guidelines from the self-regulatory body on their websites.

The individual providers are listed in the activity report published by the association: <https://www.jugendmedienschutz.at/organisation>.

Despite this widespread acceptance, the association's conduct guidelines and rules of procedure have yet to be formally recognised by a few providers of TV programmes and on-demand services. Convincing these providers of the merits of the self-regulation mechanism and the association's rules and guidelines will be a key task for the association over the next few years.

3.1.8 Effectiveness of the conduct guidelines, and type, number and outcome of complaints

Pursuant to Art. 32b Par. 4 KOG, the self-regulatory body for the protection of minors is to submit an annual report addressing the effectiveness of conduct guidelines provisions, as well as the type, number and outcome of complaints, to KommAustria by 31 March of the following year.

The Association for the Protection of Minors through Self-Regulation of Audiovisual Media Products and Services complied with its reporting duties by the due date.

By way of an overall summary and on the basis of the general criteria as specified by Art. 32a Par. 2 KOG, the self-regulatory body considers the following effectiveness criteria to be relevant:

- Conduct guidelines have been drafted that unequivocally define the objectives of self-regulation in youth protection for media services.
- The conduct guidelines have been recognised by the primary stakeholders.
- The conduct guidelines have been implemented and observed.

The association's formation, the drafting of the conduct guidelines, their provisions and progress toward their recognition by the primary stakeholders are presented above in detail.

As a result of the wide range of activities required for its formation in 2021, the self-regulatory body initially lacked the time to prepare a structured evaluation of how media services providers are implementing the conduct guidelines.

The following measures for auditing conduct guideline implementation and compliance were set out in 2022:

3.1.8.1 Effectiveness audit

In January 2022, the association conducted an effectiveness audit of media service providers, seeking answers to the following:

- 1.) Has the association's administrative office received a signed youth protection declaration from each television broadcaster and on-demand service provider (dated and with stamp, address, etc.)?
- 2.) Is this declaration published on the website and/or have the conduct guidelines been published on the media service provider's website by means of a link to the association's youth protection guidelines?

Of the 58 television broadcasters and 43 on-demand service providers audited in January 2022, 52 and 39 respectively fulfilled both audit criteria. This audit was repeated monthly, with non-compliant media service providers being notified and informed of failure to comply.

A final audit at the end of 2022 resulted in a 'pass mark' of 100%, with all 75 on-demand service providers and 63 television broadcasters successfully completing the effectiveness audit.

3.1.8.2 Auditing media service providers for youth protection conformity

Starting in summer 2022, the administrative support team then conducted a youth protection conformity audit of the television channels and on-demand services that had declared their intention to comply with the conduct guidelines and recognise the rules of procedure. This audit consisted of random sampling of the audiovisual media services provided to determine compliance with:

- a) Labelling requirements (announcement by means of an acoustic signal or the application of a visual identifier throughout the entire broadcast)
- b) Information requirements (age reference and harm reference)

An average of two audits were conducted each month. Priorities were set according to market relevance, with audits of larger media services being prioritised.

These regular audits aim to strengthen cooperation with media service providers, where necessary notifying them of any failure to comply with labelling or information requirements.

Looking at the results of the effectiveness audit on the one hand and the youth protection compliance audits of media services on the other, the association found that the major providers and many smaller providers alike had acted to ensure adequate implementation of the conduct guidelines and the newly created information system in particular, including age and harm references, by the end of 2022. No major instances of non-conformity were identified. In the event of minor non-conformities, the media service was contacted and informed promptly, and the issues then resolved.

In all other respects, the association as self-regulatory body found no other evidence to suggest that media service providers who had formally recognised the conduct guidelines had not (or not adequately) implemented them in practice.

In its effectiveness report published at the end of 2022, the association accordingly concludes that the television broadcasters and on-demand service providers who have recognised the new rules also implement these rules in practice.

The association plans to continue the effectiveness audit and the youth protection conformity audits of media services in 2023, so as to monitor and provide evidence of the implementation of the conduct guidelines.

3.1.8.3 Type, number and outcome of complaints

The self-regulatory body publishes an annual activity report that informs the general public about a number of topics, including the measures and decisions adopted by the body in the reporting year, as well as the sanctions imposed in response to breaches of the conduct guidelines (Art. 32a Par. 2 No. 5 KOG).

In the 2022 calendar year, two formal complaints were submitted to the self-regulatory body in response to a breach of the conduct guidelines.

In both cases, the experts council at the association found that the broadcasts that were the subject of the complaint had not in fact violated the conduct guidelines.

A summary of decisions made to date by the experts council can be accessed here (in German): <https://www.jugendmedienschutz.at/entscheidungen/>

In the opinion of the association, the low volume of complaints received to date can also be ascribed to the fact that the association spent much of 2022 on organising the launch of the self-regulatory body's business activities. As a result, public relations and work on raising the profile of the Association remain important tasks that the association wishes to focus on further and much more intensively during 2023. The association expects to receive a larger number of complaints in 2023.

Regular evaluations were conducted in 2022 toward continuously improving work processes. In this light, it also appeared expedient to consistently review the complaints system itself in terms of fitness for purpose, and to adapt or amend the system where necessary. This necessitated regular knowledge sharing between the management board, administrative office and members of the experts council. Meetings to coordinate efforts were therefore held at regular intervals, either online or in person.

3.1.8.4 Public relations work and stakeholder networking

In 2022, an important part of the work conducted by the association consisted of raising its profile, so as to ensure that the interested public was aware of the monitoring role carried out by the body and could therefore make use of its services.

Media relations work primarily took place through contacts with journalists active in trade and consumer media. Press releases were issued using the OTS service from the Austria Press Agency (APA) (e.g. APA-OTS on 2 March 2022, "New youth media protection association publishes first activity report", and on 24 October 2022, "Youth media protection: international cooperation of the JMS experts council with FSF"), interviews were given (e.g. in the trade journals *Horizont* and *Mediendiskurs*), and public information meetings held. Media channels owned by association members and the association's website were also used for this purpose.

Lastly, the topic of self-regulation and youth media protection was also addressed in a presentation given by the head of the association's administrative office in September 2022 as part of Cable Days 2022, making the most of this occasion to engage with many Austrian media services.

The association also placed a stronger focus on networking with relevant stakeholders in 2022 (such as management board meetings with KommAustria, and with the Youth Policy and Media and Information Society departments in the Federal Chancellery, and written and phone contact with federal youth and school pupil representatives, the ombudsman for children and youth, the professional association of Austrian psychologists, the Austrian Children's League and UNICEF). Further meetings with stakeholders will be held in 2023.

As also indicated by the volume of requests for information received by the association, steady progress is being made toward the goal of public relations efforts, namely achieving greater public awareness of the

association. The association is now often consulted for advice on issues relating to youth protection or youth media protection. Concerned parents are increasingly contacting the association with enquiries about recommendations for youth protection filters, for example.

3.1.8.5 Summary for 2022 and outlook for 2023

Looking at the reports submitted for 2022, the association offers the following conclusions about the past and upcoming calendar years.

In 2022, the second year since its formation, the association achieved some key milestones. Organisational structures, guidelines and the complaints management system were set up and subsequently refined, and have proved their capabilities in practice. The number of youth protection declarations submitted by television broadcasters and on-demand service providers has also risen. Initial measures were introduced in relation to public relations work and the visibility of the association has steadily improved. The first complaints were then received and processed by the experts council in 2022. During this year, the association spent more of its time engaging in cooperative efforts with private and public stakeholders. A wide variety of activities were able to further improve both the awareness and acceptance of the new conduct guidelines as well as the new youth protection information system.

Findings from the Video Survey commissioned by RTR-GmbH show that, among 14 to 29 year olds, the topic of youth media protection is becoming increasingly important, and needs to receive continuous attention and support. Video material is also consumed via international online platforms, however. Owing to a lack of legal jurisdiction, neither YouTube nor Facebook are subject to the regulatory powers of the association, nor is there any self-regulation here. The system presented in this report therefore does not cover these services.

The association expects its activities in 2023 to focus on improving the visibility of the self-regulatory body to the interested public. The primary aim here is to further expand and intensify networking activities with private and public stakeholders, while also participating in conferences and organising in-house events to draw attention to the association's work. Another key aspect of the association's work will be to strengthen the acceptance and awareness of the conduct guidelines and the rules of procedure in the industry, while monitoring practical implementation of the conduct guidelines by providers. The latter point is especially relevant in light of the expected increase in the volume of complaints.

3.1.9 Evaluation, assessment and recommendations by KommAustria to improve effectiveness

Pursuant to Art. 39 Par. 5 AMD-G, a self-regulatory body for the protection of minors is to provide the regulatory authority with a report, describing the progress made toward achieving compliance with the obligation of media service providers to use references to inform the public (Art. 4 and Art. 32a Par. 2 No. 5 KOG). In its activity report, the regulatory authority is to present the current status in meeting the obligation described in Par. 4. The regulatory authority can attach to this report an evaluation suggesting improvements on how information is made available.

Pursuant to Art. 32b Par. 4 KOG, the self-regulatory body for the protection of minors is to additionally submit an annual report addressing the effectiveness of conduct guidelines provisions, as well as the type, number and outcome of complaints, to KommAustria by 31 March of the following year. The regulatory authority must publish an activity report presenting its assessment of and recommendations on effectiveness.

In this context, it should first be noted that 2022 was the first 'year in business' for the association in Austria. It was thus necessary to define in detail and adjust the general framework for the activities of the new self-regulatory body, including its structure and content of activities. In the second year of the association since its formation, activities thus focused very strongly on the implementation of the self-regulation project.

A two-pronged approach was taken in the 2022 reporting year. First, efforts were made to raise the association's public profile by stepping up public relations activities. A second priority was to increase recognition of the self-regulation system by television broadcasters and media service providers (with 'youth protection declarations'), and further progress was made here in 2022.

The association was of course only recently formed and only a small volume of empirical data related to its work has been obtained to date (with 'only' two complaints received in 2022, for example). As a result, there is little basis as yet for KommAustria to conduct a detailed evaluation pursuant to Art. 39 Par. 5 AMD-G, aimed at improving the effectiveness of providing guidance to enable the assessment of the potential harms posed to minors by media content. Consequently, KommAustria is equally unable to present well-grounded recommendations on the effectiveness of the code of conduct within the meaning of Art. 32b Par. 4 KOG.

However, KommAustria welcomes the continued progress in the way of organisation and areas of activity, as presented in the reports, which the relatively new association has made following its year of formation in 2021. Conversely, KommAustria sees clear evidence that the self-regulation system established by the association is fundamentally effective and capable. This is seen in increasing professionalisation, the first submission of complaints and the routine auditing of effectiveness in the context of the system as presented in section 8.

In consideration of the above, KommAustria welcomes the following priorities as announced by the association for its future work.

The association is namely correct in stating that the effectiveness of the conduct guidelines depends to no small degree on its recognition by the industry's 'primary stakeholders,' meaning the major television broadcasters and on-demand service providers. The association has presented a list of the television broadcasters and on-demand service providers who have formally recognised the self-regulatory body's conduct guidelines and rules of procedure.

While the primary stakeholders and major industry players appear on this list, many smaller television broadcasters and providers of on-demand services have still not recognised the guidelines. In light of these facts, KommAustria concurs with the association's assessment that a key objective for activities on into the future must be to convince these remaining providers of the merits of the self-regulation mechanism and of uniform conduct guidelines. Not least because, if it should fail to publish a youth protection declaration, the Austrian media service concerned is then required by law to draft and monitor its own specific conduct guidelines (cf. Art. 39 Par. 4 AMD-G).

Looking to the future, other practical tasks that will be crucial to ensuring the success of industry self-regulation as promoted by the relevant legislation include: increasing among the interested public the visibility and awareness of the self-regulatory body as an industry regulator, strengthening the industry's acceptance and knowledge of the conduct guidelines and rules of procedure, and completing a detailed analysis of how industry players are implementing the conduct guidelines.

3.2 Accessibility Report 2022

There are more than 1.5 million people with disabilities in Austria. Only a small percentage of these disabilities are congenital, or were acquired as a result of an accident or an occupational illness. The vast majority are the result of a disease or disorder.¹ Nor should it be forgotten that disabilities also affect older people especially.

The following groups are most likely to experience restrictions to participation in society and democratic discourse, especially due to difficulties in accessing information:

- People with vision impairments or blindness
- People with hearing impairments
- People with physical or motor impairments affecting the upper limbs
- People with learning difficulties

The UN Convention on the Rights of Persons with Disabilities – and the subsequent EU Directive on Audiovisual Media Services – introduced ‘accessibility’ as one of its foundational principles.² Accessibility is a prerequisite for people with disabilities to be able to live independently, participate equally in society and exercise their rights.

Pursuant to Article 8 (1) of the UN Convention on the Rights of Persons with Disabilities (UN-BRK),³ the signatory countries are committed to taking immediate, effective and appropriate measures

- a) *To raise awareness throughout society, including at the family level, regarding persons with disabilities, and to foster respect for the rights and dignity of persons with disabilities;*
- b) *To combat stereotypes, prejudices and harmful practices relating to persons with disabilities, including those based on sex and age, in all areas of life;*
- c) *To promote awareness of the capabilities and contributions of persons with disabilities.*

Paragraph (2) sets out measures to promote awareness, with (c) specifying the measure of *encouraging all organs of the media to portray persons with disabilities in a manner consistent with the purpose of the present Convention.*

In relation to media services, accessibility is not simply reduced to how the persons concerned are portrayed, however. The issue here is to ensure that media are discoverable, accessible and usable by people with disabilities in a general and typical manner without encountering undue difficulty or requiring the aid of another person.

Guaranteeing accessibility of audiovisual content is a key requirement in the context of the obligations entered into by parties to the United Nations Convention on the Rights of Persons with Disabilities.

Accordingly, media service providers should “actively seek to make content accessible to persons with disabilities, in particular with a visual or hearing impairment.”⁴ This accessibility should not be restricted to persons with a visual or hearing impairment, but should also include persons with other disabilities (such as learning difficulties). Accessibility requirements should be met through a progressive and continuous process, while taking into account the practical and unavoidable constraints that could prevent full accessibility, such as programmes or events broadcast in real time.

1 For figures, see the federal government’s third report on the situation of people with disabilities, available (in German) at <https://www.sozialministerium.at/Themen/Soziales/Menschen-mit-Behinderungen/Bericht-der-Bundesregierung-ueber-die-Lage-der-Menschen-mit-Behinderung.html> (accessed 21 April 2022)

2 Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive), last amended by Directive (EU) 2018/1808

3 <https://www.sozialministerium.at/Themen/Soziales/Menschen-mit-Behinderungen/UN-Behindertenrechtskonvention.html>

4 Cf. Directive (EU) 2018/1808, Recital 22

The moving image – and therefore the role played by vision – plays a significant role in audiovisual media as a whole. Yet vision is not the only means of sensory perception that is stimulated by audiovisual content. Moving images should be made perceptible so that they evoke mental pictures and emotions in the audience. The strong focus of mass media on video viewing entails disadvantages for people with vision impairments as well as individuals with hearing impairments. However, these issues can be mitigated by the deployment of technical aids. This enables these consumers to participate in audiovisual media. Furthermore, modern media tools also permit the creation of technical solutions – such as the incorporation of media content in simple language – that allow people with learning difficulties to access audiovisual media content and therefore participate more fully in an inclusive social and cultural life.

3.2.1 National Action Plan on Disability

The federal government adopted the 2022–2030 National Action Plan on Disability (NAP Disability II) in the Council of Ministers on 6 July 2022. It is the successor plan to the National Action Plan (NAP Disability I) adopted back in 2012.⁵

In NAP Disability II, the current situation in each specialised area (including culture, traffic and transport and sport) is presented in the form of an issue summary (current situation). This includes political objectives that have been agreed between the federal ministries and provinces as well as indicators that aim to measure the extent to which each objective is achieved. Furthermore, the plan includes 375 measures that are to be implemented by 2030.

Regarding the current situation in media services, NAP Disability II makes observations as quoted below.

3.8.1. Current situation

Media services are an essential part of our everyday life and penetrate all areas of society. Reporting on a topic and therefore its visibility in the media influences political decisions. If a topic is discussed in detail in opinion-shaping media, it is more likely to be reflected in political action than issues that are ignored or else addressed only on special anniversaries.

Consequently, the issue of disability is not well represented in the media and is often linked with the mental image of poor people in need of charitable contributions. People with disabilities are frequently portrayed as supplicants or victims. The result of this biased and restricted representation is a distorted perception that strongly defines the public image of people with disabilities in a way that contradicts reality. This reinforces the barriers that are engrained in people's minds.

As part of its programme mandate, the Austrian Broadcasting Corporation (ORF) must ensure that the concerns of people with disabilities are properly reflected. The programmes and online services offered by the ORF as well as the advertisements that it broadcasts must respect the dignity and fundamental rights of all persons in terms of their presentation and content. Furthermore, the ORF and other audiovisual media services are legally obliged to increase year on year the percentage share of programmes that are accessible to the hearing and visually impaired and to people with learning difficulties, in particular through the use of sign language, subtitling, audio description and menu navigation that is easy to understand by viewers. As previously, there are still too few accessible services offered.

NAP Disability II now envisages the following objectives and indicators:

(137) All programmes by the ORF and other audiovisual media services should be fully accessible. New content produced in-house should also be accessible from the outset.

5 <https://www.sozialministerium.at/Themen/Soziales/Menschen-mit-Behinderungen/Nationaler-Aktionsplan-Behinderung.html>

Indicators: amount of the annual increase of accessible TV formats in the ORF; amount of the annual increase of accessible TV formats by other audiovisual media services in the RTR report

(138) All aspects of how people with disabilities live should be presented in the media in a way that is both factual and balanced. Discriminatory terms such as 'afflicted', 'wheelchair-bound' or 'deaf and dumb' should be avoided, while focus should be placed on the strengths of people with disabilities.

(139) People with disabilities should regularly participate in and present ORF programmes.

(140) The agendas of people with disabilities are to be discussed as an interdisciplinary issue in all media-related ministries.

The measures 161 to 168 following these objectives and indicators in NAP Disability II are as follows:

No.	Content	Period	Competence	Costs
161	Diversity and inclusion in media-specific vocational training and fields of study (in the context of the performance agreement)	2022–2030	Federal Ministry of Education, Science and Research	Costs are determined when budget resources are allocated
162	Monitoring of press releases for non-discriminatory language relating to people with disabilities	2022–2030	Federal Ministry for Social Affairs, Health, Care and Consumer Protection, Federal Ministry of Justice, Federal Ministry of the Interior, Federal Ministry of Defence, Federal Chancellery, Federal Ministry of European and International Affairs, Federal Ministry of Agriculture, Federal Ministry of Climate Action, Federal Ministry of Arts, Culture, the Civil Service and Sport, Federal Ministry of Finance, Federal Ministry of Education, Science and Research, Federal Ministry of Labour and Economy	Costs are determined when budget resources are allocated
163	Representation and inclusion of people with disabilities as part of film funding as a structural objective of the project committee of the Austrian Film Institute, including with the aim of increased involvement in production processes	2022–2030	Federal Ministry of Arts, Culture, the Civil Service and Sport	No costs
164	Promotion by the Austrian Film Institute of accessible versions of Austrian films with subtitles and audio descriptions	2022–2030	Federal Ministry of Arts, Culture, the Civil Service and Sport	Cost depending on need
165	Advice for media professionals on the website www.barrierefreiemedien.at	2022–2030	Federal Chancellery	Costs are determined when budget resources are allocated
166	Creation, implementation and annual evaluation by the ORF of the action plan envisaged in the ORF Act (ORF-G)	2022–2030	KommAustria	Costs are determined when budget resources are allocated
167	Implementation of the action plan envisaged in the Audiovisual Media Services Act (AMD-G) by all Austrian private broadcasters and other audiovisual media service providers (such as streaming services)	2022–2030	KommAustria	Costs are determined when budget resources are allocated
168	Redesign of the ORF fund-raising campaign Licht ins Dunkel (Light in the Dark) in terms of representing people with disabilities using positive examples from abroad	2022–2030	ORF	Costs are determined when budget resources are allocated

NAP II has met with strong criticism by representatives of people with disabilities.⁶

They take issue with the fact that financing has not been clarified, there is no overall strategy and little progress has been made in individual areas.⁷

Nevertheless, associations for people with disabilities regard the National Action Plans as groundwork documents whose implementation in individual areas will enable people with disabilities to enjoy an active life within society.

3.2.2 Legal basis

The legal basis for increasing percentage shares of accessible content and for creating action plans and reports can be found in the Audiovisual Media Services Act (AMD-G) on the one hand, and in the ORF Act (ORF-G) on the other.

Pursuant to Art. 30b Par. 1 AMD-G, media service providers are to achieve a continuous and step-by-step annual increase in programmes that meet accessibility standards compared with programming as at 31 December 2020. This increase is to be achieved throughout all of their channels and programming in accordance with their economic capabilities while also accounting for the financing provided for such measures from public funds. In terms of live content, the greater degree of effort required to ensure accessibility to this content permits certain technically justifiable exemptions to be made.

To achieve the goals of ensuring accessibility for audiovisual content, Art. 30b Par. 2 AMD-G stipulates that providers of audiovisual media services should take appropriate steps to ensure a continuous and progressive increase in the proportion of their audiovisual content that they have made accessible to people with hearing and vision impairments. Media service providers must provide further details of how they intend to implement these measures by preparing an action plan in consultation with a representative organisation acting on behalf of people with vision or hearing impairments and on behalf of people with intellectual disabilities. This action plan must set out concrete details for a three-year time frame and build on the earlier action plan adopted for the prior period. The plan must also ensure an annual increase in the proportion of programmes meeting accessibility standards (live broadcasts excepted) within the categories of information, entertainment, education, art and culture, and sport. Media service providers must publish the action plan so it is easily and immediately available, and accessible at all times. The action plan must also be submitted to KommAustria in a standardised format.

Exemptions to this requirement are granted to media service providers whose prior-year earnings from their audiovisual media service did not exceed EUR 500,000. Media service providers whose programming is of an exclusively local or regional nature are also granted an exemption to this requirement for the audiovisual media services that they offer.

A failure to prepare or publish the action plan will be sanctioned through the imposition of an administrative penalty. KommAustria may also initiate a supervisory procedure in the event of an action plan not being made available or may respond to a public complaint.

Similar provisions are envisaged for the ORF by the ORF-G. Other key objectives are specified in Art. 5 ORF-G.

Pursuant to Art. 5 Par. 2 ORF-G, news and current affairs television broadcasts (Art. 3 Par. 1) must be designed, in accordance with technical advances and economic feasibility, to simplify the consumption of such broadcasts by individuals with vision and/or hearing impairments and persons with intellectual disabilities (who need content to be expressed in simple language). Furthermore, Art. 5 Par. 2 also stipulates that the ORF shall offer at least one news broadcast in simple language during its daytime programming (9 am to 10 pm).

6 <https://www.behindertenrat.at/2022/07/nationaler-aktionsplan-behinderung-nicht-mehr-als-lippenbekenntnisse/>

7 <https://www.lebenshilfe.at/presseaussendung-nap-2022-nicht-ausreichend/>

The ORF shall also ensure that appropriate measures are taken to ensure a continuous and progressive increase in the respective proportion of audiovisual content made accessible to individuals with intellectual disabilities (who need content to be expressed in simple language) as well as to people with vision and/or hearing impairments, in comparison with programming as at 31 December 2020. The ORF may also be granted technically justifiable exemptions in the case of live content.

The ORF must provide further details of the measures intended to increase the aforesaid proportion by preparing an annual action plan in consultation with the Audience Council and with the representative organisations for people with vision or hearing impairments and individuals with intellectual disabilities. This plan must include a detailed, three-year timetable for the annual increase in the proportion of ORF programming and online content that meets accessibility requirements (excepting live broadcasts), within the categories of news and current affairs, entertainment, education, arts and culture, and sport.

Art. 5 Par. 2 ORF-G stipulates an annual increase of at least 2.5% in the categories of news and current affairs, education, and arts and culture, and of at least 4% in the category of entertainment, compared with figures at the end of the prior calendar year. Special importance is attached to ensuring accessibility for all television broadcasts in early evening and main evening programming (7 pm to 10 pm), for online services, for provincial broadcasts in the news and current affairs category, for press conferences and broadcasts reporting on elections or election results, and children's programming in the categories of news and current affairs, and entertainment.

As at 31 December 2021, a total of ten media service providers had submitted an action plan for their audiovisual media services. Two action plans were submitted in March 2022. These apply to the 2021–2023 period. By 31 December 2022, two (other) media service providers had submitted an action plan for their audiovisual media services; these apply to the 2022–2024 period. Of these, one action plan was a late submission.

KommAustria is tasked with reporting on the status quo and developments in relation to the duties as described in Art. 30b Par. 1 AMD-G and in Art. 5 Par. 2 ORF-G, together with a comparative presentation of intended target values and the actual values as achieved. Both provisions require the preparation of an annual report on implementation of the measures specified in the action plan and the proportional increase achieved by 31 March of the year after the reporting period. These reports are to be published in the same way as the action plans.

One infringement procedure and one administrative penal procedure were completed against one media service provider; KommAustria assumes the provider falls under the provisions of Art. 30b AMD-G for 2021. A further infringement procedure is pending, with two media service providers claiming that the obligations do not apply since they had not reached the revenue limit. For 2022, the action plans and the annual reports that were submitted are being evaluated and procedures are being initiated where applicable.

Pursuant to Art. 30b Par. 4 AMD-G, the regulatory authority's annual report (Art. 19 KOG) must present for each media service provider the status quo and development in terms of the requirements described in Par. 1, together with a comparative presentation of intended target values and the actual values achieved by the provider. The regulatory authority can enclose with this report, supported by RTR as a service point pursuant to Art. 20b KOG, a statement about further improvements to accessibility.

Pursuant to Art. 20b KOG, RTR has the remit to act as a point of contact for complaints and information services relating to accessible audiovisual media services and to accordingly provide information for media service providers and for the general public. This information is presented under <https://barrierefreiheit.rtr.at/>. Furthermore, RTR serves as a complaints board for accessibility issues with the content of audiovisual media services. No complaints were received relating to accessibility issues in 2022.

3.2.3 Reports on 2021–2023 action plans

The reference year for the respective action plan and thus for the current consideration of percentage shares of accessible content is 2020 for some of the media service providers under obligation, and 2021 for others. Media service providers must specify the accessible proportion of all of their programming, within the categories of news and current affairs, entertainment, education, arts and culture, and sport. In accordance with statements provided by affected media service providers, all action plans submitted were prepared following due consultation with a representative organisation acting on behalf of people with vision or hearing impairments and on behalf of people with intellectual disabilities.

The three-year action plans that were registered for the first time in 2021 and presented in last year's report are not presented here again. In these cases, a comparison is made only between the action plans that were registered and the 2022 annual reports that were submitted. For 2022, apart from the reports for ORF channels, 15 annual reports that relate to the action plans for 2021–2023 were submitted by eleven media service providers.

3.2.3.1 ProSiebenAustria GmbH

Table 15: Planned increase for the ProSieben Austria channel according to action plan (in %)

ProSieben Austria	Base year 2020	2021	2022	2023
Planned increase according to action plan	0.00%	0.33%	0.66%	0.99%
Actual increase according to annual reports	-	0.10%	0.76%	-

Reporting requirements pursuant to Art. 30b Par. 3 AMD-G

ProSieben Austria GmbH fulfilled its reporting duties pursuant to Art. 30b Par. 3 AMD-G by the given due date.

In the 2022 reporting period, a total of 390 minutes (0.76%) of accessible broadcasts in overall programming were subtitled.

The figure stated in the annual report thus exceeds the target in the action plan.

3.2.3.2 SAT.1 Privatrundfunk und Programmgesellschaft mbH

Table 16: Planned increase for the SAT.1 Österreich channel according to action plan (in %)

SAT.1 Austria	Base year 2020	2021	2022	2023
Planned increase according to action plan	0.00%	0.31%	0.61%	0.92%
Actual increase according to annual reports	-	0.09%	0.88%	-

Reporting requirements pursuant to Art. 30b Par. 3 AMD-G

SAT.1 Privatrundfunk und Programmgesellschaft mbH fulfilled its reporting duties pursuant to Art. 30b Par. 3 AMD-G by the given due date.

In the 2022 reporting period, a total of 465 minutes (0.88%) of accessible broadcasts in overall programming were subtitled.

The figure stated in the annual report thus exceeds the target in the action plan.

3.2.3.3 PULS 4 TV GmbH & Co KG

PULS 4 TV GmbH & Co KG fulfilled its reporting duties pursuant to Art. 30b Par. 3 AMD-G for both channels by the given due date.

3.2.3.3.1 Puls 4

Table 17: Planned increase for the Puls 4 channel according to action plan (in %)

Puls4	Base year 2020	2021	2022	2023
Planned increase according to action plan	0.00%	0.02%	0.04%	1.00%
Actual increase according to annual reports	-	0.02%	0.04%	-

In the 2022 reporting period, within overall programming, 220 minutes (0.04%) of accessible broadcasts in the category of entertainment were subtitled.

The figure stated in the annual report thus exceeds the target in the action plan, although the difference is not reflected in the rounded figures.

3.2.3.3.2 Puls 24

Table 18: Planned increase for the PULS 24 channel according to action plan (in %)

Puls24	Base year 2020	2021	2022	2023
Planned increase according to action plan	0.00%	0.02%	0.04%	0.30%
Actual increase according to annual reports	-	0.02%	0.07%	-

In the 2022 reporting period, 384 minutes (0.07%) of accessible broadcasts in overall programming for the Puls 24 channel included accessible measures.

PULS 4 TV GmbH & Co KG claimed that the internal decision was made not to offer only entertainment shows with subtitles, but also to provide news programmes with sign language interpreters. As a result of these developments, the required number of minutes of accessible broadcasts in the category of entertainment was not achieved. However, the percentage of accessible broadcasts increased throughout the channel.

In the 2022 reporting period, within overall programming, 176 minutes (0.03%) of accessible broadcasts in the category of entertainment were subtitled.

In the action plan, the percentage figure for the entertainment category was 0.2%. PULS 4 TV GmbH & Co KG reported that this referred to the total broadcasting time in the entertainment category.

In the 2022 reporting period, within overall programming, 208 minutes (0.04%) of accessible broadcasts in the category of information were provided with interpreting in Austrian sign language.

Here too, the total figure stated in the annual report thus exceeds the target in the action plan.

3.2.3.4 ATV Privat TV GmbH & Co KG

ATV Privat TV GmbH & Co KG fulfilled its reporting duties pursuant to Art. 30b Par. 3 AMD-G for both channels by the given due date.

3.2.3.4.1 ATV

Table 19: Planned increase for the ATV channel according to action plan (in %)

ATV	Base year 2020	2021	2022	2023
Planned increase according to action plan	0.00%	0.02%	0.04%	1.03%
Actual increase according to annual reports	-	0.02%	0.04%	-

In the 2022 reporting period, within overall programming, 208 minutes (0.04%) of accessible broadcasts in the category of entertainment were subtitled.

The figure stated in the annual report thus exceeds the target in the action plan, although the difference is not reflected in the rounded figures.

3.2.3.4.2 ATV 2

Table 20: Planned increase for the ATV2 channel according to action plan (in %)

ATV 2	Base year 2020	2021	2022	2023
Planned increase according to action plan	0.00%	0.01%	0.01%	1.05%
Actual increase according to annual reports	-	0.02%	0.04%	-

In the 2022 reporting period, within overall programming, 208 minutes (0.04%) of accessible broadcasts in the category of information were provided with interpreting in Austrian sign language.

The figure stated in the annual report thus exceeds the target in the action plan.

3.2.3.5 Sky Österreich Fernsehen GmbH

Sky Österreich Fernsehen GmbH fulfilled its reporting duties pursuant to Art. 30b Par. 3 AMD-G for both channels by the given due date.

3.2.3.5.1 Sky Sport Austria

Table 21: Planned increase for the Sky Sport Austria channel according to action plan (in %)

Sky Sport	Base year 2020	2021	2022	2023
Planned increase according to action plan	0.00%	0.14%	0.38%	0.86%
Actual increase according to annual reports	-	0.17%	0.34%	-

In the 2022 reporting period, within overall programming of the Sky Sport Austria channel, a total 1,800 minutes (0.34%) of accessible broadcasts in the category of sport were subtitled.

Accordingly, the figure stated in the annual report falls short of the target in the action plan.

As justification, Sky Österreich Fernsehen GmbH pointed to the 17th and 18th match days for the Austrian Federal Football League (Admiral Bundesliga), which had originally been scheduled for December 2022 but did not take place until January 2023 due to the World Cup in Qatar. A live match with a total length of 90 minutes was subtitled on both match days. Accordingly, the specified value of accessible broadcasts was not achieved in 2022. The two matches that were broadcast with a total length of 180 minutes will be included in the figures for accessible broadcasting for 2023.

3.2.3.5.2 Blue Movie

Table 22: Planned increase for the Blue Movie channel according to action plan (in %)

Blue Movie	Base year 2020	2021	2022	2023
Planned increase according to action plan	0.50%	0.70%	0.85%	1.05%
Actual increase according to annual reports	-	1.57%	2.00%	-

In the 2022 reporting period, within overall programming for the Blue Movie channel, a total of 4,400 minutes (2%) of accessible broadcasts in the entertainment category were subtitled.

The figure stated in the annual report thus exceeds the target in the action plan.

3.2.3.6 A1now TV GmbH

Table 23: Planned increase for the A1 Xplore TV channel according to action plan (in %)

A1 Xplore TV	Base year 2020	2021	2022	2023
Planned increase according to action plan	0.00%	0.02%	10.00%	20.00%
Actual increase according to annual reports	-	0.03%	16.06%	-

Reporting requirements pursuant to Art. 30b Par. 3 AMD-G

A1now TV GmbH fulfilled its reporting duties pursuant to Art. 30b Par. 3 AMD-G by the given due date, also noting that the technical requirements for displaying subtitles on its platform (user interface/database) had been implemented and that Alexa voice control had been introduced for A1 Xplore TV Box as an alternative to remote control.

In the 2022 reporting period, within overall programming, 184.606 minutes (16.06%) of accessible broadcasts in the category of entertainment were subtitled.

Accordingly, the figure stated in the annual report exceeds the target in the action plan.

3.2.3.7 T-Mobile Austria GmbH

Table 24: Planned increase for the Magenta On Demand channel according to action plan (in %)

Magenta on Demand	Base year 2020	2021	2022	2023
Planned increase according to action plan	38.77%	39.11%	40.22%	41.58%
Actual increase according to annual reports	-	39.11%	39.64%	-

Reporting requirements pursuant to Art. 30b Par. 3 AMD-G

In its annual report, T-Mobile Austria GmbH stated that Magenta TV is currently onboarding a new technical content supplier that will soon take over the encoding and ingest process for VoD content. With this new partner, it should be possible for all platforms to correctly apply the subtitles and audio descriptions provided by film studios. T-Mobile Austria GmbH also reported that selected TV broadcasters had enhanced their offering in the reporting year with the simple language audio option; this option was applied to all platforms.

The report states that Magenta TV had launched a new TV product in the reporting year. The new Magenta TV Box, based on Android TV, offers as standard options a number of accessibility functions such as screen readers and high-contrast text. Magenta TV is currently putting together a subscription package for the persons affected, planned as a try-and-buy option for the first month and to also include a discount without time limit.

Out of a total of 811,813 video minutes broadcast in 2022, 321,803 minutes (39.64%) within the overall programming of the Magenta On Demand service was subtitled. The programming from Magenta On Demand falls exclusively into the entertainment category.

According to the action plan, 304,626 out of a total 757,399 video minutes (40.22%) of accessible programmes were envisaged for 2022. This percentage was not achieved, with the discrepancy due to varying benchmark figures.

T-Mobile Austria GmbH argued that technical implementation of the electronic sell-through feature had resulted in delays. The feature was not launched until 2023. The aim in introducing electronic sell-through is to achieve a higher proportion of content with audio descriptions and subtitles.

3.2.3.8 Red Bull Media House GmbH

Red Bull Media House GmbH fulfilled its reporting duties pursuant to Art. 30b Par. 3 AMD-G by the given due date.

In its annual report, Red Bull Media House GmbH stated that since the start of the year, both the ServusTV and ServusTV Deutschland channels made Servus news and Servus news for Germany available in the media library as a time-shifted product with subtitles. As of 1 April 2022, technical measures were implemented to integrate subtitles in the transmitted signal. This meant that the listed content could be provided not only on the website, but also on conventional television.

Subtitles for the Hoagascht programme were first provided in the second quarter of 2022, while the prime time evening programme on Wednesdays, Terra Mater and documentaries, was made accessible by means of transcripts. These three programmes fall under the category of education.

Another category for which requirements were met using the same technical measures is that of arts and culture, under which the KULTour and LiteraTOUR programmes fall.

3.2.3.8.1 ServusTV

Table 25: Planned increase for the Servus TV channel according to action plan (in %)

Servus TV	Base year 2020	2021	2022	2023
Planned increase according to action plan	0.00%	0.10%	2.50%	5.40%
Actual increase according to annual reports	-	0.10%	4.14%	-

From a total of 15,441 minutes (4.1%) of accessible programmes within overall programming offered by the ServusTV service, 4,899 minutes (19.3%) were subtitled in the category of information, 9,617 minutes (10%) in education, and 925 minutes (18%) in arts and culture. The percentages specified in brackets for the categories each relate to the specified category. The figure stated in the annual report thus exceeds the target in the action plan.

3.2.3.8.2 ServusTV Deutschland

Table 26: Planned increase for the Servus TV Deutschland channel according to action plan (in %)

Servus TV Deutschland	Base year 2020	2021	2022	2023
Planned increase according to action plan	0.00%	0.04%	1.90%	4.70%
Actual increase according to annual reports	-	0.04%	2.80%	-

Within the next word the overall programming of the ServusTV Deutschland service, from a total of 11,336 minutes of accessible programmes in the category of information, 2,559 minutes (15%) were subtitled. In the category of education, this was 7,202 minutes (4.6%), while 1,575 minutes (25%) were subtitled in the category of arts and culture. The percentages specified in brackets for the categories each relate to the specified category. The figure stated in the annual report thus exceeds the target in the action plan.

3.2.3.9 Sa Fira Blue GmbH (ViktoriaSarina)

Table 27: Planned increase for the ViktoriaSarina YouTube channel according to action plan

ViktoriaSarina	Base year 2020	2021	2022	2023	2024
Planned increase according to action plan	0.00%	0.00%	4.00%	8.00%	12.00%
Actual increase according to annual reports	-	0.00%	4.30%	-	-

Reporting requirements pursuant to Art. 30b Par. 3 AMD-G

Sa Fira Blue GmbH fulfilled its reporting duties.

Within overall programming of ViktoriaSarina, 67 minutes (4.3%) of accessible programmes in the entertainment category were produced using simple language.

Accordingly, the figure for minutes stated in the annual report exceeds the action plan target.

3.2.3.10 MediaShop GmbH

Table 28: Planned increase for the Mediashop Meine Einkaufswelt channel according to action plan (in %)

Mediashop	Base year 2020	2021	2022	2023
Planned increase according to action plan	0.00%	0.01%	0.21%	1.07%
Actual increase according to annual reports	-	0.01%	0.52%	-

Reporting requirements pursuant to Art. 30b Par. 3 AMD-G

MediaShop GmbH fulfilled its reporting duties pursuant to Art. 30b Par. 3 AMD-G by the given due date, also noting that during the reporting period it had involved associations for people with disabilities in the evaluation and – where feasible in terms of content – deployment of simple language in its infomercials.

MediaShop GmbH also took active steps to be able in future to evaluate a growing volume of screenplays and scripts in terms of accessibility, reduce technical jargon and explain abbreviations in detail.

The company attended a workshop on simple language at Capito and the studio team was then given in-house training based on workshop learnings.

In this context, MediaShop GmbH pointed out that changes involving simple language are not taken into account in evaluating the percentage share of accessible programming. This is because any distinction made in the scripts cannot be verified in practice, so that the resulting evaluation is not transparent and verifiable.

MediaShop GmbH requested a programming change that would allow it to broadcast additional programme items such as programme panels, station IDs and trailers alongside its 15 or 30-minute ad blocks with emotive content (infomercials). This was approved by KommAustria on 23 February 2022, KOA 2.150/22-002.

The report by Mediashop GmbH stated that the change has resulted in improved orientation and programming structure, thanks to newly introduced station IDs, trailers, programme panels, category labels and colour schemes. The new items are also being used to support accessibility (see audibility/audio description and subtitles).

Specifically, ‘talking’ programme panels have been implemented: written/legible text are read out loud, and even programme trailers were being provided with speech and text since late November 2022.

Product names have been included on the order form since the end of November 2022. This makes the product easier to find and enables the product name (which is often in English or an artificial term) to be presented clearly.

Since October 2022, there has also been a separate permanently subtitled trailer on the subject of accessibility that demonstrates to MediaShop GmbH customers with disabilities the various customer services and ordering options, be it online, via chat or by telephone. The trailer is also shown several times a day.

By the same token, there has been a speech-accompanied customer review trailer since the end of November 2022; customer evaluations are not just spoken but also displayed in parallel as subtitles or text.

In the category of entertainment, out of 2,723 minutes (0.52%) of accessible programming in overall channel programming of the Media Shop Einkaufswelt service, 2,133 minutes (0.41%) were subtitled and 590 minutes (0.11%) were provided with an audio description.

Accordingly, the figure for minutes stated in the annual report exceeds the action plan target.

3.2.3.11 Melodie Express GmbH

Table 29: Planned increase for the Melodie Express channel according to action plan (in %)

Melodie TV	Base year 2020	2021	2022	2023	2024
Planned increase according to action plan	0.00%	0.10%	0.19%	0.29%	0.38%
Actual increase according to annual reports	-	0.10%	0.21%	-	-

Reporting requirements pursuant to Art. 30b Par. 3 AMD-G

Melodie Express GmbH fulfilled its reporting duties pursuant to Art. 30b Par. 3 AMD-G by the given due date. In the 2022 reporting period, within overall channel programming for Melodie TV, 1,123 minutes (0.21%) of accessible broadcasts were subtitled in the category of entertainment.

Accordingly, the figure for minutes stated in the annual report exceeds the action plan target.

3.2.3.12 Austrian Broadcasting Corporation (ORF)

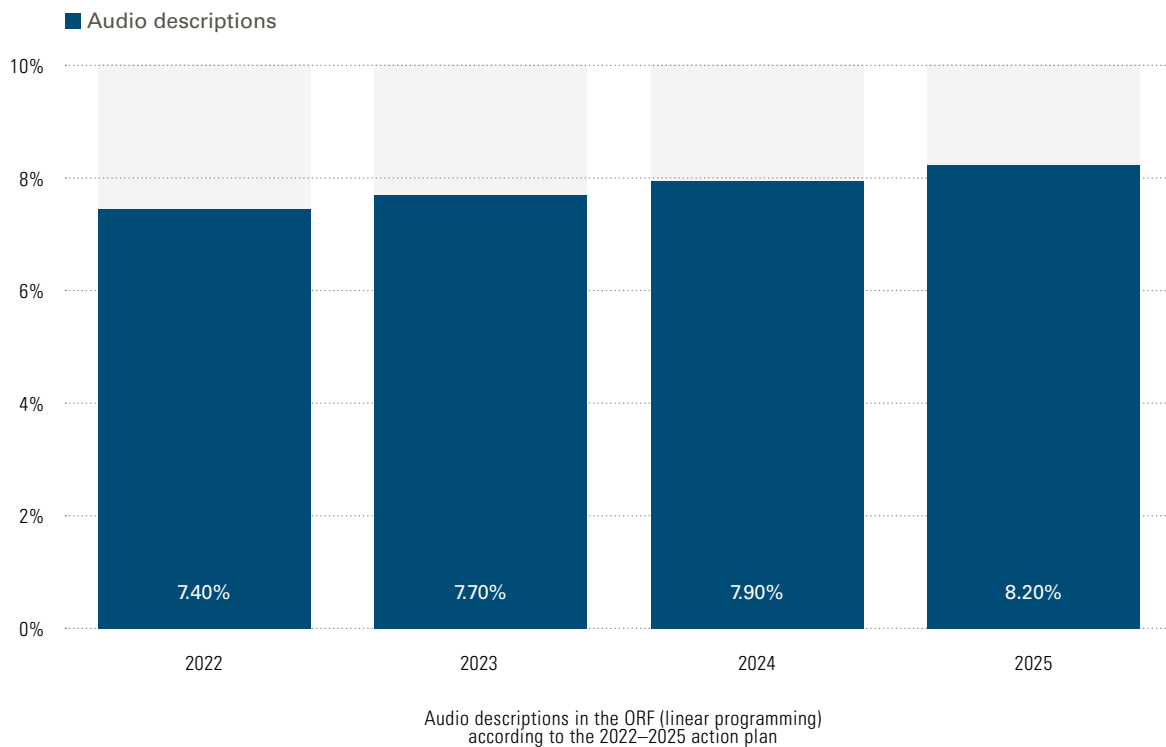
As noted above in section 2, the ORF is subject to the provisions of Art. 5 Par. 2 ORF-G.

The ORF is committed to creating an action plan on a yearly basis. This action plan must be published so as to be easily and immediately available and accessible at all times, and the regulatory authority must be notified of publication.

The most important developments from 2021 as reported by the ORF:

- Daily message block in simple language:
There has been a daily message block in simple language in all regional radio stations since January 2022.
- Expanded accessibility of regional programmes:
With Salzburg heute, another current affairs broadcast relating to a specific province was made available in the ORF TVthek with subtitles in December 2022.
- Balance sheet showing the use of synthetic voice audio descriptions:

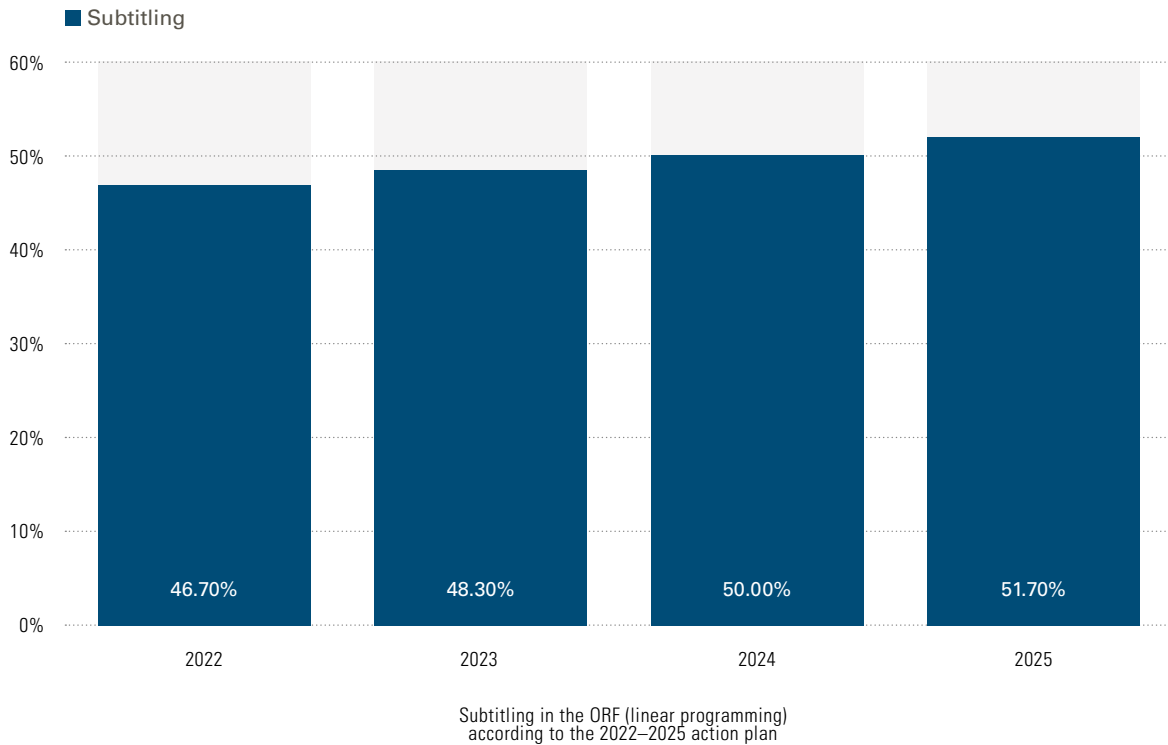
Figure 02: Planned increase in audio descriptions across all ORF channels, according to action plan (in %)



As of 2022, the ORF has broadcast via linear television 74 productions (around 102 hours) with synthetic voice audio descriptions. From all of its service offerings including audio descriptions, the share of synthetic voice audio descriptions was 4.5%.

Regular programmes with synthetic voice audio descriptions include the Universum nature series, classic Austrian films and productions such as 50 Years of Licht ins Dunkel charity-funding, and cultural programmes.

Figure 03: Planned increase in subtitling across all ORF channels, according to action plan (in %)



- Focus as defined in ORF-G

In the area of children’s programmes and broadcasts relating to current affairs, as well as during prime time evening TV (18:30 to 22:00), the respective percentage shares are higher than in 2021: current affairs broadcasts 55% (2021: 51%), children’s programmes 80.4% (2021: 54.4%) and prime time evening TV 54% (2021: 46.9%).

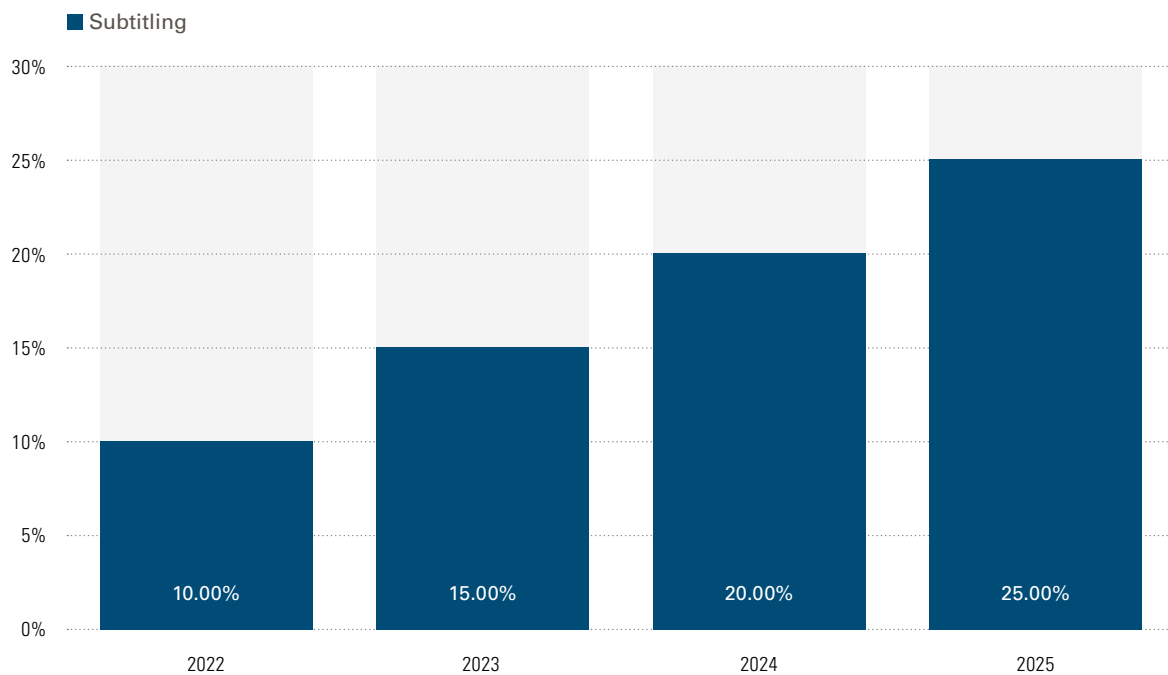
The ORF-TVthek is not an independent service, which is why the subtitling, audio description and sign language rates in this service are extremely close to the respective rates in television. An increase in accessible programming in television and the broader application of the accompanying necessary measures will lead to an increase in accessible content available from the ORF TVthek.

Additional online services (supplementary programme content and online video archives), which are especially relevant, are increasingly provided as accessible content in the ORF-TVthek.

In the case of the independent Flimmit online platform, an average of 6,500 titles (with a total length of some 4,900 hours) were available at the time the action plan was created.

An annual increase of 5% is planned here.

Figure 04: Planned increase for the FLIMMIT platform according to action plan (in %)



Subtitling in ORF (FLIMMIT)
by category according to the 2022–2025 action plan

The action plan for 2022–2025 has been published (in German) at <https://der.orf.at/unternehmen/humanitarian/barrierefreiheit/aktionsplan-barrierefreiheit104.html>. By law, the ORF is also required to notify the regulatory authority of publication.

Reporting requirements pursuant to Art. 30b Par. 3 AMD-G

For all channels subject to reporting requirements, the ORF fulfilled its reporting duties by the given due date.

Percentage shares of accessible content in the ORF (linear programming)	Subtitling	Audio description	Sign language	Simple language	Total accessible percentage share
Information	55.0%	0.4%	8.2%	0.13%	55.0%
Entertainment	83.3%	13.9%	0.04%	0.0%	83.3%
Education	61.3%	2.2%	5.9%	0.0%	61.3%
Arts and culture	53.1%	3.0%	0.45%	0.0%	53.1%
Sport	8.4%	8.2%	0.0%	0.0%	8.4%
Channels overall	46.7%	7.4%	1.8%	0.02%	46.7%

Percentage shares of accessible content in the ORF-TVthek	Subtitling	Audio description	Sign language	Simple language	Total accessible percentage share
Information	59.9%	0.4%	10.5%	0.2%	59.9%
Entertainment	74.6%	18.2%	0.13%	0.0%	74.6%
Education	72.8%	3.1%	12.5%	0.0%	72.8%
Arts and culture	55.3%	4.1%	0.6%	0.0%	55.3%
Sport	12.0%	11.6%	0.0%	0.0%	12.0%
Channels overall	45.9%	9.5%	3.6%	0.1%	45.9%

Percentage shares of accessible content in the ORF (FLIMMIT)	Subtitling	Audio description	Sign language	Simple language	Total accessible percentage share
Information	0.0%	0.0%	0.0%	0.0%	0.0%
Entertainment	7.7%	0.7%	0.0%	0.0%	7.7%
Education	21.1%	0.9%	0.0%	0.0%	21.1%
Arts and culture	0.0%	0.0%	0.0%	0.0%	0.0%
Sport	0.0%	0.0%	0.0%	0.0%	0.0%
Channels overall	10.1%	0.7%	0.0%	0.0%	10.1%

3.2.4 Reports on 2022–2024 action plans

3.2.4.1 Sascha Huber GmbH

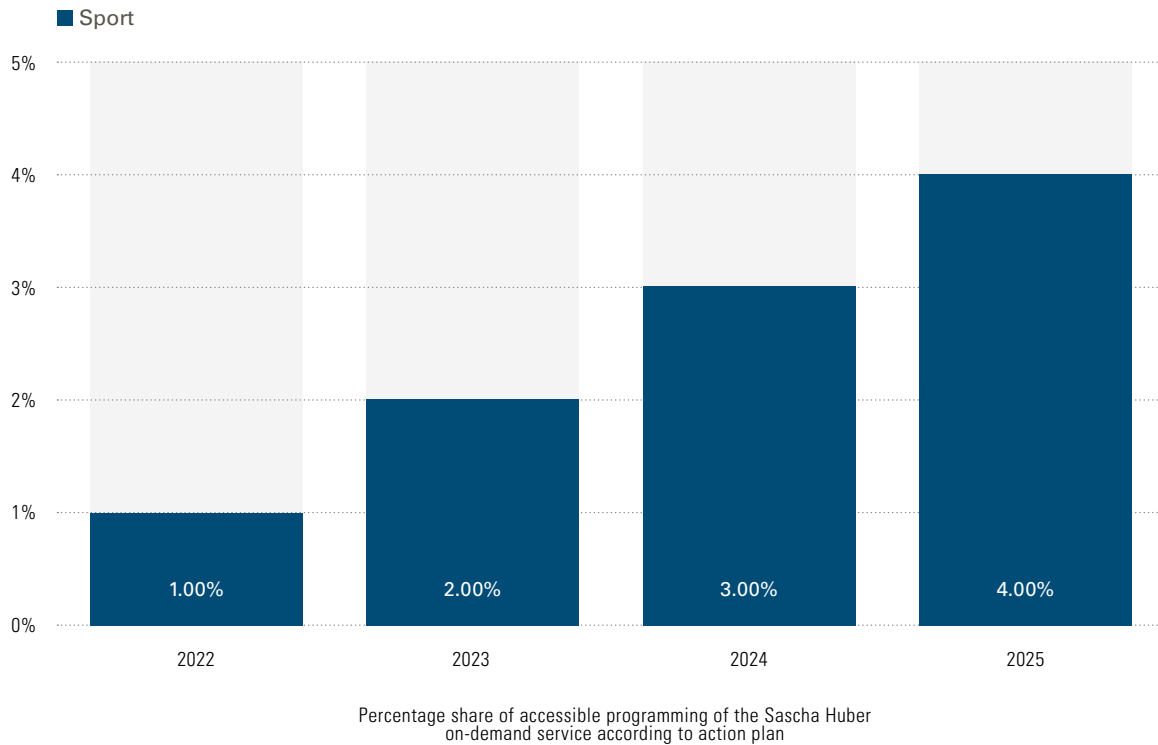
Sascha Huber GmbH operates the Sascha Huber channel on YouTube.

The proportion of videos using subtitling is to be progressively increased during 2022–2024.

Since Sascha Huber shows nothing but sports videos, only the requirements for the category of sport have been met according to the action plan. The action plan has been published at <https://www.youtube.com/@SaschaHuber/about>.

See the figure below for a breakdown of the increases in figures.

Figure 05: Planned increase for the Sascha Huber YouTube channel according to action plan (in %)



Reporting requirements pursuant to Art. 30b Par. 3 AMD-G

Sascha Huber GmbH fulfilled its reporting duties pursuant to Art. 30b Par. 3 AMD-G by the given due date.

Table 30: Planned increase for the Sascha Huber YouTube channel according to action plan (in %)

Sascha Huber	Base year 2021	2022	2023	2024
Planned increase according to action plan	1.00%	2.00%	3.00%	4.00%
Actual increase according to annual reports	-	4.00%	-	-

In the 2022 reporting period, 24 minutes (4%) of accessible broadcasts in overall channel programming by Sascha Huber were subtitled in the sport category. Accordingly, the figure for minutes stated in the annual report exceeds the action plan target.

3.2.4.2 schau Media Wien GesmbH

schau Media Wien GesmbH operates the KurierTV channel.

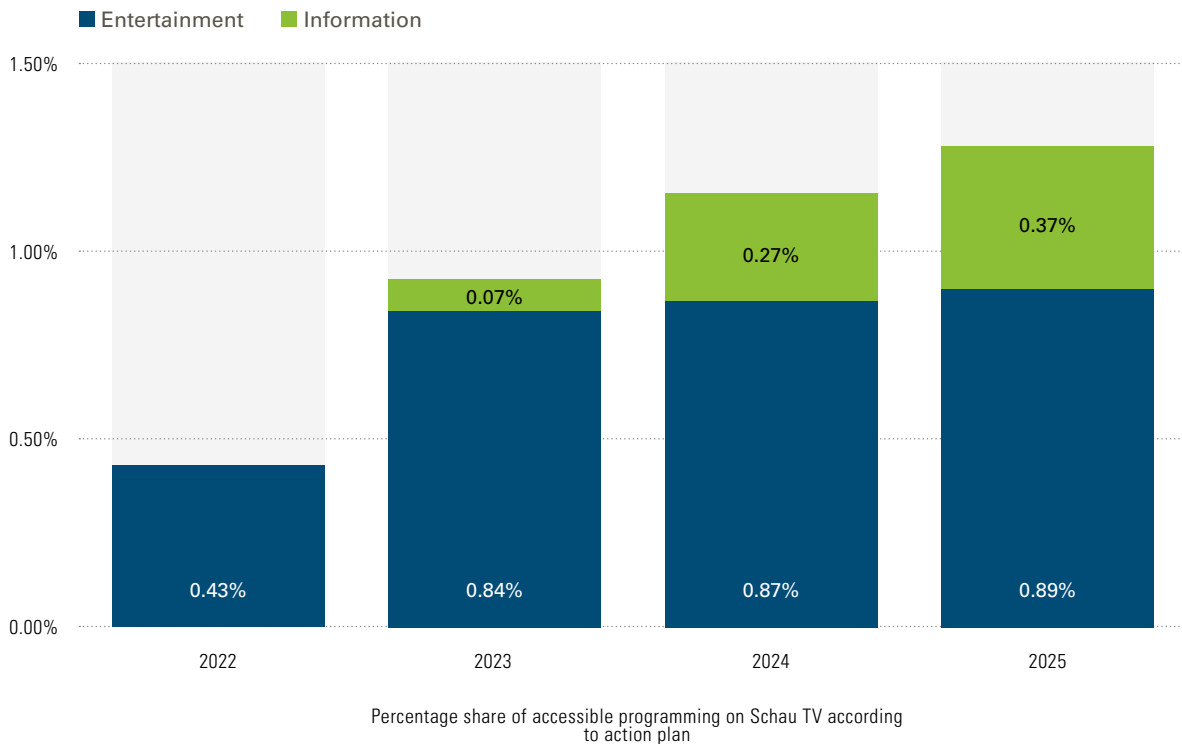
In relation to technical implementation, schau Media Wien GesmbH states that subtitles are in use.

Within the action plan period of 2022–2025, accessible programmes are to be offered in the categories of information and entertainment.

The action plan has been published at <https://kurier.tv/amp/info/kurier-tv-barrierefreiheit/402135966>.

See the figure below for a breakdown of the increases in figures.

Figure 06: Planned increase for schau media (Kurier TV) according to action plan (in %)



Reporting requirements pursuant to Art. 30b Par. 3 AMD-G

schau Media Wien GesmbH did not fulfil its reporting duties for 2022 by the given due date.

The requirement pursuant to Art. 30b Par. 3 AMD-G is not tied to a penalty. The initiation of an infringement procedure is under review.

3.2.5 Statement about further improvements to accessibility

In total, two action plans were submitted in 2023 for two channels by two media service providers. These action plans relate to the 2022–2024 period. Although the action plans from the media service providers for 2021–2023 do not have to be renewed in 2023, the media service providers have to submit an annual report on the implementation of their action plan and the share increase in the individual categories.

In addition to the annual report by the ORF for its programming, 16 annual reports were submitted by twelve media service providers for 2022. One media service provider did not submit an annual report and two media service providers made a late submission.

From the 16 reports submitted, it can be seen that only two media service providers were unable to attain the target set out in their action plans. In the event that the measures set out in the action plan and the percentage share increases are not achieved, justification must be given as to why the objectives were not achieved, what steps are being taken to achieve the planned increase by the end of the following year and, at the same time, to achieve the proposed increase for this following year. The two media service providers submitted statements to this effect in their annual reports. At the same time, objectives were even exceeded according to 14 reports.

The proportion of accessible content was not increased equally in each of the five categories of news and current affairs, entertainment, education, arts and culture, and sport. This is partly a result of the fact that some media service providers do not offer content in every category. Indeed, the action plans from five media service providers state that they only provide content in the category of entertainment, for example, so that an increase would only be possible in this category. Five additional media service providers with a total of seven channels increased their content in the entertainment category, but also include other categories in their programming. For some of these an increase in the percentage share of accessible content was also recorded.

From this, it can be seen that improvements to accessibility take place significantly more often in entertainment than in the other categories. Only one media service provider, who operates two channels, intends to increase the proportion of accessible content in the categories of information, education, and arts and culture.

The percentage share of accessible content in the category of sport increased only in the case of two providers, whose entire service programming falls into the sport category. It should also be recalled that live broadcasts may constitute justifiable exemptions pursuant to Art. 30b Par. 1 AMD-G and therefore do not need to be made accessible. This is justified by the increased effort that would be required in order to make this kind of content accessible. As sporting events are often broadcast live, it can be assumed that media service providers do not envisage achieving an increase in the sport category for this reason – if indeed they offer any content in this category at all.

Also of interest is the fact that an increase in the proportion of accessible news and current affairs content was achieved on only five channels offered by three media service providers. This considerably restricts the options of people who rely on accessible content to stay informed about current events and to participate in political and democratic discourse.

Art. 30a Par. 1 AMD-G specifies that while public service announcements in crises and disasters have to be accessible, as regards other news and current affairs programming, only the ORF is required by law to make certain kinds of programmes accessible. It can thus be concluded that most providers are achieving an increase in accessible content solely in the entertainment category.

Excepted from this summary is the ORF, who, as a result of the legal obligations correspondingly discussed in section 3.2.2, must comply with specific provisions concerning the minimum increase to be achieved in all categories – with the exception of the category of sport. The ORF is obliged in particular to ensure accessibility for main evening programming (7 pm to 10 pm) and election broadcasts in general.

3.2.5.1 Subtitling

Subtitling provides a written version of spoken-word elements such as dialogue and (on-/off-camera) commentary, as well as music and sound effects. Subtitles therefore provide details of content that would otherwise be heard. Depending on the technical approach taken, subtitles can either be hardcoded directly into the video and therefore permanently visible or can be activated as required. While digital subtitling offers a wide range of options, this technique is not yet widespread in Austria.

It is noteworthy that measures for subtitling were a key point of focus for all media service providers. Subtitles are available in various formats in the services provided, including teletext subtitles, subtitles hardcoded into video material or live (real-time) subtitles.

In 2013, a common set of subtitling guidelines was published for the German market, which addresses teletext and DVB subtitling at the preproduction stage. These guidelines are recommended by the Austrian Association of the Deaf (ÖGLB) and the Austrian Council of Associations for Hearing Loss (ÖSB).⁸ In January 2015, public television broadcasters in Austria, Germany and Switzerland agreed on a set of uniform standards for subtitling.⁹ These encompass a series of basic principles for the presentation of subtitles in the German-speaking market, relating to aspects such as format, font size, colours and overlays.

3.2.5.2 Sign Language¹⁰

Sign language is an officially recognised language based on a visual-manual modality that is used by people with hearing impairments to communicate with one another. The language employs a combination of gestures, facial expressions and bodily posture. Many distinct sign languages exist as well as many dialects. For children who grow up signing, sign language is their native language.¹¹

3.2.5.2.1 Sign language interpreters

Sign language interpreters, if used at all, are typically brought in to interpret for news programmes and press conferences.

The following points should be considered for their use:

- Camera positions should give a full view of the sign language interpreter, so that both hands are easily visible and cannot be cut off during the broadcast as a result of problematic angles.
- Ideally, a single camera will be used to cover the sign language interpreter and speaker so that they will stand next to one another. A bright background is also useful to make the interpreter's movements more easily visible.
- As an alternative, the interpreter can be shown in a box overlay, which should take up at least 25% of the screen area.
- Interpretation should also be simultaneous. If delayed, information is often lost.¹²

An increased use of sign language interpreters would be very welcome since this would achieve a greater degree of inclusion.

8 Untertitelrichtlinien.de, "Common subtitling guidelines for German-language use" (in German) <http://www.untertitelrichtlinien.de/index.html> (accessed on 21 April 2022)

9 P. Chojnacki et al.: "Subtitling standards at ARD, ORF, SRF, ZDF" (in German) http://www.untertitelrichtlinien.de/pdf/Untertitel-Standards_ARD_ORF_SRF_ZDF_Version_1.3.pdf (accessed on 21 April 2022)

10 Österreichischer Gehörlosenbund: „Herzlich willkommen" <https://www.oeglb.at/> (eingesehen am 21.04.2022)

11 Austrian Association of Sign Language Interpreters (ÖGSDV): "Deafness and sign language" (in German) <https://www.oegsdv.at/web/gehoerlosigkeit-gebaerdensprache/> (accessed on 2 May 2022)

12 Presentation given on 30 June 2021 by Helene Jamer, accessible from <https://www.youtube.com/watch?v=K7di95kQTZA&t=3s> (accessed on 21 April 2022)

3.2.5.2.2 Signing avatars

The Austrian Association of the Deaf has published a guideline for signing avatars on its website at <https://www.oeglb.at/leitfaden-fuer-gebaerdensprach-avatare/>.

Briefly summarised, it can be said that, while the association does not reject the use of such avatars, it does take a critical view. In particular, such avatars are not a substitute for human sign language interpreters.

More information about the research project and the guideline is available from <https://avatar-bestpractice.univie.ac.at/>.

3.2.5.3 Audio description

Rather like an audiobook, audio description means audibly communicating imagery that makes visual material comprehensible for people with vision impairments.

Provided on an extra audio channel, an audio description helps people with vision impairments to follow visual content by describing visual aspects of the action that takes place and its setting, as well as the appearance of individuals, and their facial and bodily gestures.¹³

3.2.5.3.1 Dual-channel mode

Dual-channel mode is an audio transmission technique whereby two separate audio channels are broadcast simultaneously. One of the two audio channels can be used to provide an acoustic description of the broadcast image, allowing especially people with vision impairments to use audiovisual media content.

A number of apps have also been published that give users access to an audio description. The GRETA app provides access to audio descriptions and subtitling, as was mentioned in one of the action plans.

3.2.5.3.2 Synthetic voice audio description

With this type of audio description, the visual content is not described by a human voice but by a synthetic (artificial) voice instead.

¹³ Blindenverband.at: "Audio description. Plenty still needs to be done" (in German) <https://www.blindenverband.at/de/aktuelles/865/Adiodeskription> (accessed on 21 April 2022)

3.3 2022 survey of reach and market shares¹⁴

3.3.1 Introduction

To enable the enforcement of the provisions of the Audiovisual Media Services Act (AMD-G) as part of legal supervision, Art. 65 AMD-G requires a survey of the reach (market shares), coverage levels, and user and viewer figures.

Based on these provisions, market research was carried out in 2023 for the 2022 calendar year, just as had been the case for the 2020 and 2021 calendar years. As part of the survey, all providers were queried about reach (market shares), coverage levels and user and viewer numbers.

Survey method

A total of 470 providers were sent requests, including 165 television broadcasters, 169 providers of on-demand services, 74 radio broadcasters and 164 cable network operators. The survey considered all services that were listed in the KommAustria directory as of the survey date of 9 January 2023 and that were active during the 2022 calendar year. During the 2022 calendar year, 29 television channels, 37 on-demand services and 19 radio stations as well as two cable networks were additionally included in the basic group surveyed. During the same period, 16 television channels and twelve on-demand services discontinued service, as did four radio stations and four cable networks.

The survey entailed the questions listed below.

Television channels:

- What was the average daily reach of the television channel as a percentage of the 12+ target group (Monday to Sunday) in the previous calendar year?
- What was the average market share of the television channel as a percentage of the 12+ target group (Monday to Sunday) in the previous calendar year?

On-demand services/non-linear audiovisual media services:

- How many users (subscribers or individual customers) did the on-demand service have on average in the previous calendar year?
- How frequently was the on-demand service requested in the previous calendar year?

The data presented in this document are based on the information supplied directly by the service providers. The figures may thus relate to varying reference values (such as coverage areas), depending on the service. The responses given by the service providers as a whole are therefore comparable only to a limited extent.

¹⁴ as of 18 April 2023

Data validity

KommAustria cannot verify the validity of the raw data. In the areas of reach and market shares in particular, it is important to note that in practice the survey was not carried out Austria-wide for media services with small regional or local coverage areas. This is because the case numbers (or respondents) in each small coverage area are too low to obtain any useful data. To achieve valid results that also include small coverage areas, the case numbers of Austria-wide surveys would have to be substantially increased, or else individual usage reports would have to be commissioned for all regional or local coverage areas. Neither variant is economically viable for media services providers.

3.3.2 2022 market report

The data queried pursuant to Art. 65 AMD-G can be grouped under three categories:

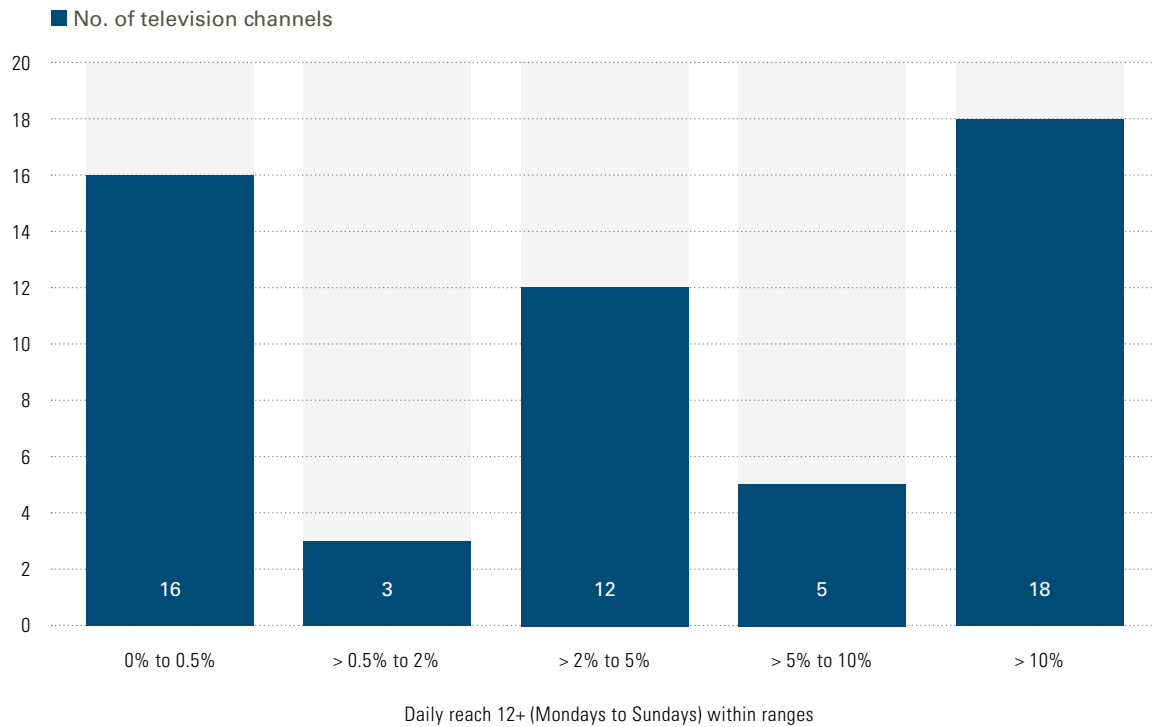
- Television channels
- On-demand services
- Cable networks

To represent the broadcasting market in its entirety, selected data relating to radio broadcasting are also provided. This is based on information provided voluntarily by radio broadcasters.

3.3.2.1 Television channels

For television channels, the daily reach and the market share was queried in the 12+ target group for Mondays to Sundays. The diagrams included here display the reported information as a bar chart divided into ranges. The data encompass television channels with nationwide as well as local and regional coverage, while the specified reach and market shares refer to the particular television broadcaster's coverage area. As such, the data are comparable only to a limited extent.

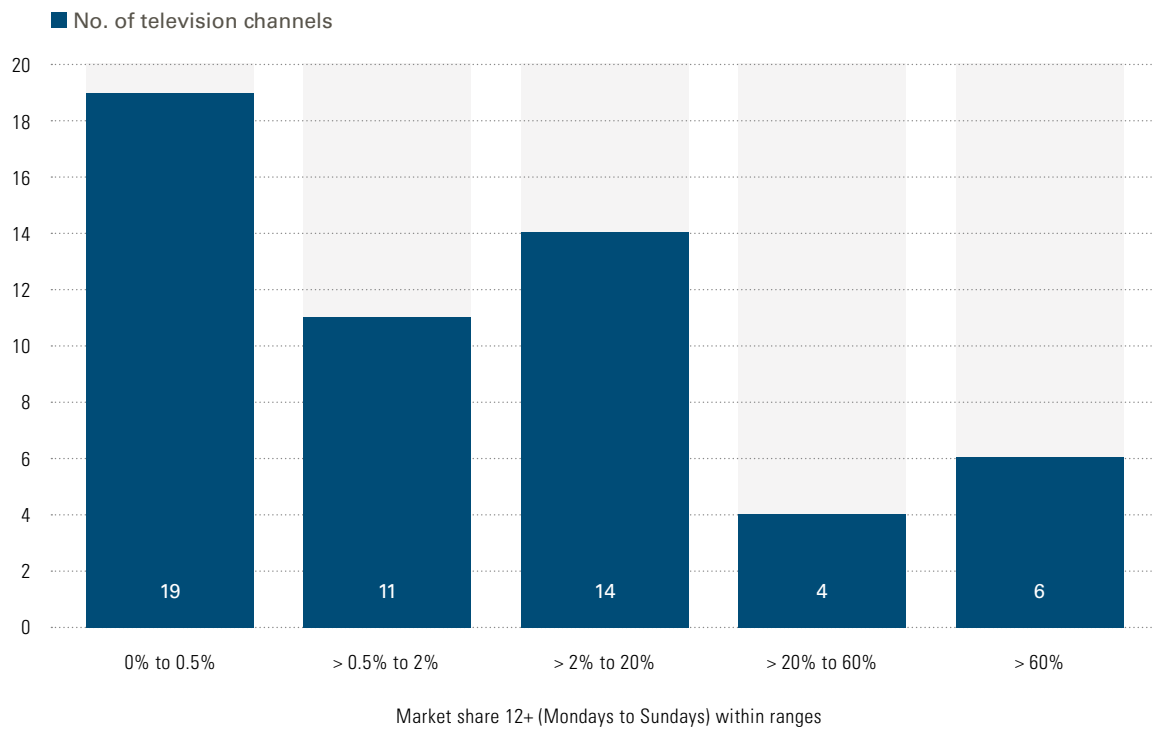
Figure 07: Number of television channels within specified daily reach ranges among viewers 12+ in 2022 (no data exist or are available for 197 providers)



Referring to the chart above, the numbers of television channels falling within specified ranges of daily reach among the 12+ target group (Monday to Sunday) in 2021 are as follows:

- 0% to 0.5%: 16
- Over 0.5% and up to 2%: 9
- Over 2% and up to 5%: 9
- Over 5% and up to 10%: 5
- Over 10%: 18
- No data existing/available 194

Figure 08: Number of television channels within specified market share ranges among viewers 12+ in 2022 (no data exist or are available for 197 providers)



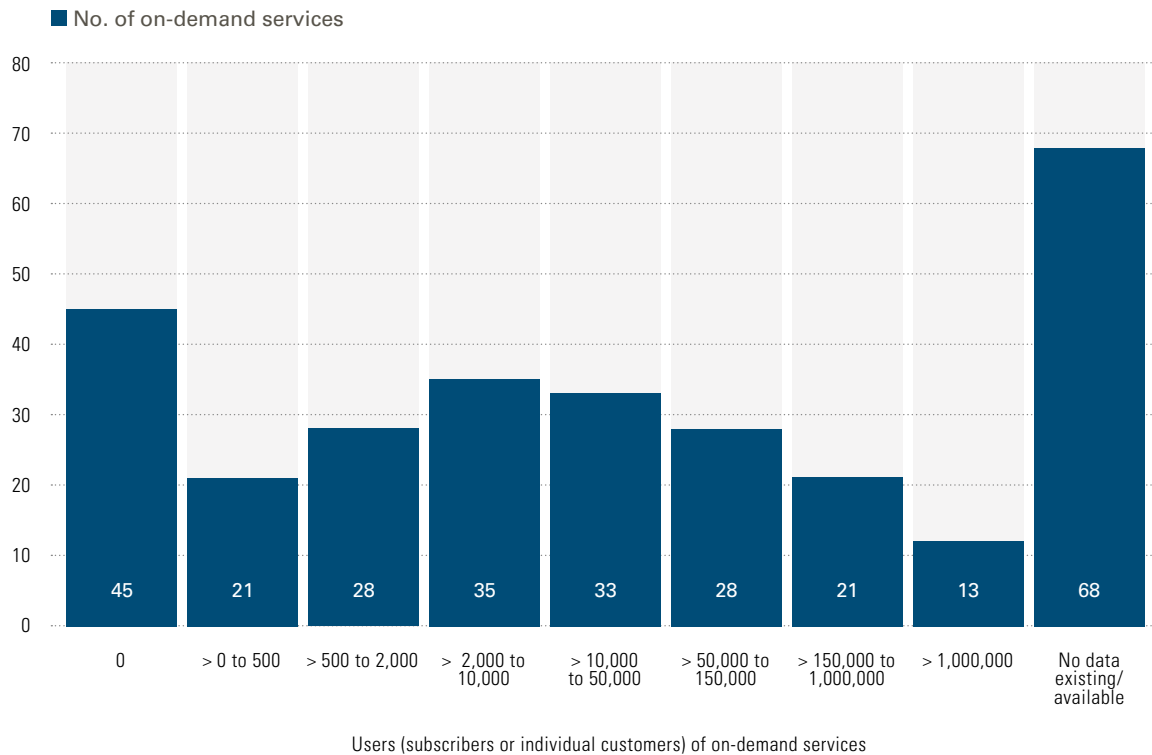
Referring to the chart above, the numbers of television channels falling within specified ranges of market share among the 12+ target group (Monday to Sunday) in 2021 are as follows:

- 0% to 0.5%: 18
- Over 0.5% and up to 2%: 15
- Over 2% and up to 20%: 19
- Over 20% and up to 60%: 2
- Over 60%: 4
- No data existing/available 193

3.3.2.2 On-demand services

For the group of on-demand services, the questions focused on the number of users (subscribers or individual customers) and service requests. As above for television channels, the figures that are reported here are also divided into ranges and displayed as a bar chart.

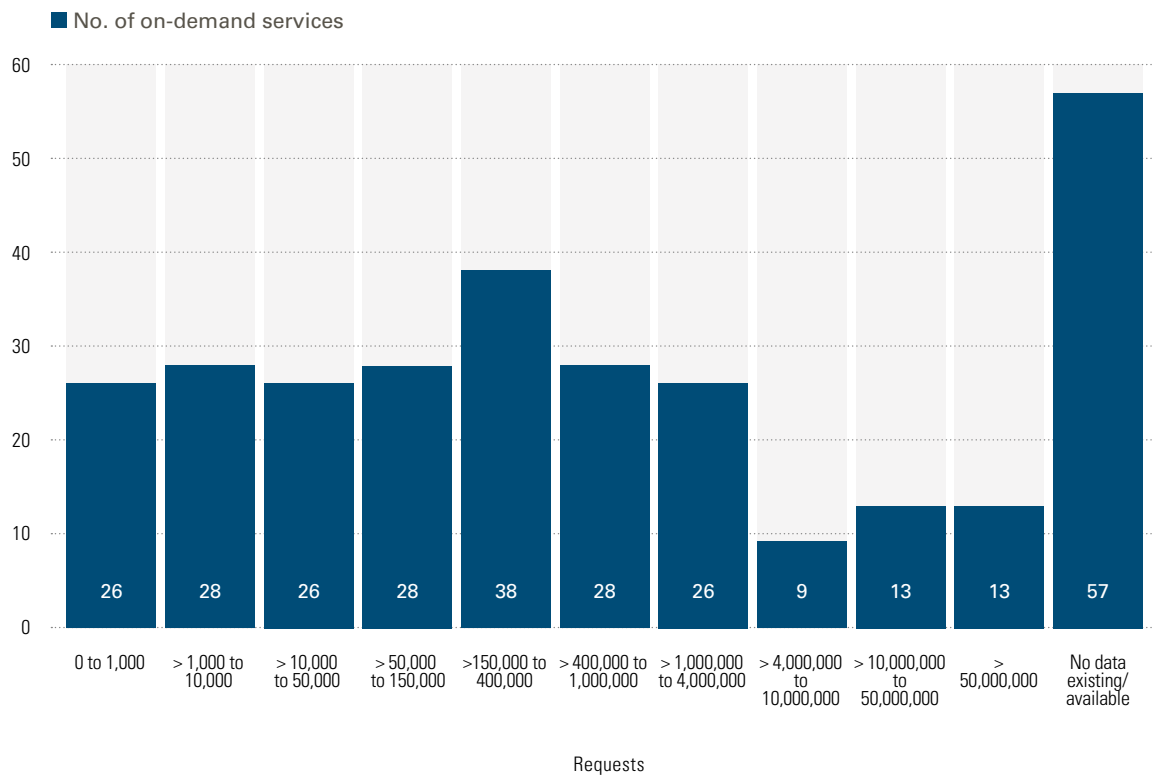
Figure 09: Number of users (subscribers or individual customers) of on-demand services in 2022 within specified ranges



Referring to the chart above, the numbers of users (subscribers or individual customers) in 2021 were as follows:

- 0: 66
- Over 0 and up to 500: 33
- Over 500 and up to 2,000: 21
- Over 2,000 and up to 10,000: 33
- Over 10,000 and up to 50,000: 35
- Over 50,000 and up to 150,000: 22
- Over 150,000 and up to 1 million: 17
- Over 1 million: 11
- No data existing/available 37

Figure 10: Number of service requests in 2022 within specified ranges



Referring to the chart above, the numbers of requests in 2021 were as follows:

- 0 to 1,000: 28
- Over 1,000 and up to 10,000: 36
- Over 10,000 and up to 50,000: 35
- Over 50,000 and up to 150,000: 26
- Over 150,000 and up to 400,000: 31
- Over 400,000 and up to 1 million: 27
- Over 1 million and up to 4 million: 21
- Over 4 million and up to 10 million: 9
- Over 10 million and up to 50 million: 14
- Over 50 million: 8
- No data existing/available 40

3.3.2.3 Radio stations

Daily reach and market shares were surveyed in the radio station category; for the bar chart presented, the daily reach and market shares were specifically queried among the 10+ target group for Mondays to Sundays. Again, the information is presented here as a diagram in which the reported data are broken down into ranges. The data include radio stations with nationwide as well as local and regional coverage, while the specified reach and market share refer to the particular radio broadcaster's coverage area.

Figure 11: Number of radio stations within specified daily reach ranges among listeners 10+ in 2022 (61 providers did not specify any information)

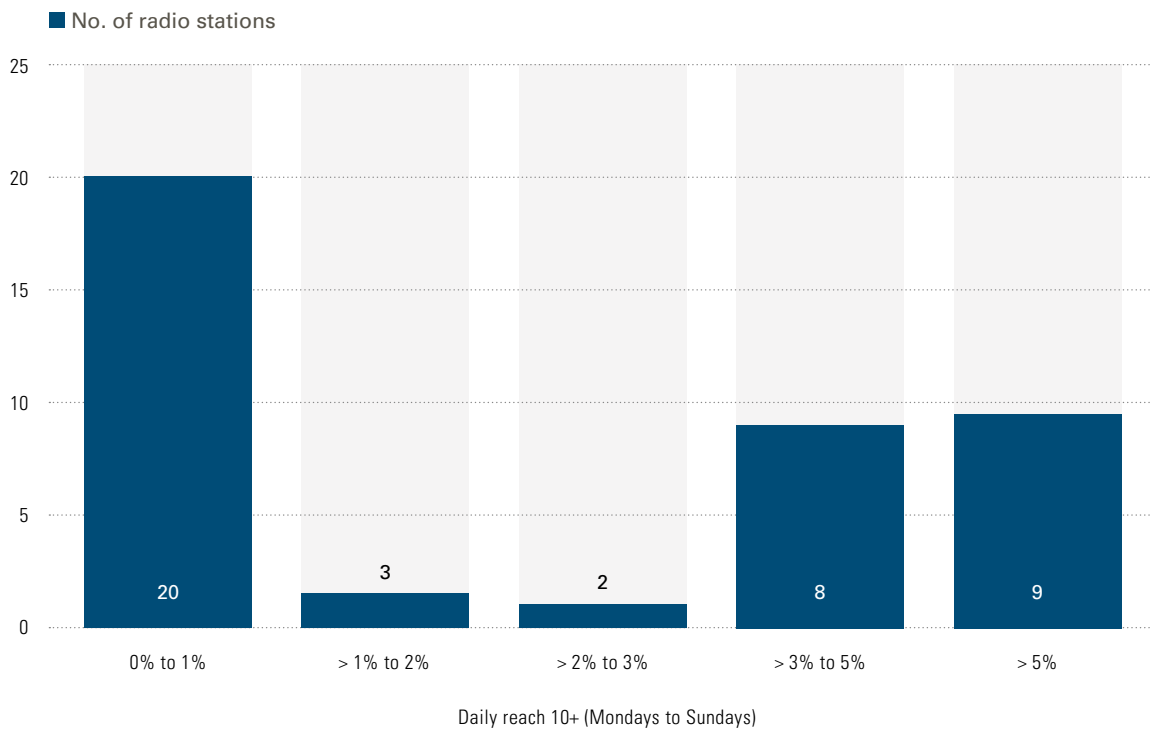
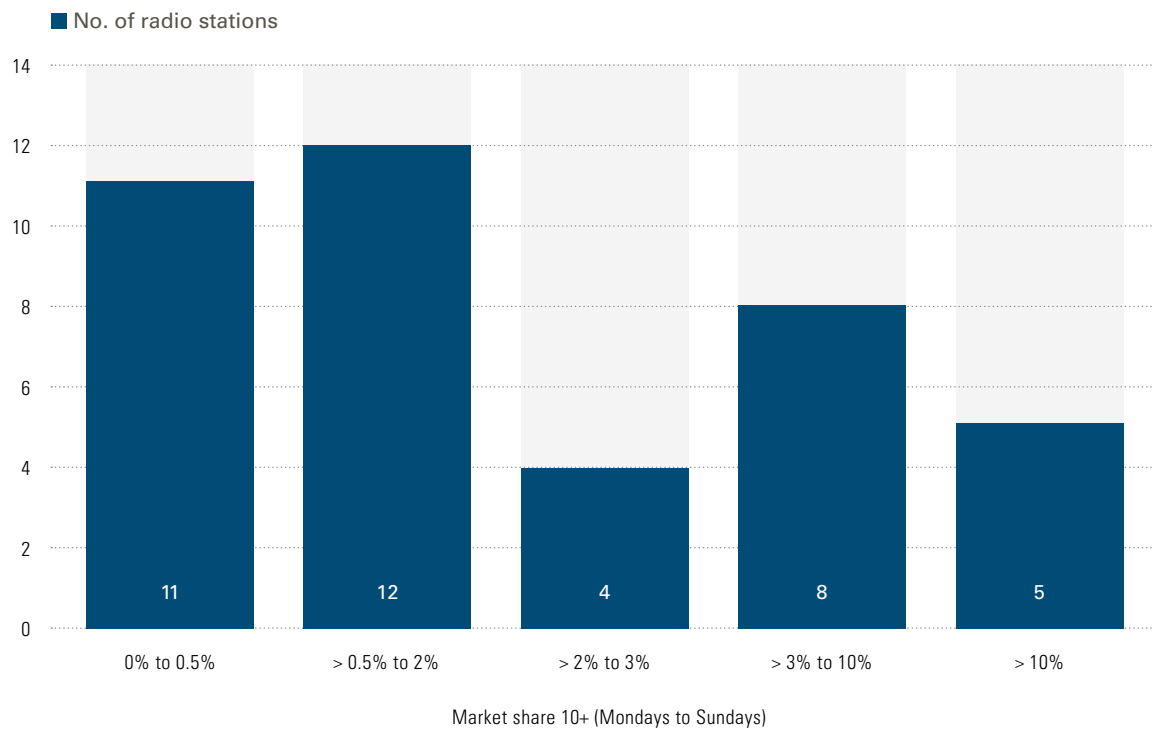


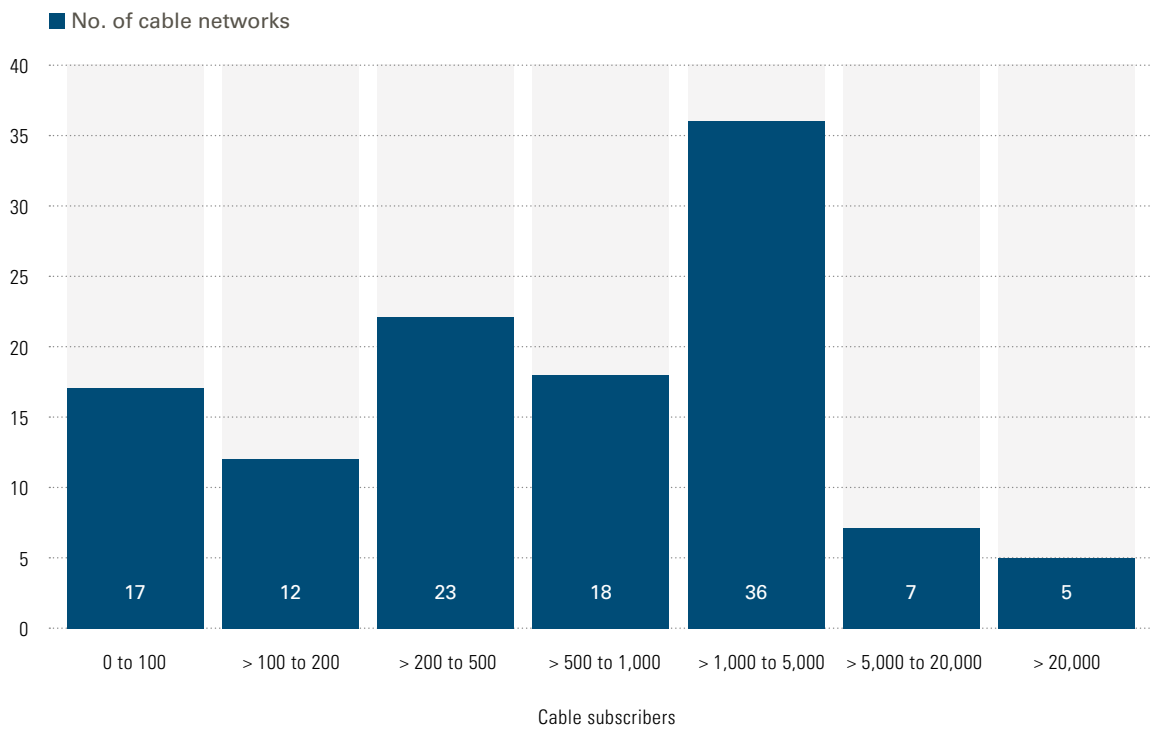
Figure 12: Number of radio stations within market share ranges among listeners 10+ in 2022
(63 providers did not specify any information)



3.3.2.4 Cable networks

For cable networks, the number of subscriptions was queried. Again, the relevant figures were divided into ranges, with the bar chart included below created on this basis.

Figure 13: Number of cable networks within subscription ranges in 2022



3.3.3 Selected detailed results

In addition, survey results were singled out from the various areas and used as examples which are presented for the whole of 2022. Note that the information presented here is based on the figures provided directly by the service providers.

Figure 14: Top 10 nationwide television channels by daily reach as a percentage of viewers 12+ in 2022

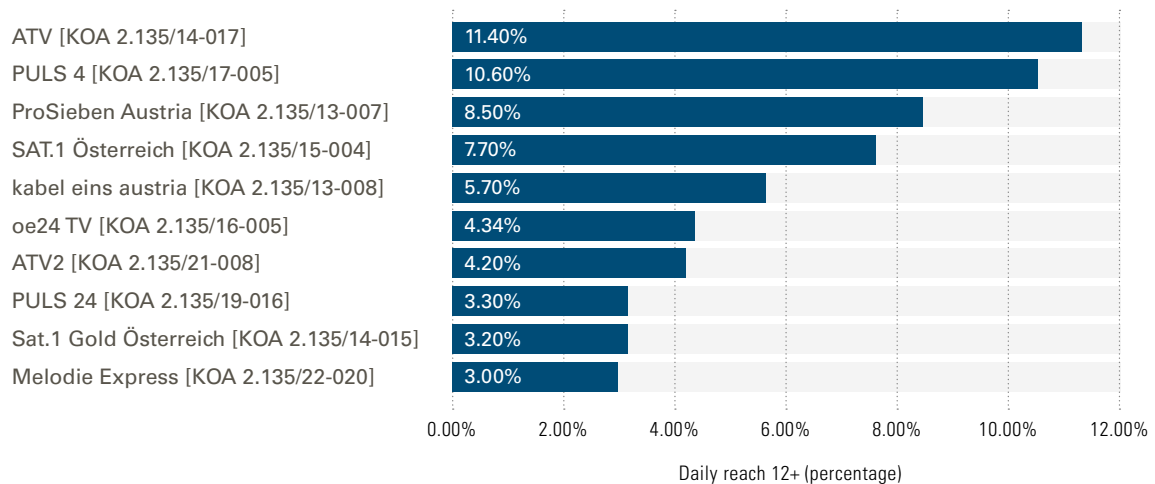


Figure 15: Top 10 on-demand services by number of users (subscribers or individual customers) in 2022

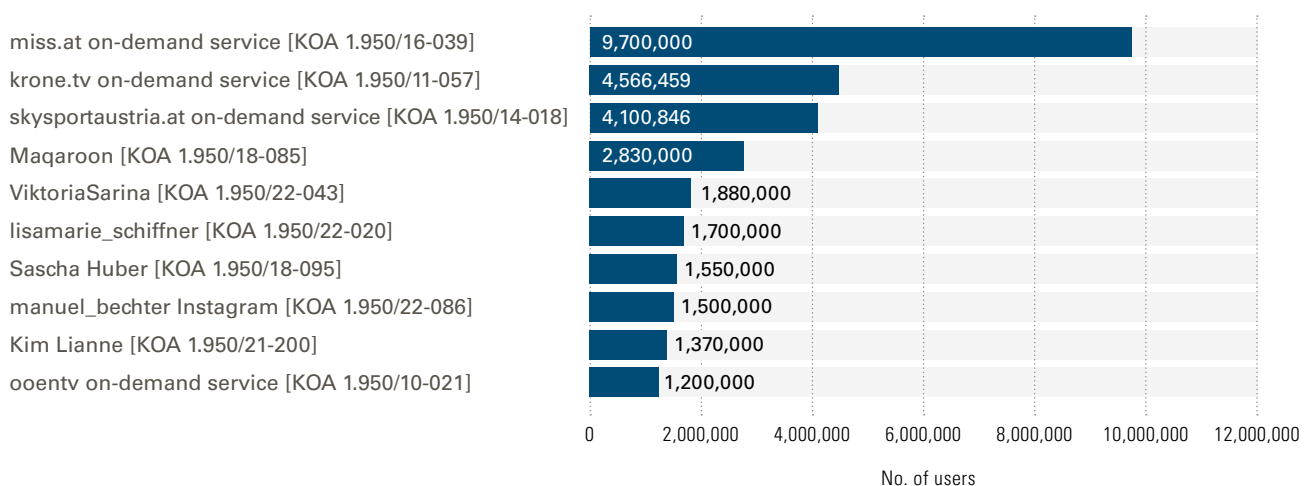


Figure 16: Top 10 on-demand services by service requests in 2022

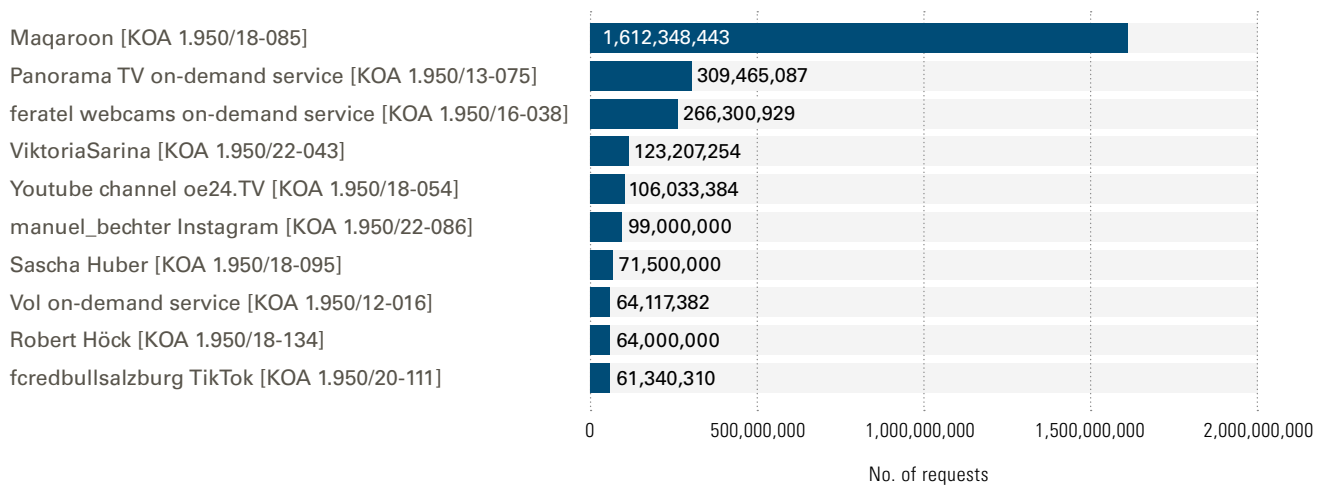


Figure 17: Percentage share of users (subscribers or individual customers) of the top 10 on-demand services compared with the share of users (subscribers or individual customers) of other on-demand services in 2022

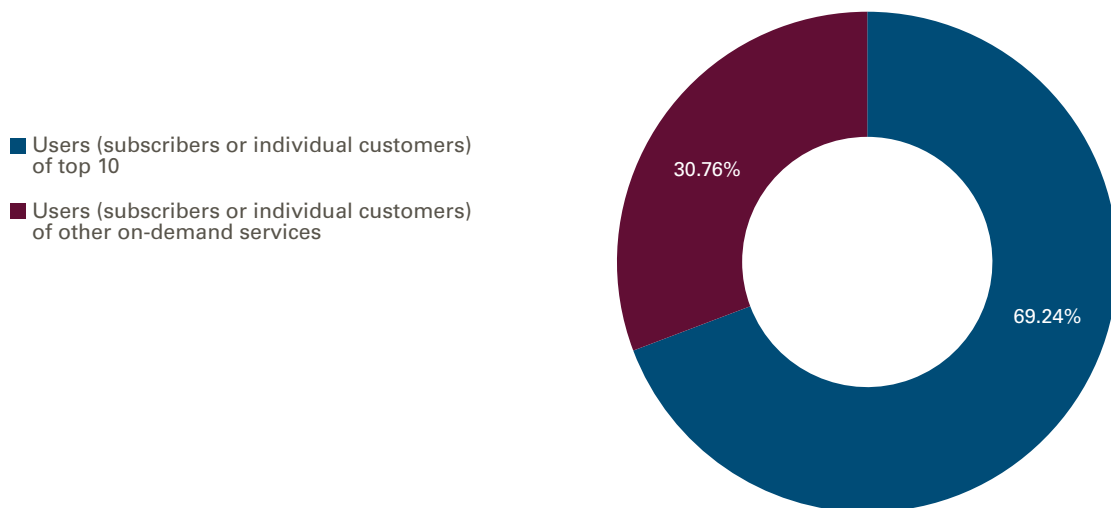
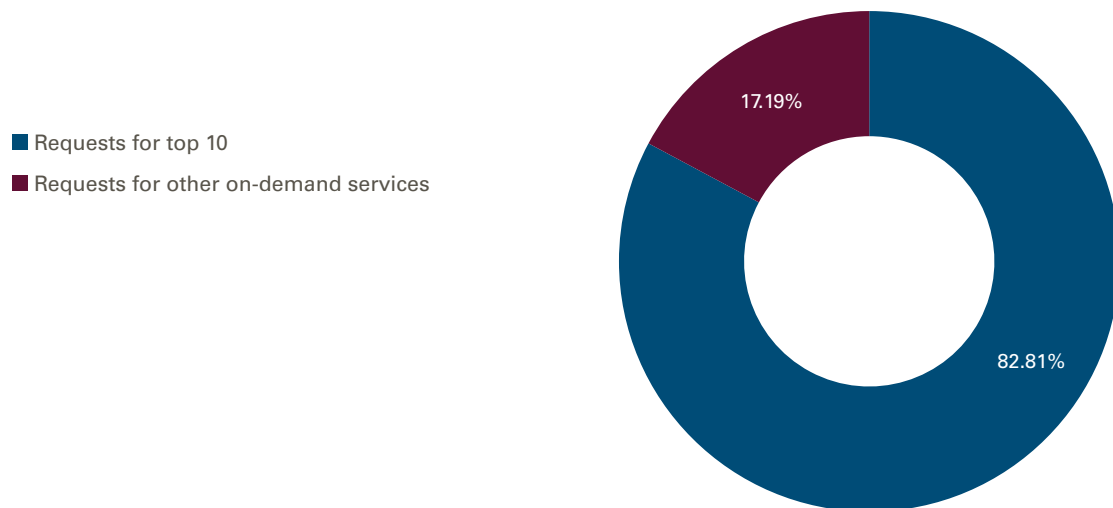


Figure 18: Percentage share of service requests to the top 10 on-demand services compared with requests directed at other on-demand services in 2022



3.3.4 Link to the overall survey results

All survey results for the categories of television and on-demand services are available on the RTR website at <https://www.rtr.at/Reichweiten-undMarktanteilerhebung2022> (in German).

The following information is listed:

Television: Provider, service, period (from/to), daily reach 12+ (in %), market share 12+ (in %)
On-demand services: Provider, service, period (from/to), number of users (subscribers or individual customers), number of requests

It must again be noted that the figures presented are based on information given directly by the service providers, while the data relating to reach and market shares in particular refer to the particular service provider's coverage area.

3.4 Progress of digitisation in broadcasting

3.4.1 Digital linear television

In Austria, television transmission and television reception via satellite, antenna (terrestrial) and cable networks are solely based on digital transmission technologies.

In 2022, 7.546 million Austrians aged twelve and over were residing in 3.872 million television households, according to figures from the TELETEST Working Group (AGTT).¹⁵ However, both figures have been 'frozen' by AGTT since the end of 2019. The rationale for this was to achieve a more reliable (average) value reflecting changes in the share of Austrian households with at least one television receiving device.¹⁶

AGTT, a merger between Austrian television broadcasters and their advertising slot marketers, commissioned market research institute GfK Austria with evaluating television viewing habits in Austria. GfK Austria's regular market research duties include working together with market research institute IFES to track the changing percentage rate of Austrian households with at least one television receiving device (known as television households). Presently, around 97% of all Austrian households are also television households. However, the trend is clearly moving towards 96%. The quarterly survey findings are volatile and make planning difficult for media agencies. Therefore, the fixed number of television households and the people residing in them are now compared on a quarterly basis with the steadily increasing total number of households, based on the micro census carried out by Statistics Austria. When thus compared, the proportion of television households and the people residing in them is experiencing a steady and linear decline, reflecting what AGTT believes to be a more realistic development.

The fixed values for television households and the people residing in them are being monitored by AGTT, with the intention of making the necessary adjustments as soon as the actual figures become apparent and deviate from a margin of fluctuation.

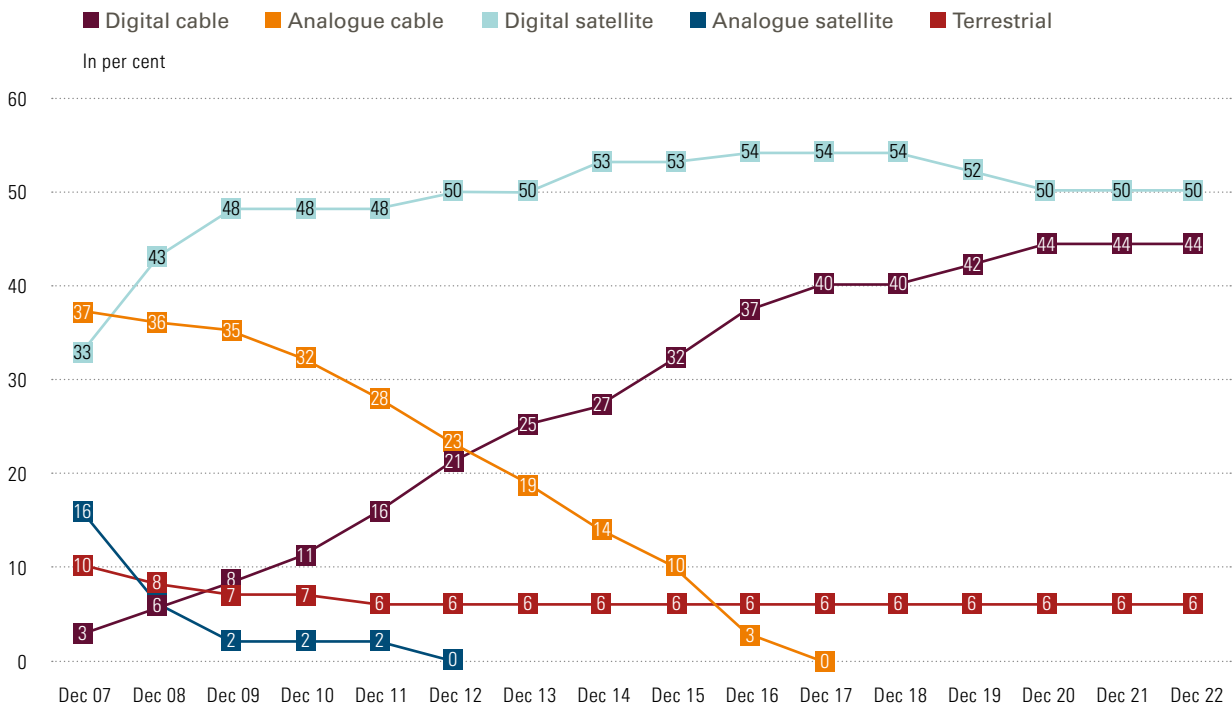
The individual values for cable, satellite and terrestrial households that are presented later on in this report are not fixed, but represent current survey results.

3.4.1.1 Distribution of conventional television reception modes among television households

The percentage rate of television households with satellite reception remained the same as the previous year at 50%. The proportion of television households with a cable TV provider also remained unchanged at the end of 2022 at 44%. Similarly, terrestrial television (DVB-T2/DVB-T, digital television 'via antenna') maintains its percentage of around 6% of TV households – unchanged since 2011 – in which it is the primary form of reception for linear television.

¹⁵ Unless otherwise specified, all data originate from the Teletest Working Group/GfK Austria (2022)

¹⁶ Based on the micro census by Statistics Austria

Figure 19: Distribution of reception modes among Austrian television households 2007-2022


Source: AGTT/GfK Austria

However, GfK Austria shows a slight change from the previous year in terms of figures for satellite and cable households for 2022, although these changes are not yet reflected in the percentage figures for the distribution of reception modes among television households. This trend was also seen in 2021, while the absolute figures were lower.

The number of TV households with a cable connection as their reception mode fell in December 2022 by 7,000 households to 1.712 million households compared with the same month of the previous year (2021: -4,000 households). The satellite platform, in contrast, grew by 9,000 households to 1.937 million (2021: +3,000 households). Terrestrial reception – via a room or roof antenna – was used in December 2022 by 224,000 households, just 1,000 fewer than in December 2021 (2021: 225,000 households, unchanged from 2020).

As a result, the number of cable and terrestrial households declined by less than 0.5%. Yet the growth in satellite households also remained under 0.5%.

3.4.1.2 562,000 people live in households with terrestrial reception (including second devices)

At the end of 2022, there had been a slight increase in the number of people aged twelve and over who used digital terrestrial television as their primary or only form of TV reception among 224,000 Austrian terrestrial households. This number increased by 4,000 people to 379,000 (2021: 375,000). This corresponds to 5% of the viewing population aged twelve and over.

In addition to the TV households where digital terrestrial television is the only form of reception, DVB-T/DVB-T2 is also used in satellite/cable television households as a supplementary reception platform. In most cases, this is due to the reception of local TV programmes, often transmitted via DVB-T or DVB-T2, or as a simple solution to add a second device to another room.

This means that, in addition to the roughly 379,000 viewers aged twelve and over who live in terrestrial-only television households, the overall figure includes another 139,000 persons in satellite households with secondary terrestrial usage. Added to this are another 44,000 individuals living in cable households with supplementary terrestrial reception.

This makes for 562,000 individuals, or 7.4% of the viewing population aged twelve and over (2021: 7.8%) who had access to terrestrial reception via DVB-T/DVB-T2 in their own homes in December 2022.

3.4.1.3 Technical range of nationwide and regional terrestrial multiplexes (DVB-T/-T2) with a total of 80 TV channels

Multiplexes A, B, D, E and F – nationwide programme portfolio

The technical range of the nationwide multiplex A continued to cover 98% of the population in 2022. The technical range for the other nationwide multiplexes B, D, E and F was also constant, at 92% of the population. MUX A and MUX B are used to transmit nationwide the channels 3sat, ATV, ORF 1, ORF 2 Regional (three versions for each province), ORF III, ORF SPORT + and ServusTV, free of charge¹⁷ and in high definition (HD) resolution, as well as ATV2, PULS 4 and RTL Austria in SD resolution. ORF 1 and ORF 2 (regional version for Vienna) are also available in standard definition (SD) resolution to ensure freedom of reception without registration.

HGTV, RTL HD Austria and ZDF info are also available on MUX B as part of a comprehensive package available at a surcharge, which also provides access to other channels on the D, E and F multiplexes.

With Puls 24 (in SD), an additional channel of Austrian origin is being broadcast free of charge and nationwide in the station line-up of MUX F, and this can be received following registration. The D, E and F multiplexes encompass a total of 47 TV channels, including most of the widely known public and private offerings from Germany (in HD or SD resolution) as well as a few pay TV channels.¹⁸

The percentage of the population also living in the multiplex C reception area (DVB-T/DVB-T2), with programming by various operators and varying from region to region, likewise remained unchanged at 64% compared with the previous year (rounded), but increased by a fractional amount after KommAustria approved the small DVB-T coverage area of Turrach (Styria) in 2022.

¹⁷ Registration is required with the multiplex operator

¹⁸ Separate surcharge

Multiplex C – regional programme portfolio

The regional channels that are transmitted via the various MUX C broadcasting locations in the provinces supplement the supra-regional and international programme portfolio carried by the A, B, D, E and F multiplexes, predominantly through programmes dedicated to reporting from the respective regions, thereby making an important contribution towards democratic discourse.

These are as follows:

ATV - Das Magazin	Kurier TV HD	RE/eins Das Außerfernsehen
ATV-Magazin Murtal	Ländle TV	RTV HD
DORF TV (OÖ)	LT1 HD	Schladming-Dachstein TV
Ennstal TV	M4TV	STV 1 Regional TV Bad Ischl
FREIZEITFERNSEHEN	Oberland TV	VOL.AT TV
KRONE TV (W, ST)	oe24.TV	W24
KULT1	Okto	

At some MUX C locations in larger agglomerations, international stations are also broadcast regionally. These include Bibel TV, Comedy Central, Hope Channel, kabel eins Doku, ProSiebenMAXX, TLC Austria, TVP World, SRF 1, SRF zwei and WELT.

Details on the parties licensed to operate the regional multiplexes (MUX C), and the 31 programmes in total broadcast on them, are available (in German) at <https://www.rtr.at/medien/service/verzeichnisse/mux/MUXC.de.html>.

3.4.1.4 4.031 million people live in households with satellite reception

At the end of 2022, 1.937 million satellite households (2021: 1.928 million) or 50% of television households using satellite reception were home to 4.031 million people aged twelve and over. This corresponds to an increase of 17,000 people compared with the previous year. This does not affect the percentage of the TV viewing population living in satellite TV households, however, which remained at 53%.

3.4.1.5 3.136 million people live in households with cable reception (including IPTV)

The percentage of television viewers aged twelve and above living in the 1.712 million cable households remained unchanged from the year before at 42%. The absolute figure fell, however, by 21,000 to 3.136 million (2021: 3.157 million).

Households with cable TV include households that are supplied by their cable TV providers via the conventional digital transmission technology DVB-C, as well as those households that stream linear TV via their cable provider on the basis of the internet protocol, that is, IPTV households. In Austria, these are primarily supplied by A1 Telekom Austria (A1 Xplore TV).

3.4.1.6 5G broadcasting trials – genuine broadcasts without SIM and data transmission rates

Towards further progress in digital broadcasting, and to test broadcasting applications based on the 5G transmission standard, KommAustria had approved in November 2019 an initial pilot study, to be carried out in the Vienna area by Österreichische Rundfunksender GmbH & Co KG (ORS). After one extension, the trial

preliminarily ended in April 2021. A second phase was started in 2021 and is set to continue on into 2023. The broadcasting trial is being funded by the Digitisation Fund set up by the RTR Media Division.

To receive linear radio and television programmes being transmitted via 5G broadcast, users require only the antenna integrated in their 5G-ready device, a smart phone or tablet for example, but not a SIM card or internet access. In the longer term, it is conceivable that the signals can be received by large screens, for instance in TV households, if the technology finds its way into these devices and, even later, if used as the broadcasting standard to succeed DVB-T2.

The 5G broadcast signals are not transmitted via mobile bands but instead using broadcasting frequency ranges shared with digital terrestrial television broadcast under the DVB-T/-T2 standard. The large transmitters that were previously used for DVB-T/T-2 are also suitable for 5G broadcast. Users' mobile data volumes are not affected through the distribution and reception of the 5G broadcast functionality and there is no added traffic within mobile cells. Thus, this application makes especially thrifty use of spectrum when broadcasting programmes to mobile devices. 5G broadcast functionality is specified as part of the 5G mobile communications standard; it is supported by every terminal device that is manufactured in full compliance with the 5G specification standards.

Broadcasting trials were performed from two large transmitters in Vienna, Kahlenberg and Liesing. For the tests, KommAustria made available a channel within the 700 MHz band (a broadcasting frequency previously following within KommAustria's competence), initially for a limited term until 30 June 2020. In the auction in early 2020, that frequency was among the spectrum reassigned for the purpose of setting up and expanding 5G mobile telecommunications, and it has accordingly been allocated for mobile services throughout Europe from 1 July 2020. KommAustria accordingly issued a decision on 25 June 2020, approving extension of the trial broadcasts in the 662–672 MHz range to include the period of 1 July 2020 to 30 June 2021.

Phase 1 of the 5G broadcasting trials in Vienna was completed on 30 April 2021 and a project report was submitted.

In October 2021, project funding by the Digitisation Fund was renewed, earmarked as '5G broadcast trial operation in Vienna phase 2'. The project runs from 1 July 2021 to 30 September 2023. Phase 2 of the project focuses on continuing to examine the suitability of further enhanced Multimedia Broadcast Multicast Service (feMBMS) and on further standardising LTE-based 5G Terrestrial Broadcast for future use as a potential standard for broadcasting terrestrial signals. feMBMS is a technology based on a specification by the 3rd Generation Partnership Project (3GPP).

By approving 5G broadcast trials, KommAustria recognises that mobile devices have long since become basic tools for access to information on a daily basis, and will continue to play an increasingly significant role. While non-linear online media services provided on demand are gaining ground particularly in the entertainment industry, linear information services continue to dominate news reporting. In sum, these two observations suggest that, on the one hand, unlimited reception of 5G broadcasts via mobile devices could be easily implemented at a technical level, without any restricting factors. It is also clear that implementation would entail a dimension relating to democracy in the information society, a factor considered by policymakers in Art. 21 of the Audiovisual Media Services Act (AMD-G). This provision calls for the rollout and advancement of digital broadcasting to be enabled and supported for all transmission platforms, while scenarios are to be detailed for the introduction, rollout and advancement of digital broadcasting and multimedia services.

A critical factor for the development opportunities of 5G broadcast is the international discussion on the reallocation of the last frequency range that is also used in Austria for digital terrestrial television, the 470 to 694 MHz range, for use in the mobile network. The stage will presumably be set for the future use of this frequency range and, therefore, the future (or ultimate end) of television received via antenna during the World Radiocommunication Conference (WRC23) in 2023. In light of this, KommAustria with its 2022 publication entitled [Rundfunk 2030 - Überlebt die Antenne?](https://www.rtr.at/medien/aktuelles/publikationen/Publikationen/nin/Rundfunk_2030.de.html)¹⁹ (Broadcasting in 2030 - Will the Antenna Survive?) made an

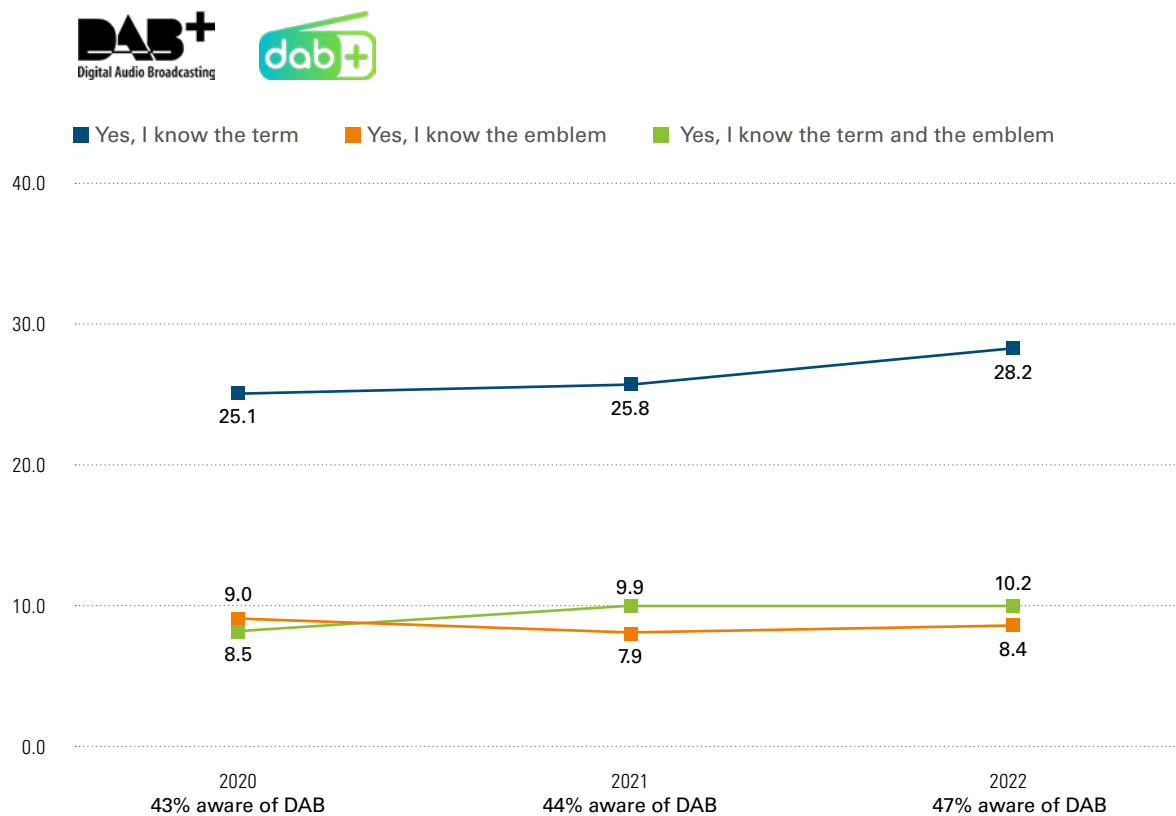
19 https://www.rtr.at/medien/aktuelles/publikationen/Publikationen/nin/Rundfunk_2030.de.html

in-depth contribution to the discussion on the possible consequences of WRC23 for terrestrial television and for radio, which is also directly affected, as well as on the developments currently taking place in the 470 to 694 MHz frequency range.

3.4.2 Digital radio

In 2013, KommAustria issued its Digitisation Plan 2013, dedicating seven coverage areas in band III (174–216 MHz range) to the nationwide and regional expansion of digital radio via the DAB+ transmission standard; in addition, the first regional DAB+ multiplex was launched in the Vienna region in 2018, after which an initial nationwide DAB+ multiplex was set up beginning in 2019. In the wake, use and awareness of digital terrestrial DAB+ have continued to grow steadily, as has the number of households in Austria with DAB+-enabled devices.

Figure 20: Awareness of DAB+, trend 2020–2022



Source: Ipsos, Verein Digitalradio Österreich 2022, DAB+ Digitalradio. Bekanntheits- und Reichweitenmessung (DAB+ Digital Radio, Awareness and Range Measurement)

Identically to FM radio, DAB+ is broadcast and received via antenna. To listen to the broadcasts, a radio receiver compatible with the DAB+ digital transmission standard is required. Such receivers, which usually support FM reception in addition to DAB+, have been long been available everywhere in Austria and in all price categories.

At the end of 2022, a total of 30 radio stations were broadcast via the two DAB+ multiplexes. Sixteen DAB+ radio stations are accommodated on the nationwide multiplex (MUX I) that first began transmitting nationwide on 28 May 2019. This multiplex had reached 83% of the population by the end of the last expansion stage in August 2020. The network was optimised in 2021, resulting in a technical coverage range of 84% of the population.

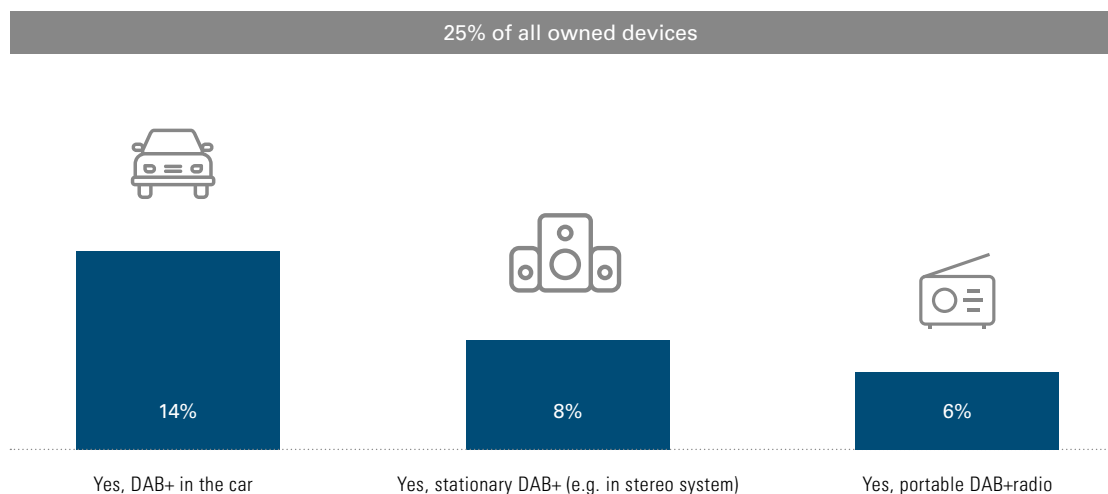
Since April 2018, 14 additional DAB+ radio stations have been broadcast in the Vienna region over what is called MUX II, with a coverage range of 2.3 million people.

Alongside a number of completely new broadcasters, many of the well-known UKW private radio broadcasters previously established in Austria are already broadcasting their programmes in parallel via DAB+ or have developed additional programmes separately for it. The FM private broadcasters Radio Energy, Mein Kinderradio, Radio Klassik Stephansdom and Radio 88.6 also broadcast their regional FM radio programmes nationwide via the DAB+ MUX I. Radio Arabella can be received in Vienna in DAB+/FM simulcast, and offers the stations arabella HOT and arabella RELAX over the nationwide MUX I. Nationwide extensions of existing regional radio programmes include Antenne Österreich and Radio Flamingo. Among the nationwide FM broadcasters, the private station Radio Austria is also available nationwide on MUX I. ORF and the private channel Kronehit have not used the transmission mode DAB+ to date.

3.4.2.1 Already 25% of Austrian households with DAB+ devices

One in four households in Austria already had at least one DAB+-enabled device in 2022, according to the DAB+ Digital Radio, Awareness and Range Measurement 2022 report,²⁰ funded by the RTR Media Division. The underlying study has been carried out by market research institute Ipsos every year since 2020 on behalf of Verein Digitalradio Österreich.

Figure 21: DAB+ devices in Austrian households 2022



Basis: Total n=2,900, percentages
Ipsos, Verein Digitalradio Österreich 2022, DAB+ Digitalradio. Bekanntheits- und Reichweitenmessung (DAB+ Digital Radio, Awareness and Range Measurement)

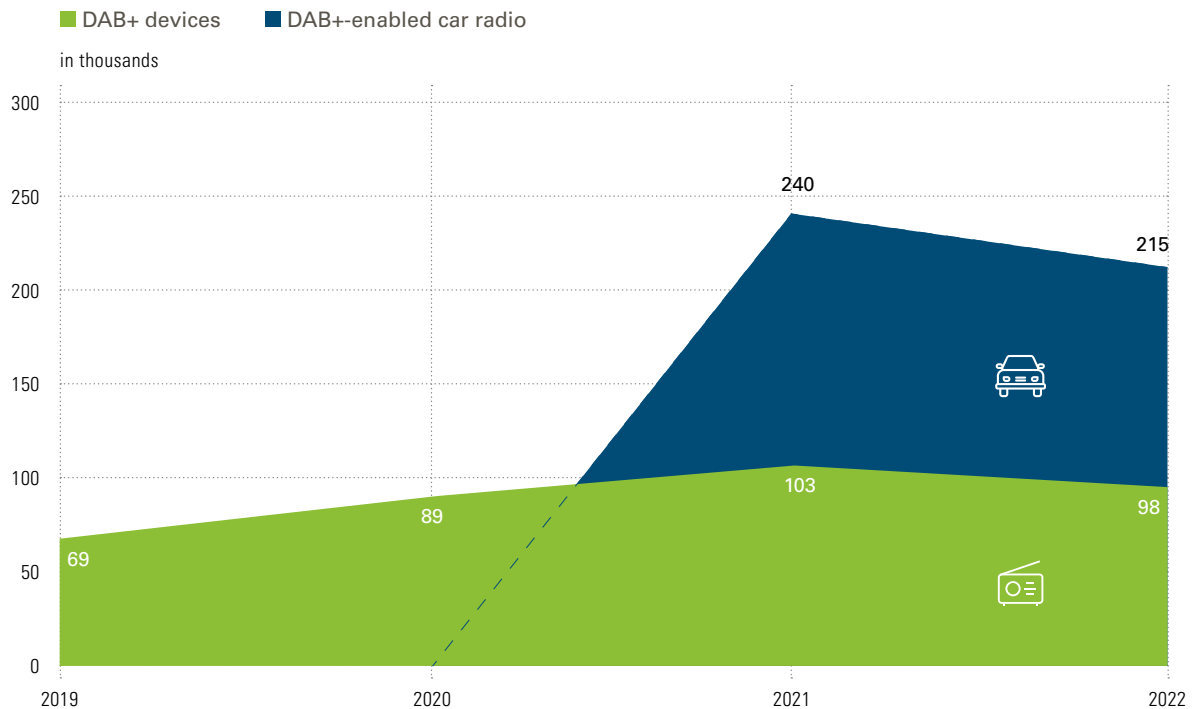
In 2022, 14% of Austrian households had a DAB+ car radio, 8% of households used a DAB+-enabled hi-fi system, and 6% of households had a portable DAB+ radio (results from multiple responses).

The high percentage of DAB+ car radios is mainly due to the EU Directive on the European Electronic Communications Code (EECC), which has required the installation of DAB+-enabled car radios in new vehicles since the beginning of 2021. New registrations of passenger vehicles have therefore been driving the year-on-year increase in sales of DAB+-enabled devices.

20 Source: DAB+ Digitalradio. Bekanntheits- und Reichweitenmessung (DAB+ Digital Radio, Awareness and Range Measurement) 2022, dabplus.at/ipsos

For many Austrians, car radio provides the first and lasting impression of the sound quality and diversity of content that DAB+ offers. Some 215,000 new passenger vehicles were registered in 2022, and almost 240,000 vehicles in 2021.

Figure 22: DAB+ device sales, ratio of home devices to car radios



Source: RTR/GFK Austria – Panelmarkt Radio/Statistics Austria – new vehicle registrations

In 2021, despite the transitional phase involving sales of residual passenger vehicles from previous productions, ultimately 94% of all newly registered passenger vehicles were fitted with a DAB+-enabled car radio as standard.

DAB+ receivers as tabletop radios or as part of music systems have been available in Austria for over ten years. In 2022, some 98,000 such units were sold in specialist stores in Austria (2021: 103,000; 2020: 89,000; 2019: 69,000; rounded figures).

In 2022, 43% of the Austrian population residing within the distribution area of the nationwide DAB+ multiplex (MUX I, 84% population coverage) and the regional multiplex in the Vienna region (MUX II, technical range of 2.3 million people) were familiar with DAB+ (2021: 39%) and 22% of the population had already listened to DAB+ radio stations.

Almost a third of DAB+ listeners used the DAB+ programme portfolio (almost) daily, 75% of these listened at least several times a month. Projected for Austria as a whole, this means that 16% of all Austrians listen to DAB+ stations at least several times a month. In 2021, this share was just 12%, and 9% in 2020.

3.4.2.2 Nationwide DAB+ service (MUX I)

The MUX I multiplex, the first nationwide DAB+ broadcasting network, has been rolled out in four phases since 2019. After completion in August 2020 by the operator, Vienna-based ORS comm GmbH & Co KG (ORS comm), the network now achieves a coverage level of 84% of the Austrian population.

MUX I carries 16 radio stations. An electronic programme guide and traffic information are also transmitted via TPEG, a transmission format that was developed for extended traffic and travel information via digital transmission modes.

The 16 MUX I (nationwide) radio programmes are:

Antenne Österreich	Klassik Radio	Radio Maria Österreich
arabella HOT	Mein Kinderradio	Rock Antenne
arabella RELAX	Radio 88.6	Technikum One
ENERGY ÖSTERREICH	radio austria	WELLE 1
ERF Süd	Radio Flamingo	
Jö Live	radio klassik Stephansdom	

3.4.2.3 DAB+ service to the Vienna region (MUX II)

The only digital radio line-up broadcast based on the DAB+ transmission standard to date began service to the Vienna region on 4 April 2018, and 14 stations were broadcasting as of year-end 2022. The operator's licence awarded by KommAustria to RTG Radio Technikum GmbH for MUX II, the Vienna regional multiplex, applies to the broadcasting region referred to as 'Großraum Wien und Teile des Wiener Umlandes' (greater Vienna and parts of neighbouring areas), with technical coverage of roughly 2.3 million people.

The channel lineup on the MUX II (Vienna):

arabella GOLD	MEGA Radio	Radio SOL
ARBÖ Verkehrsradio	NOW Radio	Radio VM1
City23	Radio Arabella	Sout al khaleej
LoungeFM	RADIO FANTASY	Technikum City
lulu.fm	Radio Radieschen	EWF-Emergency Warning function (activated only in the event of a disaster)

3.4.2.4 Emergency warning functionality system via DAB+

In addition to 14 radio stations and one electronic programme guide, the emergency warning functionality (EWF) system that was developed for digital transmission routes is ready for service on the DAB+ MUX II in Vienna. The system, developed for digital transmission modes, immediately switches all of the multiplex programmes to an information channel in the event of a crisis or disaster. The information consists of an audible radio announcement and text information that is broadcast to DAB+ receivers with a display. At the same time, EWF-compatible radio receivers also power on automatically if they are in standby mode.

In 2021, RTR Media Division provided from its Digitisation Fund a grant for a project by RTG Radio Technikum GmbH to develop hardware and software enabling the EWF signals that are broadcast over DAB+ to also appear on electronic E-Ink information screens, such as those frequently available on public transport at bus and tram stops for displaying timetables.

3.4.2.5 Digital radio via DVB-T2

Besides the DAB+ transmission standard, radio stations can also still be received in digital terrestrial mode via the DVB-T2 multiplexes A and F primarily used for terrestrial television. Such stations are thus also included in the digital terrestrial product packages marketed in Austria under the name of 'simpliTV'.

ORF radio stations Radio Österreich 1 (Ö1), Hitradio Ö3 and radio FM4 are broadcast without encryption via MUX A, which achieves the highest technical coverage range among the population (98%).

Among private radio stations, Radio Maria is broadcast at no charge but with encryption by way of MUX F, which is also nationwide (92% technical coverage range). Initial registration at no cost is required in order to receive the station.

3.4.3 KommAustria Digitisation Plan

In 2022, key points were implemented from the ordinance regarding a digitisation plan for the introduction, deployment and expansion of digital broadcasting and other media services (Digitisation Plan 2021), originally issued by KommAustria back in June 2021.

After the previous Digitisation Plan from 2017 had focused on the introduction of digital terrestrial radio, the 2021 Digitisation Plan has a broader remit and focuses both on radio and television.

The second section of the 2021 Digitisation Plan addresses preparation of the tender for the licenses of local and regional multiplex platforms for digital terrestrial television (MUX C licenses), due to expire in 2022.

These are followed by the nationwide licenses for the D, E and F multiplexes for digital terrestrial television that will expire in 2023. In this connection, KommAustria launched in April 2022 a consultation on an ordinance covering the principles for selecting operators, and, in July 2022, put the D, E and F multiplexes out to tender.

In line with the objectives defined in the sixth section of the AMD-G of supporting, enabling and introducing as well as deploying and expanding digital broadcasting to all transmission platforms and observing the technical expansion of transmission technologies, an opening for new standards beyond DVB-T2 and HD is envisaged. This applies not only to tenders under the 2021 Digitisation Plan relating to digital terrestrial television, but also enables the use of new standards, even with existing licences. The 2021 Digitisation Plan is thus paving the way for new technologies in signal transmission (by means of 5G broadcast, for example) and also in the field of video transmission (such as in UHD quality).

Furthermore, the 2021 Digitisation Plan is continuing along the path that was forged by previous digitisation plans and is aligning itself with the market's requirements for the introduction, deployment and expansion of digital terrestrial radio based on the DAB+ standard. KommAustria therefore included in the plan the option of conducting an additional survey to sound out demand for additional DAB+ station slots, so that tenders for additional multiplex platforms can subsequently be issued in the event of corresponding demand. The demand survey was carried out in the period between 30 September and 28 October 2021. The assessment and, therefore, the results of the survey were published on 28 February 2022.

3.5 Report on self-regulation of commercial communication in 2022

3.5.1 General information: legal framework of self-regulation

The Fund for the Promotion of Self-Regulation in Commercial Communication was established at the Austrian Communications Authority (KommAustria) in 2009. The fund has been allocated EUR 75,000 annually since 2021 (previously EUR 50,000).

As defined in Art. 33 Par. 2 KOG, KommAustria is to grant, upon application, an annual allowance to a recognised self-regulatory body for commercial communication in media. The purpose is to safeguard the independence of that body and ensure its ability to perform its duties in accordance with its articles of association, and to help the body in effectively implementing its decisions and resolutions.

In the face of changing conditions in the market for commercial communication in audiovisual media services, a number of changes were introduced by Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive).

The EU Directive also encouraged Member States to make use of co-regulation and to support the promotion of self-regulation by means of an industry code of conduct when transposing the requirements. To ensure an appropriate level of protection, a uniform set of criteria to be fulfilled by self-regulatory bodies was also defined.

As part of the amendment of the KOG by Federal Law Gazette I No. 151/2020 to implement Art. 4a(1) of Directive (EU) 2018/1808 and the associated deployment of self- and co-regulation in Austria, criteria were specified for the recognition of a self-regulatory body and laid down in catalogue form in Art. 32a Par. 2 to Par. 4 KOG. In accordance with Recital 31 of the Directive, this is intended to ensure the effectiveness of self- and co-regulatory measures, in particular to protect consumers and public health (see explanatory notes to government bill in annex 462, enclosure to stenographic record of National Council, 27th legislative period, regarding No. 19 [Art. 32a, Art. 32b KOG]).

Art. 32a KOG provides for the following criteria as a prerequisite for recognising a self-regulatory body:

“Self-regulatory bodies

Article 32a. (1) The activities of recognised self-regulatory bodies may be granted funding in order to help achieve the goal of ensuring compliance with minimum European standards on the part of content providers.

(2) A recognised self-regulatory body is defined as a body with legal personality that:

- 1. guarantees a broad representation of the providers concerned, and comprehensive transparency in respect of decision-making criteria, procedures and the enforcement of decisions;*
- 2. defines conduct guidelines and rules of procedure that are generally recognised by the primary stakeholders and which clearly define the goals of self-regulation;*
- 3. ensures the periodic and transparent monitoring and assessment of the fulfilment of these goals, exclusively by an external and independent entity;*
- 4. ensures that complaints are effectively handled and that its decisions are enforced, including the imposition of effective and proportionate sanctions in the event of breaches of the conduct guidelines;*
- 5. prepares a report concerning its activities, its established goals, and the measures and decisions taken in accordance with No. 3 and 4, and publishes this report in a suitable format.*

(3) Sanctions within the meaning of Par. 2 No. 4 include in particular:

1. the publication of a decision by the self-regulatory body;
2. the publication of a recommendation for future conduct by the self-regulatory body;
3. the revocation of a quality seal or positive designation granted in accordance with the body's guidelines;
4. potential identification of a breach or warnings in accordance with the body's legal framework.

(4) Every four years, the self-regulatory body shall provide the regulatory authority with a report on the body's structure and working practice that illustrates its contribution to the goal of achieving compliance with minimum standards on the part of content providers."

Also in implementation of European law requirements, as of 1 January 2021 the scope of duties for a self-regulatory body for commercial communication as defined in Art. 33 Par. 3a KOG was extended to the effect that, in order for the full funding amount to be granted, the conduct guidelines must contain provisions on inappropriate audiovisual communication relating to alcoholic beverages and, with respect to children, inappropriate audiovisual communication on food and beverages containing nutrients or substances with a nutritional or physiological effect, excessive intakes of which are not recommended as part of the overall diet, including in particular fat, trans-fatty acids, salt/sodium and sugar.

The aim of these conduct guidelines is, on the one hand, to effectively reduce the impact of audiovisual commercial communication relating to alcoholic beverages on minors and, on the other, to reduce the impact of the 'unhealthy' foodstuffs listed (known as HFSS: 'high in fat, salt or sugar') on children (see Art. 33 Par. 3b KOG).

In accordance with the last sentence of Art. 33 Par. 2, KommAustria has drawn up and published guidelines for awarding grants from the Fund for the Promotion of Self-Regulation in Commercial Communication.

The effectiveness of this self-regulatory system is then subjected to a subsequent audit by KommAustria. To facilitate such a follow-up audit, the legislation specifies the reporting requirements listed below.

Pursuant to Art. 32a Par. 2 No. 5 KOG, a self-regulatory body is to prepare an annual report on its activities, its established goals, and the measures and decisions taken in accordance with No. 3 and 4, and publish this report in a suitable format (activity report).

As defined in Art. 33 Par. KOG, by 31 March of each following year, a recognised self-regulatory body for commercial communication is to submit to KommAustria a report addressing the effectiveness of the provisions of the conduct guidelines, as well as the type, number and outcome of complaints. The regulatory authority must publish an activity report presenting its assessment of and recommendations on effectiveness (effectiveness report).

In spring of 2023, the Austrian Society for the Self-Regulation of the Advertising Industry released the reports for the year 2022 in its role as legal entity for the Austrian Advertising Council.

In the following sections, the regulatory authority provides, on the basis of the reports it has duly received, a short overview of the legal framework for self-regulation in commercial communication, information on the self-regulatory body (Austrian Advertising Council), including its conduct guidelines and rules of procedure and their effectiveness. The authority then presents its assessment of and recommendations for improving the effectiveness of the self-regulation system.

3.5.2 Austrian Advertising Council

According to Art. 32a KOG, a recognised self-regulatory body is defined as a body with legal personality which ensures a broad representation of the providers concerned and fulfils the criteria of Art. 32a KOG.

Under the Society for the Self-Regulation of the Advertising Industry as its managing entity, the Austrian Advertising Council (ÖWR) represents such a recognised institution of self-regulation of commercial communication and has been receiving subsidies from KommAustria's fund earmarked for these goals since 2009.

According to the articles of association, the society's objective is to manage the self-regulation of the advertising industry in Austria, in order to ensure that the industry exceeds the statutory requirements for adherence to ethical and moral principles, in particular with the goals of protecting consumers from abuse in advertising and of promoting business ethics in general, while at the same time maintaining a commitment to competition and to the free expression of ideas. This overarching objective is supported by the society's wider goals, as described below.

- a. Strengthening the acceptance of self-regulation of the Austrian advertising industry, by means of a trustworthy self-regulation institution for the advertising industry in Austria that is accepted at the national and international levels.
- b. Establishing executive self-regulation in the form of the 'Austrian Advertising Council' as an independent assessment body and through a balanced membership structure for this body that reflects its purpose and a wide range of political interests.
- c. Establishing an avenue for consumers to lodge complaints.
- d. Further improvement of self-regulation based on ethical and moral criteria.
- e. Promoting the image of advertising in Austria.
- f. Protecting the freedom to engage in legally compliant, inoffensive and honest advertising.
- g. Promoting communication in times of economic and social change.
- h. Avoiding state-imposed advertising restrictions through close cooperation and coordination with the respective industry representatives and significant communication associations in Austria as well as through dialogue with stakeholders.

The members of the legal entity 'Society for the Self-Regulation of the Advertising Industry' of the Austrian Advertising Council are:

- Dialog Marketing Verband Österreich (Dialogue Marketing Association Austria, DMVÖ)
- Verband Österreichischer Zeitungen (Austrian Newspaper Association, VÖZ)
- Verband der Regionalmedien (Association of Regional Media, VRM)
- Austrian Broadcasting Corporation (ORF)
- Verband Österreichischer Privatsender (Association of Commercial Broadcasters in Austria, VÖP)
- Verband der Österreichischen Markenartikelindustrie (Austrian Association of the Branded Goods Industry, MAV)
- International Advertising Association, Austrian Chapter (IAA)
- Verein Interessensgemeinschaft der Media-Agenturen (Association of Interest Group of Media Agencies, IGMA)
- Österreichischer Zeitschriften- und Fachmedienverband (Austrian Magazine Association – ÖZV)
- Internet Advertising Bureau Austria (IAB)
- Fachverband Film- und Musikwirtschaft (Professional Association of the Film and Music Industry)
- Fachverband der Telekommunikations- und Rundfunkunternehmen (Professional Association of Telecommunications and Broadcasting Companies)
- Fachverband der Nahrungs- und Genussmittelindustrie – Lebensmittel (Professional Association of the Food and Beverage industry – Food sector)
- Fachverband Werbung und Marktkommunikation (Austrian Advertising Association)
- Weischer.Cinema Austria GmbH
- Federation of Austrian Industries (IV)

The management board of the legal entity comprises President Michael Straberger, Vice President (Ethics) Roswitha Hasslinger and Vice President Gerald Grünberger as well as 18 additional board members. As a result of staffing changes within the members of the legal entity, a number of new members were appointed to the ÖWR management board over the course of 2022.

Additional bodies of the society are the general assembly, which serves as an assembly of members within the meaning of the Associations Act (Vereinsgesetz), the Austrian Advertising Council (ÖWR), which carries out the self-regulation of the Austrian advertising industry as an independently acting body, the Ethics Senate as an independently appointed council for evaluating the decisions of the ÖWR, the auditors and the society's internal arbitration tribunal for settlement of all disputes arising within the society.

The ÖWR itself consists of roughly 195 experienced and representative individuals from the three core segments of the advertising industry (media, agencies, clients) as well as experts in other disciplines and specialist fields, such as lawyers, doctors and psychologists. The members were most recently selected in October 2020 through a three-part selection process, which calls for the members of the ÖWR to be proposed by groups and finally elected by the general assembly for a term of three years.

Managing Director Andrea Stoidl is responsible for overall management of the administrative office. Due to the retirement of a long-serving employee, the administrative office welcomed new staff during the year 2022.

3.5.3 Conduct guidelines (Code of Ethics)

The ÖWR's conduct guidelines in the form of the [Code of Ethics](#)²¹ (as of February 2021), including annexes, were revised with participation of the sector and have been generally accepted as a basis for decision-making and procedures by the main stakeholders, in particular the members of the responsible association working in media, as well as by agencies, clients and higher-level institutions.

The members of the council decide on submitted complaints based on the Code of Ethics.

The Code of Ethics of the ÖWR includes Basic Rules of Conduct as well as Special Rules of Conduct for various areas.

Within the Code of Ethics, the Basic Rules of Conduct set out general advertising principles as listed below.

"Advertising thus bears social responsibility and must take into account the rights, interests and feelings of individuals and groups of people.

- 1.1.1. *Advertising should be marked by the principle of social responsibility, especially towards children and young people before the age of 18.*
- 1.1.2. *Advertising must be legally permissible and strictly observe legal standards.*
- 1.1.3. *Advertising must comply with the principles of fairness as generally recognised in economic activity.*
- 1.1.4. *Advertising must not be contrary to generally accepted public morals.*
- 1.1.5. *Advertising must not violate human dignity, especially through degrading or discriminatory depictions.*
- 1.1.6. *Advertising must not violate the principle of honesty and truthfulness.*
- 1.1.7. *Advertising must not mislead through depictions containing allusions or imitations.*
- 1.1.8. *Advertising must not violate the right to privacy.*
- 1.1.9. *Advertising must be clearly recognisable as such.*
- 1.1.10. *Advertising should not directly or indirectly place consumers under pressure to make purchases.*
- 1.1.11. *Advertising should not be placed on advertising media that obviously contradict Austrian legal provisions.»*

21 <https://www.werberat.at/selbstdisziplin.aspx>

Additional basic rules of conduct exist for the areas of ethics and morality, violence, health, safety, the environment, illegal advertising practices and influencer marketing.

Special rules of conduct relate to gender-discriminatory advertising (sexist advertising), children and young people, older people, alcohol, tobacco and motor vehicles.

In accordance with European and national regulations, the Code of Ethics was revised in 2021 and expanded to include regulations concerning inappropriate commercial communication in the context of alcoholic beverages and food.

Art. 33 Par. 3a and Par. 3b KOG states:

“(3a) Starting with 2021, the granting of the full amount of the funds available shall be dependent on a self-regulatory body’s conduct guidelines, including provisions with regard to

- 1. inappropriate audiovisual commercial communication relating to alcoholic beverages*
- 2. and for audiovisual commercial communication that is unsuitable for children and relates to foodstuffs and beverages containing nutrients or substances with a nutritional or physiological effect, excessive intakes of which are not recommended as part of the overall diet, including in particular fat, trans-fatty acids, salt/sodium and sugars.*

(3b) The conduct guidelines shall aim to effectively reduce

- 1. the impact of audiovisual communication on alcoholic beverages on minors, and*
- 2. the exposure of children to audiovisual communication involving the foods and beverages listed in Par. 3a No. 2. Regarding the foods and beverages listed in Par. 3a No. 2, the conduct guidelines shall prohibit their positive nutritional properties from being emphasised. Taking into account the recommendations of European institutions of self-regulation in the field of advertising and through an appropriate balance of interests, the conduct guidelines shall also take into account relevant recommendations of European consumer protection associations. The conduct guidelines shall also take into account recognised nutritional guidelines, in particular with regard to audiovisual commercial communication relating to the foods and beverages listed in Par. 3a No. 2. The conduct guidelines shall be drafted with the involvement of the Austrian Agency for Health and Food Safety.”*

As of February 2021, the Code of Ethics now also includes guidelines concerning inappropriate audiovisual commercial communication during children’s programmes that relates to food products (see in particular point 2.2.1.4. together with the explanatory notes on the Code of Ethics). The guidelines now also apply to providers of video-on-demand services and video-sharing platforms and have been extended to other audiovisual channels, such as video clips and user-generated content.

“2.2.1.4. Inappropriate audiovisual commercial communication in the context of children’s programmes:

The guidelines below apply to audiovisual media service providers whose offerings include children’s programmes. They aim to effectively reduce the impact on children of audiovisual communication for the foods and beverages described in more detail below (see ‘General principles’ and ‘Specific conditions’ below). They include inappropriate audiovisual commercial communication accompanying or included in children’s programmes.

Audiovisual commercial communication means images (with or without sound) which are designed to promote, directly or indirectly, the sales of food products and which are included in, or accompany, a broadcast or a user-generated video in return for payment or for similar consideration or as self-promotion.

These include, but are not limited to, television advertising and on-demand audiovisual media service advertising, sponsorship, teleshopping and product placement.

The guidelines below cover inappropriate audiovisual commercial communication for foods and beverages containing nutrients or substances with a nutritional or physiological effect, excessive intake of which is not recommended as part of the overall diet, including in particular fat, trans-fatty acids, salt/sodium and sugars. The Advertising Council decides on the basis of the Code of Ethics of the Advertising Industry. Intended as a decision-making aid for the advertising council, an expert opinion, based on recognised nutritional guidelines, is prepared by a specially established food advisory board.

The form or content of audiovisual commercial communication on the aforementioned foodstuffs is inappropriate when broadcast immediately before, after or during (commercial breaks) programmes aimed exclusively or predominantly at children (persons under twelve years of age) and if contradicting the following criteria:

2.2.1.4.1. General principles

- a) *Audiovisual commercial communication for such foods shall be designed in such a way that children's confidence in the quality of the products advertised is not abused.*
- b) *Audiovisual commercial communication for such foods shall not discourage a healthy, active lifestyle. In particular, it shall not suggest that an inactive lifestyle is preferable to physical activity.*
- c) *Audiovisual commercial communication for such foods shall not oppose or disparage a balanced and healthy diet. In particular, it shall not advise against or discourage the consumption of fresh fruit or vegetables.*
- d) *Audiovisual commercial communication for such foods shall not incite to excessive or exclusive consumption of the products advertised. Compulsive or pathological eating habits shall not be depicted in a favourable light.*
- e) *Audiovisual commercial communication for such foods shall not depict as inferior persons who refrain from consuming the advertised products.*
- f) *When advertising foods and beverages the excessive intake of which is not recommended as part of the overall diet, any favourable properties of such foods must not be emphasised.*

2.2.1.4.2. Special provisions

- a) *Audiovisual commercial communication for such foods shall not establish any link between improved academic performance and the consumption of such foods.*
- b) *Audiovisual commercial communication for such foods shall not create the impression that the possession or consumption of such foods would promote social success or ensure higher status and greater popularity among the children's age peers.*
- c) *Audiovisual commercial communication for such foods must not suggest that they have therapeutic or healing effects or prevent disease.*
- d) *Audiovisual commercial communication for such foods shall not promote immoderate consumption of such foods or negatively depict moderation or abstinence.*
- e) *Audiovisual commercial communication for such foods shall not contain negative statements about persons who, for whatever reason, wish to reduce their consumption of such foods.*
- f) *Audiovisual commercial communication for such foods shall not suggest that they could substitute for a meal. In particular, it shall not suggest that these foods can be a complete substitute for vegetables and/or fruit.*
- g) *Audiovisual commercial communication for reduced-calorie versions of these foods (light versions) shall not encourage excessive consumption of the reduced-calorie food.*
- h) *Audiovisual commercial communication for such foods and the information they provide on taste, portion size and the potential contribution of such foods to a balanced diet shall be truthful, complete and transparent.*

- i) *Audiovisual commercial communication for such foods and the information they contain about the amount of carbohydrate, fat or protein present in those foods shall not misleadingly suggest positive effects for an overall balanced diet (e.g. high carbohydrate foods shall not be promoted by referring to their low-fat or fat-free content and vice versa).*
- j) *Where such foods are directly associated with children's programmes (e.g. licensed products), related audiovisual commercial communication shall not be broadcast immediately before, during or after such programmes.*
- k) *Audiovisual commercial communication for such foods shall not cause physical or psychological harm to children.*
- l) *Audiovisual commercial communication for such foods shall not directly appeal to children to buy those foods by exploiting their inexperience and credulity.*
- m) *Audiovisual commercial communication for such foods shall not directly encourage children to persuade their parents or others to purchase those foods.*
- n) *Audiovisual commercial communication for such foods shall not, through explicit calls for purchasing, inappropriately exploit the special trust that children have in parents, teachers and other persons whom they naturally trust (including 'child idols') and thereby discourage the acquisition of a balanced diet and healthy lifestyle. It must also not suggest that the consumption of such foods directly enables children to gain popularity or social status comparable to that of such persons." (Note: excerpt without footnotes)*

In 2021, additional restrictions and clarifications were provided for audiovisual commercial communication for alcoholic beverages in the youth environment (see in particular point 2.2.2.2. of the Code of Ethics):

"2.2.2.2. Inappropriate audiovisual commercial communication for alcoholic beverages in the youth environment

The following guidelines apply to audiovisual media service providers. They aim to effectively reduce the exposure of young people (persons under 18 years of age) to audiovisual communication for alcoholic beverages.

Based on the EU Audiovisual Media Services Directive, specific requirements are set out for any inappropriate audiovisual commercial communication related to alcoholic beverages (cf. the more detailed explanations on section 2.2.1.4.) That is shown in the environment of young people.

The form or content of audiovisual commercial communication for alcoholic beverages is considered inappropriate if it contradicts the criteria for beer and spirits as set out below and in the two annexes to the Code of Ethics.

Audiovisual commercial communication for alcoholic beverages is inappropriate if it contradicts the following criteria:

- a) *Audiovisual commercial communication for alcoholic beverages must not encourage children and adolescents under the age of 18 to drink alcoholic beverages, or show adolescents drinking or encouraging others to drink.*
- b) *Audiovisual commercial communication for alcoholic beverages shall not be made in media where the majority of the editorial content is aimed at young people.*
- c) *Audiovisual commercial communication for alcoholic beverages shall not contain statements that refer to young people as not yet old enough to consume alcoholic beverages, thereby provoking them to drink.*
- d) *Audiovisual commercial communication for alcoholic beverages shall not depict persons claiming to have consumed alcoholic beverages already as an under-age person.*
- e) *If persons are shown in audiovisual commercial communication for alcoholic beverages, they must at least be young adults and appear as such." (Note: excerpt without footnotes)*

Stricter rules were also generally established for the areas of 'health' and 'alcohol' (see here point 1.4. and 2.4. of the Code of Ethics). Furthermore, the Appendix to the Code of Ethics contains under 'Alcohol' specific self-restrictions for the brewing and distilling industries.

Furthermore, a Food Review Board was established in 2021 to assist the ÖWR with complaints regarding inappropriate audiovisual commercial communication in the context of children's programmes, within the meaning of section 2.2.1.4. of the Code of Ethics of the advertising industry in its current version, by providing recommendations on the assessment of foods based on recognised nutritional guidelines.

The Anti-Sexism Advisory Board was established as early as 2012 and has since become integrated into the complaints procedure of the Austrian Advertising Council to share its opinions on complaints dealing with gender-discriminatory advertising.

3.5.4 Rules of procedure

The rules of procedure (as of 16 December 2022) define the responsibilities of the Advertising Council, the right to appeal and the course of the procedure as well as the possible sanctions in the event of failure to comply with the rules of conduct.

The rules of [procedure](#)²² were revised with participation of the sector and are generally accepted as a basis for decision-making and procedures by the main stakeholders, in particular the members of the responsible association working in media, as well as by agencies, clients and higher-level institutions.

In accordance with Article 13 of the rules of procedure, the ÖWR issues decisions that essentially fall into three categories:

1. No grounds for intervention
2. Raising awareness – request to proceed more sensitively in future when designing advertising measures or individual subjects
3. Request to immediately stop the campaign or immediately change the subject.

Furthermore, the rules of procedure provide for a graduated catalogue of sanctions:

"Article 15 Sanctions"

In accordance with the requirements of the KommAustria Act amended at the end of 2020, based on the new version of the applicable EU Audiovisual Media Services Directive (EU AVMSD) which entered into force in December 2018, a graduated catalogue of sanctions with escalation levels is provided for the enforcement of stop decisions. The client and/or the agency shall be informed in advance of the possible sanctions in writing.

- (1) *If the party in question fails to comply in due time with the request to amend or discontinue the advertising measure and to submit the required proof pursuant to Article 14 (2), (3) and (4), the Austrian Advertising Council may:*
 - a) *Withdraw the Advertising Council Quality Seal ('Pro-Ethik seal') and for one year block the client and the agency from (re-)applying for the seal.*
 - b) *Issue a public warning: the decision is communicated by means of a press release to trade and business media, media editors from the general media and, if applicable, regional media.*

22 <https://www.werberat.at/verfahrensordnung.aspx>

- (2) *In the event of a repetition of a stopped subject, the client of the advertising measure and/or the agency shall be requested in writing to change or stop the advertising measure within a period of two working days. In the event of failure to comply with the request to amend or discontinue the advertising measure, the Austrian Advertising Council may:*
- a) *Implement sanctions in accordance with Article 15 (1) and (2).*
 - b) *In addition to this, regional interest groups from advertising, trade, industry and commerce as well as media as advertising media and the corresponding media associations may also be informed.*
- (3) *In the event of a second repetition of a stopped subject, the client of the advertising measure and/or the agency shall be requested in writing to change or stop the advertising measure immediately (without setting a further deadline). In the event of failure to comply with the request to amend or discontinue the advertising measure, the Austrian Advertising Council may:*
- a) *Implement sanctions in accordance with Article 15 (1) and (2).*
 - b) *Furthermore, the Austrian Advertising Council may draft a press release in coordination with the Schutzverband gegen unlauteren Wettbewerb (Association Against Unfair Competition) and send this to the specialist and business media, media editorial offices of the general media and, if applicable, the regional media.*
- (4) *In the event of a second stop decision against an undertaking (in relation to a different campaign), action shall be taken by the business office in accordance with Article 14 (1), (2), (3), (4) and (6). In the event of failure to comply in due time with the request to amend or discontinue the advertising measure and to submit the required proof pursuant to Article 14 (2), (3) and (4), the Austrian Advertising Council may:*
- a) *Implement sanctions in accordance with Article 15 (1), (2) and (3).*
- (5) *Third stop decision against an undertaking: In the event that the Austrian Advertising Council pronounces within one year a third stop decision on advertising measures taken by an undertaking, the following procedure shall be followed:*
- a) *The stop decision shall be handled by the business office in accordance with Article 14 (1), (2), (3), (4) and (6). In the event of failure to comply in due time with the request to amend or modify the advertising measure, the business office shall proceed in accordance with Article 15 (1), (2), (3) and (4).*
 - b) *Furthermore, the Austrian Advertising Council may in coordination with the Association Against Unfair Competition draft a press release under the assumption of 'unfair business practices' and distribute it to the specialist and business media, media editorial offices of the general media and, if applicable, the regional media."*

In December 2022, the rules of procedure of the ÖWR were amended with the unanimous approval of the management board.

Article 2 (2) of the rules of procedure was detailed as follows: "The Austrian Advertising Council's scope of competence is limited to commercial advertising, subject to the provisions of (3) lit. b."

Furthermore, Article 2 (3) lit. b of the rules of procedure was modified as follows:

"The Austrian Advertising Council is responsible [...]

- b) *for professional communication to inform citizens (public information) via public federal and provincial agencies as well as municipal and civic authorities (expanded scope of responsibility).'*

Pursuant to Article 16 of the rules of procedure, the Ethics Senate decides on any written objections to a 'stop request'.

3.5.5 2022 Annual Report

In the annual report of the ÖWR (see Art. 32a Par. 2 No. 5 KOG), which is published on the website of the ÖWR, all activities, objectives as well as the complaint scorecards are discussed in detail and clearly presented.

3.5.5.1 Complaints Report 2022

With regard to complaints procedures, the 2022 annual report shows that in 2022, 503 complaints were lodged with the ÖWR, resulting in 264 decisions (2021: 413 complaints, 258 decisions; 2020: 411/241; 2019: 338/206; 2018: 316/194).

In nine cases in 2022, a request was made to stop the subject or campaign immediately (2021: 11; 2020: 11; 2019: 22; 2018: 12). In six cases, this request was complied with immediately or within the first extended deadline. In three cases, further measures to address the case were initiated in accordance with the catalogue of sanctions. Two cases were stopped after a second extension had been granted.

In 15 cases, the ÖWR pronounced a decision for "raising awareness – request to proceed more sensitively in future when designing advertising measures or individual subjects"

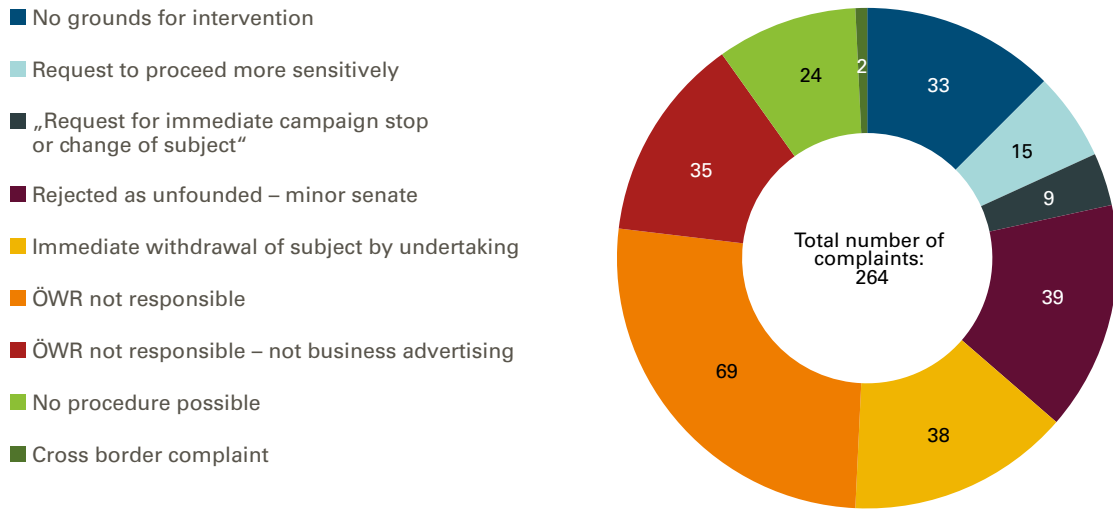
As in previous years, the companies receiving these decisions showed a willingness to cooperate with the ÖWR, as is reflected in the high number of subjects that were withdrawn immediately. In the end, 38 companies (2021: 27) withdrew or changed their advertising measures immediately after initially being contacted by the ÖWR business office.

The ÖWR determined that it was not responsible in 69 cases. These complaints were evaluated by the administrative office with regard to competence and some were forwarded, with the consent of the complainants, for further examination to the competent bodies, such as the Unfair Competition Supervisory Association, the Federal Office for Safety in Healthcare, the Federal Ministry of Health and the PR Ethics Council or Press Council.

The ÖWR was not able to act in 35 cases not involving commercial advertising. Two cases were forwarded to the competent institutions in other countries since they were 'cross-border complaints'

In 24 cases, the procedure could not be concluded because the required documents and information were not provided by the complainants even after multiple requests.

Figure 23: Summary of ÖWR Decisions in 2022

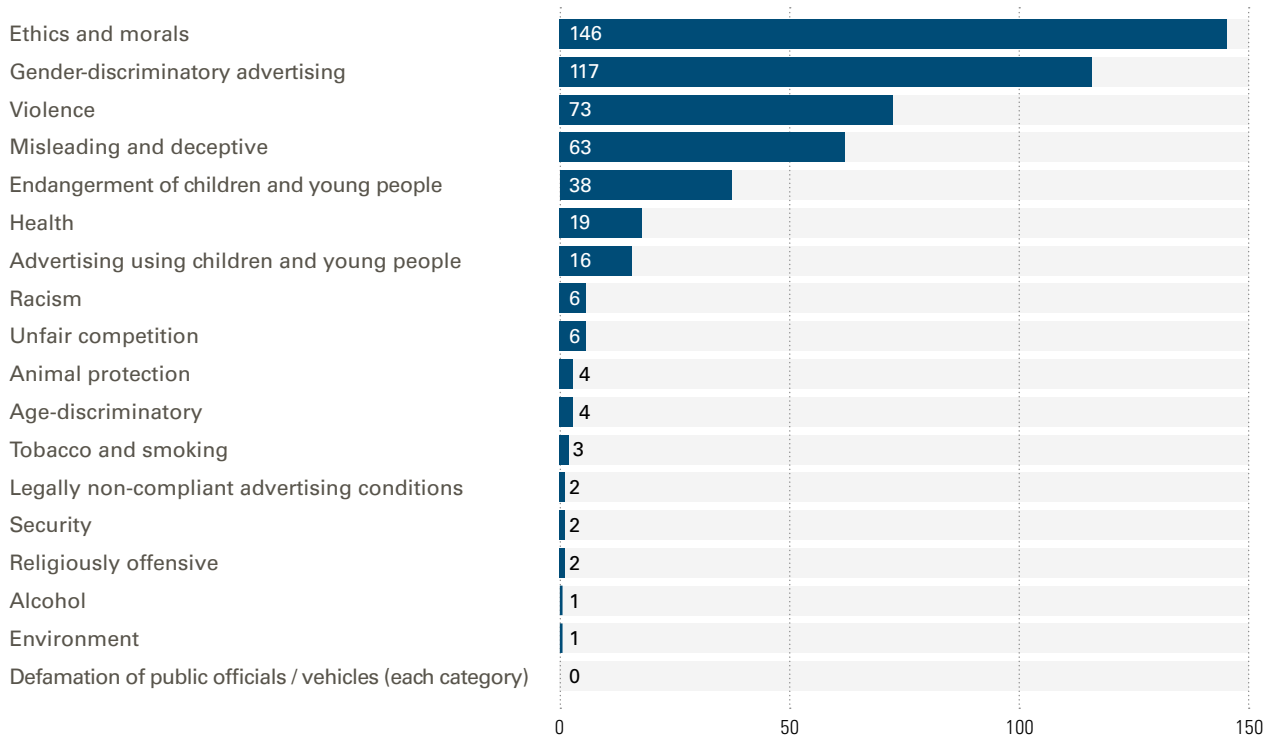


Source: 2022 ÖWR Annual Report

The annual comparison reveals that far more complaints were received in 2022 than in the previous year (+90) and more decisions (+6) were accordingly also issued. The number of decisions and therefore the workload for the ÖWR has steadily increased in recent years.

In 2022, complaints were lodged for the following reasons:

Figure 24: Grounds for complaints in 2022



n = 503 complaints, as per 31.12.2022
Source: 2022 ÖWR Annual Report

This shows that the most complaints received in 2022 fell into the categories of 'ethics and morals' at 146 complaints (2021: 116) and 'gender-discriminatory advertising' at 117 complaints (2021: 105). The category of 'violence' accounted for 73 complaints, which was a significant increase (2021: 10), putting it at third place in 2022.

It can be seen in the annual comparison that the two most common grounds for complaint remained the same over the last three years. The complaint category 'ethics and morals' held place number one in 2022 – as it did in 2021 – taking over from 'gender-discriminatory advertising', which was the leading category in previous years.

A total of 63 complaints were received in the category 'misleading and deceptive' (2021: 59). As a complaint reason, 'endangerment of children and young people' also saw an increase at 38 complaints (2021: 15). Nineteen complaints fell into the category of 'health' (2021: 31). 'Advertising with children and young people' was the reason for 16 complaints (2021: 10). A total of six complaints were in the category of 'racism', a decrease compared with the previous year (2021: 27).

All of the other complaint categories came in with fewer than ten complaints.

With regard to the advertising media involved, the most decisions made in 2022 concerned television advertising. A total of 77 decisions (2021: 62) related to TV spots.

In outdoor advertising, the 49 decisions relating to the advertising media category of 'poster/citylight' marked a significant increase over the previous year (2021: 35). Third place was held by 'social media' with 34 decisions, almost the same number as in the previous year (2021: 35).

3.5.5.2 Additional activities

In 2021, the ÖWR conducted a survey among parents on the nutrition and physical activity of children in Austria, the results of which were published in April 2022. This demonstrated that coronavirus had a considerable impact on the daily lives of children: above all, the use of the internet and social media increased significantly. Television and video games were also popular activities in a time when personal contact was prohibited or restricted. With regard to eating habits, family behaviour played a key role: (shared) cooking at home as well as shared meals within the family saw the most significant increases. Meanwhile, physical movement and athletic activity decreased. The survey among parents facilitated research into the role played by specific factors, including advertising, in childhood obesity in Austria.

The second wave of the ÖWR's awareness campaign was launched in early summer of 2022. Ads were placed in print, cinemas, radio and TV and online, as well as in digital out-of-home media. The campaign also served as a call to work together to keep Austria's advertising free of annoying aspects and to use the Advertising Council as a platform for self-regulation. The objective of the campaign was therefore to increase familiarity with the Advertising Council and awareness of its work.

In 2022, the ÖWR expanded the existing forum of the Young Advertising Council that had been established as a pilot project in 2014. Since then, roughly 100 people up to age 29 have been reaching independent decisions in parallel with those taken directly by the ÖWR. The results of both bodies are evaluated separately, and the decision of the established body is binding for assessment of the complaint. Trends in the findings of the Young Advertising Council are recorded and compared regularly with the decisions of the Advertising Council.

Numerous continuing education measures were carried out by the ÖWR in 2022. Also in 2022, the ÖWR intensified its active participation in the international network EASA (European Advertising Standard Alliance), as a way of exchanging insights with European and international self-regulation institutions.

Finally, 2022 also saw the relaunch of the newly designed ÖWR website (www.werberat.at). In addition to a visual refresh and restructuring of the content, a special focus was placed on technical adaptation for a user-friendly experience with a variety of devices.

3.5.5.3 ÖWR's outlook for 2023

For the ÖWR, elections will play a prominent role in 2023. The election of the president and vice president as well as the management board of the legal entity will take place in the spring in compliance with the articles of association, which also stipulate that the term of the decision-making body comes to a close after three years. The new members of the Advertising Council will be elected in a multi-stage process over the course of the summer of 2023. This will be followed in the autumn of 2023 by the appointment of the new ÖWR decision-making body.

Additional plans for 2023 include a focus on the topics of 'environment and sustainability in advertising' as well as 'influencers, bloggers and vloggers' plus a long-term initiative to improve the health of all Austrian residents.

3.5.6 Evaluation, assessment and recommendations to improve effectiveness by KommAustria

In the "Expert opinion assessing the fulfilment of objectives of the ÖWR – Austrian Advertising Council in accordance with Art. 32a KOG" of 24 March 2023, external expert Prof. Dieter Scharitzer states that the ÖWR fulfils the requirements set out in Art. 32a KOG for a recognised self-regulatory body. KommAustria shares this assessment.

The objectives of self-regulation (in particular protecting consumers from abuse in advertising, preserving ethical and moral principles, promoting ethics in business in general) are reflected both in the articles of association (see Art. 2 Objectives of the Association) and in the Code of Ethics. Based on the membership of the professional associations and federations, broad representation of providers concerned obviously exists. All relevant interest groups in the field of commercial communication in media are represented. Both the self-regulatory body and the Code of Ethics and rules of procedure of the ÖWR are generally recognised.

All information can be found on the ÖWR website in an easily accessible and easy-to-understand form. Full transparency in respect of decision-making criteria, procedures and the enforcement of decisions is guaranteed.

The Code of Ethics also contains the provisions required under Art. 33 Par. 3a and Par. 3b KOG concerning inappropriate commercial communication for alcoholic beverages and 'unhealthy' food. The necessary expertise is provided by the Food Review Board.

The rules of procedure available on the website provide a regulated framework for the effective handling of complaints (Articles 1 to 13 of the rules of procedure) and the enforcement of decisions based on these, including the imposition of the above-mentioned sanctions (Articles 14 to 17 of the rules of procedure). In accordance with the objective of the amendment to the KOG, the sanctions by the ÖWR were supplemented and specified within the framework of the rules of procedure, in particular within the framework of a graduated catalogue of sanctions for enforcement in the case of 'stop decisions' (Article 15 of the rules of procedure).

The Code of Ethics and the rules of procedure ensure that the ÖWR is able to effectively handle complaints and enforce its decisions, including by imposing effective and proportionate sanctions in the event of breaches of the conduct guidelines as defined in Art. 32a Par. 2 No. 4 and Par. 3 KOG.

The 2022 annual report also attests to the effective handling of complaints. The nine requests by the ÖWR to 'immediately stop the subject or campaign' were largely complied with promptly or within the first extended deadline.

Also worth mentioning is the strong willingness to cooperate with the ÖWR. In 2022, 38 companies withdrew or changed their advertising measures immediately after initially being contacted by the ÖWR business office (2021: 27).

Overall, a considerably higher volume of complaints was received by the ÖWR in 2022 compared with the previous year. The enormous increase in complaints (+90) from 2021 (413) to 2022 (503) indicates ever greater awareness of the ÖWR. The 503 complaints led to 264 decisions. An eight-year comparison shows a continuous increase in decisions.

No complaints have been submitted to the ÖWR so far with regard to the regulations of the Code of Ethics introduced in 2021, concerning inappropriate audiovisual commercial communication for certain foods in children's programmes as well as inappropriate audiovisual commercial communication for alcoholic beverages in the youth environment (see point 3). Against this backdrop, it appears worthwhile and necessary to continue raising awareness in this area.

With regard to the effectiveness of the conduct guidelines, further attention needs to be focused on preventive

measures such as positive certification with the 'Pro-Ethics seal' and the 'Pre-Copy Advice' service (advance check of unreleased advertising based on the Code of Ethics) as well as awareness-raising measures at the level of consumers and throughout the advertising industry in general.

In summary, KommAustria is of the opinion that – based on the reports and documents submitted – the present system of self-monitoring by the ÖWR is generally an effective system within the meaning of the legal requirements. The fulfilment of the legal prerequisites of Art. 32a Par. 2 and Par. 3 KOG, the increasing number of complaints brought before the ÖWR and the decisions taken, as well as the high level of awareness attributed to it warrant the conclusion that the ÖWR fulfils its duties effectively.

The Code of Ethics and the rules of procedure have generally proven themselves as practical tools and have been further improved as necessary. For instance, the rules of procedure were amended in 2022, and the responsibility of the ÖWR for professional communication to inform citizens (public information) via public federal and provincial agencies was expanded to include municipal and civic authorities as well.

KommAustria generally welcomes the planned focus topics for 2023 ('environment and sustainability in advertising', 'influencers, bloggers, vloggers' as well as a 'long-term initiative to improve the health of all Austrian residents'). All three areas deserve information and awareness campaigns.

3.6 Evaluation of the measures and duties of conduct under the Austrian Communication Platforms Act pursuant to Art. 8 Par. 2a KoPI-G

3.6.1 General information

3.6.1.1 The Austrian Communication Platforms Act

The Federal Act on Measures to Protect Users on Communication Platforms (Communication Platforms Act, KoPI-G), Federal Law Gazette I No. 151/2020, came into force in Austria on 1 January 2021 as an important cornerstone for a package of measures by the Austrian federal government aimed at combating hate crime, with service providers of communications platforms subject to the Act granted a transitional period of three months to implement the legal requirements, until 31 March 2021 (see Art. 14 KoPI-G). The KoPI-G was essentially modelled on the German Network Enforcement Act (NetzDG) as well as the French law to combat hateful content on the internet ("Loi Avia", now termed "Loi confortant le respect des principes de la République").

The explanatory notes to the government bill (29/ME 27th legislative period) state the main aim of the law as follows:

"The central reason behind drafting this bill is the fact that, in addition to the benefits of the internet and social media, there is also a worrying development that these new technologies and communication channels have established a new form of violence, and that hatred on the internet is increasing in the form of insults, public naming and shaming, misinformation and even threats of violence and murder. The attacks are predominantly based on racist, xenophobic, misogynistic and homophobic grounds. This finding is confirmed by the annual ZARA Racism Report, and with respect to women is also confirmed by a study from 2018 commissioned by the Austrian Federal Chancellery (BKA) and the Ministry for Digital and Economic Affairs (BMDW). A total of 1,070 cases of online racist attacks were reported to the Austrian anti-racism association ZARA in the 2019 reporting year, with 51% of these attacks originating from Facebook users. However, violence does in principle occur on all of the online communication channels used.

One essential characteristic of hate on the internet is the often highly public and visible manner in which the violence is experienced, with this also described by those affected as being particularly stressful. In addition to the social consequences, experiencing online violence also has a psychological, emotional and psychosomatic impact on victims. Continued abuse, defamation and threats can affect self-esteem, cause fear and anxiety, make

people ill and even result in deaths. Almost one third of all those affected participate less in or withdraw from virtual public life after experiencing online violence. [...] This strategy is based on the two pillars of responsibility of communications platforms and victim protection, with this draft bill relating to ensuring the responsibility of communications platforms. [...]

As such, this draft bill aims in detail to provide the following:

- An effective and transparent notification procedure for handling content that violates criminal law
- An easily and consistently accessible notification option for users of communications platforms
- A review obligation for specific notices, with the potential for immediate deletion of defined content that violates criminal law, graded by level of detectability
- An obligation of communications platform operators to provide information to users
- A review facility for complaints regarding alleged unjustified deletion or failure to delete content
- An obligation to appoint a responsible officer
- Guaranteed accessibility and assurance that the duty of accountability is fulfilled
- A requirement on the part of communications platforms to report on how they handle notices of content violating criminal law
- Appropriate sanctions for breaches of the law"

Regulation (EU) 2022/2065 (Digital Services Act, or DSA below) came into force on 16 November 2022. It now regulates across the EU the obligations similar to those stated above, specified under national laws, which apply to service providers of such communications platforms.

3.6.1.2 Evaluation mandate

Art. 8 Par. 2a KoPI-G reads as follows:

"(2a) The supervisory authority shall evaluate the effectiveness of the measures and duties of conduct provided for in this Federal Act as well as related developments during the two preceding calendar years, within the framework of the activity report to be prepared for 2022 (Art. 19 Par. 2 of the KommAustria Act, KOG) and with the support of the complaints board.

The explanatory notes to this provision, inserted as an amendment in the second reading of the KoPI-G, state the following:

"The evaluation to be carried out two years after this Federal Act comes into force, and reflected in the activity report to be prepared by KommAustria pursuant to Art. 19 Par. 2 KOG (to be published in 2023 with respect to the 2021–2022 observation period), is aimed at gaining knowledge of the extent to which the measures provided for have contributed toward the legal policy objective of reducing the amount of illegal content (Art. 2 No. 8) on communications platforms. At the same time, this part of the report may be used to provide information to policy decision-makers in legislation and enforcement (the report must be submitted to the Austrian National Council as specified in Art. 19 Par. 4 KOG) on the suitability, accuracy and necessity of national measures in light of the expected relevant EU legal requirements (based on the Commission's proposal for a Digital Services Act in December 2020)."

This report fulfils the evaluation mandate specified by the law. It should be noted, however, that the length and informative value of the observation period need to be viewed as relative due to the following factors:

- The observation period is relatively short: communications platforms were only required to implement the law by 1 April 2021 due to the transition period (this also shortened to three months the reporting period for the second transparency report for 2021), yet the effectiveness of notification channels can only be assessed by looking at changes in figures over a longer period of time.

- In those cases where the communications platform did not immediately nominate an authorised correspondence recipient and where correspondence therefore needed to be delivered abroad, this proved to be a major obstacle in implementing the procedures (in Ireland for example, the country in which most of the large communications platforms are based, delivery with proof of delivery is not easily possible, while Ireland is also not a party to any related European administrative agreement).
- In addition, during implementation of the KoPI-G, applications for assessment were filed by the communications platforms to clarify whether they were actually subject to the act (Art. 1 Par. 5 KoPI-G); these applications were subject to review by higher courts. Major communications platforms were granted an injunction with suspensory effect or related proceedings had to be suspended because it was not possible to continue these with legal certainty.

In summary, in terms of the mandate to evaluate the act, it can therefore be stated that the measures specified in the KoPI-G will have more medium or long-term effect, due to the subsidiary role of a supervisory authority that only takes action in the event of systemic failure. Data on the amount of illegal content removed are only collected every six or twelve months, which means that only two or four reports were submitted respectively during the reporting period for each communications platform. The informative value of the data also depends on whether it is possible to compare the transparency reports, while in the short observation period it was not yet possible to adequately implement potentials for optimisation, for example with regard to the structure of the notification forms or any guidelines for the granularity of the transparency reports, measures which would have made it possible to compare the data provided across multiple platforms.

3.6.1.3 Supervisory structure

The regulatory approach of the act is essentially based on a concept that is not often found in Austrian legal tradition. It involves a system of co-regulation, which is based on the fact that the communications platform in principle takes and implements the measures aimed at achieving the law's objective, i.e. the prevention of (certain) illegal content by establishing notification channels, offering the possibility to submit complaints and implementing its obligation to remove such content. Supervisory measures by the regulatory authority only begin when there is a systemic failure of the precautions taken by the service providers, i.e. once the overall structure of the established system gives rise to an assessment that the specified legal objective cannot be achieved or that the desired results will not be achieved in the long term. An example here is Art. 9 Par. 5 KoPI-G, which specifies that where the complaints board (Art. 7 Par. 3 KoPI-G) submits at least five justified complaints with the complaints presented each month, the supervisory authority must first examine whether an intervention should take place by way of regulatory measures. However, the supervisory authority may also take action based on another assessment that allows it to assume systemic problems. Such an approach contrasts with the usual assessment or prosecution of individual breaches of the law. This aims to ensure that, in the interests of proportionality, regulation only interferes in a subsidiary manner with the communications platforms' commercial freedom and responsibility for their own actions, so that individual responsibility is reinforced. An effective system for identifying illegal content is also created through user participation and cooperation, since their notifications, which are submitted directly to the communications platform (and do not for instance have to be reported to an authority or a court), are an important source of information.

After exhausting all options offered by the communications platform's complaints structure, users can appeal to an external body such as the complaints board established at RTR (Art. 8 Par. 2 KoPI-G) to lodge a complaint about the notification system itself, in extension of the principle that removal is a direct matter for the service providers.²³

The responsibilities under the KoPI-G are exercised at KommAustria by an individual member (see Art. 13 Par. 4 No. 1 lit. n KOG) in accordance with the applicable allocation of duties.

²³ The complaint board report can be found in the annex.

3.6.1.4 Communications platforms falling under the KoPI-G

The KoPI-G is only aimed at the largest communications platforms used in Austria, in compliance with the principle of proportionality. It covers Austrian and foreign service providers that provide communications platforms with the aim of generating a profit. A communications platform falling under the KoPI-G (Art. 1 Par. 2 KoPI-G) is defined by the fact that its main purpose or one of its essential functions is to enable by means of mass circulation the exchange of messages and presentations with intellectual content in the form of speech, writing, sound or images between users and a larger group of other users. The act does not apply to service providers that do not meet the legal thresholds (fewer than 100,000 users on average and less than EUR 500,000 in sales revenues in the previous calendar year), or to online marketplaces or not-for-profit online encyclopaedias (Art. 1 Par. 2 No. 3 KoPI-G).

To ensure compliance with Directive 2010/13/EU as amended by Directive (EU) 2018/1808 (Audiovisual Media Services Directive), service providers of video-sharing platforms do not fall under the obligations under the KoPI-G with regard to audiovisual content ('broadcasts') and user-generated videos made available on the platforms.

The following communications platforms²⁴ were listed at the time of reporting in the directory to be maintained by the supervisory authority (Art. 1 Par. 6 KoPI-G):²⁵

Table 31: Directory of communications platforms

Service provider	Communications platform
Meta Platforms Ireland Limited	Facebook
Meta Platforms Ireland Limited	Instagram
LinkedIn Ireland Unlimited Company	LinkedIn
Pinterest Europe Limited	Pinterest
TikTok Technology Limited	TikTok
Twitch Interactive Inc.	Twitch
Twitter International Unlimited Company	Twitter
New Work SE	Xing
Google Ireland Limited	YouTube
Discord Inc.	Discord
Telegram FZ LLC	Telegram

²⁴ The directory does not list procedures that have not yet been completed and are still pending, and it is without prejudice to the procedures pending before the ECJ (Case C-376/22).

²⁵ The latest applicable version of the directory can be found (in German) at https://www.rtr.at/medien/service/verzeichnisse/KommunikationsKommunikationsplattformen/Verzeichnis_KommunikationsKommunikationsplattform.de.html.

3.6.1.5 Illegal content within the meaning of the KoPI-G

Illegal content within the meaning of the KoPI-G does not refer to any and all content that breaches a law; the situation is different with the DSA for instance, which as a horizontal legal act includes any kind of illegal content (see Article 3 (h) DSA). In accordance with the legal intention, the obligation to delete illegal content includes criminal offences that can generally be summarised as hate crimes, as well as child abuse in the form of child pornography, invoking terrorism and reactivation as used in reference to National Socialism.

The following offences are specifically fall under the obligation to delete content: coercion (Art. 105 of the Austrian Criminal Code (StGB), Federal Law Gazette No. 60/1974), dangerous threat (Art. 107 StGB), persistent stalking (Art. 107a StGB), continued harassment using telecommunications (Art. 107c StGB), alleged criminal offence previously dismissed by a court (Art. 113 StGB), insult (Art. 115 StGB), unauthorised image recording (Art. 120a StGB), extortion (Art. 144 StGB), defamation of religious teachings (Art. 188 StGB), pornographic depictions of minors (Art. 207a StGB), initiating sexual contact with underage persons (Art. 208a StGB), terrorist association (Art. 278b StGB), instructions for committing terrorist offences (Art. 278f StGB), incitement to commit and approval of terrorist offences (Art. 282a StGB), incitement to hatred and violence (Art. 283 StGB) as well as Art. 3d, Art. 3g or Art. 3h of the Act Prohibiting National Socialism, State Law Gazette No. 13/1945.

3.6.2 Measures applying to communications platforms

The KoPI-G basically defines three categories of measures to be imposed on communications platforms in order to ensure the objectives described above:

- Such aimed at identifying illegal content and the implementing user rights
- Such aimed at creating transparency in decision-making processes
- Such aimed at ensuring the availability of communications platforms

3.6.2.1 Identification and removal of illegal content

3.6.2.1.1 Previous practice of service providers

Like the examples from other countries already mentioned, the KoPI-G is essentially based on existing practices of communications platforms. Notification channels have been established based around the 'community standards', meaning the set of values imposed on users as a guideline for platform conduct. Community standards overlap to a large extent with national legal norms, although in some cases there are some important differences. Holocaust denial for instance, which is punishable under criminal law in Austria, did not until 2020 constitute on the Facebook communications platform a violation of the globally applicable community standards. Users would generally receive an automatically generated message after submitting notices, but were not necessarily informed of the result of the assessment by the communications platform or whether the content in question was actually deleted/blocked.

There are still a number of voluntary commitments by the major communications platforms at EU level, such as the "Code of countering illegal hate speech online"²⁶ However, the lack of satisfactory results from the last evaluation among other things have prompted the legislative initiative of the DSA.²⁷

26 Available at https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/combating-discrimination/racism-and-xenophobia/eu-code-conduct-countering-illegal-hate-speech-online_en.

27 Available at https://commission.europa.eu/system/files/2021-10/factsheet-6th-monitoring-round-of-the-code-of-conduct_october2021_en_1.pdf.

3.6.2.2 System requirements of the KoPI-G

Art. 1 KoPI-G specifies as its objective the “promotion of the responsible and transparent handling of users’ notifications of illegal content on communications platforms and the prompt handling of these notifications”. The notification process, which aims to ensure rapid and effective removal of illegal content on the communications platform, is considered in this respect to be key in combating illegal content.

Based on this and on the crucial role that users play in detecting illegal content, the requirement for communications platforms to devise a system for the submission of notifications by users (referred to below as ‘notification channels’) constitutes the core of the KoPI-G. The aim is to make it easy for a user to report illegal content to the communications platform. If the content is found to be illegal, the platform must remove it within certain time limits (depending on how ‘obviously’ illegal it is) in order to prevent further dissemination as soon as possible. The time limits depend on whether or not illegality is evident even to a layperson with no legal background and without any further investigation. If this is the case, the service provider must remove the content promptly within 24 hours. The time limit is seven days if any illegality can only be established by means of an in-depth review. The service provider must provide direct feedback to the user and must also inform the user of the result of the review, including whether the content will be removed or blocked, as well as the main reasons for the decision.

With respect to the notification procedure described above, the law provides for the mandatory establishment by the communications platform of a review procedure, whereby the ‘original’ decision can be contested by users within two weeks, both by the user who submitted the notice and by the user whose content was blocked/removed (referred to below as the ‘review procedure’). Reference has already been made to a potential subsequent arbitration procedure before the complaints board of RTR.

3.6.2.3 Effectiveness of the notification channels

The ease with which the technical functions designed for the implementation of these procedures can be found and managed, as specified in Art. 2 Par. 2 KoPI-G, is essential in determining whether users of the communications platform also actually make use of the notification channels provided. The practice, for instance, at one large communications platform in particular, where the notification channel pursuant to the KoPI-G is designed with functions that are difficult to find, has resulted in not a single notification being submitted. In contrast, where other communications platforms have designed their notification channels in a user-friendly manner, (just the) notifications filed pursuant to the KoPI-G numbered thousands in the comparable period.

The Act itself only indirectly specifies in Art. 3 Par. 2 KoPI-G which information the user must provide, specifically “the information required for the assessment”, with the option also given for the authority to define requirements by way of an ordinance specifying details of the notification process, in particular minimum standards for the notification forms used in this process. The authority has refrained from doing this for the time being in order to evaluate existing notification channels and to identify any best practices.

Two aspects are essential for low-threshold access to the notification option: firstly, a notification option needs to be available directly at the location of the respective post, and also a separate link, accessible directly via the menu on the same page, which leads to a notification form for submitting notifications in accordance with the KoPI-G. The form for providing grounds for the notice in accordance with the KoPI-G should require (with reference to the specific criminal offences falling under the KoPI-G) that the information reported is limited to the necessary minimum, including a brief summary of the facts also allowing the post (URL) to be located, as well as the reasons in short why the user believes that the issue in question should be classified as an offence under the KoPI-G. No strict requirements should be imposed in the way of either a precise classification under one of the provisions (see for example the difficulties in distinguishing between coercion, dangerous threat and persistent stalking) or providing legal grounds. Legal grounds, including the final classification under one of the offences, is a matter for the service provider, who must remove the relevant content depending on the situation. In any case, this ideal form of a notification option meets the requirement under Art. 3 Par. 2 KoPI-G:

setting up “a function that is easy to find, always available and easy to use”. In other words, requiring a large number of clicks before the user is actually able to submit a report and imposing strict requirements relating to grounds for the notice, or a highly formalised procedure for service provider queries, have a prohibitive effect and are therefore counterproductive for achieving the objective of removing illegal content (see explanatory notes on the Transparency Reports Ordinance).

It should be noted that two communications platforms provide notification channels that meet the requirements of Art. 3 Par. 2 in an exemplary manner. On the other hand, another communications platform did not record any notifications in accordance with the KoPI-G; this evidently correlates with the difficulty in accessing the notification channel.

KommAustria has previously refrained from using its authority to issue an ordinance under Art. 3 Par. 7 KoPI-G, in order to gain an overview of implementation of the legal provisions by the communications platforms and to ascertain best practices over an observation period, with this also measured by the number of notifications submitted (see section on transparency reports).

3.6.3 Transparency provisions under the KoPI-G

The provisions under Art. 4 KoPI-G are intended to take account of the principle of ensuring “control through transparency”. Service providers are required to prepare and publish a report on their actions in response to notices alleging illegal content. The information provided (see Art. 4 Par. 2 Nos. 1 to 8 KoPI-G in detail) should cover the efforts made by a service provider to comply with the legal requirements as well as the corresponding precautions taken internally within the company. Major communications platforms with more than one million registered users must report every six months, while smaller communications platforms are required to report annually.

Art. 4 Par. 3 KoPI-G requires the supervisory authority to issue an ordinance specifying more detailed provisions on the structure of the reports and the scope of the notification obligation, in order to ensure that the reports provide meaningful information and can easily be compared, with Art. 4 Par. 2 KoPI-G specifying the information that must always be provided in such a report. This legally defines the minimum statutory requirements for the reporting obligation applying to service providers subject to the KoPI-G. The requirements are then to be defined in more detail by the supervisory authority in terms of the structure and scope of the reports.

3.6.3.1 Transparency Reports Ordinance

The relevant KommAustria ordinance (Ordinance of the Austrian Communications Authority on the Structure of Reports and the Scope of Reporting Requirements of Service Providers, Transparency Reports Ordinance)²⁸ came into force on 1 October 2021 following a public consultation involving the main stakeholders.

According to the explanatory notes to the ordinance, the reports should aim to provide transparency on the handling of illegal content by the communications platforms. Information should be provided to the public and to the supervisory authority, regarding the actions that a service provider has taken to comply with its legal obligations. Ensuring comparability of the data and the granularity of these data is crucial, which is why policymakers have to this end requested the supervisory authority to issue more detailed provisions on the structure of the reports. The principle of comparability is also stated as being important, to allow benchmarks for the effectiveness of the implemented measures to be derived from reports.

28 Available (in German) at https://www.rtr.at/medien/aktuelles/veroeffentlichungen/Veroeffentlichungen/Verordnungen/Verordnung_Transparenzberichte_KoPIG.de.html.

Accordingly, the ordinance has specified the legal concepts of the KoPI-G as well as the principles applying to notification, depicting the notification channels, to the review procedures and not least the structure of the data.

3.6.3.2 Effectiveness of the transparency requirements

The transparency reports²⁹ now provide for the first time data directly from the communications platforms. These data are specific to Austria and can play a part in better understanding manifestations of hate in the local context. Such data were previously not available at all in many cases or were only available for the German-speaking countries as a whole, in the transparency reports from the communications platforms, which were prepared on a voluntary basis. Breaking down the notifications according to the offences alleged were committed through the notified content allows conclusions to be drawn regarding issues specific to a platform, and this also makes it possible to gain an overview of the forms of online hate crimes that occur more frequently in Austria. Differences can also be identified in the type and amount of illegal content on the various communications platforms

As already mentioned, the transparency reports also reveal the importance of ensuring a user-friendly structure for the notification channels, as is also evident in the charts showing the (number of) notifications.

It is typical for an initial assessment to be conducted to determine whether the notified content violates community standards (as must also be stated in the reports), regardless of whether the notice is filed in accordance with the KoPI-G. Any breach results in global deletion of the content since, as also mentioned, the community standards apply globally to the entire company or organisation.

The transparency reports also provide an overview of the numbers of staff at the communications platforms assigned to review the notifications. Here it is seen that the review of legal violations in accordance with the KoPI-G taking place at the second stage is conducted either by the in-house legal department, external lawyers or outsourced teams of lawyers. Service providers also hold regular training courses on this subject. The Transparency Reports Ordinance specifies that information must be given regarding whether support is offered in view of the extraordinary psychological stress involved in moderation activity; this was generally affirmed.

Fears were raised during the legislative process that the requirements to delete content would result in overblocking. It is important to note of course that community standards already require the service provider to remove any adverse content, so this problem cannot be limited exclusively to regulatory intervention. Any type of deletion or blocking of a user contribution, especially on a communications platform with a large number of users, could in fact potentially constitute interference with the freedom of expression under Article 10 of the ECHR, which is why restraint is required here, but restraint is in any case considered the highest objective according to established community standards. Reference can be made here to the service provider Meta, which has created its own external body to review its moderation decisions relating to community standards. This arrangement provides the option of subsequently reviewing selected cases with respect to freedom of expression (Oversight Board).³⁰

The relationship between automated processes and (human) moderation plays a major role, not least in relation to freedom of expression. This aspect was also queried as part of the Transparency Reports Ordinance, but the communications platforms were not very forthcoming in this regard. No precise details were generally provided, apart from a general indication that both processes were used to remove illegal content. Moderation is generally more suitable for contextualising posts and avoiding any resulting overblocking. On the other hand, AI-driven processes can prevent the dissemination (or provision) of illegal content on a wider and more effective basis.

29 Available (in German) at https://www.rtr.at/medien/was_wir_tun/KommunikationsKommunikationsplattformen/Rechtsaufsicht/Berichtspflichten/Transparenzberichte.de.html

30 Available at <https://www.oversightboard.com/>.

One lesson learned from the requirements on the communications platforms for mandatory transparency reporting is that requirements should be worded with a high granularity, in other words precisely, and that the requirements should be as legally enforceable as possible, in order to ensure informative value with respect to the internal processes of the companies concerned, as well as comparability of the data across communications platforms. This means that maximum benefit can be derived from the knowledge gained, particularly with regard to an analysis of the risk potential for the respective communications platforms. This notion is also reflected in Article 34 of the DSA, which requires very large online communications platforms and very large online search engines to identify and address the systemic risks arising from the design or operation of their services and the associated systems, including algorithmic systems, or the use of their services.

3.6.3.3 Data analysis illustrated using information from Meta (Facebook)³¹

It should be noted first that when interpreting the figures for the first half of 2021, we need to take into account the low level of awareness of the notification options under the KoPI-G, while the second half of the year is a short reference period of three months. This puts into perspective the strong increase in notices of all offences listed in 2022.

Table 32: Notices in the evaluation period

Illegal content	Notices I. TR ³² 21	Notices II. TR 21*	Notices I. TR 2	Notices II. TR 22
Coercion (Art. 105 StGB)	889	681	1,991	1,902
Dangerous threat (Art. 107 StGB)	1,026	910	2,513	2,128
Persistent stalking (Art. 107a StGB)	1,323	936	2,749	2,351
Continued harassment using telecommunications (Art. 107c StGB)	2,018	1,297	3,478	3,557
Alleged criminal offence previously dismissed by a court (Art. 113 StGB)	578	471	1,570	1,468
Insult (Art. 115 StGB)	3,352	2,936	7,481	5,951
Unauthorised image recording (Art. 120a StGB)	1,091	752	2,447	2,388
Extortion (Art. 144 StGB)	1,035	742	2,471	2,291
Defamation of religious teachings (Art. 188 StGB)	862	548	1,986	1,797
Pornographic depictions of minors (Art. 207a StGB)	570	395	1,506	1,584
Initiating sexual contact with minors (Art. 208a StGB)	754	457	1,538	1,605
Terrorist offences (Art. 278b, 278f, 282a StGB)	1,266	962	4,445	3,831
Incitement to hatred and violence (Art. 283 StGB)	2,624	2,417	6,386	4,898
National Socialist reactivation (Art. 3d, Art. 3g or Art. 3h of the Act Prohibiting National Socialism)	1,182	1,464	3,404	2,322

31 As regards the applicability of the KoPI-G to the service provider Meta, reference should be made to the pending procedures before the ECJ (Case C-376/22).

32 TR = Transparency Report

Table 33: Removals/deletions during the evaluation period

Removals I. TR 21	Removals II. TR 21*	Removals I. TR 2	Removals II. TR 22
95	71	156	205
165	154	292	249
192	163	301	241
364	226	434	458
61	54	145	136
602	638	1,391	999
145	99	232	315
97	69	179	245
80	48	181	168
132	82	200	286
187	89	163	217
114	94	289	243
309	233	669	564
170	184	388	283

Table 34: Processing time of notices with subsequent deletion/blocking illustrated with reference to TR II 22

Illegal content	24 h	72 h	7 d	> 7 d
Coercion (Art. 105 StGB)	204	1	0	0
Dangerous threat (Art. 107 StGB)	243	3	2	1
Persistent stalking (Art. 107a StGB)	233	3	4	1
Continued harassment using telecommunications (Art. 107c StGB)	446	6	4	1
Alleged criminal offence previously dismissed by a court (Art. 113 StGB)	130	3	1	2
Insult (Art. 115 StGB)	973	10	15	1
Unauthorised image recording (Art. 120a StGB)	308	4	2	1
Extortion (Art. 144 StGB)	243	2	0	0
Defamation of religious teachings (Art. 188 StGB)	160	3	5	0
Pornographic depictions of minors (Art. 207a StGB)	278	6	2	0
Initiating sexual contact with minors (Art. 208a StGB)	212	2	3	0
Terrorist offences (Art. 278b, 278f, 282a StGB)	238	1	4	0
Incitement to hatred and violence (Art. 283 StGB)	537	8	14	5
National Socialist reactivation (Art. 3d, Art. 3g or Art. 3h of the Act Prohibiting National Socialism)	242	17	18	6

The following evaluation and diagram form is intended to illustrate which breaches are deleted most often, also in relation to the number of notices filed, as well as the time required to assess whether a breach has occurred.

Table 35: Summary evaluation of breaches on platforms for the period 30 June 2022–31 December 2022

Rank	Offences most frequently notified by users (in descending order)
1	Insult (Art. 115 StGB)
2	Incitement to hatred and violence (Art. 283 StGB)
3	Terrorist offences (Art. 278b, 278f, 282a StGB)
4	Continued harassment using telecommunications (Art. 107c StGB)
5	Unauthorised image recording (Art. 120a StGB)
6	Persistent stalking (Art. 107a StGB)
7	National Socialist reactivation (Art. 3d, Art. 3g or Art. 3h of the Act Prohibiting National Socialism)
8	Extortion (Art. 144 StGB)
9	Dangerous threat (Art. 107 StGB)
10	Coercion (Art. 105 StGB)
11	Defamation of religious teachings (Art. 188 StGB)
12	Initiating sexual contact with minors (Art. 208a StGB)
13	Pornographic depictions of minors (Art. 207a StGB)
14	Alleged criminal offence previously dismissed by a court (Art. 113 StGB)

Rank	Offences most frequently removed from platforms Offences (descending order)
1	Insult (Art. 115 StGB)
2	Incitement to hatred and violence (Art. 283 StGB)
3	Continued harassment using telecommunications (Art. 107c StGB)
4	Unauthorised image recording (Art. 120a StGB)
5	Pornographic depictions of minors (Art. 207a StGB)
6	National Socialist reactivation (Art. 3d, Art. 3g or Art. 3h of the Act Prohibiting National Socialism)
7	Dangerous threat (Art. 107 StGB)
8	Extortion (Art. 144 StGB)
9	Terrorist offences (Art. 278b, 278f, 282a StGB)
10	Persistent stalking (Art. 107a StGB)
11	Initiating sexual contact with minors (Art. 208a StGB)
12	Coercion (Art. 105 StGB)
13	Defamation of religious teachings (Art. 188 StGB)
14	Alleged criminal offence previously dismissed by a court (Art. 113 StGB)

Rank	Longest processing time required to classify breaches (in descending (descending order))
1	National Socialist reactivation (Art. 3d, Art. 3g or Art. 3h of the Act Prohibiting National Socialism)
2	Incitement to hatred and violence (Art. 283 StGB)
3	Alleged criminal offence previously dismissed by a court (Art. 113 StGB)
4	Defamation of religious teachings (Art. 188 StGB)
5	Persistent stalking (Art. 107a StGB)
6	Insult (Art. 115 StGB)
7	Dangerous threat (Art. 107 StGB)
8	Terrorist offences (Art. 278b, 278f, 282a StGB)
9	Initiating sexual contact with minors (Art. 208a StGB)
10	Continued harassment using telecommunications (Art. 107c StGB)
11	Unauthorised image recording (Art. 120a StGB)
12	Pornographic depictions of minors (Art. 207a StGB)
13	Extortion (Art. 144 StGB)
14	Coercion (Art. 105 StGB)

When classifying deleted content, it must also be taken into account that Facebook, like most other communications platforms, in a first step checks whether the notified content breaches community standards (even if the report is made through the KoPI-G notification channel) because it is then removed in any case due to violation of the terms and conditions of use. If the content breaches community standards, it is removed from the Facebook communications platform worldwide. If the reported content does not breach community standards, it is then examined as to whether the notified content breaches the corresponding provisions of Austrian criminal law listed in the KoPI-G. If the notified content is deemed by Facebook to be illegal within the meaning of the KoPI-G, access to the content is then blocked in Austria.

Compared with mere notification under community standards, the requirements for the design of notification channels set out in the KoPI-G represent a major improvement, as both the notifying user and the user whose content was removed after notification must be informed about the reasons for the content moderation.

In general, it has been shown – unsurprisingly – that on most communications platforms the offence of insult is most frequently notified and related content also removed. In relation to other illegal content, however, communications platforms vary significantly.

As mentioned above, it is clear that the actual structure of the notification channels is decisive for their effectiveness. A balance must be struck between: a prohibitively structured notification channel, which requires average users to provide legal information that they naturally cannot provide – and also do not really need to provide, since the legal classification and the resulting obligation to delete is the responsibility of the provider of the communications platform; and a simple notice alleging breach of law, which does not require any further justification, whereby the protective function for the user must be taken into consideration. In this context, as mentioned above, it must be taken into account that even from a legal point of view it can be difficult to distinguish between related criminal offences targeted by the KoPI-G (e.g. between coercion and dangerous threat). Therefore, where a notice is incorrectly attributed to one of the offences by the user but constitutes a another offence listed in Art. 2 No. 8 KoPI-G, and the notice not further dealt with by the service provider, the latter does not fulfil the intended legal obligation (cf. Art. 3 Par. 3 KoPI-G, which does not base the obligation to remove content on any specific offence expressly listed in the KoPI-G). It is also important to see in this case that the service provider is unconditionally obliged to take action against illegal content, otherwise the liability privilege set out in Directive 2000/31/EC would no longer apply due to the service provider's actual knowledge of the case.

Facebook's transparency report for the second half of 2022 states that in the period between 1 July 2022 and 31 December 2022, 17,187 KoPI-G notices were received, reporting a total of 16,481 items of content. Beyond this, 2,741 KoPI-G notices led to the deletion or blocking of content. This makes for a total of 3,348 deleted or blocked items of content. Of these 3,348 deleted or blocked items, 3,263 were deleted globally because of a breach of community standards. In contrast, 85 posts would not have breached community standards, but were blocked in Austria because of a violation of a provision of Austrian criminal law as specified in the KoPI-G. This may explain why, although the vast majority of assessments and removals took place within 24 hours, longer processing times beyond 24 hours were sometimes necessary, especially for assessing Art. 3d, Art. 3g or Art. 3h of Act Prohibiting National Socialism. It is another reason why it seemed important to oblige communications platforms such as Facebook, whose community standards are strongly oriented toward US legal concepts, to set up a system to check content for Austrian users against national legislation.

Finally, it should be mentioned that in order to draw meaningful conclusions overall from the information given by the service providers, other important factors must also be taken into account, such as the varying user demographics and the functioning in detail of communications platforms, factors which essentially determine what content is shared.

3.6.4 Responsibility of communications platforms in Austria

3.6.4.1 Legal requirements

In accordance with Art. 5 KoPI-G, service providers must appoint a responsible officer and an authorised correspondence recipient and inform KommAustria accordingly. This provision was intended to address problems with legal enforcement, especially with regard to document service to and communication with the responsible officer in the case of communications platforms not established in Austria. The responsible officer should be a contact person with the necessary authority to comply with the provisions of this Federal Act, against whom subsidiary penalties can be imposed in cases of non-compliant implementation.

Requiring an authorised correspondence recipient is to facilitate document service in Austria, so that official documents, documents relating to criminal or civil proceedings, and documents from the public prosecutor that are addressed to the service provider can be effectively served through that recipient.

Eight of the eleven communications platforms covered by the KoPI-G have appointed authorised correspondence recipients.³³ Five have appointed responsible officers.³⁴ Two of the three service providers (all located in countries outside the EU) who have neither authorised correspondence recipients nor responsible officers, did not respond to official letters or other initiatives to contact the authorities. Documents relating to the initiation of proceedings for the imposition of fines were subsequently served to the courts in lieu of an address, as provided for in the KoPI-G in such cases (Art. 6 Par. 1 in connection with Art. 10 Par. 1 and Par. 2 KoPI-G). Currently, procedures are being examined with regard to third-party debt enforcement, as envisaged in Art. 6 Par. 4 KoPI-G.

Criminal proceedings pursuant to Art. 10 KoPI-G were initiated with regard to those service providers who did not appoint a responsible officer. However, these had to be suspended due to the above-mentioned declaratory proceedings initiated by these service providers, which are currently the subject of proceedings for a preliminary ruling before the ECJ (cf. Case C-376/22).

33 https://www.rtr.at/medien/was_wir_tun/KommunikationsKommunikationsplattformen/Rechtsaufsicht/verantwortlicherBeauftragter/veroeffentlichte_Zustellungsbevollmaechtigte.de.html

34 https://www.rtr.at/medien/service/verzeichnisse/KommunikationsKommunikationsplattformen/Verzeichnis_KommunikationsKommunikationsplattform.de.html

3.6.4.2 Effectiveness of the requirements to appoint recipients

Communications platforms mainly appointed law firms in Austria to be their authorised correspondence recipients. The institution of the authorised correspondence recipient has proved to be a significant facilitator for reaching communications platforms in court proceedings, as well as in procedures conducted by the supervisory authority.

Since delivery to the authorised correspondence recipient is only intended for official, criminal and civil court documents as well as documents from the public prosecutor's office, documents sent by the complaints board set up at RTR-GmbH were formally received, if at all, without prejudice to any future cases.

However, there are still considerable hurdles in enforcing the law against service providers from countries outside the EU who, in principle, avoid regulation for reasons of corporate policy, and it will have to be observed whether the DSA will lead to improvements here. It should be noted, however, that the threshold for the existence of very large (online) communications platforms or search engines subject to special obligations and falling under the jurisdiction of the European Commission is set very high at 45 million active users, and that smaller (online) communications platforms with a high risk potential with regard to the provision of illegal content will be able to choose in which Member State they appoint their legal representative (Art. 13 DSA), which they are actually obliged to do.

3.6.5 Sanctions specified in the KoPI-G

The KoPI-G provides for a broad range of intervention options in the event that a service provider fails to comply with the basic legal obligations or if a structural failure with regard to the functioning of the intended notification system is identified. This ranges from supervisory procedures (Art. 9 KoPI-G), where the service provider is obliged to remedy the identified deficiency, to fines (Art. 10 KoPI-G). The institution of service to the courts in lieu of address (Art. 6 Par. 2 KoPI-G) and third-party debt enforcement also facilitate the authorities in conducting procedures, especially in the case of alleged offences outside Austria. The exclusion of the suspensory effect of appeals against supervisory proceedings, or in particular against fines pursuant to Art. 11 KoPI-G, also reinforces the deterrent effect of these potentially high penalties. However, the short period of time since the KoPI-G came into force, and above all the appeals filed against the applicability of the KoPI-G, especially by major US service providers, did not fully allow for a 'test' of this broad set of instruments and in particular the imposition of a fine.

At this point, it should be mentioned that the application of a co-regulatory system such as that of the KoPI-G has of course also been a novelty from the point of view of the authorities, as the system provides for intervention by the authorities only in the event of systemic failure of the measures taken by the communications platforms themselves to implement the legal objectives. In view of the very limited scope of the KoPI-G, applying to a few large communications platform providers, and the systemic approach, it seemed appropriate to go beyond the usual procedural steps. This included a regular exchange with these service providers on the one hand, and with civil society or its committed representatives on the other hand, in particular about manifestations of hate on the internet as well as about platform-specific challenges, with special consideration of the victims' perspective.

3.6.6 Conclusions

In summary, with regard to the objectives of the KoPI-G and the transition to EU-wide regulation within the framework of the DSA, the following central points regarding the authorities' handling of the KoPI-Gs can be preliminarily highlighted.

- **Improvement of user protection thanks to mandatory notification channels**
 First and foremost, one major achievement has been that almost all communications platforms subject to the KoPI-G have established notification channels for users to report criminal offences specified in the KoPI-G (in particular dangerous threats, unauthorised image recordings, terrorist offences, incitement to hatred and violence, NS reactivation), while internal and external complaint mechanisms now exist. This has resulted in an effective instrument for rapidly identifying and removing at least plainly illegal content, and is thus making an important contribution to reducing hate crimes on the internet.
- **Establishment of mandatory contact points for large companies based outside the EU**
 Establishing the functions of the authorised correspondence recipient and the responsible officer has significantly simplified procedures, above all for the judiciary, but also for the supervisory authority. As already mentioned, it is difficult to serve correspondence in a legally secure manner to companies that are based abroad, especially in Ireland; the possibility of serving to a person/firm registered in an Austrian system for electronic document service is a major step in making it easier to deal with communications platforms, in simplifying the procedures, and in accelerating the prosecution of hate crimes.
- **Increased transparency of the activities of large communications platforms in Austria**
 The transparency reports pursuant to Art. 4 KoPI-G provide a first insight into the activities and measures of the communications platforms in Austria (including staffing and proportion of human moderation) as well as a partial overview of the numbers and types of offences occurring on communications platforms.
- **Binding nature of the measures taken by the service providers**
 For some time now, major service providers have offered notification channels of their own accord and in compliance with their own community standards, and they have been publishing transparency reports. However, these measures have proven insufficient, as evidenced by various national legislative initiatives and the adoption of the DSA. This is why the KoPI-G was adopted, as a national measure to provide supervision by an independent regulatory authority which can take remedial action against structural failures of the service providers in the event that the communications platform's system fails. It should also be taken into account here that, from the perspective of the authorities, in enforcing these national measures certain learning effects have been achieved, relating to how to deal with transnationally operating communications platforms and how to assess systemic risks. These may also be useful in preparation for the DSA.
- **Compatibility with Directive 2000/31/EC (E-Commerce Directive) and Directive (EU)2018/1808**
 As is well known, the applicability of the KoPI-G to service providers domiciled in other Member States of the European Union (predominantly subsidiaries of US companies) has been questioned by the parties concerned on the basis of the principle of establishment set out in Art. 3 of the aforementioned Directive. In the case of two video-sharing platform service providers, applicability has been questioned on the basis of the AVMS Directive. As mentioned, the issue is currently the subject of proceedings before the ECJ. A decision will very likely be made in the second half of 2023. Despite exhausting all legal possibilities to clarify this legal issue, these service providers have implemented essential obligations of the KoPI-G.

- **Key importance of notification channels usability**
Notification channels are not only a core issue of the KoPI-G, but also a central instrument in the fight against illegal (hate) content published online (equally in future under the DSA). However, the purpose of these provisions as a safeguard is only achieved if the system is as low-threshold as possible, and easy to find and use.
- **The issue of overblocking**
Before the KoPI-G was adopted there were fears that the service providers would out of legal prudence presumably try to delete more postings than necessary, leading to overblocking of user content. Based on the information in the transparency reports, this has not turned out to be the case. One reason is that the KoPI-G provides for a user-controlled remedy, allowing for objections to deletions (Art. 3 Par. 4 No. 2 KoPI-G). The possibility to request a review procedure, on the one hand by the user whose posting has been blocked, and on the other hand by the user who has submitted the notice, ensures user-generated control over the removal.
- **Use of automated methods and content moderation**
Service providers have pointed out that automated methods of enforcing community standards have not yet advanced to the point where they can be relied upon exclusively. Reference is often made to the need for contextualisation (for instance with respect to satire). In addition, they claim to pay special attention in internal training to areas that are particularly relevant to freedom of expression, such as art, satire, parody, memes and political statements, in order to counteract tendencies of overblocking and over-moderation. In general, therefore, from the current perspective, a mix of these intervention options should be applied.

Annex: Report by the RTR complaints board

1. Awareness of the KoPI-G:

One special challenge was posed by the need to inform users about the cases for which the complaints board was actually responsible.

Users can address the complaints board with alleged deficiencies in the notification procedure as referred to in Art. 3 Par. 2 No. 1 to 3 KoPI-G, or in the review procedure referred to in Art. 3 Par. 4 KoPI-G.

Some complaints did not involve illegal content within the meaning of the KoPI-G, so these notices were not dealt with by the platforms. Since such cases did not involve any of the criminal offences listed in Art. 2 No. 8 KoPI-G, RTR's complaints board was not competent.

It is still difficult to explain to users that there is content which is impermissible, but which is not illegal content within the meaning of the KoPI-G.

Many complaints dealt with 'hacked accounts,' for which most platforms have already set up their own notification channels.

2. Authorised recipient:

Excerpt from Art. 5 KoPI-G:

Responsible officer and authorised correspondence recipient

Art. 5 (1) Service providers shall appoint a person who fulfils the prerequisites in accordance with Art. 9 Par. 4 of the Administrative Penal Act (VStG) 1991, Federal Law Gazette No. 52/1991.

This person shall

- 1. ensure 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 necessary to cooperate with authorities and courts, and*
- 4. have the resources required to perform their duties.*

No. 3 stipulates that the authorised correspondence recipient must have the necessary knowledge of the German language to cooperate with authorities and courts.

As the complaints board established by law in accordance with the KoPI-G, RTR assumes that in this case it performs duties that fall under No. 3. Some platforms, on the other hand, insisted when authorising their correspondence recipient that RTR's duties did not fall under Art. 3, which would ultimately mean that the complaints board would have to serve its conciliation proposals to the platform's headquarters and not to the appointed authorised correspondence recipient.

Other platforms have been cooperative in this regard, despite concerns about the applicability of No. 3 to the complaints board, and have accepted document service, but repeatedly emphasise that the authorised correspondence recipient was not obliged to accept the letters and that this was done as a 'courtesy.'

3. Cooperation with platforms:

Communication and cooperation between the complaints board and the platforms worked quite well in the beginning. Despite the proceedings before KommAustria on the question of the applicability of the KoPI-G of the communications platforms, many nevertheless accepted the complaints procedures.

After good cooperation in the beginning, Twitter withdrew and in 2022 refrained from all communication with the complaints body and did not get involved in a single procedure.

There have only been two complaints about Google in the two years since the KoPI-G came into force. Both procedures concerned the same case, and the complaints board was not competent because they concerned videos on YouTube. In accordance with Art. 1 Par. 4 KoPI-G, service providers of video-sharing platforms do not fall under the obligations of the KoPI-G with regard to broadcasts and user-generated videos made available on such platforms. Due to the seriousness of the matter, despite the fact that it was not competent, the complaints board officially sent description of the facts of the case to the contact person at Google, requesting a review. As a result, the matter was again reviewed and the postings in question were removed.

Cooperation with Meta generally worked well; there was sufficient exchange with the contact persons at Meta regarding both platforms. Concerns about further cooperation could be discussed directly. Due to the seriousness of the case referred to, the complaints board wanted to officially send two notices to Meta via the contact persons despite a lack of competence, but the contact persons are not authorised to accept messages on behalf of Meta. Therefore, the complaints board would have had to send this correspondence for reconsideration to Meta by regular mail, with the only other option being to use the notification channels of the respective platform.

4. Obligation to inform about involvement in a complaints procedure:

Pursuant to Art. 3 Par. 2 No. 3 last sentence KoPI-G, the platforms are obliged to inform users of the possibility of a conciliation procedure under the RTR complaints board.

Some platforms that have established notification channels in accordance with the KoPI-G have fulfilled their obligation to inform users; Meta is an example here, which has done so for Facebook and Instagram.

However, experience with complaints to date has shown that users often do not concern themselves with the prerequisites for participating in complaints procedures. Thus, as soon as they read RTR-GmbH in the notices on the platforms, they immediately file a complaint. This may also be one of the reasons why RTR's complaints board turned out not to be competent for many complaints submitted.



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Activities of RTR: department Media Division

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04 Activities of RTR: department Media Division

4.1 Complaints board annual report

4.1.1 Summary for 2022 – the four types of complaints procedure

A total of 35 complaints procedures were initiated in 2022, with all of these cases involving complaints about communications platforms.

Table 36: Complaints procedures initiated in 2022

Topic	Number of complaints initiated
Communications platforms	35
Video sharing platforms	0
Major online platforms	0
Accessibility problems	0

4.1.1.1 Process flow for a conciliation procedure

Conciliation procedures are initiated at the request of end users.

A written request must be submitted in German and, if feasible, using the e-government application. Procedures are handled using a digital process.

Users can apply to the complaints board in the cases listed below. The dispute must relate to one of the following:

- a. A reporting and/or review procedure utilised by a communications platform (disputes between a user and a service provider)
- b. A reporting and assessment system, the deployed parental control system, the tools used for marking commercial audiovisual communications or the complaints system utilised by a video sharing platform (disputes between a user and a service provider)
- c. Accessibility problems affecting the content of an audiovisual media service

Any dispute must directly involve Austrian (domestic) users.

If the conciliation request is unclear or inconsistent, or lacking important documents or statements, the complaints board has the option of granting the applicant a grace period of at least five working days to submit a revised application or to provide any such documents or statements that may have been omitted.

Participation in the complaints procedure is voluntary.

The complaints board is tasked with mediating between the parties and identifying satisfactory solutions.

As per the explanatory notes to the government bill,³⁵ items addressed may include:

- Proposed solutions for accelerating the procedure at the platform provider
- Guidance on usability requirements
- Requirements relating to decisions taken by service providers to classify or handle a specific content item, e.g.:
- Level of information detail
- Content of such items

To date, cases with successful outcomes have been decided in favour of the complainant.

4.1.1.2 Procedural rules

The complaints board's procedural rules were revised in 2022 and can be accessed from the following link on the RTR website (in German): https://www.rtr.at/medien/aktuelles/veroeffentlichungen/Veroeffentlichungen/Sonstiges/verfahrensrichtlinien_beschwerdestelle/Verfahrensrichtlinien.de.html

The procedural rules must be aligned with the basic principles of Art. 6 Par. 2 and Par. 6 No. 1, Art. 7 Par. 1, Art. 8 Par. 1 No. 1 and 2, and Par. 2 of the Alternative Dispute Resolution Act (AStG, Federal Law Gazette I No. 105/2015).

4.1.1.3 Complaints procedures relating to communications platforms

Pursuant to Art. 3 Par. 1 of the Communications Platforms Act (KoPI-G), users can address the complaints board with alleged deficiencies in the reporting procedure as referred to in Art. 3 Par. 2 No. 1 to 3 KoPI-G, or in the review procedure referred to in Art. 3 Par. 4 KoPI-G.

While most of the complaints received by the complaints board did indeed concern communications platforms as defined by the KoPI-G, the body itself was not in fact competent in most cases.

Four cases did not in fact relate to communications platforms within the meaning of the KoPI-G and should not have been submitted to the complaints board. Accordingly, the complaints board dismissed these cases due to a lack of competence.

In the case of complaints involving 'hacked' accounts (as characterised by the complainants), the complaints board, following a careful review, also dismissed these cases due to a lack of competence.

Two complaints involved the same videos on a communications platform that also constitutes a video sharing platform within the meaning of the Audiovisual Media Services Act (AMD-G). Pursuant to Art. 1 Par. 4 KoPI-G, providers of video sharing platform services (Art. 2 No. 12) are exempted from the obligations relating to broadcasts (Art. 2 No. 9) and user-generated videos (Art. 2 No. 7) imposed by the Communications Platforms Act. These two complaints were therefore dismissed. Despite lacking competence, the board nonetheless reported the case in detail to the service provider, who in the end took down the videos in question because of the seriousness of the issue.

³⁵ Explanatory notes to government bill 463, enclosure to stenographic record of National Council, 27th legislative period, 11.

In some cases, the individuals filing complaints were asked to submit additional documentation or information. These requests were not always met and the procedures were therefore dropped after the expiry of the deadline.

Some procedures were discontinued as a result of communication platform providers declining to participate in the complaints procedure.

Five procedures were concluded with positive outcomes in which complainants achieved at least some of their intended goals.

The complaints board also contacted the Documentation Centre of Austrian Resistance (DÖW) since at least one case involved issues falling under the law prohibiting national-socialist activities.

4.1.1.4 Complaints procedures relating to video sharing platforms

The provisions of Art. 54c ff. of the AMD-G apply to video sharing platforms run by providers domiciled in Austria as defined by Art. 3 No. 3 of the E-Commerce Act (ECG).

In 2022, no complaints were received concerning video sharing platforms.

4.1.1.5 Complaints procedures relating to accessibility issues

During the reporting period, the complaints board received no complaints alleging a lack of accessibility of content provided by audiovisual media services.

4.1.1.6 Complaints procedures relating to major online platforms

The amended 2022 Copyright Act (UrhG) entered into force in full on 1 March 2022, thereby assigning new competences to both KommAustria and the RTR Media Division.

As a result of these new provisions, platform providers are now responsible for their users' copyright infringements if providers structure the content uploaded by their users, which is typically handled by algorithms, and advertise such content.

Commercial platforms must make efforts to protect copyright holders' licences, i.e. to seek content authors' consent, and must set up effective filtering and monitoring systems. Providers of major online platforms are liable to pay damages to authors whose copyrights are infringed upon if unable to provide verifiable evidence of the following (subject to the principle of proportionality):

- All efforts were taken to obtain the content author's consent.
- All efforts were taken to ensure that content protected by copyright is not made available.
- After receiving adequately substantiated notification from the copyright holder, the content made available without authorisation was blocked or removed from the online platform without undue delay, with any future uploading prevented.

Providers of major online platforms must now comply with a range of duties that are designed to avoid any risk of 'chilling effects' on freedom of speech through the implementation of filtering and monitoring systems. As one example, platforms of this kind must set up an effective internal complaints system for users whose content has been blocked or removed from the platform as a result of copyright concerns.

The system is to be effective and respond promptly, meaning:

1. Users can submit their complaints by means of online platform features that are simple to identify, always available and easy to use.
2. Complaints must be processed without undue delay.
3. Statements from the respondent to the complaint must be obtained without undue delay and notified to users as soon as possible.
4. Related decisions are to be subjected to a review conducted by a human appraiser and users are to be informed of the results of this review without undue delay.
5. Procedures are generally to be concluded within two weeks of the complaint submission date.

Furthermore, the filters and monitoring systems that providers have put in place are to be defined and configured so as to avoid overblocking – i.e. the blocking or removal of content whose use is indeed allowed by copyright law (as a result of fair use provisions, for example).

Providers of major online platforms must also offer users appropriate online forms and guidance such that permit these users to state, before or while uploading the content, that the intended use is permitted. Such permitted uses include caricature, parody, pastiche, or citation for the purpose of criticism or review, for example. In allowing users to issue such statements, providers must also take care to prevent the misuse of this kind of ‘pre-flagging’.

Furthermore, providers of major online platforms must provide users and user groups with relevant details of the functionality of the filtering and monitoring measures they have adopted. This information must be easy to find on the website and provided in their terms of service.

The amendment to the act establishes KommAustria as the supervisory authority for platforms domiciled in Austria. Pursuant to Art. 89c UrhG, KommAustria is not only assigned oversight of providers of major online platforms regarding compliance with obligations pursuant to Art. 89 Par. 2, Par. 4 sent. 2 and Par. 5 UrhG, but is also assigned oversight of these providers. The aim here is to ensure that they do not apply measures that act to systematically and substantially restrict the availability of works or other protected items uploaded by users in cases where such items do not infringe copyright or a related property right.

In the event of an unjustified block or removal of their uploaded content, users must first contact the platform itself, however, and make use of its internal complaints procedure. If no satisfactory outcome is obtained, users may then involve the complaints board. If the conciliation procedure is also unsuccessful and a systemic failure on the part of the platform provider is identifiable from one or more complaints directed at them, KommAustria may issue orders aimed at establishing legal compliance on the part of the provider. As a last resort, KommAustria may levy fines of up to EUR 1 million on providers.

No complaints were received in relation to major online platforms during the period under review.

4.1.2 Events

During the reporting period, the event ‘Media Literacy – Orientation in the Digital Transformation’ was organised jointly with KommAustria.

On 29 November 2022, two panels composed of industry experts and authors of the media literacy report discussed the wide-ranging aspects of this topic. The guest speakers also took the opportunity to share their professional experience and insights. The panellists were Charles Bahr, young entrepreneur and expert for Gen Z social media marketing, Ulrike Domany-Funtan, secretary general of fit4internet, Martin Fleischhacker,

managing director of the Wiener Zeitung media group, Sabine Frank, head of governmental affairs and public policy at YouTube/Google, Irina Oberguggenberger, member of the ORF's Young Audience Team, author and psychotherapist Lukas Wagner, and Sonja Ziegelwagner, head of media literacy at the Federal Ministry of Education, Science and Research.

See also [section 8.1.2](#) for details.

4.2 Management of funds and grants

4.2.1 Digitisation Fund

The Digitisation Fund is allocated EUR 0.5 million each year. The purpose of the fund is to promote digital transmission technologies and digital applications based on European standards relating to broadcasting. Funding is derived from those broadcasting fees which, while collected jointly with ORF programme fees, are primarily allocated to the federal budget.

4.2.1.1 DAB+ grants

This funding is to enable grant recipients to introduce regular digital radio broadcasting service, based on the DAB+ standard. The funding provided covers the planning, procurement and setup costs for technical infrastructure (technical broadcasting costs), or broadcasters' share of the fees they have to pay to cover the technical costs of broadcasting DAB+ radio programmes. The latter refers to the fees that multiplex operators charge to broadcasters of digital terrestrial radio stations for the technical transmission of radio programmes.

A total of 23 DAB+ stations received funding during 2022.

New funding guidelines for the awarding of grants from the Digitisation Fund to support the introduction of regular DAB+ service in 2022 (de minimis aid)

Following the expiry of the guidelines and completion of a market consultation, new funding guidelines duly entered into force on 15 March 2022. One of the most significant changes for the 2022–2024 funding period was the introduction of a degressive grant award process.

While funding remains focused on subsidising the costs of transmission for broadcasters of DAB+ stations, DAB+ station broadcasters who have already received four years of funding are now placed on a degressive funding track from 2022 onwards. This decision is in line with the principle, established back in 2017, that grants are intended as a type of start-up financing to enable broadcasters to launch new stations. The decision to adopt this degressive approach also arises from the fact that relevant programme content is also eligible for grants from the Private Broadcasting Fund. Accordingly, steps must be taken to minimise any preferential treatment of DAB+ broadcasters and FM broadcasters by funding provided to cover the technical costs of transmission. New broadcasters of digital-terrestrial stations or broadcasters who only introduced DAB+ stations at a later date, between 2018 and 2021, will receive four years of funding at the previous level.

4.2.1.2 Grant for a nationwide media and public relations project to promote the digital future of radio for everyone in Austria (funded until the end of 2022)

The Verein Digitalradio Österreich association submitted a candidate project to create financial incentives for consumers who become early adopters of terrestrial radio station reception.

This project aims to introduce the concepts behind the DAB+ digital radio standard to as many people in Austria as possible, while informing the general public about all of the options and benefits available to them by switching to terrestrial digital radio reception. Funding was approved to cover 50% of the costs.

4.2.1.3 Notes on the 2022 annual accounts

Based on the statement for the trustee account as at 31 December 2021, and considering the credits and disbursements as well as the grants already approved but not yet disbursed, EUR 311,229.40 was available in the fund as at 31 December 2022 (see the table below for details).

Table 37: Digitisation Fund – excerpt from the 2022 annual accounts

Austrian Digitisation Fund	(EUR)	(EUR)
Trustee account balance as at 31 December 2021		2,663,380.12
Credits		
Revenues received in 2022	500,000.00	
Deferred payment/repayment of administrative expenses from 2021	32,652.88	
Grant repayments	41,444.62	574,097.50
Debits		
Interest/fees	1,038.58	
Administrative expenses and RTR participation in projects in 2022	-143,000.00	
Grant disbursements in 2022		
Balance resulting from initial amount, credits and debits in 2022	-1,357,219.60	-1,499,181.02
= Trustee account balance as at 31 December 2022		1,738,296.60
Outstanding administrative expenses in 2022 and RTR participation in projects in 2022, for repayment in 2023		42,883.56
Balance of trustee obligations as at 31 December 2022		1,781,180.16
Approved grants pending disbursement		
Committed funds from 2018	-24,755.82	
Committed funds from 2019	-171,982.62	
Committed funds from 2020	-20,918.78	
Committed funds from 2021	-541,344.91	
Committed funds from 2022	-710,948.63	-1,469,950.76
Funds available in 2023		311,229.40

4.2.2 AUSTRIAN TELEVISION FUND

The Austrian Television Fund is Austria's largest institution for funding TV productions. It supports the production and commercial exploitation of television films, series and documentaries. It was set up at RTR in 2004 by the Austrian federal government to provide support to the Austrian film industry and promote Austria's attractiveness for the media industry. RTR manages the available budget which amounts to EUR 13.5 million each year. Grants are awarded from this fund based on guidelines, along with Articles 26 to 28 and Articles 23 to 25 of the KommAustria Act (KOG), which together constitute the legal basis for the activities of the Austrian Television Fund.

The Austrian Television Fund's statutory remit includes financial support for independent Austrian producers, thereby stimulating the productivity of the domestic production sector and creating long-term employment in the film industry. Another objective is to improve the quality of television productions, thereby preserving Austria's rich cultural landscape and making a vital contribution towards strengthening the audiovisual sector in Europe. Key criteria considered in the grant award process include value creation and spending in Austria.

4.2.2.1 Support for television films in 2022

4.2.2.1.1 Production grants

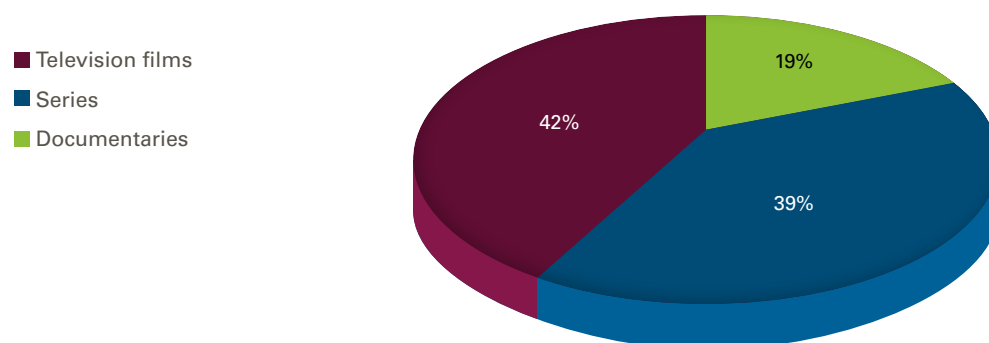
Of the 101 applications that were submitted in 2022, 74 productions were approved for funding amounting to EUR 12,794,617.

Funding was approved to cover roughly EUR 90.8 million of planned total production costs. Spending in Austria in connection with these television productions is expected to amount to EUR 51 million. The latter figure represents almost four times the total amount of funding awarded by the Austrian Television Fund.

Details of production grants

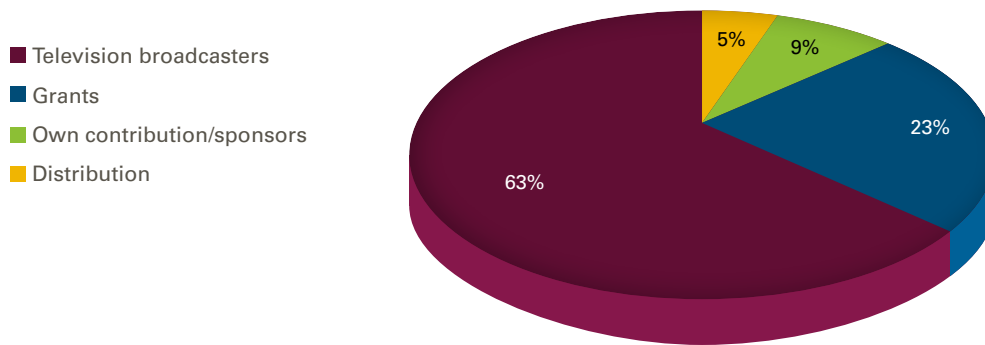
The 74 grants approved provided support to twelve television films, four series and 58 documentaries. The figure below gives details on how the funding shares were distributed:

Figure 25: Austrian Television Fund – grants approved in 2022



The proportion of funding awarded to the television films and series rose from 26 to 42% compared with the previous year. This contrasts with the increase in grant share for series, which dropped from 58 to 39%. The proportion of funding awarded to documentaries grew from 16% to 19%.

Figure 26: Austrian Television Fund – share contributed to projects funded in 2022

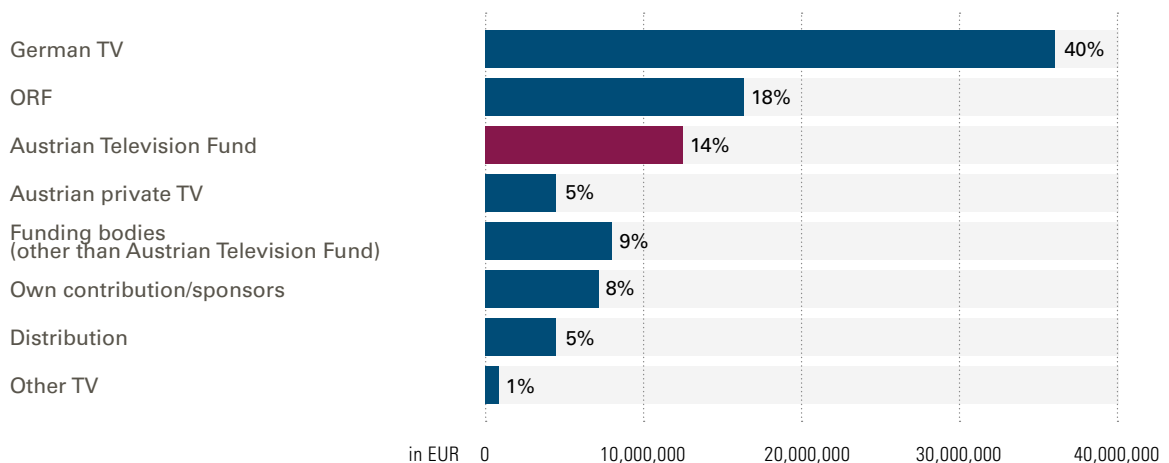


The supported productions sourced 63% of their funding from television broadcasters, 23% from grants, 9% from own funds and sponsoring, and 5% via distribution agreements.

Co-financing provided by funding bodies other than the Austrian Television Fund accounted for 9% of the total in 2022. Of a total of 74 funded television productions, Austrian funding bodies were exclusively involved in the financing of 69 productions; two projects were also supported by European funding bodies.

The chart below gives a breakdown of the funding in detail:

Figure 27: Austrian Television Fund – detailed shares contributed to projects funded in 2022



Participation by television broadcasters

From the total number of 74 funded projects, 64 television productions were co-financed by the ORF. Compared with the year before, the number of productions receiving funding from Austrian private television broadcasters increased from five to eight.

German television broadcasters participated in a total of 25 projects. Six productions featured financial participation from European broadcasters based in Czechia, France, Italy, Slovenia and Switzerland (and excluding Germany).

As in previous years, the productions co-financed by European broadcasters were documentaries. Germany was the main European country whose broadcasters contributed to funding films or series.

No productions received funding from international television broadcasters in the reporting year.

Women's share in the funded projects

In terms of appointments to senior management positions – production, direction and screenplay – patterns shifted compared with the previous year. The percentage of women among producers dropped from 25% to 16%. The proportion of female directors grew from 31% to 36%. The proportion of female screenwriters also augmented, from 34% to 38%.

Table 38: Austrian Television Fund – gender statistics for funded projects

2022	Women	Percentage	Men	Percentage
Producers	11	16%	59	84%
Directors	30	36%	52	64%
Screenwriters	33	38%	54	62%

4.2.2.1.2 Exploitation grants

To support the broader distribution of their film projects, producers received Austrian Television Fund grants to produce versions for the hearing and visually impaired, as well as versions in other languages and for submission to film festivals. Grants totalling EUR 162,442 were approved in 22 cases in 2022.

Full details of the supported projects and the grant award guidelines are published on the websites of the Austrian Television Fund (www.fernsehfonds.at) and the [film library](#)³⁶ (in German).

4.2.2.2 Notes on the 2022 annual accounts

Based on the statement for the trustee account as at 31 December 2021, and considering the credits and disbursements as well as the grants already approved but not yet disbursed, EUR 144,911.65 was available in the fund as at 31 December 2022 (see the table below for details).

36 https://www.rtr.at/medien/was_wir_tun/foerderungen/fernsehfonds_austria/filmarchiv/uebersichtsseite.de.html

Table 39: Austrian Television Fund – excerpt from the 2022 annual accounts

Austrian Television Fund	(EUR)	(EUR)
Trustee account balance as at 31 December 2021		3,944,869.94
Credits		
Revenues received in 2022	13,500,000.00	
Administrative expenses carried over from 2021	101,191.59	
Grant repayments	733.34	13,601,924.93
Debits		
Interest/fees	-37,109.34	
Administrative expenses in 2022	-424,798.41	
Grant disbursements	-10,879,668.08	-11,442,767.42
Balance resulting from initial amount, credits and debits in 2022		
= Trustee account balance as at 31 December 2022		6,104,027.45
Outstanding repayment in 2023 of administrative expenses from 2022		17,920.92
Balance of trustee obligations as at 31 December 2022		6,121,948.37
Approved grants pending disbursement Grants		
Committed funds from 2019	-39,833.34	
Committed funds from 2020	-102,520.17	
Committed funds from 2021	-1,048,283.18	
Committed funds from 2022	-4,786,400.03	-5,977,036.72
Funds available in 2023		144,911.65

4.2.3 Broadcasting funds

The Fund for the Promotion of Private Broadcasting (Private Broadcasting Fund) and the Fund for the Promotion of Non-Commercial Broadcasting (Non-Commercial Broadcasting Fund) were set up in 2009 with the amendment of the KommAustria Act (KOG). A total of EUR 6 million was originally allocated to the two funds, with funding continually increased each year to finally EUR 18 million in 2013, the level at which it remained until 2018. In 2019, the Private Broadcasting Fund received an additional EUR 5 million, which increased the annual fund budget to EUR 23 million. The Non-Commercial Broadcasting Fund was topped up by EUR 5 million in 2022, taking the total fund volume to EUR 25 million per year.

All grants serve to promote the Austrian broadcasting system and help broadcasters deliver a diverse portfolio of high-quality programming. Broadcasters can apply for grants if their programmes require a licence or notification as defined in the Audiovisual Media Services Act (AMD-G) or the Private Radio Act (PrR-G).

Funding is awarded on the basis of applicable legislation and approved guidelines.

4.2.3.1 Non-Commercial Broadcasting Fund

In 2022, a total of about EUR 5 million was available in the Non-Commercial Broadcasting Fund.

4.2.3.1.1 Submission deadlines in 2022

In the first round of submissions (due by 9 November 2021), 69 requests were submitted by radio broadcasters, two by education and training initiatives, and 13 by television broadcasters. The fund awarded grants to 14 non-commercial radio stations, three community television stations and two educational institutions in radio broadcasting.

A total of EUR 2,817,113 was awarded. Of the funding, 31.59% (EUR 890,000) went to television, 65.32% (EUR 1,840,124) went to radio and 3.09% (EUR 86,989) was allocated to educational institutions.

In this round, grants of EUR 2,543,625 were awarded for content creation, EUR 252,208 for educational measures and EUR 21,280 for studies.

The second submission period ended on 31 May 2022. A total of EUR 2,135,716 was awarded. Some 61.86% (EUR 1,321,166) was awarded to radio, with 35.80% (EUR 764,550) allotted to TV and 2.34% (EUR 50,000) to educational institutions. The fund awarded grants to 13 radio stations and three television stations.

Full details of the projects supported and the grant award guidelines are published on the RTR website (https://www.rtr.at/medien/was_wir_tun/foerderungen/nichtkommerzieller_rundfunk/Startseite_Nichtkommerzieller_Rundfunk.en.html).

4.2.3.2 Notes on the 2022 annual accounts

Based on the statement for the trustee account as at 31 December 2021, and considering the credits and disbursements as well as the grants already approved but not yet disbursed, EUR 39,674.53 was available in the fund as at 31 December 2022 (see the table below for details).

Table 40: Non-Commercial Broadcasting Fund – excerpt from the 2022 annual accounts

Non-Commercial Broadcasting Fund	(EUR)	(EUR)
Trustee account balance as at 31 December 2021		1,002,797.82
Credits		
Revenues received in 2022	5,000,000.00	
Administrative expenses carried over from 2021	-12,054.70	
Grant repayments	4,164.48	4,992,109.78
Debits		
Interest/fees	-4,736.47	
Administrative expenses in 2022	-123,000.00	
Grant disbursements in 2022	-4,174,290.52	-4,302,026.99
Balance resulting after initial amount, credits and debits in 2022		
= Trustee account balance as at 31 December 2022		1,692,880.61
Share of custodian fees in 2022		-3,366.12
Outstanding administrative expenses from 2022 for deferred payment in 2023		5,146.84
Balance of trustee obligations as at 31 December 2022		1,694,661.33
Approved grants pending disbursement Grants		
Committed funds from 2021	-276,444.00	
Committed funds from 2022	-1,378,542.80	-1,654,986.80
Funds available in 2023		39,674.53

4.2.3.3 Private Broadcasting Fund

4.2.3.3.1 Submission deadlines in 2022

In the first round (with a deadline of 9 November 2021), 195 requests were submitted for television grants, 252 for radio grants and two for the funding of educational institutions. A total of EUR 19,326,220 was awarded to 51 private television broadcasters, 37 private radio broadcasters and two educational institutions during this first round. Of these funds, EUR 14,289,561 (73.94%) went to television broadcasters, EUR 4,727,742 (24.46%) to private radio broadcasters and EUR 308,917 (1.60%) to the educational institutions Privatsenderpraxis and Forum Journalismus TV/Radio.

A breakdown of grants according to the three grant categories reveals that 94.46% of the total awarded in the first round of submissions went to supporting content, 2.57% to education and training, 1.38% to reach surveys and quality studies, 1.59% to educational institutions.

The second submission period ended on 31 May 2022. A total of EUR 2,136,518 was awarded. A total of 69.09% (EUR 1,476,193) was awarded to television, with 28.30% (EUR 604,636) allotted to radio and 2.61% (EUR 55,689) to educational institutions. The fund awarded grants to 23 television broadcasters and 30 radio broadcasters.

Full details of the projects supported and the grant award guidelines are published on the RTR website (https://www.rtr.at/medien/was_wir_tun/foerderungen/privatrundfunkfonds/Startseite_Privatrundfunkfonds_en.html).

Promotion of media literacy

In the future, the information portal will publish profiles of all projects aimed at promoting media literacy that are funded by the Private Broadcasting Fund (<https://medienkompetenz.rtr.at>).

4.2.3.3.2 Notes on the 2022 annual accounts

Based on the statement for the trustee account as at 31 December 2021, and considering the credits and disbursements as well as the grants already approved but not yet disbursed, about EUR 661,876.34 was available in the fund as at 31 December 2022 (see the table below for details).

Table 41: Private Broadcasting Fund – excerpt from the 2022 annual accounts

Private Broadcasting Fund	(EUR)	(EUR)
Trustee account balance as at 31 December 2021		18,769,926.70
Credits		
Revenues received in 2022	20,000,000.00	
Grant repayments	114,464.19	
Administrative expenses carried over from 2021	20,297.64	20,134,761.83
Debits		
Interest/fees	-51,189.71	
Administrative expenses in 2022	-613,010.00	
Grant disbursements in 2022	-20,783,096.62	-21,447,296.33
Balance resulting after initial amount, credits and debits in 2022		
= Trustee account balance as at 31 December 2022		17,457,392.20
Repayment of share of custodian fees in 2022		4,342.78
Outstanding repayment in 2023 of administrative expenses from 2022		110,391.36
Balance of trustee obligations as at 31 December 2022		17,572,126.34
Approved grants pending disbursement		
Committed funds from 2020	-57,087.00	
Committed funds from 2021	-5,065,832.00	
Committed funds from 2022	-11,787,331.00	-16,910,250.00
Funds available in 2023		661,876.34

4.2.4 Fund for the Promotion of Digital Transformation

Established by law on 13 April 2022, the Fund for the Promotion of Digital Transformation provides the Austrian media market with new sources of funding that are aimed at maintaining the diversity of providers while promoting the establishment and expansion of digital services on the part of private media companies who orient their media content toward the Austrian public.

The available funding is intended to strengthen media companies and their digital portfolios alike while generally reinforcing the central role played by media in a modern, democratic society.

This measure aims to maintain and promote the diversity and pluralism exhibited by the news media sector, as well as strengthening the profession of journalism, which is crucial to the long-term development of news media as a whole. Austrian media content – and regional content in particular – should continue to be made available to Austrian consumers.

Allotted an initial budget of EUR 54 million in its launch year, the Fund will continue with an annual budget of EUR 20 million from 2023.

The Fund for the Promotion of Digital Transformation offers two separate funding tracks. Incentive funding is aimed at project development, and applications for fund grants are accepted only from daily and weekly newspapers. With the project funding track, however, applications can be made under digital transformation, digital journalism, or youth protection and accessibility.

4.2.4.1 Submission deadlines in 2022

The first submission period ran from 9 May to 22 August 2022. Grants were awarded to 191 applications from broadcasters and print companies. Of these, 40 projects received incentive funding, while project funding was awarded to 130 digital transformation projects, 17 digital journalism projects, and four youth protection and accessibility projects.

Funds totalling EUR 52,564,291 were awarded. Of this amount, 31.32% (EUR 16,462,398) was awarded to incentive funding projects, 65.66% (EUR 34,515,522) for digital transformation, 2.56% (EUR 1,346,909) to digital journalism projects, and 0.46% (EUR 239,462) to projects involving youth protection and accessibility.

The figures below illustrate the distribution of funds awarded across the print and broadcasting sectors:

Figure 28: Incentive funding – funding received by company/group

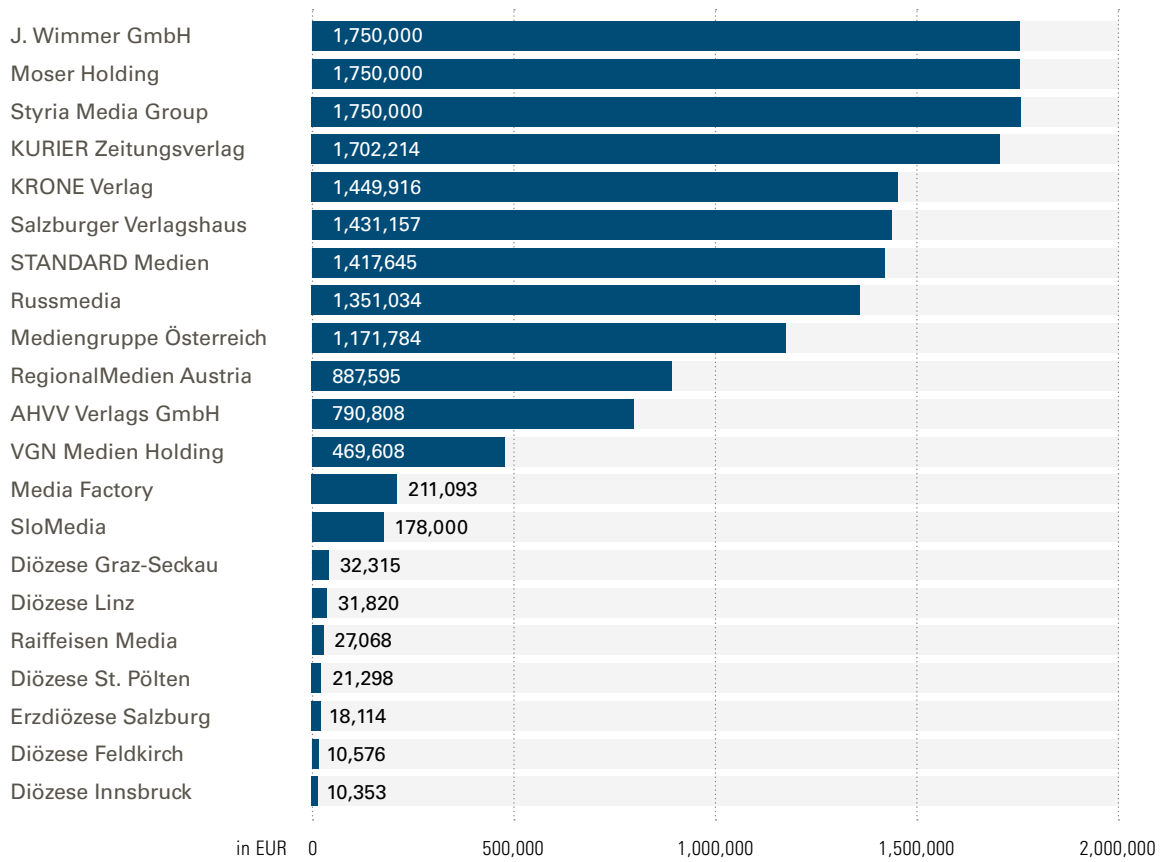


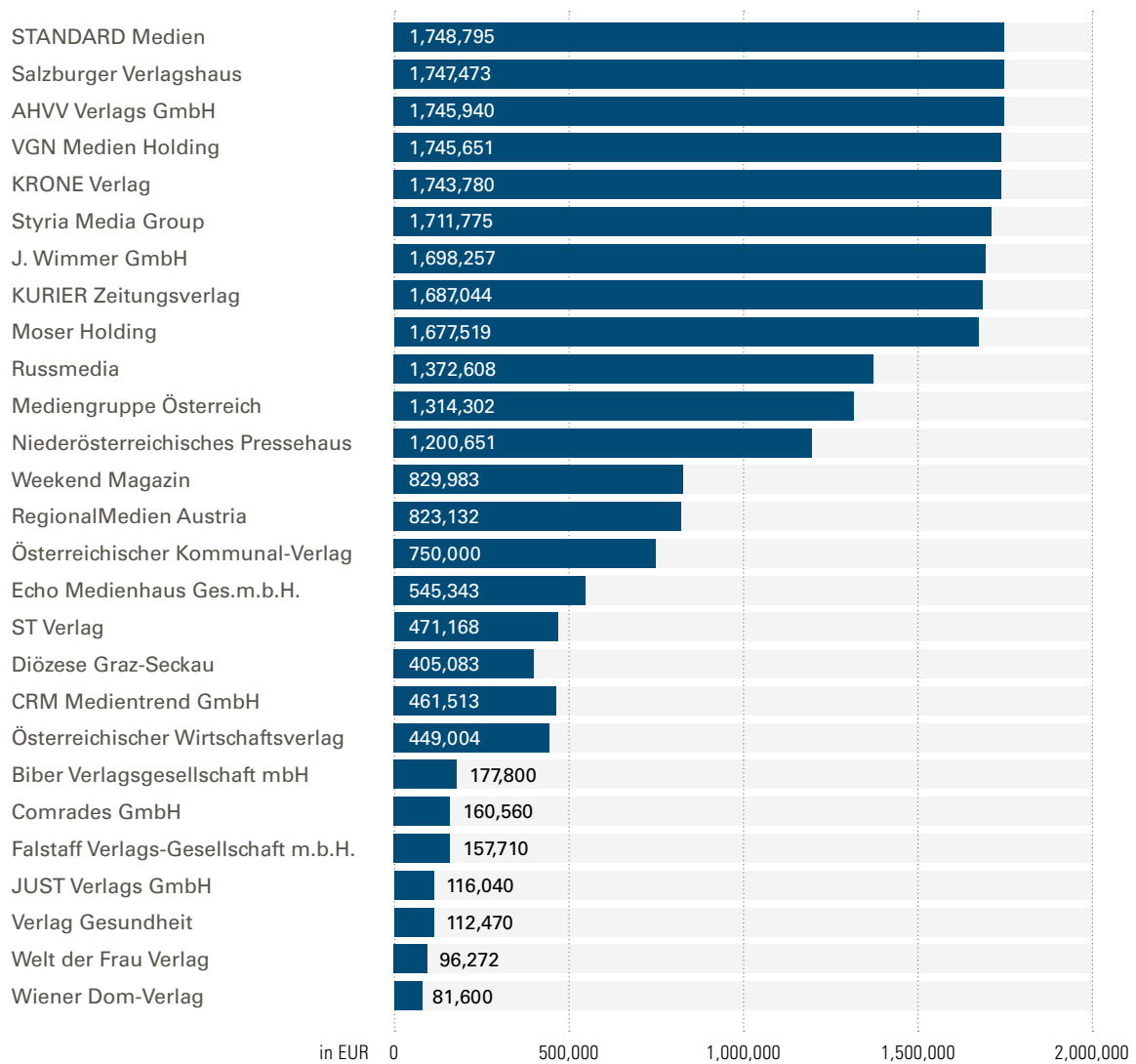
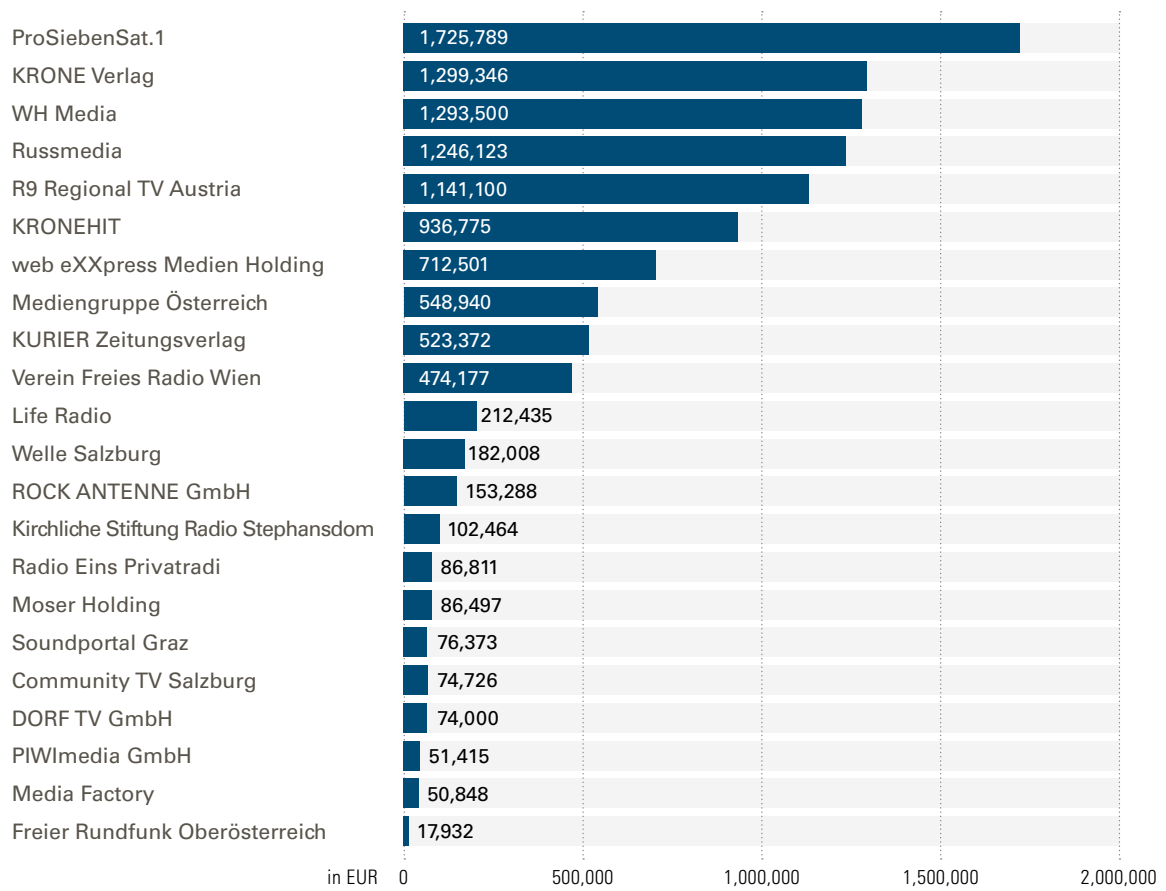
Figure 29: Print media project funding – funding received by company/group


Figure 30: Broadcaster project funding – funding received by company/group



Full details of the projects supported and the grant award guidelines are published on the RTR website (https://www.rtr.at/medien/was_wir_tun/foerderungen/digitaltransformation/startseite.en.html).

4.2.4.2 Notes on the 2022 annual accounts

Considering the credits and disbursements as well as the grants already approved but not yet disbursed, EUR 932,007.76 was available in the fund as at 31 December 2022 (see the table below for details).

Table 42: Fund for the Promotion of Digital Transformation – excerpt from the 2022 annual accounts

Fund for the Promotion of Digital Transformation	(EUR)	(EUR)
Trustee account balance as at 31 December 2021		0.00
Credits		
Revenues received in 2022	54,000,000.00	
Administrative expenses carried over from 2021	0.00	
Grant repayments	0.00	54,000,000.00
Debits		
Interest/fees	-9,836.21	
Administrative expenses in 2022	-570,990.00	
Grant disbursements in 2022	-33,465,295.50	-34,046,121.71
Balance resulting after initial amount, credits and debits in 2022		
= Trustee account balance as at 31 December 2022		19,953,878.29
Share of custodian fees in 2022		46,750.67
Outstanding administrative expenses from 2022 for deferred payment in 2023		30,374.30
Balance of trustee obligations as at 31 December 2022		20.031.003,26
Approved grants pending disbursement Grants		
Committed funds from 2022		-19,098,995.50
Funds available in 2023		932,007.76



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Regulatory activities of the TKK

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05 Regulatory activities of the TKK

The Telekom-Control-Kommission (TKK), as an autonomous authority not subject to external control, has been responsible for regulating the telecommunications market in Austria since 1997. Its tasks and responsibilities are specified in detail by law. It is additionally empowered to serve as the supervisory body specified in the Signatures Act (SigG). In the following, we provide an overview of the main areas of regulatory activity in 2022, the year under review.

5.1 Measures to ensure competition

The Telecommunications Act (TKG) presents the regulatory authority with a toolbox that enables it to ensure competition in the Austrian telecommunications markets.

5.1.1 Market analysis procedure

These tools include market analysis procedures, which are performed at intervals not exceeding five years. Such procedures are intended to identify relevant markets subject to regulation and to determine whether any one or more undertakings possess significant market power; they also serve to identify any (potential) difficulties that may exist in maintaining competition or whether effective competition exists in the markets under investigation. Where the particular market lacks effective competition, appropriate obligations are to be imposed on the company with significant market power.

In the course of the market analysis procedure initiated by the TKK in 2020, a sub-procedure focused on the wholesale market for local and central access (i.e. physical and virtual unbundling as well as bitstreaming) was separated from the main procedure in spring 2021. Other such sub-procedures addressed the retail market for access to the public telephone service at fixed locations (similarly separated in spring 2021), the wholesale markets for termination in individual fixed and mobile communications networks (separated in October 2021) and the wholesale market for high-quality access at fixed locations (Ethernet services and dark fibre, separated in spring 2022).

Concurrently with the separation of these sub-procedures, RTR experts submitted extensive reviews on the two aforementioned markets, to define and analyse them as well as to recommend specific obligations. All reports were discussed with the parties to the procedures in public oral negotiations, which typically took place as video conferences due to prevailing circumstances.

Termination markets

In relation to operator-specific termination markets, a Delegated Regulation of the European Commission, which is directly applicable in all Member States as of 1 July 2021, has defined uniform maximum fixed and mobile termination rates throughout the Union. It was recommended in the report by the RTR experts relating to these markets to remove the specific obligations on the operator-specific termination markets. The TKK followed this recommendation and submitted draft decisions which were initially subjected to a nationwide consultation process following their publication on the RTR website and subsequently submitted to the European Commission for review ('coordination'). The TKG envisages both steps before the adoption of the corresponding decisions. As the European Commission did not raise any objections, the TKK made the decision in May 2022 to remove the specific obligations on the operator-specific termination markets for fixed and mobile networks.

Market for local and central access

'Local access' refers to the handover of the physical local loop or of a data stream from and to end users by the alternative (fixed network) operator at A1's automatic exchange (main distribution frame). 'Central access' refers to the handover of this data stream at one or more of A1's regional network node points (typically in the provincial capitals).

In a report submitted in March 2021, the official experts recommended the separation of the wholesale market for private customers, formerly nationwide, into two areas. Whereas lifting of the regulation was proposed in the 430 or so municipalities in area 1, the previous specific obligations of A1 Telekom Austria AG (access, fee control, equal treatment, transparency, separate accounts) are essentially to be maintained in the roughly 1,700 municipalities of area 2 for wholesale private customer products as well as nationwide for wholesale business customer products. Area 1 consists of the approximately 60% of households with a low A1 market share, in relatively urban municipalities with a high population density and two or more fixed network providers, while area 2 represents the approximately 40% of households with a high A1 market share, in relatively rural municipalities with a low population density and a maximum of one or two fixed network providers.

The procedure therefore took a new turn in spring 2022 when A1 submitted voluntary commercial agreements with market participants. These related to the wholesale service of virtual unbundling on the one hand, and access to the fibre-optic networks to be installed by A1 on the other. In view of the above, the TKK considered the re-evaluation of the market situation and therefore commissioned an additional official expert report to examine the effects of these agreements under private law. This was submitted in March 2022. The report concluded that instead of lifting certain specific obligations in area 2 as proposed in the initial report by the experts, A1's existing obligations in the market for local and central access as a whole should be lifted on a nationwide basis. The official experts essentially argued that the contracts submitted by A1 contained conditions which were largely more attractive compared to those of a potential regulatory decision. The supplementary report was discussed in another oral hearing in June 2022 after the discussion that had been sparked by A1's commercial agreements.

In this case, too, the TKK followed the suggestions made by the official experts and submitted a draft decision in July 2022. In view of the changed market situation due to these commercial agreements, the decision concluded that the wholesale market for local and central access is no longer relevant for sector-specific regulation. Furthermore, the draft decision envisaged lifting the existing specific obligations, although this involved a transitional period of between one and two years for the wholesale services of physical unbundling and bitstreaming. The draft decision passed through the national consultation procedure – with active participation by the market players – in the summer of 2022 and was subsequently submitted to the European Commission. Despite a few critical comments, no objections were raised. In October 2022, the TKK decided to lift A1's specific obligations currently in force in the market for local and central access, while observing the aforementioned transitional periods. This put an end to regulatory intervention dating back to 1999 and going back to the initial decisions adopted by the TKK on the – physical – unbundling of the local loop. In its decision, the TKK did, however, emphasise that it will continue to monitor the market in question in the procedure and will address any misuse either directly or by calling on the Federal Competition Authority (BWB).

Two parties to the procedures have lodged complaints against the decision with the Federal Administrative Court (BVG).

Retail market for access to the public telephone service at fixed locations

With respect to the retail market for access to the public telephone service at fixed locations, in March 2021 the official experts proposed in their evaluation report to lift the existing specific obligations (price cap for POTS and ISDN business customer rates, separate accounts) in contrast to the corresponding wholesale market for local and central access, pointing to the increasing trend towards voice-over-broadband as a result of lower access barriers through virtual unbundling. Since the sub-procedure relating to the relevant wholesale market for local and central access had to be concluded first, a draft decision on the retail market for access to the public telephone service at fixed locations was not put through a national consultation procedure until November 2022.

Wholesale market for high-quality access at a fixed location

In the sub-procedure relating to the wholesale market for high-quality access at fixed locations, in their report dated May 2022 the official experts divided the market into two areas. This was due to marked regional differences in the market shares of A1 and the presence of alternative operators with their own infrastructures. Area 1 comprises 1,087 municipalities in which A1 has a market share of less than 50%, and in which at least one additional infrastructure operator is active in addition to A1 and at least 25% of buildings can be supplied by an alternative network operator with its own infrastructure; all other municipalities are located in area 2. In the municipalities belonging to area 1, A1's existing specific obligations should be lifted with regard to lines within or between these municipalities. For high-quality access within the municipalities belonging to area 2, or between the municipalities from area 1 and area 2, specific obligations should continue to be imposed on A1.

In addition to an access obligation in relation to Ethernet services and dark fibre, these obligations are to include fee control for Ethernet services in the form of cost-related prices with a price cap for connections and the retention of the two-part tariff plan (fees based on duration and 'active-minus' fees) for dark fibre, in each case with the provision of price reductions (minus 15% within six months after the issue of the decision, minus 10% within another two years in each case). These measures are to be flanked by the obligation for equal treatment and transparency (the latter set out in a publication explaining the specific key figures or key performance indicators).

Following an update of the figures relating to fee control on which the initial expert report was drafted in spring 2022, the official experts recommended in a supplementary expert report dated November 2022 a slight adjustment to A1's weighted average cost of capital (WACC) for the year 2021 as well as the elimination of the third price reduction step.

Due to the need to agree on additional oral negotiations for the year 2023, separate sub-procedures relating to the retail market for access to the public telephone service at fixed locations as well as the wholesale market for high-quality access at fixed locations were still ongoing at the end of the reporting period.

Competition in the mobile telecommunications market

Furthermore, the TKK decided in February 2022 to carry out a detailed analysis of competition in the mobile telecommunications sector. In 2020 and 2021, complaints were regularly received by the Federal Competition Authority (BWB) and RTR concerning uncompetitive wholesale prices, pressure on mobile virtual network operators (MVNOs) and other wholesale customers to change their business models, and cases of access refusal. The original obligation of Hutchison Drei Austria GmbH from the merger with Orange before the European Commission to grant access at wholesale service level for potential MVNOs expired at the end of 2022. It is currently under review whether competition in the mobile wholesale market, and therefore ultimately also in the mobile retail market, can be successfully continued in future, or whether there are trends that may affect the advantages for the market as a whole that have been sustainably achieved to date. The review was still ongoing at the time this report was prepared.

5.1.2 Arbitration between operators

As part of its role as an arbitrator, the regulatory authority ensures a fair balance of interests among operators of public communications networks. If a settlement under private law in the form of a network access or interconnection agreement is not reached, each participant has the option of applying to the regulatory authority for a decision in lieu of such an agreement.

In July 2022, in a pending procedure the TKK issued a decision on the conditions for the reciprocal termination of text messages. Since the provision of text message termination services is not assigned to any market relevant for sector-specific regulation and no business entity here enjoys significant market power as defined by telecommunications law, an 'appropriate' scope of the conditions in dispute had to be set. The fee schedules are in line with earlier rulings by the TKK. To contest, a party to the procedure has lodged a complaint with the BVwG.

5.2 Net neutrality

5.2.1 General information

Net neutrality refers to the equal treatment of all data transmitted via the internet. Equal treatment is independent of the sender, recipient, location, content, service or application. Net neutrality is important because it allows every internet user to retrieve and share information, content as well as services and applications. This helps ensure freedom of expression, economic growth and innovation through the internet. Working to protect net neutrality, the Telecoms Single Market (NN) Regulation has been in force at EU level since November 2015. The associated BEREC guidelines, which were adopted in August 2016 and first amended in June 2022, aim to ensure uniform implementation of the Regulation across Europe.

Work in the field of net neutrality was once again strongly informed in 2022 by international cooperation in the BEREC Open Internet Expert Working Group and by national procedures and advisory activities conducted in order to ensure the fulfilment of net neutrality standards. As in previous years, market developments were observed and internet access products reviewed. At the end of June 2022, the regulatory authority published its Net Neutrality Report covering the period May 2021–April 2022. With the aid of the aforementioned measures, the results are intended to ensure the continued availability of internet access services at a level of quality that properly reflects advances in technology. Regular dialogue was maintained with all market participants to this end. Providers regularly sought the advice of experts from RTR before the introduction of new products or services that could affect aspects of net neutrality. This approach allowed any concerns in this context to often be addressed beforehand.

5.2.2 Zero-rating

Surprising developments have been seen in the context of zero-rating. The European Court of Justice ruled on zero-rating issues in late 2021, handing down three landmark decisions that have simultaneously made it necessary to revise the European BEREC Guidelines on the open internet. Based on these decisions, zero-rating products are generally not permitted if they discriminate in pricing based on commercial considerations when supplying data traffic to one and the same end user via that party's internet access service. Within the framework of the competent BEREC Working Group, our expert team at RTR worked together feverishly with other European regulatory authorities to revise those guidelines. The committee responsible at BEREC adopted and published the new version in June 2022. This made it clear that the 'classic' form of zero-rating is now a thing of the past. Austrian regulatory authorities RTR and TKK started to collect the required information and data from market participants and evaluated this material in the first half of 2022. Based on the picture that emerges and under consideration of the newly updated BEREC Guidelines, the necessary steps are being

taken to safeguard net neutrality in Austria. Since July 2022, no zero-rating products have been offered in Austria to new customers in the market. By way of an official notice, the regulatory authority has obliged providers also to discontinue zero-rating even for existing customers by the end of March 2023 at the latest.

5.2.3 War in Ukraine: internet blocking

The war in Ukraine and the EU's response, namely to adopt new sanctions against state-affiliated Russian media, have also involved national and EU regulatory authorities, specifically due to mandatory internet blocks of the websites run by RT and Sputnik, as well as later blocks of other Russia-based media channels.

Internet blocking has in general become an ongoing concern in recent years. The mechanism is being applied in a growing number of areas: copyright law, consumer protection law, as a wartime sanctions measure or even as a market control tool for products offered in the EU. As a result, ISPs are being held accountable with increasing frequency for enforcing legislation relating to online activities. The current legislative framework faces national regulatory authorities, providers and internet users with a dilemma, raising the question of how to strike a balance between legal certainty, legal protection and the fundamental rights of all stakeholders concerned.

5.2.4 Copyright law: internet blocking

In late 2022, the regulatory authority initiated numerous supervisory procedures against providers of internet access services. This occurred after warning several rights owners and subsequently blocking a number of domains and IP addresses in Austria. However, some of the IP addresses were assigned to CloudFlare, which meant that various third-party services were only partially accessible at times. The review of the legitimacy of the internet blocking measures that were carried out had not been concluded at the end of the reporting period.

5.2.5 New responsibilities

At the end of the year, the TKK was given new competence within the scope of market surveillance in the EU. The new EU Market Surveillance Regulation intends to provide a better response to new economic developments, especially in international trade, and to close existing loopholes through which goods from third countries that do not comply with EU laws and cannot be traced back to a tangible responsible economic operators are brought into the EU market via online platforms. To effectively remedy such breaches in the digital environment, the EU Market Surveillance Regulation envisages various online access restrictions by providers of information society services, provided no other option exists for eliminating a serious risk. Requests can be made by the market surveillance authority to have incriminated online content restricted. These restriction measures must then be taken by access providers and other intermediaries. The regulatory authority acts in such cases as an enforcement body if the immediate offenders cannot be identified.

5.3 Frequency issues: Mobile and broadband spectrum

5.3.1 Preparation for the next frequency award

Preparations for the next scheduled frequency award began in early 2022. The award is expected to comprise both the (regional) spectrum in the 3410 to 3470 MHz range remaining from the 2019 auction and frequencies from the 26 GHz range. This is how the information is presented in the Spectrum Release Plan 2022 to 2026 that was published in the reporting year. This award will be the first to be performed on the basis of the new TKG 2021 frequency regime.

In Q4 2022, an extensive public TKK/RTR consultation was held in this context. The result of the consultation included important findings for the ordinances to be subsequently issued pursuant to Art. 14 TKG 2021 (ordinance relating to limitation by number) and Art. 15 TKG 2021 (ordinance defining a selection procedure). Award objectives, competition, product and auction design and local frequency assignments were also addressed.

In 2016, the regulatory authority had originally published a Spectrum Release Plan covering the period up to 2020, subsequently completing two successful 5G auctions in accordance with this declaration of intent. During a consultation on the upcoming award procedures, the Federal Ministry of Agriculture, Regions and Tourism (BMLRT) – still having jurisdiction at the time in 2021 – and the regulatory authority collected important suggestions and discussed possible approaches. Here our special focus was on the 26 GHz band. A summary of the statements received has been published (in German) on the RTR website.³⁷

The regulatory authority, together with the BMLRT, later published the current Spectrum Release Plan in February 2022³⁸. This ensured planning security for all stakeholders in the coming years as well.

Over a long time frame, use of the following spectrum is being proposed for mobile and broadband ECS services:

- 26 GHz
- Remaining 3410–3800 MHz spectrum
- 2.6 GHz
- 2.3 GHz
- 42 GHz
- 6 GHz
- 60 GHz

For some of these bands, decisions on harmonisation have already been made by the European Commission; for others, harmonisation is being planned or discussed. Based on the TKG 2021,³⁹ the regulatory authority is responsible for awarding harmonised ECS spectrum (for mobile and broadband use), as soon as accordingly defined in the Frequency Utilisation Ordinance and as long as no general authorisation (for unlicensed use) has been granted. As a consequence – and depending on decisions that are still to be taken at international level (by the ITU, CEPT or EU) – it is most likely that all or at least part of the spectrum mentioned above will fall within the TKK's scope of responsibility.

37 https://www.rtr.at/TKP/aktuelles/veroeffentlichungen/veroeffentlichungen/konsultationen/konsultation_spectrum_release_plan_stn.de.html

38 https://www.rtr.at/TKP/was_wir_tun/telekommunikation/spectrum/framework/FRQ_Spectrum_Release_Plan.de.html

39 Several parts of the frequency regime were amended when the TKG 2021 entered into force on 1 November 2021. In addition to the aforementioned extended competence of the TKK, the RTR and TKK were granted new powers to issue ordinances. In addition, items including the peer review process were legally consolidated, while new provisions relating to the period of use, such as renewal regimes, and simplifications in spectrum trading for operators were also enshrined in law.

5.3.2 Review of the conditions in the 3410–3800 MHz range (second deadline)

The first coverage obligations for the 3410–3800 MHz range entered into force at the end of 2020. Licence holders had to operate a certain number of locations depending on the frequencies awarded in each case. To be considered a location within the meaning of the obligation, these locations must fulfil certain criteria (e.g. transmission power, transmitted bandwidth). The review procedure at the time showed that two out of seven companies did not meet the requirements and penalties were imposed accordingly. Related appeal processes were still pending at the time when this report was prepared.

For the award procedure, the second deadline was set as 30 June 2022; since that date, each rights holder is required to operate a significantly larger number of locations using spectrum from the 3410–3800 MHz frequency range; the specific number is displayed in the table below.

Table 43: Locations to be operated per company from 30 June 2022

	Locations to be operated per company from 30 June 2022
A1 Telekom	1,000
Hutchison Drei	1,000
T-Mobile	1,000
MASS Response	35
LIWEST	83
Salzburg AG	96
Holding Graz	50

The corresponding review procedure has shown that all seven rights holders are now meeting their respective obligations.

5.3.3 Review of the conditions in the 2100 MHz range

The first coverage obligations based on the 2020 auction of the 2100 MHz range became effective at the end of 2021. The three spectrum licence holders in this range (A1 Telekom Austria AG, Hutchison Drei Austria GmbH and T-Mobile Austria GmbH) have been required to operate a minimum of 2,000 locations with these frequencies since the end of 2021. The geographical distribution of these 2,000 locations must ensure that at least 75 locations are operated in each province. To be considered a location within the meaning of the obligation, these locations must fulfil certain criteria. The review enabled the identification of data requirements for providers, and data requests were duly sent out to the licence holders at the end of 2021. The review procedure in 2022 showed that all licence holders are fulfilling their respective obligations.

5.3.4 Review of the requirements in the 700 MHz range

The initial band-specific conditions for the 700 MHz range became effective at the end of 2022.

Hutchison Drei Austria GmbH and T-Mobile Austria GmbH were each assigned several frequency packages from the 700 MHz range. As of 31 December 2022, both companies each have 500 locations to operate with these frequencies (band-specific coverage obligation). The corresponding review procedure was initiated at the end of 2022. A1 Telekom Austria AG was not assigned any spectrum use rights in this range, however.

5.3.5 Review of level of coverage of poorly served cadastral municipalities

During the second 5G auction in 2020, involving the 700, 1500 and 2100 MHz bands, the regulatory authority assigned to operators 1,702 of the 2,100 poorly served cadastral municipalities, as part of extended coverage obligations to ensure wide-area coverage.⁴⁰ The conditions related that operators may decide as flexibly as possible which cadastral municipalities they supply with service. However, this applies under the condition that in fulfilment of the coverage obligation a cadastral municipality can be accepted by only one operator. Operators can exchange cadastral municipalities for ones that are still available until the respective deadline. They also have the option of exchanging deadlines and trading cadastral municipalities among each other. In order to make this process as smooth as possible, the regulatory authority has developed a portal that allows cadastral municipalities to be nominated and exchanged in accordance with the rules under the decision. This portal went online in the first quarter of the reporting year. In 2022, over 1,300 successful transactions were registered on the portal.

A cadastral municipality is considered to have coverage within the meaning of the coverage obligation if, in this cadastral municipality:

- 95% of the population residing within the cadastral municipality is covered with a data transmission rate of 30 Mbps for downloads and 3 Mbps for uploads
- 90% of the settlement area of the cadastral municipality is covered with a data transmission rate of 30 Mbps for downloads and 3 Mbps for uploads
- 75% of the permanent settlement area of the cadastral municipality is supplied with a data transmission rate of 10 Mbps for downloads and 1 Mbps for uploads

The first phase of the extended coverage obligation involving 185 cadastral municipalities in total had to be fulfilled by A1 Telekom (113 cadastral municipalities) and Hutchison (72 cadastral municipalities) as of three deadlines in 2022. The corresponding review procedure was initiated in 2022 and work started on the review (data requests, simulations, measurement arrangements). Prior to the first deadline, a concept for the review was created and sent to the operators for their opinion.

40 For information relating to the second 5G auction and the innovative auction design ('incentive auction'), see article (in German): Regulatorisches: Zweite 5G-Auktion: Flächendeckende Mobilfunk-Breitbandversorgung für Österreich (Second 5G auction-wide-area mobile telecommunications broadband coverage for Austria) in the TKP newsletter February 2020 at https://www.rtr.at/TKP/aktuelles/publikationen/publikationen/Newsletter/Telekom_und_Post_Newsletter_TK_02-2020.de.html.

5.4 Network cooperation

One of the main innovations of the TKG 2021 that has significantly expanded the competences of the TKK concerns network cooperation. The central provision is Art. 85, which provides for a two-phase approval procedure for sharing agreements, based on the merger procedure set out in the Cartel Act 2005, thus introducing formal ex-ante control by the TKK. This increases legal certainty for the cooperation partners involved and represents a real paradigm shift, as inadmissible network collaborations could previously only be addressed ex post, in a supervisory procedure in connection with spectrum assignment decisions or through an appeal to the Cartel Court. The procedure is initiated by the contracting parties when reporting the cooperation agreement to the TKK. In the first phase, the TKK will examine within a period of eight weeks whether potential competition concerns require an 'in-depth review' of the cooperation. The Federal Competition Authority and the Federal Public Attorney for Cartel Matters are also to be involved in this decision, with "utmost account to be taken" of their opinions. The parties to the procedures cannot file a separate appeal against the TKK's decision on whether or not to initiate a second phase. Phase II, lasting four months, is to be concluded with a decision which, like other TKK decisions, can be appealed to the Federal Administrative Court and, as a third instance, to the Austrian Administrative Court.

In 2022, RTR closely examined the new approval regimes and the various related implications and issues. In accordance with the transitional provisions (Art. 212 Par. 3 of the TKG 2021), the regulatory authority had to be notified of existing agreements relating to cooperation on active network components within six months of the new TKG coming into effect.

The regulatory authority has targeted adaptation of the previous position paper on infrastructure sharing to create guidelines, explaining the new authorisation regime of Art. 85 in more detail and answering related questions. The regulatory authority awaits the first procedures based on Art. 85 TKG 2021 as an opportunity to gather experience to be incorporated into the new guidelines.

5.5 Universal service

With the entry into force of the TKG 2021, the scope of universal service was reduced to a minimum range of public communications services at affordable prices. As was already the case in the TKG 2003, the new legal framework does not include a definition of minimum bandwidth; the legislation continues to work on the assumption of "functional internet access" which – even though not explicitly defined – must guarantee access to the services listed in Annex V of the European Electronic Communications Code (EECC); this includes email, search engines, online tools for basic training and education or online newspapers. The Federal Minister for Finance can issue an ordinance setting a minimum bandwidth, if necessary to ensure full social and economic participation in society.

Even if the universal service obligation in accordance with the provisions of the TKG 2021 is basically met by the market and no universal service provider is currently designated, irrecoverable costs may still accrue to operators when responding to individual coverage requests as a part of ensuring universal service. Therefore, the new legal framework still includes a provision for a sectoral financing mechanism. Providers of what are called number-independent interpersonal communication services (NIICS) with over 350,000 end customers nationwide have been newly added to the group of companies under obligation. In response to a request to offset costs, they have to contribute towards financing both the universal service fund and fund administration, supplying 30% in proportion to the number of end customers each has within Austria.

The transitional provisions of the TKG 2021 also envisage the possibility of the previous universal service provider enforcing existing claims from the scope of the TKG 2003 and especially also for decommissioning public telephones. In the reporting period, one procedure was pending before the TKK, regarding on the one hand financial compensation for those verifiably accrued costs of providing universal service in 2021 that could not be recovered despite efficient operation, and on the other the costs of decommissioning public telephones following the discontinuation of the universal service obligation.

5.6 Electronic signatures and trust services

As set out in the Signature and Trust Services Act (SVG), the TKK is the supervisory body for those trust service providers (TSPs), as defined in the eIDAS Regulation (910/2014), who are established in Austria.

5.6.1 Procedures before the TKK

All procedures initiated in 2021 or earlier were concluded in 2022. A total of 37 additional procedures were initiated in 2022, ten of which could not be concluded by the end of 2022. The Austrian market for providers of qualified certificates in 2022 included four providers of electronic signatures, three providers each of electronic seals and qualified timestamps, and two providers of website authentication.

Qualified TSPs are required to undergo a conformity assessment by an accredited conformity assessment body every two years. The relevant technical standard envisages that a qualified TSP will be subject to a review audit by a conformity assessment body during the interim period between the two assessments. In 2022, all four qualified TSPs submitted reports for such review audits and these were evaluated by the supervisory body.

Once the required conformity assessment report had been evaluated, the TKK attested one provider the qualification to issue qualified timestamps.

In 2022, two requests were submitted for the inclusion of non-qualified trust services in the Austrian trusted list ([see section 5.6.2](#)). One request was complied with, the other was withdrawn by the TSP.

Twelve procedures related to modifications of qualified trust services. One of these procedures related to amendments to the terms of service and other documents that are relevant to the contract. Two procedures related to the cooperation of a qualified TSP with specific service providers. The use of new versions of qualified signature creation devices for creating remote signatures was covered by three procedures. The supervisory body reviewed the integration of additional identification methods for recipients of qualified certificates in six procedures. Of these, two involved electronic identification methods and four involved other methods that had to be confirmed for equivalent security by a conformity assessment body.

The supervisory body also verified an additional confirmation relating to the security of one identification method whose previous confirmation had expired.

In eight cases, the supervisory body took action as part of official duties in response to reported potential security breaches. In one case, there were distributed denial of service attacks on a qualified TSP. Another case concerned a vulnerability that was caused by a faulty software update and was corrected by an additional update. What is more, the supervisory body looked at a vulnerability that occurred in smartphones from a specific manufacturer that were used as authentication factors when creating remote signatures. There were three cases of identity theft, while qualified certificates had been issued erroneously in two other cases.

Furthermore, the TKK carried out surveys on the security of video identification methods, which had been called into question by a report from the Chaos Computer Club in August 2022. In a further procedure, the TKK dealt with the hash function SHA-1, which has been classified as a risk since 2017, and which was still being used in 2022 by certain institutions for the creation of official signatures.

5.6.2 Infrastructure

In supervisory operations, the TKK works through RTR, with the latter separately responsible for certain tasks. This applies especially to the infrastructure required to verify certificates, electronic signatures, electronic seals and electronic time-stamps, all of which is operated by RTR. This includes:

- the 'trusted list' made available at www.signatur.rtr.at/currenttl.xml (a list of information related to TSPs and the trust services they provide, which is required to be made available in a standardised format by each Member State);
- the signature verification service made available at www.signaturpruefung.gv.at, which allows verification of electronic signatures, electronic seals and electronic certificates from other EU and EEA countries, where these items are listed in the trusted list for the particular country;
- a 'trust infrastructure', enabling the supervisory body to adopt the certificate database of a TSP that discontinues service.



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Activities of RTR Telecommunications and Postal Services Division

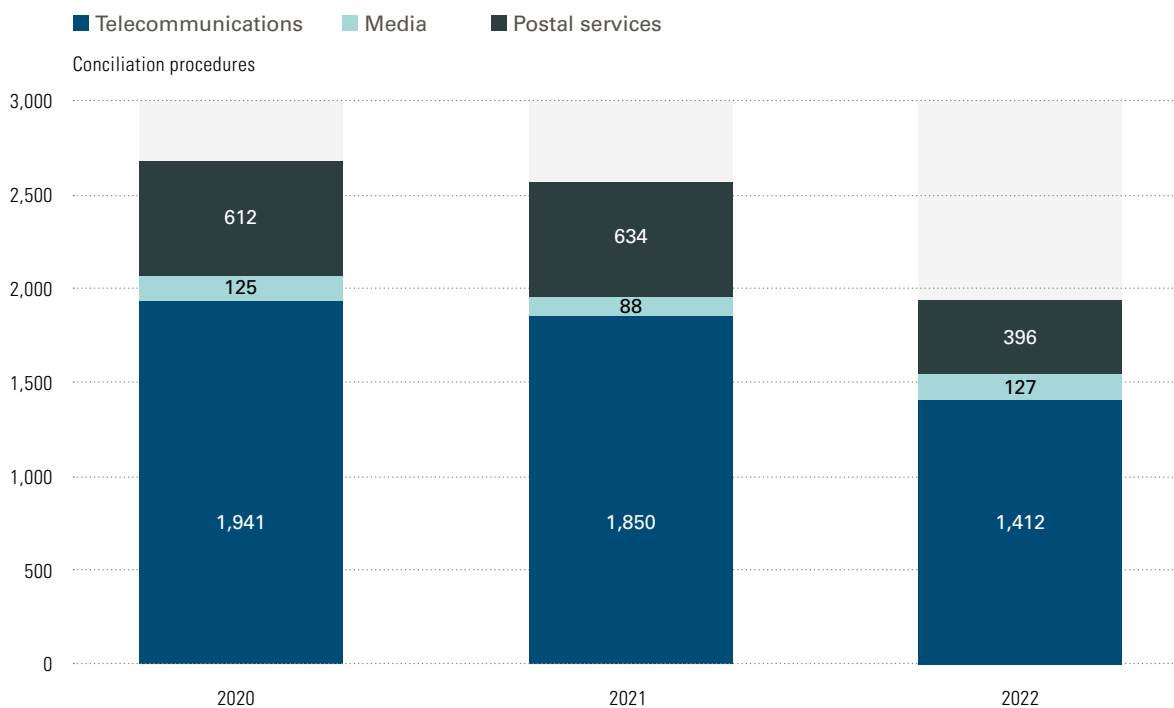
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06 Activities of RTR Telecommunications and Postal Services Division

6.1 Alternative legal protection for end users

The positive trend observed in recent years by the RTR conciliation bodies continued in 2022. The number of conciliation procedures for telecommunications and postal services decreased once again compared with previous years. Providers of postal and communications services evidently responded well to customer demands. It can be surmised that no serious issues currently exist that would drive up the number of complaints. The conciliation body for media was an exception, however, as the number of complaints submitted to this body increased.

Figure 31: Conciliation procedures involving telecoms, media and postal services, 2020–2022



Of the 1,539 telecommunications and media cases processed in total, more than 91% were completed within 90 days. A settlement was reached in 76% of all cases.

Of the 396 procedures relating to postal services, 84% were completed within 90 days. An amicable agreement was reached in 64% of all cases.

Conciliation procedures in telecommunications

Conciliation cases relating to telecommunications saw a steep decline, with the number falling from 1,850 to 1,412.

Hardly any numeric shift was seen between categories of cases. As in previous years, the ongoing concern continues to be 'contractual issues,' a term that covers a broad range of contract-related problems.

An increase was seen in conciliation cases involving roaming. Although case volumes had decreased due to the pandemic in 2020 and 2021, this downward trend reversed in 2022 as travel picked up.

Conciliation procedures in media

Compared with the telecommunications and postal sectors, media, including cable television, proved to be the exception in terms of conciliation procedures in 2022, with cases showing a sharp rise, from 88 to 127 cases year on year. This extra caseload can in fact only be attributed to a web portal for the automated submission of conciliation requests, with many of the requests being invalid. Most were submitted without first lodging a complaint with the provider as is required. When the figures are adjusted to omit these cases, a decline is also seen in media conciliation. Problems with contracts continue to be a dominant issue in this sector.

Conciliation procedures in postal services

While parcel shipments remained stable year on year in 2022, the volume of conciliation cases related to postal services shrank disproportionately. The most common reasons for lodging a complaint continue to be delivery issues, loss of parcels outside of Austria and difficulties relating to parcel deliveries.

6.2 Reporting phone number misuse

The contact point for reporting phone number misuse was created in 2018 to address the first waves of one-ring calls. The Telecommunications Act 2021 (TKG 2021) established statutory rules that permit interventions such as a block on collections, number blocking and fee announcements.

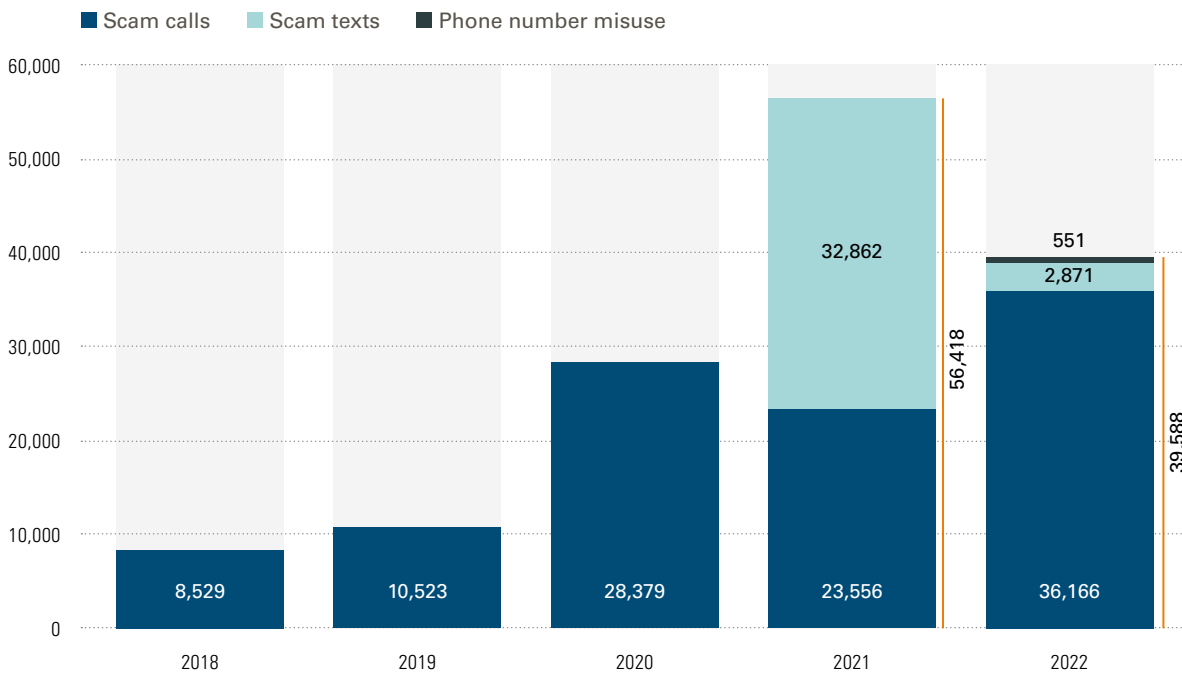
One-ring calls no longer represented a problem in the reporting year. The reasons are as follows:

- Users are now aware of the problem, resulting in increased caution when taking calls from unknown international numbers.
- The three largest Austrian mobile telecoms providers have adopted technical measures that are clearly very effective.
- Manufacturers have increasingly implemented spam warning functions on user devices.

Currently, the largest problem is 'spoofing', where perpetrators make use of spoofed Austrian telephone numbers (primarily mobile numbers or geographic numbers) for the sender ID. Spoofing provides the basis for robocall scams like 'police department calls' or 'Microsoft support calls.' In 2023, the RTR will be intensifying its efforts to combat this kind of abuse. An evaluation of the possible actions is taking place at national level. At international level, especially in the German-speaking region, an increased information exchange can be seen. If it is possible to successfully combat spoofing, this will also eliminate the basis for many other fraud scenarios – at least in part.

With regard to SMS messages that are used in attempts to spread malware to smartphones, the massive waves of fraud seen in 2021 were not repeated. New attacks can be expected, however.

Figure 32: Reports of scam calls (incl. one-ring calls) and scam texts, 2018–2022



6.3 Unfair practices in providing value-added services

Services from third parties, particularly number-independent services, have been carefully monitored for a number of years now. The Communications Parameters, Fees and Value-Added Services Ordinance (KEM-V 2009) has resulted in a steady decline in complaints concerning number-based services (traditional value-added services). The regulatory authority is carefully assessing developments around number-independent third-party services, but there is no current need for regulatory intervention since the Austrian providers have responded with self-regulation and user-friendly handling of complaints. In 2022, complaints regarding third-party services remained at a similarly low level as in 2021. The situation is therefore still not considered critical.

Table 44: Conciliation procedures involving third-party services, 2020–2022

	2020	2021	2022
Total number of conciliation procedures	2,066	1,938	1,539
Procedures involving value-added text messaging	1	1	0
Procedures involving value-added voice services	9	4	11
Procedures involving number-independent third-party services	156	50	46

6.4 Ensuring legally compliant terms of contract

With the TKG 2021, the TKK's task of ensuring that the contractual terms and conditions of telecommunications service providers (including general terms of service, service descriptions and tariff provisions) are legally compliant was transferred to the Telecommunications and Postal Services Division of RTR. Providers must draw up contract terms and notify them to RTR in advance for review. RTR can reject the application of these contract terms to business transactions if the terms breach the provisions of telecommunications law or certain points of civil or consumer protection law. A number of requirements relating to net neutrality are also reviewed, in this way ensuring compliance with these transparency requirements and thus safeguarding free access to the open internet.

In 2022, 489 cases were reviewed, which was a major increase compared with 402 cases in 2021 and 333 in 2020. Among the reasons for this are the various adjustments made necessary by the TKG 2021, and that providers of interpersonal communications services (NIICS) are now also subject to reporting requirements. Numerous enquiries from both end users and providers were also handled on the subject of notifying or reviewing contractual conditions. Content reviews of terms and conditions focus not only on compliance with provisions of telecommunications law but also civil and consumer protection legislation. In detail, it became apparent in 2022 that more and more European and international undertakings are becoming active as providers on the Austrian market. In ensuring that contract terms comply with the law, RTR has been facing a new set of challenges, since some of these providers have only limited knowledge of the relevant substantive and procedural provisions of Austrian and EU law, and may also not have an adequate command of German as Austria's official language.

RTR is primarily concerned with ensuring that telecoms make any necessary changes to contract terms already during procedures: this ensures that legal compliance is established as soon as possible. In every procedure in 2022, the TKK achieved this goal. For end users, checking through contract terms in advance reduces their risk of needing to go to court to clarify the legality of individual clauses once the contract has already been signed. Such legal proceedings are also associated with a very high cost risk. At the same time, end users are often unable to identify potentially unlawful clauses that are in fact unenforceable even though they have been agreed and included in the general terms of service. This practice of vetting contract conditions terms also makes an important contribution to fair competition between telecommunications service providers while also preventing them from gaining a competitive edge by introducing unlawful terms. With a view to net neutrality breaches, the practice also enables monitoring and thus an early warning mechanism.

6.5 Services subject to notification requirements

Pursuant to Art. 6 TKG 2021, the intent to provide a public communications network or to offer a public communications service as well as to modify or terminate such a network or service must be notified to the regulatory authority prior to the start of operation, modification or termination.⁴¹

⁴¹ For further information on notification procedures, please refer to the Communications Reports of the previous years.

Table 45: Notified active services 2018–2022

Service category	2018-12-31	2019-12-31	2020-12-31	2021-12-31	2022-12-31
Public telephone services at fixed locations	391	387	443	531	544
Call shops	38	33	27	26	24
Internet cafés	48	42	35	32	28
Public internet communications services	421	413	419	419	413
Public communications networks	532	564	582	612	648
Public leased-line services	82	80	82	82	84
Other public communications services	31	34	42	43	49
TOTAL services notified	1,543	1,553	1,630	1,745	1,790

As of 31 December 2022, 1,790 active services had been notified by a total of 1,115 operators, of which 33 were operators of call shops and/or internet cafés. Based on a 2011 amendment to the TKG 2003 that has been included in the TKG 2021, such operators are exempt from a large number of obligations arising from the TKG 2021 that apply in general to businesses required to provide notification as defined in Art. 6 TKG 2021 (this includes notification of general terms and conditions).

Pursuant to Art. 6 Par. 7 TKG 2021, RTR must immediately forward each notification concerning services subject to reporting requirements to BEREC by electronic means. Since the start of 2022, therefore, all notifications – both existing and new ones – are submitted to BEREC at regular intervals, by uploading them to a publicly accessible database (<https://gad.berec.europa.eu/#!view=Providers&sort=ProviderName|ASC>). Steps were already taken internally in 2022 to implement new service categories on the basis of the TKG 2021; these will be concluded in 2023.

6.6 Communications parameters: administration of the Austrian number range

6.6.1 Central number database (ZR-DB)

The central number database was officially launched on 15 September 2021. The database has been fully available to market participants since 7 October 2021, and this has considerably simplified regulatory activities in the areas of telephone number assignment and market supervision.

In addition to eliminating some of the 'teething troubles' with the central number database, the year 2022 also saw the old notice of use regime (submission of forms by email) replaced by integration into the central number database in order to ensure automated processing of notices of use.

The database will also facilitate the querying of location and subscriber data when responding to emergency calls and providing information in other cases as required by law. Alongside the implementation of mandatory direct routing, these are the remaining challenges that will be addressed during 2023.

6.6.2 Reports detailing statistics on telephone number administration

In total, 586 applications for the assignment of phone numbers were submitted in the 2022 reporting year. A total of 563 decisions were issued. Applications were either withdrawn or refused in 22 cases. In the 2022 reporting year, 580 applications were processed and completed overall.

Table 46: Decisions on telephone number requests, 2018 to 2022

	2018	2019	2020	2021	2022
Number of affirmative decisions	566	648	664	733	558
Geographic numbers	332	402	422	469	362
Non-geographic numbers	234	246	242	264	196
Number of negative decisions	15	6	3	8	5
TOTAL	581	654	667	741	563

In 2022, RTR issued a total of 13 decisions, all of them positive, in the context of administrating special communications parameters, which include mobile network codes, a basic and essential addressing element for mobile networks.

6.7 Emergency communications

In relation to emergency communications, RTR again fielded enquiries from call handling centres, operators and ministries. This not insignificant aspect of RTR's work involves mediation between several parties and continues to be a challenging role. However, these challenges cannot be resolved by means of conventional regulatory activities. An intuitive approach combined with technical expertise is required instead to ensure that legal provisions are implemented appropriately. In line with this approach, the Emergency Calls Platform event was held again in 2022 for the first time since the pandemic – this time in a hybrid form – so that market participants could learn about important new provisions of the TKG 2021. In particular, this includes the obligation now explicitly enshrined in the TKG that emergency communications must be routed – independent of technical feasibility – to the most appropriate public safety answering point; this obligation also applies to text-based emergency communications (e.g. SMS). This poses major challenges especially to 'network-independent providers' (e.g. Skype Out) because, unlike conventional mobile network operators, they do not have network-based location data and instead should use the location of the end-user device. A corresponding position paper was drafted by RTR in 2022 and will be published at the start of 2023. This also supports one of the main goals of the EECC of striving for a maximally level playing field between market players.

All operators have to implement a uniform interface for retrieving subscriber data, with a transmission now required rather than a query as under previous legislation. The change constitutes a major challenge for all market participants, one that will keep RTR very busy in 2023.

Public warning system (AT-Alert)

In Austria, the obligation to introduce a text-based public warning system is implemented in Art. 125 TKG 2021 with the introduction of a cell broadcast service in all public mobile telecommunications networks. Warnings issued by the competent authorities are then triggered among mobile network operators via the IT systems of the regional warning centres and the federal alarm centre. In this context, RTR is required to publish the

issued warnings on a publicly accessible internet page (webpage) (see Art. 125 Par. 4 TKG 2021). RTR has also taken on additional administrative tasks relating to the networking of the participating organisations (federal alarm centre, nine regional warning centres, three mobile network operators and RTR). Regular coordination meetings on this topic were held with the participating organisations already in 2022, and this will continue to be an important focus of RTR in 2023.

6.8 Network deployment and infrastructure use

When expanding communications networks, operators have to route their infrastructure across private and public property. Operators can claim wayleave rights under these circumstances. Yet another option is to co-use existing infrastructure (masts, ducts, maintenance holes or lines) owned by other businesses, thereby reducing the costs of expanding fixed and mobile networks (co-use rights). Infrastructure rights under telecommunications law can be enforced to enable cost-effective coordination of the excavation work needed to lay lines. As of November 2021, the TKG 2021 expanded the infrastructure rights to include a location right, which enables the establishment of mobile network locations ('antenna masts including all of the site facilities required, such as are necessary regardless of the specific technology deployed for technical operations'). Parties unable to agree on the contents of infrastructure rights can request the TKK to take a decision. Prior to any decision, RTR attempts to arbitrate (mediation). If not successful, RTR issues a decision in lieu of the contract.

In the reporting period, a total of 37 requests were made to RTR for rights pertaining to wayleave, co-use and location, as well as construction coordination. The 200 odd completed cases involving queries that did not lead to formal procedures additionally bear witness to the continued importance of infrastructure rights as set out in TKG 2021 Section 7.

The amended version of the Ordinance on Reference Rates for Impairment by RTR, the WR-V 2022, Federal Law Gazette II 2022/454, entered into force on 14 December 2022. This established the reference rates for the payment of wayleave and location rights. The latest version of the ordinance expands on the proven basis and system of the WR-V 2019 and also takes account of the current data situation in relation to input parameters. For more information about the details of the WR-V 2022, see the explanations provided by RTR (in German) at https://www.rtr.at/TKP/aktuelles/veroeffentlichungen/veroeffentlichungen/Verordnungen/WR-V_2022_Erl.pdf.

Note: Ruling by the VfGH on location rights (G 141/2022-13)

Similarly to all infrastructure rights pursuant to the TKG 2021, the location right is subject to the fundamental provision that any 'dispositions' by the property owner that conflict with infrastructure rights are still to be possible. In the case of location rights, this option was limited in the original version of the TKG 2021 to dispositions "resulting from a verified technical necessity." In a ruling dated 5 October 2022, the VfGH repealed this limitation of the property owner's disposition options as conflicting with the principle of equality, but confirmed at the same time that location so provincial government rights are otherwise constitutional.

This decision was brought about by a petition from the Provincial Government of Vienna to abolish the provision at location rights as a whole due to its unconstitutional nature. The VfGH shared the concerns of the Provincial Government of Vienna only to the extent that – as was already mentioned above – only dispositions "resulting from a verified technical necessity" that subsequently opposed previously granted location rights, could be considered contrary to the principle of equality. With this 'enhanced property protection', lawmakers unduly gave precedence to public interest in the expansion of broadband over other public interests that the owners could pursue with their property. The VfGH believes that an evaluation of opposing public interests must rather be made on a case-by-case basis. The VfGH did not raise any objection to the additional statutory obligation requiring public owners to offer a substitute location for dispositions that necessitate the removal

of a location. The VfGH did not share the remaining concerns voiced by the Provincial Government of Vienna – namely, the validity of the provision only against public owners, the infringement of legitimate expectations, the assumed uncertainty and the infringement of municipalities’ right to autonomy. To this extent, location rights do not give cause for concern in constitutional terms.

6.9 Ordinances

The TKG 2021 mandates regulatory authorities RTR and TKK with over 30 competencies for issuing ordinances. Apart from the continuation of a widely known authority to issue ordinances stemming from the TKG 2003, other, new legal foundations were also laid.

As regards the previous ordinances issued on the basis of the TKG 2003, a transitional provision exists allowing all of these ordinances to remain in force until the new ordinances – based on the TKG 2021 – have been duly issued.

In 2022, RTR issued the following ordinances:

- The Number Porting Ordinance 2022 (NÜV 2022) from 11 May 2022 lays out detailed provisions relating to number porting between mobile voice communications service providers. Among other aspects, the following topics were clarified in detail: no number porting fees for the end user, ‘automatic’ lapsing of the existing end user contract unless some other agreement is established, and extending of the option for subsequent number porting to one month after the end of the contract.
- The Telecom Notification Ordinance (TKA-V) from 10 June 2022 set out more detailed requirements for providers of telecommunications services regarding the electronic format for notifying their general terms of business and tariff provisions for these services.
- For monitoring developments on the market and the competition situation within the scope covered by the TKG 2021, RTR must conduct statistical surveys, generate statistics and publish the results. Details concerning the data to be collected for these statistics are now defined in the Communications Survey Ordinance 2022 (KEV 2022) from 23 June 2022.
- More detailed provisions concerning reporting and querying the data as well as viewing the data at the Single Information Point for Infrastructure Data (ZIS) are laid out in the Ordinance on the Single Information Point for Infrastructure Data (ZIS-V 2022) from 21 October 2022. The amended version of this ordinance contains adaptations to the TKG 2021 as well as other changes that proved necessary based on experiences operating the Single Information Point during recent years.
- The Ordinance on Reference Rates for Impairment 2022 (WR-V 2022) from 13 December 2022 defines reference rates applying to compensation paid out for the impairment of property and real estate value due to wayleave rights and location rights. More details can be found in the [section 6.8](#) on infrastructure rights.

At the end of 2022, procedures were still ongoing for the amendment of ordinances concerning the type, scope and file format of the information on broadband coverage (ZIB-V) and concerning the level of detail, content and form of the notification of changes to general terms of business and fee provisions that are not exclusively beneficial for end users (Mit-V).

Drafts of new ordinances are published on the RTR website and pass through a public consultation process.

6.10 Security of networks and services

Since November 2011, operators of public communications networks or services have been required to report to RTR, according to a format specified by RTR, any security violation or impairment of integrity that has a considerable impact on network operations or the provision of services. RTR is in turn required to submit an annual report to the European Commission and to the European Union Agency for Cybersecurity (ENISA), describing the notifications received and the measures taken. RTR can also inform regulatory authorities in other Member States, ENISA or the public about certain notifications on an ad hoc basis. Here the goal of transparency nonetheless always needs to be seen in the context of requirements for protecting the privacy of provider data.

With the entry into force of the TKG 2021, regulations for network and service security have also changed. As with authenticity and confidentiality, integrity and availability are now also considered aspects of the security of networks and services. The regulatory scope no longer extends merely to traditional communications services such as voice calls and internet access, but also covers number-based message services (e.g. SMS), number-independent interpersonal communications services (e.g. email, online chat) and signal transmission services (e.g. leased lines). The criteria for notifiable security incidents have also been expanded to include additional criteria.

6.10.1 Reports of network failures

In 2022, the reporting portal of RTR received 22 reports of security incidents in electronic communications networks or services. Twelve reports involved regional unavailability of one or more emergency telephone numbers. Most of these incidents lasted only a short time. In one case, however, the service disruption continued for over 8 hours, while in another case it lasted for 16 hours.

One report concerned a disruption of a number-independent interpersonal communications service in which about 20% of the emails of roughly 900,000 subscribers in Austria were delayed or lost over a period of one to three hours.

One disruption in a mobile telecommunications network was reported by four providers of virtual mobile networks in addition to the operator of the communications network. The incident involved roughly 925,000 subscribers for a period of over one hour.

6.10.2 Security of 5G networks

Once again in 2022, ensuring the security of 5G networks was a focal point of RTR's activities in network security. Foundational work in this area had been completed at European level with the EU Toolbox for 5G cybersecurity⁴² published by the NIS Cooperation Group, the majority of whose measures are implemented in Austria by the Telecommunications Network Security Ordinance 2020 (TK-NSiV 2020). Alongside general regulations applicable to all communications networks and services, the Ordinance envisages specific security measures for operators of 5G networks with a mobile subscriber base of more than 100,000 customers. This includes the following notification obligations:

- Evidence of the existence of an information security management system (ISMS)
- Submission of a declaration of conformity regarding the fulfilment of telecommunications-specific security standards
- Regular submission of an overview in terms of function and manufacturer of the security-relevant components deployed to operate the 5G network

⁴² Cybersecurity of 5G networks – EU Toolbox of risk mitigating measures, <https://ec.europa.eu/digital-single-market/news-redirect/667123>.

RTR again received this last item of information from the affected network operators in 2022.

At European level, RTR continues to assist the Federal Chancellery with its tasks in the NIS cooperation group, providing technical expertise on 5G networks in particular. RTR also participates in a working group on cybersecurity at BEREC, which communicates regularly with the European Commission and the NIS Cooperation Group and contributes to a shared understanding of the measures in the EU Toolbox while striving for the harmonised application of these standards.

6.10.3 Cybersecurity in the context of the war in Ukraine

The acts of war in Ukraine have created the need for a reevaluation of the general security situation in the EU Member States. In relation to telecommunications networks and digital services, this means an in-depth examination of the cybersecurity situation in the Member States. RTR supported the Austrian Federal Chancellery in surveying the sector, thereby assisting with the assessment of the national and European threat situation.

6.10.4 Cross-sectoral activities

Cross-sectoral cooperation with the energy sector continued in 2022, building on the activities stemming from the sector risk analysis initiated and organised by RTR in regular intervals of two to three years. Hosted jointly by the two parties, a series of workshops focused on mutual interdependencies and cascade effects that impact both sectors, which make a shared approach to the mitigation of these cross-sectoral risks both prudent and necessary. At the same time, these activities give rise to an expert network of regulatory authorities, operators and interest groups that can intervene promptly as and when needed. A review of the RTR sector risk analysis for the telecom sector is planned for 2023.

6.10.5 5G certification

The certification of products, services and processes is generally a tried and tested means for increasing security. As the same time, consideration should be given to not hindering the flexibility and innovation of an industry with frequent product and update cycles. In 2022, RTR cooperated with a European working group, coordinated by ENISA, on the development of a 5G cybersecurity certification scheme.⁴³ The programme for preparing the EU 5G scheme consists of two phases. The first phase, which was concluded at the end of 2022, included the translation of the current elements of existing schemes into their EU equivalents and the identification of gaps. It also produced an initial outline of the required additions and/or improvements to future versions of the schemes. The second phase, launched at the start of 2023, is focused on the implementation of additions and improvements as well as preparing and detailing the EU 5G scheme.

6.10.6 New era of cybersecurity with NIS 2

In December 2022, the NIS 2 Directive⁴⁴ was published in the Official Journal of the European Commission. This directive brings communications networks and services (as well as trust services) under its purview and strives for a new European cybersecurity architecture. RTR has frequently expressed its willingness to actively

43 Ad-Hoc Working Group on 5G Cybersecurity Certification, https://www.enisa.europa.eu/topics/certification/copy_of_adhoc_wg_calls/ad-hoc-working-group-on-5g-cybersecurity-certification.

44 Directive (EU) 2022/2555 of the European Parliament and the Council of 14 December 2022 on measures for a high common level of cybersecurity across the Union, amending Regulation (EU) No 910/2014 and Directive (EU) 2018/1972, and repealing Directive (EU) 2016/1148 (NIS 2 Directive).

participate in a newly designed Austrian cybersecurity landscape and has expressed its conviction that it is necessary to continue paying sufficient attention to sector-specific security aspects.

6.10.7 Network security advisory board

An advisory board for security in electronic communications networks was first set up when the Telecommunications Act entered into force in November 2021. The advisory board consists of twelve experts from ministries and social partners as well as the Computer Emergency Response Team (CERT) and the Austrian Institute of Technology (AIT) who are appointed by the federal government to serve for four years. The position of board chair is held by the Managing Director of RTR's Telecommunications and Postal Services Division, and RTR additionally provides operational support. The tasks of the advisory board include:

- Advising the Federal Ministry of Finance, responsible for the telecommunications agenda, on general aspects of the security of electronic communications networks
- Ongoing monitoring of the technological developments in the area of security components and services for such networks
- Publishing of an annual status report
- Drafting of expert opinions for procedures within the Federal Ministry for Finance relating to any classification of a manufacturer of network components or a provider of services for such networks as a high-risk supplier (this is a supplier considered very likely to be unable to comply, either at all or consistently, with applicable EU standards, especially with respect to information security and data protection).

The establishment of the advisory board and the adoption of rules regarding high-risk suppliers also serve to fulfil a corresponding requirement set out in the EU 5G Toolbox of risk-mitigating measures in relation to the cybersecurity of 5G networks from 29 January 2020. The constituent session of the advisory board was held on 21 November 2022, at which the members discussed the outlines of the board's future work.

6.11 Single information point for infrastructures: an information hub for telecommunications network operators

The TKG 2003 was amended in 2015 to add a package of measures that have been designed to reduce the costs of rolling out high-speed networks. These measures include, amongst others, the Single Information Point for Infrastructure Data (ZIS) and the Single Information Point for Broadband Coverage (ZIB), both of which are operated by RTR.

Full details and background information on the two information points have been published in the Communications Report 2019 (https://www.rtr.at/TKP/aktuelles/publikationen/publikationen/kommunikationsbericht/kommunikationsreport_2019.en.html) and on our website: https://www.rtr.at/TKP/was_wir_tun/telekommunikation/zentrale_informationsstellen/ZIB_ZIS.de.html (in German).

6.11.1 Single information point for infrastructure data (ZIS)

The Single Information Point for Infrastructure Data (ZIS) was established at RTR in 2016 and since manages a directory of all existing and planned infrastructure expansion that can be used for telecommunications purposes. The ZIS permits the efficient exchange of information about existing infrastructure and planned construction work, and consequently facilitates the efficient co-use and installation of infrastructure.

What kinds of data are stored in the ZIS?

The requirement to report geodata applies to all Austrian municipalities as well as other public bodies that are responsible for transmission infrastructure or for planning construction work. Information must also be reported by providers of public communications networks, who are subsequently permitted to query the data collected. Companies operating physical infrastructure for oil, gas, electricity, district heating, water, funicular railways or transport must also report data. The group of organisations obliged to report data is referred to as 'network or grid providers.'

Network or grid providers are required to digitise data on existing infrastructures and planned construction projects, and upload these data to the ZIS. To support network or grid providers in this process, the ZIS Portal makes available an application that facilitates the online digitalisation of both transmission infrastructure and planned construction projects (<https://www.rtr.at/zis>). To ensure both the quality and the completeness of the data reported, on uploading, data are reviewed and approved by RTR as part of the reporting process.

Furthermore, the network providers subject to reporting requirements as well as public bodies are supported with relevant functions, such as bulk uploading for the simultaneous reporting of both large data volumes and multiple construction measures in a single step, a simplified workflow for reporting data in general and the transfer of subsidy data into the ZIS.

The workflow for the querying functions has been simplified since the end of 2022, so that infrastructure and construction query requests can now be submitted in a single step. Since the ZIS-V 2022 entered into force, it has additionally been possible to download as geodata the results of queries on construction measures. This makes the process easier, especially since the data can now be integrated into the planning tools of the companies and is no longer made available merely as PDF maps. The scope of parties entitled to submit queries for planned construction measures was also expanded to include all suppliers of data to the ZIP, in other words providers of a public communications network are not the only entities permitted to submit queries about construction projects.

The ZIS is not a public directory. Only providers of public communications networks are entitled to query infrastructure data, since only they are entitled to co-use under the Telecommunications Act (TKG).

For the purpose of administering earmarked funding (for broadband), the Federal Minister for Finance has exercised the legal option of designating authorised parties at RTR who are entitled to consult data about further existing and planned infrastructures. Currently about 60 individuals from the provinces and the Ministry of Finance are so entitled.

Legal background

As of 1 November 2021, the legal framework for the ZIS is provided by Art. 80 of the Telecommunications Act 2021 (TKG 2021). A remit for the ZIS was first introduced in response to the EU Directive on reducing the costs of broadband expansion, implemented in late 2015 in an amendment to the Austrian Telecommunications Act 2003 (TKG 2003). In addition to assigning RTR the task of technical implementation as well as a support role for the ZIS, this legislation also authorises RTR to issue ordinances in this context. RTR most recently exercised this power to promulgate the Ordinance on the Single Information Point for Infrastructure Data 2022 (ZIS-V) in October 2022, with the ordinance entering into force on 12 December 2022. The ordinance sets out all of the provisions for querying data.

ZIS Portal use as of 31 December 2022

Since June 2016, some 10 million data records have been supplied by the potential group of roughly 3,300 organisations required to report – including 2,095 Austrian municipalities.

As of 31 December 2022, 357 of the companies required to report had applied to RTR and received authorisation to query the ZIS Portal. A total of 4,086 query requests were made in 2022 by authorised telecoms companies using the 1,214 user accounts authorised to access the database. This is 6.5 times the number of query requests filed in the previous year.

Requests were processed on average within 1 day and 39 minutes in 2022, this figure referring to the entire turnaround time. Despite the massive increase in volume, the query requests were processed on average more than ten hours more quickly during 2022 than in the year before.

More detailed information is published on the RTR website at <https://www.rtr.at/zis> (in German).

6.11.2 Geographical surveys of broadband coverage levels

The geographical surveys of broadband coverage levels (ZIB) were introduced at RTR in July 2019. Data on the current and planned coverage of broadband connections in telecommunications networks is collected for both fixed and mobile networks. Information on data transmission speeds, technologies, active connections and procured wholesale services is also stored in the database. Besides supporting companies in making data available, RTR is tasked with data verification and organisation, with the goal of providing an up-to-date picture of broadband coverage in Austria.

Providers of public communications networks and providers of public communications services are required to supply data. Every year, the companies are requested by RTR to report their most recent data as well as planned rollout projects to the ZIB. The ZIB Portal offers a map editor: this allows coverage areas to be selected and the corresponding data to be stored in CSV files for later uploading. Some companies do not work with a geographic information system or maps. For these entities, RTR provides support in the form of an Excel-based data-editing tool. This tool converts address data into the 100 metre grid used by Statistics Austria and matches these data with municipalities. All required CSV files are then generated, ready to be uploaded to the ZIB Portal.

RTR assists the companies in this task by means of the aforementioned tools as well as via telephone support. That All necessary information and supporting materials are publicly accessible on the ZIB website. Personal support can be obtained via the email address zib@rtr.at or, since 2022, directly via the ZIB Portal as well.

Legal background

As of 1 November 2021, the legal framework for the ZIB is provided by Art. 84 of the Telecommunications Act 2021 (TKG 2021). A remit for the ZIB was first introduced by an amendment to the TKG 2003 in December 2018. An Ordinance on Submission of Information to RTR as Single Information Point for Broadband Coverage (ZIB-V; Federal Law Gazette II 202/2019) entered into force on 5 July 2019 and is currently being revised based on the TKG 2021.

ZIB Portal use as of 31 December 2022

Work here in 2022 focused on providing support in data preparation and reporting to the some 670 companies required to report, as well as ensuring the quality and comprehensiveness of these data. The ZIB Portal was also reworked with a more transparent design, making the processing status of the data visible to the reporting party directly in the portal. Communication via the ZIB Portal has also been improved so that companies and municipalities (who act as providers of a public communications networks) can now view right next to the reported any by RTR regarding necessary amendments to the data. Additionally, ZIB users can now find contact data for their personal ZIB support agent directly in the portal. The data preparation tool provided to these companies was improved and extended based on feedback from users. Data validation upon uploading was also improved.

After passing quality checks, the data are used for market analysis and published in the quarterly RTR Internet Monitor. The data are also used to create funding maps and made available to Federal Ministry of Agriculture, Regions and Tourism (now the Ministry of Finance) for publication in the broadband atlas.

The focus in 2023 will be on further enhancing the ZIB Portal and on adapting the data checks in preparation for the coming ZIS-V 2023.

More information about the ZIB can be found on the RTR website: <https://www.rtr.at/zib>

6.12 Universal service

The TKG 2021 assigns to RTR a number of new duties relating to universal service. One example is monitoring the development and level of end-user prices, where RTR can intervene as necessary by issuing a decision securing service affordability. Regarding universal service availability, RTR will in future be assigned its own powers for specific enquiries received from end users at a certain location, supplementing the support provided by the Federal Minister for Finance.

RTR also continues to respond to universal service enquiries submitted by private citizens. In 2022, end users raised a number of issues in relation to this topic, particularly concerning broadband coverage at a specific location and the costs involved in establishing connectivity. As a result of changes introduced by the TKG 2021, RTR also received more and more enquiries relating to public telephone services.

6.13 International activities

6.13.1 RTR and BEREC – electronic communications

The European regulatory offices for electronic communication work together within BEREC to enable better connectivity, ensure fair competition in digital markets and assist end users in making informed decisions. RTR sends delegates to several working groups at BEREC. The RTR Telecommunications and Postal Services Division also co-chairs the Fixed Network Evolution and Roaming groups.

6.13.1.1 Roaming

The new Roaming Regulation entered into effect during the reporting year. BEREC advised the European Commission as early as during drafting of the regulation. It also introduced a new set of tasks for BEREC, such as revising the guidelines for roaming at retail and wholesale level, and developing databases on emergency calls and value-added services.

The BEREC Wholesale Roaming Guidelines from 2022, replacing those from 2017, now take into account the changes introduced by the new Roaming Regulation. The guidelines require mobile network operators to comply with all reasonable requests for wholesale roaming access. This applies in regard to both direct wholesale roaming access and wholesale roaming access for resale. In all cases, the provided access must enable the roaming providers to replicate the retail mobile telecommunications services offered in Austria, where technically feasible. This applies to all EU Member States as well as in the EEA-EFTA states of Iceland, Liechtenstein and Norway (when implemented accordingly).

The guidelines expand on the BEREC Retail Roaming Guidelines also published in the same year. The retail guidelines also replace the previous version from 2017 and serve to explicate the new Roaming Regulation and the Commission Implementing Regulation. The guidelines specify detailed rules governing application of the

fair use policy and the transparency provisions. They also offer guidance on emergency telephone numbers and value-added services. Furthermore, the guidelines contain detailed explanations of the provisions on quality of service and application of roaming transparency provisions to non-terrestrial networks.

Alongside its work on the guidelines and its advisory duties to the EU Commission on roaming matters, the working group also regularly publishes current market figures. This takes place in the International Roaming Benchmark Data Report and Intra-EU Communicators Benchmark Report.

6.13.1.2 Fixed network evolution

During the reporting year, the European Commission held a public consultation on the draft revised guidelines for state aid to promote broadband networks. BEREC also participated in the consultation through work in the FNE working group.

In 2022, BEREC additionally published its report on a “consistent approach to migration and copper switch-off”. As part of BEREC’s goal to support full connectivity, the report responds to the fact that the rollout of optical fibre makes conventional copper-based connection networks increasingly obsolete, so that providers therefore wish to discontinue such networks by, for example, shutting down main distribution frame sites. On the basis of regulations and experiences of regulatory authorities in 17 European states, the report identifies a consistent approach for managing this migration and the shut-down of the copper network.

A draft report was also published for public consultation that examines competition among various specific internet providers in the same geographical region. This takes into account the increasingly important role played by regional operators of VHC/NGA networks (very high capacity / next generation access) on the broadband market in many countries. The networks of the various providers can also partially overlap in some regions. In other regions, the networks may not overlap, but they may still be situated very close together and easily expanded to include the coverage area of the other operator in each case. Some operators may have ‘scattered’ networks throughout the entire country and compete with many different operators.

The final version of the draft report was published in the following year. Based on data from 31 European countries, the report serves two purposes:

Firstly, to investigate the extent to which multiple NGA networks are present in a geographical area and consequently what impacts this has on the retail prices and the product properties in the retail market; Secondly, to analyse the impacts on the market for local network access at the wholesale level at a fixed location. In each instance, both cases were analysed, i.e. where the market definition and/or remedial measures differed geographically and where they did not.

6.13.1.3 Other work of interest

In 2022, BEREC also issued a first position paper on the public discussion about ‘direct financial contributions’ (often referred to as ‘fair share’) paid by content and application providers (CAPs) to internet providers (ISPs) for transmitting the data traffic they generate through their networks. Here, BEREC analyses the assumptions underlying such a ‘sending party network pays’ principle and shares its preliminary assessment based on previous work: BEREC has thus far found no proof that the statutory regulation of such a mechanism would be justified in consideration of the current market conditions. Rather, BEREC refers to various risks for the internet ecosystem that could arise from such a proposal.

It must be emphasised that these are preliminary views. BEREC is focussing here only on those assumptions underlying the purported need to regulate the compensation paid to ISPs by large CAPs. This topic will continue to occupy BEREC, which will participate in the relevant consultation of the European Commission next year.

In multiple public consultation rounds during the reporting year, BEREC provided opportunities for comments on the 5G value chain and the status of the 5G ecosystem. A subsequently published report offered an overview of the main players in the 5G ecosystem, on 5G performance promises, cost structures and revenue sources.

Here, BEREC highlights the role of traditional market participants in the introduction of 5G and promoting demand for 5G-based products. However, the bundling of the IT and telecommunications competences required for the provision of 5G products may reveal new roles here as well.

BEREC shed light on the technical advantages offered by the 5G functions for the provision of new and/or better products, such as improved electronic communications services (ECS), private 5G networks and edge computing, but also addressed the demand side with the growth of B2B products and solutions for the 'verticals.' In addition, BEREC investigated the costs for the provision and operation of a 5G network and the costs for verticals to introduce the new technology.

Overall, BEREC comes to the conclusion that the 5G ecosystem is still in an early stage and that there is currently no need for specific 5G regulatory measures.

On the subject of the open internet, the European Court of Justice (ECJ) issued a decision in 2021. As a result, BEREC was obliged as part of its mandate to adapt the Open Internet Guidelines, which were later published during the reporting year after a consultation. The new guidelines reflect the judgement of the ECJ that zero-rating offers are incompatible with the obligation to treat data traffic equally, as set out in the Open Internet Regulation.

The guidelines were updated in accordance with the court ruling. Within eight paragraphs, they now provide greater clarity and strengthen the rights of end users. Going forward, BEREC will continue handling coordination between the national regulatory authorities.

As the second assessment of the Net Neutrality Regulation (Regulation [EU] 2015/2120 or 'TSM Regulation') by the European Commission is planned for the coming year, BEREC submitted an opinion in 2022. This opinion encompasses BEREC's experiences in applying the Net Neutrality Regulation as well as the associated BEREC guidelines. It comes to the conclusion that the Net Neutrality Regulation is still an appropriate and effective means of implementing this important European principle.

BEREC remains active in Sustainability Indicators for Electronic Communications. BEREC would like to contribute more on the topic of sustainability and assist with identifying indicators and standards that are suitable and effective for the evaluation of environmental footprint as well as help improve the comparability of environmental impacts within the sector.

6.13.2 RTR and ENISA – cybersecurity and trust services

Within ENISA, the European Union Agency for Cybersecurity, RTR participates in two working groups. The first of these is the ECATS Expert Group⁴⁵ (formerly Article 19 Expert Group), a working group comprising the European authorities responsible for trust services. The Telecommunications and Postal Services Division holds the chair of this group presumably until 2024. The experts in this group work on the efficient and harmonised implementation of security requirements for trust services, exchange information about security incidents, weaknesses and proven practices, and provide feedback to ENISA on its activities in the area of trust services.

As of late 2024, the cybersecurity of trust services will fall under the NIS 2 Directive promulgated at the end of 2022, while other aspects of trust services will continue to be regulated by the eIDAS Regulation. Because of interdependent responsibilities as defined in the eIDAS Regulation and the NIS 2 Directive, close cooperation

45 ECATS stands for European Competent Authorities for Trust Services.

is required between competent authorities at the national and European levels. Promoting this cooperation through ECATS is an important goal of RTR. This is reflected, for example, in the opening of ECATS in 2022 to include NIS authorities in future. During its chair of ECATS, RTR will also be included in certain working groups of the NIS Cooperation Group (NIS CG) established under the NIS and NIS 2 Directives. The NIS CG advises the European Commission on matters such as the preparation of implementing acts, thereby contributing to continuity with previous procedures in connection with security measures and the reporting of security incidents.

The second ENISA working group that RTR is engaged with is called the ECASEC Expert Group.⁴⁶ This working group is primarily occupied with security measures and reporting obligations in accordance with Article 40 EEC.

Alongside ENISA, RTR also contributed to the Forum of European Supervisory Authorities for Trust Service Providers (FESA), which aims to achieve the harmonisation of supervisory practice and cooperation between the supervisory bodies on matters of common interest. As one example, the forum has agreed on proven procedures for ensuring end-to-end supervision even in the case of trust services provided across several Member States.

RTR also participates in European activities relating to security aspects of Open RAN at various levels. It contributes its expertise to the relevant working groups, whether at BEREC, ENISA or the NIS CG, in the latter case supporting the Federal Chancellery.

6.13.3 RTR and OECD – economic cooperation and development

At the OECD, RTR represents Austria in the CISP working party (Working Party on Communications Infrastructure and Service Policy), which is concerned with communications infrastructures and services. On the whole, the OECD pursues the goals of promoting economic prosperity, equality, opportunities and well-being, and serves as a clearing house for the exchange of knowledge, data and analyses, as well as insights and the sharing of best-practice examples.

In 2022, the WP-CISP finalised its contribution to the OECD's communication regulators of the future. The digital transformation of the economy and society in general is also driving rapid developments in the communications sector. To overcome these future challenges, the OECD believes that the communication regulation authorities must acquire new capabilities, especially in the area of data and digitalisation. As traditional markets blend and boundaries blur, to assist one another in achieving goals, regulatory authorities increasingly need to take data-supported approaches as well as to collaborate both formally and informally.

A second focus of RTR's work in the CISP working party concerns the developments surrounding spectrum administration for communications services. A corresponding document detailing the most recent trends in the administration of the critical and scarce resource known as 'spectrum' was published in October 2022. This report comes to the conclusion that well-designed, transparent licensing systems (including auctions) will promote investments and innovations and that flexible conditions in future (e.g. shared use or licence-free spectrum) can support efficient use of spectrum.

46 ECASEC stands for European Competent Authorities for Secure Electronic Communications.



RTR and PCK activities in the postal sector

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07 RTR and PCK activities in the postal sector

The Post-Control-Kommission (PCK) and the Austrian Regulatory Authority for Broadcasting and Telecommunications (RTR) are mandated with safeguarding competition in the postal services market. In addition to providing operational support to the PCK, RTR has separate regulatory duties relating to the notification of services, conciliation and end user dispute settlement. The most significant regulatory activities by the two authorities in 2022 are presented briefly below.

7.1 Procedures before the PCK

7.1.1 Closure and discontinuation of postal service points

In the context of closure or discontinuation, a distinction needs to be made between postal service points (PSPs) operated by Österreichische Post AG (Post AG) and PSPs operated by third parties.

Post AG must directly report to the PCK whenever it plans to close down any PSP it operates, and may only proceed with closure once certain preconditions set out in the Postal Market Act (PMG) have been met.

In such cases, the obligation to provide the universal service can also be met by other PSPs, such as existing PSPs operated by Post AG or a Post AG partner (a third-party-operated PSP). Where the preconditions for closure as set out in the PMG are not met, the PCK may conclude the procedure by prohibiting closure. The PCK may make authorisation of the closure contingent on another specified PSP providing replacement service. The PCK may also drop the procedure and allow closure to go ahead if the preconditions under the PMG have been met. More information on procedures relating to the closure of PSPs operated by Post AG can be found in communications reports for previous years. In the 2022 reporting year, Post AG notified the regulatory authority of the planned closure of a total of 16 directly operated PSPs.

In addition to monitoring the planned closure of directly operated PSPs, the PCK also conducts supervisory procedures to review any discontinuation of third-party-operated PSPs, for instance after insolvency of postal service partners or the termination of contracts.

Under the PMG, Post AG is also required in such closure cases to ensure supply universal service as well as coverage with PSPs throughout the country. Under certain conditions, alternative supply solutions, including the deployment of rural delivery personnel, can be implemented in such situations.

Procedures conducted by the PCK in 2022 involved both closures of third-party-operated PSPs and of directly operated PSPs. Procedures were initiated in a total of 120 cases. All of the supervisory procedures initiated were concluded without issuing a decision, since the provision of the universal service and wide-area coverage with PSPs was ensured in each case.

Total PSPs in Austria declined during the reporting year, from 1,746 (as of 31 December 2021) to 1,720 (as of 31 December 2022). As of 31 December 2022, rural delivery personnel had been additionally deployed in eleven cases as an alternative service supply solution.

Table 47: Postal service points operated by Post AG and by third parties, 2019 to 2022

	2019	2020	2021	2022
Post AG-operated PSPs	413	402	395	379
Third-party-operated PSPs	1,342	1,350	1,351	1,341
Total PSPs	1,755	1,752	1,746	1,720

Source: RTR

7.1.2 Payment orders for the financial contribution under Art. 34a KOG

To cover the cost of postal sector regulation, under the KommAustria Act (KOG), the federal government is required to fund from the federal budget one portion of regulatory expenses, with the postal service industry providing financial contributions to cover the rest.

Where postal service providers fail to meet their obligation to pay financial contributions, the PCK is obliged to issue an official decision ordering payment of the contribution. In no case in 2022 was it necessary for the PCK to order payment of an outstanding financial contribution.

7.1.3 Licence issuing

Commercial activities for the purpose of conveying letters up to 50 g require a licence from the PCK. In 2022, there were no changes to previously issued licences.

Thus, the following seven businesses continued to hold licences as of the end of 2022:

- Feibra GmbH
- Medienvertrieb OÖ GmbH
- RS Zustellservice Rudolf Sommer
- noebote GmbH
- hpc DUAL Österreich GmbH
- Wien IT GmbH
- Russmedia Service GmbH

7.1.4 General terms of service and tariffs

In connection with providing universal services, the universal service provider (Post AG) is required to issue general terms and conditions specifying rules for providing the services and the associated tariffs to be charged. These general terms and conditions are then to be notified to the PCK. Within two months, the PCK can object to any notified general terms and conditions that fail to conform to specific provisions of law. Four procedures involving modifications of Post AG's general terms and conditions were conducted in the 2022 reporting year.

Other postal service providers offering services in the universal service sector are also required to issue and to notify to the PCK the applicable general terms and conditions. The review is carried out to the same standards as those that apply to the universal service provider, although the PCK does not verify the tariffs. In 2022, one procedure was conducted that involved modifications of general terms and conditions issued by other postal service providers.

7.1.5 Postal tariff adjustments

As of 1 July 2022, the tariffs for Eco letters were increased, while a new fee was introduced to cover the expense of handling unstamped postal items.

Other tariff adjustments, as of 1 October, affected letters and parcels, while other changes taking effect as of 1 January 2023 related to official letters with advice of receipt and to postal newspaper delivery as well as to the Sponsoring.Post and Info.Mail services.

The PCK commissioned RTR experts to review the tariffs and submit evaluation reports for the individual cases. Evaluation reports examined whether the universal service sector's expenses were being recovered or even a surplus generated. The reports concluded that the tariff adjustments for the overall basket was below the forecast change in the Consumer Price Index (CPI). As a result, the PCK did not object to the reported changes in the general terms and conditions (including tariffs).

7.1.6 Proceedings before the VwGH

Whether parcel stamps fall under universal services was the issue addressed in a ruling handed down by the Austrian Administrative Court (VwGH) on 20 December 2021 and served to the PCK in January 2022. The PCK's classification of parcel stamping as a universal service was contested by Post AG. The VwGH ruling confirmed that parcel stamps do indeed fall under universal services.

7.2 Procedures before RTR

7.2.1 Notification of provision of postal services

Postal service providers are required to notify RTR in advance of the intended provision of a postal service as well as any change to or discontinuation of such a service. RTR is required to publish on the internet a list of notified postal services, including the name of the postal service provider in each case. In 2022, 14 business entities notified to RTR the provision of postal services. As a result, the list of postal service providers maintained by RTR comprised a total of 137 businesses at the end of 2022.

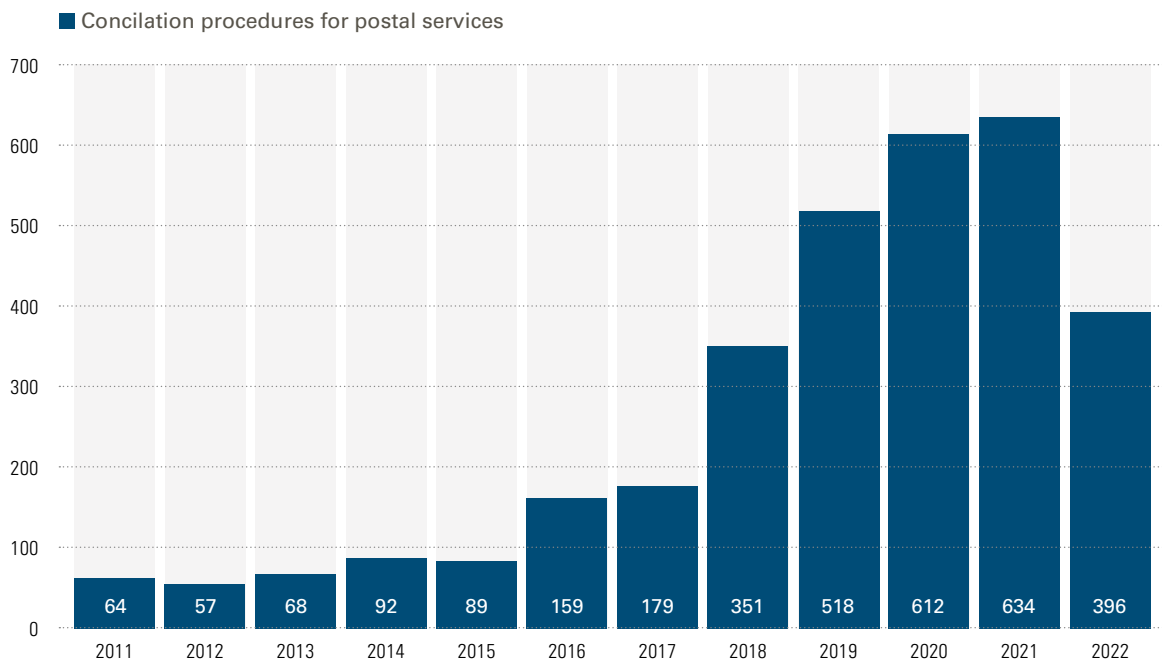
7.2.2 Review of Post AG's cost accounting system

Among the regulatory authority's remits is to periodically review the cost accounting system used by universal service provider Post AG. Within its internal cost accounting systems, the universal service provider is obliged to maintain separate accounts for services classified as universal services and for those not falling under this category. The internal cost accounting systems must be based on uniformly applied and objectively justifiable principles of cost accounting. As in previous years, the review carried out in the reporting year revealed that the cost accounting system used in 2021 complied with the specified criteria.

7.3 Conciliation cases involving postal service providers

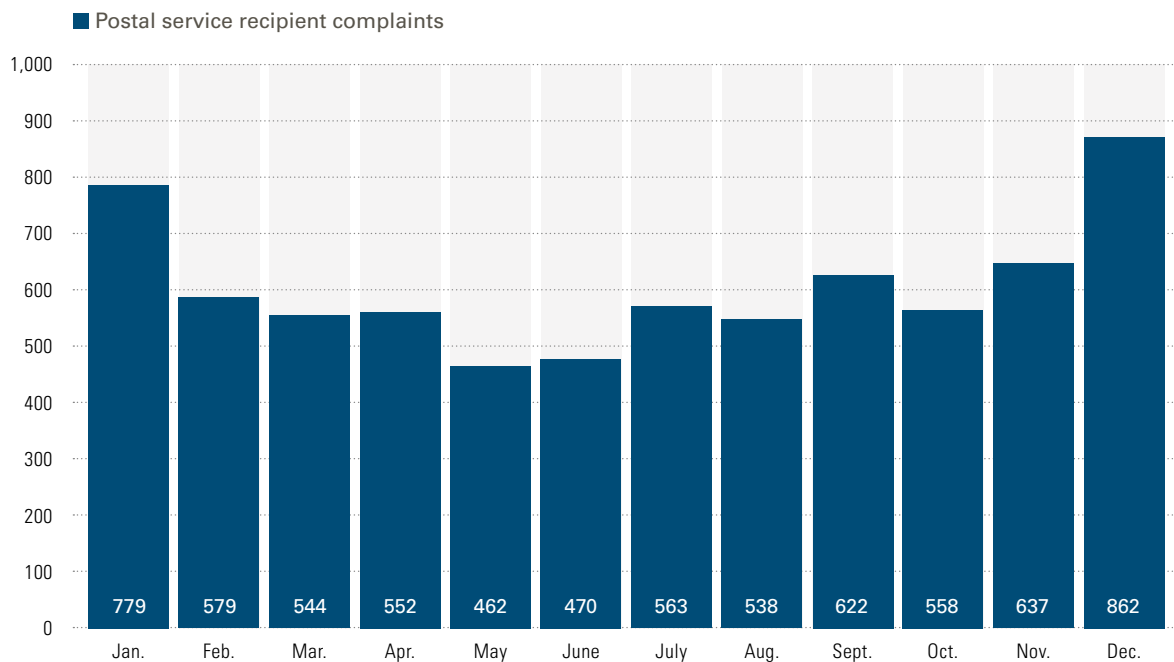
For the first time ever since the conciliation body for postal services was set up in 2011, requests for postal conciliation fell year on year unexpectedly to an appreciable extent. The development was encouraging, considering the huge volume of items delivered each year. Conciliation requests in the reporting year numbered only slightly less than 400. One reason for the drop is the fact that normally only parties sending postal items may request conciliation. Only these parties have an agreement with the particular postal service provider and are thus eligible to assert claims based on the agreement.

Figure 33: Conciliation procedures for postal services, 2011-2022



An additional reason for the drop in conciliation cases is a message portal set up by RTR in February 2021, which allows recipients of postal items to submit complaints. The portal supports recipients in putting their concerns into a structured form when bringing complaints before the regulatory authority. The chart below, showing the volume of complaints submitted by recipients during the reporting year, indicates how well users accept this option for lodging complaints.

Figure 34: Postal service recipient complaints in 2022



In summary, it should be noted that postal service providers generally do their job well, with issues arising only in isolated cases.

In the case of both conciliation requests and complaints by recipients, the most common subjects of disputes are 'parcel delivery issues' and 'loss of postal items' as well as 'damaged parcel contents'.

The 2022 activity report of the conciliation bodies presents in detail the activities undertaken in the postal service sector [Tätigkeitsbericht der Schlichtungsstellen 2022](#)⁴⁷ (in German).

7.4 International activities: RTR and the ERGP

The European Regulators Group for Postal Services (ERGP), set up based on an EU Commission resolution passed on 10 August 2010, became operational in 2011. The ERGP is a body that provides technical support and advice to the European Commission on issues relating to postal service regulation within the EU. The group thus plays a key role in consultation, coordination and cooperation between Member States and the European Commission.

The Postal Services Directive, not amended since 2008, has proved increasingly less suited to addressing changes in the postal sector over the years. One of the changes is the drop in the volumes of letters, which are being increasingly substituted by electronic services, a trend that not even the pandemic could brake and that is having growing impact on the financing and, indirectly, the quality of universal service. In April 2022, the ERGP adopted a [position paper](#)⁴⁸ in response to the 2021 report by the European Commission on the evaluation of the Postal Services Directive. The report had highlighted the importance of adapting the

⁴⁷ https://www.rtr.at/schlichtungsbericht_2022

⁴⁸ <https://ec.europa.eu/docsroom/documents/49914?locale=en>

regulatory framework to a digital world. Similarly, the Council of the European Union adopted a [resolution](#)⁴⁹ in June 2022 calling on the European Commission to review the need for revising the legal framework and, if appropriate, to submit a proposal. In response, the European Commission announced that a forecast study was planned for 2023 to look at requirements in the postal sector, at the same time requesting the ERGP's assistance with the study, which is to serve as an additional basis for the decision on whether to revise the postal regulatory framework.

The focus of the ERGP's activities in the reporting year was the adoption of a Medium-Term Strategy for 2023–[2025](#)⁵⁰, based mainly on three Strategic Pillars:

- Revisiting the postal sector and its regulatory framework in the light of environmental sustainability and digitalisation.
- Promotion of a competitive single EU postal market in the context of rising e-commerce deliveries.
- Empowerment of end users and ensuring a user-oriented universal service.

Alongside consistent monitoring of the postal market and evaluation of the Postal Services Directive, the 2022 work programme highlighted the topic of sustainability, building on the 2021 report to assess the impact of the Green Deal on the postal market. In this connection, the ERGP held an in-house workshop on sustainability strategies and regulation in late June 2022. At the event, postal service providers as well as sector and research experts had the opportunity to share their recent experience with ecological sustainability in the postal sector and to discuss recommendations for progress in this area. The ERGP Report on environmental sustainability in the [postal sector](#)⁵¹ details action taken by postal service providers towards enhancing sustainability, in particular to reduce CO2 emissions and to ensure clean delivery conditions and emission-free urban logistics, with best practice examples summarised.

Postal sector quality of service was another issue highlighted in the 2022 reporting year, on the one hand through continuation of the Report on quality of service, consumer protection and [complaint management](#)⁵². Quality of service was also the focus of an internal feasibility study on parcel market indicators in the context of e-commerce. The ERGP additionally discussed e-commerce within another setting. The Report on access to the [postal network](#)⁵³ tackled issues relating to regulated access to postal networks in various geographical locales.

Other reports adopted by the ERGP in the period under review include:

- ERGP Report Analysis of Article 6 of the Regulation (EU) 2018/644 on cross-border [parcel delivery services](#)⁵⁴
- ERGP Follow-up Report on the implications of online platforms in the [postal sector](#)⁵⁵
- ERGP Report on core indicators for the [postal sector](#)⁵⁶
- [2023](#)⁵⁷ Work Programme

Prof. Mariano Bacigalupo (CNMC, Spain) chaired the ERGP until mid-September 2022. He was succeeded by Petros Galides (OCECPR, Cyprus), who back in late 2021 had been unanimously elected to chair the group in 2023 and took office early.

49 <https://eur-lex.europa.eu/legal-content/DE/TXT/HTML/?uri=CELEX:32022D1327&from=EN>

50 <https://ec.europa.eu/docsroom/documents/52617?locale=en>

51 <https://ec.europa.eu/docsroom/documents/52934?locale=en>

52 <https://ec.europa.eu/docsroom/documents/52954?locale=en>

53 <https://ec.europa.eu/docsroom/documents/52954?locale=en>

54 <https://ec.europa.eu/docsroom/documents/50715?locale=en>

55 <https://ec.europa.eu/docsroom/documents/52434?locale=en>

56 <https://ec.europa.eu/docsroom/documents/52936?locale=en>

57 <https://ec.europa.eu/docsroom/documents/52954?locale=en>



RTR's activities as a competence centre

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08 RTR's activities as a competence centre

RTR is tasked with serving as a competence centre for broadcasting and telecommunications industry⁵⁸ affairs, in doing so complying with the general principles of economy, efficiency and expediency.

This competence centre role involves analysing issues relating to the activities of KommAustria, the TKK and RTR. Examples here include the commissioning of study reports and the preparation of expert reviews. The findings from such evaluations are to be appropriately prepared for public disclosure.

The following section presents the activities falling under the competence centre remit (cf. Art.20 KommAustria Act (KOG)).

8.1 Activities within the Media Division

8.1.1 Studies and publications

8.1.1.1 2022 Video Survey

The Video Survey has been conducted annually by GfK Austria on behalf of the Media Division and the Teletest Working Group (AGTT) since 2016. Typically held in February, this representative survey involves the market research institute asking around 4,000 people, representative of the Austrian population, to complete computer-assisted web interviews (CAWI). The survey offers insights into the use of a wide variety of video services in Austria – from linear television and broadcaster media libraries to alternative online services, and including video use in social media – at a very high level of detail. The Video Survey provides an analysis of usage patterns in the Austrian population as a whole, while breaking these down into five separate and especially relevant age groups. Data are not interpreted but are merely presented in the form of tables and charts that illustrate trends in video service usage as a year-on-year comparison.

The 2022 Video Survey, together with its data-rich charts and tables, is available in its entirety on the RTR website (in German).

8.1.1.2 Broadcasting 2030 – Will the Antenna Survive?

A collection of articles published and commissioned by KommAustria, entitled *Broadcasting 2030 – Will the Antenna Survive?*, explains which technical developments are now being pursued in the field of digital terrestrial television that depend on the long-term availability of the last block of spectrum, 470 to 694 MHz, dedicated to terrestrial television. The authors are leading representatives of both public and private media and telecommunications companies, cultural institutions, national and international industry and professional associations, and media regulators, as well as internationally recognised researchers from academic institutions throughout Europe.

The publication came out in autumn 2022 to coincide with the 2023 World Radiocommunication Conference (WRC-23), at which individual countries from the international community contribute their respective opinions on the future use of the frequency spectrum in question.

With a total of 21 individual articles, the publication provides a comprehensive overview both of current needs and of new developments currently in preparation that depend on the availability of this block of spectrum.

⁵⁸ RTR does not act as a competence centre for postal service regulation.

Many articles address the development of the 5G broadcast wireless technology while also highlighting the dependency of cultural actors on this frequency range for the use of radio microphones as well as the interdependency of radio on the continued existence of large terrestrial transmitters. The publication therefore provides both a general outlook on the future of broadcasting while also looking at television specifically in the context of advances in digitalisation and convergence.

The publication (originally titled *Rundfunk 2030 - Überlebt die Antenne*) is available (in German) to be downloaded from the RTR website at https://www.rtr.at/medien/aktuelles/publikationen/Publikationen/nin/Rundfunk_2030.de.html.

8.1.1.3 Digital Skills Austria study

The Digital Skills Austria study was completed on behalf of the Media Division under the leadership of Prof. Thomas Steinmaurer (Paris Lodron University of Salzburg). The central question addressed by this study is the extent to which people in Austria have the skills necessary to orient themselves and navigate within digital space, or to shape it.

During the months of May and June 2022, the study used an online questionnaire to survey Austrians aged 16 and over, asking them to self-assess their own digital skills. The researchers utilised a model here that assumed a set of interrelated and complementary digital competencies.

The survey was also designed to collect sociodemographic data, personal attitudes to technology, expertise in the digital domain (digital knowledge) and the use of media for self-expression.

The study shows that, while sociodemographic attributes have no influence on digital knowledge, they do impact the use of media and information as well as digital skills. Study findings include the following, for example:

- Conventional media service providers can play a key role in helping consumers acquire advanced expertise about the workings of the digital sphere.
- High usage levels of quality media plus skills in relation to communication and interaction, as well as technology and its application, have a positive effect on users' digital knowledge.
- This knowledge is negatively impacted, however, by a high level of expertise in content production, and by the extensive, active use of social networks or the tabloid press and regional media.

The Digital Skills Austria study is available (in German) on the RTR website at https://www.rtr.at/medien/aktuelles/publikationen/Publikationen/Digital_Skills_Austria.de.html.

8.1.1.4 2022 Media Literacy Report

The 2022 Media Literacy Report illuminates the wide-ranging topic of media literacy from various perspectives and offers an overview of the many initiatives in this field.

The Media Literacy Report is structured according to the three focal points of 'education', 'generations' and 'media'. Interviews with domain specialists were conducted on each of these topic areas, with the experts illuminating the topic of media literacy from a variety of perspectives and offering insights into their activities in this field. The report is rounded off by statements from media policymakers.

The 2022 Media Literacy Report is available (in German) on the RTR website at <https://www.rtr.at/medien/aktuelles/publikationen/Publikationen/Medienkompetenz-Bericht.de.html>.

8.1.2 Events

8.1.2.1 Media literacy – Orientation in the Digital Transformation

In November 2022, the Media Division held an expert event, entitled Media Literacy – Orientation in the Digital Transformation, which provided an important contribution to public debate about the challenges involved in designing and using digital media services. During this hybrid online and in-person event, RTR also introduced its recently published [Digital Skills Austria](#)⁵⁹ study together with its [2022 Media Literacy Report](#)⁶⁰.

An event summary, including videos, is available (in German) on the RTR website at https://www.rtr.at/medien/aktuelles/veranstaltungen/Veranstaltungen/Veranstaltungenn_2022/Nachschau_Medienkompetenz.html.

8.2 Activities of the Telecommunications and Postal Services Division

8.2.1 Studies and publications

8.2.1.1 Switching Barriers for Key Internet Services

The study entitled *Switching Barriers for Key Internet Services* utilises a representative survey of 2,092 individuals to investigate the reasons for their selection of messenger, browser and day-to-day search engine, as well as the barriers that may be encountered when switching between the various providers of these services.

Why were these services considered in particular? Messenger services compete to a certain extent with 'conventional' telecommunications services and are treated as synonymous with them in some provisions of the Telecommunications Act 2021 (TKG 2021). Browsers and search engines, on the other hand, are important 'gatekeepers' that have a significant influence on the openness of the internet. Messengers, browsers and search engines can also take on the role of broker between consumers and companies, and are therefore defined as core platform services in the EU's ground-breaking Digital Markets Act (DMA).

59 https://www.rtr.at/medien/aktuelles/publikationen/Publikationen/Digital_Skills_Austria.de.html

60 <https://www.rtr.at/medien/aktuelles/publikationen/Publikationen/Medienkompetenz-Bericht.de.html>

Key study insights include the following:

- Although many services are available on phones, many users will nonetheless choose the same provider in each case. When selecting a messenger, the most important criterion is the network effect, i.e. users will often use the messenger that keeps them in contact with as many people as possible. In Austria, WhatsApp is the dominant messenger.
- In the case of browsers and search engines, familiarity plays a major role in service usage. Most users keep using the browser or search machine originally installed or configured on their device. This means that the browser market is heavily dominated by Chrome (Google) and Safari (Apple). Firefox users prioritise security and data protection aspects – and therefore download and install the browser themselves.
- Google has the lion's share of the search engine market. The use of an alternative search engine often goes hand-in-hand with a strong preference for security and better data protection safeguards. The most significant barrier to switching browsers or search engines is the need to assess the level of security and privacy offered by other providers.

The study (original German title: *Wechselbarrieren bei wesentlichen Diensten des Internets*) is available for downloading from the RTR website at <http://rtr.at/plattformen/wechselbarriere> (in German).

8.2.1.2 Usage of communication services on the internet

Internet-based communications services, such as internet telephony, video telephony and videoconferencing, messenger and email services compete directly with conventional telephony and SMS, and have been subject to sector-specific regulation in a number of regards since the entry into force of the TKG 2021. In July 2022, RTR therefore decided to look at the state of play, with a representative survey of 2,009 members of Austria's online community that collected data on the use of these services, later publishing the results in a study entitled Usage of Communication Services on the Internet.

The data obtained show that nearly two thirds of all call minutes are now handled over the internet, with roughly half of these involving telephone calls with video or videoconference calls, with younger people more likely to use internet telephony, video telephony or videoconferencing services.

Online messenger services have largely replaced text messages across all age groups, with nine in ten messages now being sent by instant messengers or email.

Many internet-based communications services form an integral part of their underlying digital ecosystems – whether from Meta (formerly Facebook), Google, Apple or Microsoft. Meta services (WhatsApp, Facebook, Facebook Messenger, Instagram) not only dominate instant messenger services but also the market segments of telephony and video telephony.

The study (original title: *Nutzung von Kommunikationsdiensten im Internet*), the questionnaire used in the survey and the raw data as collected can be accessed from https://www.rtr.at/TKP/aktuelles/publikationen/publikationen/internet_based_communication.html. This data are provided for access and use as open data.

8.2.1.3 Demand for Optical Fibre Connections in Austria

Following its study on internet connections using optical fibre in Austria from 2018⁶¹, RTR again takes a look at the proliferation of optical fibre connections in Austria, this time with a focus on differences in demand based on geographical aspects. Published in December, the report provides an overview of current FTTH usage in Austria, highlighting regional differences and analysing the factors to which these differences can be

61 <https://www.rtr.at/TKP/aktuelles/publikationen/publikationen/GlasfaserOe2018.de.html>

attributed. The report was based on interviews with FTTH providers, plus an analysis of geographical data on broadband coverage and usage at municipal level.

The analysis shows that the availability and usage of optical fibre connections in Austria have increased steadily over the last few years, although major regional differences are also observed. The most important factor for FTTH usage is the parallel availability of alternative infrastructures and the quality of these infrastructures. Alongside cable networks and broadband, mobile services also play an important role here.

The report is available from the RTR website at <https://www.rtr.at/TKP/aktuelles/publikationen/publikationen/FTTHNachfrage2022.de.html> (in German).

8.2.2 Events

8.2.2.1 23rd Salzburg Telecom Forum

Under the motto of Net Security and Telecommunications, the 23rd Salzburg Telecom Forum was held in September by RTR, the University of Salzburg and the European Commission over the course of two days. The conference was organised on both days as a hybrid in-person and online event.

Alongside a video welcome message from State Secretary Florian Tursky and keynotes from Dr Roberto Viola (Director General of GD CONNECT at the European Commission) and Wolfgang Kopf (Deutsche Telekom), the afternoon programme on the first day of the event included presentations from Vinzenz Heußler and Arno Spiegel (Federal Chancellery), Klaus Steinmaurer (RTR), Marcell Nedelko (PwC Austria) and Matthias Schmidl (Data Protection Authority).

The afternoon continued with a discussion of the topic of "Network security and corporate strategy – what does the future hold?" with panellists Andreas Eichinger (Salzburg AG), Andreas Reichhardt (Federal Ministry of Finance), Rudolf Schrefl (Drei), Paul Sungler (SALK) and Wolfgang Urbantschitsch (E-Control).

The second day was dedicated to the wide-ranging topic of "Network security and the letter of the law", with presentations from Prof. Iris Eisenberger (University of Vienna), Svetlana Schuster (European Commission), Prof. Peter Burgstaller (attorney-at-law) and Ulrich Latzenhofer (RTR).

8.3 Public relations: information and transparency

Numerous public relations activities in 2022 were aimed at familiarising the general public with the specific work of regulatory bodies KommAustria, TKK, PCK and RTR, as well as promoting transparency.

Media relations and enquiry management

Through numerous press activities, RTR informed the public of regulatory decisions, issues relating to regulation and grant decisions. RTR also responded to numerous media enquiries and held interviews with media representatives.

RTR deals with a large number of enquiries daily, both by phone and in writing, often concerning extremely complex problems. In 2022, a total of 3,004 enquiries were submitted to rtr@rtr.at and subsequently answered. As in previous years, the majority of enquiries (68%) concerned end-user issues.

Table 48: Volume of enquiries, 2020 to 2022

	2020	2021	2022
Number of enquiries to rtr@rtr.at	3,286	3,931	3,004

Source: RTR

For initial enquiries relating to user protection and conciliation procedures, consumers can obtain advice from a team of experts by calling 01 58058 888 (weekdays only). A total of 3,354 over-the-phone consultations were conducted during the reporting year.

New website www.rtr.at

In the reporting year, work on the extensive RTR website focused on improving usability aspects. These included a relaunch of the welcome page as well as improvements to the site search.

Publications

Publications during the reporting year included the Communications Report, the annual report of the conciliation bodies for telecommunications, media and postal services, the Net Neutrality Report and the RTR Roaming Monitor, as well as the quarterlies RTR Telekom Monitor, RTR Post Monitor and RTR Internet Monitor. A total of nine issues of the RTR newsletter were published, alongside five issues from the Media Division and four issues from the Telecommunications and Postal Services Division.

A brief description of the studies that were published by the Media Division and the Telecommunications and Postal Services Division in the reporting year is provided in sections [8.1](#) and [8.2](#).

Information events

Numerous workshops and information events for distributing information that is relevant for market participants and the interested public were mostly held as hybrid events in the reporting year.



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Market developments from a regulatory viewpoint

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09 Market developments from a regulatory viewpoint

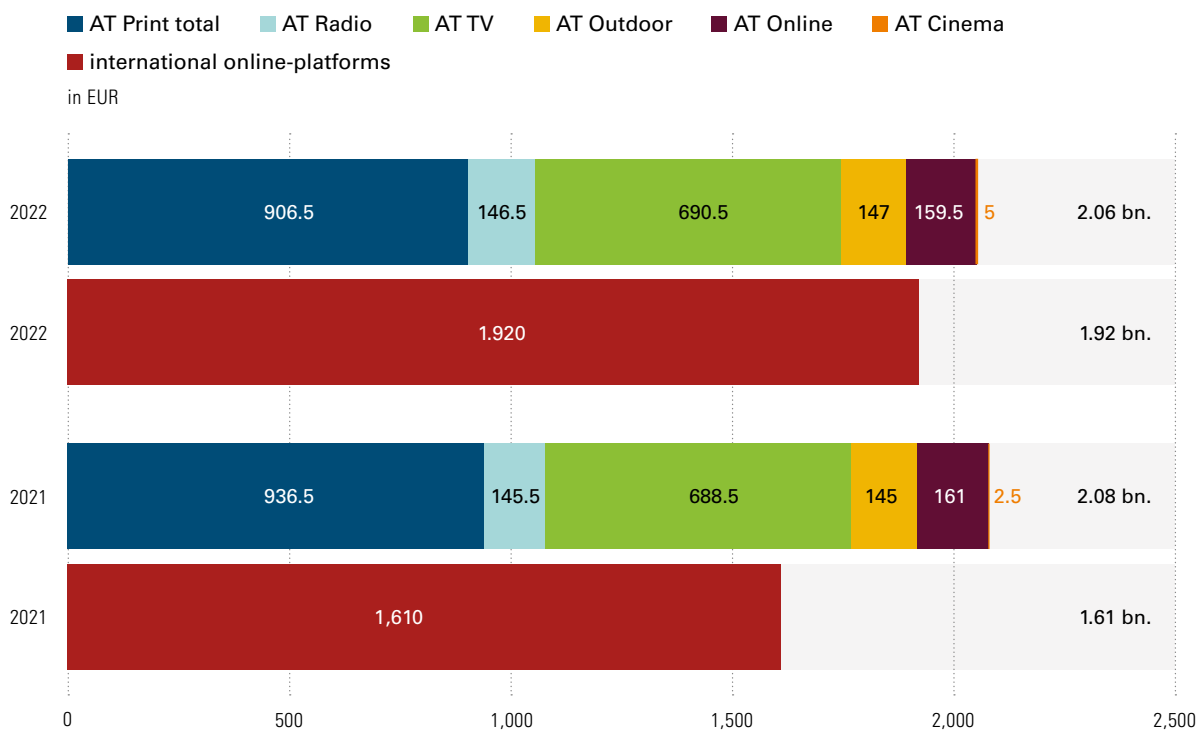
9.1 The Austrian communications and advertising markets

9.1.1 Changes in the advertising market

To date, the development of the Austrian advertising market as presented in this report has been based solely on the valuable survey data for gross advertising income earned by Austrian media companies, as provided by FOCUS Media Research. However, following the introduction of the digital tax in mid-2020, and the billions in advertising revenue earned by major online multinationals discernible from it, a new and supplementary perspective is needed to provide a truly accurate picture.

Achieving this realistic picture of the Austrian advertising market not only involves looking at the income earned by Austrian businesses working in conventional or online media but also requires an assessment of the outflow of domestic advertising revenue represented by spending on the online advertising platforms operated by Alphabet/Google, Meta/Facebook and others.

Figure 35: Net advertising income, Austrian media vs. major online multinationals (2021 and 2022)



Source: FOCUS Research 2023, Federal Ministry of Finance Online: projection based on interviews (advertising businesses and media agencies), excl. cinema/conventional flyer advertising to 2016, incl. cinema and online 'on top' from 2017

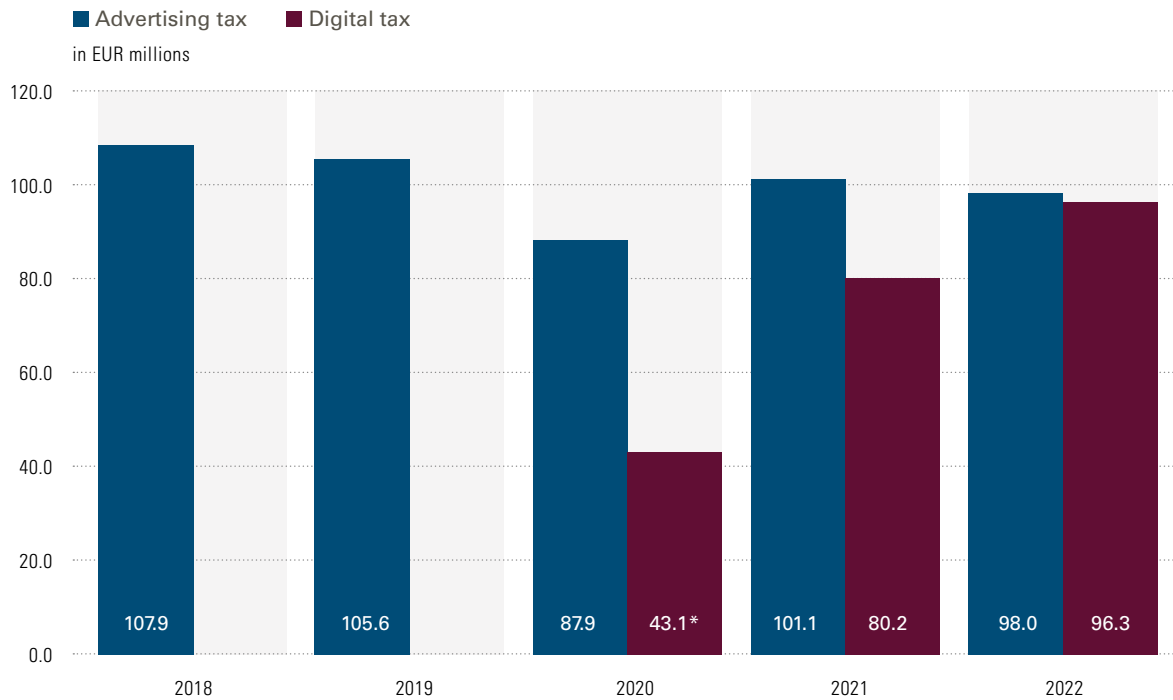
From revenue collected by the Federal Ministry of Finance (BMF) at a 5% digital tax rate on net income earned by major online platforms (2022: EUR 96.3 million), the outflow of ad revenue from the Austrian market was EUR 1.92 billion in 2022. This figure alone equals roughly 90% of total income earned by the Austrian media – print, TV, radio, online, outdoor and cinema – in the same year.⁶²

Major online multinationals are required to pay the digital tax on the net income they earn from the Austrian market. FOCUS Media Research uses official price lists to present income earned by Austrian media companies as gross advertising income. To achieve a realistic estimate of net income for Austrian media companies – i.e. the sums of money actually paid by advertisers after applicable discounts – as a basis for comparison, the comparative picture presented in this report is achieved by weighting gross advertising income for Austrian media companies at a discount of 50%. While this percentage does not apply equally to all industries, experts consider it to be an acceptable approximation. Furthermore, cross-checking the figure against Federal Ministry of Finance tax revenue from the advertising tax levied on net income for conventional media companies, which is also 5%, results in a deviation of just a few percent.

In 2022, BMF tax revenue from the advertising duty was EUR 98 million, equivalent to total net income from television and radio stations, print media, outdoor and cinema of EUR 1.96 billion. To this must be added income from Austrian online media businesses, which are not subject to the advertising tax or the digital tax. According to monthly gross figures from FOCUS Media Research, this amounts to EUR 320 million and therefore EUR 160 million when weighted at 50%. This would result in total net advertising income for Austrian media companies of EUR 2.12 billion in 2022. In the above diagram, which compares net income between Austrian media companies and major online platforms, a figure of EUR 2.06 billion is given for Austrian media businesses. While a difference of EUR 60 million is not insignificant, it can be seen that the calculation method used by FOCUS, which applies a 50% discount to the gross advertising revenue earned by Austrian media companies, and the calculation primarily based on the advertising tax both produce very similar results for net advertising income earned by Austrian media businesses, and therefore offer acceptable approximations of real-world revenue levels and ratios.

62 General net calculation applied: FOCUS reports an average 50% discount on gross advertising income

Figure 36: Revenues from advertising tax and digital tax (2018 to 2022)



Source: Federal Ministry of Finance 2023, figures in EUR millions; *digital tax introduced March 2020

Gross advertising expenditure 2022, conventional media and online advertising

To ensure a targeted analysis of advertising trends in the individual media categories, the following sections present the market based on gross advertising figures from FOCUS Media Research and therefore continue the Austrian advertising market presentation format used in previous communication reports. Gross advertising figures are based on official price lists from advertising media, and are analysed using a quantitative assessment of the placement of newspaper ads, TV, radio and cinema commercials, and billboard advertising. Reliable information about discounts granted is not available for the individual categories and is therefore not accounted for. Clear trends are visible, however.

Although the positive developments of 2021 in the Austrian advertising market seemed set to continue at the beginning of 2022, the situation changed markedly following the invasion of Ukraine by Russia. While gross spending from industry advertisers showed a year-on-year increase of 17.5% in January 2022, the generally fraught international situation coupled with steep price inflation soon sent gross advertising expenditure into decline.

In terms of actual spending, gross advertising revenue for conventional media (print, television, radio, outdoor and cinema) in Austria totalled EUR 3.792 billion in 2022⁶³ (2021: EUR 3.837 billion). This equates to a decline of around 1.2% (2021: +9.2%) or EUR 45 million compared with the previous year⁶⁴.

63 All figures for gross advertising sales in Austria: FOCUS Research 2022

64 Statistical analysis based on the advertising price lists of the media channels in each case

Taken together with online advertising⁶⁵, the annual result was ultimately positive, however, thanks to strong growth in the online category (+11.3%). Traditional and online media posted combined gross advertising revenue of EUR 4.65 billion in 2022 (2021: EUR 4.61 billion) and therefore slight growth of around 0.8% (2021: +9.8%).

To obtain a figure for annual gross advertising expenditure in the online category, FOCUS Media Research adds the monthly data reported by Austrian online media firms (2022 total roughly EUR 320 million) to the findings of around 300 expert interviews conducted with ad-buying businesses and media agencies about their spending on platforms operated by major online multinationals (2022: EUR 540 million). For 2022, this produced a figure of EUR 860 million for gross advertising expenditure in online. Noting the difference between the EUR 540 million determined for gross advertising expenditure on international online platforms and the EUR 1.92 billion spent by Austrian businesses on advertising with the major online platforms based on digital tax receipts, FOCUS points to the fact that many Austrian small and micro enterprises buy advertising from Google, Meta and others directly, without the involvement of media agencies, thereby generating around EUR 1.4 billion in income for the major online platforms.

In 2022, revenues in the Austrian advertising market were most strongly affected by the downward trend in the advertising spend on print. Overall, gross advertising revenue for this segment declined by 3.2%. Television showed no change year on year, radio stations achieved a modest uptick of 0.7% and outdoor posted an increase of 1.1%.

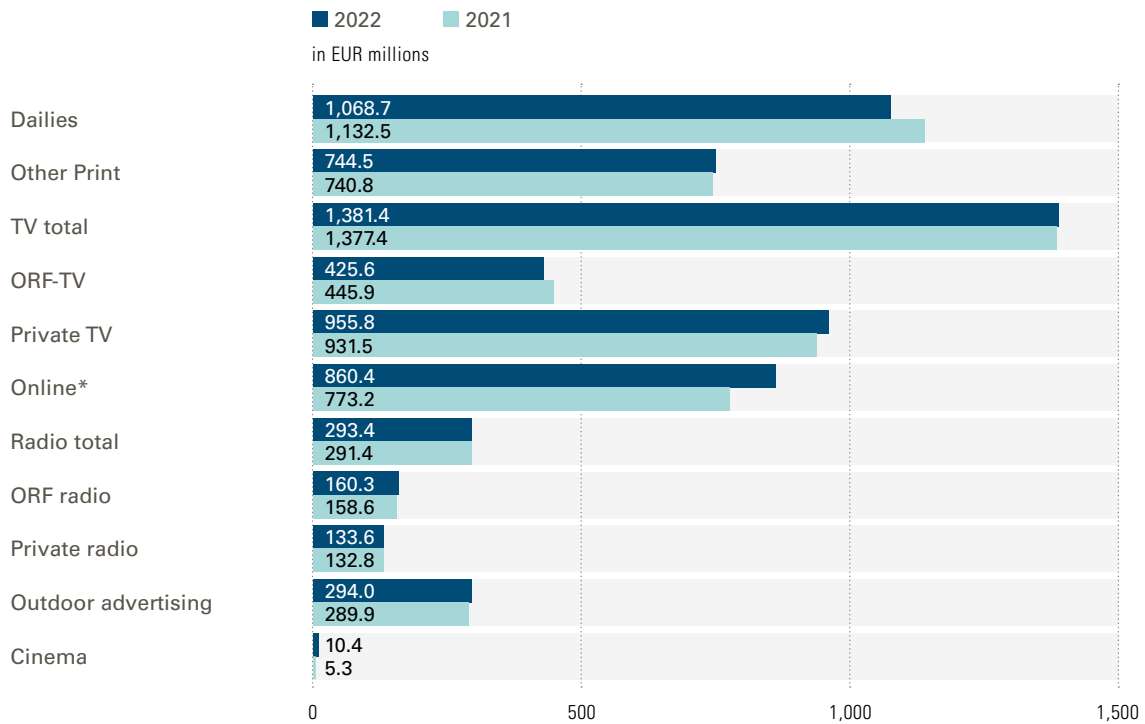
Advertising report for 2022: online and cinema up, print down, radio and outdoor make modest gains while TV treads water

Although the first five months of 2022 were marked by year-on-year gains in the advertising market for conventional media, a clear downward trend was nonetheless present, which from June onwards ultimately dragged monthly gross advertising sales below comparative figures for the previous year. Exceptional gains in 2022 were achieved only by online and cinema advertising.

Following a strong start in January, marked by year-on-year growth of 17.5%, monthly growth in gross advertising income for media companies then fell to just under 2% for the months of February, March and May. This trend was interrupted only by a temporary reversal in April 2022, which posted growth of 12%. June 2022 was the first month where the year-on-year comparison turned negative. In the following months, comparative figures for growth were all below the values posted in the previous year. In some cases, considerably so – such as in July, which at –8.9% was the worst-performing month. Yet in June, October and even during the Christmas season in December, monthly figures for gross advertising expenditure were similarly almost 8% lower year on year.

65 Source: FOCUS, projection based on expert interviews with companies buying advertising and media agencies

Figure 37: Gross advertising expenditure in Austria by category in 2022 and 2021



Data: FOCUS Research 2023; EUR millions

*Projection based on interviews with advertising businesses and media agency representatives; online: projection based on interviews (advertising businesses and media agency representatives)

In the final analysis, the print category was most strongly affected in 2022, posting an annual loss of 3.2% (2021: +3.8%). Within this category, newspapers were hardest hit, with their gross advertising revenue shrinking by 5.6% (2021: +4.3%) or EUR 63.7 million to EUR 1.069 billion. Gross advertising sales by magazines and general-interest magazines fell by 3.3% to EUR 239 million, with trade magazines slipping 0.6% to EUR 75.8 million. Only regional weeklies were able to turn in a decent performance, increasing their gross advertising income by 2.9% to EUR 429.5 million.

In 2022, the media category of television extended its lead over newspapers, which had achieved the highest gross advertising revenue across all media categories for decades and had only been overtaken by television in 2017. In the following years, television extended its lead over newspapers, thus establishing itself as the highest-earning conventional category. In 2022, however, this continued without any input from television itself.

Although gross advertising income for television remained virtually unchanged year on year at around EUR 1.38 billion, its lead over newspapers nonetheless grew by EUR 68 million to EUR 312 million, as a result of losses in the latter category (gap between television and newspapers 2021: EUR 245 million). On closer analysis of the category, however, it can be seen that the little or no change in television in 2022 is the result of mutually offsetting trends between ORF and private broadcasters. In 2021, as the economy in general pursued a rapid recovery after the wind-down of pandemic restrictions, television earned gross advertising income of EUR 1.377 billion, a figure some 18.8% or EUR 200 million higher than in the previous year. At that time, percentage growth figures for private broadcasters (+18.8% to EUR 932 million) and the ORF (+18.6% to EUR 446 million) were virtually identical. In 2022, however, gross advertising income for the ORF fell by 4.6% to EUR 425.6 million, while private broadcasters improved their earnings by 2.2% to EUR 955.8 million.

Radio closed 2022 with a modest uptick of 0.7% in year-on-year gross advertising growth, which was therefore a below-average result when compared with the last two years (2021: 5.4%; 2020: 9.1%). In 2022, gross spending by businesses on radio spots amounted to EUR 293.5 million, a mere EUR 2.1 million more than in 2021, for which year-on-year gains of EUR 15 million had been posted. In 2022, advertising spots valued at EUR 160.3 million were played by ORF radio (+1% or EUR 1.65 million), with this figure being around EUR 133 million for private stations (+0.4% or EUR 470,000). This represents a significant decline for radio overall, and for ORF radio stations and private stations alike. Growth rates between 6% and 9% were not unusual in recent years, not only for the media category overall but also for the ORF radio stations and private stations – even at the peak of the pandemic.

Excluding cinema advertising, which earned EUR 10 million and effectively doubled (+97%) its gross income thanks to a return to pre-pandemic conditions, although still trailing its 2019 pre-Covid earnings by EUR 6 million, online advertising was the only media category capable of posting significant gains to gross revenue in 2022.

Online advertising maintained its steady growth trajectory, matching the sharp rise in gross earnings growth of 12% achieved in 2021, with a very similar performance that took it to +11.3% in 2022. In 2022, spending on online advertising totalled EUR 860 million (2021: EUR 773 million), rising by EUR 83 million year on year (2020: EUR 690 million or +7.6%; 2019: EUR 642 million or +6.6%). According to government figures for digital tax revenues, however, gross advertising sales for online advertising in Austria reached EUR 1.92 billion in 2022, making online the best-performing media category for media sales in Austria by a wide margin.

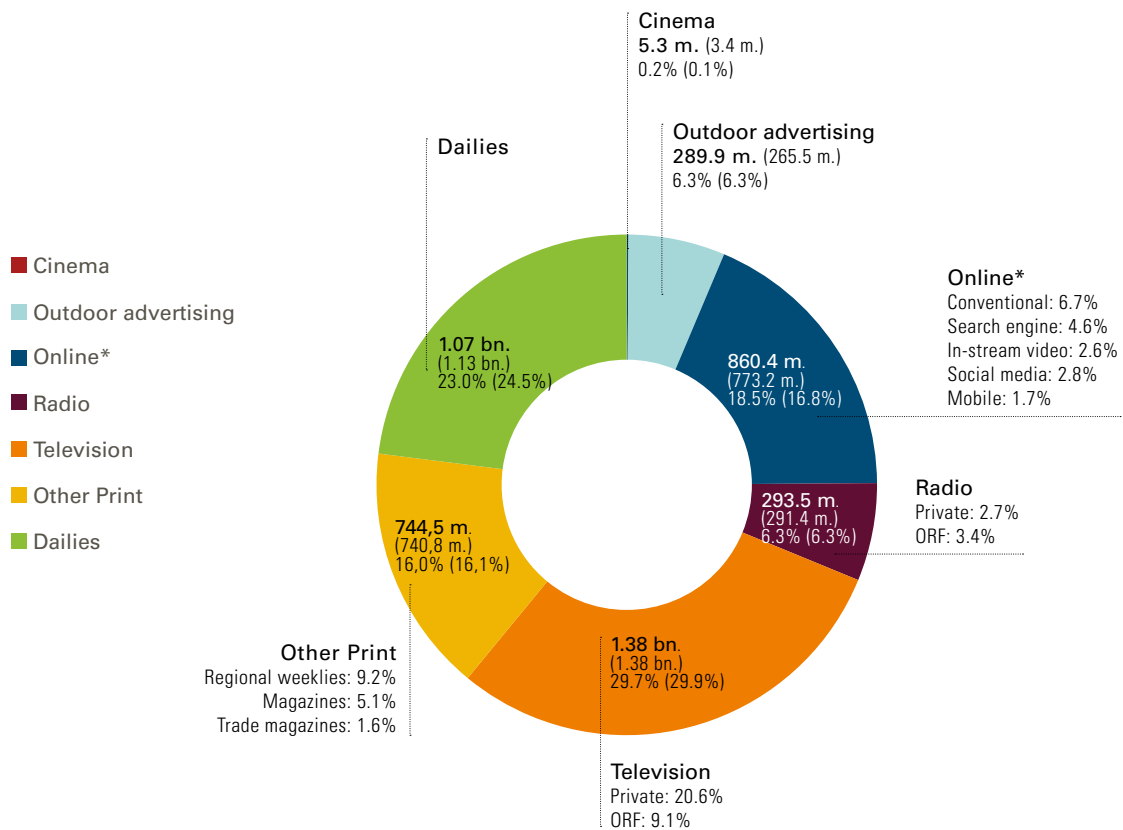
In terms of online advertising growth, FOCUS again awards the crown to social media, which posted record gains of 24.6% (2021: 17.9%; 2020: 11.9%; 2019: 14.9%) to reach EUR 132.3 million. Gross advertising expenditure on search engine advertising also recorded strong gains, rising by 19.1% (2021: 12.3%; 2020: 8.2%) to EUR 216.2 million. Despite advertising earnings growth of 17.5% to EUR 122.2 million, online video was forced to surrender the second place it had held since 2021 (2021: 15.3%; 2020: 6.1%; 2019: 8.2%). While online mobile (online advertising tailored specifically to mobile devices) achieved less impressive gains to gross advertising income of EUR 78.7 million, this increase of 4.8% was nonetheless higher than in previous years (2021: 4%; 2020: 3.8%; 2019: 10.5%). Demand was weaker in 2022 for conventional online advertising such as website banners, which had steadily been gaining ground in the years since 2018, when it recorded a downtick of 0.5%. In 2022, however, gross advertising expenditure in this category rose by only 1.5%, following growth of 10.6% in 2021 (2020: 7.3%; 2019: 3%).

In outdoor advertising, whose gross advertising income rose slightly by 1.1% to EUR 294 million in 2022, the ambient media sub-category achieved above-average growth of 34.4% (2021: –6.2%; 2020: –28%), and a surprising return to form in light of the serious difficulties experienced in 2020 and 2021. Despite this, the EUR 2.9 million earned by ambient media – a broad field encompassing advertising media in the environment, such as beer mats, washrooms in restaurants, admission tickets or taxi headrests – places last in the outdoor format performance rankings. Digital-out-of-home (DOOH, meaning digital advertising on all public screen formats) took second place, posting growth of 15.5% to EUR 72.5 million and again achieving a significant double-digit increase to match its 2021 result (2021: +13.6%; 2020: –16.8%). The transport sub-category (advertising in and on vehicles used for public transport as well as at stops and stations) recorded substantial growth in advertising takings of 14.8% or EUR 15.4 million, although failing to match the ‘post-pandemic boost’ of 20.4% achieved in 2021. The heavyweight of the outdoor category, conventional billboard advertising, fell 5.4% to become the standout underachiever within this media category in 2022. This decline, a loss of around EUR 8.5 million, was a contributor to the weak overall performance of outdoor advertising in 2022. Yet even in 2021, billboard had managed gains of only 4%, unable to match other sub-categories in benefiting from the initial post-pandemic upswing. In a similar development, street furniture advertising (e.g. passenger shelters and seating, bike racks) followed up its strong comeback of an 18.4% increase in gross advertising income in 2021 with a loss of 1.6% or EUR 54.4 million in 2022.

Percentage distribution of gross advertising expenditure by category

Looking at the distribution of total gross advertising expenditure of EUR 4.65 billion across conventional media, cinema and online media (2021: EUR 4.61 billion), the share taken by online advertising showed strongest growth, expanding by 1.7 percentage points to take an 18.5% slice of the advertising pie in 2022.

Figure 38: Per-category share of total volume of gross advertising income in 2022 (2021)



Source: FOCUS Research 2023, 2022 Advertising Report, percentages and in euros; *projection based on expert interviews

The gains made in online advertising came at the expense of print, which posted a loss of 1.6 percentage points (2021: -2.4 percentage points) to record the largest overall decline among media categories. Print media nevertheless once again took the largest share, accounting for 39% of gross advertising expenditure (2021: 40.6%). When the print category is split into newspapers and other print media, it becomes clear that the losses in this category can be attributed entirely to newspapers, whose share shed 1.6 percentage points and shrank to 23% (2021: 24.6%; 2020: 25.8%), while other print media effectively matched their prior-year performance and maintained their share at 16.0% (2021: 16.1%; 2020: 17.2%).

The share of gross advertising expenditure taken by television advertising slipped by two tenths of a percentage point to 29.7% in 2022 (2021: +2.3 percentage points). In contrast, private television expanded its share by a modest four tenths of a percentage point to 20.6% (2021: 20.2%; 2020: 18.7%), while the ORF ticked down six tenths of a percentage point to 9.1% (2021: 9.7%).

Overall, radio was able to maintain its 2021 share of the market at 6.3% in 2022 (2020: 6.6%). This figure comprises the ORF with 3.4% (2020: 3.5%) and private radio with 2.7% (2020: 3.1%).

Like radio, outdoor took a share of 6.3% of advertising expenditure in 2022 and therefore maintained its 2021 position (2020: 6.1%). Cinema doubled its share of total advertising expenditure to 0.2% but will need to double this figure again in 2023 to regain the pre-pandemic share it held in 2019.

9.1.1.1 Comparison with the German advertising market

While German advertising market overall also shrank in 2022 (AT: +0.8%),⁶⁶ gross advertising spending took a significantly more negative trajectory than in Austria and fell by 3.8% (2021: +6.8%). In terms of actual spending, gross advertising income for conventional media (print, TV, radio, outdoor) plus online and cinema in Germany totalled EUR 34.2 billion in 2022⁶⁷ (2021: EUR 35.55 billion). As in Austria, the German market started strongly in January and February 2022 in a year-on-year comparison, posting strong growth of 15.2% and 11.3%, respectively. Excluding the outlier of April (+5.3%), gross advertising revenues then dropped considerably below their prior-year values for the rest of the year, reaching –5% in June, and falling as low as –10% in October and November.

The effects of the downturn in the 2022 German advertising market were most strongly felt by television, print media and – direct contrasting the trend in Austria – online advertising.

In 2022, gross advertising revenues for German television fell by 5.5% (AT: 0.0%) to EUR 17.1 billion (2021: +12.7%, EUR 18.1 billion), while television advertising in Austria slipped by only two tenths of a percentage point. This loss was shared very unevenly by German television stakeholders. While public broadcasters actually extended their gross advertising revenue by 2.1% to EUR 650 million (2021: +12%), the private television segment slid back 5.6% (2021: +13%) to EUR 15.9 billion. In Austria, by way of comparison, year-on-year gross advertising revenue for the ORF dropped by 4.6% in 2022, whereas private broadcasters made gains of 2.2%. The hardest-hit sub-category in 2022 was German pay TV, however, which saw its gross advertising income fall by 9.6% (2021: +7%) to EUR 568.9 million.

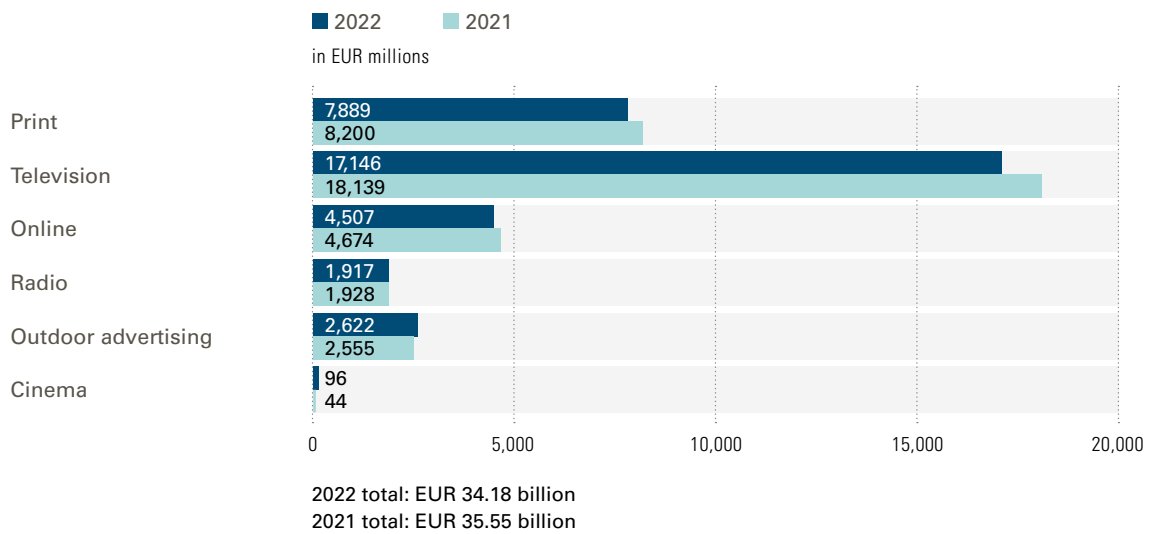
Print media in Germany faced a similar situation as their Austrian counterparts, with gross advertising revenues declining by 3.8% to EUR 7.9 billion (2021: +1.4%, EUR 8.2 billion; AT 2022: –3.2%; AT 2021: +3.8%). Within the category, gross advertising revenues for German newspapers shrank by 4.5% to just under EUR 5.1 billion, while German (general-interest) magazines lost 2.5% to finish with EUR 2.8 billion. A realistic country-to-country Austria–Germany comparison can, however, only be based on the overall performance of the two domestic print markets: the ‘Newspapers’ category in Germany includes not only dailies but also weekly and fortnightly regional papers, and similar publications. This rules out any direct comparison of the Austrian classification (‘Newspapers’ and ‘Other print media’) with the German ‘Newspapers’ and ‘General-interest magazines’ categories.

The trajectory taken by German online advertising ran counter to that in Austria, with gross advertising revenues decreasing by 3.6% or EUR 170 million to EUR 4.5 billion in 2022 (2021: +6.8%, EUR 4.67 billion), making this the third worst-performing media category (AT 2022: +11.3%). In the first pandemic year of 2020, advertisers in Germany had shifted a large proportion of their advertising spending to online, which generated growth in gross earnings of 16.7%. In 2021, expenditure on online advertising rose by another 6.8% (AT 2021: +12%), thereby taking it to pre-pandemic levels. Nielsen’s figures for Germany include only mobile and desktop advertising, however. This fact, together with differences in data collection methods, excludes any direct comparison with Austria.

66 All figures for Germany’s advertising market: Nielsen Media Germany GmbH 2023, adjusted

67 DE/AT comparison excludes below-the-line advertising activities such as direct marketing

Figure 39: Gross advertising expenditure in Germany by category in 2022 and 2021



Source: Nielsen Media Germany GmbH 2023; EUR millions

Mirroring developments in Austria, German radio was also affected by a growth hiatus in terms of business spending on radio advertising. However, whereas Austria still managed to achieve an uptick of 0.7% year on year in 2022, radio advertising in Germany posted a negative result for the third year in succession. As in 2021, the market slipped by six tenths of a percentage point, with gross advertising income shedding EUR 11 million to end with EUR 1.917 billion. This does though mean that the downturn over the last two years has at least been more moderate than the situation in 2020, when gross advertising income for German radio fell by 4.3% (AT 2020: +9.1%). In 2022, this trend was entirely attributable to performance by public radio in Germany, however, whose income dropped by 3.9% or EUR 18 million to EUR 449 million. In contrast, private stations actually achieved a slight uptick of 0.5% or EUR 7 million to close the year with EUR 1.47 billion.

Takings for German outdoor advertising rose by 2.6% (2021: +11.1%) to EUR 2.62 billion, thereby achieving more or less the same performance as their Austrian counterparts over the last two years (AT 2022: +1.1%; AT 2021: +9.2%).

In terms of percentage share, cinema took the top spot among media categories in 2022. With Covid-19 restrictions being relaxed later here than in Austria, this was the year when German cinema was finally able to welcome larger numbers of patrons through its doors and more than double its gross advertising income by 119% (2021: +9%) to EUR 96.5 million (AT 2022: +97%; AT 2021: +52.9%).

9.1.1.2 Gross advertising expenditure by category in Germany and Austria

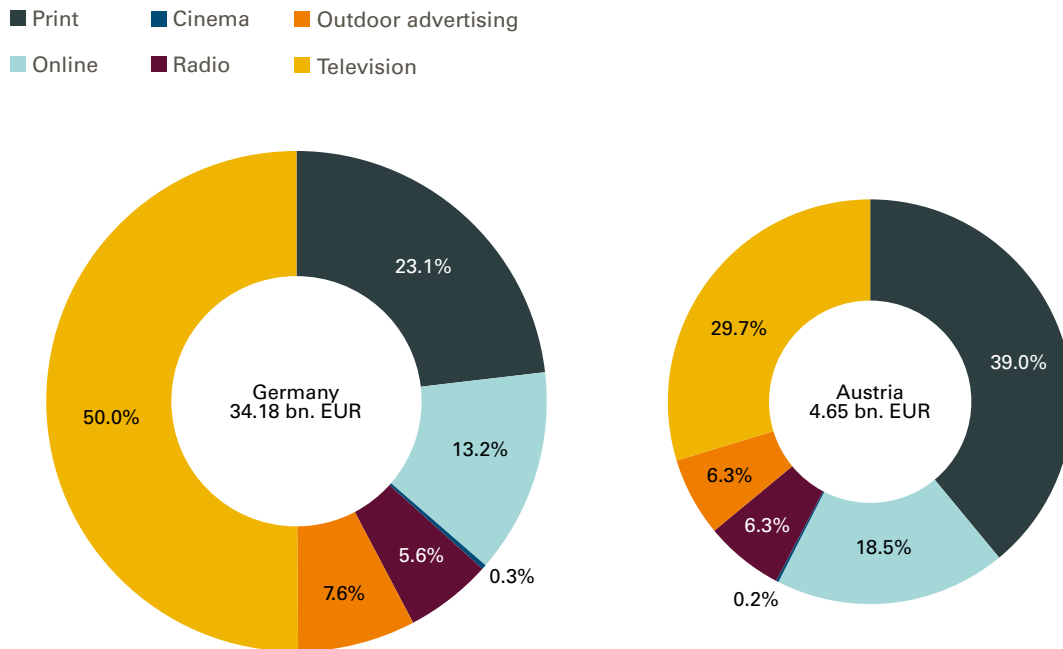
Aside from the gross advertising volumes in each of the domestic markets, the most noticeable difference between Germany and Austria relates to print and television, which play opposite roles in each country.

As regards the share of gross advertising expenditure in Germany, television once again took the largest slice of the gross advertising pie (in total 3.8% smaller than in 2022) but saw one percentage point shaved off its portion year on year.

In 2022, some 50.2% (2021: 51%) of the EUR 34.2 billion spent on advertising in Germany – across print, TV, radio, online, cinema and outdoor – was invested in TV spots. In Austria, television traditionally takes second place to the print market. While the former has gradually been making gains here in recent years, its current share of 29.7% of advertising spending (2021: 29.9%) still sees it trailing print by a wide margin. On the other hand, Austrian print media's share of gross advertising revenues actually shrank year on year by 1.6 percentage

points to 39% in 2022 (2021: 40.6%; 2020: 43.0%). In Germany, the share of the overall advertising market taken by print remained unchanged year on year at 23.1% in 2022 (2020: 22.9%).

Figure 40: Gross advertising expenditure – share per media category in 2022, Germany vs. Austria



Source: Nielsen Media Research (D) 2023; FOCUS Media Research (AT); percentages

According to figures from analysts at Nielsen in Germany and FOCUS in Austria, online advertising achieved the third-largest share of gross advertising expenditure in both countries, although, as before, these figures discount the large volume of advertising bought directly (i.e. without the involvement of media agencies) by small and micro enterprises from major online players such as Alphabet/Google, Meta/Facebook or Amazon. In Germany, however, Nielsen market research includes only mobile and desktop advertising in its online figures. For this reason and because of differing data collection methods, a direct comparison of Germany with Austria in terms of online share is admissible only to limited extent. This should be borne in mind regarding the share of gross advertising spending for online in Germany, which remained unchanged (despite losses in gross revenues) year on year at 13.2% (2020: 13.8%) and so appears lower than the figure for Austria, where growth of 1.7 percentage points in 2022 expanded the share of gross advertising spending for online to 18.5% (2021: 16.8%; 2020: 16.4%).

Radio in Germany and Austria also saw their slices of the advertising pie shrink to a similar degree in 2021. German radio's share of the overall advertising market fell from 6.9% to 5.4%. While radio in Austria had seized a larger piece of the advertising market in 2020, this 7.6% share shrank to 6.3% in 2021, even smaller than the 2019 figure of 6.8%.

Outdoor ads and radio spots traditionally account for a similar share in both countries, although in Austria outdoor advertising has usually attracted a slightly higher percentage of overall advertising spending than in Germany. This trend was interrupted in the first pandemic year of 2020, however, and the hiatus has continued since. In Germany, outdoor expanded its share of gross advertising expenditure by four tenths of a percentage point to 7.6% (2021: 7.2%; 2020: 8.3%) in 2022. After seeing its share shrink by 1.6 percentage points to just 6.3% of gross advertising expenditure in 2021, outdoor advertising in Austria only succeeded in holding this level in 2022.

9.1.2 The Austrian television market

9.1.2.1 Television viewing

On average, linear television reached 66.5% of the population aged 12 and over in 2022. This corresponds to a year-on-year decline of 2.7 percentage points, nonetheless following two particularly strong years for television during the worst of the pandemic (2021: 69.2%; 2020: 70.3% daily reach). A daily reach of 66.5% therefore sees television returning to its pre-pandemic levels (2019: 66.4%; 2018: 65.1%; 2017: 65.3%).

Average viewing time was also less than the previous year but recorded an above-average loss of 17 minutes, falling to 186 minutes per day. Previously, TV viewing time had been adding single-digit minute gains every year for many years, with daily average viewing time dropping by 6 minutes to 203 minutes only in 2021 and 2020 posting the second-highest figure ever recorded with a viewing time of 209 minutes. In contrast, the 17-minute decline recorded in 2022 marks a return to viewing time figures last observed in 2017 (2019: +4 min to 196 min, 2018: +6 min to 192 min, 2017: +8 min to 186 min, 2016: +7 min to 178 min).⁶⁸

Month by month, viewing time and reach in 2022 also stayed consistently below 2021 levels, although the negative trend for viewing time was significantly steeper than for reach. In January 2022, the year started with an average viewing time of 218 minutes per day, 30 minutes less than in the previous year (January 2021: 248 minutes per day). From then onwards, viewing time in 2022 declined by an average of 10 minutes every month, reaching its lowest point in the year at 161 minutes in June. Average viewing time then started rising, slowly at first in July and August, and then more rapidly in September, October and November, although staying well under prior-year figures even during the FIFA World Cup (20 November to 18 December). In November, average daily viewing time was 196 minutes (November 2021: 212 minutes), rising to 201 minutes in December 2022 (December 2021: 216 minutes). The month-by-month trend for daily reach followed a similar trajectory. In 2022, linear television reached the largest proportion of the population aged 12 and over in the period January to March, with an average reach of 70.4% each month (January to March 2021: average of 74%). From April, reach first declined to 67.3% before then falling further to 60.8% in July 2022 (July 2021: 62.7%). From August, in a typical seasonal change observed every year, reach then started gaining ground, rising in that month to 61.7% (August 2021: 62.2%) and to 68.8% by November 2022, although this figure was still three percentage points lower year on year despite the start of the FIFA World Cup (November 2021: 71.8%). Even in December, the month in which most of the World Cup matches were held, average TV daily reach remained true to seasonal fluctuation, levelling out again slightly to 68.3%, thereby staying three percentage points below the prior-year figure (December 2021: 70.9%).

For the second year in succession, the average time spent in front of the TV set in 2022 remained significantly lower than in previous years. Unlike viewing time, which considers the average time spent using the television by all persons in TV households – including household members who do not watch TV – the ‘time spent viewing’ is a metric calculated only from the average usage time of the proportion of the population that actively watches TV. In 2022, time spent viewing was only 271 minutes, which represents a significantly above-average loss of 14 minutes year on year. In 2021, time spent viewing decreased by 6 minutes – the first decline for years (2021: 285 minutes; 2020: 291 minutes; 2019: 290 minutes; 2018: 290 minutes; 2017: 281 minutes).

Daily reach losses for television in 2022 affected almost all nationwide TV channels in Austria

The general decline in daily reach experienced by linear television affected all Austrian TV channels equally in 2022. The exception was Krone.tv, which launched in 2020 and was able to improve its daily reach by one tenth of a percentage point to 0.8% in 2022 (2021: rise of four tenths of a percentage point to 0.7%). Measured by the respective initial reach figure for each station, proportional losses were very similar across the board.

Largely as a result of a much greater demand for news and information during the pandemic, the ORF television channels had increased overall daily reach in 2020 by a significantly above-average 4.1 percentage

68 All figures for TV: GfK Austria/TELETEST working group 2022 (representative survey of some 1,670 Austrian households) and ORF media research

points to a daily average of 53.8% of the viewing public aged 12 and over, and had then held this share virtually constant at 53.4% in 2021. In 2022, however, these channels slid back to 50.4% – a figure only just above pre-pandemic levels (2019: 49.7%; 2018: 49.4%). ORF 2 shed three percentage points to finish on a viewing public reach of 40.2%, which was barely a single percentage point improvement on 2019 (2021: 43.1%; 2020: 43.7%; 2019: 39.1%). The loss of daily reach in 2022 hit ORF 1 especially hard, which gave up 2.6 percentage points to land at 24.8% reach, a level below even the previous historic low recorded in 2019 (25.4%). In contrast, ORF III ticked down only slightly to 11.7% daily reach (2021: 11.9%). ORF Sport+ had nearly achieved 4% daily reach just before the pandemic (2019: 3.9%) only to then slide back to 3.5% in 2020. Although the channel managed to stall the decline in 2021, it again lost reach in 2022, falling to 3.1% and therefore its weakest level over the last five years.

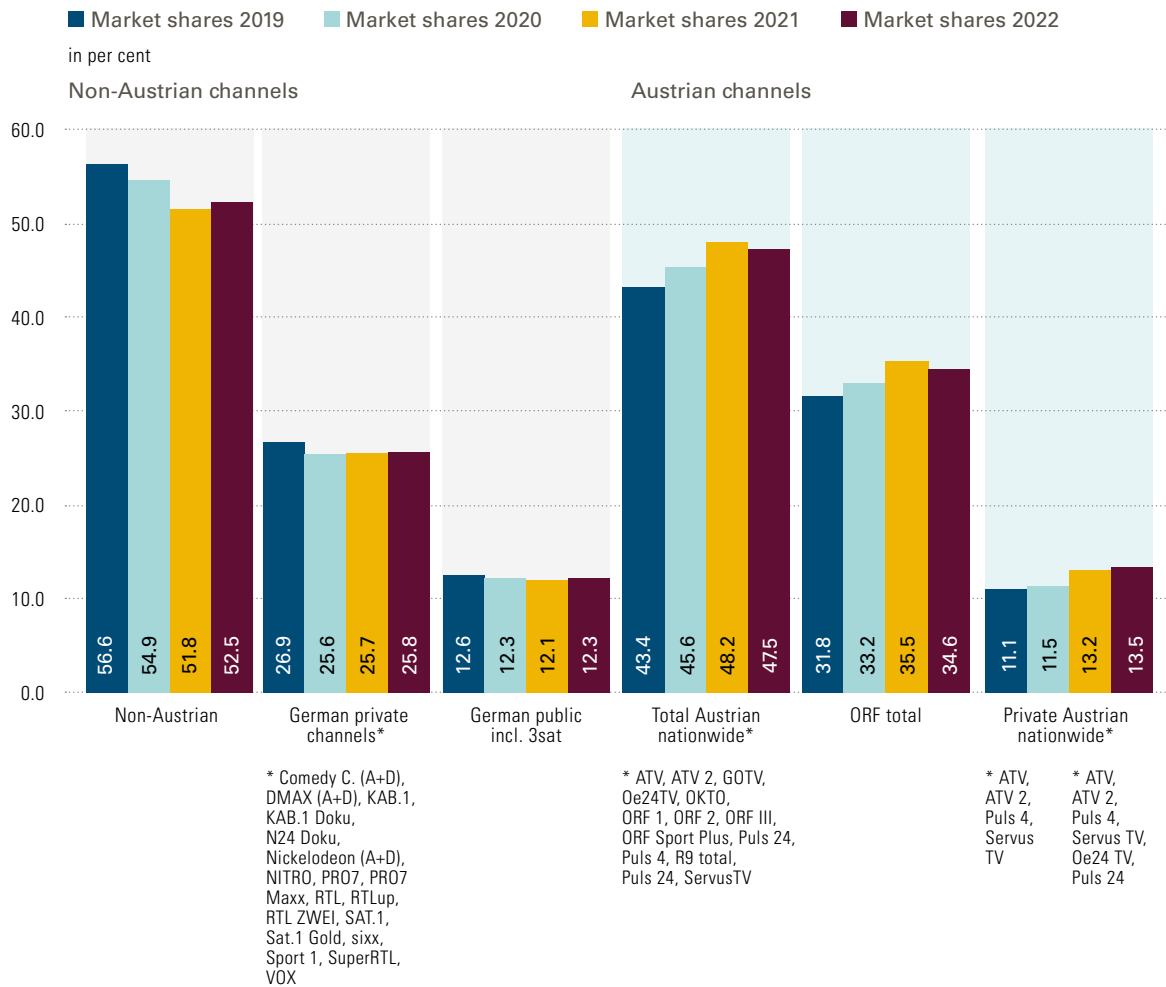
Among private broadcasters, ServusTV slipped one tenth of a percentage point to 15.5% to hold its position as the channel with the widest reach in 2022. Following its exceptional growth in 2020 (rising two percentage points to 15.8%), ServusTV has since followed a gradual negative trajectory. The other major private channels suffered bigger losses. ATV shed one percentage point, falling to a daily reach of 11.4% (2021: 12.4%; 2020: 13%), which is below the figure it had attained in 2018 (11.6%). After losing eight tenths of a percentage point in 2021, daily reach for Puls 4 dropped again significantly in 2022, falling by 1.2 percentage points to 10.6% daily reach, a figure that also marks the weakest performance for the Puls 4 channel over the last five years. After recording continuous growth in reach since 2017, Oe24 TV also saw its average daily reach fall in 2022, shedding half a percentage point to close on 4.3%, only just ahead of ATV 2, which slipped four tenths of a percentage point to finish at 4.2% daily reach. The Puls 24 channel, launched in 2020, also suffered a slight loss of two tenths of a percentage point to close on 3.3% daily reach. R9, a joint channel run by regional private broadcasters, lost two tenths of a percentage point for a daily reach of 2.0%. Okto TV maintained its daily reach of 0.1%. GoTV ceased broadcasting operations in May 2022.

9.1.2.2 Market share ratio of Austrian to non-Austrian TV channels

Following losses in 2020 and 2021, the overall market share of foreign TV channels returned to positive growth in 2022, rising seven tenths of a percentage point to a 52.5% annual market share (2021: 51.8%) in the Austrian population aged 12 and over. This does, however, mean that non-Austrian channels are still some distance away from matching the annual shares of between 56% and 57% of the Austrian TV market they had held up to 2019. Domestic channels correspondingly lost seven tenths of a percentage point in 2022, falling to an annual market share of 47.5%, a figure that nonetheless represents the second-highest value over a ten-year period. Between 2013 and 2020, domestic channels collectively achieved annual market shares ranging from 44% to just under 46%. The ongoing pandemic combined with political upheavals in Austria continued to drive demand for domestic news and current affairs programming in 2021. This helped Austrian channels to collectively achieve growth of 2.6 percentage points in market share, which rose to 48.2% and therefore the highest market share for domestic channels ever recorded.

Among non-Austrian channels, those originating from Germany or broadcast in German are naturally those with the highest viewing figures.

Figure 41: Market shares of Austrian and non-Austrian TV channels among individuals aged 12+, 2019–2022



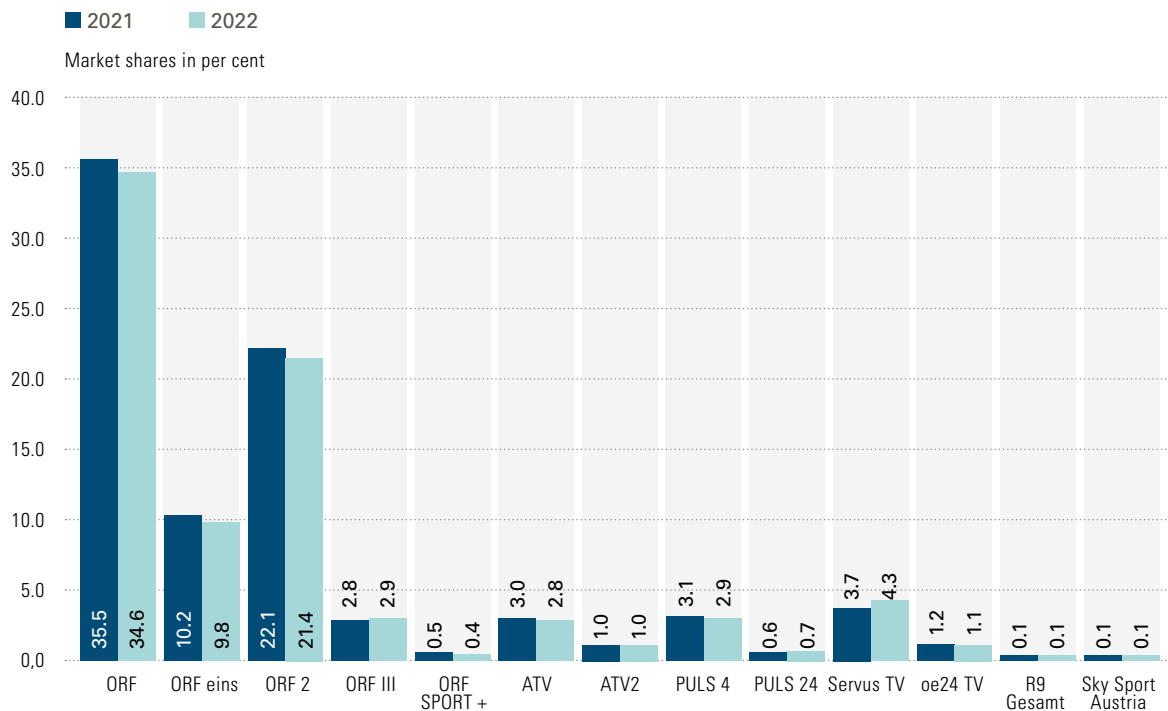
Source: AGTT/GfK TELETTEST; Evogenius Reporting; weighted by person; including VOSDAL/timeshift, percentages

ORF channels lost just under one percentage point overall in 2022, falling to 34.6% (2021: 35.5% market share), which primarily resulted from losses at ORF 2 (–0.7 to 21.4%), with ORF 1 also slipping slightly to 9.8% (2021: 10.2%). Domestic private channels improved their market share slightly, which rose by three tenths of a percentage point to 13.5%. German channels (private as well as public, including 3sat) achieved a market share of 38.1% in Austria in 2022 (2021: 37.8%; 2020: 37.9%) and therefore remained significantly below the level achieved before the pandemic (2019: 39.5%; 2018: 40.7%). This figure represents the market share of German private channels featuring Austrian advertising slots added to the shares held by private channels with German advertising (viewed via satellite) and by public channels from Germany.

9.1.2.3 Market shares of Austrian television channels

Looking at developments in the market shares of Austrian TV channels in 2022, the private channel ServusTV was the only clear winner, improving its position by five tenths of a percentage point to close the year with a market share of 4.3% (2021: 3.7% market share; 2020: 3.4%). The slight reduction in daily reach for ServusTV together with its market share gain mean that, on average daily in 2022, slightly fewer people switched to ServusTV compared with the previous year, but these viewers then spent more time watching the broadcast.

Figure 42: Nationwide market shares of Austrian TV channels in 2021 and 2022



Source: AGTT/GfK: TELETTEST, Evogenius Reporting, 2022; including VOSDAL/Timeshift; individuals 12+; market share in %

A channel's market share depends on how long that channel was viewed, unlike daily reach, which merely represents how many more people tuned into the channel once a day – possibly only for a few minutes. To increase market share, a channel must actually be used for a longer period of time than in the previous year and the rate of increase for this channel must also be greater than for its competitors in order to obtain a higher percentage of total television minutes viewed in Austria.

For ServusTV, 2022 was the third year in a row of significant gains. By expanding its share at the same time as its private-sector competitors suffered losses, ServusTV was able to further consolidate its position as market leader, ahead of Puls 4 with 2.9% market share (2021: 3.1%) and ATV with 2.8% market share (2021: 3.0%), each of whose market shares surrendered two tenths of a percentage point. For ATV, which had headed the Austrian private broadcaster market in 2019 with a share of 3.5%, 2022 was in contrast its third year in succession of market share losses.

In 2022, the ORF channel portfolio lost just under one percentage point, falling to 34.6% (2021: 35.5% market share), which primarily resulted from losses at ORF 2 (–0.7 to 21.4%), with ORF 1 also slipping slightly to 9.8% (2021: 10.2%). ORF III ticked up by one tenth of a percentage point to a market share of 2.9% (2021: 2.8%), while ORF SPORT+ slipped one tenth of a percentage point to 0.4% (2021: 0.5%).

There were hardly any noteworthy changes among other private channels. Puls 24 acquired one tenth of a percentage point, taking its market share to 0.7%, while Oe24 TV lost a tenth of a percentage point to close with a share of 1.1%. The market share for ATV 2 was unchanged at 1.0%. Nor were there any changes in 2022 for R9, a joint channel run by regional private broadcasters, or Sky Sport Austria, both of whose market shares remained steady at 0.1%.

Market share for the channels OKTO TV, Krone.TV, SchauTV (Kurier TV since 2023), LAOLA 1, GoTV (ceased operations in May 2022) and CANAL+ First (launched in early 2022) remained negligible in 2022 and was therefore reported as 0% in each case.

9.1.2.4 Market shares of German television channels

As in previous years, new and existing special-interest channels from Germany further fragmented the share of the Austrian market held by German private broadcasters, resulting ultimately in a net loss of market share among German TV channels overall. Considering German programming as a whole, the continued decline of major channels was once again observed, although this downward trend flattened somewhat in the reporting year. While the smaller and special-interest channels tend to experience modest growth and shrinkage, the overall annual trends tend to reflect changes to numbers beyond the decimal point. A key difference in 2022 was that these changes no longer involved gains and losses within a range of up to six tenths of percentage point but spanned a maximum of three tenths of a percentage point.

With a market share of 4.1% and gains amounting to two tenths of a percentage point, public broadcaster ZDF was the most successful German channel in the Austrian television market in 2022. ZDF was also significantly ahead of the other public channels ARD ('Das Erste') with a 3.1% market share (2021: 3.0%), 3sat with a 1.4% market share (unchanged) and ARD's regional channels, with a total market share of 3.7% (2021: 3.8%). Overall and also counting 3sat, German public channels achieved a 12.3% share of the Austrian market in 2022, representing a year-on-year gain of three tenths of a percentage point.

Among German private broadcasters, VOX positioned itself as the clear market leader in 2022, gaining three tenths of a percentage point for a market share of 3.5% (2021: 3.2%; 2020: 3.4%) and now clearly pulling ahead of RTL, which had long held the number one spot.

RTL itself lost one tenth of a percentage point to take a market share of 3.0% and second place (2021: 3.1%; 2020: 3.7%; 2019: 4%) among German private broadcasters in Austria. ProSieben and SAT.1, which had each held a market share of 2.7% in 2021, both lost ground, although SAT.1 shed only one tenth of a percentage point to take a 2.6% share (2021: 2.7%; 2020: 3.0%) while ProSieben slipped by three tenths of a percentage point to a share of 2.4% (2021: 2.7%; 2020: 3.2%) and therefore suffered the biggest loss among German private channels.

Among channels with less than 2% market share, three channels each lost one tenth of a percentage point: Kabel 1 (1.7% share), sixx (0.7% share) and Nickelodeon (0.1% share).

RTLup (1.6% share), Kabel 1 Doku (0.8%), DMAX (0.7%) and n-tv (0.7%) were each able to gain around one tenth of a percentage point.

There was no year-on-year change in 2022 at the German private channels RTLZWEI (1.8% share), SAT.1 Gold (1.7%), Nitro (1.4%), SUPER RTL (1.0%), TLC (0.8%), ProSieben Maxx (0.6%), Comedy Central (0.3%) and SPORT 1 (0.3%).

The group of non-Austrian channels claimed a collective market share of 52.5% in 2022 (2021: 51.8%; 2020: 54.9%). Besides the channels originating from Germany that have already been mentioned, this category comprises other German-language channels, including Swiss public television, and shopping channels such as QVC or HSE 24, as well as of course channels broadcast in other languages.

9.1.2.5 2022 Video Survey: ratio between viewing broadcast and online video

Overall video viewing time in decline in 2022, slight increase in online share

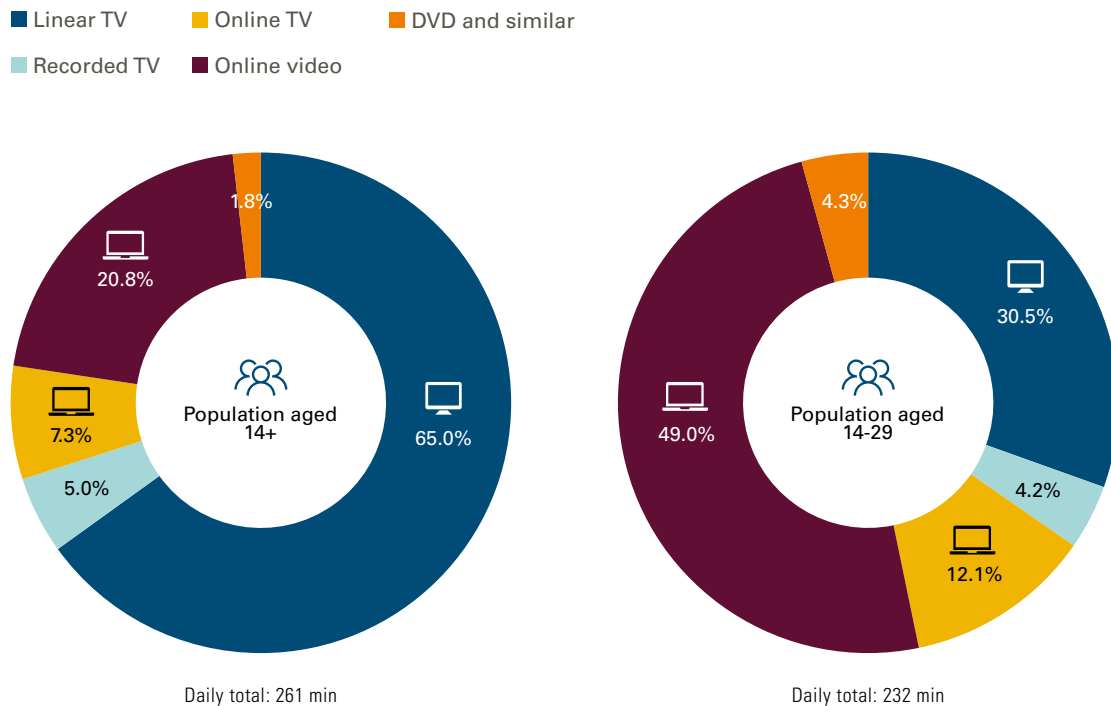
Combined video viewing time for linear television and streaming services decreased in 2022 by a total of 20 minutes per day. This trend is in step with developments in viewing time exclusively for television channels, which fell by 17 minutes in 2022. Despite this change, video viewing time per capita and day remained at a very high level among the Austrian population aged 14 and over in 2022, reaching an average of 4 hours and 21 minutes (261 minutes) and therefore the second-highest figure since records began, after 2021 (281 minutes). In 2019, the year before the pandemic, 219 minutes of video were consumed on average per day.

While the recent trend, sometimes striking, toward video consumption on online streaming platforms exhibited a marked slowdown in 2021, online consumption picked up in 2022 and therefore altered the usage proportions of the various video sources compared with the previous year.

Traditional linear scheduled television remained the most-used source by a large margin, but slipped four percentage points in the Austrian population aged 14 and over to take 65% of the daily video mix compared with 69.1% in 2021. As a result, average viewing time for linear television fell by 24 minutes to 170 minutes (2021: 194 minutes). Including time-shifted TV such as 'home-made' TV recordings using a hard disk recorder, or from platforms offered by cable television providers, television usage took a total share of 70% (2021: 73.4%) or 183 minutes (2021: 206 minutes) of daily video viewing time. Video consumption from purely online sources such as Netflix, Amazon Prime Video or YouTube, as well as video on social media such as Facebook, TikTok, Instagram and WhatsApp, contributed 20.8% or 54 minutes (2021: 18.5% or 52 minutes) toward average video viewing time per day by the general population in 2022. Including TV livestreams and access to television programmes hosted by media libraries, Austrians covered 28.1% of their daily video viewing needs online (2021: 25%; 2020: 24.6%) for a total of 73 minutes per day (2021: 70 minutes).

These are the findings of the 2022 Video Survey, research conducted annually since 2016 by the Media Division at RTR and the Teletest Working Group (AGTT) at GfK Austria. This opinion research institute typically surveys 4,000 people in February, who make up a representative sample of the Austrian population aged 14 and over.

Figure 43: Daily viewing of video broadcasts and online video, individuals aged 14+ and 14 to 29-year-olds, 2022



Source: RTR/AGTT 2022 Video Survey; shares as percentages; all of Austria

The video survey presents the use of all video services, from linear television and broadcaster media libraries to alternative online services, and includes video consumption in social media, both in the population as a whole and in many specific subgroups. The 2022 Video Survey is available in its entirety on the RTR website at <https://www.rtr.at/Bewegtbildstudie2022> (in German).

Young people use alternative online offerings slightly more than linear channels

The daily video viewing time of the 'younger generation' aged 14 to 29 fell in 2022 by 18 minutes to 232 minutes per day (2021: +10 minutes for 250 minutes). In terms of overall consumption, conventional television reception via antenna, cable or satellite took a share of 30.5% (2021: 31.9%) or 71 minutes. Including TV recordings on user devices or as offered by cable network operators, television consumption in the younger target group came to 34.7% (2021: 36.3%).

The use of online sources for video, such as live streams and broadcaster media libraries, as well as alternative video services such as Netflix, Amazon Prime Video or YouTube, and on social media such as Facebook, TikTok, Instagram and WhatsApp, rose to 61.1% in the 14 to 29-year-old age group in 2022, marking a year-on-year increase of one percentage point (2021: 60.1%; 2020: 59%; 2019: 46%).

If video viewing time is not categorised by technical format, i.e. linear television or streaming service, but instead by its origin, and TV live streams and access to media libraries operated by conventional broadcasters are therefore added to linear television usage (34.7%), then television content overall achieved a daily average of 46.8% in the daily video viewing mix for young people in 2022 (2021: 48.3%), a smaller usage share than that for purely online services at 49% (2021: 48%). In 2021, these two shares had still been practically equal.

Rankings for online services

With a share of 4.6% of average daily video viewing time, Netflix (2021: 4.1%) and YouTube (2021: 3.9%) shared first place in the general population aged 14 years and over for online video service consumption in 2022, followed by TV channel media libraries with a total of 4.3% (2021: 3.6%) and TV broadcaster live streams with a share of 3.0%. Amazon Prime Video took fifth place among the most frequently used online services with 2.3% (2021: 2.6%). Other online services trailed at some distance. Instagram ranked sixth with a 1% share (2021: 0.8%) of daily video viewing time, followed by Twitch (2021: 0.6%), Disney+ (2021: 0.4%) and TikTok (2021: 0.4%), each with a 0.7% share. Facebook and WhatsApp both took a 0.6% share (2021: 0.5% each). Other online videos reached a total average of 5.1% of the daily video viewing time among the overall population aged 14 and above (2021: 4.5%).

For young people in the 14–29 age group, YouTube, with a share of 13.4% (2021: 11.4%), was the frontrunner among online services used, as measured by daily video viewing time in 2022. YouTube therefore dethroned the previous title holder Netflix, which gave up more than one percentage point to fall back to 11.0% (2021: 12.3%). Coming in next, the TV media libraries claimed third place in the online ranking among the 14–29 target group, with 6.9% (2021: 7.3%). Other online services amounted to 5.2%. Instagram took fifth place as a video source with 3.7%. This was not due to exceptional growth (2021: 3.3%) but was the result of serious losses in the younger population for Amazon Prime Video, which gave up over half of its video viewing time share among 14 to 29-year-olds, dropping from 3.7% in 2021 to 1.5% in 2022 and therefore equal to WhatsApp (2021: 1.6%). TikTok improved its share significantly by one percentage point to 2.8% (2021: 1.7%), Twitch ticked up to 2.3% (2021: 2.1%), Disney+ also made a significant gain of one percentage point to 1.7% (2021: 0.7%) and Facebook took 1%, as in the previous year. The sub-category of other online services used took a 10% share and therefore remained as broad-based as before (2021: 9.8%). Snapchat, which had actually taken a 1.4% share in 2021, lost its relevance for the younger population as a video source in 2022 and can now be found under other video sources instead.

9.1.3 The Austrian radio market

9.1.3.1 Nationwide listening figures in 2022

As had been observed in 2020 and 2021, daily reach for Austrian radio programmes as a whole fell slightly year on year among the general population aged ten and over (10+) in 2022,⁶⁹ although daily reach actually rose in the core target group of 14 to 49-year-olds. A modest decline in listening time of 1 minute among the general population (10+) was offset by growth of no less than 11 minutes in the core target group of 14 to 49-year-olds. Private stations also took market share from the ORF radio portfolio in both age groups in 2022.

Survey figures show that, on average, 74.9% of the Austrian population (10+) listened to the radio 'for at least 15 minutes yesterday'⁷⁰ in 2022 (2021: 75.2%; 2020: 75.7%). In 2019, radio's daily reach within the general population (10+) had actually grown again for the first time in eight years, making gains of just under two percentage points to reach an average of 77.3% of listeners per day. Following a further loss of 1.6 percentage points to daily reach in 2020, the steady decline in 2021 and 2022 indicates that the success achieved in 2019 was a short-lived recovery rather than a reversal of this negative trend.

Still, in 2022, radio was able to reach a larger number of people in the core group of 14 to 49-year-olds than in 2021. An average of 71.7% of the target group listened to a radio station every day, which marks a significant increase of two percentage points. However, radio already had to accept considerable losses in daily reach in this age group back in 2020, losing 3.7 percentage points. As a result, radio did not quite reclaim its 2019 daily reach among 14 to 49-year-olds in 2022 but is on the right track toward doing so (2021: 69.7% daily reach; 2020: 69.5%; 2019: 73.2%).

69 Source of all data on the Austrian radio market: Radiotest

70 Definition of daily reach for radio, both for radio as a whole and for individual stations

Average daily listening time declined once again in the general population (10+) in 2022, slipping by 1 minute to 187 minutes. Compared with 2021, when listening time dropped by 8 minutes to 188 minutes, and 2020, with another drop by 5 minutes to 196 minutes, the loss experienced in 2022 was comparatively small. Then too, in 2019, there had been an unusual but significant gain in listening time, by 18 minutes to 201 minutes. As a result, listening time in the general population (10+) in 2022 was still higher than listening time in 2018 (183 minutes) and 2017 (179 minutes).

In the target group of 14 to 49-year-olds, the notable fluctuations in listening time seen in recent years continued, on this occasion featuring a sharp rise of 11 minutes to 177 minutes. In 2021, average listening time in the core target group fell by 4 minutes to 166 minutes, therefore marking the lowest figure for listening time over the last five years. In 2020, listening time in the core target group decreased year on year by 15 minutes to 170 minutes, although it had posted an unprecedented gain of 14 minutes to 185 minutes the year before, thereby reversing a long-term negative trend.

Austria-wide market shares and daily reach for ORF and private radio

The daily reach of a radio station signifies the percentage of people within a target age group who report having tuned into that station the day before and listened for at least 15 minutes. When for example a listener tunes into three stations for at least 15 minutes each, the amount of positive impact that this listener has on daily reach is the same for all three stations, even if she perhaps listened to two of the stations for only 15 minutes each but to the third for a longer period.

This contrasts with market share, which tells us how many of the average radio minutes listened to each day can be allocated to the respective radio stations. If people spend more time listening to one radio station, this station has more market share than others and so increases the value of its airtime to advertisers.

Radiotest determines market share based on a survey of respondents' activities on each previous day. The day is divided up into quarter-hour periods, with listeners allowed to name up to three radio stations for each quarter of an hour. This, as well as rounding effects, can lead to overlapping among the results for the various radio stations, so that the total market share held by radio stations may turn out to be greater than the adjusted (net) figure for all stations in total, for example, for the ORF channel portfolio as a whole or private stations in total. This effect was observed again in 2020. Although the individual shares of the market for listeners aged 14 to 49 should add up to 100%, the market shares held by ORF, nationwide private radio broadcasters and other radio broadcasters (such as non-Austrian stations) in fact total 103%.

The following information concentrates on the 14 to 49-year-old core target group which is especially key for marketing. Here, mean listening time is calculated for an entire week, that is, from Monday to Sunday.

Daily reach for ORF radio network stable, DAB+ also brings gains for private stations

In 2022, the ORF radio network achieved the same daily reach as in the previous year, taking 48.9% of the 14 to 49-year-old target group, thus proving unable to compensate for losses in recent years (2020: 51.2%; 2019: 54.6%; 2018: 51.6%). In contrast, domestic private stations took 39%, thereby improving their consolidated daily reach for the second year in a row.

With the exception of the arts and current affairs station Ö1, the various ORF stations⁷¹ were able to achieve reach gains of less than one percentage point, however.

In 2022, Ö1 shed seven tenths of a percentage point to achieve a daily reach of 5.5% in the target group of 14 to 49-year-olds, and therefore reversed the positive trend in daily reach observed for a number of years now. As recently as 2020 and 2021, Ö1 had expanded its reach, first to 5.7% and then to 6.2%.

71 ORF regional stations considered together as one station

Ö3 ticked up by just under one percentage point to 35.5% daily reach (2021: 34.6%), although it had slipped by 1.4 percentage points in 2021 and lost as many as three percentage points of daily reach in 2020.

Taken together, the ORF regional stations improved their daily reach among 14 to 49-year-olds by seven tenths of a percentage point to 13.5% in 2022, but did not manage to regain the two percentage points lost in 2021 (12.8%) or the nine tenths of a percentage point relinquished in 2020. Gains made in 2022 were distributed relatively evenly across all ORF regional stations, each receiving an uptick of between one and three tenths of a percentage point. Among the general Austrian population, only Radio Kärnten lost daily reach, shedding two tenths of a percentage point to finish with 1.2%. In relation to the population of Carinthia, however, the station lost 5.6 percentage points of daily reach and fell to 17.5% (2021: 23.1%).

FM4, which had suffered a comparatively large loss of daily reach in 2021, shedding eight tenths of a percentage point to 4.7%, managed to recover some of this loss in 2022 by gaining five tenths of a percentage point, which took it to a 5.2% daily reach (2020: 5.5%; 2019: 5.0%).

Although the consolidated figure for daily reach for all ORF stations did not change in 2022, domestic private stations were able to expand their daily reach from 35.6% to 39% during the year. This figure would suggest that ORF listeners, previously thought of as loyal to just one station, became more flexible in 2022 and were more likely to switch over to a private station once or twice during the year. While private stations had collectively gained two percentage points of daily reach in 2021, they had then lost 2.2 percentage points and fallen back to a 33.6% reach in 2020.

Overall ORF market share drops significantly in 2022, new record for private stations

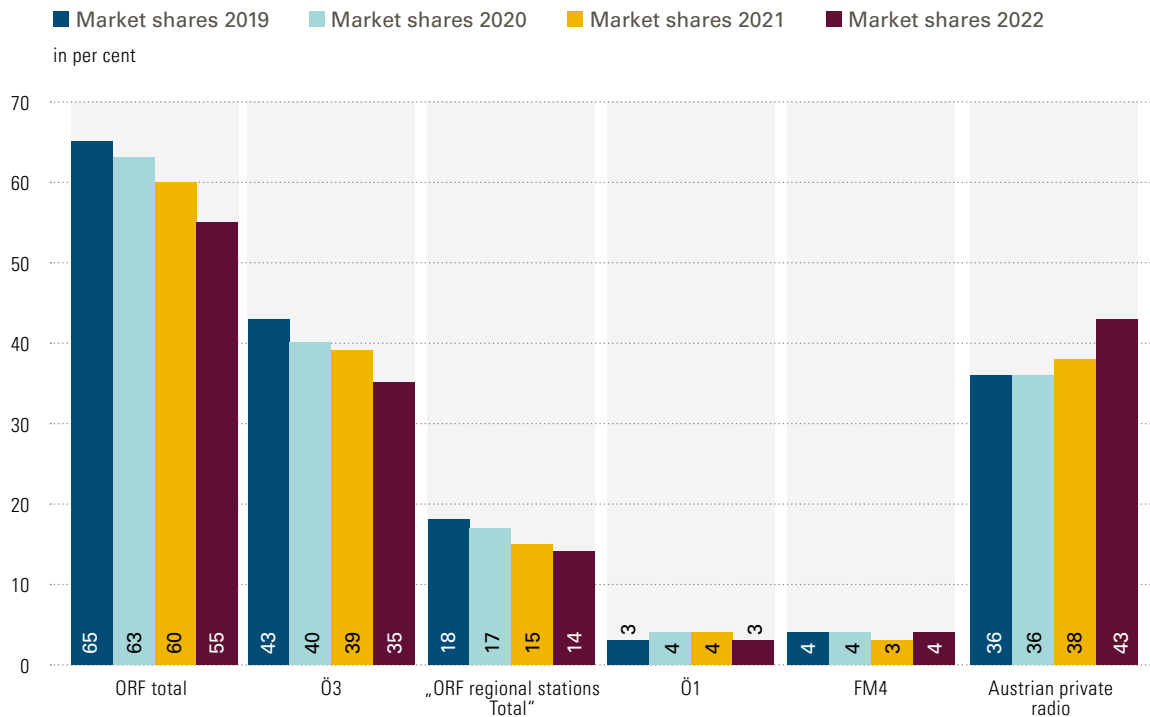
Market share for the ORF radio network fell by five percentage points to 55% in 2022. In 2021 and 2020, the ORF stations had already lost three and then two percentage points of overall market share in the group of 14 to 49-year-old listeners. This meant that in the space of three years the ORF radio network had lost ten percentage points of market share in the most relevant target group for advertisers.

The consolidated loss of two percentage points for ORF regional stations, which fell to 15% market share, had largely accounted for overall ORF network performance in 2021. This contrasts with 2022, when the mainstream station Ö3 was the factor weighing in the most for ORF radio's final position, losing four percentage points and falling to a 35% share, thereby continuing the downward trend Ö3 began in 2020 (2020: 40%; 2019: 43% market share).

The nine ORF regional stations lost one percentage point in 2022 to close the year with a 14% market share. Ö1 also lost just under one percentage point to finish with a 3% market share, returning the same level seen in 2019.

Only FM4 was able to make gains in 2022, regaining one percentage point to balance out its loss from 2021 and achieve a 4% market share among 14 to 49-year-olds.

Figure 44: Shares of the nationwide radio market held by ORF and private stations among the 14–49 target group, 2019–2022



Source: Radiotest 2022; percentages; all of Austria.

The consolidated market share for private stations in the provinces as well as the nationwide networks Radio KRONEHIT and Radio Austria, and the DAB+ digital radio stations with nationwide reception, rose by five percentage points in 2022 to reach 43% and therefore the highest market share recorded to date. The private stations had improved on the 36% market share they had held since 2015 (single exception 2018 with 37% market share) only in 2021, when they had gained two percentage points year on year to achieve a record market share of 38% in the core target group of 14 to 49-year-olds.

The overall success enjoyed by private stations in 2021 was generally attributable to the gains made by national station Radio KRONEHIT, which grew by four percentage points to a 15% market share (2020: 11% market share). But in 2022 gains were distributed evenly, with a single percentage point acquired at national level by each of Radio Flamingo (DAB+ pop station launched in June 2021), Radio Austria, 88.6 – so rockt das Leben (FM in Vienna and DAB+ national) and Life Radio Oberösterreich. In contrast, Kronehit lost one percentage point to drop back to 14% market share.

For 88.6 – so rockt das Leben, this nationwide figure actually conceals considerable shifts in market share within regional reception areas. Whereas the station lost four percentage points to fall back to a 9% market share of the core target group in Vienna, 88.6 managed to improve its position in the equally populous Lower Austria by four percentage points to a 15% market share, and even gained nine percentage points to take a 22% market share in Burgenland while acquiring one percentage point and a 3% market share in Styria. Life Radio in Upper Austria extended its market share from 11% to 13% in its (only) province and therefore increased its nationwide market share from 2% to 3% in the target group of 14 to 49-year-olds. Newcomer DAB+ station Radio Flamingo made the most of nationwide DAB+ reception to achieve a 1% market share at national level in its first year of operations and achieved its highest regional market share of 2% in Styria.

9.1.3.2 Radio listening in Vienna in 2022

The trends for daily reach and market share at a national level, both for radio overall and separately for ORF radio and for private stations, are roughly reflected in the figures for Vienna, a fiercely competitive radio market nonetheless dominated by distinctive local conditions. Overall and on daily average, the percentage reach for radio in the national capital tends to be significantly lower than for the country as a whole. Listening time per day in Vienna is also significantly lower than the nationwide average and is the shortest among all provinces.

Over the last few years, daily reach for radio in Vienna has been subject to the occasional minor fluctuation. In 2022, 62.5% of Vienna's total population (10+) listened to radio on a daily basis, a figure virtually unchanged from the previous year (2021: 62.4%; 2020: 64.5%; 2019: 63.9%). Nationwide, radio reaches 74.9% of the total population (10+) on a daily average. In the group of Vienna residents aged 14 to 49, radio achieved a daily reach of 56.5% in 2021, representing a gain of 1.6 percentage points from the previous year (2021: 54.9%; 2020: 55.6%; 2019: 56.8%), while the nationwide figure for this age group was 71.7%.

Although this means that radio in Vienna stabilised or even modestly improved daily reach in the overall population (10+) in 2022, its performance was unable to close the gap of two percentage points lost in 2021. In the 14 to 49-year-old group, however, radio achieved gains of 1.6 percentage points, thereby making up more than twice over the loss of reach suffered in 2021 (seven tenths of a percentage point) and also breaking the long-term negative trend observed for radio reach in the Viennese core target group.

Significant rise in radio listening time in Vienna again in 2022

Following the sharp downturn in listening time of 18 minutes in 2021, both among the general population aged ten and over (10+) and the target group of 14 to 49-year-olds, listening time in Vienna again rose noticeably in 2022, although not to 2020 levels. Listening time forms the basis for calculating market share for individual stations. In the general population (10+), listening time rose by 8 minutes to a daily average of 142 minutes in 2022 (2021: 134 minutes, 2020: 152 minutes). In the 14 to 49-year-old target group, listening time gained 16 minutes, rising to 117 minutes per day in 2022 (2021: 101 minutes, 2020: 119 minutes). As a result, listening time in Vienna remained below the nationwide average, 45 minutes less for the general population and 60 minutes less for the core target group.

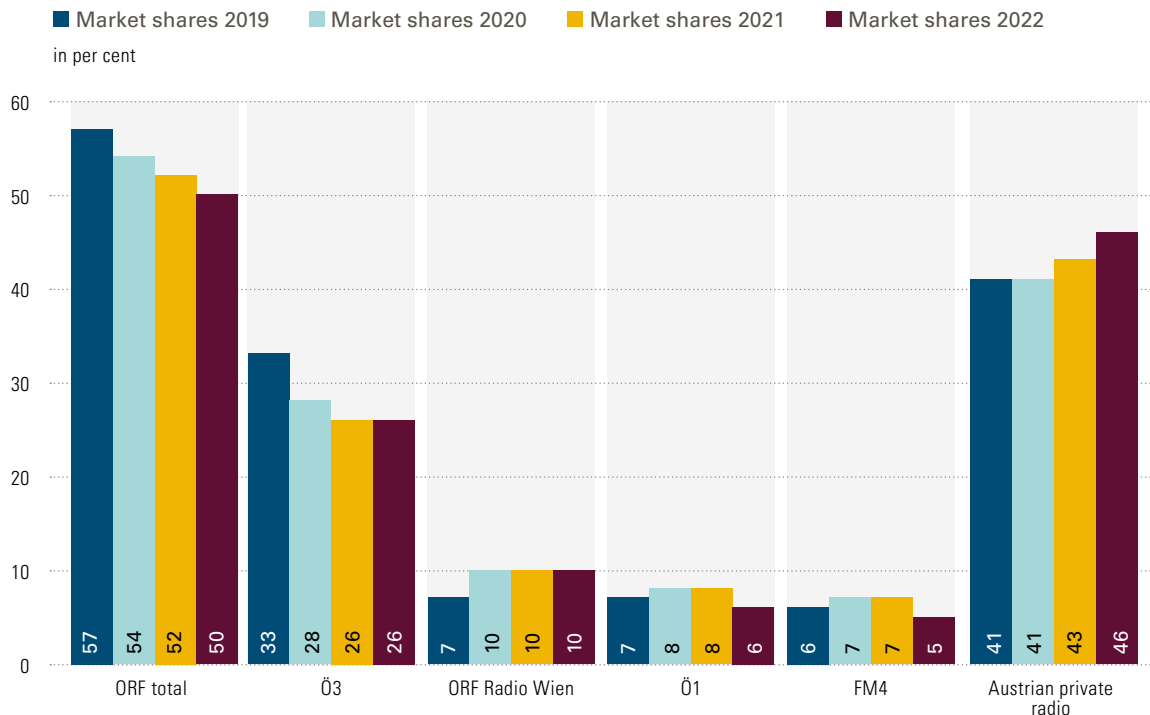
Market shares and daily reach among radio listeners in Vienna aged 14–49

In Vienna, the ORF stations lost two percentage points of market share among 14 to 49-year-olds compared with the previous year, to close 2022 with a market share of 50%. The ORF radio network thus suffered a less serious loss in Vienna than at national level, posting minus five percentage points. This contrasts with daily reach for the ORF station portfolio, which improved significantly by 2.2 percentage points to 35.8%. Private radio stations collectively improved their market share in Vienna by a significant three percentage points to 46% in the target group especially relevant for advertisers, while also expanding daily reach slightly by three tenths of a percentage point to 29.2%.

ORF Radio stations in Vienna

The regional ORF station Radio Wien remained stable at a 10% market share for the third year in succession. Ö3 also bucked the national trend by maintaining its market share year on year in Vienna, staying at 26%. This meant that Ö3 at least halted the negative trend in Vienna that had started in 2020. Ö1 and FM4, in contrast, each lost two percentage points, with Ö1 falling to a 6% market share (2021 and 2020: 8%) and FM4 to a 5% market share (7%) in the core target group. The Ö1 and FM4 losses for the ORF radio network in Vienna were nonetheless partially offset in the Vienna radio market overall by the 2% market shares each obtained by Radio Burgenland (2021: 0% market share in Vienna) and Radio Niederösterreich (2021: 1%), respectively.

Figure 45: Radio market shares in Vienna among the 14–49 target group, ORF vs. private stations, 2019–2022



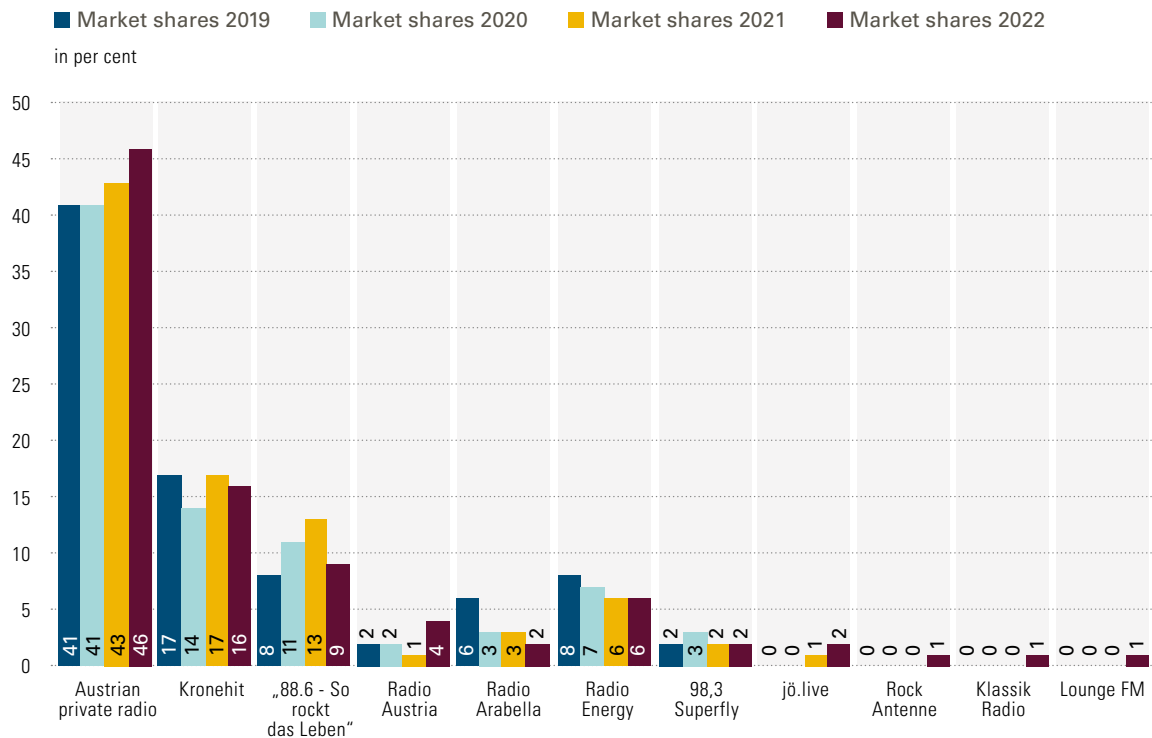
Source: Radiotest 2022; percentages; Vienna market

In contrast to market share, daily reach for the ORF radio network in Vienna increased overall in 2022, rising by 2.2 percentage points to 35.8% (2021: 33.6%) among 14 to 49-year-olds. Ö3 improved its reach in Vienna by 1.6 percentage points to 20.7% (2021: –1.1 percentage points to 19.1% daily reach), although the other ORF regional stations operating in Vienna also significantly improved their consolidated reach from 6.9% to a daily reach of 10.0%. Mainly responsible here were Radio Wien, Radio Burgenland and Radio Niederösterreich. Radio Niederösterreich gained 1.2 percentage points to achieve 2.0% daily reach, Radio Burgenland rose one percentage point to 1.3% and Radio Wien gained eight tenths of a percentage point, taking it to 6.7%. Daily reach figures for FM4 and Ö1 worsened, however, with the stations losing seven tenths of a percentage point to finish with 7.7% (Ö1, 2021: 8.4%) and 4.8% (FM4, 2021: 5.5%).

Private stations, Vienna

By improving its overall market share among 14 to 49-year-olds by three percentage points for the second year running to a 46% market share in 2022, the private radio segment has now pulled away from the 40% to 41% market share it had oscillated between for many years. This success can be attributed to several stations, all of which can (also) be received via DAB+ in Vienna.

Figure 46: Private radio shares in the Vienna market among the 14–49 target group, 2019–2022



Source: Radiotest 2022; percentages

Broadcast over FM and DAB+, the Radio Austria station significantly improved its market share in Vienna by three percentage points to a 4% market share. DAB+ broadcaster jö.live added one percentage point to obtain a market share of 2%, while DAB+ station Rock Antenne, which has also been broadcast on FM in Vienna since December 2022, achieved a measurable share, rising to 1% market share among 14 to 49-year-olds. Also improving its market share from 0.0% to 1% was Klassik Radio, which is one of several terrestrial stations in Vienna that is broadcast only via DAB+.

The station 88.6 – so rockt das Leben, which had gained one percentage point at national level in 2022, and which had achieved above-average gains in Lower Austria and Burgenland ([see listening figures for 2022, section 9.1.3.1](#)), experienced a downturn in the Viennese radio market, dropping four percentage points to a 9% market share and so falling back to its 2018 level (2021: 13%; 2020: 11%; 2019: 8% market share). While KRONEHIT remained the private segment market leader in Vienna by a wide margin, the station mirrored its national performance by shedding one percentage point in the 14 to 49-year-old group to end with a 16% market share (2021: 17%; 2020: 14%).

Radio Arabella, which improved its daily reach in Vienna from 2.8% in 2021 to 3.2%, nonetheless saw its market share drop by one percentage point to 2% in 2022. With a market share of 3% in 2021, Radio Arabella had remained constant compared with the previous year, although it had enjoyed a market share of 6% in 2019 and even 7% in 2018. Its daily reach also remained stable at 2.8% (2020: 2.7%).

Radio Energy halted a four-year losing streak by maintaining its market share at 6% year on year in 2022 (2018: 9% market share) and achieved significant gains in daily reach, rising eight tenths of a percentage point to 7.6% (2021: 6.8%; 2020: 6.7% daily reach).

Superfly in Vienna improved the daily reach figure of 1.5% achieved in 2020 and 2021 to 1.9% in 2022, although its market share remained unchanged at 2%.

The DAB+ station LoungeFM also achieved a measurable market share in the 14 to 49-year-old group in Vienna and finished the year with a 1% share. LoungeFM also improved its daily reach by half a percentage point to 0.8%.

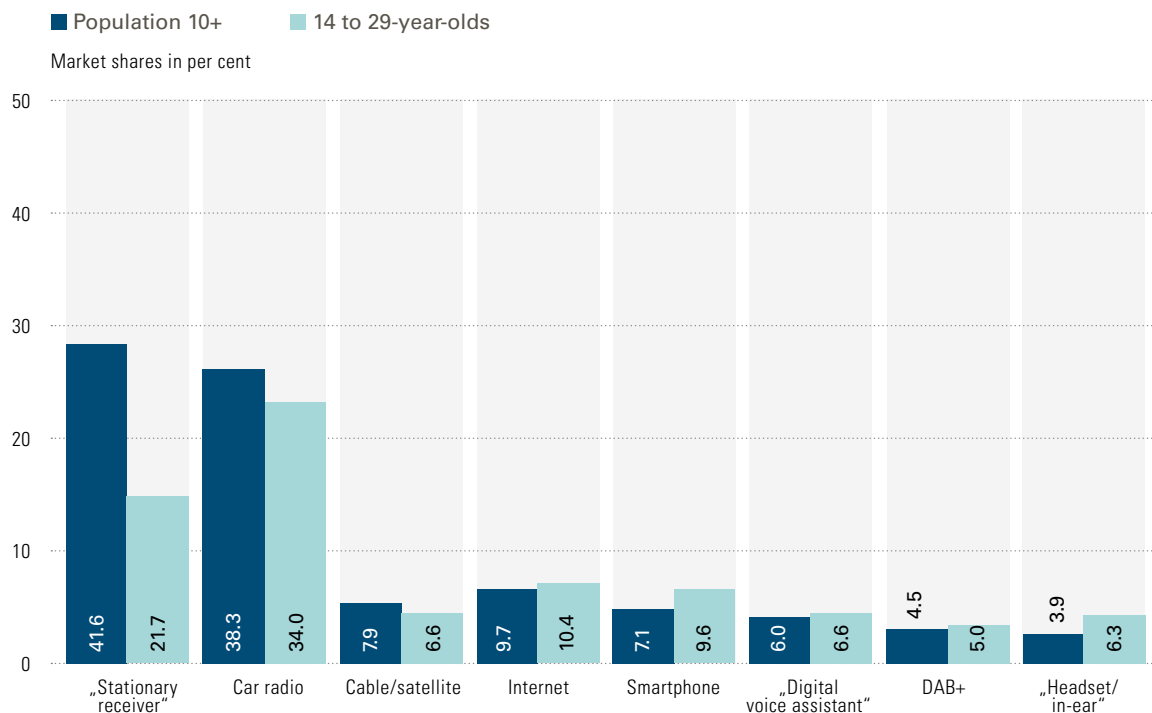
9.1.3.3 Radio listening by source and device and by age group

An analysis by Radiotest in Q4 of 2022 with a breakdown of the devices and sources used for radio reception again reveals a decline for conventional, non-mobile reception formats, with simultaneous increases for newer, internet-based devices as well as digital radio using the DAB+ standard.

Traditional stationary radios, while still the most widespread format, lost reach once again in 2022 in the general population aged ten and over (10+), with the most palpable losses being experienced in the young listener age group (listeners aged 14–29). On average, 41.6% of the general population (10+) switched on a radio on a daily basis in 2022 (2021: 43.9%). This not only marks a loss of 2.3 percentage points year on year but also equates to a loss of around 10 percentage points over a five-year period (2017: 51.9%). Although there had been no change among young listeners in 2021, the reach for standard radios dropped here by around four percentage points to 21.7% in 2022 (2021: 26%).

Car radios remained the second most common radio receivers used in 2022, with 38.3% of the general population (10+) using one on a daily basis. Although daily reach also improved slightly, this represents practically no change from the 38.0% achieved in 2021 (2020: 37.7%; 2019: 43.5%; 2018: 44.9%). This contrasts with car radio reach in the 14 to 29-year-old age group, which fell by more than three percentage points to 34% (2021: 37.2%; 2020: 33.9%; 2019: 41.1%; 2018: 44.3%). In 2020, car radio suffered a particularly serious loss of reach as a result of restrictions on movements imposed by pandemic health measures, losing six percentage points in the 10+ group and seven percentage points in the 14 to 29-year-old group. This category has yet to recoup these losses, particularly among younger people.

Figure 47: Sources and devices for daily radio listening in 2022, individuals 10+ and 14–29



Quelle: Radiotest 2022, Markt Wien

Radio reception via a cable or satellite connection saw a significant loss in daily reach among the general population (10+) for the first time in 2022, slipping by about one percentage point to a figure of 7.9% (2021: 8.8%; 2020: 8.7%; 2019: 8.4%). Interest in this type of radio reception among young people decreased again slightly by half a percentage point to 6.6% reach, thus continuing the recent fluctuating trend (2021: 6.1%; 2020: 6.6%; 2019: 4.8%; 2018: 6.8%).

The percentage of the overall population that listens to radio via the internet increased in 2022 by more than one percentage point to 9.7% (2021: 8.5%; 2020: 7.5%; 2019: 7.9%). In 2022, the daily reach of the internet as a source of radio increased among young people by over two percentage points to 10.4% (2021: 8.3%; 2020: 7.1%; 2019: 8.9%).

Smartphones and digital voice assistants or smart speakers continue to gain popularity as internet radio devices. On a daily basis, 7.1% of the general population (10+) used a smartphone as a radio device in 2022 (2021: 5.8%; 2020: 5.5%), with 6% of the general population using a digital voice assistant (2021: 4.5%; 2020: 3.4%). In the 14 to 29-year-old age group, 9.6% of young people used a smartphone (2021: 8.9%; 2020: 8.0%) and 6.6% a smart speaker (2021: 4.5%; 2020: 3.1%) for radio reception.

Digital stations for antenna reception based on the DAB+ communication standard also collectively improved their reach as a reception source used on a daily basis in 2022. In 2022, 4.5% of the overall population (10+) used DAB+ on a daily basis (2021: 3.9%). As in the previous year, DAB+ again had a slightly wider reach in the younger target group in 2022, achieving 5.0% (2021: 4.6%). Overall, growth in DAB+ use on a daily basis has lost momentum. In 2019, the year of its launch, DAB+ was already being used on a daily basis by 2% of the overall population, and similarly by 2% of young people. In 2020, daily reach had still been growing, rising in the general population by 1.5 percentage points and even adding 2.2 percentage points in the younger target group.

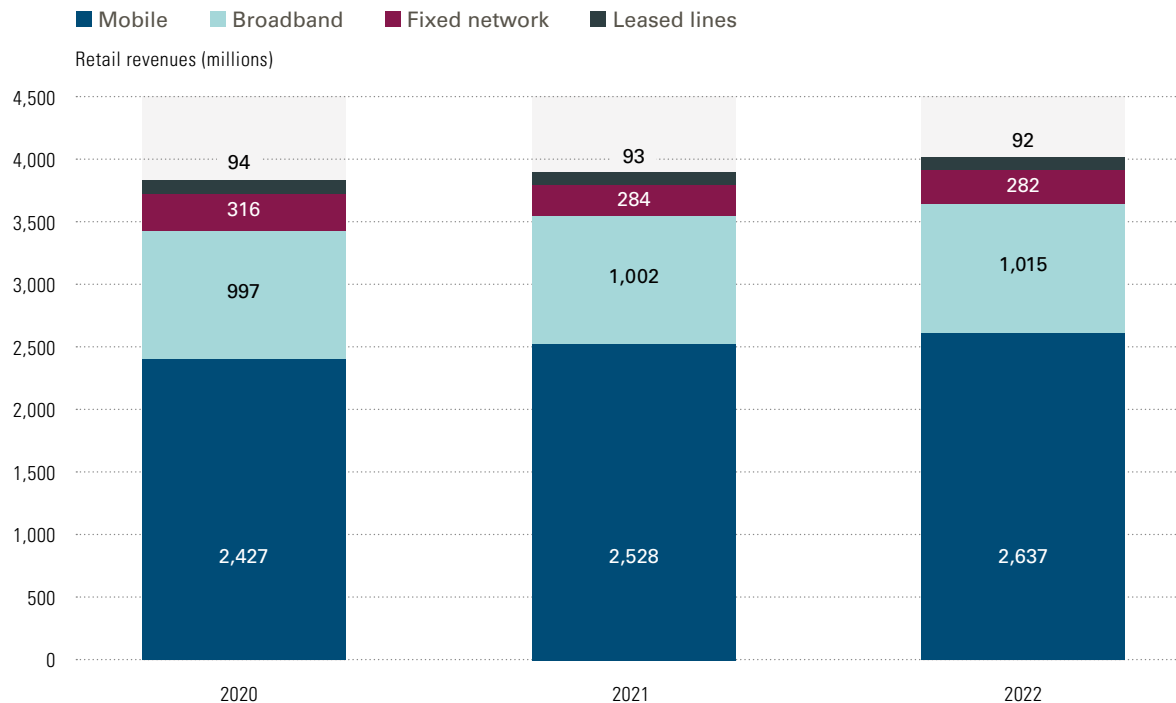
The proportion of the general population using headphones or in-ears for daily radio listening increased slightly to 3.9% in 2022 (2021: 3.3%; 2020: 3.1%; 2019: 3.2%). Among 14 to 29-year-olds, radio listening via headphones fell in 2019 and has been fluctuating between a reach of 5% and 6% ever since, with 6.3% recorded for 2022 (2021: 5.6%; 2020: 5.3%; 2019: 5.8%).

9.2 Developments in the telecommunications markets

This section provides a summary of the most significant market developments in mobile telecommunications, broadband and fixed network services.

In 2022, retail revenues in the telecommunications sector rose 3.1% from EUR 3.91 billion to EUR 4.03 billion. The growth compared with the previous year is therefore higher than in the two previous years (2% and 1% in the respective years). The largest growth was seen in mobile telecommunications revenue (+4.3% including mobile data subscriptions), while an increase was also observed in broadband (+1.4%). Fixed voice telephony as well as leased lines and Ethernet services, on the other hand, experienced minor declines of -0.4% and -1.5% relative to the previous years.

Figure 48: Retail revenues from mobile, fixed broadband, fixed voice and leased line services (2020–2022)



Source: RTR

Optical fibre connections: deployment now accelerating but demand still has potential

- Commercial agreements driving deregulation of broadband wholesale markets
- Internet access: mobile broadband out in front
- 5G coverage rising but take-up still moderate

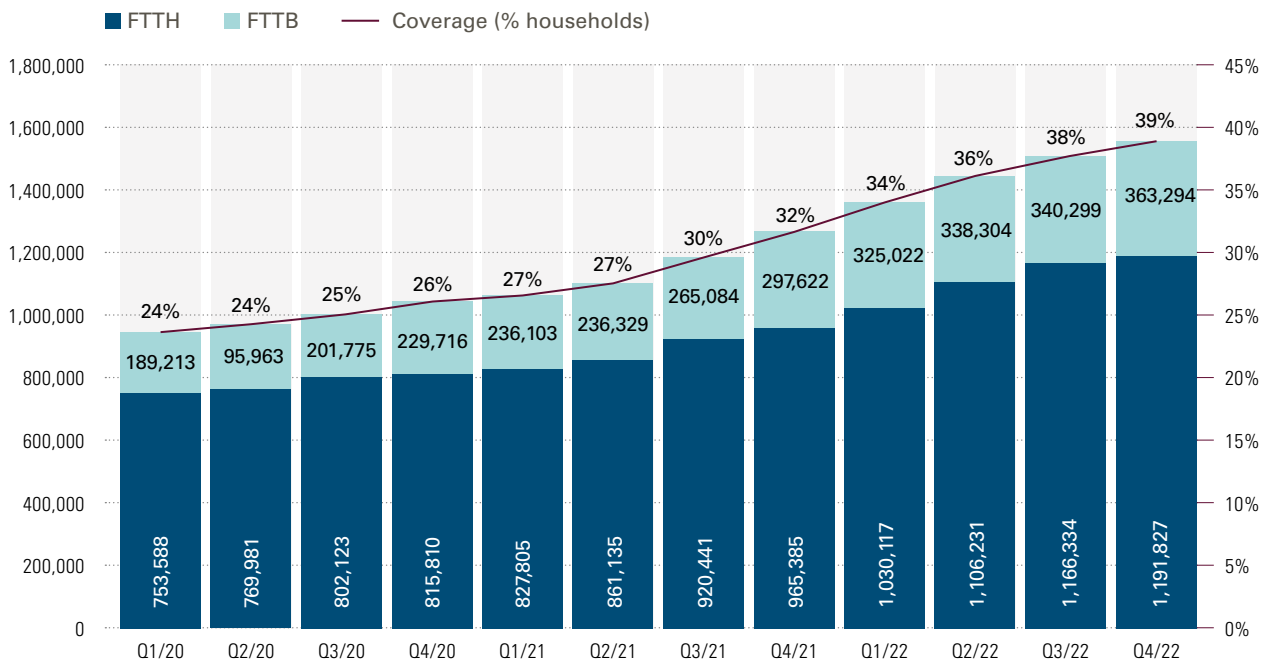
Optical fibre connections: Deployment now accelerating but demand still has potential

Both the European Union and the Austrian federal government are currently pursuing ambitious targets in relation to providing Austria with internet connections that have very high bandwidths. By 2030, the EU and Austria aim to ensure large-scale coverage with symmetrical, gigabit-capable access networks.⁷² Of particular importance here is coverage with optical fibre connections, where the optical fibre in the access network extends at least to the building (fibre to the building, FTTB) or even as far as the user’s actual apartment or house (fibre to the home, FTTH).

Figure 49 shows coverage with FTTB and FTTH connections in Austria during the period 2020–2022. Coverage figures here reference potentially available connections ('homes passed') and not connections in actual use. FTTB refers to cases where optical fibre extends to the building but copper or coaxial cable is then used within the residential property.

There has been a steady increase in coverage with FTTB/H connections in recent years. Although coverage was only 24% at the beginning of 2020, this figure had risen to 39% of all households by Q4 2022.⁷³ Most of this coverage is attributed to FTTH (approx. 1.2 million households in Q4 2022), with approx. 360,000 households having FTTB coverage.

Figure 49: FTTB/H connection coverage (Q1 2020–Q4 2022)



Source: RTR (ZIB)

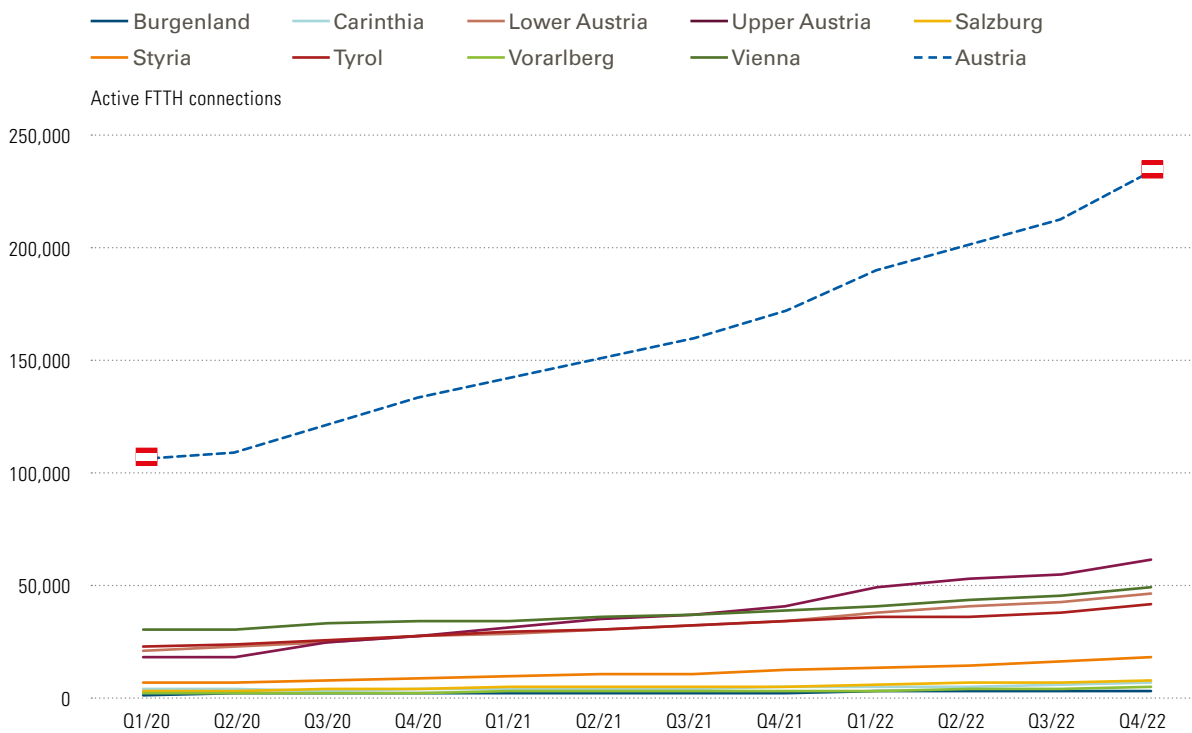
72 See Broadband Strategy 2030, accessible from https://data.breitbandbuero.gv.at/PUB_Breitbandstrategie-2030.pdf (in German), pp. 18 and 24, and the European Commission's Digital Decade targets for 2030, accessible from https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/europe-fit-digital-age/europes-digital-decade-digital-targets-2030_de.

73 Reference figure: approximately 4 million Austrian households.

In 2022, capital spending on optical fibre connections received an important boost, with several companies announcing investments in the Austrian market totalling several billion euros. Examples include a Magenta and Meridiam joint venture,⁷⁴ an agreement between ÖGIG and Allianz,⁷⁵ and Speed Connect Austria.⁷⁶ A1 has also announced that it will increase investment in connections over the next few years in conjunction with the deregulation of broadband wholesale markets (see the discussion in the next section).⁷⁷ In addition, state subsidies amounting to EUR 900 million were allocated in 2022.⁷⁸ Over the next few years, further significant growth in FTTB/H coverage is therefore to be expected.

Demand for optical fibre connections has also significantly increased over the last few years. From the first quarter of 2020 to the fourth quarter of 2022, the number of active FTTH connections more than doubled to 234,000. Most of these connections were located in Upper Austria, followed by Vienna, Lower Austria and Tyrol.

Figure 50: Number of active FTTH connections by province (Q1 2020–Q4 2022)



Source: RTR (ZIB)

74 Refer to <https://newsroom.magenta.at/2023/03/01/oesterreichs-groesste-private-glasfaser-partnerschaft-startet-in-diesem-fruehjahr-mit-dem-ausbau-in-vielen-regionen/> (in German)

75 Refer to <https://oegig.at/news/oesterreichische-glasfaser-infrastrukturgesellschaft-eine-milliarde-euro-fuer-den-glasfaserausbau-in-oesterreich/> (in German)

76 Refer to <https://www.speed-connect.at/about/#speedconnect> (in German)

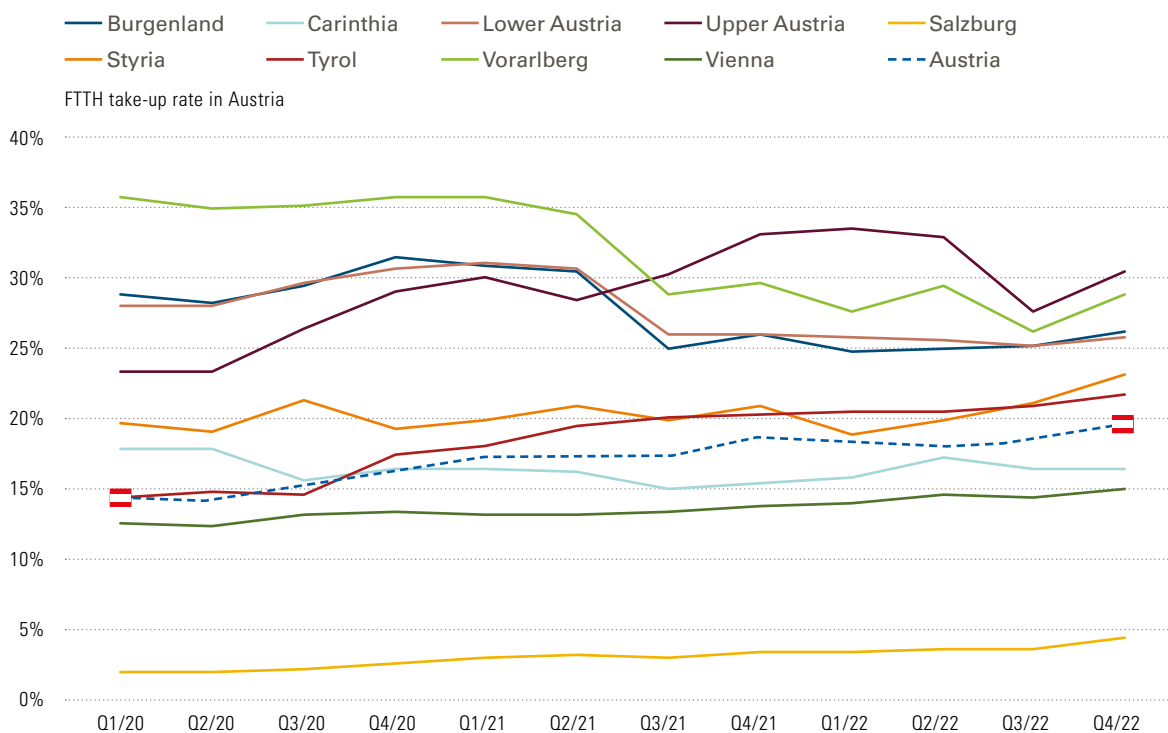
77 Refer to <https://newsroom.a1.net/news-ausbau-in-hoehstgeschwindigkeit-a1-glasfasernetz-heuer-bereits-um-3000-kilometer-ge-wachsen?id=161646&menueid=13051&l=deutsch> (in German)

78 Refer to <https://www.bundeskanzleramt.gv.at/eu-aufbauplan/aktuelles/breitbandausbau-900-millionen-euro-fuer-schnelles-und-stabiles-internet-in-oesterreich.html> (in German)

Despite these positive developments, substantial potential for the use of FTTH networks has yet to be exploited. This has been shown by an RTR study from December 2022,⁷⁹ which presents the development of take-up rates,⁸⁰ and analyses the underlying reasons for regional variation. For Austria as a whole, the FTTH take-up rate was 20% at the end of 2022. Although this is a significant increase of 6 percentage points compared with early 2020, the rate is still significantly lower than relevant long-term targets (typically >50%).

In terms of geographical distribution, substantial differences can already be seen between the provinces. While the average take-up rate in Upper Austria was 31% in the fourth quarter of 2022, the rate was only 4% in Salzburg and 15% in Vienna. The latter two provinces are provinces that have very good cable network coverage.

Figure 51: FTTH take-up rate by province (Q1 2020–Q4 2022)



Source: RTR (ZIB)

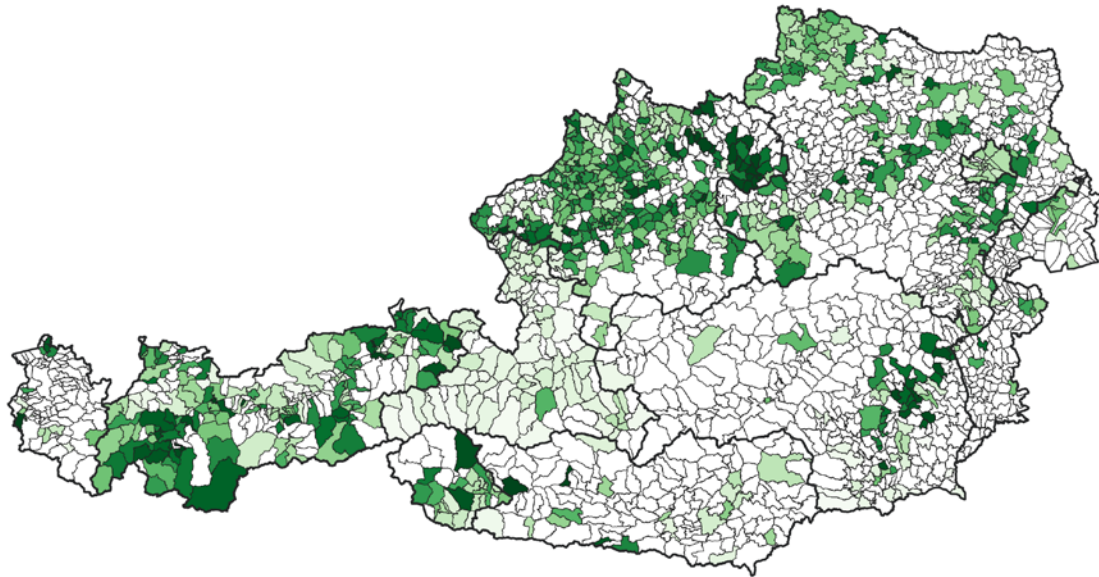
Even greater differences are found at local level. In the five municipalities with the highest take-up rate, this figure is already over 60%, while take-up rates of only 1–2% are found at the other end of the spectrum.⁸¹ Figure 52 presents the distribution of FTTH take-up rates at local community level, with green shading only being applied to those municipalities that combine that had achieved FTTH coverage of at least 10% by Q4 2022 (about 420 municipalities).

79 See RTR (2022), 'Study on demand for fibre access in Austria', accessible from <https://www.rtr.at/TKP/aktuelles/publikationen/publikationen/FTTHNachfrage2022.de.html> (in German)

80 Actual connections used by 'homes passed'.

81 See RTR (2022), 'Study on demand for fibre access in Austria', pp. 30–32.

Figure 52: FTTH take-up rate at municipal level (Q4 2022)



Source: RTR (ZIB)

Not entirely unexpectedly, a statistical analysis shows that coverage with alternative forms of infrastructure is the factor that most readily accounts for differences in take-up rates.⁸² Alongside cable networks, DSL coverage from A1's copper network and mobile service provision both play important roles here.

Commercial agreements driving deregulation of broadband wholesale markets

For more than 20 years, access to wholesale broadband products in the A1 Telekom Austria network was regulated by decisions from the Telekom-Control-Kommission (TKK). The network first comprised access to the physically unbundled local loop and was later expanded to bitstream products.⁸³ As optical fibre networks expanded in the direction of FTTH connections, a gradual transition towards virtual unbundling started in 2010: this is an Ethernet-based wholesale product with which traffic can be handed over on a local, regional or centralised basis.

In the years since the last TKK decision in 2017, A1 has lost considerable market share in the private customer segment, while cable networks as well as alternative optical fibre networks and the use of mobile broadband as home internet have seen further growth. By March 2021, a report published by experts from RTR had concluded that self-sustaining, infrastructure-based competition was already in place for private customer products in large parts of Austria, even without wholesale service regulation. In the business customer segment, by contrast, A1 continued to maintain a strong market position nationwide in Austria.

With an eye on potential (at least partial) deregulation in the near future, Hutchison Drei Austria (Drei) negotiated commercial agreements with A1 concerning future access to wholesale broadband services during the course of 2021. These negotiations produced two agreements: Virtual Unbundling 2.0 (vULL 2.0), covering the copper network and existing FTTB/H connections; and VHCN Access, which regulates access to new FTTB/H investments made by A1. In addition, similar agreements were also concluded with other alternative providers.

⁸² See RTR (2022), 'Study on demand for fibre access in Austria', pp. 34–39.

⁸³ Active wholesale services at IP level with regional or centralised traffic handover.

Another expert report published by RTR in March 2022 concluded that these agreements – each concluded for a five-year term – would adequately safeguard competition at consumer level while incentivising further investment by A1. These further incentives to investment are primarily the result of the VHCN agreement, which grants significant discounts on monthly rates to wholesale service users who participate in pre-marketing activities and who make minimum purchase commitments. Indeed, A1 duly announced increased capital spending on FTTB/H connections in 2022 (and has since started work on infrastructure rollout) although the focus to date has primarily been on FTTC (fibre to the cabinet).⁸⁴ For the private customer segment, uniform provision of vULL 2.0 throughout the country was also considered as more positive for competition than partial regulation in largely rural areas.

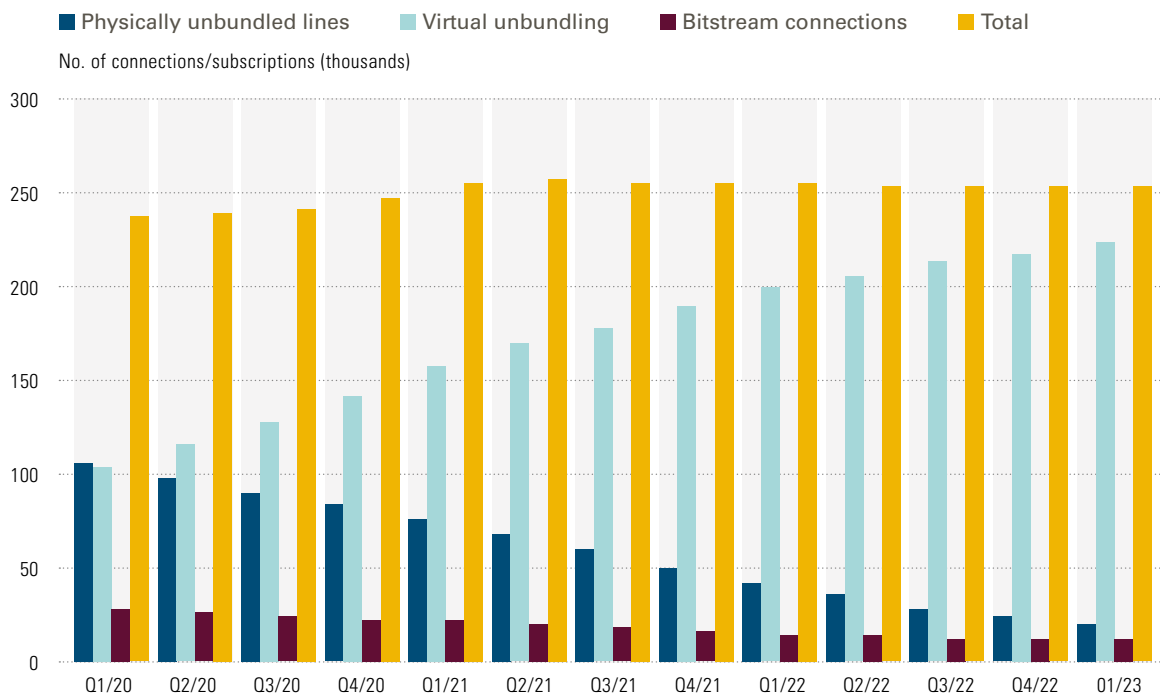
Finally, the TKK decision from 10 October 2022 removed regulation from the broadband wholesale services markets.⁸⁵

Recent demand at wholesale level is presented in Figure 53. Even after deregulation (Q3 2022), an increase in virtually unbundled connections continued to be observed. The number of broadband wholesale services requested from A1 has remained constant at approx. 250,000 connections over the last two years.

With close observation of recent market trends still necessary, a follow-up in-depth analysis of the market is planned within the next five years.

84 Optical fibre up to the cable branch box

85 Transitional rules still apply to physical unbundling and to bitstream products over the next 18 months and two years, respectively.

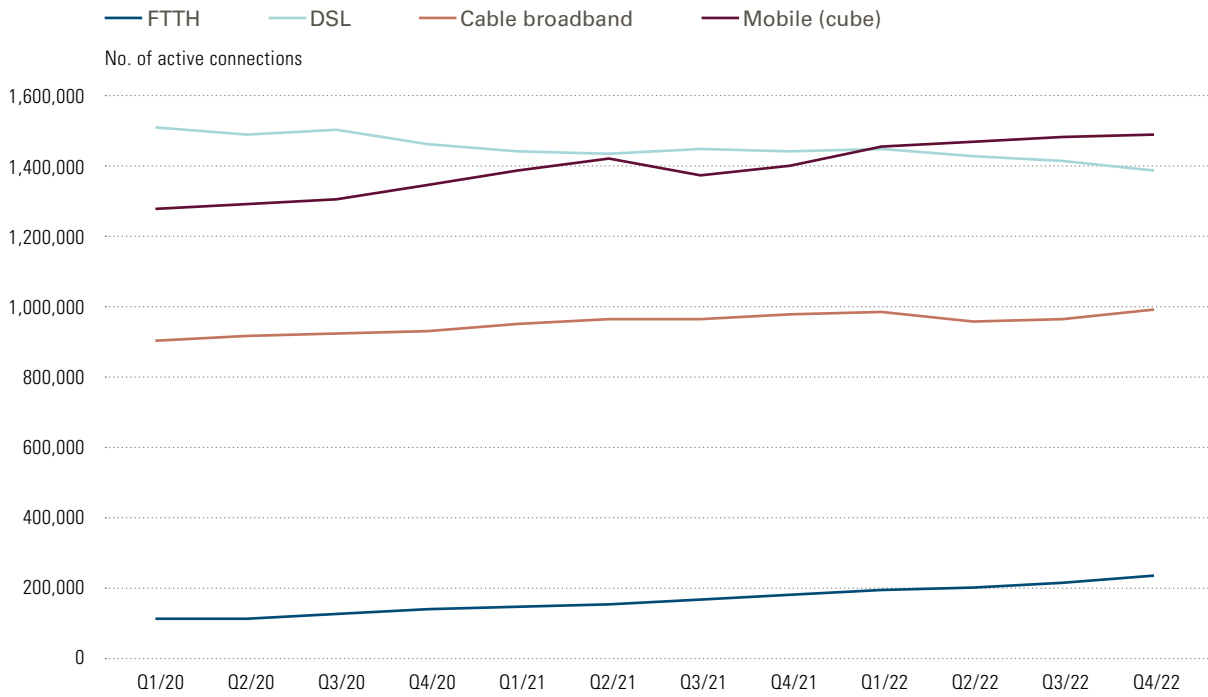
Figure 53: Broadband wholesale services (Q1 2022–Q1 2023)


Source: RTR

Internet access: mobile broadband out in front

While the number of active FTTH connections has increased significantly in recent years, the market remains dominated as before by other access technologies. In 2022, mobile broadband with stationary usage (via a Wi-Fi modem or cube) supplanted DSL connections as the most commonly installed technology (see Figure 54). In the fourth quarter of 2022, 1.5 million cubes and 1.4 million DSL connections were in use. The number of DSL connections has been on the decline for some time now, with this type of access being replaced both by low-cost, flexible cubes as well as by more high-performance FTTH or cable connections. Following years of steady growth, however, cable networks also recorded only modest growth during 2022.

Figure 54: Broadband technologies (Q1 2020–Q4 2022)

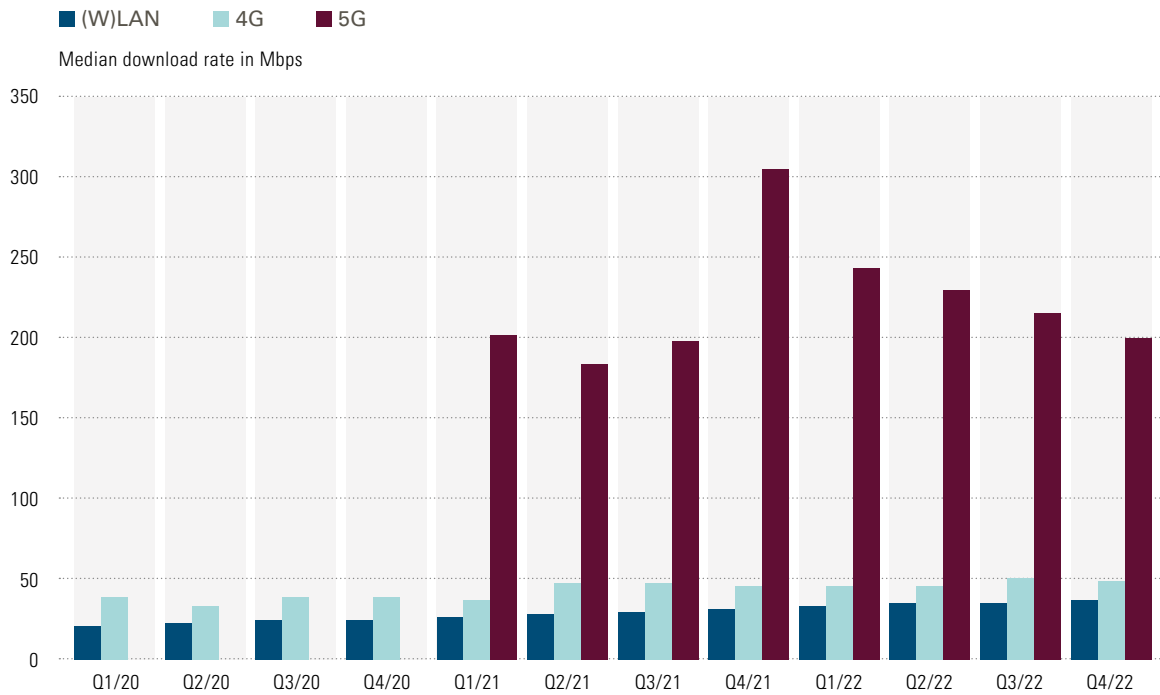


Source: RTR (ZIB)

In terms of mobile broadband, analyses of data provided by RTR-NetTest show that average⁸⁶ download speeds increased to roughly 50 Mbps for 4G during the course of last year, with 5G typically averaging speeds as much as four times higher. (W)LAN measurements include fixed lines (DSL, cable broadband, FTTH) and mobile broadband (cubes). The median speed here was approx. 35 Mbps in 2022.

86 This chart shows median speeds. The median is the value located exactly in the middle of all values when sorted by size (i.e. half of the values lie above and half lie below this value).

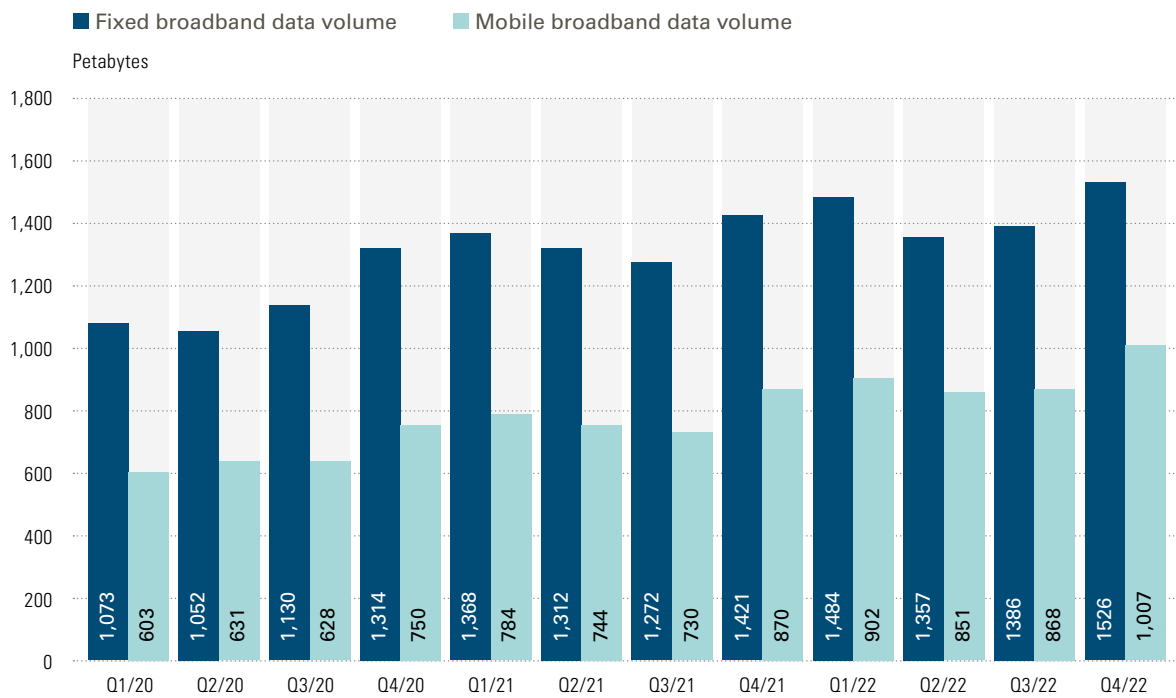
Figure 55: Median download speeds (Q1 2020–Q4 2022)



Source: RTR (NetTest)

The volume of data consumed, i.e. the quantity of data transmitted as a download or upload, continued to exhibit significant rates of increase within both fixed and mobile networks (see Figure 56). Year on year (Q4/21 to Q4/22), fixed data volume increased by 7.5%, with mobile rising by no less than 15.8%. Mobile data consumption has seen faster rates of growth than fixed data for several years now and accounted for 40% of all data consumed in the fourth quarter of 2022.

Figure 56: Fixed and mobile data volume (Q1 2020–Q4 2022)

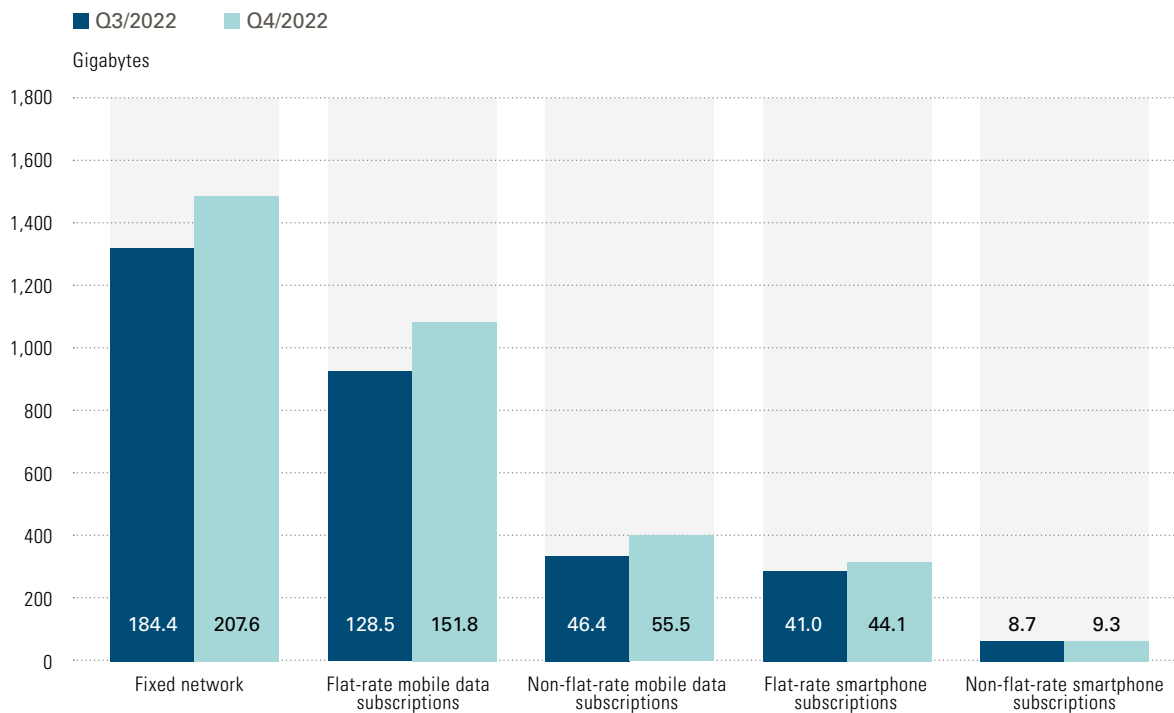


Source: RTR

With mobile broadband, however, the type of subscription strongly affects usage intensity. For smartphone subscriptions not charged at a flat rate,⁸⁷ i.e. with limited monthly data volumes,⁸⁸ average monthly usage in Q4 2022 was 9 GB, with the same metric being 44 GB for flat-rate smartphone subscriptions, 55 GB for non-flat-rate data subscriptions⁸⁹ and 152 GB for data subscriptions at a flat rate. Fixed networks recorded the highest average usage, at 208 GB per connection.

87 Smartphone subscriptions here are tariffs where the basic monthly fee includes data as well as minutes and texts.
 88 This also includes subscriptions where speeds are throttled back after a certain volume of data has been consumed.
 89 Data subscriptions are tariffs where the basic monthly fee includes data but not minutes or texts.

Figure 57: Fixed and mobile data volume per subscription/connection (Q3 and Q4 2022)



Source: RTR

5G coverage rising but take-up still moderate

The rollout of the fifth-generation mobile network (5G) by network operators continued during 2022, with 5G now also available outside urban areas.

Extensive coverage obligations were imposed as part of the first two 5G auctions. The following obligations apply to the reporting period: by the end of 2021, each mobile network operator was required to operate at least 2,000 sites with 2100 MHz spectrum, with the seven licence holders operating a total of 3,264 sites with spectrum from the 3410 to 3800 MHz range by 30 June 2022. The audits conducted revealed that all licence holders had fulfilled their respective obligations. The initial band-specific obligations for the 700 MHz range became effective at the end of 2022 (500 locations in each case). The corresponding review procedure was initiated at the end of 2022. During the second 5G auction in 2020, involving the 700, 1500 and 2100 MHz bands, the regulatory authority assigned to operators 1,702 of the 2,100 poorly served cadastral municipalities, as part of extended coverage obligations to ensure wide-area coverage. The first phase of the extended coverage obligation involving 185 cadastral municipalities in total had to be fulfilled by A1 Telekom (113 cadastral municipalities) and Hutchison (72 cadastral municipalities) as of three deadlines in 2022. The corresponding review procedure was initiated in 2022 and work started on the review (data requests, simulations, measurement arrangements; see also section 5.3).

Actual usage of 5G is still relatively modest, however. Of the roughly 13.4 million SIM cards in use at the end of 2022, only about 800,000 – a share of merely 6% – had subscriptions permitting the use of 5G without an add-on package. The most likely reason for this is that 5G subscriptions still had a significant markup compared with 4G subscriptions even in 2022. Even in 2022, three years after the 5G launch, 5G smartphone subscriptions were offered only by the major brands of the top three operators (A1, Magenta, Drei), but not by sub-brands or virtual network operators (MVNOs)⁹⁰ like Bob, HoT, Spusu or yesss!

In February 2022, the TKK initiated a market analysis procedure to address potential competition issues, with the aim of analysing in detail competition in the mobile surface market.⁹¹

9.3 Developments in the Austrian postal market

To monitor developments in the Austrian postal market, RTR has been collecting quarterly data on Austrian postal service providers – including data on revenues, mail volumes and employees – since 2013. These data on the postal market and related developments are presented quarterly in the RTR Post Monitor.⁹²

In recent years, letter volumes have decreased while parcel volumes have increased, with the Covid pandemic temporarily having an accelerating effect. These trends are now continuing, albeit at a slow pace, since the general economic situation with high inflation is presenting a major challenge for postal service providers. They are attempting to make themselves fit for the future by pursuing sustainability goals and promoting new, innovative solutions such as delivery via parcel boxes.

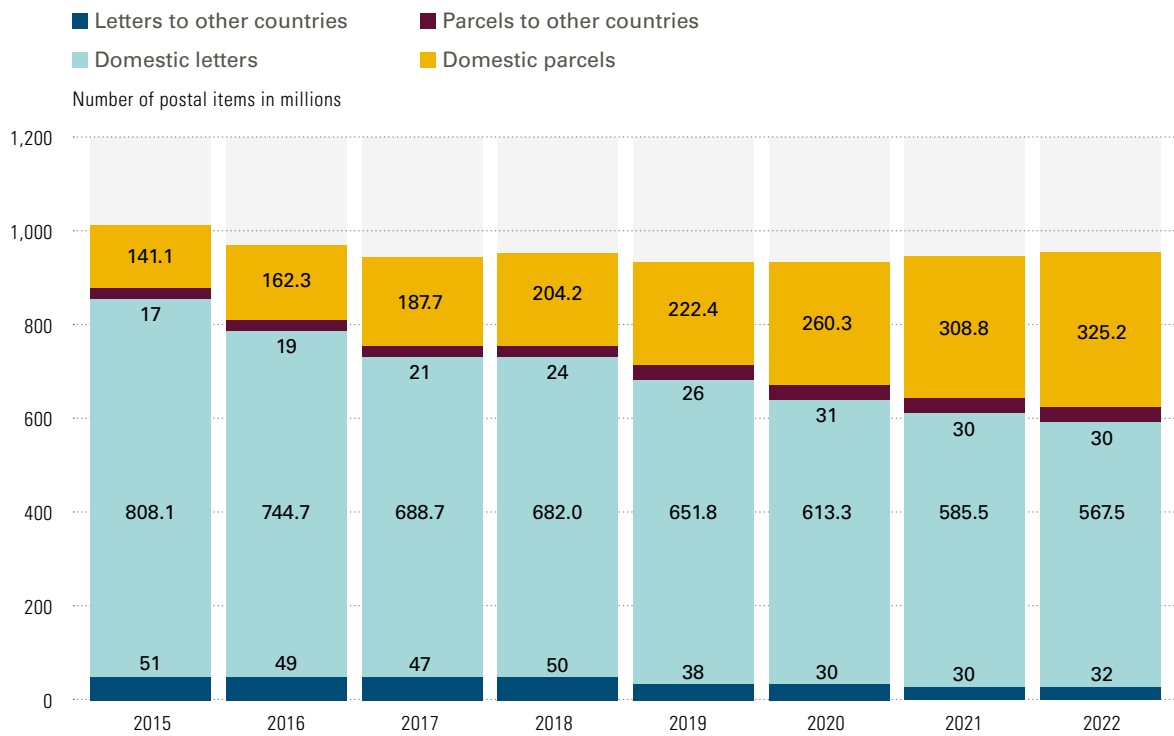
For the first time in years, the total number of postal items conveyed in Austria fell slightly from 954.6 million to 954.4 million in 2022. The number of letters delivered within Austria declined by 4.5%, while the volume of letters sent to foreign destinations increased by 0.4%. Only around 5% of all letters were sent abroad. The opposite trend could be seen among delivered parcels. The number of domestic parcel deliveries increased by 5.3%, whereas the number of parcels delivered abroad – also a significantly lower volume – fell by 1.1%. Although this was the second decline in succession, the total number of parcels destined for abroad was still clearly higher than in 2019 (see figure 58).

90 Mobile virtual network operators

91 Refer to <https://www.rtr.at/TKP/presse/pressemitteilungen/pressemitteilungen/pinfo22022022tkp.de.html> (in German)

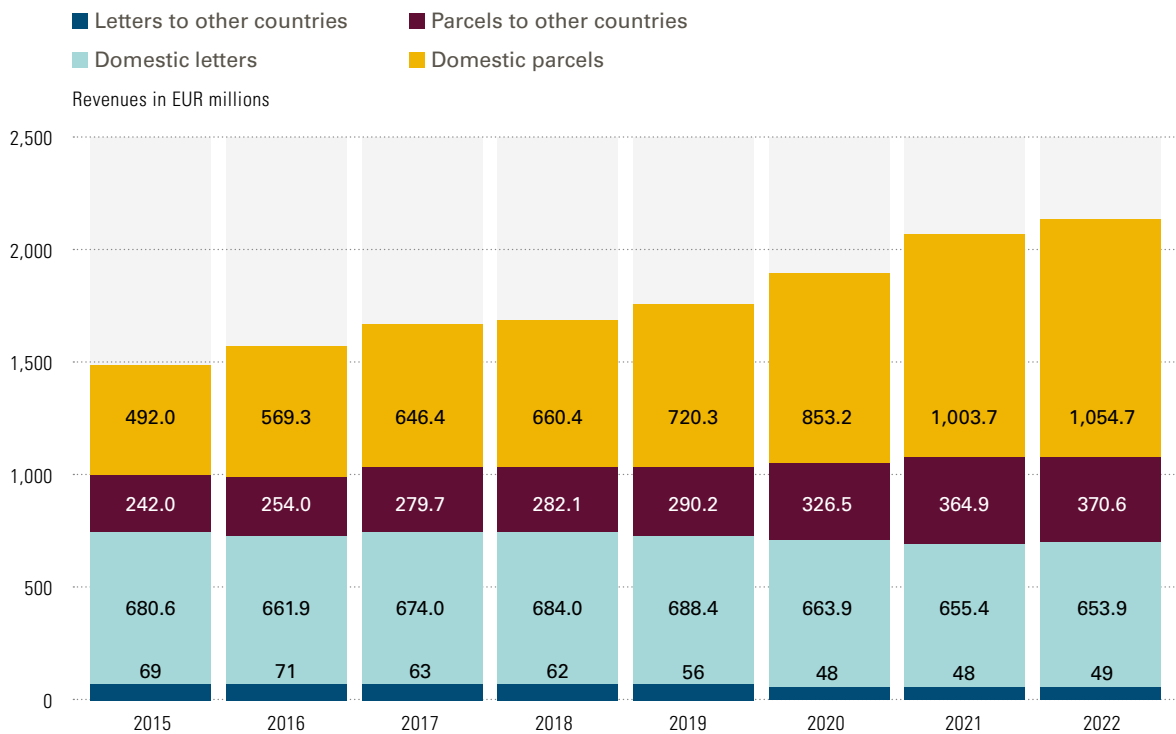
92 <https://www.rtr.at/TKP/aktuelles/publikationen/Uebersichtseite.de.html#l=de&q=&t=category%3Dpostmonitor>

Figure 58: Total letter and parcel volumes (2015–2022)



Despite the slight decline in conveyed postal items, the revenue generated in the reporting year increased by a total of 2.7%. Only revenues from letter items delivered within Austria fell by 0.2% compared with 2021. Revenues from letter items delivered abroad were 3.2% higher than in 2021. With parcel handling, slight revenue increases were seen both for domestic deliveries (+5.1%) and for parcels sent to points abroad (+1.6%; see figure 59).

Figure 59: Total letter and parcel revenues (2015–2022)



Power within the parcel market is distributed differently depending on whether parcels are delivered within Austria or sent to other countries. With a market share based on revenues of 57.6% (or 52.9% based on letter and parcel volumes), Post AG continues to dominate the market for parcels delivered to domestic destinations. It is followed by Amazon Transport Austria GmbH (14.2% based on revenues or 13.7% based on letter and parcel volumes), DPD Direct Parcel Distribution Austria GmbH (12.9% or 13.7%), General Logistics Systems Austria GmbH (7.4% or 7.5%) and other postal service providers (7.8% or 8.2%).

Shares are distributed much more evenly within the market for parcels sent to other countries. In this market, looking at the market share based on revenues, United Parcel Service Speditionsgesellschaft m.b.H. takes first place (29.2%) ahead of Post AG (22.4%), General Logistics Systems Austria GmbH (16.1%), DHL Express (Austria) GmbH (15.3%) and DPD Direct Parcel Distribution Austria GmbH (7.6%). The remaining providers together claim a market share of 9.3%.

When viewed by letter and parcel volumes, General Logistics Systems Austria GmbH (27.7%) leads, followed by Post AG (26.3%), DPD Direct Parcel Distribution Austria GmbH (20.4%), United Parcel Service Speditionsgesellschaft m.b.H. (14.5%) and DHL (Express) Austria GmbH (7.0%). All other providers are responsible for 4% of parcels sent to other countries.

Figure 60: Market shares of postal service providers – parcels delivered in Austria (2022; percentages)

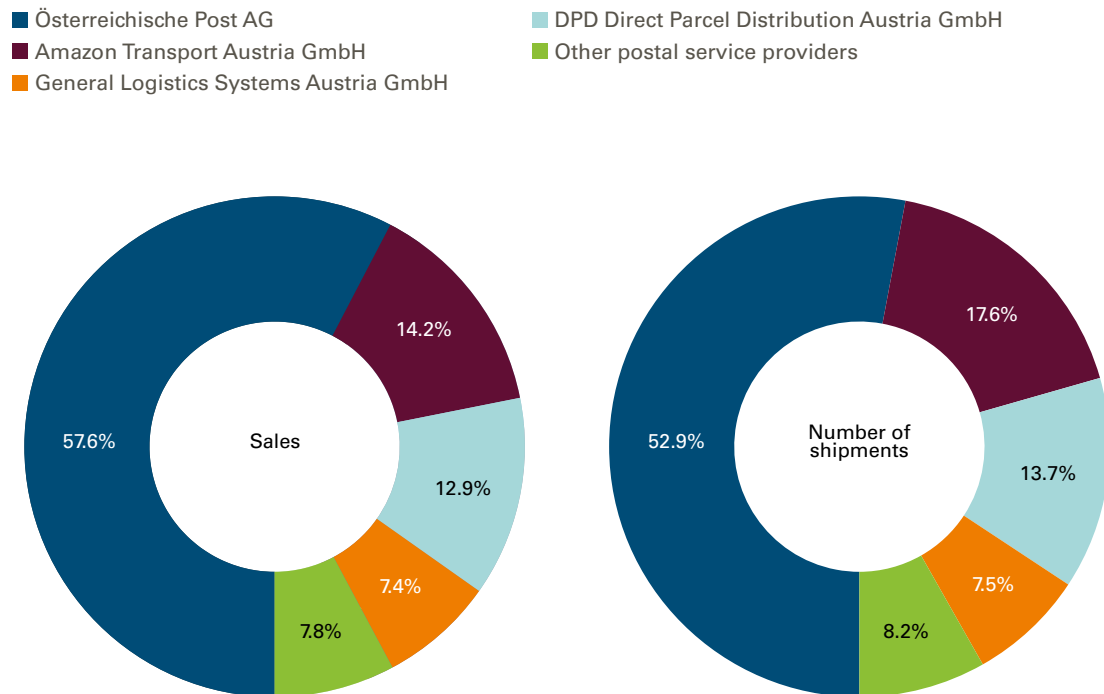
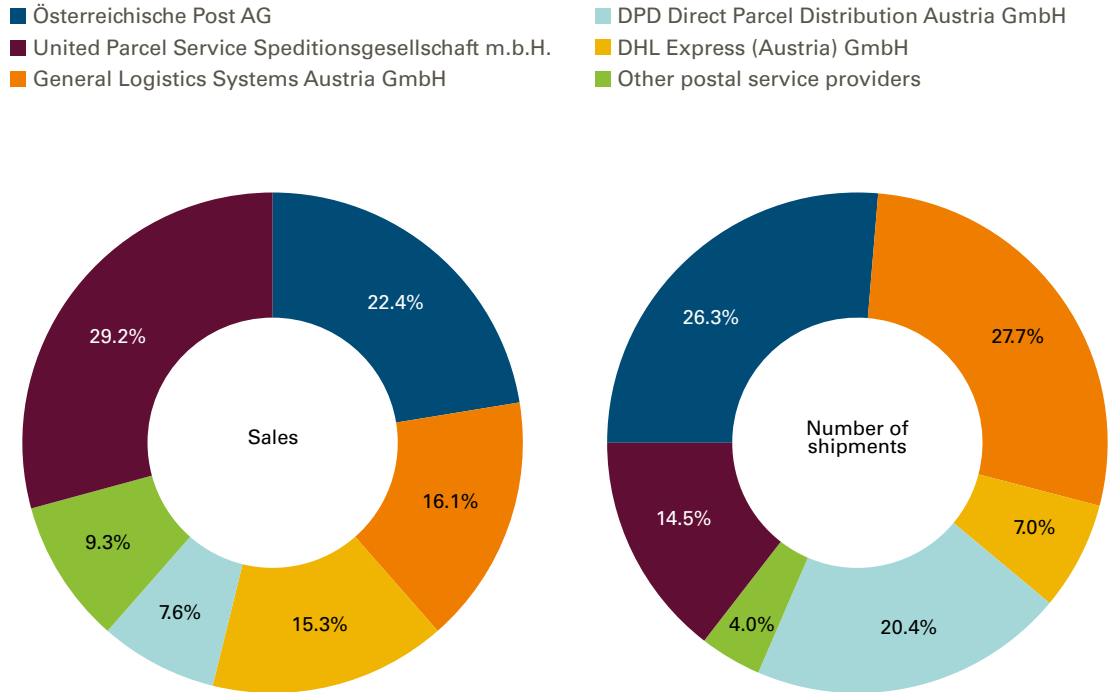


Figure 61: Market shares of postal service providers – parcels destined for other countries (2022; percentages)



The RTR Post Monitor describes the Austrian postal market in detail, including quarterly evaluations. It is available (in German) from the RTR website at <https://www.rtr.at/TKP/aktuelles/publikationen/uebersichtseite.de.html#l=de&q=&t=category%3Dpostmonitor>.



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