Federal Act enacting a Telecommunications Act (Telecommunications Act – TKG 2021)

Original version: Federal Law Gazette No. 190/2021

as amended by:
Federal Law Gazette I No. 180/2022,
Federal Law Gazette I No. 47/2023,
Federal Law Gazette I No. 182/2023,
Federal Law Gazette I No. 6/2024,
Federal Law Gazette I No. 75/2024

Non-binding version: Translation of the amendments via DeepL

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Section 1
General information

Purpose and aims

Article 1. (1) The purpose of this Federal Act is to promote competition in the field of electronic communications so as to ensure the provision of reliable, low-cost, high-quality and innovative communications services to the population and the economy.

(2) All of the following aims are to be pursued as part of the enforcement of this Federal Act:

1. promoting connectivity and access to and use of networks—including fixed, mobile telecommunications and wireless networks—with very high capacity on the part of all citizens and undertakings of the European Union;

2. promoting competition in the provision of communications networks and associated facilities—including effective infrastructure-based competition over the long term—as well as competition in the provision of communications services and associated services;
3. contributing to the development of the single market, to be achieved by the enforcing authorities helping to remove the remaining barriers to investment in communications networks, communications services, associated facilities and associated services, and to the provision of the same throughout the European Union, and simplifying the creation of convergent conditions for the same, and developing common rules and predictable regulatory approaches, and, further, promoting the effective, efficient and coordinated use of radio spectrum, open-access innovations, the establishment and expansion of trans-European networks, and the provision, availability and interoperability of services and end-to-end connectivity throughout Europe;
4. promoting the interests of citizens of the European Union, to be achieved by the enforcing authorities ensuring connectivity to and broad availability and use of networks—including fixed, mobile telecommunications and wireless networks—with very high capacity as well as communications services, to be achieved by enforcing authorities facilitating the greatest possible benefits in terms of choice, price and quality based on the principles of effective competition, maintaining the security of networks and services, utilising the necessary sector-specific regulations to ensure a common high level of protection for end users, and taking into account the needs—including the need for affordable prices—on the part of specified groups in society, particularly end users with disabilities, older end users and end users with specific social needs, as well as the breadth of choice on offer as well as equal access for end users with disabilities.

(3) In pursuing the aims stated in Par. 1, steps are to be taken such that the enforcing authorities:

1. promote regulatory predictability by maintaining appropriate review periods and by working together, with BEREC, with the Radio Spectrum Policy Group and with the European Commission to establish a uniform regulatory approach;
2. ensure that, under comparable conditions, there is no discrimination in the treatment of providers of communications networks and services;
3. apply Union law so as to ensure technology neutrality, insofar as this is compatible with achieving the aims in Par. 2;
4. promote efficient investment and innovation in relation to new and enhanced infrastructures, not least by ensuring that any access obligation takes appropriate account of the risk incurred by the investing undertakings, and by permitting various cooperative arrangements between investors and parties requesting access to diversify the risk of investment as well as concerning the shared use of infrastructures, while simultaneously safeguarding competition in the market and the principle of non-discrimination;
5. duly consider the wide-ranging conditions in connection with infrastructure, competition and circumstances affecting end users and consumers in particular, which prevail in the various geographical areas, and also in relation to local infrastructure managed on a non-profit basis by natural persons;
6. impose ex ante regulatory obligations only insofar as is necessary in order to facilitate effective, long-term competition in the interests of end users, and to relax or lift such obligations once this requirement has been fulfilled.

(4) In reaching their decisions, the enforcing authorities shall as far as is possible take into account the guidance, statements, recommendations, common perspectives, and established methods and procedures adopted by BEREC.

(5) As part of their responsibilities, the implementing authorities shall act to support the implementation of measures that aim to promote freedom of expression, freedom of information, cultural and linguistic diversity, and media pluralism.

(6) This Federal Act transposes into national law the following Directives of the European Union:

1. Directive (EU) 2018/1972 establishing the European Electronic Communications Code, OJ 2018 L 321/36;
2. Directive 2014/61/EU on measures to reduce the cost of deploying high-speed electronic communications networks, OJ 2014 L 155/1;
3. Directive 2008/63/EC on competition in the markets in telecommunications terminal equipment, OJ 2008 L 162/20;
4. Directive 2002/77/EC on competition in the markets for electronic communications networks and services, OJ 2002 L 249/21;

5. Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications), OJ L 201 of 31 July 2002, p. 37, as last amended by Directive 2009/136/EC, OJ L 337 of 18 December 2009, p. 11.

(7) This Federal Act also defines measures in support of the following European Union legislation:

1. Regulation (EU) 2018/1971 establishing the Body of European Regulators for Electronic Communications (BEREC) and the Agency for Support for BEREC (BEREC Office), amending Regulation (EU) 2015/2120 and repealing Regulation (EC) No 1211/2009, OJ 2018 L 321/1;
2. Regulation (EU) 2015/2120 laying down measures concerning open internet access and retail charges for regulated intra-EU communications and amending Directive 2002/22/EC and Regulation (EU) No 531/2012, OJ 2015 L 310/1, as last amended by Regulation (EU) 2018/1971, OJ 2018 L 321/1;
3. Regulation (EU) 531/2012 on roaming on public mobile communications networks within the Union, OJ 2012 L 172/10, as last amended by Regulation (EU) 2017/920, OJ 2017 L 147/1.

(8) In the context of private-sector regulation, and specifically in the event of a market failure, close cooperation is required between public and private actors to establish open telecommunications networks for all market participants and providers of public telecommunications services.

(9) This Federal Act also governs amateur radio services.

Exceptions from the scope of application

Article 2. (1) This Federal Act shall not apply to communications equipment (specifically including radio systems and terminal equipment) set up and operated exclusively for the purposes of national defence. Spectrum use shall, however, be agreed with the Federal Ministry for Agriculture, Regions and Tourism.

(2) This Federal Act shall not apply to communications equipment (specifically including radio systems and terminal equipment) set up and operated exclusively for the purposes of telecommunications authorities.

(3) The Industrial Code (*Gewerbeordnung*) 1994, Federal Law Gazette No. 194/1994, shall not apply to providers of communications services or to providers and operators of communications networks.

(4) This Federal Act is without prejudice to the jurisdiction of the Cartel Court (*Kartellgericht*), the Federal Public Attorney for Cartel Matters (*Bundeskartellanwalt*) or the Federal Competition Authority (*Bundeswettbewerbsbehörde*).

Subsidies

Article 3. To achieve the aims of this Federal Act, contributions earmarked for a specific purpose can be granted based on special guidelines.

1. Earmarked contributions made to natural persons or legal persons not under federal administration (including associations founded by municipalities) are considered subsidies (*Förderungen*) within the meaning of Art. 30 Par. 5 Federal Organic Budget Act (*Bundeshaushaltsgesetz*) 2013, Federal Law Gazette No. 139/2009.
2. Earmarked contributions made to municipalities that on their own behalf and on their own account install or operate cable ducts to close gaps during the installation of high-speed electronic communications networks for providing blanket coverage are considered dedicated subsidies (*Zweckzuschüsse*) within the meaning of Art. 12 Par. 2 Financial Constitution Act (*Finanz-Verfassungsgesetz*) 1948, Federal Law Gazette No. 45/1948.

Definitions

Article 4. The following definitions shall apply as used by this Federal Act:

1. ‘communications network’ means electronic transmission systems whether or not based on a permanent infrastructure or centralised administration capacity, and, where applicable, switching or routing equipment and other resources, including network elements which are not active, which permit the conveyance of signals by wire, radio, optical or other electromagnetic means, including satellite networks, fixed (circuit- and packet-switched, including internet) and mobile networks, electricity cable systems, to the extent that they are used for the purpose of transmitting signals, networks used for radio and television broadcasting, and cable television networks, irrespective of the type of information conveyed;

2. ‘very high capacity network’ means a communications network which consists wholly of optical fibre elements at least up to the distribution point at the serving location, or a communications network which is capable of delivering, under usual peak-time conditions, similar network performance in terms of available downlink and uplink bandwidth, resilience, error-related parameters, and latency and its variation; network performance can be considered similar regardless of whether the end-user experience varies due to the inherently different characteristics of the medium by which the network ultimately connects with the network termination point;
3. ‘transnational markets’ means markets that cover the European Union or a substantial part thereof located in more than one Member State;
4. ‘communications services’ means electronic services normally provided for remuneration via communications networks within the territorial scope of application of this Federal Act, regardless of the provider’s registered place of business; with the exception of services providing, or exercising editorial control over, content transmitted using communications networks and services, as well as minimal auxiliary services, the latter definition applying to the following types of services:
   (a) ‘internet access services’ as defined in point (2) of the second paragraph of Article 2 of Regulation (EU) 2015/2120;
   (b) interpersonal communications services; and
   (c) services consisting wholly or mainly in the conveyance of signals such as transmission services used for machine-to-machine communication or for broadcasting;
5. ‘telecommunications service’ means a communications service with the exception of radio and television broadcasting;
6. ‘interpersonal communications service’ means a service normally provided for remuneration that enables direct interpersonal and interactive exchange of information via communications networks between a finite number of persons, whereby the persons initiating or participating in the communication determine its recipients and does not include services which enable interpersonal and interactive communication merely as a minor ancillary feature that is intrinsically linked to another service;
7. ‘number-based interpersonal communications service’ means an interpersonal communications service which connects with publicly assigned numbering resources, namely, a number or numbers in national or international numbering plans, or which enables communication with a number or numbers in national or international numbering plans;
8. ‘number-independent interpersonal communications service’ means an interpersonal communications service which does not connect with publicly assigned numbering resources, namely, a number or numbers in national or international numbering plans, or which does not enable communication with a number or numbers in national or international numbering plans;
9. ‘public communications network’ means a communications network used wholly or mainly for the provision of publicly available communications services which support the transfer of information between network termination points;
10. ‘network termination point’ means the physical point at which an end user is provided with access to a public communications network, and which, in the case of networks involving switching or routing, is identified by means of a specific network address, which may be linked to an end user’s number or name;
11. ‘associated facilities’ means associated services, physical infrastructures and other facilities or elements associated with a communications network or a communications service which enable or support the provision of services via that network or service, or have the potential to do so, and include buildings or entries to buildings, building wiring, antennas, towers and other supporting constructions, ducts, conduits, masts, maintenance holes, and cabinets;
12. ‘associated service’ means a service associated with a communications network or a communications service which enables or supports the provision, self-provision or automated-provision of services via that network or service, or has the potential to do so, and includes number translation or systems offering equivalent functionality, conditional access systems and electronic programme guides (EPGs), as well as other services such as identity, location and presence service;
13. ‘user’ means a natural or legal person using or requesting a publicly available communications service;

14. ‘end user’ means a user not providing public communications networks or publicly available communications services;
15. ‘consumer’ means any natural person who uses or requests the use of a publicly available communications service for purposes other than those of a trade, business, craft or profession (‘consumer’ as defined in Art. 1 of the Federal Act of 8 March 1979 Establishing Provisions for the Protection of Consumers (Consumer Protection Act (*Konsumentenschutzgesetz*, KSchG), Federal Law Gazette No. 140/1979);
16. ‘communications network provider’ means anyone who establishes, operates, controls or makes available a communications network;
17. ‘radio spectrum allocation’ means the designation of a given radio spectrum band or number range for use by one or more types of radio communications services, where appropriate, under specified conditions;
18. ‘harmful interference’ means interference which endangers the functioning of a radio navigation service or of other safety services or which otherwise seriously degrades, obstructs or repeatedly interrupts a radio communications service operating in accordance with the applicable international, Union or national regulations;
19. ‘security of networks and services’ means the ability of communications networks and services to resist, at a given level of confidence, any action that compromises the availability, authenticity, integrity or confidentiality of those networks and services, of stored or transmitted or processed data, or of the related services offered by, or accessible via, those communications networks or services;
20. ‘radio local area network’ means low-power wireless access system, operating within a small range, with a low risk of interference with other such systems deployed in close proximity by other users, using, on a non-exclusive basis, harmonised radio spectrum;
21. ‘harmonised radio spectrum’ means radio spectrum for which harmonised conditions relating to its availability and efficient use have been established by way of technical implementing measures in accordance with Art. 4 of Decision No 676/2002/EC, OJ 2002 L 108/1;
22. ‘shared use of radio spectrum’ means access by two or more users to use the same radio spectrum bands on the basis of a general authorisation (Art. 28 Par. 10), a spectrum licence or a combination thereof;
23. ‘access’ means the making available of facilities or services to another undertaking, under defined conditions, either on an exclusive or a non-exclusive basis, for the purpose of providing communications services, including when they are used for the delivery of information society services or broadcast content services; access includes: access to network elements and associated facilities, which may involve the connection of equipment, by fixed or non-fixed means (in particular this includes access to the local loop and to facilities and services necessary to provide services over the local loop); access to physical infrastructure including buildings, ducts and masts; access to relevant software systems including operational support systems; access to information systems or databases for pre-ordering, provisioning, ordering, maintaining and repair requests, and billing; access to number translation or systems offering equivalent functionality; access to fixed and mobile networks, in particular for roaming; access to conditional access systems for digital television services and access to virtual network services;
24. ‘interconnection’ means the physical and logical linking of public communications networks used by the same or a different undertaking in order to allow the users of one undertaking to communicate with users of the same or another undertaking, or to access services provided by another undertaking; services may be provided by the operators involved or other operators who have access to the network; interconnection is a specific type of access implemented between public communications network operators;
25. ‘operator’ means an undertaking providing or authorised to provide a public communications network or an associated facility;
26. ‘local loop’ means the physical path used by electronic communications signals connecting the network termination point to a distribution frame or equivalent facility in the fixed public electronic communications network;
27. ‘call’ means a connection established by means of a publicly available interpersonal communications service allowing two-way voice communication;
28. ‘voice communications service’ means a publicly available communications service for originating and receiving, directly or indirectly, national or national and international calls through a number or numbers in a national or international numbering plan;

29. ‘public safety answering point’ or PSAP means a physical location where an emergency communication is first received under the responsibility of a public authority or a state-recognised private organisation;
30. ‘most appropriate PSAP’ means a PSAP established by responsible authorities to cover emergency communications from a specified area or for emergency communications of a specified type;
31. ‘emergency communication’ means communication by means of interpersonal communications services between an end user and the PSAP with the goal of requesting and receiving emergency relief from emergency services;
32. ‘emergency service’ means a service, recognised as such by the state, which in accordance with national law provides immediate and rapid assistance in situations where there is, in particular, an immediate risk to life or limb, to individual or public health or safety, to private or public property, or to the environment;
33. ‘caller location information’ means, in a public mobile network, the data processed, derived from network infrastructure or handsets, indicating the geographic position of an end user’s mobile terminal equipment, and, in a public fixed network, the data about the physical address of the network termination point;
34. ‘terminal equipment’ means terminal equipment as defined in point (1) of Art. 1 of Commission Directive 2008/63/EC;
35. ‘security incident’ means an event having an actual adverse effect on the security of electronic communications networks or services;
36. ‘provider’ means an undertaking that provides a publicly available communications service;
37. ‘M2M transmission services’ means communications services where the provider ensures by technical means that these services can only be used to transmit data and information automatically between devices or software applications, without or with only minimal human involvement;
38. ‘third-party provider service’ means a service having the following characteristics:
    a) the service is accessible via public communications services;
    b) the service is operated to generate revenues;
    c) the fees collected from end users using the service are on average higher than the costs of upstream communications services provided up to the third-party provider;
    d) fees are initially charged to the end user assigned to the connection that is used in the context of the service; and
    e) the master data required for billing the end user is made available by the provider who assigns the connection that is used in the context of the service for use with specific services;
39. ‘amateur radio service’ means a radio service for experimental and technical purposes that uses facilities including terrestrial and satellite radio stations, and which is operated by radio amateurs for their own training, intercommunication, radio communication in emergencies and disasters, and technical research;
40. ‘radio amateur’ means a natural person who has been issued an amateur radio licence and is involved in radio technology and radio operation out of personal interest or as part of an organisation active in the public interest, but not in order to pursue any other interests, in particular of an economic or political nature;
41. ‘amateur radio station’ means one or more transmitters or receivers or a group of transmitters or receivers, including ancillary equipment, which are required for the operation of an amateur radio service at a particular location and use a part of or several of the frequency bands allocated for amateur radio service in Austria, even where the spectrum used for transmission or reception range goes beyond the frequency ranges allocated for amateur radio;
42. ‘station officer’ means a radio amateur appointed by an amateur radio association or an organisation active in the public interest who is responsible for ensuring compliance with the provisions of this Act and with the provisions of ordinances issued on the basis of this Act;
43. ‘club radio station’ means an amateur radio station belonging to an amateur radio association or an organisation active in the public interest;
44. ‘beacon transmitter’ means an automatic amateur radio transmission system, installed and operated at a fixed location, which continuously and repeatedly transmits signals with distinctive technical and operating characteristics, for the purpose of measuring spectrum and investigating radio wave propagation conditions;

45. ‘relay radio station’ means an amateur radio station for the purpose of automatic information transmission;
46. ‘remote radio station’ means an amateur radio station that is operated remotely by a radio amateur;
47. ‘funding providers’ means organisations that invite tenders for public funding for the deployment of communications infrastructure, or which grant or manage such funding;
48. ‘funding applicants’ means undertakings or other organisations which apply for public funding for the deployment of communications infrastructure, which make or have made use of such funding or which operate communications networks set up through the use of public funding;
49. ‘radio system’ means a product, or relevant component thereof, capable of communication by means of the transmission and/or reception of radio waves utilising the spectrum allocated for terrestrial/satellite radio communication; electrical systems which are designed to prevent radio communications by means of radio waves are also considered radio systems;
50. ‘broadband coverage level’ means the data transmission speed available to a user, based on the following categories: for fixed networks, the minimum download and upload speeds available for using internet access services, the speeds normally available and the advertised maximum speeds; for mobile networks, the estimated maximum download and upload speeds available for using internet access services and the advertised speeds;
51. ‘communications line’ means underground or overhead transmission paths (communications systems), including the associated switching, amplification or branching equipment, power supplies, building wiring, masts, antennas, towers and other supporting structures, ducts, conduits, cable shafts, maintenance holes and cabinets;
52. ‘building’ means every end result of building or civil engineering construction which in its entirety is sufficient of itself to fulfil an economic or technical function and comprises one or more elements of a physical infrastructure;
53. ‘physical infrastructure’ means any element of a network which is intended to host other elements of a network without itself becoming an active element of the network, such as transmission lines, masts, ducts, inspection chambers, maintenance holes, cabinets, buildings or entries to buildings, antenna installations, towers and poles; dark fibre is also encompassed by this term; elements of networks used for the provision of water intended for human consumption, as defined in Art. 2 No. 1 of Directive 98/83/EC on the quality of water intended for human consumption, OJ 1998 L 330/32, last amended by Regulation (EC) No 596/2009, OJ L 188/14, do not constitute physical infrastructure within the meaning of this provision;
54. ‘in-building physical infrastructure’ means physical infrastructures or installations at the end user’s location, including elements under joint ownership, for the purpose of hosting wired and/or wireless access networks, where such access networks are capable of delivering electronic communications services and connecting the building access point with the network termination point;
55. ‘high-speed-ready in-building physical infrastructure’ means in-building physical infrastructure for the purpose of hosting elements of high-speed electronic communications networks or supporting the provision of such networks;
56. ‘communications infrastructure” means all active or passive elements of communications networks including accessories;
57. ‘access point’ means a physical point, located inside or outside a building, which is accessible to providers of public communications networks and enables a connection to in-building physical infrastructures;
58. ‘high-voltage masts’ means structures together with foundations, groundings, insulators, accessories and fittings used to carry lines or line systems with an operating voltage of 110 kV or higher for the transmission of electrical energy;
59. ‘antenna masts’ means masts or other structures which are erected for or actually used for supporting antennas, the latter meaning those parts of a radio system which are used directly for the transmission or reception of electromagnetic waves; fixtures for small antennas are not considered antenna masts;
60. ‘small antennas’ means radio equipment with a form factor not exceeding 0.03 m^3;
61. ‘object’ means objects with the exception of buildings that are appropriate for mounting small antennas, including traffic signs, street lighting and fuse boxes;

62. ‘high-speed electronic communications network’ means a communications network offering the capability of providing broadband access services with download speeds of at least 30 Mbps;
63. ‘public property’ means property including buildings, parts of buildings and other building structures as well as objects owned by public bodies or which are owned by legal entities that are themselves owned by public bodies; the term ‘public property’ does not apply to publicly used property within the meaning of Art. 54 Par. 1;
64. ‘network or grid provider’ means a provider of a public communications network or an undertaking or a federal, provincial or municipal body or municipal association body or other self-governing body that operates physical infrastructure intended for providing production, transportation or distribution services for petroleum, natural gas, electricity (including public lighting), district heating, water (including sewage treatment and disposal, and sewage systems) or transportation services (including track, roads, ports and airports) or that operates cableway infrastructure (Art. 7f Cableway Act (*Seilbahngesetz*) 2003, Federal Law Gazette I No. 103/2003);
65. ‘roaming end user’ means an end user who uses an interpersonal communications service in Austria based on an agreement with a foreign provider;
66. ‘small enterprise and microenterprise’; ‘microenterprise’ means a one-person business active in trades or crafts, without employees or even marginally employed part-time workers, oriented towards the market and with the activity planned on a long-term basis without involving other businesses; ‘small undertaking’ means an undertaking based in Austria whose revenues do not exceed EUR 250,000 for any value-added tax assessment period.
67. ‘BEREC’ refers to the Body of European Regulators for Electronic Communications established under Regulation (EU) No. 2018/1971;
68. ‘communications parameters’ collectively refers to all characters, letters, digits and signals that are directly used for network control of communications connections.

Section 2
Communications services, communications networks

Provision of communications networks and services

Article 5. Any person shall be entitled to provide or offer communications networks and services in compliance with the statutory provisions.

Notification requirement

Article 6. (1) 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 shall be notified to the regulatory authority prior to the start of operation, modification or termination. Number-independent interpersonal communications services are exempted from this requirement.

(2) This notification shall be made electronically using the e-government system provided by RTR-GmbH and shall include the following particulars:

1. name of the undertaking;
2. legal form and Commercial Register number of the undertaking (if available);
3. physical address of the head office and of any one branch office in a Member State of the European Union;
4. URL to the undertaking’s website that is associated with providing the activity;
5. contact person and contact details;
6. brief description of the networks or services that are to be provided;
7. affected Member States of the European Union;
8. envisaged point in time for commencing, modifying or terminating the activity.

This notification must be made regardless of any notification required within another Member State of the European Union.

(3) Without prejudice to Par. 4, the regulatory authority shall issue a confirmation of notification within a week of receiving the complete notification. Such a confirmation must also cite the rights and obligations arising from this Federal Act. The fact of this confirmation must be publicly announced on the regulatory authority’s website.

(4) If, based on the complete notification as received, the regulatory authority has reason to believe that a public communications network is not being provided or a public communications service is not being offered, the authority shall inform the notifying party of this fact within one week and conduct further investigations. If such investigations reveal that the public communications network is not being provided or the public communications service is not being offered, an assessment decision shall be issued and published within four weeks. Otherwise, a confirmation pursuant to Par. 3 shall be issued.

(5) Art. 32, 45, 46, 120, 121, 125, 126, 129 to 136, 142, 143, 144, and 145 shall not apply to providers whose entire scope of services is offered to end users on the providers' business premises or to municipalities who offer public, free-of-charge services to end users via a local area radio (Wi-Fi) network, insofar as these services do not form part of the universal service.

(6) If certain circumstances lead the regulatory authority to conclude that the undertaking has ceased activities, yet the termination of this activity has not been notified pursuant to Par. 1 to the regulatory authority, then the regulatory authority may, at a point in time no earlier than six months after the time at which the notification of termination was due, proceed to delete the notification as part of official duties. Prior to this, the undertaking shall be granted an opportunity to make a statement.

(7) The regulatory authority shall notify BEREC electronically without undue delay of the notifications received pursuant to Par. 2, the decisions issued pursuant to Par. 4 and any deletions made pursuant to Par. 6.

Installation and operation of communications networks

Article 7. (1) The installation and operation of infrastructure facilities and public communications networks does not require authorisation. This is without prejudice to provisions concerning the use of spectrum and communications parameters, provisions concerning the fulfilment of technical requirements and interface specifications for radio equipment and interface specifications for terminal equipment that is not radio equipment, and Art. 6.

(2) The architecture and functionality of the infrastructure facilities and public communications networks that are designed for interconnection with public communications networks or for the provision of a public communications service shall correspond to the recognised state of technology in respect of:

1. security of network operation;
2. interoperability of services; and
3. compliance with the interface specifications published pursuant to Par. 3.

(3) Operators of public communications networks shall publish:

1. the technical specifications for the interfaces they make available;
2. all updated specifications; and
3. any technical modification to an existing interface.

(4) The operator shall not offer services that are to be provided using the interfaces published pursuant to Par. 3 if publication of such has not yet taken place.

(5) The Federal Minister for Agriculture, Regions and Tourism shall, having regard to binding international legislation, issue an ordinance setting out the more detailed provisions concerning the form, scope, content and timing of such publication, and in such a format that permits manufacturers of terminal equipment to supply the market with terminal equipment that conforms to the interfaces.

(6) Acting in agreement with the Federal Minister for Agriculture, Regions and Tourism, and in accordance with the current state of technology, the Federal Chancellor may determine the measures necessary to safeguard the greatest possible degree of availability for voice communications services and internet access services provided over public electronic communications networks, even in the event of the total failure of the public communications network or in cases of *force majeure*, and in particular the uninterrupted availability of emergency numbers and the broadcasting of public warnings.

Access to local area radio networks

Article 8. (1) Operators and providers may grant access to their networks to the general public via local area radio networks, which may also be located in end-user buildings, insofar as the conditions for general authorisation (Art. 28 Par. 10) are met and the consent of the end user has been obtained.

(2) Operators or providers shall enable end users to make their radio local area network publicly accessible and shall allow the setup of additional access points by third parties on this basis.

(3) This is without prejudice to the duties imposed by Regulation (EU) 2015/2120 and pursuant to Art. 12 of Directive 2000/31/EC on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market, OJ L 178 of 17 July 2000, p. 1.

Separate financial accounting and reporting

Article 9. (1) Operators and providers:

1. who have special or exclusive rights within the European Economic Area for the provision of services in other sectors; and
2. whose annual revenues from the provision of communications networks or services within the European Economic Area amount to at least EUR 50 million;

shall be obliged to structurally outsource activities relating to the operation of public communications networks and the provision of public communications services or to keep a separate set of accounts for these activities equivalent to the recordkeeping required if those activities were to be carried out by a legally separate undertaking. Those accounts must disclose all cost and revenue components of the activities, together with the corresponding bases of calculation and detailed cost allocation methods, including a detailed breakdown of fixed assets and structural costs.

(2) Where operators of public communications networks and providers of public communications services are not obliged under other statutory or European Union regulations to submit their financial reports to an independent audit, the regulatory authority shall request such operators and providers to submit their financial reports for independent auditing and to publish those reports.

Section 3
Spectrum

Management of radio spectrum; principles

Article 10. (1) The Federal Minister for Agriculture, Regions and Tourism shall administrate the radio spectrum for communications networks and services in Austria in accordance with the aims of this Federal Act. In doing so, the Minister shall take due account of the fact that radio spectrum is a public good that has an important social, cultural and economic value.

(2) The assignment of radio spectrum, the issuing of authorisations for the setup and operation of radio equipment (operating permits) and the issuing of general authorisations (Art. 28 Par. 10) by the competent authorities shall be based on objective, transparent, pro-competitive, non-discriminatory and appropriate criteria. All such activities shall respect relevant international agreements and other agreements concluded within the framework of the ITU on the regulation of radio spectrum.

(3) Spectrum administration shall promote the harmonisation of the use of radio spectrum by communications networks and services across the European Union, consistent with ensuring its effective and efficient usage, and so as to achieve benefits for the consumer, which include competition, economies of scale, and service and network interoperability. Spectrum administration activities shall also:

1. pursue wireless broadband coverage of the Austrian territory and population at high quality and speed, as well as coverage of major national and European transport paths, including the trans-European transport network as referred to in Regulation (EU) No 1315/2013 on Union guidelines for the development of the trans-European transport network and repealing Decision No 661/2010/EU, OJ 2013 L 348/1, last amended by Delegated Regulation (EU) 2019/274, OJ L 43 of 14 February 2019, p.1;
2. facilitate the rapid development of new, wireless communications technologies and applications in the Union, adopting a cross-sectoral approach to achieve this where necessary;
3. ensure predictability and consistency in the granting, renewal, amendment, restriction and revocation of radio spectrum assignments, in order to promote long-term investment;
4. ensure the prevention of harmful cross-border or national interference, and implement appropriate pre-emptive and remedial measures to this end;
5. promote the shared use of radio spectrum between similar or different uses of radio spectrum in accordance with competition law and also as part of regulatory approaches, such as licensed shared access, which is intended to facilitate the shared use of a radio spectrum band, subject to a binding agreement between all parties involved, in accordance with sharing rules as included in their rights of use for radio spectrum in order to guarantee predictable and reliable sharing arrangements for all users;

6. apply the most appropriate and least onerous authorisation system possible, in such a way as to maximise flexibility, sharing and efficiency in the use of radio spectrum;
7. apply rules for the granting, transfer, renewal, modification and withdrawal of radio spectrum assignments that are clearly and transparently laid down in order to guarantee regulatory certainty, consistency and predictability;
8. pursue consistency and predictability regarding the way that radio spectrum is assigned and used throughout the European Union in terms of protecting the general public from the harmful effects of electromagnetic fields, taking into account Recommendation 1999/519/EC on the limitation of exposure of the general public to electromagnetic fields (0 Hz to 300 GHz), OJ 1999 L 199/59.

(4) Duties pursuant to Par. 1 involving spectrum designated in the spectrum use plan and spectrum assignment plan for broadcasting within the meaning of the Federal Constitutional Act on Broadcasting (*BVG-Rundfunk*, Federal Law Gazette No. 396/1974), shall be performed by KommAustria if a broadcasting use is present. This does not apply to the performance of duties pursuant to Section 15.

Spectrum use plan

Article 11. (1) The Federal Minister for Agriculture, Regions and Tourism shall prepare a spectrum use plan, in which the frequency ranges are assigned to the individual radio services and other applications using electromagnetic waves. In doing so, the Minister shall take particular account of international harmonisation, technical developments and compatibility between different uses of spectrum in transmission media.

(2) The spectrum use plan shall include a breakdown of spectrum by spectrum uses as well as specifications for those spectrum uses. In particular, the maximum permissible field strengths for spectrum uses may also be defined where necessary in order to minimise interference with other radio systems. The spectrum use plan may consist of sub-plans.

(3) The spectrum use plan shall specify the administration by the regulatory authority of spectrum not falling under general authorisation (Art. 28 Par. 10) which under international rules is allocated for the operation of mobile communications networks or for the provision of mobile communications services (harmonised ECS bands for mobile services and broadband).

(4) The spectrum use plan may also specify that, within individual ranges of spectrum not subject to Par. 3, the number of frequencies assigned may be restricted, either entirely or in relation to certain spectrum uses.

(5) Specifications that are made pursuant to Par. 3 and 4 shall account for all current and foreseeable future uses, taking particular account of spectrum planning taking place at international and European level, and foreseeable technical developments, while accounting for work on technological development being completed within international organisations and the European Union, aligned in each case with the duration of the spectrum assignment to be expected, while also taking steps to ensure the efficient use of spectrum. The intended use and technical terms and conditions of use shall be stated in all cases. A rationale for this specification shall be provided and published.

(6) The Federal Minister for Agriculture, Regions and Tourism shall issue an ordinance setting out the more detailed provisions governing spectrum use and spectrum assignment, and the preconditions necessary for assignment in particular. In doing so, consideration must be given in particular to the specific characteristics of the affected radio spectrum, the necessity to guard against harmful interference, the establishment, insofar as applicable, of reliable conditions for shared frequency use, the need to ensure the technical quality of communications or services, the basic requirements in the public interest, and the efficient use of spectrum.

(7) If there is insufficient demand for the use of a spectrum band within the harmonised radio spectrum, then, in accordance with Par. 10 and 11, an alternative use of this entire frequency band or a part of this band, including an existing use, may be authorised through an ordinance issued by the regulatory authority, provided that:

1. the lack of demand for the use of such a spectrum band has been determined on the basis of a public consultation, which shall also include a predictive assessment of market demand;
2. the alternative use does not prevent or impair the availability or the use of such a spectrum band in other Member States of the European Union; and
3. due consideration is given to the long-term availability or use of such a spectrum band in the European Union as well as the economies of scale for equipment resulting from using the harmonised radio spectrum in the European Union.

(8) The telecommunications office shall be responsible for assigning radio spectrum in the context of an ordinance pursuant to Par. 7, and granting permits for the setup and operation of radio equipment using that radio spectrum. Such an assignment and permit shall be granted for a period not exceeding one year. Such an assignment and permit shall become void at the latest when an ordinance pursuant to Par. 7 that abolishes the preconditions for the alternative use enters into force.

(9) Each decision to authorise the alternative use shall be reviewed every two years as well as immediately where the regulatory authority has received a sufficiently justified request from a party interested in using the spectrum band in accordance with the technical implementation measure. The authority competent for assignment shall notify the European Commission and the other Member States of the decision taken, with notification including the reasons for this decision as well as the outcome of the review.

(10) The Federal Minister for Agriculture, Regions and Tourism shall, in preparing the spectrum use plan, ensure that all types of technology used for the provision of electronic communications networks or services may be used in the radio spectrum that, in accordance with Union law, has been declared available for electronic communications services in the national frequency allocation plan. Proportionate and non-discriminatory restrictions to the types of radio networks or wireless access technologies used for electronic communications services may be provided for, however, where this is necessary:

1. to avoid harmful interference;
2. to protect the general public against health risks from electromagnetic fields while complying as closely as possible with Recommendation 1999/519/EC;
3. to ensure the technical quality of service;
4. to ensure maximisation of radio spectrum sharing;
5. to safeguard the efficient use of radio spectrum; or
6. to ensure the fulfilment of a general interest objective in accordance with Par. 12.

(11) The Federal Minister for Agriculture, Regions and Tourism shall, in preparing the spectrum use plan, ensure that all types of electronic communications services may be provided in the radio spectrum that, in accordance with Union law, has been declared available for electronic communications services. Proportionate and non-discriminatory restrictions may be applied to the types of electronic communications services to be provided, however, particularly if this is necessary in order to fulfil an international requirement.

(12) Any conditions that are imposed through an ordinance or decision as a basic requirement for providing an electronic communications service in a specific band available for electronic communications services must also pursue one of the following objectives:

1. protecting human life;
2. promoting social, regional or territorial cohesion;
3. avoiding any inefficient use of radio spectrum; or
4. promoting cultural and language diversity and media pluralism, for example by the provision of radio and television broadcasting services.

Conditions that prohibit the provision of any other electronic communications service in a specific spectrum band may be provided for only where justified based on the need to safeguard services aimed at protecting human life.

(13) Timings established by international regulations, and in particular on the basis of Art. 53 and 54 of Directive (EU) 2018/1972, shall be taken into account when preparing the spectrum use plan. The criteria provided for in these provisions for assessing these timings shall be accounted for when issuing ordinances and in other procedural steps taken in relation to the same.

(14) The Federal Minister for Agriculture, Regions and Tourism shall regularly review the necessity and applicability of the preconditions and restrictions set out in this provision, and shall make the results of these reviews public. In doing so, the Minister may enlist the aid of the regulatory authority.

Radio spectrum coordination among Member States

Article 12. (1) In the event that cross-border coordination has failed, such coordination has not taken place or harmful interference has occurred or is expected to occur during the use of harmonised radio spectrum despite coordination taking place, the Federal Minister for Agriculture, Regions and Tourism can request the Radio Spectrum Policy Group (RSPG) to use its good offices to address the problem and, where appropriate, issue an opinion in which a solution is proposed.

(2) If the problem persists after the completion of the procedure mentioned in Par. 1, then the Federal Minister for Agriculture, Regions and Tourism can apply for a decision from the European Commission pursuant to Art. 28 of Directive (EU) 2018/1972.

Spectrum assignment

Article 13. (1) Spectrum shall be assigned by official decision, in accordance with the spectrum use plan and based on objective, transparent, non-discriminatory and appropriate criteria while maintaining technology neutrality and service neutrality.

(2) By way of derogation from Par. 1, proportionate and non-discriminatory restrictions to technology neutrality may be introduced under the following conditions:

1. to avoid harmful interference;
2. to protect the general public against health risks from electromagnetic fields while complying as closely as possible with Recommendation 1999/519/EC;
3. to ensure the technical quality of service;
4. to ensure maximisation of radio spectrum sharing;
5. to safeguard the efficient use of radio spectrum; or
6. to ensure the fulfilment of a general interest objective in accordance with Par. 3.

(3) A restriction to service neutrality is also subject to the requirements of proportionality and non-discrimination, and is permitted for reasons including:

1. protecting human life;
2. avoiding inefficient use of radio spectrum;
3. promoting social, regional or territorial cohesion; or
4. in the case of spectrum designated in the spectrum use plan for broadcasting within the meaning of *BVG-Rundfunk*, promoting cultural and linguistic diversity and media pluralism, for example by the provision of radio and television broadcasting services.

(4) Where restrictions pursuant to Par. 2 and 3 are introduced, the responsible authority as designated in Par. 7 shall periodically review the extent to which the conditions for the particular restriction still exist. The results of this review shall be published.

(5) Any assessment of whether restrictions protect human life and health shall consider current scientific research, international standards as well as laws and ordinances on general protection from electromagnetic fields.

(6) Spectrum shall be individually assigned for use if:

1. it is designated for the intended use in the spectrum use plan and cannot be used based on an ordinance as referred to in Art. 28 Par. 10;
2. it is available in the intended usage area; and
3. its use is compatible with other spectrum uses.

(7) The responsibility for spectrum assignment as well as for modifying and revoking spectrum assignments shall lie with:

1. KommAustria for spectrum used for broadcasting within the meaning of *BVG-Rundfunk*;
2. the regulatory authority
   a) for spectrum for which a specification has been made pursuant to Art. 11 Par. 3 in the spectrum use plan and for which an alternative use has not been authorised by an ordinance pursuant to Art. 11 Par. 7; and
   b) for spectrum for which a limitation on the number of assignments has been set pursuant to Art. 11 Par. 4.
3. the telecommunications authority for all other spectrum.

(8) Approval by KommAustria shall be obtained prior to the assignment of spectrum that the spectrum use plan also designates for broadcasting within the meaning of *BVG-Rundfunk* but which is not planned to be used for broadcasting as defined in *BVG-Rundfunk*, and prior to the modification of such assignments. Approval by the telecommunications authority shall be obtained prior to the assignment of spectrum that the spectrum use plan does not designate for broadcasting within the meaning of *BVG-Rundfunk* but is planned to be used for broadcasting as defined in the *BVG-Rundfunk*, and prior to the modification of such assignments.

(9) Spectrum assignments pursuant to Par. 7 No. 1 and No. 2 shall be made within six weeks of receipt of the complete application. Where the regulatory authority is required to conduct a competitive or

comparative selection procedure, this period shall be extended by eight months. KommAustria shall notify the telecommunications authority as soon as possible of any spectrum assignment and operating permit granted, with that notification including all necessary data (in particular location, technical data and antenna diagrams).

(10) Spectrum assignments pursuant to Par. 7 No. 2 shall be made as part of a procedure pursuant to Art. 15.

(11) The spectrum assignment shall specify the type and scope of the spectrum use insofar as this is necessary to ensure the most efficient and interference-free use of spectrum as well as compatibility with other spectrum uses.

(12) Spectrum assignment shall be without prejudice to existing obligations for compliance with statutory, technical or operational requirements arising from other statutory provisions and international agreements.

(13) Spectrum shall be assigned preferentially to applicants operating radio systems that serve public interests, where the applicant requires the spectrum in order to fulfil duties.

(14) When assigning spectrum, no liability is assumed for the quality of the radio connection.

(15) All spectrum shall be assigned only for a limited period. The period must be set so as to be appropriate in view of objective and business considerations. Art. 18 shall be applied to the assignment of individual rights of use pursuant to Art. 13 Par. 6.

(16) Spectrum assignments may include ancillary provisions. The following ancillary provisions may be provided for, in particular with a view to ensuring effective and efficient use of radio spectrum or improving coverage:

1. shared use of radio spectrum or of passive or active infrastructure for radio spectrum use;
2. commercial roaming access agreements;
3. joint deployment of infrastructures for the provision of electronic communications networks or services which rely on the use of radio spectrum.

Competent authorities shall ensure that any ancillary provisions attached to spectrum assignments do not prevent the sharing of radio spectrum.

(17) The telecommunications authority shall take the decision on the assignment of spectrum as referred to in Par. 7 No. 3 in line with the spectrum use plan, and as part of granting the permit referred to in Art. 34, within six weeks of receipt of the complete application, unless a frequency coordination procedure based on international agreements must be completed first.

(18) The competent authority for assignment can, as part of spectrum assignment, specify the option of a use of the affected spectrum by a party other than the addressee of the decision (secondary use). The rights accruing to the decision addressee by the assignment of spectrum shall not be permanently restricted by such secondary use.

Conditions and limitation on the number of spectrum assignments by the regulatory authority

Article 14. (1) For the assignment of spectrum for which a specification has been made pursuant to Art. 11 Par. 3 in the spectrum use plan, the regulatory authority may issue an ordinance that limits the number of spectrum assignments. In this ordinance, the authority may also specify conditions for safeguarding competition as referred to in Art. 23 Par. 2 insofar as these are not to be enforced by separate requirements.

(2) When issuing an ordinance pursuant to Par. 1, and without prejudice to the provisions of Art. 23, the authority shall seek to maximise benefits for users while facilitating the development of competition. All current and foreseeable future uses, particularly the spectrum planning taking place at international and European level, as well as foreseeable technical development, shall be accounted for, aligned in each case with the duration of the spectrum assignment to be expected. Steps shall be taken to ensure the efficient use of spectrum.

(3) The regulatory authority shall conduct a public consultation pursuant to Art. 206 on the question of whether considerations as referred to in Par. 2 exist.

(4) A rationale for the specification pursuant to Par. 1 shall be provided and published. The specification shall be reviewed at appropriate intervals. If the regulatory authority determines that the conditions referred to in Par. 2 are no longer met, the authority shall revoke the ordinance without undue delay. A review shall also be conducted following a justified request from an undertaking affected by the limitation on spectrum assignments.

Spectrum assignment by the regulatory authority

Article 15. (1) Assignment shall be made by the regulatory authority following an application. If the spectrum assignment is not limited in number pursuant to Art. 11 Par. 4 or Art. 14 Par. 1, the spectrum assignment shall be made pursuant to Art. 13 Par. 6. Assignment in all other cases shall take place by means of a competitive selection procedure. If, however, the regulatory authority determines that the aims and aspects of Par. 2 and Par. 3 could be better achieved by a comparative selection procedure, the authority shall accordingly use such a procedure. The regulatory authority shall by means of an ordinance make the selection procedure decision by considering the aims and criteria stated in Par. 2 and Par. 3.

(2) If the spectrum assignment is limited in number pursuant to Art. 11 Par. 4 or Art. 14 Par. 1, the regulatory authority shall assign those rights by means of a selection procedure pursuant to Art. 16, which shall be open, objective, transparent, non-discriminatory and proportionate. In doing so, the regulatory authority shall duly account for the aims and requirements pursuant to Art. 1 and 10. In such selection procedures, the regulatory authority may extend the maximum period given in Art. 13 Par. 9 for as long as necessary to ensure that the procedure is fair, reasonable, open and transparent for all interested parties, but by no longer than eight months. The specification of such periods shall be without prejudice to any applicable international agreements relating to the use of radio spectrum and satellite coordination.

(3) In deciding on an award procedure, the regulatory authority shall consider the following aspects:

1. promoting competition;
2. improving coverage;
3. ensuring the necessary quality of service performance;
4. promoting the efficient use of radio spectrum, including by taking into account the conditions attached to the rights of use and the levels of fees;
5. promoting innovation and business development.

(4) The regulatory authority shall provide a rationale for the selection procedure decision, including any preliminary phase for access to the procedure, while accounting for the aims of spectrum administration as set out in this Federal Act, and shall publish the decision. In doing so, fulfilment of the aims of the national markets and the single market shall be accounted for. The regulatory authority shall also clearly state the outcome of any related assessment of the competitive, technical and economic situation of the market, and provide reasons for the possible use and choice of measures pursuant to Art. 17 and publish this information.

(5) The regulatory authority shall publish the chosen selection procedure, the corresponding provisions and the conditions attached to the rights of use, and shall put the spectrum assignment to public tender while properly accounting for the selection rules pursuant to Art. 16. A minimum spectrum licence fee to be paid shall also be specified according to the rules given in Art. 24 Par. 2.

(6) This provision is without prejudice to the licensing of rights of use for radio spectrum pursuant to Art. 20.

Procedure for assignment by the regulatory authority of spectrum limited by number

Article 16. (1) The regulatory authority shall assign such spectrum as is entrusted to the authority and limited in number to the applicant who meets the general requirements set out in Par. 2 No. 2 and guarantees the most efficient use of the spectrum. In the case of a competitive award procedure, this is determined based on the amount of the spectrum licence fee offered. The regulatory authority shall make decisions on applications for spectrum assignment within the period stated in Art. 15 Par. 2 from application submission. Those time limits do not apply if due to international agreements the conclusion of spectrum coordination is pending. The decision shall be published.

(2) The regulatory authority shall assign spectrum in accordance with the principles of an open, fair and non-discriminatory procedure, and according to standards of economic efficiency. In planning the procedure, the authority shall consider the regulatory aims set out in Art. 1 and the aspects listed in Art. 15 Par. 3, especially competition. Auction procedures shall be designed to be simple, clear and comprehensible. These requirements are to be met in particular by ensuring that bidders submit their bids in full knowledge of the maximum payment obligation that results from doing so. The regulatory authority shall put the intended assignment of spectrum to public tender in cases where:

1. a need has been established by the authority itself; or
2. an application has been received and the regulatory authority has concluded that the applicant is able to comply with the ancillary provisions attached to the right to use the spectrum. In particular, the applicant’s technical capabilities and business qualifications, experience in the communications sector and related business segments shall be taken into account, as well as the

applicant's expertise. There should be no reason to believe that the proposed service will not be provided, particularly as regards service quality and fulfilment of the coverage obligation.

(3) After conducting a consultation and having the tender conditions approved by the Federal Minister for Agriculture, Regions and Tourism, the call for tenders shall be published in the Official Gazette (*Amtsblatt*) of the Wiener Zeitung. The call for tenders shall include the following:

1. those ranges of the frequency spectrum entrusted to the regulatory authority which are designated for assignment through a joint procedure;
2. the intended use of the spectrum to be assigned as well as its terms and conditions of use;
3. the requirements for making available the tender documentation, including a refund of expenses where applicable;
4. a period of at least two months for submitting applications for the assignment of spectrum use rights.

(4) The tender documentation shall include the following:

1. in the case of a competitive award procedure, the basic principles of the procedure for determining the highest spectrum licence fee; and
2. the requirements in terms of the format and content of the application documents, so as to ensure comparability between applications. The documentation may also include details of the minimum spectrum licence fee to be bid, which shall be determined pursuant to Art. 24 Par. 2. If spectrum packages are to be assigned, the tender documentation may allow applications for the assignment of individual spectrum packages, a specific number of spectrum packages or combinations of spectrum packages.

(5) The regulatory authority may specify in the tender conditions that the undertaking to which the spectrum is assigned by the regulatory authority may be authorised by a procedure pursuant to Art. 20 to transfer a portion of the rights of use for this spectrum to other providers or operators of communications networks, either for the entire term of use or for a specified period.

(6) The regulatory authority may specify in the tender conditions that the possibility of a secondary use of spectrum will be permitted for the spectrum to be assigned.

(7) Applications may deviate from the requirements set out in the tender documentation only if (and only to the extent to which) this is expressly permitted in the documentation. Changes to applications or application withdrawals are not permitted after expiry of the tender submission period. The foregoing does not apply to any later amendments made as part of a comparative selection procedure or to the amount of the spectrum licence fee, if such an amendment has been expressly permitted by the tender documentation as part of the rules for determining the highest bid.

(8) Material changes in the tender conditions are permitted only in response to changes to statutory or international regulations that are binding on the Republic of Austria.

(9) The applicants are considered parties to a joint procedure. The regulatory authority shall issue a decision to exclude any applicants from the spectrum award procedure whose applications are incomplete or which deviate unacceptably from the tender conditions, or which do not comply with the general requirements set out in Par. 2.

(10) The regulatory authority shall issue a procedural order to define appropriate rules for determining the highest bid. These rules shall be in accordance with the principles set out in Par. 2 first sentence and Par. 4 No. 1 while also taking into account the intended purpose of the spectrum to be assigned (Par. 3 No. 2). The rules shall also define the requirements for determining a valid bid as well as appropriate financial guarantees for the bids. The rules shall include advisory information stating that applicants who engage in collusive conduct during the procedure for determining the highest bid may be excluded by a procedural order from further participation in the procedure for determining the highest bid. The rules shall be made available to applicants at least two weeks before the procedure to determine the highest bid begins.

(11) The spectrum assignment may contain the following ancillary provisions, which are intended to ensure the fullest compliance with the aims and provisions of this Act as well as relevant European Union regulations:

1. designation of the intended purpose, the type of network and the technology for which the spectrum is to be assigned, including where applicable the exclusive use of a frequency for the transmission of specific content or specific audiovisual services;
2. ancillary provisions, such as are required to ensure effective and efficient use of spectrum, including where applicable requirements relating to range and rules relating to the scheduled

beginning of service and coverage as well as penalties in the event of a failure to comply with imposed obligations;

3. technical and operational conditions necessary for the avoidance of harmful interference and special conditions for limiting the exposure of the general public to electromagnetic fields according to the criteria set out in Art. 13 Par. 5;
4. time limits in consideration of Art. 18;
5. any conditions relating to the transfer of spectrum at the request of the party holding rights to use that spectrum;
6. obligations that the undertaking obtaining the spectrum has committed to during the selection procedure;
7. obligations necessary for complying with applicable international agreements relating to spectrum use;
8. obligations relating to shared use of infrastructure in consideration of Art. 26.

(12) The regulatory authority may consult experts and advisors at any stage of the procedure. The fees for such consultants and other cash expenses shall be paid by the applicant awarded the spectrum in each case. Expenses are paid proportionally if there are multiple applicants.

(13) The regulatory authority is entitled to cancel the call for tenders and terminate the procedure at any stage for good cause, particularly in the following cases:

1. the regulatory authority has discovered collusive conduct between applicants, and an efficient, fair and non-discriminatory procedure cannot be conducted;
2. requirements pursuant to Par. 2 have been met by only one applicant or no applicants;
3. no or only one applicant who complies with the requirements under Par. 2 actually takes part in the procedure for determining the highest bid;
4. the procedure results in the applicants requesting less spectrum than the amount to be assigned.

None of the above shall be the basis for any claim to compensation; this is without prejudice to claims based on official liability.

(14) If the assignment procedure cannot be concluded in time to ensure uninterrupted coverage with telecommunications services using the spectrum that is the subject of the procedure, and this endangers public health and welfare or means serious national economic losses are likely to be incurred, or disadvantages will be suffered by the parties, then the regulatory authority may decide by means of an administrative order. An assignment of this kind must be time-limited as appropriate for the circumstances pertaining to the case in question.

(15) This provision shall not apply to the assignment of spectrum that the spectrum use plan designates for broadcasting within the meaning of *BVG-Rundfunk*.

Peer review process

Article 17. (1) Where the regulatory authority intends to undertake a selection procedure in accordance with Art. 16 in relation to radio spectrum for which harmonised conditions have been set by technical implementing measures in accordance with Decision No 676/2002/EC in order to enable its use for wireless broadband networks and services, it shall inform the Radio Spectrum Policy Group (RSPG) about any draft measure which falls within the scope of the comparative or competitive selection procedure pursuant to Art. 16 and indicate whether and when it is to request the RSPG to convene a Peer Review Forum.

(2) During the Peer Review Forum, the national regulatory authority or other competent authority shall provide an explanation on how the draft measure:

1. promotes the development of the internal market, the cross-border provision of services, as well as competition, and maximises the benefits for the consumer, and overall achieves the objectives set forth in Articles 1 and 10 to 13 as well as in Decisions No 676/2002/EC and No 243/2012/EU establishing a multiannual radio spectrum policy programme, OJ L 81 of 21 March 2012, p. 7, as amended in Directive 2018/1972/EU, OJ L 321 of 17 December 2018, p. 36;
2. ensures effective and efficient use of radio spectrum; and
3. ensures stable and predictable investment conditions for existing and prospective radio spectrum users when deploying networks for the provision of communications services which rely on radio spectrum.

(3) If the regulatory authority has requested that a Peer Review Forum be convened, then the authority may request the RSPG to prepare a report addressing the question of how the draft measure is able to achieve the goals stated in Par. 2.

(4) The regulatory authority may request the RSPG to issue an opinion on the draft measure within six weeks of the Peer Review Forum.

Duration of rights

Article 18. (1) Spectrum shall not be assigned for a period longer than is envisaged in accordance with the provisions of the spectrum use plan.

(2) Without prejudice to the provisions of this article, spectrum shall be assigned for a period not exceeding ten years. The period must be set so as to be appropriate in view of objective and business considerations.

(3) Where the regulatory authority assigns spectrum for a period other than the one specified in Par. 1, the regulatory authority shall ensure that the assignment is granted for a period that is appropriate in light of the objectives pursued in accordance with Art. 16, taking due account of the need to ensure competition, as well as, in particular, effective and efficient use of radio spectrum, and to promote innovation and efficient investments, including by allowing for an appropriate period for investment amortisation.

(4) Where the regulatory authority assigns spectrum for which harmonised conditions have been set by technical implementing measures in accordance with Decision No 676/2002/EC in order to enable its use for wireless broadband communications services ('wireless broadband services') for a period other than the one specified in Par. 1, the regulatory authority shall ensure regulatory predictability for the holders of the rights over a period of at least 20 years regarding conditions for investment in infrastructure which relies on the use of such radio spectrum, taking account of the requirements referred to in Par. 3. The foregoing is subject, where relevant, to any modification of the conditions attached to those assignments in accordance with Art. 21.

(5) To the end referred to in Par. 4, it shall be ensured that such rights are valid for a duration of at least 15 years and, where necessary to comply with the conditions laid down in this provision, an extension not exceeding ten years shall be included. No extension is possible if this period is at least 20 years.

(6) The regulatory authority shall make available the general criteria for an extension of the duration of assignment, in a transparent manner, to all interested parties in advance of assigning spectrum, as part of the conditions laid down in Art. 16 Par. 3 and Art. 15 Par. 2. Such general criteria shall relate to:

1. the need to ensure the effective and efficient use of the radio spectrum concerned, the objectives pursued in Art. 10 Par. 3 No. 3, or the need to fulfil general interest objectives related to protecting human life, to public order, public security or defence; and
2. the need to ensure undistorted competition.

(7) At the latest two years before the expiry of the initial duration of an assignment, the regulatory authority shall conduct on request an objective and forward-looking assessment of the general criteria laid down for extension of the duration of the assignment, in light of Art. 10 Par. 3 No. 3. Provided that the competent authority has not initiated enforcement action for non-compliance with the conditions of the assignment pursuant to Art. 184, it shall grant the extension of the duration of the assignment, unless it concludes that such an extension would not comply with the general criteria laid down in Par. 6 No. 1 and 2. On the basis of that assessment, the regulatory authority shall notify the holder of the right as to whether the extension of the duration of the assignment is to be granted.

(8) If, after a period of at least three months in which participants have had the chance to make a statement, the regulatory authority decides that such an extension cannot be granted, the authority shall reassign the spectrum band while applying the provisions of this Federal Act. The foregoing provision is without prejudice to Art. 25 and Art. 184.

(9) The regulatory authority may derogate from Par. 4 to 8 in the following cases:

1. in limited geographical areas, where access to high-speed networks is severely deficient or absent and this is necessary to ensure achievement of the objectives pursuant to Art. 10 Par. 3;
2. at the rights holder's request for short-term projects;
3. in cases where market developments lead to the expectation of earlier reassignment of spectrum;
4. for experimental use;

5. for uses of radio spectrum which, in accordance with Art. 11 Par. 10 and 11, can coexist with wireless broadband services; or
6. for alternative use of radio spectrum in accordance with Art. 11 Par. 7.

(10) The regulatory authority may adjust the duration of spectrum assignment to ensure the simultaneous expiry in one or several bands, provided that reassignment is expected to significantly enhance the efficiency of spectrum use.

Renewal of spectrum licences for harmonised radio spectrum

Article 19. (1) The regulatory authority shall take a decision on the renewal of assignments for a maximum of ten years for harmonised radio spectrum in a timely manner before the duration of those assignments expire, except where, at the time of assignment, the possibility of renewal has been explicitly excluded. For that purpose, the regulatory authority shall assess the need for such renewal, of the authority's own accord or upon request by the holder of the right, in the latter case not earlier than five years prior to expiry of the duration of the rights concerned. This shall be without prejudice to renewal clauses applicable to existing rights.

(2) In taking a decision pursuant to Par. 1, the following shall be considered in particular:

1. the fulfilment of the objectives set out in this Federal Act, as well as public policy objectives under Union or national law;
2. the implementation of a technical implementing measure adopted in accordance with Art. 4 of Decision No 676/2002/EC;
3. the review of the appropriate implementation of the conditions attached to the right concerned;
4. the need to promote, or avoid any distortion of, competition in line with Art. 23;
5. the need to render the use of radio spectrum more efficient in light of technological or market evolution;
6. the need to avoid severe service disruption;
7. the reasons stated in Art. 21 Par. 1.

(3) When considering possible renewal of an assignment for harmonised radio spectrum pursuant to Par. 2, for which provision has been made pursuant to Art. 14, the regulatory authority shall conduct an open, transparent and non-discriminatory procedure, and shall:

1. consult the Federal Minister for Agriculture, Regions and Tourism;
2. give all interested parties the opportunity to express their views through a public consultation in accordance with Art. 206; and
3. clearly state the reasons for such possible renewal.

If the consultation conducted according to Art. 206 reveals that undertakings not yet holding licences for spectrum in the band concerned also have a justified interest in an assignment, the authority shall take this into account in its decision to either renew the licence or initiate a new selection procedure. Art. 15 Par. 1 shall be applied mutatis mutandis.

(4) A decision to renew the assignment of harmonised radio spectrum may be accompanied by a review of the fees as well as of the other terms and conditions attached thereto. Where necessary in order to avoid any distortion of competition, the regulatory authority may adjust the fees collected for assignment as set out in Art. 24.

Transfer of spectrum, change in ownership structure

Article 20. (1) The regulatory authority must authorise a transfer of spectrum that has been assigned by the regulatory authority before the transfer is made. This transfer may constitute a transfer solely of rights of use or may also involve the transfer of the assignment notice itself to a third party. The regulatory authority shall make public both the transfer application and the decision about authorising the transfer. In making the decision, the regulatory authority shall consider the transfer's technical implications on a case-by-case basis and impact on competition in particular. The authorisation may include any ancillary provisions as are considered necessary in order to avoid adverse effects on competition. Authorisation shall be refused in all cases where, despite the imposition of ancillary provisions, an adverse effect on competition is likely as a result of the transfer.

(2) If, during the transfer of spectrum, a change in the type and scope of spectrum use proves to be necessary in order to prevent adverse technical effects or adverse effects on competition, any such change must be carried out in accordance with Art. 21.

(3) Authorisation shall be granted, with the ancillary provisions originally attached to this assignment maintained. Without prejudice to the need to ensure the avoidance of a distortion of competition, in particular in accordance with Art. 23, the regulatory authority shall:

1. submit transfers to the least onerous procedure possible;
2. in the case of a simple transfer of rights of use, not refuse this transfer if the transferor undertakes to remain liable for meeting the original conditions attached to the assignment;
3. in all other cases, not refuse the transfer unless there is a clear risk that the new holder is unable to meet the original conditions for the assignment.

The foregoing is without prejudice to the regulatory authority's competence to enforce compliance with the conditions attached to the assignment at any time, both with regard to the transferor and the new owner.

In light of any transfer, relevant details relating to tradable individual rights of use shall be made publicly available in a standardised electronic format when the rights are created.

(4) Material changes in the ownership structure of undertakings that have been assigned rights of use for radio spectrum in a procedure pursuant to Art. 16 shall require prior approval by the regulatory authority. Par. 1 third to final sentence shall apply mutatis mutandis.

(5) This provision shall be without prejudice to restrictions of spectrum use resulting from broadcasting regulations.

(6) The telecommunications office shall be notified before the transfer of rights of use for radio spectrum that has been assigned by that office. The notification shall include:

1. the precise designation of the official decision used to assign rights of use for radio spectrum, grant an operating permit pursuant to Art. 37 and prescribe fees pursuant to Art. 36;
2. the contract by which the rights of use are to be transferred;
3. particulars identifying the legal successor;
4. details of the legal successor's billing address.

On receipt of the notification by the telecommunications office, the official decision shall be transferred in its entirety to the legal successor.

Changes in spectrum assignment

Article 21. (1) The competent authority may amend the type and scope of the spectrum assignment if:

1. a considerable increase in efficiency is possible due to technological advances; or
2. an amendment is required as a result of international circumstances, in particular those resulting from further development of international telecommunications law; or
3. an amendment is necessary to adapt to international circumstances relating to modified spectrum use.

The proportionality of the measure and the economic impact on affected parties must be considered when making any such amendments, while taking into account Art. 23. Amendments must not go beyond the provisions in this section.

(2) In procedures pursuant to Par. 1, the licence holder shall be notified of the planned amendment and be granted a period of at least four weeks to make a statement, as set out in Art. 45 Par. 3 of the General Administrative Procedures Act (*Allgemeines Verwaltungsverfahrensgesetz,* AVG) 1991, Federal Law Gazette I No. 51/1991. Except where proposed amendments are minor and have been agreed with the licence holder, notice shall be given of the intention to make such amendments and interested parties, including users and consumers, shall be allowed a period of four weeks to express an opinion.

(3) A spectrum assignment amendment is considered 'minor' within the meaning of Par. 2 if it only affects the respective licence holder and is unlikely to increase the risk of harmful interference or to distort competition in relation to other licence holders. The simultaneous amendment, as part of official duties, of assignments of spectrum not falling under Art. 16 to various licence holders (refarming) is considered minor if corresponding coordination by the authority ensures compliance with the conditions of this provision. The authority shall justify this minor status and make this justification available to other indirectly affected licence holders on duly reasoned request.

(4) The licence holder shall carry out the ordered amendment pursuant to Par. 1 or 2 within a reasonable period and at their own expense. Such an order shall not be the basis for any claim to compensation. This shall be without prejudice to claims based on the Liability of Public Bodies Act (*Amtshaftungsgesetz*, AHG).

(5) At the licence holder's request, the competent authority may, on consideration of Par. 2, amend the prescribed spectrum use, in particular with regard to the requirement of technology and service neutrality, where this is permissible based on the designated use given in the spectrum use plan. Energy consumption may only be reduced by means of energy efficiency measures if this does not result in a violation of non-location-based coverage obligations. When making decisions in accordance with this paragraph, the competent authority shall consider in particular technical developments, the coverage of the population and impacts on competition. The authorisation may include any ancillary provisions as are considered necessary in order to avoid adverse effects on competition, the coverage of the population or on the technically efficient use of spectrum.

(6) The Federal Minister for Agriculture, Regions and Tourism shall be consulted where the amended technical conditions for spectrum use differ from the tender conditions in a procedure pursuant to Art. 16.

(7) The telecommunications authority shall be notified of any amendments to spectrum use rights introduced by the regulatory authority.

Spectrum use

Article 22. The assignment of rights of use for radio spectrum cannot be used to derive ownership rights to specific frequencies. Only the right to use specified frequencies is granted.

Competition

Article 23. (1) The regulatory authority shall promote effective competition and avoid distortions of competition in the internal market when deciding to grant, amend or renew spectrum assignments for electronic communications networks and services.

(2) When the regulatory authority grants, amends or renews spectrum assignments, the authority may take appropriate measures to achieve the aims defined in Par. 1, in particular:

1. limit the amount of radio spectrum bands that are granted to any spectrum user, or, in justified circumstances, attach conditions to such an assignment, such as the provision of wholesale access, national or regional roaming, in specified bands or in specified groups of bands with similar characteristics;
2. reserve, if appropriate and justified with regard to a specific situation in the national market, a specified part of a radio spectrum band or group of bands for assignment to new entrants;
3. refuse to grant new spectrum assignments or to allow new radio spectrum uses in specified bands, or attach conditions to the grant of new spectrum assignments or to the authorisation of new uses of radio spectrum, in order to avoid the distortion of competition by any assignment, transfer or accumulation of rights of use;
4. include conditions prohibiting, or imposing conditions on, transfers of spectrum assignments, not subject to Union or national merger control, where such transfers are likely to result in significant harm to competition;
5. amend any existing rights in accordance with Directive (EU) 2018/1972 where necessary to remedy ex post a distortion of competition by any transfer or accumulation of rights of use for radio spectrum.

(3) Insofar as measures from Par. 2 cannot be implemented as part of the specific assignment of spectrum by the regulatory authority as individual ancillary provisions, the regulatory authority shall specify this in the ordinance pursuant to Art. 14 Par. 1 or the tender to award spectrum pursuant to Art. 16 Par. 3.

(4) The regulatory authority shall, taking into account market conditions and available benchmarks, base the decisions on an objective and forward-looking assessment of the market competitive conditions, of whether such measures are necessary to maintain or achieve effective competition, and of the likely effects of such measures on existing and future investments by market participants in particular for network deployment. In doing so, the authority shall take into account the approach to market analysis as set out in Art. 87 Par. 5.

Spectrum licence fee

Article 24. (1) To ensure efficient use of the frequency spectrum, holders of an assignment granted pursuant to Art. 16 by a competitive award procedure shall pay a spectrum licence fee in addition to the spectrum use fee pursuant to Art. 36 Par. 5 No. 3. This also applies to a spectrum licence fee offered as part of a comparative selection procedure.

(2) The minimum bid must be specified as an amount that ensures an effective assignment and use of radio spectrum, and which meets the criteria given in Art. 36 Par. 6. The minimum bid shall also be based on the amount of the spectrum assignment fees that are expected to be paid for the spectrum to be assigned.

(3) In justified cases, the authority can derogate from the requirement to define the minimum bid based on the spectrum assignment fees, as defined for these frequency ranges in an ordinance pursuant to Art. 36 Par. 6 in conjunction with Art. 36 Par. 5 No. 2, if this appears justified considering the actual market value of the spectrum. In this case, the minimum bid shall not exceed 50 per cent of the lower limit of the market value as determined in accordance with the previous sentence. This shall be justified by the regulatory authority.

(4) The regulatory authority shall prescribe the spectrum licence fee in the official notice of spectrum assignment, whereby the applicant shall be bound, in any case, by the fee amount specified in the application.

(5) In the official decision of spectrum assignment, an eight-week time limit shall be set for payment of the spectrum licence fee.

Voiding of assignments

Article 25. (1) An assignment becomes void as a result of:

1. waiver;
2. revocation;
3. expiry of the term for which it was granted; or
4. death or termination of the legal personality of the licence holder except in cases of universal succession under company law.

(2) On the death of the licence holder, the administrator of the deceased's estate may exercise this right pending formal transfer of the deceased's estate to the legitimate heir, whereas the administrator of the deceased's estate shall accordingly notify the competent authority without undue delay.

(3) The assignment shall be revoked if the requirements under which it was granted are no longer met. The assignment may be revoked if the licence holder grossly or repeatedly violates the associated obligations, or if the assigned spectrum is not used as specified in the assignment within a six-month period following the telecommunications authority's decision pursuant to Art. 34, or if, after initial spectrum use, use is interrupted for more than a year. Prior to the revocation, the licence holder shall be allowed a reasonable opportunity to make a statement.

(4) The assignment shall be revoked if bankruptcy proceedings have been initiated against the licence holder or a bankruptcy petition has been dismissed for lack of sufficient assets likely to cover the costs of the bankruptcy proceedings; the competent authority may refrain from revocation in the case that continuation is strongly aligned with the creditors' interests.

(5) In a procedure in accordance with Par. 3, the regulatory authority shall apply Art. 184 mutatis mutandis. An order under Par. 3 shall not be the basis for any claim to compensation. The foregoing is without prejudice to claims based on official liability.

(6) The regulatory authority shall report the voiding of the assignment to the telecommunications authority without undue delay. If the intended revocation of assignments will have a considerable impact on the affected market, the regulatory authority shall subject the decision to a consultation with interested parties pursuant to Art. 206.

Shared use obligations for infrastructure

Article 26. (1) The regulatory authority may impose on undertakings providing or authorised to provide electronic communications networks obligations in relation to the sharing of passive infrastructure or obligations to conclude localised roaming access agreements, in both cases if directly necessary for the local provision of services which rely on the use of radio spectrum, and provided that no viable and similar alternative means of access to end users is made available to any undertaking on fair and reasonable terms and conditions.

(2) The regulatory authority may impose such obligations only where this possibility is clearly provided for when assigning spectrum and where justified on the grounds that, in the area subject to such obligations, the market-driven deployment of infrastructure for the provision of networks or services which rely on the use of radio spectrum is subject to insurmountable economic or physical obstacles and therefore access to networks or services by end users is severely deficient or absent.

(3) In those circumstances where access and sharing of passive infrastructure do not suffice to address the situation, the regulatory authority may impose obligations on sharing of active infrastructure.

(4) The regulatory authority shall pursue the following goals when prescribing obligations according to this provision:

1. the need to maximise connectivity along major transport paths and in particular territorial areas, and the possibility of achieving significantly greater choice and higher quality of service for end users;
2. the efficient use of radio spectrum;
3. the technical feasibility of sharing and associated conditions;
4. the state of infrastructure- and service-based competition;
5. technological innovation;
6. the overriding need to support the incentive of the communications network provider to deploy the infrastructure in the first place.

(5) In the event of dispute resolution, the regulatory authority may, inter alia, impose on the beneficiary of the sharing or access obligation, the obligation to share radio spectrum with the infrastructure provider in the relevant area.

(6) Obligations and conditions imposed in accordance with this provision shall be objective, transparent, proportionate and non-discriminatory. They shall be subject to a consultation pursuant to Art. 206. After ordering the measure previously adopted in relation to the same undertakings, the regulatory authority shall, at intervals of no more than five years, review the results of these obligations and conditions, and assess whether it would be appropriate to withdraw or amend them in light of evolving conditions. The results of this review shall be published.

Section 4

Radio systems and terminal equipment

Technical requirements

Article 27. (1) In relation to their structure and functioning, radio systems and terminal equipment shall comply with recognised rules of technology and the requirements to be met under international regulations.

(2) When installing and operating radio systems and terminal equipment, the protection of human life and health as well as operation of other radio systems while avoiding harmful interference and telecommunications terminal equipment must be ensured. When designing radio systems and terminal equipment, consideration must also be given to the requirements of environmental protection, in particular also with regard to proper disposal, taking into account economic reasonableness.

(3) The Federal Minister for Agriculture, Regions and Tourism may issue an ordinance specifying, in line with the current state of technology, detailed provisions and technical requirements for radio systems and terminal equipment, in particular for the operation of radio systems on non-Austrian ships, aircraft and other transport vehicles while on Austrian territory.

(4) Every car radio installed in a new Class M vehicle which is placed on the market for sale or hire must include a receiver which at least enables the reception and broadcasting of radio services transmitted via digital terrestrial broadcasting. It is assumed that receivers that meet the harmonised standards or parts thereof and for which references have been published in the Official Journal of the European Union, are in conformity with this requirement, which is in line with the relevant standards or parts thereof.

Installation and operation of radio systems

Article 28. (1) Without prejudice to the provisions of the Radio Systems Market Monitoring Act (*Funkanlagen-Marktüberwachungs-Gesetz,* FmaG) 2016, Federal Law Gazette I No. 57/2017, the installation and operation of a radio system shall only be permitted:

1. within the limits of technical conditions specified in an ordinance pursuant to Par. 10;
2. after notification of the operation of a radio system based on an ordinance pursuant to Par. 10 last sentence;
3. under a permit to be issued pursuant to Par. 4, 5 or 6 or Art. 28;
4. under a permit to be issued pursuant to Art. 34 with simultaneous spectrum assignment by the telecommunications authority (Art. 13 Par. 7 No. 3) or KommAustria (Art. 13 Par. 7 No. 1);

5. under a permit to be issued pursuant to Art. 34 after spectrum assignment by the regulatory authority pursuant to Art. 16; or
6. under an amateur radio licence.

(2) The following are exempt from Par. 1:

1. operation in the case of co-use pursuant to Art. 151;
2. temporary operation of a club radio station in the context of an international amateur radio event, if operation is directly supervised by a radio amateur.

(3) Operation within the meaning of Par. 2 No. 2 must be announced in writing to the telecommunications office at least two weeks before its commencement.

(4) The permit to install and operate electrical equipment that is considered a radio system as defined in Art. 4 No. 49 last sentence shall be granted exclusively to government authorities entrusted with duties relating to public security, defence, national security or criminal justice. The application shall be submitted by the supreme body.

(5) A permit for the installation and operation of radio systems which, by means of the transmission of signals, enable the ascertainment of geographical locations and the user's international mobile subscriber identity number (IMSI) without the involvement of a provider shall be granted exclusively to authorities, where they are entrusted with the enforcement of Art. 53 Par. 3b Security Police Act (*Sicherheitspolizeigesetz,* SPG), Federal Law Gazette No. 566/1991, or with duties relating to public security, defence, national security or criminal justice. The application shall be submitted by the supreme body. Records shall be kept of the place and time of use of such radio systems, which shall be submitted to the telecommunications authority upon request and kept for a period of four weeks.

(6) The permit for the installation and operation of radio systems exclusively serving foreign territory shall be granted by the competent national regulatory authority. For this purpose, the applicant shall submit the licence issued to them by the regulatory authority of the country concerned. The permit must not exceed the technical parameters specified therein. Coverage of Austrian territory by such a radio system is not permitted. The national regulatory authority responsible for granting the permit shall also be responsible for the related spectrum assignment as well as for its modification and revocation.

(7) The telecommunications office shall be responsible for spectrum assignment made within the scope of a permit in accordance with Par. 4 or Par. 5, as well as for the modification and revocation of such spectrum assignment.

(8) KommAustria shall be informed if spectrum is assigned within the scope of permits pursuant to Par. 4 and 5 which in the spectrum use plan is also designated for broadcasting within the meaning of the Federal Constitutional Broadcasting Act (*BVG-Rundfunk*) (Art. 11 Par. 2). If spectrum as defined in Art. 11 Par. 3 was assigned as part of a permit pursuant to Par. 4 and Par. 5, the regulatory authority shall be informed.

(9) Before the assignment of spectrum that in the spectrum use plan is additionally designated for broadcasting within the meaning of *BVG-Rundfunk* (Art. 11 Par. 2), under a permit pursuant to Par. 6, an opinion shall be obtained from KommAustria. Before the assignment of spectrum as specified in Art. 11 Par. 3, an opinion shall be obtained from the regulatory authority.

(10) The Federal Minister for Agriculture, Regions and Tourism shall issue an ordinance setting out the technical terms and rules of conduct applying when operating radio systems without any specific spectrum assignment or operating permit (general authorisation). In this context, consideration is to be given to:

1. international standardisation;
2. ensuring the proper operation of a telecommunications system while avoiding harmful interference;
4. the specific characteristics of radio frequencies;
5. the necessary protection against harmful interference;
6. ensuring adequate quality of service;
7. efficient use of radio frequencies;
8. objectives laid down in Union law.

Where necessary in order to ensure that radio systems are operated without interference, that ordinance may also stipulate that specified radio applications are subject to a notification requirement as defined in Art. 33.

Exceptional authorisation

Article 29. (1) The Federal Minister for Agriculture, Regions and Tourism may authorise the installation and operation of radio systems for the purposes of technical testing on request where from a technical point of view no objections exist, and in particular if harmful interference with other communications equipment is not to be expected. Such a permit shall be limited to an appropriate period of time.

(2) The Federal Minister for Agriculture, Regions and Tourism shall be responsible for spectrum assignment made within the scope of an exceptional permit, as well as for modifying and revoking such spectrum assignment. Before the assignment of spectrum that in the spectrum use plan is additionally designated for broadcasting within the meaning of *BVG-Rundfunk* (Art. 11 Par. 2), under a permit pursuant to Par. 1, and prior to any change to such assignments, an opinion is to be obtained from KommAustria. Before the assignment of spectrum as specified in Art. 11 Par. 3 and 4, an opinion is to be obtained from the regulatory authority.

(3) The Federal Minister for Agriculture, Regions and Tourism may issue an ordinance transferring competence for deciding on specific applications pursuant to Par. 1 or 2 to the telecommunications office, insofar as only harmonised spectrum or spectrum already assigned to the applicant are to be used within the scope of a permit under Par. 1 and this appears justified on the basis of the expected low interference potential of the applications. The telecommunications office shall inform the Federal Minister for Agriculture, Regions and Tourism of the granting of such permits.

Import, sale and possession of radio systems

Article 30. (1) A permit shall not generally be required for the import, sale or possession of radio systems. The foregoing is without prejudice to Art. 24 Par. 3 FMaG 2016.

(2) Exempted from Par. 1 are the import, sale and possession of electrical equipment which is considered as radio equipment as defined in Art. 4 No. 49 last sentence. The permit to import and possess such equipment shall be granted exclusively to government authorities entrusted with duties relating to public security, defence, national security or criminal justice. The application shall be submitted by the supreme body.

(3) The Federal Minister for Agriculture, Regions and Tourism may issue an ordinance declaring the import, sale and possession of radio transmission systems to be subject to a permit. When issuing such an ordinance, consideration must be given to whether the use of the radio system may result in an enhanced risk for public security or otherwise oppose the fulfilment of official duties.

(4) A permit in accordance with Par. 3 shall be granted if the radio system does not fall under the FMaG 2016 and there is reason to assume that compliance is given with the technical requirements as defined in Art. 27, in particular where no harmful interference with other radio systems is to be expected and there is no other reason for refusal pursuant to Art. 37, or if the radio system is used as an historic exhibit or for demonstrative purposes.

Use

Article 31. (1) Radio systems and terminal equipment must not be misused. The following shall be considered misuse:

1. any communication that threatens public order and safety or morality or constitutes a breach of law;
2. any severe harassment or intimidation of other users;
3. any violation of the duty to maintain secrecy as required under this Act and international agreements;
4. any communication not in accordance with the authorised purpose of the radio system.

(2) Holders of radio systems and terminal equipment shall, to the extent reasonable for them, and taking into account the fundamental right to data protection within the meaning of the Data Protection Act (*Datenschutzgesetz*, DSG), Federal Law Gazette I No. 165/1999, and Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data, on the free movement of such data and repealing Directive 95/46/EC (GDPR), OJ No. L 119 of 4 May 2016, p. 1, as amended by OJ No. L 74 of 4 March 2021, p. 35, to take appropriate measures to prevent misuse within the meaning of Par. 1. Service providers who merely provide access to communications services shall not be deemed to be holders.

(3) Radio systems may be operated only for the authorised purpose and at the locations specified in the particular permit; mobile systems may be operated only in the usage area specified in the authorisation.

(4) Radio transmission systems may only be operated using the spectrum and any call sign assigned as part of the permit.

(5) Radio equipment which neither has a licence valid under Art. 212 Par. 4 nor complies with the provisions of FMaG 2016, as well as terminal equipment which neither has an authorisation valid under Art. 212 Par. 4 nor complies with the provisions of the Electrical Engineering Act (*Elektrotechnikgesetz*, ETG) 1992, Federal Law Gazette No. 106/1993, may neither be connected to nor operated in connection with a public communications network.

(6) Radio systems and terminal equipment may only be operated in such a way that no harmful interference with a public communications network occurs.

Deactivation

Article 32. (1) Without prejudice to any initiation of administrative penal procedures, the operator of a public communications network or service may request an end user to remove from the network termination point without undue delay any radio systems not complying with the FMaG 2016 or terminal equipment not complying with the ETG 1992 or causing harmful interference.

(2) The foregoing shall be without prejudice to the provisions of Art. 24 Par. 1 and 2 FMaG 2016.

(3) Operators of public communications networks shall not refuse to connect terminal equipment to the relevant interface for technical reasons if the terminal equipment meets the essential requirements of ETG 1992.

Section 5
Procedures, fees

Notification procedure

Article 33. (1) The telecommunications authority shall be notified in writing of the commencement of operation of a radio system in accordance with an ordinance issued under Art. 28 Par. 10 last sentence. Such notification must include the information specified in Art. 34 Par. 1 No. 1 to 3.

(2) If the regulatory authority finds that the information is incomplete, the authority shall request the notifier to amend the notification within a reasonable period (to be determined at that time).

Authorisation procedure

Article 34. (1) Applications for the installation and operation of a radio system (Art. 28) shall be submitted in writing. The application shall specify at least:

1. applicant’s name and address;
2. information about the intended use of the radio system;
3. information about the functioning of the radio system;
4. any official decisions issued by the regulatory authority pursuant to Art. 16.

Where needed for assessing whether the conditions for a permit have been met, the authority shall request the applicant to submit documentation verifying the technical characteristics of the radio system as well as the declaration of conformity for the equipment used.

(2) The telecommunications office shall decide on an application pursuant to Par. 1. KommAustria shall decide on applications pursuant to Par. 1 with regard to radio transmission systems intended for broadcasting within the meaning of the Federal Constitutional Broadcasting Act (*BVG-Rundfunk)*. The authority shall decide within six weeks of receipt of the complete application, unless the conclusion of frequency coordination on the basis of international agreements is to be awaited. If the spectrum was awarded in a comparative selection procedure, the period shall be extended by eight months.

(3) The telecommunications office shall decide on the assignment of spectrum within the scope of secondary use within the meaning of Art. 16 Par. 6.

(4) In cases where the spectrum is not assigned by the regulatory authority, without prejudice to Art. 28 Par. 4, 5 and 6, the competent authority pursuant to Art. 13 Par. 7 shall decide on the assignment based on the criteria set out in Art. 13.

(5) Decisions pursuant to Art. 37 shall be issued to be valid for a maximum of ten years. If the spectrum was assigned by the regulatory authority, the time limit of the decision pursuant to Art. 37 shall be based on the time limit stated in the assignment decision.

(6) Without prejudice to Art. 212 Par. 8, the Federal Minister for Agriculture, Regions and Tourism shall issue an ordinance setting out a timetable for the expiry of an unlimited permit to install and operate radio systems. In doing so, consideration shall be given to the total number of permits issued for an unlimited period of time, the economic significance of the radio application depending on the frequency range, intended use and application, and other aspects, the observance of which ensures replacement by permits for a limited period of time while preserving acquired rights as much as possible. At the same time as the respective permits expire, the associated spectrum assignment and associated fee claims shall also expire.

(7) The telecommunications office shall be notified of any renewal of the spectrum assignment decision issued by the regulatory authority pursuant to Art. 19. On the basis of this notification, the telecommunications office shall renew and adjust the operating permit accordingly.

(8) Decisions pursuant to Art. 37 may contain ancillary provisions. In cases pursuant to Art. 16, additional obligations may be imposed as necessary in order to ensure in the specific use-case that radio systems are operated without interfering with other radio systems, in particular when a coordination procedure is required involving radio systems within or outside Austria. In all other cases, obligations may be imposed by means of conditions and requirements, compliance with which is apparently necessary in order to protect human life or health in accordance with the criteria under Art. 13 Par. 5, to prevent damage to property, to comply with international agreements, to ensure operation of other telecommunications systems while avoiding harmful interference or for other technical or operational reasons, depending on the circumstances of the case.

(9) If a permit for the installation and operation of radio systems operated on spectrum assigned by the regulatory authority contains conditions aimed at avoiding interference with foreign radio communications equipment in the border area, these conditions may be modified by agreement between the operators concerned, provided that this increases the efficiency of frequency use or reduces the occurrence of harmful interference between the operators concerned. Such an agreement may not have any technical or competitive effects on third parties and requires the approval of the Federal Minister for Agriculture, Regions and Tourism in order to be effective and may be revoked if the above-mentioned prerequisites cease to apply. An opinion of the regulatory authority shall be obtained prior to the granting of this permit and prior to its revocation.

(10) In cases pursuant to Art. 20 Par. 6, the telecommunications authority shall at the legal successor's request issue an assessment decision on the transfer of the official decision.

Procedures for granting amateur radio licenses

Article 35. (1) The application shall be submitted in writing and shall contain information on:

1. first name and surname of the applicant or station officer;
2. the date of birth of the applicant or station officer;
3. the main residence of the applicant or station officer;
4. the intended location of the amateur radio station;
5. the planned power level;
6. the planned licence class;
7. any special technical characteristics of the amateur radio station.

(2) The telecommunications office shall decide on applications for amateur radio licences.

(3) When applying for assignment, applicants unable to provide proof of Austrian residence shall designate an authorised recipient within the meaning of Art. 9 of the Service of Documents Act (*Zustellgesetz*), Federal Law Gazette No. 200/1982.

(4) The application shall be accompanied by the amateur radio examination certificate or an amateur radio examination certificate recognised under Art. 159.

(5) The application may contain proposals for the design of a call sign. There is no entitlement to the assignment of a specific call sign.

(6) In the case of an application concerning a club radio station, beacon transmitter, relay radio station or remote radio station, No. 5, 6 and 7 of Par. 1 shall not apply.

(7) Licence holders shall notify the telecommunications office of any change of name or address within two weeks.

(8) Any licence holder moving abroad shall, within two weeks, notify the telecommunications office of the name of an authorised recipient within the meaning of Art. 9 *Zustellgesetz*, Federal Law Gazette No. 200/1982.

(9) Notification shall be made to the telecommunications office of any change of the person designated as authorised recipient within two weeks of the change.

(10) If, contrary to Par. 3, an authorised recipient is not named or if the notification referred to in Par. 3 is omitted, the telecommunications office may deliver documents by depositing them with the telecommunications office without further attempt at delivery until the authorised recipient is named or notified again by the licence holder.

(11) The Federal Minister for Agriculture, Regions and Tourism may issue an ordinance specifying more detailed provisions on the form and appearance of amateur radio licences, taking into account cost effectiveness, simplicity and expediency. Insofar as that ordinance provides for copies of amateur radio licences to be issued in credit card format, the payment of appropriate compensation by the holder of the amateur radio licence shall be determined in agreement with the Federal Minister for Finance.

(12) Duplicates of amateur radio licences shall be issued upon application, in particular where:

1. the amateur radio licence has become unusable; or
2. a report of loss or theft concerning that amateur radio licence is submitted.

(13) When issuing a duplicate or changing the scope of an amateur radio licence, the originally issued copy shall be returned to the authority except in the cases of Par. 12 No. 2.

Fees

Article 36. (1) Fees shall be payable for notifications pursuant to Art. 33, assignments, permits, for issuing certificates and for performing reviews for the purpose of obtaining the certificates granted under this Federal Act.

(2) The obligation to pay fees applies as of the point in time when spectrum is assigned or the authorisation of spectrum use is granted with legal effect, or when an official duty is carried out. In the case of notifications pursuant to Art. 33, such obligation arises upon receipt of the notification by the authority.

(3) The obligation to pay the fee shall also arise in those cases in which an application for spectrum assignment is withdrawn after the start of the investigation procedure or the application is rejected. In these cases, the fee shall amount to half of the fee payable for the assignment of the spectrum.

(4) The obligation to pay the fee shall also arise in those cases where an application for a certificate is deemed to be withdrawn. In such cases, the fee shall be payable in full.

(5) The fees payable pursuant to Par. 1 are intended as compensation for expenditures for spectrum administration, for planning, coordination and updates of frequency usage as well as for the measurements, tests and compatibility reviews required to ensure efficient spectrum use while avoiding harmful interference. Fees of the following types can be required:

1. one-time fees for notifications pursuant to Art. 33;
2. one-time fees for the assignment of spectrum;
3. periodically payable fees for the use of spectrum;
4. one-time fees for other administrative activities based on the provisions of this Act;
5. one-time fees for the issue of certificates and for performing reviews for the purpose of obtaining such certificates.

The assignment fee shall not be payable in cases where a spectrum licence fee as defined in Art. 24 is paid. For the services of authorities and organisations entrusted with rescue duties or with responsibility for maintaining public peace, order, safety and security, no fees shall be payable for a permit to install and operate a radio system intended solely for fulfilling such duties or responsibilities.

(6) The fees as defined in Par. 5 shall be set by way of ordinance by the Federal Minister for Agriculture, Regions and Tourism in agreement with the Federal Minister for Finance. In doing so, the following shall be considered in particular:

1. the value of the rights in the case of any alternative uses;
2. the additional costs arising from the requirements associated with these rights;
3. the actual availability of the radio spectrum;
4. the personnel and material costs of ensuring the efficient use of spectrum.

(7) The fees set by way of ordinance as referred to in Par. 6 shall be reduced or increased to the extent that the consumer price index 2015 published by the Statistics Austria federal institution or the index replacing it has increased or decreased by at least three per cent since the last change in the fee on the reference date of 30 June of any year. Value adjustment shall take place to the extent of the increase or decrease of the index as of the reference date of 30 June each year. It shall enter into force on the 1 January following the index adjustment. Value adjustment shall also apply to all legally enforceable fee claims. The Federal Minister for Agriculture, Regions and Tourism shall publish in the Federal Law Gazette II the amounts modified based on value adjustment and the date on which modification becomes effective.

(8) The telecommunications office shall require anyone who has evaded fees through an unlawful act to pay the evaded fee, without prejudice to the penalty for committing the unlawful act, within the period of limitation according to the rates in force at the time the unlawful act is ascertained.

(9) Fees in arrears may be collected by means of statements of arrears.

(10) The provisions of Art. 1486 of the Austrian Civil Code (*Allgemeines Bürgerliches Gesetzbuch*, ABGB) shall apply mutatis mutandis to the limitation of fees.

(11) For spectrum that is designated for broadcasting within the meaning of *BVG-Rundfunk*, with the exception of spectrum not planned for use in broadcasting within the meaning of that Act, the ordinance pursuant to Par. 6 is to be issued by KommAustria. In such KommAustria shall also carry out the procedure pursuant to Par. 4.

Granting of authorisation

Article 37. (1) A permit to install and operate a radio system shall be granted and spectrum shall be assigned pursuant to Art. 13 Par. 17, except where:

1. the requested spectrum is not available in the intended usage area or cannot be assigned due to already existing spectrum uses;
2. at least six months have not yet passed after a revocation as referred to in Art. 42 Par. 2;
3. commencement of operation might threaten public security;
4. commencement of operation might hinder the performance of official duties.

(2) Permits can also be granted for a majority of radio transmission and reception systems which are installed in a specified area in such a manner as to enable the provision of a telecommunications service or a telecommunications network over a wide area through technical cooperation, where it is possible to commonly specify for all or several groups of radio transmission systems the same:

1. technical parameters;
2. ancillary provisions required to ensure the operation of other radio systems while avoiding harmful interference;
3. ancillary provisions to ensure the objectives specified in Art. 27 Par. 2.

The location of such radio systems is the area indicated in the permit.

Additional prerequisites for granting amateur radio licences

Article 38. (1) An amateur radio licence shall be granted on application to persons who:

1. have reached the age of 14 years and:
2. a) have successfully passed the amateur radio examination; or
   b) present an amateur radio examination certificate recognised pursuant to Art. 159.

(2) Persons not fully capable of entering into legally binding contracts shall submit a declaration of a person with full legal capacity, by which the latter assumes liability for the Federal Government's fee claims resulting from the permit granted.

(3) An amateur radio licence shall be granted on application to amateur radio clubs and organisations operating in the public interests if they nominate a station officer who:

1. has their main residence in Austria;
2. is fully capable of entering into legally binding contracts;
3. has successfully passed the amateur radio examination.

(4) On request, holders of amateur radio licences issued by other countries shall be granted amateur radio licences with a comparable scope of authorisation where:

1. on the basis of the regulations of the country in which the foreign amateur radio licence was issued, an amateur radio licence is issued based on an Austrian amateur radio licence;

2. there are no doubts as to the technical competence of the applicant.

(5) An amateur radio licence granted on the basis of Par. 4 shall be limited in time based on objectively appropriate considerations and for a maximum of ten years.

(6) The Federal Minister for Agriculture, Regions and Tourism may issue an ordinance recognising amateur radio licences issued abroad, taking into account the existence of reciprocity and the equivalence of technical competence.

Granting of amateur radio licences

Article 39. (1) The licence shall be issued in writing. A certificate with the designation ‘amateur radio licence’ shall be issued, unless it concerns the authorisation of a relay radio station, a beacon transmitter or a remote radio station.

(2) Except in the cases of Par. 6 and Art. 38 Par. 5, the licence shall be limited to a period of ten years. If the authorisation is limited to ten years, the national regulatory authority shall inform the authorisation holder six months before the expiry of the time limit. This notice shall advise the authorisation holder of the opportunity to notify within three months the telecommunications authority and request a renewal of the amateur radio licence for a further ten years, with the same scope and call sign as assigned in the expired amateur radio licence; such notification shall be deemed to be an application within the meaning of Art. 35.

(3) The applicant shall be assigned a call sign in the amateur radio licence. If the radio amateur is granted a new amateur radio licence within five years after the amateur radio licence granted to the radio amateur becomes void, this shall be reassigned at the request of the radio amateur with the same scope and call sign as assigned in the expired amateur radio licence. The term of an amateur radio licence renewed within the meaning of Par. 2 shall begin with the expiry of the previous authorisation.

(4) According to the examination category of the amateur radio examination taken by the applicant or the station officer, the amateur radio licence shall be granted for a specified licence class. This shall also apply to renewals pursuant to Par. 3.

(5) The amateur radio licence shall be granted for a specified power level. This defines the highest permissible transmission power with which the amateur radio station may be operated.

(6) The Federal Minister for Agriculture, Regions and Tourism, considering the current state of technology as well as international agreements, may issue an ordinance making the following contingent on the performance of a trial operation or reserve the following for amateur radio clubs or organisations operating in the public interests:

1. the installation and operation of amateur radio stations that are operated without the personal presence of a radio amateur;
2. the installation and operation of amateur radio stations at specified locations;
3. the use of specific types of transmission, modes of operation, transmission powers or frequency ranges.

A licence granted on the basis of this ordinance may be based on objectively appropriate considerations be limited in time to a maximum of ten years, and shall contain the required conditions.

(7) The Federal Minister for Agriculture, Regions and Tourism shall issue an ordinance specifying licence classes, power levels, types of transmission, frequency ranges and bandwidths; for specified licence classes and frequency ranges, the Federal Minister may set maximum power levels are. In doing so, consideration shall be given to international agreements, the current state of technology, in particular the immunity of telecommunications systems to interference and the requirements of amateur radio service.

(8) When granting an amateur radio licence, no guarantee is extended for being able to operate an amateur radio system without harmful interference.

Special call sign

Article 40. (1) The telecommunications office may on request assign a special call sign for use on special occasions.

(2) The assignment shall be limited to the duration of the special occasion. If the applicant can justify the need, the term of assignment may be extended by setting the period to at the earliest two days before the special occasion or at the latest one day after the special occasion.

(3) At the request of a club radio station, a special call sign may be assigned for a period not exceeding six months where:

1. the special occasions on which this special call sign is to be used have already been scheduled, as plausibly demonstrated to the authority;
2. the special occasions concerned have trans-regional significance.

(4) In cases as referred to in Par. 3, the fee for the assignment of the special call sign for the second and each further special occasion shall be one quarter of the fee set in the ordinance issued on the basis of Art. 36 Par. 6 for the assignment of special call signs.

Subsequent modifications of authorisation

Article 41. (1) Where provisions of an authorisation are affected, any of the following changes requires prior approval by the telecommunications office:

1. any change of location;
2. any use outside the usage area indicated in the permit in the case of mobile systems;
3. any technical change of the system.

(2) The authority may modify granted authorisations in the public interests if this is required for good cause:

1. to ensure the security of public telecommunications traffic;
2. for technical or operational reasons;
3. due to changes in spectrum assignment as defined in Art. 21.

In doing so, the authority shall proceed in accordance with Art. 21 while protecting as far as possible the economic and business interests of the licence holder.

(3) The licence holder shall comply with any modification ordered pursuant to Par. 2, at their own expense and within a reasonable period. Such an order shall not constitute any claim to compensation. This shall be without prejudice to claims based on the Liability of Public Bodies Act (*Amtshaftungsgesetz*, AHG).

(4) If the communications capacities required by a user increase so as to utilise the assigned spectrum to an extent limiting the designated use of that spectrum by other users, where no other corrective action is possible, the authority may assign another frequency to the party whose radio operation has caused the limitation. The same shall apply if, in the context of requests to expand existing radio networks, the designated use of spectrum by other users is limited.

(5) KommAustria shall be responsible for the duties pursuant to Par. 1 and 2 relating to authorisations in the field of broadcasting within the meaning of *BVG-Rundfunk*.

Voiding of authorisation

Article 42. (1) The licence becomes void

1. through expiry of the term of granting;
2. through waiver by the licence holder;
3. through revocation;
4. voiding of spectrum assignment as defined in Art. 25.

(2) Revocation shall be declared by the authority granting the licence if:

1. required to ensure operation of a public communications network while avoiding harmful interference;
2. the licence holder has grossly or repeatedly violated the provisions of this Act or failed to comply with the obligations or conditions under the licence;
3. the requirements for obtaining the licence are no longer met;
4. the systems are either not operated or not operated according to the designated authorised purpose;
5. the systems are not operated with the authorised technical features and the licence holder has not carried out the modifications despite being requested; or
6. the licence holder fails to pay the fees prescribed under Art. 36 despite two reminders.

(3) Revocation shall not constitute any claim to compensation.

(4) For cases of revocation and waiver, no limit period shall be set. The declaration of waiver shall be submitted in writing to the authority that granted the licence.

(5) When an amateur radio licence becomes void, the amateur radio licence certificate must be returned to the telecommunications office within two months.

Prohibiting

Article 43. The operation of a radio system may be prohibited by the telecommunications authority if:

1. notification required pursuant to the ordinance referred to in Art. 28 Par. 10 is not submitted;
2. the conditions and rules of conduct for radio systems as specified in the ordinance referred to in Art. 28 Par. 10 are not observed;
3. the fees prescribed in Art. 36 for notifications are not paid despite two reminders;
4. a radio system is operated without a permit required pursuant to Art. 34; or
5 in the event of failure to amend notification as referred to in Art. 33 Par. 2.

Section 6
Open internet access and network security

Security and integrity

Article 44. (1) Operators and providers shall implement technical and organisational measures to ensure a level of security that is suitable for appropriately mitigating the risks to network and service security. The measures taken in this context should ensure a level of security for networks and services that is proportionate and appropriate in light of the extant risk while considering the current state of technology. Measures, including encryption where appropriate, are to be taken specifically to prevent and minimise the impact of security incidents on users, and on other networks and services. The regulatory authority may impose specific deadlines on operators and providers for the implementation of proportionate and appropriate security measures. In the event of imminent danger, and even without a prior investigation pursuant to Art. 57 of the General Administrative Procedures Act (*Allgemeines Verwaltungsverfahrensgesetz,* AVG), the regulatory authority may require operators and providers to implement proportionate and appropriate measures to resolve or prevent a security incident on a provisional basis by specified deadlines.

(2) If a security incident affecting public electronic communications networks or services creates a specific and significant risk, the operators and providers concerned shall inform those users potentially affected by the risk without undue delay and at no charge about the risk as well as all possible protective or remedial measures that the users are themselves able to implement.

(3) Operators and providers are obliged to provide the regulatory authority with the information necessary for assessing the security of their services and networks, including documented security policies, when the regulatory authority requests such information as part of the authority's statutory remit.

(4) Where indications of a breach of the obligation set out in Par. 1 are identified, the regulatory authority may act in accordance with its statutory remit, and require operators and communication service providers to submit at their own expense to a security audit by the regulatory authority or by a qualified, independent body commissioned by the regulatory authority.

(5) Operators and providers must notify the regulatory authority, without undue delay and in the form prescribed by the regulatory authority, of any security incidents that have had a significant impact on the operation of networks or services.

To determine the significance of the impact of a security incident, the following specific parameters will be taken into account if available:

1. the number of users affected by the security incident;
2. the duration of the security incident;
3. the geographical spread of the area affected by the security incident;
4. the extent to which the functioning of the network or service is impaired;
5. the extent of the impact on economic and societal activities.

(6) The regulatory authority shall forward any notification received in accordance with Par. 5 without undue delay to the Federal Minister for the Interior. The latter shall incorporate the information contained therein in the situation report to be created pursuant to Art. 5 No. 3 of the Network and Information System Security Act (*Netz- und Informationssystemsicherheitsgesetz*, NISG), Federal Law Gazette I No. 111/2018. This report is to be discussed within the coordination structures (Art. 7 NISG).

(7) The regulatory authority may inform the regulatory authorities of other EU Member States or the European Network and Information Security Agency (ENISA) concerning notifications received pursuant to Par. 5. In such cases, the regulatory authority shall also inform the operator or provider who notified the case without undue delay; no specific format is required for this information.

(8) Where disclosure of the security incident is in the public interest, the regulatory authority may directly inform the public in an appropriate manner or require the operators and providers concerned to do so.

(9) The regulatory authority shall submit to the European Commission and to ENISA an annual summary report of all notifications received pursuant to Par. 5 and of the actions taken. This annual report is to be submitted by 31 March of the following year.

(10) In agreement with the Federal Minister for Agriculture, Regions and Tourism, the Federal Chancellor, and the Federal Minister for the Interior, and while giving due consideration to relevant international regulations, the type of network or service, options offered by technology, protection of personal data and other user interests worthy of protection, the regulatory authority may issue an ordinance to define in detail the provisions for implementing this provision, specifically:

1. technical and organisational security measures pursuant to Par. 1;
2. circumstances, format and procedure for the notification duties pursuant to Par. 5.

(11) An ordinance pursuant to Par. 10 that refers to broadcasting networks and the transmission of broadcasting signals is to be issued by KommAustria.

(12) Where cases also lie within the competence of the Austrian Data Protection Authority, the regulatory authority shall consult with the Data Protection Authority and share with that authority any information collected. Personal data must not be processed as part of this information sharing activity.

(13) To fulfil its duties in accordance with this provision, the regulatory authority may seek the assistance of a CERT, set up pursuant to Art. 14 Par. 1 NISG, concerning questions falling within the latter's remit pursuant to Art. 14 Par. 2 NISG. Where cases also lie within the competence of the authorities as referred to in Art. 4 to 7 NISG, the regulatory authority shall consult with the authorities mentioned and share with those authorities any information collected.

(14) An ordinance issued pursuant to Par. 10 may also require operators of public communications networks or providers of public communications services who operate or provide their networks or services in Austria but who have no residency or registered place of business in the European Union to provide a domestic service address to which correspondence in procedures pursuant to this Federal Act may be officially served. Such a requirement may also be imposed on manufacturers of elements for electronic communications networks or on providers of services for such networks if such manufacturers or providers offer their goods or services in Austria or import these into Austria but have no residency or registered place of business in the European Union.

High-risk suppliers

Article 45. (1) For reasons of national security, the Federal Minister for Agriculture, Regions and Tourism may issue a decision classifying manufacturers of elements for electronic communications networks or providers of services for such networks as high-risk suppliers, with an exemption in each case for broadcast networks within the meaning of the Federal Constitutional Act on Broadcasting (*BVG-Rundfunk*).

(2) A high-risk supplier as referred to in Par. 1 is a supplier who can in all probability be assumed to be unable to (or unable to consistently) maintain the standards that are applicable to that supplier within the European Union, particularly those relating to information security and data protection.

(3) When assessing a classification pursuant to Par. 1, the following criteria shall be considered in particular, insofar as these are applicable to conduct as described in Par. 2:

1. defects on the part of the manufacturer relating to product quality (including RAN, core networks and managed services) and cybersecurity practices; specifically, a lack of control over the manufacturer's own supply chain or insufficient adherence to good security practice according to current technical standards, including due consideration paid to key targets in information security (confidentiality, availability and integrity) in relation to all products and services manufactured and provided;
2. the absence of either a security or data protection agreement between the European Union and the supplier's country of establishment, where the latter is a third country, or a lack of written declarations by the supplier that would include specific and binding provisions requiring the

supplier to take technical and organisational measures in order to ensure that user data can neither be transferred unlawfully to countries outside the European Union nor can be received, whether directly or indirectly, by organisations, institutions or authorities of those countries;

3. an insufficient level of capability on the part of the manufacturer to ensure uninterrupted supply.

(4) Before making a decision, the Federal Minister for Agriculture, Regions and Tourism must brief the 'advisory board for security in electronic communications networks' (Par. 7) on the case and commission an expert opinion to ascertain whether the conditions set out in Par. 3 (AVG Art. 52) have been met. The advisory board shall make every effort to submit its expert opinion within twelve weeks of being briefed. The Federal Minister for Agriculture, Regions and Tourism shall consider the expert opinion as part of the investigation.

(5) Insofar as this is considered sufficient for averting the risk described in Par. 2, the Federal Minister for Agriculture, Regions and Tourism shall, in the decision issued pursuant to Par. 1, declare that:

1. the classification as a high-risk supplier will be limited to specified security-relevant business segments or categories of goods or services, or to individual hardware or software components, and, as appropriate, to a specified period of time or a specified geographical area;
2. a manufacturer will be excluded from supplying security-relevant elements or network parts for networks as defined in Par. 1, either for all elements or individual elements; or that
3. a service provider will be excluded from providing security-relevant services for networks within the meaning of Par. 1, either for all services or individual services.

Each decision issued pursuant to Par. 1 shall expire after no more than two years.

(6) A copy of the decision shall be sent to the Telecommunications and Postal Services Division at RTR-GmbH. A copy of the decision shall be sent to the Data Protection Authority where the decision touches on matters relating to data protection. RTR-GmbH shall publish the key points of the decision, including a summary of its rationale, while maintaining confidentiality about company or trade secrets.

(7) RTR-GmbH shall set up an 'advisory board for security in electronic communications networks'. RTR-GmbH shall chair the advisory board while also organising its business and providing administrative support.

(8) The advisory board shall have the following tasks:

1. advising the Federal Minister for Agriculture, Regions and Tourism on general aspects of security for electronic communications networks;
2. preparing expert opinions in procedures for categorising a manufacturer of (hardware and software) network elements as a high-risk supplier within the meaning of Par. 4.

To fulfil its duties pursuant to No. 1, the advisory board shall in particular monitor, on a continuing basis, the technological development of security for elements of electronic communications networks and for services for such networks both inside and outside the European Union. The advisory board shall produce regular reports on its work on behalf of the Federal Minister for Agriculture, Regions and Tourism at intervals of no less than one year. In preparing an expert opinion pursuant to No. 2, the advisory board shall, in making its assessments, also take into account compliance with general national legal standards in the third countries in question, as well as the technical and economic impact on existing electronic communications networks in Austria and their operators.

(9) The advisory board shall consist of the chairperson and twelve members.The members shall be appointed by the federal government for a term of four years. In making these appointments, the federal government shall consider proposals from the following bodies or organisations, for one member of the advisory board in each case: the Federal Chancellor; the Federal Minister for Agriculture, Regions and Tourism; the Federal Minister for the Interior; the Federal Minister for European and International Affairs; the Federal Minister for Digital and Economic Affairs; the Federal Minister for National Defence; the Federal Minister for Social Affairs, Health, Care and Consumer Protection; the Federal Economic Chamber; the Federal Chamber of Labour; the Federation of Austrian Industries (IV); the National CERT and the Austrian Institute of Technology (AIT). The members proposed by the National CERT and AIT must possess relevant technical expertise in the field of information security. Members may be reappointed. If a member leaves before their term expires, the federal government shall appoint a new member. The right to propose a replacement for that member shall lie with that body or organisation that recommended the member who is prematurely leaving. The federal government shall terminate a member's position appointment in the following cases:

1. if requested to do so by the member;
2. if the body/organisation that proposed the member requests their termination;

3. if the appointment requirements set out in Par. 10 are no longer fulfilled or were not fulfilled at the time of the appointment.

(10) Neither the chairperson nor the members of the advisory board are permitted to hold the position of employee, shareholder or officeholder at a manufacturer of elements or a provider of services for an electronic communications network, or at an operator of electronic communications networks or a provider of electronic communications services. In their work for the advisory board, the chairperson and members of the advisory board act independently pursuant to Art. 20 Par. 2 No. 1 of the Federal Constitutional Act (*Bundes-Verfassungsgesetz*, B-VG).

(11) The advisory board shall be chaired by the managing director of the Telecommunications and Postal Services Division at RTR-GmbH. In the event of the managing director being unable to perform their duties, that person shall be represented by the member of the advisory board appointed on the recommendation of the Federal Minister for Agriculture, Regions and Tourism. The advisory board is quorate when the chairperson and at least six other members are present. The advisory board shall adopt its resolutions based on a simple majority of votes cast. In the event of a tie in any vote, the chairperson has the deciding vote. Circular consultations and resolutions—which may include the use of telecommunications systems—are permissible.

(12) The Federal Minister for Agriculture, Regions and Tourism in agreement with the Federal Chancellor shall issue an ordinance setting out the rules of procedure for the advisory board. The members of the advisory board shall be entitled to receive compensation for reasonable travel and cash expenses, as well as a session allowance to be set by the Federal Minister for Agriculture, Regions and Tourism. Costs for the activities of the advisory board shall be borne by the Federal Ministry of Agriculture, Regions and Tourism. The advisory board may invite individuals to provide information at its sessions.

Service quality

Article 46. (1) Providers of internet access services and of publicly available interpersonal communications services shall publish comprehensive, comparable, reliable, user-friendly and up-to-date information for end users on the quality of their services, to the extent that they control at least some elements of the network either directly or by virtue of a service level agreement to that effect, and on measures taken to ensure equivalence in access for end users with disabilities.

(2) Providers of publicly available interpersonal communications services shall provide details as appropriate if the quality of the services they provide depends on any external factors, such as control of signal transmission or network connectivity.

(3) The details and measures pursuant to Par. 1 and Par. 2 are to be supplied to the regulatory authority before publication, and must comply with Regulation (EU) 2015/2120.

(4) The regulatory authority, acting in agreement with the Federal Minister for Agriculture, Regions and Tourism, shall issue an ordinance—while taking account of the BEREC guidelines pursuant to Art. 4(1) point (d) of Regulation (EU) 2018/1971 and while taking account of Annex X of Directive (EU) 2018/1972—setting out the quality of service parameters to be measured, the applicable measurement methods, and the content, form and manner of the information to be published, including possible quality certification mechanisms. This ordinance may also set out appropriate measures that, in consideration of the needs of people with disabilities and in line with applicable legal provisions, make it possible for such individuals to make use of telecommunications services and to gain access to contractual content and pre-contractual information to the same extent as people without disabilities.

(5) The regulatory authority shall be entitled to perform independent reviews of service quality or have such reviews performed, as a means of verifying the validity and comparability of the information provided and the measures taken. The regulatory authority may publish details of the information provided and the measures taken as well as the results of service quality verification.

(6) The regulatory authority shall be entitled to offer instruments and review mechanisms that enable end users to verify the information provided pursuant to Par. 1 and 2 of this provision, Art. 132(2) point (2)(a) and Art. 4(1) of Regulation (EU) 2015/2120.

Open internet access

Article 47. (1) For providers as defined in Art. 2(1) of Regulation (EU) 2015/2120, the regulatory authority may issue an ordinance setting out requirements in relation to technical characteristics, minimum quality of service, and other appropriate and necessary measures pursuant to Art. 5(1) of Regulation (EU) 2015/2120. In doing so, the regulatory authority shall take into account the continuous availability of non-discriminatory internet access services as defined in Art. 2(2) of Regulation (EU)

2015/2120 at a level of quality reflecting the current state of technology. In particular, the regulatory authority may issue an ordinance that sets out requirements for the advertising of the speed and other technical characteristics of internet access services as defined in Art. 2(2) of Regulation (EU) 2015/2120 as marketed to end users in such a way that, in the case of wired internet access services, the advertised speed must not exceed a specified figure, expressed as a ratio to the agreed normally available speed as defined in Art. 4(1) point (d) of Regulation (EU) 2015/2120. In the case of stationary internet access services connected via radio signal, the respective ratio to the advertised speed is to be measured in accordance with the agreed estimated maximum speed as defined in Art. 4(1) point (d) of Regulation (EU) 2015/2120 and at an appropriate level of signal availability. When specifying that ratio number, the regulatory authority shall take into account the interests of end users to be protected, the transparency of details provided and the ease with which quality parameters can be identified by the end user.

(2) If a measure pursuant to Par. 1 affects the responsibilities of KommAustria, in particular those pursuant to Art. 199 Par. 4a, agreement must be reached with KommAustria. This does not apply to procedures of the Telekom-Control Commission. Upon request, KommAustria shall have party status in these procedures. § Art. 199 Par. 5, 6 and 7 shall apply mutatis mutandis.

(3) For providers as defined in Art. 2(1) of Regulation (EU) 2015/2120, the regulatory authority may issue an ordinance specifying the level of detail and schedules required to submit the information requested pursuant to Art. 5(2) of Regulation (EU) 2015/2120.

Performance monitoring mechanism

Article 48. The regulatory authority shall offer a performance monitoring mechanism to end users. That mechanism shall be considered a certified monitoring mechanism as defined by Art. 4(4) of Regulation (EU) 2015/2120. This mechanism must reflect the current state of technology and account for the fact that the measurement results obtained may be used as prima facie evidence for a consumer claim as stated in Art. 4(4) of Regulation (EU) 2015/2120. The mechanism must also support commonly used internet access technologies. The regulatory authority may specify a guideline for the performance monitoring mechanism.

Location of network termination point

Article 49. (1) The regulatory authority may issue an ordinance specifying the location of the network termination points of public communications networks, while accounting for the type of public communications network and technical possibilities. In doing so, the authority shall take utmost account of the BEREC guidelines on common approaches to the identification of the network termination point in different network topologies. Before an ordinance as specified in this paragraph is issued, the procedure as referred to in Art. 206 shall be conducted.

(2) RTR-GmbH shall consult with KommAustria before issuing an ordinance in accordance with Par. 1 where:

1. a broadcasting network and a telecommunications network are provided via an identical physical infrastructure; or
2. broadcasting within the meaning of *BVG-Rundfunk* is carried out via a telecommunications network.

Interoperability

Article 50. (1) Providers of voice communications services and number-based text messaging shall ensure interoperability between end users of all public voice communications services and of number-based text messaging.

(2) Providers of voice communications services and number-based text messaging shall, as far as technically and economically feasible, and insofar as the called end user has not chosen to limit access by calling parties located in specific geographical areas for commercial reasons, take all necessary steps to ensure:

1. end users are able to access and use services using non-geographic numbers within EEA Member States and Switzerland; and
2. end users are able to reach all numbers existing in EEA Member States and Switzerland, regardless of the technology and devices used by the provider, including the numbers in the national numbering plans of Member States and Universal International Freephone Numbers (UIFNs).

(3) Where no obligation pursuant to Art. 105 applies, providers as defined in Par. 1 and 2 shall if requested conclude agreements stipulating appropriate fees for establishing and ensuring interoperability.

(4) Beyond such a request, the regulatory authority may also require providers and operators to implement the following measures so as to ensure interoperability:

1. In justified cases and within the necessary scope, the authority may impose obligations on businesses which are subject to a notification requirement pursuant to Art. 6 and who monitor access to end users to make their services interoperable.
2. In justified cases, where end-to-end connectivity between end users is threatened by a lack of interoperability between interpersonal communications services, and within such a scope as is necessary to ensure end-to-end connectivity between end users, the authority may impose obligations on affected providers of number-independent interpersonal communications services, who have a substantial degree of coverage and user base, to make their services interoperable.

(5) Obligations pursuant to Par. 4 No. 2 may only be imposed:

1. inasmuch as they do not exceed the scope necessary to ensure the interoperability of interpersonal communications service; this scope may also encompass proportionate obligations for the providers of these services, the disclosure and approval of the application, modification and dissemination of relevant information on the part of the authorities or other providers, or standards or specifications pursuant to Art. 39(1) of Directive (EU) 2018/1972, or the application or implementation of other relevant European or international standards; and
2. where the European Commission, following consultation with BEREC and taking the utmost account of the latter's opinion, has determined that end-to-end connectivity between end users in the EU as a whole or in at least three Member States is threatened to a significant degree, and where the Commission has adopted implementation measures in which the nature and scope of the obligations to be imposed has been specified.

Section 7

Network deployment and infrastructure use

Scope and content of wayleave rights

Article 51. (1) Without prejudice to obligations under other provisions of the law, wayleave rights shall comprise the right:

1. to install and maintain communications lines, with the exception of the construction of antenna masts;
2. to construct and maintain line supports, switching equipment and other line objects or other accessories;
3. to insert, conduct and route cable lines (especially optical fibre and wire lines), and to maintain such lines, in and through buildings, parts of buildings (especially cable ducts and other facilities for laying cable) and other structures;
4. to operate, expand and upgrade systems as listed in No. 1, 2, 3 and 5 where such activities do not result in permanent physical changes;
5. to install and maintain small antennas, including their fixing systems and their necessary supply lines;
6. to remove branches, meaning the removal of obstructive trees that have been planted and the felling of individual trees, and to cut paths through wooded areas.

(2) The content of the respective wayleave right results from the particular agreement or decision by the regulatory authority. Agreements on wayleave rights are to be submitted to the regulatory authority on substantiated request.

Wayleave rights on private property

Article 52. (1) Providers of public communications networks shall be entitled to claim wayleave rights pursuant to Art. 51 Par. 1 No. 1 to 4 and No. 6 to privately owned property if:

1. the designated use of the property is not permanently restricted by such use or only restricted for a limited period; and
2. co-use of systems, lines or other facilities pursuant to Art. 60 to 64 that are located on the property is not possible or practicable.

(2) The owner of a property encumbered pursuant to Par. 1 shall be paid compensation corresponding to the impairment.

(3) Where wayleave rights are exercised in accordance with this provision, the party entitled to erect the line shall verifiably notify the owner of the planned project in writing, enclosing a drawing, and shall offer compensation as referred to in Par. 2. If other systems operated by undertakings are present on a property where rights are claimed, the same procedure must be followed.

(4) If the entitled party and the property owner do not reach an agreement on the wayleave right pursuant to Par. 1 or on the compensation pursuant to Par. 2 within four weeks from the date when the project pursuant to Par. 3 was made public, either party involved may call upon the regulatory authority for a decision.

Wayleave rights on public property

Article 53. (1) Providers of public communications networks shall have the right to claim wayleave rights pursuant to Art. 51 Par. 1 No. 1 to 4 and No. 6 to publicly owned property if no public interests oppose such rights, and:

1. the designated use of the property is not permanently restricted by such use or only restricted for a limited period; and
2. co-use of systems, lines or other facilities pursuant to Art. 60 to 64 is not possible or practicable.

(2) Providers of public communication networks shall have the right to claim wayleave rights pursuant to Art. 51 Par. 1 No. 5 to publicly owned property and objects if no public interests oppose such rights and if:

1. the designated use of the property or the object is not permanently restricted by such use or only restricted for a limited period; and
2. co-use of systems, lines or other facilities pursuant to Art. 60 to 64 is not possible or practicable.

(3) The owner of a property encumbered by a wayleave right pursuant to Par. 1 or Par. 2 shall be paid compensation corresponding to the impairment.

(4) Where wayleave rights are exercised in accordance with this provision, the party entitled to erect the line shall verifiably notify the owner of the planned project in writing, enclosing a drawing, and shall offer compensation as referred to in Par. 3.

(5) If the entitled party and the property owner do not reach an agreement on the wayleave right pursuant to Par. 1 or Par. 2 or on the compensation pursuant to Par. 3 within four weeks from the date when the project pursuant to Par. 4 was made public, either party involved may call upon the regulatory authority for a decision.

(6) In cases where direct or indirect private ownership coexists with public ownership of a property, before enforcing wayleave rights, the regulatory authority shall weigh the public interest in intervention against the private ownership.

Wayleave rights on publicly used property

Article 54. (1) Providers of communications networks shall be entitled under this Act to exercise wayleave rights pursuant to Art. 51 Par. 1 on publicly used property, such as streets, footpaths and public places, and the overlying airspace, free of charge and without special authorisation.

(2) 'Free of charge' within the meaning of Par. 1 does not affect:

1. a legal basis for collecting fees where that basis was already in force on 1 August 1997;
2. the compensation paid to the impaired party on account of the latter's actual recorded expenditure resulting from the asserted wayleave right; and
3. the participation in compensation of the actual expenditure on the part of the party obliged to allow co-use, and specifically the setup and operating costs for the co-used system.

(3) Where wayleave rights are exercised in accordance with this provision, the party entitled to erect the line shall verifiably notify the party administrating the publicly used property of the planned project in writing, enclosing a drawing. Should the party administrating the publicly used property have objections to the project, that party shall inform the entitled party of the grounds for the objection within four weeks after receiving the notification and provide an alternative proposal, otherwise the wayleave right shall apply in the scope as notified.

(4) If the party administrating the publicly used property raises objections and does not reach an agreement with the entitled party on exercising the wayleave right within four weeks from the date when the project pursuant to Par. 3 was made public, either party involved may call upon the regulatory authority for a decision. Equally, each of the involved parties may ask the regulatory authority to determine whether and in which scope a wayleave right applies pursuant to Par. 1 and Par. 3.

Reference rates for impairment and for compensation

Article 55. The regulatory authority shall issue an ordinance specifying corresponding reference rates of compensation for the impairment of properties or objects pursuant to Art. 52 Par. 2, Art. 53 Par. 3 and Art. 59 Par. 3. Where expedient, those reference rates shall be specified separately by infrastructure type, and by the nature and location of the property or object for which wayleave rights are claimed. When issuing an ordinance pursuant to this provision, the regulatory authority shall consider the objectives set out in Art. 1. The ordinance is to be reviewed at regular intervals. Before an ordinance as specified in this paragraph is issued, the interested parties shall be given the opportunity to submit opinions.

General provisions on wayleave rights

Article 56. (1) The party commissioned with the installation, maintenance, operation, expansion or replacement of the systems, lines or other facilities listed in Art. 51 Par. 1 is permitted access to properties and objects (as appropriate) only to an extent not prohibited by other provisions of the law. With the exception of actual emergencies, access to the interiors of buildings is permitted only following prior notification of the owner or their representatives and only to an extent not prohibited by other provisions of the law.

(2) The removal of branches as referred to in Art. 51 Par. 1 No. 6 may be demanded only to the extent unavoidably necessary for the installation, maintenance, operation, expansion or replacement of the systems, lines or other facilities listed in Art. 51 Par. 1. The entitled party may demand to have paths cut through closed wooded areas only in the absence of any other economically viable possibility for erecting a line, and if the maintenance and proper cultivation of the forest are not thereby endangered. Unless an agreement is reached between the parties involved, any removal of branches and cutting of paths shall be carried out at the request of the entitled party within a reasonable period of time by the party whose property is encumbered (administrator of the publicly used property, or owner of the public or private property). The entitled party can perform the removal of branches themselves if the encumbered party does not fulfil this request in the allotted time or in the event of imminent danger. The party entitled to erect the line shall bear the costs of any and every removal of branches and cutting of paths.

(3) Where the property owner justifiably objects to the laying of lines in the airspace above the property, the party entitled to erect the line shall be obliged to lay the communications lines in the ground, subject to technical feasibility and a weighing-up of economic factors. The party entitled to erect the line shall, after completing the laying of their communications lines in the ground, provide the property owner with an accurate site map of the same in a timely manner, in printed or electronic form as requested.

(4) Wayleave rights may also be established for existing communications lines, including their accessories, by a decision of the regulatory authority.

(5) Regardless of their culpability, entitled parties are liable for all losses suffered by the encumbered party as caused by the utilisation and exercising of a wayleave right, and particularly as a result of the installation, maintenance, expansion, replacement, operation or removal of the former's communications lines, except in cases where the latter is culpable for the loss. Claims for compensation of this kind are to be heard by the ordinary courts.

Right to use lines or systems secured by right

Article 57. (1) If the owner of a line or system erected on a property and secured by right additionally uses the line or system for the installation, operation, expansion or replacement of communications lines, the property owner shall tolerate such use unless subject to Art. 51 Par. 1 No. 4 and where the use does not permanently restrict the designated use of the property to a greater extent.

(2) The property owner shall be paid a one-time compensation for the right of use unless such compensation has previously been paid for a use for the purposes of communications. After hearing the parties involved, the regulatory authority shall issue an ordinance setting a uniform nationwide reference rate for one-time compensation.

Utilisation of the right of use and decision

Article 58. (1) Where rights of use are utilised pursuant to Art. 57, the entitled party shall verifiably notify the property owner of the planned project in writing. If the party entitled to use offers the property owner compensation in accordance with the uniform reference rate pursuant to Art. 57 Par. 2, or if such compensation has previously been paid for the use of communications lines, no hindrance shall exist to use of the property for the purposes specified in Art. 57 Par. 1.

(2) If the party entitled to use and the property owner do not reach an agreement on exercising the right of use or on the compensation within four weeks from the date when the project pursuant to Art. 58

was made public, either party involved may call upon the regulatory authority for a decision on exercising the right of use or on the compensation. Equally, each of the involved parties may ask the regulatory authority to determine whether and in which scope a right of use applies pursuant to Art. 57 Par. 1.

Location rights

Article 59. (1) 'Locations' within the meaning of this provision refer to antenna masts including all of the site facilities required, such as are necessary regardless of the specific technology deployed for technical operations. Providers of public communications networks, insofar as a specific network is used to supply number-based interpersonal communications services, are entitled to claim location rights for the installation, operation, maintenance, replacement and expansion of sites at properties that are under the direct or indirect sole ownership of a public body if such a claim is unopposed by public interests, and:

1. the designated use of the property is not permanently restricted by such use or only restricted for a limited period; and
2. co-use as referred to in Art. 64 is not possible or practicable on the property.

(2) For location rights as defined in Par. 1, Art. 75 applies with the proviso that the owner shall offer the entitled party a suitable substitute location where acceptable on technical or economic grounds.

(3) The owner of a property encumbered pursuant to Par. 1 shall be paid compensation corresponding to the impairment resulting from the location right.

(4) Where location rights are exercised in accordance with this provision, the entitled party shall verifiably notify the owner of the planned project in writing, enclosing a drawing, and offer compensation as referred to in Par. 3.

(5) If the entitled party and the property owner do not reach an agreement on the location right within four weeks from the date when the project pursuant to Par. 4 was made public, either party involved may call upon the regulatory authority for a decision.

(6) Art. 56 applies mutatis mutandis to location rights.

Rights to co-use infrastructures or systems usable for communications lines

Article 60. (1) Anyone exercising a right of way, wayleave right or right of use pursuant to this Federal Act or other federal or provincial laws on the basis of an official decision or an agreement shall permit, on written request, the co-use of infrastructures or systems, such as are usable for communications lines and have been erected based on those rights, by other providers of public communications networks, to the extent economically reasonable and technically feasible.

(2) Insofar as is necessary to protect the environment, public health or safety or to meet urban-planning objectives, the regulatory authority, acting in accordance with the conditions imposed by Par. 1, can impose the co-use of infrastructures or systems for communications lines, if technically feasible and economically acceptable to the parties involved. Draft enforcement measures pursuant to this paragraph that will have a considerable impact on the affected market are subject to the procedure as defined in Art. 206.

Rights to co-use physical infrastructures belonging to network or grid providers

Article 61. Network or grid providers, in their role as owners or parties otherwise entitled to use physical infrastructures, shall on written request make those physical infrastructures available for co-use to providers of public communications networks for the purposes of deploying high-speed electronic communications networks, provided that shared use is economically reasonable and in particular technically feasible.

Rights to co-use in-building physical infrastructures

Article 62. Owners or parties otherwise entitled to use in-building physical infrastructures shall allow providers of public communications networks to co-use those infrastructures for communications lines up to the first concentration or distribution point on a shared basis, provided that co-use is economically reasonable and in particular technically feasible, and where replication of such infrastructure would be economically inefficient or physically impracticable.

Rights to co-use wiring, cables and associated facilities inside buildings

Article 63. (1) Owners or parties otherwise entitled to use wiring, cables and associated facilities inside buildings shall allow providers of public communications networks to co-use such infrastructure for communications lines within the building on a shared basis or up to the first concentration or distribution point outside the building, provided that shared use is economically reasonable and in

particular technically feasible, and where replication of such infrastructure would be economically inefficient or physically impracticable.

(2) In procedures pursuant to Par. 1, the regulatory authority may extend access obligations beyond the scope of Par. 1, to a point after the first concentration or distribution point that is the closest access point to end users at which a sufficient number of end-user connections is available for efficient access seekers so as to be commercially viable, where, potentially taking into account specific obligations pursuant to Art. 89:

1. obligations as imposed in Par. 1 would not be sufficient to eliminate high and non-transitory economic or physical barriers to replication of infrastructure;
2. the current or expected market situation will significantly limit competitive outcomes for end users;
3. a viable and similar alternative means of reaching end users is not made available to access seekers by providing access to a very high capacity network, specifically on fair, non-discriminatory and reasonable terms and conditions; and
4. the imposition of obligations in accordance with this paragraph would not compromise the economic or financial viability of deployment of new network, in particular in the context of small local projects that have been financed without the assistance of public funds.

The regulatory authority may impose active or virtual access obligations if this is justified on technical or economic grounds.

(3) The regulatory authority shall take the utmost account of any guidelines issued by BEREC that relate to:

1. the first concentration or distribution point pursuant to Par. 1;
2. the access point located after the first concentration or distribution point pursuant to Par. 2;
3. the question of which economic or physical barriers to replication are considered high and non-transitory pursuant to Par. 2 No. 1;
4. the question of which network deployments can be considered to be new pursuant to Par. 2 No. 4; or
5. the question of which projects can be considered small and local pursuant to Par. 2 No. 4.

(4) Draft enforcement measures pursuant to Par. 2 that will have a considerable impact on the affected market are subject to the procedures as defined in Art. 206 and 207.

Rights to co-use antenna masts and high-voltage masts

Article 64. Owners or parties otherwise entitled to use an antenna mast or a high-voltage mast must permit providers of a public communications network, fire brigades, emergency medical services as well as law enforcement authorities to co-use such infrastructure, provided that co-use is economically reasonable and technically feasible, in particular in terms of spectrum. The owner or party otherwise entitled to use shall perform or have performed any technical modifications required for the foregoing purpose if the modifications are minimal and the party requesting co-use bears the corresponding expenses. Co-use rights shall also include shared use of the infrastructure that is necessary for operation. The owner or party otherwise entitled to use shall not exercise their power of disposition over the system to the detriment of co-users.

Compensation for co-use rights

Article 65. The party required to tolerate co-use pursuant to Art. 60 to 64 shall be paid appropriate compensation. Such compensation shall appropriately take into account the costs of erecting the system used on a shared basis, including acquisition costs, ongoing operating costs and other costs arising from shared use, as well as the levels of compensation customary to the market, whereby average values may be used as a basis for determining the costs.

Common provisions governing co-use rights

Article 66. (1) When exercising rights pursuant to Art. 60 to 64, parties must consider, appropriately and to a verifiable extent, the use of existing facilities as well as future technical advances that require capacity to be kept in reserve.

(2) If a property includes a facility whose owner or party otherwise entitled to use is required to grant shared use rights pursuant to Art. 60 to 64, the property's owner or party otherwise entitled to its use shall also tolerate such co-use if this use will not permanently restrict the designated use of the property to a greater extent. If increased physical wear and tear on the property as a result of the co-use cannot be

unequivocally excluded, the owner or party otherwise entitled to use the property shall have a power of approval and a right to claim appropriate compensation. The compensation must in particular be oriented on customary market practice.

(3) Co-use rights may also be established for existing communications lines, including their accessories, by a decision of the regulatory authority.

Requesting and granting co-use rights

Article 67. (1) Every party subject to obligations imposed by Art. 60 to 64 and Art. 66 Par. 2 shall, on receipt of a written request from a provider of a public communications network, submit an offer for co-use or for tolerating co-use pursuant to Art. 66 Par. 2.

(2) Every party subject to obligations pursuant to Art. 64 shall submit an offer for co-use on receipt of a written request from providers of a public communications network, or from fire brigades, emergency medical services or law enforcement authorities.

(3) Each request pursuant to Par. 1 or 2 must include the project elements that are sought for the co-use as well as a detailed schedule. The property owner must also be informed.

(4) If the obligated party and the entitled party fail to reach an agreement on co-use rights pursuant to Art. 60 to 64, on compensation pursuant to Art. 65 or on the toleration of shared use including compensation pursuant to Art. 66 Par. 2 within a period of four weeks from receipt of the request, either party involved may call upon the regulatory authority for a decision.

(5) Providers of public communications networks that are used for the public offering of mobile communications services shall prepare framework agreements for the co-use of their antenna masts.

(6) Framework agreements pursuant to Par. 5 and agreements on other co-use rights are to be submitted to the regulatory authority on substantiated request.

Offer to coordinate civil works

Article 68. (1) Network or grid providers directly or indirectly planning or carrying out civil works shall, on receipt of a request from other network providers, submit an offer for concluding an agreement to coordinate those civil works, insofar as one of the parties involved is, as a provider of a public communications network, planning or carrying out the deployment of elements for high-speed electronic communications networks.

(2) Network or grid providers may refuse requests made pursuant to Par. 1 only if:

a) the requested coordination would result in additional expense compared with that of the planned civil works and the requesting party will not bear this expense;

b) the requested coordination would impede control over the planned civil works;

c) on receipt of the request all required permits have already been applied for with the competent authorities;

d) proposed civil works are affected for which an ordinance pursuant to Art. 70 has been issued; or

e) the requested coordination is neither economically reasonable nor in particular technically feasible for the network or grid provider planning or carrying out the civil works.

The reasons for any refusal of a request are to be presented to the requesting party in writing with plausible circumstances cited for the refusal.

(3) The expense associated with the coordination of civil works is to be shared proportionately.

Request and application

Article 69. (1) Requests pursuant to Art. 68 Par. 1 are to be submitted in writing. The requesting party shall plausibly demonstrate that the conditions specified in Art. 68 Par. 1 have been met and shall provide details of the proposed deployment plans, including the area in which a coordination of civil works is being proposed and the proposed schedule.

(2) If the parties involved do not reach an agreement on the coordination of civil works pursuant to Art. 68 Par. 1, including proportionate apportionment of the expense as referred to in Art. 68 Par. 3, within one month of receipt of the request, either party involved may call upon the regulatory authority for a decision.

Proposed minor civil works

Article 70. For proposed civil works considered minor in terms of value, scope or duration, the regulatory authority may issue an ordinance to stipulate exemptions from the obligations laid down in

Art. 68.Before an ordinance as specified in this paragraph is issued, the interested parties shall be given the opportunity to submit opinions. All such exemptions are to be notified to the European Commission.

Access to minimum information about infrastructures

Article 71. (1) Providers of public communications networks are entitled to receive minimum information pursuant to Art. 80 Par. 3 concerning infrastructures that can be used for communications lines, including physical infrastructures, in order to be able to review the option of co-use pursuant to Art. 60 to 64.

(2) Except in procedures pursuant to Par. 5 and 6, the single information point as referred to in Art. 80 shall, on receipt of a written request from the party entitled pursuant to Par. 1, make the minimum information accessible to that party or shall inform the applicant that the requested data do not exist, without undue delay and within six weeks of receipt of the complete application in electronic format. The single information point shall inform the owners or parties otherwise entitled to use the infrastructures of the identity of the requesting party and of the information provided to that party within an appropriate period no later than two weeks from the date on which the minimum information was made accessible.

(3) Network or grid providers as owners or parties otherwise entitled to use infrastructures as referred to in Par. 1 shall, on receipt of a separate written request of the party entitled pursuant to Par. 1, make available any minimum information as specified in Par. 2 that the single information point was unable to make accessible, within two months of receipt of the complete request and for an appropriate fee. Par. 4 first sentence shall apply mutatis mutandis.

(4) The applicant as referred to in Par. 2 shall plausibly demonstrate that the application prerequisites have been met and shall provide details of the area in which co-use pursuant to Art. 60 to 64 is being proposed as well as the proposed schedule. Requests as referred to in Par. 3 shall not be considered requests for granting co-use pursuant to Art. 60 to 64 but can be tied to such requests.

(5) Refusal of access to the minimum information as referred to in Par. 2 and 3 shall be permitted only if necessary for the purpose of ensuring network security and integrity, national security, public health or safety, the confidentiality or the safeguarding of company and trade secrets, or if related to physical infrastructures for which co-use would lead to the risk of an interruption or of irreversible damage that would have an impact on human life or health, or on the maintenance of public peace, order or security, or have serious repercussions for the national economy, or if related to infrastructures for which an ordinance as referred to in Art. 82 Par. 2 has been issued.

(6) Where the response to written applications (Par. 2) contains minimum information that a network or grid provider has designated in accordance with Art. 80 Par. 3 last sentence, the single information point shall issue an official decision on whether to make the data accessible. Each affected network or grid provider is also considered an involved party in procedures.

(7) If the requesting party referred to in Par. 3 and the obligated party do not reach an agreement on access to minimum information, including appropriate fees, within the period specified in Par. 3, any of the involved parties may call upon the regulatory authority for a decision.

Access to minimum information on proposed civil works

Article 72. (1) In order to be able to review the option of coordinating civil works as referred to in Art. 68, network or grid providers that have made data available to the regulatory authority pursuant to Art. 80 are entitled to receive minimum information as referred to in Art. 80 Par. 4 concerning planned civil works involving physical infrastructures. Only providers of a public communications network are, in accordance with the conditions stated in the first paragraph, entitled to receive minimum information designated by a network or grid provider as such pursuant to Art. 80 Par. 4 last sentence.

(2) Except in procedures pursuant to Par. 5 and 6, the single information point as referred to in Art. 80 shall, on receipt of a written request from the party entitled pursuant to Par. 1 or 2, make the minimum information accessible to that party, without undue delay and within six weeks of receipt of the complete application in electronic format. The single point shall further notify that party of the place where the requested minimum information has been made publicly available in electronic format or shall inform the party that the requested data are unavailable. The single information point shall inform the network or grid providers as referred to in Art. 68 Par. 1 of the identity of the requesting party and of the information provided to that party within an appropriate period no later than two weeks from the date on which the minimum information was made accessible.

(3) The network or grid providers as referred to in Art. 68 Par. 1 shall, on receipt of a separate written request from the party entitled pursuant to Par. 1, make available any minimum information that the single information point was unable to make accessible as specified in Par. 2, within two months of

receipt of the complete request and for an appropriate fee, or shall inform that party of the place where the requested minimum information has been made publicly accessible in electronic format. Par. 4 shall apply mutatis mutandis.

(4) The applicant shall plausibly demonstrate that the application prerequisites have been met and shall provide details of the area in which the coordination of civil works is being considered, including the proposed schedule. Requests pursuant to Par. 3 shall not be considered requests for the coordination of civil works within the meaning of Art. 68 but can be tied to such requests.

(5) Refusal of access to the minimum information as referred to in Par. 2 and 3 shall be permitted only if necessary for the purpose of ensuring network security and integrity, national security, public health or safety, the confidentiality or the safeguarding of company and trade secrets, or if related to physical infrastructures for which joint construction management would lead to the risk of an interruption or of irreversible damage that would have an impact on human life or health, or on the maintenance of public peace, order or security, or have serious repercussions for the national economy, or if related to proposed civil works for which an ordinance as referred to in Art. 70 or Art. 82 Par. 2 has been issued.

(6) Where the response to written applications as referred to in Par. 2 contains minimum information that a network or grid provider has designated in accordance with Art. 80 Par. 4 last sentence, the single information point shall issue an official decision on whether to make the data accessible. Each affected network or grid provider is also considered an involved party in procedures.

(7) If the requesting party referred to in Par. 3 and the obligated party do not reach an agreement on access to minimum information, including appropriate fees, within two weeks, then any of the involved parties may call upon the regulatory authority for a decision if at least one of the parties is a provider of a public communications network.

On-site surveys of proposed civil works

Article 73. (1) Network or grid providers shall, on receipt of a written request from a provider of a public communications network who plausibly demonstrates the intention of deploying a high-speed electronic communications network, facilitate a joint on-site survey of elements of their physical infrastructures within one month of receipt of the written request and for an appropriate fee.

(2) The requesting party shall plausibly demonstrate that the conditions for the application have been met and shall provide details of the area in which the deployment of a high-speed electronic communications network is being proposed, including the proposed schedule.

(3) Refusal of on-site surveys shall be permitted only if economically unreasonable or technically unfeasible for the obligated party, if necessary for the purpose of ensuring network security and integrity, national security, public health or safety, the confidentiality or the safeguarding of company and trade secrets, or if related to physical infrastructures for which co-use would lead to the risk of an interruption or of irreversible damage that would have an impact on human life or health, or on the maintenance of public peace, order or security, or have serious repercussions for the national economy, or if related to infrastructures for which an ordinance as referred to in Art. 82 Par. 2 has been issued. The reasons for any refusal are to be presented to the requesting party in writing.

(4) If the requesting party and the obligated party do not reach an agreement on the on-site survey, including appropriate fees, within the period specified in Par. 1, any of the involved parties may call upon the regulatory authority for a decision.

Exercising rights

Article 74. (1) When exercising rights pursuant to Art. 51 to 70, the entitled party shall avoid where possible any disturbance and proceed with the utmost consideration in relation to the properties and objects as well as the systems, lines, other facilities or physical infrastructures used, and the rights of third parties.

(2) The entitled party shall, to the utmost extent possible and at their own expense and particularly during the performance of the works, take steps to safeguard the intended use of the properties and objects as well as the systems, lines, other facilities or physical infrastructures used, and ensure that a faultless condition is restored as soon as possible after termination of the work. Consideration shall be also given to other ongoing or approved works.

Powers of disposition of encumbered parties

Article 75. (1) The rights pursuant to Art. 51 to 70 shall not hinder the encumbered parties from freely disposing of their properties and objects as well as the systems, lines, other facilities or physical infrastructures used (including their modification, development, adding fixtures or other measures). If

such a disposition requires the removal or alteration of a system of the entitled party or could result in damage to the same, then the encumbered party shall inform the entitled party in good time before the work commences (formal notification). The entitled party shall take the necessary precautions in good time, which may include the removal or relocation of their system at their own expense. The entitled party may submit an alternative proposal to the encumbered party. The involved parties shall aim to achieve a mutually agreeable and cost-effective solution.

(2) If the party required to provide notification pursuant to Par. 1 culpably fails to do so in good time and the system or its operation is damaged by the measures taken by the party required to provide notification, the latter shall be liable to pay damages. The encumbered party shall also be liable to pay damages if that party submits a false notification that causes the removal or relocation of a system or if the entitled party proposes an alternative procedure for the planned modification, by means of which the system would have remained unchanged without impairing the intended purpose, and the entitled party further offers to bear any additional costs that the encumbered party would have incurred, and the encumbered party does not respond to such a proposal without good cause. Claims for compensation of this kind are to be heard by the ordinary courts.

(3) If the encumbered party and the entitled party are unable to reach an agreement on any termination of rights pursuant to Art. 51 to 70 as necessitated by a disposition as referred to in Par. 1, on a resulting modification of a system, or on the associated legal consequences, within four weeks after receipt of the notification pursuant to Par. 1, either of the parties involved may call upon the regulatory authority for a decision.

(4) Where the owner or facility manager of a property used for agricultural purposes is required to submit notifications to local authorities or funding bodies, that party shall inform the party entitled to erect the line about the information required by the former not later than upon conclusion of the agreement or, in the case of a procedure heard before the regulatory authority, immediately after the decision by the regulatory authority. Where such information falls within the party's scope of responsibility, the party entitled to erect the line shall provide that information to the owner or manager of the encumbered property before starting work except in the event of imminent danger.

Transfer of rights and obligations

Article 76. (1) Rights pursuant to Art. 51 to 70, together with any associated obligations, shall pass by virtue of law to the respective owner or party entitled to use the communications lines, systems, lines, other facilities or communications lines erected on the basis of those rights, and to the respective owner or party entitled to use the antenna mast or high-voltage mast.

(2) Rights pursuant to Art. 51 to 70 shall be considered effective against every holder of the properties and objects as well as the systems, lines, or other facilities, communications lines or physical infrastructures for which a right of use is claimed.

(3) Rights pursuant to Art. 51 to 70 shall not be subject to registration in the land register, and exercising rights shall not constitute any title to acquisitive prescription or limitation.

(4) Without prejudice to other authorisation or approval requirements, the provider of a public communications network shall be entitled to transfer, in whole or in part, to third parties any rights accruing from Art. 51 to 70 for the construction, maintenance, operation, expansion and replacement of the communications network.

Presentation of contracts, best efforts and sample contracts

Article 77. (1) Agreements on rights and obligations made pursuant to this section are to be submitted to the regulatory authority on substantiated request.

(2) All parties involved shall pursue the objective of enabling and facilitating the use and exercise of rights granted pursuant to this section.

(3) The regulatory authority may use its website to publish samples of contract conditions concerning rights granted pursuant to this section that the authority considers appropriate for the reconciliation of interests.

Procedure

Article 78. (1) If the regulatory authority receives a request pursuant to Art. 52 to 75, the authority shall conduct an arbitration procedure except in cases where all parties to the procedure expressly waive their right to have this procedure conducted. If a mutually agreeable solution is achieved within four weeks, the regulatory authority shall discontinue the procedure.

(2) If no mutually agreeable solution pursuant to Par. 1 is achieved, the regulatory authority shall, without undue delay and following the expiry of the deadline as set in Par. 1, give the respondent the opportunity to issue a statement concerning the request, submit evidence and file requests in a written and verifiable format. On receiving a substantiated request, the regulatory authority may extend this period if necessary by a maximum of two weeks. In its decisions, the regulatory authority shall only consider submissions, evidence and requests received within the allotted period. The regulatory authority shall expressly mention that legal consequence when requesting opinions from the parties.

(3) No changes may be made to the request that initiated the procedure.

(4) The parties shall participate in the arbitration procedure as referred to in Par. 1 and the procedure pursuant to Par. 2, and shall provide all information and submit all documents necessary to assess the facts of the case. In procedures pursuant to Art. 52 to 75, the regulatory authority shall issue a decision without undue delay and no later than six weeks after the expiry of the deadline set in Par. 2. The decision shall replace an agreement to be reached.

(5) The entitled party shall bear the expense of fees owed to any external experts consulted. This expense may be shared in a proportionate manner for reasons of fairness.

Expropriation

Article 79. (1) Expropriation shall be permitted if the installation of a communications line is in the public interest and if the utilisation of rights pursuant to Art. 51 to 67 either fails to achieve the desired objective or could do so only with disproportionate measures.

(2) The installation of a communications line by the provider of a public communications network shall in all cases be considered as being in the public interest.

(3) The least severe measure shall be applied in the case of expropriation. If expropriation means the property is no longer or not reasonably usable for its designated purpose, ownership of the plot to be encumbered shall, at the property owner's request, be transferred to the party entitled to expropriation on payment of appropriate compensation.

(4) If expropriation of a part of the property means the owner would no longer be able to use the property for its designated purpose, the entire property shall, at the owner's request, be expropriated and compensation paid.

(5) In performing the expropriation and calculating the compensation payable by the entitled party to the expropriated party, the regulatory authority shall apply, mutatis mutandis, the provisions of the Federal Roads Act (*Bundesstraßengesetz*) 1971, Federal Law Gazette No. 286/1971. The expropriation of properties used for public railway traffic or air traffic shall require the consent of the railway or aviation authorities.

Single information point for infrastructure data

Article 80. (1) The regulatory authority shall, in accordance with the following provisions, set up, maintain and regularly update a single information point for infrastructure data.

(2) The Federal Minister for Agriculture, Regions and Tourism shall be authorised to make accessible to the regulatory authority any minimum information within the meaning of Par. 3 to 5 that funding applicants report to the ministry in the context of awarding and managing funding for the deployment of communications infrastructures. The regulatory authority may store and process such data, as well as other data reported on a voluntary basis, at the single information point for infrastructure data, and may include the data when responding to enquiries pursuant to Art. 71 and 72 and when allowing viewing pursuant to Art. 81.

(3) Network or grid providers shall make accessible to the regulatory authority their information available in electronic format, such as relates to systems, lines or other facilities that can be used for communications lines, such as entries to buildings, building wiring, masts, antennas, microwave links, towers and other support structures, tubing, ducts, conduits, cable ducts, maintenance holes and junction boxes, including physical infrastructure. This information shall comprise the location and route, the type and current use of the infrastructures, as well as a contact point (minimum information). Network or grid providers holding in a non-electronic format information concerning systems, lines or other facilities that can be used for communications lines shall make this information accessible to the regulatory authority in electronic format without undue delay following the entry into force of this Federal Act. When reporting the information, the network or grid providers can designate those locations and routes for which co-use would lead to the risk of an interruption or of irreversible damage that would have an impact on human life or health, or on the maintenance of public peace, order or security, or have serious repercussions for the national economy.

(4) Network or grid providers who are directly or indirectly planning civil works on their physical infrastructures and who envisage applying for an initial permit within the next six months or, if no permit is required, envisage starting these works, shall make accessible to the regulatory authority minimum information concerning these civil works, specifically the location and type of the works, the network elements affected, the planned starting date and duration of the civil works, as well as a contact point, or shall provide the regulatory authority with details of where the requested minimum information has been made publicly accessible in electronic format. When reporting the information, network or grid providers can designate those network elements for which joint construction management would lead to the risk of an interruption or of irreversible damage that would have an impact on human life or health, or on the maintenance of public peace, order or security, or have serious repercussions for the national economy.

(5) The obligated parties pursuant to Par. 3 to 4 shall make accessible to the regulatory authority information about updated and new elements of the specified infrastructures within two months of the availability of this information, on the last day of the current quarter. The regulatory authority may extend this deadline by no more than one month on receipt of a substantiated request and if necessary to ensure the reliability of the information provided. Par. 3 third sentence shall apply mutatis mutandis.

(6) The regulatory authority shall use systems reflecting the current state of technology to protect from access by unauthorised parties any data made accessible pursuant to Par. 2 to 5. The regulatory authority is entitled to use the data received pursuant to Par. 2 to 5 to generate statistical analyses and to publish such analyses in a suitable format. The regulatory authority shall take steps to ensure that the publication of these statistics does not disclose any trade secrets.

Viewing data at the single information point for infrastructure data

Article 81. (1) Network or grid providers who are required to make information accessible to the regulatory authority pursuant to Art. 80 Par. 3 to 5 are entitled to view a current list of the identity of the network providers who have reported civil works in a specific area pursuant to Art. 80 Par. 4, as well as the duration of said works in a list format.

(2) The Federal Minister for Agriculture, Regions and Tourism may, for the purposes of processing earmarked contributions pursuant to Art. 3, provide the regulatory authority with details of authorised representatives who are entitled to view the minimum information made accessible to the regulatory authority pursuant to Art. 80 Par. 2 to 5. Such authorisation does not extend to viewing information about network elements designated pursuant to Art. 80 Par. 3 last sentence or Art. 80 Par. 4 last sentence.

(3) Internal experts appointed by the regulatory authority are entitled to view the minimum information made available to the regulatory authority pursuant to Art. 80 Par. 2 to 5, in order to verify the details supplied by parties in the course of authoring a commissioned expert opinion. Such authorisation does not extend to viewing information about network elements designated pursuant to Art. 80 Par. 3 last sentence or Art. 80 Par. 4 last sentence.

Ordinances relating to the single information point for infrastructure data

Article 82. (1) The regulatory authority shall issue an ordinance specifying detailed provisions governing the procedures, in particular concerning the type, structure and data format of the information to be made accessible to the authority pursuant to Art. 80 Par. 3 to 5, and concerning queries about these data as referred to in Art. 71 and 72 and inspections as referred to in Art. 81. In doing so, the regulatory authority shall consider the objectives specified in Art. 1 as well as the provision in Art. 209. Before an ordinance as specified in this paragraph is issued, the interested parties shall be given the opportunity to submit opinions.

(2) For infrastructures that cannot be used for communications lines or are not technically suited for the deployment of high-speed electronic communications networks, and for proposed civil works classified as minor in terms of value, scope or duration, the regulatory authority may issue an ordinance to stipulate exemptions from the obligations laid down in Art. 80 Par. 3 to 5. Before an ordinance as specified in this paragraph is issued, the interested parties shall be given the opportunity to submit opinions. All such exemptions are to be notified to the European Commission.

Single information point for permits

Article 83. As the single information point for permits, the regulatory authority shall publish on its website general information about the conditions and procedures for issuing permits for civil works necessary for the deployment of elements of high-speed electronic communications networks, including any information about exemptions to otherwise necessary permit requirements that apply to such elements, and shall update this information on a regular basis.

Geographical surveys of broadband coverage levels

Article 84. (1) The regulatory authority shall obtain information about broadband coverage levels in accordance with the following provisions, and shall make such information available to the Federal Minister for Agriculture, Regions and Tourism for the purposes of publication and the creation of funding maps. The regulatory authority shall be entitled to use the data so obtained to generate statistical analyses and to publish those analyses in a suitable format. For data other than publicly available data about broadband coverage levels, the regulatory authority shall take steps to avoid disclosing company and trade secrets.

(2) At the end of each quarter, operators of public communications networks and providers of public communications services shall make information accessible to the regulatory authority about their current and envisaged broadband coverage for each area, and private-sector network deployment plans in particular, in electronic format. This information shall, at the level of the geographic units used, include details of the technology used, the reach, the service quality and the parameters thereof as well as the usage rate. The regulatory authority shall be authorised to verify the information about broadband coverage that is made accessible, drawing in particular on the data at its disposal pursuant to Art. 80.

(3) The regulatory authority shall issue an ordinance specifying detailed provisions governing the procedures, in particular concerning the type, structure and data format of the information to be made accessible to the authority pursuant to Par. 2. The regulatory authority shall specify for that forecast an appropriate period not exceeding three years. Before an ordinance as specified in this paragraph is issued, the procedure as referred to in Art. 206 shall be conducted.

(4) The regulatory authority shall take into account the collected broadband coverage data, particularly when conducting procedures for market definition and market analysis pursuant to Art. 87, when specifying coverage obligations linked to rights of use for radio spectrum pursuant to Art. 16 Par. 11 No. 2 and when monitoring the availability of services that are governed by the universal service obligation pursuant to Art. 106.

(5) The Federal Minister for Agriculture, Regions and Tourism may, at regular intervals not exceeding three years, publish more detailed information about an area with clear territorial boundaries, where it is determined that, for the duration of the relevant forecast period, no private-sector undertaking has deployed or is planning to deploy a very high capacity network, or significantly upgrade or extend its network to a level of performance offering download speeds of at least 100 Mbps.

(6) For an area designated according to Par. 5, the Federal Minister for Agriculture, Regions and Tourism may instruct the regulatory authority to invite undertakings and public authorities to declare their intention to deploy very high capacity networks over the duration of the relevant forecast period. Where such an invitation results in a declaration by an undertaking or public authority of its intention to do so, the Federal Minister for Agriculture, Regions and Tourism may instruct the regulatory authority to require other undertakings and public authorities to declare any intention to deploy very high capacity networks, or significantly upgrade or extend their networks to a level of performance offering download speeds of at least 100 Mbps in this area. The regulatory authority shall specify the information to be included in such submissions, and shall also inform any undertaking or public authority expressing its interest whether the designated area is covered or likely to be covered by a next-generation access network offering download speeds of less than 100 Mbps.

(7) The Federal Minister for Agriculture, Regions and Tourism shall make available to end users in an easily accessible format information about the broadband coverage of areas, so that users can determine the availability of network connections in various areas at a level of detail that is suitable for aiding them in their selection of a service provider.

Cooperative arrangements relating to active network elements

Article 85. (1) A cooperative arrangement relating to an active network element means an agreement between providers of public communications networks that is used for the public offering of mobile communications services, or which concerns the sharing of active network elements or access to the functionality offered by active network elements. As used in this provision, ‘active network elements’ means elements that are operated using electrical power, and which are deployed for the generation, processing and amplification of signals, and for network control.

(2) Providers as referred to in Par. 1 are, in accordance with the following provisions, entitled to enter into cooperative arrangements relating to active network elements where such do not oppose in particular the regulatory aims set out in Art. 1 Par. 3 No. 4 and 5 or the provisions of competition law.

(3) Providers as referred to in Par. 1 shall notify to the regulatory authority any intended agreements on cooperative arrangements relating to active network elements, providing the full wording as well as

any and all other relevant enclosures, before the conclusion and implementation of the agreement. Upon receipt of such an agreement, the regulatory authority shall act without undue delay to give the Federal Competition Authority (*Bundeswettbewerbsbehörde*) and the Federal Public Attorney for Cartel Matters (*Bundeskartellanwalt*) an opportunity to issue opinions on the notified drafts within a period of four weeks.

(4) Within four weeks of the expiry of the deadline stated in Par. 3 last sentence, the regulatory authority shall decide whether, in consideration of the regulatory aims stated in Par. 2 and Art. 210, a more detailed review of the agreement pursuant to Par. 3 is required. In making that decision, the regulatory authority shall take utmost account of the opinions supplied pursuant to Par. 3 by the Federal Competition Authority and the Federal Public Attorney for Cartel Matters. Decisions issued pursuant to this paragraph shall be notified without undue delay to the providers referred to in Par. 1 who notified that agreement, the Federal Competition Authority and the Federal Public Attorney for Cartel Matters. No separate appeals are permissible against decisions issued pursuant to this paragraph.

(5) If the regulatory authority decides pursuant to Par. 4 that a more detailed review is not necessary, the agreement is considered to be approved pursuant to Par. 3 in the format as notified in that paragraph and the regulatory authority shall not be entitled to submit an application to the Court for Cartel Matters pursuant to Art. 36 Par. 4 No. 2 of the Cartels Act (*Kartellgesetz*) 2005 on account of the circumstances underlying the notified agreement.

(6) If the regulatory authority decides pursuant to Par. 4 that a more detailed review of the agreement notified pursuant to Par. 3 is necessary, the authority shall complete the review within four months after the decision issued pursuant to Par. 4. In completing its review, the regulatory authority shall take utmost account of the opinions supplied pursuant to Par. 3 by the Federal Competition Authority and the Federal Public Attorney for Cartel Matters. If the notified agreement raises no concerns as referred to in Par. 2 and Art. 210, also considering any other restrictions or conditions as may have been imposed, the agreement shall be approved, with restrictions or conditions being imposed as appropriate. If that notified agreement raises concerns as referred to in Par. 2 or Art. 210 that cannot be resolved by the imposition of restrictions or conditions, the conclusion and implementation of the notified agreement shall be prohibited. All of the providers considered as potential parties to the notified agreement pursuant to Par. 1 are considered to be involved parties in procedures pursuant to this paragraph. Decisions issued pursuant to this paragraph by the regulatory authority shall be notified to the Federal Competition Authority and the Federal Public Attorney for Cartel Matters.

(7) Agreements on cooperative arrangements relating to active network elements that have not been notified to the regulatory authority pursuant to Par. 3 or which have been prohibited pursuant to Par. 6 are considered null and void and must not be implemented.

Section 8

Regulation of competition

Undertakings with significant market power

Article 86. (1) An undertaking shall be deemed to have significant market power if, either individually or jointly with others, it enjoys a position equivalent to dominance, namely a position of economic strength affording it the power to behave to an appreciable extent independently of competitors, customers and ultimately users.

(2) Where an undertaking has significant market power on a specific market, it may also be designated as having significant market power on a market that is closely related horizontally, vertically or geographically, where the links between the two markets allow the market power held on the specific market to be leveraged into the closely related market, thereby strengthening the market power of the undertaking.

Market definition and market analysis procedure

Article 87. (1) The purpose of this procedure is to identify the relevant markets subject to sector-specific regulation and to determine whether one or more undertakings have significant market power or whether effective competition prevails on those markets, and whether specific obligations are to be imposed, amended or withdrawn.

(2) In procedures pursuant to Par. 1, the regulatory authority shall, by virtue of office, issue official decisions identifying the relevant markets subject to sector-specific regulation according to national circumstances and in accordance with the principles of general competition law, while considering any

special geographical circumstances relating to the competitive situation as well as the requirements of sector-specific regulation.

(3) In identifying the relevant markets, the regulatory authority shall take into account the provisions of the European Union. Accordingly, only those markets are to be considered: that are characterised by high and non-transitory structural, legal or regulatory barriers to entry; that do not tend towards effective competition in the long term; and on which the application of general competition law alone is not sufficient to remedy the particular market failure.

(4) In procedures pursuant to Par. 1, the regulatory authority shall also carry out an analysis of the markets in accordance with Par. 2 with due attention to the provisions of the European Union.

(5) Where conducting the market definition and analysis procedure, the regulatory authority shall consider developments from a forward-looking perspective in the absence of regulation imposed on the basis of this section in that relevant market, and taking into account all of the following:

1. market developments affecting the likelihood of the relevant market tending towards effective competition;
2. all relevant competitive constraints, at the wholesale and retail levels, irrespective of whether the sources of such constraints are considered to be communications networks, electronic communications services, or other types of services or applications which are comparable from the perspective of the end user, and irrespective of whether such constraints are part of the relevant market;
3. other types of regulation or measures imposed and affecting the relevant market or related retail market or markets throughout the relevant period;
4. any regulation imposed on other relevant markets.

(6) For the procedure pursuant to Par. 1, the procedure pursuant to Art. 207 is to be initiated within five years from the adoption of a previous measure relating to that market. This period may be extended by three additional years where the regulatory authority submits a reasoned proposal for extension to the European Commission at the latest four months before expiry of the five-year period and where the European Commission does not object within one month of submission.

(7) For the procedure pursuant to Par. 1, by way of derogation from Par. 6, with regard to those markets for which the European Commission has not received prior notification in accordance with Art. 207, the procedure pursuant to Art. 207 must be initiated within three years after the adoption of a revised Commission Recommendation on relevant product and service markets within the electronic communications sector.

(8) After expiry of the time limits specified in Par. 6 and 7, the regulatory authority may request BEREC to provide assistance with the analysis of the specific market and the specific obligations to be imposed. In the foregoing case, the draft measure is to be coordinated in accordance with Art. 207 within six months.

Transnational markets and demand

Article 88. (1) If transnational markets have been defined in accordance with Art. 65(1) of Directive (EU) 2018/1972, the regulatory authority shall participate in the procedure in accordance with Art. 65(2) of Directive (EU) 2018/1972. In doing so, it shall work towards mutual agreement as to whether specific obligations pursuant to Art. 91 to 96, 98 and 101 are to be imposed, maintained, amended or revoked. The regulatory authority shall participate in any coordination procedure pursuant to Art. 207.

(2) Even where no transnational markets exist, the regulatory authority may conduct a possible coordination procedure pursuant to Art. 207 jointly with the national regulatory authority of another Member State if they consider the market conditions in their respective jurisdictions to be sufficiently homogeneous.

(3) The regulatory authority is entitled, together with the national regulatory authority of at least one other Member State, to jointly request BEREC to carry out an analysis of transnational end-user demand for products and services offered in one or more of the markets within the European Union as listed in the Recommendation.

Imposition, amendment or withdrawal of specific obligations

Article 89. (1) Where in a procedure pursuant to Art. 87 Par. 1 the regulatory authority identifies one or more undertakings as having significant market power on the relevant market and subsequently concludes that effective competition does not prevail, the regulatory authority shall impose appropriate specific obligations pursuant to Art. 91 to 96, 98, 99, 103 and 104 while considering the principle of

proportionality. Depending on the outcome of the procedure, the regulatory authority shall reimpose, amend or specific obligations previously imposed on undertakings while considering the regulatory objectives.

(2) Where the regulatory authority determines on the basis of the procedure pursuant to Art. 87 Par. 1 that a market previously defined as subject to sector-specific regulation is no longer a relevant market, or that effective competition now prevails on a relevant market and therefore no undertaking has significant market power, the regulatory authority must not impose any obligations under Par. 1; in this case, the regulatory authority shall issue an official decision stating that effective competition prevails on the relevant market. Where undertakings are still subject to specific obligations on this market, they are to be withdrawn by way of an official decision. The official decision shall also specify a reasonable period not exceeding one year, after which the withdrawal shall take effect.

(3) The regulatory authority shall monitor and review compliance with the obligations imposed pursuant to Art. 91 to 96 and, if necessary, take action pursuant to Art. 184.

(4) The regulatory authority shall monitor the markets for electronic communications while considering the impact of new market developments, such as in relation to commercial agreements influencing competitive dynamics. Where market developments are not significant enough to require a new market analysis pursuant to Art. 87, the regulatory authority shall review the specific obligations imposed on an undertaking with significant market power and, where appropriate, amend its previous decision in order to further ensure that the obligations are appropriate and proportionate. Such amendments shall be subject to the procedures pursuant to Art. 206 and 207.

Fundamentals of procedures

Article 90. (1) As part of the procedure under Art. 87, the Federal Competition Authority (*Bundeswettbewerbsbehörde*) as well as the Federal Public Attorney for Cartel Matters (*Bundeskartellanwalt*) shall be given the opportunity to submit opinions on the draft enforcement measure pursuant to Art. 206.

(2) In procedures pursuant to Art. 87 to 89, the undertaking in relation to which specific obligations are imposed, amended or withdrawn shall in any case be a party to the procedure.

(3) In procedures pursuant to Art. 87 to 89, parties who have plausibly demonstrated that in accordance with Art. 202 they are affected by the procedure shall also be parties to the procedure.

(4) Where the regulatory authority schedules oral negotiations by issuing an official bulletin, that official announcement must contain the information specified under Art. 44(d) Par. 2 of the General Administrative Procedure Act (*Allgemeines Verwaltungsverfahrensgesetz,* AVG) as well as a notice of the legal consequences in accordance with Art. 42 Par. 1 of that Act.

(5) The regulatory authority shall publish official decisions issued pursuant to Art. 87 Par. 2 and 4 or Art. 89 Par. 1 and 2 and submit copies to the European Commission.

(6) The regulatory authority shall notify the European Commission of the undertakings designated as having significant market power, the specific obligations imposed upon them and any modifications thereto.

Transparency obligation

Article 91. (1) The regulatory authority may impose obligations of transparency in relation to access on undertakings with significant market power.

(2) Accordingly, without prejudice to the provisions under Art. 181, the regulatory authority may require undertakings with significant market power to make public the following information in particular:

1. Information about accounting and cost calculation;
2. prices;
3. technical specifications;
4. network characteristics and expected developments thereof;
5. terms and conditions for provision and use;
6. key performance indicators and corresponding performance levels;
7. any conditions altering access to or use of services and applications, in particular with regard to migration from legacy infrastructures.

(3) The regulatory authority may define the specific information to be published by the undertaking with significant market power, including in particular the target group, the level of detail and the manner of publication.

(4) The regulatory authority may require an undertaking with significant market power to publish a reference offer. In the reference offer, the undertaking shall offer adequately detailed subservices, break down the relevant offerings into components according to market needs and detail the associated terms and conditions including fees. Reference offers must be submitted to the regulatory authority.

(5) Where an obligation is imposed on an undertaking with significant market power pursuant to Art. 95 concerning access to and use of specific network elements and associated facilities, or pursuant to Art. 94 concerning access to civil engineering assets, the regulatory authority shall also impose an obligation pursuant to Par. 4, specifying minimum criteria.

(6) The regulatory authority may order changes to reference offers in order to ensure the effectiveness of specification obligations imposed.

Equal treatment obligation

Article 92. (1) The regulatory authority may impose obligations of equal treatment in relation to access on undertakings with significant market power.

(2) Obligations of equal treatment shall ensure, in particular, that an undertaking with significant market power applies equivalent conditions in equivalent circumstances to other undertakings providing equivalent services, and provides services and information to others under the same conditions and of the same quality as it provides for its own services, or those of affiliated or third-party undertakings.

(3) The regulatory authority may impose on undertakings obligations to supply access products and services to all undertakings, including to themselves, on the same timescales, terms and conditions, including those relating to price and service levels, and by means of the same systems and processes, in order to ensure equivalence of access.

Accounting separation obligation

Article 93. (1) The regulatory authority may impose on undertakings with significant market power obligations for accounting separation in relation to specified activities related to interconnection or access.

(2) To this end, in particular a vertically integrated company may be required to make transparent and reproducible its wholesale prices and its internal transfer prices. The regulatory authority may specify the format and the accounting methodology to be used, including the level of detail and the manner in which the information is to be made available.

(3) Without prejudice to the provisions under Art. 181, the regulatory authority may request accounting and cost calculation records, including all associated information and documents, to be provided in the manner and format prescribed. The regulatory authority may publish such information, while safeguarding any trade secrets, to the extent required to promote competition.

Obligation to allow access to civil engineering assets

Article 94. (1) The regulatory authority may require undertakings with significant market power to meet requests for access to, and use of, civil engineering assets. Such an obligation may be imposed irrespective of whether the assets that are affected by the obligation are part of the relevant market.

(2) Access to civil engineering assets include buildings or entries to buildings, building cables, including wiring, antennas, towers and other supporting constructions, poles, masts, ducts, conduits, inspection chambers, maintenance holes and cabinets.

Obligation to allow access to and use of defined network elements and associated facilities

Article 95. (1) The regulatory authority may require undertakings with significant market power to meet requests for access to, and use of, specific network elements and associated facilities.

(2) The obligation pursuant to Par. 1 may include the following in particular:

1. to allow access to, and use of, specific physical network elements and associated facilities, as appropriate, including unbundled access to the local loop and sub-loop;
2. to allow access to specific active or virtual network elements and services;
3. to negotiate in good faith with undertakings requesting access;
4. to not withdraw previously granted access to facilities;
5. to provide specified services on a wholesale basis for resale by third parties;

6. to grant open access to technical interfaces, protocols or other key technologies that are indispensable for the interoperability of services or virtual network services;
7. to enable co-location or other forms of associated facility sharing;
8. to provide specific services needed to ensure interoperability of end-to-end services to users, or roaming on mobile networks;
9. to interconnect networks or network facilities;
10. to provide access to associated services such as identity, location and presence service.

(3) In imposing the obligations pursuant to Par. 2 the regulatory authority shall especially consider:

1. the technical and economic viability of using or installing competing facilities, in the light of the rate of market development, taking into account the nature and type of interconnection and access involved, including the viability of other upstream access products such as access to ducts;
2. the expected technological evolution affecting network design and management;
3. the need to ensure technology neutrality enabling end users to design and manage their own networks;
4. the feasibility of providing access, in relation to the capacity available;
5. the initial investment by the facility owner, taking account of any public investment made and the risks involved in making the investment, with particular regard to investments in, and risk levels associated with, very high capacity networks;
6. the need to safeguard competition in the long term, with particular attention to economically efficient infrastructure-based competition and innovative business models that support sustainable competition;
7. any industrial property rights or intellectual property rights;
8. the provision of pan-European services.

(4) Prior to imposing an obligation pursuant to Par. 1 and 2, the regulatory authority shall review whether imposing obligations pursuant to Art. 94 would be a more proportionate means of promoting competition and the interests of end users.

(5) Where an operator is required to provide access pursuant to Par. 1 and 2, the regulatory authority may lay down technical or operational conditions to be met by the provider or the users of such access, where necessary to ensure normal operation of the network.

Price control and cost calculation with regard to access

Article 96. (1) The regulatory authority may impose obligations on undertakings with significant market power with regard to specified types of access concerning cost recovery and charge control, including cost-related charges. To do so, the regulatory authority must first determine through a procedure pursuant to Art. 87 that:

1. an undertaking with significant market power could sustain prices at an excessively high level, or could apply a price squeeze, to the detriment of end users;
2. there is no demonstrable downward pressure on retail prices; and
3. the obligations imposed in accordance with Art. 91 to 95, including in particular an obligation for economic replicability, do not ensure effective and non-discriminatory access.

(2) In the case of an obligation pursuant to Par. 1 the regulatory authority shall consider:

1. the need to promote competition and the long-term interests of end users with regard to the deployment and use of next-generation networks, in particular very high capacity networks;
2. the operator’s investment, including in next-generation networks;
3. the benefits associated with stable and predictable wholesale prices, with a view to enabling efficient market entry for all undertakings and providing sufficient incentives to deploy new and enhanced networks.

(3) The regulatory authority shall make possible an appropriate return on invested capital, taking into account the risks involved and future market developments.

(4) Where an undertaking with significant market power has an obligation relating to the cost orientation of its prices, the burden of proof that charges are derived from costs including a reasonable rate of return on investment shall lie with the undertaking concerned. For the purpose of calculating the cost of efficient service provision, the regulatory authority may use cost accounting methods independent of those used by the undertaking concerned. The regulatory authority may require an undertaking with significant market power to provide full justification for its prices, and may, where appropriate, require

charges to be adjusted. The regulatory authority may also take into account prices applicable in comparable markets open to competition.

(5) The regulatory authority shall ensure that, where implementation of a cost accounting method by an undertaking with significant market power is mandated, a description of the cost accounting method is made publicly available, showing the main categories under which costs are grouped and the rules used for the allocation of costs. The regulatory authority or a qualified independent body commissioned by the regulatory authority shall verify compliance with the cost accounting method annually. The regulatory authority shall publish the outcome of the verification.

Termination rates

Article 97. (1) No mobile or fixed termination service provider shall charge more than the Union-wide uniform maximum mobile or fixed termination rate set by the European Commission in accordance with Art. 75 of Directive (EU) 2018/1972 for the respective mobile or fixed termination service for voice communications.

(2) Where no maximum mobile or fixed termination rate or neither of these maximum rates has been set by the European Commission, in carrying out any market analyse of the call termination markets as referred to in Art. 87 and 89 as the basis for the planned setting of termination rates, the regulatory authority shall be guided by the principles, criteria and parameters set out in Annex III to Directive (EU) 2018/1972.

(3) The regulatory authority shall monitor the application of the Union-wide termination rates by termination service providers and ensure compliance with the rates. If the regulatory authority determines that the termination rates charged do not comply with the provisions of Par. 1 or 2, the authority shall order the termination service provider to restore legal compliance.

(4) The regulatory authority shall report annually to the European Commission and BEREC on the application of this provision.

Cooperation, co-investments and access

Article 98. (1) Undertakings that have been designated or are very likely to be designated as having significant market power may offer commitments to the regulatory authority regarding the terms and conditions of cooperation, co-investment or access in force for their networks.

(2) Commitments offered in accordance with Par. 1 may relate to matters including:

1. cooperation agreements;
2. co-investments for the deployment of a new very high capacity network consisting of optical fibre elements up to end user premises or the base station;
3. effective and non-discriminatory access for third parties in accordance with Art. 100;
4. existing or new wholesale offers.

(3) The commitments offered shall be sufficiently detailed, in particular with regard to the timing, the scope of implementation as well as duration, to enable the regulatory authority to fully assess the commitments. In its assessment, the regulatory authority shall take into account in particular:

1. the overall adequacy of the commitments offered to enable sustainable competition on downstream markets and to facilitate cooperative deployment and take-up of very high capacity networks in the interest of end users;
2. the openness of the commitments to all market participants;
3. the timely availability of access on fair, reasonable and non-discriminatory conditions.

(4) Obligations in accordance with Par. 1 may extend beyond the time periods for conducting market analyses as defined in Art. 87 Par. 6.

(5) Commitments for co-investments (Par. 2 No. 2) must comply with the following conditions:

1. the offer for co-investment shall be open to operators and providers at any time during the lifetime of the network;
2. the offer for co-investment shall allow other co-investors who are operators or suppliers to compete effectively and sustainably over the long term in the downstream markets in which the undertaking with significant market power operates, on conditions which shall include:
   a) fair, reasonable and non-discriminatory conditions allowing access to the full capacity of the network to the extent that it is subject to co-investment;
   b) flexibility in terms of the value and timing of the participation of each co-investor;
   c) the possibility of increasing such participation in future; and

d) reciprocal rights awarded by the co-investors after the deployment of the co-financed infrastructure.

3. The undertaking shall publish the offer in good time and, where not an undertaking operating exclusively at the wholesale level as referred to in Art. 101, at the latest six months before beginning deployment of the new network elements; that period may be extended;
4. access seekers not participating in the co-investment shall be able from the outset to benefit from the same quality, speed and conditions and end-user reach as were available before the deployment, subject to the addition of a mechanism of adaptation over time confirmed by the regulatory authority, taking into account developments in the relevant retail markets, to maintain the incentives to participate in the co-investment;
5. it shall at least comply with the criteria set out in Annex IV to Directive (EU) 2018/1972;
6. there shall be no indication of the co-investment offer being made in misuse of market power.

(6) Where the commitments offered comply with the requirements set out in the previous paragraphs, the regulatory authority shall conduct a public consultation on the commitments offered.

(7) Taking into account the views expressed in the consultation and the assessment in accordance with Par. 3 and 5, the regulatory authority shall communicate to the undertaking that has offered commitments pursuant to Par. 1 a preliminary assessment of whether the commitments offered meet the objectives of this provision and under what conditions the authority may consider making the commitments binding. The undertaking may amend its initial offer to take the regulatory authority's preliminary assessment into account.

(8) The regulatory authority shall, after consultation and most careful consideration of the opinion of the Federal Competition Authority, declare the commitments offered to be binding, in whole or in part, for a specified period of time, to the extent that the objectives of this provision are thereby achieved. The regulatory authority shall assess the effects of this decision on market developments as well as the appropriateness of the specific obligations the authority has imposed or would have imposed pursuant to Art. 91 to 96.

(9) If the regulatory authority comes to the conclusion that the offered obligation for co-investments (Par. 2 No. 2) fulfils the conditions defined in Par. 5, the authority shall declare that obligation binding and shall not impose any additional obligations pursuant to Art. 91 to 96 with regard to the elements of the new very high capacity network affected by the obligations. The foregoing shall apply on condition that at least one potential co-investor has entered into a co-investment agreement with the undertaking with significant market power.

(10) Without prejudice to Par. 9, the regulatory authority may impose, maintain or amend specific obligations pursuant to Art. 91 to 96 in relation to the new very high capacity networks if the authority determines that significant competition problems due to the specific characteristics of those markets would not otherwise be resolved.

(11) The regulatory authority shall monitor, review and ensure compliance with the obligations declared to be binding. In connection with binding obligations relating to co-investments (Par. 2 No. 2), the regulatory authority may require the undertaking with significant market power to submit annual declarations of conformity. An extension of the period for which the obligation has been declared binding shall be permissible.

(12) Decisions on obligations shall be subject to the procedures defined in Art. 206 and 207.

Functional separation

Article 99. (1) Where the regulatory authority in a procedure in accordance with Art. 87 and 89 conclude that the regulatory obligations imposed in accordance with Art. 91 to 96 have failed to achieve effective competition and that important competition problems or market failures persist on those markets, the regulatory authority may, as an exceptional measure, impose an obligation on vertically integrated undertakings with significant market power on those markets to place activities related to the wholesale provision of the relevant access products to a business entity operating independently. The purpose of that business entity is to supply all access products and services to all undertakings, including to other business entities within the parent company, on the same timescales, terms and conditions, in particular in relation to prices and service levels, and by means of the same systems and processes.

(2) When intending to impose an obligation pursuant to Par. 1 on an undertaking, the regulatory authority is to submit to the European Commission a request that includes the following content:

1. evidence justifying the conclusions of the regulatory authority as referred to in Par. 1;

2. a reasoned assessment that there is no or little prospect of effective and sustainable competition on the relevant markets for wholesale access products within a reasonable time-frame;
3. an analysis of the expected impact on the regulatory authority, on the undertaking in question, in particular on its workforce and on the electronic communications sector as a whole, and on incentives to invest therein, in particular with regard to the need to ensure social and territorial cohesion, and on other stakeholders including, in particular, the expected impact on competition and any potential effects on consumers;
4. an analysis of the reasons justifying that this obligation would be the most efficient means to enforce remedies aimed at addressing the competition problems or market failures identified.

(3) Together with the request in accordance with Par. 2, the regulatory authority is to submit to the European Commission a draft measure that includes the following content:

1. the precise nature and level of separation, specifying in particular the legal status of the separate business entity;
2. an identification of the assets of the separate business entity, and the products or services to be supplied by that entity;
3. the governance arrangements to ensure the independence of the staff employed by the separate business entity, and the corresponding incentive structure;
4. rules for ensuring compliance with the regulatory obligations;
5. rules for ensuring transparency of operational procedures, in particular towards the other interest groups;
6. a monitoring programme to ensure compliance, including the publication of an annual report.

(4) The decision of the European Commission shall serve as the basis for the regulatory authority's decision on the draft measure. If the European Commission approves the request, the regulatory authority shall subsequently perform in accordance with Art. 87 a coordinated analysis of the relevant markets concerned, in which the existing regulatory obligations pursuant to Art. 91 to 96 shall be reimposed, amended or withdrawn depending on the outcome of the analysis.

Voluntary functional separation

Article 100. (1) Undertakings which have been identified as having significant market power on one or more relevant markets shall inform the regulatory authority at least three months before any intended transfer of their local access network assets or a substantial part thereof to a separate legal entity under different ownership, or any intended establishment of a separate business entity, in order to provide all demand-side parties, including its own retail divisions, with fully equivalent access products. The regulatory authority shall also be informed in advance of any changes to this intention and of the final outcome of the separation process.

(2) Pursuant to Art. 87 and 89 and taking into account the planned transaction as well as any commitments offered pursuant to Art. 98, the regulatory authority shall subsequently perform a coordinated analysis of the relevant markets concerned, in which the existing regulatory obligations pursuant to Art. 91 to 96 shall be reimposed, amended or withdrawn depending on the outcome of the analysis.

Wholesale-only undertakings

Article 101. (1) Where an undertaking which is not active on any retail market for communications services is designated as having significant market power on one or more wholesale markets pursuant to Art. 87 and 89, the regulatory authority shall assess whether the undertaking has the following characteristics:

1. all companies and business units within the undertaking, all companies that are controlled by the same ultimate owner, and any shareholder capable of exercising control over the undertaking, do not have activities in any retail market for communications services provided to end users in the Union;
2. the undertaking is not bound to deal with a single and separate undertaking operating downstream that is active in any retail market for communications services provided to end users.

(2) If the regulatory authority concludes that the conditions defined in Par. 1 are met, the authority may impose on that undertaking obligations only in accordance with Art. 92 and 95 or relative to fair and reasonable pricing where justified on the basis of a market analysis.

(3) Undertakings subject to obligations as referred to in Par. 2 shall inform the regulatory authority without delay of any changes in the characteristics defined in Par. 1 No. 1 and No. 2.

(4) The regulatory authority shall review obligations imposed on the undertaking in accordance with Par. 2 if it is ascertained that the conditions pursuant to Par. 1 are no longer met or that, based on the conditions offered by the undertaking, competition issues have arisen or are likely to arise to the detriment of end users. In the latter case, the regulatory authority shall conduct a procedure pursuant to Art. 89.

Migration from legacy infrastructure

Article 102. (1) Undertakings which pursuant to Art. 87 have been designated as having significant market power in one or several relevant markets shall notify the regulatory authority in advance and in a timely manner of any intention to decommission or replace with a new infrastructure parts of the communications network that are subject to obligations pursuant to Art. 91 to 96, 98, 99 and 101.

(2) Notification in accordance with Par. 1 shall provide for a transparent timetable and conditions, including an appropriate notice period for transition. The regulatory authority shall establish the availability of alternative products of at least comparable quality that allow access to the upgraded network infrastructure, to the extent required to safeguard competition and the rights of end users.

(3) With regard to assets which are proposed for decommissioning or replacement, the regulatory authority shall withdraw the specific obligations after having ascertained that the undertaking in accordance with Par. 1:

1. has established the appropriate conditions for migration, including making available an alternative access product of at least comparable quality as was available using the legacy infrastructure, enabling the access seekers to reach the same end users; and
2. has complied with the conditions and procedure notified to the national regulatory authority pursuant to Par. 1 and 2.

(4) Before any specific obligations are withdrawn, the procedures pursuant to Art. 206 and 207 must be carried out.

Regulatory control of retail services

Article 103. (1) Where the regulatory authority ascertains in procedures pursuant to Art. 87 and 89 that no competition prevails on a relevant retail market and that specific obligations pursuant to Art. 91 to 96 would not lead to the achievement of the aims specified in Art. 1, the regulatory authority shall impose specific obligations in accordance with Par. 2 or 3 on undertakings with significant market power on a retail market.

(2) Specific obligations as referred to in Par. 1 may include in particular requirements prohibiting that undertaking from:

1. charging excessive prices;
2. inhibiting entry of new market players;
3. applying dumping prices;
4. showing undue preference to specific end users;
5. bundling services in unreasonable form.

(3) Specific obligations as referred to in Par. 1 that the regulatory authority may impose on such an undertaking may also include appropriate retail price cap measures, measures to control individual tariffs or to orient tariffs towards costs or prices on comparable markets.

(4) Undertakings subject to specific obligations as referred to in Par. 1 to 3 shall accordingly implement cost accounting systems for which the regulatory authority may specify the format and accounting methodology to be used. The regulatory authority or a qualified independent body commissioned by the regulatory authority shall verify compliance with the cost calculation method. The regulatory authority shall ensure that a statement concerning compliance with these regulations is published once a year.

Additional obligations

Article 104. The regulatory authority may, in exceptional circumstances, impose obligations relating to access other than those set out in Art. 91 to 96, 98 and 99 on undertakings with significant market power. When doing so, the regulatory authority must submit a request to this effect to the European Commission. The decision of the European Commission shall serve as the basis for the regulatory authority’s decision.

Interconnection

Article 105. (1) Every operator of a public communications network shall be under the obligation to make an offer for interconnection to other operators on request. All parties involved shall strive to achieve an agreement with the objective of enabling and enhancing communication among the users of different public communications networks, access to the services offered by other undertakings, and the interoperability of services.

(2) When granting access or interconnection, equivalent conditions shall be provided under comparable circumstances.

(3) The regulatory authority shall support negotiations as referred to in Par. 1 where required by the competitive situation and requested by at least one negotiating party.

(4) Information acquired by operators from other operators as part of negotiating network access may be used solely for the purpose for which the data were supplied. The operators shall respect at all times the confidentiality of the information supplied and shall not pass it on to any other party, in particular other departments, subsidiaries or business partners who might achieve a competitive advantage through such information, except as otherwise stipulated in an agreement between operators.

(5) Agreements over network access are to be submitted to the regulatory authority on substantiated request.

Section 9
Universal service

Scope and content of universal service

Article 106. (1) Universal service is a minimum set of public communications services at affordable prices which ensures unlimited social and economic participation in society. Universal service shall include access to an internet access service of adequate bandwidth and to voice communications services at a fixed location, whether wired or wireless. At the request of the end user, the connection shall be limited to a voice-only service.

(2) Universal service shall be available to end users who are consumers, microenterprises or small enterprises.

(3) The bandwidth available for universal service shall enable the use of at least the services listed in Annex V to Directive (EU) 2018/1972.

(4) The Federal Minister for Agriculture, Regions and Tourism may issue an ordinance specifying such bandwidth in greater detail to the extent required to ensure full social and economic participation in society. In doing so, she shall take into account the usage behaviour of the majority of end users. She may avail herself of the support of the regulatory authority in the process and include in her considerations the ongoing analyses of changes in internet access patterns, as carried out by the regulatory authority and BEREC.

Availability of universal service

Article 107. (1) The Federal Minister for Agriculture, Regions and Tourism, with the support of the regulatory authority, shall review every five years whether universal services are being provided by the market under competitive conditions. If this is the case for a universal service, any party previously obliged to provide that service shall be released from that obligation by means of an official decision. If this is not the case, the universal service in question shall be put out to public tender and a corresponding contract awarded through a decision, in accordance with the procedural provisions on the procurement of services. In doing so, the Minister may enlist the aid of the regulatory authority. The invitation to tender may be carried out separately based on subject matter or regional criteria. The aim of the tender shall be to identify those providers with the smallest subsidy requirement, to be paid from the universal service fund, who would provide the universal services specified by the Federal Minister for Agriculture, Regions and Tourism. The provider of the universal service shall be entitled to compensation in the amount of the subsidy requirement disclosed in the tender, subject to Art. 109 Par. 1.

(2) If, in the course of the invitation to tender, more than one provider is contracted to provide the various universal services, differentiated based on subject matter or regional criteria, care shall be taken to ensure that the total amount of the subsidy requirement is as low as possible. A provider obligated through a tender procedure shall be bound that obligation until the obligation to provide the universal service is imposed on another provider or until the original provider is released from that obligation by official decision.

(3) A call for tenders as referred to in Par. 1 may be waived where in view of efficient provision of the universal service, only one provider meets the operational prerequisites for the provision of the universal service. Any tender procedure as referred to in Par. 1 shall be terminated prematurely if no bid for the provision of the tendered service is submitted within the tender submission period. In the foregoing cases, the Federal Minister for Agriculture, Regions and Tourism shall require the most suitable provider to provide the service in question, in accordance with the conditions defined in this Federal Act, in any ordinances issued on the basis of this Federal Act, and in the tender conditions specified in the call for tenders. In this context, care shall be taken to ensure that in accordance with the provisions of Art. 109 the net costs incurred are as low as possible.

(4) The call for tenders shall be published at a minimum in the Official Gazette (*Amtsblatt*) of the Wiener Zeitung, specifying a reasonable tendering period as well as the coverage area and type of service to be provided.

(5) If no provider offers services pursuant to Art. 106 Par. 1 to meet concrete end-user demand at a specific location, the regulatory authority shall invite the nearest three providers who, according to the available data pursuant to Art. 80 and 84, provide internet access services or voice communications services at the requested location to submit bids for the provision of those services at the requested location within a period of three weeks. The invitation shall be published on the regulatory authority's website. Each provider shall be entitled to submit an offer. The regulatory authority shall issue a decision awarding the contract for providing the universal service to the provider offering the services at the lowest subsidy requirement.

(6) If no provider submits an offer in accordance with Par. 5, that provider shall be obliged to provide the service who under this Federal Act or the legal situation applicable until the entry into force of this Federal Act was last contracted to do so. The provider shall be compensated upon request for the net costs incurred as a result of the obligation, in accordance with the provisions of Art. 109 and 110.

(7) The authority responsible for a decision under this provision shall inform the European Commission in writing without undue delay of any obligation imposed on a provider to provide universal service.

Affordability

Article 108. (1) The regulatory authority shall monitor the evolution in and level of retail prices of the services referred to in Art. 106 Par. 1 and the provision of unbundled services within the meaning of Par. 3. In doing so, the regulatory authority shall consider in particular:

1. the prices in relation to national prices and incomes;
2. the requirements of end users with social needs and low income, taking into account potential subsidy benefits.

(2) If the regulatory authority determines that retail prices for the services referred to in Art. 106 Par. 1 are no longer affordable, the authority shall require providers of such services to offer affordable products that meet universal service requirements. In doing so, it may set prices for specified end-user groups which deviate from offers made under normal economic circumstances, and also prescribe uniform national tariffs. Where under this provision obligations are imposed on providers, the regulatory authority shall inform the European Commission in writing without undue delay.

(3) Where the regulatory authority determines that, as a result of the bundling of products, costs are imposed on end users for equipment or services which are not necessary or not required for the service in question, the regulatory authority may issue a decision obliging providers to offer the universal service in unbundled form.

(4) If the regulatory authority determines that the market does not offer sufficient options to pay for access to the communications network or to use the communications services included under the universal service on a prepaid basis, the authority may issue a decision obliging providers to offer the possibility of paying for universal service services on a prepaid basis. Likewise, the regulatory authority may issue a decision ordering the possibility of paying for access to the communications network in instalments.

(5) An obligation in accordance with Par. 2 to 4 shall be imposed only on those providers who are obliged to pay the financial contribution pursuant to Art. 34a of the KommAustria Act (*KommAustria-Gesetz*, KOG). Providers below this revenue limit may also be obliged, if they declare their interest expressly, irrevocably and in writing to the regulatory authority. For this purpose, the regulatory authority shall provide information on planned measures within the meaning of Par. 2 to Par. 4 on its website for a period of at least four weeks.

Cost of universal service

Article 109. (1) In the cases referred to in Art. 107 Par. 3 and Par. 6, the verifiably accrued costs of universal service which cannot be recovered despite economic and cost-efficient management shall upon request be compensated in accordance with Par. 2 to 4. In all other cases, the subsidy requirement of the provider awarded the contract after tender shall continue to be used as the basis for any requested universal service compensation. The provider under obligation shall submit the request to the regulatory authority once for an entire business year, otherwise the claim to compensation shall be forfeited within one year of the end of that same year.

(2) The regulatory authority shall base the calculation on the net costs attributable to:

1. elements of the communications services that can only be provided at a loss or provided under cost conditions falling outside normal commercial standards;
2. those end users who can only be served at a loss or under cost conditions falling outside normal commercial standards, while taking into account the market benefit accruing to the provider under obligation, including intangible benefits and lifecycle effects.

(3) In the procedure for determining the amount of the compensation, the parties under obligation to pay a universal service charge shall be parties to a joint procedure.

(4) The provider under obligation shall on submission of the application present appropriate documentation to the regulatory authority in order to enable the authority to review the information in relation to the costs claimed. To this end, the regulatory authority may, either directly or through an external auditor, inspect the accounts and records, make comparisons with other operators, or take other steps to achieve the required objective while complying with the principle of proportionality. The regulatory authority may in justified cases determine a lower amount than the one requested. The regulatory authority shall publish the results of the review.

Universal service fund

Article 110. (1) The regulatory authority shall where necessary set up and administer a universal service fund. The fund shall be used to finance the subsidy requirement determined in the course of tender procedures or a cost compensation determined in accordance with Art. 109 Par. 2. An annual report shall be published on the activities and performance of the universal service fund, which shall set out, broken down by the undertakings obliged to contribute, the subsidy requirement, the cost compensation and the shares.

(2) With the exception of providers within the meaning of Art. 4 No. 8, providers generating more than EUR 5 million in annual revenues through the provision of communications services within Austrian territory shall contribute 70 per cent of the financing of the universal service fund and of the financing of fund administration, each in proportion to their share of the total revenues from this activity within the federal territory. Providers within the meaning of Art. 4 No. 8 with more than 350,000 end users within the federal territory shall contribute 30 per cent of the financing of the universal service fund and of the financing of fund administration, each in proportion to the number of their end users within Austrian territory.

(3) After completion of the procedure pursuant to Par. 1, the regulatory authority shall determine the shares of the parties contributing to that compensation and notify the parties concerned of their shares. When calculating the amount of the shares, the regulatory authority shall take care to cause as little distortion as possible to competition and to user demand.

(4) The providers contributing to the compensation in accordance with Art. 109 Par. 1 shall remit to the regulatory authority the shares attributable to them within three months after the regulatory authority determines the shares. The period begins on the day of receipt of the notification referred to in Par. 3.

(5) If a party assessed as liable to contribute is in arrears with payment by more than four weeks, the regulatory authority shall issue a decision stating the contributions in arrears and collect them.

Section 10

Addressing and emergency communications

Aims

Article 111. This section aims to provide for the efficient structuring and administration of all communications parameters in their entirety in order to comply with the requirements of end users, providers and operators in open, objective, transparent, proportionate and non-discriminatory manner.

Plan for communications parameters

Article 112. (1) The regulatory authority shall issue an ordinance defining a plan for communications parameters in accordance with Art. 111, as well as emergency numbers, including the European emergency number 112 and the hotline for missing children number 116000; this ordinance will additionally define the requirements for the assignment of communications parameters. The plan for communications parameters may consist of subplans.

(2) That ordinance may also specify:

1. rules of conduct to be followed in the use of communications parameters as well as regulations which detail how subordinate elements are to be passed on or assigned to users;
2. the point in time when or deadlines within which previously assigned communications parameters not complying with the requirements of the plan must be updated.

(3) In preparing that plan, special consideration shall be given specifically to the relevant international regulations, the development of new national and international services as well as the availability of a sufficient number of communications parameters.

(4) Providers and operators are required to participate in implementation of the plans.

Plan modifications

Article 113. (1) The regulatory authority shall in accordance with current technology modify the plan:

1. to ensure the security of public communications traffic;
2. in the interests of the general public and users as a whole;
3. to adapt it to market requirements;
4. for technical or operational reasons;
5. to adapt it to accommodate modified spectrum use or recommendations based on the international situation;
6. to make changes in accordance with the current state of technology to ensure the efficient use of communications parameters.

The regulatory authority shall inform the permit holders concerned.

(2) Modifications of the plan shall only be permissible in objectively justified cases and in compliance with the principle of proportionality. The impact on the parties concerned, in particular the direct and indirect costs incurred by modifications, shall be taken into account. If plan amendments affect or revoke existing assignments, the economic and business interests of the permit holder must be protected as far as possible.

(3) Parties already holding permits shall later implement the changes specified in the plan within a reasonable period of time at their own expense. Such an order shall not constitute any claim to compensation. This shall be without prejudice to claims based on the Liability of Public Bodies Act (*Amtshaftungsgesetz,* AHG).

Competence for assigning communications parameters and related procedures

Article 114. (1) The regulatory authority shall be competent for the efficient administration of the plan, in particular for recording the use and the assignment of communications parameters to end users as well as to providers and operators. Providers and operators may be granted the right to pass on subordinate elements to other providers or operators or to assign them to users, in order to provide a communications service.

(2) Providers and operators who have been granted the right to pass on subordinate elements pursuant to Par. 1 shall be obliged to refrain from discriminating against other providers and operators with regard to the number sequences used to access their services.

(3) The regulatory authority shall assign communications parameters to end users, providers and operators for use on request. The regulatory authority shall decide on the request without undue delay but at the latest within three weeks of receipt of the complete application. The decision shall be published.

(4) Official decisions pursuant to Par. 3 may contain the following ancillary provisions:

1. designation of the service for which the communications parameter may be used;
2. an appropriate term of assignment in accordance with the type and significance of the communications parameter;
3. ancillary provisions necessary to ensure effective and efficient use of the communications parameter, in particular the obligation to notify actual use;

4. obligations necessary for complying with relevant international agreements on the use of communications parameters.

(5) Rights of use shall not be freely transferable. At the permit holder's request, the right of use shall be transferred by the regulatory authority to another end user, provider or operator in a procedure pursuant to Par. 3. Exempted from the above are:

1. cases of number porting pursuant to Art. 119, in which case the right of use must be transferred through notification of the number porting by the receiving provider to the regulatory authority;
2. cases where the number is returned pursuant to Art. 119 Par. 5, in which case the right of use must be transferred through notification of the return by the transferring provider;
3. cases where the number is transferred or when the transfer is terminated pursuant to Par. 1, in which case the right of use must be transferred through notification of transfer or corresponding termination by the transferring provider to the regulatory authority.

The regulatory authority may disclose the current holders of the rights of use, provided that such disclosure does not raise competition law concerns.

(6) The provider required to give notice pursuant to Par. 5 shall give such notification to the regulatory authority within the time period provided for in the ordinance pursuant to Par. 7. If the rules of conduct specified in the plan cannot be fulfilled by the receiving provider, the regulatory authority shall prohibit this transfer.

(7) The regulatory authority may issue an ordinance specifying detailed provisions on collecting and making available data in connection with the assignment and use of numbers in a central database. In doing so, the regulatory authority shall consider in particular the notification obligations pursuant to Par. 5 as well as the recording of the operator and provider responsible for the accessibility of the respective end user.

Use

Article 115. (1) No right to specific communications parameters shall accrue from the assignment of communications parameters. Only the right to use communications parameters is granted.

(2) Communications parameters for which no valid rights of use exist must not be used.

Use fees

Article 116. (1) A fee is payable for using any communications parameter. The Federal Minister for Agriculture, Regions and Tourism may issue an ordinance setting the fee amount. In doing so, consideration shall be given in particular to the personnel and material expenses associated with the achievement of the specified objectives, the commercial benefit derived from the assignment and the optimum use of the communications parameters.

(2) Par. 1 shall also apply to any communications parameters that are in use or reserved for use as of the date when this Federal Act enters into force.

Voiding of assignments

Article 117. (1) An assignment becomes void through:

1. expiry of the term of granting;
2. waiver by the permit holder;
3. revocation;
4. death or termination of the legal personality of the permit holder except in cases of universal succession under company law.

(2) The regulatory authority shall revoke the assignment where:

1. one of the requirements for assignment is no longer met;
2. necessary due to international requirements;
3. the holder of the right of use has grossly or repeatedly violated a provision of this section, an ordinance issued under Art. 112, 114 Par. 7 or Art. 131, or failed to comply with the ancillary provisions attached to the assignment.

(3) In a procedure as defined in Par. 2 No. 3, Art. 184 shall be applied mutatis mutandis. Revocation shall not constitute any claim to compensation.

(4) The declaration of waiver shall be submitted in writing to the regulatory authority.

Switching providers of internet access services

Article 118. (1) In the case of switching between providers of internet access services using the same infrastructure, the providers concerned shall provide the end user with adequate information before and during the switching process and ensure continuity of the internet access service, unless technically not feasible.

(2) The provider switch shall be carried out under the direction of the new provider, whereby the new and the existing provider shall cooperate in good faith. They must not delay or misuse the provider switch and shall not carry the switch out without the express consent of the end user. The contract between the end user and the current provider shall terminate automatically upon completion of the switch.

(3) The new provider shall ensure that the activation of the internet access service takes place as soon as possible and on the day and within the timeframe expressly agreed with the end user. Service shall not be interrupted for any longer than one working day during the switching process. Until the new provider activates the service, the current provider shall continue to provide the internet access service under the previous conditions.

(4) The regulatory authority may issue an ordinance specifying detailed provisions on provider switching. In doing so, consideration shall be given to technical feasibility and the need to ensure continuity of service to end users. The regulatory authority shall also take appropriate measures to ensure that end users are adequately informed as well as protected throughout the switching process and are not switched to another provider without their consent. Art. 119 Par. 7 shall apply accordingly.

Number portability

Article 119. (1) Providers of publicly available voice communications services shall ensure that end users who have been assigned numbers from the national numbering plan may switch providers while retaining their numbers without any change in the type of use specific to the particular number range and, where end users hold geographically based numbers, may change locations within the geographic area defined for the number range.

(2) Number porting shall be carried out under the direction of the receiving provider in accordance with Par. 1, and the receiving and the transferring providers shall cooperate in good faith. They shall neither delay nor misuse number porting and shall not port the number without the express consent of the end user at least in electronic format. The contract between the end user and the transferring provider shall terminate automatically upon successful completion of the number porting process, unless the end user explicitly requests a continuation of the contractual relationship.

(3) The transfer of numbers and their subsequent activation shall in each case take place as quickly as possible and, as far as technically possible, on the day expressly agreed with the end user. In this context, the following shall be considered:

1. For end users who have concluded agreements for porting their numbers to new providers, numbers shall in any event be activated within one working day of the day agreed with the end user.
2. If number porting could not be successfully completed, the transferring provider shall reactivate the number and related services of the end user until the porting is successful.
3. The transferring provider shall provide their services under the same conditions until the services of the receiving provider are activated.
4. In no case shall service be interrupted for more than one working day during the transfer of numbers. The operators of the access networks or facilities used by the transferring or the receiving provider, or both, shall ensure that there is no interruption of service which would result in a delay in the transfer or porting process.

(4) The number shall also be ported where requested by the end user from the receiving provider within one month of the end of the contract, unless the end user expressly waives this right.

(5) Where a contractual relationship between an end user and a provider relating to a number comes to an end without the end user submitting a number porting request, and where no request has been made for transfer of the line or connection to another end user, the provider must return the number within one month after expiry of the period defined in Par. 4. The number is to be returned to the provider to which the number was originally assigned or to which the relevant number block has since been transferred. In other cases, the number is to be returned to the regulatory authority.

(6) The regulatory authority may issue an ordinance specifying detailed provisions governing number porting. In doing so, consideration shall be given to technical feasibility and the need to ensure

continuity of service to the end user, and details of provider switching and number portability shall be specified. This includes, where technically feasible, a requirement for the porting to be completed through over-the-air provision, unless an end user requests otherwise. The regulatory authority shall also take appropriate measures to ensure that end users are adequately informed and protected throughout the switching and porting processes and are not switched to another provider without their consent.

(7) The regulatory authority may issue an ordinance specifying rules on the easy and timely compensation of end users by their providers in the event of a provider's failure to comply with obligations under this provision, in particular through delay or misuse of transfer or through missing customer service or installation appointments. To the extent required to inform end users of the existence of their rights to compensation, the regulatory authority shall issue an ordinance specifying further information provision requirements for contracts, in accordance with Art. 129.

(8) For the duration of a procedure in accordance with Art. 117 Par. 2 No. 3, an end user using a number shall not be entitled to have the number ported, where the number is the subject of a pending procedure.

Fees charged for number porting

Article 120. Providers shall set by cost-related agreement the fees charged for number porting. The porting end user shall not be charged any fee for number porting. In the case of prepaid services, the transferring provider shall refund the remaining balance to the end user upon request. This refund may only be subject to a fee if stipulated in the contract. Any such fee shall be proportionate to the actual costs incurred by the transferring provider in connection with the refund.

Measures to avoid number misuse

Article 121. (1) The regulatory authority shall act as a reporting office. End users and providers may disclose facts relating to number misuse to the regulatory authority. The regulatory authority shall forward the reports received to the competent law enforcement or administrative criminal authorities, depending on the authority's assessment of content, and shall make the resulting findings and recommendations available to the public in a timely manner.

(2) In the case of significant number misuse, the regulatory authority may take measures in accordance with Par. 3 and 4. Significant number misuse shall be understood to mean all conduct which is repeated on a large scale and which cumulatively intends, represents or at a minimum tolerates an unjustified and not negligible intrusion into the privacy or financial situation of end users. Depending on the seriousness of the intrusion as well as the frequency of number misuse, the measures shall be appropriately limited in time but to a maximum of three months. If civil proceedings have not yet been completed, the period may be extended by a further three months.

(3) The regulatory authority shall issue an official decision prohibiting providers from charging end users for those fee components that have resulted from significant number misuse as defined in Par. 2, provided that the measure is appropriate for protecting end users from damage or for eliminating the economic basis for the abusive behaviour. Unless a refund is expressly requested by the end users concerned, the particular end user's provider shall take into account any fees already paid as a credit in the next billing. In such a case, the provider shall not be obliged to pay the fee to wholesale partners and may reclaim fee amounts already paid.

(4) The regulatory authority may issue a decision ordering the blocking of numbers or number ranges by providers, the permit holder concerned or the operators in whose communications networks a particular number is routed. The regulatory authority may also order the provision of automated voice information free of charge. When selecting and designing the measures ordered, the regulatory authority shall take into account the effectiveness of measures, those end-user interests that are worthy of protection and the technical possibilities. Such an order shall not constitute any claim to compensation against the party obliged to block.

(5) In cases of imminent danger, the regulatory authority may also proceed without a prior investigation procedure by issuing an official decision pursuant to Art. 57 of the General Administrative Procedure Act (*Allgemeines Verwaltungsverfahrensgesetz*, AVG). Where the prerequisites are met, decisions in accordance with Par. 3 and 4 shall unconditionally be issued to providers with at least 50,000 end users.

(6) Official decisions in accordance with Par. 3 and 4 are to be published on the regulatory authority's website. The regulatory authority shall maintain a list of blocked numbers.

Emergency communications

Article 122. (1) Providers of publicly available number-based interpersonal communications services, providers of public pay telephones and operators shall ensure the establishment of a non-payable connection free of charge to the most appropriate public safety answering point (PSAP) that is addressed by an emergency number, both in cases of voice calls and text-based messages, and ensure uninterrupted accessibility.

(2) Providers pursuant to Par. 1 and operators shall ensure that the number of the calling line or connection can be identified at the PSAP, even if this number has been suppressed, if an emergency number was dialled to establish the connection.

(3) The operator of the single European emergency number 112 shall:

a. operate a central infrastructure for a text-based emergency call which is based on standards harmonised throughout Europe;

b. operate a central infrastructure for receiving location data that are determined from terminal devices in the course of emergency calls;

c. enable other operators of emergency services to use the services available pursuant to a and b, by means of a standardised interface for emergency call handling.

(4) The operator of the single European emergency number 112 shall accept text-based emergency communications. In particular, it shall be ensured that two-way communication can take place. Furthermore, the regulatory authority may issue an ordinance pursuant to Art. 112 Par. 1 in conjunction with Par. 2 No. 1, requiring other emergency services to accept text-based emergency communications and specifying alternative emergency numbers in order to ensure that roaming end users can also be reached.

(5) Without prejudice to the obligation set out in Par. 4, operators of emergency services shall ensure that persons with disabilities have, in accordance with an ordinance issued pursuant to Art. 46 Par. 4, access to services which is equivalent to that of the majority of persons without disabilities. Particularly in the case of text-based emergency communications, it must be ensured that two-way communication can take place. In order to meet the foregoing requirement, providers pursuant to Par. 1 and operators shall ensure two-way communication.

(6) Undertakings that provide services used to reach voice communications services or that operate private communications networks via which such services are provided shall be obliged to ensure that connections are established to the most appropriate PSAP that is addressed by an emergency number.

(7) This provision shall also apply to roaming end users.

Fail-safe operation

Article 123. (1) Providers of publicly available number-based interpersonal communications services, providers of public pay telephones and operators shall, for the purposes of connection to emergency numbers, provide all facilities to ensure connection to emergency numbers in the event of network failure.

(2) The regulatory authority shall issue an ordinance specifying detailed provisions for the design of technical facilities in order to ensure fail-safe operation, taking into account the current state of technology, while observing the principle of proportionality and considering the probability of occurrence of any technical faults.

(3) The providers and operators referred to in Par. 1 shall once a year review the functionality of facilities referred to in Par. 1 and report the findings to the regulatory authority. The regulatory authority may, where specific indications of a breach of Par. 1 are identified, require such providers to submit at their own expense to a security audit by the regulatory authority or by a qualified, independent body commissioned by the regulatory authority.

(4) Providers and operators as referred to in Par. 1 shall notify without undue delay the regulatory authority, the affected addressees of official decisions relating to emergency telephone number holders, as well as the affected PSAPs, of any security incidents which have had considerable impact on the accessibility of emergency telephone numbers.

Information to operators of emergency services

Article 124. (1) Providers of publicly available number-based interpersonal communications services, including providers of public pay telephones and operators, shall provide operators of emergency services with caller location information within the meaning of Art. 160 Par. 3 No. 9, including information from a terminal device not registered in the mobile network, without undue delay

upon taking a call via an emergency number. Those parties shall provide information on available master data within the meaning of Art. 160 Par. 3 No. 5 lit. a to d upon request and without undue delay. If an operator of an emergency service becomes aware of an emergency through a means other than an emergency number, the location of the terminal device and master data of the person at risk shall be transmitted to that operator upon request and without undue delay. Location data shall also be transmitted in those cases where the whereabouts of a person at risk can only be determined via the cell ID of a third party's terminal equipment. Transmission of location data shall be permitted in the event of:

a) an emergency call from the caller to be located; or

b) an emergency which can only be averted by disclosure of that information.

The operator of the emergency service shall be responsible for ensuring that the request for information is permissible under law. That information shall be provided free of charge.

(2) The operator of the emergency service shall document the necessity of any transmission of information pursuant to Par. 1 lit. b and submit documentation to the provider without undue delay and within 24 hours at the latest. The provider and the operator may not make transmission of information dependent on the prior documentation of the necessity.

(3) Providers pursuant to Par. 1 and the operator shall establish a uniform electronic interface for the provision of the information referred to in Par. 1.

(4) Where it is not possible to determine a current location as referred to in Par. 1, the most recently available cell ID of the terminal equipment referred to in Par. 1 may be processed.

(5) The provider and the operator shall inform the end user concerned in writing of any information provided relating to location and master data, insofar as such has not been transmitted pursuant to the first sentence of Par. 1, at the earliest after 48 hours, but no later than after 30 days. That information must include:

1. the legal basis for providing the information;
2. the data in question;
3. the date and time of the query;
4. an indication of the body that requested the location data as well as details for contacting that body.

(6) Operators whose networks are also used to provide number-based interpersonal communications services shall cooperate free of charge in determining caller location information, where applicable international standards exist.

(7) Providers pursuant to Par. 1 and operators whose networks are also used to provide number-based interpersonal communications services shall cooperate free of charge in the transmitting location data determined from a terminal device.

(8) The regulatory authority may—if required after consulting BEREC pursuant to Art. 4(1) point (1) Regulation (EU) 2018/1971—issue an ordinance specifying the details of how locations are to be determined, in particular how accurately and reliably locations are to be determined, and relating to transmission of terminal device location data. Such ordinance may additionally prescribe measures that enable and support the collection and transmission, to operators of emergency services, of location data determined from terminal devices. Technical specifications for the interface offered pursuant to Par. 3 may also be defined. In specifying any and all of the above, the regulatory authority shall consider in particular international standards, fundamental requirements in the public interest, the technical possibilities and the investments required for the particular purpose, any existing contractual agreements between providers pursuant to Par. 1 and operators of emergency services, as well as the appropriateness of the required economic expenditure.

Public warning system

Article 125. (1) When ordered by authorities responsible for warnings under federal or provincial law, providers shall transmit public warnings via text messaging to end users, in the event of imminent or spreading major emergencies and disasters or any appeals made in such a context. Once an ordinance has been issued pursuant to Par. 5, the obligation shall extend only to those systems defined in that ordinance. Such public warnings shall be transmitted on a nationwide or regionally restricted basis in accordance with the order issued. The uninterrupted transmission of those warnings shall be ensured.

(2) Public warnings pursuant to Par. 1 shall be easily receivable by end users, including roaming customers, and shall be free of charge for them, where economically and technically reasonable.

(3) The order shall specify the legal basis for the warning and shall not require any special form and shall be documented by the party issuing the order. The authority issuing the order shall be responsible for ensuring that the warning is permissible under law. In carrying out the order, providers pursuant to Par. 1 may process any master data and location data required for the purpose, insofar as necessary exclusively for providing targeted information to affected users in accordance with Par. 1.

(4) The authority issuing the order shall inform Rundfunk- und Telekom Regulierungs-GmbH (RTR-GmbH) without undue delay. The latter shall publish without undue delay the full text of all warnings issued pursuant to Par. 1 on a publicly accessible website, including the recipient group.

(5) The Federal Minister for Agriculture, Regions and Tourism, in agreement with the Federal Minister for the Interior and taking into account relevant international norms and standards, shall issue an ordinance by 21 June 2022 at the latest, specifying the technical format to be used by providers when transmitting messages in accordance with Par. 1 to end users. When imposing the obligation, the technical possibilities of the providers shall be taken into account.

(6) For the implementation of the ordinance pursuant to Par. 5, the obligated companies shall be reimbursed by the Federal Minister of Finance upon request for the investment costs (personnel and material expenses) that arise and are demonstrably absolutely necessary. In this context, particular consideration shall be given to

1. acquisition costs
2. set-up costs
3. network adaptation costs
4. licence costs

In addition, the obligated companies shall be reimbursed by the Federal Minister of the Interior for the additional personnel and material expenses proven to have been incurred and absolutely necessary to ensure the uninterrupted transmission of warnings, the Rundfunk- und Telekom Regulierungs-GmbH for the additional personnel and material expenses proven to have been incurred and absolutely necessary for the tasks transferred within the framework of the warning system and the federal provinces for the separate personnel and material expenses proven to have been incurred and absolutely necessary in the case of the provision of necessary joint components of the public warning system, in each case upon application.

Subscriber directory and directory enquiry service

Article 126. (1) Providers of number-based interpersonal communications services shall:

1. maintain a consistently updated directory of their subscribers, either in printed (book) form, in the form of a telephone directory enquiry service or on an electronic medium, or in any other technical form of communication; the directory shall include in the least the data compiled pursuant to Art. 137 Par. 2, whereby providers ensuring the publication of such a directory shall be considered as complying with this provision;
2. maintain a telephone directory enquiry service on the contents of their subscriber directory, whereby providers ensuring that another telephone directory information service provides this information shall be considered as complying with this provision;
3. grant their subscribers access to telephone directory enquiry services of other providers;
4. upon request of other providers of number-based interpersonal communications services, make available their subscriber directories containing the data defined in Art. 137 Par. 2 and 3, and upon request of publishers of cross-provider subscriber directories or cross-provider directory enquiry services, make available their subscriber directories containing the data defined in Art. 137 Par. 2 and 3, online or at least weekly in an electronically readable format against payment of a cost-related fee.

(2) Providers of number-based interpersonal communications services that provide services via carrier networks shall not be subject to the obligations pursuant to Par. 1 No. 1, 2 and 4 in respect of these services.

(3) If no agreement is reached between the providers of number-based interpersonal communications services and the parties entitled under Par. 1 No. 4 on the provision of the data as defined in Art. 137 Par. 2 and 3 within six weeks of receipt of the enquiry, either party involved may call upon the regulatory authority for a decision. An order shall replace an agreement to be reached.

(4) If a subscriber does not wish personal data to be included in the subscriber directory, that data shall also not be passed on to third parties, except in the cases specified in Art. 181 Par. 8 and Art. 124.

Section 11
User protection

Exceptions from the scope of application of this section

Article 127. (1) With the exception of Article 128, the provisions of this section do not apply to microenterprises that provide number-independent interpersonal communications services unless they provide other communications services as well.

(2) Microenterprises to which the criteria of Par. 1 apply shall verifiably notify end users of the existence of an exception pursuant to Par. 1 prior to the conclusion of the contract.

Non-discrimination

Article 128. (1) Any person shall be entitled to use communications services, including universal service, under the conditions set out in the general terms and conditions and tariffs as published. Providers shall not apply any different requirements or general conditions of access to, or use of, networks or services to end users, for reasons related to the end user's nationality, place of residence or place of establishment, unless such different treatment is objectively justified.

Information requirements for contracts

Article 129. (1) Before a consumer is bound by a contract or any corresponding offer, providers, with the exception of those providing M2M transmission services, shall provide the information referred to in Art. 5a of the Consumer Protection Act (*Konsumentenschutzgesetz*, KSchG) and Art. 4 of the Act on Distance Selling and Contracts (*Fern- und Auswärtsgeschäfte-Gesetz*, FAGG), as well as the information listed in Annex VIII of Directive (EU) 2018/1972, to the extent that information relates to a service they provide.

(2) The information shall be provided in a clear and comprehensible manner on a durable medium or, where provision on a durable medium is not feasible, in an easily downloadable document made available by the provider. The provider shall expressly draw the consumer's attention to the availability of that document and the importance of downloading it for the purposes of documentation, future reference and unchanged reproduction. The information shall be provided on request in a format that meets the requirements of Art. 3 No. 5 FAGG and of Art. 4 of Directive (EU) 2019/882 on the accessibility requirements for products and services, OJ L 151 of 7 June 2019, p. 70–115.

(3) The information referred to in Par. 1, 2, 4 and 5 as well as in Art. 130 shall also be provided to end users that are microenterprises or small enterprises or not-for-profit organisations, unless they have explicitly agreed to waive all or parts of those provisions.

(4) Providers who do not provide M2M transmission services and are subject to the requirements pursuant to Par. 1 shall provide consumers with a concise and easily readable contract summary. That summary shall identify the main elements of the information requirements in accordance with Par. 1 and shall correspond to the template set out in Commission Implementing Regulation (EU) 2019/2243, OJ L 336, p. 274, establishing a template for the contract summary to be used by providers of publicly available electronic communications services pursuant to Directive (EU) 2018/1972, and contain the information contained therein as main elements. Contract summaries shall be duly completed with the required information and provided free of charge to consumers, prior to the conclusion of the contract, including distance contracts. The provision of this information represents a suspensory condition for contract validity.

(5) Where, for objective technical reasons, it is impossible to provide the contract summary prior to the conclusion of the contract, it shall be provided without undue delay thereafter. The contract shall become effective when the consumer has confirmed their agreement after reception of the contract summary.

(6) The information referred to in Par. 1 and 4 shall become an integral part of the contract and shall not be altered unless the contracting parties expressly agree otherwise. The foregoing is without prejudice to Art. 135 Par. 8.

Limitation of costs

Article 130. (1) Where internet access services or communications services are billed on the basis of either time or volume consumption, their providers shall offer consumers the facility to monitor and control the usage of each of those services. This facility shall include access to timely information on the level of consumption of services included in a tariff plan.

(2) For communications services within the meaning of Par. 1, the regulatory authority may issue an ordinance specifying upper limits for usage to limit costs, where this is necessary in order to monitor or exercise control over costs. When defining the upper limits for usage, the regulatory authority shall consider average anticipated consumption by end users, in which case such limits serve as protection from unexpectedly high bills. Providers shall notify end users before those upper limits are reached and before the volume included in their products is consumed to its full extent.

(3) The regulatory authority may issue an ordinance implementing measures that go beyond Par. 1 and Par. 2 and specify the degree of detail and format. The regulatory authority may specify the possibility for end users to take advantage of specific cost control mechanisms such as non-payable alerts or service barring in the case of unusual or excessive patterns of consumer behaviour. In doing so, the regulatory authority shall consider the type of contractual relationship and service, the technical options and the protection of personal data, and shall take account of the fact that consumers must be enabled to control their expenses and be reliably protected from incurring excessively high charges.

Charges and regulation of third-party services

Article 131. (1) The regulatory authority shall issue an ordinance specifying detailed provisions on:

1. fees for special number ranges, which may be charged for the provision of number-based communications services and number-based third-party services;
2. numbers that are charged based on events;
3. the procedures for the communication of amounts charged for the provision of services where special pricing applies to those services or where users have a special need for enhanced tariff transparency;
4. how charges are calculated.

In issuing that ordinance, the regulatory authority shall consider: those interests of end users that are worthy of protection; tariff transparency for end users; in the case of number-based communications services and number-based third-party services, the ability to easily identify charges based on the number used; the technical options; and the need for end users to control their expenses.

(2) The regulatory authority can issue an ordinance specifying detailed rules governing the provision of third-party services in a transparent manner and in compliance with appropriate user protection. This may comprise items that go beyond the scope of content detailed in an ordinance pursuant to Par. 1, including in particular access controls relating to specific user groups, provisions on advertising, time limits, rules on dialler programmes and tariff information, price limits and charge calculation methods. In issuing that ordinance, the regulatory authority shall consider the technical options as well as the need for end users to control their expenses.

(3) The regulatory authority shall maintain a directory of number-based third-party service numbers that additionally indicates the name and the address of the provider of the particular service. The regulatory authority shall publish that directory and on request provide information on its contents.

Transparency and disclosure of information

Article 132. (1) Providers shall issue general terms and conditions which additionally describe the services offered as well as specify corresponding tariff provisions, and publish those terms and conditions in an appropriate form. The contents are to be clear, comprehensive, machine-readable and in a format accessible for end users with disabilities.

(2) Wherever possible depending on the type of services provided, the general terms and conditions between providers and end users must contain at a minimum:

1. the identity and address of the provider;
2. the services provided, including in particular:
   a) the scope of the services offered and the main features of each service provided, including any minimum levels of service quality of service and taking utmost account of the BEREC guidelines adopted in accordance with Art. 4(1) point (d)(x) of Regulation (EU) 2018/1971 regarding:
      – for internet access services: at least latency, jitter and packet loss,
      – for publicly available interpersonal communications services, where providers exert control over at least some elements of the network or have a service level agreement to that effect with undertakings providing access to the network: at least the time for the initial connection, failure probability, call signalling delays in accordance with Annex X of Directive (EU) 2018/1972;

b) the types of maintenance service offered and the available customer services, as well as the means of contacting those services;
c) any restrictions imposed by the provider on the use of terminal equipment supplied;

3. the duration of the contract and the conditions for renewal and termination of services and of the contract, including:
a) any minimum use or duration required to benefit from promotional terms;
b) any fees due on termination of the contract, including information on unlocking the terminal equipment and any cost recovery with respect to terminal equipment;
c) the conditions on termination of bundle offers or of elements thereof;
4. without prejudice to the right of end users to use terminal equipment of their choice in accordance with Art. 3(1) of Regulation (EU) 2015/2120, any conditions, including fees, imposed by the provider on the use of terminal equipment supplied;
5. any compensation and refund arrangements that apply if contracted levels of quality of service are not met or if the provider responds inadequately to a security incident, threat or vulnerability;
6. the type of action that might be taken by the provider in reaction to security incidents or threats or vulnerabilities;
7. in the case of providers of number-based interpersonal communications services, information on access to emergency services and caller location, or any limitation on the latter;
8. in the case of providers of number-based interpersonal communications services, information on the end users' right to determine whether to include their personal data in a directory, and the types of data concerned;
9. in the case of providers of number-independent interpersonal communications services, information on the degree to which access to emergency services may be supported or not;
10. details of products and services specifically designed for end-users with disabilities, as well as how updated information can be obtained;
11. reference to the option of initiating conciliation procedures pursuant to Art. 205 Par. 1 as well as a short description thereof;
12. in the case of providers of internet access services, the minimum content pursuant to Art. 4 of Regulation (EU) 2015/2120;
13. information on what personal data shall be provided before the performance of the service or collected in the context of the provision of the service.

(3) Tariff provisions shall include in the least:

1. tariffs of the services offered, along with information on communications volumes of specific tariff plans, including the billing period, and the applicable tariffs for additional communication units, numbers or services subject to particular pricing conditions;
2. charges for access and maintenance, all types of use fees;
3. special and targeted tariff schemes and any additional charges;
4. costs with respect to terminal equipment;
5. the means by which up-to-date information on all applicable tariffs and maintenance charges may be obtained;
6. procedures and direct charges related to the portability of numbers and other end-user identifiers;
7. charges for the activation of the communications service;
8. in the case of a tariff plan or plans with a preset volume of communications, the possibility for consumers to defer any unused volume from the preceding billing period to the following billing period, where this option is included in the contract;
9. facilities to safeguard bill transparency and monitor the level of consumption;
10. for bundled services and bundles including both services and terminal equipment, the price of the individual elements of the bundle to the extent they are also marketed separately.

Objection procedures and procedural rules

Article 133. (1) Providers shall, prior to the start of services, notify the regulatory authority of their general terms and conditions and tariff provisions as well as any changes thereto in an electronic format specified in an ordinance by the regulatory authority. In doing so, the regulatory authority shall consider the availability of the technical options and the most harmonised access possible to this information. The regulatory authority shall publish the contract terms once the procedure has been completed.

(2) The contract summary pursuant to the template set out in Regulation (EU) 2019/2243 shall be exempted from the notification requirement referred to in Par. 1. The foregoing shall be without prejudice to the right of the regulatory authority to initiate supervisory procedures pursuant to Art. 184.

(3) Exempted from the notification requirement pursuant to Par. 1 are those providers with fewer than 1,000 end users or, if these are providers within the meaning of Art. 4 No. 8, with fewer than 350,000 end users within Austrian territory.

(4) An announcement and notification period of three months shall apply where changes are not exclusively favourable to end users.

(5) Notifications of changes shall include the general terms and conditions or tariff provisions to be changed, in which case the changes shall be clearly and comprehensibly indicated.

(6) The regulatory authority may object to the general terms and conditions and tariff provisions notified pursuant to Par. 1, with the exception of nominal tariff amounts, within six weeks, where such fail to comply with this Federal Act or the ordinances issued under this Act or Art. 879 and Article 864a Austrian Civil Code (*Allgemeines Bürgerliches Gesetzbuch*, ABGB) or Art. 6 and 9 KSchG or Art. 4 of Regulation (EU) 2015/2120. Such an objection shall unconditionally prohibit the further use of the general terms and conditions or the tariff provisions.

(7) The regulatory authority may initiate a supervisory procedure pursuant to Art. 184 if the general terms and conditions and tariff provisions of a provider pursuant to Par. 3 do not comply with this Federal Act or the ordinances issued under this Act or Art. 879 and Article 864a ABGB or Art. 6 and 9 of the KSchG or Art. 4 of Regulation (EU) 2015/2120.

(8) The foregoing shall be without prejudice to the competence for verifying the general terms and conditions and tariff provisions in accordance with other provisions of law.

(9) If notifications do not comply with the form requirements set out in Par. 1 or 5, the notification shall be considered not submitted.

(10) In the procedure pursuant to Par. 6, providers shall be entitled to withdraw or to change any notification pursuant to Art. 13 Par. 7 or Par. 8 of the General Administrative Procedures Act (*Allgemeines Verwaltungsverfahrensgesetz*, AVG). If the notification is changed, the six-week period defined in Par. 6 shall be renewed.

(11) Par. 6 shall not apply to operators of broadcasting networks or operators who are responsible for the transmission of broadcasting signals.

Comparison of tariffs and offers

Article 134. (1) The regulatory authority shall ensure that, where an independent comparison tool is not provided in the market free of charge, end users have access free of charge to at least one such tool, based on the data notified and published pursuant to Art. 46 Par. 3 and Art. 133 Par. 1, which enables end users to compare and evaluate different internet access services and publicly available number-based interpersonal communications services, and, where applicable, publicly available number-independent interpersonal communications services, with regard to:

1. prices and tariffs of services provided against recurring or consumption-based direct monetary payments; and
2. the quality of service performance, where minimum quality of service is offered or the undertaking is required to publish such information pursuant to Art. 46.

(2) The comparison tool referred to in Par. 1 shall:

1. be operationally independent of the providers of such services, thereby ensuring that those providers are given equal treatment in search results;
2. clearly disclose the owners and operators of the comparison tool;
3. set out clear and objective criteria on which the comparison is to be based;
4. use plain and unambiguous language;
5. provide accurate and up-to-date information and state the time of the last update;
6. be open to any provider of internet access services or publicly available interpersonal communications services making available the relevant information, and include a broad range of offers covering a significant part of the market and, where the information presented is not a complete overview of the market, a clear statement to that effect, before displaying results;
7. provide for an effective procedure to report incorrect information;

8. include an option for comparing prices, tariffs and quality of service performance between offers available to end users.

(3) Comparison tools fulfilling the requirements in Par. 2 No. 1 to 8 shall, on request by the provider of the tool, be certified through the issue of an official decision by the regulatory authority. The decision may include ancillary provisions where necessary for verifying whether the approval criteria in the specific case are met.

(4) The regulatory authority may issue an ordinance pursuant to Art. 133 Par. 1 specifying the format of the notification of the data required for the comparison tool as set out in Par. 1. In doing so, the regulatory authority shall consider the type of end-user relationship and service, the comparability of services, the ease of comprehension, clarity, and the significance of the information for the usability of the service. Providers with fewer than 1,000 end users, or providers within the meaning of Art. 4 No. 8 with fewer than 350,000 end users, may be exempted from the notification requirement if the effort involved would be disproportionate to the anticipated information value of the data. Third parties shall have a right to use, free of charge and in open data formats, the information published by the regulatory authority and providers of internet access services or interpersonal communications services under this Federal Act, for the purposes of making available such comparison tools.

Contract duration and termination

Article 135. (1) Contracts concluded between consumers and providers, with the exception of those providing either number-independent interpersonal communications services or M2M transmission services, must not mandate a commitment period longer than 24 months. Every consumer must have the option of concluding for each communications service a contract with a maximum commitment period of twelve months.

(2) Without prejudice to any provisions on minimum contract duration, contracts with providers must not stipulate any conditions or contract termination procedures that act as a disincentive for switching operators.

(3) Par. 1 and 2 shall not apply to the duration of an instalment contract where the consumer has agreed in a separate contract to instalment payments exclusively for providing a physical connection, in particular to very high capacity networks. An instalment contract within the meaning of this paragraph must relate to terminal equipment, such as a router or modem.

(4) Par. 1 to 3 and 5 to 7 shall also apply to end users that are microenterprises or small enterprises or not-for-profit organisations, unless they have explicitly agreed to waive those provisions.

(5) Providers as referred to in Par. 1 shall enable the termination of contracts subject to a notice period of one month. The foregoing shall be without prejudice to the agreement of a commitment period.

(6) Where a commitment period or an automatic renewal after a time limit has been agreed for contracts, providers as referred to in Par. 1 shall notify end users in a clear and comprehensible manner and on a durable medium concerning the end of the contractual commitment and the options for terminating the contract. Such information shall be provided in good time before the final date of the termination notice period, in order to allow termination of the contract upon expiry of the commitment period or the time limit.

(7) Providers as referred to in Par. 1 shall inform end users of the best-possible tariff in relation to the services used and based on end users' usage behaviour in the past year, in the event of an automatic renewal after a time limit, at least once a year, but in any case at the time when end users are informed pursuant to Par. 6.

(8) Providers who do not provide any number-independent interpersonal communications services shall notify end users, using a durable medium, concerning the content of any not exclusively favourable changes to general terms and conditions and tariff provisions, at least three months before the change enters into force. At the same time, end users shall be notified of the date when the changes are to enter into force while advising them of their right to terminate their contracts prior to that date in accordance with Par. 12.

(9) The regulatory authority may issue an ordinance specifying the degree of detail, content and format of the notification to end users pursuant to Par. 6 and 8 while considering the need to ensure that the notification is transparent for end users. Any changes to general terms and conditions and tariff provisions which are of a purely administrative nature, or which become mandatory and directly necessary due to legislative changes and which do not exclusively favour end users, shall not entitle the latter to terminate their contracts free of charge in accordance with Par. 12. In the event of any breach of

the provisions set out in this paragraph, the regulatory authority may initiate a supervisory procedure pursuant to Art. 184.

(10) Any significant continued or frequently recurring discrepancy between the actual performance of a communications service, other than an internet access service or a number-independent interpersonal communications service, and the performance indicated in the contract shall be considered to be a basis for triggering the remedies under other provisions of law, including the right to terminate the contract free of charge.

(11) If a consumer changes their place of residence, the provider who with that consumer concluded a contract for communications services that includes at least one internet access service shall be obliged to provide the contractual service at the consumer's new place of residence without changing the agreed term of the contract while providing other contents of the contract insofar as such is available there. The provider may charge an appropriate fee to cover the financial burden incurred by the relocation, which however must not be higher than the applicable fee for activating a new connection. If the service is not available at the new place of residence, the consumer shall be entitled to terminate the contract in accordance with Par. 12, subject to a notice period of two months ending on the last day of a calendar month.

(12) If an end user is entitled to terminate a contract on exceptional grounds before the expiry of an agreed commitment period, providers—insofar as they do not provide number-independent interpersonal communications services—may then request partial payment if the end user decides to keep any terminal equipment that may have been allocated to them.

(13) Partial payment shall be determined based on the initial value, calculated as 90 per cent of the purchase price at the time when the contract was concluded, minus the payments made by the end user in the form of a reduced purchase price, as well as any instalment payments made. For the period up to the end of the sixth month of the contractual period, partial payment is assumed at a flat rate of 50 per cent of the initial value. Thereafter, partial compensation for each month of the commitment period shall be set at the amount referred to above minus an amount for depreciation. The respective depreciation amount shall be determined by dividing the initial value by the number of months of the agreed commitment period, multiplied by the number of months from the conclusion of the contract until the termination comes into effect. The amount of the partial payment that is determined as described above shall be included in the contract in the form of a table. The end user shall be able to easily recognise from that table, in relation to each calendar month, the costs that will be incurred from the time when the termination takes effect. The partial payment must not be greater than the monthly fees outstanding until the end of the commitment period. No other fees may be charged. At the latest after the partial payment has been remitted, the provider shall remove free of charge all restraints on use of the terminal equipment in other networks.

(14) Par. 11 and 12 shall apply only to contracts that are concluded after this Federal Act enters into force. For contracts that were concluded before this Federal Act enters into force, partial payment must not be charged in the event of termination pursuant to Par. 8.

(15) Insofar as M2M transmission services are involved, the rights referred to in Par. 8 and 12 shall apply only to those end users who are consumers, microenterprises, small enterprises or not-for-profit organisations.

(16) The recommended retail price (RRP) shall be used to determine the purchase price pursuant to Par. 13. The RRP shall be published by the provider—insofar as they provide terminal equipment pursuant to Par. 12—on the regulatory authority's website via an electronic interface that is to be set up and operated by the regulatory authority. The RRP shall be updated at least every six months. For terminal equipment without an RRP, the regulatory authority shall set an initial value for the partial payment pursuant to Par. 13. In determining this value, the regulatory authority shall be guided by its observation of and experience in the market. The regulatory authority may also use average values when specifying the initial value. Furthermore, the regulatory authority shall be authorised to obtain information from manufacturers of terminal equipment, providers of terminal equipment or providers of communications services. Such shall be obliged to provide this information.

Bundled products

Article 136. (1) If a consumer bundled product comprises at least one internet access service or a number-based interpersonal communications service in addition to other services and terminal equipment, Art. 129 Par. 4, Art. 132 Par. 1, Art. 135 Par. 1 to 15 and Art. 118 shall apply to all elements of the bundle including, to the extent applicable, those not otherwise covered by those provisions.

(2) Where the consumer is entitled to terminate any element of a bundle as referred to in Par. 1 because of a lack of conformity with the contract, the consumer has the right to terminate the contract with respect to all elements of the bundle.

(3) Any subscription to additional services or terminal equipment provided or distributed by the same provider of internet access services or of number-based interpersonal communications services shall not extend the original duration of the contract to which such services or terminal equipment are added, unless the consumer expressly agrees otherwise when subscribing to the additional services or terminal equipment.

(4) Par. 1 and 3 of this provision shall also apply to end users who are microenterprises or small enterprises or not-for-profit organisations, unless they have explicitly agreed to waive all or parts of those provisions.

Entry in the subscriber directory

Article 137. (1) subscribers shall have the right under the prerequisites referred to in Par. 2 to 4 to have an entry in publicly available subscriber directories, to verify the entry, correct it and have it withdrawn.

(2) A subscriber is entitled to request from the provider of number-based interpersonal communications services with whom the user has a contractual relationship for the use of a line or connection to have the following data included in the provider's subscriber directory free of charge: surname, first name(s), academic degree, address, number and, on the subscriber's request, occupation.

(3) Subject to the subscriber's consent, additional data may be included in the subscriber directory. Any other individuals affected must also provide consent.

(4) Where requested by a subscriber, the data relating to the subscriber shall be completely or partly excluded from the subscriber directory (non-listing). This shall be free of charge. Where requested by a subscriber, the data relating to the user shall be excluded from any electronic subscriber directory that allows searches based on data other than user name.

(5) Providers of number-based interpersonal communications services shall notify their subscribers of their rights pursuant to Par. 1 and 2 in an appropriate form.

Billing and itemised bills

Article 138. (1) The charges for an internet access service or number-based interpersonal communications service shall be presented in the form of an itemised bill listing in chronological order all connections for which a fee was charged.

(2) End users shall be entitled to receive invoices without an itemised bill. The invoice shall contain a reference to the option of verifying the charges as well as up-to-date contact details for the provider sending the invoice.

(3) If the invoice or itemised bill is made available in electronic format, the end user must have the option of specifically requesting and receiving both records in printed form free of charge. In the case of an end-user relationship based on a contract not enabling the transmission of invoices or itemised bills in electronic format, the invoice or itemised bill shall be transmitted in paper format.

(4) If the bill is made available in electronic format, the provider shall transmit the bill in a storable format such as PDF to an electronic mail address disclosed by the end user and keep the bills available for a period of seven years at no charge. The provider shall inform the end user of the email address to which the invoice or itemised bill will be transmitted. The end user must also be given the opportunity to provide a different email address for this purpose.

(5) The regulatory authority may issue an ordinance specifying the degree of detail and the form in which the itemised bill is to be provided. In doing so, the regulatory authority shall consider the type of user relationship and service, the technical options and the protection of personal data, and shall take account of the need to enable end users to control their expenses, and to allow identification of providers of number-based third-party services.

(6) In preparing an itemised bill no data other than absolutely necessary may be processed. Called user numbers or other information identifying the recipient of a communication may be shown in an itemised bill only in abbreviated form unless the tariff applied to a connection can be recognised only from the non-abbreviated user number or the end user has declared in writing that he has correspondingly informed, or will inform, all current or future co-users of the line or connection. The foregoing is without prejudice to any other restrictions under labour law. Calls or other connections not subject to charges as well as calls to or connections with emergency services must not appear on the itemised bill. The identity

of providers of number-based services from third-party providers shall be specified on the itemised bill by disclosing the non-abbreviated number, unless the end user has requested in writing for this information to be stated only in an abbreviated format for future billing periods.

(7) Without prejudice to Par. 4, the deletion of data relating to an itemised bill shall be subject to the same time limits as apply to the deletion of traffic data.

Display of caller number

Article 139. (1) In voice communications services, except when making emergency calls, calling users must be given the option of having the display of information suppressed for each individual call, independently and free of charge. The user must have this option in relation to the line or connection.

(2) In voice communications services, users receiving calls must be given the option of having the display of incoming calls suppressed, independently and free of charge. Where the number is displayed prior to the connection being established, the users receiving calls must be given the option of rejecting, independently and free of charge, incoming calls for which the number display is suppressed.

(3) In a public communications network, users receiving calls must be given the option of having the display of their numbers suppressed, independently and free of charge.

(4) Providers of number-based interpersonal communications shall make available to end users DTMF (dual-tone multi-frequency dialling) as well as number display, subject to technical feasibility.

(5) The provisions of Par. 1 to 3 shall also apply to calls placed to countries not belonging to the European Union as well as calls originating in such countries.

(6) In the event of any breach of the foregoing provisions, the regulatory authority may initiate a supervisory procedure pursuant to Art. 184.

Automatic call forwarding

Article 140. When providing services that support call forwarding, operators of communications networks and services shall, at the end user's request and free of charge, deactivate any automatic call forwarding the end user's terminal device that has been requested by third parties. Where multiple operators are involved in such forwarding of calls, the operators shall cooperate.

Call tracing, malicious calls

Article 141. (1) Call tracing is the process of establishing the identity of the connection placing the call, irrespective of the caller's wishes.

(2) If an end user requests such tracing in the case of malicious calls, the provider shall set up tracing for future calls or have such tracing set up by the network operator. Tracing may also consist of overriding the suppression of number display and recording of incoming numbers by the operator. The operator or provider may charge an appropriate fee for this service.

(3) The results of call tracing or of overriding the suppression of number display shall be recorded by the communications service operator and disclosed to the end user, for those calls during surveillance that the end user plausibly demonstrates to have been malicious calls.

Service blocking

Article 142. (1) Without prejudice to the right to bar services for security reasons, providers of voice communications services and number-based interpersonal communications services shall offer to bar, at the request of their end users once a year and free of charge, any third-party services or internet access services charged based on consumption. Such barring of third-party number-based services includes all number ranges that are dedicated to services from third-party providers, insofar as these can be billed at more than EUR 0.20 per minute or event. When barring services, consideration shall be given to the technical options as well as the need for end users to control their expenses.

(2) Without prejudice to any deviating statutory or contractual provisions, providers are entitled to bar an end user's connection for third-party services, permanently and at no expense, where the end user disputes the fees charged for such services for at least two consecutive billing periods.

Payment delays

Article 143. Providers of telecommunications services may interrupt or deactivate services in the event of a payment delay on the part of an end user only if they have previously and unsuccessfully sent the end user a reminder threatening the interruption or deactivation of the service, and after setting a grace period of at least two weeks. The provider may agree an appropriate processing fee for completely blocking the service for which the end user is in arrears. No separate fee may be agreed for the case of interruption of only individual parts of the relevant service by the provider.Interruption of access to

emergency calls shall not be permitted. Services belonging to universal service within the meaning of Art. 106 Par. 1 shall not be interrupted or deactivated if the end user has failed to meet their obligations exclusively from another contractual relationship for universal service or from a different contractual relationship with the same provider.

Email forwarding

Article 144. On termination of a contract for an internet access service for which an end user has received an email address with the company or a brand belonging to the provider, the end user may request the provider to continue to forward corresponding emails free of charge in the twelve months following termination of the contract. The regulatory authority may issue an ordinance specifying technical details regarding the specific process for forwarding such emails. In doing so, the regulatory authority shall base this process on the reasonable effort for end users and providers to enable receipt of emails.

Review of charges

Article 145. (1) Where an end user doubts the correctness of the fees charged for a communications service, the provider shall, on written request, review all factors underlying calculation of the amount and, depending on the outcome, either confirm the correctness of the charge in writing or appropriately revise the amount charged. Such requests may be submitted within three months after invoicing.

(2) Where the regulatory authority is notified in writing of an objection to the fees charged by a provider for a communications service, from the date of notification the payment due date of the invoiced and contested charge shall be deferred until the dispute is settled. The deferment of the due date shall end if a request pursuant to Art. 205 Par. 1 is not submitted within three months after receipt of the provider's reply to the objection pursuant to Par. 1. Without prejudice to the foregoing, the provider may demand immediate payment of an amount corresponding to the average charged for the previous three billing periods.

(3) At the end user's request, the provider shall refund that part of the fee which has already been paid by the end user and which may not be collected pursuant to Par. 2 for the duration of the conciliation procedure. Once the procedure has been completed, the operator shall refund any excess amounts plus interest under law from the date of collection onward.

(4) In the event that in the provider's review procedure or in the conciliation procedure pursuant to Art. 205 Par. 1 no reason is identified for recalculating the contested amount, legal interest may be charged beginning with the payment due date stated on the bill. The limitation period pursuant to Art. 1486 No. 1 ABGB shall be suspended in relation to the total amounts of the bills disputed pursuant to Par. 2 for the duration of the conciliation procedure pursuant to Art. 205 Par. 1.

(5) In the event that an error is identified that is potentially to the end user's disadvantage and the correct charge cannot be calculated, without prejudice to any court decision, a one-time compensation amount based on the average use of the particular communications service by the end user shall be specified in the general terms and conditions, provided the provider can plausibly demonstrate service consumption of at least that magnitude.

Section 12
Use of amateur radio stations

Scope of authorisation

Article 146. (1) An amateur radio licence authorises the holder to install and operate:

1. one or more fixed amateur radio stations at one or more locations specified in the amateur radio licence;
2. mobile amateur radio stations on Austrian territory;
3. on a temporary basis, a fixed amateur radio station at a location on Austrian territory other than the location specified in the amateur radio licence. 'Temporary' in this sense is for a period not exceeding three months.

(2) A Class 1 amateur radio licence authorises the holder to modify or construct amateur radio broadcasting systems.

(3) Transmissions may be sent from an amateur radio station only:

1. in the frequency ranges allocated to the amateur radio service and to the respective authorisation class;

2. with the transmission types specified for the respective authorisation class;
3. at a transmission power no higher than the maximum permitted level specified for the respective frequency range and as derived directly from the amateur radio licence;
4. using no more than the bandwidth specified in each case; and
5. while the holder of the amateur radio licence or joint user of the amateur radio station is personally present at the amateur radio station for the entire duration of the transmission, unless the station is a relay radio station, a beacon transmitter or a remote radio station.

(4) Amateur radio stations may be connected to telecommunications networks using internet technologies if the participating amateur radio stations are used solely to provide amateur radio services.

(5) For the purposes of training amateur radio operators and while taking into account the needs of the amateur radio service, the Federal Minister for Agriculture, Regions and Tourism may issue an ordinance providing for exceptions to Par. 3.

Communications content

Article 147. (1) All amateur radio traffic is to be broadcast in plain language and content is to be limited to:

1. trial transmissions;
2. technical or operational communications; and
3. statements of a personal nature or figurative descriptions which, because of their insignificance, could not reasonably be expected to be transmitted using telecommunications services.

(2) Radio traffic is permitted solely between authorised amateur radio stations.

(3) Communications must be terminated immediately in the event that radio traffic is received by a radio station other than an authorised amateur radio station.

(4) When communicating with other radio stations, operators must refrain from any activities that endanger the standing, the security or the economic interests of the federal or a provincial government, or contravene laws, public order or decency.

(5) Communications are prohibited with amateur radio stations based in countries that have raised objections to amateur radio communications with Austria. A list of those countries shall be published by the Federal Minister for Agriculture, Regions and Tourism in the Federal Law Gazette.

Radio communications in emergencies and disasters

Article 148. (1) Emergency radio communications involve the exchange of messages between a radio station that is directly experiencing, involved in or witnessing an emergency and another radio station or stations that is/are providing aid. To the best of their abilities, radio amateurs shall respond to requests from the authorities responsible for providing emergency aid by providing support for the provision of emergency/disaster radio communications and shall act as instructed by the authorities.

(2) An emergency is an event during which the safety of human life is at least apparently jeopardised.

(3) Disaster radio communications involve the exchange of communications in the context of national or international aid, between radio stations within a disaster area and between a radio station based in the disaster area and organisations providing aid.

(4) A disaster area is a geographical area in which a disaster has occurred and is defined as such for the duration of the disaster.

(5) The restrictions given in Art. 146 Par. 4 and 147 Par. 1 to 3 shall not apply to emergency and disaster radio communications or to drills for emergency and disaster radio communications.

(6) Drills for emergency and disaster radio communications must be notified to the telecommunications office at least seven days before the drills commence.

(7) If an emergency communication is received, personal radio communications must cease immediately and any interruption of the emergency communication must be avoided.If no answer is received from any other radio station, contact to the calling radio station must be established without undue delay. If necessary, other radio stations must be alerted to the emergency communication.

Call signs

Article 149. (1) The assigned call sign must be broadcast in full at the start, before termination and repeatedly during radio communications, using the respective transmission type.

(2) When operating a club radio station, the call sign assigned to the club radio station must be used. With the consent of the station owner, the club radio station may also be operated with the call sign assigned to the joint user, but only within the authorisation scope of the licence with which the call sign was assigned.

Call sign lists

Article 150. (1) The telecommunications authorities may use a suitable format to publish call sign lists from which the data referred to in Par. 2 may be obtained.

(2) A call sign list must include the following details:

1. first and last name of the amateur radio operator;
2. the first location of the amateur radio station, as indicated in the amateur radio licence;
3. the assigned call sign;
4. the authorisation class for which the amateur radio licence was issued.

(3) Entry of the personal data as specified in Par. 2 No. 1 and 2 requires the express consent of the person involved (data subject).

(4) The data given in the call sign list must be used exclusively for the purposes of the amateur radio service. All other uses are prohibited.

Co-use

Article 151. (1) The holder of an amateur radio licence or the station owner may allow co-use of the amateur radio station by individuals who have successfully qualified as an amateur radio operator.

(2) Such joint users of an amateur radio station may operate the station only within a scope as derived from;

1. the examination category of their amateur radio examination certificate; and
2. the licence class and broadcast power level of the amateur radio licence held by the owner of the amateur or club radio station.

(3) For the purposes of training amateur radio operators and while taking into account the needs of the amateur radio service, the Federal Minister for Agriculture, Regions and Tourism may issue an ordinance providing for exemptions to Par. 2.

(4) The holder of the amateur radio licence or the station owner remains responsible for ensuring compliance with legal provisions and must therefore monitor the operation of the radio station.

Radio logs

Article 152. (1) A radio log must be kept:

1. in the case of emergency radio communications, disaster radio communications, and when conducting emergency and disaster radio communications drills;
2. at the request of the telecommunications authority for the purpose of clarifying technical frequency issues.

(2) The radio log must document broadcasts so as to cover key aspects of the transmission.

(3) In the case of emergency radio communications, disaster radio communications, and when conducting emergency and disaster radio communications drills, the log entry must summarise the entire content, including the identity and location of the remote station.

Security measures

Article 153. The owner of an amateur radio station shall implement appropriate measures to prevent the use of their radio station by unauthorised individuals.

Section 13
Amateur radio examination certificates

Prerequisites for issue

Article 154. (1) An amateur radio examination certificate shall be issued to a technically competent individual who applies for the same.

(2) Technical competence is to be proven by the successful completion of the amateur radio examination.

Application for issue

Article 155. Applications for the issuing of an amateur radio examination certificate must be made to the telecommunications office in writing and must include the following details:

1. applicant's name and address;
2. examination category being applied for.

Withdrawal of application

Article 156. An application for the issuing of an amateur radio examination certificate is considered withdrawn if the applicant does not appear for the examination at all or arrives only after such a delay that the examination can no longer be held, and does not provide credible evidence of not being directly responsible for missing the examination, or withdraws during the examination or does not pass the examination.

Examination content, supplementary exam

Article 157. (1) The amateur radio examination comprises the following subjects:

1. operation and systems;
2. applicable provisions of law.

(2) The written parts of the examination can also be conducted using a computerised system or completed as a written multiple choice test.

(3) The Federal Minister for Agriculture, Regions and Tourism shall issue an ordinance specifying various examination categories that reflect the scope and the level of difficulty of the amateur radio examination, as well as, taking into account international agreements, the scope of individual examination topics. The ordinance shall also specify a process for handling the examination that prioritises simplicity and efficiency.

(4) Individuals who have passed the amateur radio exam in any category other than the highest examination category may attend a supplementary examination to acquire a certificate in a higher examination category.

Establishment of an examination board

Article 158. (1) The examination board is to be set up in the telecommunications office.

(2) The members of the examination board shall be appointed by the Federal Minister for Agriculture, Regions and Tourism for a term of five calendar years.

(3) The examination board consists of two examiners. Persons appointed as examiners are to be experts from the telecommunications authority or, for the subject of operations and systems, an experienced amateur radio operator who has qualified in the highest examination category and consents to appointment. The board shall be chaired by the examiner for the subject of applicable legislation. The chair's vote is final in the event of a tie.

Recognition of foreign certificates

Article 159. The Federal Minister for Agriculture, Regions and Tourism may issue an ordinance to recognise certificates that are issued abroad, taking into account the existence of reciprocity and the equivalence of training.

Section 14

Confidentiality of communications, data protection

General information

Article 160. (1) The provisions of this section shall apply to the processing and transmission of personal data or of data relating to a legal person which are not publicly accessible, in connection with the provision of public communications services in public communications networks, including those public communications networks which support data collection and identification equipment.

(2) The provisions set out in this section are without prejudice to the Code of Criminal Procedure (*Strafprozessordnung*, StPO) 1975, Federal Law Gazette No. 631/1975.

(3) Without prejudice to Art. 4, the following definitions shall apply in this section:

1. 'provider' means a provider of public communications services;
2. 'user' means any person using a publicly available communications service, for private or business purposes, without necessarily having subscribed to that service;

3. ‘user identifier’ means an identifier which enables a communications transaction to be attributed unambiguously to a specific user;
4. ‘email address’ means the unique identifier assigned to an electronic mailbox by an internet email provider;
5. ‘master data’ means all data required for the establishment, processing, modification or termination of legal relations between the user and the provider, or for the production and publication of user directories, namely:
   a) name (surname and first name in the case of natural persons, and name or designation in the case of legal persons);
   b) academic degree in the case of natural persons;
   c) address (address of residence in the case of natural persons, and place of establishment or billing address in the case of legal persons);
   d) user number and other contact information for the communication;
   e) information relating to type and content of the contractual relationship;
   f) creditworthiness;
   g) date of birth.
6. ‘traffic data’ means any data processed for the purpose of the conveyance of a communication on a communications network or for the billing thereof;
7. ‘access data’ means the traffic data that are generated with the operator when a user accesses a public communications network and that are required for assigning to the user the network addresses used for a communication at a specific point of time;
8. ‘content data’ means the contents of transmitted communications (No. 11);
9. ‘location data’ means any data processed in a communications network or by a communications service, indicating the geographic position of the terminal equipment used by a user of a public communications service, and in the case of fixed-link terminal equipment indicating the address of the equipment;
10. ‘cell ID’ means the identifier of the radio cell that is used to establish a connection for mobile communications;
11. ‘communication’ means any information exchanged or conveyed between a finite number of parties by means of a public communications service; the term does not include any information conveyed as part of a broadcasting service to the public via a communications network in such a way that the information cannot be associated with an identifiable recipient;
12. ‘value-added service’ means any service which requires the processing of traffic data or location data other than traffic data to an extent beyond that necessary for the transmission of a communication or the billing thereof;
13. ‘electronic mail’ means any text, voice, audio or image communication that is sent via a public communications network and can be stored in the network or in the recipient’s terminal equipment pending retrieval by the recipient;
14. ‘email’ means electronic mail sent via the internet using the Simple Mail Transfer Protocol (SMTP);
15. ‘public IP address’ means a unique numerical address from an address block that has been assigned by the Internet Assigned Numbers Authority (IANA) or a regional internet registry to an internet access service provider in order to allow the provider to assign to their customers addresses which allow the unique identification of and routing of traffic to computers on the internet;;public IP addresses are considered access data as defined under No. 7, and a specific public IP address assigned to a user for exclusive use during the term of a contract is additionally considered master data within the meaning of No. 5;
16. ‘personal data breach or breach of not publicly accessible data relating to a legal person’ means any breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data or not publicly accessible data relating to a legal person, where such data are transmitted, stored or otherwise processed in connection with the provision of a publicly available communications service in the European Union.

Confidentiality of communications

Article 161. (1) Content data, traffic data and location data shall be subject to confidentiality of communications. Confidentiality of communications shall additionally apply to the data used in unsuccessful connection attempts.

(2) Every operator or provider of a public communications network or service and all persons involved in the operator's or provider's activities shall be obliged to maintain confidentiality of communications. The obligation to maintain confidentiality shall continue to apply following the cessation of the activities giving rise to this obligation.

(3) Persons other than a user shall not be permitted to listen, tap, record, intercept or otherwise monitor communications and the associated traffic and location data or to disclose related information without the consent of all users involved. This shall not apply to the recording and tracing of telephone calls when answering and processing emergency calls and to cases of malicious call tracing, monitoring of communications under Art. 135 Par. 3 of the StPO, providing information on data relating to communications under Art. 135 Par. 2 of the StPO, providing information on data under Art. 99 Par. 3a of the Federal Act of 26 June 1958 concerning financial criminal law and financial criminal procedure (*Finanzstrafgesetz*, FinStrG), Federal Law Gazette No. 129/1958 as amended by Federal Law Gazette No. 21/1959 (typographic correction), providing information on data under Art. 11 Par. 1 No. 7 of the Federal Act on the organisation, tasks and powers of the police force for state protection (*Polizeiliches Staatsschutzgesetz*, PStSG), Federal Law Gazette I No. 5/2016, or to providing information on data under Art. 22 Par. 2a and 2b of the Military Powers Act (*Militärbefugnisgesetz*, MBG), Federal Law Gazette I No. 86/2001, or to technical storage as necessary for forwarding communications.

(4) If communications are received unintentionally by means of a radio system, terminal equipment or any other technical equipment which are not intended for that radio system, that terminal equipment or the user of the other equipment, the contents of the communications as well as the fact that they have been received shall not be recorded, communicated to unauthorised persons or used for any other purposes. Recordings of communications must be erased or otherwise destroyed.

(5) Journalistic confidentiality (Art. 31 Media Act, *Mediengesetz*) and other obligations to confidentiality specified in other Federal Acts shall be observed in accordance with the legal protection granted to professional confidentiality, including that extended to religious officials, including prohibitions of circumventions of such confidentiality, as set out in Art. 144 and 157 Par. 2 of the StPO. Providers are not required to conduct official audits.

Technical facilities

Article 162. (1) To the extent required under ordinances issued under Par. 3 and Art. 166 Par. 2 and 171 Par. 6, providers shall make available all facilities necessary for monitoring communications under Art. 135 Par. 3 StPO and for providing information on data in communications under Art. 135 Par. 2 StPO, providing information on data under Art. 11 Par. 1 No. 7 PStSG, providing information on data under Art. 99 Par. 3a FinStrG, providing information on data under Art. 22 Par. 2a and 2b MBG, and for fulfilling obligations under Art. 166 Par. 2.Providers shall be compensated for 80 per cent of the costs (personnel and materials) of establishing in their systems the functionality necessary in order to comply with the ordinances issued pursuant to Par. 3 and Art. 166 Par. 2 and 171 Par. 6. In agreement with the Federal Minister for Justice, the Federal Minister for Defence, the Federal Minister for the Interior and the Federal Minister for Finance, the Federal Minister for Agriculture, Regions and Tourism shall issue an ordinance that sets out the basis of assessment for this percentage and the circumstances under which claims for this compensation can be asserted. In doing so, consideration is to be given in particular to the economic reasonableness of this expenditure, any potential interest in the services to be provided on the part of the affected undertaking, any threat arising from the technical facilities offered by the latter that is to be mitigated by their cooperation as requested, as well as the simplicity and cost-effectiveness of the procedure.

(2) Providers shall cooperate to the extent necessary in monitoring communications under Art. 135 Par. 3 StPO and in providing information on data in communications under Art. 135 Par. 2 StPO, providing information on data under Art. 11 Par. 1 No. 7 PStSG, providing information on data under Art. 99 Par. 3a FinStrG, and providing information on data under Art. 22 Par. 2a and 2b MBG. Where the transmission of traffic data, location data and master data requires the processing of traffic data pursuant to the provisions of the StPO, the SPG, the FinStrG, the PStSG and the MBG, such transmission must deploy a technology that ensures the identification and authentication of sender and recipient, as well as the integrity of the data. In agreement with the Federal Minister for Agriculture, Regions and Tourism, and the Federal Minister for Finance, the Federal Minister for Justice shall issue an ordinance providing for appropriate compensation. In doing so, consideration is to be given in particular to the economic reasonableness of this expenditure, any potential interest in the services to be provided on the part of the affected undertaking, any threat arising from the technical facilities offered by the latter that is to be mitigated by their cooperation as requested, as well as the public duty of the administration of justice.

(3) In agreement with the Federal Minister for the Interior, the Federal Minister for Justice and the Federal Minister for Defence, the Federal Minister for Agriculture, Regions and Tourism may issue an ordinance specifying detailed provisions, in accordance with the current state of technology, for the design of the technical facilities to ensure the monitoring of communications pursuant to Art. 135 Par. 3 of the StPO and the provision of information on communications data pursuant to Art. 135 Par. 2 of the StPO as well as to prevent unauthorised third parties from gaining knowledge of the data to be transmitted. A report shall be submitted to the Main Committee of the National Council directly after any such ordinance has been issued.

Data security measures

Article 163. (1) For each service provided by a provider of a public communications service, the particular provider shall be required to implement data security measures within the meaning of Art. 24, 25 and 32 GDPR in relation to the provision of a public communications service.

(2) Without prejudice to Par. 1, where there is a high risk of a breach of confidentiality, the provider of a public communications service shall inform their users about such a risk and, if the risk lies outside the scope of the measures to be implemented by the provider, of any potential remedies including their associated costs.

(3) Providers of public communications services shall implement data security measures to ensure the following at all times:

1. only authorised persons are granted access to personal data and only for legally authorised purposes;
2. personal data that are stored or transmitted are protected against accidental or unlawful destruction, accidental loss or alteration, and unauthorised or unlawful storage, processing, access and disclosure;
3. the implementation of a security policy for the processing of personal data.

The regulatory authority may review the measures taken by the providers of public communications services and issue recommendations for achieving the targeted security level.

Security breaches

Article 164. (1) Without prejudice to Art. 44 or the provisions of the Federal Data Protection Act or the GDPR, in the case of any security breach involving personal data or data relating to a legal person which are not publicly accessible, providers of public communications services shall notify the Data Protection Authority of that breach without undue delay. If such a breach can be assumed to violate an individual's privacy or the integrity of their personal data, the provider shall also notify the individuals affected by the breach without undue delay.

(2) A provider of public communications services is not required to notify the individuals affected in cases where the provider demonstrates to the satisfaction of the Data Protection Authority that the provider has implemented appropriate technological protection measures within the meaning of Regulation (EU) No 611/2013 on the measures applicable to the notification of personal data breaches pursuant to Directive 2002/58/EC, OJ L 173 of 26 June 2013, p. 2, and that those measures have been applied to the data affected by the security breach. In all cases, such technological protective measures must reliably prevent unauthorised persons from accessing the data.

(3) Without prejudice to the obligations incumbent on the provider pursuant to Par. 1, second sentence, the Data Protection Authority may, having considered the probable adverse effects of the breach, also require the provider of public communications services to notify the persons affected.

(4) The wording of the notification to affected individuals must fulfil the provisions of Art. 3 of Regulation (EU) No 611/2013.

(5) In individual cases, the Data Protection Authority may also issue orders to ensure that the individuals affected are appropriately notified of the repercussions of the security breach. The Data Protection Authority may also issue guidelines in connection with security breaches.

(6) Providers of public communications services shall maintain inventories of security breaches involving personal data or data relating to a legal person which are not publicly accessible. Such an inventory must include background information on the breaches, their impact and the corrective measures taken, and must be sufficiently detailed to enable the Data Protection Authority to verify compliance with the provisions of Par. 1 to 4.

(7) The Data Protection Authority shall inform the regulatory authority about those security breaches that are necessary for the regulatory authority to fulfil the duties it has been assigned by Art. 44.

Data protection: general provisions

Article 165. (1) Master data, traffic data, location data and content data may be collected and processed only for the purposes of providing a communications service.

(2) Data as referred to in Par. 1 may be transmitted only to the extent that is necessary for the provider of a public communications service to provide the specific communications service for which those data have been collected and processed. The data may be processed for the marketing of communications services or the provision of value-added services, or may be otherwise transmitted only with the consent of the data subject, who may revoke that consent at any time. Processing for such purposes shall be restricted to the scope and duration required for marketing. Providers of public communications services must not make the provision of their services contingent on such consent.

(3) Providers of public communications services and of information society services within the meaning of Art. 3 No. 1 of the E-Commerce Act (*E-Commerce-Gesetz*), Federal Law Gazette I No. 152/2001, shall inform their subscribers or users about the personal data which the provider intends to process, and about the legal basis for such processing and its purpose, and for how long such data will be stored. Such data may only be collected where the user or subscriber actively grants consent after having received clear and comprehensive information about the same. The foregoing shall not oppose any technical storage or access where this is for the sole purpose of transmitting a communication via a communications network or is a basic precondition enabling the provider of an information society service to provide a service explicitly requested by the user or subscriber. The user shall also be informed of the potential data uses afforded by the search functions embedded in electronic versions of the directories. That information shall be provided in an appropriate format, specifically as part of the provider's general terms and conditions, and by no later than the date on which the parties commence their legal relationship.

Master data

Article 166. (1) Without prejudice to Art. 165 Par. 1 and 2 or to Art. 181 Par. 8 and 9, providers may process master data only for the following purposes:

1. conclusion, performance, amendment or termination of the contract with the user;
2. invoicing;
3. preparation of user directories pursuant to Art. 126;
4. providing information to operators of emergency services pursuant to Art. 124.

(2) Before performing the contract and before the first top-up occurring after 1 September 2019, the user must be identified by or on behalf of the provider and the master data required for the identification of the user (Art. 160 Par. 3 No. 5, lit. a, b and g) must be registered by means of suitable identification procedures. In agreement with the Federal Minister for the Interior, the Federal Minister for Agriculture, Regions and Tourism shall issue an ordinance specifying suitable identification procedures. Compensation for unavoidable investments made shall be provided for by the rules given in Art. 162 Par. 1.

(3) The provider shall delete the master data by the date on which the contractual relationship with the user is terminated. Exceptions shall be permitted only to the extent to which those data are still required for settling bills or collecting charges, handling complaints or complying with other legal obligations.

Traffic data

Article 167. (1) With the exception of the cases explicitly addressed in this Act, traffic data must not be stored or transmitted and shall without undue delay be deleted or made anonymous after the connection is terminated. Whether traffic data transmitted in accordance with Par. 5 are permitted to be further processed shall be determined based on the provisions of the StPO, the FinStrG, the SPG, the PStSG and the MBG.

(2) The operator or provider of a public communications network or service shall store traffic data only to the extent required for the purposes of retail or wholesale billing. Traffic data must be deleted or made anonymous as soon as the payment process has been completed and no objection to the charges has been submitted in writing within a period of three months. Such data are not to be deleted, however:

1. if an objection is raised within the allotted period, until the expiry of the period during which a bill may be legally contested;
2. if the bill has not been settled, until the expiry of the period within which a payment claim can be asserted;

3. if a procedure relating to the amount of the charges has been initiated, until a final decision is issued; or
4. if an order is issued pursuant to Art. 135 Par. 2b StPO, until the expiry of the specified period or as ordered by the public prosecutor's office (Art. 138 Par. 2 StPO).

During the dispute, the data referred to in No. 1 to 3 shall be made available in full to the body handing down the decision and to the conciliation body (Art. 205). The scope of traffic data stored must be restricted to the absolute minimum required.

(3) With the exception of transmission, the processing of traffic data may be carried out only by persons responsible for billing or traffic management, troubleshooting, customer enquiries, fraud detection or marketing communications services, or for providing value-added services, or by individuals commissioned by the aforementioned persons responsible. The scope of traffic data processed must be restricted to the absolute minimum required.

(4) With the exception of the cases specifically provided for by this Act, providers shall be prohibited from scrutinising a local loop in terms of the user numbers called from that line except for billing purposes. With the user's consent, the provider may use the data for the purpose of marketing the provider's own telecommunications services or for the provision of value-added services.

(5) Traffic data may be processed in order to obtain the following kinds of information:

1. information about data relating to communications pursuant to Art. 134 No. 2 of the StPO;
2. information about access data, for courts and public prosecutor's offices in accordance with § 135 Par. 1a second clause of the StPO;
3. information about traffic and master data, where traffic data needs to be processed, and information about location data, for law enforcement authorities defined as competent by the SPG, pursuant to Art. 53 Par. 3a and 3b SPG, Art. 11 Par. 1 No. 5 PStSG and Art. 22 Par. 2b MBG; if a current location cannot be determined, the cell ID of the last communication registered for the terminal device may be processed;
4. information about access data, if these data were stored within the three months prior to a query, for law enforcement authorities defined as competent by the SPG, pursuant to Art. 53 Par. 3a No. 3 SPG, Art. 11 Par. 1 No. 5 PStSG, Art. 99 Par. 3a FinStrG and Art. 22 Par. 2b MBG;
5. information about traffic, access and location data pursuant to Art. 11 Par. 1 No. 7 PStSG and Art. 22 Par. 2b MBG.

Content data

Article 168. (1) With the exception of the cases addressed in this Act, content data must not be stored at any time unless storage constitutes an essential element of the communications service. If short-term storage is required for technical reasons, the provider shall delete the stored data without undue delay once those reasons no longer apply.

(2) The provider shall implement technical and organisational precautions to ensure that content data are not stored or are stored only to the minimum extent required for technical reasons. If content storage is a feature of the service, the data shall be deleted immediately after service provision has ended.

Location data other than traffic data

Article 169. (1) Without prejudice to Art. 124, location data other than traffic data may be processed only if:

1. made anonymous; or
2. the users or subscribers have granted their consent, which they may revoke at any time.

(2) Even if consent to data processing has been given pursuant to Par. 1, users or subscribers must be given an option to temporarily prohibit the processing of those data for each transmission; this option must be straightforward and free of charge.

(3) The processing of location data other than traffic data in accordance with Par. 1 and 2 must be restricted to the scope necessary in order to provide the value-added service and to persons as commissioned by the provider or the third party providing the value-added service. Without prejudice to Art. 161 Par. 3, the collection and use of location data not connected to a communication in order to obtain information shall be prohibited.

Data security during the transmission of operationally necessary traffic and location data to legally entitled authorities for information purposes

Article 170. (1) The data must be transmitted via a central information handling point that is to be established within Bundesrechenzentrum GmbH by the Federal Minister for Agriculture, Regions and Tourism .

(2) The technical specification of the information handling point must provide for the use of an encrypted transmission mode (transport encryption).

(3) The content both of the query and of the response sent between the sender and recipient must also be encrypted by means of an asymmetric encryption technique (content encryption). Asymmetric encryption techniques may also be implemented as hybrid techniques.

(4) The information handling point identifies and authenticates the participants in the data exchange by means of an advanced electronic signature.

Information handling point—basic structure

Article 171. (1) The information handling point shall establish an electronic mailbox system for the secure handling of queries and requests for information in accordance with Par. 6. All participants are to be connected to the information handling point by means of an encrypted channel.

(2) The information handling point must be established in such a way that Bundesrechenzentrum GmbH, as the processor, within the meaning of Art. 4(8) GDPR, of the information handling point, has no means of accessing personal details contained in information request queries and their responses.

(3) The information handling point shall handle requests for information about data which are necessary for providers for the purposes set out in Art. 167 Par. 2 and 3. Statistics on all requests for queries shall be collected by the information handling point in an audit-compliant manner.

(4) The specification for the information handling point must provide for a transmission technology that guarantees the identification and authentication of sender and recipient as well as data integrity. The data must be transmitted by means of a technically advanced encryption technique and using the CSV (comma-separated value) file format. The following exceptions apply:

1. the transmission of data in the cases given in Art. 124;
2. the transmission of traffic data and master data in cases of imminent danger, where traffic data needs to be processed, and information about location data, for law enforcement authorities defined as competent by the SPG, pursuant to Art. 53 Par. 3a and 3b SPG, Art. 11 Par. 1 No. 5 PStSG and Art. 22 Par. 2b MBG; if a current location cannot be determined pursuant to Art. 124 Par. 1, the last cell ID available for the terminal device may be processed pursuant to Art. 124 Par. 4;
3. the transmission of access data in cases of imminent danger, if these data were stored within the three months prior to a query, for law enforcement authorities defined as competent by the SPG, pursuant to Art. 53 Par. 3a No. 3 SPG, Art. 11 Par. 1 No. 5 PStSG and Art. 22 Par. 2b MBG;
4. the transmission of location data when determining the current location pursuant to Art. 134 ff. StPO;
5. the transmission of accompanying call data as part of communications monitoring.

(5) The specification for the information handling point shall provide for a dedicated means of access for the Data Protection Authority, the legal protection officer at the Federal Ministry for Justice, the Federal Minister for the Interior and the Federal Minister for Finance. Access to log data or statistics shall be provided in accordance with the duties of those officeholders.

(6) In agreement with the Federal Minister for the Interior, the Federal Minister for Justice and the Federal Minister for Finance, the Federal Minister for Agriculture, Regions and Tourism may issue an ordinance specifying the details as required for a uniform definition of the syntax and data fields, and the encryption, storage and transmission of the data. Without prejudice to Art. 170, 171 and 172, details are to be provided for the following in particular:

1. information handling point roles;
2. auditing of information handling point roles;
3. authentication, security level of connection, encryption/signature;
4. authorities granted access;
5. provider connections;
6. mailboxes and delivery;

7. optional requests for master data information via the information handling point;
8. logging of data traffic via the information handling point;
9. statistical analysis of log data.

A report shall be submitted to the Main Committee of the National Council directly after any such ordinance has been issued.

(7) A provider who is not required to submit a financial contribution pursuant to Art. 34 of the KommAustria Act (*KommAustria-Gesetz*, KOG) need not use the information handling point to meet their information obligations.

Establishment and operation of the information handling point—client and execution

Article 172. (1) The Federal Minister for Agriculture, Regions and Tourism shall be responsible for the establishment and the operation of the information handling point, as well as certificate management and data security.

(2) The establishment and operation of the information handling point as well as certificate management shall be entrusted to Bundesrechenzentrum GmbH, which assumes the role of data processor for each data controller who submits data to the information handling point or has data accepted by the latter for the controller's use.

(3) The Federal Minister for Agriculture, Regions and Tourism may commission a service provider for the purposes of auditing the practical implementation of the technical specification by Bundesrechenzentrum GmbH.

Subscriber directory

Article 173. (1) The data included in the subscriber directory pursuant to Art. 137 Par. 2 and 3 may be processed and analysed by the provider only for the purposes of utilising number-based interpersonal communications services. All other processing is prohibited. In particular, data must not be used for the profiling, within the meaning of Art. 4 point (4) GDPR, of users or to classify such users into categories, except for the preparation and publication of user directories. The provider shall introduce significant obstacles to the copying of electronic subscriber directories, accounting for the current state of technology and economic reasonableness.

(2) Data included in a user directory may be transmitted to the persons specified in Art. 126 Par. 1 No. 4 where Art. 137 Par. 4 is taken into account.

(3) The restriction of use pursuant to Par. 1 shall apply to data transmitted under Par. 2.

Unsolicited communications

Article 174. (1) Calls, including facsimile transmissions, for marketing purposes shall not be permitted without the prior consent of the user. The consent of a person authorised by the end user to use the line or connection shall be considered equivalent to the user's own consent. Consent once given may be revoked at any time; revocation of consent shall have no impact on any contractual relationship with the person to whom consent was given.

(2) In the case of telephone calls for marketing purposes, the caller must not suppress or falsify the display of the calling number and the service provider must not be instructed to suppress or falsify the display of the calling number.

(3) The sending of electronic mail, including text messages, without the recipient's prior consent shall not be permitted where the message is sent for the purpose of direct marketing.

(4) Prior consent to electronic mail pursuant to Par. 3 shall not be required where:

1. the sender has received the contact details for the communication in the context of a sale or a service to their customers;
2. the communication is transmitted for the purpose of direct marketing of the sender's own similar products or services;
3. the customer is clearly and explicitly given an opportunity to refuse, easily and free of charge, such uses of electronic contact information, at the time it is collected and each time it is transmitted; and
4. the recipient has not previously refused such communication, in particular by registering for the list referred to in Art. 7 Par. 2 of the E-Commerce Act.

(5) The sending of electronic mail for the purposes of direct marketing shall be prohibited without exception if:

1. the identity of the sender on whose behalf the communication is transmitted is disguised or concealed;
2. the provisions of Art. 6 Par. 1 of the E-Commerce Act are breached;
3. the recipient is requested to visit websites breaching that provision; or
4. no valid address is provided to which the recipient is able to send a request to cease such communications.

(6) Where an administrative offence pursuant to Par. 1, 3 or 5 has not been committed in Austria, the offence shall be considered as having been committed at the place where the unsolicited communication is received by the user's connection or line.

Section 15
Supervisory rights and transparency

Scope

Article 175. (1) Communications services shall be subject to supervision by the regulatory authority, which for this purpose may use persons authorised by the telecommunications office.

(2) Persons authorised by the telecommunications office shall, at the request of the regulatory authority, provide assistance within the scope of their duties, in particular in relation to telecommunications issues.

(3) Telecommunications systems and operation of such systems shall be subject to supervision by the telecommunications authorities. 'Telecommunications systems' within the meaning of this section are all systems and devices for processing communications, including in particular communications networks, cable broadcasting networks, radio systems and terminal equipment.

(4) The telecommunications authorities shall be entitled to test telecommunications systems, in particular radio systems and telecommunications terminal equipment or parts thereof, for compliance with the provisions of this Act and the ordinances and decisions issued under this Act. For this purpose, persons authorised by the telecommunications offices who duly identify themselves shall be granted access to premises or rooms where such systems are or presumed to be located. They shall be given all necessary information relating to the systems and their operation. Authorisation documents as well as any confirmation issued pursuant to Art. 6 shall be presented on request.

(5) If required for testing, the licence holder shall at the request of the telecommunications office make the radio systems available for testing, at the location and time specified and at the licence holder's expense. Radio systems may be also tested on site at the licence holder's expense where this is practicable because of the size or technical design of the system or the financial expense involved. The foregoing obligations shall also apply to a person who operates a radio system without authorisation.

Searches

Article 176. (1) Where there is a strong suspicion that a radio transmission system installed or operated without authorisation poses a potential threat of personal harm or property damage, or where required to enforce obligations under international agreements, the telecommunications authorities may order or, where the threat is imminent, may have persons whom they authorise carry out searches of premises, households, persons or vehicles.

(2) Any search shall be carried out with the utmost respect for the persons present and items of property. Attention shall be paid in particular to ensuring that any interference with the rights of the person concerned is proportional within the meaning of Art. 29 of the Security Police Act (*Sicherheitspolizeigesetz*, SPG). The provisions of Art. 121 Par. 2 and 3 as well as Art. 122 Par. 3 of the Code of Criminal Procedure (*Strafprozessordnung*, StPO) shall apply mutatis mutandis unless the purpose of the measure would be thwarted.

(3) The official body carrying out the search shall draft on site a brief report describing the sequence of events and the results. One copy shall be handed over to the person searched or left at the site of the search.

Supervisory measures

Article 177. (1) Where one telecommunications system causes harmful interference to another telecommunications system, the telecommunications office may order and execute such measures as are necessary to protect the affected system and, under the given circumstances while avoiding excessive costs, are best suited for the systems in question. Where a telecommunications system is disrupted by an

electrical system or by electrical equipment which is not subject to supervision by the telecommunications office, the telecommunications office shall make a corresponding report to the authority responsible for supervision of the system causing the interference. In case of imminent danger, the telecommunications office shall proceed in accordance with Art. 57 of the General Administrative Procedure Act (*Allgemeines Verwaltungsverfahrensgesetz*, AVG) and inform the authority responsible for the supervision of the interfering installation without undue delay.

(2) Telecommunications systems installed and operated without authorisation may be decommissioned without prior warning. The foregoing shall apply to telecommunications systems otherwise installed or operated in breach of the provisions of this Act only if necessary to safeguard or restore communications traffic while avoiding harmful interference.

(3) If a radio system certified as complying with the provisions of the Radio Systems Market Monitoring Act (*Funkanlagen-Marktüberwachungs-Gesetz,* FMaG) 2016 or terminal equipment certified as complying with the provisions of the Electrical Engineering Act (*Elektrotechnikgesetz,* ETG) 1992 causes serious damage to a network or harmful interference to network operation or if harmful interference is caused by that equipment, the telecommunications office may allow the network operator to refuse connection of, disconnect or discontinue service for that equipment. The telecommunications office shall notify the Federal Minister for Agriculture, Regions and Tourism of the measures that have been taken.

(4) The network operator may disconnect a device from the network without prior permission in an emergency only if immediate disconnection of the device is necessary to ensure network protection and if the user can be offered an alternative solution without undue delay and free of charge. The operator shall inform the telecommunications office of any such measure in writing without undue delay, while referring to this provision and providing reasons.

Termination of operations

Article 178. (1) To maintain public peace, order or security, the Federal Minister for Agriculture, Regions and Tourism may terminate in whole or in part the operation of telecommunications systems or specified types of systems for a limited or unlimited period of time and impose temporary restrictions on the use of specified systems.

(2) The Federal Minister for Agriculture, Regions and Tourism may prohibit the provision of electronic communications networks and services in whole or in part only for the reasons set out in Art. 52(1) of the Treaty on the Functioning of the European Union (hereinafter TFEU), OJ C 326 of 26 October 2012, p. 47. Such action shall be duly justified and notified to the European Commission.

(3) Any order issued pursuant to Par. 1 shall protect as far as possible the operator's interests in relation to business and operations. Such an order shall not be the basis for any claim to compensation.

Control equipment in amateur radio

Article 179. (1) Amateur radio stations shall be installed, maintained and operated in such a manner as to avoid any hazard to and harmful interference with the operation of other telecommunications systems properly installed and operated.

(2) The Federal Minister for Agriculture, Regions and Tourism, considering the current state of technology as well as international agreements, shall issue an ordinance specifying the amateur radio stations required to have monitoring equipment to allow verification of compliance with technical requirements at any time during operation.

Blocking of value-added service numbers

Article 180. (1) Where the regulatory authority has reason to assume that provisions specified in an ordinance pursuant to Art. 131 Par. 1 and 2 or Art. 112 Par. 2 No. 1 and relating to:

1. tariff information provided immediately prior to the use of services;
2. tariff information provided during the use of services; or
3. the use of a telephone number in accordance with its designated purpose;

have been breached in such a way as to potentially result in a risk of significant economic disadvantage for users, the regulatory authority shall order the provider, the permit holder or the operators concerned in whose communications networks the telephone number is routed to block the telephone number without undue delay, in application of Art. 57 AVG. Such an order shall not constitute any claim to compensation against the party obliged to block.

(2) Official decisions pursuant to Par. 1 are to be published on the regulatory authority's website. The regulatory authority is to maintain a list of blocked telephone numbers.

Information requirements

Article 181. (1) Operators, providers and holders of spectrum assignments or communications parameters shall be obliged to provide, upon written request, to the Federal Minister for Agriculture, Regions and Tourism and the regulatory authority such information as is required for the enforcement of this Act, the ordinances issued under this Federal Act and the relevant international regulations. The foregoing specifically includes:

1. information for verifying, on a systematic or case-by-case basis, compliance with the obligations arising from this Federal Act or an ordinance or official decision issued under this Federal Act,
2. information for verifying obligations on a case-base-case basis, where based on a complaint submitted or on other grounds the regulatory authority assumes a breach of duties or conducts investigations on its own initiative;
3. information required in procedures for the assignment of spectrum or communications parameters;
4. information required for a procedure pursuant to Art. 87 to 89;
5. information required for publishing comparative overviews of quality and price of services for the benefit of users;
6. information on future network or service developments that could have an impact on related wholesale services;
7. information on communications networks and associated facilities broken down to a local level and sufficiently detailed for the geographical survey and identification of areas as defined in Art. 84;
8. information for responding to requests for information by BEREC pursuant to Art. 40 of Regulation (EU) 2018/1971;
9. information from undertakings designated as having significant market power on wholesale markets, in relation to accounting data on the retail markets that are associated with those wholesale markets.

(2) Where the information collected in accordance with Par. 1 No. 6 and 7 is insufficient for carrying out regulatory tasks under Union law or this Federal Act, the authorities specified in Par. 1 may where necessary request other relevant undertakings active in the electronic communications or closely related sectors to provide such information.

(3) The information requested pursuant to Par. 1 and 2 shall be provided within the time limit and according to the schedule and in such detail as may be required by the authorities referred to in Par. 1. Information pursuant to Par. 1 No. 3 may also be requested from undertakings prior to commencing activities. Any information requested shall be proportionate to the performance of the tasks in question. The request shall be substantiated and the person concerned shall be informed of the specific purpose for which the information provided is to be used. A refusal to provide information on the grounds of contractually agreed business secrets is not permissible. Art. 208 shall remain unaffected.

(4) For the purpose of observing and monitoring changes in the market and in competition, the regulatory authority shall compile statistics on a quarterly basis. To this end, the regulatory authority is hereby empowered to issue an ordinance specifying further details on the data to be collected.

(5) In addition to the statistical surveys, the ordinance pursuant to Par. 4 shall specify in particular:

1. the survey population;
2. statistical units;
3. the type of statistical survey;
4. survey characteristics;
5. the frequency and intervals of data collection;
6. the definition of the group required to provide information;
7. whether or to what extent the results of the statistical surveys are to be published, while observing the provisions of Art. 19 Par. 2 of the Federal Statistics Act (*Bundesstatistikgesetz,* BStatG) 2000, Federal Law Gazette I No. 163/1999.

(6) Various items of data may be passed on to the Statistics Austria federal institution to be used for federal statistics.

(7) Statistics shall be compiled under corresponding application of the provisions of BStatG 2000.

(8) Providers shall be obliged to provide information to administrative authorities, at their written substantiated request, on master data, within the meaning of Art. 160 Par. 3 No. 5 lit. a to e, of users who

are suspected of having committed an administrative offence through an act involving a public telecommunications network, where such information can be provided without processing traffic data.

(9) Providers shall be obliged to provide the competent courts, public prosecutor's offices or the police responsible for criminal investigations (§ 135 Par. 1a second clause StPO) upon written request with information relating to users' master data (Art. 160 Par. 3 No. 5) in order to support the investigation and prosecution of a criminal offence where concrete suspicion exists. The foregoing shall apply mutatis mutandis to requests from law enforcement authorities, financial police authorities and military intelligence services in accordance with Art. 53 Par. 3a No. 1 SPG, Art. 99 Par. 3a of the Federal Act concerning financial criminal law and financial criminal procedure (*Finanzstrafgesetz*, FinStrG), Art. 11 Par. 1 No. 5 of the Federal Act on the organisation, tasks and powers of the police force for state protection (*Polizeiliches Staatsschutzgesetz*, PStSG), Federal Law Gazette I No. 5/2016, or Art. 22 Par. 2a of the Military Powers Act (*Militärbefugnisgesetz*, MBG). In urgent cases, however, such requests may be initially transmitted verbally.

(10) Operators shall maintain records of the geographical location of the radio cells used to operate their services in order to ensure that at any time a cell ID can be accurately matched with its actual geographical location, including details of geo-coordinates, for any point in time within the last six months.

(11) Operators who have established Class E2 or E10 short-range wireless access points as defined in Regulation (EU) 2020/1070 specifying the characteristics of small-area wireless access points pursuant to Art. 57(2) of Directive (EU) 2018/1972 of the European Parliament and the Council establishing the European Electronic Communications Code, shall report to the telecommunications office within two weeks of the establishment the installation and location of such access points and the requirements they meet in accordance with Art. 3(1) of Regulation (EU) 2020/1070. That notification shall represent the current operating status.

(12) The telecommunications office shall monitor the application of Regulation (EU) 2020/1070, in particular the application of Art. 3(1) of Regulation (EU) 2020/1070, and report thereon annually to the European Commission.

Transparency

Article 182. (1) The regulatory authority shall publish decisions of fundamental significance in anonymised form and with due regard to data protection, while also appropriately safeguarding business secrets.

(2) The regulatory authority shall publish the market data at its disposal in an appropriate manner while safeguarding business secrets.

(3) While considering Art. 208, the regulatory authority shall publish information which contributes to an open, competitive market or to achieving the aims of this Federal Act.

Information by the regulatory authority

Article 183. (1) The regulatory authority shall transmit to the European Commission, at its reasoned written request, the information needed for the performance of its duties. The foregoing shall include information on the general content, number and duration of appeal procedures. If the information to be transmitted to the European Commission refers to data provided by operators and providers, the regulatory authority shall inform those parties of the transmission of the information.

(2) Upon substantiated written request from BEREC or other regulatory authorities, information previously provided to another authority shall be made available to the requesting authority to enable compliance with obligations under Union law.

Supervisory procedures

Article 184. (1) Where the regulatory authority in relation to its duties has any reason to assume that an undertaking is in breach of the provisions of this Federal Act, the provisions of an ordinance issued under this Federal Act, a decision issued under this Federal Act or of directly applicable Union law, the regulatory authority shall correspondingly notify the undertaking while granting at the same time the opportunity to submit an opinion on the allegations or remedy any deficiencies within a reasonable period following receipt of the notification.

(2) If the regulatory authority ascertains that the deficiencies due to which the supervisory procedure had been initiated have not been remedied after expiry of the period, the regulatory authority shall issue a corresponding decision and at the same time order necessary appropriate measures to ensure compliance with the breached provisions as well as set a reasonable period for complying with the measure.

(3) If the measures ordered pursuant to Par. 2 are not successfully implemented, where an undertaking has grossly or repeatedly breached its duties, the regulatory authority may suspend that undertaking's right to operate communications networks or provide communications services until the deficiencies have been remedied or may prohibit that undertaking from continuing to operate communications networks or provide communications services. The regulatory authority may on the same grounds revoke the assignment of spectrum or communications parameters.

(4) Where a breach of the provisions of this Federal Act, the provisions of an ordinance issued under this Federal Act or a decision issued under this Federal Act constitutes an imminent and serious threat to public order, security or health, or results in serious issues relating to the business interests or operations of other providers or users of communications networks or services, the regulatory authority may additionally in a procedure pursuant to Art. 57 AVG order measures pursuant to Par. 2. Such measures shall be limited to a period of up to three months and may be extended for a further three months in particularly serious circumstances.

(5) Should the regulatory authority ascertain that the deficiencies due to which the supervisory procedure was initiated do not actually exist or were remedied within the set period, the authority shall issue an official decision stating that the deficiencies do not (or no longer) exist.

(6) The undertaking for which the regulatory authority has pursuant to Par. 1 reason to assume a breach shall unconditionally be a party to the supervisory procedure.

(7) In supervisory procedures pursuant to Art. 202, undertakings which in accordance with Art. 202 Par. 2 are able to provide credible evidence that they are affected by the procedure shall also be parties thereto.

(8) Art. 202 Par. 3 No. 1 shall apply subject to the restriction that the official bulletin must contain a description of the evidence prompting initiation of the supervisory procedure.

Regulatory approach; evaluation of ordinances

Article 185. (1) As part of their responsibilities, the regulatory authorities shall cooperate in maintaining a consistent regulatory approach as defined in Art. 3(4) point (a) of Directive (EU) 2018/1972.

(2) The regulatory authority shall review the ordinances it issues, periodically and at least every three years, to determine whether they are appropriate and necessary to achieve the aims defined in Art. 1. The result of the review shall be published on the regulatory authority's website.

(3) The regulatory authority shall review the practical effectiveness of contract summaries as defined in Art. 129 Par. 4, in particular with regard to the objective of enabling end users to make informed decisions, periodically and at least every three years, and shall publish the result of that review on its website.

Monitoring of competition

Article 186. The regulatory authority may, on the basis of publicly available data or data made available, monitor competition in the electronic communications sector and, in so doing, may also publish information or studies in accordance with Art. 182 Par. 2.

Section 16

Penal provisions

Breaches of user rights

Article 187. (1) Any person as referred to in Art. 161 Par. 2 who:

1. without authorisation discloses the fact or the contents of the telecommunications traffic of specific persons to an unauthorised person or gives such a person the opportunity to directly gain knowledge of facts that are subject to the secrecy requirement; or
2. falsifies, incorrectly relates, modifies, suppresses or incorrectly conveys a communication or illegitimately withholds it from the intended recipient;

shall be sentenced by a court to a maximum term of imprisonment of three months or to a maximum fine of 180 times the daily fine, unless under another provision the offence carries a more severe penalty.

(2) The offender shall be prosecuted only at the request of the injured party.

Administrative penal provisions

Article 188. (1) Any person who commits one of the following acts is guilty of an administrative offence that is to be punished by imposing a maximum fine of **EUR 1,000**:

1. breaches Art. 28 Par. 3 by failing to notify the authorities of the operation of a radio system in due time;
2. breaches Art. 33 Par. 1 by failing to provide notification in writing of the commencement of operation of a radio system in accordance with an ordinance issued under the last sentence of Art. 28 Par. 10;
3. breaches Art. 146 Par. 3 by carrying out transmissions:
   a. in frequency ranges which are allocated to the amateur radio service but not to the respective licence class; or
   b. with types of transmission other than those specified for the respective licence class; or
   c. with a higher transmission power than the permissible transmission power; or
   d. with a bandwidth greater than that specified and there is no exemption as defined in Art. 146 Par. 5;
4. breaches Art. 146 Par. 3, as the holder of the amateur radio licence or as a joint user of the amateur radio station, by not being personally present at the amateur radio station for the entire duration of the transmission;
5. breaches Art. 146 Par. 4, by connecting amateur radio stations by means of internet technology while the amateur radio stations involved are not used exclusively for the amateur radio service;
6. breaches Art. 147 Par. 2 and 3 by intentionally carrying out radio communications with a radio station which is not an authorised amateur radio station or by not immediately breaking off such a radio communication if the prerequisites in Art. 148 Par. 5 are not met;
7. breaches Art. 147 Par. 2 and 3, by carrying out radio communications with an amateur radio station that is not authorised or by not immediately breaking off such radio communications if the prerequisites in Art. 148 Par. 5 are not met;
8. breaches Art. 147 Par. 5 by carrying out radio communications with amateur radio stations in those states whose objection to amateur radio communications with Austria has been announced by the Federal Minister for Agriculture, Regions and Tourism in the Federal Law Gazette;
9. breaches Art. 148 Par. 6 by failing to notify the authority in due time about carrying out emergency and disaster radio traffic exercises;
10. breaches Art. 151 Par. 1 by permitting persons who have not successfully passed the amateur radio examination to concurrently use their amateur radio station;
11. breaches Art. 151 Par. 2 by concurrently using an amateur radio station without having successfully passed the amateur radio examination or beyond the scope resulting from Art. 151 Par. 2 No. 1 and 2 while lacking an exemption as defined in Art. 151 Par. 3;
12. breaches Art. 151 Par. 4 by failing to ensure compliance with provisions of law or failing to adequately monitor the operation of the radio station during concurrent use.

(2) Any person who commits one of the following acts is guilty of an administrative offence that is to be punished by imposing a maximum fine of **EUR 5,000**:

1. breaches Art. 21 Par. 4 by failing to comply with a modification that has been ordered;
2. breaches Art. 28 Par. 1 by installing or operating a radio system;
3. breaches an ordinance issued under Art. 30 Par. 3 by importing, selling or possessing a radio system without a permit;
4. breaches Art. 31 Par. 1 by misusing a radio system or terminal equipment;
5. breaches Art. 31 Par. 2 by failing to take the appropriate measures to prevent misuse of radio systems or terminal equipment;
6. breaches Art. 31 Par. 3 by operating a radio system for a purpose other than the authorised one, at an unauthorised location or in an unauthorised usage area;
7. breaches Art. 31 Par. 4 by operating radio transmission systems using spectrum not assigned to them or not using the call sign if one was assigned;
8. breaches Art. 31 Par. 5 by connecting to a public communications network or by operating in connection with such a network: radio equipment that neither has a licence valid in accordance with Art. 212 Par. 4 nor complies with the provisions of FMaG 2016; or terminal equipment that

neither has an authorisation valid under Art. 212 Par. 4 nor complies with the provisions of ETG 1992;

9. breaches Art. 31 Par. 6 by causing harmful interference to a public communications network;
10. breaches Art. 41 Par. 1 by failing to report modifications or to comply with modifications ordered pursuant to Art. 41 Par. 3;
11. breaches Art. 41 Par. 4 by failing to comply with a modification that has been ordered;
12. operates a radio system despite being prohibited from doing so under Art. 43;
13. breaches Art. 113 Par. 3 by failing to comply with a modification that has been ordered;
14. breaches Art. 146 Par. 3 No. 1 by carrying out transmissions in frequency ranges which are not allocated to the amateur radio service;
15. in communicating with other radio stations, breaches Art. 147 Par. 4 by endangering the standing, the security or the economic interests of the federal or a provincial government, or by contravening laws, public order or decency;
16. breaches Art. 148 Par. 7 by interrupting or failing to answer emergency communications;
17. breaches Art. 149 by transmitting a call sign other than the assigned call sign or no call sign;
18. breaches Art. 150 Par. 4 by using data for purposes other than amateur radio service;
19. breaches Art. 175 Par. 4 by failing to provide the required information or to submit the requested documents or confirmation;
20. breaches Art. 175 Par. 5 by failing to make radio systems available for testing at the specified location or the specified time;
21. breaches Art. 181 Par. 11 by not providing notification as required;
22. breaches Art. 205 Par. 1 by failing to cooperate in dispute resolution procedures.

(3) Any person who commits one of the following acts is guilty of an administrative offence that is to be punished by imposing a maximum fine of **EUR 10,000**:

1. breaches Art. 13 Par. 16 by failing to comply with ancillary provisions;
2. breaches Art. 16 Par. 11 by failing to comply with ancillary provisions;
3. breaches Art. 20 Par. 1 by failing to comply with ancillary provisions;
4. breaches Art. 34 Par. 8 by failing to comply with ancillary provisions;
5. breaches Art. 114 Par. 4 by failing to comply with ancillary provisions;
6. breaches Art. 114 Par. 5 by transferring communications parameters to other users;
7. breaches Art. 175 Par. 4 by failing to allow persons authorised by the telecommunications office access to property or premises;
8. breaches Art. 176 Par. 1 by hampering a search;
9. acts in breach of an ordinance issued by the Federal Minister for Agriculture, Regions and Tourism or in breach of a decision issued under this Federal Act by the telecommunications office.

(4) Any person who commits one of the following acts is guilty of an administrative offence that is to be punished by imposing a maximum fine of **EUR 50,000** or, where the fine cannot be collected, a maximum term of imprisonment of six weeks:

1. breaches Art. 7 Par. 4 by providing a service;
2. breaches Art. 8 Par. 2 by not enabling end users to make their radio local area network publicly accessible and allowing the setup of additional access points by third parties on this basis;
3. breaches Art. 9 Par. 1 by failing to keep separate accounts;
4. breaches Art. 30 Par. 2 by importing, distributing or possessing electrical equipment the purpose of which is to prevent radio communication by means of radio waves;
5. breaches Art. 32 Par. 3 by refusing to connect terminal equipment;
6. breaches Art. 46 Par. 1 or 2 by failing to provide information or, in breach of Par. 3, failing to disclose such information to the regulatory authority;
7. breaches the requirements of an ordinance in accordance with Art. 47 Par. 1 by making false statements in advertising the speed or other technical characteristics of their internet access services;
8. breaches Art. 77 Par. 1, Art. 91 Par. 4 or Art. 105 Par. 5 by failing to submit agreements on reference offers or agreements on network access;

9. breaches Art. 80 Par. 3, 4 or 5 by making no data or only incomplete data accessible to the regulatory authority;
10. breaches Art. 84 Par. 2 by making no data or only incomplete data accessible to the regulatory authority;
11. breaches Art. 85 Par. 3 or Art. 212 Par. 3 by failing to send notification of an agreement concerning cooperation on active network elements or by performing an agreement considered void in accordance with Art. 85 Par. 7;
12. breaches Art. 105 Par. 4 by using or disclosing information without authorisation;
13. breaches Art. 114 Par. 2 through discriminatory conduct;
14. breaches Art. 115 Par. 2 by using communications parameters without having the right to use them;
15. breaches Art. 118 Par. 1, 2 or 3 by failing to ensure a switch of internet access service providers;
16. breaches Art. 119 Par. 1, 3 or 4 by failing to ensure number portability, breaches Par. 2 by delaying, misusing or carrying out porting without express consent, or breaches Par. 5 by failing to return the number;
17. breaches Art. 126 Par. 1 by failing to comply with the duties of a provider of number-based interpersonal communications services;
18. breaches Art. 129 Par. 1 by failing to provide the appropriate information or to provide information in the manner prescribed in Art. 129 Par. 2, or breaches Art. 129 Par. 4 by failing to provide, complete or make available free of charge clear and easily readable contract summaries;
19. breaches the provision in Art. 139 by not offering users receiving calls the option of having the display of their numbers suppressed, independently and free of charge, or of rejecting, independently and free of charge, incoming calls for which the number display is suppressed;
20. breaches Art. 162 Par. 2 by failing to cooperate to the required extent in monitoring communications or in providing information on communications data;
21. breaches Art. 163 Par. 2 by failing to inform users of risks;
22. breaches Art. 164 Par. 1 or 3 by failing to provide notification;
23. breaches Art. 164 Par. 6 by failing to maintain an inventory;
24. breaches Art. 165 Par. 3 by failing to inform users or subscribers;
25. breaches Art. 166 Par. 2 by failing to register the required master data, failing to register it in full or failing to register it though a suitable identification procedure.
26. breaches Art. 173 Par. 1 by failing to erect barriers to copying electronic subscriber directories;
27. breaches Art. 174 Par. 2 by suppressing or falsifying the display of calling numbers, or by having others act correspondingly;
28. breaches Art. 174 Par. 3 or Par. 5 by sending electronic mail.

(5) Any person who commits one of the following acts is guilty of an administrative offence that is to be punished by imposing a maximum fine of **EUR 75,000** or, where the fine cannot be collected, a maximum term of imprisonment of six weeks:

1. breaches Art. 44 Par. 1 by not implementing any measures;
2. breaches Art. 44 Par. 2 by not providing corresponding information;
3. breaches Art. 44 Par. 3 by failing to provide information for the assessment of the security or integrity of services and networks, including documents relating to security policies or results of the security audit, or breaches Art. 44 Par. 4 failing to submit to a security audit;
4. breaches Art. 44 Par. 5 by failing to report any security breaches that have had significant impact on the operation of networks or services;
5. breaches Art. 44 Par. 8 by failing to inform the public at the regulatory authority's request;
6. breaches Art. 122 Par. 1 by failing to ensure connection free of charge to the most appropriate public safety answering point (PSAP) addressed by means of an emergency telephone number or to ensure uninterrupted accessibility;
7. breaches Art. 122 Par. 2 by failing to ensure that the number of the calling line identification is made available at the PSAP;
8. breaches Art. 122 Par. 4 by failing to accept text-based emergency communications;
9. breaches Art. 122 Par. 5 by failing to provide equal access to persons with disabilities;
10. breaches Art. 122 Par. 6 by failing to ensure a connection to the most appropriate PSAP;

11. breaches Art. 123 Par. 1 by failing to keep facilities available, breaches Par. 3 by failing to inspect facilities or report the findings, or breaches Par. 4 by failing to report security incidents without undue delay;
12. breaches Art. 124 Par. 1 by failing to provide information on master data or location data or breaches Par. 2 by failing to document and submit such information or breaches Par. 3 by failing to set up an interface or breaches Par. 5 by failing to inform end users;
13. breaches Art. 124 Par. 6 and 7 by failing to cooperate free of charge;
14. breaches Art. 162 Par. 2 by transmitting data in non-encrypted form over a communications network;
15. breaches Art. 167 Par. 2 No. 4 by deleting data specified in a public prosecutor's order in accordance with Art. 135 Par. 2b StPO or by failing to delete such data after the obligation to waive the obligation to delete has ended;
16. breaches Art. 181 by failing to provide the necessary information or breaches Art. 181 Par. 8, 9 or 10 by failing to provide information on master data or failing to keep records of geographical location.

(6) Any person who commits one of the following acts is guilty of an administrative offence that is to be punished by imposing a maximum fine of **EUR 100,000** or, where the fine cannot be collected, a maximum term of imprisonment of six weeks:

1. breaches Art. 6 Par. 1 by failing to provide notification;
2. acts in breach of an ordinance issued by RTR-GmbH or KommAustria on the basis of this Federal Act or in breach of a decision issued by the Federal Minister for Agriculture, Regions and Tourism, RTR-GmbH, the Telekom-Control-Kommission or KommAustria on the basis of this Federal Act or Regulation (EU) 2015/2120 or Regulation (EU) 531/2012;
3. breaches Art. 50 Par. 1 by failing to establish interoperability or breaches Par. 2 by failing to take measures;
4. breaches Art. 78 Par. 4 and Art. 200 Par. 5 by failing to duly cooperate in the dispute settlement procedure, to provide information or to submit documents;
5. breaches Art. 132 Par. 1 by failing to publish general terms and conditions or tariff provisions in an appropriate form;
6. breaches Art. 133 Par. 1 or 4 by failing to notify the regulatory authority or publish their general terms and conditions or tariff provisions or changes thereto in due time before commencing the service or the change takes effect;
7. breaches Art. 181 Par. 1 No. 4 by failing to provide information to the extent defined in Article 181 in a procedure pursuant to Art. 87 and 89;
8. fails to provide technical facilities within the meaning of Art. 162 Par. 1; the foregoing shall not be punishable where the required investment costs have not yet been reimbursed on the basis of an ordinance issued pursuant to Art. 162 Par. 1;
9. breaches Art. 174 Par. 1 by making calls for marketing purposes;
10. acts in breach of Regulation (EU) No 531/2012 of 13 June 2012 on roaming on public mobile communications networks within the Union (recast), OJ L 172 of 30 June 2009, p. 10;
11. acts in breach of Art. 3, 4(1), Art. 4(2) or Art. 5(2) of Regulation (EU) 2015/2120.

(7) Whether the offence has been committed as part of business activities or repeatedly shall be considered when determining the fines pursuant to Par. 1 to 6. Where the offence has been committed as part of business activities, the unlawful gain achieved, as revealed by the outcome of the preliminary investigation, shall be taken into account when determining the fine.

(8) Any party who repeatedly commits the offence referred to in Par. 6 No. 11 shall be liable to a minimum fine of EUR 10,000.

(9) An act shall not be deemed an administrative offence pursuant to Par. 1 to 6 where qualifying as a criminal offence that falls within the jurisdiction of the courts or where punishable by a more severe penalty under other administrative penal provisions.

(10) The penal order may declare the objects used for committing the offence as forfeited for the benefit of the state.

(11) Fines imposed by the telecommunications office under this Federal Act shall be apportioned to the state.

(12) Where in procedures pursuant to Par. 2 to 6 the an accused party is an operator of public communications services or networks, the administrative prosecution authority shall provide the regulatory authority with a copy of the decision on completion of the procedure.

Publication of penal decisions

Article 189. A penal decision issued for a punishable act pursuant to Art. 188 Par. 5 or 6 may rule that the penal decision be published within a specific period in one or more periodicals at the expense of the convicted party, where the offender has been previously punished twice for offences stemming from the same harmful inclination as the offence underlying the current conviction and it is expected that, given the nature of the offence, the offender will continue to commit offences punishable under this Federal Act. The publication shall include the judgement of the penal decision. If there are special circumstances, the publication of the reasons for the penal decision may also be ordered.

Confiscation of unlawful gains

Article 190. (1) Where the regulatory authority ascertains that an undertaking has gained economic advantage through an unlawful act in breach of this Federal Act or Regulation (EU) 2015/2120 or Regulation (EU) No 531/2012, or in breach of the provisions of an ordinance issued under this Federal Act or of an official decision issued based on this Federal Act or Regulation (EU) 2015/2120 or Regulation (EU) No 531/2012, the regulatory authority may request the Cartel Court (*Kartellgericht*) to determine an amount to be declared confiscated. The amount confiscated shall be in proportion to the economic advantage and may be determined by the Cartel Court as a maximum of 10 per cent of the undertaking's revenues in the previous year. The regulatory authority shall have party status in this procedure.

(2) Where evidence of the amount of the advantage obtained unlawfully cannot be obtained or only under disproportionately difficult circumstances, the Cartel Court may on request or of its own accord exercise free discretion by setting a reasonable amount.

(3) The amount confiscated shall be used for to finance the Austrian Regulatory Authority for Broadcasting and Telecommunications (RTR-GmbH).

Section 17
Authorities and procedural provisions

Telecommunications authorities

Article 191. The telecommunications authorities are the Federal Minister for Agriculture, Regions and Tourism and the telecommunications office under the minister.

Competence

Article 192. (1) The territorial scope of competence of the telecommunications authorities shall include the entire Austrian territory.

(2) The Federal Minister for Agriculture, Regions and Tourism can establish branches for the telecommunications office as may be required to meet the demands of urgency, purpose or cost-effectiveness.

(3) Unless otherwise specified, the telecommunications office shall be responsible for official duties under this Federal Act.

(4) Without prejudice to the other provisions of this Federal Act, the Federal Minister for Agriculture, Regions and Tourism shall be responsible for:

1. exercising the right to issue instructions as well as supervisory rights pursuant to Art. 18 Par. 3 and 4 of the KommAustria Act (*KommAustria-Gesetz*, KOG);
2. issuing and administrating regulations required for ensuring compliance with international agreements, specifically those concerning the use of radio spectrum.

(5) Appeals against decisions made by the Federal Minister for Agriculture, Regions and Tourism and the telecommunications office, and to their failure to fulfil their duty to reach a decision in administrative matters, may be filed with the Federal Administrative Court (*Bundesverwaltungsgericht*).

(6) Procedures completed by authorities pursuant to the preceding paragraphs may, when using computerised data processing systems, be prepared and executed without a signature.

Assistance from public law enforcement officers, enforcement

Article 193. (1) Law enforcement officers shall assist the telecommunications office and those it authorises, at their request, in ensuring the latter's ability to exercise monitoring powers within their scope of competence.

(2) Decisions issued by the telecommunications authorities shall be enforced directly by the telecommunications authorities while applying the provisions of the Administrative Enforcement Act (*Verwaltungsvollstreckungsgesetz*), except where such decisions concern payments.

Duties of Rundfunk und Telekom Regulierungs-GmbH

Article 194. (1) Rundfunk und Telekom Regulierungs-GmbH (RTR-GmbH) shall perform all duties conferred on the regulatory authority by this Federal Act and the ordinances issued under this Federal Act, except where such duties are assigned to the Telekom-Control-Kommission or KommAustria.

(2) RTR-GmbH shall be deemed the national regulatory authority as referred to in Regulation (EU) 2018/1971. In matters for which the Telekom-Control-Kommission or KommAustria is responsible, agreement shall be reached with that authority. The regulatory authorities shall actively support BEREC's aims in connection with improving regulatory coordination and enhancing coherence.

(3) Unless otherwise stipulated by this Federal Act, RTR-GmbH shall be deemed the national regulatory authority as referred to in Art. 1 to Art. 5 of Regulation (EU) 2015/2120.

(4) In those matters where RTR-GmbH is the competent national regulatory authority pursuant to the preceding paragraphs and which constitute matters pursuant to Art. 5(1) point a to h of Directive (EU) 2018/1972, the managing director of the Telecommunications and Postal Services Division at RTR-GmbH acts independently within the meaning of Art. 20 Par. 2 of the Federal Constitutional Act (*Bundes-Verfassungsgesetz*, B-VG).

Tasks of the Artificial Intelligence Service Desk

Article 194a. (1) Within the scope of the "Artificial Intelligence Service Desk" (AI) established at RTR-GmbH pursuant to Art. 17 Par. 8 KOG, the tasks of the Telecommunications and Postal Services Division shall in any case include the following support and advisory services for the public, in particular with regard to

1. the regulatory framework for the development and use of AI in companies and public legal entities;

2. the regulatory framework for the technical documentation of AI systems, including information for users

3. promoting the development and exchange of knowledge on AI and the markets for AI applications, in particular by conducting studies, analyses and specialist events;

4. the impact of AI on cyber security;

5. AI already in use in high-risk areas.

In order to fulfil these tasks, the Service Agency also has a coordinating function in line with the cross-sectional nature of the subject matter.

(2) If an activity of the service centre in the Telecommunications and Postal Services Division touches on issues of media and diversity of opinion as well as media policy issues in connection with AI, the Managing Director of the Telecommunications and Postal Services Division must reach agreement with the Managing Director of the Media Division on the further procedure for dealing with the topic in his or her division.

Telekom-Control-Kommission

Article 195. (1) The Telekom-Control-Kommission has been established to perform the duties specified in Art. 198.

(2) The Telekom-Control-Kommission shall be based within Rundfunk und Telekom Regulierungs-GmbH. Rundfunk und Telekom Regulierungs-GmbH shall be responsible for managing the activities of the Telekom-Control-Kommission. While acting on behalf of the Telekom-Control-Kommission, the staff of Rundfunk und Telekom Regulierungs-GmbH shall be bound by instructions issued by the chairperson or the member designated in the rules of procedure.

(3) Pursuant to Art. 20 Par. 2 B-VG, the members of the Telekom-Control-Kommission shall not be bound by instructions in the performance of their duties.

Structure of the Telekom-Control-Kommission

Article 196. (1) The Telekom-Control-Kommission shall consist of three members who are appointed by the federal government. One member shall belong to the judiciary. In appointing that member, the federal government shall consider three candidates proposed by the president of the Supreme Court (*Oberster Gerichtshof*). The other two members shall be appointed after proposal by the Federal Minister for Agriculture, Regions and Tourism. Those proposals shall be preceded by a fair and open selection procedure following public notification of the vacancies; Art. 2 Par. 2 and 3 of the Public Appointments Act (*Stellenbesetzungsgesetz*), Federal Law Gazette I No. 26/1998 shall apply. The vacancies shall be published in the Official Gazette (*Amtsblatt*) of the Wiener Zeitung. Proposals should reflect the requirement for one member to have relevant technical expertise and the other to have relevant legal and business experience. The term of office for Telekom-Control-Kommission members is five years. Members may be reappointed.

(2) The Federal Minister for Agriculture, Regions and Tourism shall appoint a substitute member for each member. Substitute members shall take the place of members unable to fulfil their duties.

(3) The following shall not be permitted to serve on the Telekom-Control-Kommission:

1. members of the federal government or a provincial government, or state secretaries;
2. persons whose legal or de facto relationship with individuals utilising the services of the Telekom-Control-Kommission or who are affected by the same would result in a conflict of interest;
3. persons not eligible to be elected to the National Council;
4. persons who within the previous year have carried out activities and exercised the roles as stated in No. 1 and 2.

(4) Should grounds for exclusion pursuant to Par. 3 become applicable to a member of the Telekom-Control-Kommission following appointment, or a member become unable to fulfil their duties, the Telekom-Control-Kommission shall issue a decision ascertaining that fact. The failure of a member to attend three consecutive sessions without circumstances justifying their absence shall also constitute grounds for exclusion. The individual shall forfeit their membership in the Telekom-Control-Kommission as a consequence.

(5) Par. 1, 3 and 4 shall apply mutatis mutandis to the substitute members.

(6) On the death, voluntary retirement or exclusion (pursuant to Par. 4) of a member of the Telekom-Control-Kommission, the respective substitute member shall become a full member, and a new substitute member shall be appointed pursuant to Par. 1 and 2 to serve for the members' term of office.

(7) Termination of membership pursuant to Par. 6 shall be announced by the Federal Minister for Agriculture, Regions and Tourism in the Official Gazette (*Amtsblatt*) of the Wiener Zeitung. The member leaving the Telekom-Control-Kommission may request that the reason for termination is mentioned in the announcement.

(8) The members of the Telekom-Control-Kommission shall be entitled to claim compensation for travel and out-of-pocket expenses where reasonable, as well as an attendance fee that shall be set in an ordinance issued by the Federal Minister for Agriculture, Regions and Tourism in agreement with the Federal Minister for Finance, while considering the significance and the scope of the duties to be performed by the Telekom-Control-Kommission.

Chairperson and rules of procedure

Article 197. (1) The member appointed from the judiciary shall be chairperson of the Telekom-Control-Kommission.

(2) The Telekom-Control-Kommission shall adopt rules of procedure, which shall entrust one of its members with the management of operational business.

(3) Decisions by the Telekom-Control-Kommission shall require a unanimous vote in order to be valid. Abstentions shall not be permitted. Circular consultations and resolutions—which may include the use of telecommunications facilities—shall be permitted.

Duties

Article 198. The Telekom-Control-Kommission shall have the following duties:

1. administering spectrum ranges in accordance with the spectrum use plan (Art. 11 Par. 3 and 4);
2. spectrum assignments pursuant to Art. 13 Par. 7 No. 2;
3. deciding on spectrum assignments pursuant to Art. 15;

4. deciding on validity periods of spectrum assignments pursuant to Art. 18;
5. deciding on renewals of spectrum assignments pursuant to Art. 19;
6. deciding on transfers of spectrum or approvals of changes to the ownership structure pursuant to Art. 20;
7. changing spectrum assignments pursuant to Art. 21 and revoking spectrum assignments pursuant to Art. 25;
8. deciding on the shared use of infrastructure pursuant to Art. 26;
9. deciding on security audits pursuant to Art. 44 Par. 4;
10. deciding in procedures pursuant to Art. 50;
11. deciding in procedures pursuant to Art. 79 and 85;
12. identifying the relevant markets subject to sector-specific regulation and determining 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, pursuant to Art. 87;
13. deciding in procedures pursuant to Art. 92, Art. 94, Art. 95, Art. 96, Art. 97 Par. 3, Art. 98, Art. 99, Art. 100 Par. 2, and Art. 101 to 105;
14. determining the financial compensation to be paid from the universal service fund pursuant to Art. 109;
15. determining the contribution to be paid into the universal service fund pursuant to Art. 110;
16. deciding on security audits pursuant to Art. 123 Par. 3 second sentence;
17. deciding in procedures pursuant to Art. 126 Par. 3;
18. deciding on the revocation of rights to provide communications networks or services pursuant to Art. 184 Par. 3;
19. identifying breaches and requesting confiscations pursuant to Art. 190;
20. deciding in procedures pursuant to Art. 203;
21. deciding in cross-border disputes pursuant to Art. 204;
22. petitioning the Cartel Court pursuant to Art. 210;
23. deciding on appropriate and necessary measures pursuant to Art. 5(1) of Regulation (EU) 2015/2120 in individual cases;
24. deciding on the sustainability of the abolition of retail roaming surcharges pursuant to Art. 6c of Regulation (EU) 2015/2120 in individual cases;
25. deciding on measures pursuant to Art. 9(4) point (g) of Regulation (EU) 2017/2394 on cooperation between national authorities responsible for the enforcement of consumer protection laws and repealing Regulation (EC) No 2006/2004, OJ L 345 of 27 December 2017, p. 1, as amended by Regulation (EU) No 2018/302, OJ L 60I of 2 March 2019, p. 1, resulting from claims made pursuant to Art. 7b of the Consumer Protection Cooperation Act (*Verbraucherbehördenkooperationsgesetz*, VBKG) against providers of internet access services, hosting services, caching services, search engines or domain name registrars;
26. deciding on provisional measures pursuant to Art. 9(4) point a and g of Regulation (EU) 2017/2394, resulting from claims made pursuant to Art. 7c VBKG against hosting services and (potentially) providers of internet access services, caching services, search engines and domain name registrars.

Competence of KommAustria

Article 199. (1) In cases where:

1. a request to initiate proceedings or a regulatory measure refers to the use of a communications network or associated facilities, or the use of a communications service for the distribution of:
   a) electronic audio media and electronic audiovisual media within the meaning of Art. 1 Par. 1 KOG, including broadcasting as referred to by the Federal Constitutional Broadcasting Act (*BVG-Rundfunk*);
   b) ancillary services within the meaning of Art. 2 No. 44 of the Audiovisual Media Services Act (*Audiovisuelle Mediendienste-Gesetz*, AMD-G);
   c) video sharing platforms within the meaning of Art. 2 No. 37b AMD-G; or

(Note: lit d repealed by Art. 12 Z 4, BGBl. I No. 182/2023)

2. a regulatory measure for a market for the distribution of the services listed in No. 1; then KommAustria shall, by way of derogation from the allocation of responsibilities set out in

Art. 194 and 198, be responsible for those duties of the regulatory authority within the meaning of this Federal Act that are set out under Par. 2.

(2) Assuming the conditions defined in Par. 1 are met, KommAustria shall be responsible for the following:

1. duties pursuant to Art. 6;
2. duties pursuant to Art. 9;
3. spectrum administration in accordance with Art. 10 Par. 4;
4. spectrum assignments in accordance with Art. 13 Par. 7 No. 1;
5. approvals of spectrum transfer pursuant to Art. 20;
6. changes in spectrum assignment in accordance with Art. 21 and revocations of spectrum assignment in accordance with Art. 25;
7. issuing of permits for the installation and operation of radio systems in accordance with Art. 34 Par. 2 second sentence, and modifications to the same in accordance with Art. 41 Par. 5 as well as revocations in accordance with Art. 42 Par. 2;
8. specifications of fees pursuant to Art. 36 Par. 11;
9. duties pursuant to Art. 44, 46 and 49;
10. setting of reference rates pursuant to Art. 57;
11. ordering co-use pursuant to Art. 60 to 67;
12. duties relating to the regulation of competition according to Section 8;
13. duties pursuant to Art. 133;
14. duties pursuant to Art. 181 and 183;
15. supervisory measures pursuant to Art. 184;
16. confiscations of unlawful gains pursuant to Art. 190;
17. duties pursuant to Art. 203 to 210.

(3) The Telekom-Control-Kommission or RTR-GmbH and KommAustria shall periodically share information on the subjects of and the parties to newly pending procedures. Furthermore, RTR-GmbH shall inform the Telekom-Control-Kommission and KommAustria regularly about matters affecting those two bodies within the scope of BEREC activities.

(4) In cases where a request to initiate proceedings or a regulatory measure refers to the use of a communications network or associated facilities, or to the use of a communications service or to a market:

1. both for the distribution of:
   a) electronic audio media and electronic audiovisual media within the meaning of Art. 1 Par. 1 KOG, including broadcasting within the meaning of BVG-Rundfunk;
   b) ancillary services within the meaning of Art. 2 No. 44 AMD-G;
   c) video sharing platforms within the meaning of Art. 2 No. 37b AMD-G; and

(Note: lit d repealed by Art. 12 Z 4, BGBl. I No. 182/2023)

2. for other communications services;

and the conditions for Art. 39 Par. 2b last sentence of the General Administrative Procedure Act (*Allgemeines Verwaltungsverfahrensgesetz,* AVG) are not met; corresponding competence shall depend on the main purpose of the activities concerned. If the main purpose is covered by No. 1, KommAustria shall perform the regulatory authority duties pursuant to Par. 1 and 2; if covered by No. 2, then Art. 194 and 198 shall apply.

(4a) KommAustria is authorised to exercise the powers and duties under Regulation (EU) No. 2022/2065 on a single market for digital services and amending Directive 2000/31/EC (Digital Services Act), OJ No. L 277 of 27 October 2022 p. 1, as corrected by OJ No. L 310 of 1 December 2022 p. 17, and the Coordinator for Digital Services Act (Koordinator-für-digitale-Dienste-Gesetz), Federal Law Gazette I No. 182/2023.

(5) On request, KommAustria shall become a party to procedures for which the Telekom-Control-Kommission or RTR-GmbH are competent pursuant to Par. 4.

(6) On request—in accordance with Art. 194 and 198—the Telekom-Control-Kommission or RTR-GmbH shall become a party to procedures for which KommAustria is competent pursuant to Par. 4.

(7) Where KommAustria, the Telekom-Control-Kommission or RTR-GmbH is a party to procedures pursuant to Par. 5 or 6, that authority is entitled to file appeals against decisions, on grounds of illegality,

with the Federal Administrative Court. That authority is similarly entitled to appeal to the Supreme Administrative Court (*Verwaltungsgerichtshof*).

Procedural rules, levels of appeal

Article 200. (1) Applications relating to Art. 198 No. 13, 17 and 20 shall be referred to RTR-GmbH for dispute resolution procedures.

(2) Where an application based on Par. 1 is referred to RTR-GmbH, a dispute resolution procedure shall be carried out, except where the parties to the procedure unanimously waive such a procedure. Procedures pending with the Telekom-Control-Kommission shall be discontinued if a mutually agreeable solution is reached within four weeks, or otherwise the particular procedure shall be continued.

(3) Network or service providers subject to reporting requirements pursuant to Art. 6, and persons or undertakings obligated to participate in electronic legal procedures in accordance with Art. 89c of the Rules of Procedure Act (*Geschäftsordnungsgesetz*, GOG), shall submit documents in procedures heard by the regulatory authorities under this Federal Act solely by electronic channels, either via email or via the e-government system provided by RTR-GmbH.

(4) Operators and providers who operate or provide their networks or services in Austria, and who have no residency or registered place of business in the EEA, shall provide a domestic service address to which correspondence in procedures pursuant to this Federal Act may be officially served. The provisions of Art. 10 of the Service of Documents Act (*Zustellgesetz*) shall apply.

(5) The Telekom-Control-Kommission shall decide on procedures pursuant to Art. 198 No. 13 within four months. That decision shall supplant the need to reach an agreement. The parties to dispute resolution procedures shall cooperate actively in such procedures, and provide all information and submit all documents necessary to assess the circumstances of the case.

(6) Art. 39 Par. 3 AVG shall apply, subject to the provision that no new claims or evidence are admissible once the preliminary investigation has concluded.

(7) Appeals against decisions made by the Telekom-Control-Kommission and RTR-GmbH, and to the failure of these authorities to fulfil their duty to reach a decision in administrative matters, may be filed with the Federal Administrative Court.

Proceedings before the Federal Administrative Court

Article 201. (1) By way of derogation from Art. 13 of the Proceedings of Administrative Courts Act (*Verwaltungsgerichtsverfahrensgesetz*, VwGVG), Federal Law Gazette I No. 33/2013, appeals against decisions by the regulatory authorities shall not have a suspensory effect. Upon petition, the Federal Administrative Court may grant a suspensory effect in the respective procedure if, after considering all affected interests, the Court believes that the enforcement of the decision or the exercising of the rights thereby granted would entail severe and irreparable damage for the appellant.

(2) The Federal Administrative Court shall hand down decisions by way of senates in cases where appeals are filed against the Telekom-Control-Kommission in its capacity as authority.

Large-scale procedures

Article 202. (1) Where procedures heard by the Telekom-Control-Kommission or RTR-GmbH are expected to involve more than 100 persons, those authorities may issue an official bulletin to initiate the procedure.

(2) If the procedure has been initiated by way of an official bulletin, then an involved party shall lose party status if they do not provide plausible evidence of their affected status within a period of six weeks from publication of that official bulletin. Art. 42 Par. 3 AVG shall apply mutatis mutandis.

(3) The official bulletin shall include the following:

1. a description of the subject of the procedure;
2. the period as referred to in Par. 2;
3. notice of the legal consequences referred to in Par. 2;
4. notice (if relevant) that the procedure will be conducted with the aid of electronic communications channels, and that formal announcements and notifications may be made by official bulletin on the website of the regulatory authority; and
5. notice (if relevant) that the regulatory authority also permits the parties to view procedural records electronically.

(4) The regulatory authority may schedule an oral hearing by way of an official bulletin if the procedure has been or is simultaneously announced by way of an official bulletin. Legal consequences pursuant to Art. 42 Par. 1 AVG shall apply, as shall Art. 44e Par. 1 and 2 AVG.

(5) The official bulletin initiating the procedure and the official bulletin scheduling an oral hearing shall be published on the website of the regulatory authority.

(6) If the initiation of the procedure was announced by official bulletin, then formal announcements and notifications may be made by official bulletin on the website of the regulatory authority. Art. 44f AVG shall apply mutatis mutandis.

(7) The procedures may be conducted with the aid of electronic communications channels.

Resolution of disputes between undertakings

Article 203. (1) Where an operator or provider is subject to specific obligations pursuant to Art. 92, 94, 95, 96, 97 or 104, or offers commitments relating to co-investments under procedures pursuant to Art. 98, or is under obligation pursuant to Art. 50, 105 or 119, and that operator or provider is unable to reach an agreement with another operator, provider or undertaking which benefits from access obligations under this Act regarding the obligations existing under Art. 50, 92, 94 to 98, 104, 105 or 119, within six weeks of receipt of the request and despite a period of genuine negotiation, either party involved may call upon the regulatory authority.

(2) In justified cases, the regulatory authority may also initiate a procedure under Par. 1 of its own accord.

(3) Where an operator makes access available to their network even in the absence of a specific obligation and that operator fails to reach an agreement with another operator or provider concerning said network access, within six weeks of receiving the request and despite negotiations, either party involved may call upon the regulatory authority.

Resolution of cross-border disputes

Article 204. (1) In the event of disputes between parties in different Member States involving the regulatory scope of Directive (EU) 2018/1972, with the exception of radio spectrum coordination between Member States, where the dispute lies within the competence of authorities from at least two Member States, any party may call upon the competent authorities. The authorities shall coordinate their efforts in order to resolve the dispute.

(2) Where the dispute affects trade between Member States, the regulatory authority shall notify the dispute to BEREC in order to bring about a consistent resolution of the dispute. The regulatory authority shall await BEREC's opinion before taking any action to resolve the dispute. The regulatory authority shall take the utmost account of BEREC's opinion and decide on the matter within one month after the opinion is issued.

(3) Procedural deadlines are suspended until BEREC has issued its opinion. The foregoing shall be without prejudice to the regulatory authority's option of adopting interim measures on its own initiative to safeguard competition or protect end-user interests. The foregoing is without prejudice to the jurisdiction of the ordinary courts of law.

Conciliation procedures

Article 205. (1) Without prejudice to the jurisdiction of the ordinary courts of law, end users, providers and interest groups may submit to the regulatory authority, in its capacity as conciliation body, cases of dispute or complaint that end users and providers have been unable to resolve satisfactorily, specifically in such cases that involve quality of service, claims arising from universal services, an alleged breach of this Federal Act, or an ordinance or official decision issued based on this Federal Act, or payment disputes. Providers shall cooperate actively in such a procedure, and shall provide all information and submit all documents necessary to assess the circumstances of the case. The regulatory authority shall achieve a mutually agreeable solution or communicate its opinion on the case in question to the parties.

(2) Without prejudice to the jurisdiction of the ordinary courts of law, providers may submit to the regulatory authority cases of dispute or complaint, specifically in such cases that involve an alleged breach of this Federal Act, or an ordinance or official decision issued based on this Federal Act. Providers shall cooperate actively in such a procedure, and shall provide all information and submit all documents necessary to assess the circumstances of the case. The regulatory authority shall achieve a mutually agreeable solution or communicate its opinion on the case in question to the parties.

(3) Funding providers can submit to the regulatory authority for review the access offers that are submitted by funding applicants in accordance with the funding requirements. The regulatory authority shall review the access offers, in particular with regard to compliance with this Federal Act, with the ordinances and official decisions issued based on this Federal Act, and with the funding requirements, and shall communicate to the parties involved its assessment of the access offers reviewed. The funding providers shall pay the regulatory authority compensation corresponding to the personnel and material expenses incurred in performing the review; this compensation shall be deducted from the regulatory authority's expenses that are to be funded pursuant to Art. 34 KOG. Funding providers shall cooperate actively in the procedure, and, at the regulatory authority's request, shall provide all information and submit all documents necessary to assess the circumstances of the case.

(4) The regulatory authority may specify a set of procedural rules for conducting procedures pursuant to Par. 2 and 3, which are to be published in a suitable format.

Consultation procedures

Article 206. (1) The Federal Minister for Agriculture, Regions and Tourism and the regulatory authority shall give interested parties the opportunity to submit an opinion on draft enforcement measures pursuant to this Federal Act that are likely to have a significant impact on the relevant market within a reasonable period and, except in exceptional circumstances, in any event not shorter than 30 days. The foregoing shall not apply to measures pursuant to Art. 184 Par. 4, 203 and 204.

(2) Unless otherwise specified by Art. 208, consultation procedures and the results thereof shall be made publicly available by the respective authority.

(3) Any procedural time limits shall be suspended during the period allotted for submitting opinions.

(4) For the purposes of Art. 17, the regulatory authority shall inform the Radio Spectrum Policy Group (RSPG) concerning draft enforcement measures that fall within the scope of Art. 16 and which relate to the use of radio spectrum for which harmonised conditions have been set by technical implementing measures in accordance with Decision No 676/2002/EC in order to enable its use for wireless broadband electronic communications networks and services.

(5) The Federal Minister for Agriculture, Regions and Tourism and the regulatory authority shall give interested parties the opportunity to submit an opinion within a reasonable period on issues relating to end-user or consumer rights in connection with public communications services. The Minister and the authority shall consider such opinions where appropriate, in particular where a significant impact on the market is expected.

Coordination procedures

Article 207. (1) Where a draft enforcement measure pursuant to Art. 206 that is expected to have an effect on trade between Member States concerns:

1. the imposition of obligations relating to access, interconnection and interoperability pursuant to Art. 26 and 63;
2. market definition;
3. market analysis; or
4. the imposition, alteration or abolition of specific obligations;

on completion of the consultation procedure pursuant to Art. 206, the draft together with a statement of the reasons shall be made available to the European Commission, BEREC and the national regulatory authorities of the Member States of the European Union.

(2) Where the European Commission, BEREC or the national regulatory authorities of the Member States have submitted opinions on the draft in question within one month, utmost account shall be taken of such opinions. With the exception of the cases referred to in Par. 3, the resulting enforcement measure may then be enacted. The measure shall be communicated to the European Commission and BEREC.

(3) The enforcement measure shall be deferred for two additional months if the measure:

1. aims to define a relevant market that differs to those markets that are defined in the recommendation pursuant to Art. 87; or
2. addresses the classification of undertakings with significant market power pursuant to Art. 89;

and the European Commission, in its opinion expressed pursuant to Par. 2, believes that the enforcement measure would constitute an obstacle to the Single Market or has serious misgivings as to its compatibility with Union law, in particular with the aims set out in Art. 1.

(4) Where the European Commission has, within the period specified in Par. 3 and while taking utmost account of an opinion provided by BEREC, and while providing objective and detailed reasons,

instructed the regulatory authority to withdraw the draft, the enforcement measure shall be amended or withdrawn within six months. Amended draft enforcement measures shall be submitted to procedures pursuant to Art. 206 and 207.

(5) The enforcement measure shall be suspended an additional three months if the measure relates to the imposition, alteration or abolition of obligations pursuant to Art. 91 to 96, 98, 99 or 101 and 63, and the European Commission, in its opinion expressed pursuant to Par. 2, finds that the enforcement measure would constitute an obstacle to the Single Market or has serious misgivings as to its compatibility with Union law.

(6) Within the period specified under Par. 5, the regulatory authority shall cooperate closely with the European Commission and BEREC in order to determine the most suitable and most effective measure with regard to the aims specified under Art. 1.

(7) If BEREC submits an opinion sharing the doubts expressed by the European Commission within the first six weeks of the period specified under Par. 5, the regulatory authority may either retain the draft enforcement measure or amend or withdraw the measure while taking utmost account of the opinions submitted by the European Commission and BEREC.

(8) If, within one month of the expiry of the period specified in Par. 5, the European Commission, while taking utmost account of an opinion by BEREC, recommends that the regulatory authority should amend or withdraw the enforcement measure, and the regulatory authority has not yet withdrawn the draft enforcement measure, the regulatory authority shall adopt the planned measure within one month, and no later than upon completing a procedure pursuant to Art. 206.The regulatory authority shall justify a decision not to amend or withdraw the enforcement measure in accordance with the recommendation.

(9) If, within one month of the expiry of the period specified in Par. 5, the European Commission, while providing objective and detailed reasons, and while meeting the conditions set by Art. 33(5) point c of Directive (EU) 2018/1972, issues a decision that requires the regulatory authority to withdraw the draft pursuant to Art. 63 and 98, the enforcement measure shall be amended or withdrawn within six months. Amended draft enforcement measures shall be submitted to procedures pursuant to Art. 206 and 207.

(10) Draft enforcement measures pursuant to Par. 1 may be withdrawn by the regulatory authority at any stage of the procedure.

(11) Procedural time limits shall remain suspended during a procedure conducted pursuant to Par. 1.

(12) Enforcement measures pursuant to Par. 1 may be adopted for a maximum period of three months without conducting such a procedure, where the measure is required immediately under exceptional circumstances in order to ensure competition and to safeguard user interests. The European Commission, BEREC and the national regulatory authorities of the Member States of the European Union shall be informed without undue delay, with a full statement of the reasons being enclosed. A procedure pursuant to Par. 1 shall be carried out before renewing the validity of the enforcement measure.

(13) The regulatory authority shall maintain and publish a list of pending procedures pursuant to Par. 1. The regulatory authority shall provide the European Commission and BEREC with details of all measures adopted according to this provision.

Handling trade secrets

Article 208. (1) The regulatory authority shall treat business and trade secrets it has become a party to in the strictest confidence.

(2) The regulatory authority is responsible for classifying a fact as a trade secret, and shall do so while also balancing the interests of the party entitled to secrecy against those of third parties with an interest in disclosure.

(3) If the regulatory authority has reasonable doubt as to whether a fact warrants secrecy, the authority shall inform the party entitled to secrecy and ask the latter to provide plausible reasons for their economic interest in its continued secrecy.

Cooperation with other authorities

Article 209. (1) The regulatory authorities, the other competent authorities under this Federal Act, the Federal Competition Authority (*Bundeswettbewerbsbehörde*) and the Data Protection Authority (*Datenschutzbehörde*) are authorised to exchange information, with the exception of personal data without an express legal basis, as necessary in order to enforce this Federal Act or fulfil the statutory duties of the authorities so named. The requesting authority is bound to the same level of confidentiality as the authority providing the information.

(2) The competent authorities for the enforcement of this Federal Act are authorised to conclude cooperation agreements with one another in order to promote such cooperation on regulatory matters. This authorisation for Austrian authorities is also valid for the competent authorities of other Member States of the European Union.

(3) The Federal Office of Metrology and Surveying (*Bundesamt für Eich- und Vermessungswesen*) or its successor organisation shall provide the Federal Minister for Agriculture, Regions and Tourism and the regulatory authority with up-to-date data in the following categories: altitude grid, property plot data, digital cadastral map and administrative boundaries.

(4) The Statistics Austria federal institution or its successor organisation shall provide the Federal Minister for Agriculture, Regions and Tourism and the regulatory authority with up-to-date data in the following categories: regional statistical grid data, as well as grid-based packages and data (including: population figures, housing (buildings and dwellings), register-based census data, housing census data, workplace census data, harmonised labour force statistics data, test register-based census data, combined census data and data from future statistical surveys).

(5) The Federal Minister for Agriculture, Regions and Tourism and the Federal Minister for Justice may conclude a separate agreement with RTR-GmbH whereby they consult the latter as an external expert, particularly concerning economic and technical matters.

(6) In order to fulfil duties within its statutory scope of competence, RTR-GmbH may request assistance from the Federal Minister for Agriculture, Regions and Tourism.

(7) The Federal Minister for Agriculture, Regions and Tourism may also request the telecommunications office to assist in those private-sector administrative duties of the Federal Ministry for Agriculture, Regions and Tourism that target the promotion of communications infrastructure.

Right to petition the Cartel Court

Article 210. (1) Where the regulatory authority has reason to assume in the course of its activities that a case is subject to cartel law, the authority shall review that case and where appropriate file a request with the Cartel Court pursuant to Art. 28 Par. 1 and 2 of the Cartel Act (*Kartellgesetz*, KartG) 2005, Federal Law Gazette No. 61/2005.

(2) In the event of breaches of the prohibitions set out in the first chapter KartG 2005 or failures to comply with the commitments declared binding under Art. 27 KartG 2005, the regulatory authority shall be obliged to file a request in cases that affect the purpose and aims defined in Art. 1 of this Federal Act.

Section 18
Transitional and final provisions

Expiry of provisions of law

Article 211. The Telecommunications Act (*Telekommunikationsgesetz*, TKG) 2003, Federal Law Gazette I No. 70/2003 (TKG 2003), as last amended by the Federal Act in Federal Law Gazette I No. 90/2020, is abolished by the entry into force of this Federal Act.

Transitional provisions

Article 212. (1) Administrative procedures pending before the regulatory authority on the date of entry into force of this Federal Act shall, with the exception of procedures under Art. 87, be completed in accordance with the material and procedural provisions, including any scope of competence, which were applicable prior to the entry into force of this Federal Act.

(2) Procedures under Section 7 for which a final ruling had been handed down on the basis of the laws applicable prior to the entry into force of this Federal Act but was later overturned by a ruling of the Austrian Constitutional or Supreme Administrative Court shall be completed in accordance with the material law and procedures applicable as of the date when the final ruling was issued.

(3) Art. 85 shall not apply to those agreements concerning cooperation on active network elements that were in effect on the date of entry into force of this Federal Act. Such existing agreements shall be notified to the regulatory authority, in full and with all applicable enclosures as appropriate, within six months of the date of entry into force of this Federal Act.

(4) Authorisations and licences valid as of the entry into force of this Federal Act shall remain valid.

(5) A confirmation of a submitted notification in accordance with TKG 2003 is considered a confirmation within the meaning of Art. 6 Par. 3.

(6) No later than five years after entry into force, the Federal Minister for Agriculture, Regions and Tourism shall investigate whether the market is providing the universal services under competitive conditions.

(7) The Federal Minister for Agriculture, Regions and Tourism shall issue an ordinance to define:

1. the licence classes to which the licences issued before the entry into force of this Federal Act correspond, based on whether the licence holder is permitted to use all frequency ranges and transmission types specified for amateur radio communications;
2. the power levels to which classes A to D as definitive for transmission power correspond (in accordance with Art. 5 Par. 1 of the ordinance, with legislative status, in Federal Law Gazette No. 30/1954, as amended by Federal Law Gazette No. 326/1962);
3. the examination categories to which the certificates documenting the necessary knowledge and skills correspond that were issued prior to the entry into force of this Federal Act, based on whether the certificate holder has achieved proof of competence in Morse code;

(8) Amateur radio licences issued before midnight on the day on which the Federal Act in Federal Law Gazette I No. 78/2018 was promulgated and which:

1. were granted in a year that, when expressed in digits, ends with the digit ‘7’ or ‘6’, shall become invalid as of 31 December 2024;
2. were granted in a year that, when expressed in digits, ends with the digit ‘8’ or ‘9’, shall become invalid as of 31 December 2025;
3. were granted in a year that, when expressed in digits, ends with the digit ‘1’ or ‘0’, shall become invalid as of 31 December 2026;
4. were granted in a year that, when expressed in digits, ends with the digit ‘2’ or ‘3’, shall become invalid as of 31 December 2027;
5. were granted in a year that, when expressed in digits, ends with the digit ‘4’, shall become invalid as of 31 December 2028;
6. were granted in a year that, when expressed in digits, ends with the digit ‘5’,

shall, insofar as they were not granted after the entry into force of the Federal Act in Federal Law Gazette I No. 78/2018, become invalid as of 31 December 2029.

(9) Information that was provided to the regulatory authority by federal, provincial or municipal government bodies or associations, as well as by other self-governing bodies, on the basis of Art. 13a Par. 2 TKG 2003 as last amended by the Federal Act in Federal Law Gazette I No. 134/2015 may continue to be stored and processed in the single information point for infrastructure data pursuant to Art. 80, and included in response to requests for information made pursuant to Art. 71, 72 and viewings pursuant to Art. 81.

(10) Administrative procedures pursuant to Art. 16, in which consent as sought by the Federal Minister for Agriculture, Regions and Tourism pursuant to Art. 16 Par. 3 had been given by midnight on the day of the promulgation of this Federal Act, are to be conducted to their conclusion in accordance with the material and procedural provisions applicable prior to that point in time.

(11) The Universal Service Ordinance (*Universaldienstverordnung*, UDV), Federal Law Gazette II No. 192/1999, is abolished by the entry into force of this Federal Act.

(12) Ordinances issued on the basis of TKG 2003 shall remain in force until corresponding ordinances have been issued on the basis of this Federal Act.

(13) Legal claims pursuant to Art. 31 Par. 1 TKG 2003 extant at the time of entry into force of this Federal Act shall be asserted by the universal service provider pursuant to Art. 30 TKG 2003 no later than 31 December 2022.If proof is offered of circumstances that would prevent the timely assertion of claims, the regulatory authority may issue a decision extending this deadline. The procedure shall be conducted in accordance with the material and procedural provisions that were applicable prior to the entry into force of this Federal Act.

(14) The members and substitute members of the Telekom-Control-Kommission currently in office at the time of entry into force of this Federal Act shall serve until the expiry of their appointment.

(15) The consumer price index monitoring period named in Art. 36 Par. 7 does not start until the entry into force of this Federal Act.

(16) The forwarding obligation incumbent on providers pursuant to Art. 144 persists for one year after the entry into force of this Federal Act.

(17) The technical or organisational arrangements necessary to fulfil the duties incumbent on operators vis-à-vis end users, as envisaged by Art. 118, 119, 124, 135 Par. 4, 135 Par. 7, 135 Par. 8, 135 Par. 11, 136, 138 Par. 5 and 138 Par. 6, shall be implemented without undue delay and within a period of six months after the entry into force of this Federal Act at the latest. Until that point in time, all duties vis-à-vis end users that can be derived from the legal basis existing prior to the entry into force of this Federal Act and applicable to the new circumstances shall continue to apply mutatis mutandis.

(18) Existing spectrum assignments at the time of entry into force of Art. 21 Par. 5 in the version of the Federal Law Gazette I No. 75/2024 can also be amended at the request of the licence holder on the basis of this provision.

References

Article 213. References in this Federal Act to other federal acts or ordinances shall be considered as references to the current amendment of the respective act or ordinance.

Publications

Article 214. (1) Ordinances and promulgations by the Federal Minister for Agriculture, Regions and Tourism may contain references to documents with technical content, in particular measurement and test methods, plans and charts, which are of interest only to a limited group of individuals and shall be promulgated by making them available for inspection during office hours.

(2) Ordinances by the regulatory authority shall be published in Federal Law Gazette II.

(3) Information that is to be published by the regulatory authority in accordance with the provisions of this Federal Act shall also be made available on the regulatory authority's website.

Enforcement

Article 215. (1) The Federal Minister for Agriculture, Regions and Tourism shall be responsible for enforcing this Federal Act, unless otherwise provided for in Par. 2 to 12.

(2) The Federal Chancellor in agreement with the Federal Minister for Agriculture, Regions and Tourism shall be responsible for enforcing Art. 7 Par. 6.

(3) The Federal Chancellor shall be responsible for enforcing Art. 36 Par. 11 and Art. 44 Par. 11.

(4) The Federal Minister for Agriculture, Regions and Tourism in agreement with the Federal Minister for Finance shall be responsible for enforcing Art. 36 Par. 6 and Art. 196 Par. 8.

(5) The Federal Minister for Agriculture, Regions and Tourism in agreement with the Federal Minister for the Interior shall be responsible for enforcing Art. 125 Par. 5.

(6) The Federal Minister for Agriculture, Regions and Tourism in agreement with the Federal Minister for Justice, the Federal Minister for National Defence, the Federal Minister for the Interior and the Federal Minister for Finance shall be responsible for enforcing Art. 162 Par. 1.

(7) The Federal Minister for Justice in agreement with the Federal Minister for Agriculture, Regions and Tourism and the Federal Minister for Finance shall be responsible for enforcing Art. 162 Par. 2.

(8) The Federal Minister for Agriculture, Regions and Tourism in agreement with the Federal Minister for the Interior in agreement with the Federal Minister for Justice, the Federal Minister for National Defence and the Federal Minister for the Interior shall be responsible for enforcing Art. 162 Par. 3.

(9) The Federal Minister for Agriculture, Regions and Tourism in agreement with the Federal Minister for the Interior shall be responsible for enforcing Art. 166 Par. 2.

(10) The Federal Minister for Agriculture, Regions and Tourism in agreement with the Federal Minister for the Interior in agreement with the Federal Minister for Justice, the Federal Minister for the Interior and the Federal Minister for Finance shall be responsible for enforcing Art. 171 Par. 6.

(11) The Federal Minister for Agriculture, Regions and Tourism and the Federal Minister for Justice shall be responsible for enforcing Art. 209 Par. 5.

Gender equality in language

Article 216. All role designations and expressions relating to persons as used in this Federal Act are to be interpreted as applying to all genders.

Entry into force

Article 217. (1) This Federal Act enters into force on the first day of the month following its promulgation.

(2) Art. 47 Par. 2, Art. 167 Par. 5 No. 2, Art. 181 Par. 9, Art. 199 Par. 4 No. 1 lit. c and Art. 199 Par. 4a in the version of Federal Act Federal Law Gazette BGBl. I No. 182/2023 shall enter into force on 17 February 2024; Art. 199 Par. 1 No. 1 lit. d and Par. 4 No. 1 lit. d shall expire at the same time.

(3) The table of contents and Art. 194a including the heading in the version of Federal Law Gazette BGBl. I No. 6/2024 shall enter into force on 1 January 2024.