

## 4. National summaries

### 4.1. AT – Austria – National Summary<sup>33</sup>

#### 4.1.1. Summary

In Austria, access to the market is granted exclusively by the regulatory authority (Kommunikationsbehörde Austria, hereinafter KommAustria)<sup>34</sup>, except for the public service media, which was created by law.

KommAustria is also in charge of monitoring the compliance of all AVMS providers with the regulatory framework.

Three systems are used:

- Licensing, which is applicable to non-public service linear AVMS distributed via DTT and satellite and which is organised in the form of a formal licence.
- Notification, which is applicable to non-public service linear AVMS distributed via cable, IPTV and OTT and to non-public service non-linear AVMS.
- Public service, which is applicable to the public service media ORF. The missions of the ORF are prescribed in a specific law. The regulatory framework does not directly grant pre-emption for public service television channels, although, in practice, the two main television channels of the ORF are available on one multiplex.

**Table 14. Applicable systems**

System	Category
Licensing	Formal licence
Notification	N/A
Public service	Law

Source: Austrian response to European Audiovisual Observatory standardised questionnaire

<sup>33</sup> The factsheet on Austria incorporates the feedback received from members of the *Rundfunk und Telekom Regulierungs-GmbH (RTR-GmbH)* during the checking round with media regulators. No further remarks were received from the members of the Contact Committee set up by the AVMSD.

<sup>34</sup> <https://www.rtr.at/de/rtr/OrganeKommAustria>.



## 4.1.2. Functioning of the applicable systems

According to the Audiovisual Media Services Act,<sup>35</sup> linear AVMS distributed via DTT and satellite have to be licensed by and all other linear and non-linear AVMS have to be registered with KommAustria.

Licences are granted for ten years and notifications of non-linear AVMS have no limited term. If the notification is not acknowledged, the applicant has the opportunity to lodge an appeal with the Federal Administrative Court (Bundesverwaltungsgericht)<sup>36</sup> within four weeks of receipt of the decision. It is a full jurisdiction review: the Federal Administrative Court can replace the decision of KommAustria with its own. A decision by the Federal Administrative Court can then be appealed – but only on points of law of substantial relevance – to the Supreme Administrative Court<sup>37</sup> within six weeks of the decision by the Federal Administrative Court.

The public service media ORF<sup>38</sup> is out of the scope of the licensing and notification systems. The ORF was created by the ORF Act.<sup>39</sup> The pre-emption of frequencies is only granted to the ORF for its radio services, not for its television services. However, in practice, public service is available on one multiplex, since when licensing DTT networks operators, KommAustria has to ensure that the digital channels and additional services are broadcast under fair, equal and non-discriminatory conditions, and that the two main nationwide television channels of the ORF are included.

**Table 15. Functioning of the applicable systems**

System	Category	Authority	Description of the procedure
Licensing	Formal licence	KommAustria	Application to be sent to KommAustria, who grants the licence if formal criteria are met
Notification	N/A	KommAustria	Notification to send prior to the launch of the service to KommAustria, who enters the AVMS in the appropriate register
Public service	Law	Parliament	The public service media ORF was created by law

Source: Austrian response to European Audiovisual Observatory standardised questionnaire

<sup>35</sup> <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20001412> (in German).

[https://www.ris.bka.gv.at/Dokumente/ErV/ERV\\_2001\\_1\\_84/ERV\\_2001\\_1\\_84.html](https://www.ris.bka.gv.at/Dokumente/ErV/ERV_2001_1_84/ERV_2001_1_84.html) (in English).

<sup>36</sup> <http://www.bverwg.de/>.

<sup>37</sup> <https://www.vwgh.gv.at/>.

<sup>38</sup> <http://www.orf.at/>.

<sup>39</sup> <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10000785> (in German)

[https://www.ris.bka.gv.at/Dokumente/ErV/ERV\\_1984\\_379/ERV\\_1984\\_379.html](https://www.ris.bka.gv.at/Dokumente/ErV/ERV_1984_379/ERV_1984_379.html) (in English).

### 4.1.3. Application to public audiovisual media service providers

The missions of the ORF are prescribed in the ORF Act.

There is no limited term to the activities of the ORF.

For new services, a specific procedure applies, compliant with the Communication from the European Commission on the application of State aid rules to public service broadcasting and, in particular, with the decision of the European Commission of 28 October 2009 on the financing of ORF. These services have to be approved by KommAustria.

**Table 16. Access to market by public service providers**

Service	Category	Authority
<i>Linear</i>		
<i>Via DTT</i>	Law	Parliament
<i>Via cable</i>	Law	Parliament
<i>Via IPTV</i>	Law	Parliament
<i>Via satellite</i>	Law	Parliament
<i>Via OTT</i>	Law	Parliament
<i>Non-linear</i>		
<i>Via DTT</i>	Law	Parliament
<i>Via cable</i>	Law	Parliament
<i>Via IPTV</i>	Law	Parliament
<i>Via satellite</i>	Law	Parliament
<i>Via OTT</i>	Law	Parliament

*Source: Austrian response to European Audiovisual Observatory standardised questionnaire*

*For new services, the approval of Komm Austria is also necessary*

### 4.1.4. Application to private (commercial) audiovisual media service providers

Licences are granted to linear AVMS distributed via DTT and satellite in the form of a formal licence.

Applications can be submitted anytime to KommAustria. Pursuant to section 3 (2) and (3) of the Audiovisual Media Services Act, they “*shall prove compliance with the requirements according to section 10 and section 11*” and “*shall establish in credible form, together with providing evidence for complying with the licensing requirements according to*



paragraph 2, that the applicant satisfies the requirements for the regular provision and dissemination of the planned channel regarding the professional, financial and organizational aspects, and that the programme will correspond to the requirements of Parts 7 and 9” (that is to say, the traditional content requirement imposed on broadcasters in application of the AVMS Directive). They shall also contain the following information (section 4 (4)):

- “1. the articles of incorporation or the partnership agreement in the case of legal persons or partnerships;*
- 2. a presentation of the membership and ownership relations to prove compliance with the requirements mentioned in section 10 and section 11;*
- 3. information about the type of channel, the channel schedule, the proportion of self-produced programmes, as well as whether the programme is to be disseminated as a window channel on a specific framework channel;*
- 4. a description of the programming principles with explanations of the applicant’s own programming concepts;*
- 5. a presentation of the transmission modes provided for the dissemination of the channel:*
  - a) in the case of terrestrial television and mobile terrestrial television: especially evidence of the availability of agreements regarding the use of transmission capacities of a multiplex operator in the event that a license is granted, or information about the area covered and about the planned dissemination in cable or other electronic communications networks,*
  - b) in the case of satellite television: information as to which satellite (transponder) and which earth-satellite transmitting stations will be used to disseminate the channel, information about the area covered, as well as information about arrangements that the applicant has already reached with the satellite operator on the use of this satellite in the event that a license is granted;*
- 6. information about establishment according to section 3, especially whether decisions on the channels offered, the transmission staff as well as the broadcasting operations are taken in Austria or in another state;*
- 7. the planned editorial agreement.”*

Section 10 provides for the obligation for the applicant be an Austrian citizen or a legal person domiciled in Austria (EEA citizens and legal persons domiciled in the EEA have equal status) and forbids certain types of applications (from legal persons under public law, political parties, the ORF and other public service media, as well as from legal entities in which the aforementioned actors hold a direct share).

Section 11 provides for limitations in terms of media concentration (detailed in section 4.1.8 below).

If the application is found to be deficient (for instance if the required documentation is not complete), the applicant is requested to submit the missing documents or rectify other formal deficiencies, usually within two weeks (no legal deadline is set). The regulatory authority may also request that the applicant provide additional information and, in particular, that it disclose ownership and potential legal relations to the state, the provinces or the municipalities/communities, to broadcasters and media companies (section 4 (5)). All applicants are required to disclose their owners



on every level of incorporation up to the ultimate beneficial owner, and KommAustria recommends that a chart of the ownership structure be included in the application.

Pursuant to section 5 (1), the licence “*shall be granted if the applicant has satisfied the requirements listed in section 4 (2) and (3)*”, which gives the licensing procedure the form of a formal licence: KommAustria has no discretion as to whether or not the licence is granted as long as the formal licensing requirements are met by the applicant (unless on concentration grounds as detailed in section 4.1.8. below).

There is no specific deadline obliging KommAustria to respond to an application (although under general administrative procedure it has to decide without undue delay and at the latest within six months) and no deadline imposed on an AVMS provider for the effective provision of its service.

All the other AVMS (linear AVMS distributed by cable, IPTV or OTT and non-linear AVMS) have to be notified to KommAustria no later than two weeks prior to the launch of the activity. The notification has to contain the name and address of the AVMS provider, information on the distribution and coverage zone of the AVMS, as well as documentation on compliance with the requirements of the aforementioned sections 10 and 11. The restrictions for state actors and political parties are not as strict as for terrestrial and satellite AVMS: state actors and political parties are allowed to provide TV programmes outside the scope of the Austrian Constitutional Act of 10 July 1974 on Guaranteeing the Independence of Broadcasting (basically pure weather camera-channels or similar) and on-demand audiovisual media services. In addition, state actors are also allowed to provide cable television channels with a duration of not more than 120 minutes per day (not counting the repetitions and broadcasts of general representative bodies). These provisions are meant to enable local programmes provided by communities.

In the case of linear AVMS, the notification also has to give information on the type of channel; the schedule; the proportion of self-produced programmes and whether the channel is a full-range channel; a special-interest channel; a window channel or a framework channel; as well as the maximum length of transmission time on a channel, and the number and length of time of window channels.

In the case of non-linear AVMS, the notification has to contain information on the catalogue of programmes, in particular on the scope of the service; the special interests covered; and the programmes offered.

If all requirements are met, there is no further formal decision and the AVMS is registered in the list of AVMS kept by KommAustria.<sup>40</sup> If, however, in the event that an AVMS provider is not established in Austria according to the Audiovisual Media Service Directive or if the notified service does not constitute an audiovisual media service, then the application is to be rejected by a decision of KommAustria (in the case of a provider not established in Austria, KommAustria has to hold a public hearing).

If the provider does not meet the requirements of the aforementioned sections 10 and 11, or if the notified service would violate section 30 (1) and (2), 39 or 42 (1) (respect for human dignity and the fundamental rights of others, no incitement to hatred, the

---

<sup>40</sup> <https://www.rtr.at/de/m/Abrufdienste>.



protection of minors), KommAustria shall issue a decision prohibiting the launch of the activity (if the decision can only be taken after the AVMS has already launched its activity, KommAustria shall start interdiction proceedings).

**Table 17. Access to market by private service providers**

Service	Category	Authority
<i>Linear</i>		
<i>Via DTT</i>	Formal licence	KommAustria
<i>Via cable</i>	Notification	KommAustria
<i>Via IPTV</i>	Notification	KommAustria
<i>Via satellite</i>	Formal licence	KommAustria
<i>Via OTT</i>	Notification	KommAustria
<i>Non-linear</i>		
<i>Via DTT</i>	Notification	KommAustria
<i>Via cable</i>	Notification	KommAustria
<i>Via IPTV</i>	Notification	KommAustria
<i>Via satellite</i>	Notification	KommAustria
<i>Via OTT</i>	Notification	KommAustria

Source: Austrian response to European Audiovisual Observatory standardised questionnaire

#### 4.1.5. Application to regional/local audiovisual media service providers

The same procedure as the one described in section 4.1.4 above is applicable.

#### 4.1.6. Application to community (non-profit) audiovisual media service providers

The same procedure as the one described in section 4.1.4 above is applicable.

#### 4.1.7. Licence fee

There is no specific licence fee.

A general fee of EUR 6.50 is set by a federal regulation for all administrative decisions, and it applies for the delivery of a licence, but not for a notification.



The beneficiary is the State.

#### 4.1.8. Media ownership and concentration

The transparency of ownership of all AVMS providers is ensured via the obligation to provide the relevant data when applying for a licence or notifying.

Media concentration is avoided during the licensing process by section 11 of the Audiovisual Media Services Act according to which:

*“(1) A person or partnership may hold several licences for digital terrestrial television, as long as not more than three coverage areas included in the licences overlap.*

*(2) A media owner shall be precluded from providing television channels within the meaning of the Federal Constitutional Law Guaranteeing the Independence of Broadcasting, Federal Law Gazette No. 396/1974, according to this Federal Act if the media owner exceeds the following ranges or levels of coverage in one of the listed markets:*

- 1. terrestrial radio programmes (more than 30 per cent of a nationwide range),*
- 2. daily press (more than 30 per cent of a nationwide range of the daily press),*
- 3. weekly press (more than 30 per cent of a nationwide range of the weekly press),*
- 4. cable networks (more than a level of 30 per cent of coverage to the population by means of cable network on the national territory).*

*(3) A media owner shall be precluded from providing terrestrial television services if the media owner exceeds the below ranges or levels of coverage in the respective coverage areas in more than one of the listed markets:*

- 1. terrestrial radio programmes (more than a range of 30 per cent in the coverage area),*
- 2. daily press (more than a range of 30 per cent in the coverage area),*
- 3. weekly press (more than a range of 30 per cent of the coverage area),*
- 4. cable network (more than level of coverage of 30 per cent of the population by means of cable networks on the national territory).*

*(4) Except for any technically unavoidable overlapping (spill over), a media group may provide the same location in the national territory simultaneously with only one channel licensed under the Private Radio Broadcasting Act and a maximum of one third of the terrestrial television channels that can be received in that location. If no licensees as defined in the Private Radio Broadcasting Act belong to a media group, the media group may provide the same location in the national territory with not more than one third of the terrestrial television channels that can be received in that location.*

*(5) Those persons or partnerships are deemed to belong to a media group:*

- 1. who/which hold more than 25 per cent of the share capital or the voting rights of a media owner or exert a dominating influence or have one of the possibilities to exert an influence as defined in section 244 (2) in connection with paragraphs 4 and 5 of the Business Code;*



2. where one of the persons or partnerships listed in item 1 has more than 25 per cent of the share capital or voting rights or a dominating influence or one of the possibilities to exert an influence as defined in section 244 (2) in connection with paragraphs 4 and 5 of the Business Code;

3. where a media owner holds more than 25 per cent of the share capital or voting rights or exerts a dominating influence or has one of the possibilities to exert an influence as defined in section 244 (2) in connection with paragraphs 4 and 5 of the Business Code.

For the purposes of the present paragraph it shall be tantamount to a direct capital interest of more than 25 per cent if there are one or several interests and the interest on every level is more than 25 per cent. Interests by media owners, or persons associated with them according to the present paragraph, on the same level shall be added together when determining the limit of 25 per cent.

(6) The ranges and levels of coverage according to paragraphs 2 and 3 shall be determined by the regulatory authority or third parties commissioned by the latter, on the basis of scientific methods and analyses. The results of that determination shall be published in suitable form by 31 March of every year. In the event that the accuracy of the established ranges is contested, the regulatory authority shall issue a decree on the established ranges, upon application by the media owner concerned. In any event, the ranges and levels of coverage shall be established and published prior to any invitation to tender for a license under this Federal Act.”

**Table 18. Main issues regarding media ownership and concentration**

Issue	Description
Transparency of ownership issues considered during the licensing or notification process	Relevant data has to be provided when applying for a licence or notifying
Media concentration issues considered during the licensing process	Cross-media ownership and coverage of population thresholds

Source: Austrian response to European Audiovisual Observatory standardised questionnaire

#### 4.1.9. Management of the licence and notification

Licences are granted for ten years and notifications have no limited term.

The suspension and revocation of a licence are among the administrative sanctions that can be decided by KommAustria. Sanctions have to follow a gradual approach: in case of a serious or repeated violation of the law by a licensee, KommAustria shall instruct the AVMS provider by means of a formal decision to comply with the law and to take precautions to avoid future violations (which has the effect of a formal warning). Only in cases where the AVMS provider then again repeatedly or severely violates the law, can the licence be revoked.





In addition, a “repeated violation” is not deemed to have taken place when there is a period of at least three years between the established violations of a specific provision of the law; if the AVMS provider proves that the consequences of the violation have remained insignificant (and the AVMS provider showed regret during the proceedings and took appropriate measures to avoid future violations); or if the AVMS provider proves that the violations were based on a justifiable legal view at the time the violation was committed.

A licence can be revoked if the AVMS provider has not notified a change in ownership of more than 50% of the shares, or in case of serious or repeated violations of the law (after a formal warning has been issued). The licence ends when the licensee dies or loses his/her legal personality or in the case of the regulatory authority declaring (by means of decree, after holding a public hearing) that the AVMS provider is no longer deemed to be established in Austria.

There is no procedure regarding the termination of the service; however, the licence expires if the licensee does not distribute the programme for more than one year. For notified services, data on the services provided has to be updated by 31 December of each year, so there is an implicit obligation to notify on that occasion that a service is terminated.

A licensee shall notify to KommAustria in advance any major changes in the type of AVMS, the daily length of transmission time, and in the number and duration of window programmes. In addition, the planned retransmission of the channel via other satellites or further terrestrial multiplex platforms has to be notified; the notification has to contain documentation of agreements with a satellite operator or a multiplex operator. These changes have to be approved by KommAustria. Changes regarding notified AVMS shall be notified to KommAustria by 31 December each year.

In case of modifications to the service with a view to targeting different audiences, it would be considered by KommAustria that:

- different linguistic versions constitute different AVMS (which therefore have to be licensed or notified accordingly);
- different advertising windows constitute different AVMS (which therefore have to be licensed or notified accordingly);
- any changes regarding the number or the length of the programming windows (which are allowed for licensed services) need KommAustria’s prior approval.

**Table 19. Main procedural aspects regarding the management of the licence**

Issue	Description
Duration	10 years
Procedure to renew	Same as for licensing
Procedure to suspend	Same as for other sanctions
Procedure to revoke	Same as for other sanctions
Procedure in case of termination of the provision of the service	No



Procedure in case of modifications in the licence conditions	Prior approval of KommAustria
Procedure in case of modifications to the service with a view to targeting different audiences	Different linguistic versions and advertising windows have to be licensed or notified accordingly

Source: Austrian response to European Audiovisual Observatory standardised questionnaire

#### 4.1.10. Future amendments to the regulatory framework

N/A.

#### 4.1.11. Video-sharing platforms

N/A.

#### 4.1.12. Applicable regulatory framework

■ Primary legislation:

- In German - Bundesgesetz über audiovisuelle Mediendienste / Audiovisuelle Mediendienste-Gesetz AMD-G (Audiovisual Media Services Act):  
<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20001412>
- In German - Bundesgesetz über den Österreichischen Rundfunk / ORF-Gesetz ORF-G, (ORF Act):  
<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10000785>
- In English<sup>41</sup> - Audiovisual Media Services Act:  
[https://www.ris.bka.gv.at/Dokumente/ErV/ERV\\_2001\\_1\\_84/ERV\\_2001\\_1\\_84.html](https://www.ris.bka.gv.at/Dokumente/ErV/ERV_2001_1_84/ERV_2001_1_84.html)
- In English - ORF Act:  
[https://www.ris.bka.gv.at/Dokumente/ErV/ERV\\_1984\\_379/ERV\\_1984\\_379.html](https://www.ris.bka.gv.at/Dokumente/ErV/ERV_1984_379/ERV_1984_379.html)

---

<sup>41</sup> When provided, English translations shall not be considered as official translations.



### 4.1.13. Data compilation

This factsheet was produced based on data compiled by Hans Peter Lehofer, Prof. Dr., Vienna University of Economics and Business, Institute for Austrian and European Public Law.