



4. National legal summaries

4.1. AT – Austria – National legal summary²⁴

4.1.1. Applicable regulatory framework

Relevant legislation includes the following:

Primary legislation:

- *Audiovisuelle Mediendienste-Gesetz*; AMD-G²⁵ (Audiovisual Media Services Act – AMD-G²⁶)
- *Arzneimittelgesetz*²⁷ (Medicines Act)
- *Medizinproduktegesetz 2021*²⁸ (Medical Devices Act 2021)
- *Tabak- und Nichtraucherinnen- bzw. Nichtraucherschutzgesetz*²⁹ (Tobacco and Non-Smoker Protection Act)
- *Glücksspielgesetz*³⁰ (Gambling Act)
- *Bundesgesetz gegen den unlauteren Wettbewerb*³¹ (Act against Unfair Competition)
- *KommAustria-Gesetz*³² (Law on KommAustria – KommAustria-G³³)

Self and co-regulatory instruments:

- Richtlinien der KommAustria für die Vergabe von Mitteln aus dem Fonds zur Förderung der Selbstkontrolle bei der kommerziellen Kommunikation (Guidelines for the allocation of funds from the Fund for Promotion of Self-Regulation in Commercial Communications by KommAustria)³⁴

²⁴ The factsheet on Austria incorporates feedback received from Stefan Rauschenberger, Director of the Legal Department at Rundfunk und Telekom Regulierungs-GmbH (RTR-GmbH) during the checking round with the national regulatory authorities.

²⁵ <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20001412>.

²⁶ https://www.ris.bka.gv.at/Dokumente/Erv/ERV_2001_1_84/ERV_2001_1_84.html.

²⁷ <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10010441>.

²⁸ <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20011580>.

²⁹ <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10010907>.

³⁰ <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10004611>.

³¹ <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10002665>.

³² <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20001213>.

³³ https://www.ris.bka.gv.at/Dokumente/Erv/ERV_2001_1_32/ERV_2001_1_32.html.

³⁴ https://www.rtr.at/medien/was_wir_tun/foerderungen/selbstkontrolleinrichtungen/kommerzielle_kommunikation/Richtlinien/Richtlinien_KK2021.pdf.



- Förderung der Selbstkontrolle zum Schutz Minderjähriger: Richtlinien der KommAustria für die Vergabe von Förderungen (Guidelines for awarding grants to promote self-regulation to protect minors by KommAustria)³⁵

4.1.2. Definitions and restrictions regarding commercial communications

This section aims at identifying the relevant definitions related to commercial communications stemming from related laws, rules and current practices, as well as ongoing reforms under the transposition and implementation of the revised AVMS Directive. Please note that this review includes definitions which are part of the revised AVMSD, inclusive of audiovisual commercial communications, advertising, surreptitious commercial communications, sponsorship and product placement, but also definitions of supplementary and/or related concepts, such as advertiser, sponsor and sponsored content, as well as misleading commercial communication, for the purpose of providing a comprehensive overview.

4.1.2.1. Definitions

Table 27. Definition of the main concepts related to commercial communications

Concept	Existence of a definition
Audiovisual commercial communications	Yes.
Television advertising	Yes.
Advertiser	No.
Surreptitious commercial communication	Yes.
Misleading commercial communication	Under the definition of surreptitious commercial communication.
Virtual advertising	No.
Sponsorship	Yes.
Sponsor	No.
Sponsored content	No.
Product placement	Yes.

³⁵https://www.rtr.at/medien/was_wir_tun/foerderungen/selbstkontrolleinrichtungen/schutz_minderjaehriger/richtlinien/2021.de.html.



Other:	/
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Source: Austrian response to European Audiovisual Observatory standardised survey

4.1.2.1.1. Audiovisual commercial communications

Section 2, item 2 of the AMD-G defines audiovisual commercial communications as:

Images with or without sound that

a) are designed to promote, directly or indirectly, the goods, services or image of a natural or legal entity pursuing an economic activity, or

b) are designed to support a cause or idea.

Such images accompany or are included in a programme or, in the case of (a) also in a user-generated video, in return for payment or for similar consideration or, in the case of a), for self-promotional purposes. In any event, audiovisual commercial communication includes product placement, the representation of production props of insignificant value, sponsorship announcements and advertising pursuant to item 40

4.1.2.1.2. Television advertising

The AMD-G, in section 2, item 40, provides the following definition of television advertising:

Any form of announcement broadcast or provided on television channels by the provider (television advertising) or as part of an on-demand audiovisual media service by the provider whether in return for payment or for similar consideration or for self-promotional purposes in connection with a trade, business, craft or profession in order to promote the supply of goods or services, including immovable property, rights and obligations, in return for payment. Furthermore, advertising includes any form of announcement broadcast whether in return for payment or for similar consideration in order to support a cause or idea (advertising for causes).

4.1.2.1.3. Advertiser

There is no definition of advertiser.

4.1.2.1.4. Surreptitious commercial communication

Section 2, item 29, of the AMD-G defines surreptitious commercial communication by literally transposing the text of the revised AVMSD, as:

The representation in words or pictures of goods, services, the name, the trademark or the activities of a producer of goods or a provider of services in programmes when such representation is intended by the media service provider or one of its subsidiaries to serve as advertising and might mislead the public as to the nature of such representation. Such representation shall, in particular, be considered as intentional if it is done in return for payment or for similar consideration.



4.1.2.1.5. Misleading commercial communication

The AMD-G, in Section 2, item 29, includes the definition of misleading commercial communications in the definition of surreptitious commercial communications (see under 4.1.2.1.4. above)

4.1.2.1.6. Virtual advertising

There is no definition of virtual advertising.

4.1.2.1.7. Sponsorship

Section 2, item 32, defines sponsorship as:

Any contribution made by public or private undertakings or natural persons not engaged in providing audiovisual media services or video-sharing platforms or in the production of audiovisual works for the financing of audiovisual media services, video-sharing platforms, user-generated videos or programmes with a view to promoting their name, trademark, image, activities or products.

4.1.2.1.8. Sponsor

There is no definition of sponsor.

4.1.2.1.9. Sponsored content

There is no definition of sponsored content.

4.1.2.1.10. Product placement

Section 2, item 27, of the AMD-G defines product placement as:

Any form of commercial communication consisting of the inclusion of or reference to a product, a service or a trademark thereof, in return for payment or for similar consideration, so that it is featured within a programme or a user-generated video. The provision of goods or services free of charge, such as production props or prizes, with a view to their inclusion shall not be considered to be product placement if the goods or services involved are of insignificant value.

4.1.2.1.11. Other definitions

N/A.



4.1.2.2. Restrictions regarding commercial communications

The revised AVMSD introduces obligations for video-sharing platforms to, *inter alia*, respect certain requirements regarding commercial communications and this section aims at updating the information relative to these obligations and measures imposed under national legislation on media service providers, including VSP providers related to commercial communications.

As a general note, the AMD-G, in section 54e para 4 item 1 to 4, extends the following requirements to VSPs:

In the case of audiovisual commercial communications contained in or added to programmes or user-generated videos (§ 2(3), first sentence (a) and second and third sentences), platform providers shall ensure that

- 1. at least the conditions laid down in § 31, § 33 to § 35(1) and § 36(1) and (2) are satisfied if these were marketed, sold or assembled by the platform providers themselves;*
- 2. through the General Terms and Conditions required under (2) point 1, where possible platform users are also required to comply with §§ 31, § 33 to § 35(1) and § 36(1) and (2) in the content they upload to the video-sharing platform;*
- 3. users uploading content have at their disposal a function enabling them to indicate whether, to the best of their knowledge, the content contains such communication;*
- 4. where content contains such communication, that is clearly indicated, provided that the platform provider is aware of it from an indication under (3) or for another reason.*

Restrictions and prohibitions of the aforementioned related provisions are provided below.

4.1.2.2.1. Audiovisual commercial communications for alcoholic beverages and tobacco and tobacco-related products, including electronic cigarettes and refill containers

Section 33 of the AMD-G prohibits audiovisual commercial communications related to tobacco and tobacco-related products:

Any form of audiovisual commercial communication for tobacco products and related products, including devices for the purpose of consumption, shall be prohibited (§ I Tobacco and Non-Smoker Protection Act, TNRSZ, Official Gazette No 431/1995³⁶)

The AMD-G, in section 35, paragraphs 1 and 2, provides for certain restrictions vis-à-vis alcohol, including a prohibition on audiovisual commercial communications being specifically aimed at or showing minors consuming alcohol, associating alcohol consumption with improved physical performance, including while driving, sexual success or suggesting alcohol as therapeutic, stimulating, etc. Paragraph 2 deals with the requirements and content of self-regulatory mechanisms vis-à-vis alcoholic beverages:

³⁶ *Tabak- und Nichtraucherinnen- bzw. Nichtraucherschutzgesetz* (Tobacco and Non-Smoker Protection Act), http://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Erv&Dokumentnummer=ERV_1995_431.



All media service providers shall draw up and comply with guidelines on audiovisual commercial communications relating to alcoholic beverages. The guidelines shall specify which forms and contents of audiovisual commercial communications are inappropriate and shall be aimed at reducing the impact of audiovisual communications on minors effectively. The guidelines shall be published in an easily, directly and permanently accessible form. The experience and recommendations of a recognised self-regulation body shall be taken into account in assessing what is inappropriate (§ 33(3b) Austrian Communication Authority Act, KOG).

4.1.2.2.2. Audiovisual commercial communications for medicinal products and medical treatment available only on prescription in the member state

Section 34, paragraph 1, of the AVMSD Act prohibits commercial communications for medicinal products and treatments available only on prescription:

Any form of audiovisual commercial communication for medicines or therapeutic treatments that are only available on prescription as well as for medical devices that are subject to a prescription pursuant to a regulation according to § 100 of the Act on Medical Devices, Federal Law Gazette No. 657/1996, shall be prohibited.³⁷

Related advertising restrictions of the Medicines Act, regulated in sections 50-56a, and those of the Medical Devices Act 2021, regulated in sections 70-76, remain the same.

4.1.2.2.3. Surreptitious audiovisual commercial communications

The AMD-G, in section 31, paragraphs 1 and 2, stipulates mandatory identifiability of commercial communications and prohibits surreptitious techniques:

- 1. Audiovisual commercial communications shall be readily recognizable as such.*
- 2. Surreptitious advertising, audiovisual commercial communication that is below the limit of perception and comparable practices shall be prohibited.*

4.1.2.2.4. Subliminal techniques in commercial communications

Section 31 paragraphs 1 and 2 of the AMD-G prohibits subliminal marketing techniques, and stipulates mandatory identifiability of audiovisual commercial communications:

- 1. Audiovisual commercial communications shall be readily recognizable as such.*
- 2. Surreptitious advertising, audiovisual commercial communication that is below the limit of perception and comparable practices shall be prohibited.*

³⁷ Although the Medical Devices Act 1996 has already expired and been replaced by the Medical Devices Act 2021, section 34 AVMSD-Act still refers to the provision of the Medical Devices Act 1996.



4.1.2.2.5. Prejudice with regard to human dignity

The AMD-G, section 31, paragraph 3 item 1, prohibits prejudice with regard to human dignity: “Audiovisual commercial communications shall not prejudice respect for human dignity.”

4.1.2.2.6. Inclusion or promotion of any discrimination (e.g., on the grounds of sex, racial or ethnic origin, nationality, religion, etc.)

Section 31, paragraph 3 item 2, of the AMD-G stipulates that: “Audiovisual commercial communication shall not contain or encourage any discrimination on the grounds of sex, race or ethnic origin, nationality, religion or belief, disability, age or sexual orientation.”

4.1.2.2.7. Encouragement of behaviour prejudicial to health or safety

The AMD-G, in section 31, paragraph 3 item 3: “Audiovisual commercial communication shall not encourage behaviour prejudicial to health or safety.”

4.1.2.2.8. Encouragement of behaviour grossly prejudicial to the protection of the environment

The AMD-G, in section 31, paragraph 3 item 4: “Audiovisual commercial communication shall not encourage directives that are highly prejudicial to the protection of the environment.”

4.1.2.2.9. Causing physical, mental or moral detriment to minors

The AMD-G, section 36, stipulates that audiovisual commercial communication must not lead to physical, mental or moral impairment of minors and provides for the following criteria to be respected in relation to the protection of minors, in addition to stipulating the establishment of relevant self-regulatory mechanisms:

(1) Audiovisual commercial communications shall not cause physical, mental or moral harm to minors

(2) Therefore, an audiovisual commercial communication shall comply with the following criteria for the protection of minors:

1. It shall not directly exhort minors to buy or hire a product or a service by exploiting their inexperience or credulity.

2. It shall not directly encourage minors to persuade their parents or others to purchase the goods or services being advertised.

3. It shall not exploit the special trust minors place in parents, teachers or other persons.

4. It shall not unreasonably show minors in dangerous situations. All media service providers whose service also includes children’s programmes shall draw up and comply with guidelines regarding audiovisual commercial communications on foods and beverages



containing nutrients and substances with a nutritional or physiological effect, in particular those such as fat, trans-fatty acids, salt/sodium and sugars, excessive intakes of which in the overall diet are not recommended. The guidelines shall specify which forms of audiovisual commercial communications are inappropriate before, after and during children's programmes and stipulate that positive characteristics of the foods and beverages concerned may not be emphasised. The guidelines shall be published in an easily, directly and permanently accessible form. The experience and recommendations of a recognised self-regulation body for commercial communications shall be taken into account in assessing what is inappropriate (§ 33(3b) Austrian Communication Authority Act, KOG)

4.1.2.2.10. Other

Section 31, paragraph 3, of the AMD-G prohibits encouragement of illegal practices of any kind (item 5) and misleading or harming the interests of consumers (item 6). Furthermore, persons who regularly present news programmes and programmes on political current affairs are not allowed to appear, neither in imagery nor in sound, in audiovisual commercial communications, which must not compromise the editorial independence of the media service provider (section 32 of the AMD-G).

4.1.3. Sponsorship and product placement

Certain obligations stem from the revised AVMSD vis-à-vis sponsorship and product placement and this part aims at identifying the rules and practices pertaining to these two specific categories of commercial communications.

4.1.3.1. Sponsorship

Sponsorship rules are contained in section 37 of the AMD-G, applicable to VSPs as well, in terms of respect for the prohibition on influencing the responsibility and editorial independence of the media service provider, mandatory identifiability of sponsorship, as well as the requirement that sponsorship not:

3. ...directly encourage the purchase or rental of the products or services of the sponsor or a third party, in particular by making special promotional references to those products or services.

In addition to a prohibition on sponsorship of news and political information programmes, audiovisual media services and programmes may not be sponsored by natural or legal persons whose main activity is the manufacture or sale of products or the provision of services for which audiovisual commercial communication is prohibited under section 33 (see under 4.1.2.2.1. and 4.1.2.2.2.). In cases involving sponsorship of audiovisual media services or programmes by companies whose business involves the manufacture or sale of



medicines and therapeutic treatments, only the name or image of the company may be used. There can be no mention of medicines or therapeutic treatments that are only available with a doctor's prescription.

4.1.3.2. Product placement

While section 38, applicable to VSPs as well, of the AMD-G permits product placement in general (except in news, political information programmes, consumer programmes, religious and children's programmes), certain requirements do apply, such as identifiability of product placement, a prohibition on influencing the editorial responsibility and independence of the media service provider or direct solicitation of a purchase, hiring or leasing of any goods or services: "especially not by specifically promoting such goods or services by means of promotional notices"(Paragraph 2). Also, as stipulated in paragraph 3 of the said provision, product placement must not: "overemphasise the product in question".

Broadcasts may also not contain any product placements in favour of companies whose main activity is the manufacture or sale of tobacco products and related products, including devices intended for consumption.

4.1.4. Obligations regarding (v)blogs and (v)blogging

According to section 2 item 3 of the AMD-G, an audiovisual media service is: "a service as defined by Articles 56 and 57 of the Treaty on the Functioning of the European Union, where the principal purpose or a dissociable section of the service is devoted to providing programmes, under the editorial responsibility of a media service provider, in order to inform, entertain or educate, to the general public by electronic communications networks" and is inclusive of on-demand television programming – a service provided by a media service provider for reception at the time chosen by the user and on their individual request from a program catalogue specified by the media service provider (section 2 item 4).

If they cumulatively meet all requirements in the aforementioned provision, vlogs may be considered on-demand audiovisual media services (e.g., if a channel has been set up on YouTube, TikTok etc. and it contains a number of videos.)

In case a vlog is considered an audiovisual media service, the aforementioned provisions and restrictions of the AMD-G are applicable. Besides, on-demand service providers established in Austria must notify the Austrian regulatory authority KommAustria³⁸ of their activity no later than two months after starting the activity (Section 9 paragraph 1 AMD-G).

³⁸ Die Kommunikationsbehörde Austria,
https://www.rtr.at/medien/wer_wir_sind/KommAustria/KommAustria.de.html



4.1.5. Other relevant information

N/A.

4.1.6. Content-related rules regarding commercial communications for VSP providers

While certain restrictions regarding the content of commercial communications stem from the revised AVMSD and relate to issues connected to the protection of minors and restrictions on the advertising of certain products and services, this part deals with less-explored notions, such as rules pertaining to gambling, environmental claims vis-à-vis products and services, etc.

4.1.6.1. Advertising of, or on behalf of, associations that are wholly or mainly concerned with religion, faith and other belief systems

N/A.

4.1.6.2. Gambling, betting, betting tipsters, etc.

The AMD-G does not contain any explicit provisions specific to gambling, but the general provisions regarding the requirements for commercial communication apply, such as, e.g. section 36 AMD-G (see under 4.1.2.2.) which prohibits audiovisual commercial communication from leading to physical, mental or moral impairment of minors, hence prohibiting direct solicitations to minors to buy or rent goods or services, taking advantage of their inexperience and gullibility, etc.

Furthermore, the concessionaires and license-holders of games of chance must maintain a responsible standard in their advertising in section 56 paragraph 1 of the Gambling Act. According to the literature,³⁹ responsible behaviour is probably violated when particularly high stakes, gambling with borrowed capital or progressive gaming to compensate for any losses is advertised. In addition, it may not be suggested that increased gaming increases the chances of winning, chances of winning must generally not be exaggerated, and the gambling character of the game must not be denied. Gambling advertising also may not suggest that gambling could help with financial difficulties.

³⁹ Strejcek/Bresich, Kommentar zum Glücksspielgesetz, 2012, 374 (Commentary on the Gambling Act).



4.1.6.3. Environmental or “green” claims for products

According to section 2 of the Act against Unfair Competition, advertising must not contain any misleading information. Furthermore, the international standards within the DIN EN ISO 14020⁴⁰ contain requirements regarding product-related environmental information (for example: statements about a product's environmental aspects must be accurate, verifiable and true; statements about the environmental aspects of a product must be based on scientifically verifiable methods that are as widely accepted and accessible as possible).

The Act against Unfair Competition aims to ensure fair competition in general by providing legal remedies against practices that allow companies to gain an unfair advantage over their competitors. Therefore, it is not tied to a certain medium and includes, for example, actions carried out on VSPs that are questionable under fair competition law.

4.1.6.4. Other

N/A.

4.1.7. Self- and co-regulation and enforcement

This section aims at identifying the legal framework and practice for self- or co-regulatory schemes and measures regarding commercial communications on VSPs, including identification of the body or bodies in charge of self- and co-regulation and enforcement powers with regard to commercial communications and VSPs, as well as the scope of their activities with regard to commercial communications and VSPs.

4.1.7.1. Self- and co-regulatory bodies

4.1.7.1.1. Context of establishment and legal background

Media service providers are obliged to establish and adhere to guidelines regarding audiovisual commercial communications related to alcoholic beverages, as well as audiovisual commercial communications for food and beverages containing nutrients or substances with a nutritional or physiological effect, such as in particular fat, trans fats, salt/sodium and sugars, of which excess intake as part of the overall diet is not recommended.

KommAustria is tasked with promoting self-regulation in commercial communication – for which it receives an annual budget.

⁴⁰ <https://www.iso.org/standard/34425.html>.



4.1.7.1.2. Stakeholders involved

The self-regulatory organisation Österreichischer Werberat works closely with interest groups and the industry to develop guidelines intended to prevent discriminatory, human dignity-violating, or misleading advertising measures.

4.1.7.1.3. Scope and objectives

The scope of self-regulatory instruments includes:

- Inappropriate ACCs for alcoholic beverages
- ACCs for HFSS foods and beverages
- ACCs which encourage behaviours grossly prejudicial to the protection of the environment

4.1.7.1.4. Code(s) of conduct

According to Section 35 paragraph 2 of the AMD-G, each media service provider is required to establish and adhere to guidelines regarding audiovisual commercial communications related to alcoholic beverages. The guidelines must include provisions on what forms and content of audiovisual commercial communications are inappropriate and aim to effectively reduce the exposure of minors to audiovisual communications. The guidelines are to be published in a way that makes them easily, immediately and permanently accessible. In the assessment of what is inappropriate, the findings and recommendations of a recognised institution for self-regulation are considered.

Section 32a paragraph 1 (KommAustria-G) foresees the establishment of self-regulation bodies:

To provide support in achieving the objective of ensuring the observance of European minimum standards by providers of content, the activities of recognized self-regulation bodies may be subsidised.

According to Section 32a paragraph 2 (KommAustria-G) a recognised self-regulatory body is a body with a legal personality that:

- 1.guarantees broad representation of the providers concerned and comprehensive transparency in respect of the basis of decisions, the proceedings and the implementation of decisions,*
- 2.stipulates conduct guidelines and procedural guidelines that are broadly accepted by the main stakeholders and clearly define the objectives of self-regulation,*
- 3.ensures regular, transparent and, in any event, external as well as independent monitoring and evaluation of the objectives aimed at,*



4.provides for the effective handling of complaints and the enforcement of its decisions including effective and proportionate sanctions in the case of infringements of the conduct guidelines, and

5.prepares an annual report on its activities, the objectives set and the measures and decisions taken pursuant to sub-paras. 3 and 4 and publishes the report in an appropriate manner.

When it comes to the self-regulation of media and VSPs for commercial communications, the Werberat Association⁴¹ is of relevance.

Another (more specific) example is the Association for Self-Regulation of Audiovisual Media for the Protection of Minors⁴² (Section 32b KommAustria-G). While this association may tackle some relevant aspects of commercial communication, it mainly focuses on the protection of minors.

Upon request, KommAustria must grant a recognised institution of self-regulation in the field of commercial communication in the media or in the field of protection of minors an annual subsidy to cover the costs incurred. This is intended to ensure the independence of these institutions and to ensure the performance of their statutory tasks and to ensure the effective enforcement of their decisions and resolutions. In order for the full amount of the available funds to be granted, the code of conduct of a self-regulatory body in the field of commercial communication in the media must contain provisions on:

- inappropriate audiovisual commercial communications for alcoholic beverages and
- audiovisual commercial communications inappropriate for children for foods and beverages containing nutrients or substances with a nutritional or physiological effect, such as in particular fat, trans fats, salt/sodium and sugars, excessive intake of which is not recommended as part of the total diet.

The Codes of Conduct should aim to effectively reduce the exposure of minors to audiovisual communications for alcoholic beverages and to effectively reduce children's exposure to audiovisual communications for the above-mentioned foods and beverages (foods and beverages containing nutrients or substances with a nutritional or physiological effect, such as in particular fat, trans fats, salt/sodium and sugars, excessive intake of which is not recommended as part of the total diet). For these foods and beverages, the code of conduct must provide that their positive nutritional properties should not be emphasised. The code of conduct must also acknowledge the relevant recommendations of European consumer protection associations, taking into account the recommendations of European self-regulatory bodies in the advertising sector in an appropriate balance of interests. These behavioural guidelines should also take recognised nutritional guidelines into account. They are to be drawn up with the assistance of the Agency for Health and Food Safety.

⁴¹ Werberat, <https://www.werberat.at/>

⁴² Verein zur Selbstkontrolle audiovisueller Medienangebote zum Schutz von Minderjährigen, <https://www.jugendmedienschutz.at/#:~:text=Der%20hierf%C3%BCr%20gegr%C3%BCndete%20%E2%80%9Everein%20zur,im%20Sinne%20der%20gesetzlichen%20Bestimmungen.>



Furthermore, according to Section 36 paragraph 2 of the AMD-G, any media service providers that also offers children's programmes have to create and follow guidelines with regard to audiovisual commercial communications for food and beverages containing nutrients or substances with a nutritional or physiological effect, such as in particular fat, trans fats, salt/sodium and sugars, of which excess intake as part of the overall diet is not recommended. The guidelines must include provisions on what forms of audiovisual commercial communication are inappropriate before, after and in/during children's programmes. Furthermore, they must include provisions stipulating that positive qualities of the food and drink in question must not be emphasised. The guidelines have to be published in a way that makes them easily, immediately and permanently accessible. To assess what is inappropriate, the findings and recommendations of a recognised institution for self-regulation in commercial communication (Section 33 paragraph 3b KommAustria-G) must be used.

Codes of conduct should take into account the recommendations of European institutions for self-regulation in the advertising sector, as well as the relevant recommendations of European consumer protection associations in an appropriate balance of interests. These guidelines should also consider recognised nutritional guidelines, particularly with regard to audiovisual commercial communication for food and beverages. They are to be drawn up with the assistance of the Agency for Health and Food Safety.

4.1.7.1.5. Role of the (self-)regulatory bodies

VSPs have to ensure, as far as possible, in the case of audiovisual commercial communications included in or attached to broadcasts or user-generated videos, that the users of the platform are required to comply with the requirements for the content they upload to the video-sharing platform (see 4.1.2.2)

4.1.7.1.6. Period of activity (if limited)

N/A.

4.1.7.1.7. Role of the regulatory authority in a co-regulatory system

4.1.7.1.7.1. *Regulatory body*

KommAustria is given EUR 75 000 annually to promote self-regulation in commercial communication (section 33 paragraph 1 of the KommAustria-G), and these funds must be invested and managed profitably in a money account. On request, KommAustria must grant a recognised self-regulatory body an annual grant to cover the costs incurred in the amount specified in section 33 paragraph 1 of the KommAustria-G, plus any reserves and interest. The request must contain evidence of the costs incurred in fulfilling the tasks. KommAustria has to draw up guidelines that contain, in particular, more detailed regulations on the form and content of applications as well as deadlines for submitting such applications.



A prerequisite for the granting of the full amount of the funds available to promote self-regulation is that the behavioural guidelines of a self-regulation institution regulate inappropriate audiovisual commercial communication for alcoholic beverages and audiovisual commercial communication for food and beverages that contain nutrients or substances with nutritional or physiological effects, such as fat, trans fatty acids, salt / sodium and sugar, the excessive intake of which is not recommended as part of the overall diet, for children (section 33 paragraph 3a of KommAustria-G).

KommAustria is to be informed annually by 31 March of the following year about the effectiveness of the rules of the code of conduct as well as about the type, number and resolution of complaints. KommAustria must present its assessment and recommendations on effectiveness in its activity report (section 33 paragraphs 3a-c KommAustria-G).

4.1.7.1.7.2. Co-regulatory scheme

N/A.

4.1.7.1.7.3. Relationship and roles of stakeholders

N/A.

4.1.7.2. Monitoring/evaluation, compliance and sanctioning powers

Video-sharing-platform providers must notify KommAustria of their activities no later than two months after they have started. In addition to the name, address and any representatives and process agents, the notification must also provide evidence of the facts relevant for determining the jurisdiction. The platform providers must update the data mentioned annually and submit it to the regulatory authority by December 31 of each year (Section 54c, paragraph 4 AMD-G).

According to these provisions, and in accordance with the provisions of the revised AVMSD, VSP providers have to operate a system through which users can use easily findable, always available and easy-to-use functions on the video-sharing platform, which allow them a) to rate the content available there for third parties to view and b) to report content to the platform provider together with the information required for an assessment. Furthermore, the platform provider has to explain to its users how their report will be dealt with and what the result of the process in question was. VSPs are obliged to remove/block access to content, such as pornographic depictions of minors, incitement to commit terrorist offenses and approval of terrorist offenses, hate speech, etc. as well as run a proper user notification system related to this, all covered under the general terms and conditions, in addition to explanations or warnings for users.

KommAustria can, for certain reasons, review the adequacy of the measures taken by the platforms and, in the case of violation, fine them up to EUR 150 000 Euros (sections 54g and 54h AMD-G). KommAustria can also exempt some platforms from most of the regulations described above by regulation if the imposition of these measure would be unjustified or disproportionate, because of low sales and user numbers or because of the content type and orientation of the platform.



4.1.8. Cross-sector and cross-border collaboration

N/A.

4.1.9. Update on plans and practices related to new obligations of VSPs

N/A.

4.1.10. Studies, reports and research

N/A.

4.1.11. Data compilation

This factsheet is based on data compiled by Dr. Harald Karl and Samuel Schuber of Pepelnik&Karl Rechtsanwälte GmbH.