

Act to Improve Enforcement of the Law in Social Networks

(Network Enforcement Act)

The Bundestag has adopted the following Act:

Article 1

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(Network Enforcement Act)

Section 1

Scope

(1) This Act shall apply to telemedia service providers which, for profit-making purposes, operate internet platforms which are designed to enable users to share any content with other users or to make such content available to the public (social networks). Platforms offering journalistic or editorial content, the responsibility for which lies with the service provider itself, shall not constitute social networks within the meaning of this Act. The same shall apply to platforms which are designed to enable individual communication or the dissemination of specific content.

(2) The provider of a social network shall be exempt from the obligations stipulated in sections 2 and 3 if the social network has fewer than two million registered users in the Federal Republic of Germany.

(3) Unlawful content shall be content within the meaning of subsection (1) which fulfils the requirements of the offences described in sections 86, 86a, 89a, 91, 100a, 111, 126, 129 to 129b, 130, 131, 140, 166, 184b in connection with 184d, 185 to 187, 241 or 269 of the Criminal Code and which is not justified.

Section 2

Reporting obligation

(1) Providers of social networks which receive more than 100 complaints per calendar year about unlawful content shall be obliged to produce half-yearly German-language reports on the handling of complaints about unlawful content on their platforms, covering the points enumerated in subsection (2), and shall be obliged to publish these reports in the Federal Gazette and on their own website no later than one month after the half-year concerned has ended. The reports published on their own website shall be easily recognisable, directly accessible and permanently available.

(2) The reports shall cover at least the following points:

1. general observations outlining the efforts undertaken by the provider of the social network to eliminate criminally punishable activity on the platform,
2. description of the mechanisms for submitting complaints about unlawful content and the criteria applied in deciding whether to delete or block unlawful content,
3. number of incoming complaints about unlawful content in the reporting period, broken down according to whether the complaints were submitted by complaints bodies or by users, and according to the reason for the complaint,
4. organisation, personnel resources, specialist and linguistic expertise in the units responsible for processing complaints, as well as training and support of the persons responsible for processing complaints,
5. membership of industry associations with an indication as to whether these industry associations have a complaints service,
6. number of complaints for which an external body was consulted in preparation for making the decision,
7. number of complaints in the reporting period that resulted in the deletion or blocking of the content at issue, broken down according to whether the complaints were submitted by complaints bodies or by users, according to the reason for the complaint, according to whether the case fell under section 3 subsection (2) number (3) letter (a), and if so, whether the complaint was forwarded to the user, and whether the matter was referred to a recognised self-regulation institution pursuant to section 3 subsection (2) number (3) letter (b),
8. time between complaints being received by the social network and the unlawful content being deleted or blocked, broken down according to whether the complaints were submitted by complaints bodies or by users, according to the reason for the complaint, and into the periods "within 24 hours"/"within 48 hours"/"within a week"/"at some later point",
9. measures to inform the person who submitted the complaint, and the user for whom the content at issue was saved, about the decision on the complaint.

Section 3

Handling of complaints about unlawful content

(1) The provider of a social network shall maintain an effective and transparent procedure for handling complaints about unlawful content in accordance with subsections (2) and (3). The provider shall supply users with an easily recognisable, directly accessible and permanently available procedure for submitting complaints about unlawful content.

(2) The procedure shall ensure that the provider of the social network:

1. takes immediate note of the complaint and checks whether the content reported in the complaint is unlawful and subject to removal or whether access to the content must be blocked,
2. removes or blocks access to content that is manifestly unlawful within 24 hours of receiving the complaint; this shall not apply if the social network has reached agreement with the competent law enforcement authority on a longer period for deleting or blocking any manifestly unlawful content,

3. removes or blocks access to all unlawful content immediately, this generally being within 7 days of receiving the complaint; the 7-day time limit may be exceeded if
 - a) the decision regarding the unlawfulness of the content is dependent on the falsity of a factual allegation or is clearly dependent on other factual circumstances; in such cases, the social network can give the user an opportunity to respond to the complaint before the decision is rendered;
 - b) the social network refers the decision regarding unlawfulness to a recognised self-regulation institution pursuant to subsections (6) to (8) within 7 days of receiving the complaint and agrees to accept the decision of that institution,
4. in the case of removal, retains the content as evidence and stores it for this purpose within the scope of Directives 2000/31/EC and 2010/13/EU for a period of ten weeks,
5. immediately notifies the person submitting the complaint and the user about any decision, while also providing them with reasons for its decision,

(3) The procedure shall ensure that each complaint, along with the measure taken to redress the situation, is documented within the scope of Directives 2000/31/EC and 2010/13/EU.

(4) The handling of complaints shall be monitored via monthly checks by the social network's management. Any organisational deficiencies in dealing with incoming complaints shall be immediately rectified. The social network's management shall offer the persons tasked with the processing of complaints training courses and support programmes delivered in the German language on a regular basis, this being no less than once every six months.

(5) The procedures in accordance with subsection (1) may be monitored by an agency tasked to do so by the administrative authority named in section 4.

(6) An institution shall be recognised as a self-regulation institution within the meaning of this Act if

1. the independence and expertise of its analysts are ensured,
2. appropriate facilities are in place and prompt analysis within a 7-day period is guaranteed,
3. it has rules of procedure which regulate the scope and structure of the analysis, stipulate the submission requirements of the affiliated social networks, and provide for the possibility to review decisions,
4. a complaints service has been set up, and
5. the institution is funded by several social network providers or establishments, guaranteeing that the appropriate facilities are in place. In addition, the institution must remain open to the admission of further providers, of social networks in particular.

(7) Decisions leading to the recognition of self-regulation institutions shall be rendered by the administrative authority named in section 4.

(8) Recognition can be wholly or partly withdrawn or tied to supplementary requirements if any of the conditions for recognition are subsequently no longer met.

(9) The administrative authority named in section 4 can also stipulate that the possibility for a social network provider to refer decisions in accordance with subsection (2)

number (3) letter (b) is barred for a specified period if there is a reasonable expectation that the provider in question will not fulfil the obligations under subsection (2) number (3) by affiliating itself with the system of self-regulation.

Section 4

Provisions on regulatory fines

(1) A regulatory offence shall be deemed to have been committed by any person who, intentionally or negligently,

1. in contravention of section 2(1) sentence 1, fails to produce a report, to produce it correctly, to produce it completely or to produce it in due time, or fails to publish it, to publish it correctly, to publish it completely, to publish it in the prescribed form or to publish it in due time,
2. in contravention of section 3(1) sentence 1, fails to provide, to provide correctly or to provide completely, a procedure mentioned therein for dealing with complaints submitted by complaints bodies or by users whose place of residence or seat is located in the Federal Republic of Germany,
3. in contravention of section 3(1) sentence 2, fails to supply a procedure mentioned therein or to supply it correctly,
4. in contravention of section 3(4) sentence 1, fails to monitor the handling of complaints or to monitor it correctly,
5. in contravention of section 3(4) sentence 2, fails to rectify an organisational deficiency or to rectify it in due time,
6. in contravention of section 3(4) sentence 3, fails to offer training or support or to offer them in due time, or
7. in contravention of section 5, fails to name a person authorised to receive service in the Federal Republic of Germany or fails to name a person in the Federal Republic of Germany authorised to receive information requests from German law enforcement authorities, or
8. in contravention of section 5 subsection (2), second sentence, fails to respond to requests for information while acting as the person authorised to receive service.

(2) In cases under subsection (1) numbers 7 and 8, the regulatory offence may be sanctioned with a regulatory fine of up to five hundred thousand euros, and in other cases under subsection (1) with a regulatory fine of up to five million euros. Section 30(2) sentence 3 of the Act on Regulatory Offences shall apply.

(3) The regulatory offence may be sanctioned even if it is not committed in the Federal Republic of Germany.

(4) The administrative authority within the meaning of section 36(1) number 1 of the Act on Regulatory Offences shall be the Federal Office of Justice. The Federal Ministry of Justice and Consumer Protection, in agreement with the Federal Ministry of the Interior and the Federal Ministry for Economic Affairs and Energy, shall issue general administrative principles on the exercise of discretion by the regulatory fine authority in initiating regulatory fine proceedings and in calculating the fine.

(5) If the administrative authority wishes to issue a decision relying on the fact that content which has not been removed or blocked is unlawful within the meaning of section 1(3), it shall first obtain a judicial decision establishing such unlawfulness. The court with jurisdiction over the matter shall be the court that rules on the objection to the regulatory fine order. The application for a preliminary ruling shall be submitted to the court together with the social network's statement. The application can be ruled upon without an oral hearing. The decision shall not be contestable and shall be binding on the administrative authority.

Section 5

Person authorised to receive service in the Federal Republic of Germany

(1) Providers of social networks shall immediately name a person authorised to receive service in the Federal Republic of Germany and shall draw attention to this fact on their platform in an easily recognisable and directly accessible manner. It shall be possible to effect service on this person in procedures pursuant to section 4 or in judicial proceedings before German courts on account of the dissemination of unlawful content. The same shall also apply to the service of documents initiating such proceedings.

(2) To enable the receipt of requests for information from German law enforcement authorities, a person in the Federal Republic of Germany shall be named who is authorised to receive such requests. The person so authorised shall be obliged to respond to such requests for information pursuant to the first sentence within 48 hours of receipt. In cases where the requested information is not exhaustively provided, reasons for this shall be included in the response.

Section 6

Transitional provisions

(1) The first issue of the report pursuant to section 2 shall be due in respect of the first half-year of 2018.

(2) The procedures pursuant to section 3 shall be introduced within three months of the entry into force of this Act. If the social network provider does not fulfil the requirements of section 1 until some later date, the procedures pursuant to section 3 shall be introduced within three months of this date.

Article 2

Amendment of the Telemedia Act

The Telemedia Act of 26 February 2007 (Federal Law Gazette I p. 179), last amended by Article 1 of the Act of 21 July 2016 (Federal Law Gazette I p. 1766) shall be amended as follows:

1. The following subsections (3) to (5) shall be added to section 14:

“(3) Furthermore, the service provider may in individual cases disclose information about subscriber data within its possession, insofar as this is necessary for the enforcement of civil law claims arising from the violation of absolutely protected rights by unlawful content as defined in section 1 subsection (3) of the Network Enforcement Act.

(4) Before information is disclosed in accordance with subsection (3), a court order on the permissibility of such disclosure shall be obtained; this shall be requested by the injured party. Jurisdiction for issuing any such order shall lie with the regional court, regardless of the value of the claim. Territorial jurisdiction shall lie with the court in whose district the injured party has his domicile, his seat or a branch office. The decision shall be rendered by the civil division. The provisions of the Act on Proceedings in Family Matters and in Matters of Non-Contentious Jurisdiction shall apply *mutatis mutandis* to the proceedings. The costs of the court order shall be borne by the injured party. The remedy of immediate complaint is admissible in respect of the regional court decision.

(5) The service provider shall be involved as an interested party in proceedings pursuant to subsection (4). It may inform the user that proceedings have been instigated.”

2. In section 15 subsection (5), the fourth sentence shall be worded as follows:

“Section 14 subsections (2) to (5) shall apply *mutatis mutandis*.”

Article 3

Entry into force

This Act shall enter into force on 1 October 2017.