[DE] Federal Government Struggles to Reach Compromise on “Anti-Scam Law”

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According to media reports, the discussion of the Federal Government’s “anti-scam bill” was taken off the agenda of the cabinet meeting on 6 February 2013. It is thought that recent criticism has triggered a further need for consultation.

The current ministerial bill contains a series of provisions designed to prohibit certain practices relating to the mass distribution of warning letters, particularly concerning copyright infringements, as well as shady business models used by telesales firms and collection agencies. For example, subscriptions or competition entries completed over the telephone would only become legally binding if they were confirmed by email or fax. The maximum fines that the Bundesnetzagentur (Federal Network Agency) can impose for unauthorised telephone advertising would also be increased from EUR 50,000 to EUR 300,000. The bill also contains tighter regulations on the activities of collection agencies: firstly, higher fines could be imposed for deliberately making unjustified demands, while a comprehensive obligation to provide information about the amount, origin and justification of payment demands would also be introduced.

The bill also includes more consumer-friendly regulations regarding Internet copyright infringement warnings. The value of a claim would be limited to EUR 1,000, for example, while the official warning fee, which depends on the amount in dispute, would be capped at around EUR 155. Exceptions to this upper limit would only be possible if the warned party had previously infringed the rights of the rightsholder or if the copyright infringements were taking place on a commercial scale. The party issuing the warning would also be required to explain in detail the source of the information about the alleged infringement. If the warning proved to be unfounded, the procedural and legal costs of the unjustifiably warned party would need to be fully reimbursed ipso jure.

The bill is reported to have attracted criticism from people including the Federal Government Representative for Culture and Media (Minister for Culture), who thought the proposed regulations went too far. He demanded, for example, that the cap on the value of claims for copyright infringements should be removed not only in the case of repeat infringements against the same party, but whoever made the claim. The Minister for Culture also thought an exemption rule should, in principle, remove the cap on costs in cases that would lead to “unreasonable”

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results. Incidentally, he also opposed the principle that legal costs incurred as a result of unfounded warnings should be legally reimbursable. Rather, this should only apply if the demands made were “discernibly” unfounded ex tunc.

In view of the need for further consultation and the likely length of the legislative process, it remains uncertain whether the bill will be passed during the current legislative period.

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