[DE] October entry into force for NetzDG appeal procedure

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On 1 October 2021, new rules establishing an appeal procedure for social networks and video-sharing platform services entered into force in Germany. The rules were introduced as part of the latest reform of the *Netzwerkdurchsetzungsgesetz* (Network Enforcement Act – NetzDG) under the *Gesetz zur Änderung des Netzwerkdurchsetzungsgesetzes* (Act to Amend the Network Enforcement Act) of 3 June 2021. For video-sharing platform services, the appeal procedure has been applicable to user-generated videos and programmes since 28 June 2021. Since 1 October 2021, as well as social networks, video-sharing platform services have also been obliged to provide a corresponding procedure for other types of content.

Under the newly introduced Article 3b NetzDG, providers are obliged to provide an effective and transparent procedure for reviewing decisions on the removal or blocking of access to content. Both the complainant (i.e. the person who flags the third-party content) and the user, on whose behalf the flagged content was stored (content creator), can request a review if a service provider decides to remove or block access to content following a complaint alleging that it is illegal. For the review process to be triggered, an appeal must be submitted, with grounds of complaint, within two weeks of the provider's decision being taken. With this in mind, providers must make available an easily recognisable process that enables users to contact them electronically in a simple, direct way.

The act also contains provisions designed to promote transparency. For example, if a provider wishes to rectify its decision, it must immediately inform the respondent, i.e the person who initially flagged the allegedly illegal content, about the content of the appeal and give them the opportunity to reply within a reasonable deadline. The parties must be informed of this possibility in advance. However, the provider must ensure that the identities of the parties to the procedure are not disclosed. Furthermore, the provider's decision on the appeal, which must not be taken by a person who was involved in taking the initial decision, must be notified with grounds to the parties immediately.

Under the exemption referred to in Article 3b(3)(4) NetzDG, a provider does not need to review its decision if the appeal concerns commercial communications that are clearly unsolicited, or are in breach of the provider's general terms of

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business and are either shared by the user with many other users or are made accessible to the public, or if the appeal clearly has no prospect of being upheld. This exemption is designed to ensure the appeal procedure is not abused in clear cases of advertising.

The reform of the NetzDG that resulted from the amending act served in part to implement Articles 28a and 28b of the EU Audiovisual Media Services Directive. Video-sharing platform services could previously be subject to the NetzDG insofar as they could also be defined as social networks. However, these did not include platforms that only distributed specific, e.g. thematically limited, content (such as so-called video-game “Let’s Plays”) in user postings, independent of their social network functions. Now the law has been extended to cover all video-sharing platform services, this limitation no longer applies and the obligations of social networks and video-sharing platform services with regard to unlawful content have been harmonised.

Gesetz zur Änderung des Netzwerkdurchsetzungsgesetzes vom 3. Juni 2021 (BGBl. 2021 I/29)

https://www.bmjv.de/SharedDocs/Gesetzgebungsverfahren/Dokumente/Bgbl_NetzDG.pdf;jsessionid=8D70A0B85DA81EF4DF4E2C1BC090D7A0.1_cid334?__blob=publicationFile&v=2

Act to Amend the Network Enforcement Act of 3 June 2021 (Official Gazette 2021 I/29)

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