

November 2020

## Austrian E-Commerce Act: Update on the Right to Information - Sec. 18 para 4 ECG

### Extending: The Scope

In contrast to other European legislation, the Austrian E-Commerce Act (ECG) sets forth a particular obligation of Host Providers to disclose information: Pursuant to Sec. 18 para 4 ECG, Host Providers are obliged to **transmit information about their users at the request of third parties**, provided that they have an overriding legal interest and can substantiate that knowledge of such information constitutes a material prerequisite for legal prosecution. Only recently, the Austrian Supreme Court (OGH 6 Ob 226/19g) extended the scope of this duty beyond Host Providers and included other internet providers by applying Sec. 18 para 4 ECG per analogiam, which makes this right to information even more significant.

- **Previously**, the scope of Sec. 18 para 4 ECG covered operators of online discussion forums, video platforms and social networks that enabled their users to write comments as **Host Providers**.
- **Now**, with respect to a webmail service, the OGH explicitly **extended** the scope of this duty to **Access Providers** who operate services that are aimed at making content that was entered by users available to third parties, but without gaining knowledge of the content as such.

### Existing: The Case Law

**The information** that must be disclosed by the Provider is limited to the first and last name of the user, as well as the user's postal address and e-mail address, only by request and if known. The question whether and to what extent IP addresses are included in this information has remained unanswered. However, according to Austrian case law, a dynamic IP address shall not be transmitted to third parties, as the knowledge of such does not enable them to lawfully identify the user. Therefore, the requirement of such information constituting "a material prerequisite for legal prosecution" is not met.

**The substantiation** of an overriding legal interest of the third party and the knowledge of such information constituting a material prerequisite for legal prosecution requires that the alleged infringement may not be entirely excluded upon a first cursory examination.

Therefore, the right to information does not depend on the definitive assessment of the alleged infringement.

**The disclosure obligation of foreign providers domiciled in the European Union** shall be assessed according to the country of origin principle. Sec. 21 and Sec. 22 ECG provide for specific exceptions – these include in particular measures taken for the protection of the dignity of individuals or the maintenance of public order, such as the prosecution of criminal offences.

**The international jurisdiction for lawsuits against foreign providers domiciled outside the European Union** asserting the right to information in principal follows the jurisdiction for the alleged infringement; thus, in general, Austrian courts have jurisdiction for the assertion of the right to information due to alleged damage of credit/defamation and infringements of copyright or industrial property rights, if the content in question is accessible in Austria. However, a case-by-case assessment must be carried out in light of the particular circumstances in each matter.

#### Exchanging: Combating Hate on the Internet Act

Currently, a reduction of court fees and a shift of the information procedure from the contentious to the **non-contentious legal process** are considered in the context of the Combating Hate on the Internet Act. This would further enhance the practical significance of this provision, as it may allow faster and more inexpensive enforcement.

## About WOLF THEISS

Wolf Theiss is one of the leading law firms in Central, Eastern and Southeastern Europe (CEE/SEE). We have built our reputation on a combination of unrivalled local knowledge and strong international capability. We opened our first office in Vienna over 60 years ago. Our team now brings together over 340 lawyers from a diverse range of backgrounds, working in offices in 13 countries throughout the CEE/SEE region.

For more information about our services, please contact:



**Adolf Zemann**

Consultant

[adolf.zemann@wolftheiss.com](mailto:adolf.zemann@wolftheiss.com)

T: +43 1 51510 5099



**Elisabeth Zhang**

Associate

[elisabeth.zhang@wolftheiss.com](mailto:elisabeth.zhang@wolftheiss.com)

T: +43 1 51510 1094

This memorandum has been prepared solely for the purpose of general information and is not a substitute for legal advice.

Therefore, WOLF THEISS accepts no responsibility if – in reliance on the information contained in this memorandum – you act, or fail to act, in any particular way.

If you would like to know more about the topics covered in this memorandum or our services in general, please get in touch with your usual WOLF THEISS contact or with:

Wolf Theiss  
Schubertring 6  
AT – 1010 Vienna

[www.wolftheiss.com](http://www.wolftheiss.com)