[SE] Amendments to the Radio and Television Act

IRIS 1998-10:1/24

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With the enactment of the Radio and Television Act of 1996 (RTA) (see IRIS 1996-9: 11), which came into force 1 December 1996, Sweden got a cohesive set of provisions regulating all transmissions of sound radio and television programmes which are directed to the Swedish public and intended for reception using technical aids. The RTA comprises provisions which earlier were found in several special Acts regarding terrestrial-, satellite, wire-transmissions etc., provisions which were transferred with relatively few material changes to the new Act. Due to the amendments of Council Directive 89/552/EEC by Directive 97/36/EC of the European Parliament and of the Council, changes in the RTA were necessary. On 25 June 1998, the Swedish Parliament passed Proposition 1997/98:184 Ändringar i radio- och TV-lagen m.m. concerning amendments to the Act. The changes will come into force on 1 January 1999, by which time public digital terrestrial TV-broadcasting in Sweden presumably will have started.

The changes to the RTA concern mainly, in line with Directive 97/36/EC, the areas of jurisdiction and events considered to be of major importance for society. Some new provisions about supervision and sanctions will come into force. Some amendments are due to the introduction of digital terrestrial TV-broadcasting. The matter of applicable law according to Directive 89/552/EEC is quite intricate, and the respective provisions have been open to fairly wide interpretations. Swedish jurisdiction and evasion of Swedish national law are touched upon in the well known joined cases C-34/95, C-35/95 and C-36/95 KO v. De Agostini (Svenska) Förlag AB and KO v. TV-Shop i Sverige AB. According to the RTA, Swedish jurisdiction is - as a main ruleconnected to a broadcaster's domicile in the country. In the legislative material to the enactment of the RTA it is stated that the domicile concept shall be understood to have the meaning of domicile as defined in the Procedural Act. This rule has been criticized. The Broadcasting Commission of Sweden has, in a decision 1 December 1997 about TV3, found that the Swedish jurisdiction rule concerning transmissions by wire is in conflict with the jurisdiction rule in Directive 89/552/EEC. In the now amended RTA the domicile concept regarding jurisdiction is omitted and it is clearly stated that a broadcaster's establishment in Sweden is - as a main rule - decisive for the Member State's jurisdiction.

The amended RTA also contains a provision concerning evasion of Swedish national law. The new provision states that if a broadcaster establishes in another

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EEC-State with the intent to evade Swedish national law and the broadcaster's activities mainly are directed to Sweden, the broadcaster shall be considered established in Sweden. This provision refers to the 14th recital of the preamble to Directive 97/36/EC. The Swedish provision

- unlike the preamble - states that the broadcaster must have been first established in Sweden, and thereafter in another EEC-state, for the evasion rule to apply.

Regeringens proposition 1997/98:184 Ändringar i radio- och TV-lagen (1996:844), m.m.

The Proposition of the Swedish Government 1997/98:184. Amendments to the Swedish Radio and Television Act (1996:844).

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