[FR] CSA and Conseil d'Etat Acknowledge Luxembourg Nationality for RTL 9

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Since May 1998 the French group AB has been the majority shareholder, with 65% of its shares, in the RTL 9 television channel; CLT-UFA holds only 35%. This take-up has been followed by changes in the organisation and functioning of the channel, whose agreement with the CSA (Conseil Supérieur de l'Audiovisuel - national radio and television supervisory body)) had expired. When called upon to determine which legal scheme the channel came under, the CSA noted that its registered office, staff and most of its means of production were established in Luxembourg. CLT-UFA also has editorial responsibility for the service, and the programmes are put together in Luxembourg. Lastly, the first up-link and terrestrial broadcasting to part of France originate from emitters established on Luxembourg territory. In the light of all this, and in application of Article 2 of the Directive on Television without Frontiers, the CSA has decided that the channel RTL 9 should be governed by Luxembourg's regulations. Consequently, in accordance with case-law of the Court of Justice of the European Communities (Case C-11/95, Commission v. Kingdom of Belgium, 10 September 1996), RTL 9 ceases to be subject to the approval procedure applicable to French channels and becomes subject to the declaratory scheme which applies to European channels for their distribution on the French cable networks. This decision enables the Luxembourg channel, from now on subject only to the requirements set out in the Directive on Television without Frontiers, to avoid the requirements imposed by French regulations. One month later, an application was made to the Conseil d'Etat to cancel the formal notice issued by CSA to RTL 9 requiring it to adhere to the obligations concerning the broadcasting of cinematographic works originally in French contained in the agreement between them; the Conseil d'Etat confirmed the Luxembourgish nationality of the channel. Using the same criteria as the CSA (place of actual headquarters, of assembling and broadcasting programmes and of making decisions on programming), the Conseil d'Etat held that the fact that a French production company established in France provided part of the programming did not mean that RTL 9 should be considered to be a service broadcast by a company established in France. According to the supreme administrative judge, it should be considered a service broadcast by a company established, within the meaning of Article 59 of the Treaty of Rome and in accordance with case-law at the CJEC, in another State of the European Union, namely Luxembourg. Because of the implications of the new situation, the CSA has announced that in the coming months it will be looking into possible changes

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in the regulations applicable to cable channels.

Conseil d'État, 25 novembre 1998, req. n° 172407 et 168125, Compagnie luxembourgeoise de télédiffusion.

Conseil d'Etat, 25 November 1998, applications no.172407 and no.168125, Compagnie Luxembourgeoise de Télédiffusion(CLT).

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