[DE] 10th Inter-State Broadcasting Agreement Enters into Force

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On 1 September 2008, the *Zehnte Rundfunkänderungsstaatsvertrag* (10th Agreement Amending the Inter-State Broadcasting Agreement - 10. RÄStV) entered into force in all 16 German *Bundesländer* . In particular, the new Agreement provides for the restructuring of media supervision in the *Länder* (Art. 35 ff. of the *Rundfunkstaatsvertrag* – Inter-State Broadcasting Agreement – RStV) as well as new access rules and rules for platform operators (Art. 50 ff. RStV). It also includes new rules on the organisation of competitions (Art. 8a RStV).

Under Art. 35 para. 2 nos. 1 and 7 RStV, the licensing of private broadcasters that broadcast throughout the country – these include RTL, PRO7 and SAT.1, for example – and monitoring of their compliance with media law provisions will in future no longer be the responsibility of the competent State Media Authority, but of a new central *Kommission für Zulassung und Aufsicht* (Licensing and Monitoring Commission - ZAK). This body's decisions will continue to be implemented by the competent State Media Authority.

The *Kommission zur Ermittlung der Konzentration im Medienbereich* (Commission on Concentration in the Media - KEK), which previously comprised six independent experts, has been expanded with the addition of six extra members, recruited from the State Media Authorities (Art. 35 para. 5 RStV). However, the KEK will continue to be chaired by one of the experts. Even so, the proposed changes were heavily criticised by those who argued that the expansion of the KEK would transform it from a genuine committee of experts into a political body with a lower level of expertise.

Under Art. 35 para. 2 RStV, as well as the ZAK and the KEK, the State Media Authorities will be supported by two other central bodies: the *Gremienvorsitzendenkonferenz* (Conference of Authority Chairpersons - GVK) and the *Kommission für Jugendmedienschutz* (Committee for the Protection of Youth in the Media - KJM). They will assist the State Media Authorities with the allocation of transmission capacities and platforms and in the area of youth protection.

Access regulation has been completely reorganised under the 10. RÄStV. The most significant change is the introduction of a new concept of platform provider (Art. 2 para. 2 No. 10 RStV) and the related regulations set out in Art. 52 ff. RStV,

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which apply to platform providers using all digital transmission methods. However, essential provisions on matters such as platform allocation, technical freedom of access and fees (Art. 52b to 52e RStV) do not apply to platforms in open networks such as the Internet unless they hold a dominant market position. Platforms which merely carry a licensed service without changing it or which have a limited number of users are also exempt. The ZAK is now responsible for issues related to non-discriminatory access and platform regulation. It is taking over this role from the *Gemeinsame Stelle Digitaler Zugang* (Joint Digital Access Authority - GSDZ), whose Chairperson will act as a representative for relevant questions. According to press reports, the practical platform regulations that must be adopted in accordance with Art. 53 RStV should enter into force by the beginning of 2009.

Game shows and competitions are still allowed under Art. 8a RStV, although they are now subject to rules on transparency and the protection of participants. For example, the programme must provide information about participation costs and the competition format. A maximum fee of EUR 0.50 may be charged per entry. The rules on youth protection must also be respected.

Finally, Art. 8 para. 4 of the *Rundfunkgebührenstaatsvertrag* (Inter-State Agreement on Broadcasting Fees - RGebStV) is amended by Art. 5 of the 10. RÄStV, which stipulates that the State Media Authorities and the *Gebühreneinzugszentrale* (Fee Collecting Office - GEZ) may in future collect personal data, including from private bodies, without the knowledge of the person concerned, as long as the data is used to determine whether the person is obliged to pay the licence fee.

Zehnter Rundfunkänderungsstaatsvertrag vom 19. Dezember 2007

http://www.alm.de/fileadmin/Download/Gesetze/10._RStV_01.09.2008.pdf

10th Agreement Amending the Inter-State Broadcasting Agreement of 19 December 2007

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