[AT] Preparations for Major Broadcasting Law Amendment

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At the end of 2009, the *Bundeskanzleramt* (Federal Chancellery) published for debate an extensive draft amendment to Austrian broadcasting laws. The consultation procedure has since been completed, so the Federal Government can now consider the opinions that have been submitted as it draws up a Government bill.

The organisation and remit of the *Kommunikationsbehörde Austria* (Austrian communications authority - KommAustria) are the subject of significant changes. In future, KommAustria will not be subject to directives and will take the form of a collegiate authority. Its role will be extended to include legal supervision of *Österreichischer Rundfunk* (Austrian broadcasting corporation - ORF) and audiovisual media services, as well as tasks set out in the *Fernseh-Exklusivrechtegesetz* (Act on exclusive television rights - FERG). On the other hand, supervision of collecting societies is transferred to the new *Aufsichtsbehörde für Verwertungsgesellschaften* (supervisory authority for collecting societies). Appeals against KommAustria's decisions can still be submitted to the *Bundeskommunikationssenat* (Federal communications senate).

The financing of ORF will be adapted to conform to the rules agreed between Austria and the European Commission at the end of 2009. The following measures are designed to ensure that the money received by ORF from licence fees is only used to fund activities that clearly fall within the public service remit defined by the Parliament in accordance with EU law, and to prevent any unnecessary distortion of competition linked to the fulfilment of this remit. To this end, the ministerial draft makes provision for the following measures:

- ORF's public service remit must be clarified with regard to its online services and special interest channels. This should be achieved by amending its legal remit and instructing ORF to draw up "service concepts", which should provide more concrete definitions.

- In addition, ORF must set up an internal quality assurance system involving its three most important organs, i.e., the Director-General, the *Stiftungsrat* (Foundation Board) and the *Publikumsrat* (Viewers' Council). An external council of experts will evaluate the overall performance of the quality assurance system

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and decide whether the quality criteria are being met in key areas. The *Publikumsrat* only has the power to make recommendations. KommAustria is required to ensure compliance with the provisions of the quality assurance system.

- It should be determined in advance whether new services provided by ORF - such as a new specialist channel or an additional online service - comply with European State aid law. To do so, such services must provide added value compared to existing public services, but at the same time must not excessively distort competition. KommAustria will carry out this evaluation procedure.

- In order to prevent over-financing of ORF, the rules on calculating the maximum allowable licence fee will be clarified. As before, the level of the licence fee will be set by the *Stiftungsrat*, while the *Publikumsrat* will continue to have the right of veto with delaying effect; however, KommAustria will be obliged to examine decisions setting the licence fee.

The *ORF-Gesetz* (ORF Act) must also be brought into line with the AVMS Directive. To this end, the concepts of "commercial communication", "audiovisual media service" and "on-demand service" will be defined in the Act for the first time.

The *Privatfernsehgesetz* (Private Television Act) will, in future, regulate audiovisual media services as well as terrestrial and mobile terrestrial private television, satellite television, cable television and multiplex platforms, and will consequently be renamed the "*Audiovisuelles Mediendienste-Gesetz*" (Audiovisual Media Services Act). Licences must be obtained in accordance with this Act by any company providing terrestrial and mobile terrestrial television or satellite television services. Cable broadcasters and other media service providers merely have to register their services with KommAustria. In accordance with the AVMS Directive, provisions on product placement for private audiovisual media services will be adopted. Product placement will be permitted under certain conditions in cinematographic works, films and series made for television, sports programmes and light entertainment programmes.

The *Privatradiogesetz* (Private Radio Act) will, in future, also regulate cable and satellite radio. Digital radio will be possible using a multiplex model. The date of the tender procedure for the multiplex platform has not yet been fixed, but it will conform to the digitisation concept. According to the bill, the operator of the multiplex platform for digital television will not be excluded from the tendering procedure for the radio multiplex platform.

The amendment of the *Fernseh-Exklusivrechtegesetz* is designed to implement Art. 3k of the AVMS Directive. A distinction is made between events of general interest to the public to which, due to the circumstances of the event, only one television broadcaster has access, and events of general interest to the public to which a television broadcaster has acquired exclusive broadcasting rights. For the

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latter category, the maximum length of short reports is 90 seconds, whereas there is no limit in the case of the former category. Compensation may not exceed the costs directly linked to the provision of access; a television broadcaster which, due to the circumstances of the event, is the only one able to report on it, may also charge a proportion of the production costs.

Ministerialentwurf 115/ME (XXIV.GP) und weitere Dokumente

http://www.parlament.gv.at/PG/DE/XXIV/ME/ME_00115/pmh.shtml

Ministerial draft 115/ME (XXIV.GP) and other documents

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