[AT] Comprehensive Media Rights Reforms Adopted

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Christian M. Bron
Institute of European Media Law (EMR), Saarbrücken/Brussels

On 17 June 2010, the Austrian *Nationalrat* (national assembly) adopted amendments to the *Bundes-Verfassungsgesetz* (Federal Constitutional Act), *KommAustria-Gesetz* (KommAustria Act - KommAustria-G), *Telekommunikationsgesetz* (Telecommunications Act), *Verwertungsgesellschaftengesetz* (Collecting Societies Act), *ORF-Gesetz* (ORF Act - ORF-G), *Privatfernsehgesetz* (Private Television Act) (now known as the *Audiovisuelles Mediendienste-Gesetz* - Audiovisual Media Services Act - AMD-G), *Privatradiogesetz* (Private Radio Act) and *Fernseh-Exklusivrechtegesetz* (Exclusive Television Rights Act - FERG). The decision is essentially in line with the 2009 ministerial draft of the *Bundeskanzleramt* (Federal Chancellery) (see IRIS 2010-3:1/5).

Under Articles 1, 2 and 13 KommAustria-G (in connection with Articles 35 and 36 ORF-G), KommAustria, which is not subject to directives, is responsible for the legal supervision of ORF and other audiovisual media services, and for fulfilling tasks listed in the FERG. Article 3 states that the five KommAustria members are appointed by the government and confirmed by the parliamentary steering committee. The *Bundeskommunikationssenat* (Federal Communications Senate) controls the administrative activities of KommAustria and remains responsible for hearing appeals against its decisions (Article 36 KommAustria-G).

The *Aufsichtsbehörde für Verwertungsgesellschaften* (supervisory authority for collecting societies), newly created under the auspices of the *Bundesministerium für Justiz* (Federal Ministry of Justice), is now responsible for supervising collecting societies (Article 28 *Verwertungsgesellschaftengesetz*).

ORF remains partly funded through licence fees, which will be fixed on a five-yearly basis and whose usage will also be monitored by KommAustria (Article 31 paragraphs 1, 14 and 15 ORF-G). The ORF Director-General will provide KommAustria with a structural concept with measures to cut broadcasters' costs, including an income and expenditure plan (Article 31 paragraph 13 ORF-G). An evaluation committee set up within KommAustria will submit its opinion on this concept to the ORF *Stiftungsrat* (Foundation Board), which will take the final decision. According to Article 4 paragraph 8 ORF-G, the ORF Director-General will be required to submit a code of conduct for journalistic activities. This must be approved by the *Publikumsrat* (Viewers' Council) and *Stiftungsrat* and published

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on the ORF website.

In order to guarantee ORF's (core) public service remit, Article 4a ORF-G provides for an internal quality assurance system involving the ORF Director-General, *Stiftungsrat* and *Publikumsrat*. Under Article 4a paragraph 2 ORF-G, an external council of experts will evaluate the overall performance of the quality assurance system and decide whether the quality criteria are being met in key areas. KommAustria will ensure compliance with the provisions of the quality assurance system (Article 4a paragraph 8 ORF-G). ORF's public service remit must be clarified with regard to online services (Articles 4e and 4f ORF-G) and special interest channels (Articles 4b, 4c and 4d ORF-G). To this end, ORF must draw up "service concepts", which should provide more concrete definitions (Article 5a ORF-G). KommAustria is also required to evaluate new ORF services in advance (Articles 6 ff. ORF-G), particularly by determining whether they meet the social, democratic and cultural needs of the Austrian population and help ORF to fulfil its core public service remit effectively.

The ORF-G contains new rules for ORF's commercial activities (Articles 8a ff.) and commercial communication (Articles 13 ff.). The latter must be easily recognisable, while surreptitious advertising and commercial communications beneath the perception threshold are prohibited during programmes. Product placement is forbidden in principle, although Article 16 ORF-G mentions some exceptions, which are subject to additional conditions.

The AMD-G regulates private terrestrial, mobile terrestrial, satellite and cable television, multiplex platforms and audiovisual media services (Articles 29 ff. AMD-G). Articles 39 ff. AMD-G, particularly, include provisions on the protection of minors and product placement for private audiovisual media services.

The FERG contains provisions on the exercise of exclusive television broadcasting rights for events of considerable importance to society (Article 3 FERG) and short reporting rights for events of general public interest (Article 5 FERG). For example, the maximum length of short reports for the latter category is 90 seconds, unless otherwise agreed, whereas there is no limit for the former category.

50. Bundesgesetz, mit dem das Bundes-Verfassungsgesetz, das KommAustria-Gesetz, das Telekommunikationsgesetz 2003, das Verwertungsgesellschaftengesetz 2006, das ORF-Gesetz, das Privatfernsehgesetz, das Privatradiogesetz und das Fernseh-Exklusivrechtegesetz geändert werden

http://www.bka.gv.at/Docs/2010/7/19/BGBL_2010_I_50.pdf

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50th Federal Act Amending the Federal Constitutional Act, KommAustria Act, 2003 Telecommunications Act, 2006Collecting Societies Act, ORF Act, Private Television Act, Private Radio Act and Exclusive Television Rights Act

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