[DE] FFG Amendment Passed

IRIS 2010-8:1/22

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On 11 June 2010, the Bundestag (lower house of parliament) adopted an amendment to the Filmförderungsgesetz (Film Support Act - FFG). The Bundesrat (upper house of parliament) had already decided not to raise any objections on 26 March 2010 and adopted it on 18 June 2010.

Under the revised FFG, whose entry into force was backdated to 1 January 2010, the television industry is now legally obliged to pay a fixed level of contributions to the Filmförderungsanstalt (Film Support Office - FFA).

Previously, television companies were free to negotiate the level of their contributions with the FFA (Art. 67 of the old version of the FFG), while cinema operators and video companies had to pay a fixed amount based on their turnover (Art. 66 f. of the old version of the FFG). Several cinema operators had filed complaints about this unequal treatment of the different sectors required to pay the contributions. They had subsequently made their contributions to the FFA subject to certain conditions or stopped paying them altogether. During the proceedings, the Bundesverwaltungsgericht (Federal Administrative Court - BVerwG), as the appeal body, expressed doubts over the compatibility of the contributions regime with the equality principle enshrined in Article 3 of the Grundgesetz (Basic Law - GG). It held that the failure to lay down in law a fixed amount for television companies violated the principle of fair contributions. The BVerwG suspended the proceedings and referred them to the Bundesverfassungsgericht (Federal Constitutional Court) (see IRIS 2010-3:1/18 and IRIS 2009-4:7/8).

Aiming to dispel the concerns of the BVerwG and create a secure legal basis for the financing of the FFA, the current legislative amendment establishes a legal obligation for television companies to pay the FFA contributions. Article 67 of the revised FFG specifies the level of contributions and payment method required. It concerns public and private broadcasters of free-to-air television channels, pay-TV providers and programme marketing companies.

Under paragraph 1 of Article 67, public service television companies are obliged to pay 2.5% of the amount they spent on the broadcast of cinematographic films (e.g., licence and administrative costs) during the previous year. Under paragraph 2, the contributions to be paid by private television companies are graded in

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accordance with the ratio of cinematographic films to total airtime and net turnover for the previous year. Paragraph 3 states that pay-TV providers must pay a contribution of 0.25% of their net income from subscriptions (excluding the provision of technical services) for the previous year. The rule does not apply to channels on which cinematographic films account for less than 2% of total airtime (paragraph 4). Television companies are allowed to pay up to 50% of their contributions in the form of media services. The details of these services must be set out in an agreement with the FFA (paragraph 5).

Since the amendments have been backdated, they apply to the period from 2004 onwards.

Filmförderungsgesetz in der Fassung der Bekanntmachung vom 24. August 2004 (BGBl. I S. 2277), das zuletzt durch das Gesetz vom 31. Juli 2010 (BGBl. I S. 1048) geändert worden ist

http://www.gesetze-im-internet.de/ffg_1979/BJNR008030979.html

Film Support Act, published on 24 August 2004 (Federal Gazette I p. 2277), most recently amended by the Act of 31 July 2010 (Federal Gazette I p. 1048)

Entscheidung des Bundesrats vom 26. März 2010

http://www.bundesrat.de/cln_171/SharedDocs/Drucksachen/2010/0001-0100/75-10_28B_29,templateId=raw,property=publicationFile.pdf/75-10%28B%29.pdf

Decision of the Bundesrat (lower house of parliament), 26 March 2010

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