[AT] Bill to amend Regional Radio Act and Cable Broadcasting Bill under consideration

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In mid-September the Austrian Federal Chancellery issued a Bill to revise the Regional Radio Act (Regionalradiogesetz - RRG) and a Cable Broadcasting Bill (Kabelrundfunkgesetz - KRG) for consideration; both drafts had already been announced in the government agreement by the coalition parties on 20 March 1996.

These were necessary as a result of two judgments of 27 September 1995, in which the Austrian Constitutional Court (Verfassungsgerichtshof - VfGH) forced the legislator to take action. Firstly, the Court considered the legal principles for drawing up the frequency allocation plan (and therefore for distributing licences) contained in the Regional Radio Act unconstitutional because they infringed the rule of clarity inherent in the constitutional principle of legality; as a result the frequency allocation plan drawn up on these principles was suspended as it had no legal foundation. Secondly, the VfGH found it a disproportionate interference in the freedom to broadcast embodied in Art.10(1) of the EMRK that operators of cable networks were authorised to distribute cable text only, to the exclusion of any other cable broadcasting operations, and suspended this limitation in the Broadcasting Order on 1 August 1996. The Bill to amend the Regional Radio Act takes account of the VfGH judgment in giving a stricter definition of the method of frequency allocation to be used. The Austrian Broadcasting Corporation (ORF) must guarantee to supply four radio stations (although for the fourth 90% cover would be sufficient); in each federal state one broadcasting licence would be issued (with the exception of Vienna, where two would be issued) for regional radio and as many broadcasting licences as necessary to provide local radio, so that it should largely be possible to avoid double and multiple cover.

The Cable Broadcasting Bill concerns the organisation of radio and television in cable networks (or cable systems as they are called in the U.S.). Although the draft makes no greater requirement than mere registration for certain channels (cable text and cable information channels with no advertising, but also all stations broadcasting for less than 120 minutes per day), it basically requires stations to obtain authorisation from the regional radio and cable broadcasting authorities. The authorisation should constitute a legal claim in the presence of certain legal assumptions. In advising the authorising authority (whose composition is reduced), the radio advisory body to be set up under the draft revision of the RRG (which according to the Cable Broadcasting Bill is to function

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as a "Council for Cable Broadcasting") may be asked for its comments. Supervision of legality of cable broadcasting operators is incumbent on the commission set up under the RRG to supervise compliance with the Regional Radio Act (in the KRG the "Commission to supervise compliance with the Cable Broadcasting Act"). With regard to conditions of ownership, the draft provides a relative amount of detail: the proprietors of national and foreign daily and weekly newspapers may not operate cable broadcasting on their own, but may hold up to 26% of the capital of a cable broadcasting company set up as a joint stock company. The same restriction would apply to national and foreign television and radio broadcasters (including cable broadcasters). Section 36 of the draft provides that the authorities may prohibit the further extension of foreign television channels whose content is specifically directed at the Austrian public and whose operators are established outside Austria in order to circumvent national legal regulations. Further steps towards liberalisation obviously remain in abeyance. Although according to the legal position in Austria at present, broadcasting may only be operated on the basis of and in accordance with a federal legislative order, the intended reform is restricted firstly to wire-less terrestrial regional and local radio and secondly to cable broadcasting, thereby excluding the operation of television and nationwide radio by wire-less terrestrial means as well as satellite broadcasting.

Entwurf Bundesgesetz, mit dem das Regionalradiogesetz geändert wird, 12. September 1996; Entwurf Bundesgesetz, mit dem Bestimmungen über den Kabelrundfunk erlassen werden und die als Bundesgesetz geltende Verordnung über die Einrichtung und den Betrieb von Runkfunk- und Fernsehrundfunkempfangsanlagen geändert wird (Kabel-Rundfunkgesetz).

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