[DE] Draft regulations on compliance, transparency and supervision in the state media treaty

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On 7 December 2022, the *Rundfunkkommission* (Broadcasting Commission) of the German *Länder* adopted a set of draft regulations on compliance, transparency and supervision in public service broadcasting and posted them on its website in the belief that the regulation of public communication should be publicly debated. Indeed, during the preparation of the *Medienstaatsvertrag* (state media treaty), the *Länder* always posted the latest drafts on the Internet so that anyone could comment on them.

Until now, the German public service broadcasters have approached compliance, transparency and supervision in very different ways. The regulations put forward for discussion, which the *Länder* hope will enable them to respond quickly to issues such as the recent Rundfunk Berlin-Brandenburg affair and ensuing scandals, are designed to create a common basis for public service broadcasters in these areas.

The proposed additions to the state media treaty contain a common set of rules that will apply to the state broadcasters that form the ARD, as well as ZDF and Deutschlandradio, setting out minimum standards in the areas concerned. It will still be possible to adopt additional regulations through state law. Identical rules contained in the current ZDF and Deutschlandradio state treaties will be replaced by the new provisions of the state media treaty.

The draft states, *inter alia*, that the broadcasters that form the ARD, as well as ZDF and Deutschlandradio, must ensure maximum transparency with the general public. For this reason, their organisational structure, including the composition of their boards and committees, all statutes, directives, rules of procedure, and other essential information, must be published on their respective websites. They must also publish details of the annual remuneration paid to their directors, who should be mentioned by name, unless they are subject to a repayment obligation, in their annual reports and on their websites. This remuneration includes expense allowances, attendance fees and other non-cash benefits. The transparency requirement also applies, in particular, to:

- payments promised to the individuals concerned in the case of early termination of their activities;

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- payments promised to the individuals concerned in the case of normal termination of their activities;

- payments promised and made to any of the individuals concerned who ends their activities during the course of the year;

- payments made to the individuals concerned for activities with subsidiaries and associated companies; and

- payments made to the individuals concerned for secondary activities; this does not apply if the agreed payments do not exceed EUR 1,000 per financial year.

The broadcasters' annual reports and websites must also contain information about tariff structures and a structured presentation of non-tariff agreements.

According to the draft, each public service broadcaster will be required to operate an effective compliance management system, that meets recognised standards, and to keep it up to date at all times. They must also appoint an independent compliance office or officer, who should regularly report to the director-general and administrative board. These compliance offices and officers should exchange information with each other.

The draft also requires each broadcaster to appoint an ombudsperson to act as an external point of contact for confidential and anonymous reporting of violations of laws and rules within the broadcasting organisation concerned.

According to the proposals, the broadcasters' supervisory bodies must have the human resources and structure required to fulfil all their responsibilities. In particular, the broadcasters must ensure that (1) their administrative boards are sufficiently knowledgeable in the fields of auditing, business management, law and the media industry or media sciences, (2) the members of each supervisory body receive regular training to help them fulfil their roles, and (3) offices with adequate human and material resources are set up for the supervisory bodies.

Comments on these proposals can be submitted between 19 December 2022 and 31 January 2023. They will be taken into consideration in further discussions and published on the website if the relevant consent is given.

Diskussionsentwurf für staatsvertragliche Regelungen zu Compliance und Transparenz des öffentlichrechtlichen Rundfunks (Stand: Dezember 2022)

https://www.rlp.de/fileadmin/rlp-stk/pdf-Dateien/Medienpolitik/Anhoerung_Compliance_und_Transparenz/Anhoerung_2022_Sysopse_Diskussionsentwurf_Transparenz_und_Compliance.pdf

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Draft discussion document on state treaty provisions on the compliance and transparency of public service broadcasters (as at December 2022)

Pressemitteilung der Rundfunkkommission, 7. Dezember 2022

https://www.rlp.de/de/regierung/staatskanzlei/medienpolitik/rundfunkkommission/compliance-und-transparenz-im-oeffentlich-rechtlichen-rundfunk/

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