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## INTERNATIONAL

### COUNCIL OF EUROPE

#### European Court of Human Rights: Judgment on the Freedom of Expression in the Case Tammer v. Estonia

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In a judgment in the case Tammer v. Estonia the European Court of Human Rights held unanimously that there had been no violation of Article 10 of the Convention. In 1997 Tammer, a journalist and editor of the Estonian daily newspaper *Postimees*, was convicted of the offence of insult under Article 130 of the Criminal Code. He was found guilty and had to pay a fine of 220 Estonian kroons because of the degradation of another person's honour or dignity in an improper form. Tammer was convicted after a private prosecution instituted by Ms. Laanaru, the second wife of Mr. Savisaar, the former Prime Minister of Estonia. The journalist had published an interview in his newspaper which contained some value judgments that were considered as insulting allegations with regard to Ms. Laanaru. More precisely, in an interview with the author who published a series of articles on the life of

Judgment by the European Court of Human Rights (First Section), Case Tammer v. Estonia, application no. 41205/98 of 6 February 2001. Available on the ECHR's website at <http://www.echr.coe.int>

EN

Ms. Laanaru, Tammer had raised the question if the publication of this kind of memoir did not make a hero of the wrong person. Tammer also formulated a critical value judgment in his question by putting it as follows: "A person breaking up another's marriage (*abielulõhkuja*), an unfit and careless mother deserting her child (*rongaema*): it does not seem to be the best example for young girls". After exhausting all national remedies before the Estonian courts, Tammer applied to the European Court of Human Rights alleging a violation of Article 10 of the Convention.

The Strasbourg Court however was of the opinion that the interference in the right of freedom of expression of Tammer met all three conditions of Article 10 paragraph 2. Tammer's conviction was prescribed by law, pursued a legitimate aim and was to be considered as necessary in a democratic society. The Court noted the assessment of the domestic courts concerning the nature and use of the words in the circumstances of the case and considered that the applicant journalist could have formulated his criticism of Ms. Laanaru's actions without resorting to insulting language. The Strasbourg Court did not find it established that the use of the impugned terms in relation to Ms. Laanaru's private life was justified in terms of public concern or that they bore on a matter of general importance. The Court considered that the domestic courts properly balanced the various interests involved in the case. Taking into account the margin of appreciation, the Court reached the conclusion that the national authorities were indeed justified in the circumstances in interfering with the exercise of the applicant's right, noting also the limited amount of the fine imposed on Tammer as a penalty. Therefore, there had not been a violation of Article 10 of the European Convention.

This judgment will become final in accordance with the circumstances set out in Article 44 paragraph 2 of the Convention. ■

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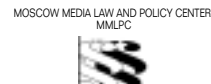
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## EUROPEAN UNION

### European Parliament: Copyright Directive Passes Second Reading

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On 14 February, the European Parliament approved a legislative resolution on the Council common position for adopting a directive on copyright and related rights in

European Parliament legislative resolution on the Council common position for adopting a European Parliament and Council directive on the harmonisation of certain aspects of copyright and related rights in the Information Society (9512/1/2000 - C5-0520/2000 - 1997/0359(COD)). Available at:

[http://www3.europarl.eu.int/omk/omnsapir.so/pv2?PRG=DOCPV&APP=PV2&LANGUE=EN&SDOCTA=11&TXLST=1&POS=1&Type\\_Doc=RESOL&TPV=PROV&DATE=140201&Prg\\_Prev=TYPEF@A5|PRG@QUERY|APP@PV2|FILE@BIBLIO01|NUMERO@43|YEAR@01|PLAGE@1&TYPEF=A5&NUMB=1&DATEF=010214](http://www3.europarl.eu.int/omk/omnsapir.so/pv2?PRG=DOCPV&APP=PV2&LANGUE=EN&SDOCTA=11&TXLST=1&POS=1&Type_Doc=RESOL&TPV=PROV&DATE=140201&Prg_Prev=TYPEF@A5|PRG@QUERY|APP@PV2|FILE@BIBLIO01|NUMERO@43|YEAR@01|PLAGE@1&TYPEF=A5&NUMB=1&DATEF=010214)

EN-FR-DE

### European Commission: Combatting Cybercrime and Ensuring Network Security

On 30 January 2001, the European Commission presented a Communication to the Council and the European Parliament on its policy orientations concerning improving the security of information infrastructures and combating computer-related crime. The importance of network security and the fight against cybercrime are highlighted in the eEurope Action Plan launched by the Commission in June 2000 (see IRIS 2000-6: 5).

The Commission feels that information and communication infrastructures have become a critical part of national economies and therefore need to be protected against their own vulnerabilities and against criminal activities. In the Communication, computer-related crime is addressed in the broadest sense, as any crime that in some way or other involves the use of informa-

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Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions "Creating a Safer Information Society by Improving the Security of Information Infrastructure and Combating Computer-related Crime", adopted on 26 January 2001. Available at:

<http://europa.eu.int/ISPO/eif/InternetPoliciesSite/Crime/crime1.html>

EN-FR-DE

## NATIONAL

### BROADCASTING

#### AT – Carinthian Governor Labelled a "Dangerous Political Rogue"

On 11 January 2001, the criminal chamber of the *Landgericht Wien* (Vienna District Court) decided that Germany's second TV channel, ZDF, should be allowed to continue referring to the former President of the FPÖ (Austrian Freedom Party) and current Governor of Carinthia as a "dangerous political rogue".

The disputed remark was made by the presenter of a programme broadcast by ZDF on 12 October 1999, which included a report on the Austrian politician. After losing the initial proceedings, ZDF appealed, whereupon the

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the Information Society. The Copyright Directive aims to harmonise and update the Member States legislation on copyright, in order to take into account new technologies and the Internet (see IRIS 2000-7: 3, IRIS 2000-2: 15, IRIS 1999-6: 4 and IRIS 1998-1: 4).

The amendments introduced by the Parliament concern mostly the list of exceptions to the absolute rights of authors and other rights holders. An amendment has been introduced to clarify the question of private copying. Copying is allowed when it is made by a natural person for private use and for ends that are neither directly or indirectly commercial, on condition that the rightsholders receive fair compensation. As to the exceptions concerning e.g. teaching, scientific research and use for criticism and review purposes, the source should be always indicated except where this proves to be impossible.

The deadline for the transposition of the Directive has been reduced from 2 years to 18 months in order to have the Directive adopted as soon as possible. The proposal is now awaiting a second reading by the Council. ■

tion technology. A distinction can be made between computer specific crimes, such as virus attacks, and traditional crimes performed with the aid of computer technology, such as using the Internet for smuggling, counterfeiting, etc.

The European Union has already taken a number of steps in this area, such as fighting harmful and illegal content on the Internet and protecting intellectual property and personal data. This Communication aims at forming a harmonised policy to combat computer crime and install necessary mechanisms, without hindering the rapid development of e-commerce in the EU, and respecting the fundamental right to privacy.

For the future, the Communication announces both legislative proposals and non-legislative measures. The legislative proposals will deal with child pornography offences, the trafficking in human beings, actions against racism and xenophobia on the Internet and an approximation of substantive criminal law in the area of high-tech crime. The non-legislative measures will focus on encouraging awareness and training among various information security actors, the creation of an EU forum and the training of law enforcement staff on high-tech crime issues via existing Commission programmes. ■

*Oberlandesgericht Wien* (Vienna District Appeal Court) quashed the libel verdict "essentially on grounds of law" and referred the case back to the court of first instance. The Appeal Court based its decision on the belief that the court of first instance had failed to give sufficiently clear consideration to the right to express an opinion.

The Court has now decided that the presenter's remarks constituted "extremely crude, maybe excessive" but nonetheless "admissible political criticism". The phrase "political rogue" referred to the Governor's general manner as a politician, so he was not actually being described as a criminal. ZDF supported its assessment of the politician by arguing that, on many past occasions, he had made public assertions which had subsequently proven to be false.

The ruling is not yet final. The politician has appealed because he still feels that his dignity was breached by the presenter's comments. ■

## EVENTS OF MAJOR

This table gives an overview of the relevant regulations or the status of debate in Member States of the Observatory "Television without Frontiers" as amended by Directive 97/36/EC of the European Parliament and the Council

Member States	SPORTS				
	Olympic Games	Football World Cup	Football European Cup	International Competitions for Football Clubs	National Football Cup
<b>AT</b>	X	- semi-finals - final - national team	- semi-finals - final - national team		final
<b>BE (*)</b>	only summer games	X and qualifying matches of national team	X and qualifying matches of national team	European competitions: - semi-finals - final - national clubs	final
<b>BG</b>	X	X and qualifying matches of national team	X and qualifying matches of national team	X and qualifying matches of national clubs	all matches
<b>CH</b>	X	- semi-finals - final - national team and qualifying matches of national clubs	- semi-finals - final - national team and qualifying matches of national clubs	Champions' League and UEFA Cup (if national club is involved): - semi-finals - final	final
<b>CY<sup>1</sup></b>					
<b>CZ<sup>2</sup></b>	X	- semi-finals - final - national team	- semi-finals - final - national team		
<b>DE</b>	X	- opening game - semi-finals - final - national team	- opening game - semi-finals - final - national team	Champions League, UEFA Cup: final	- semi-finals - final
<b>DK</b>	X	- semi-finals - final - national team including qualifying matches	- semi-finals - final - national team including qualifying matches		
<b>ES</b>	X			Champions League: - final - one game on each matchday with national participation UEFA Cup: - One match of the semi-finals - final Super Cup: national clubs Intercontinental Cup: final	- semi-finals - final
<b>GB</b>	X (A)	final (A)	final (A)		
<b>IT</b>	X	- final - national team	- final - national team	Champions' League and UEFA Cup (if national club is involved): - semi-finals - finals	
<b>MK<sup>3</sup></b>	X	X	X	X	X
<b>NL (*)</b>	X (B)	X and qualifying matches of national team	X and qualifying matches of national team	- national clubs' matches and finals in European competitions - Super Cup and World Cup when a national club is playing	- quarter-finals (C) - semi-finals (A) - final (A)
<b>NO (*)</b>	X	- semi-finals - final - national team	- semi-finals - final - national team		
<b>PL<sup>4</sup></b>	X	- semi-finals - final - national team	- semi-finals - final - national team	Champions League, UEFA Cup: national clubs	
<b>PT</b>	- opening and closing ceremonies - participation of nationals	- opening match - quarter-finals - semi-finals - final - national team	- opening match - quarter-finals - semi-finals - final - national team	- one game per round in each European competition, where national clubs are involved. - semi-finals and finals of all European competitions - finals of all club competitions organised by FIFA	- semi-finals - final
<b>TR</b>	X	- semi-finals - final - national team - qualifying matches of national team	- semi-finals - final - national team		all matches

The following countries have no list or draft: EE, FI, FR<sup>5</sup>, GR, HU, IE, IS, LI, LT, LU, LV<sup>6</sup>, ML, MT<sup>7</sup>, RO, RU, SE, SI, SK

(\*) To date a list has been only proposed; it is not yet adopted. The above information may be subject to changes

(\*\*) Precise reference unavailable at time of going to press

## IMPORTANCE TO SOCIETY

concerning the lists of “events of major importance to society” as foreseen in Article 3a of Council Directive 89/552/EEC of 19 June 1997 and in Article 9bis of the Protocol amending the European Convention on Transfrontier Television

### SPORTS

World & European Athletics Championships	Tennis	Other Sports Events
		World Championships of alpine and nordic skiing
- semi-finals - finals - national participation and <i>Memorial Ivo Van Damme</i>	Wimbledon and Roland Garros: - semi-finals - finals	<i>Tour de France</i> ; Worldcup, National and World Championships for cycling; <i>Veldrijden</i> cycling; World and European Championships Judo and Swimming semi-finals and finals with Belgian competitor; <i>Grote Prijs van België Formule 1</i> car racing; <i>Grote prijzen van België motorcross</i> motor races
national participation		All football national team's qualifying matches to championships
X	Davis Cup (if national team is involved): - semi-finals - final Fed Cup (if national team is involved): - final	World Cup for Downhill Skiing in Switzerland, World Downhill Skiing Championship, Athletissima meeting in Lausanne, LCZ Meeting in Zurich <i>Tour de Suisse</i> (Swiss Cycling Tour) Ice Hockey World Championship: national participation Ice Hockey Swiss Championship: play-off final Federal Festival of Swiss wrestling and alpine games
X		Ice Hockey World Cup - semi-final - final - national team
		National football team's matches
		World and European handball championships: - semi-finals - finals - national team - qualifying matches for women
World Championship (field): - semi-finals (only with Spanish participation) - finals	Davis Cup, Fed Cup (only when Spanish team participates) Roland Garros: (only when Spanish players participate in single) - quarter-finals - semi-finals - finals	Football: all matches involving the national team Basketball: Saporta Cup, Korac Cup (if any Spanish club is playing): - semi-finals - finals Handball: official matches of national team Cycling: <i>Tour de France</i> and <i>Vuelta Ciclista a España</i> (Cycling Tour of Spain) Motorcycle racing: World Championships
	Wimbledon: - finals (A) - other matches (B)	(A) Rugby World Cup Final (B) All other matches in the Rugby World Cup Finals Tournament, Six Nations Rugby Tournament matches involving home countries, Commonwealth Games, World Athletics Championship, Cricket World Cup (final, semi-finals and matches involving home nations' team), Cricket Test matches played in England, Ryder Cup, Open Golf Championship
		All matches involving the national football team in official competitions, <i>Giro d'Italia</i> (Tour of Italy) cycling competition, Formula One Italian Grand Prix.
X	- Australian Open - Wimbledon - US Open	NBA; World and European Handball Championships Boxing; World and European Skating Championships European Basketball Championships
outdoor C)	Wimbledon, Roland Garros: - semi-finals singles (with national competitors) and singles finals (A), Wimbledon, Roland Garros, US Open, Australian Open: - singles with national competitors (C)	(A) National football team's matches, World and European Championships ice-scating (all-round, sprint, distances), Dutch ice-scating tour <i>Elfstedentocht</i> , (B) <i>Tour de France</i> , Amstel Gold Race, TT Assen, World Championships cycling final weekend, (C) Paralympics, all matches of football <i>eredivisie</i> (Premier League), World and European Championships for Volleyball (men) and Hockey if national team is playing
World Championships		World and European Championship in handball; World Championship Ski (board, alpine, nordic ski); World Championship Biathlon
participation of nationals		Football: all matches of national team; Premier League – one game per round (involving successful clubs) Handball, basketball, ice hockey: all matches of national teams (including World & European Cup), World & European Club's competitions – finals with national team; National Cup finals Volleyball: all matches of national teams (including World & European Cup) Formula I Grand Prix if national participates; Rally of Portugal; National bicycle Tour ( <i>Volta</i> ); Motorcycling Grand Prix of Portugal
		- Turkish Cup matches (Basketball, Volleyball, Handball) - European Championships semi-finals and finals (all branches) - World Championships semi-finals and finals matches (all branches) - <i>Kirkpinar</i> Traditional Wrestling

1. The Cyprus Radiotelevision Authority is still preparing its draft. Further information was not available.

2. A new Broadcasting Act is being prepared and is still being examined by Parliament. It is expected to enter into force on 1 July 2001.

3. These are proposals which the Broadcasting Council has submitted to Parliament and to the government.

4. Under the terms of the Broadcasting Act, the National Broadcasting Council will be able to add further events to the list. With this in mind, the NBC is organising a seminar with experts on 9 May 2001 in order to prepare the future list.

5. See p.11 in this IRIS issue.

6. Latvia is currently amending its legislation on radio and television to conform with the Directive "Television without Frontiers"

7. See p.13 in this IRIS issue.

Member States	Culture		Other requirements/e.g. deferred coverage; grouping according to the coverage/reception; necessity to secure transmission rights	Period of validity
	International	National		
<b>AT</b>		- New Year's Day Concert - Vienna Opera Ball		listed events are drawn up for an unlimited period subject to amendments
<b>BE (*)</b>	Queen Elisabeth Contest			
<b>BG</b>	Sofia Musical Weeks; March Musical Weeks; International Festival "Varna Summer"; International Folklore Festival, Bourgas; International Festival of Romantic Movies "Love is A Madness", Varna	Bulgarian Film Festival "Golden Rose", Varna	free public access	listed events are drawn up for an unlimited period subject to amendments
<b>CH</b>				listed events are drawn up for an unlimited period subject to amendments
<b>CY<sup>1</sup></b>				
<b>CY<sup>2</sup></b>				listed events are drawn up for an unlimited period subject to amendments
<b>DE</b>				listed events are drawn up for an unlimited period subject to amendments
<b>DK</b>			a substantial proportion of the public is deemed deprived of being able to follow the events if they are broadcast on a channel received by less than 90% of the Danish public	1998 and after <sup>3</sup>
<b>ES</b>			Olympic Games: if due to schedule problems it is not possible to provide live coverage of an event in which Spanish athletes and teams are participating, broadcasters may make these events available via whole or partial deferred coverage. Cycling: the broadcast of these events shall include, at least, the last hour of each stage. According to Article 5 of the Law No. 21/1997 (Law on Broadcasting of Sport Events) a match from every league or cup competition game day, for those sports in which such competition systems apply, must be broadcast live, free and throughout the entire national territory	2000/2001
<b>GB</b>			sports events are categorised as Group A & Group B; <sup>4</sup> a substantial part of the public is defined as 5%.	2000 and after. listed events are drawn up for an unlimited period subject to amendments
<b>IT</b>		San Remo Italian Music Festival	The Authority reserves the right to amend the list in particular by including the following events: finals of basketball, water polo and volleyball world championships involving the national team; final and semi-finals of the Davis Cup involving the national team; road-cycling world championship	Revision of the list possible after two years following the entry into force <sup>5</sup>
<b>MK<sup>6</sup></b>				
<b>NL(*)</b>		(A) Christmas concert and Prinsengrachtconcert of the Royal Concertgebouw Orchestra, Eurovision Songfestival (C) Pinkpop	The events listed are split into three groups A, B and C: - Category A: events must be broadcast live and in full on free television. - Category B: events must be broadcast live, but only in part. - Category C: highlights of these events can be broadcast later in the day.	
<b>NO(*)</b>				
<b>PL<sup>7</sup></b>				listed events are drawn up for an unlimited period subject to amendments
<b>PT</b>				2000/2001
<b>TR</b>				2001

The following countries have no list or draft: EE, FI, FR<sup>8</sup>, GR, HU, IE, IS, LI, LT, LU, LV<sup>9</sup>, ML, MT<sup>10</sup>, RO, RU, SE, SI, SK

(\*) To date a list has been only proposed; it is not yet adopted. The above information may be subject to changes

(\*\*) Precise reference unavailable at time of going to press

(\*\*\*) Unofficial notification

Legal Basis		Source Reference		Date of Notification with	
EC	CoE	Draft	Final	Standing Committee***	EC Commission
X	X	- Regierungsvorlage für ein Bundesgesetz, mit dem ein Bundesgesetz über die Ausübung exklusiver Fernsehübertragungsrechte (FERG) erlassen wird und das Kabel- und Satelliten-Rundfunkgesetz sowie das Rundfunkgesetz geändert werden (285 der Beilagen zu den stenographischen Protokollen des Nationalrates XXI. GP); - Entwurf für eine Verordnung auf Grund des § 4 FERG.		01.10.2000	September 2000
X					
	X		- definition of "major event": additional provisions to Radio and Television Law, enacted by the 38th National Assembly on the 23rd of September, 1998 - securing the right of access: Art. 13 Radio and Television Law - list of important events (**)	15.03.2000	
	X		<i>Departement für Umwelt, Verkehr, Energie und Kommunikation, Liste der Ereignisse mit erheblicher gesellschaftliche Bedeutung vom 21. August 2000</i>		
	X	X		24.02.2000	
		X			
X	X		<i>Art. 5a des Fünften Rundfunkänderungsstaatsvertrages der Bundesrepublik Deutschland</i>	01.10.2000	28.04.1999
X			Order No. 809 of 19 November 1998 on the Use of TV Rights to Events of Major Importance for Society		14.12.1998
X			<i>Resolución de 31 de julio de 2000, del Consejo de Emisiones y Retransmisiones Deportivas, por la que se ordena la publicación del Acuerdo del Pleno del Consejo de Emisiones y Retransmisiones Deportivas por el que se aprueba el Catálogo de Competiciones o Acontecimientos Deportivos de Interés General para la temporada 2000/2001, BOE n. 191, of 10.08.2000, p. 28656</i>		
X			Part IV of the Broadcasting Act 1996, The Television Broadcasting Regulations 2000, the Independent Commission's Code on Sport and other Listed Events and several declarations by the Secretary of State for Culture, Media and Sports, OJ C 328, 18.11.2000, 2		05.05.2000
X			Decision no 8/1999 of the Communications Authority adopted on 09.03.1999		10.05.1999
		X			
X		Amendment of the <i>media besluit</i> (Media Decree)			
X		<i>Liste over begivenheter av vesentlig samfunnsmessig betydning Følgende begivenheter anses for å være av vesentlig samfunnsmessig betydning</i>			
X			Art. 20 Broadcasting Act adopted on 29.12.1992; amended: 1995, official gazette <i>Dziennik Ustaw</i> No 66; 1995, official gazette <i>Dziennik Ustaw</i> No 142, item 701; 1996, official gazette <i>Dziennik Ustaw</i> No 106, item 496; 1997, official gazette <i>Dziennik Ustaw</i> No 121, item 770; 2000, official gazette <i>Dziennik Ustaw</i> No 29, item 356 and 358.	01.10.2000	
X			<i>Despacho 21380/2000 published in Diário da República (Official Journal), II Série, 24.10.2000</i>		
X			X (**)	01.10.2000	

1. The Cyprus Radiotelevision Authority is still preparing its draft. Further information was not available.
2. A new Broadcasting Act is being prepared and is still being examined by Parliament. It is expected to enter into force on 1 July 2001.
3. The order entered into force on 1 December 1998. Listed events are drawn up for an unlimited period subject to amendments.
4. Group A events are those events that may not be covered live on an exclusive basis unless certain criteria are met. Group B events may not be broadcast live on an exclusive basis unless adequate provision has been made for secondary coverage.
5. Entry into force: 24 May 1999.
6. These are proposals which the Broadcasting Council has submitted to Parliament and to the Government.
7. Under the terms of the Broadcasting Act, the National Broadcasting Council will be able to add further events to the list. With this in mind, the NBC is organising a seminar with experts on 9 May 2001 in order to prepare the future list.
8. See p.11 in this IRIS issue.
9. Latvia is currently amending its legislation on radio and television to conform with the Directive "Television without Frontiers"
10. See p.13 in this IRIS issue.

## AT – Bill on “KommAustria” Media Authority

The Austrian Government has submitted a draft Federal Act on the Establishment of a National Media Authority, the Austrian Communications Commission (*KommAustria*).

According to Section 1.1 of the Bill, the new authority's basic role would be to assume all regulatory responsibility for the broadcasting and telecommunications fields throughout Austria. At present, these tasks are distributed between the Federal Chancellery and various ministries.

The new media authority would, for example, be expected to push for effective competition, reasonably-priced consumer access to communications services, plurality of opinion and the development of technical and economic conditions suitable for a dual public/private broadcasting market in Austria. It would comprise a President and twelve other members, three of whom would

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**Ministerialentwurf betreffend Bundesverfassungsgesetz über die Einrichtung einer unabhängigen Regulierungsbehörde in den Bereichen audiovisuelle Medien, Telekommunikation und Informationstechnologie, Einrichtung der "Kommunikations-Kommission Austria"** (Ministry Bill concerning a Federal Constitutional Act on the establishment of an independent regulatory authority in the audiovisual media, telecommunications and information technology fields, establishment of the Austrian Communications Commission), available at [http://www.parlinkom.gv.at/pd/pm/XXI/ME/his/001/ME00114\\_.html](http://www.parlinkom.gv.at/pd/pm/XXI/ME/his/001/ME00114_.html)

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be employed full-time. The members, who would be split into three commissions (media, infrastructure and competition), would act independently and not take instructions from outside bodies. According to Section 3 of the Bill, they would be appointed on the Federal Government's recommendation for a six-year term following an open application procedure.

The Commission's tasks would include granting licenses to and monitoring broadcasters, guaranteeing minimum European standards, particularly concerning the protection of minors and consumers vis-à-vis content providers, planning and administering broadcast frequencies, and guaranteeing and laying down conditions for non-discriminatory access to communications services and infrastructure, together with responsibilities in the field of competition law. *KommAustria's* work would be supported by a company, *KommAustria-GmbH*, to be set up by the Federal Government. This company would assume the administrative tasks related to *KommAustria's* work, draft and publish *KommAustria* recommendations and guidelines for the audiovisual media and telecommunications sectors, and implement procedures provided for by federal law to settle disputes in these areas. The President of *KommAustria* would oversee the work of *KommAustria-GmbH*.

A 15-member advisory committee would also be set up to advise the Federal Government and *KommAustria*, dealing in particular with fundamental issues in the media and telecommunications fields and their impact on competition and consumer protection.

In principle, appeals against *KommAustria's* decisions could be lodged with the *Unabhängige Bundeskommunikationssenat* (Independent Federal Communications Board). ■

## BA – Competitive Process for the Awarding of Long-term Broadcasting Licenses

The Rule of the Independent Media Commission (IMC) concerning the allocation of frequencies based on a competitive process came into effect on 1 October 2000. The Competition Rule applies to:

- all regional broadcasters whose programs are directed towards audiences beyond the town or city of the broadcasters' location of registration with the IMC;
- all broadcasters seeking to serve a community where the IMC determines that the frequency spectrum is overcrowded;
- applicants not previously licensed by IMC.

The allocation is based on a point system that evaluates the merits of the respective applicants. The following four criteria are relevant in the determination of an application, with points awarded as indicated :

1. Program Quality, which carries a maximum of 20 points;
2. Financial Information and Viability – maximum 10 points;
3. Technical Operations – 10 points, and
4. Prior Compliance with IMC Regulations.

At this criterion of Compliance different valencies depend on

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Media  
Commission  
(IMC)

**IMC Rule 04/2000 "Merit-based Competitive Process for the Awarding of Long-term Broadcasting Licenses"**. Available at: <http://www.imcbih.org/pdfs/CompetitionRule.doc>

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- a) No Issue = 0 points
- b) Each requirement to publish an apology, warning or order = minus 1 point
- c) Each fine = minus 2 points
- d) Each suspension of license or order to close down operations = minus 3 points.

In order to obtain a license, each broadcaster must achieve a minimum of 24 points in total, with a minimum of 12 points in Program requirements, a minimum of 6 points in financial and a minimum of 6 points in technical operations.

In order to facilitate the efficient management of the frequency spectrum, the whole country was divided into 13 regions along geographical lines.

Using this legal basis, the IMC has already completed the process in the Tuzla region, which was taken first due to the high density of broadcasters in that region. 62 stations (23 public and 39 private), among them 19 TV and 43 radio stations, took part in the competition process. At the beginning of the process, a total number of 72 broadcasters were registered, but 10 did not apply for a license. After an in-depth assessment and evaluation the IMC decided that only 20 broadcasters (5 public and 15 private) fulfilled the legal requirements for long-term broadcasting licenses in this region. Therefore, applications from 42 broadcasters (25 private and 17 public), or 67,7 % had to be rejected. Affected stations can now submit a complaint to the Council of IMC, whose decision will be final. ■

## CZ – Revised Czech Television Act

On 23 January 2001, the Czech Parliament passed an amendment to the Czech Television Act. The amendment was drawn up after the Parliamentary Speaker declared a

legislative state of emergency.

At the end of last year, the appointment of a new Director General of Czech public service broadcasting led to mass strikes. The appointment was seen as an attempt



to gain political control over public service television (see IRIS 2001-1: 7).

Generally speaking, however, the amendments to the Act are not particularly far-reaching, although the role of public service television is newly and more precisely defined.

The Director General will continue to be elected by the members of the Czech Television Council, which in future will have fifteen members instead of nine. As before, these members will be appointed by Parliament. However, candidates for Council membership will from now on be nominated by organisations and associations representing cultural, regional, social, religious, scientific and environmental interest groups, as well as trade unions, employers and national minorities. One-third of the

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**Zákon, č. 39/2001 Sb., kterým se mění zákon č. 483/1991 Sb., o České televizi, a o změně některých dalších zákonů (amendment to the Czech Television Act)**

CS

members will step down on a rotational basis every two years. Council meetings and the minutes of those meetings will, in principle, be open to the public.

Another new provision is the establishment of a supervisory board responsible for monitoring how the funding and assets of Czech television are used. The board will be appointed by the Council, to which it will report any breaches it finds and recommend the necessary sanctions.

The Director General will submit to Parliament a code of conduct for Czech television, setting out basic principles for the activities of public service television. If the code is breached, the Director General may be dismissed.

The new Act makes a number of interim provisions. For example, the existing Council was dissolved on the day on which the Act came into force. The Parliament then had sixty days in which to appoint a new Council. It was also empowered to dismiss the Director General during that period and choose an acting Director to fulfil that role until the Council elected its own new Director General.

Under the new Television Act, public service broadcasters are also, for the first time, made subject to the Information Act and the Act on Public Services.

The Television Act entered into force on 25 January 2001. ■

## DE – Appeal Against British List of Important Events

The *Kirch* group which, together with the Swiss marketing company *ISL*, owns the broadcasting rights for the 2002 and 2006 football World Cups, has lodged a complaint against the European Commission. The European Court of Justice must therefore rule on the Commission's decision to approve the provisions of the United Kingdom's Broadcasting Act 1996, as amended by the Television Broadcasting Regulations 2000, and the ITC Code on Sports and Other Listed Events, which were designed to transpose Article 3a of the "Television without Frontiers" Directive (see IRIS 2000-3: 8). The Commission's approval of the provisions was published in the Official Journal of the European Communities in November 2000.

The holders of the broadcasting rights have queried

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the Commission's decision to recognise as being in line with Community law a regulation stating that all matches in the World Cup finals should be available to viewers free of charge.

According to section 7 of the ITC Code, the restrictions (concerning the exploitation of rights) only apply to broadcasting rights acquired after the entry into force of Section 101 of the 1996 Broadcasting Act, i.e., 1 October 1996. The agreement between *FIFA* and *Kirch* concerning broadcasting rights was concluded in September 1996. Recitals 18 and 20 to the "Television without Frontiers" Directive would seem to suggest that broadcasting rights are acquired at the moment when the rights-holder (the marketing company) signs the relevant contract with a television broadcaster. ■

## DK – Media Agreement Implemented into the Radio/TV Legislation

The political Media Agreement concluded on 28 March 2000, for the period 2001 - 2004 between the Danish government and the political parties *Socialistisk Folkeparti* (Socialist Popular Party) and *Centrum-Demokraterne* (Centre-Democrats) has been codified by the *Lov om ændring af lov om radio- og fjernsynsvirksomhed og lov om indkomstbeskatning af aktieselskaber m.v.* (Act no. 1272 of 20 December 2000 amending the Broadcasting Act and the Act on Income Taxation of Limited Companies). The Act entered into force on 1 January 2001.

The principal amendments to the Broadcasting Act are as follows:

1. **Public Service:** The fundamental rules are laid down in a new Chapter 3a. Art. 6a defines public service activities as a broad selection of programmes and services concerning news, information, education, art and entertainment. The selection offered has to be qualified and manifold. Freedom of expression has to be strongly respected, and the information broadcast has to be objective and impartial. Special attention has to be paid to the Danish language and Danish culture. - The public service actors are Danmarks Radio (DR),

TV2 and the planned fourth and fifth radio channels which have to be allocated on the basis of offers. According to Art. 6c, the fourth radio channel shall be a public service orientated channel with classical music supplemented by rhythmic music, jazz, Danish music, cultural programmes and programmes dealing with social problems and debate. The fifth radio channel shall deal with public service news (Art. 6d). Besides the public service activities the channel has to offer a broad selection of programmes. According to Art. 6e, the DR and TV2 may be permitted to exercise other programme activities. Art. 6a provides for the DR activities to be financed through license fees and other income, cf. Art. 8.

According to the Introduction of the Bill no. 79 the public service activities are no longer restricted to definite institutions or medias. The on-line activities of DR and TV2 shall be part of the public service activities.

The 1<sup>st</sup> of March 2001 was the deadline for applications for the allocation of the fourth radio channel.

Among the applicants is Danmarks Radio.

2. **Directors:** Chapter 4 of the Act has been revised. It lays down provisions on the board of directors of DR, composed of 13 members, and of TV2, composed of 12 members. Some of these members are appointed by

the Minister of Culture and by the *Folketing* (Danish Parliament). A Member of the *Folketing* may not be a member of the board of directors. Art. 13 provides that a programme council is established for each of the regional programme enterprises of the DR.

3. The Radio and TV Board: A new Chapter 4a provides for a new Radio and TV Board called *Radio og tv-nævnet*. The rules thereon are laid down in the Articles 33a - 33e. The Board is composed of 7 members. The members have to represent legal, economic, administrative, business and media/cultural expert knowledge. The Board grants broadcasting permission on a local level to carry out programme activities based on satellite or cable broadcasting within an area exceeding one local area only, and on regional and national level to carry out programme activities made by terrestrial broadcasting. The Board assumes control functions and decides about complaints, for example concerning the refusal of the local board to grant permission to broadcast local programming activities.

Diffusion of national and regional programmes through terrestrial transmitting networks requires a license granted by the Radio and TV Board, except in the case of the public service activities of the DR and the TV2 broadcasters and other activities accomplished through analogous transmitting networks. The license is granted by the Board on the basis of offers. So the Board has to decide on the allocation of the fourth and the fifth radio channels.

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Act no. 1272 of 20 December 2000 amending the Broadcasting Act and the Act on Income Taxation of Limited Companies (*Lov om ændring af lov om radio- og fjernsynsvirksomhed og lov om indkomstbeskatning af aktieselskaber .v.*) is available at: <http://www.retsinfo.dk/DELFIN/HTML/A2000/0127230.htm>  
The Media Agreement 2001-2004 (in Danish: *Medieaftale 2001-2004*) is available at: [http://www.kum.dk/dk/con-2\\_STD\\_1435.htm](http://www.kum.dk/dk/con-2_STD_1435.htm)

DA

## IE – Radio Takeover Refused

On 29 January 2001, the Independent Radio and Television Commission (IRTC) refused to allow Ulster Television to take over County Media. Ulster Television (UTV) broadcasts in and from Northern Ireland and is part of the UK's Independent Television Network. County Media is the owner of three independent local radio stations in Cork, the second largest city in Ireland. Under section 6.2 of the Radio and Television Act 1988, the IRTC must have regard *inter alia* to the character, expertise and experience of the applicant. It must also have regard to

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The Irish Times, 30 January 2001

## IT – European Community Act 2000 Contains Provisions Relevant to the Television Sector

Every year, the Italian Parliament adopts an act called *Legge comunitaria* (European Community Act) in order to comply with the obligations deriving from its membership of the European Communities. The main aim of this act is to ensure the implementation of EC directives in due time to avoid infringement procedures for lack of implementation. According to the procedure laid down by the *Norme generali sulla partecipazione dell'Italia al processo normativo comunitario e sulle procedure di ese-*

According to Art. 60b the Radio and TV Board is competent to grant subventions to non-commercial radio- and TV broadcasters based on proposals from the local boards in accordance with rules laid down by the Minister of Culture.

Furthermore, the Board decides on the content of radio and TV advertising, Art. 33e. According to art. 34, paragraph 1, cf. art. 71 and 72, the former board called *Satellit- og Kabelnævnet* is abolished.

4. Advertising: Advertising may be broadcast as before in blocs placed between the broadcast programmes. Medicines, tobacco and alcoholic beverages with an alcohol content of 2.8 % or more may not be advertised. Likewise, economic interest groups and religious and political groups are not permitted to advertise their opinions. These rules, applicable to all broadcasters, are now gathered together in Art. 65. In regard to radio, advertising may be placed anywhere within the transmission area, except advertising for medicines, tobacco and the above-mentioned alcoholic beverages. Advertising may constitute a maximum of 15 % of the licensed daily transmission time. The rules are now contained in Art. 69.

The prohibitions against the transmission of programmes sponsored by trade unions and religious movements have been removed, see the Introduction to the Bill.

It is left to the Minister of Culture to establish further rules on restricting advertising directed towards children and advertising of products for children. This rule is laid down in a new paragraph 2 added to Article 70. The rules are intended to be applied only when voluntary measures have been proved insufficient.

5. Financial control of public service: A Public Service Council has been established. Its function is to control the public service accounts of the DR, TV2, the fourth radio channel and the news coverage broadcast on the fifth radio channel, Arts. 73b - 73c.
6. Record filing: As a general rule laid down in Art. 73d the DR, TV2 and the holders of licences for programme activities have to keep copies of the transmitted programmes for 3 months after the broadcast. ■

the desirability of having a diversity of services in the geographical area concerned. The Act does not lay down strict rules as to how the IRTC is to achieve this. The policy of the IRTC since 1988 has been to prevent any existing media outlet from holding more than a 27% stake in any other media concern. It has also favoured retaining a strong local presence in the ownership of local stations. To allow UTV to buy County Media would have marked a fundamental change in that policy. The IRTC has announced, however, that a full review of its policy on ownership is underway. On 1 February 2001 the Minister for Enterprise, Trade and Employment cleared the UTV deal under national mergers and takeovers legislation. ■

*cuzione degli obblighi comunitari* (Rules on the implementation of European Community legislation, Act of 9 March 1989, no. 86, in *Gazzetta Ufficiale* no. 1989, 58), the text of this annual act has to be proposed by the Government to the Parliament before 1 March. Among other provisions, this act generally contains a list of directives of which the deadline for transposition is almost due.

On 20 January 2001 the *Legge comunitaria 2000* (European Community Act for year 2000 of 29 December 2000, no. 422) was published in the Official Journal and entered into force. The Act contains two provisions relevant to the television sector. Art. 13 entrusts the Go-

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Autorità per le  
Garanzie nelle  
Comunicazioni

vernment with the power to implement Commission Directive 1999/64/EC of 23 June 1999 amending Directive 90/388/EEC in order to ensure that telecommunica-

Act of 29 December 2000, no. 422, *Disposizioni per l'adempimento di obblighi derivanti dall'appartenenza dell'Italia alle Comunità europee - Legge comunitaria 2000* (Gazz. Uff. 20 January 2001, Serie generale no. 14). Available at: <http://www.senato.it/parlam/leggi/00422l.htm>

IT

## ES – Resolution Regulating Advertising in RTVE

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Internacional  
Comisión del  
Mercado de las  
Telecomuni-  
caciones

In January 2001, the Board of Directors of the *Ente Público Radiotelevisión Española* (the national public broadcaster - RTVE) approved a Resolution regulating advertising on *Televisión Española* (TVE, the national public TV broadcaster, which belongs to the RTVE group). The aim of this Resolution is to update RTVE's regulation on advertising, in order to bring it into line with the Spanish legislation in this field. The text of the Resolution almost coincides with that of the Chapter on Advertising and Sponsorship of the national Act 25/1994 (as amended by the national Act 22/1999), on the implementation of the EC Directive "Television without Fron-

*Resolución de 22 de enero de 2001, de la Dirección General del Ente Público Radiotelevisión Española, por la que se hacen públicas las normas reguladoras de la emisión de publicidad por "Televisión Española, Sociedad Anónima", aprobadas por el Consejo de Administración del Ente Público Radiotelevisión Española en su reunión de 11 de enero de 2001, BOE n. 21, de 24 de enero de 200, pp. 2993-2997* (Resolution of the Board of Directors of RTVE on advertising on TVE)

ES

## FR – TF1 Guilty of Abuse of Dominant Position in the Television Advertising Market

Amélie  
Blocman  
Légipresse

A decision taken on 13 February 2001 by the *Conseil de la concurrence* (the French Council on Competition) in a case brought to its attention by CANAL+ dealt with the practice of market share discounts operated by the company TF1 during the period 1994/1997 concerning the sale of advertising space on television. This practice involves allowing specific reductions to advertisers whose proportion of advertising expenditure on TF1 is greater than the channel's share of the television advertising market. Referring to a previous decision (18 June 1996) and to the decision of the European Commission on 20 September 1995 concerning RTL/Veronica/Endemol, the Council agreed that there was a separate market for television advertising and went on to note that, over the period in question, TF1 held a proportion of this market in excess of 50% (ahead of the second operator, France Télévision Publicité, with 29%). Yet a comparison of the audience share and the market share of each of the channels shows that T1 is the only channel to obtain adver-

French Council on Competition (Conseil de la concurrence), 13 February 2001, Canal + v. TF1 and TF1 Publicité

FR

## FR – Events of Major Importance in France

Adopted specifically in order to transpose the "Television without Frontiers" Directive into French law, the Act of 1 August 2000 (see IRIS 2000-8: 7) introduces an

tions networks and cable TV networks owned by a single operator are separate legal entities. Art. 15 abrogates part of the Television Advertising Act of 30 April 1998, no. 122 (*Differimento di termini previsti dalla legge 31 luglio 1997, n. 249, relativi all'Autorità per le garanzie nelle comunicazioni, nonché norme in materia di programmazione e di interruzioni pubblicitarie televisive, Gazzetta Ufficiale 1998, 99, see IRIS 1998-6: 8*), which contained an exception for the application of provisions concerning advertising breaks in television programmes purchased before 28 February 1998. This abrogation was particularly urgent as an action was pending before the Court of Justice for lack of implementation of the revised Directive "Television without Frontiers" (see IRIS 2000-7: 4). ■

tiers". However, it must be noted that this Resolution also includes some provisions which deal with subjects that are not regulated by the national Act 25/1994 (e.g., the use of obscene language in advertising). This Resolution also determines those cases in which TVE shall not allow the broadcasting of certain advertising spots.

This Resolution has created a certain degree of controversy, as its alignment with Act 25/1994 could lead to an increase of advertising and sponsorship in TVE. It is necessary to take into account that the Act 25/1994, as amended by the Act 22/1999, allows sponsorship of the weather and sports sections of the news and current affairs programmes (art. 15.3). It also establishes that sponsorship can be placed during programmes and in advertising spots (art. 15.1.a), and that the transmission time devoted to sponsorship shall not be taken into account when applying the limits on the transmission time devoted to advertising (art. 15.4). These provisions of the Act 25/1994 are incorporated into the new Resolution by its article 27. ■

tising investment shares larger than its audience share across the board. The Council also noted that, even for its standard target viewer (the now-famous housewife under the age of 50), the channel was able to charge rates which were higher than those of its competitors, thereby demonstrating the power it wielded. In the light of these elements, the Council concluded that, during the period in question, TF1 occupied a dominant position in the television advertising market. The Council went on to note that applying discounts on the basis of market shares had resulted in advertisers allocating to TF1 a share of their advertising budget at least equal to the channel's market share. As a result, this discount – similar to a loyalty discount – hampered the fluidity of advertising investment between the various channels. According to the consistent case-law of the Court of Justice in Luxembourg and the Council on Competition, a company in a dominant position commits an abuse if it applies loyalty discounts. Moreover, the fact that the market leader applied this practice meant that it subsequently spread to the other channels, which made the market even more rigid. The Council therefore decided to fine TF1 FRF 8 million, despite the fact that the channel claims that it no longer applies any practice of the nature of a market share discount. ■

Article 20-2 into the Audiovisual Communication Act of 30 September 1986, which provides that:

"Events of major importance may not be broadcast exclusively in such a way that deprives a significant proportion of the public of the possibility of following the

events in a live or recorded broadcast on a freely accessible television service.

The list of events of major importance is to be fixed by decree of the Conseil d'État. The decree shall determine the conditions for applying this article.

Television services may not exercise those exclusive rights acquired since 23 August 1997 in such a way as to deprive a significant proportion of the public of another Member State of the European Community or of a State that is party to the agreement on the European Economic Area of the possibility of following those events declared to be of major importance by that State on a freely accessible television service.

The *Conseil supérieur de l'audiovisuel* shall ensure that television services comply with the provisions of this Article."

Amélie  
Blocman  
Légipresse

## GB – Interactive Television Guidance Published

Last year, the Independent Television Commission opened a consultation on the approach to regulation concerning interactive services (see ITC news release of 29 February 2000). The key elements of interactive services were recognised to be (a) viewer choice and (b) viewer responsibility. The spin-off is the potential for certain rules to be amended or disapplied.

The consultation related to the two main forms of interactive services: "dedicated interactive services" and "enhanced programme services".

The former are "stand-alone services not related to a broadcast programme but accessed primarily directly via an Electronic Programme Guide. This links the viewer to a series of commercial ("Shopping Mall") entertainment and information services. In such an environment the principal concern of users is likely to be issues such as misleadingness with much less accent on matters of taste and offence." The latter are "services linked with traditional "linear" programme services. Using digital technology, viewers will have the opportunity to leave the linear programme and to interact both with programmes

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ITC news release 16/00 of 29 February 2000 "ITC Consults on a Light Touch Approach to the Regulation of Interactive Services". Available at:

[http://www.itc.org.uk/news/news\\_releases/show\\_release.asp?article\\_id=377](http://www.itc.org.uk/news/news_releases/show_release.asp?article_id=377)

ITC news release 09/01 of 12 February 2001 "ITC Publishes Guidance to Broadcasters on Interactive Television Services". Available at:

[http://www.itc.org.uk/news/news\\_releases/show\\_release.asp?article\\_id=472](http://www.itc.org.uk/news/news_releases/show_release.asp?article_id=472)

FR

## GB – ITC Moves Towards Partial Self-regulation and Lighter Regulation of Content

The major White Paper on the regulation of communications, including broadcasting, in the UK, (see IRIS 2001-1: 8) proposed the future simplification of content regulation and a much greater reliance on partial self-regulation by the broadcasters themselves. The Independent Television Commission, the UK regulator of private broadcasters, has announced a number of moves in this direction even before the proposals have been finalised and put into legislation. The future approach was indicated in a speech by the new Chief Executive of the Commission, who summarised her approach as "we should be reluctant to regulate, preferring competition and as much certainty for business as possible".

However, the decree mentioned in paragraph 2, intended to fix the exact list of such events, has not yet been adopted. To date, only the encrypted channel CANAL+ has undertaken, since signing its new convention on 29 May, to refrain from "reserving for itself the exclusivity of broadcasting:

a) the following events:

- Winter Olympic Games,
- Summer Olympic Games,
- Cycling: the Tour de France;

b) matches of:

- the football World Cup,
- the European football championship,
- the Six Nations rugby tournament in which a French team is playing

c) the final match in the Coupe de France football series" (Article 31 of the CANAL+ agreement of 29 May 2000; see IRIS 2000-6: 8).

The list seems to constitute a basic minimum, and will probably be taken up in the regulations for implementing Article 20-2 of the 1986 Act; these should be adopted in the coming months. ■

and with advertisements." The publication of guidance to licensees on interactive services (published on 12 February 2001) is based on the approach that "viewers come first and must be allowed to benefit from an innovative, emerging market." However, two current programme standards will continue to be important: the separation of advertising from editorial content and the protection of children. There were 32 responses to the consultation. The ITC also had discussions with "interested parties".

As regards "Dedicated Interactive Services" (including electronic shopping malls; entertainment services; and betting and gaming services) the ITC states that its "regulatory role in this area will be very limited." e.g., not regulating the content of such services "before viewers make a choice to enter an electronic 'High Street.'" However, content will still be subject to national laws (as compared to the ITC's own Codes). Therefore, viewers should be clear about "which content is subject to ITC rules and which is not."

As regards "Enhanced Programme Services", the ITC's main concern is to safeguard viewers against "any confusion amongst viewers about when they are being sold to, and that programme content remains effectively safeguarded from commercial influences."

The applicable rules, contained in the Guidance Note, are separated into (a) general requirements and (b) more specific rules for news and current affairs; consumer advice; and children's programmes. ■

In the past, the Commission has undertaken a detailed performance review of each licensee every year. It now plans instead to use a system of "statements of programming commitment". This will require licensees to volunteer a rolling annual statement of how they plan to deliver their remits. At the end of the year, they will report on their own performance. This will form the basis of a report by the Commission putting the broadcaster's report in the context of audience judgements and "an objective, fact-based assessment of what the industry as a whole has to offer." Where possible, public service requirements will be quantified; for example, costs per hour, diversity across channels, production for and from the regions, and the proportion of output in public service genres.

The Commission has also issued a revised version of its Programme Code, effective from 2 April 2001. It is

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significantly shorter and has been written to provide greater clarity of intent and ease of use for licensees. The

Independent Television Commission, "ITC Chief Executive Calls for More Clarity on OFCOM's Priorities and Powers", news release 10/01, 12 February 2001; "ITC Publishes Response to White Paper on Regulating Communications", news release 11/01, 13 February 2001; "ITC Publishes Revised Programme Code", news release 13/01, 21 February 2001. All available at: <http://www.itc.org.uk/> (The substantive documents can be accessed via the news releases)

## MT – 2000 Legislative Package

Following the adoption of the Broadcasting (Amendment) Act 2000, several pieces of subsidiary legislation have been published and since then have come into force.

The 2000 legislative package comes in the light of Malta's efforts to implement the Council of Europe's Transfrontier Television Convention (signed 1991 and ratified in 1993) and EC Directives 89/552/EEC and 97/36/EC. In 2000 Malta tacitly ratified the Protocol amending the convention on Transfrontier Television.

A few points have been selected to highlight the legislative background of these recent legislative changes:

The Broadcasting (Jurisdiction and European Co-operation) Regulations contain detailed definitions of the scope and the conditions under which a broadcaster is considered to be under the jurisdiction of Malta. In the Maltese context these provisions gain particular importance as a number of foreign television stations have chosen to broadcast from Malta without, however, being available to local viewers. Along with provisions for the broadcasting of European works and transmission of major events, the Regulations contain a clause on administrative offences.

A Notice of coming into force (L.N. 260 of 2000) has since been published, establishing the 15 December 2000 as the date of coming into force. It must be pointed out,

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Schmitz

General Counsel  
Seifert mtm  
Systems  
(Malta) Ltd.

**Broadcasting (Jurisdiction and European Co-operation) (Amendment) Regulations 2000. Broadcasting (Substitution of Code for Advertisements and Sponsorships for Third Schedule) Regulations 2000 (L.N. 159 of 2000); Broadcasting Code For The Protection of Minors 2000 (L.N. 160 of 2000); Code for the Investigation and Determination of Complaints (L.N. 161 of 2000); Special Administrative Procedure Regulations 2000 (L.N. 162 of 2000); Broadcasting Act (Amendment of Fifth Schedule) Regulations 2000 (L.N. 164 of 2000); Dubbing of Tapes Regulations (L.N. 245 of 2000)**

EN

## YU – Media Legislation Reform Under Way

The first important steps undertaken by the new Government of Serbia have repealed the 1998 Law on Public Information of Serbia and made changes to the 1991 Serbian Law on Radio Television.

The fate of the 1998 Law on Public Information was pretty much as expected – first, on 5 January 2001, the Federal Constitutional Court published its Ruling on the constitutionality of that Law (see Official Gazette of FR Yugoslavia NR. 1/2001-4). The Ruling found the following articles to be in breach of "FRY Constitution, international law and federal law": Art. 17, Art. 26 para 1, Art. 27, Art. 38 para 3, Art. 41 para 3, Art. 42 para 2 and 3, Art. 43, Art. 44 para 1 in regard to the wording "within 3 days from the day the motion has been received" and para 2, Art. 45, Art. 46, Art. 47 para 2,

substantive changes are minor, but include:

- requirements of greater sensitivity to the content of daytime programmes during school holidays and clearer rules on the participation of children in programmes;
- new rules on the recording of telephone calls by programme makers and journalists to ensure informed consent;
- and the requirement that no undue prominence is given to commercial Internet sites of the licensee or of a third party.

Consultation on the White Paper proposals is continuing and the central issue of the extent to which the new regulatory arrangements in it will apply to the BBC remains unresolved. ■

however, that the section on broadcasting of European works has been excluded from the scope of this Notice. At present Malta's reservations to the WTO agreement stand in the way of full implementation of the system of programme quotas. During the screening of the Maltese legislation in view of the *acquis communautaire*, Malta stated its intention to take the necessary steps to change its commitments towards WTO in co-operation with the European Commission. It had been agreed that the best way to remedy this obstacle would be for the Commission to undertake further discussions with WTO on the negotiation of a package for all other candidate countries which have the same or similar problems as Malta with reservations to the WTO agreements. Malta's National Plan for the Adoption of the *acquis communautaire* identifies implementation of the "Television without Frontiers" Directive as one of the country's medium-term priorities in the Audiovisual sector for 2002. A reservation has been made that "the implementation of certain elements of this directive, particularly those relating to programme quotas may need to be phased in gradually".

The Code for Advertisements and Sponsorships replaces the previous Third Schedule and clarifies a number of issues. Advertising of a political nature, which was previously banned, remains restricted. However, it is now admissible if "authorized under a scheme of political broadcasts approved by the (Broadcasting) Authority". Furthermore the advertising regulations have been amended to include provisions on teleshopping.

The Code for the Investigation and Determination of Complaints in connection with the Special Administrative Procedure Regulations have introduced a system whereby administrative sanctions replace the previously applicable penal sanctions with respect to broadcasters. Considered as strengthening the effectiveness of the Broadcasting Authority, its actions in this regard are now subject to judicial review. ■

Art. 48, Art. 52, Art. 54, Art. 61 to 64, Art. 67, Art. 68, Art. 69, Art. 70 para 1 subpara 3 in wording "if they start publishing, i.e. broadcasting before the entry into the registry (Art. 17) or", Art. 71 para 1 subpara 1, Art. 72 to 74, Art. 76. Other articles that were examined were not found to be in breach of the Constitution. After that, at the session of the Serbian Assembly held on 14 February, the Law was repealed, "apart from the provisions pertaining to the registration of media, right of reply and right of correction". That means that only articles 12 to 23 (apart from Art. 17 quashed by the Federal Constitutional Court), and articles 37 to 41 (apart from Art. 38. para 3 and Art. 41 para 3, quashed by the Federal Constitutional Court) of the 1998 Law on Public Information remain in force.

As for the Law on Radio Television of Serbia, the Serbian Assembly repealed articles 30 to 33 and article 36 of

that Law at its session on 13 February. Those provisions stipulated the financing of the Radio Television of Serbia (RTS) through a special fee paid along with the electricity bill, the amount of which was linked to the price of electricity. The state broadcaster is therefore left without any sources of autonomous financing, and shall be financed directly from the budget until the new regulation on state television is passed.

The new regulations, which should regulate media and broadcasting, are expected to be passed by June 2001. The current position of the expert group, working within the Media Centre under the auspices of the new authorities, is that the whole media sphere should be regulated by two acts – a general media law and a broadcasting law. Following the most recent recommendation of the conference on adapting Yugoslav regulations to European standards, the proposed general media law shall be based upon a Model Media Law drawn up in 1998 by a group of independent experts (apart from parts of that Model that

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Official Gazette of Republic of Serbia NR. 11/2001-1  
Council of Europe Committee of Ministers' Recommendation Rec (2000) 23 on the Independence and Functions of Regulatory Authorities for the Broadcasting Sector; Conclusions and Recommendations for Public Service Broadcasting in Serbia; Conclusions and Recommendations on the Regulation and Licensing of Private Broadcasters. All available at: <http://www.humanrights.coe.int/media>

## NEW MEDIA/TECHNOLOGIES

### DE – Bill on E-Commerce

On 14 February 2001, the Federal Government adopted the Bill on a legal framework for electronic commerce. As a result, the transposition of Directive 2000/31/EC ("E-Commerce Directive") of 8 June 2000 (see IRIS 2000-5: 3) will be brought before Parliament.

The Bill mainly concerns amendments to the *Telemediengesetz* (Teleservices Act) and obliges the *Bundesländer* to adapt their *Mediendienstestaatsvertrag* (Inter-State Agreement on Media Services), since the "information society services" covered by the Directive, as teleservices, fall within the scope of both these instruments. The Bill makes provision for unrestricted authorisation for providers of these teleservices, general transparency obligations (with breaches punishable by fines)

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Entwurf des Gesetzes über rechtliche Rahmenbedingungen für den elektronischen Geschäftsverkehr (EGG) (Bill on a legal framework for electronic commerce), 14 February 2001, available at <http://www.bmwi.de/Homepage/download/infogesellschaft/EGG-Entwurf.pdf>

DE

## RELATED FIELDS OF LAW

### CZ – Monopolies Commission Rules on Cable Operator's Abuse of Dominant Position

The *Úřad na ochranu hospodářské soutěže* (Czech Monopolies Commission) has ruled on the alleged abuse of a dominant market position by a cable network operator.

In order to dominate the market, the company concerned sold its services at a loss between 1998 and 2000. It concentrated on attracting as many customers as possible,

and specific duties regarding information in relation to commercial communications. It also regulates service providers' responsibility for third-party information. The "country of origin" principle is at the centre of the proposed legislation. This means that national provisions governing Internet services in the country where they are based should be recognised by the other EU states. Service providers established in Germany should in future, therefore, only be subject to German law, even if they offer or provide their electronic services in other EU countries. However, a particular exception is made for consumer agreements. The Bill should also make it possible for arbitration agreements to be concluded electronically in cases where consumers are involved. Amendments are also made to data protection law. For example, the Bill specifies which personal data may be collected and processed without the express permission of the user and lays down rules that service providers must follow when collecting and processing such information. ■

Since the new broadcasting regulations shall provide for a transitional period for the adjustment of existing broadcasters to the new legal environment, the actual changes in Serbian broadcasting may be expected to come into force from September 2001. ■

and specific duties regarding information in relation to commercial communications. It also regulates service providers' responsibility for third-party information. The "country of origin" principle is at the centre of the proposed legislation. This means that national provisions governing Internet services in the country where they are based should be recognised by the other EU states. Service providers established in Germany should in future, therefore, only be subject to German law, even if they offer or provide their electronic services in other EU countries. However, a particular exception is made for consumer agreements. The Bill should also make it possible for arbitration agreements to be concluded electronically in cases where consumers are involved. Amendments are also made to data protection law. For example, the Bill specifies which personal data may be collected and processed without the express permission of the user and lays down rules that service providers must follow when collecting and processing such information. ■

sible, taking no account of the relationship between the price it charged and its own operating costs.

This anti-competitive practice was an example of so-called "predatory pricing" and excluded other competitors from the market. It was a form of suppressive competition which prevented other companies from entering the market. The company succeeded in eliminating effective competition. Once it had achieved a dominant market position, the company increased its prices by up to 289% on 1 January 2001 in order to recover its losses.

Jan Fučík  
Broadcasting  
Council  
Prague

This constituted a breach of Section 9.3 of Czech Act no.63/1991 on the protection of economic competition,

Decision of the Monopolies Commission no. 585/2000-1789/00-2320, 22 December 2000  
CS

## NL – Transposition of EC Directive on Comparative Advertising

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Helberger  
Institute for  
Information Law  
University  
of Amsterdam

By means of an amendment to the *Burgerlijk Wetboek* (Civil Code), Directive 97/55/EC of the European Parliament and of the Council of 6 October 1997 amending Directive 84/450/EEC concerning misleading advertising so as to include comparative advertising was transposed into Dutch law.

The Directive states that comparative advertising is, in principle, admissible in the European Community, provided a number of carefully defined criteria are met.

In order to transpose the Directive, a new Article 194a was added to the Dutch Civil Code, defining com-

*Aanpassing van Boek 6 van het Burgerlijk Wetboek aan richtlijn (EG) nr. 97/55 van het Europees Parlement en de Raad van 6 oktober 1997 tot wijziging van richtlijn nr. 84/450/EEG inzake misleidende reclame ten einde ook vergelijkende reclame te regelen (PbEG L 290) (Amendment of the 6th volume of the Civil Code in line with Directive 97/55/EC of the European Parliament and of the Council of 6 October 1997 amending Directive 84/450/EEC concerning misleading advertising so as to include comparative advertising) Voorstel van wet, Kamerstuk 2000-2001, 27619, nr. 1-2, Tweede Kamer, 22 February 2001*

NL

## PT – Lack of Legislation on Media Concentration

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On January 2001, the *Alta Autoridade para a Comunicação Social* (High Authority for the Media) has expressed concern regarding the “poor expression or non-existence” of regulation about horizontal, vertical and multi-media concentration in Portugal. The High Authority was asked by the *Direcção-Geral do Comércio e da Concorrência* (Government Competition Agency) to clarify its position on the recent acquisition of one of the most important Portuguese media groups, *Lusomundo*, by the biggest national telecommunications operator,

*Alta Autoridade para a Comunicação Social, Parecer pedido pela Direcção-Geral do Comércio e da Concorrência acerca da concentração PT/Lusomundo (aprovado na reunião plenária de 5 de Janeiro de 2001) (High Authority for the Media, Statement asked by the Government Competition Agency regarding the PT/Lusomundo concentration process, approved in the plenary session of 5 January 2001)*

PT

## RU – Bill on Amendments to the Advertising Law

Viktor  
Kravchenko  
Moscow Media  
Law and Policy  
Center

At its plenary session of 8 February 2001, the State Duma of the Russian Federation considered the draft law on the amendments to Article 11 of the Russian Federation Law “On Advertising”.

The draft law, which was submitted to the State Duma by the Astrakhan Regional Representative Assembly, makes alterations to paragraph 1 of Article 11 of the Russian Federation Law “On Advertising” (1995) by totally prohibiting the interruption of educational pro-

*Draft Law O vnesenii izmeneniy i dopolneniy v statju 11 Federalnogo Zakona “O reklame” (On the Amendments and Addenda to Article 11 of the Russian Federation Law “On Advertising”). Published in Zakonodatelstvo i praktika mass-media journal, 2, 2001.*

RU

which prohibits the abuse of dominant market positions.

The Monopolies Commission was inundated with complaints from viewers and decided to take action itself.

In its decision, the Monopolies Commission cited a number of rulings by the European Court of Justice concerning economic competition, which were binding on the Czech Republic because it was a candidate for EU membership. Accordingly, the Commission banned the company from abusing its dominant position and ordered it to pay a hefty fine. ■

parative advertising and explaining under what conditions – in accordance with the Directive’s provisions – it is allowed. For example, comparative advertising may not be misleading and any comparison must be made on the basis of objective, comprehensible criteria and specific features of the compared goods or services. It may not harm a competitor’s reputation or discredit its products or services. Furthermore, products must not be shown if they are imitations of other products bearing a protected trade mark. Article 194a concludes with specific regulations on special offers.

At the same time, the *Stichting Reclamecode* (a self-regulatory body including advertisers as well as media and consumer representatives) announced that the *Reclamecode* (advertising guidelines) would also be brought into line with the Directive’s provisions. Self-regulation plays a vital role in advertising in the Netherlands.

Article 195 of the Dutch Civil Code, which has also been amended, contains a change in the burden of proof in favour of anyone who relies on the aforementioned provisions in legal proceedings. From now on, the advertiser carries the burden of proof for the legitimacy of comparative as well as misleading advertising. ■

Portugal Telecom. *Lusomundo* group has significant interests in the distribution and exhibition of movies, television rights, video, video-games and the media, namely radio, press (national and regional) and cable television. Portugal Telecom, on the other hand, is the most important economic group in Portugal. By Portuguese standards, Portugal Telecom has exceptional financial capabilities and is rapidly expanding its activities to third countries (e.g. Brazil).

The economic importance of the Portugal Telecom group has led the High Authority for the Media to consider that the editorial integrity of media companies of the *Lusomundo* group might eventually be at stake. However, the High Authority recognises that it does not have the most adequate legal instruments at its disposal to make a more significant deliberation on the issue, and it states that it will follow this and other concentration processes with the utmost attention. ■

grams, radio shows and feature films by advertisements. In the current version of the Law, advertising during broadcasts of radio shows or feature films is allowed with the consent of the rightsholder.

This draft law also envisages a limit of two advertisement breaks in programs which last from 30 to 60 minutes (at present, this is the limit set for programs that last 15 to 60 minutes). In accordance with the draft law, the volume (sound) level of the advertisement shall not be louder than that of regular broadcasts.

The draft law passed its first reading with 275 deputies voting in favour, 73 against, and 1 deputy abstained from voting. The second reading of the draft law is planned for March 2001. ■

## TR – Copyright Act Amended

On 21 February 2001, the Turkish Parliament adopted *4630 sayılı Fikir ve Sanat Eserleri Kanunu* (Act no. 4630 on Intellectual and Artistic Works).

The new Act is a result of recent efforts to align existing laws with technological and socio-economic realities as well as to comply with relevant EC directives and international instruments such as TRIPs.

The new Act amends some articles of the Law no. 5846 on Intellectual and Artistic Works, in particular, the right of distribution including rental and lending, the right of communication to the public by any means of transmit-

**Hatice Dilek  
Baytan**  
European  
Audiovisual  
Observatory

**4630 sayılı Kanunla değişik 5846 sayılı Fikir ve Sanat Eserleri Kanunu (Act no. 5846 on Intellectual and Artistic Works amended by the Law no. 4630) of 22 February 2001**  
<http://www.tbmm.gov.tr/kanunlar/k4630.html>

TR

ting signs, sounds or images, the right of payment pertaining to the authors whose works are broadcast and/or transmitted by broadcasting organisations. The new Act increases the penalties in cases of infringement of related rights and the penalties aiming at preventing piracy, and revises the provisions concerning moral and economic rights for holders of related rights. In addition, it provides retroactive protection for works, performances and phonograms and protection for electronic rights, including fines and penalties. Due to the considerable importance attached by Turkey to Intellectual Property, new specialized courts are established to deal with cases concerning the legal relations governed by this Act.

For the effective implementation of the amendments, regulations on the procedures (e.g. the procedures applicable to the exploitation of works on radio and television broadcasts as stipulated in article 43 and the procedures regarding the works to be compiled for the purposes of protection and maintenance of cultural heritage and the organizations to carry out compilation transactions as stipulated in supplementary article 5) shall be prepared by the Ministry of Culture, the executive body for authors' rights and related rights. ■

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