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INTERNATIONAL

EFTA

Surveillance Authority: Competition Probe into Standard Film Rental Terms for Norwegian Cinemas

The EFTA Surveillance Authority has sent a statement of objections to the association of film distributors and an association of cinemas in Norway, thus formally opening competition proceedings against film rental practices believed to unlawfully restrict competition through the fixing of film rental prices.

In January 2002, *Norske Filmbyrårs Forening* (the Norwegian Film Distributor's Association) and *Film & Kino* (an association of mainly municipal cinemas) entered into film rental agreements laying down standard terms for the distribution of films to Norwegian cinemas. The agreements divide Norwegian cinemas into four categories according to their annual admission numbers and lay down differing fees and other conditions for the distribution of films to each of these categories of cinemas. The members of *Norske Filmbyrårs Forening* and *Film & Kino* are obliged to comply with the terms laid down in the film rental agreements.

The EFTA Surveillance Authority shares responsibility for the handling of competition matters with the European Commission under the competition (and built-in

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• "EFTA Surveillance Authority opens proceedings against the film rental practices between distributors and cinemas in Norway", EFTA Surveillance Authority Press Release PR (02) 29 of 20 December 2002, available at:
http://www.eftasurv.int/information/pressreleases/pr_2002/dbaFile2874.html

EN

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COUNCIL OF EUROPE

European Court of Human Rights: Case of Roemen and Schmit v. Luxembourg

At the origin of this case lies an article in the *Lëtzëbuerger Journal* in which Robert Roemen reported that a Minister was convicted of tax evasion, commenting that such conduct was all the more shameful coming from a public person who should set an example. The article reported that the Minister had been ordered to pay a tax fine of LUF 100.000 (nearly EUR 2.500). This information was based on an internal document that was leaked from the Land Registry and Land Property Office. The Minister lodged a criminal complaint and an investigation was opened in order to identify the civil servant(s) who had handled the file under a breach of confidence. Apart from carrying out searches at the journalist's home and workplace, the investigative judge also ordered a search of the office of the journalist's lawyer. Several applications lodged both by Roemen and Schmit because of the alleged violation of the protection of journalistic sources and the breach of confidentiality between the lawyer and her client (right of privacy) were dismissed. Finally, after the exhaustion of all domestic remedies, Roemen and Schmit lodged an application with the European Court of Human Rights.

The Court came to the conclusion that the searching of the journalist's home and office is to be considered as a violation of Article 10 of the European Convention on Human Rights. Confirming its case law, the Court considered that "having regard to the importance of the

protection of journalistic sources for press freedom in a democratic society and the potentially chilling effect an order of source disclosure has on the exercise of that freedom, such a measure cannot be compatible with Article 10 of the Convention, unless it is justifiable by an overriding requirement in the public interest" (see also ECourtHR 27 March 1996, Goodwin v. United Kingdom, par. 39 – see IRIS 1996-4: 5). The Court recognised that the searches carried out in the journalist's home and place of work were prescribed by law and pursued the legitimate aim of maintaining the public order and preventing crime. However, because the article had discussed a matter of general interest, the search interferences could not be compatible with Article 10 of the Convention unless they were justified by an "overriding requirement in the public interest". The Court was of the opinion that the Luxembourg authorities had not shown that the balance between the interests at stake had been preserved. The Court underlined that the search warrant gave the investigative officers very wide powers to burst in on a journalist at his place of work and gave them access to all the documents in his possession. The reasons adduced by the Luxembourg authorities could not be regarded as sufficient to justify the searches of the journalist's home and place of work. Therefore the Court came to the conclusion that the investigative measures at issue had been disproportionate and had infringed Roemen's right to freedom of expression.

The judgment also confirmed the Court's case law on the point that, in principle, the confidentiality of communication between a lawyer and his or her client falls under the protection of privacy as guaranteed by Article 8 of the Convention (see also ECourtHR 16 December 1992, Niemietz v. Germany). The Court considered that the search carried out by the Luxembourg judicial authorities at the lawyer's office and the seizure of a document had amounted to an unacceptable interference with her right to respect for her private life, and hence amounted to a violation of Article 8 of the Convention. The Court emphasised that the search carried out at Ms Schmit's office clearly amounted to a breach of the journalist's source through the intermediary of his lawyer. The Court held that the search had therefore been disproportionate to the legitimate aims pursued, particularly in view of the rapidity with which the search order had been carried out. ■

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• Judgment by the European Court of Human Rights (Fourth Section), case of Roemen and Schmit v. Luxembourg, Application no. 51772/99 of 25 February 2003, available at: <http://www.echr.coe.int>

FR

European Commission against Racism and Intolerance: Media Provisions of Six New Reports on Racism

The European Commission against Racism and Intolerance (ECRI) recently made public six new reports as part of the second cycle of its monitoring process of the laws, policies and practices to combat racism in the Member States of the Council of Europe. Each of the reports (Andorra (CRI (2003) 2), Azerbaijan (CRI (2003) 3), Liechtenstein (CRI (2003) 4), Lithuania (CRI (2003) 5), Moldova (CRI (2003) 6) and Sweden (CRI (2003) 7)) contains provisions on the media.

A recurrent theme in the reports is that of self-regulatory codes of conduct for the media profession. In Andorra, Azerbaijan and Moldova, ECRI "strongly supports the adoption and implementation" by media professionals of codes of conduct which would "favour a more responsible type of reporting". It hopes that the Press Code in Lithuania will be reviewed "to take into account the need to protect from negative stereotypes all minority groups within Lithuanian society".

These statements were prompted by concerns that the media in the countries in question had been showing tendencies to: (i) mention the nationality of the alleged perpetrators of crimes, even when this was not relevant to the crime itself; (ii) report on issues relating to minorities in a manner which, instead of contributing to a general climate of tolerance, was creating or exacerbating biased or stereotyped images of certain sections of society. In order to counter the former trend, ECRI encourages the media profession in Liechtenstein to "follow up" on existing codes of conduct. In order to curb the latter trend, ECRI similarly encourages the media profession in Sweden to implement relevant ethical codes for reporting and "to take further steps to 'mainstream' persons of minority origin in media reporting and in the media professions".

ECRI highlights that there is a legislative requirement in Moldova that 65% of the total duration of programming broadcast by the audiovisual media (public and private) should be in the national language (apart from programming targeting areas densely populated by national minorities). Notwithstanding the

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- "Council of Europe: Six new reports on racism", Press Release No. 204a(2003) of 15 April 2003, available at:
[http://press.coe.int/cp/2003/204a\(2003\).htm](http://press.coe.int/cp/2003/204a(2003).htm)

EN-FR

- All six of the ECRI reports mentioned in the article are available at:
http://www.coe.int/T/E/human_rights/Ecri/

EUROPEAN UNION

Court of Justice of the European Communities: Judgment on Misleading and Comparative Advertising

The *Oberster Gerichtshof* (the Austrian Supreme Court) referred a number of questions to the Court of Justice of the European Communities for a preliminary ruling regarding the interpretation of Council Directive 84/450/EEC on misleading and comparative advertising, as amended by Directive 97/55/EC. The questions arose in proceedings between the Austrian company *Pippig Augenoptik GmbH & Co. KG* ("Pippig") and the Austrian company *Hartlauer Handelsgesellschaft mbH* ("Hartlauer"). Both companies sell spectacles. *Pippig* markets the spectacles in three specialist opticians' shops and obtains its supplies from a number of different manufacturers, whereas *Hartlauer* is not supplied by the same suppliers as opticians are, but obtains the spectacles outside normal distribution channels, particularly by parallel import, and sells them in its department stores.

The dispute between the two companies concerns the comparative advertisement that *Hartlauer* published in an advertising leaflet and broadcast on Austrian radio and television channels. The advertisement compared the prices charged for spectacles by the two companies. This comparison was made by carrying out test purchases, which were conducted over six years. *Pippig* now claims that *Hartlauer's* comparative advertising is misleading and discrediting. In order to solve the dispute, the *Oberster Gerichtshof* sought interpretation of the Directive on

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- Case C-44/01, *Pippig Augenoptik GmbH & Co. KG v. Hartlauer Handelsgesellschaft mbH, Verlassenschaft nach dem verstorbenen Franz Josef Hartlauer*, Judgment of the European Court of Justice of 8 April 2003, available at:
<http://europa.eu.int/jurisp/cgi-bin/form.pl?lang=en&Submit=Submit&dorequire=all-docs&numaff=c-44%2F01&datefs=&datefe=&nomusuel=&domaine=&mots=&res-max=100>

- Directive of 10 September 1984 relating to the approximation of the laws, regulations and administrative provisions of the Member States concerning misleading advertising (84/450/EEC), OJ 1984 L 250 p. 17, available at:
http://europa.eu.int/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=31984L0450&model=guichett

- 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, OJ 1997 L 290 p. 18, available at:
http://europa.eu.int/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=31997L0055&model=guichett

DA-DE-EL-EN-ES-FI-FR-IT-NL-PT-SV

Council of the European Union: Directive on Advertising and Sponsorship of Tobacco Products Adopted

At its meeting of 27-28 March 2003, the Council of the European Union adopted at its first reading a Directive on

that the application of such legislation, particularly in relation to the granting or withdrawal of media licences, does not harm the development of the minority languages spoken in Moldova". In a similar vein, ECRI notes in its report on Lithuania that there has been a decrease in "the time allocated to television programmes on issues relevant to national minorities or in their languages". ■

misleading and comparative advertising by referring a number of questions to the Court of Justice for a preliminary ruling.

The Court ruled as follows. Article 7(2) of the Directive precludes the application to comparative advertising of stricter national provisions on protection against misleading advertising as far as the form and content of the comparison is concerned. There is no need to distinguish in the legislation between the various elements of the comparison, such as statements concerning the advertiser's offer, statements concerning the competitor's offer and the relationship between those offers.

With regard to the interpretation of Article 3a(1)(a), the Court decided that, although in principle the advertiser is free to state or not to state the brand name of rival products in comparative advertising, in some particular cases the omission of the brand name could be misleading: for instance, where the brand plays an important role in the consumer's choice or where there is a major difference in the fame of the brand names of the compared products. It is for the national court to verify if these particular circumstances are present.

Furthermore, with regard to the interpretation of Article 3a(1), the Court ruled that the article does not preclude compared products from being purchased through different distribution channels. Also, this article does not preclude an advertiser from carrying out a test purchase with a competitor before his own offer has even commenced, as long as the conditions for the lawfulness of comparative advertising set out in the article are complied with.

The Court held that a price comparison is not discrediting to the competitor, within the meaning of Article 3a(1)(e), either on the grounds that the difference in price between the products compared is greater than the average price difference, or by reason of the number of comparisons made. *Pippig* had argued that it was unfair that *Hartlauer* compared prices that implied a greater price difference than the actual average difference. Also, it argued that repeating the comparisons was discrediting, because repetition creates the impression that the competitor's prices are excessive. In addition, the article does not prevent the reproduction of the competitor's logo and a picture of its shop front in addition to citing its name, as long as the advertisement complies with the conditions for lawfulness laid down by Community law. ■

the advertisement and sponsorship of tobacco products. The Directive is based on the Commission's initial proposal of May 2001 with the addition of the two amendments voted by the European Parliament on 20 November 2002 (see IRIS 2003-1: 6). One of these amendments guarantees that Member States retain

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- Press Release no. 7685/03, 2499th Council Meeting (Transport, Telecommunications and Energy), Brussels, 27-28 March 2003, available at:
<http://ue.eu.int/pressData/en/trans/75264.pdf>
- Council Recommendation of 2 December 2002 on the prevention of smoking and on initiatives to improve tobacco control (2003/54/EC), Official Journal L 022 of 25 January 2003, available at:
http://europa.eu.int/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numpdoc=32003H0054&model=guichet

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the competence to regulate matters not covered by the Directive. These matters are, for instance, indirect advertising or the sponsorship of events or activities without cross-border effects.

The Directive aims at harmonising national regulations on tobacco advertising and sponsorship, in order to ensure the free movement of products and services. At present, the different provisions on advertising and sponsorship in Member States lead to barriers to the functioning of the Internal Market.

This problem has already been tackled as regards advertising on television, which is regulated by the "Television without Frontiers" Directive (the Directive imposes a total ban on tobacco advertising and sponsorship on television).

The new Directive regulates tobacco advertising in print media, radio broadcasting and information society services, imposing a total ban on it (with a few exceptions for print media and information society services). Also the sponsorship by tobacco companies of radio programmes and of events involving or taking place in more than one Member State (cross-boarder sponsorship) is prohibited. This includes the free or discounted distribution of tobacco products.

The new Directive replaces an earlier Directive on the advertising and sponsorship of tobacco products (98/43/EC). This Directive was annulled by the European Court of Justice on 5 October 2000 (see IRIS 2000-9: 4), because some of its provisions were not in conformity with the legal basis on which it had been adopted, namely article 95 of the EC Treaty.

On 2 December 2002, the Council also adopted a Council Recommendation on the prevention of smoking and on initiatives to improve tobacco control. This Recommendation complements the new Directive. ■

European Commission: Reasoned Opinion Sent to France for Failure to Comply with Cable and Full Competition Directives

On 8 April 2003 the European Commission sent a reasoned opinion to France regarding its failure to comply with two telecommunications Directives. France allegedly maintains special arrangements for the provision of telecommunication services by cable, despite its obligations under the Cable Directive and the Full Competition Directive.

The Cable Directive (95/51/EC) aims to remove restrictions imposed by Member States on the provision of telecommunication services over cable infrastructure

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- "Commission calls for equal treatment for cable networks in the provision of telecommunications services in France", Press Release of the European Commission of 9 April 2003, IP/03/520, available at:
http://www.europa.eu.int/rapid/start/cgi/guesten.ksh?p_action.gettxt=gt&doc=IP/03/52010RAPID&lg=EN&display=1

DE-EN-FR

(see IRIS 1996-2: 7). The Full Competition Directive (96/19/EC) aims to remove Member States' restrictions on the provision of telecommunication services in general. The two Directives in combination are intended to allow cable network operators to provide telephone and Internet access services over cable networks under the same conditions as other service providers. France, however, maintains separate regulatory requirements for the provision of telecommunication services over cable networks. First, the provision of telecommunication services over cable networks is subject to consultation with all municipalities concerned. Second, cable network operators are not charged on equal terms as other network operators for the use of public facilities.

The Commission sent a letter of formal notice to France in October 2002. If France does not comply with the reasoned opinion or does not reply within two months, the Commission could start infringement proceedings. ■

European Commission: Approval of Merger between Stream and Telepiù Subject to Conditions

On 2 April 2003, the European Commission approved, subject to conditions, the proposed acquisition by Australian company NewsCorp of the Italian pay-television operator Telepiù. NewsCorp already controls (jointly with Italian telecommunications operator Telecom Italia) Stream, the other existing pay-television company in Italy. Pursuant to the acquisition, Stream and Telepiù are to be merged into a combined satellite pay-TV platform, in which Telecom Italia will hold a minority stake. Clearance for the concentration comes after an in-depth investigation carried out by the Commission, as the operation raised a number of important competition concerns (see IRIS 2003-1: 5).

The merger will, indeed, create a quasi-monopoly in the Italian pay-TV market, as Stream and Telepiù are at present virtually the only providers of pay-TV services in Italy. However, neither of the two operators has ever been profitable, due to high programming costs coupled

with a limited rate of penetration of pay-TV in Italy. Whilst not accepting the application of the so-called "failing company defence" to this case (invoked by NewsCorp), the Commission has taken due account of the financial difficulties of both operators and of the specific characteristics of the Italian pay-TV market. Thus it has come to the conclusion that "authorising the merger, subject to appropriate conditions, would be more beneficial to consumers than the disruption that would have been caused by the likely closure of Stream, the smaller and weaker of the two existing operators".

The approval has been made subject to a number of conditions in order to ensure that the Italian pay-TV market remains open to competitors. These consist of both structural and behavioural undertakings submitted by NewsCorp, which the Commission has accepted as creating the necessary conditions for effective actual and potential competition.

A first set of undertakings relates to access to premium content and aims to ensure that competitors will be able to acquire rights to content such as block-

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buster films and sports. NewsCorp's commitments include, *inter alia*, limiting the duration of exclusivity contracts with content providers and waiving exclusive rights in relation to premium content for means of transmission other than satellite (e.g. terrestrial, cable, UTMS).

Secondly, NewsCorp has undertaken to grant satellite competitors access to its satellite platform and to offer all related technical services under fair and reasonable terms, as well as to grant licences of its Conditional Access System technology on a fair and

• "Commission clears merger between Stream and Telepiù subject to conditions", Press Release of the European Commission of 2 April 2003, IP/03/478, available at: http://europa.eu.int/rapid/start/cgi/guesten.ksh?p_action.gettxt=gt&doc=IP/03/478101RAPID&lg=EN

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non-discriminatory basis. It will also have to enter into simulcrypt agreements, if requested to.

Thirdly, NewsCorp has undertaken to divest the merged entity of Telepiù's terrestrial broadcasting activities and not to enter into any further DTT activities (neither as network nor as retail operator) in order to favour potential competition via this channel of transmission.

The commitments are due to remain in force until the end of 2011, although their duration may be shortened in light of future competition conditions. Their implementation will be ensured through an arbitration procedure in which the AGCOM (Italian Communications Authority) will play a major role.

As to the concerns raised with regard to telecoms markets (mainly broadband Internet access) the Commission has not come to the conclusion that the concentration will lead to the strengthening of a dominant position of Telecom Italia on these markets.

The Commission's clearance of the Stream-Telepiù merger comes shortly after the approval by Spanish authorities (also subject to strict conditions) of the merger between the two leading digital pay-TV platforms in Spain (see IRIS 2003-3: 10). ■

NATIONAL

BROADCASTING

BA – Automatic Extension of Broadcast Licenses

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On 20 March 2003, the Communications Regulatory Agency (CRA), a single state-level regulator, responsible for the broadcasting and telecommunications sector, announced that after the end of a two-year broadcasting period, known as Licensing Phase Two, the

• CRA's report on the future of broadcasting in Bosnia and Herzegovina, see press release of 20 March 2003, available at: <http://www.cra.ba/en/broadcast/reports/default.aspx?cid=2497>

EN

licenses of radio and television stations will be extended automatically. This on the basis that strict respect to the Broadcasting Code of Practice was adhered to in the past.

Commercial broadcasters will receive 10-year licenses, and public broadcasters two-year licenses. The shorter period for public stations results from the fact that the process of their privatisation is ongoing and the CRA plans to monitor their development. ■

BA – Controversies over RTV Pink BiH

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Recently, criticism has been raised regarding the Communications Regulatory Agency's (CRA) decision to issue a broadcasting license to RTV Pink BiH.

Belgrade-based TV Pink's Plus Programme is broadcast via Sarajevo-based NTV 99. In order to legalize its

• CRA's press release of 18 April 2003, available at: <http://www.cra.ba/en/public-affairs/pressr/default.aspx?cid=2556>

EN

broadcasts, TV Pink has registered its sister company in Bijeljina, north-east of Bosnia (*Republika Srpska*), under the name RTV Pink BiH.

The Association of Electronic Media BiH (AEM) criticized the CRA's decision because of the alleged low quality of the programming. The CRA has emphasized that its decision does not concern the allocation of new frequencies, but the transfer of licenses of local broadcasters – TV Kometa, TV Patria and TV GLS – to RTV Pink BiH, which would be in accordance with CRA rules and regulations. ■

BE – Total Ban on Political Advertising on Radio and Television

Since 1998 the Flemish Broadcasting Act has prohibited political advertising on radio and television (Article 80 para. 3 – see IRIS 1998-5: 13). The prohibition of political advertising on radio and television was integrated into the Flemish Broadcasting Act when the Flemish Parliament realised that the federal law on

electoral propaganda and the financing of political parties did not provide for such a prohibition. Nor was the provision in Article 81, no.1 of the Flemish Broadcasting Act that forbids advertising with a political tendency an effective rule for banning political advertising on radio and television, as political messages paid for by political parties were not considered as "advertising" according to the definition contained in the Flemish Broadcasting Act (and the Television Without Frontiers Directive).

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However article 80 para. 3, which was inserted into the Broadcasting Act in 1998, only prohibited messages paid for by political parties in order to promote the parties themselves. As a consequence, it seemed that the

• **Decreet houdende wijziging van artikel 80 § 3 van de decreten betreffende de radio-omroep en de televisie, gecoördineerd op 25 januari 1995 (Decree of 28 February 2003 modifying Article 80 para. 3 of the Broadcasting Act 1995), Le Moniteur belge/Het Belgisch Staatsblad, 21 March 2003, available at:**
http://www.just.fgov.be/cgi/article_body.pl?language=fr&caller=summary&pub_date=2003-03-21&numac=2003035304

FR-NL

CH – SRG Breaches Political Advertising Ban

The *Bundesamt für Kommunikation* (Federal Communications Office - *BAKOM*) has banned the *SRG* (Swiss public service broadcasting company) from broadcasting the TV commercial "Jetzt ein Stromausfall" ("And now a power cut") by the *Forum Stromversorgung Schweiz* (Swiss power supply forum). In the run-up to a referendum on two electricity-related petitions, the *BAKOM* ruled that the commercial constituted unlawful political advertising. The *SRG* was ordered to cease showing the commercial and to pay to the State the income it had received for broadcasting it.

The commercial shows a man and a woman in a lift. Both are hoping there will be a power cut. However, their wish is not met as the lift reaches its destination. The man and woman go their separate ways. A voice then says: "Water power and nuclear energy are an

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• **Order of the Bundesamt für Kommunikation (Federal Communications Office - BAKOM) of 14 March 2003 against SRG SSR idée suisse concerning political advertising, available at:**
<http://www.bakom.ch/imperia/md/content/deutsch/radiotv2/aufsichtsentscheide/48.pdf>

DE

DE – Court Rules on Alleged Unlawful Advertising in “Editorial” Reports

In a recently published ruling, the *Oberverwaltungsgericht Berlin* (Berlin Higher Administrative Court - *OVG*) gave its opinion on the question of which legal measures the *Medienanstalt Berlin-Brandenburg* (Berlin-Brandenburg Media Authority - *MABB*) could use against a TV broadcaster that had shown what it considered to be an extended advertising programme.

In the programme *ars vivendi*, a so-called "top gastronomic TV magazine programme", various restaurants and hotels in the Berlin and Brandenburg region have been featured in rapid succession since 1997; since the total length of the programme was increased from 30 minutes to around 1 hour, each report lasts between 5 and 9 minutes.

In the court's view, the reports, without exception, portrayed a positive image of the featured establishments. When hotels were featured, special emphasis was given to the attractive surrounding landscape, room décor, service and so on. The reports on restaurants focused in particular on the dishes they served. These images were accompanied by complimentary, positive remarks about the quality of their preparation. The

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• **Oberverwaltungsgericht Berlin (Berlin Higher Administrative Court), case no.: 8 B 13.00, ruling of 26 November 2002**

DE

possibility was left open for messages that would promote individual politicians or candidates for elections. After the *Vlaams Commissariaat voor de Media* (Flemish Media Authority) decided on 23 September 2002 that this kind of individualised political message was not covered by Article 80 para. 3 of the Broadcasting Act, the Flemish Parliament decided to reformulate and broaden the ban on political advertising. It was emphasised that in 1998 the legislator had had the intention to ban all political advertising on radio and television promoting political parties and individual politicians. The modification of Article 80 para. 3 that was passed by the Flemish Parliament on 19 February 2003 now contains a total ban on political advertising: Flemish radio and television broadcasters are not allowed to provide paid broadcasting time to political parties, elected officials or candidates for elections. ■

indispensable pairing if things are to stay like this". The Internet address of the *Forum Stromversorgung Schweiz* is also given.

On account of the proximity and relevance of the commercial to the referendum of 18 May 2003 on the "Strom ohne Atom" ("power without nuclear energy") and "Moratorium plus" petitions, the *BAKOM* classified it as unlawful political advertising. In the *BAKOM*'s view, advertising on subjects that are soon to be voted on infringes the ban on political advertising on radio and television if it is broadcast after the date of the vote has been announced.

In its order addressed to the *SRG*, the *BAKOM* states that the broadcast of the commercial breached the core provisions of the ban on political advertising. The main purpose of the ban is to prevent wealthy organisations from unilaterally influencing public opinion by paying for expensive TV advertising, thereby putting less well-off groups at a disadvantage. According to the *BAKOM*, advertising associated with referenda and elections, where the institutionalised development of public opinion is directly involved, is particularly targeted by the ban on political advertising. ■

reports were produced under a scheme whereby a company, a subsidiary of the TV broadcaster, made so-called "PR videos" for the featured hotels and restaurants, for which the latter had to pay a fee. It was partly disputed, according to the court, whether the reports that were broadcast were identical to the aforementioned videos in terms of length and content.

According to the *MABB*, which first expressed this view in 1997, these programmes constituted "extended advertising". The *Verwaltungsgericht Berlin* (Berlin Administrative Court - *VG*) had ruled in the broadcaster's favour in the previous proceedings. In a ruling of 15 April 1999, the *VG* had overturned the decision to query the admissibility of the programme and demand that it be labelled as an "extended advertising programme" (see IRIS 1999-6: 7).

The *OVG* rejected the *MABB*'s appeal against this decision. Like the *VG*, it did not believe that the provisions of the inter-state media agreement between the Berlin and Brandenburg *Länder* formed a sufficient basis to justify the action taken by the *MABB* that was disputed by the broadcaster. It was a legal requirement that broadcasters should label extended advertising programmes as such throughout the broadcast. However, the inter-state agreement did not stipulate that the regulatory authority should determine the nature of such a programme and order the broadcaster to label it accordingly. As for whether the reports constituted advertising, the *OVG* did not give an opinion on this question. ■

Copyright

(UPDATED WITH AVAILABLE DATA AS OF 15 APRIL 2003)

	WIPO Berne Convention for the protection of the literary and artistic works (1886)		WIPO Copyright Treaty (1996)			WIPO Performances and Phonograms Treaty (1996)			Declarations
	Date on which the State became Party to the Convention	Latest Act of the Convention to which the State is Party PA : Paris, BR : Bruxelles, RO : Rome, ST : Stockholm	Signatures	Ratifications and Accessions	Entry into force	Signatures	Ratifications and Accessions	Entry into force	
Member States of Council of Europe									
AD Andorra									
AL Albania	06/03/1994	PA : 06/03/1994						17/05/2001: A	20/05/2002
AM Armenia	19/10/2000	PA : 19/10/2000							
AT Austria	01/10/1920	PA : 21/08/1982	30/12/1997			30/12/1997			
AZ Azerbaijan	04/06/1999	PA : 04/06/1999							
BA Bosnia-Herzegovina	01/03/1992	PA : 01/03/1992							
BE Belgium	05/12/1887	PA : 29/09/1999	19/02/1997				19/12/1997		
BG Bulgaria	05/12/1921	PA : 04/12/1974		29/03/2001: A	06/03/2002			29/03/2001: A	20/05/2002
CH Switzerland	05/12/1887	PA : 25/09/1993	29/12/1997				29/12/1997		
CY Cyprus	24/02/1964	PA : 27/07/1983							
CZ Czech Republic	01/01/1993	PA : 01/01/1993		10/10/2001: A	06/03/2002			10/10/2001: A	20/05/2002
DE Germany	05/12/1887	PA : 10/10/1974 - PA : 22/01/1974	20/12/1996				20/12/1996		
DK Denmark	01/07/1903	PA : 30/06/1979	28/10/1997				28/10/1997		
EE Estonia	26/10/1994	PA : 26/10/1994	29/12/1997				29/12/1997		
ES Spain	05/12/1887	PA : 10/10/1974 - PA : 19/02/1974	20/12/1996				20/12/1996		
FI Finland	01/04/1928	PA : 01/11/1986	09/05/1997				09/05/1997		
FR France	05/12/1887	PA : 10/10/1974 - PA : 15/12/1972	09/10/1997				09/10/1997		
GB United Kingdom	05/12/1887	PA : 02/01/1990	13/02/1997				13/02/1997		
GE Georgia	16/05/1995	PA : 16/05/1995		04/07/2001: A	06/03/2002			04/07/2001: A	20/05/2002
GR Greece	09/11/1920	PA : 08/03/1976	13/01/1997				13/01/1997		
HR Croatia	08/10/1991	PA : 08/10/1991	15/12/1997	03/07/2000: R	06/03/2002	15/12/1997	03/07/2000: R	20/05/2002	
HU Hungary	14/02/1922	PA : 10/10/1974 - PA : 15/12/1972	29/01/1997	27/11/1998: R	06/03/2002	29/01/1996	27/11/1998: R	20/05/2002	
IE Ireland	05/10/1927	BR : 05/07/1959 - ST : 21/12/1970	19/12/1997				19/12/1997		
IS Iceland	07/09/1947	PA : 25/08/1999 - PA : 28/12/1984							
IT Italy	05/12/1887	PA : 14/11/1979	20/12/1996				20/12/1996		
LI Liechtenstein	30/07/1931	PA : 23/09/1999							
LT Lithuania	14/12/1994	PA : 14/12/1994		18/06/2001: A	06/03/2002			26/01/2001: A	20/05/2002
LU Luxembourg	20/06/1888	PA : 20/04/1975	18/02/1997				18/02/1997		
LV Latvia	11/08/1995	PA : 11/08/1995		22/02/2000: A	06/03/2002			22/03/2000: A	20/05/2002
MD Moldova	02/11/1995	PA : 02/11/1995	19/09/1997	13/03/1998: R	06/03/2002	19/09/1997	13/03/1998: R	20/05/2002	
MK TFyRoMacedonia	08/09/1991	PA : 08/09/1991							
MT Malta	21/09/1964	RO : 21/09/1964 - PA : 12/12/1977							
NL Netherlands	01/11/1912	PA : 30/01/1986 - PA : 10/01/1975	02/12/1997				02/12/1997		
NO Norway	13/04/1896	PA : 11/10/1995 - PA : 13/06/1974							
PL Poland	28/01/1920	PA : 22/10/1994 - PA : 04/08/1990							
PT Portugal	29/03/1911	PA : 12/01/1979	31/12/1997				31/12/1997		
RO Romania	01/01/1927	PA : 09/09/1998	31/12/1997	01/02/2001: R	06/03/2002	31/12/1997	01/02/2001: R	20/05/2002	
RU Russian Federation	13/03/1995	PA : 13/03/1995							
SE Sweden	01/08/1904	PA : 10/10/1974 - PA : 20/09/1973	31/10/1997				31/10/1997		
SI Slovenia	25/06/1991	PA : 25/06/1991		19/11/1999: R	06/03/2002	12/12/1997	19/11/1999: R	20/05/2002	
SK Slovakia	01/01/1993	PA : 01/01/1993	29/12/1997	14/01/2000: R	06/03/2002	29/12/1997	14/01/2000: R	20/05/2002	
SM San Marino			12/12/1997						
TR Turkey	01/01/1952	PA : 01/01/1996							
UA Ukraine	25/10/1995	PA : 25/10/1995		29/11/2001: A	06/03/2002			29/11/2001: A	20/05/2002
YU Serbia and Montenegro	27/04/1992	PA : 27/04/1992		13/03/2003: A	13/06/2003			13/03/2003: A	13/06/2003
Non Member States									
BY Belarus	12/12/1997	PA : 12/12/1997	08/12/1997	15/07/1998: R	06/03/2002	08/12/1997	15/07/1998: R	20/05/2002	
IL Israel	24/03/1950	BR : 01/08/1951 - ST : 26/02/1970	25/03/1997				25/03/1997		
MA Morocco	16/06/1917	PA : 17/05/1987							
MC Monaco	30/05/1889	PA : 23/11/1974	14/01/1997				14/01/1997		
TN Tunisia	05/12/1887	PA : 16/08/1975							
VA Holy See	12/09/1935	PA : 24/04/1975							
EC			20/12/1996				20/12/1996	20/12/1996	
Other States¹⁾									
AR Argentina	10/06/1967	PA : 19/02/2000 - PA : 08/10/1980	18/09/1997	19/11/1999	06/03/2002	18/09/1997	19/11/1999: R	20/05/2002	
AU Australia	14/04/1928	PA : 01/03/1978							
BR Brazil	09/02/1922	PA : 20/04/1975							
CA Canada	10/04/1928	PA : 26/06/1998	22/12/1997				22/12/1997		
CN China	15/10/1992	PA : 15/10/1992							
DZ Algeria	19/04/1998	PA : 19/04/1998							
EG Egypt	07/06/1977	PA : 07/06/1977							
IN India	01/04/1928	PA : 06/05/1984 - PA : 10/01/1975							
JP Japan	15/07/1899	PA : 24/04/1975		06/06/2000: R	06/03/2002			09/07/2002: A	09/10/2002 X
MX Mexico	11/06/1967	PA : 17/12/1974	18/12/1997	18/05/2000: R	06/03/2002	18/12/1997	17/11/1999: R	20/05/2002	
NZ New-Zealand	24/04/1928	RO : 04/12/1947							
TH Thailand	17/07/1931	PA : 02/09/1995 - PA : 29/12/1980							
US USA	01/03/1989	PA : 01/03/1989	12/04/1997	14/09/1999: R	06/03/2002	12/04/1997	14/09/1999: R	20/05/2002	X
ZA South Africa	03/10/1928	BR : 01/08/1951 - PA : 24/03/1975	12/12/1997				12/12/1997		

1) Selection

Copyright and others

(UPDATED WITH AVAILABLE DATA AS OF 15 APRIL 2003)

	UNESCO Universal Copyright Convention (Geneva, 1952)	WIPO-UNESCO-ILO Rome Convention ¹⁾ (26 October 1961)	WIPO-UNESCO-BIT Phonograms Convention, Geneva ²⁾ (29 October 1971)	WIPO-UNESCO Convention relating to the distribution of programme-carrying signals transmitted by satellite (21 May 1974)	WIPO Treaty on the international registration of audiovisual works (20 April 1989)	ESA/ASE Convention for the establishment of a European Space Agency (30 May 1975)			
	Ratification, Accession, and Declaration 1952 Text	1971 Text	Ratification or Accession	Declarations	Ratification Accession / Acceptance Declaration	Date on which State became Party to the Convention	Signature	Ratification / Accession	Date of ratification
Member States of Council of Europe									
AD Andorra	22/01/1953 : R								
AL Albania		01/09/2000 : A							
AM Armenia		31/01/2003 : A			13/12/1993				
AT Austria	02/04/1957 : R	14/05/1982 : A	09/06/1973 : R	X	21/08/1982 : R	06/08/1982			
AZ Azerbaijan	07/04/1997 : D			X	01/09/2001 : A	06/08/1982			
BA Bosnia-Herzegovina	12/07/1993 : D	12/07/1993 : D				06/03/1992			
BE Belgium	31/05/1960 : R		02/10/1999 : A	X					
BG Bulgaria	07/03/1975 : A	07/03/1975 : A	31/08/1995 : A		06/09/1995 : A				
CH Switzerland	30/12/1955 : R	21/06/1993 : R	24/09/1993 : A	X	30/09/1993 : R	24/09/1993			
CY Cyprus	19/09/1990 : A	19/09/1990 : A			30/09/1993 : A				
CZ Czech Republic	26/03/1993 : D	26/03/1993 : D	01/01/1993 : D	X	01/01/1993 : D				
DE Germany	03/06/1955 : R	18/10/1973 : R	21/10/1966 : R	X	18/05/1974 : R	25/08/1979			
DK Denmark	09/11/1961 : R	11/04/1979 : R	23/09/1965 : R	X	24/03/1977 : R				
EE Estonia			28/04/2000 : A		28/05/2000 : A				
ES Spain	27/10/1954 : R	10/04/1974 : R	14/11/1991 : R	X	24/08/1974 : R				
FI Finland	16/01/1963 : R	01/08/1986 : R	21/10/1983 : R	X	18/04/1973 : R				
FR France	14/10/1955 : R	11/09/1972 : R	03/07/1987 : R	X	18/04/1973 : R	20/04/1989			
GB United Kingdom	27/06/1957 : R	19/05/1972 : R	18/05/1964 : R	X	18/04/1973 : R	27/02/1991 : R			
GE Georgia						01/01/1993 : R			
GR Greece	24/05/1963 : A		06/01/1993 : A		09/02/1994 : A	22/10/1991			
HR Croatia	06/07/1992 : D	06/07/1992 : D	20/04/2000 : A		20/04/2000 : A	29/12/1989			
HU Hungary	23/10/1970 : A	15/09/1972 : R	10/02/1995 : A		28/05/1975 : A	08/10/1991			
IE Ireland	20/10/1958 : R		19/09/1979 : R	X		20/04/1989			
IS Iceland	18/09/1956 : A		15/06/1994 : A	X		07/08/1998 : A			
IT Italy	24/10/1956 : R	25/10/1979 : R	08/04/1975 : R	X	24/03/1977 : R	07/07/1981			
LI Liechtenstein	22/10/1958 : A	11/08/1999 : R	12/10/1999 : A	X	12/10/1999 : R				
LT Lithuania			22/07/1999 : A		27/01/2000 : A				
LU Luxembourg	15/07/1955 : R		25/02/1976 : A	X	08/03/1976 : R				
LV Latvia			20/08/1999 : A	X	23/08/1997 : A				
MD Moldova	18/04/1997 : D		05/12/1995 : A	X	17/07/2000 : A				
MK FYRoMacedonia	30/04/1997 : D	30/04/1997 : D	02/03/1998 : A	X	02/03/1998 : A	17/11/1991			
MT Malta	19/08/1968 : A								
NL Netherlands	22/03/1967 : R	30/08/1985 : R	07/10/1993 : A	X	12/10/1993 : A				
NO Norway	23/10/1962 : R	07/05/1974 : R	10/07/1978 : A	X	01/08/1978 : R	06/02/1979			
PL Poland	09/12/1976 : A	09/12/1976 : A	13/06/1997 : A	X		30/12/1986			
PT Portugal	25/09/1956 : R	30/04/1981 : A	17/07/2002 : A			14/11/2000			
RO Romania			22/10/1998 : A	X	01/10/1998 : A				
RU Russian Federation	27/02/1973 : A	09/12/1994 : A	26/05/2003 : A		13/03/1995 : A	20/01/1989			
SE Sweden	01/04/1961 : R	27/06/1973 : R	18/05/1964 : R	X	18/04/1973 : R				
SI Slovenia	05/11/1992 : D	05/11/1992 : D	09/10/1996 : A	X	15/10/1996 : A	06/04/1976			
SK Slovakia	31/03/1993 : D	31/03/1993 : D	01/01/1993 : D	X	01/01/1993 : D				
SM San Marino						01/01/1993 : R			
TR Turkey									
UA Ukraine	17/01/1994 : D		12/06/2002 : A		18/02/2000 : A				
YU Serbia and Montenegro			10/06/2003 : A		12/06/2003 : R	27/04/1992			
Non Member States									
BY Belarus	29/03/1994 : D								
IL Israël	06/04/1955 : R		30/12/2002 : A		01/05/1978 : R				
MA Morocco	08/02/1972 : A	28/10/1975 : A				30/06/1983			
MC Monaco	16/06/1955 : R	13/09/1974 : R	06/12/1985 : R	X	02/12/1974 : R				
TN Tunisia	19/03/1969 : A	10/03/1975 : R							
VA Holy See	05/07/1955 : R	06/02/1980 : R			18/07/1977 : R				
EC									
Other States³⁾									
AR Argentina	13/11/1957 : R		02/03/1992 : R		30/06/1973 : A				
AU Australia	01/02/1969 : R	29/11/1977 : A	30/09/1992 : A	X	22/06/1974 : A	26/10/1990			
BR Brazil	13/10/1959 : R	11/09/1975 : R	29/09/1965 : R		28/11/1975 : R				
CA Canada	10/05/1962 : R		04/06/1998 : A	X		21/12/1989			
CN China	30/07/1992 : A	30/07/1992 : A			30/04/1993 : A	*			
DZ Algeria	28/05/1973 : A	28/05/1973 : A							
EG Egypt					23/04/1978 : A	30/05/1989			
IN India	21/10/1957 : R	07/01/1988 : R			12/02/1975 : R	20/04/1989			
JP Japan	28/01/1956 : R	21/07/1977 : R	26/10/1989 : A	X	14/10/1978 : R				
MX Mexico	12/02/1957 : R	31/07/1975 : R	18/05/1964 : R		21/12/1973 : R	25/08/1979			
NZ New Zealand	11/06/1964 : A				13/08/1976 : A	20/04/1989			
TH Thailand									
US USA	06/12/1954 : R	18/09/1972 : R			07/03/1974 : R	27/02/1991 : R			
ZA South Africa									

* Canada is a cooperating state since 1979. The cooperation agreement is effective until 31 December 2009. – 1) International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations – 2) Convention for the Protection of Producers of Phonograms against Unauthorised Duplication of their Phonograms – 3) Selection

Council of Europe

(UPDATED WITH AVAILABLE DATA AS OF 15 APRIL 2003)

	European Convention on the Legal Protection of Services based on, or consisting of, Conditional Access (24 January 2001)				European Convention on the Protection of the Audiovisual Heritage (8 November 2001)				Protocol to the Convention of the Audiovisual Heritage, on the protection of Television Production (8 November 2001)				Convention on Cybercrime (23 November 2001)				Additional Protocol to the Convention on cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems (28 January 2003)			
	A	B	C	D	A	B	C	D	A	B	C	D	A	B	C	D	A	B	C	D
Member States of Council of Europe																				
AD Andorra																				
AL Albania													23/11/01							
AM Armenia													23/11/01				28/01/03			
AT Austria				05/06/02				05/06/02					23/11/01				30/01/03			
AZ Azerbaijan																				
BA Bosnia-Herzegovina																				
BE Belgium													23/11/01				28/01/03			
BG Bulgaria	21/11/02				08/11/01				08/11/01				23/11/01							
CH Switzerland	06/06/01												23/11/01							
CY Cyprus	25/01/02												23/11/01							
CZ Czech Rep.		27/11/02	01/07/03																	
DE Germany													23/11/01				28/01/03			
DK Denmark													22/04/03							
EE Estonia													23/11/01				28/01/03			
ES Spain																				
FI Finland													23/11/01				28/01/03			
FR France	24/01/01				14/03/02				14/03/02				23/11/01				28/01/03			
GB United Kingdom													23/11/01							
GE Georgia																				
GR Greece					08/11/01				08/11/01				23/11/01				28/01/03			
HR Croatia													23/11/01				26/03/03			
HU Hungary													23/11/01							
IE Ireland													28/02/02							
IS Iceland					08/11/01				08/11/01				30/11/01							
IT Italy													23/11/01							
LI Liechtenstein																				
LT Lithuania					04/11/02				04/11/02											
LU Luxembourg	09/04/01												28/01/03				28/01/03			
LV Latvia																				
MD Moldova	27/06/01	27/03/03	01/07/03										23/11/01				25/04/03			
MK FYRoMacedonia													23/11/01							
MT Malta													17/01/02				28/01/03			
NL Netherlands	14/05/02												23/11/01				28/01/03			
NO Norway	24/01/01	26/08/02	01/07/03										23/11/01							
PL Poland													23/11/01							
PT Portugal					08/11/01				08/11/01				23/11/01				17/03/03			
RO Romania	24/01/01				30/05/02				30/05/02				23/11/01							
RU Russian Federation	07/11/02																			
SE Sweden													23/11/01				28/01/03			
SI Slovenia													24/07/02							
SK Slovakia					17/02/03				17/02/03											
SM San Marino																				
TR Turkey																				
UA Ukraine													23/11/01							
YU Serbia and Montenegro																				
Non member States																				
BY Belarus																				
IL Israel																				
MA Morocco																				
MC Monaco																				
TN Tunisia																				
VA Holy See																				
EC																				
Other States																				
CA Canada													23/11/01							
JP Japan													23/11/01							
US USA													23/11/01							
ZA South Africa													23/11/01							

A: Signature - Accession (AC) - Acceptance (AP), **B:** Ratification, **C:** Entry into force - Denunciation (d), **D:** Reservation (RE) - Declaration (DE) - Territorial Declaration (TD)

Council of Europe

(UPDATED WITH AVAILABLE DATA AS OF 15 APRIL 2003)

	European Convention on Transfrontier Television (5 May 1989)				Protocol amending the European Convention on Transfrontier Television (9 September 1998)				European Convention on cinematographic co-production (2 October 1992)				European Convention relating to questions on copyright law and neighbouring rights in the framework of transfrontier broadcasting by satellite (11 May 1994)	
	A	B	C	D	B	C	A	B	C	D	A	B		
Member States of Council of Europe														
AD Andorra														
AL Albania	02/07/99													
AM Armenia														
AT Austria	05/05/89	07/08/98	01/12/98	DE	01/10/00	01/03/02	09/02/94	02/09/94	01/01/95	DE				
AZ Azerbaijan								28/03/00	01/07/00	DE/TD				
BA Bosnia-Herzegovina														
BE Belgium							19/02/98					06/08/98		
BG Bulgaria	20/05/97	03/03/99	01/07/99	DE	15/03/00	01/03/02								
CH Switzerland	05/05/89	09/10/91	01/05/93	RE/DE	01/10/00	01/03/02	05/11/92	05/11/92	01/04/94	DE		11/05/94		
CY Cyprus	03/06/91	10/10/91	01/05/93	DE	24/02/00	01/03/02	19/05/99	29/11/00	01/03/01			10/02/95	21/12/98	
CZ Czech Republic	07/05/99						24/02/97	24/02/97	01/06/97					
DE Germany	09/10/91	22/07/94	01/11/94	DE	01/10/00	01/03/02	07/05/93	24/03/95	01/07/95	DE		18/04/97		
DK Denmark							02/10/92	02/10/92	01/04/94	DE				
EE Estonia	09/02/99	24/01/00	01/05/00	DE	24/01/00	01/03/02	13/12/96	29/05/97	01/09/97	DE				
ES Spain	05/05/89	19/02/98	01/06/98	DE	01/10/00	01/03/02	02/09/94	07/10/96	01/02/97	DE		11/05/94		
FI Finland	26/11/92	18/08/94	01/12/94	RE/DE	01/10/00	01/03/02	09/05/95	09/05/95	01/09/95	DE				
FR France	12/02/91	21/10/94	01/02/95	DE	05/02/02	01/03/02	19/03/93	09/11/01	01/03/02	DE				
GB United Kingdom	05/05/89	09/10/91	01/05/93	DE/TD	01/10/00	01/03/02	05/11/92	09/12/93	01/04/94	DE		02/10/96		
GE Georgia							21/11/01	15/10/02	01/02/03					
GR Greece	12/03/90						17/11/95	24/06/02	01/10/02					
HR Croatia	07/05/99	12/12/01	01/04/02		12/12/01	01/04/02	02/10/01							
HU Hungary	29/01/90	02/09/96	01/01/97	RE/DE	01/10/00	01/03/02	24/10/96	24/10/96	01/02/97	DE				
IE Ireland							28/04/00	28/04/00	01/08/00	DE				
IS Iceland							30/05/97	30/05/97	01/09/97	DE				
IT Italy	16/11/89	12/02/92	01/05/93	DE	01/10/00	01/03/02	29/10/93	14/02/97	01/06/97	DE				
LI Liechtenstein	05/05/89	12/07/99	01/11/99	RE/DE	12/07/99	01/03/02								
LT Lithuania	20/02/96	27/09/00	01/01/01	DE	27/09/00	01/03/02	08/09/98	22/06/99	01/10/99	DE				
LU Luxembourg	05/05/89						02/10/92	21/06/96	01/10/96	DE		11/05/94		
LV Latvia	28/11/97	26/06/98	01/10/98	RE	01/10/00	01/03/02	27/09/93	27/09/93	01/04/94	DE				
MD Moldova	03/11/99	26/03/03	01/07/03	DE/TD										
MK FYROMacedonia	30/05/01			RE			11/04/02							
MT Malta	26/11/91	21/01/93	01/05/93	DE	01/10/00	01/03/02	17/09/01	17/09/01	01/01/02					
NL Netherlands	05/05/89						04/07/94	24/03/95	01/07/95	DE/TD				
NO Norway	05/05/89	30/07/93	01/11/93	RE/DE	01/10/00	01/03/02						11/05/94	19/06/98	
PL Poland	16/11/89	07/09/90	01/05/93	DE	01/10/00	01/03/02	25/05/99							
PT Portugal	16/11/89	30/05/02	01/09/02	TD			22/07/94	13/12/96	01/04/97	RE/DE				
RO Romania	18/03/97						24/04/01	28/03/02	01/07/02					
RU Russian Federation							30/03/94	30/03/94	01/07/94	DE				
SE Sweden	05/05/89						10/06/93	10/06/93	01/04/94	DE				
SI Slovenia	18/07/96	29/07/99	01/11/99	RE/DE	29/07/99	01/03/02								
SK Slovakia	11/09/96	20/01/97	01/05/97	RE/DE	01/10/00	01/03/02	05/10/93	23/01/95	01/05/95	DE				
SM San Marino	05/05/89	31/01/90	01/05/93		01/10/00	01/03/02						11/05/94		
TR Turkey	07/09/92	21/01/94	01/05/94		01/10/00	01/03/02	10/01/97							
UA Ukraine	14/06/96													
YU Serbia and Montenegro														
Non Member States														
BY Belarus														
IL Israël														
MA Morocco														
MC Monaco														
TN Tunisia														
VA Holy See	17/09/92	07/01/93	01/05/93	DE	01/10/00	01/03/02	10/02/93						26/06/96	
EC														

A: Signature - Accession (AC) - Acceptance (AP), **B:** Ratification, **C:** Entry into force - Denunciation (d), **D:** Reservation (RE) - Declaration (DE) - Territorial Declaration (TD) - Objection (O)

FR – CSA Redefines Conditions for Broadcasting Programmes Not to Be Shown to Children under the Age of 12

After stating and supplementing the existing arrangements for limiting the television broadcasting of "Category V" programmes, ie cinematographic works that may not be shown to people under the age of 18 years and pornographic or very violent programmes, (see IRIS 2003-4: 9), the *Conseil supérieur de l'audiovisuel* (audiovisual regulatory body – CSA) has now turned to those in Category III – works that are deemed not suitable for children under the age of 12 and works that may not be screened in cinemas to children under the age of 12. These programmes may not be broadcast in the 20:30h slot by any services that are not cinema or pay-per-view services.

Following on from a meeting with the management of the national channels, the CSA has redefined the conditions for broadcasting these programmes. An amendment incorporating these new arrangements will

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• Protection of minors – the CSA redefines the conditions for broadcasting Category III programmes, published on 31 March 2003, available at: http://prod-csa.integra.fr/actualite/decisions/decisions_detail.php?id=11974

FR

therefore be added to the current agreements with the national channels; the agreements with future channels or new agreements with cable and satellite channels already in existence will also include the new arrangements.

After discussion in plenary on 11 March 2003, the CSA decided to maintain the extension of the absolute ban on Category III programmes in the early evening during all school holidays and on Tuesdays, Fridays, Saturdays and the night before public holidays. Although there is already the possibility of waiving on four occasions the ban on broadcasting such works in the 20:30h slot, the CSA states that only cinematographic works designated as not to be shown to children under the age of 12 by the Minister with responsibility for culture will be counted for these four exceptions.

On the subject of the exceptional broadcasting of programmes in this category, and in order to define the slots for these broadcasts, the phrase "before 22:00h" contained in the agreements with the channels will be replaced by the phrase "after 20:30h". In addition, the criteria for the exceptional broadcasting of programmes in this category early in the evening will be defined in a recommendation to be published shortly. Nevertheless, the CSA decided against requiring the broadcasting of a specific warning for this type of programme.

The working party on the «protection of young people and programming ethics» was also given the task of holding regular meetings with channel management to examine after the event their practices in the exceptional broadcasting of programmes in this category in the early part of the evening's viewing. ■

GB – Regulator Rejects Appeal Against Decision that Programme Funding by the European Commission Breaches Sponsorship Code

The Independent Television Commission has rejected an appeal against an earlier decision by its staff that European Commission funding for a programme on the Euro breached its Sponsorship Code (see IRIS 2000-10: 7). The programme was in CNBC's "Euro Change" series, which had been partially funded by the European Commission. According to the Independent Television Commission's staff, it was a current affairs programme, and under the Code of Programme Sponsorship current affairs programmes may not be sponsored. This prohibition is to ensure that news and current affairs programmes are both free from external influence and clearly seen to be free from such influence.

CNBC Europe maintained that the programme was not current affairs, and that the ban on sponsorship was not relevant to the European Commission as the latter is a "public administration" and not a "public undertaking" in the context of the "Television Without Frontiers" Directive underpinning the Code. Moreover, the European Commission was not promoting itself or the Euro and so was not sponsoring the programme.

The Independent Television Commission distinguished

between current affairs programmes and instructional programmes to consumers which may be sponsored, or public information advertisements and programmes which may be funded by the UK Government, the European Commission or other public bodies so long as they are purely informational, impartial and properly labelled. It concluded that in a UK context the programme was a current affairs programme, defined in the Code as including the explanation and analysis of current events and issues, or material dealing with political controversy or current public policy. The Code also defines a sponsor as "any organisation or person, other than the broadcaster..., who is sponsoring the programme in question with a view to promoting their goods or services." This was consistent with the Directive, especially as the purposes of the European Commission's funding programme were described as including "increasing confidence" in the Euro. Therefore the European Commission was seeking to promote its activities through sponsorship.

The Independent Television Commission stressed that it was of paramount importance that news and current affairs programmes are editorially independent and not subject to sponsorship by governments or any other body. However, public bodies such as the European Commission could fund instructional programmes to consumers, non-political advertisements (such as those on road safety and fire prevention) and public information films, so long as the latter are informational and impartial rather than controversial and are properly labelled. ■

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• ITC Reminds Broadcaster: No Sponsorship of Current Affairs Programmes", Independent Television Commission News Release 21/03, 31 March 2003, available at: http://www.itc.org.uk/latest_news/press_releases/release.asp?release_id=692
• ITC Code of Programme Sponsorship available at: http://www.itc.org.uk/itc_publications/codes_guidance/programme_sponsorship/index.asp

GB – Regulator Fines Channel for Misleading Advertisements and for Presenting Advertisements as Programmes

The Independent Television Commission has fined a "lifestyle channel", You TV, GBP 20,000 for broadcasting

misleading advertisements and passing off what were, essentially, advertisements for produced programmes. This had resulted in breaches of the Commission's Programme Code and Code of Advertising Standards.

You TV is a satellite channel, launched in June 2002,

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and sister channel to Shop America. It covers issues mainly concerning health, beauty and the mind and maintains that it is not a teleshopping channel but a programme service, and wishes to remain such a service. The Commission had warned it in the past about blurring the boundaries between programmes and advertising

- "ITC Imposes £20K Financial Penalty on You TV", **Independent Television Commission**, News Release 20/03, 24 March 2003, available at: http://www.itc.org.uk/latest_news/press_releases/release.asp?release_id=691
- ITC Advertising Standards Code, available at: http://www.itc.org.uk/itc_publications/codes_guidance/advertising_standards_practice2/index.asp
- ITC Programme Code, available at: http://www.itc.org.uk/itc_publications/codes_guidance/programme_code/index.asp

but was still concerned that programmes were not independent and editorially free of commercial considerations. A programme featuring the owner and marketer of a weight loss product had been repeated on at least three occasions, despite being found to breach the Programme Code as it was used to market and promote the product. A further programme was used to market and promote self-help tapes and material.

In addition, three teleshopping advertisements were misleading; two had already been transmitted on "Shop America" and found to be in breach of the Code of Advertising Standards. They concerned a memory improvement system (the advertisement was misleading and contained inaccurate pricing), an inflatable mattress (the advertisement made unsubstantiated claims) and a golf improvement system (the advertisement made unqualified guarantees and breached the rules on price comparisons).

The fines were considered justified in view of the number and seriousness of the breaches and their repeated nature, and in addition because a company within You TV's group had profited as a result of the code breaches. ■

IE – Legislation on Major Events

The Broadcasting (Major Events Television Coverage) (Amendment) Bill 2003 has been passed by both Houses of the *Oireachtas* (Parliament). The Act is in response to the long-running controversy over the sale by the Football Association of Ireland (FAI) of the rights to live coverage of Ireland's home soccer matches to Sky Television for showing on a pay-per-view basis. An Act of 1999 allowed the Minister for Communications to draw up a list of designated events for showing on free-to-air television, but that was not done until 2002 when the FAI/Sky deal provided the impetus (see IRIS 2002-10: 9). The list of designated events was published in October 2002 and the Minister signalled that he would introduce amending legislation, effectively to provide a mechanism to deal retrospectively with deals such as the FAI/Sky one and to strengthen the existing legislation. The amending legislation was introduced in February 2003, was passed by both Houses in April 2003 and was signed into law by the President on 25 April 2003.

Section 2 makes clear that the Act applies to events designated both before and after the passing of the Act, whether or not an agreement or arrangement has been entered into between the event organiser and a broadcaster. An agreement or arrangement entered into before the passing of the Act is covered, provided it

was entered into after the publication of the Television without Frontiers Directive and concerns an event taking place after 13 November 1999, the date on which Article 3a of the Directive was given effect to in Ireland by the Broadcasting (Major Events Television Coverage) Act 1999.

The High Court is given a central role in implementing the new legislation (section 4). Qualifying broadcasters (that is, free-to-air broadcasters) can apply to the High Court for an order to allow them to provide coverage of a designated event upon terms to be fixed by the Court. The Court can appoint an arbitrator to determine reasonable market rates, in accordance with the criteria set out in the Act (section 6). The inclusion of an arbitration mechanism was urged by many sporting organisations during the consultation process.

Where the High Court has fixed the terms and there is more than one qualifying broadcaster interested, the event organiser can choose which of them shall have the rights. In situations where an existing contract is in place between an event organiser and a non-qualifying broadcaster (that is, one that is not free-to-air), as in the FAI/Sky case, the High Court, on application to it by a qualifying broadcaster, shall decide to whom and in what proportion monies in respect of reasonable market rates should be paid. The Court may, if it considers it necessary, adjust an existing agreement or arrangement.

The Act also provides for periodic review of designated events and the designation of events (section 9). ■

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- **Broadcasting (Major Events Television Coverage) (Amendment) Act 2003, 25 April 2003**, available at: <http://www.gov.ie/bills28/bills/2003/1003/b10c03d.pdf>

RO – Information Obligation for Sanctioned Broadcasters

In future, whenever the *Consiliul Național al Audiovizualului* (Romanian National Audiovisual Council – CNA) reprimands or sanctions a TV or radio broadcaster, the broadcaster concerned will be obliged, according to CNA Decision No. 52/2003, to provide its viewers or listeners with accurate, prompt information about the reason for and form of the punishment. In the case of TV broadcasters, a statement must be broadcast within 24 hours of the decision being announced by the CNA, at least three times between 6 pm and 10 pm and at least once in a main news bulletin. Sanctioned radio broadcasters must also broadcast a similar statement to

their listeners within 24 hours of the CNA decision being announced, at least three times between 6 am and 2 pm and at least once in a main news bulletin. In accordance with Article 91 of Audiovisual Act No. 504/2002, failure to comply with these regulations may result in the CNA imposing fines of between ROL 25,000,000 and ROL 250,000,000 (approx. EUR 683.86 and EUR 6,838.64).

CNA Decision No. 52/2003 revokes Decision No. 135/1999, published in Official Gazette No. 207 of 11 May 2000.

One of the first TV broadcasters to be affected by the new rule was the commercial channel "PRIMA TV", which received an official warning (*somatie publică*, similar to the French *sommation publique*) from the CNA because programmes from the *Big Brother* series broadcast after

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● **Decizia nr. 52/2003 privind obligația radiodifuzorilor de a aduce la cunoștință publicului somâfile și sacrificiile aplicate de CNA**, CNA Decision No. 52/2003, available at:
<http://www.cna.ro/eng/decisions/d05203.html>

RO

FILM

DE - Bill Amending Film Support System Tabled

On 2 April 2003, the Federal Government Minister for Culture and Media tabled a draft new *Filmförderungsgesetz* (Film Support Act - *FFG*). The main aim of the proposed new Act is to adapt the film support system to today's economic climate. Overall, according to the accompanying explanatory memorandum, the current situation of the German film industry is "difficult". This is due to a host of reasons, such as financing problems caused by increasing caution amongst banks, rising production and marketing costs all over the world and a general lack of market growth.

The *Entwurf des neuen Filmförderungsgesetzes* (Draft Revised Film Support Act - *FFG-E*) aims to increase the funds available for reference film aid and marketing support (see IRIS Plus 2001-4: 2) and to broaden the remit of the *Filmförderungsanstalt* (Film Support Institute - *FFA*). Funding levels are to be raised through a statutory 1% increase in the rate of cinema and video taxes (paras. 66 and 66a *FFG-E*). With the proviso that the federal government is satisfied that this system is compatible with state aid law (see explanatory memorandum, para. 66

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● **Referentenentwurf und Begründung** (Bill and explanatory memorandum), available at:
<http://www.bundesregierung.de/Regierung/Beauftragte-fuer-Kultur-und-Me-,9848/Entwurf-FFG-Novelle.htm>

● Press release No. 146 of 2 April 2003, available at:
<http://www.bundesregierung.de/Nachrichten-,417.476994/Kulturstaatsministerin-Weiss-D.htm>

DE

including numerous obscene expressions and gestures and imitation of sexual acts. As stated in the *CNA* Communiqué of 9 April 2003, the broadcast of this programme infringed the provisions of *CNA* Decision No. 57/2003 on the protection of minors. ■

FFG-E), consideration will be given to the European Commission's demand that films produced in other Member States of the European Union should be exempt from these taxes. However, as well as this statutory rise in funding, the TV companies' pledge to increase their voluntary film aid contributions for the next *FFG* period is also significant. The public service broadcasters have already said they are prepared to double their contributions, which currently amount to EUR 11.2 million. Private broadcasters, meanwhile, will increase their commitment in the form of benefits in kind, e.g. prime-time film trailers or other forms of advertising. A corresponding agreement, to be drawn up in accordance with the newly added para. 67.1.1 *FFG-E* as a basis for these payments, should be concluded between the TV companies and the *FFA* before the new Act is adopted.

The Bill also makes provision for the creation of a new advisory body (para. 2a *FFG-E*). The German Film Council, to be chaired by the Minister for Culture and Media, will draw up fundamental film policy recommendations, evaluate the film support system and recommend general measures for individual organisations, institutions and associations. This is meant to ensure that politicians, sponsors and members of the film industry continually exchange ideas about film policy. All in all, the Minister for Culture and Media hopes that the revised Act will provide a new impetus for structural improvements to the film industry and a decisive impact on the quality and success of German cinema films. The Act is expected to enter into force on 1 January 2004. ■

NEW MEDIA/TECHNOLOGIES

AL - The Strategy of the Information Technologies is Approved

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Albanian Parliament

On 10 April 2003 the Albanian Government approved the *Strategjia Kombetare e Teknologjive te Informacionit dhe Komunikimit* (National Strategy of the Information and Communications Technologies), a document which

● **Strategjia Kombetare e Teknologjive te Informacionit dhe Komunikimit** (National Strategy of the Information and Communications Technologies) of 10 April 2003

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supports the government's program for the country's development until 2005.

The "Strategy" determines ways for the effective use of new information technologies and means of communication, in order to nurture the economic capacities as well as to develop the democratic reforms regarding the Association and Stabilization Agreement between Albania and the European Union.

The "Strategy" is expected to be passed by the Parliament to enable the compilation of a governmental working document. ■

RELATED FIELDS OF LAW

AT - Film Music Composer's Right to Credits Amendment

In a recently publicised case, the *Oberster Gerichtshof* (Supreme Court - *OGH*) recognised the right of a film music composer to have a list of credits amended, even though the list had previously been contractually agreed.

The plaintiff in the dispute heard by the *OGH* is a composer who, along with two other composers, wrote the music for a 90-minute film. In the end, only 4 minutes and

8 seconds of the music composed by the plaintiff was used. The film, including the credits, was played in the plaintiff's presence. In the credits, the plaintiff and the other two composers were named under the heading "Music". There was no indication as to which part of the soundtrack had been written by the plaintiff, nor of the fact that his composition accounted for a total of only 4 minutes and 8 seconds. After the director and producer had handed the film over to the commissioning broadcaster, the plaintiff announced that he did not want to be

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• Ruling of the *Oberster Gerichtshof* (Supreme Court) of 16 July 2002, case no.: 4 Ob 164/02z, available at: <http://www.ris.bka.gv.at/taweb-cgi/taweb?x=d&o=d&v=jus&d=JUST&i=70138&=1&q=%28JJT/20020716/OGH0002/0040OB00164/02Z0000/000%29%3ADOKNR>

DE

named as one of the composers of the music in the film.

The *OGH* ruled in the composer's favour. It reasoned that the naming of the author (Art. 20 of the *Urheberrechts-*

gesetz - Copyright Act) constituted the outwardly visible exercise of his inalienable right to claim authorship of his work (Art. 19 of the Copyright Act). However, it was questionable whether or under what circumstances an author could subsequently amend such a credit. Although the *OGH* accepted that a tacit agreement had been reached, under which the plaintiff would be named in the film credits as one of several composers of the music, it recognised in this case the composer's right to amend this agreement unilaterally at a later date. It concluded that a composer should be allowed to withdraw consent for his name to be used if he did not wish (or no longer wished) to be associated with the music of other composers which, in his opinion, was "of extremely poor quality". ■

DE – Constitutional Court Overturns Shock Advertising Ruling Again

The highest German courts still cannot agree on the meaning and scope of human dignity as a restriction on freedom of expression. In a decision of 11 March 2003, the *Bundesverfassungsgericht* (Federal Constitutional Court - *BVerfG*) quashed a ruling made on 6 December 2001 by the *Bundesgerichtshof* (Federal Supreme Court - *BGH*) in a dispute relating to competition law (see IRIS 2002-2: 14) and referred the case back to the *BGH* for a review. In the same case, on 12 December 2000 the *BVerfG* had overturned and referred back the *BGH*'s first ruling of 6 July 1995 (see IRIS 2001-2: 13). The *BGH* had subsequently issued a further decision, which has now been quashed.

The dispute concerns an advertisement for the Benetton company, depicting part of a naked human bottom on which the words "H.I.V. Positive" were stamped. Below the image, on the right hand side, were the words "UNITED COLORS OF BENETTON". Both courts agree that this advertisement could (also) be interpreted as a criticism of society, while at the same time serving a selfish commercial purpose. However, they draw different conclusions to the question of whether the dignity of AIDS sufferers is breached by the image. While the *BGH* believes it infringes human dignity, which is protected by Article 1.1 of the *Grundgesetz* (Basic Law - *GG*), the *BVerfG* disagrees.

The *BGH*'s view was essentially based on the argument that this "shock advertising" exploited the affliction of HIV sufferers and their stigmatisation by society for economic advantage. AIDS sufferers and their fate were

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• Ruling of the *Bundesverfassungsgericht* (Federal Constitutional Court), 11 March 2003, case no.: 1 BvR 426/02, available at: http://www.bverfg.de/entscheidungen/rs20030311_1bvr042602

DE

FR – Presentation of Preliminary Bill on Electronic Communications

After public consultation last autumn, during which all the parties concerned had an opportunity of airing their concerns (see IRIS 2002-10: 8), the Ministry of Culture and Communication and the ministry with responsibility for industry has now drawn up a preliminary bill on electronic communications. This is part of a very wide-ranging reform of the regulations that apply to telecommunications activities embarked on at European level in 1999 and which includes the adoption on 7 March 2002 of six directives and one decision, often referred to collectively as the "telecoms package" (see IRIS 2002-3: 4-5), which the bill would transpose into national law. This text pursues the Community's objectives, namely the elaboration of a harmonised framework of regulations for all electronic communications networks (both audiovisual and telecommunications), the content supplied on the two networks remaining subject to separate schemes, and confirmation of the aim of establishing effective competition right across the board for electronic communications. The present article will

portrayed as objects that could be used to generate profit through advertising. Attention-grabbing advertisements that exploited people's suffering for commercial advantage were incompatible with Article 1.1 of the *GG*. An appeal for solidarity with people in need was cynical and breached their right to respect and human solidarity if it was linked to a commercial strategy designed to increase business turnover in a completely unrelated field.

The *BVerfG* has now decided that the *BGH*'s ruling breaches a fundamental right of the plaintiff, a press firm, enshrined in Art. 5.1.2 of the Basic Law (freedom of the press). Under the freedom of the press, the company was entitled to rely on the freedom of expression guaranteed in Art. 5.1.1 of the Basic Law. The freedom of the press covered third-party opinions contained in advertisements. In its assessment of the advertisement with regard to competition law, the *BGH* had misjudged the meaning and scope of human dignity as a restriction on freedom of expression. In fact, human dignity set an absolute limit on freedom of expression. If an opinion expressed in an advertisement infringed human dignity, it was inadmissible regardless of any breach of competition law. However, since fundamental rights were, on the whole, practical expressions of the principle of human dignity, a specific reason would always need to be given for any decision that the exercise of a fundamental right was in breach of human dignity, which was sacrosanct. Using this yardstick, the attention-grabbing nature of the advertisement did not, on its own, mean that it breached human dignity. The advertisement itself merely drew attention to the suffering of the people concerned and left it to members of the public to draw their own interpretation. The fact that the advertiser also sought to profit from the public attention created by the image did not justify the harsh accusation that it had breached human dignity. ■

not cover the changes concerning telecommunications networks and services, but only those concerning sound broadcasting and television. On this point, the bill would modernise and relax the provisions of the Audiovisual Communication Act of 30 September 1986 concerning the infrastructures for broadcasting radio and television services, while upholding its basic principles.

In an effort to clarify the ambit of the regulatory bodies, the text affirms firstly the principle of the competence of the *Conseil supérieur de l'audiovisuel* (audiovisual regulatory body - CSA) for all radio and television services, whatever their mode of transmission or distribution. The procedures for attributing radio-electric resources would be modernised, notably by reducing the time taken to examine the procedures for allocating frequencies for sound radio services. Moreover, Article 58 of the bill would open up the possibility of extending the role of the radiophonic technical committees to local television companies for examining applications for authorisation and the monitoring of their obligations. Lastly, with a view to keeping up with developments in the radio sector and introducing a flexibility that is not at present permitted by *Conseil*

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d'État precedent, Article 78 would make it possible for the CSA to authorise radio stations to change category between Category C (franchises of national networks) and Category D (themed music networks).

The legal scheme for public- and private-sector operators would also be made more flexible. The bill would reform the arrangements of the 1986 Act by harmonising and simplifying the scheme applicable to the distribution of services by cable and satellite. Firstly, it would put an end to the scheme of prior authorisation by municipalities or groupings of municipalities for the establishment of cable networks, replacing it by a straightforward advance declaration to the CSA. Secondly,

• **Projet de loi sur les communications électroniques : 2003 (2003 Electronic Communications Bill), available at:**
<http://www.ddm.gouv.fr/actualites/88.html>

• **CSA communiqué no. 527 dated 3 April 2003, available at:**
http://www.csa.fr/actualite/communiques/communiques_detail.php?id=12064

FR

it defines a harmonised scheme for the distribution of services for all communication supports. Terrestrially broadcast digital television would nevertheless still remain outside this evolution, to take account of the scarcity of frequencies for terrestrial broadcasting, which calls for specific provisions.

Lastly, the market for technical terrestrial broadcasting would be wider open to competition. Apart from the measures adopted within the Post and Telecommunications Code, the transposition of the directives implies ending the monopoly enjoyed at present by the company Télédiffusion de France for broadcasting the national programme companies terrestrially in analog mode. The reference to the company in the 1986 Act would therefore be deleted, which means that this would fall completely into the public domain, creating the conditions for competition on an equal footing.

Apart from these rearrangements, the preliminary bill still needs to be completed with measures on the extension of the CSA's powers in terms of economic regulations and arrangements in support of the development of local television. Before expressing its opinion, and with a view to consultation, the CSA launched an appeal on 3 April in order to gather the comments of those parties in the audiovisual communication sector concerned by the preliminary bill. ■

RU – Regulation on Access to Information ERRATUM

In IRIS 2003-4: 15 we published an article on the above-mentioned regulation, in which we incorrectly stated 12 December 2003 as the date of its adoption. The correct date is 12 February 2003.
We apologize for the error.

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AGENDA

Medienforum.nrw 2003 – Herausforderungen an die audiovisuelle Politik der Beitrittsländer

24 June 2003
Organiser: Landesanstalt für Medien Nordrhein-Westfalen (LfM),
Institut für Europäisches Medienrecht (EMR)
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