



DIREKTORENKONFERENZ
DER
LANDESMEDIENANSTALTEN

DIRECTORS' CONFERENCE
OF THE
STATE MEDIA AUTHORITIES

Interstate Treaty

on

Broadcasting and Telemedia

(Interstate Broadcasting Treaty)

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The Interstate Treaty on Broadcasting and Telemedia (Interstate Broadcasting Treaty), in German: Staatsvertrag für Rundfunk und Telemedien (Rundfunkstaatsvertrag) is the central component of the Interstate Treaty on Broadcasting in Unified Germany (Staatsvertrag über den Rundfunk im vereinten Deutschland) from 31 August 1991 as amended most recently by the Ninth Interstate Treaty for Amending the Interstate Treaties with Regard to Broadcasting Law (Neunter Staatsvertrag zur Änderung rundfunkrechtlicher Staatsverträge – Neunter Rundfunkänderungsstaatsvertrag) from 10 October 2006.

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MITGLIEDER:

Landesanstalt für Kommunikation Baden-Württemberg (LfK) - Bayerische Landeszentrale für neue Medien (BLM) - Medienanstalt Berlin-Brandenburg (MABB) - Bremische Landesmedienanstalt - Medienanstalt Hamburg Schleswig-Holstein (MA HSH) - Hessische Landesanstalt für privaten Rundfunk (LPR) - Landesrundfunkzentrale Mecklenburg-Vorpommern (LRZ) - Niedersächsische Landesmedienanstalt (NLM) - Landesanstalt für Medien Nordrhein-Westfalen (LfM) - Landeszentrale für Medien und Kommunikation (LMK) Rheinland-Pfalz - Landesmedienanstalt Saarland (LMS) - Sächsische Landesanstalt für privaten Rundfunk und neue Medien (SLM) - Medienanstalt Sachsen-Anhalt (MSA) - Thüringer Landesmedienanstalt (TLM)

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Preamble

This Interstate Treaty contains the basic regulatory framework for public service and commercial broadcasting in a dual broadcasting system of the federal States in unified Germany. It takes account of the development of the broadcasting sector in Europe.

Public service broadcasting and commercial broadcasting are committed to the free formation of individual and public opinion and the plurality thereof. Both broadcasting systems must be able to meet the demands of national and international competition.

In the course of the increase in broadcasting channels in Europe due to new technologies the plurality of information and cultural offerings should be increased in the German-speaking regions. By means of this Interstate Treaty, but in particular through further regulatory and promotional measures in the Federal Republic of Germany, continuing support will be given for the creation of new European television productions.

The existence and development of public service broadcasting must be guaranteed. This includes its participation in all new technical means of production and transmission and in the provision of new forms of broadcasting. Its financial basis, including

the financial equalisation, must be maintained and ensured.

Commercial broadcasters are enabled to extend and develop a commercial broadcasting system, especially with regard to technical and programming matters. For this purpose they should be provided with sufficient transmission capacities and access to adequate sources of income. They should be able to disseminate their satellite channels, taking account of local and regional contributions and in accordance with the respective State law, additionally via available terrestrial television frequencies which should be allocated nationwide in as balanced a manner as possible, also with regard to new television broadcasters.

The unification of Germany and the continuing development of the dual broadcasting system require a comprehensive review of the allocation and use of frequencies up to now. All States declare their intention to reduce double and multiple coverage in order to gain additional transmission capacities for commercial broadcasters, including the "West-schiene"¹ broadcaster.

The State Media Authorities are required to cooperate more closely with one another with a view to equal treatment of commercial broadcasters and a better implementation of decisions.

Section I General Provisions

Article 1 Scope of Application

(1) This Interstate Treaty applies to the provision and dissemination of broadcasting in Germany in a dual broadcasting system; for telemedia only Sections IV to VI and Article 20 (2) apply.

(2) Insofar as this Interstate Treaty does not contain or permit any other regulations relating to the provision and dissemination of broadcasting the provisions of State law governing the respective broadcasting corporation or the respective commercial broadcaster shall apply.

Article 2 Definitions

(1) Broadcasting is the provision and dissemination for the general public of presentations of all kinds of speech, sound and picture using electromagnetic oscillations without a junction line or along or by means of a conductor. The term includes presentations which are disseminated in encrypted form or can be received in return for a special fee. Telemedia are all electronic information and communications

¹ Commercial television channel VOX

services, insofar as they are not telecommunications services as defined by Article 3 no. 24 of the Telecommunications Act², which consist entirely of the transmission of signals through telecommunications networks or telecommunications supported services as defined by Article 3 no. 25 of the Telecommunications Act or broadcasting as defined by paragraphs 1 and 2. Telemedia are also television and radio text as well as teleshopping channels.

(2) For the purposes of this Interstate Treaty:

1. "Full service channel" means a broadcasting channel of pluralistic content in which information, education, advice and entertainment form a major part of the overall programming;
2. "Theme channel" means a broadcasting channel the content of which are basically of the same kind;
3. "Satellite inserted channel" means a broadcasting channel of limited duration which has nationwide coverage within the framework of a broader-ranging service (primary channel);
4. "Regional inserted channel" means a broadcasting channel of limited duration and extent with mainly regional content and broadcast as part of a primary channel;
5. "Advertising" means any form of announcement broadcast whether in return for payment or for similar consideration or broadcast for self-promotional purposes in connection with a trade, business, craft or profession in order to promote the sale of goods or services, including immovable property, rights and obligations, in return for payment. Article 7 (8) remains unaffected;
6. "Surreptitious advertising" is the allusion to or representation of goods, services, the name, the trade mark or the activities of a producer of goods or a provider of services in programmes when such representation is intended by the broadcaster to serve advertising purposes and might mislead the public as to its nature. Such allusion or representation is considered to be intended for advertising purposes, in particular, if it is done in return for payment or for similar consideration;
7. "Sponsorship" is any contribution made by a natural or legal person or an association of persons not engaged in broadcasting activities or in the production of audiovisual works to the direct or indirect financing of a programme

with a view to promoting the name, the trademark, the image of the person or association, their activities or their products;

8. "Teleshopping means" direct offers broadcast to the public with a view to selling goods or services, including immovable property, rights and obligations, in return for payment;
9. "Channel package" means the bundling of channels and services which are broadcast digitally under one electronic programme guide

Article 3 General Programming Principles

The State Broadcasting Corporations which form the „Arbeitsgemeinschaft der öffentlich-rechtlichen Rundfunkanstalten der Bundesrepublik Deutschland“ (ARD)³, „Zweites Deutsches Fernsehen“ (ZDF)⁴ and all broadcasters of television channels disseminated nationwide must in their programmes respect and protect human dignity. They should contribute to strengthening respect for life, freedom and freedom from bodily harm, for the beliefs and the opinions of others. The moral and religious convictions of the population shall be respected. More far-reaching requirements under State law regarding the design of programme content as well as Article 41 of this Interstate Treaty remain unaffected.

Article 4 Broadcasting of Major Events

(1) In the Federal Republic of Germany, events of major importance for society (major events) may be broadcast in encrypted form and for a special fee only if the broadcaster or a third party makes it possible under appropriate conditions for the event to be broadcast on at least one television channel which can be received freely and is generally accessible in the Federal Republic of Germany at the same time or, if individual events running in parallel make this impossible, slightly delayed. Should the parties fail to reach agreement on appropriate conditions they should accept arbitration under Article 1025 onwards of the Code of Civil Procedure⁵ in due time before the event takes place. Should they be unable to agree on an arbitration procedure for reasons which must be justified by the television broadcaster or the third party the broadcast under sentence 1 shall be deemed as not made possible under appropriate conditions. Only channels which can actually be received by more than two thirds of households shall be deemed to be generally accessible.

² Telekommunikationsgesetz (TKG)

³ Association of State Broadcasting Corporations in the Federal Republic of Germany

⁴ „Second German Television“, Germany`s national public service television broadcaster

⁵ Zivilprozessordnung (ZPO)

(2) For the purposes of these provisions major events are:

1. The Summer and Winter Olympic Games;
2. All European Championship and World Cup matches involving the German national football team as well as the opening match, the semi-finals and the finals, irrespective of whether the German team is involved;
3. The semi-finals and the final of the German Football Association Cup;
4. The German national football team's home and away matches;
5. The final of any European football club competition (Champions League, UEFA Cup) with German participation.

If major events consist of more than one individual event, each event shall be considered to be a major event. Inclusion or removal of events in this provision is only permitted on the basis of an Interstate Treaty concluded by all States.

(3) Should a Member State of the European Union notify the European Commission of its provisions on the broadcasting of major events pursuant to Article 3a of Directive 89/552/EC of the Council on the Co-ordination of Certain Provisions Laid Down by Law, Regulation or Administrative Action in Member States Concerning the Pursuit of Television Broadcasting Activities amended by Directive 97/36/EC of the European Parliament and the Council, and if the Commission does not raise any objections within three months after notification and if the provisions of the Member State in question are published in the Official Journal of the European Union, the broadcasting of major events in encrypted form and in return for payment is only permitted for said Member State if the television broadcaster enables transmission in a freely accessible channel pursuant to the provisions of the respective Member State as published in the Official Journal. Sentence 1 does not apply for the transmission of major events for other Member States for which television broadcasters have prior to 30 July 1997 acquired rights to the exclusive encrypted transmission in return for payment for said Member State.

(4) If provisions of a state that has ratified the European Convention on Transfrontier Television as amended according to the provisions of the Protocol from 9 September 1998 are published pursuant to the procedure in Article 9 a (3) of the Convention, those regulations apply for broadcasters in the Federal Republic of Germany in accordance with sentence 4 unless the Minister Presidents of the States unanimously refuse within six months to accept the regulations. Refusal to accept the regulations is only possi-

ble if the provisions of the State in question contravene the Constitution or the European Convention for the Protection of Human Rights and Fundamental Freedoms. The provisions that apply to broadcasters in the Federal Republic of Germany under the aforementioned procedure must be published in the Official journals of the States. Upon the date of the latest publication in the Official Journals of the States the broadcasting of major events in encrypted form and in return for payment is only permitted for that State if the television broadcaster enables a transmission there in a freely accessible channel pursuant to the published provisions of the respective State .

(5) If a broadcaster contravenes the provisions of paragraphs 3 and 4, his licence may be revoked. Instead of revocation the licence can be endorsed with special conditions provided this is sufficient to remedy the contravention.

Article 5 **Short Reporting**

(1) Any licensed television broadcaster in Europe has the right to short reporting at no charge for its own broadcasting purposes of functions and events which are open to the public and of general interest. This right includes the right of access, the right to make short live transmissions, the right to make recordings and to use them to produce a single report, and the right to pass on this information under the terms in paragraphs 2 to 12.

(2) All other statutory provisions, in particular those of copyright law and the right to protect privacy, remain unaffected.

(3) Paragraph 1 does not apply to churches and other religious communities and their institutions which carry out similar tasks.

(4) Short reporting at no charge is restricted to news-type reporting which is appropriate to the occasion. The permissible duration shall be the length of time required to convey the news content of the function or event. For functions of a similar nature recurring at short notice and at regular intervals the upper time limit shall generally be one and a half minutes. If short reports on functions of a similar nature are summarised, their news character must also be preserved in this summary.

(5) The right to short reporting must be exercised in a manner that avoids any preventable disturbances to functions or events. The organiser may restrict or exclude a transmission or recording if it can be assumed that the function would otherwise be jeopardised or that the moral sensibilities of those attending the event would be grossly offended. The right to short reporting is excluded if considerations of public law and order prevail over the public's interest in the information. The organiser's right to completely ex-

clude the transmission or recording of a function remains unaffected.

(6) In return for the right to short reporting the organiser may call for payment of the admission fee generally charged; he must also be reimbursed for any necessary expenses that may be incurred as a result of the exercise of that right.

(7) In return for the exercise of the right to short reporting of professionally conducted functions the organiser may demand reasonable payment appropriate to the nature of the short reporting. If there is no agreement on the amount of the payment, an arbitration proceeding pursuant to Article 1025 onwards of the Code of Civil Procedure⁶ should be agreed. The absence of agreement as to the amount of the payment or as to the implementation of an arbitration proceeding does not conflict with the exercise of the right to short reporting; the same applies to litigation already pending on the amount of the payment.

(8) Exercise of the right to short reporting is subject to notification by the television broadcaster to the organiser by no later than ten days prior to the start of the function. The latter must inform the television broadcasters no later than five days before the start of the function whether there is sufficient space and technical facilities for the transmission or recording. In the case of functions at short notice and for events the notifications must be made as soon as possible.

(9) If there is not sufficient space and technical facilities to cater for all who have given notification that they intend to attend, those television broadcasters who have made contractual agreements with the organiser or sponsor of the event shall be given priority. In addition, the organiser or sponsor is entitled to choose. In exercising that right those television broadcasters who guarantee comprehensive coverage for the State in which the function or event is being held shall be considered first.

(10) Television broadcasters who exercise short reporting must provide the signal and the recording immediately to those television broadcasters who could not be permitted to attend, in return for reimbursement of reasonable costs.

(11) If the organiser or sponsor of an event makes a contractual agreement with a television broadcaster with regard to reporting he shall ensure that at least one other television broadcaster has an opportunity for short reporting of the event.

(12) The unused material for the short reporting shall be destroyed no later than three months after the end of the function or event; the organiser or

sponsor of the event shall be notified in writing about the destruction. The time limit is interrupted by the exercise of legitimate rights of third parties.

Article 6 European Productions, Own, Commissioned and Joint Productions

(1) Television broadcasters shall contribute to safeguarding German and European film and television productions as a cultural asset and as a part of audio-visual heritage.

(2) In order to present the plurality of the German-speaking regions and of Europe as a whole and to promote European film and television productions television broadcasters should reserve the greater part of their total scheduled broadcast time devoted to feature films, films made for television, series, documentaries and comparable productions for European works in accordance with European law.

(3) A significant proportion of full service channels should be own productions as well as commissioned and joint productions from the German-speaking regions and Europe as a whole. The same applies to theme television channels insofar as this is feasible with regard to their focus in terms of content.

(4) As part of its programming mandate and taking into account the principles of austerity and economic efficiency public service broadcasting is entitled, in order to safeguard the quality and quantity of the programming procured, to participate in film promotions. Other State regulations remain unaffected.

Article 7 Advertising and Teleshopping Content, Identification

(1) Advertising and teleshopping shall not mislead, harm the interests of the consumer and shall not promote behaviour which endangers the health or safety of the consumer or the protection of the environment.

(2) Advertising or advertisers shall not influence, content-wise or editorially, the remainder of the programming. Sentence 1 applies for teleshopping spots, teleshopping inserts and their providers *mutatis mutandis*.

(3) Advertising and teleshopping shall be clearly recognisable as such. On television, they shall be distinctly separated from other parts of the programme service by optical means, on radio by acoustic means. No subliminal techniques shall be used in advertising and teleshopping.

⁶ Zivilprozessordnung (ZPO)

(4) A partial covering of the broadcast picture with advertising is allowed if the advertising is optically separated of the remainder of the programme service and is identified as such. This advertising will be added to the duration of spot advertising pursuant to Articles 16 and 45. Article 15 (1) and Article 44 (1) apply mutatis mutandis.

(5) Infomercials are allowed if their advertising character is recognizably in the foreground and the advertising makes up a substantial component of the broadcast. They must be announced as infomercials at the beginning of the broadcast and identified as such for their entire duration.

(6) Surreptitious advertising is prohibited. The insertion of virtual advertising in programmes is permitted if:

1. At the beginning and at the end of the relevant programme this is mentioned and
2. This replaces advertising already existing at the site of transmission.

Other rights remain unaffected.

(7) Television advertisements and teleshopping may not feature individuals who regularly present news or current affairs programmes.

(8) Advertising of political, ideological or religious nature is prohibited. Sentence 1 applies for teleshopping mutatis mutandis. Public service announcements broadcast free of charge, including charitable appeals, are not considered as advertising in the sense of sentence 1. Article 42 remains unaffected.

Article 8 Sponsorship

(1) In programmes which are partially or totally sponsored the financing by the sponsor must be indicated in justifiable brevity at the beginning or at the end of the programme; in this framework, the reference is also possible by means of a moving picture. Alongside or instead of the name of the sponsor the company logo or a trade mark can be used.

(2) Content and scheduling of a sponsored programme shall not be influenced by the sponsor in such a way that the responsibility and the editorial independence of the broadcaster are impaired.

(3) Sponsored programmes shall not exhort to the sale, purchase, rental or lease of products or services of the sponsor or a third party, above all not by explicit special reference.

(4) Programmes shall not be sponsored by undertakings whose main activity is the manufacture of cigarettes and tobacco products.

(5) Sponsorship of programmes by undertakings whose activities include the manufacture or sale of medicinal products and medical treatment may promote the name or the image of the undertaking, but may not promote particular medicinal products or medical treatment available only on prescription.

(6) News and current affairs programmes may not be sponsored.

Article 9 Obligation to Provide Information, Competent Authorities

(1) Under State law the State Broadcasting Corporations are obliged to make available upon request to the competent authority under State law pursuant to Article 6 (2) of the European Convention on Transfrontier Television the information specified in that provision. The same applies for commercial television broadcasters who must make the information available upon request to the State Media Authority of the State in which the licence was issued. That authority shall pass the information on to the authority that supervises the legality of its functions and operations.

(2) The Minister Presidents of the States shall designate by way of a resolution one or more of the authorities referred to in paragraph 1 to meet the requirements of Article 19 (2) and (3) of the European Convention on Transfrontier Television. The competent authorities of the individual States shall provide the authority or authorities thus designated with all the information they need in order to carry out their tasks.

(3) Paragraphs 1 and 2 apply mutatis mutandis insofar as the States are legally bound to report on broadcasting to intergovernmental institutions or international organisations.

Article 9a Right to be Informed

(1) Broadcasters have a right to information from authorities. Information can be refused insofar as:

1. Providing information could thwart, impede, delay or endanger the proper execution of a pending proceeding, or
2. Provisions on secrecy are conflicting
3. An overwhelming public or private interest worthy of protection would be violated or

4. Its extent exceeds a reasonable measure.

(2) General ordinances which forbid an authority to provide information to broadcasters are inadmissible.

(3) Broadcasters can demand from authorities that in the dissemination of official announcements they are treated equally in relation to other applicants.

Article 10

Reporting, Informational Broadcasts, Opinion Polls

(1) Reporting and informational programmes must conform to accepted principles of journalism even when virtual components are used. They must be independent and objective. News must be verified before their dissemination regarding truth and origin with the attention to accuracy and source that is required by the circumstances. Comments must be clearly separated from the reporting and indicated as such with the name of the author.

(2) When opinion polls which are conducted by broadcasters are reported it must be expressly indicated whether they are representative.

Section II

Provisions on Public Service Broadcasting

Article 11

Mandate

(1) Public service broadcasting must, by producing and broadcasting radio and television channels, act as a medium and a factor in the process of shaping free individual and public opinion. Along with the channels it may offer printed material and telemedia with programming-related content.

(2) Public service broadcasting must provide in its offerings and in its programming a comprehensive overview of international, European, national and regional events in all major spheres of life. It should hereby promote international understanding, European integration and social cohesion on a regional and national level. Its programming must serve to inform, educate, advise and entertain. It must, in particular, offer cultural contributions.

(3) Public service broadcasting must in fulfilling its mandate take into consideration the principles of objectivity and impartiality of reporting, plurality of opinion and the balance of offerings and programming.

(4) The State Broadcasting Corporations which form the ARD, the ZDF, and "Deutschlandradio"⁷ shall in each case issue statutes or guidelines providing more detail regarding their respective mandates. The statutes and guidelines pursuant to in sentence 1 must be published in the Official Journals of the States. The Public Broadcasting Corporations which form the ARD, the ZDF, and "Deutschlandradio" shall publish every two years, the first time being 1 October 2004, a report on the fulfilment of their respective mandates, on the quality and quantity of the offerings and channels and the planned focal points of the respective programme services on the agenda.

(5) Three years after the Seventh Interstate Treaty for Amending Interstate Treaties with Regard to Broadcasting Law⁸ comes into force the States shall review the application of the provisions in paragraph 4.

Article 12

Adequate Funding, Principle of Financial Equalisation

(1) Funding must enable public service broadcasting to meet its constitutional and statutory mandate. It shall, in particular, guarantee the existence and development of public service broadcasting.

(2) Financial equalisation among the State Broadcasting Corporations is part of the ARD's funding system. In particular, it must ensure that the Corporations "Saarländischer Rundfunk" and "Radio Bremen" are able to adequately fulfil their mandate. The amount of the financial equalisation sum and the adjustment thereof with regard to the broadcasting fee are determined pursuant to the Interstate Treaty on Broadcasting Funding⁹.

Article 13

Funding

(1) Public service broadcasting is financed from broadcasting fees, television and radio advertising and other sources of income. The primary source of income is the broadcasting fee. Channels and offerings as part of its mandate in return for a special payment are not permitted with the exception of ancillary materials. Income from offering premium rate telephone services may not be obtained.

(2) Keeping a device which allows for broadcasting reception continues to constitute the obligation to pay the broadcasting fee.

⁷ Public Service Broadcasting Corporation producing and providing nationwide radio services

⁸ Siebter Rundfunkänderungsstaatsvertrag

⁹ Rundfunkfinanzierungsstaatsvertrag (RFinStV)

Article 14

Funding Requirements of Public Service Broadcasting

(1) The funding requirements of public service broadcasting are regularly reviewed and determined by the independent “Kommission zur Ermittlung des Finanzbedarfs der Rundfunkanstalten”¹⁰ (KEF) taking into account the principles of economic efficiency and austerity including the associated rationalisation potential. The review is based on the funding requirements reported by the State Broadcasting Corporations which form the ARD, the ZDF and “Deutschlandradio”¹¹.

(2) The review and determination of the funding requirements shall be based on the following criteria, in particular:

1. The continuation in a competitive way of the existing radio and television channels as well as the television channels licensed by an interstate treaty signed by all States (requirements based on existing channels);
2. New radio and television channels permitted under State law, participation in the opportunities offered by new broadcasting technologies in terms of production and dissemination of such channels as well as the possibility to provide new forms of broadcasting (development requirements);
3. The general development of costs and, particularly, the development of costs in the media sector;
4. The development in income from fees, advertising and other sources.

(3) In reviewing and determining the financial requirements a high degree of objectivity should be achieved.

(4) The fee is determined by means of an interstate treaty.

Article 15

Insertion of Advertising

(1) Broadcasts of religious services or children's programmes must not be interrupted by advertising or teleshopping spots.

(2) Television advertising and teleshopping spots must be inserted between programmes. Isolated ad-

vertising and teleshopping spots shall remain the exception. Advertising and teleshopping spots may be inserted during programmes subject to the conditions defined in paragraphs 3 and 4 insofar as the integrity and character of the programme are not affected and the rights of the holders of the rights are not violated.

(3) Television programmes of more than 45 minutes duration may be interrupted once by advertising and teleshopping spots; the same applies where the programmes are divided into parts. In the case of broadcasts of events and performances containing advertising and teleshopping spots shall only be inserted between the autonomous parts or in the intervals. The duration of a programme is calculated according to its scheduled broadcast time.

(4) For the broadcasting of sporting events comprising intervals advertising and teleshopping spots shall, notwithstanding the provisions in paragraph 3 sentence 1, only be shown in the intervals.

(5) If advertising or teleshopping spots on a television channel are specifically and frequently geared to audiences in another state which has ratified the European Convention on Transfrontier Television but which is not a Member of the European Union, the television advertising and teleshopping rules that apply there must not be circumvented. Sentence 1 does not apply where the provisions of this Interstate Treaty on advertising or teleshopping are stricter than the rules that apply in the state in question, nor where conventions in this area have been concluded with the relevant state.

Article 16

Duration of Advertising

(1) The total amount of advertising on the ARD-Channel “Das Erste”¹² and on the channel “Zweites Deutsches Fernsehen”¹³ shall not exceed 20 minutes per working day on an annual average. Advertising shall not be broadcast after 8.00 p.m., nor on Sundays or on national public holidays. Article 17 remains unaffected.

(2) There shall be no advertising on other television channels of the ARD and the ZDF or on the “Dritten Fernsehprogramme”¹⁴ disseminated nationwide.

(3) The duration of spot advertising on television within a one-hour period shall not exceed 20 per cent.

¹² „The First“

¹³ „Second German Television“: Germany’s national public service television channel ZDF

¹⁴ “Third Television Channels”: Full service channels with partly regionally-oriented content provided and disseminated nationwide by some State Broadcasting Corporations.

¹⁰ Commission for the Review and Determination of the Funding Requirements of the Broadcasting Corporations

¹¹ Public Service Corporation producing and providing nationwide radio services

(4) References by the State Broadcasting Corporations made to their own programmes and ancillary products which are directly derived from said programmes, public service announcements broadcast free of charge including charity appeals and mandatory references as defined in the Advertising of Medications Act¹⁵ are not considered to be advertising in the sense of paragraphs 1 to 3.

(5) The States are entitled to allow the State Broadcasting Corporations to broadcast an annual average of up to 90 minutes radio advertising per working day; any difference in the amount of advertising and the daily time limits existing in the States on 1 January 1987 may be retained.

Article 16 a Guidelines

The State Broadcasting Corporations which form the ARD, and the ZDF issue guidelines for the implementation of Articles 7, 8, 15 and 16. In so doing they shall consult the State Media Authorities and shall exchange their experiences with regard to the implementation of these guidelines.

Article 17 Changes to Advertising

The States may agree to change the total duration of advertising, the daily time limits for advertising and the restriction of advertising to working days in public service broadcasting.

Article 18 Exclusion of Teleshopping

There shall be no teleshopping, with the exception of teleshopping spots, in public service broadcasting.

Article 19 Broadcasting channels

(1) The State Broadcasting Corporations which form the ARD, and the ZDF each broadcast one full service television channel pursuant to Article 1 (1) ARD Interstate Treaty¹⁶ and Article 2 (1) ZDF Interstate Treaty¹⁷. The individual State Broadcasting Corporations which form the ARD may not broadcast in total more than the television channels broadcast as of 1 April 2004.

(2) The State Broadcasting Corporations which form the ARD, and the ZDF may together broadcast:

1. One television channel which has a cultural focus; foreign public service broadcasters, in particular those from European countries, may participate and
2. Two theme television channels.

They participate in the European Cultural Television Channel.

(3) The channels pursuant to paragraph 2 are broadcast via satellite; additional dissemination using other transmission means is governed by State law.

(4) The State Broadcasting Corporations which form the ARD, and the ZDF may also broadcast their channels digitally; they are also each authorised to broadcast up to three additional television channels which may only be digitally broadcast focusing on culture, education and information. The channels may in each case be combined as one total offering under one electronic programme guide (channel package); mutual access to the joint channels must be ensured.

(5) The channels or channel packages pursuant to paragraph 4 may, if they are broadcast digitally, not exceed in total for ZDF the extent of one and for the State Broadcasting Corporations which form the ARD the extent of two analogue television channels; ARD and ZDF shall agree on the allocation of their current joint analogue television channels to these transmission capacities.

(6) New television channels that are broadcast nationwide or statewide may be broadcast by the State Broadcasting Corporations which form the ARD, and the ZDF if, in exchange for this, a previous programme offering pursuant to paragraph 1 sentence 2, paragraph 2 sentence 1 or paragraph 4 is waived and the statutory programming mandate is also fulfilled by the new offering without causing additional costs overall.

(7) The State Broadcasting Corporations which form the ARD may broadcast together on the radio the total number of their analogue and digital services broadcast as of 1 April 2004. Radio services which are broadcast using analogue and digital technology in respect to the same content are considered to be only one service. The option of the State Broadcasting Corporations which form the ARD in accordance with the respective State law to replace their analogue or digital offerings with other radio offerings or by cooperation without causing additional costs overall remains unaffected pursuant to sentence 1. Replacing a digital channel by an analogue channel is not permitted.

(8) The State Broadcasting Corporations which form the ARD shall endeavour to bundle their radio services and to cooperate even more closely. They shall report on this matter pursuant to Article 11 (4).

¹⁵ Heilmittelwerbegesetz (HWG)

¹⁶ ARD-Staatsvertrag

¹⁷ ZDF-Staatsvertrag

Section III
Provisions for Commercial Broadcasting

Subsection 1
Licensing and Procedural Principles

Article 20
Licensing

(1) Commercial broadcasters require a licence pursuant to State law. The licence for broadcasters of nationwide channels must specify the channel category pursuant to Article 2 (2).

(2) If and insofar as an electronic information and communications service is to be categorised as broadcasting, the provider of such a service requires a license under State Law. If the competent State Media Authority, in agreement with all State Media Authorities, determines that this is the case, the provider, after being notified of the determination, at his discretion, must without delay submit a license application or within three months provide the information and communications service in such a way that the service cannot be categorised as broadcasting. Providers of electronic information and communications services are entitled to apply for confirmation from the competent State Media Authority that a service is unobjectionable under broadcasting law.

(3) State law may provide for a simplified licensing procedure if programmes are:

1. Presented and broadcast in the area if a public function is being held and at or about the time it is being held or
2. Offered to establishments provided the latter use them for the same purposes and provided the programmes can be received only by them and their function is associated with the tasks to be implemented in said establishments.

Provisions of State law which do not prescribe licences for programmes intended for a limited number of housing units or for programmes in establishments restricted to one building or one building complex remain unaffected.

(4) The licence of a television broadcaster may be denied or revoked if:

1. The channel of the broadcaster is directed wholly or to a significant extent to the population of another state which has ratified the European Convention on Transfrontier Television, and
2. The broadcaster has established itself in the Federal Republic of Germany for the purpose

of circumventing the provisions of the other state and

3. The provisions of the other state which the broadcaster is intending to circumvent are subject to the European Convention on Transfrontier Television.

Instead of denying or revoking the licence the latter may also be amended by endorsing it with special conditions provided this is sufficient to prevent the circumvention referred to in sentence 1.

Article 21
Principles for the Licensing Procedure

(1) The applicant must provide all information and documents required for the consideration of his licence application.

(2) The obligation to provide information and documents extends in particular to:

1. A description of the direct and indirect interest in the applicant as defined in Article 28 and of the capital and voting rights in the applicant and associated undertakings as defined in the Stock Corporations Act¹⁸;
2. Information about relatives as defined in Article 15 of the Tax Code¹⁹ among the parties pursuant to in no. 1. The same shall apply to representatives of the persons or partnership or of a member of an organ of a legal entity;
3. The memorandum and the articles of association of the applicant;
4. Agreements existing among the parties who have a direct or indirect interest in the applicant in the sense of Article 28 and relating to the joint provision of broadcasting as well as trustee relationships and relationships that are significant pursuant to Articles 26 and 28;
5. A written statement from the applicant that the documents and information provided pursuant to nos. 1 to 4 are complete.

(3) In the event that a matter relating to events which lie outside the scope of application of this Interstate Treaty is significant for the licensing procedure review the applicant must provide an explanation and the necessary evidence. He must exhaust all legal and actual possibilities in doing this. The applicant may not claim that he is unable to provide an explanation or evidence if, in the circumstances, he could have given himself the possibility of doing

¹⁸ Aktiengesetz (AktG)

¹⁹ Abgabenordnung (AO)

so or could have acquired such a possibility when forming his circumstances.

(4) The obligations pursuant to paragraphs 1 to 3 shall apply *mutatis mutandis* to natural persons and legal entities or partnerships who have a direct or indirect interest in the applicant in the sense of Article 28 or who are an undertaking associated with the applicant or who may exercise an influence on it in some other way in the sense of Articles 26 and 28.

(5) If those obliged to provide information and submit documents do not fulfil their obligations under paragraphs 1 to 4 within a time limit fixed by the competent State Media Authority, the application for a licence may be refused.

(6) Those obliged to provide information and submit documents under the licensing procedure must notify the competent State Media Authority immediately of any change in circumstances which may have occurred since the application was submitted or the licence was issued. Paragraphs 1 to 5 apply *mutatis mutandis*. Article 29 remains unaffected.

(7) Regardless of any other notification obligations the broadcaster and the parties with a direct or indirect interest in the broadcaster in the sense of Article 28 are required to submit a statement to the competent State Media Authority upon the expiry of the calendar year without delay indicating whether and to what extent within that calendar year any change has occurred with regard to the participating interests or channel attribution situation as described in Article 28.

Article 22 Information and Investigation Rights

(1) The competent State Media Authority may carry out all investigations and obtain all evidence required to perform its tasks pursuant to Articles 26 to 34. It may make use of evidence which, in exercising its due discretion, it deems necessary to ascertain the facts. It may in particular:

1. Obtain information;
2. Hear the parties involved in the sense of Article 13 of the Administrative Procedure Act²⁰, question witnesses and experts or obtain written statements from the parties involved, experts and witnesses;
3. Consult documents and files;
4. Inspect the evidences.

²⁰ *Verwaltungsverfahrensgesetz (VwVfG)*

Persons other than the parties involved shall not be called upon to provide information unless the information provided by the latter does not clarify matters or is not likely to be successful.

(2) Witnesses and experts have a duty to make oral statements or submit reports. The provisions of the Code of Civil Procedure²¹ relating to the obligation of witnesses to make statements or of experts to submit reports, the rejection of experts and the questioning of members of the civil service as witnesses or experts, apply *mutatis mutandis*. Witnesses and experts shall receive compensation in accordance with the Court Payment and Reimbursement Act²².

(3) In order to substantiate that the information provided is complete and accurate the competent State Media Authority may require an affidavit from those who are obliged to provide information and submit documents under Article 21 (1) and (4). An affidavit shall only be required if other means of establishing the truth are not available, have been unsuccessful or require a disproportionate amount of time and effort.

(4) Those commissioned by the competent State Media Authority to perform the tasks arising from Articles 26 to 34 may enter the business premises of the persons and partnerships referred to in Article 21 (1), (3) and (4), during normal business and working hours and may inspect and review the documents mentioned in paragraph 5 below. The basic right codified in Article 13 of the Constitution shall be restricted to that extent.

(5) The persons or partnerships referred to in Article 21 (1), (3) and (4) shall submit records, books, business papers and other documents which may be significant to the application of Articles 26 to 34, give information and provide any assistance otherwise needed to carry out the measures pursuant to paragraph 4 upon request. The taking of any steps which may hinder or impede those measures is not permitted.

(6) Those obliged to provide information may refuse to answer questions, the replies to which would make them or one of the relatives referred to in Article 383 (1) nos. 1 to 3 of the Code of Civil Procedure²³ liable to criminal prosecution or proceedings pursuant to the Administrative Offences Act²⁴.

(7) Searches may only be conducted pursuant to a warrant from the local court judge in whose district the search is to be conducted. If there is any danger

²¹ *Zivilprozessordnung (ZPO)*

²² *Justizvergütungs- und -entschädigungsgesetz (JVEG)*

²³ *Zivilprozessordnung (ZPO)*

²⁴ *Gesetz über Ordnungswidrigkeiten (OWiG)*

in delay, the persons referred to in paragraph 4 may conduct the necessary searches during business hours without a judicial warrant. A record shall be made at the time and place of search containing the reasons for, the time of and the place of the search and its outcome. In the event that no judicial warrant has been issued such a record shall also indicate the facts which led to the assumption of danger in delay.

(8) The person having actual authority over the premises to be searched may be present during the search. If he is absent, his representative or another witness shall be called in. The person having actual authority over the searched premises or his representative must upon request be provided with a copy of the record mentioned in paragraph 7 sentence 3.

Article 23

Duty of Public Disclosure and other Submission Requirements

(1) Every broadcaster, regardless of the legal form thereof, shall in accordance with the provisions of the Commercial Code²⁵ applying to large corporations prepare and publish annual accounts and notes to the annual accounts as well as an annual report by no later than the end of the ninth month following the end of the financial year. Sentence 1 also applies mutatis mutandis to parties with a direct interest in the broadcaster to whom the latter's channels are attributable pursuant to Article 28 (1) sentence 1 and parties with an indirect interest in the broadcaster to whom the channels are attributable pursuant to Article 28 (1) sentence 2.

(2) Within the same time limit the broadcaster shall submit to the competent State Media Authority a list of the programming sources for the period covered by the report.

Article 24

Confidentiality

Data on the personal or material circumstances of a natural person, or legal entity, or a partnership or business or trade secrets which are entrusted to the State Media Authorities, their organs, employees or third persons acting on their behalf within the framework of the performance of their tasks or which have become known to them in some other way may not be disclosed without authorisation. Where personal data are processed the data protection provisions of State law apply.

Subsection 2 Ensuring Plurality of Opinion

Article 25

Plurality of Opinion, Regional Inserts

(1) The editorial content of commercial broadcasting must express plurality of opinion. The important political, ideological and social forces and groups shall be given appropriate opportunity to express themselves in the full channels; minority views shall be taken into account. The possibility to offer theme channels remains unaffected.

(2) A single channel must not influence public opinion in an exceedingly imbalanced way.

(3) In the licensing procedure the State Media Authority shall seek to ensure that interested parties providing cultural programming are able to participate in the broadcaster. No legal right to participate exists.

(4) The two full service channels broadcast nationwide with the largest audience shall include inserted channels at least to the scheduled and regionally differentiated extent of the programme activities as of 1 July 2002 in accordance with the respective State law. These inserted channels shall provide an up to date authentic portrayal of political, economic, social and cultural life in the respective State. The primary broadcaster shall guarantee by its organisation that the editorial independence of the broadcaster of the inserted channel is safeguarded. The inserted channel broadcaster must be issued a separate licence. Inserted channel broadcasters and primary channel broadcasters should not be related to one another as affiliated undertakings pursuant to Article 28. The primary channel broadcaster shall guarantee the organisation and financing of the inserted channels. The State Media Authorities shall coordinate the scheduling and technical organisation of the inserted channels taking into account the interests of the broadcasters affected.

Article 26

Ensuring Plurality of Opinion on Television

(1) An undertaking (natural person or legal entity or partnership) may itself or through undertakings attributable to it broadcast nationwide in the Federal Republic of Germany an unlimited number of television channels unless as a result thereof it is able to exercise a dominant power of opinion in accordance with the following provisions.

(2) If the channels attributable to one undertaking achieve an annual average of 30 per cent of all viewers, it shall be deemed that it has a dominant power of opinion. The same applies if the share is 25 per cent where the undertaking holds a dominant position in a media-relevant related market or an

²⁵ Handelsgesetzbuch (HGB)

overall assessment of its activities in television and in media-relevant related market shows that the influence obtained as a result of those activities corresponds to that of an undertaking with a viewer share of 30 per cent. In calculating the relevant viewer share pursuant to sentence 2 two percentage points are deducted from the actual viewer share if inserted channels are included in the full channel attributable to the undertaking with the highest viewer share pursuant to Article 25 (4). If at the same time broadcasting time is included for third parties pursuant to paragraph 5, another three percentage points shall be deducted from the actual viewer share.

(3) If an undertaking is able to exercise a dominant power of opinion with the channels attributable to it, no licence may be issued for further channels attributable to that undertaking, nor may the acquisition of further attributable participating interests in broadcasters who are attributable to it be confirmed as being acceptable.

(4) If an undertaking has acquired a dominant power of opinion with the channels attributable to it, the State Media Authority shall, through the “Kommission zur Ermittlung der Konzentration im Medienbereich”²⁶ (KEK, Article 35 (2) sentence 1 no. 1), propose the following measures to the undertaking:

1. The undertaking may give up its participating interests in broadcasters attributable to it until the attributable viewer share of the undertaking drops below the level stated in paragraph 2 sentence 1, or
2. It may, in the case defined in paragraph 2 sentence 2, limit its market position in media-relevant related markets or give up its participating interests in broadcasters attributable to it until it no longer exercises a dominant power of opinion pursuant to paragraph 2 sentence 2 or
3. It may, with regard to attributable broadcasters, take the measures in the sense of Articles 30 to 32 in order to ensure plurality of opinion.

The KEK shall discuss the possible measures with the undertaking with the aim of reaching a mutual agreement. If no agreement is reached or the measures which the undertaking and the KEK have mutually agreed upon are not implemented within a reasonable period of time, the State Media Authorities may, after the KEK has established the facts, revoke the licences of as many of the channels attributable to the undertaking as is required to ensure that the undertaking no longer exercises a dominant

power of opinion. The KEK shall select the channels to be revoked after consideration of the special circumstances of each case. No compensation shall be granted for any financial loss incurred by the revocation of the licence.

(5) If a broadcaster achieves with a full channel or an information-oriented theme channel an annual average viewer share of 10 per cent, the broadcaster must within six months after this fact is established and after being informed by the State Media Authority allocate broadcasting time to independent third parties in accordance with Article 31. If a broadcaster achieves an annual average viewer share of 20 per cent with channels attributable to the broadcaster without one of the full channels or information-oriented theme channels achieving a viewer share of 10 per cent, the obligation under sentence 1 shall apply to the broadcaster of the channel attributable to the undertaking that has the highest viewer share. If the broadcaster does not implement the prescribed measures, the licence shall be revoked by the competent State Media Authority after the facts have been established by the KEK. Paragraph 4 sentence 5 applies *mutatis mutandis*.

(6) The State Media Authorities shall publish a KEK report every three years jointly or upon the request of the States on the development of concentration and on measures to secure plurality of opinion in the commercial broadcasting sector, taking into account:

1. Interdependencies between television and media-relevant related markets;
2. Horizontal interdependencies between broadcasters in different areas of transmission and
3. International interdependencies in the media sector.

The report should also comment on the application of Articles 26 to 32 and on any necessary amendments to these provisions.

(7) The State Media Authorities shall publish a list of channels to be drawn up by the KEK annually. The list of channels shall include all channels, their broadcasters and parties with participating interests.

Article 27 **Determining Viewer Shares**

(1) Through the KEK the State Media Authorities determine the viewer share of each channel taking into consideration all German language channels broadcast by the public service broadcasters and commercial broadcasters which can be received nationwide. Decisions are based on the average viewer share of the last twelve months of the chan-

²⁶ Commission on Concentration in the Media

nels to be included at the time of the commencement of the proceedings.

(2) Following a decision by the KEK the State Media Authorities commission an undertaking to determine the viewer shares. The contract shall be awarded in accordance with the principles of austerity and economic efficiency. The determination must be made by means of representative surveys of viewers over the age of three using generally accepted scientific methods. The State Media Authorities should reach agreement with the undertaking that the data collected in determining viewer shares pursuant to paragraph 1 sentence 1 may also be used by third parties on a contractual basis. In that case the costs to the State Media Authorities shall be reduced accordingly.

(3) The broadcasters must assist in determining the viewer shares. In the event that a broadcaster does not comply with this obligation its licence may be revoked.

Article 28 **Attribution of Channels**

(1) All channels that an undertaking broadcasts itself or that are broadcast by another undertaking in which it has a direct interest of that undertaking's capital or voting rights of 25 per cent or more shall be attributed to this undertaking. The same applies to channels of undertakings in which it has an indirect interest insofar as those undertakings are affiliated undertakings to it in the sense of Article 15 of the Stock Corporations Act²⁷ and hold a share of 25 per cent or more of the capital or voting rights of a broadcaster. The affiliated undertakings in the sense of sentences 1 and 2 shall be deemed to be a single undertaking and their shares in the capital or in the voting rights shall be added up. If as a result of an agreement or otherwise, several undertakings collaborate in such a way that they can jointly have a dominant influence over an undertaking holding an interest, each of them shall be deemed to be a dominant undertaking.

(2) An interest pursuant to paragraph 1 exists if an undertaking either alone or together with others is able to have a comparable influence over a broadcaster. Furthermore, a comparable influence exists if an undertaking or an undertaking already attributable to it for other reasons pursuant to paragraph 1 or paragraph 2 sentence 1:

1. Regularly provides programming for a significant portion of the broadcasting time of a broadcaster;
2. Holds a position by virtue of contractual agreements, provisions in the memorandum

and in the articles of association or in any other way which makes the fundamental decisions of a broadcaster concerning design, procurement and production of programming subject to its approval.

(3) In making the attribution pursuant to paragraphs 1 and 2 undertakings established outside the area of validity of this Interstate Treaty shall be included.

(4) Existing family relationships shall be taken into account when considering and assessing comparable influences on a broadcaster. In doing so the principles of business and tax law apply.

Article 29 **Change in Participating Interests**

The competent State Media Authority must be notified in writing of any planned change in participating interests or other influences before its implementation. Those charged with reporting these changes are the broadcaster and those holding a direct or indirect interest in the broadcaster pursuant to Article 28. The competent State Media Authority may only confirm that such changes are unobjectionable if a licence could still be issued under such changed conditions. If a planned change is implemented which cannot be declared unobjectionable pursuant to sentence 3, the licence shall be revoked. The revocation procedure is governed by State law. For minor interests in public limited companies the KEK may issue guidelines in order to exempt these from the obligation to report changes.

Article 30 **Measures to Ensure Plurality**

Insofar as the aforementioned provisions refer to measures employed by a broadcaster or undertaking to ensure plurality such measures are:

1. Granting broadcasting time to independent third parties (Article 31);
2. Establishing a Programming Advisory Council (Article 32).

Article 31 **Broadcasting Time for Independent Third Parties**

(1) An inserted channel which is broadcast based on the obligation to provide broadcasting time pursuant to the above provisions must, while safeguarding the programming autonomy of the primary broadcaster, make a further contribution to the plurality in the latter's programming, particularly in the fields of culture, education and information. The programming of the inserted channel must be designed independently of the primary channel.

²⁷ Aktiengesetz (AktG)

(2) The duration of the inserted channel must be at least 260 minutes a week of which at least 75 minutes must be in the broadcasting time between 7 p.m. and 11.30 p.m. A maximum of 150 minutes of regional inserted channels per week may be counted towards the weekly broadcasting time. Of this a maximum of 80 minutes per week outside the broadcasting time defined in sentence 1 may be counted towards third party broadcasting time. If the weekly broadcasting time for the regional inserted channel is less than 150 minutes, the 80 minutes counting towards third party broadcasting time shall be reduced *mutatis mutandis*. Regional inserted channels may only count towards the weekly broadcasting time if they are editorially independent and together reach at least 50 per cent of television households nationwide. In the course of digitalisation of the transmission paths a lower level of coverage is permitted subject to the conditions in Article 36 (2).

(3) The provider of an inserted channel pursuant to paragraph 1 may not be legally dependent upon the broadcaster of the primary channel. He is legally dependent in the sense of sentence 1 if the primary channel and the inserted channel can be attributed to the same undertaking pursuant to Article 28.

(4) If the primary channel broadcaster is obliged to provide broadcasting time for independent third parties, the competent State Media Authority shall, after deliberation with the primary channel broadcaster, invite applications for a licence to broadcast the inserted channel. The competent State Media Authority examines whether the applications received conform to the provisions of this Interstate Treaty as well as other provisions of State law and informs the primary channel broadcaster of the applications which qualify for a licence. It shall discuss the applications with the primary channel broadcaster in order to reach agreement on the choice of applicant. If an agreement cannot be reached and the competent State Media Authority has received more than three applications which qualify for a license, the primary channel broadcaster submits three suggestions to the competent State Media Authority. The competent State Media Authority can, in the interest of plurality, add up to two further suggestions, which it again discusses with the primary channel broadcaster with the aim of reaching a mutual selection. If an agreement cannot be reached, the competent State Media Authority chooses from among the suggestions the applicant whose channel can be expected to contribute the most to plurality in the channel of the primary channel broadcaster and issues the license to this channel. If there are three or fewer applications, the competent State Media Authority makes the decision alone.

(5) Once an applicant for the inserted channel has been chosen pursuant to paragraph 4 the primary channel broadcaster and the applicant shall con-

clude an agreement on the broadcasting of the inserted channel as part of the primary channel. Such an agreement shall comprise, in particular, the obligation of the primary channel broadcaster to enable the broadcaster of the inserted channel to fund his channel sufficiently. The agreement must also provide that termination during the term of the licence pursuant to paragraph 6 is only permitted in case of serious breaches of the agreement or for another important reason, subject to six months' notice for the end of a calendar year.

(6) On the basis of an agreement for appropriate conditions pursuant to paragraph 5 the competent State Media Authority shall issue a licence to the inserted channel broadcaster. The licences of the broadcaster of the primary and of the inserted channel shall include as an integral part the main obligations arising from the agreement pursuant to paragraph 5. No compensation shall be granted for any losses incurred as a result of the partial revocation of the licence of the primary channel broadcaster. The license for the inserted channel broadcaster is issued for a period of five years; it expires when the license of the primary channel broadcaster runs out, is not renewed or reissued.

Article 32 Programming Advisory Council

(1) The Programming Advisory Council should advise those responsible for programming, the management of the broadcaster and the partners or shareholders on how the programming is to be designed. The Programming Advisory Council shall by means of its suggestions and proposals contribute to ensuring plurality of opinion and programming diversity (Article 25). When setting up a Programming Advisory Council the broadcaster must guarantee by means of an agreement or a statute that the Programming Advisory Council will have an effective influence on the programming.

(2) The members of the Programming Advisory Council are appointed by the broadcaster. Due to the fact that they belong to different groupings of society they must as a whole guarantee that the main opinions of society are represented.

(3) The Programming Advisory Council shall be informed by the management of all matters concerning the programming. It shall be consulted on any major changes in programming structure, content and scheme and at any programming-related hearings conducted by the competent State Media Authority and in the case of programming complaints.

(4) The Programming Advisory Council may for the purpose of performing its functions demand information from the management and make complaints to the management regarding the programming or individual contributions. The management must comment

on enquiries and complaints within an appropriate period of time. If the Programming Advisory Council is of the view that it does not take sufficient account of the enquiries and complaints, the Programming Advisory Council may seek a decision in this matter from the body supervising the management or, if no such supervisory body exists, from the partners' or shareholders' meeting. The proposal of the Programming Advisory Council may only be rejected with a majority of 75 per cent of the votes cast at the partners' or shareholders' meeting or by the members of the body supervising the management.

(5) In case of changes in the programming structure, content or scheme or in case of a decision on programming complaints the approval of the Programming Advisory Council shall be obtained prior to the decision by the management. If such an approval is withheld or if no comment on the matter can be obtained within an appropriate period of time the management may only introduce the measure in question with the consent of the body supervising the management or, if no such supervisory body exists, the partners' or shareholders' meeting. For such consent a majority of 75 per cent of the votes cast is needed. The broadcaster shall notify the competent State Media Authority of the outcome of the deliberations by the Programming Advisory Council or the decision pursuant to sentence 2.

(6) If the broadcaster where a Programming Advisory Council is to be set up is an undertaking managed by a sole trader, paragraphs 4 and 5 shall apply on condition that the Programming Advisory Council may refer the matter to the competent State Media Authority which will decide on the measure instead of the partners' or shareholders' meeting or the body supervising the management.

Article 33 Guidelines

The State Media Authorities issue joint guidelines for the further specification of Articles 25, 31 and 32. The guidelines relating to Article 32 shall, in particular, contain details regarding the appointment and composition of the members of the Programming Advisory Council.

Article 34 Transitional Provision

The existing data on viewer shares shall be used as a basis for assessing whether plurality of opinion is guaranteed in connection with the nationwide broadcasting of television channels until the first viewer shares are determined pursuant to Article 27. Broadcasters are obliged to make their data on viewer shares available to the KEK upon request. The State Media Authorities shall, by applying rules of administrative procedure while respecting the interests of the parties concerned, ensure that measures taken pur-

suant to this Interstate Treaty and based on the data referred to in sentence 1 can be adapted without delay to the factual and legal situation arising from the first determination of viewer shares pursuant to Article 27.

Subsection 3 Organisation of Media Supervision, Funding of Special Tasks

Article 35 Supervision Related to Ensuring Plurality of Opinion

(1) The competent State Media Authority examines compliance with the provisions for ensuring plurality of opinion under this Interstate Treaty applying to commercial broadcasters before and after the licence is issued. It makes the corresponding decisions in accordance with the provisions of this Interstate Treaty.

(2) In order to perform the tasks under paragraph 1 the following institutions will be established:

1. The "Kommission zur Ermittlung der Konzentration im Medienbereich"²⁸(KEK) and
2. The "Konferenz der Direktoren der Landesmedienanstalten"²⁹(KDLM).

These institutions serve the respective competent State Media Authority in the fulfilment of its tasks pursuant to paragraph 1.

(3) The KEK consists of six legal experts specialised in broadcasting and business law, three of whom must have the qualification for judgeship. The members of the KEK and two substitute members in the event that a member is not able to attend for more than a temporary period shall be appointed unanimously by the Minister Presidents of the States for a term of five years; they may be reappointed. The following may not be members of the KEK: members and employees of institutions of the European Union, the federal and State constitutional organs, members of the governing bodies and employees of the State Broadcasting Corporations of the ARD, the ZDF, "Deutschlandradio", the European cultural television channel ARTE, the State Media Authorities and commercial broadcasters as well as employees of undertakings which have a direct or indirect interest in them in the sense of Article 28.

(4) If a member of the KEK resigns, the Minister Presidents of the States shall by agreement appoint a substitute or another expert as a member for the remainder of the term of office; the same applies if a substitute resigns.

²⁸ Commission on Concentration in the Media

²⁹ Conference of Directors of the State Media Authorities

(5) The KDLM is composed of the legal representatives of the State Media Authorities, who shall be ex officio members. They may be represented by the permanent deputy if they are unable to attend. The members of the KDLM are not entitled to remuneration.

(6) The members of the KEK and of the KDLM shall not be bound by instructions in fulfilling their tasks under this Interstate Treaty. The obligation of confidentiality pursuant to Article 24 shall also apply in the relationship between the members of the KEK and of the KDLM with other organs of the State Media Authorities.

(7) The KEK experts shall receive appropriate remuneration for their work and reimbursement of their necessary expenses. The State holding the chair of the “Rundfunkkommission”³⁰ concludes the contracts with the experts.

(8) The State Media Authorities shall provide the KEK with the necessary personnel and material resources. The KEK shall prepare a budget based on the principles of austerity and economic efficiency. Expenditure for the KEK and the KDLM shall be covered by the funds allocated to the State Media Authorities pursuant to Article 10 of the Interstate Treaty on Broadcasting Funding³¹. The competent State Media Authorities shall levy an adequate proportion of the costs from those involved in the procedure. The details shall be governed by an administrative agreement between the State Media Authorities. The Minister Presidents decide on the location of the KEK secretariat by unanimous resolution.

Article 36 Competency

(1) The KEK and, pursuant to Article 37 (2), the KDLM, are competent to make a concluding decision on whether plurality of opinion is ensured in connection with the provision of nationwide broadcasting of television channels. Within the framework of sentence 1 they have particular competency to examine such questions when deciding on a licence or a licence modification confirming changes in participating interests to be unobjectionable, and with regard to measures taken pursuant to Article 26 (4). The KEK and the KDLM may apply the procedures envisaged in Articles 21 and 22 through the competent State Media Authority. The KEK determines the viewer shares attributable to each of the undertakings.

(2) The selection and licensing of broadcasters of inserted channels as well as programming supervision

³⁰ Broadcasting Commission: A working group of the Minister Presidents preparing media-related issues and making proposals to the Minister Presidents Conference

³¹ Rundfunkfinanzierungsstaatsvertrag (RFinStV)

shall be the responsibility of the competent organ of the competent State Media Authority. The State Media Authorities shall determine whether the conditions laid down in Article 25 (4) sentence 1 are met by a three-quarters majority. Prior to the selection and licensing of broadcasters of inserted channels the KEK must be consulted.

Article 37 Licensing and Supervisory Procedures

(1) If the State Media Authority receives a licence application from a commercial broadcaster, the authority's legal representative shall immediately submit the application, together with the available documents, to the KEK for its assessment as to whether plurality of opinion is ensured, given that there are no other reasons which would already lead to a rejection of the application. The KEK shall make its decisions by a majority of its statutory members. The grounds for the decisions shall be given. The statement of grounds shall give the main factual and legal reasons for the decision. KEK decisions shall be binding on the other organs of the competent State Media Authority. They shall form the basis for the authority's decisions. Paragraph 2 remains unaffected.

(2) In the event that the organ competent for the licensing decision of the competent State Media Authority wishes to take a decision that differs from that of the KEK, that organ shall within one month after the decision of the KEK appeal to the KDLM. No other State Media Authority may make this appeal. All documents required in connection with the application must be submitted to the KDLM. If the KDLM does not make a different decision by a majority of three-quarters of its statutory members within three months following the appeal, the decision of the KEK shall remain binding, otherwise the decision of the KDLM shall supersede the decision of the KEK.

(3) Paragraphs 1 and 2 apply mutatis mutandis to assessments by the KEK or the KDLM within the sphere of their competence as to whether plurality of opinion is ensured in cases other than that of the licensing of a commercial broadcaster.

(4) Any television broadcaster licensed to broadcast channels nationwide who is affected by the decision of the State Media Authority under Articles 35 and 36 is entitled to appeal against that decision.

Article 38 Supervision in other Matters

(1) The competent State Media Authority shall examine before and after the issue of the licence whether the other provisions of this Interstate Treaty applicable to commercial broadcasters have

been complied with. It shall make its decision pursuant to the applicable provisions of State law.

(2) The competent State Media Authorities agree on a common procedure in all states for the application of paragraph 1. They establish joint bodies for this reason and for the preparation of decisions in individual cases. The State Media Authorities should cooperate in planning and preliminary technical work.

(3) Each State Media Authority may complain pursuant to paragraph 1 to the State Media Authority which issued the licence that a channel broadcast nationwide violates other provisions of this Interstate Treaty. The competent State Media Authority is obliged to consider the complaint and to inform the State Media Authority which has made the complaint of the review and of any steps taken.

(4) Articles 47 (3) sentence 1 remains unaffected.

Article 39 Scope of Application

Articles 21 to 38 apply only to nationwide television broadcasts. There may be no deviating provision under State law. Decisions by the KEK and, in accordance with Article 37 (2), the KDLM shall also be taken as the basis for decisions under State law on the allocation of transmission capacities by the competent State Media Authority.

Article 39 a Cooperation

(1) The State Media Authorities cooperate with the Regulatory Authority for Telecommunications and with the Federal Cartel Office in order to fulfil their tasks. The State Media Authorities must, when requested by the Regulatory Authority for Telecommunications or the “Bundeskartellamt”³², provide the information the latter require to fulfil their tasks.

(2) Paragraph 1 shall apply mutatis mutandis to State Cartel Authorities.

Article 40 Funding of Special Tasks

(1) The share stipulated in Article 10 of the Interstate Treaty on Broadcasting Funding³³ may be used for funding the following tasks:

1. The licensing and supervisory tasks of the State Media Authorities including the necessary planning and, in particular, preliminary technical work;

³² Federal Cartel Office

³³ Rundfunkfinanzierungsstaatsvertrag (RFinStV)

2. The promotion of public access channels³⁴.

On the basis of special authorisations granted by the State legislature funds from the share referred to in sentence 1 may also be used until 31 December 2010 to promote the technical infrastructure required under State law to supply the State with radio and television and to promote projects for innovative broadcasting technology. The funding of projects for innovative broadcasting technology should have a time limit. On the basis of a special authorisation from the State legislature, non-commercial forms of local and regional broadcasting and projects for promoting media literacy may receive financial support from the share pursuant to sentence 1.

(2) The right of the State legislature to allocate to the State Media Authority only a part of the share pursuant to paragraph 1 remains unaffected.

(3) Insofar as the share pursuant to paragraph 1 is not made use of the respective State Broadcasting Corporations shall be entitled to it. An appropriation by State law is admissible.

Subsection 4 Programming Principles, Broadcasting Time for Third Parties

Article 41 Programming Principles

(1) The constitutional order shall apply to the broadcasting channels. They must respect human dignity and the moral and religious convictions of others as well as their world view. They shall promote solidarity in unified Germany and international understanding and should work towards a non-discriminatory society. The general legislative provisions and the statutory provisions protecting personal dignity shall be complied with.

(2) Full service channels should contribute to presenting the plurality in German-speaking areas and in Europe by providing an appropriate share of information, culture and education. The possibility of offering theme channels remains unaffected.

(3) Paragraphs 1 to 2 only apply to nationwide broadcasting.

Article 42 Broadcasting Time for Third Parties

(1) The Protestant Churches, the Catholic Church and the Jewish Communities shall, if they so request, be granted appropriate time for broadcasting

³⁴ Offene Kanäle

religious programmes; the broadcaster may call for reimbursement of costs.

(2) Political parties participating in elections for the “Deutscher Bundestag”³⁵ shall, subject to reimbursement of costs, be granted an appropriate amount of broadcasting time if an election list of this party has been admitted in at least one State. In addition, any party or other political association participating in the elections of representatives from the Federal Republic of Germany for the European Parliament is entitled to a appropriate amount of broadcasting time if at least one electoral proposal has been approved, subject to reimbursement of costs.

(3) Paragraphs 1 and 2 only apply to nationwide broadcasting.

Subsection 5 Financing, Advertising, Teleshopping

Article 43 Financing

Commercial broadcasters may finance their channels through income from advertising and teleshopping, and through other income, in particular user fees (subscriptions or individual fees), as well as from their own means. Commercial broadcasters may not be financed funded by broadcasting fees. Article 40 remains unaffected.

Article 44 Insertion of Advertising and Teleshopping

(1) Broadcasts of religious services and children’s programmes may not be interrupted by advertising or teleshopping spots.

(2) Television advertising and teleshopping spots must be inserted between programmes. Isolated advertising and teleshopping spots shall remain the exception. Advertising and teleshopping spots may be inserted during programmes subject to the conditions defined in paragraphs 3 and 4 as far as the integrity and character of the programme are not affected and the rights of the rights holders are not violated.

(3) In television programmes which consist of autonomous parts or in sports programmes and programmes of similarly structured events and presentations with intervals advertising and teleshopping spots can be inserted only between the autonomous parts or in the intervals. In other programmes the interval between two consecutive interruptions within the programmes must be at least 20 minutes. Paragraphs 4 and 5 remain unaffected.

(4) Divergent from paragraph (3) sentence 2 the broadcast of audiovisual works, such as feature films and films made for television, excluding series, serials, light entertainment programmes and documentaries, may be interrupted once for every period of 45 minutes, provided their scheduled duration is more than 45 minutes. A further interruption is allowed if the scheduled duration is at least 20 minutes longer than two or more complete periods of 45 minutes.

(5) On television, news and current affairs programmes, documentaries, religious programmes, when their scheduled duration is less than 30 minutes, shall not be interrupted by advertising or teleshopping. If their scheduled duration is 30 minutes or longer, the provisions of the previous paragraphs shall apply.

(6) If advertising or teleshopping spots on a television channel are specifically and frequently geared toward audiences in another state which has ratified the European Convention on Transfrontier Television but which is not a Member of the European Union, the television advertising and teleshopping rules that apply there must not be circumvented. Sentence 1 shall not apply if the provisions of this Interstate Treaty on advertising or teleshopping are stricter than the rules that apply in the state in question, nor if agreements in this area have been concluded with the relevant state.

Article 45 Duration of Advertising

(1) The proportion of broadcasting time devoted to teleshopping spots, advertising spots and other forms of advertising, with the exception of teleshopping inserts in the sense of Article 45 a, shall not exceed 20 per cent of the daily broadcasting time. The broadcasting time for advertising spots shall not exceed 15 per cent of the daily broadcasting time.

(2) The proportion of broadcasting time for advertising spots and teleshopping spots within a given clock hour shall not exceed 20 per cent.

(3) References made by the broadcaster to its own programmes and ancillary products which are directly derived from said programmes, public service announcements broadcast free of charge including charity appeals and mandatory references as defined in the Advertising of Medications Act³⁶ are not considered to be advertising in the sense of paragraphs 1 and 2.

³⁵ German Federal Parliament

³⁶ Heilmittelwerbegesetz (HWG)

Article 45 a Teleshopping Inserts

(1) Inserts devoted to teleshopping broadcast by a channel not exclusively devoted to teleshopping shall be of a minimum uninterrupted duration of 15 minutes.

(2) The maximum number of inserts per day shall be eight. Their overall duration shall not exceed three hours per day. They must be clearly identified as teleshopping inserts by optical and acoustic means.

Article 45 b Self-promotional Channels

For self-promotional channels Articles 7, 8, 44 and 45 a apply mutatis mutandis. On these channels other forms of advertising are allowed within the limitations of Article 45 (1) and (2).

Article 46 Guidelines

The State Media Authorities shall issue joint guidelines for the implementation of Articles 7, 8, 44, 45, 45a and 45b after consultation with the State Broadcasting Corporations which form the ARD, and the ZDF and shall exchange their experiences with regard to the implementation of these guidelines.

Article 46 a Exemptions for Regional and Local Television Broadcasters

For regional and local television channels State law may differ from Article 7 (4) sentence 2, Article 44 (3) to (5) and Articles 45, 45 a.

Subsection 6 Data Protection

Article 47 Data Protection

(1) Insofar as personal data are collected, processed or used in the provision and dissemination of broadcasting according to this Interstate Treaty the provisions of the data protection section of the Telemedia Act³⁷ in the current valid version apply mutatis mutandis.

(2) Insofar as a broadcaster processes personal data exclusively for his own journalistic-editorial purposes and the person concerned is thus negatively affected in his interests worthy of protection, he can demand information about the underlying saved

data about his person. The information can be denied after consideration of the party's interests worthy of protection, insofar as by means of the communication the journalistic task of the broadcaster would be negatively affected by the exploration of the saved information or if from the data:

1. Persons who were involved in the preparation, production or broadcasting or
2. The person of the sender or of the guarantor of contributions, documents and communications for the editorial part

can be ascertained. The affected party can demand the correction of incorrect data or the addition of his own statement of appropriate length.

(3) The competence for supervision of compliance with paragraphs 1 and 2 follows State law. The calling up of offerings or access to offerings within the framework of supervision is free of charge. Broadcasters must guarantee this. The broadcaster is not allowed to block his offerings from being called up or accessed by the competent supervisory authority.

Section IV Appeal, Administrative Offences

Article 48 Appeal to Federal Administrative Court

In a judicial proceeding an appeal may also be made to the "Bundesverwaltungsgericht"³⁸ on the grounds that the judgement being challenged is based on a violation of the provisions of this Interstate Treaty.

Article 49 Administrative Offences

(1) A commercial broadcaster broadcasting nationwide commits an administrative offence if he, either intentionally or through negligence:

1. Broadcasts major events in encrypted form and for a special payment in breach of Article 4 (1) or (3);
2. Fails to separate advertising or teleshopping from other parts of the programme service in breach of Article 7 (3) sentence 2;
3. Uses subliminal techniques in the advertising or teleshopping in breach of Article 7 (3) sentence 3;
4. In breach of Article 7 (4) uses part of the broadcast image with advertising without clearly separating the advertising from the rest of the pro-

³⁷ Telemediengesetz (TMG)

³⁸ Federal Administrative Court

- gramme service by optical means and without identifying it as such in breach of Article 7 (4);
5. In breach of Article 7 (5) sentence 2 fails to identify an infomercial;
 6. In breach of Article 7 (6) sentence 1 disseminates surreptitious advertising or similar practices;
 7. In breach of Article 7 (6) sentence 2 inserts virtual advertising in programmes;
 8. In breach of Article 7 (8) broadcasts advertising or teleshopping of a political, ideological or religious nature;
 9. In breach of Article 8 (1) sentence 1 fails to indicate the sponsor at the beginning or at the end of the sponsored programme;
 10. Broadcasts prohibited sponsored programmes (Article 8 (3) to (6));
 11. In breach of Article 9 (1) sentence 2 fails to comply with the to provide information;
 12. In breach of Article 20 (1) sentence 1 or (2) sentence 1 provides broadcasting channels without a licence;
 13. In breach of Article 23 (2) fails to submit the list of programming sources to the competent State Media Authority within the time limit;
 14. In breach of Article 34 sentence 2 fails to provide available data on viewer shares at the request of the KEK;
 15. In breach of Article 44 (1) interrupts religious services or children's programmes with advertising or teleshopping;
In breach of Article 44 (3) sentence 1 fails in television programmes consisting of autonomous parts, or in sport programmes and similarly organised broadcasts of events and performances which include intervals to insert advertising or teleshopping between the autonomous parts, or in the intervals or
In breach of the conditions stated in Article 44 (4) and (5) interrupts other programmes with advertising or teleshopping;
 16. In breach of Article 45 exceeds the permissible amount of advertising;
 17. In breach of Article 45 a (1) broadcasts teleshopping inserts which do not have an uninterrupted duration of at least 15 minutes,
In breach of Article 45 a (2) sentence 1, broadcasts more than eight teleshopping inserts daily,
In breach of Article 45 a (2) sentence 2 broadcasts teleshopping inserts the total duration of which exceeds three hours per day or
In breach of Article 45 a (2) sentence 3 broadcasts teleshopping windows which are not clearly identified as such by optical and acoustic means;
 18. In breach of Article 47 (1) in connection with Article 12 (3) of the Telemedia Act³⁹ makes the use of broadcasting dependent on consent by the user to his data being processed for other purposes;
 19. In breach of Article 47 (1) in connection with Article 13 (1) sentence 1 or 2 of the Telemedia Act fails to inform the user, informs the user incorrectly, incompletely or unpunctually;
 20. In breach of Article 47 (1) in connection with Article 13 (2) or (4) sentence 1 nos. 1 to 5 of the Telemedia Act does not meet or inadequately meets an obligation to ensure named there;
 21. In breach of Article 47 (1) in connection with Article 14 (1) or Article 15 (1) or (8) sentence 1 or 2 of the Telemedia Act processes personal data;
 22. In breach of Article 47 (1) in connection with Article 15 (3) sentence 3 of the Telemedia Act combines a use profile with data on the bearer of the pseudonym;
 23. In breach of Articles 47 (3) sentence 4 blocks offerings from being called up or accessed by the competent supervisory authority.
- A broadcaster also commits an administrative offence if he:
1. In breach of Article 21 (6) fails to immediately notify the competent State Media Authority of any major change in its circumstances after applying for or receiving a licence;
 2. In breach of Article 21 (7) fails to notify the competent State Media Authority immediately after the end of a calendar year if and to what extent there has been a change within that calendar year regarding interests in the undertaking and the conditions of attribution;
 3. In breach of Article 23 (1) fails to prepare and publish the annual statement of accounts with appendix and a management report within the time limit;
 4. In breach of Article 29 sentence 1 fails to notify of any changes planned;

³⁹ Telemediengesetz (TMG)

5. In breach of Article 52 (3) fails to provide, or does not provide to a sufficient extent or not on the terms provided the necessary transmission capacities for the channels to be broadcast, or In breach of Article 52 (5), without consent of the respective broadcasters unbundles the public service or commercial channel packages, or includes individual broadcasting channels or content in channel packages or otherwise markets them in return for or without payment or In breach of Article 52 (6) sentence 1 fails to notify or does not notify in good time of the retransmission of television channels or media services;
 6. In breach of Article 53 (2) sentence 1 fails, to immediately notify the competent State Media Authority of the use of a conditional system or a system pursuant to Article 53 (1) sentence 2 no. 3 or the ownership in application programme interfaces or the fees for the cable feed or bundling and marketing of channels; In breach of Article 53 (2) sentence 2 to immediately notify the competent State Media Authority of changes in the information referred to in Article 53 (2) sentence 1 or In breach of Article 53 (2) sentence 3 to provide the competent State Media Authority upon demand with the necessary information or fails to provide it to a sufficient degree;
 7. In breach of Article 55 (1) for telemedia fails to keep available or fails to keep correctly available the name or address or in the case of legal persons the name or the address of the authorised representative;
 8. In breach of Article 55 (2) for telemedia with journalistically-editorially designed offerings fails to indicate or incorrectly indicates the responsible party;
 9. In breach of an executable instruction by the competent State Media Authority pursuant to Article 59 (3) sentence 2, also in connection with (4) sentence 1, fails to block an offering or
 10. In breach of Article 59 (7) sentence 3 blocks offerings from being called up by the competent supervisory authority.
- (2) The administrative offence can be penalised by a fine of up to Euro 500,000, in the case of paragraph 1 sentence 2 nos. 7 and 8 by a fine of up to Euro 50,000 and in the case of paragraph 1 sentence 2 nos. 9 and 10 by a fine of up to Euro 250,000.
- (3) The competent administrative authority in accordance with Article 36 (1) no. 1 of the Administrative

Offences Act⁴⁰ is the State Media Authority of the State in which the licence was issued or applied for provided no other authority has been designated under the State law as the competent administrative authority to deal with administrative offences under paragraph 1 sentence 1 nos. 18 to 23. The competent administrative authority shall inform the other State Media Authorities immediately if legal proceedings are instituted. To the extent that proceedings pursuant to this paragraph are instituted in several States the authorities involved shall decide which authority will continue the proceedings.

(4) The State Media Authority of the State which has issued the licence to a broadcaster of a channel broadcast nationwide may decide that complaints following a legal breach of regulations in this Interstate Treaty as well as final decisions in an administrative offence proceeding in accordance with paragraph 1 shall be broadcast by the broadcaster in question in its programming. The content and timing of the notice are to be determined by said State Media Authority with due discretion. Paragraph 3 sentence 2 and 3 apply *mutatis mutandis*.

(5) The prosecution of the administrative offences specified in paragraph 1 comes under a statute of limitations of six months.

Section V Transmission Capacities

Article 50 Principle

The States decide on the allocation and use of the transmission capacities which serve in the dissemination of broadcasting and comparable telemedia (telemedia aimed at the general public) in accordance with this Interstate Treaty and the respective State law.

Article 51 Allocation of Satellite Transmission Capacities

(1) The States decide on the allocation of satellite transmission capacities for broadcasting purposes subject to the provisions of paragraphs 2 to 5.

(2) The Minister Presidents decide on allocations to the State Broadcasting Corporations which form the ARD for the broadcasting of a joint channel, and to the ZDF as well as on allocations to States in accordance with paragraph 1 unless such allocations are the subject of interstate treaties.

(3) The following principles in particular shall apply to allocations:

⁴⁰ Verwaltungsverfahrensgesetz (VwVfG)

1. The ARD, the ZDF and a body to be determined by the State Media Authorities shall be informed of any available satellite transmission capacities;
2. If there are sufficient satellite transmission capacities to meet the registered demand, they shall be allocated accordingly;
3. If the satellite transmission capacities available are not sufficient to meet the registered demand, the Minister Presidents shall endeavour to achieve an agreement between the parties involved; in the case of commercial broadcasting the parties in question are the State Media Authorities;
4. If the parties involved do not reach an agreement, the Minister Presidents shall decide according to the following criteria:
 - ensuring the basic supply,
 - equal treatment of commercial broadcasters,
 - participation of public service broadcasting in all new technologies and channel types,
 - plurality of programme offerings and
 - number of satellite transmission capacities already allocated to a State.

(4) The chairman of the Minister Presidents Conference allocates the satellite channel pursuant to the agreement of all Minister Presidents pursuant to paragraph 2.

(5) The Minister Presidents agree on procedural rules for implementing paragraphs 2 to 4.

Article 52 Retransmission

(1) The simultaneous and unaltered retransmission of television channels which can be received nationwide, or which are operated in Europe legally and in accordance with the provisions of the European Convention on Transfrontier Television shall be authorised under State law within the framework of the available technical capacities. The retransmission of television channels may be suspended in conformity with European broadcasting regulations. Regulations under State law concerning the allocation of analogue cable channels are permitted provided they are required in order to achieve clearly defined public interest objectives. They may be made specifically to ensure a pluralistic media that is based on the principle of

plurality of opinion. The details, particularly the order of priority with regard to the allocation of cable channels, shall be governed by State law.

(2) If television channels or comparable telemedia are broadcast additionally or exclusively using digital means in a cable system, the provisions of paragraphs 3 to 5 apply for digitally used capacities.

(3) The operator of a cable system must ensure that:

1. The necessary transmission capacities for the television channels of public service broadcasting statutorily determined for the respective State including its channel package, are available;
2. Transmission capacities are available for the commercial broadcasting channels containing regional inserts in accordance with Article 25;
3. The transmission capacity of one analogue television channel for the regional and local television channels licensed in the respective State and for the public access channels is available. If subsequently this transmission capacity is not exhausted, the allocation shall be governed by State law. The special provisions under State law for public service channels and similar offerings remain unaffected;
4. The technical transmission capacities pursuant to nos. 1 to 3 are technically equivalent in relation to other digital transmission capacities;
5. Fees and rates for the channels in nos. 1 to 3 are disclosed. Fees and rates must in the framework of the Telecommunications Act be designed in such a way as to allow regional and local offerings to also be broadcast on appropriate and equal terms; the special provisions under State law for public service channels and similar offerings remain unaffected.

(4) The decision concerning the allocation beyond that pursuant to paragraph 3 with television channels and telemedia broadcast in digital technology shall be made by the operator:

1. Within a further transmission capacity to the extent of one third of the total capacity available for digital transmission insofar as in doing so he includes, considering the interests of the homes connected, a multitude of broadcasters as well as a pluralistic programme offering of full service channels, channels free of charge, theme channels and foreign language channels and takes appropriate account of telemedia;
2. Within transmission capacities in excess thereof solely in accordance with general laws.

(5) The operator of a digitalised cable network may not without consent of the respective broadcasters unbundle their public or commercial channel packages, nor may the operator include individual broadcasting channels or contents in channel packages or otherwise market these in return for or without payment.

(6) The operator of a cable network must notify the competent State Media Authority at least two months prior to the start of the retransmission of television channels or teledata and submit to it an allocation schedule and in the cases specified in paragraph 3 its terms and conditions. If the conditions in paragraph 3 and 4 no. 1 are not fulfilled by the operator of a cable network, the selection of the retransmitted digital television channels and the allocation of the digital transmission capacities shall be made in accordance with State law. The operator of a cable network must first be given an appropriate period of time in which to fulfil the statutory conditions. In the event of a change of allocation sentences 1 to 3 apply *mutatis mutandis*.

(7) The allocation of radio channels to a cable network is governed by State law.

Article 52 a **Digitalisation of Broadcasting**

(1) When digital terrestrial transmission capacities in television are allocated for the first time under State law priority must be given to television broadcasters with channels which are disseminated in analogue form in the broadcasting region affected. The technical transmission capacities for these channels must be of similar quality in relation to other transmission capacities.

(2) The State Public Broadcasting Corporations which form the ARD, the ZDF, and the "Deutschlandradio" may meet their obligation to supply broadcasting to the population by using all means of transmission. They are entitled to phase out the analogue terrestrial supply on appropriate terms in order to, at the same time, allow the development and allocation of digital terrestrial transmission capacities. The analogue terrestrial television supply may also be phased out if channel reception is guaranteed by another means of transmission.

Article 53 **Free Access**

(1) Providers of telecommunications services which disseminate broadcasting and comparable teledata must guarantee that the technology used allows for a pluralistic offering. To ensure plurality of opinion providers of broadcasting and teledata shall not either directly or indirectly:

1. Through conditional access systems;

2. Through application programming interfaces;

3. Through systems which also control the selection of television programmes and function as a superordinate user interface for all services offered via the system or

4. Due to the nature of their fees

be unreasonably impeded from broadcasting their offerings or treated differently from similar providers without an objectively justifiable reason.

(2) The respective competent Media Authority must be notified immediately of the use of a conditional access system or a system pursuant to paragraph 1 sentence 2 no. 3, ownership of application programming interfaces, fees for cable feed and the bundling and marketing of channels. Sentence 1 shall apply *mutatis mutandis* to any changes. The competent State Media Authority must be provided with the necessary information upon demand.

(3) The competent State Media Authority shall act after notification pursuant to paragraph 2, on the basis of information from the Regulatory Authority for Telecommunications or following a complaint from broadcasters, teledata providers or users.

(4) The competent State Media Authority, in consultation with the Regulatory Authority for Telecommunications, determines whether a breach of paragraph 1 exists.

(5) The State Media Authority of the State in which the licence of the broadcaster has been issued or the provider or user of services has his registered office, place of residence or, failing this, his habitual residence is the competent authority. If there is no competent authority according to this provision, the competent authority is the State Media Authority in the district of which the cause of the official action arises.

(6) The State Media Authorities shall by means of concordant statutes regulate details of the specification in terms of content and procedure of paragraphs 1 to 4.

Article 53 a **Review Clause**

Articles 52 and 53 shall be reviewed on a regular basis every three years, for the first time on 31 March 2007 in accordance with Article 31 (1) of Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on Universal Service and Users' Rights Relating to Electronic Communications Networks and Services (Universal Service Directive).

Section VI Telemedia

Article 54 General Provisions

(1) Telemedia within the framework of the law require no license or registration. For offerings the constitutional order applies. The provisions of the general laws and the legal ordinances for the protection of personal honour are to be respected.

(2) Telemedia with journalistically-editorially designed offerings in which, in particular, the content of periodical print media is reproduced completely or partially in text or image must conform to recognised journalistic principles. News are to be checked by the provider before their dissemination with the diligence appropriate to the circumstances for content, source and truth.

(3) In presenting opinion polls that were carried out by providers of telemedia it must be expressly indicated, whether or not they are representative.

Article 55 Obligation to provide Information and Right to be Informed

(1) Providers of telemedia which does not exclusively serve personal or familial purposes must keep the following information easily recognizable, directly accessible and constantly available:

1. Name and address as well as
2. In the case of legal persons also the name and address of the authorised representative.

(2) Providers of telemedia with journalistically-editorially designed offerings in which, in particular, the content of periodical print media is reproduced completely or partially in text or image must also, in addition to the specifications pursuant to Articles 5 and 6 of the Telemedia Act, name an accountable person giving their name and address. If several accountable persons are named, it must be made clear which of the named persons is accountable for which part of the service. As accountable person can be named persons only who:

1. Have their permanent residence in Germany;
2. Have not lost their competency to hold public office by a court judgement;
3. Are fully legally competent and
4. Can be fully prosecuted.

(3) For providers of telemedia pursuant to paragraph 2 sentence 1, Article 9a applies *mutatis mutandis*.

Article 56 Right of Reply

(1) Providers of telemedia with journalistically-editorially designed offerings in which, in particular, the content of periodical print media is reproduced completely or partially in text or image, are obligated, without delay to include in their offerings without an additional calling-up fee the reply of the person or institution who is affected by an assertion of fact made through one of their offerings without costs for the affected person. The reply must be offered without insertions and omissions in the same layout as the assertion of fact. The reply must be offered in the same length as the assertion of fact in direct conjunction to it. If the assertion of fact is no longer offered or if the offering ends before the inclusion of the reply, then the reply must be offered in a comparable place for as long as the originally offered assertion of fact. A response to the reply must be limited to actual information and may not be offered in direct conjunction to the reply.

(2) An obligation to include the reply pursuant to paragraph 1 does not exist if:

1. The affected party has no legitimate interest in the reply,
2. The extent of the reply inappropriately exceeds that of the refuted assertion of fact,
3. The reply does is not limited to actual information or has punishable content or
4. The reply, in writing and signed by the affected party or his legal representative, is not received without delay by the accessed provider within at the latest six weeks after the last day of the offering of the refuted text but in any event three months after the first placement of the offering.

(3) The regular course of law exists for the enforcement of a futilely asserted right of reply. For this procedure the provisions of the Code of Civil Procedure⁴¹ on the procedure for issuing an injunction are to be applied *mutates mutandis*. An endangerment of the right does not need to be made plausible. Principal proceedings do not take place.

(4) An obligation to reply does not exist for truthful reports about open sessions of the supra-national parliamentary organs, about the legislative federal and state organs as well as those organs and au-

⁴¹ Zivilprozessordnung (ZPO)

thorities for which the respective State press acts exclude a press law related reply.

Article 57

Data Protection in connection with journalistic-editorial purposes

(1) Insofar as undertakings and associated undertakings of the press as providers of telemedia collect, process or use personal data exclusively for their own journalistic-editorial purposes, Articles 5, 7, 9 and 38a of the Federal Data Protection Act⁴² apply on condition that liability is limited to damages which occur through a violation of data confidentiality pursuant to Article 5 of the Federal Data Protection Act or through insufficient technical or organisational measures in the sense of Article 9 of the Federal Data Protection Act. Specific provisions according to interstate treaty or State law remain unaffected.

(2) If through offerings of a provider of telemedia personal data are processed exclusively for the provider's own journalistic-editorial purposes and the party concerned is thus negatively affected in his interests worthy of protection, he can demand information about the underlying saved data about his person. The information can be denied after consideration of the party's interests worthy of protection insofar as by means of the communication the journalistic task of the broadcaster would be negatively affected by the exploration of the saved information or if from the data:

1. Persons who were involved in the preparation, production or broadcasting or
2. The person of the sender or of the guarantor of contributions, documents and communications for the editorial part

can be ascertained. The affected party can demand the correction of incorrect data or the addition of his own statement of appropriate length. Sentences 1 to 3 do not apply for the offerings of undertakings and associated undertakings of the press, insofar as these are subject to self-regulation by the Press Code⁴³ and the Rules for Complaint⁴⁴ of the "Deutscher Presserat"⁴⁵.

(3) If the journalistic-editorial use of personal data leads to the dissemination of counter representations of the affected party or to formal obligations, injunctions or judgements on the cessation of the dissemination or on the retraction of the content of the data, these counter representations, declarations of cessation or retractions must be added to the

saved data and kept there for the same period of time as the data themselves and in the case of a conveyance of the data these must be conveyed along with the data.

Article 58

Advertising, Sponsorship

(1) Advertising shall be clearly recognisable as such and distinctly separated from the other content of the offerings. In the advertising no subliminal techniques shall be used.

(2) For teleshopping channels Articles 7, 8, 44, 45 and 45a apply mutatis mutandis.

(3) For sponsorship in television text Article 8 applies mutatis mutandis.

Article 59

Supervision

(1) The competent supervisory authorities pursuant to the general Federal and State data protection acts monitor for their area compliance with the data protection provisions of the Telemedia Act⁴⁶ as well as those of Article 57. The competent authorities for data protection in the journalistic-editorial area in public service broadcasting also monitor for their area compliance with the data protection provisions for journalistic-editorial offerings in telemedia. Sentence 1 does not apply if undertakings and associated undertakings of the press are subject to self-regulation by the Press Code⁴⁷ and the Rules of Complaint⁴⁸ of the "Deutscher Presserat"⁴⁹.

(2) Compliance with the provisions for telemedia with the exception of data protection is monitored by a supervisory authority determined by State law.

(3) If the respective competent supervisory authority determines a violation of the provisions with the exception of Article 54, Article 55 (2) and (3), Article 56, Article 57 (2) or the data protection provisions of the Telemedia Act, it takes the measures necessary for the elimination of the violation in regard to the provider. It can, in particular, forbid offerings and order their blocking. The forbiddance is not allowed to take place if the measure is disproportionate to the importance of the offering to the provider and the general public. The forbiddance can only take place if its purpose cannot be reached in another way. The forbiddance is, insofar as its purpose can be reached in this way, to be limited to certain types or parts of offerings or limited in duration. For journalistically-editorially designed offerings in which exclusively the content of periodical

⁴² Bundesdatenschutzgesetz (BDSG)

⁴³ Pressekodex

⁴⁴ Beschwerdeordnung

⁴⁵ German Press Council

⁴⁶ Telemediengesetz (TMG)

⁴⁷ Pressekodex

⁴⁸ Beschwerdeordnung

⁴⁹ German Press Council

print media is reproduced completely or partially in text or image a blocking is only admissible only under the conditions of Article 97 (5) sentence 2 and Article 98 of the Code of Criminal Procedure⁵⁰.

(4) If measures against the responsible party according to Article 7 of the Telemedia Act⁵¹ prove to be infeasible or not promising, measures to block offerings pursuant to paragraph 3 can also be targeted at the service provider of external content pursuant to Articles 8 to 10 of the Telemedia Act, insofar as blocking is technically possible and reasonable. Article 7 (2) of the Telemedia Act remains unaffected.

(5) If through an offering the rights of a third party are encroached upon and the regular course of law against this is opened for the third party, instructions of the supervisory authority in the sense of paragraph 3 should only be given if this is necessary for reasons of the common good.

(6) Responsible for the execution of this section is the supervisory authority of the State in which the affected provider has his headquarters, his residence or for lack of these his domicile. If this results in no competence, then the supervisory authority is competent in whose district the reason for the legal act emerged.

(7) Calling up offerings within the framework of supervision is free of charge. The service providers shall ensure this. The provider is not allowed to block his offerings from being called up by the competent supervisory authority.

Article 60 Telemedia Act, Public Authorities

(1) For telemedia which come under the provisions of this Interstate Treaty or the provisions of the other interstate broadcasting treaties of the States the provisions of the currently valid version of the federal Telemedia Act⁵². Paragraph 2 remains unaffected.

(2) For the public authorities of the States in addition to the above provisions the provisions of the currently valid version of the federal Telemedia Act apply *mutatis mutandis*.

Article 61 Notification

Amendments to this section are subject to obligation to notify pursuant to Directive 98/48/EC of the European Parliament and of the Council of 20 July 1998 amending Directive 98/34/EC laying down a

⁵⁰ Strafprozeßordnung (StPO)

⁵¹ Telemediengesetz (TMG)

⁵² Telemediengesetz (TMG)

procedure for the provision of information in the field of technical standards and regulations.

Section VII Transitional and Final Provisions

Article 62 Termination

(1) This Interstate Treaty shall remain in force indefinitely. It may be terminated by any of the contracting parties subject to twelve months notice from the end of the calendar year. It may be terminated at the earliest with effect from 31 December 2008. If the Interstate Treaty is not terminated as from that date, the same period of notice may be given for a date two years later. Termination shall be made in writing to the Chairman of the Minister Presidents Conference. If one State gives notice of termination it may terminate with effect from the same date the Interstate Treaty on License Fees⁵³ and the Interstate Treaty on Broadcasting Funding⁵⁴. Every other State may thereupon likewise terminate the Treaty with effect from the same date within a period of six months following receipt of the notice of termination. These Interstate Treaties shall remain in force between the other States.

(2) In the event of termination the allocation of satellite transmission capacities shall remain in force as long as there are still licences for these transmission capacities. In the case of termination by individual States Article 19 remains unaffected.

(3) Article 4 (1) and (2) may be terminated by any of the contracting parties with effect from the end of the calendar year subject to twelve months notice. It may be terminated at the earliest with effect from 31 December 2008. If Article 4 (1) and (2) is not terminated with effect from that date the same period of notice may be given for a date two years later. Termination shall be made in writing to the Chairman of the Minister Presidents Conference. If one State terminates the Treaty every State may within three months following receipt of the termination terminate Article 4 (1) and (2) with effect from the same date. The termination by one State does not affect the validity of the terminated provisions of this Interstate Treaty with regard to the relation of the other States to one another.

(4) Article 12 (2) may also be terminated alone by any of the contracting States subject to one year notice with effect from the end of the calendar year. It may be terminated at the earliest with effect from 31 December 2009. If Article 12 (2) is not terminated with effect from this date, the same period of notice may be given for a date two years later. Termination shall be made in writing to the Chair-

⁵³ Rundfunkgebührenstaatsvertrag (RGebStV)

⁵⁴ Rundfunkfinanzierungsstaatsvertrag (RFinStV)

man of the Minister Presidents Conference. If one State gives notice, each other State may terminate this Interstate Treaty, the ARD Interstate Treaty⁵⁵, the ZDF Interstate Treaty⁵⁶, the Interstate Treaty on the public corporation “Deutschlandradio”, the Interstate Treaty on Broadcasting Funding⁵⁷ and the Interstate Treaty on License Fees⁵⁸ with effect from the same date within three months following receipt of the notice of termination. The termination by one State does not affect the validity of the terminated provisions of this Interstate Treaty listed in sentence 5 with regard to the relation of the remaining States to one another.

(5) Article 16 (1), (2) and (5) may be terminated alone by any of the contracting States subject to six months notice with effect from the end of the calendar year following the determination of the funding requirements of public service broadcasting pursuant to Article 14 if the Interstate Treaty on Broadcasting Funding is not amended after the determination of the funding requirement pursuant to Article 14 due to an increase in broadcasting fees. It may be terminated at the earliest with effect from 31 December 2008. If Article 16 (1), (2) and (5) is not terminated with effect from one of these dates, the same period of notice may be given for a date two years later. Termination shall be made in writing to the Chairman of the Minister Presidents Conference. If one State gives notice of termination, each other State may terminate the Interstate Treaty on License Fees and the Interstate Treaty on Broadcasting Funding with effect from the same date within three months following receipt of the notice of termination. In this case each State may in addition terminate with effect from the same date within a further three months following receipt of the notice of termination pursuant to sentence 5 Article 13 (2) and Articles 14 and 17 with regard to individual or all provisions. The terminated provisions of this Interstate Treaty and the Interstate Treaties mentioned in sentence 5 remain in force between the remaining States.

Article 63 Regulation for Bavaria

The Free State of Bavaria is entitled to stipulate a proportion of the broadcasting fee pursuant to Article 40 to be used to fund tasks of the “Bayerische Landeszentrale für neue Medien”⁵⁹ under its public remit as defined by State Law. In other respects the provisions of this Interstate Treaty apply *mutatis mutandis* to providers under Bavarian law.

⁵⁵ ARD-Staatsvertrag

⁵⁶ ZDF-Staatsvertrag

⁵⁷ Rundfunkfinanzierungsstaatsvertrag (RfinStV)

⁵⁸ Rundfunkgebührenstaatsvertrag (RgebStV)

⁵⁹ Bavarian Regulatory Authority for Commercial Broadcasting