

# Interstate Treaty on Broadcasting and Telemedia (Interstate Broadcasting Treaty)

in the version of the  
13th Amendment to the Interstate Broadcasting Treaties  
Entry into force: 1 April 2010

## Explanatory note

The Interstate Broadcasting Treaty contains general provisions applying to both public-service and commercial broadcasting (Sections I, IV- VII) as well as provisions applying to public-service broadcasting only (Section II), and provisions exclusively applicable to commercial broadcasting (Section III).

The 13<sup>th</sup> amendment to the Interstate Broadcasting Treaty completes the transposition of the Audiovisual Media Services Directive of 19 December 2007 (AVMS-Directive, codified version of 26 January 2010) into German media law.

The issue of jurisdiction (Art. 2 AVMS-D) was transposed in Art. 1 (3) RStV.

The provision on short news reports (Art. 15 AVMS-D) finds its equivalent in Art. 5 RStV.

The provision on the identification of providers (Art. 5 AVMS-D) was transposed in Art. 9a and Art. 55 (for telemedia).

The general provisions on audiovisual commercial communications contained in Art. 9 AVMS-D was transposed in Art. 7 and 7a RStV. Sponsorship (Art. 10 AVMS-D) is regulated via Art. 8 RStV. Other provisions on advertising can be found for public-service broadcasting in Art. 16 while for commercial broadcasting, advertising is regulated in Art. 45-46a.

Product placement (Art. 11 AVMS-D) has been incorporated into German media law through Articles 15, 44 and 63 RStV.

Regarding the protection of minors in the media, the Interstate Broadcasting Treaty on the Protection of Minors in the Media applies alongside the Interstate Broadcasting Treaty.

- Translation, for information purposes only -  
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## Preamble

This Interstate Treaty contains the principal 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 master the demands of national and international competition.

With the range of broadcasting services in Europe increasing as a result of new technologies, the variety of services available providing information and culture should be increased in the German-speaking regions. By means of this Interstate Treaty, but in particular by means of further regulatory measures and promotional activities in the Federal Republic of Germany, support is to be continued 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 technologies for the production and transmission as well as the provision of new forms of broadcasting. Its funding basis, including the financial equalisation, is to be maintained and ensured.

The commercial broadcasters are to be put into a position enabling them to extend and develop a commercial broadcasting system, especially as regards technologies and contents. To this end, they should be provided with sufficient transmission capacities and access to adequate sources of revenue. They should be able to transmit their satellite services additionally via the available terrestrial television frequencies which should be designated nationally in as balanced a manner as possible, also with regard to new television broadcasters, taking account of local and regional contents and in accordance with the respective state law.

The unification of Germany and the continued development of the dual broadcasting system require a comprehensive review of the designation and use of frequencies effected to date. All states declare their intention to reduce double and multiple coverage in order to secure additional transmission capacities for commercial broadcasters, including the "Westschienen" broadcaster<sup>1</sup>.

It is for the state media authorities to cooperate more closely in the interest of equal treatment of commercial broadcasters and the improved implementation of decisions.

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<sup>1</sup> Commercial television channel VOX - [www.vox.de](http://www.vox.de)

## **Section I General Provisions**

### **Article 1 Scope of Application**

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

(2) As far as this Interstate Treaty does not contain or permit any other regulations for the provision and transmission of broadcasting, the provisions of state law governing the respective broadcasting corporation or the respective commercial broadcaster shall apply.

(3) Television broadcasters which are not already under German jurisdiction due to their residence shall also be subject to the provisions of this Interstate Treaty if an up-link situated in Germany is used. If no satellite up-link is used in a Member State that is subject to the provisions of Directive 89/552/EEC of the European Parliament and of the Council of 3 October 1989 on the coordination of certain provisions laid down by law, regulation of administrative action in Member States concerning the provision of television services (OJ L 298 of 17 October 1989, p. 23), last amended by Directive 2007/65/EC of the European Parliament and of the Council of 11 December 2007 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (OJ L 332 of 18 December 2007, p. 27) - Audiovisual Media Services Directive -, German law shall also apply if a satellite capacity appertaining to Germany is used. This provision does not apply to offers which are

1. intended exclusively for reception in third countries, and
2. not received by the public with standard consumer equipment directly or indirectly in a state situated within the scope of Directive 89/552/EEC.

(4) The provisions laid down in Sections I and III of this Interstate Treaty shall apply to teleshopping channels only as far as this is expressly specified.

### **Article 2 Definitions**

(1) Broadcasting means a linear information and communication service; it means the provision and transmission of offers for the general public for simultaneous reception in moving images or sound along a schedule, using electromagnetic oscillations. The term includes offers which are transmitted in encrypted

form or can be received against special payment. Telemedia means all electronic information and communications services, as far as they are not telecommunications services pursuant to Article 3 no. 24 of the Telecommunications Act<sup>2</sup>, which consist entirely in the conveyance of signals across telecommunications networks or telecommunications-supported services pursuant to Article 3 no. 25 of the Telecommunications Act, or broadcasting pursuant to sentences (1) and (2).

(2) For the purposes of this Interstate Treaty:

1. 'broadcasting service' means a sequence of contents arranged and timed on the basis of a schedule,
2. 'programme' means an enclosed part of a broadcasting service limited in duration with related contents,
3. 'general channel' means a broadcasting service of varied content with information, education, advice and entertainment forming a major part of the programming overall;
4. 'thematic channel' means a broadcasting service offering contents which are basically of the same type;
5. 'satellite window service' means a broadcasting service of limited duration with national coverage transmitted as part of a broader-ranging service (main service);
6. 'regional window service' means a broadcasting service of limited duration and extent offering predominantly regional contents transmitted as part of a main service;
7. 'advertising' means any form of announcement in broadcasting transmitted in return for payment or for similar consideration or transmitted for self-promotion purposes by a public-service or a commercial broadcaster or a natural person in connection with a trade, business, craft or profession in order to promote the supply of goods or services, including immovable property, rights and obligations, in return for payment. Article 7 (9) remains unaffected;
8. 'surreptitious advertising' means the representation in words or pictures 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

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<sup>2</sup> Telekommunikationsgesetz (TKG) in the version published 25 July 1996, last amended 14 August 2009 - [http://www.gesetze-im-internet.de/bundesrecht/tkg\\_2004/gesamt.pdf](http://www.gesetze-im-internet.de/bundesrecht/tkg_2004/gesamt.pdf)

- by the broadcaster to serve advertising purposes and might mislead the public as to the actual purpose of the representation. Such representation is considered to be intended for advertising purposes, in particular if it is done in return for payment or for similar consideration;
9. 'sponsorship' means any contribution 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;
  10. 'teleshopping' means direct offers broadcast to the public with a view to the supply of goods or services, including immovable property, rights and obligations, in return for payment, in the form of teleshopping channels, windows or spots;
  11. 'product placement' means the identified representation in words or pictures of goods, services, names, trade marks, activities of a producer of goods or a provider of services in programmes in return for payment or for similar consideration in order to promote sales. The provision of goods or services free of charge shall be deemed to constitute product placement if said goods or services are of major value;
  12. 'channel package' means the bundling of broadcasting and other services which are transmitted digitally under an electronic programme guide;
  13. 'platform provider' means a provider that collates broadcasting services and comparable telemedia (telemedia directed at the general public) including contents by third parties on digital transmission capacities or digital data streams for the purpose of making these contents available as an overall provision, or that decides on the selection for bundling; platform provider does not mean an operator whose exclusive activity is the marketing of broadcasting services or comparable telemedia;
  14. 'broadcaster' means a provider of a broadcasting service under its own editorial responsibility;
  15. 'information' means the following in particular: news and current affairs, political information, economics, reports from abroad, religion, sport, regional information, society news, service and contemporary history;
  16. 'education' means the following in particular: science and technology, everyday life and advice, theology and ethics, animals and nature, society, children and minors, learning, history and other countries;
  17. 'culture' means the following in particular: theatre plays, music, television plays, television films and radio plays, fine arts, architecture, philosophy, literature and cinema;
  18. 'entertainment' means the following in particular: cabaret and comedy, films, series, shows, talk-shows, games, music;
  19. 'programme-related telemedia' means: offers for the analysis of contents of a specific programme including background information, as far as recourse is made to the materials and sources used for the programme in question and as far as these offers enhance and support the content and the topic of the programme, without, however, already presenting an independent new or modified offer pursuant to Article 11 f (3);
  20. 'press-type offer' means not only electronic editions of print media, but all journalistic edited offers which correspond to newspapers or magazines in their design and content.
- (3) Broadcasting does not mean offers which
1. are offered to fewer than 500 potential users for simultaneous reception in any case,
  2. are destined for the immediate reproduction from reception equipment storage media,
  3. exclusively serve personal or family purposes,
  4. are not journalistic edited offers, or
  5. consist of programmes which are each activated against individual payment.

### **Article 3 General Provisions**

(1) The state broadcasting corporations forming the association of public-service broadcasters in Germany ("Arbeitsgemeinschaft der Landesrundfunkanstalten, ARD")<sup>3</sup>, the second national public-service broadcasting corporation "Zweites Deutsches Fernsehen (ZDF)"<sup>4</sup>, the Deutschlandradio<sup>5</sup> and all providers of broadcasting services distributed nationally shall respect and protect human dignity in their offers; the moral and religious beliefs of the population must be

<sup>3</sup> [www.ard.de](http://www.ard.de)

<sup>4</sup> [www.zdf.de](http://www.zdf.de)

<sup>5</sup> [www.dradio.de](http://www.dradio.de)

respected. Offers should further the respect for life, freedom, and freedom from physical harm, for faith and the opinions of others. Further-reaching provisions under state law regarding the design of offers and Article 41 of this Interstate Treaty remain unaffected.

(2) The providers pursuant to (1) shall increase the range of barrier-free offers over and above their existing commitments as far as their technical and financial means permit.

#### **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 against special payment only if the broadcaster or a third party allows for the event to be broadcast at appropriate terms via at least one free-to-air television service which is generally accessible in the Federal Republic of Germany as live coverage or, if individual events running in parallel make this impossible, as deferred coverage. Should the parties fail to reach agreement on appropriate terms they should accept arbitration under Article 1025 of the Code of Civil Procedure<sup>6</sup> in good time prior to the event. If no arbitration procedure can be agreed upon for reasons which must be justified by the television broadcaster or the third party, the broadcast pursuant to sentence 1 shall be deemed as not made possible under appropriate conditions. Only services which can actually be received by more than two thirds of households shall be deemed to be generally accessible.

(2) For the purposes of this provision 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 matches, the semi-finals and the finals, irrespective of any participation of the German team;
3. the semi-finals and the final of the German Football Association Cup;
4. the home and away matches of the German national football team;
5. the final of any European football club competition (Champions League, UEFA Cup) with German participation.

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<sup>6</sup> Zivilprozessordnung (ZPO) in the version of 25 December 2005, last amended 24 September 2009 - <http://dejure.org/gesetze/ZPO>

Where major events consist of several individual events, each individual 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) If a Member State of the European Union notifies 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 coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities<sup>7</sup> as amended by Directive 97/36/EC of the European Parliament and the Council<sup>8</sup>, 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 shall be permitted for said Member State only if the television broadcaster allows for transmission in a freely accessible service 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 acquired rights for the exclusive encrypted transmission in return for payment for said Member State prior to 30 July 1997.

(4) If provisions of a state that has ratified the European Convention on Transfrontier Television as amended according to the provisions of the Protocol of 9 September 1998<sup>9</sup> are published pursuant to the procedure laid down in Article 9 a (3) of the Convention, said regulations shall apply for broadcasters in the Federal Republic of Germany in accordance with sentence 4 unless the Prime Ministers of the states within six months unanimously refuse to accept the regulations. Acceptance of the regulations can only be refused if the provisions of the respective state contravene the German Constitution<sup>10</sup> or the European Convention for the Protection of Human Rights and Fundamental Freedoms<sup>11</sup>. The provisions applying to broadcasters in the Federal Republic of Germany under the aforementioned procedure shall be published in the official gazettes of the states. Upon the date of the last publication in the official gazettes of the states the broadcasting of major events in encrypted form and in return for payment shall only be permitted for the respective state if the television broadcaster allows for a transmission

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<sup>7</sup> OJ L 298, 17 October 1989, p. 23

<sup>8</sup> OJ L 202, 30 July 1997, p. 80

<sup>9</sup>

<http://conventions.coe.int/Treaty/EN/treaties/Html/132.htm>

<sup>10</sup> Grundgesetz der Bundesrepublik Deutschland of 23 May 1949, last amended 19 March 2009 -

<http://www.bundestag.de/dokumente/rechtsgrundlagen/grundgesetz/>

<sup>11</sup> <http://conventions.coe.int/treaty/en/Treaties/Html/005.htm>

there in a free-to-air service pursuant to the provisions published by the respective state.

(5) If a broadcaster contravenes the provisions laid down in (3) and (4), its licence may be revoked. Instead of revocation, the licence can be made subject to auxiliary terms and conditions provided this is sufficient to remedy the contravention.

### **Article 5 Short News Reporting**

(1) Any licensed television broadcaster established in Europe shall be entitled to provide free of charge for its own broadcasting purposes short news reports of performances and events which are open to the public and of general interest. This right comprises the right of access, the right to conduct 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 laid down in (2) to (12).

(2) This right shall be without prejudice to all other statutory provisions, in particular those of copyright law and the right to protect privacy.

(3) Paragraph (1) does not apply to churches and other religious communities and their institutions conducting corresponding tasks.

(4) Short news reports free of charge shall be restricted to news-type reports corresponding to the occasion. The permitted duration shall be the period required for conveying the news content of the performance or event. For performances of a similar nature recurring at short notice and at regular intervals, the maximum duration shall as a rule be one and a half minutes. If short reports about performances of a similar nature are summarised, their news character shall also be preserved in said summary.

(5) In exercising the right to short news reporting any preventable disturbances to performances or events must be avoided. The organiser may restrict or proscribe the transmission or the recording if it has to be assumed that the performance would otherwise be jeopardized or that the moral sensitivities of those attending the event would be grossly offended. The right to short news reporting shall be excluded if reasons of public law and order prevail over the interest of the general public in the information. The right of the organiser to completely exclude the transmission or recording of the performance remains unaffected.

(6) The organiser may demand payment of the admission fee generally charged in return for the right to short news reporting; he must also be compensated for any necessary expenses incurred as a result of the right being exercised.

(7) The organiser may demand adequate payment which is appropriate to the nature of the short report in return for the right to short news reporting being exercised concerning professionally conducted performances. If agreement concerning the amount of the payment cannot be reached, an arbitration proceeding pursuant to Article 1025 et sqq. of the Code of Civil Procedure should be agreed. The lack of agreement concerning the amount of the payment or the implementation of arbitration proceedings does not conflict with the right to short news reporting being exercised; this also applies to litigation already pending on the amount of the payment.

(8) For exercising the right to short news reporting, the television broadcaster must notify the organiser at the latest ten days prior to the start of the performance. The organiser must inform the television broadcasters at the latest five days prior to the start of the performance whether sufficient spatial and technical facilities are available for a transmission or recording. In the case of performances called at short notice and in the case of events the notifications must be made as early as possible.

(9) If the spatial and technical facilities do not permit all broadcasters having notified the organiser of their intention to attend to be considered, those television broadcasters who have taken out contractual agreements with the organiser or sponsor of the event shall be given priority. Furthermore, the organiser or sponsor shall have the right of choice. In exercising this right the television broadcasters shall be considered first who guarantee comprehensive coverage for the state in which the performance or event is being held.

(10) Television broadcasters who transmit short news reports must provide the signal and the recording without delay to the 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 takes out a contractual agreement on a report with a television broadcaster, he shall ensure that at least one other television broadcaster has the opportunity to exercise the right of short news reporting of the event.

(12) Material not used for short news reporting shall be destroyed at the latest three months after the end of the performance or event; the organiser or sponsor of the event shall be notified in writing of the destruction. The deadline will be interrupted by the exercise of legitimate rights of third parties.

### **Article 6 European Productions, Own, Commissioned and Joint Productions**

(1) The television broadcasters shall contribute to securing German and European film and television

productions as a cultural asset and as part of the 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 majority proportion of the time devoted to the transmission of feature films, films made for television, series, documentaries and comparable productions overall for European works in accordance with European law.

(3) General television channels should comprise a significant proportion of own productions as well as commissioned and joint productions originating in the German-speaking regions and Europe as a whole. The same requirement relates to thematic channels as far as this is feasible regarding their focus in terms of content.

(4) As part of its programming remit and taking into account the principles of efficiency and economy, public-service broadcasting is entitled to participate in film promotion in order to secure the quality and quantity of the programming procured, without any immediate return consideration being required. Other state regulations remain unaffected.

#### **Article 7**

##### **Advertising Principles, Obligatory Identification**

(1) Advertising and teleshopping shall not

1. prejudice respect for human dignity,
2. include or promote any discrimination based on sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation,
3. be misleading or prejudice the interests of consumers, or
4. encourage behaviour prejudicial to health or safety as well as grossly prejudicial to the protection of the environment.

(2) Advertising or advertisers shall not influence the editorial content or other parts of a programme. Sentence 1 applies accordingly to teleshopping spots, teleshopping windows and providers thereof.

(3) Advertising and teleshopping shall be readily recognisable as such and shall be clearly distinguishable from editorial content. Advertising and teleshopping shall not use subliminal techniques. New advertising techniques used shall also keep advertising and teleshopping quite distinct from other parts of the programme by optical means, on radio by acoustic means in a manner that is adequate to the media.

(4) Advertising may occupy part of the broadcast picture provided that the advertising is kept optically separate from the other parts of the programme and is clearly identified as such. Such advertising will be included in the calculated duration of spot advertising pursuant to Articles 16 and 45. Article 7a (1) applies accordingly.

(5) Infomercials shall be permitted provided that the advertising character can be clearly recognized and that the advertising constitutes a substantial component of the programme. They must be announced as infomercials at the beginning of the programme and identified as such for the entire duration of the programme. Sentences 1 and 2 shall also apply to teleshopping.

(6) Virtual advertising may be inserted in programmes provided that:

1. the insertion is pointed out at the beginning and at the end of the programme in question, and
2. it replaces advertising already existing at the site of transmission.

Other rights remain unaffected. Sentences 1 and 2 shall also apply to teleshopping.

(7) Surreptitious advertising, product placement and thematic placement as well as similar practices shall be prohibited. As far as exceptions are admissible pursuant to Articles 15 and 44, product placement must meet the following requirements:

1. Editorial responsibility and independence concerning content and scheduling must not be prejudiced;
2. the product placement shall not directly encourage the purchase, rental or lease of goods or services, in particular not by making special promotional references to such goods or services, and
3. the product shall not be unduly prominently placed; this shall also apply to goods of minor value provided free of charge.

There shall be clear information concerning product placement. Product placement shall be identified at the beginning and at the end of a programme as well as at its continuation following an advertising break, or on radio by a similar adequate identification. Obligatory identification shall not apply for programmes not produced by the broadcaster itself or produced or commissioned by a company affiliated to the broadcaster, if it is not possible to establish at reasonable expense whether they contain product placement; information to this effect shall be given. The broadcasting corporations forming the ARD as-

sociation, the ZDF and the state media authorities shall stipulate a uniform system of identification.

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

(9) Advertising of a political, ideological or religious nature shall be prohibited. Sentence 1 applies to teleshopping accordingly. Public service announcements transmitted free of charge, including charitable appeals, shall not be considered as advertising within the meaning of sentence 1. Article 42 remains unaffected.

(10) Advertising and teleshopping for alcoholic beverages shall not promote excessive consumption of such beverages.

(11) Paragraphs 1 to 10 shall also apply to teleshopping channels.

#### **Article 7a**

##### **Insertion of Advertising and Teleshopping**

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

(2) Isolated advertising and teleshopping spots shall remain the exception on television; this shall not apply to the transmission of sports events. The insertion of advertising or teleshopping spots on television shall not prejudice the integrity of programmes, taking into account natural breaks in transmission and the duration and the nature of the programme, and the rights of the right holders.

(3) The transmission of films with the exception of series, serials and documentaries as well as cinematographic works and news programmes may be interrupted by television advertising or teleshopping once for each scheduled period of at least thirty minutes.

(4) If advertising or teleshopping spots in a television service are specifically and frequently directed at viewers in another state that has ratified the European Convention on Transfrontier Television but is not a Member of the European Union, the television advertising and teleshopping rules which apply in the respective state must not be circumvented. Sentence 1 shall not apply if the provisions of this Interstate Treaty are stricter than the provisions of said state, nor if agreements have been taken out in this respect with the respective state.

#### **Article 8**

##### **Sponsorship**

(1) In programmes which are partially or wholly sponsored, the financing by the sponsor shall be

pointed out in justifiable brevity and in an appropriate manner at the beginning or at the end of the programme; the reference may also be by means of a moving image. Alongside or in place of the name of the sponsor the company logo or a trade mark, another symbol of the sponsor, a reference to his products or services or a similar distinctive sign may be shown.

(2) The content and scheduling of a sponsored programme shall not be influenced by the sponsor in such a manner that the editorial responsibility and independence of the broadcaster are prejudiced.

(3) Sponsored programmes must not encourage the sale, purchase, rental or lease of products or services of the sponsor or a third party, in particular by making special references.

(4) Programmes may not be sponsored by undertakings whose principal activity is the manufacture or the sale of cigarettes and other 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 political information programmes may not be sponsored. The transmission of sponsorship logos shall be prohibited in children's programmes and religious broadcasts.

(7) Paragraphs (1) to (6) shall also apply to teleshopping channels.

(8) Paragraph 7 (1), (3) and (8) to (10) shall apply accordingly.

#### **Article 8a**

##### **Prize Games**

(1) Prize game programmes and prize games shall be permitted. They shall be transparent and shall protect participants. They must not be misleading and must not harm the interests of participants. Information shall be provided in the programme in particular on the costs of participation, the entitlement to participate, the design of the prize games and the solution to the task posed. The concerns of the protection of minors shall be preserved. Costs charged for participation must not exceed a fee of 0.50 Euro; Article 13 (1) sentence 3 remains unaffected.

(2) Upon request of the body in charge of supervision, the broadcaster shall submit all documents and provide all information required to control the correct implementation of the prize game programmes and prize games.

(3) Paragraphs (1) and (2) also apply to advertising and teleshopping channels.

### **Article 9** **Obligation to Provide Information, Competent Authorities**

(1) The broadcasting corporations governed by state law are required to make available, upon request, to the competent authority under state law the information specified in the provision in accordance with Article 6 (2) of the European Convention on Transfrontier Television. The same shall apply for commercial television broadcasters who shall make the information available upon request to the state media authority of the state in which the licence was granted. The state media authority shall forward the information to the authority exerting legal supervision.

(2) The Prime Ministers of the states shall designate by way of decision one or more of the authorities referred to in (1) which fulfil the tasks pursuant to 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 information required for fulfilling their tasks.

(3) Paragraphs (1) and (2) apply accordingly as far as the states are legally required to provide reports on broadcasting to intergovernmental institutions or international organisations. Sentence 1 shall also apply to teleshopping channels.

### **Article 9a** **Right to Information**

(1) Broadcasters are entitled to obtain information from authorities. Information may be denied as far as it:

1. could prevent, compound, delay or endanger the adequate execution of a pending proceeding, or
2. would conflict with provisions on secrecy,
3. would violate an overwhelming public or private interest meriting protection,
4. in its extent exceeds a reasonable measure.

(2) General ordinances which prevent an authority from providing information to broadcasters shall be prohibited.

(3) Broadcasters can require authorities to be treated equally in relation to other applicants concerning the transmission of official announcements.

### **Article 9b** **Consumer protection**

(1) With the exception of Articles 2, 9 and 12, the provisions of the law implementing the EC consumer protection provisions<sup>12</sup> concerning the provisions of this Interstate Treaty for transposing Articles 10 to 21 of Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting, last amended by Directive 97/6/EC of the European Parliament and the Council (OJ L 202 of 30 July 1997, p. 60) shall apply accordingly regarding violations within the Community. Sentence 1 shall also apply to teleshopping channels.

(2) In the framework of their offers overall, broadcasters shall make the following information accessible easily, directly and permanently:

1. the name and geographical address,
2. details allowing rapid and immediate contact and efficient communication,
3. the competent supervisory body.

### **Article 10** **Reporting, Information Programmes, Opinion Polls**

(1) Reporting and information programmes must conform to accepted journalistic standards, also where virtual components are employed. They must be independent and objective. Prior to transmission, news must be verified regarding their truthfulness and origin in accordance with the attention to accuracy and source required by the circumstances. Comments must be clearly separate from the reports and must be identified as such giving the name of the author.

(2) Reports on opinion polls conducted by broadcasters must expressly indicate whether they are representative.

## **Section II** **Provisions for Public-Service Broadcasting**

### **Article 11** **Remit**

(1) Under their remit, the public-service broadcasting corporations are to act as a medium and factor in the process of the formation of free individual and public opinion through the production and transmission of their offers, thereby serving the democratic, social

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<sup>12</sup> EG-Verbraucherschutzdurchsetzungsgesetz (VSchDG) of 21 December 2006, last amended 30 June 2009 - <http://www.gesetze-im-internet.de/bundesrecht/vschg/gesamt.pdf>

and cultural needs of society. In their offers, the public-service broadcasting corporations must provide a comprehensive overview of international, European, national and regional events in all major areas of life. In so doing, they shall further international understanding, European integration and the social cohesion on the federal and state levels. Their offers shall serve education, information, consultation and entertainment. They must in particular provide contributions on culture. Entertainment should also be provided in line with a public-service profile of offers.

(2) The public-service broadcasting corporations in fulfilling their remit shall pay due respect to the principles of objectivity and impartiality in reporting, plurality of opinion and the balance of their offers.

### **Article 11a Offers**

(1) Offers provided by public-service broadcasting shall be broadcasting services (radio and television services) and telemedia in accordance with this Interstate Treaty and the respective provisions under state law. Public-service broadcasting may offer print publications providing programme-related contents complementing its services.

(2) Broadcasting services distributed on different routes of transmission shall be counted as one offer.

### **Article 11b Television services**

(1) The state broadcasting corporations forming the association of public-service broadcasters in Germany (ARD) shall jointly provide the following television services:

1. the channel "Erstes Deutsches Fernsehen (Das Erste)"<sup>13</sup>,
2. three services as additional offers in accordance with the concept attached as an annex, namely
  - a) "EinsExtra"<sup>14</sup>,
  - b) "EinsPlus"<sup>15</sup>, and
  - c) "EinsFestival"<sup>16</sup>.

(2) The following television services of one individual or several state broadcasting corporations forming the ARD association shall be provided in accordance with to the provisions of the respective state law(s):

<sup>13</sup> [www.daserste.de](http://www.daserste.de)  
<sup>14</sup> [www.eins-extra.de](http://www.eins-extra.de)  
<sup>15</sup> [www.einsplus.de](http://www.einsplus.de)  
<sup>16</sup> [www.einsfestival.de](http://www.einsfestival.de)

1. The "Dritte" television channels including separate regional offers, for each of the following corporations

- a) Bayerischer Rundfunk (BR),
- b) Hessischer Rundfunk (HR),
- c) Mitteldeutscher Rundfunk (MDR),
- d) Norddeutscher Rundfunk (NDR),
- e) Radio Bremen (RB),
- f) Rundfunk Berlin-Brandenburg (RBB),
- g) Südwestrundfunk (SWR),
- h) Saarländischer Rundfunk (SR), and
- i) Westdeutscher Rundfunk (WDR),

2. the thematic channel "BR-alpha"<sup>17</sup> focusing on education.

(3) The ZDF shall provide the following television services:

1. The general channel "Zweites Deutsches Fernsehen (ZDF)",
2. three services as additional offers in accordance with the concept attached as an annex, namely
  - a) "ZDFinfokanal"<sup>18</sup>,
  - b) "ZDFkulturkanal", and
  - c) "ZDF-Familienkanal".

(4) The state broadcasting corporations forming the ARD association and the ZDF shall jointly provide the following television services:

1. the general channel "3sat"<sup>19</sup> focusing on culture, with the participation of European public-service broadcasters,
2. the general channel "arte - Der Europäische Kulturkanal"<sup>20</sup>, with the participation of European public-service broadcasters,
3. the thematic channel "PHOENIX - Der Ereignis- und Dokumentationskanal"<sup>21</sup>, and
4. the thematic channel "KI.KA - Der Kinderkanal"<sup>22</sup>.

(5) Analogue transmission of a service which has previously been transmitted exclusively in digital technology shall not be permitted.

### **Article 11c**

<sup>17</sup> [www.br-online.de/br-alpha/](http://www.br-online.de/br-alpha/)

<sup>18</sup> <http://infokanal.zdf.de>

<sup>19</sup> [www.3sat.de](http://www.3sat.de)

<sup>20</sup> [www.arte.tv/de](http://www.arte.tv/de)

<sup>21</sup> [www.phoenix.de](http://www.phoenix.de)

<sup>22</sup> [www.kika.de](http://www.kika.de)

## Radio services

(1) The state broadcasting corporations forming the ARD association shall, on the basis of the respective state law(s), individually or jointly provide radio services for their respective area(s) of coverage; national radio services must not be provided. Radio services exclusively distributed in the internet shall be acceptable only on condition that a procedure in accordance with Article 11f has been conducted.

(2) The total number of radio services transmitted terrestrially by the state broadcasting forming the ARD association must not exceed the number of radio services transmitted terrestrially per 01 April 2004. State law may provide for the respective state broadcasting corporation additionally broadcasting the same number of digital radio services as it covers states. The respective state law(s) may provide for terrestrially transmitted radio services to be exchanged for other terrestrially transmitted radio services, including a cooperation service, as long as this does not result in any additional costs overall or an increase in the total number of services. Cooperation services shall in each case be counted as one service of the corporations involved. Separate regional offers remain unaffected. The replacement of a service transmitted in digital technology by a service transmitted in analogue technology shall not be permitted.

(3) Deutschlandradio shall provide the following radio services focusing on information, education and culture:

1. the service "Deutschlandfunk"<sup>23</sup>,
2. the service "Deutschlandradio Kultur"<sup>24</sup>,
3. the digital service "DRadio Wissen" distributed in accordance with the concept attached as an annex, in particular by resorting to the provisions pursuant to Article 5 (2) of the Deutschlandradio Interstate Treaty<sup>25</sup>; for this purpose, the state broadcasting corporations forming the association of public-service broadcasters in Germany (ARD) shall cooperate with Deutschlandradio,
4. radio services for exclusive distribution in the internet offering contents from the services listed in numbers 1 to 3 in accordance with a procedure conducted pursuant to Article 11f.

(4) Starting per 01 January 2010, the state broadcasting corporations forming the ARD association and Deutschlandradio shall publish a list of all radio

services provided by all corporations in the official gazettes of the states each year.

## Article 11d Telemedia

(1) The state broadcasting corporations forming the ARD association, the ZDF and Deutschlandradio shall provide telemedia as necessitated from a journalistic or editorial point of view as journalistic edited offers.

(2) The remit pursuant to (1) shall comprise offers as follows:

1. provision of their services on demand for up to seven days following transmission, provision on demand of major events in accordance with Article 4 (2) as well as of matches of the 1<sup>st</sup> and 2<sup>nd</sup> German football divisions ("Bundesliga") for up to 24 hours after the event;
2. telemedia with contents relating to a specific programme for up to seven days following transmission as far as recourse is made to the materials and sources used for the programme in question and as far as the telemedia enhance and support the content and topic of the programme, without, however, already presenting an independent new or modified offer pursuant to Article 11 f (3); these programme-related telemedia must be described in telemedia concepts in accordance with Article 11f (1); prior announcements are permitted;
3. programmes and telemedia relating to a specific programme following expiry of the periods specified in no. 1, 1<sup>st</sup> half-sentence and no. 2 as well as of telemedia not related to a programme in accordance with a procedure conducted pursuant to Article 11f; in the telemedia concepts, the period of availability in relation to the offer shall be specifically restricted; press-type offers not related to a programme shall not be permitted; and
4. archives for unrestricted availability including contents of contemporary history and cultural history in accordance with the telemedia concepts to be developed pursuant to Article 11 f.

Offers provided in accordance with Articles 16a to 16e remain unaffected in all other respects.

(3) The telemedia concepts shall enable all groups of society to participate in the information society, offer orientation and foster technical and content media literacy for all generations and minorities. Programme-related telemedia must be detailed regarding the temporal and content relationship with a specific programme in the respective telemedia offer.

<sup>23</sup> [www.dradio.de/dlf/](http://www.dradio.de/dlf/)

<sup>24</sup> [www.dradio.de/dkultur/](http://www.dradio.de/dkultur/)

<sup>25</sup> Deutschlandradio-Staatsvertrag of 17 June 1993, last amended by the 12th Interstate Broadcasting Treaty, in force since 01 June 2009 -

[http://www.jurpc.de/hessenrecht/hessenrecht/Staatsvertrage/Hoerfunk\\_SVG/DLR\\_StV/DLR\\_StV.htm](http://www.jurpc.de/hessenrecht/hessenrecht/Staatsvertrage/Hoerfunk_SVG/DLR_StV/DLR_StV.htm)

(4) The state broadcasting corporations forming the ARD association, the ZDF and Deutschlandradio shall provide their offers in electronic portals and shall bundle their programmes in electronic programme guides.

(5) Advertising and sponsorship shall not be permitted in teledmedia. Acquired feature films and acquired episodes of television series which have not been commissioned must not be offered on demand. Full-coverage local reporting in teledmedia shall not be permitted. The types of offer detailed in the annex to this Interstate Treaty shall not be permitted in teledmedia.

#### **Article 11e Statutes, Directives, Obligatory Reports**

(1) The state broadcasting corporations forming the ARD association, the ZDF and Deutschlandradio shall enact statutes or directives detailing the execution of their respective remit as well as specifying the procedures governing the development of offer concepts and the procedure governing new or modified teledmedia. The statutes or directives shall also include rules on ensuring the independence of the broadcasting councils in their decision-taking. The statutes or directives shall be published in the official gazettes of the states.

(2) The state broadcasting corporations forming the ARD association, the ZDF and Deutschlandradio shall, commencing on 01 October 2004, publish a report every two years on the fulfilment of their respective remit, on the quality and quantity of the existing offers as well as on the focus of the respective planned offers.

#### **Article 11f Teledmedia Concepts as well as New or Modified Teledmedia**

(1) The state broadcasting corporations forming the ARD association, the ZDF and Deutschlandradio shall substantiate the content of their teledmedia pursuant to Article 11d (2) sentence 1 nos. 3 and 4 in teledmedia concepts detailing the target group, content, direction and duration of the planned offer.

(2) The description of all teledmedia must allow for a review of the funding requirements by the Commission assessing the funding requirements of public-service broadcasting (KEF)<sup>26</sup>.

(3) The state broadcasting corporations forming the ARD association, the ZDF and Deutschlandradio shall establish concurrent criteria in the statutes or directives for application for each individual decision on whether a new or modified teledmedia offer

exists and requires analysis under the procedure specified below. A modified offer shall be deemed to exist in particular if the overall direction of the content of the offer or the target group aimed at is altered.

(4) For a planned new offer or the planned modification of an existing offer pursuant to (1), the broadcasting corporation must demonstrate to its competent council that the planned, new or modified offer is covered by its remit. Details shall be given on the following:

1. to what degree the offer conforms to the democratic, social and cultural needs of society,
2. to what degree the offer contributes to editorial competition in a qualitative manner, and
3. what financial expenditure is required for the offer.

The details should also take into consideration the quantity and quality of the existing, freely accessible offers, the impact of the planned offer on the market and its function regarding the formation of opinion in the light of existing comparable offers including those of public-service broadcasting. The expected duration of the offer must be specified.

(5) Prior to the realisation of a new or modified offer, the competent council shall offer the opportunity to third parties to comment on the specifications pursuant to (4) in a suitable manner, especially via the internet. Comments shall be possible for a minimum period of six weeks following publication of the planned offer. The competent council of the broadcasting corporation must analyse the comments received. For the purpose of preparing its decision, the competent council may commission opinions by independent experts at the expense of the respective broadcasting corporation; expert opinion must be sought regarding market impact. The name of the expert must be published. The expert may seek further information and comments; comments may be forwarded directly to the expert.

(6) The decision as to whether the realisation of a new or modified offer is in line with the provisions of (4) must be taken with a majority of two thirds of the votes cast by the members present, at least with the majority of the votes cast by the legal members of the competent council. The reasons for the decision shall be given. The reasons given shall address the question whether the new or modified offer is comprised by the remit, taking into account the comments received and expert opinions sought. The respective broadcasting corporation shall publish the result of its examination including the expert opinions sought in the same manner as it published the plan, preserving business secrets.

<sup>26</sup> Kommission zur Ermittlung des Finanzbedarfs der Rundfunkanstalten - [www.kef-online.de](http://www.kef-online.de)

(7) Prior to publication, all information required for a legal assessment shall be submitted to the authority in charge of legal supervision. Upon completion of the procedure pursuant to (5) and (6), and following assessment by the authority in charge of legal supervision, the description of the new or modified offer shall be published in the official gazettes of the respective states.

### **Article 12** **Adequate Funding,** **Principle of Financial Equalization**

(1) The funding provided for public-service broadcasting must enable it to meet its constitutional and statutory tasks. It shall, in particular, guarantee the existence and development of public-service broadcasting.

(2) The financial equalization among the state broadcasting corporations constitutes part of the funding system of ARD. In particular, it must ensure that the corporations "Saarländischer Rundfunk" and "Radio Bremen" are able to adequately fulfil their tasks. The volume of the financial equalization and the adjustment thereof with regard to the licence fee are determined pursuant to the Interstate Treaty on Broadcasting Funding<sup>27</sup>.

### **Article 13** **Funding**

(1) Public-service broadcasting shall be funded through licence fees, income from television and radio advertising and other sources of revenue. The main source of income shall be the licence fee. With the exception of ancillary products, the provision of services and offers as part of its remit in return for special payment shall not be permitted. No income may be generated from offering premium rate telephone services.

(2) Keeping a device permitting the reception of broadcasting services continues to constitute the obligation to pay the licence fee.

### **Article 14** **Funding Requirements of** **Public-Service Broadcasting**

(1) The funding requirements of public-service broadcasting shall be regularly reviewed and determined by the independent commission assessing the funding requirements of public-service broadcasting (KEF) taking into account the principles of efficiency and economy including the related potentials for rationalisation; the review will be based on the

funding requirements presented by the state broadcasting corporations forming the association of public-service broadcasters in Germany (ARD), the ZDF and Deutschlandradio.

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

1. the continuation of the existing broadcasting services as well as the television services licensed by an Interstate Treaty signed by all states (requirement based on existing services);
2. new broadcasting services permitted under state law, participation in the opportunities offered by new broadcasting technologies in terms of the production and transmission of such services as well as the possibility to provide new forms of broadcasting (requirement based on new developments);
3. general development of costs and, in particular, the development of costs in the media sector;
4. the development in income from licence fees, advertising and other sources of revenue;
5. the assets, interest yields and dedicated utilization of surpluses resulting from the total annual revenue of the state broadcasting corporations forming the ARD association, the ZDF or Deutschlandradio exceeding the overall expenditure incurred in fulfilling their remits.

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

(4) The state audit offices shall inform the KEF about the results of the examination of the state broadcasting corporations forming the ARD association, the ZDF and Deutschlandradio including their associated companies.

(5) The licence fee shall be determined by means of an Interstate Treaty.

### **Article 15** **Admissible Product Placement**

In derogation from Article 7 (7), sentence 1, product placement shall be admissible in broadcasting

1. in cinematographic works, films and series, sports programmes and light entertainment programmes which are not produced by the broadcasters itself or produced or commissioned by a company affiliated to the broadcaster, unless they are children's programmes, or

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<sup>27</sup> Rundfunkfinanzierungsstaatsvertrag (RFinStV) of 26 August - 11 September 1996, last amended by the 12th amendment to the Interstate Broadcasting Treaty - <http://www.mdr.de/DL/169039.pdf>

2. where there is no payment, but only the provision of specific goods or services free of charge such as production props and prices with a view to their inclusion in a programme, unless the programmes concerned are news programmes, current affairs programmes, advice and consumer programmes, programmes for children or religious broadcasts.

Light entertainment programmes shall exclude in particular programmes which - alongside elements of entertainment - are of a predominantly informative nature, are consumer programmes or advice programmes including elements of entertainment.

#### **Article 16 Duration of Advertising**

(1) The total amount of advertising in the ARD channel "Das Erste" and in the channel "Zweites Deutsches Fernsehen" shall not exceed 20 minutes per working day on an annual average. Broadcasting times including product placement shall not be included in the permitted advertising minutage. The subsequent utilisation of advertising minutage not fully exploited must not exceed 5 minutes per working day. 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 in other television services of the ARD and the ZDF or in the regional television channels transmitted nationally ("Dritte Fernsehprogramme").

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

(4) References by the state broadcasting corporations made to their own services and programmes and ancillary products which are directly derived from said programmes and programmes, public service announcements broadcast free of charge including charity appeals and mandatory references under law are not considered to be advertising.

(5) The states are entitled to permit the state broadcasting corporations to broadcast an annual average of up to 90 minutes of radio advertising per working day; any difference in the amount of advertising and the daily limits in duration existing in the states per 1 January 1987 may be retained.

#### **Article 16a Commercial Activities**

(1) The state broadcasting corporations forming the ARD association, the ZDF and Deutschlandradio shall be entitled to perform commercial activities. Commercial activities mean activities which involve services being offered also to third parties in the

competition, in particular advertising and sponsorship, exploitation activities, merchandising, productions for third parties and leasing of transmitter facilities to third parties. These activities may be conducted only at market conditions. The commercial activities must be effected by legally independent subsidiaries. In the event of a limited impact on the market, a commercial activity may be effected by the broadcasting corporation itself; for this case, separate accounting shall be provided for. The state broadcasting corporations forming the ARD association, the ZDF and Deutschlandradio must act in conformity to market conditions in their relationships to their commercially active subsidiaries and must comply with the respective conditions relating to commercial activities, also in relation to their subsidiaries.

(2) The areas of activity must be approved by the competent councils of the broadcasting corporations prior to commencement. The assessment shall comprise the following:

1. the description of the type and scope of the activity justifying that it is in conformity with the conditions of the market (market conformity) including an assessment in accordance with the arm's length principle,
2. the comparison with offers of commercial competitors,
3. provisions for separate accounting, and
4. provisions for effective supervision.

#### **Article 16b Shareholdings in Companies**

(1) The state broadcasting corporations forming the ARD association, the ZDF and Deutschland radio shall be permitted to take out direct or indirect shareholdings in companies pursuing a commercial or otherwise economic business purpose provided that

1. this is in pertinent connection to their legal tasks,
2. the company is constructed as a legal person, and
3. the statute or the articles of association of the company provide for a supervisory board or comparable body.

The provisions pursuant to sentence 1 need not be fulfilled if the shareholding is limited to a temporary period only and serving direct programming purposes.

(2) In the event of an investment in a company, the broadcasting corporations are required to secure the necessary influence upon the management of the company in an appropriate manner, in particular, an appropriate presentation in supervisory bodies. The

activities of the corporations in the company must be reviewed by an auditor, paying due regard to commercial principles.

(3) Paragraphs (1) and (2) shall apply accordingly to legal persons under private law which are set up by the broadcasting corporations and whose shares are held exclusively by the corporations.

(4) Paragraphs (1) and (2) shall apply accordingly to shareholdings of the broadcasting corporations in non-profit broadcasting ventures and pension funds.

#### **Article 16c** **Control of Shareholdings in Companies**

(1) The state broadcasting corporations forming the ARD association, the ZDF and Deutschlandradio must establish an effective control system regarding their shareholdings established pursuant to Article 16b. The Director General ("Intendant") must notify the respective competent supervisory body of the broadcasting corporation at regular intervals of the major operations of the associated companies, in particular as regards their financial development.

(2) The Director General must present to the respective supervisory body an annual report on shareholdings. This report shall cover the following areas:

1. the presentation of all direct and indirect shareholdings and their economic relevance for the broadcasting corporation,
2. the separate presentation of the shareholdings involving commercial activities and evidence that the provisions of this Interstate Treaty concerning commercial activities have been fulfilled, and
3. the presentation of the control of the shareholdings including any operations of specific relevance.

The report shall be submitted to the respective competent audit offices and the state government exercising legal supervision.

(3) The competent audit offices controlling the state broadcasting corporations forming the ARD association, the ZDF and Deutschlandradio shall audit the economic activities of such companies under private law in which the broadcasting corporations hold direct or indirect majority shareholdings, also jointly with other corporations or public bodies, and whose articles of association or statute provide for such control by the audit offices. The broadcasting corporations are required to provide for the necessary provisions being included in the articles of association or statute of the company.

(4) In the event that several audit offices are competent, they may entrust one of the audit offices with the control.

#### **Article 16d** **Control of Commercial Activities**

(1) The state broadcasting corporations forming the ARD association, the ZDF and Deutschlandradio are further required to ensure that over and above the general audit competences of the audit offices for the majority shareholdings for companies commanding an audit by the competent audit office, the associated companies appoint a certified public accountant for the annual audit pursuant to Article 319 (1) sentence 1 of the Commercial Code<sup>28</sup> exclusively with the agreement of the competent audit offices. The broadcasting corporations are required to ensure that the associated company authorizes the accountant to audit the annual accounts also regarding market conformity of their commercial activities on the basis of additional questions to be stipulated by the respective competent audit offices and that it authorizes the accountant to submit the result of its audit to the competent audit offices together with the annual report. These questions shall be specified by the audit office competent for the audit and shall include in particular proof of compliance with the provisions regarding commercial activities as provided for in this Interstate Treaty. The broadcasting corporations are required to ensure that the necessary provisions are included in the articles of association or the statute of the associated company. The accountants shall certify the annual account of the associated company and shall provide a report to the competent audit offices also regarding the questions detailed in sentences 2 and 3. They shall notify the competent audit offices of the result and the annual report. The competent audit offices shall evaluate the audit and are entitled to take their own audit measures concerning the respective associated companies in each individual case. The audit offices shall notify the authority in charge of legal supervision of the respective broadcasting corporation of all violations established regarding the provisions concerning market conformity. Additional costs incurred for the additional audits shall be borne by the respective associated companies.

(2) The audit offices shall communicate the result of the audits to the respective Director General, the respective supervisory body of the broadcasting corporation and to the associated company. The audit offices shall inform the state governments and the state parliaments of the states responsible for the broadcasting corporation and the independent commission assessing the funding requirements of public-service broadcasting (KEF) about the main results. In so doing, the audit offices shall ensure that the competi-

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<sup>28</sup> Handelsgesetzbuch (HGB) of 10 May 1897, last amended 31 July 2009 - <http://www.gesetze-im-internet.de/hgb/BJNR002190897.html>

tiveness of the associated companies being controlled is not prejudiced and in particular that operating and business secrets are kept secret.

**Article 16e**  
**Liability for Associated Companies**  
**Pursuing Commercial Activities**

The state broadcasting corporations forming the ARD association, the ZDF and Deutschlandradio must not assume any liability for associated companies pursuing commercial activities.

**Article 16f**  
**Directives**

The state broadcasting corporations forming the ARD association and the ZDF shall enact directives for the implementation of Articles 7, 7a, 8a, 15 and 16. The directive relating to Article 8a shall in particular specify in greater detail the conditions for the participation of minors. For enacting said directives, the state broadcasting corporations forming the ARD association and the ZDF shall consult with the state media authorities and shall conduct a joint exchange of experiences with regard to the implementation of these directives. The directive relating to Article 7 (7) and Article 15 shall specify in detail under which conditions, in which formats and to which extent free product placement may take place, by which means the independence of producers and editorial staff will be safeguarded and by which means undue prominence of the product will be avoided. Sentences 1 to 4 shall apply accordingly for the directives enacted by Deutschlandradio for the implementation of Articles 7, 8a and 15.

**Article 17**  
**Changes to Advertising**

The states may agree to change the total duration of advertising, the daily limits for advertising and the restrictions regarding the transmission of advertising to working days for 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**  
**Remit of Provision**

The state broadcasting corporations forming the ARD association, the ZDF and Deutschlandradio may fulfil their legal remit by using appropriate routes of transmission. The selection of the route of transmission shall be effected paying due regard to the principles of efficiency and economy. The analogue transmission of services which have previ-

ously been exclusively transmitted in digital technology shall be prohibited.

**Article 19a**  
**Publication of Complaints**

The competent councils of the state broadcasting corporations forming the ARD association, the ZDF and Deutschlandradio can require the respective Director General to publish complaints issued by the councils because of a breach of the legal provisions in the respective service.

**Section III**  
**Provisions for Commercial Broadcasting**

**Subsection 1**  
**Principles**

**Article 20**  
**Licensing**

(1) Commercial broadcasters require a licence for the purpose of providing broadcasting services. Notwithstanding the provisions of Articles 21 to 39a, the licensing of a provider of a broadcasting service transmitted nationally shall be governed by Article 20a; in all other respects, licensing shall be subject to state law. The licence granted to a provider of services transmitted nationally shall specify the category of the service (general or thematic channel).

(2) If and as far as an electronic information and communications service is to be categorised as broadcasting, the provider of such a service requires a licence. If the competent state media authority determines that this is the case, the provider, after being notified of the determination, at its discretion, must submit a licence application without delay, or within three months provide the information and communications service in such a manner that the service cannot be categorised as broadcasting. Providers of electronic information and communications services shall be entitled to apply for confirmation by the competent state media authority that a service would not raise objections under broadcasting law.

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

1. provided and transmitted in the local vicinity of a public event and at or around the time the event is being held, or
2. offered to institutions provided the latter use them for the same purposes, and further provided that the services can be received only by them and their function is associated with the tasks to be implemented in said institutions.

Provisions of state law under which licences for programmes aimed at a limited number of housing units or for programmes in institutions restricted to one building or one building complex remain unaffected.

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

1. the service of the broadcaster is directed entirely or to a significant extent at the population of another state that 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 respective state, and
3. the provisions of the respective state which the broadcaster is intending to circumvent are subject to the European Convention on Transfrontier Television.

As an alternative to the refusal or revocation of the licence it may also be amended by auxiliary terms and conditions provided this is sufficient to rule out the circumvention referred to in sentence 1.

#### **Article 20a Granting of Licences for Providers of National Broadcasting Services**

(1) A licence may only be granted to a natural or legal person who

1. has unlimited legal capacity,
2. has not lost the ability to serve in a public capacity as a result of a legal ruling,
3. has not waived the fundamental right of free speech pursuant to Article 18 of the German Constitution,
4. is not banned as an association,
5. has his seat of residence or seat in the Federal Republic of Germany, another Member State of the European Union or another state of the European Economic Area (EEA) and can be pursued by court,
6. warrants that in providing broadcasting he will respect the legal provisions and any administrative acts passed thereon.

(2) The requirements subject to (1) nos. 1 to 3 and 6 must in the case of legal persons be fulfilled by the legal or statutory representatives. A provider with the legal form of a public limited company may be granted a licence only if the statutes of the public lim-

ited company specify that the shares may be issued only as registered shares or non-voting shares.

(3) A licence must not be granted to legal persons of public law with the exception of churches and universities, their legal representatives and senior staff, nor to political parties and voter associations. The same shall apply for undertakings which are related to those listed in sentence 1 as associated companies within the meaning of Article 15 of the German Company Law<sup>29</sup>. Sentences 1 and 2 shall apply accordingly to foreign public or state institutions.

#### **Article 20b Radio in the internet**

Providers of radio services distributed exclusively in the internet do not require a licence. Providers must notify the competent state media authority of the service. Article 20a shall apply accordingly in all other respects.

#### **Subsection 2 Procedural Provisions**

#### **Article 21 Principles for the Licensing Procedure**

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

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

1. a description of the direct and indirect interests in the applicant as defined in Article 28 and of the capital and voting rights in the applicant and associated companies as defined in the German Company Law;
2. information about relatives as defined in Article 15 of the Fiscal Code<sup>30</sup> among the parties pursuant to no. 1. The same shall apply to representatives of the person or partnership or of the member of a body of a legal entity;
3. the articles of association and the statutory provisions of the applicant;
4. agreements existing among the parties holding a direct or indirect interest in the applicant within the meaning of Article 28 relating to the joint provision of broadcasting as well as to

<sup>29</sup> Aktiengesetz (AktG) in the version of 06 September 1965, last amended 31 July 2009 - <http://www.gesetze-im-internet.de/bundesrecht/aktg/gesamt.pdf>

<sup>30</sup> Abgabenordnung (AO) of 13 March 1976, last amended 30 July 2009 - [http://www.gesetze-im-internet.de/bundesrecht/ao\\_1977/gesamt.pdf](http://www.gesetze-im-internet.de/bundesrecht/ao_1977/gesamt.pdf)

trustee relationships and relationships that are significant pursuant to Articles 26 and 28;

5. a written statement of the applicant to the effect that the documents and information pursuant to nos. 1 to 4 have been provided in full.

(3) In the event that a matter relating to events which lie outside the scope of this Interstate Treaty has some relevance for the licensing procedure, the applicant must provide an explanation and the necessary evidence. In so doing it must exhaust all legal and actual possibilities. The applicant may not claim that it is unable to provide explanations or evidence if, in the circumstances, it could have made it possible for itself to do so or could have acquired such a possibility when devising its circumstances.

(4) The obligations pursuant to (1) to (3) shall apply accordingly to natural persons and legal entities or partnerships holding a direct or indirect interest in the applicant within the meaning of Article 28, or who represent an undertaking associated with the applicant, or who may exercise influence on it in some other manner within the meaning of Articles 26 and 28.

(5) In the event that those required to provide information or to submit documents do not fulfil their obligations pursuant to (1) to (4) within a period set by the competent state media authority, the licence application may be refused.

(6) Those obliged to provide information and to submit documents during the licensing procedure must notify the competent state media authority of any change in circumstances without delay which may have occurred since the application was submitted or the licence was issued. Paragraphs (1) to (5) apply accordingly. Article 29 remains unaffected.

(7) Notwithstanding any other notification requirements the broadcaster and the parties holding a direct or indirect interest in the broadcaster within the meaning of Article 28 are required to submit a statement to the competent state media authority upon expiry of the calendar year without delay, indicating whether and to what extent any change has occurred within that calendar year with regard to relevant participating interests and facts necessitating attribution pursuant to 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. In particular, it may:

1. obtain information;
2. hear the parties involved within the meaning of Article 13 of the Law of Administrative Proceedings<sup>31</sup>, question witnesses and experts or obtain written statements from parties involved, experts and witnesses;
3. consult documents and files;
4. inspect evidence.

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 do so.

(2) Witnesses and experts must give oral statements or submit reports. The provisions of the Code of Civil Procedure relating to the obligation of witnesses to provide statements or of experts to submit reports, the rejection of experts and the questioning of members of the civil service as witnesses or experts, shall apply accordingly. Witnesses and experts shall receive compensation in accordance with the provisions of the Court Payment and Reimbursement Act<sup>32</sup>.

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

(4) Those entrusted by the competent state media authority with performing the tasks pursuant to 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 (5). 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 have a relevance with regard to the application of Articles 26 to 34, give information and provide any assistance otherwise required to carry out the measures pursuant

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<sup>31</sup> Verwaltungsverfahrensgesetz (VwVfG) in the version of 25 May 1976, last amended 14 August 2009 -

<http://www.gesetze-im-internet.de/vwvfg/BJNR012530976.html>

<sup>32</sup> Justizvergütungs- und -entschädigungsgesetz (JVEG) of 05 May 2004, last amended 30 July 2009 -

<http://www.gesetze-im-internet.de/jveg/BJNR077600004.html>

to (4) upon request. Steps hindering or impeding those measures shall be avoided.

(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 Procedure liable to criminal prosecution or proceedings pursuant to the Administrative Offences Act<sup>33</sup>.

(7) Searches may only be conducted pursuant to a warrant granted by the local court judge in whose district the search is to be conducted. In the event of any imminent danger, the persons referred to in (4) may conduct the necessary searches during business hours without a judicial warrant. A record shall be made at the time and location of a search containing the reasons for, the time and the location of the search and its main result. In the event that no judicial warrant has been issued, such record shall also indicate the facts which led to the assumption of imminent danger.

(8) The person having actual authority over the premises to be searched may be present during the search. In the event of his absence, 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 specified in (7) sentence 3.

### **Article 23** **Duty of Public Disclosure** **and other Submission Requirements**

(1) Every broadcaster, regardless of its legal form, shall prepare and publish annual accounts including notes to the annual accounts as well as a management report no later than the end of the ninth month following the end of the financial year in accordance with the provisions of the Commercial Code applying to companies limited by shares. Sentence 1 also applies accordingly to parties holding a direct interest in the broadcaster pursuant to Article 28 (1) sentence 1 to whom the service provided by the broadcaster is attributable, and to parties holding an indirect interest in the broadcaster to whom the service pursuant to Article 28 (1) sentence 2 is attributable.

(2) Within the same period 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**

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<sup>33</sup> Gesetz über Ordnungswidrigkeiten (OWiG) of 24 May 1968, last amended 29 July 2009 - [http://www.gesetze-im-internet.de/bundesrecht/owig\\_1968/gesamt.pdf](http://www.gesetze-im-internet.de/bundesrecht/owig_1968/gesamt.pdf)

Data on the personal or material circumstances of a natural person or legal entity, or a partnership, or operating or business secrets which are entrusted to the state media authorities, their bodies, employees or third persons acting on their behalf within the framework of the execution of their tasks or which have become known to them in some other way must not be disclosed without authorisation. As far as personal data are processed, the data protection provisions of state law apply.

### **Subsection 3** **Ensuring Plurality of Opinion**

#### **Article 25** **Plurality of Opinion, Regional Windows**

(1) The editorial content of commercial broadcasting shall convey plurality of opinion. The major political, ideological and social forces and groups shall be granted adequate opportunity for expression in the general channels; minority views shall be taken into account. The possibility to offer thematic channels remains unaffected.

(2) A single service must not exert an exceedingly imbalanced influence on public opinion.

(3) In the licensing procedure the state media authority shall seek to ensure that interested parties providing cultural contents are also able to participate in the broadcaster. There is no legal entitlement to participation.

(4) The two general channels transmitted nationally with the largest audience reach shall incorporate window services providing up to date, authentic presentations of the political, economic, social and cultural life in the respective state at least in line with the scheduled and regionally differentiated extent of the programme activities as per 1 July 2002 pursuant to the respective state law. The main service provider shall guarantee the editorial independence of the window service provider by its organisation. The window service provider shall be granted a separate licence. Window service providers and main service providers should not be related to one another in the form of affiliated undertakings pursuant to Article 28, unless independence is secured in other ways through state provisions in force per 31 December 2009. Licences in place on 31 December 2009 shall remain unaffected. An extension shall be admissible. The organisation of the window services shall ensure their funding by the main service providers. The state media authorities shall coordinate the scheduling and technical organisation of the window services, taking into account the interests of the main service providers 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 provide an unlimited number of television services transmitted nationally in the Federal Republic of Germany unless this results in the undertaking acquiring dominant power of opinion in accordance with the following provisions.

(2) If the services attributable to an undertaking reach an annual average audience share of 30 per cent of all viewers, dominant power of opinion shall be assumed to be given. The same applies for an audience share of 25 per cent if the undertaking holds a dominant position in a media-relevant related market or an overall assessment of its activities in television and in media-relevant related markets shows that the influence on the formation of opinion obtained as a result of these activities corresponds to that of an undertaking with a 30 per cent audience share. In the calculation of the relevant audience share pursuant to sentence 2, two percentage points shall be deducted from the actual audience share if window services are included in the general channel attributable to the undertaking with the highest audience share pursuant to Article 25 (4). If at the same time broadcasting time is included for third parties in accordance with (5), a further three percentage points shall be deducted from the actual audience share.

(3) If an undertaking has acquired dominant power of opinion with the services attributable to it, no licence may be issued for further services attributable to this undertaking, nor may the acquisition of further participating interests in broadcasters attributable to it be confirmed as being acceptable.

(4) If an undertaking has acquired dominant power of opinion with the services attributable to it, the state media authority shall, through the Commission on Concentration in the Media<sup>34</sup> (KEK, Article 35 (2) sentence 1 no. 3), propose the following measures to the undertaking:

1. The undertaking may give up its participating interests in broadcasters attributable to it until the attributable audience share of the undertaking falls below the limit pursuant to (2) sentence 1, or
2. it may, in the case specified in (2) sentence 2, limit its market position in media-relevant related markets or give up its participating interests in broadcasters attributable to it until dominant power of opinion pursuant to (2) sentence 2 no longer prevails, or

3. it may, with regard to service providers attributable to it, take the measures within the meaning of Articles 30 to 32 in order to ensure plurality of opinion.

The KEK shall discuss the possible measures with the undertaking with the objective of reaching mutual agreement. If agreement cannot be reached or if the measures which the undertaking and the KEK have mutually agreed upon are not implemented within a reasonable period, the state media authorities may, after the KEK has established the facts, revoke the licences of as many of the services attributable to the undertaking as may be required to ensure that the undertaking no longer exercises dominant power of opinion. The KEK shall select the licences to be revoked, taking into account the specificities of each case. No compensation shall be granted for any financial loss incurred as a result of the revocation of the licence.

(5) If a service provider reaches an annual average audience share of 10 per cent with a general channel or an information-oriented thematic channel, the service provider must allocate broadcasting time to independent third parties in accordance with Article 31 within six months after this fact has been established and after having been informed accordingly by the state media authority. If a service provider reaches an annual average audience share of 20 per cent with services attributable to it without one of the general channels or information-oriented thematic channels reaching an audience share of 10 per cent, the obligation pursuant to 1 shall apply to the service provider of the service attributable to the undertaking with the highest audience share. If the service provider does not implement the required 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 accordingly.

(6) Every three years or upon the request of the states, the state media authorities shall jointly publish a KEK report on the development of concentration and on measures to ensure 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 an annual list of services to be drawn up by the KEK. The

<sup>34</sup> Kommission zur Ermittlung der Konzentration im Medienbereich - <http://www.kek-online.de/cgi-bin/esc/englisch.html>

list of services shall include all services, their broadcasters and parties with participating interests.

### **Article 27** **Establishing Audience Shares**

(1) The state media authorities shall establish the audience share of each service through the KEK, taking into account all German language services broadcast by the public-service broadcasters and the services of commercial broadcasters which can be received nationally. Decisions shall be based on the average audience share reached by the services to be included during the previous twelve months and prevailing at the time of the commencement of the proceedings.

(2) Following a decision by the KEK, the state media authorities shall commission an undertaking to determine the audience shares. The contract shall be awarded in accordance with the principles of efficiency and economy. Audience shares shall be established by means of representative surveys among viewers aged three years and older, using generally accepted scientific methods. The state media authorities should agree with the undertaking that the data collected in establishing audience shares pursuant to (1) sentence 1 may also be used by third parties on a contractual basis. In this case the costs to the state media authorities shall be reduced accordingly.

(3) The broadcasters are required to assist in establishing the audience shares. In the event that a broadcaster does not comply with this obligation its licence may be revoked.

### **Article 28** **Attribution of Services**

(1) All services that an undertaking provides itself or that are provided by another undertaking in which it has a direct interest of 25 per cent or more of the capital or voting rights shall be attributed to this undertaking. Furthermore, all services shall be attributed to it which are provided by undertakings in which it has an indirect interest insofar as those undertakings are affiliated undertakings within the meaning of Article 15 of the German Company Law and hold a share of 25 per cent or more of the capital or voting rights of a broadcaster. The affiliated undertakings within the meaning of sentences 1 and 2 shall be deemed to be a single undertaking and their shares in the capital or the voting rights shall be added up. If as a result of an agreement or otherwise, several undertakings cooperate in such a manner that they can jointly exert 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 (1) also exists if an undertaking is able either by itself or together with

others to exert a comparable influence on a broadcaster. Furthermore, a comparable influence exists if an undertaking or an undertaking already attributable to it for other reasons pursuant to (1) or (2) sentence 1:

1. regularly provides programming for a significant proportion of the broadcasting time of a broadcaster;
2. by virtue of contractual agreements, stipulations in the statutory provisions and in the articles of association or in any other manner holds a position which makes the fundamental decisions of a broadcaster concerning the design, acquisition and production of programming subject to its approval.

(3) The attribution pursuant to (1) and (2) shall also include undertakings established outside the scope of this Interstate Treaty.

(4) The analysis and assessment of comparable influences on a broadcaster shall also take into account existing family relationships. It shall apply the principles of commercial or fiscal law.

### **Article 29** **Changes in Participating Interests**

The competent state media authority must be notified in writing of any planned change in participating interests or other influences prior to their implementation. Notifications shall be made by the broadcaster and by parties holding a direct or indirect interest in the broadcaster within the meaning of Article 28. The competent state media authority may confirm that no objections exist to such changes only if a licence could still be issued under such changed conditions. If a planned change is implemented to which confirmation pursuant to sentence 3 cannot be given, the licence shall be revoked. The revocation procedure shall be governed by state law. For minor interests in public limited companies the KEK may issue directives detailing exemptions concerning the obligation to report changes.

### **Article 30** **Measures Ensuring Plurality**

As far as the aforementioned provisions aim at measures ensuring plurality concerning a broadcaster or undertaking, such measures shall include:

1. granting broadcasting time to independent third parties (Article 31),
2. establishing a programme advisory council (Article 32).

### **Article 31** **Broadcasting Time**

### **for Independent Third Parties**

(1) A window service which is broadcast on the basis of the requirement to provide broadcasting time pursuant to the above provisions must, while respecting the programming autonomy of the main broadcaster, make a further contribution to the plurality in the programming of the latter, in particular in the areas of culture, education and information. The window service must be designed independently of the main service.

(2) The duration of the window service shall be at least 260 minutes per week, of which at least 75 minutes shall be broadcast between 7 p.m. and 11.30 p.m. Regional window services with a maximum of 150 minutes in duration shall be calculated with a maximum of 80 minutes per week towards the transmission time for third parties outside the transmission time specified in sentence 1 for the weekly broadcasting time; in the case of less than 150 minutes broadcasting time for the regional window service per week, the duration of 80 minutes to be calculated as transmission time for third parties time shall be reduced accordingly. Regional window services may be taken into account for the weekly transmission time only if they are provided with editorial independence and jointly reach at least 50 per cent of television households in national transmission. In the course of digitisation of the routes of transmission a lower level of coverage is acceptable.

(3) The window service provider pursuant to (1) may not be legally dependent upon the main service provider. Within the meaning of sentence 1, legal dependence shall be assumed if the main service provider and the window service provider pursuant to Article 28 can be attributed to the same undertaking.

(4) If the main service provider is obliged to provide broadcasting time for independent third parties, the competent state media authority shall, after discussion with the main service provider, invite applications for a licence for the window service. The competent state media authority shall analyse whether the applications received conform to the provisions of this Interstate Treaty as well as to other provisions of state law, and shall inform the main service provider about the applications which qualify for a licence. It shall discuss the applications with the main service provider for the purpose of reaching agreement on the applicant to be selected. If agreement cannot be reached and the competent state media authority has received more than three applications which qualify for a licence, the main service provider shall submit three proposals to the competent state media authority. The competent state media authority may, in the interest of plurality, add up to two further proposals which it shall discuss with the main service provider for the purpose of reaching mutual agreement concerning the selection. If

agreement cannot be reached, the competent state media authority shall select from the proposals the applicant whose service can be expected to offer the greatest contribution to plurality in the service of the main service provider, and shall grant the licence to this service. If there are three or fewer applications, the competent state media authority shall take the decision directly.

(5) Once an applicant for the window service has been selected pursuant to (4), the main service provider and the applicant shall conclude an agreement on the transmission of the window service as part of the main service. Such an agreement shall comprise, in particular, the obligation of the main service provider to provide for sufficient funding for the window service provider. The agreement shall further provide for termination being possible during the term of the licence pursuant to (6) only in the event of serious breaches of the agreement or for another important reason subject to six months' notice.

(6) On the basis of an agreement with appropriate conditions pursuant to (5) the competent state media authority shall grant a licence to the window service provider. The main obligations resulting from the agreement pursuant to (5) shall be included as an integral part in the licences of the main service provider and the window service provider respectively. No compensation shall be granted for any losses incurred as a result of the partial revocation of the licence of the main service provider. The licence for the window service provider shall be granted for a period of five years; it shall expire when the licence of the main service provider expires, is not renewed or not granted again.

### **Article 32 Programme Advisory Council**

(1) The programme advisory council must advise those responsible for programming, the management of the broadcaster and the partners or shareholders on how programming is to be designed. With its proposals and suggestions, the programme advisory council should contribute to ensuring plurality of opinion and programme diversity (Article 25). When setting up a programme advisory council the broadcaster must ensure effective influence on programming for the programme advisory council by means of an agreement or statute.

(2) The members of the programme advisory council shall be appointed by the broadcaster. As members of the different groups of society they must as a whole ensure that the major views of society are represented.

(3) The programme advisory council shall be informed by the management of all matters concerning programming. It shall be consulted on any major changes in the structure, content and scheduling of a

service as well as regarding any programme-related hearings conducted by the competent state media authority, and in the event of programme complaints.

(4) For the purpose of performing its tasks, the programme advisory council may require information from the management and may make complaints to the management regarding programming or individual broadcasts. The management must comment on enquiries and complaints within a reasonable period. If in the opinion of the programme advisory council it does not take sufficient account of the enquiries and complaints, the programme advisory council may require a decision on this issue to be taken by the body supervising the management or, if no such supervisory body exists, by the partners' or shareholders' meeting. The requirement by the programme advisory council may only be rejected by the partners' or shareholders' meeting or by the members of the body supervising the management with a majority of 75 per cent of the votes cast.

(5) In the event of changes in the structure, content or scheduling of a service or in the event of a decision on programme complaints, the approval of the programme advisory council shall be obtained prior to the decision being taken by the management. If such approval is withheld or if no comment on the matter can be obtained within a reasonable period, the management may introduce the measure in question only with the consent of the body supervising the management or, if no such supervisory body exists, of the partners' or shareholders' meeting, with such consent requiring a majority of 75 per cent of the votes cast. The broadcaster shall notify the competent state media authority of the result of the deliberations by the programme advisory council or the decision pursuant to sentence 2.

(6) If a programme advisory council is set up for a broadcaster which is an undertaking managed by a sole trader, (4) and (5) shall apply on condition that the programme advisory council may refer the issue for decision to the competent state media authority in place of the partners' or shareholders' meeting or the body supervising the management.

### **Article 33 Directives**

The state media authorities shall issue joint directives further specifying Articles 25, 31 and 32. The directives relating to Article 32 shall, in particular, detail the appointment of the members and the composition of the programme advisory council.

### **Article 34 Transitional Provision**

Prior to the audience shares being established pursuant to Article 27 for the first time, the existing data on au-

diences shall form the basis for the assessment whether plurality of opinion is ensured in the context of the provision of national television services. Broadcasters are required to make their audience share data available to the KEK upon request. The state media authorities must, by applying rules of administrative procedure while respecting the interests of the parties concerned, ensure that measures taken pursuant to this Interstate Treaty which are based on the data pursuant to sentence 1 can be adapted without delay to the factual and legal situation resulting from audience shares being established pursuant to Article 27 for the first time.

## **Subsection 4 Organisation of Media Supervision, Funding**

### **Article 35 Organisation**

(1) The tasks pursuant to Article 36 shall be the responsibility of the competent state media authority. It shall take the respective decisions pursuant to the provisions of this Interstate Treaty.

(2) The tasks pursuant to (1) and in accordance with the provisions of the Interstate Treaty on the Protection of Minors<sup>35</sup> shall be fulfilled by the following bodies:

1. the Commission on Licensing and Supervision ("Kommission für Zulassung und Aufsicht - ZAK"),
2. the Conference of Chairpersons of the Decision-Taking Councils ("Gremienvorsitzendenkonferenz - GVK"),
3. the Commission on Concentration in the Media ("Kommission zur Ermittlung der Konzentration im Medienbereich - KEK"), and
4. the Commission for the Protection of Minors in the Media ("Kommission für Jugendmedienschutz - KJM").

They shall serve the respective competent state media authority in fulfilling its tasks pursuant to Article 36.

(3) The state media authorities shall each delegate the legal representative under state law to the ZAK; for the event that he is unable to attend, he may be represented by his permanent deputy. The members of the ZAK shall perform their functions free of charge.

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<sup>35</sup> Staatsvertrag über den Schutz der Menschenwürde und den Jugendschutz in Rundfunk und Telemedien (JMStV) of 10 - 27 September 2002, last amended by the 11th Interstate Broadcasting Treaty, in force since 01 January 2009 - <http://www.kjm-online.de/public/kjm/downloads/JMStV%202009%20englisch.pdf>

(4) The GVK consists of the respective chairperson of the plural decision-taking body of each of the state media authorities; for the event that he is unable to attend, he may be represented by the deputy chairperson. The members of the GVK shall perform their functions free of charge.

(5) The KEK consists of

1. six experts specialised in broadcasting law and in commercial law, three of whom must have the qualification for judgeship, and
2. six legal representatives of the state media authority appointed pursuant to state law.

The members of the KEK pursuant to sentence 1 no. 1, and two substitute members for the event that a member is unable to attend shall be appointed unanimously by the Prime Ministers of the states for a term of office of five years. The following persons may not be members pursuant to sentence 2: 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 forming the ARD association, the ZDF, Deutschlandradio, the European cultural television channel ARTE, the state media authorities and commercial broadcasters and platform operators as well as employees of undertakings which have a direct or indirect interest in them within the meaning of Article 28. If a member of the KEK appointed pursuant to sentence 2 resigns, the Prime Ministers of the states shall unanimously appoint a substitute member or another expert as a member for the remainder of the term of office; the same applies if a substitute member resigns. The members pursuant to sentence 2 shall receive adequate remuneration for their function and reimbursement of their necessary expenses. The state holding the chair of the Broadcasting Commission<sup>36</sup> shall conclude the contracts with the experts. The chairperson of the KEK and the deputy chairperson shall be elected from the group of members pursuant to sentence 1 no. 1. The six representatives of the state media authorities and two deputy members for the event of a member being unable to attend shall be elected by the state media authorities for the duration of the term of office of the KEK.

(6) A representative of the state media authorities must not simultaneously be a member of the KEK and the KJM; substitute membership or deputy membership shall be permitted.

(7) The state media authorities shall set up a joint management office for the bodies pursuant to paragraph (2); this notwithstanding, the management offices of the KJM in Erfurt and of the KEK in Potsdam respectively shall remain in operation until 31 August 2013.

(8) The members of the ZAK, the GVK and the KEK shall not be bound by instructions in fulfilling their tasks pursuant to this Interstate Treaty. For the members of the ZAK and the GVK, Article 24 shall apply accordingly. The obligation to maintain secrecy shall also apply in the relationship of the members of the bodies pursuant to (2) with other bodies of the state media authorities.

(9) The bodies pursuant to (2) shall take their decisions with the majority of their legal members. Concerning decisions of the KEK, in the event of equality of votes cast, the chairperson, and in case of his unavailability, the vote of the deputy chairperson shall have the decisive vote. The reasons for the decisions taken shall be given. The reasons shall include the major factual and legal grounds. The decisions shall be binding upon the other bodies of the competent state media authority. The competent state media authority shall implement the decisions within the periods set by the bodies pursuant to (2) sentence 1.

(10) The state media authorities shall provide the bodies pursuant to (2) with the necessary human and material resources. The bodies shall each prepare a budget based on the principles of efficiency and economy. The costs for the bodies pursuant to (2) shall be covered from the funds allocated to the state media authorities pursuant to Article 10 of the Interstate Treaty on Broadcasting Funding. The details shall be governed by concurrent statutes of the state media authorities.

(11) The competent state media authorities shall levy an adequate proportion of the costs on those involved in the procedure. The details shall be governed by concurrent statutes of the state media authorities.

### **Article 36 Competences, Remit**

(1) For the cases governed by (2) sentence 1 nos. 1, 3, 4 and 8, the competent state media authority shall be the authority which receives the respective application or the notification. If more than one authority is the competent authority pursuant to sentence 1, the decision shall be taken by the state media authority which dealt with the matter first. For the cases governed by (2) sentence 1 nos. 5 to 7 and 9 as well as for the cases of withdrawal or revocation of the licence or the designation, the competent authority shall be the state media authority which granted the licence to the broadcaster, effected the designation or received the notification.

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<sup>36</sup> Rundfunkkommission: working group of the Prime Ministers dealing with media-related issues and making proposals concerning media policy and legislation to the Conference of Prime Ministers

(2) The ZAK shall have the competence for the following tasks:

1. licensing, withdrawing or revoking the licence of national service providers pursuant to Articles 20a, 38 (3) no. 1 and (4) no. 1 as well as the notification of radio services in the internet pursuant to Article 20b, sentence 2;
2. performing the tasks pursuant to Article 51 (3) sentence 1 nos. 1 and 3;
3. designating transmission capacities required for the provision of contents or services distributed nationally and their withdrawal or revocation pursuant to Articles 51a and 38 (3) no. 2 and (4) no. 2 insofar as the GVK is not competent pursuant to (3);
4. the notification of platform operations pursuant to Article 52;
5. supervising platform operations pursuant to Article 51b (1) and (2) as well as Articles 52a to f insofar as the GVK is not competent pursuant to (3);
6. establishing whether the requirements for regional window services pursuant to Article 25 (4) and for broadcasting time for third parties pursuant to Article 31 (2) Sentence 4 exist;
7. supervisory measures concerning national commercial broadcasters insofar as the KEK is not competent pursuant to (4);
8. taking decisions on the licensing requirement pursuant to Article 20 (2); the ZAK shall take these decisions unanimously;
9. dealing with notifications pursuant to Article 38 (1).

For the tasks pursuant to sentence 1 no. 7, the ZAK may set up examining committees. The examining committees shall decide each case unanimously in place of the ZAK. At the beginning of the term of office of the ZAK, the ZAK shall determine the distribution of procedures. The details shall be specified in the rules of procedure of the ZAK.

(3) The GVK shall have the competence for the selection decisions regarding the designation of transmission capacities pursuant to Article 51a (4) and for the decision concerning the allocation of platform capacities pursuant to Article 52b (4) sentences 4 and 6. The ZAK shall inform the GVK continually about its activities. It shall incorporate the GVK regarding matters of principle, in particular concerning the drafting of statutes and directives.

(4) The KEK shall have the competence for the final assessment of issues relating to securing plurality of opinion in connection with the provision of national television services. Within the framework of sentence 1, it shall, in particular, have the competence for assessing issues arising in connection with decisions relating to a licence being granted or amended, changes of the shareholder structures being confirmed as unproblematic, and regarding measures pursuant to Article 26 (4). The KEK shall establish the audience shares attributable to each undertaking.

(5) The selection and licensing of regional window services pursuant to Article 25 (4) and of providers of television windows pursuant to Article 31 (4) as well as the supervision of these services shall be the task of the competent body of the competent state media authority which has the competence for the licensing of offers which are not transmitted nationally. For the selection and licensing of providers pursuant to Sentence 1 above, the KEK shall be consulted.

(6) Article 47 (3) sentence 1 remains unaffected.

#### **Article 37 Licensing Procedures, Designation**

(1) Upon receipt of an application pursuant to Article 36 (2) nos. 1, 3, 4, 8 or 9, the legal representative of the competent state media authority shall present the application as well as the existing documentation to the ZAK and, for the cases governed by Article 36 (2) no. 1, in addition to the KEK without delay.

(2) In the event that not all applications can be approved pursuant to Article 36 (2) no. 3, the decision shall be taken by the GVK.

(3) Paragraph (1) above shall apply correspondingly to the assessment of issues which relate to ensuring plurality of opinion by the KEK within the framework of its competence regarding issues other than the licensing of a national commercial broadcaster.

(4) The commissions pursuant to Article 35 (2) shall be entitled to resort to the procedural provisions pursuant to Articles 21 and 22.

(5) If appeals are lodged against a decision pursuant to Articles 35 and 36, no advance procedure pursuant to Article 68 (1) of the Rules of the Administrative Courts<sup>37</sup> will take place.

#### **Article 38 Notification, Supervision, Withdrawal, Revocation**

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<sup>37</sup> Verwaltungsgerichtordnung (VWGO) of 21 January 1960, last amended 21 August 2009 - <http://www.gesetze-im-internet.de/bundesrecht/vwgo/gesamt.pdf>

(1) Every state media authority may notify to the competent state media authority that a national service violates the other provisions of this Interstate Treaty. The competent state media authority is obliged to deal with the notification through the ZAK.

(2) If the competent state media authority finds that a provider has violated the provisions of this Interstate Treaty, it shall take the measures required. Measures include in particular admonition, prohibition, withdrawal and revocation. The provisions of the Interstate Treaty on the Protection of Minors remain unaffected.

(3) The licence granted pursuant to Article 20a or the designation effected pursuant to Article 51a shall each be withdrawn if

1. a licensing requirement pursuant to Article 20a (1) or (2) was not fulfilled or a licensing restriction pursuant to Article 20a (3) was not considered when the licence was granted, or
2. during designation, the provisions in accordance with Article 51a (4) were not taken into consideration when the designation was effected,

and within a period specified by the competent state media authority no remedial action has been taken.

(4) The licence and the allocation shall each be revoked if

1. in the case of the licence
  - a) a licensing requirement pursuant to Article 20a (1) or (2) subsequently no longer applies or a licensing restriction pursuant to Article 20a (3) arises and within the adequate period specified by the competent state media authority no remedial action is taken, or
  - b) the broadcaster has repeatedly and seriously violated its obligations under this Interstate Treaty or under the Interstate Treaty on the Protection of Minors and has not complied with the instructions of the competent state media authority within the period specified by it,
2. in the case of the designation
  - a) changes of the offer have subsequently occurred for which the provider is responsible, according to which the offer no longer meets the requirements laid down in Article 51a (4) and no remedial action is taken within the period specified by the competent state media authority, or

- b) the offer is not provided or continued within the period specified for the duration specified for reasons for which the provider is responsible.

(5) The provider shall not receive any compensation for financial losses incurred as a result of the withdrawal or revocation pursuant to (3) or (4). In all other respects, the Law of Administrative Proceedings of the state of residence of the respective competent state media authority shall apply concerning the withdrawal and the revocation.

### **Article 39 Scope of Application**

Articles 20a to 38 shall apply to national services only. No deviation under state law shall be permitted. Articles 20, 20a, 21 (1), 24 and 35 to 38 and 39a shall also apply to teleshopping channels. The decisions of the KEK shall form the basis for the designation of transmission capacities pursuant to this Interstate Treaty as well as for the decision on the designation of transmission capacities under state law by the competent state media authority.

### **Article 39a Cooperation**

(1) In fulfilling their tasks the state media authorities shall cooperate with the Regulatory Authority for Telecommunications<sup>38</sup> and with the Federal Cartel Office<sup>39</sup>. Upon enquiry of the Regulatory Authority for Telecommunications or of the Federal Cartel Office, the state media authorities shall provide findings which are required for the latter fulfilling their tasks.

(2) Paragraph (1) shall apply accordingly for state cartel authorities.

### **Article 40 Funding of Special Tasks**

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

1. licensing and supervisory tasks of the state media authorities including the necessary planning and, in particular, preliminary technical work;
2. promoting public access channels.

<sup>38</sup> Regulierungsbehörde für Telekommunikation und Post (RegTP) - <http://www.bundesnetzagentur.de/enid/8d854e2aaea3dbd7b2b0128d696de0f0,0/xn.html>

<sup>39</sup> Bundeskartellamt (BKartA) - <http://www.bundeskartellamt.de/wEnglisch/index.php>

On the basis of special authorisations granted by the state legislator, funds from the share pursuant to sentence 1 may also be used to promote the technical infrastructure required under state law to supply the state and to promote projects for innovative broadcasting technology until 31 December 2020. The funding of projects for innovative broadcasting technology should be restricted in duration. On the basis of a special authorisation granted by the state legislator, 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 legislator to allocate to the state media authority only part of the share pursuant to paragraph (1) remains unaffected.

(3) As far 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 shall be permitted.

### **Subsection 5 Programming Principles, Broadcasting Time for Third Parties**

#### **Article 41 Programming Principles**

(1) The broadcasting services are bound by the constitutional order. They must respect human dignity as well as the moral, religious and ideological beliefs of others. They should promote social cohesion in unified Germany and international understanding and should work towards a non-discriminatory society. The general provisions of law and the legal provisions protecting personal dignity must be complied with.

(2) The broadcasting services should contribute to presenting the plurality in German-speaking regions and in Europe by providing an appropriate share of information, culture and education contents; the possibility of offering thematic channels remains unaffected.

(3) Paragraphs (1) to (2) apply to services transmitted nationally only.

#### **Article 42 Broadcasting Time for Third Parties**

(1) The Protestant Churches, the Catholic Church and the Jewish Communities shall, upon request, be granted appropriate time for broadcasting religious programmes; the broadcasters may request reimbursement of their costs.

(2) Political parties participating in elections to the German Parliament<sup>40</sup> shall, subject to reimbursement of costs, be granted appropriate broadcasting time if an election list of a party has been accepted for said party in at least one state. Furthermore, parties or other political associations participating in the elections of representatives of the Federal Republic of Germany to the European Parliament are entitled to appropriate broadcasting time if one electoral proposal has been accepted at least, subject to reimbursement of costs.

(3) Paragraphs (1) and (2) apply to services transmitted nationally only.

### **Subsection 6 Funding, Advertising, Teleshopping**

#### **Article 43 Funding**

Commercial broadcasters may fund their broadcasting services through advertising and teleshopping revenues, through other income, in particular fees payable by users (subscriptions or individual fees), as well as from their own means. Commercial broadcasters must not be funded by licence fee revenue. Article 40 remains unaffected.

#### **Article 44 Admissible Product Placement**

In derogation from Article 7 (7), sentence 1, product placement shall be admissible in broadcasting

1. in cinematographic works, films and series, sports programmes and light entertainment programmes unless they are children's programmes, or
2. where there is no payment, but only the provision of specific goods or services free of charge such as production props and prices, with a view to their inclusion in a programme, unless the programmes concerned are news programmes, current affairs programmes, advice and consumer programmes, programmes for children or religious broadcasts.

Light entertainment programmes shall exclude in particular programmes which - alongside elements of entertainment - are of a predominantly informative nature, are consumer programmes or advice programmes including elements of entertainment as well as programmes in regional window services and window services pursuant to Article 31.

#### **Article 45 Duration of Television Advertising**

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<sup>40</sup> Deutscher Bundestag - [www.bundestag.de](http://www.bundestag.de)

(1) The proportion of television advertising spots and teleshopping spots within one hour shall not exceed 20 per cent. Sentence 1 shall not apply to product placements and sponsorship announcements.

(2) Announcements made by the broadcaster in connection with its own services and programmes and ancillary products directly derived from said services and programmes, public service announcements and charity appeals broadcast free of charge as well statutory references are not considered to be advertising.

(3) Paragraphs (1) and (2) as well as Article 7a shall not apply to channels exclusively devoted to advertising.

#### **Article 45a Teleshopping Windows and Self-Promotion Channels**

(1) Windows devoted to teleshopping which are transmitted in a service not exclusively devoted to teleshopping shall be of a minimum uninterrupted duration of 15 minutes. They shall be clearly identified as teleshopping windows by optical and acoustic means.

(2) Articles 7 and 8 shall apply accordingly to self-promotion channels. Articles 7a and 45 shall not apply to self-promotion channels.

#### **Article 46 Directives**

The state media authorities shall issue joint statutes or directives for the implementation of Articles 7, 8, 8a, 44, 45 and 45a; the statute or directive governing Article 8a shall in particular specify the prosecution of violations and the conditions for the participation of minors.

#### **Article 46a Exemptions for Regional and Local Television Broadcasters**

For regional and local television services provisions under state law may differ from Article 7 (4) sentence 2, Article 7a (3) and Article 45 (1).

#### **Subsection 7 Data Protection**

#### **Article 47 Data Protection**

(1) Insofar as personal data are collected, processed or used in the provision and transmission of broadcasting services under this Interstate Treaty, the

provisions of the section of the Telemedia Act<sup>41</sup> governing data protection shall apply accordingly in the respective amendment in force.

(2) Insofar as a broadcaster processes personal data for its own journalistic or editorial purposes only and the person concerned is thus negatively affected in his interests meriting protection, he may demand information on the underlying data stored about his person. The information may be denied following consideration of the party's interests meriting protection, if its provision would prejudice the journalistic task of the broadcaster by exploring the information gathered or if the data would allow conclusions on

1. persons who were involved in the preparation, production or transmission, or
2. the person of the sender or of the guarantor of contributions, documentation and communications for the editorial section.

The affected party may demand the correction of incorrect data or the addition of its own statement of appropriate length.

(3) The competence for supervision of compliance with (1) and (2) is governed by state law. The retrieval of offers or access to contents within the framework of supervision shall be free of charge. Broadcasters must ensure this. The broadcaster must not block offers against on-demand retrieval by or access for the competent supervisory authority.

(4) Paragraphs (1) to (3) shall also apply to teleshopping channels.

### **Section IV Appeal, Administrative Offences**

#### **Article 48 Appeal to The Federal Administrative Court**

Appeals to the Federal Administrative Court<sup>42</sup> in a judicial proceeding may also be made on the grounds that the judgement being challenged is based on a violation of the provisions of this Interstate Treaty.

#### **Article 49 Administrative Offences**

<sup>41</sup> Telemediengesetz (TMG) of 26 February 2007, last amended 14 August 2009 - <http://www.gesetze-im-internet.de/bundesrecht/tmg/gesamt.pdf>

<sup>42</sup> Bundesverwaltungsgericht - [http://www.bverwg.de/enid/86a816dcf67a57e59f81110560a50249.0/Aktuelles/Information\\_in\\_English\\_g0.html](http://www.bverwg.de/enid/86a816dcf67a57e59f81110560a50249.0/Aktuelles/Information_in_English_g0.html)

(1) A commercial broadcaster providing a service transmitted nationally commits an administrative offence if it, either intentionally or through negligence:

1. in breach of Article 4 (1) or (3) transmits major events in encrypted form and against special payment;
2. in breach of Article 7 (3) sentence 2 uses subliminal techniques in advertising or teleshopping;
3. in breach of Article 7 (3) sentence 3 fails to identify advertising and teleshopping in a manner appropriate to the media by optical or acoustic means or fails to spatially separate same from other parts of a programme;
4. in breach of Article 7 (4) uses part of the broadcast image for advertising without clearly separating the advertising from the other parts of the programme by optical means and without identifying it as such;
5. in breach of Article 7 (5) sentence 2 fails to identify an infomercial;
6. in breach of Article 7 (6) sentence 1 inserts virtual advertising in programmes or in teleshopping;
7. in breach of Article 7 (7) sentence 1 engages in surreptitious advertising, thematic placements or similar practices;
8. in breach of Article 7 (7) sentence 1 engages in product placement as far as this is not admissible pursuant to Article 44;
9. in breach of Article 7 (7) sentences 3 or 4 fails to clearly identify product placement as such;
10. in breach of Article 7 (9) transmits advertising or teleshopping of a political, ideological or religious nature;
11. in breach of Article 7a (1) interrupts the transmission of religious broadcasts or children's programmes by advertising or teleshopping spots;
12. in breach of the conditions laid down in Article 7a (3) interrupts programmes by advertising or teleshopping;
13. in breach of Article 8 (1) sentence 1 fails to identify the sponsor at the beginning or at the end of the sponsored programme;
14. in accordance with Article 8 (3) to (6) transmits illegally sponsored programmes;
15. in breach of Article 9 (1) sentence 2 fails to provide obligatory information;
16. in breach of Article 9b (2) fails to make accessible the information specified therein in an easy, direct and permanent manner;
17. in breach of Article 20 (1) sentence 1 or (2) sentence 1 provides broadcasting services without a licence;
18. in breach of Article 20b sentences 1 and 2 provides radio services exclusively in the internet without notifying or fully notifying the competent state media authority;
19. in breach of Article 23 (2) fails to submit the list of programming sources to the competent state media authority within the specified period;
20. in breach of Article 34 sentence 2 fails to make available data on audience shares available to it to the KEK upon request;
21. in breach of Article 45 (1) exceeds the permitted advertising duration;
22. in breach of Article 45a (1) sentence 1 transmits teleshopping windows which do not have a minimum uninterrupted duration of 15 minutes or in breach of Article 45a (1) sentence 2 transmits teleshopping windows which are not clearly identified as such by optical and acoustic means;
23. in breach of Article 47 (1) in conjunction with Article 12 (3) of the Telemedia Act makes the use of broadcasting dependent on the consent of the user to his data being processed for other purposes;
24. in breach of Article 47 (1) in conjunction with Article 13 (1) sentence 1 or 2 of the Telemedia Act fails to inform the user or informs the user incorrectly, incompletely or not in good time;
25. in breach of Article 47 (1) in conjunction with Article 13 (2) or (4) sentence 1 nos. 1 to 5 of the Telemedia Act fails to comply with or to fully comply with the obligation specified therein regarding data protection;
26. in breach of Article 47 (1) in conjunction with Article 14 (1) or Article 15 (1) or (8), sentence 1 or 2 of the Telemedia Act processes personal data;
27. in breach of Article 47 (1) in conjunction with Article 15 (3) sentence 3 of the Telemedia Act combines a user profile with data on the bearer of the pseudonym;

28. in breach of Article 47 (3) sentence 4 blocks offers against being retrieved or accessed by the competent supervisory authority.

A broadcaster also commits an administrative offence if it

1. in breach of Article 21 (6) fails to immediately notify the competent state media authority of any major change of its circumstances following application for or having been granted a licence;
2. in breach of Article 21 (7) fails to notify the competent state media authority without delay after the end of a calendar year if and to what extent there has been a change during that calendar year regarding interests in the undertaking and the terms of attribution;
3. in breach of Article 23 (1) fails to prepare and publish the annual statement of accounts with annex and a management report within the period specified;
4. in breach of Article 29 sentence 1 fails to notify any planned changes;
5. violates a statute pursuant to Article 46 sentence 1 in conjunction with Article 8a insofar as the statute refers to this provision for administrative fines concerning a specific offence;
6. in breach of Article 51b (2) sentence 1 or 3 fails to notify the retransmission of television services in good time or in full and the notification was not effected by the platform provider;
7. in breach of Article 52 (3) sentence 1 or 2 fails to notify the operation of a platform for broadcasting and comparable telemedia services completely, in good time or in full;
8. in breach of Article 52a (3) sentences 1 and 2 without the agreement of the respective broadcaster alters the content or technical characteristics of its service or comparable telemedia or includes individual broadcasting services or contents in packages or markets them in other ways against remuneration or free of charge;
9. in breach of Article 52b (1) or of Article 52b (2) sentences 2, 3 or 4 fails to make available the required transmission capacity for the services to be transmitted or fails to provide sufficient transmission capacities or fails to provide same at the terms provided, or in breach of Article 52b (4) sentence 3 or sentence 6 fails to notify the allocation or the amendment of allocation of platform capacities or fails to notify it in good time or in full;

10. in breach of Article 52c (1) sentence 2 unduly impedes the transmission of the services of providers of broadcasting or comparable telemedia services including electronic programme guides or treats said providers differently in relation to other providers without justifiable cause by using a conditional access system or a system pursuant to Article 52c (1) sentence 2 no. 3 or through application programming interfaces or by imposing other technical requirements concerning Article 52c (1) sentence 2 nos. 1 to 3 in relation to manufacturers of digital broadcast reception equipment, in breach of Article 52c (2) sentence 1 or 2 fails to notify without delay the use or alteration of a conditional access system or a system pursuant to Article 52c (1) sentence 2 no. 3 or an application programming interface or the fees thereof, in breach of Article 52c (2) sentence 3 fails to present the necessary information to the competent state media authority upon request;
11. in breach of Article 52d sentence 1 unduly impedes providers of services or comparable telemedia through the structure of its fees or tariffs or without justifiable cause treats them differently in relation to comparable providers, or in breach of Article 52d sentence 3 does not publish or fully lay open fees or tariffs for offers according to Article 52b (1) sentence 1 or (2) sentence 2;
12. in breach of Article 52e (1) sentence 1 fails to present the necessary documentation to the competent state media authority upon request;
13. in breach of Article 55 (1) for telemedia fails to keep on hand or correctly on hand the name or address or, in the case of legal persons, the name or the address of the authorised representative;
14. in breach of Article 55 (2) for telemedia with journalistic edited offers to specify or incorrectly specifies the responsible party;
15. in breach of Article 58 (3) in conjunction with Article 7 (3) sentence 2 uses subliminal techniques in advertising or in teleshopping;
16. in breach of Article 58 (3) in conjunction with Article 7 (3) sentence 3 fails to adequately identify advertising or teleshopping by optical or acoustic means or fails to clearly spatially separate same from the other parts of an offer;
17. in breach of Article 58 (3) in conjunction with Article 7 (6) sentence 1 inserts virtual advertising in its offers;
18. in breach of Article 58 (3) in conjunction with Article 7 (4) complements the offer of the mov-

ing images transmitted by inserting advertising without clearly separating the advertising by optical means and without identifying it as such;

19. in breach of Article 58 (3) in conjunction with Article 7 (5) sentence 2 fails to identify an offer of moving images as continuous advertising;
20. in breach of Article 58 (3) in conjunction with Article 7 (7) sentence 1 engages in surreptitious advertising, thematic placements or similar practices;
21. in breach of Article 58 (3) in conjunction with Article 7 (7) sentence 1 engages in product placement as far as this is not admissible pursuant to Articles 15 or 44;
22. in breach of Article 58 (3) in conjunction with Article 7 (7), sentences 3 or 4 fails to clearly identify product placement;
23. in breach of Article 58 (3) in conjunction with Article 7 (9) transmits advertising or teleshopping of a political, ideological or religious nature;
24. in breach of Article 58 (3) in conjunction with Article 7a (1) integrates advertising or teleshopping spots in religious broadcasts or offers of moving images directed at children;
25. in breach of the conditions specified in Article 58 (3) in conjunction with Article 7a (3) integrates advertising and teleshopping in offers of moving images;
26. in breach of Article 58 (3) in conjunction with Article 8 (1) sentence 1 fails to identify the sponsor of a sponsored offer of moving images;
27. in accordance with Article 58 (3) in conjunction with Article 8 (3) to (6) transmits illegally sponsored offers of moving images;
28. in breach of an instruction by the competent supervisory authority to be implemented pursuant to Article 59 (3) sentence 2, also in conjunction with (4) sentence 1, fails to block offers, or
29. in breach of Article 59 (7) sentence 3 blocks offers against on-demand access by the competent supervisory authority.

Further provisions under state law regarding administrative offences remain unaffected.

(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. 13 and 14 by a fine of up to Euro

50,000, and in the case of paragraph 1 sentence 2 nos. 15 and 16 by a fine of up to Euro 250,000.

(3) The competent administrative authority within the meaning of Article 36 (1) no. 1 of the Administrative Offences Act shall be the state media authority of the state in which the licence was granted or applied for provided no other authority has been designated under state law as the competent administrative authority to deal with administrative offences pursuant to (1) sentence 1 nos. 23 to 28 and sentence 2 nos. 13 to 29. The competent administrative authority shall notify the other state media authorities without delay of any legal proceedings being instituted. In the event of proceedings being instituted in several states pursuant to this paragraph, the authorities involved shall decide which authority shall continue the proceedings.

(4) The state media authority of the state which granted the licence to a broadcaster of a service transmitted nationally may decide that complaints following a violation of provisions of this Interstate Treaty as well as final decisions in an administrative offence proceeding pursuant to (1) shall be broadcast by the broadcaster concerned in its service. The content and time of the notice must be determined by said state media authority with due discretion. Paragraph (3) sentences 2 and 3 shall apply accordingly.

(5) The prosecution of the administrative offences specified in paragraph 1 is subject to a statute of limitations of six months.

## **Section V Platforms, Transmission Capacities**

### **Article 50 Principle**

The decision on the assignment, designation and use of transmission capacities for the distribution of broadcasting services and comparable telemedia (telemedia directed at the general public) shall be governed by this Interstate Treaty and the respective state law.

### **Article 51 Assignment of Wireless Transmission Capacities**

(1) The states shall decide unanimously on the notification of non-wired (wireless) transmission capacities required for the provision of contents or services to be distributed nationally with the regulatory authority in charge of telecommunications. For notifications of capacity requirements covering more than one state, sentence 1 shall apply accordingly concerning the states in question.

(2) The Prime Ministers of the states shall decide unanimously on the assignment of transmission ca-

capacities for the provision of contents or services to be distributed nationally to the state broadcasting corporations forming the ARD association, to the ZDF, to Deutschlandradio or to the state media authorities.

(3) For the assignment, the following principles shall apply in particular:

1. Available free transmission capacities shall be made known to the state broadcasting corporations forming the ARD association, to the ZDF or to Deutschlandradio and to the state media authorities;
2. If the transmission capacities do not suffice for covering the capacity requirements presented, they shall be assigned accordingly;
3. If the transmission capacities available do not suffice for covering the capacity requirements presented, the Prime Ministers shall work towards 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 Prime Ministers shall decide which assignment will ensure the greatest-possible variety of offers, taking into account the specificities of the transmission capacity and taking into account the range of offers overall; in this process, the following criteria shall be taken into consideration in particular:
  - a) ensuring basic supply<sup>43</sup> and the participation of public-service broadcasting in new technologies and formats;
  - b) the concerns of commercial broadcasting and of the providers of telemedia.

The assignment of the transmission capacities shall be effected for a maximum duration of 20 years.

(4) The chairman of the Conference of Prime Ministers<sup>44</sup> shall assign the transmission capacity in accordance with the decision of the Prime Ministers pursuant to (2).

(5) If an assigned transmission capacity is not used for the distribution of contents or services within eighteen months following receipt of the decision of assignment, the assignment decision may be re-

<sup>43</sup>"Grundversorgung": broadcasting catering for all interests and tastes

<sup>44</sup> Ministerpräsidentenkonferenz (MPK) - [http://www.bundesrat.de/cln\\_090/nn\\_11008/EN/national-en/fachministerkonf-en/fachministerkonf-en-inhalt.html?\\_nnn=true](http://www.bundesrat.de/cln_090/nn_11008/EN/national-en/fachministerkonf-en/fachministerkonf-en-inhalt.html?_nnn=true)

voked by a decision of the Prime Ministers; no compensation shall be granted. Upon application of the recipient of the assignment, the period may be extended by a decision of the Prime Ministers.

(6) The Prime Ministers shall agree on procedural rules for implementing (2) to (5).

#### **Article 51a** **Designation of Wireless Transmission Capacities to Commercial Providers by the Competent State Media Authority**

(1) The state media authorities shall designate transmission capacities for the provision of offers or services to be distributed nationally by commercial broadcasters, providers of comparable telemedia or platform providers.

(2) The state media authorities shall determine the beginning and the end of a period of exclusion without delay during which written applications for the designation of transmission capacities assigned to the state media authorities may be filed. The state media authorities shall specify and publish in a suitable manner (tender) the beginning and the end of the period of application, the procedure and the major requirements concerning the application, in particular as regards fulfilment of the provisions of this Interstate Treaty for ensuring plurality of opinion and variety of offers.

(3) Unless all applications for the designation of transmission capacities can be complied with, the competent state media authority shall work towards an agreement among the applicants. If agreement can be reached, it shall form the basis of the decision of the state media authority concerning the distribution of transmission capacities if the documentation presented allows the conclusion that plurality of opinion and variety of offers can be ensured with the overall number of offers provided.

(4) Unless agreement can be reached within the adequate period to be specified by the competent state media authority, or unless the planned distribution of capacities is likely to meet the requirement of plurality of opinion and variety of offers, the competent state media authority shall designate the transmission capacity to the applicant who appears to be most likely with its offer to

1. further plurality of opinion,
2. also present public events, political issues and cultural life, and
3. provide opportunities for political, ideological and societal groups to present their views.

The decision on selection shall further take into account whether the offer appears to be economically

viable and sufficiently takes into consideration the interests of and acceptance by consumers. In the event that the transmission capacity of a provider is to be designated to the provider of a platform, note shall also be taken of whether the respective offer permits access at adequate conditions for television and radio broadcasters and for providers of comparable telemedia including electronic programme guides and allows for equal and non-discriminatory access.

(5) The designation of transmission capacities shall be effected for a duration of ten years. A renewal by ten years shall be permitted once. The designation shall take immediate effect. If a designated transmission capacity is not made use of within twelve months following the decision on designation, the competent state media authority may revoke the designation decision pursuant to Article 38 (4) no. 2b. Upon application by the recipient of the designation, the period may be extended.

#### **Article 51b Retransmission**

(1) The simultaneous and unaltered retransmission of television services which can be received nationally, or which are operated in Europe legally and in accordance with the provisions of the European Convention on Transfrontier Television shall be permitted. The retransmission of television services may be suspended paying due regard to European broadcasting law.

(2) Providers of services other than the television services referred to in (1) shall notify the state media authority in whose area of competence the services are to be distributed of the retransmission at least one month prior to commencement. Notification may also be effected by the platform operator. The notification must comprise the name of a person responsible for the contents, a description of the service and the presentation of a licence or comparable document. The operator of the platform shall be prohibited to effect retransmission if the broadcasting service does not meet the requirements of Article 3 or of the Interstate Treaty on the Protection of Minors, or if the provider is not entitled to provide broadcasting in line with the law applicable in the country of origin, or if the service is not retransmitted as unaltered content.

(3) State provisions governing analogue cable allocation for broadcasting shall be permitted as far as they are required for achieving clearly-defined objectives serving general public interests. They may be established in particular for securing a pluralistic media order orientated along the principle of plurality of opinion and variety of offers. Details, in particular regarding the ranking for the allocation of cable capacities, shall be specified pursuant to state law.

#### **Article 52 Platforms**

(1) The following provisions shall apply for platforms for all technical transmission capacities. With the exception of Articles 52a and 52f, they shall not apply to providers of

1. platforms in open networks (Internet, UMTS or similar networks), as far as they do not hold a dominant position in this market,
2. platforms restricting operation to the unaltered redistribution of a package of offers meeting the provisions of this Section,
3. wired platforms as a rule comprising less than 10.000 homes connected, or
4. wireless platforms as a rule comprising less than 20.000 users.

The state media authorities shall determine in statutes and directives pursuant to Article 53 which providers shall be governed by the rules pursuant to sentence 2 above, taking into consideration the regional and local situation.

(2) Platforms may be operated only by operators meeting the requirements specified in Article 20a (1) and (2).

(3) Commercial providers intending to offer a platform including broadcasting and comparable telemedia services must notify the competent state media authority of their intention at the latest prior to the platform commencing operation. The notification must comprise

1. details in accordance with Article 20a (1) and (2), and
2. the description as to how the requirements of Articles 52a to Article 52d shall be fulfilled.

#### **Article 52 a Provisions for Platforms**

(1) Offers provided across platforms are bound by the constitutional order. The provisions of general law and the legal provisions for protecting personal honour must be complied with.

(2) Platform providers shall be responsible for their own programmes and other services. In the event of orders given by supervisory authorities against programme services and other services of third parties which are distributed across the platform, the providers are obliged to meet the orders. If measures against those responsible for programme services or other services pursuant to sentence 2 cannot be effected or are

not expected to achieve the desired success, measures may be taken to prevent access for programme services and other services also against the platform provider if such prevention is technically possible and reasonable.

(3) The provider of a platform must not alter the editorial and technical content of the service of the respective broadcaster or comparable telemedia provider without the approval of the provider and must not include individual broadcasting services or contents in channel packages or must not market such services against remuneration or free of charge. Technical alterations which exclusively serve a more efficient use of capacities and do not impede the agreed quality standard are permitted.

### **Article 52b Allocation of Platform Capacities**

(1) The allocation of platform capacities for television services shall be governed by the following provisions:

1. The platform provider shall ensure that within a technical capacity amounting to a maximum of one third of the overall capacity available for the digital transmission of broadcasting
  - a) the capacities required for the national distribution of licence-fee funded legally specified services as well as for the "Dritte" (regional) services of public-service broadcasting including programme-related services are available; the state-related windows distributed within the "Dritte" (regional) services may be distributed only within those states for which they are legally determined,
  - b) the capacities for the commercial television services which contain regional windows pursuant to Article 25 are available,
  - c) the capacities for the regional and local television services and open access channels licensed in the respective state are available; specific state provisions for open access channels and comparable offers remain unaffected,
  - d) the technical capacities referred to in (a) to (c) offer the same technical standard in relation to other digital capacities.
2. Within a further technical capacity amounting to the capacity referred to under no. 1, the platform provider shall decide on the allocation of capacities for television services and telemedia distributed in digital technology, taking into consideration the interests of users connected, a variety of content providers as well as a varied range of general channels, non-fee-funded services, the-

matic channels and foreign-languages services and adequately taking into consideration comparable telemedia and teleshopping channels.

3. For the technical capacities exceeding the capacities above, it shall take the decision on capacity allocation solely with due regard to general law.

If the capacity available does not suffice for allocation pursuant to sentence 1, the principles laid down in sentence 1 shall be applied in line with the capacity available overall; in this process, the legally specified licence-fee funded services and programme-related services of public-service broadcasting for the respective area of distribution shall be given priority, notwithstanding the adequate consideration of offers as specified in sentence 1 no. 1 (b) and (c).

(2) For platforms of commercial providers offering radio services the following provisions apply. The platform provider must ensure that

1. within a technical capacity amounting to a maximum of one third of the overall capacity available for the digital transmission of radio contents, the technical capacities for the legally specified, licence-fee-funded services and programme-related services of public-service broadcasting for the respective area of distribution are available,
2. within a further technical transmission capacity of the amount as specified in no. 1, the platform provider shall decide on the allocation of capacities for radio services and telemedia transmitted in digital technology, thereby adequately taking into consideration the interests of users connected, a varied range of offers and a variety of providers in the respective area of distribution,
3. for the technical capacity exceeding the capacities referred to above, it shall decide on allocation solely with due regard to general law.

Paragraph (1) sentence 2 shall apply accordingly. If radio and television services are transmitted on a platform, the services pursuant to sentence 2 no. 1 shall be taken into consideration within the framework of the capacity as specified pursuant to paragraph (1) sentence 1 no. 1 (a).

(3) The platform provider shall be exempt from the requirements pursuant to paragraphs (1) and (2) to the extent that

1. the provider proves to the competent state media authority that it or a third party ensures reception of the respective offers on a comparable route of transmission and the same reception equipment directly and without any additional expenditure, or
2. the requirement of plurality of opinion and variety of offers has already been fulfilled within the

framework of the assignment and designation decision pursuant to Article 51 or 51a.

(4) The decision on the allocation of platform capacities shall be taken by the provider of the platform. Services which can be attributed to the platform provider in accordance with Article 28 or which are exclusively marketed by it shall not be taken into consideration as regards fulfilment of the requirements pursuant to (1) nos. 1 and 2. The provider of a platform must notify the allocation of capacities for broadcasting services or telemedia to the competent state media authority at the latest one month prior to the platform commencing operation. If the requirements laid down in (1) to (3) are not fulfilled, the competent state media authority shall allocate capacities for broadcasting services to be distributed pursuant to the provisions of this Interstate Treaty and state law. Prior to this, the provider of a platform shall be granted an adequate period for fulfilling the legal requirements. For alterations of capacity allocations, sentences 1 to 5 shall apply accordingly.

#### **Article 52c** **Free Access**

(1) Providers of platforms transmitting broadcasting services and comparable telemedia must ensure that the technology employed allows for a varied range of offers. To ensure plurality of option and variety of offers, providers of broadcasting services and comparable telemedia including electronic programme guides must not be unduly impeded either directly nor indirectly through

1. conditional access systems,
2. application programming interfaces,
3. user surfaces providing the first access to the services, or
4. any other technical specifications in relation to nos. 1 to 3 also with regard to manufacturers of digital broadcasting reception equipment

in the distribution of their offers, or without justifiable cause be treated differently to comparable providers.

(2) The use of an conditional access system or a system pursuant to paragraph (2) sentence 2 or 3 or an application programming interface and the related fees shall be notified to the competent state media authority without delay. Sentence 1 shall apply accordingly regarding alterations. The competent state media authority shall be provided with the necessary information upon request.

#### **Article 52d** **Fees, Tariffs**

The structure of fees and tariffs must not unduly impede providers of broadcasting services and comparable telemedia nor result in their being treated differently to comparable providers without justified cause. The distribution of offers pursuant to Article 52b (1) no. 1 and no. 2 or Article 52b (2) in conjunction with (1) sentence 1 must be effected at adequate conditions. Fees and tariffs for services pursuant to Article 52b (1) sentence 1 or (2) sentence 2 shall be laid open. Fees and tariffs are to be set in such a manner within the framework of the Telecommunications Act that regional and local offers can also be transmitted at adequate and non-discriminatory conditions. The special provisions of state law for open access channels and comparable offers remain unaffected.

#### **Article 52e** **Presentation of Documentation, Cooperation with the Regulatory Authority for Telecommunications**

(1) Providers of platforms are required to present the necessary documentation to the competent state media authority upon request. Articles 21 to 24 shall apply accordingly.

(2) In the case of platform providers who simultaneously are also providers of telecommunications services, the competent state media authority shall decide in cooperation with the regulatory authority for telecommunications<sup>45</sup> whether the provisions of Article 52c (1) no. 1 or no. 2 or Article 52d have been violated.

#### **Article 52f** **Measures of the Competent State Media Authority**

If a platform provider violates the provisions of this Interstate Treaty or the Interstate Treaty on the Protection of Minors, Article 38 (2) shall apply accordingly.

#### **Article 53** **Statutes, Directives**

The state media authorities shall specify the details for the provisions of this Section being put in concrete terms by means of statutes and directives with the exception of Article 51. In so doing, the relevance for the formation of public opinion concerning the respective audiences in relation to the respective route of transmission shall be taken into consideration.

#### **Article 53a** **Review Clause**

This Section as well as the complementary state provisions shall be reviewed regularly every three years, for the first time per 31 August 2011 in accordance with Article 31 (1) of Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on uni-

<sup>45</sup> now called Bundesnetzagentur - <http://www.bundesnetzagentur.de/enid/8dbbf271d3535df947f7dd77dd6641b8.0/xn.html>

versal service and users' rights relating to electronic communications networks and services (Universal Service Directive)<sup>46</sup>.

**Article 53b**  
**Existing Licences,**  
**Assignments, Designations,**  
**Notification of Existing Platforms**

(1) Existing licences, assignments and designations for national providers of services transmitted nationally shall remain valid until their expiry. Existing licences and designations for window service providers shall be extended until 31 December 2009 notwithstanding the provisions of Article 25 (4) Sentence 4.

(2) Providers of platforms which are already in operation at the time of this Interstate Treaty entering into force must present the notification pursuant to Article 52 (3) six months following this Interstate Treaty entering into force at the latest.

**Section VI**  
**Telemedia**

**Article 54**  
**General Provisions**

(1) Telemedia within the framework of the law require no licence or registration. The offers are bound by the constitutional order. The provisions of general law and the legal provisions protecting personal honour must be complied with.

(2) Telemedia providing journalistic edited offers which, in particular, prior to distribution completely or partially reproduce texts or visual contents of periodical print media must conform to recognised journalistic standards. News must be verified by the provider prior to their transmission with the diligence appropriate to the circumstances concerning their content, source and truthfulness.

(3) The presentation of opinion polls carried out by providers of telemedia must expressly indicate whether or not they are representative.

**Article 55**  
**Obligation to Provide Information**  
**and Right to Information**

(1) Providers of telemedia not exclusively serving personal or familial purposes must keep the following information directly accessible and constantly available for easy recognition:

1. the 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 containing journalistic edited offers which, in particular, prior to distribution, completely or partially reproduce texts or visual contents of periodical print media must, in addition to the specifications pursuant to Articles 5 and 6 of the Telemedia Act, furthermore name an accountable person including their name and address. In the event that several accountable persons are named, it must be made clear which of the named persons is accountable for which part of the service. Only persons may be named as accountable persons who:

1. have their permanent residence in Germany,
2. have not lost their competence to hold public office due to a court judgement,
3. are fully legally competent, and
4. can be prosecuted without restrictions.

(3) For providers of telemedia pursuant to (2) sentence 1, Article 9a applies accordingly.

**Article 56**  
**Right of Reply**

(1) Providers of telemedia including journalistic edited offers which, in particular, prior to distribution, completely or partially reproduce texts or visual contents of periodical print media are required to include in their offers without delay the reply of the person or institution who is affected by an assertion of fact made in their offer at no cost to the person affected. The reply must be provided without insertions and omissions in the same layout as the assertion of fact. The reply must have the same length as the assertion of fact and be provided in direct conjunction with it. If the assertion of fact is no longer provided or if the offer is discontinued before the reply can be included, the reply must be provided in a comparable position for the same duration as the assertion of fact originally provided. A response to the reply must be limited to factual information and must not be directly linked to the reply.

(2) No obligation to include the reply pursuant to (1) arises if:

1. the affected party has no legitimate interest in the reply,
2. the reply inappropriately exceeds the extent of the assertion of fact being refuted,
3. the reply is not restricted to factual information or includes contents which are liable to prosecution, or

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<sup>46</sup> OJ L 108 of 24 April 2002, p. 51

4. the reply, in writing and signed by the affected party or its legal representative, is not made available to the provider against whom a right of reply is claimed, without delay, at the latest within six weeks following the last day of the offer including the refuted text being available, but in any event three months after the offer was first made available.

(3) Recourse to law may be sought for enforcing the claim to the right of reply which was asserted in vain. The provisions of the Code of Civil Procedure for the procedure for issuing an injunction are to be applied accordingly for this procedure. Jeopardy to the right of reply need not be proven. Principal proceedings shall not take place.

(4) No obligation to grant the right of reply exists in relation to truthful reports about open sessions of the supra-national parliamentary organs, the legislative federal and state organs as well as those bodies and authorities for which the respective state press laws exclude a reply pursuant to press law.

#### **Article 57 Data Protection in Relation to Journalistic and Editorial Purposes**

(1) As far as undertakings and associated undertakings of the press acting as providers of telemedia collect, process or use personal data for their own journalistic and literary purposes only, Articles 5, 7, 9 and 38a of the Federal Data Protection Act<sup>47</sup> apply on condition that liability is limited to damage resulting from a violation of data secrecy pursuant to Article 5 of the Data Protection Act or through insufficient technical or organisational measures within the meaning of Article 9 of the Data Protection Act. Specific provisions according to Interstate Treaty regulations or state law remain unaffected.

(2) If through offers of a provider of telemedia personal data are processed for the exclusive journalistic or editorial purposes of the provider and the party concerned is thus negatively affected in its interests meriting protection, it can require information about the underlying data stored about his person. The information can be denied following consideration of the party's interests meriting protection as far as by means of the communication the journalistic task of the broadcaster would be prejudiced by the exploration of the stored information or if the data would allow identification of:

1. persons who were involved in the preparation, production or transmission, or

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<sup>47</sup> Bundesdatenschutzgesetz (BDSG) of 20 December 1990, last amended 14 August 2009 - [http://www.gesetze-im-internet.de/bdsg\\_1990/](http://www.gesetze-im-internet.de/bdsg_1990/)

2. the person of the sender or of the guarantor of contributions, documents and communications for the editorial section.

The affected party can require the correction of incorrect data or the addition of its own statement of appropriate length. Sentences 1 to 3 do not apply concerning the offers of undertakings and associated undertakings of the press, insofar as these are subject to self-regulation under the Press Code and the Complaints Procedure of the German Press Council<sup>48</sup>.

(3) If the journalistic and editorial use of personal data results in the distribution of counterstatements by the affected party or in formal obligations, injunctions or rulings concerning the termination of the transmission or in the retraction of the content of the data, said counterstatements, declarations of termination or retractions must be added to the stored data and must be kept with the data for the same duration as the data and in the event of data being transferred must be transferred with the data.

#### **Article 58 Advertising, Sponsorship, Television-Like Telemedia, Prize Games**

(1) Advertising shall be clearly recognisable as such and shall be distinctly separate from the other parts of the offers provided. Advertising shall not use subliminal techniques.

(2) For sponsorship in television text services Article 8 shall apply accordingly.

(3) For telemedia including contents which are television-like in their form and content and which are provided by a provider for individual on-demand retrieval at a time determined by the user and from a catalogue of contents stipulated by the provider (audiovisual on-demand media services), Article 1 (3) as well as Articles 7 and 8 shall apply accordingly. For offers pursuant to Article 2 (3) no. 5, in addition Articles 4 to 6, 7a and 45 shall apply accordingly.

(4) For prize games provided in comparable telemedia (telemedia directed at the general public), Article 8a shall apply accordingly.

#### **Article 59 Supervision**

(1) The supervisory authorities pursuant to the general federal and state data protection laws shall supervise compliance with the data protection provisions of the Telemedia Act as well as those of Article 57 for their area of competence. The authorities in charge of data protection regarding journalistic or

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<sup>48</sup> Deutscher Presserat - <http://www.presserat.info/english.0.html>

editorial issues concerning public-service broadcasting shall also supervise compliance with the data protection provisions for journalistic and editorial offers provided in telemedia for their area of competence. Sentence 1 does not apply if undertakings and associated undertakings of the press are subject to self-regulation under the Press Code and the Complaints Procedure of the German Press Council.

(2) Compliance with the provisions for telemedia including general law and the legal provisions for protecting personal honour with the exception of data protection shall be supervised by a supervisory authority designated under state law.

(3) If the respective competent supervisory authority ascertains a violation of the provisions with the exception of Articles 54, 55 (2) and (3), 56, 57 (2) or the data protection provisions of the Telemedia Act, it shall take the measures required for remedying the violation in relation to the provider. It can, in particular, prohibit offers and order their blocking. Offers must not be prohibited if the measure is disproportionate in relation to the relevance of the offer to the provider and the general public. Offers may be prohibited only if the objective cannot be achieved by other means. Insofar as the objective can be achieved in this manner, the prohibition must be restricted to specific types and parts of offers or must be limited in duration. Journalistic edited offers which, in particular, reproduce completely or partially the texts or visual contents of periodical print media may be blocked only pursuant to the provisions detailed in Article 97 (5) sentence 2 and in Article 98 of the Code of Criminal Procedure<sup>49</sup>. The competences of the supervisory authorities for the implementation of the provisions of general law and the legal provisions protecting personal honour remain unaffected.

(4) If measures directed against the responsible party according to Article 7 of the Telemedia Act prove to be not practicable or unlikely to prove successful, measures to block offers pursuant to (3) may also be targeted at the service provider of offers of third parties 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 an offer affects the rights of a third party and legal action is possible correspondingly for the third party, the supervisory authority within the meaning of (3) should issue instructions only if this is required for reasons of the public interest.

(6) The execution of this section is the competence of the supervisory authority of the state in which the

affected provider has its office, residence or, lacking either, permanent domicile. If no competence can be established through the above, the supervisory authority shall be the competent authority in whose district the reason for the legal act occurred.

(7) Access to offers within the framework of supervision shall be free of charge. The service providers must ensure this. The provider must not block its offers against access by the competent supervisory authority.

## **Article 60 Telemedia Act, Public Authorities**

(1) Telemedia subject to the provisions of this Interstate Treaty or the provisions of the other Interstate Treaties of the states relating to broadcasting are subject to the provisions of the respective amendment of the Telemedia Act in force in all other respects. Paragraph (2) remains unaffected.

(2) In addition to the above provisions, the provisions of the respective amendment of the Telemedia Act in force apply accordingly for the public authorities of the states.

## **Article 61 Notification**

Amendments to this section are subject to obligatory notification pursuant to Directive 98/48/EC of the European Parliament and of the Council of 20 July 1998<sup>50</sup> amending Directive 98/34/EC laying down a procedure for the provision of information in the field of technical standards and regulations<sup>51</sup>.

## **Section VII Transitional and Final Provisions**

### **Article 62 Termination**

(1) This Interstate Treaty shall remain in force for an indefinite period. It may be terminated by any of the contracting parties subject to twelve months' notice at 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 of this date, the same period of notice may be given for termination at a date two years later each time. Termination shall be made in writing to the Chairman of the Conference of Prime Ministers. If one state gives notice of termination, it may terminate the Interstate Treaty on Licence Fees<sup>52</sup> and the Interstate Treaty on Broadcasting Fund-

<sup>49</sup> Strafprozeßordnung (StPO) of 12 September 1950, last amended 30 July 2009 - <http://www.gesetze-im-internet.de/bundesrecht/stpo/gesamt.pdf>

<sup>50</sup> OJ L 217 of 05 August 1998, p. 18

<sup>51</sup> OJ L 24 of 21 July 1998, p. 37

<sup>52</sup> Rundfunkgebührenstaatsvertrag (RGebStV) of 31 August 1991, last amended by the 12th Interstate Treaty, in force

ing with effect from the same date. Every other state may thereupon likewise terminate the Treaty or Treaties 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 assignment of satellite transmission capacities shall remain in force as long as entitlements to transmission capacities continue. In the event of termination by individual states, Articles 11a to d remain unaffected.

(3) Article 4 (1) and (2) may also be terminated separately by any of the contracting parties subject to twelve months' notice at the end of the calendar year. 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 termination at a date two years later. Termination shall be made in writing to the Chairman of the Conference of Prime Ministers. If one state gives notice of termination of the Treaty, every state may terminate Article 4 (1) and (2) with effect from the same date within three months following receipt of notice of the termination. The termination by one state does not affect the validity of the terminated provisions of this Interstate Treaty with regard to the relationship of the remaining states to one another.

(4) Article 12 (2) may also be terminated separately by any of the contracting states subject to twelve months' notice 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 termination at a date two years later. Termination shall be made in writing to the Chairman of the Conference of Prime Ministers. If one state gives notice, every state may give notice of termination of this Interstate Treaty, the ARD Interstate Treaty<sup>53</sup>, the ZDF Interstate Treaty<sup>54</sup>, the Interstate Treaty on the public corporation "Deutschlandradio" the Interstate Treaty on Broadcasting Funding and the Interstate Treaty on Licence Fees with effect from the same date within a period of 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 and the Treaties listed in sentence 5

with regard to the relationship of the remaining states to one another.

(5) Article 16 (1), (2) and (5) may be terminated separately by any of the contracting states subject to six months' notice at the end of the calendar year following determination of the funding requirements of public-service broadcasting in accordance with Article 14 unless the Interstate Treaty on Broadcasting is amended following the determination of the funding requirement in accordance with Article 14 as a result of an increase in the licence fee. 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 of termination may be given for a date two years later. Termination shall be made in writing to the Chairman of the Conference of Prime Ministers. If one state gives notice of termination, every state may terminate the Interstate Treaty on Licence 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 furthermore terminate Article 13 (2) and Articles 14 and 17 regarding individual or all provisions with effect from the same date within a further three months following receipt of the notice of termination pursuant to sentence 5. The terminated provisions of this Interstate Treaty and the Interstate Treaties referred to in sentence 5 remain in force between the remaining states.

#### **Article 63**

##### **Transitional Provisions for Product Placements**

Article 7 (7) and Articles 15 and 44 shall not apply for programmes produced prior to 19 December 2009.

#### **Article 64**

##### **Regulation for Bavaria**

The Free State of Bavaria is entitled to provide for a proportion of the licence fee pursuant to Article 40 to be used for funding tasks of the "Bayerische Landeszentrale für neue Medien" under its public remit as defined by state law. In all other respects the provisions of this Interstate Treaty shall apply accordingly to providers under Bavarian law. Deviating regulations with regard to Article 7 (9), sentence 1, 1<sup>st</sup> variant for the implementation of provisions of the state constitution shall be permitted.

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since 01 June 2009 -

<http://www.gez.de/e160/e161/e392/Staatsvertrag.pdf>

<sup>53</sup> ARD-Staatsvertrag -

<http://www.mdr.de/DL/169198.pdf>

<sup>54</sup> ZDF-Staatsvertrag -

[http://www.unternehmen.zdf.de/uploads/media/zdf-staatsvertrag\\_neu.pdf](http://www.unternehmen.zdf.de/uploads/media/zdf-staatsvertrag_neu.pdf)