

## The EU Audiovisual Media Services Directive and its transposition into national law – a comparative study of the 27 Member States

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### Member State: Luxembourg

#### Law on Electronic Media

##### Important Notice

This text is an unofficial translation conducted at the University of Luxembourg in the framework of a research project on the transposition of the “**Audiovisual Media Services Directive**” in the Member States of the European Union.

The original legal acts which Member States notified to the European Commission as national execution measures were retrieved from official national databases. In order to focus on the core of the research project, several national legal acts have been shortened to include only those provisions of relevance for the study. Subsequently, the modified acts were translated by a translation agency external to the university\*.

The translations only serve the purpose of being an information source; there is no guarantee whatsoever that the translations correctly correspond to the original versions of the laws. Therefore, evidently, the texts have no legal value. The original, as well as the translated version of the legal acts, are available at: [www.medialaw.lu](http://www.medialaw.lu), where additional information on the comparative study may be found.

\* We would like to thank the Service de Médias et des Communications Luxembourg (Media and Communications Service, [www.mediacom.public.lu](http://www.mediacom.public.lu)) for valuable support in the translation by providing drafts of earlier unofficial translations.

## Member State: Luxembourg

### Law of 27 July 1991 on Electronic Media

**Official Journal:** Mém. A - 47 of 30 July 1991, p. 972; doc. parl. 3396

As amended by:

- Law of 2 April 2001 (Mém. A - 42 of 17 April 2001, p. 924; doc. parl. 4584; dir. 89/552/EEC and 97/36/EC),

As consolidated in a *texte coordonné*:

- Law of 2 April 2001 (Mém. A - 47 of 30 July 1991, p. 972; doc. parl. 3396)

As amended by:

- Law of 19 December 2003 (Mém. A – 189 of 31 December 2003, p. 3989)
- Law of 8 June 2004 (Mém. A – 85 of 8 June 2004, p. 1201)
- Law of 23 April 2008 (Mém. A – 55 of 29 April 2008, p.759)
- Law of 17 December 2010 (Mém. A – 241 of 24 December 2010, p. 4024; doc. parl. 6145, dir. 2007/65/EC and 2010/13/EU)
- Law of 8 April 2011 (Mém. A – 69 of 12 April 2011, p. 1120)
- Law of 27 August 2013 (Mém. A – 163 of 9 September 2013, p. 3114)

## Coordinated text

### Chapter I. –

#### About the purpose of the law and definitions<sup>1</sup>

##### Article 1. – Purpose of the law

(1) This law is intended to guarantee that the people of the Grand Duchy have unrestricted access, in the field of electronic media, to a multitude of sources of information and entertainment, guaranteeing freedom of expression and information, as well as the right to

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<sup>1</sup> New chapter introduced by the law of 2 April 2001.

receive and transmit in the territory of the Grand Duchy any audiovisual media or sound services that conform to the legal requirements.

- (2) It organises the operation of Luxembourg's electronic media, while pursuing the following objectives:
- a) the right of unrestricted and pluralist audiovisual communication;
  - b) guarantee of independence and pluralism of information;
  - c) respect of human beings and their dignity;
  - d) highlighting our cultural heritage and support for contemporary audiovisual creation;
  - e) promotion of communication, intercultural exchanges and the integration of immigrants;
  - f) safeguard of the existence and pluralism of the printed press.

**(Law of 2 April 2001 as amended by the Law of 27 August 2013)**

## **Article 2. – Definitions**

For the purposes of this law, the following definitions apply:

- 1) **"Authority"**, the *Autorité luxembourgeoise indépendante de l'audiovisuel* (Independent Luxembourg Audiovisual Authority);
- 2) **"audiovisual commercial communication"** means images with or without sound which are designed to promote, directly or indirectly, the goods, services or image of a natural or legal entity pursuing an economic activity. Such images accompany or are included in an audiovisual programme in return for payment or other consideration or for self-promotional purposes. Forms of audiovisual commercial communication include, inter alia, television advertising, sponsorship, teleshopping and product placement;
- 3) **"surreptitious audiovisual commercial communication"** 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 by the media service provider to serve as advertising and might mislead the public as to its nature. Such representation shall be considered as intentional, particularly if it is done in return for payment or other consideration;
- 4) **"Member State of the European Economic Area"** means any state that is a signatory to the Agreement creating the European Economic Area or any other state that has signed a reciprocal agreement with the European Union on the application of the Audiovisual Media Services Directive;
- 5) **"audiovisual media service provider"** means the natural person or legal entity with editorial responsibility for the selection of audiovisual content for the audiovisual media service and who determines how it is organised;
- 6) **"Luxembourgish audiovisual media service provider"** means an audiovisual media

service provider that is subject to the jurisdiction of the Grand Duchy of Luxembourg because:

- he meets any of the relevant criteria in Article 2bis below,
- he falls within the scope of Article 2 paragraph (5) of Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (hereinafter the “Audiovisual Media Services Directive”);

- 7) "**Luxembourgish radio service provider**" means the natural person or legal entity registered in the Grand Duchy of Luxembourg that produces or has produced a sound radio service for which he is responsible and that he broadcasts or has broadcast by a third party;
- 8) "**Luxembourgish broadcasting frequency**" means a frequency intended for the terrestrial broadcast of particular television or radio services that the Grand Duchy of Luxembourg is entitled to exploit in accordance with relevant international agreements to which it is party;
- 9) "**sponsorship**" means any contribution made by public or private undertakings or natural persons not engaged in providing audiovisual media services or in the production of audiovisual works, to the financing of audiovisual media services or programmes with a view to promoting their name, trade mark, image, activities or products;
- 10) "**product placement**" means any form of audiovisual commercial communication consisting of the inclusion of or reference to a product, a service or the trade mark thereof so that it is featured within a programme, in return for payment or for similar consideration;
- 11) "**programme**" means a set of moving images with or without sound constituting an individual item within a schedule or a catalogue established by a media service provider in the case of audiovisual services, or any set of sounds in the case of a radio service and the form and content of which are comparable to the form and content of television broadcasting. Examples of programmes include feature-length films, sports events, situation comedies, documentaries, children’s programmes and original drama;
- 12) "**television advertising**" means any form of announcement broadcast whether in return for payment or for other consideration or broadcast for self-promotional purposes by a public or private undertaking or 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;
- 13) "**cable network**" means any essentially wireline terrestrial network serving principally to transmit or retransmit public television or radio services, including master antenna and cable television systems and other telecommunications networks covered by this definition. The term "cable network" also covers all other terrestrial, including virtual, wired and Hertzian networks, except those using Luxembourgish broadcasting frequencies that transmit or retransmit television or radio services selected by the operator;

- 14) **"editorial responsibility"** means the exercise of effective control both over the selection of the programmes and over their organisation either in a chronological schedule or in a catalogue, in the case of on-demand audiovisual media services;
- 15) **"audiovisual media service"** means a service that is under the editorial responsibility of a media service provider and whose main aim is to supply audiovisual programmes with the aim of informing, entertaining or educating the general public or of providing commercial communication through an electronic communications network. An audiovisual media service is a television service and/or an on-demand audiovisual media service;
- 16) **"on-demand audiovisual media service"** means an audiovisual media service provided by an audiovisual media service provider for the viewing of audiovisual programmes at the moment chosen by the user and at his individual request on the basis of a catalogue of programmes selected by the audiovisual media service provider;
- 17) **"audiovisual media or sound service"**, or **"media service"** means any audiovisual media or radio service;
- 18) **"Luxembourgish audiovisual media or sound service"** means any audiovisual media or sound service of a Luxembourgish audiovisual media or radio service provider;
- 19) **"non-Luxembourgish audiovisual media or sound service"** means any audiovisual media or sound service of any audiovisual media or sound service provider who is not a Luxembourgish audiovisual media or radio service provider;
- 20) **"radio service"** means any service that falls under the editorial responsibility of a media service provider and whose main aim is the supply, through electronic communications networks and with the purpose of informing, entertaining or educating the public, of sound services that can be listened to simultaneously using a programme schedule;
- 21) **"television service"** means any audiovisual media service provided by an audiovisual media service provider for the simultaneous viewing of audiovisual programmes on the basis of a programme schedule;
- 22) **"Luxembourgish cable service"** means any non-broadcast Luxembourgish television or radio service that is transmitted to the public via a cable network but not satellite and in particular any television or radio service directly produced at the head-end of the network, inserted using recordings or introduced via a telecommunications line;
- 23) **"Luxembourgish satellite service"** means any non-broadcast Luxembourgish radio or television service that is transmitted by satellite;
- 24) **"Luxembourgish broadcast service"** means
  - a) any Luxembourgish radio or television service that is transmitted via a Luxembourgish broadcasting frequency, or
  - b) any Luxembourgish radio or television service that has been granted a Luxembourgish broadcast service concession, even if the service is not transmitted via a Luxembourgish broadcasting frequency;

- 25) **"Luxembourgish international broadcast service"** means any radio or television service that falls within the definition of a "Luxembourgish broadcast service" and that reaches not only the resident public but also an international public and national publics that are not resident in the Grand Duchy of Luxembourg;
- 26) **"Luxembourgish broadcast service to the resident public"** means any radio or television service that falls within the definition of a "Luxembourgish broadcast service" and that is designed, as confirmed in the concession it has received, primarily for all or any part of the public resident in the Grand Duchy of Luxembourg;
- 27) **"non-Luxembourgish broadcast service"** means any non-Luxembourgish radio or television service transmitted via a Luxembourgish broadcasting frequency;
- 28) **"Luxembourgish satellite system"** means any system of one or more satellites using the satellite frequencies the Grand Duchy of Luxembourg is entitled to exploit in accordance with relevant international agreements to which it is party, whether those frequencies belong to the broadcasting or any other service;
- 29) **"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.

#### **Article 2bis. – Audiovisual media service providers deemed to be established in the Grand Duchy of Luxembourg**

For the purposes of this law, an audiovisual media service provider is deemed to be established in the Grand Duchy of Luxembourg in the following cases:

- a) where the audiovisual media service provider has its head office in the Grand Duchy of Luxembourg and the editorial decisions relating to audiovisual media services are also taken there;
- b) where the audiovisual media service provider has its head office in the Grand Duchy of Luxembourg and a significant proportion of the personnel employed for the activities of audiovisual media services work there;
- c) the audiovisual media service provider has its head office in another Member State of the European Economic Area, but the editorial decisions relating to the audiovisual media services are taken in the Grand Duchy of Luxembourg and a significant proportion of the personnel employed for the activities of audiovisual media services work there, if a significant proportion of the personnel employed for the activities of audiovisual media services do not work in the country where the audiovisual media service provider has its head office;
- d) the audiovisual media service provider has its head office in the Grand Duchy of Luxembourg and the editorial decisions relating to the audiovisual media services are taken in a different Member State of the European Economic Area, or vice versa and a significant proportion of the personnel employed for audiovisual media service activities is neither employed in the Grand Duchy of Luxembourg, nor in the other

Member States of the European Economic Area concerned, but the audiovisual media service provider has started its activities in Luxembourg in accordance with Luxembourgish law and maintains a stable and genuine economic link with Luxembourg;

- e) the audiovisual media service provider has its registered office in the Grand Duchy of Luxembourg and the editorial decisions are taken in a country that is not a member of the European Economic Area, or vice versa, if a significant proportion of the personnel employed for audiovisual media service activities works in Luxembourg.”

## **Chapter “II.”<sup>2</sup> – About broadcasting**

### **A) Common provisions**

#### **Article 3. – Broadcasting concessions and permits**

*(Law of 2 April 2001)*

- 1) Nobody may transmit a Luxembourgish or non-Luxembourgish broadcast service without having obtained a concession or a permit beforehand, in accordance with the provisions of this chapter.
- 2) Concessions or permits are granted after publication of an open call for candidatures, subject to the exceptions provided for by this law.
- 3) Any concession or permit is accompanied by a *cahier des charges* (hereinafter book of obligations), whose provisions must be respected at any time by the holder.
- 4) The concession or permit is personal and non-transferable. It is granted for a limited period, but is renewable and may be withdrawn at any time
  - a. if the conditions required to obtain it are not longer met, or
  - b. if the obligations written into the book of obligations are not met, or
  - c. if it is not used in a regular manner, in accordance with the arrangements laid down.

The arrangements for withdrawal are governed by the provisions of “Article 35<sup>sexies</sup>”.<sup>3</sup>

- 5) Any concession or permit which reaches its expiry date may be renewed in favour of the same holder, without a new open call for candidatures being organised. The provisions of the new concession or permit may be different from those applicable previously.

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<sup>2</sup> New chapter number introduced by the law of 2 April 2001.

<sup>3</sup> As amended by the law of 27 August 2013.

- 6) A copy of any concession or permit and any decision to withdraw it is communicated to the minister responsible for telecommunications, so that he can initiate the procedure provided for in Article “5”<sup>4</sup>.

*(Law of 2 April 2001)*

**“Article 4. – Luxembourgish broadcasting frequencies**

A grand-ducal regulation lays down and updates the list of Luxembourgish broadcasting frequencies. It may allocate the frequencies to various categories, corresponding in particular to the various uses laid down by this law. It may also define these frequency categories more precisely.”

*(Law of 17 December 2010)*

**“Article 5. – Licences**

Once informed that a concession or licence has been granted under Article 3, the minister responsible for radio wave management shall take over the procedure for granting the beneficiary or any third party designated by the beneficiary the licence described in Article 3, paragraph (2) of the law of 30 May 2005 concerning the organisation and management of the radio waves. “Should a concession or permit not be operated for one year, the licence may be withdrawn”.<sup>5</sup>

**Articles 6 and 7** *(repealed by the Law of 17 December 2010)*

**B) Broadcast services with international impact**

**Article 8.** *(repealed by the Law of 2 April 2001)*

**Article 9. – Luxembourgish international broadcast services**

- 1) A grand-ducal regulation, to be enacted after the opinion of the Council of State (...)<sup>6</sup>, based on a proposal by the minister responsible for the media and after consultation of “the Authority”<sup>7</sup>, determines the arrangements under which the government shall grant concessions for Luxembourg broadcast services that reaches an international public, as well as the general rules governing concessions and their associated book of obligations.

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<sup>4</sup> Amended by the law of 2 April 2001.

<sup>5</sup> As amended by the law of 27 August 2013.

<sup>6</sup> Deleted / amended by the law of 2 April 2001.

<sup>7</sup> As amended by the law of 27 August 2013.



- 2) The various concessions for services covered by “Article 2, “point 24)”<sup>8</sup>, letter a)”, may be granted to one or more holders and incorporate, if commercial and financial imperatives so require, elements of exclusivity. If an additional concession is granted to an existing concessionaire, there is no requirement to carry out a new open call for candidatures.
- 3) Concessions for services covered by “Article 2, “point 24)”<sup>9</sup>, letter b)”, can only be granted if the final control room or the uplink is situated in the territory of the Grand Duchy and if the concessionaire is a company incorporated under Luxembourgish law. There is no requirement to proceed with an open call for candidatures.

### **Article 10. – Book of obligations**

- 1) Each book of obligations covered by Article 9, paragraph (1) may contain, depending on the circumstances, provisions on:
  - a) the licence to be paid to the treasury and the cultural services to be provided in the interest of the country;
  - b) the activities that must be carried out in the territory of the Grand Duchy;
  - c) the presentation of information in a spirit of impartiality and objectivity and with respect for the pluralism of ideas and freedom of information;
  - d) the promotion of culture and artistic creativity in the conception and production of the service;
  - e) the conditions under which the government may have Luxembourgish socio-cultural programmes broadcast at its own expense, at the request of the public institution mentioned in Article 14, paragraph (2);
  - f) the conditions under which the concessionaire may put its facilities at the disposal of television or radio services aimed at a resident audience other than those mentioned in letter e);
  - g) the limits within which services may contain advertising messages;
  - h) the monitoring of the service content by “the Authority”;<sup>10</sup>
  - i) the right for the government to inspect the articles of association, shareholder information and the organs of the concessionaire company and any companies participating in the operation of the concession;
  - j) the monitoring of the activities of the concessionaire by one or more government commissioners;
  - k) the obligation to identify the service as a Luxembourgish service and contribute through its programming to the reputation and international impact of the Grand Duchy;

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<sup>8</sup> Amended by the law of 27 August 2013.

<sup>9</sup> As amended by the law of 27 August 2013.

<sup>10</sup> As amended by the law of 27 August 2013.

- l) the conditions under which the concessionaire may associate other companies in the operation of the concession;
  - m) the obligation to place the facilities free of charge at the disposal of the state for the broadcasting of official communiqués or information relating to the security of human life and the needs of the police. This broadcasting will be carried out at the request of the government and take priority over other programmes.
- 2) The book of obligations relating to services using Luxembourgish broadcasting frequencies may contain the obligation either to transmit short daily broadcasts in the Luxembourgish language for Luxembourgers living abroad, or to make the transmitter available for the transmission of such programmes.

*(Law of 2 April 2001)*

**“Article 10bis. – Non-Luxembourgish services**

- 1) The government may, based on a proposal from the minister responsible for the media, and after consulting the “the Authority”<sup>11</sup>, grant concessions for non-Luxembourgish broadcast services. Such a concession allows the holder, using a Luxembourgish broadcasting frequency, to broadcast a particular service transmitted by a service provider subject to the competence of another Member State of the European Economic Area, in accordance with the rules applicable in that Member State. Such a concession may be granted either to a company incorporated under Luxembourgish law, or to a non-Luxembourgish television or radio service provider.
- 2) Concessions for non-Luxembourgish broadcast services are granted after publication of an open call for candidatures, except in the following special circumstances:
- a) the concession is granted to the concessionaire for Luxembourgish broadcast services which reach an international public, to enable it to continue using a Luxembourgish broadcasting frequency to broadcast a service which has lost the status of Luxembourgish service, since it comes under the competence of another Member State of the European Economic Area; or
  - b) the concession is granted to the concessionaire for Luxembourgish broadcast services which reach an international public to enable it to use a Luxembourgish broadcasting frequency granted to it under its existing concession to broadcast a non-Luxembourgish service part-time or on a temporary basis.

**Article 10ter. – Book of obligations**

- 1) Any concession covered by Article 10bis is accompanied by a book of obligations whose provisions must be complied with at all times by the concessionaire.

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<sup>11</sup> As amended by the law of 27 August 2013.

- 2) The book of obligations states that the concession is only valid for the full-time or part-time of the specified non-Luxembourgish service, duly authorised by its country of origin.
- 3) The book of obligations may contain, depending on the circumstances, provisions on:
  - a) the counterpart to be fulfilled by the concessionaire;
  - b) the rights for the government to inspect the articles of association, shareholder information and the organs of the concessionaire company;
  - c) the obligation to place the facilities free of charge at the disposal of the state for the broadcasting of official communiqués or information relating to the security of human life and the needs of the police. This broadcasting will be carried out at the request of the government and take priority over other programmes.”

### **C) Broadcast services aimed at a resident audience**

#### **Article 11. – ”List of broadcast services covered”<sup>12</sup>**

(...)<sup>13</sup>

“(1)<sup>14</sup> Luxembourgish broadcast services aimed at a resident audience include:

- a) television services (...)<sup>15</sup>,
- b) sound radio services disseminated by high-power transmitters, i.e.:
  - radio services with commercial aims;
  - radio services for a socio-cultural purpose, as well as
- c) sound radio services disseminated by low-power transmitters, i.e.
  - local radio services and
  - radio services disseminated by transmission networks.

*(Law of 2 April 2001)*

- d) sound radio services broadcast in a digital multiplex and possibly
- e) television services broadcast in a digital multiplex.”

“(2)<sup>16</sup> Broadcast services foreseen in this Article are the subject of a permit issued at the risk and expense of their holders.

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<sup>12</sup> Deleted / amended by the law of 2 April 2001.

<sup>13</sup> Deleted / amended by the law of 2 April 2001.

<sup>14</sup> New numbering introduced by the law of 2 April 2001, the previous paragraph (1) was deleted.

<sup>15</sup> Deleted / amended by the law of 2 April 2001.

<sup>16</sup> As amended by the law of 2 April 2001.

## **Article 12. – Television services (...)<sup>17</sup>**

*(Law of 2 April 2001)*

“(1) A grand-ducal regulation to be enacted after the opinion of the Council of State will determine the arrangements under which the government shall grant, based on a proposal by the minister responsible for the media and after consultation of “the Authority”<sup>18</sup>, permits for television services and the general rules governing these permits and the associated book of obligations.”

(2) Each set of book of obligations covered by “paragraph”<sup>19</sup> (1) may contain, depending on the circumstances, provisions on:

- a) the fee to be paid to the treasury and the cultural services to be provided in the interest of the country;
- b) respect of pluralism in the presentation of news and ideas;
- c) the promotion of culture and artistic creativity in the conception and production of the television service;
- d) monitoring of the television service content by “the Authority”,<sup>20</sup>
- e) the conditions under which the government may at its own expense have Luxembourgish socio-cultural programmes broadcast, at the request of the public institution mentioned in Article 14, “paragraph (2);
- f) the conditions under which the holder may put its facilities at the disposal of services aimed at a resident audience other than those mentioned in letter e);
- g) the limits within which services may contain advertising messages;
- h) the right for the government to inspect the articles of association, shareholder information and the organs of the holder company and any companies participating in the exploitation of the permit;
- i) the monitoring of the activities of the holder by a government commissioner;
- j) the obligation to place the facilities free of charge at the disposal of the state for the broadcasting of official communiqués or information relating to the security of human life and the needs of the police. This broadcasting will be carried out at the request of the government and take priority over other programmes;
- k) the proportion of programmes that must be acquired from producers that are independent from the holder;
- l) the conditions under which the holder may associate other companies in the exploitation of the permit.

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<sup>17</sup> Deleted / amended by the law of 2 April 2001.

<sup>18</sup> As amended by the law of 27 August 2013.

<sup>19</sup> As amended / deleted by the law of 2 April 2001.

<sup>20</sup> As amended by the law of 27 August 2013.

((3) repealed by the Law of 17 December 2010)

### **Article 13. – Sound radio services using high-power transmitters**

- (1) A grand-ducal regulation to be enacted after the opinion of the Council of State will determine the arrangements under which the government shall grant, based on a proposal by the minister responsible for the media and after consultation of “the Authority”<sup>21</sup>, permits for radio services disseminated by high-power transmitters and the general rules governing these permits and the associated book of obligations. These arrangements and rules vary depending on the ultimate purpose of the services.
- (2) Sound radio services using high-power transmitters are divided into commercial radio services and socio-cultural radio services.
- (3) Socio-cultural radio services will be devoid of advertising messages and subject to the provisions of Article 14. Commercial radio services may contain advertising messages within the limits foreseen or set pursuant to Article 28*sexies*.
- (4) Each book of obligations covered by paragraph (1) may contain, depending on the circumstances, provisions on:
  - a) the fee to be paid to the treasury and the cultural service to be provided in the interest of the country, unless the service in question is for commercial ends;
  - b) respect of pluralism in the presentation of news and ideas;
  - c) the promotion of culture and artistic creativity in the conception and production of the radio service;
  - d) monitoring of the radio service content by “the Authority”;<sup>22</sup>
  - e) the right for the government to inspect the articles of association, shareholder information and the organs of the holder company and any companies participating in the exploitation of the permit;
  - f) the monitoring of the activities of the holder by a government commissioner;
  - g) the obligation to place the facilities free of charge at the disposal of the state for the broadcasting of official communiqués or information relating to the security of human life and the needs of the police. This broadcasting will be carried out at the request of the government and take priority over other programmes;
  - h) the conditions under which the holder may associate other companies in the exploitation of the permit.

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<sup>21</sup> As amended by the law of 27 August 2013.

<sup>22</sup> As amended by the law of 27 August 2013.

## **Article 14. – Socio-cultural radio services**

*(Law of 17 December 2010)*

- “(1) One or more Luxembourgish broadcasting frequencies intended for sound radio services disseminated by high-power transmitters shall be reserved entirely or in part for the broadcast of socio- cultural radio services.”
- (2) A public institution is set up with the aim of exploiting this frequency or these frequencies and organising radio services for socio-cultural ends, for which it assumes responsibility. A grand-ducal regulation, to be enacted after an opinion of the Council of State (...)<sup>23</sup>, shall lay down the arrangements for its structure and operation.

*(Law of 2 April 2001)*

- “(3) The public institution shall hold a permit for radio services using a high-power transmitter, which is awarded to it without a call for candidatures.
- (3bis) The state shall conclude a multi-annual agreement with the institution, defining its public service missions and the corresponding obligations of the state with regards to financial or other terms.”
- (4) Socio-cultural radio services will provide wide access to the airwaves for “social and cultural organisations from Luxembourg”<sup>24</sup>.
- (5) “The Authority”<sup>25</sup> is authorized to submit proposals to the responsible organs of the public institution relating to balanced content corresponding to the socio-cultural objectives. It is also charged with the monitoring of socio-cultural radio services.<sup>26</sup>

(...)<sup>27</sup>

## **Article 15. – Sound radio services disseminated by low-power transmitters**

- (1) Sound radio services disseminated by low-power transmitters are either local radio services or network radio services.
- (2) Permits are granted for sound radio services disseminated by low-power transmitters, in accordance with the provisions of Articles 15 to 18 by “the Authority”<sup>28</sup>. The arrangements and the rules to be applied may be laid down by a grand-ducal regulation.

*(Law of 2 April 2001)*

- “(3) The permit provided for under paragraph (2) will be refused to any natural or legal person who has operated a broadcasting transmitter without authorisation, if the absence of authorisation has been reported by the Luxembourg Institute for Regulation and if this observation dates back less than six years.”

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<sup>23</sup> As amended / deleted by the law of 2 April 2001.

<sup>24</sup> As amended / deleted by the law of 2 April 2001.

<sup>25</sup> As amended by the law of 27 August 2013.

<sup>26</sup> The final sentence of Art. 21 (5) was deleted by the law of 27 August 2013.

<sup>27</sup> As amended / deleted by the law of 2 April 2001.

<sup>28</sup> As amended by the law of 27 August 2013.

- (4) Any permit granted for a radio service that is not broadcast full-time shall specify the times allocated to the radio service in question.
- (5) “The Authority”<sup>29</sup> may reduce the number of hours allocated if, apart from cases of *force majeure*, broadcasting is not regular or does not cover all the hours allocated.
- (6) The holder association or company must send “the Authority”<sup>30</sup>, before the tenth day of each month, a report on the content of the programme during the past month. This report must show any relevant information about the duration of broadcasting, the times, the time on-air devoted to advertising messages, as well as the advertising revenue. Each year, it shall supply an annual report and a copy of the annual accounts.

#### **Article 16. – Arrangements for allocating frequencies for low-power transmitters<sup>31</sup>**

- (1) “The Authority”<sup>32</sup> carries out calls for candidatures by publishing the list of frequencies and slots available for sound radio services with low-power transmitters, with their respective characteristics and setting a deadline for the submission of candidatures and dossiers.
- (2) Any application for a permit is to be sent to “the Authority”<sup>33</sup>, under pain of nullity, in writing and on a special form provided for this purpose.
- (3) The dossier enclosed with the request must specify, in particular:
  - a) the name adopted by the radio service;
  - b) the technical data relating to the transmitter(s), which must comply with the parameters set in the publication mentioned “in paragraph”<sup>34</sup> (1), under pain of nullity;
  - c) the general characteristics of the radio service, in particular the air-time proposed;
  - d) the forecast expenditure and revenue and the origin and volume of financing planned; and
  - e) the articles of association and the list of members and directors of the association or company submitting the application, as well as the composition of the management organ(s) of the functional structures.
- (4) The dossier may also present the candidate’s arguments in relation to the criteria for granting permits mentioned “in paragraph”<sup>35</sup> (7) below.
- (5) “The Authority”<sup>36</sup> shall draw up in each case the list of admissible candidatures and may, before making its choice in accordance with the award criteria mentioned “in paragraph”<sup>37</sup>

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<sup>29</sup> As amended by the law of 27 August 2013.

<sup>30</sup> As amended by the law of 27 August 2013.

<sup>31</sup> As amended by the law of 27 August 2013.

<sup>32</sup> As amended by the law of 27 August 2013.

<sup>33</sup> As amended by the law of 27 August 2013.

<sup>34</sup> As amended by the law of 2 April 2001.

<sup>35</sup> As amended by the law of 2 April 2001.

<sup>36</sup> As amended by the law of 27 August 2013.

<sup>37</sup> As amended by the law of 2 April 2001.

- (7) below, encourage grouping of applications that it considers to be in the public interest, taking account of the objectives defined and the award criteria.
- (6) "The Authority"<sup>38</sup> shall assess in each case the public interest in the reception area and may, if appropriate, when making its decision in accordance with the award criteria set out "in paragraph"<sup>39</sup> (7) below, divide the time for use of frequencies and slots between several candidates.
- (7) To choose between candidates, if necessary, "the Authority"<sup>40</sup> will take account, in the light of the objectives set out in Article 1, "paragraph"<sup>41</sup> (2), of the following, in particular:
- a) the merits of the association or company, its members or directors and its management have acquired in the social and cultural field, as well as their moral integrity and their general representativeness;
  - b) the experience of the association or the company, its members or directors and its management have acquired in the field of communication, without taking account of unauthorised radio broadcasts;
  - c) the informative, cultural and recreational value of the radio service proposed and the originality of the concept presented and its complementary character in relation to other media and other radio services that can be received in the region in question; and
  - d) the credibility of the dossier, in particular with regard to the availability of sufficient human and material resources to produce the radio service proposed.

*(Law of 17 December 2010)*

- "(8) Local radio programme permissions shall state the frequency and location the holder may use to broadcast his programme. Should the frequency fail to provide satisfactory coverage of the locality in which the local radio is established, "the Authority"<sup>42</sup> may, if requested by the permission holder and without further public call for tender, replace the radio frequency stated on the permission with another. The new frequency must be placed close to the locality concerned as envisaged by the list of frequencies set aside for local radios in the grand-ducal regulation referred to in Article 4.
- (9) Permissions for network broadcast radio programmes shall state the frequency or frequencies the holder may use to broadcast his programme. Should the frequency fail to provide satisfactory coverage of certain parts of the country, "the Authority"<sup>43</sup> may, if requested by the permission holder and without further public call for tender, add an additional frequency or replace a frequency stated on the permission with another. Such frequencies must appear on the list of frequencies set aside for network broadcast radios in the grand-ducal regulation referred to in Article 4."

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<sup>38</sup> As amended by the law of 27 August 2013.

<sup>39</sup> As amended / deleted by the law of 2 April 2001.

<sup>40</sup> As amended by the law of 27 August 2013.

<sup>41</sup> As amended by the law of 2 April 2001.

<sup>42</sup> As amended by the law of 27 August 2013.

<sup>43</sup> As amended by the law of 27 August 2013.



## **Article 17. – Local radio services**

- (1) The permit for a local radio service can only be granted to a not-for-profit corporation. It is granted for a renewable five-year period.
- (2) No association can obtain more than one permit for a local radio service.
- (3) The exploitation of the permit for a local radio service must be carried out by the holder association itself and cannot be entrusted to third parties.
- (4) The technical interconnection and grouping between two or more local radio services transmitters is prohibited.
- (5) Local radio services may be authorised to contain advertising messages within limits to be set by a grand-ducal regulation, to be enacted after an opinion by the Council of State (...)<sup>44</sup>.
- (6) Each book of obligations granted in accordance with Article 3, “paragraph (3)”<sup>45</sup> and relating to a local radio service may contain, depending on the circumstances, provisions concerning:
  - a) promotion of local life, local culture and artistic creativity, in the conception and production of the radio service;
  - b) the absence of a profit goal and the prohibition of or imposition of a ceiling on advertising messages in accordance “with paragraph (5)”<sup>46</sup> ;
  - c) the monitoring of the content of the radio service by “the Authority”<sup>47</sup>;
  - d) the right for the government to inspect the articles of association and the operation of the holder association;
  - e) the obligation to place the facilities free of charge at the disposal of the state for the broadcasting of official communiqués or information relating to the security of human life and the needs of the police. This broadcasting will be carried out at the request of the government and take priority over other programmes;
  - f) the deadline for the start of transmissions;
  - g) the respect of pluralism in the presentation of local news and ideas.

## **Article 18. – Radio services disseminated by a transmission network**

- (1) The permit for a radio service disseminated by a transmission network can only be granted to a commercial company. It is granted for a renewable ten-year period.
- ((2) *Repealed by Law of 17 December 2010*)

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<sup>44</sup> As amended/ deleted by the law of 2 April 2001.

<sup>45</sup> As amended by the law of 2 April 2001.

<sup>46</sup> As amended by the law of 2 April 2001.

<sup>47</sup> As amended by the law of 27 August 2013.

- (3) Radio services with a transmission network may contain advertising messages, provided that these do not exceed six minutes per hour as a daily average and eight minutes for any individual hour on average every day except Sunday.
- (4) A grand-ducal regulation, to be enacted after an opinion of the Council of State (...)<sup>48</sup>, may amend the restrictions covered “in paragraph (3)”<sup>49</sup>.
- (5) Each book of obligations granted in accordance with Article 3, “paragraph (3)”<sup>50</sup> and relating to a transmission network radio service may contain, depending on the circumstances, provisions concerning:<sup>51</sup>
  - a) the fee to be paid to the treasury, unless the radio service concerned does not contain advertising messages;
  - b) the specific radio service constraints adopted by “the Authority”<sup>52</sup>, on the basis of the concept proposed, which led to the choice of that candidate as a holder;
  - c) limitations relating to advertising messages in accordance with “paragraphs”<sup>53</sup> (3) and (4);
  - d) monitoring of the radio service content by “the Authority”<sup>54</sup>;
  - e) the rights for “the Authority”<sup>55</sup> to inspect the allocation of shares or units in the holder company;
  - f) the obligation to place the facilities free of charge at the disposal of the state for the broadcasting of official communiqués or information relating to the security of human life and the needs of the police. This broadcasting will be carried out at the request of the government and take priority over other programmes;
  - g) the deadline for the start of transmissions.

*(Law of 2 April 2001)*

**“Article 19. – Sound radio services broadcast in digital multiplex**

- (1) A grand-ducal regulation will determine the arrangements under which the government, based on a proposal from the minister responsible for the media and after consultation of “the Authority”<sup>56</sup>, grants permits for sound radio services broadcast in digital multiplex on frequencies reserved for terrestrial digital radio, as well as the general rules governing these permits and the book of obligations associated with them, given that priority will be given to radio stations using high-power transmitters and existing radio services disseminated by a transmission network.

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<sup>48</sup> As amended/deleted by the law of 2 April 2001.

<sup>49</sup> As amended by the law of 2 April 2001.

<sup>50</sup> As amended by the law of 2 April 2001.

<sup>51</sup> As amended by the law of 27 August 2013.

<sup>52</sup> As amended by the law of 27 August 2013.

<sup>53</sup> As amended by the law of 2 April 2001.

<sup>54</sup> As amended by the law of 27 August 2013.

<sup>55</sup> As amended by the law of 27 August 2013.

<sup>56</sup> As amended by the law of 27 August 2013.

- (2) The services covered by paragraph (1) may be existing Luxembourgish broadcast services, new sound radio services, existing non-broadcast Luxembourgish services transmitted by radio service providers which fall under the competence of another Member State of the European Economic Area in accordance with the rules applicable in that Member State.
- (3) If it is a new Luxembourgish service or an existing Luxembourg non-broadcast service, the radio service provider will be granted a permit for sound radio services broadcast in digital multiplex.
- (4) If it is an existing Luxembourgish broadcast service, the radio service provider will be awarded an additional permit for the simultaneous and unaltered broadcasting of the service as a Luxembourgish radio service broadcast in digital multiplex.
- (5) If it is a non-Luxembourgish service, the holder will be awarded a permit for the broadcasting of the service concerned as a non-Luxembourgish sound radio service broadcast in digital multiplex.
- (6) The grand-ducal regulation mentioned in paragraph (1) may make provisions concerning the implementation of digital radio, particularly concerning the broadcasting of the signal, the determination of the network operator and the authorisation to broadcast, the various types of services that can be offered by means of frequencies reserved for digital radio, the arrangements for the choice of service providers not linked to a radio service and the allocation of the bandwidth available.

#### **Article 19bis. – Television services broadcast in digital multiplex**

A grand-ducal regulation to be enacted after an opinion of the Council of State will determine the arrangements for the implementation of terrestrial digital television by analogy with the provisions of Article 19 above.”

### **Chapter “III.”<sup>57</sup> –**

#### **Other means of broadcasting and on-demand audiovisual media services**

##### **A) Satellite broadcasting**

*(Law of 2 April 2001)*

#### **“Article 20. – Luxembourgish satellite systems**

- (1) Nobody can establish and operate a Luxembourgish satellite system without previously having obtained a concession, granted by the government, based on a joint proposal from the minister responsible for telecommunications and the minister responsible for the media.”

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<sup>57</sup> New numbering of chapters introduced by the law of 2 April 2001.

- (2) Such a concession may consist, if commercial and financial imperatives so require, or make it desirable in the interest of the country, of elements of exclusivity, particularly for the use of certain frequency bands or certain orbital positions or for certain types of applications in the field of communication by satellite.
- (3) Any concession is accompanied by a book of obligations, whose provisions must be respected at all times by the concessionaire.
- (4) The concession is personal and non-transferable. It is limited in time, but renewable and may be withdrawn at any time, under conditions and according to arrangements laid down by the concession contract and the book of obligations:
  - a) if the conditions required to obtain it are no longer fulfilled; or
  - b) if the obligations set out in the book of obligations are not respected; or
  - c) if it is not the subject of regular exploitation, pursuant to the arrangements laid down.

(Law of 2 April 2001)

“(5) The concession grants the right for the concessionaire to make its transmission capacity available to users, whether Luxembourgish or foreign, for the broadcasting of audiovisual media or sound services. The identity of the users and the provisions of the contracts of use are liable to opposition from the government.

The concessionaire is bound to file and keep up-to-date at the *Service des Médias et des Communication* (Media and Communications Service) a list of audiovisual media or sound services or bouquets of audiovisual media or sound services transmitted and other services offered. It is bound to inform the government of any relevant information that will enable it, for each audiovisual media or sound service transmitted by means of a Luxembourgish satellite, to determine the audiovisual media or sound service provider and the country under whose competence it falls.”

- (6) The concessionaire must impose on all its users complete compliance with the constraints laid down in the book of obligations.
- (7) Each book of obligations covered “in paragraph (3)”<sup>58</sup> may contain, depending on the circumstances, provisions including the following:
  - a) the fee to be paid to the treasury;
  - b) the activities that must be carried out in the territory of the Grand Duchy;
  - c) the rights for the government to inspect the articles of association, the breakdown of shareholding and the organs of the concessionaire company;
  - d) monitoring of the activity of the concessionaire by one or more government commissioners;
  - e) the constraints relating to the content of audiovisual media or sound services broadcast;

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<sup>58</sup> As amended / deleted by the law of 2 April 2001.

- f) the technical constraints to be met for the configuration of the satellite system and for its operation;
- g) the conditions under which the concessionaire may make its transmission capacity available to users and may associate other firms in the exploitation of the concession;
- h) the obligation to place the transmission capacity at the disposal of the government (...) <sup>59</sup>.

(...) <sup>60</sup>

## **Article 21. – Luxembourgish satellite services**

(...) <sup>61</sup>

“(1)” <sup>62</sup> “Nobody may transmit a Luxembourgish service by satellite without previously having obtained a concession” from the government, based on a proposal from the minister responsible for the media and after consultation of “the Authority”. <sup>63</sup>

“(2)” <sup>64</sup> Any concession covered “by paragraph (1)” <sup>65</sup> is accompanied by a book of obligations, whose provisions must be brought into line with those of the concessions governing Luxembourgish radio services and must be respected at all times by the concessionaire.

“(3)” <sup>66</sup> A grand-ducal regulation, to be enacted after an opinion of the Council of State (...) <sup>67</sup>, shall lay down:

- a) the arrangements under which the government grants the concessions covered “in paragraph (1)” <sup>68</sup>; and
- b) the general rules governing these concessions and the associated books of obligations.

*(Law of 2 April 2001)*

“(4) The concessionaire for a Luxembourgish service transmitted by satellite must take the form of a legal person incorporated under Luxembourgish law.”

“(5)” <sup>69</sup> The concession is personal and non-transferable. It is granted for a limited period of time, but is renewable and may be withdrawn at any time:

- a) if the conditions required to obtain it are no longer fulfilled, or

<sup>59</sup> As amended / deleted by the law of 2 April 2001.

<sup>60</sup> As amended / deleted by the law of 2 April 2001.

<sup>61</sup> New numbering introduced by the law of 2 April 2001, the previous paragraph (1) was deleted.

<sup>62</sup> New numbering introduced by the law of 2 April 2001, the previous paragraph (1) was deleted.

<sup>63</sup> As amended by the law of 27 August 2013.

<sup>64</sup> New numbering introduced by the law of 2 April 2001, the previous paragraph (1) was deleted.

<sup>65</sup> As amended by the law of 2 April 2001.

<sup>66</sup> New numbering introduced by the law of 2 April 2001, the previous paragraph (1) was deleted.

<sup>67</sup> As amended / deleted by the law of 2 April 2001.

<sup>68</sup> As amended by the law of 2 April 2001.

<sup>69</sup> New numbering introduced by the law of 2 April 2001, the previous paragraph (1) was deleted.

- b) if the constraints set out in the book of obligations are not respected.

The arrangements for withdrawal are governed by the provisions of “Article 35~~sexies~~”.<sup>70</sup>

“(6)”<sup>71</sup> Each book of obligations covered “by paragraph (1)”<sup>72</sup> may contain, depending on the circumstances, provisions including those on:

- a) the fee to be paid to the treasury;
- b) the activities that must be carried out on the territory of the Grand Duchy;
- c) the presentation of information in a spirit of impartiality and objectivity and respecting freedom of information;
- d) promotion of culture and artistic creativity in the conception and production of the service;
- e) monitoring of the service content;
- f) the rights for the government to inspect the articles of association, the breakdown of shareholding and the organs of the concessionaire company and any companies participating in the exploitation of the concession;
- g) monitoring of the activity of the concessionaire by one or more government commissioners;
- h) the obligation to identify the service as a Luxembourgish service and to contribute through its service to the reputation and international impact of the Grand Duchy;
- i) the conditions under which the concessionaire can associate other companies in the exploitation of the concession.

“(7)”<sup>73, 74</sup> *repealed by Law of 17 December 2010*

## **B) “Transmission and re-transmission by cable”**

*(Law of 2 April 2001)*

### **“Article 22. – Cable networks**

- (1) Nobody may establish and operate in the territory of the Grand Duchy a cable network for the transmission or re-transmission of television or radio services without complying with the provisions of the prevailing legislation on telecommunications.
- (2) Operators of cable networks covered by paragraph (1) have the right to free reception and simultaneous and unaltered re-transmission of any Luxembourgish broadcast service, any

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<sup>70</sup> As amended by the law of 27 August 2013.

<sup>71</sup> New numbering introduced by the law of 2 April 2001, the previous paragraph (1) was deleted.

<sup>72</sup> As amended by the law of 2 April 2001.

<sup>73</sup> New numbering introduced by the law of 2 April 2001, the previous paragraph (1) was deleted.

<sup>74</sup> As amended / deleted by the law of 2 April 2001.

Luxembourgish satellite service and any Luxembourgish cable service that holds a concession or a permit in accordance with this law.

- (3) They also have the right to free reception and simultaneous and unaltered re-transmission of any foreign radio or television service intended for the public, subject to the provisions of paragraph (4) below.
- (4) Operators of cable networks are not authorised to transmit or re-transmit
- Luxembourgish television or radio services for which no concession or permit has been granted;
  - non-Luxembourgish television or radio services, which are the subject either of a prohibition in their country of origin, or a prohibition on re-transmission in accordance with Article 25 paragraphs (2) to (5) of this law.

They are bound to file and keep up-to-date at the Media and Communications Service a list of television or radio services or bouquets of television or radio services transmitted or re-transmitted and other services offered.

- (5) A grand-ducal regulation may establish a list of Luxembourgish broadcast services which should be transmitted as a priority.”

#### **Article 23. – “Luxembourgish”<sup>75</sup> cable services**

(...)<sup>76</sup>

“(1)<sup>77</sup> Nobody may transmit a Luxembourgish cable service, without previously having obtained a concession from the government, based on a proposal from the minister responsible for the media and after consultation of “the Authority”.<sup>78</sup>

“(2)<sup>79</sup> Any concession covered “by paragraph (1)”<sup>80</sup> is accompanied by a book of obligations, whose provisions must be brought into line with those of the concessions and permits governing Luxembourgish broadcast services and must be respected at all times by the concessionaire.

“(3)<sup>81</sup> A grand-ducal regulation, to be enacted after an opinion of the Council of State (...)<sup>82</sup>, shall lay down:

- a) “the criteria and”<sup>83</sup> the arrangements under which the government grants the concessions covered “by paragraph (1)”<sup>84</sup>; and

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<sup>75</sup> As amended by the law of 2 April 2001.

<sup>76</sup> New numbering introduced by the law of 2 April 2001, the previous paragraph (1) was deleted.

<sup>77</sup> New numbering introduced by the law of 2 April 2001, the previous paragraph (1) was deleted.

<sup>78</sup> As amended by the law of 27 August 2013.

<sup>79</sup> New numbering introduced by the law of 2 April 2001, the previous paragraph (1) was deleted.

<sup>80</sup> As amended by the law of 2 April 2001.

<sup>81</sup> New numbering introduced by the law of 2 April 2001, the previous paragraph (1) was deleted.

<sup>82</sup> As amended / deleted by the law of 2 April 2001.

<sup>83</sup> As amended / deleted by the law of 2 April 2001.

<sup>84</sup> As amended / deleted by the law of 2 April 2001.

- b) the general rules governing these concessions and the associated books of obligations.

“(4)”<sup>85</sup> The concession is personal and non-transferable. It is granted for a limited period of time, but is renewable and may be withdrawn at any time:

- a) if the conditions required to obtain it are no longer fulfilled, or
- b) if the constraints set out in the book of obligations are not respected.

The arrangements for withdrawal are governed by the provisions of “Article 35*sexies*”.<sup>86</sup>

“(5)”<sup>87</sup>, *repealed by Law of 17 December 2010*)

*(Law of 17 December 2010)*

### **C) “Audiovisual media services subject to notification”**

#### **Article 23*bis*. –Television services transmitted by electronic communications networks other than broadcasting frequencies, satellite or cable networks**

Any Luxembourgish audiovisual media service providers intending to provide a television service that is not a Luxembourgish broadcast service, a Luxembourgish satellite service or a Luxembourgish cable service must, no later than twenty days before service launch, inform the minister responsible for the media of such intention. The notification shall unambiguously identify the audiovisual media service provider and give the name of the television service, a description of the service that will be provided and the expected date of the launch of the activities. By making the notification the audiovisual media service provider shall undertake to give free, unencrypted access to its service “to” “the Authority”<sup>88</sup> or to supply “it” with all information needed to supervise the service.<sup>89</sup>

#### **Article 23*ter*. – On-demand audiovisual media services**

Luxembourgish audiovisual media service providers intending to provide an on-demand service must, no later than twenty days before service launch, inform the minister responsible for the media of such intention. The notification shall unambiguously identify the on-demand audiovisual media service provider and give the name of the audiovisual media service, a description of the service that will be provided and the expected date of the launch of the activities. By making the notification the audiovisual media service provider shall undertake to give free, unencrypted access to its service “to” “the Authority”<sup>90</sup> or to supply “it” with all

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<sup>85</sup> New numbering introduced by the law of 2 April 2001, the previous paragraph (1) was deleted.

<sup>86</sup> As amended by the law of 27 August 2013.

<sup>87</sup> New numbering introduced by the law of 2 April 2001, the previous paragraph (1) was deleted.

<sup>88</sup> As amended by the law of 27 August 2013.

<sup>89</sup> As amended by the law of 27 August 2013.

<sup>90</sup> As amended by the law of 27 August 2013.



information needed to supervise the service.<sup>91</sup>

**Article 23<sup>quater</sup>. – Third country audiovisual media services using a Luxembourgish uplink or a Luxembourgish satellite**

(1) Audiovisual media services transmitted by an audiovisual media service provider that is not established in a Member State of the European Economic Area shall be deemed to fall under the jurisdiction of the Grand Duchy of Luxembourg if they:

- use a satellite up-link situated in the territory of the Grand Duchy of Luxembourg, or
- do not use a satellite up-link situated in the territory of a Member State of the European Economic Area but do use a satellite capacity appertaining to the Grand Duchy of Luxembourg,

unless the audiovisual media service concerned is to be received only in one or more countries outside the European Economic Area and is not received directly or indirectly using standard equipment by the public in any Member State of the European Economic Area.

(2) Any Audiovisual media service provider intending to supply a service deemed to fall within Luxembourgish jurisdiction by virtue of paragraph (1) must, no later than two months before the commencement of such service, inform the minister responsible for the media of such intention. The notification shall unambiguously identify the audiovisual media service provider, contain all information needed by the minister to establish whether the service falls within Luxembourgish jurisdiction and shall give the name and a description of the service that will be provided and the expected date of the launch of the activities. By making the notification the audiovisual media service provider shall undertake to give free, unencrypted access to its service “to” “the Authority”<sup>92</sup> or to supply “it” with all information needed to supervise the service.<sup>93</sup>

(3) Persons providing audiovisual media service providers with a service requiring use of an uplink located in Luxembourg or of a Luxembourgish satellite capacity must, no later than ten days before the commencement of such service, inform the minister responsible for the media of the name of the audiovisual media service, the name and details of the audiovisual media service provider and everything needed to determine which Member State has jurisdiction. “The notification required under this sub-section may also be made by the person performing the duty referred to in (2) hereabove”.<sup>94</sup>

(4) The services referred to paragraph (1) must comply with chapter V “and article 34<sup>bis</sup>”<sup>95</sup> of this law. Television services must also allow a right of reply as required under the law of 8 June 2004 on the freedom of expression in the media.”

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<sup>91</sup> As amended by the law of 27 August 2013.

<sup>92</sup> As amended by the law of 27 August 2013.

<sup>93</sup> As amended by the law of 27 August 2013.

<sup>94</sup> As amended by the law of 27 August 2013.

<sup>95</sup> As amended by the law of 27 August 2013.

(Law of 2 April 2001)

**“Chapter “IV.”<sup>96</sup> –  
About reception and re-transmission  
of audiovisual media or sound services**

**Article 24. – Freedom of reception and re-transmission**

- (1) Freedom of reception is guaranteed in the territory of the Grand Duchy for any Luxembourgish audiovisual media or sound service transmitted in conformity with this law and for any non-Luxembourgish audiovisual media or sound service that is not subject to a prohibition in its country of origin.
- (2) Simultaneous and unaltered re-transmission of any audiovisual media or sound service covered by paragraph (1) and not subject to the measures foreseen in Article 25 paragraphs (2) to (5), is allowed to any cable network covered by Article 22.

**Article 25. – Restrictions on the freedom to re-transmit and market**

- "(1)<sup>97</sup> Withdrawal under “Article 35*sexies*”<sup>98</sup> of a concession or permission to transmit a radio or television service and any prohibition under “Article 35*sexies*”<sup>99</sup> of an audiovisual media service that is subject to prior notice under Article 23*bis*, Article 23*ter* or Article 23*quater* shall also prohibit cable networks from retransmitting the service concerned."
- (2) The re-transmission and marketing of a non-Luxembourgish audiovisual media or sound service which is not subject to a prohibition in its country of origin may be prohibited temporarily, if:
  - a) the audiovisual media or sound service manifestly and seriously infringes the provisions of Articles 26*bis*, 27*ter*, 28*quater* or 28*quinquies*; and
  - b) during the previous 12 months, it has infringed the same provisions on at least two prior occasions.
- (3) If it is a television service and if the television service provider falls under the jurisdiction of a Member State of the European Economic Area in accordance with the Audiovisual Media Services Directive, the re-transmission and marketing can only be prohibited temporarily if
  - a) the Luxembourgish authorities have notified both the television service provider and the European Commission by registered letter of the alleged violation and their intention to ban the re-transmission or marketing temporarily if such a violation were to recur; and

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<sup>96</sup> Factual error in the text of the law of 2 April 2001; in fact, this concerns Chapters IV and V.

<sup>97</sup> As amended by Law of 17 December 2010.

<sup>98</sup> As amended by the law of 27 August 2013.

<sup>99</sup> As amended by the law of 27 August 2013.

- b) the consultations with the government of the country of transmission and the European Commission have not led to an amicable settlement within 15 days of the notification under a) and the alleged violation persists.

If the European Commission decides that the measures taken are incompatible with Community law, the measures in question shall be terminated immediately.

(Law of 17 December 2010)

"(3bis) The retransmission and marketing of any non-Luxembourgish on-demand audiovisual media service that has not been prohibited in the service provider's country of jurisdiction may be temporarily prohibited if the service concerned endangers or presents a serious risk of endangering:

- public order and in particular the prevention, investigation and pursuit of criminal offences, especially the protection of minors and the fight against incitement to hatred on grounds of race, sex, religion or nationality and the fight against prejudice to human dignity,
- the protection of public health,
- public security, including the safeguarding of national security and defence,
- the protection of consumers, including investors.

The prohibition may not be ordered until the minister with responsibility for the media has:

- requested the service provider's country of jurisdiction to take measures and this has not been done or the measures taken have been inadequate,
- if the service provider's country of jurisdiction is a Member State of the European Economic Area, notified the European Commission and that Member State of the government's intention to take such measures while substantiating the grounds on which it bases its assessment.

The minister may, in urgent cases, derogate from the conditions laid down above. Where this is the case, the measures shall be notified in the shortest possible time to the country under whose jurisdiction the media service provider falls and if it is a Member State of the European Economic Area, also to the European Commission, indicating the reasons for the urgency.

If the European Commission decides that the measures taken are incompatible with Community law, the measures in question shall be terminated immediately."

- (4) A temporary prohibition under paragraphs (2) and (3bis) shall be imposed by the government, on the basis of a proposal from the minister responsible for the media, having heard the opinion of "the Authority".<sup>100</sup>
- (5) It shall be published in the *Mémorial* (hereinafter Luxembourgish Official Gazette) and entails a prohibition for re-transmission of the audiovisual media or sound service by the

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<sup>100</sup> As amended by the law of 27 August 2013.

cable networks and on any person marketing the audiovisual media or sound service concerned in the Grand Duchy of Luxembourg.

## Chapter "V."<sup>101</sup> –

### Rules applying to audiovisual media or sound services

#### "Article 26"<sup>102</sup>. – Services concerned

- (1) Provisions provided by or taken under the present chapter shall be respected
- a) by all Luxembourgish audiovisual media or sound services, subject to paragraph (2) and
  - b) by all audiovisual media services falling under the jurisdiction of the Grand Duchy of Luxembourg in accordance with Article 23*quater*.
- (2) Luxembourgish audiovisual media or sound services intended exclusively for reception in third countries outside of the European Economic Area and which are not received with standard consumer equipment directly or indirectly by the public in one or more Member States of the European Economic Area shall comply with Article 26*bis* and, as appropriate, with Articles 27*ter*, 28*quater* and 28*quinquies* and also, as appropriate, with the book of obligations of the concession."

*(Law of 17 December 2010)*

#### A) "Rules applying to all audiovisual media and sound services"

##### Article 26*bis*. – Prohibition of incitement to hatred

Audiovisual media or sound services shall not contain any incitement to hatred based on race, sex, opinion, religion or nationality."

#### B) "Rules applying to audiovisual media services"

##### Article 27. – Promotion of distribution and production of European works

- (1) A grand-ducal regulation shall lay down the rules applicable to the content concerning European works and for works from independent producers and concerning the promotion of these works in accordance with the Audiovisual Media Services Directive.

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<sup>101</sup> New numbering introduced by the law of 2 April 2001.

(2) Audiovisual media service providers shall not transmit cinematographic works outside periods agreed with the rights holders. *(Law of 17 December 2010)*

**"Article 27bis. – Audiovisual commercial communications**

(1) Audiovisual commercial communications shall:

- a) be readily recognisable as such. Surreptitious audiovisual commercial communication shall be prohibited;
- b) not use subliminal techniques;
- c) not prejudice respect for human dignity;
- d) not include or promote any discrimination based on sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation;
- e) not encourage behaviour prejudicial to health or safety;
- f) not encourage behaviour grossly prejudicial to the protection of the environment.

(2) All forms of audiovisual commercial communications for cigarettes and other tobacco products shall be prohibited.

(3) Audiovisual commercial communications for alcoholic beverages shall not be aimed specifically at minors and shall not encourage immoderate consumption of such beverages.

(4) Audiovisual commercial communication for medicinal products and medical treatment available only on prescription shall be prohibited.

(5) Audiovisual commercial communications shall not cause physical or moral detriment to minors. Therefore they shall not directly exhort minors to buy or hire a product or service by exploiting their inexperience or credulity, directly encourage them to persuade their parents or others to purchase the goods or services being advertised, exploit the special trust minors place in parents, teachers or other persons, or unreasonably show minors in dangerous situations.

(6) A grand-ducal regulation shall lay down the rules restricting sponsorship.

(7) Product placement is prohibited in programmes made after 19 December 2009 unless exempted as determined by a grand-ducal regulation."

*(Law of 17 December 2010)*

**"C) Rules applicable only to television services**

**Article 27ter. – Protection of minors**

(1) Programmes of television services which might seriously impair the physical, mental or

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<sup>102</sup> As amended by Law of 17 December 2010.

moral development of minors, in particular programmes that involve pornography or gratuitous violence are prohibited.

- (2) Other programmes which are likely to impair the physical, mental or moral development of minors are also prohibited, except where it is ensured, by selecting the time of the broadcast or by any technical measure, that minors in the area of transmission will not normally hear or see such services.
- (3) When the programmes referred to in (2) are broadcast in unencoded form, they must be preceded by an acoustic warning or be identified by the presence of a visual symbol throughout their duration.

A grand-ducal regulation shall lay down the acoustic warnings or visual symbols to be used for this purpose.

The grand-ducal regulation may:

- a) distinguish between different age groups and set corresponding acoustic warnings or visual symbols,
- b) prohibit broadcasting before a given time of day for programmes which might impair the physical, mental or moral development of minors in any of these age groups,
- c) specify the arrangements by which providers of television services must identify such programmes using acoustic warnings or visual symbols,
- d) specify the conditions under which providers of television services may in the public interest choose to apply the acoustic warnings or visual symbols used in another country."

## **Article 28. – Television advertising and teleshopping**

"(1)<sup>103</sup> Television advertising and teleshopping shall be readily recognisable and distinguishable from editorial content. Without prejudice to the use of new advertising techniques, television advertising and teleshopping shall be kept quite distinct from other parts of the programme by optical, acoustic or spatial means. Isolated advertising and teleshopping spots, other than in transmissions of sports events, shall remain the exception."

((2) *repealed by the Law of 17 December 2010*)

((3) *repealed by the Law of 17 December 2010*)

- (4) A grand-ducal regulation shall lay down the restrictive conditions imposed on advertising and teleshopping for medicinal products and medical treatments and for alcoholic beverages pursuant to the Audiovisual Media Service Directive.

The grand-ducal regulation shall also determine the rules relating to the insertion of advertising and teleshopping during programmes and the transmission time devoted to advertising and teleshopping.

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<sup>103</sup> As amended by Law of 17 December 2010 and amended by Law of 8 April 2011.

“(5)<sup>104</sup> The presiding judge of the Chamber of the *Tribunal D’Arrondissement* (hereinafter district court) ruling in commercial matters at the request of the organisations covered by Article L.313-1 et seq. of the *Code de la consommation* (hereinafter Law on Consumption), of the minister responsible for the protection of the consumers, of the *Commission de surveillance du secteur financier* (hereinafter Commission monitoring the financial sector) or of the *Commissariat aux Assurances* (hereinafter Commission of the Insurance corporations), may order any measure intended to abate any act which contravenes the present Article, or the grand-ducal regulation adopted pursuant to paragraph (4).

The action for an injunction shall be instituted according to the procedure applicable before the *tribunal des référés* (hereinafter court of appeal). The judge presiding the Chamber of the district court ruling in commercial matters rules on points of facts and law. The time limit for an appeal is 15 days.

Articles 2059 to 2066 of the *Code civil* (hereinafter Civil Code) are also applicable.

Notice of the ruling may be ordered on the interior or exterior of the sales facilities of the offender and at the cost thereof. The ruling shall state the duration of the posting of said notice and may also order its publication, in full or in abstract at the cost of the offender, through newspapers or any other means.

This notice and publication order shall only be released pursuant to a judicial ruling which has become final.

Any breach of injunctions or prohibitions resulting from a judicial ruling passed pursuant to the present Article and which has become final is punishable by a fine of 251 to 50,000 Euros.”

#### **Article 28bis. – Exclusive rights to major events**

- (1) A grand-ducal regulation may lay down a list of major events for society, whether they are national or non-national. This grand-ducal regulation is notified to the European Commission in accordance with Article 14 paragraph (2) of the Audiovisual Media Services Directive.
- (2) Television service providers shall not exercise exclusive rights that they have bought after this grand-ducal regulation has come into effect, in such a way as to deprive a substantial proportion of the Luxembourg society of the possibility of watching the events on this list by whole or partial live coverage or if necessary or appropriate for objective reasons in the public interest, by whole or partial deferred coverage, on free television. The said grand-ducal regulation may also provide implementing measures for the provisions of this paragraph.
- (3) The television service providers shall not exercise exclusive rights that they have purchased after 30 July 1997 in such a way as to deprive a substantial proportion of the public in another Member State of the European Economic Area of the possibility of following events which are designated by that other Member State in accordance with

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<sup>104</sup> As inserted by Law of 19 December 2003 and amended by Law of 23 April 2008.

Article 14 paragraphs (1) and (2) of the Audiovisual Media Services Directive by whole or partial live or deferred coverage on free television as determined by that other Member State.

*(Law of 17 December 2010)*

**“Article 28ter. – Right to access short extracts of major events**

- (1) Television service providers with exclusive rights to transmit events of high interest to the public shall grant all Luxembourgish television service providers access to such events on fair, reasonable and non-discriminatory terms to enable them to produce short news reports.
- (2) The obligation set out in paragraph (1) shall also apply to television service providers established in other Member States of the European Economic Area “seeking access”<sup>105</sup> unless a different television services provider established in the other Member State concerned has acquired exclusive rights to the same event.
- (3) Access shall be given either by free selection of short extracts when invited by the television service provider holding the exclusive rights, where possible, or by an equivalent system giving access on a fair, reasonable and non-discriminatory basis through other means. In both cases, television service providers using the extracts shall indicate their source.
- (4) Short extracts shall be used solely for general news programmes and may be used in on-demand audiovisual media services only if “the same programme is offered”<sup>106</sup> on a deferred basis by the same media service provider.
- (5) The holder of the exclusive rights may request compensation which shall not exceed the additional costs directly incurred in providing access.
- (6) Extracts may not exceed 90 seconds in length. The length may be altered by grand-ducal regulation, which may also set the maximum time limit until which their transmission has to occur.”

*(Law of 17 December 2010)*

**“D) Rules applicable only to on-demand audiovisual media services”**

**Article 28quater. – Protection of minors**

Programmes offered by on-demand audiovisual media service providers which might seriously impair the physical, mental or moral development of minors may not be made available to the public unless minors will not normally hear or see such on-demand audiovisual media services.

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<sup>105</sup> As amended by the law of 27 August 2013.

<sup>106</sup> As amended by the law of 27 August 2013.



## **E) Rules applicable only to radio**

### **Article 28<sup>quinquies</sup>. – Protection of minors**

Paragraphs (1) and (2) of Article 27<sup>ter</sup> also apply to Luxembourgish radio services.

### **Article 28<sup>sexies</sup>. – Advertising content**

(1) A grand-ducal regulation may:

- a) specify general restrictions on the quantity and nature of advertising on Luxembourgish radio services; and
- b) impose the provisions of Articles 27<sup>bis</sup> or 28 or any grand-ducal regulation passed by virtue of those Articles or any of their provisions on certain categories of, or all, Luxembourgish radio services.

(2) Luxembourgish radio services may not advertise tobacco or tobacco products."

## **Chapter "VI."<sup>107</sup> – Other provisions**

### **A) Institutional measures**

#### **Article 29. – Media and Communications Service**

(1) Within the government administration, a *Service des médias et des communications* (hereinafter Media and Communications Service) is set up, reporting to the minister responsible for the media.

(2) The missions of the Media and Communications Service are, in particular:

- a) to assist the minister in the definition and execution of the media and communications policy;
- b) to encourage the development, in terms of the media, of the range of programmes available to the people of the Grand Duchy;
- c) to encourage, in collaboration with the other services concerned, the promotion of the Grand Duchy as a European centre for audiovisual and communications business activities;

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<sup>107</sup> New numbering of the chapters introduced by the law of 2 April 2001.

(Law of 2 April 2001)

- “d) to assist the government commissioners charged with the monitoring of the holders of concessions or permits, the *Commission consultative des médias* (hereinafter Consultative Committee for the Media) created by Article 33 and the committee foreseen by the law on the promotion of the printed press;<sup>108</sup>
  - e) to assure the contact with international and foreign organisations charged with the monitoring of the audiovisual sector and particularly to represent the Grand Duchy in the Contact Committee provided by the Audiovisual Media Services Directive and the Standing Committee set up pursuant to the European Convention on Transfrontier Television;”
  - f) to collaborate with the other public television services with responsibilities in related fields, and to enable them to benefit from its expertise.
- (3) The Media and Communications Service is headed by a senior official of the government administration, who is authorised to hold the title of Director.
- (4) A grand-ducal regulation shall lay down the internal organisation of the Media and Communications Service.

**Article 30 and 31** (repealed by the Law of 27 August 2013)

### **Article 32. – Information and Press Service**

- (1) A *Service information et presse* (hereinafter Information and Press Service) is set up within the government administration, reporting to the minister responsible for information.
- (2) The missions of the Information and Press Service are, in particular:
- a) providing information to the press, the public and other interested circles about the activities of the state;
  - b) assisting the government and the administrations in the work of making the Grand Duchy better known abroad and cultivating its international image;
  - c) to these ends, publishing documents of all kinds and disseminating the documents published by ministries and public administrations, organising press conferences and other events and hosting foreign journalists and official visitors;
  - d) developing and updating the VideoState programme in the interactive videotex service;
  - e) facilitating by every possible means the work of Luxembourg’s press organs and journalists.
- (3) The Information and Press Service is headed by a senior official of the government administration, who is authorised to hold the title of Director.

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<sup>108</sup> As amended by the law of 27 August 2013.

- (4) A grand-ducal regulation shall lay down the internal operation of the Information and Press Service.

### **Article 33. – Consultative Committee on the Media**

- (1) A *Commission consultative des médias* (hereinafter Consultative Committee on the Media) is set up within the government administration, reporting to the minister responsible for the media, having the mission to represent at the government the companies, associations and trade unions in the media sector, particularly in the field of the printed press, television, sound radio, “multimedia”<sup>1</sup>, satellites and cable.
- (2) Whenever he regards it as appropriate, the minister consults the Consultative Committee on questions relating to media policy. The Committee, on its own initiative, brings to the attention of the minister any matter that it considers appropriate.
- (3) The positions adopted by the Consultative Committee shall take the form of opinions, which may include diverging opinions, or be accompanied by minority opinions.
- (4) The meetings of the Consultative Committee are attended, without voting rights, by officials charged with media issues and related subjects, including at least one delegate of the ministers of telecommunications, finance and culture (...) <sup>109</sup>.
- (5) The discussions of the Consultative Committee are confidential. The opinions issued may be published following a joint decision by the minister and the Committee.
- (6) A grand-ducal regulation shall lay down the internal operation of the Consultative Committee.
- (7) The Consultative Committee shall choose a chairman from among its ranks, who will be assisted by the secretariat provided by the Media and Communications Service.

### **B) Miscellaneous**

#### **“Article 34. – Advertising resources of the printed press”<sup>110</sup>**

- (1) *(implicitly repealed by the Law of 3 August 1998 on Promotion of the Printed Press)*
- (2) *(implicitly repealed by the Law of 3 August 1998 on Promotion of the Printed Press)*
- (3) *(implicitly repealed by the Law of 3 August 1998 on Promotion of the Printed Press)*
- (4) A committee consisting of delegates of the government, representatives of publishers of “press organs benefiting from the scheme for promotion of the printed press”<sup>111</sup> and experts chosen by mutual agreement is charged with monitoring and evaluating the consequences of the introduction of new sound radio and television services on advertising resources of

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<sup>109</sup> As amended / deleted by the law of 2 April 2001.

<sup>110</sup> As amended / deleted by the law of 2 April 2001.

<sup>111</sup> As amended by the law of 2 April 2001.

“press organs benefiting from the scheme for promotion of the printed press”<sup>112</sup> and to propose, if appropriate, compensation to be funded from the state budget. (...) <sup>113</sup>.

(...) <sup>114</sup>

*(Law of 17 December 2010)*

**"Article 34bis. – Supply of information and storing of recordings**

- (1) Each radio or television service “falling within the authority of the Grand Duchy of Luxembourg”<sup>115</sup> must regularly identify themselves to the public by using their official name and title.
- (2) Any Audiovisual media service provider shall provide to the recipient of the service and responsible authorities with easy, direct and permanent access to at least the following information:
  - a) its name;
  - b) the address at which the media service provider is established;
  - c) the details of the media service provider, including its electronic mail address or website, which allow it to be contacted rapidly in a direct and efficient manner;
  - d) the details of the minister responsible for the media and of “the Authority”. <sup>116</sup>
- (3) All radio and television services and on-demand programmes must be recorded in full and the recordings must be stored for one month. If a programme is accused of breach of this Law or the book of obligations, the recording must be stored for as long as required to serve as evidence. The same shall apply if a right of reply or subsequent information procedure concerning a programme is begun under Article 61 of the law of 8 June 2004 on freedom of expression in the media.
- (4) A copy of the programme recording shall be provided upon request to the supervisory authorities or the court dealing with an objection concerning the programme in question."

*(Law of 27 August 2013)*

**“Chapter VII - Monitoring application of the law”<sup>117</sup>**

**“Article 35. The Autorité luxembourgeoise indépendante de l’audiovisuel**

- 1) The Authority is an independent administrative public body with a legal personality. The registered office of the Authority is in Luxembourg. It may be transferred at any time to

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<sup>112</sup> As amended by the law of 2 April 2001.

<sup>113</sup> As amended / deleted by the law of 2 April 2001.

<sup>114</sup> As amended / deleted by the law of 2 April 2001.

<sup>115</sup> As amended / deleted by the law of 27 August 2013.

<sup>116</sup> As amended by the law of 27 August 2013.

any other location in Luxembourg by Grand Ducal order.

The Authority is financially and administratively independent and reports to the Media Minister.

It operates totally independently in pursuance of the objectives set out in article 1 of this law and of its duties under this law.

- 2) The duties of the Authority are to:
  - a) grant and withdraw the permits specified in articles 15 to 18 hereabove;
  - b) develop proposals for that will ensure increased choice and a better balance of programmes for the resident public, particularly with respect to the implementation of articles 12(2)(e) and 14(5) of this law;
  - c) encourage the providers of audiovisual media services that fall within its scope to ensure that the services they offer become increasingly accessible to persons who are sight or hearing impaired;
  - d) encourage the providers of audiovisual media services to develop ethical codes on inappropriate commercial audiovisual communications that are broadcast to accompany, or broadcast during, children's programmes, where such communications concern foods or drinks that contain nutrients or substances with a nutritional or physiological effect, such as fats, trans fatty acids, salt/sodium or sugars, and whose inclusion in the diet in excessive quantities is not recommended;
  - e) encourage the providers of on-demand audiovisual media services that fall within its scope to ensure that, where possible and using appropriate means, the on-demand services they offer promote the production of, and access to, European works;
  - f) exercise its powers under article 6 of the Law of 20 April 2009 on Access to Public Cinematographic Performances;
  - g) supervise, control and ensure compliance with the law, regulations and specifications by audiovisual and sound media services that fall within the scope of the Luxembourg authorities under this law, either because they have received a concession or permit under this law, or because they have reported their services pursuant to article 23*bis*, 23*ter* or 23*quater* (2) of this law.
- 3) The Authority shall be consulted by the Media Minister before any request for a concession or permit is granted under articles 9, 10*bis*, 12, 13, 19, 21 or 23, and before withdrawal of any such permit or concession.<sup>118</sup>

### **“Article 35*bis*. Authority executive**

The Authority executive comprises the Board of Directors, the Director and the Consultative Committee.

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<sup>117</sup> This chapter was substantially amended by the law of 27 August 2013.

<sup>118</sup> As amended by the law of 27 August 2013.

## A. The Board of Directors

### (1) 1. Duties of the Board of Directors

- a) It decides on the admissibility of complaints and the start of investigations, identifies violations of this law and its implementing regulations and failures to perform the duties connected with concessions, permits and their associated obligations, and where appropriate imposes one of the penalties set out in article 35*sexies* of this law after having obtained the opinion of the Director.
  - b) Where the Board of Directors concludes that the facts stated in the investigation file do not constitute failure to comply with this law and that no provision of this law has been violated, it shall dismiss the case.
  - c) The Board of Directors may, if it wishes, request the Director to carry out an additional investigation.
  - d) Similarly, the Committee may, if it wishes, itself question the persons investigated.
2. It gives a preliminary opinion on all requests for concessions and permits put to it by the Media Minister and before any Government decision to withdraw a concession or permit.
  3. It grants and withdraws the permits referred to in articles 15 to 18 of this law.
  4. It approves the internal regulations and rules of procedure for investigations that have been prepared by the Director.
  5. It closes the Authority's budget and annual accounts.
  6. It approves the management report prepared by the Director and submits it to the Government pursuant to article 35*quinqies*(6).
  7. It decides its own internal regulations.
  8. It appoints the registered auditor of the Authority.
  9. It approves the actions of the Director and all administration actions that may be charged to the budget.
  10. It approves the statement of employees and in the event of vacancies makes recommendations to the relevant authorities, having first obtained the opinion of the Director.
  11. It issues opinions on candidates for the position of Director.
  12. It performs the duties entrusted to the Authority under article 6 of the Law of 20 April 2009 on Access to Public Cinematographic Performances.
- Decisions concerning the budget referred to under 5 hereabove and those under 8 hereabove are submitted for approval to the relevant minister. Decisions concerning the

annual accounts referred to under 5 hereabove and those under 10 hereabove are submitted for approval to the Governing Committee.

## 2) Composition of the Board of Directors

The Board of Directors has 5 members, one of whom is its Chairman and all of whom are appointed by the Grand Duke at the recommendation of the Government in Council.

The Chairman represents the Authority before the courts and out of court.

Members of the Board of Directors may not be members of the Government, the Chamber of Deputies, the Council of State or the European Parliament. They may not hold any municipal position, or position or mandate in any entity supervised by the Authority, nor may they hold any direct or indirect interest in any company or other body that comes within the scope of the Committee.

Their 5-year terms of office are renewable.

The replacement of Board members who have resigned or died or who are permanently incapable of performing their duties shall be made as quickly as possible in the manner set out hereabove. The term of office of a replacement member is the remainder of the term of office of the member being replaced.

The Board of Directors selects a secretary from among the officers of the Authority.

Members of the Board of Directors and its secretary receive monthly remuneration from the Authority. The amount of their remuneration is set by Grand Ducal order based on the scope and extent of their respective duties.

## (3) Operation of the Board of Directors

The Board of Directors meets whenever its duties require. It is convened by the Chairman or if he/she is unable to do so by the member who is oldest in age.

It must be convened if a meeting is requested by at least three members or by the Director.

The Board of Directors is quorate when the majority of its members are present. Each member of the Board of Directors may act as proxy for no more than one other member. Proxies must be given exclusively to other members of the Board of Directors.

Decisions of the Board of Directors are taken by simple majority vote of members present.

All deliberations of the Board of Directors are secret. Decisions by the Board of Directors as to the dismissal of complaints and investigations, decisions ordering additional investigation and decisions applying a penalty are published.

## B. The Director

## (1) Appointment of the Director

The Director is appointed by the Grand Duke for a renewable 5-year term of office at the recommendation of the Government in Council and after having obtained the opinion of the Board of Directors.

The Government in Council may, having requested the opinion of the Board of Directors, recommend that the Grand Duke revoke the mandate of the Director if the latter is permanently incapable of performing his/her duties or no longer meets position requirements.

The Director shall hold a university Masters degree or recognised equivalent.

The Director is a civil servant.

The Director may not be a member of the Government, the Chamber of Deputies, the Council of State or the European Parliament.

He/she may not hold any municipal position, undertake any activity that is incompatible with his/her position, or hold any direct or indirect interest in any company or other body that comes within the scope of the Authority.

## (2) Duties of the Director

The Director supervises compliance with this law, its implementing regulations, the rules governing concessions and permits and their associated specifications.

1. Complaints addressed to the Authority shall be sent to the Director for action after the Board of Directors has checked their admissibility.

2. The Director manages investigations. Once an investigation is concluded, he/she shall submit the file to the Board of Directors, recommending either dismissal without action or application of one of the penalties specified in article 35*sexies* hereunder.

He/she shall attend Board meetings in an advisory capacity unless otherwise decided by the Board of Directors.

3. He/she undertakes all administrative management and implements the decisions of the Board of Directors.

4. Authority personnel report to the Director.

5. The Director establishes the internal regulations and the procedural rules for investigations, which do not come into force until approved by the Board of Directors.

6. He/she prepares or has prepared the annual accounts, budget and management report and submits them to the Board of Directors for approval.<sup>119</sup>

## “Article 35*ter*. The Consultative Committee

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<sup>119</sup> As amended by the law of 27 August 2013.



- 1) The Consultative Committee is the consultative body of the Authority and has up to twenty-five members, each appointed for five years by the organisations that best represent the social and cultural life of the country. The list of organisations represented and the number of members each appoints is fixed by Grand Ducal order.
- 2) The Consultative Committee is quorate when a majority of its members is present. Resolutions are adopted by majority vote of the members present. In the event of a tie, the Chairman has the casting vote.

The deliberations of the Consultative Committee are secret.

The Director attends the deliberations of the Committee in an advisory capacity.

- 3) It establishes its own internal regulations governing its internal operation.
- 4) It has the following duties:
  1. it must be consulted in the event of investigations concerning articles 26*bis*, 27*ter*, 28*quater* and 28*quinquies* of this law;
  2. it must be consulted if the Authority is seised within the meaning of article 6(2) of the Law of 20 April 2009 on Access to Cinematographic Performances;
  3. it may be consulted by decision of the Board of Directors in connection with the other duties of the Authority.

The members of the Consultative Committee receive attendance fees from the Authority, the amount of which is set by Grand Ducal order.<sup>120</sup>

#### **“Article 35*quater*. Personnel structure**

- 1) Apart from the Director, the personnel structure, organised by rank, includes the following functions and jobs:
  1. senior administration career, seniority pay scale 12:
    - a) first-class management advisors,
    - b) management advisors,
    - c) deputy management advisors,
    - d) Government attachés, first class,
    - e) Government attachés,
  2. middle administration career, seniority pay scale 7:
    - a) senior inspectors, first class,
    - b) senior inspectors,
    - c) inspectors,

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<sup>120</sup> As inserted by the law of 27 August 2013.

- d) office managers,
  - e) deputy office managers,
  - f) chief editors,
  - g) editors,
3. lower administration career, seniority pay scale 4:
- a) senior clerks, first class,
  - b) senior clerks,
  - c) clerks,
  - d) deputy clerks,
  - e) forwarding clerks.
- 2) The structure at (1) hereabove may be supplemented by trainees, State employees and State workers subject to budget.
- 3) The Director may, if approved by the Board of Directors and in particular and *ad hoc* circumstances, call on external experts whose services are specified and remunerated under private law contracts.<sup>121</sup>

**“Article 35quinquies. Financial**

- 1) The Authority receives an annual contribution from the State budget. The State provides the property the Authority requires to be able to operate and perform its duties.
- 2) The Authority may obtain the proportion of its payroll and operating costs that is not covered by the annual contribution from the State budget by taxing all providers of audiovisual media services and persons subject to its supervision.

The amount of the tax and the method of implementing this sub-section are set by Grand Ducal order.

- 3) The Authority's accounts shall be kept in accordance with commercial accounting principles and methods.

The Authority's financial year is the calendar year.

At closing of each financial year, the Director prepares a draft balance sheet and a draft income statement and submits both to the Board of Directors for approval.

- 4) An authorised auditor appointed by the Board of Directors audits the Authority's accounts and control the propriety of all transactions and accounting entries.

The authorised auditor shall meet the requirements of the Law of 18 December 2009 on the Audit Profession.

Auditors are appointed for a renewable three-year period. Their remuneration is for the

account of the Authority. They submit their report to the Board of Directors by 1 April. The Board of Directors may require them to undertake specific controls.

- 5) Before 30 April each year the Director prepares a draft budget for the following year and submits it to the Board of Directors for approval.
- 6) By 1 May the Board of Directors submits the annual accounts to the Government along with a management report and the audit report. The Government in Council decides whether to give discharge to the Authority executive. Both this decision and the annual accounts are published in the *Mémorial*.
- 7) The Authority's financial management is subject to control by the Court of Accounts.<sup>122</sup>

#### **“Article 35sexies. Penalties**

- 1) Physical and moral persons, whether or not resident in the Grand Duchy of Luxembourg, may submit written complaints to the Authority concerning non-compliance with this law, implementation of this law or specifications by any audiovisual or sound service subject to Luxembourg law.
- 2) Complaints shall be registered and a receipt sent to the complainant. The Authority shall immediately inform the provider of the media services concerned. Said supplier shall keep a copy of the recording of the programme, so long as the recording is still available given the time limit set in article 34bis(3) hereunder.

The Authority may require receipt of the recording and may also ensure the complainant is able to see or hear the recording.

- 3) Should the Authority become aware through its own actions or through a complaint that an audiovisual or sound media provider broadcasting an audiovisual or sound media service covered by articles 3, 5, 13(3), 15(6), 17(4), 17(5), 18(3), 20, 21(1), 21(2), 22(1), 22(4), 23(1), 23(2), 23bis, 23ter, 23quater (2), 23quater (3), 23quater (4), 25(1), 25(5), 26bis, 27, 27bis, 28, 28bis, 28ter, 28quater, 28quinquies, 28sexies, 34 or 35quinquies(2) of this law has violated any Grand Ducal regulation implementing this law or any concession/permit or associated specification, it shall send the provider concerned a registered letter requesting explanations. Said procedure shall not apply to events that are over one year old. If the Authority concludes at the end of the procedure that the service manifestly, seriously and gravely violated the relevant provisions of the law, it shall order, based on the seriousness of the facts, one of the following penalties:

- a. reprimand,
- b. reprimand with duty to read an announcement on air,
- c. a fine of 250-25 000 euro.

Reprimands and fines may not be applied to violations that are subject to a criminal penalty.

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<sup>121</sup> As inserted by the law of 27 August 2013.

<sup>122</sup> As inserted by the law of 27 August 2013.

- 4) In all cases covered by this article, decisions shall follow procedures involving all parties, the media service provider either having presented a defence or having been duly summonsed to do so by registered letter. The media service provider may have legal assistance or be legally represented.
- 5) Should a media service provider fail to comply with an order made in accordance with sub-section (3) hereabove following the imposition of a fine under (3) hereabove or if it should repeat the same violation within six months of the fine order, the amount of the fine as per (3)(c) hereabove may be doubled or the Authority may:
  - if an audiovisual media service within the meaning of articles 9, 10*bis*, 12, 13, 14, 19, 21 or 23 of this law is involved, inform the minister with responsibility for the Authority and recommend the temporary suspension or permanent withdrawal of the permit or concession;
  - if an audiovisual media service within the meaning of articles 23*bis*, 23*ter* or 23*quater* is involved, inform the minister with responsibility for the Authority and recommend temporary suspension or a permanent ban.

In the case of services within the meaning of article 23*quater*, service bans shall include a ban on the use of the Luxembourg satellite uplink and capacity;

- if a sound media service within the meaning of articles 15 to 18 of this law is involved, order the temporary suspension or permanent withdrawal of its permit.

With regard to the first two bullet points in this article, the Government, acting on the recommendation of the minister responsible for the Authority, shall order the penalty, which may not be heavier than the penalty recommended by the Authority in its report.

- 6) Decisions to withdraw licences shall be published in the *Mémorial*.
- 7) Appeals from Authority decisions made by virtue of the present article may be brought before the administrative courts.
- 8) Responsibility for the recovery of fines ordered under (3) and (5) hereabove lies with the *Administration de l'enregistrement et des domaines* (Indirect Tax Office and Registry), which shall act as in the case of register entries.<sup>123</sup>

#### **Articles 36 and 37 (repealed by the Law 8 June 2004)**

#### **Article 38. (repealed by the Law 27 August 2013)**

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<sup>123</sup> As inserted by the law of 27 August 2013.

**Article 39. – Entry into force and transitional arrangements<sup>124</sup>**

- (1) This law shall come into effect on the first day of the second month following its publication in the Luxembourgish Official Gazette.
- (2) By way of derogation from paragraph (1), the provisions of Chapter “V”<sup>125</sup> shall come into effect on 1 October 1991.
- (3) *(implicitly repealed by the Law of 21 March 1997 on telecommunications)* .
- (4) Any legal provision contrary to this law is abolished following the entry into force of this law.

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<sup>124</sup> This provision concerns the original Law of 30 July 1991.

<sup>125</sup> Amended implicitly by the Law of 2 April 2001.