

Interstate Broadcasting Agreement (Rundfunkstaatsvertrag)

Dated 31 August 1991 (incorporating the third amendment adopted between 26 August and 11 September 1996)

Table of Contents

Article 1: Agreement on Broadcasting

Preamble

Section I: General Provisions

Article 1 Field of application

Article 2 Terms employed

Article 3 Prohibited broadcasts, protection of young persons

Article 4 Commissioners for the protection of young persons

Article 5 Short coverage

Article 6 European, own, commissioned and joint productions

Article 7 Advertising content, identification

Article 8 Sponsorship

Article 9 Duty to provide information, competent authorities

Article 10 Opinion surveys

Section II: Provisions on Public Service Broadcasting

Article 11 Funding commensurate with function, principle of financial equalisation

Article 12 Funding

Article 13 Financial requirements of public service broadcasting

Article 14 Insertion of advertisements

Article 15 Duration of advertising

Article 16 Guidelines

Article 17 Advertising changes

Article 18 Exclusion of teleshopping

Article 19 Satellite television service for the ARD and the ZDF

Section III: Provisions on Private Broadcasting

Subsection 1: Licensing and procedural rules

Article 20 Licensing

Article 21 Licensing principles

Article 22 Information and investigation

Article 23 Public disclosure and similar requirements

Article 24 Confidentiality

Subsection 2: Ensuring plurality of opinion

Article 25 Plurality of opinion, regional windows

Article 26 Ensuring plurality of opinion in television

Article 27 Viewer ratings

Article 28 Attribution of programmes

Article 29 Changes in the ownership structure

Article 30 Measures ensuring plurality
Article 31 Transmission time for independent third parties
Article 32 Advisory Council for Programming
Article 33 Guidelines
Article 34 Transitional provision
Subsection 3: Organisation of media supervision, financing of special tasks

Article 35 Supervisory activities to ensure plurality of opinion
Article 36 Competency
Article 37 Licensing and supervisory procedures
Article 38 Supervision in other matters
Article 39 Field of application
Article 40 Financing of special tasks
Subsection 4: Programming principles, transmission time for third parties

Article 41 Programming principles
Article 42 Transmission time for third parties
Subsection 5: Funding, advertising

Article 43 Funding
Article 44 Insertion of advertisements
Article 45 Duration of advertisements
Article 46 Guidelines
Subsection 6: Data protection, revision, finable offences

Article 47 Data protection
Article 48 Appeal to the Federal Administrative Court
Article 49 Finable offences
Section IV: Transmission capacities

Article 50 Principle
Article 51 Allocation of satellite channels
Article 52 Retransmission
Article 53 Freedom of access
Section V: Transitional and Concluding Provisions

Article 54 Denunciation
Article 55 Rule for Bavaria
Article 2: Agreement on the ARD
Article 3: Agreement on the ZDF
Article 4: Agreement on Licence Fees
Article 5: Agreement on Funding
Article 6: Agreement on Interactive Videotext
Article 7: Transitional Provision, Denunciation, Entry into Force
Article 8: Expiration

The State of Baden-Württemberg,
The Free State of Bavaria,
The State of Berlin,
The State of Brandenburg,

The Free Hanseatic City of Bremen,
The Free and Hanseatic City of Hamburg,
The State of Hesse,
The State of Lower Saxony,
The State of Mecklenburg-Western Pomerania,
The State of North-Rhine/Westphalia,
The State of Rhineland-Palatinate,
The Saarland,
The Free State of Saxony,
The State of Saxony-Anhalt,
The State of Schleswig-Holstein,
The State of Thuringia,

conclude the following Agreement

Article 1: Agreement on Broadcasting

Preamble

This Agreement contains the regulatory framework for public service and private broadcasting in a dual system of the states in united Germany. It takes account of European developments in the field of broadcasting.

Public service broadcasting and private broadcasting are committed to the free formation of individual and public opinion and encourage plurality of opinion. Both broadcasting systems must be in a position to respond to the demands of national and international competition.

As new technologies increase the number of broadcasting services in Europe efforts will be made to secure greater variety of information and a broader range of cultural programmes in German-speaking areas. By means of this Agreement, but particularly through further regulatory and promotional measures in the Federal Republic of Germany, continuing support will be given for the production of European television programmes.

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

Private broadcasters will be enabled to extend and develop a private system, especially where technical and programming matters are concerned. To this end they will be afforded sufficient transmission capacities and access to adequate sources of income. In addition to relaying their programmes by satellite they will be allowed to transmit them, in accordance with state law and taking account of local and regional contributions, via available terrestrial television frequencies which will be allocated as fairly as possible throughout the country and also cater for new television broadcasters.

The unification of Germany and the continuing development of the dual broadcasting system call for a comprehensive review of the allocation and use of frequencies. All states declare their intention to reduce duplication and multiplication of services in order to secure additional transmission capacities for private broadcasters, including those operating on the western line.

The supervisory authorities under state law for private broadcasters are required to cooperate more closely with one another in order to ensure that private broadcasters receive equal treatment and that decisions are carried out more effectively.

Section I: General Provisions

Article 1 Field of application

- (1) This Agreement shall apply to the provision and transmission of programmes in Germany in a dual broadcasting system.
- (2) Insofar as this Agreement contains or permits no other arrangements relating to the provision and transmission of programmes, the provisions of state law governing the public service corporation or private broadcaster concerned shall apply.

Article 2 Terms employed

(1) Broadcasting is the provision and transmission for the general public of presentations of all kinds of speech, sound and picture, using electromagnetic oscillations without junction lines or along or by means of a conductor. The definition includes presentations which are transmitted in encoded form or can be received for a special payment, as well as broadcast videotext.

(2) For the purposes of this Agreement

1. full programme means a programme service of varied content in which information, education, advice and entertainment constitute a major part of the overall output;
2. specialised programme means a programme service whose contents are basically of the same kind;
3. satellite window programme means a programme service of limited duration which is broadcast nationwide within the framework of a broader-ranging programme service (main programme);
4. regional programme means a programme service of limited duration and extent with a mainly regional content and broadcast within the framework of a main programme.

Article 3 Prohibited broadcasts, protection of young persons

(1) Broadcasts shall be prohibited if they

1. arouse hatred against segments of the population or national, racial, religious or ethnic groups, encourage violent or arbitrary action against them or attack the human dignity of others by insulting segments of the population or any of the aforementioned groups or by maliciously degrading or defaming them (Penal Code, Section 130),
2. depict cruel or otherwise inhumane acts of violence otherwise inhumane acts of violence against persons in such a way as to glorify or trivialise such acts of violence or depict their cruel or inhumane aspects in a manner which constitutes a violation of human dignity (Penal Code, Section 131),
3. glorify war,
4. are pornographic (Penal Code, Section 184),
5. are obviously capable of seriously endangering the morals of children or adolescents,
6. portray people who are dying or who are or were exposed to severe physical or mental suffering in a manner which constitutes a violation of human dignity and show a real occurrence without any predominant, legitimate interest in especially this form of reporting; consent is irrelevant.

(2) Broadcasts that are capable of endangering the physical, mental or emotional well-being of children or adolescents may not be transmitted unless the broadcaster takes steps to ensure, through the timing of the broadcast or in some other manner, that children or adolescents in the age groups concerned will not normally see or hear the programmes in question; the broadcaster may assume this to be the case for broadcasts between 11.00 p.m. and 6.00 a.m. In choosing the time to broadcast films which, under the Protection of Young Persons in Public Act are not to be made accessible to children and adolescents under the age of twelve, consideration shall be given to the well-being of younger children. Films which, under the Protection of Young Persons in Public Act, are not to be made accessible to children and adolescents under the age of 16 may only be broadcast between 10.00 p.m. and 6.00 a.m., and films not approved for adolescents under 18 only between 11.00 p.m. and 6.00 a.m.

(3) Broadcasts whose contents are completely or basically the same as publications included in the list pursuant to Section 1 of the Dissemination of Publications Harmful to Young Persons Act shall be permissible only between 11.00 p.m. and 6.00 a.m., and only if the possible moral endangerment of children and adolescents, taking all circumstances into account, cannot be considered serious. The reasons for any such decision to broadcast shall be put down in writing before the transmission and, upon request, communicated to the supervisory authority responsible under state law for private broadcasters in the case of the state public service broadcasting corporations forming the ARD (Association of German Public Service Broadcasting Corporations) and in the case of the ZDF (German Television Channel II) to the responsible body.

(4) Programmes which, pursuant to the provisions of paragraphs 2 or 3, may not be broadcast at certain times may be announced with moving pictures only within those restricted times.

(5) The state public service broadcasting corporations forming the ARD, and the ZDF, as well as the supervisory authorities for private broadcasters may either in guidelines or individual cases allow exceptions from the time limits under paragraph 2, third sentence, and paragraph 3, first sentence, and deviate from the classification under paragraph 2, third sentence, and paragraph 3, first sentence; in the case of paragraph 2, third sentence, this applies especially to films whose classification is more than 15 years old. In guidelines or individual cases they may also impose time limits with regard to films to which the Protection of Young Persons in Public Act does not apply or which, pursuant to the Act, are approved for adolescents under 16 years of age in order to allow for the special circumstances of films transmitted by television, especially television series.

(6) In making their decisions the state supervisory authorities for private broadcasters shall take account of programme assessments by voluntary self-regulating bodies, especially where they concern protection for young persons.

Article 4 Commissioners for the protection of young persons

The state public service broadcasting corporations forming the ARD, the ZDF, and all broadcasters of programmes which are transmitted nationwide shall each designate a commissioner for the protection of young persons. The commissioner shall have the qualifications necessary for the fulfilment of his tasks. He shall not be under instructions in applying his professional experience. He shall advise the director general or other persons responsible for programming on all matters concerning protection of young persons. His opinion shall be adequately taken into account on all matters relating to the acquisition, production, scheduling and structuring of programmes. The commissioners for the protection of young persons shall exchange information on a regular basis.

Article 5 Short coverage

- (1) Every licensed television broadcaster in Europe is entitled to short coverage free of charge for his own broadcasting purposes of functions and events which are open to the public and of general interest. This includes access, the right to make short, direct transmissions and recordings, the right to use the material to prepare a single report, and the right to transmit under the conditions set out in paragraphs 2 to 11.
- (2) All other statutory provisions, in particular those protecting copyright and the right to personal privacy, shall remain unaffected.
- (3) Paragraph 1 shall not apply to churches and other religious communities or their institutions which carry out similar functions.
- (4) Short coverage free of charge is restricted to news-type reporting which is appropriate to the occasion. The permissible duration shall be the length of time needed to convey the news content of the function or event. In the case of functions of a similar nature recurring at short, regular intervals the upper time limit shall normally be one and a half minutes. Where brief reports on functions of a similar nature are summarised their news character must be preserved in such cases also.
- (5) The right to short coverage must be exercised in such a way that avoidable disturbances to functions or events do not occur. The organiser may restrict or exclude a transmission or recording where it can be assumed that the function would be jeopardised or the moral sensibilities of those present grossly offended. The right to short coverage is excluded where considerations of public safety and order prevail over the public interest in the information. The organiser's right to totally exclude the transmission or recording of a function shall otherwise remain unaffected.
- (6) The organiser may demand payment of the admission fee usually charged in return for the right to short coverage; in addition, he must be reimbursed for any necessary expense incurred as a result of the exercise of that right.
- (7) Before exercising the right to short coverage the television broadcaster shall notify the organiser at the latest ten days prior to the function's commencement. The latter shall inform the television broadcaster at the latest five days prior to the function's commencement whether sufficient space and technical facilities are available for the transmission or recording. Notice shall be given as soon as possible in the case of functions and events planned at short notice.
- (8) If the available space and technical facilities are insufficient to cater for all who have given notice of their intention to attend, those television broadcasters who have made contractual agreements with the organiser or sponsor of the event shall be given preference. Furthermore, the organiser or sponsor has the right to choose. In exercising that right those television broadcasters who can guarantee comprehensive coverage for the state in which the function or event is being held shall be considered first.
- (9) Television broadcasters able to exercise gratuitous short coverage rights are obliged to make the signal and the recording immediately available to those television broadcasters who could not be permitted to attend, in return for reimbursement of reasonable costs.

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

(11) Parts of the material not used for the short coverage shall be destroyed at the latest three months after the end of the function or event; the organiser or sponsor of the event shall be notified of the destruction in writing. The time limit shall be interrupted as a result of the exercise of legitimate rights by third parties.

Article 6 European, own, commissioned and joint productions

(1) In order to present the diversity of the German-speaking regions and of Europe as a whole and to promote European film and television productions, television broadcasters shall reserve the greater part of total time scheduled for the transmission of feature films, television plays, series, documentaries and comparable productions for European works in accordance with European law.

(2) A significant proportion of full television programmes shall be own, commissioned and joint productions from the German-speaking regions and Europe as a whole. The same shall apply to specialised television programmes to the extent that their main focus allows.

Article 7 Advertising content, identification

(1) Advertisements shall not be misleading and shall not prejudice the interests of consumers, nor may they encourage behaviour which endangers the health or safety of consumers or poses a threat to the environment. Advertisements also addressed to or using children or adolescents may not prejudice their interests or exploit their inexperience.

(2) The advertisement or advertiser may not exercise any editorial influence over the content of programmes.

(3) Advertisements must be clearly distinguishable as such. On television they must be clearly separated from other programme items by optical means and on sound radio by acoustic means. Advertisements may not use subliminal techniques.

(4) Commercial broadcasts of greater length shall be allowed if their advertising character clearly predominates and advertising constitutes a substantial part of the broadcast. Commercial broadcasts must be announced as such when they begin and remain so distinguishable throughout. The first and second sentences shall apply *mutatis mutandis* to forms of advertisements within the meaning of Article 45, paragraph 3.

(5) Surreptitious advertising shall not be allowed. Surreptitious advertising is the reference to or presentation of goods, services, names, trademarks or activities of a manufacturer of goods or of a supplier of services in programmes when such reference or presentation serves advertising purposes and can mislead the general public as to the real purpose. A reference or presentation shall be regarded as serving advertising purposes especially where it is made for remuneration or other consideration.

(6) Television advertisements may not feature persons regularly presenting news or current affairs programmes.

(7) Advertisements of a political, ideological or religious nature shall not be allowed. Article 42 shall remain unaffected.

Article 8 Sponsorship

(1) Sponsorship is the contribution by a natural or legal person or an association of persons not engaged in broadcasting activities or in the production of audiovisual works to the direct or indirect financing of a broadcast for the purpose of promoting the name, trademark, image, activities or services of the person concerned.

(2) In the case of wholly or partially sponsored programmes a clear and reasonably brief reference to the sponsor's financing must be made at the beginning and at the end of the programme; the reference may in this framework also be made in the form of moving images. In addition to or instead of the sponsor's name the company logo may be faded in.

(3) The content and scheduling of a sponsored programme shall not be influenced by the sponsor in such a way as to prejudice the broadcaster's responsibility and editorial independence.

(4) Sponsored programmes shall not encourage the sale, purchase, rent or lease of products or services of the sponsor or a third party, in particular by making special promotional references to them.

(5) Any person who is not allowed under this law or pursuant to other statutory provisions to advertise or who is mainly involved in the manufacture and sale of products or provides services the advertising of which is prohibited under this law or pursuant to other statutory provisions shall not sponsor programmes.

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

Article 9 Duty to provide information, competent authorities

(1) Pursuant to Article 6, paragraph 2, of the European Convention on Transfrontier Television, the state public service broadcasting corporations shall be obliged upon request to make available to the competent authority under state law the information specified in that provision. The same shall apply to private television broadcasters who must make the information available upon request to the supervisory authority for private broadcasters of the state in which the licence was awarded. That authority shall pass the information on to the authority which supervises the legality of its measures.

(2) The minister presidents of the states shall designate one or more of the authorities referred to in paragraph 1 to meet the requirements of Article 19, paragraphs 2 and 3, of the European Convention on Transfrontier Television. The competent authorities of the individual states shall provide the authority or authorities thus designated with all the information they need in order to carry out their responsibilities.

(3) Paragraphs 1 and 2 shall apply *mutatis mutandis* in so far as the states are legally bound to report on broadcasting to intergovernmental institutions or international organisations.

Article 10 Opinion surveys

Reports on any opinion surveys conducted by broadcasters must expressly indicate whether they are representative.

Section II: Provisions on Public Service Broadcasting

Article 11 Funding commensurate with function, principle of financial equalisation

(1) Public service broadcasting shall be funded in such a way that it is able to meet its constitutional and statutory responsibilities; in particular the funding shall be sufficient to safeguard the existence and development of public service broadcasting.

(2) Financial equalisation among the state public service broadcasting corporations shall form part of the ARD's funding system; in particular it shall ensure that the Saarländischer Rundfunk, Radio Bremen and Sender Freies Berlin corporations are able to meet their responsibilities in a way commensurate with their function. The size of the financial equalisation fund and its adjustment in the light of the television and radio licence fee shall be determined pursuant to the Agreement on Funding.

Article 12 Funding

(1) Public service broadcasting shall finance itself through television and radio licence fees, income from television and radio advertising and other income; the main source of income shall be the television and radio licence fee.

(2) The possession of a serviceable radio or television set in itself renders the holder liable to pay the licence fee.

Article 13 Financial requirements of public service broadcasting

1) The financial requirements of public service broadcasting shall be regularly reviewed by the independent commission appointed to review the financial requirements of the broadcasting corporations (KEF) on the basis of the requirement estimates of the state public broadcasting corporations forming the ARD, the ZDF, and the public corporation "Deutschlandradio" (Radio Germany) and with the principles of economic efficiency, making allowance for possible rationalisation measures.

(2) The financial requirements shall be reviewed on the basis of the following criteria:

1. the continuation on a competitive basis of the existing radio and television programmes as well as the television programmes licensed under agreements among all the states (requirements based on existing programmes),
2. new radio and television programmes permissible under state law, participation in new broadcasting technology used in the production and transmission of such programmes, as well as the possible adoption of new forms of broadcasting (development requirements),
3. the cost trend in general and in the media sector in particular,
4. the situation with regard to income from licence fees, advertising and other sources.

(3) In reviewing the financial requirements a high degree of objectivity shall be sought.

(4) The licence fee shall be determined by means of an Inter-State Agreement.

Article 14 Insertion of advertisements

(1) Broadcasts of religious services or children's programmes shall not be interrupted by advertisements.

(2) Television advertisements shall be inserted in blocks and between programmes; they may also be inserted during programmes subject to the conditions contained in paragraphs 3 and 4 provided that the integrity and character of the programmes are not prejudiced.

(3) Television programmes of more than forty-five minutes duration may be interrupted once by advertisements; this shall also apply where the programme is divided into autonomous parts. In the case of broadcasts of events and performances containing intervals, advertisements shall only be inserted between the parts or in the intervals.

(4) In the case of broadcasts of sporting events which contain intervals, advertisements shall, notwithstanding the provisions of paragraph 3, first sentence, only be shown during the intervals.

(5) Where advertisements in a television programme are specifically and with some frequency directed to audiences in another country which has ratified the European Convention on Transfrontier Television but which is not a member of the European Community, the television advertising rules in that country shall not be circumvented. The first sentence shall not apply where the provisions of this Agreement relating to advertising are stricter than the corresponding rules in the country concerned, nor where agreements in this area have been concluded with that country.

Article 15 Duration of advertising

(1) The annual average for the entire duration of advertising on German Television Channel I (ARD) and on German Television Channel II (ZDF) shall in each case not exceed twenty minutes on working days. Advertising time which has not been completely used up may be made up for up to a maximum of five minutes on working days. Advertisements shall not be broadcast after 8.00 p.m. nor on Sundays or on public holidays which are observed throughout the country. Article 17 shall remain unaffected.

(2) There shall be no advertising on other nationwide television programmes of the ARD and the ZDF or on programmes of German Television Channel III. Article 19, paragraph 4, shall remain unaffected.

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

(4) The states are entitled to authorise the state public service broadcasting corporations to allocate an annual average of up to ninety minutes sound radio advertising time per working day; differences in the amount of advertising and the daily time limits which existed between the states on 1 January 1987 may be retained.

Article 16 Guidelines

The state public service broadcasting corporations forming the ARD, and the ZDF, shall issue guidelines for the implementation of Articles 3, 7, 8, 14 and 15. They shall for this purpose consult the supervision authorities for private broadcasters and exchange information with them on their respective experience in the application of the guidelines.

Article 17 Advertising changes

The states may agree to change the entire duration of advertising, the daily time limits for advertising, and the restriction of advertising in public service transmissions to workdays.

Article 18 Exclusion of teleshopping

Advertisements in the form of direct offers to the public for the sale, purchase or rental of products or for the provision of services (teleshopping) are excluded from public broadcasting.

Article 19 Satellite television service for the ARD and the ZDF

(1) The state public service broadcasting corporations forming the ARD may together operate an additional television programme service with a cultural emphasis via satellite; foreign broadcasters, especially from European countries, may take part. Any additional transmissions using other means shall be governed by state law.

(2) Furthermore, the state public service broadcasting corporations forming the ARD and the ZDF, may together broadcast two additional specialised television programmes via satellite.

(3) Additional television programme services jointly transmitted nationwide by the state public service broadcasting corporations forming the ARD and the ZDF shall be permissible only on the basis of special agreements among all the states.

(4) Within the framework of their mandate to provide programme services the state public service broadcasting corporations forming the ARD, and the ZDF, may separately or jointly present programmes transmitted internationally together with foreign broadcasters or enterprises or they may acquire an interest in the broadcaster of such programmes if

1. such programmes can be received nationwide and do not contain any advertisements which are directed exclusively at the Federal Republic of Germany,
2. the joint interest of the ARD and the ZDF in the programme or in the programme and capital of the broadcaster does not exceed 50 per cent.

The state public service broadcasting corporations forming the ARD, and the ZDF, shall hold an interest in the European Television Culture Channel. An interest in other programme services pursuant to the first sentence of this paragraph may only be acquired where the minister presidents conclude an agreement to this effect.

(5) Insofar as this Agreement does not provide otherwise, the provisions relating to the state public service broadcasting corporations forming the ARD and to the ZDF shall apply *mutatis mutandis* to their programme services pursuant to paragraphs 1, 2 and 4.

Section III: Provisions on Private Broadcasting

Subsection 1: Licensing and procedural rules

Article 20 Licensing

(1) Private broadcasters shall require a licence in accordance with state law. The licence for broadcasters of nationwide programmes shall define the programme category in accordance with Article 2, paragraph 2.

(2) If and to the extent that media services fall into the category of broadcasting the providers of such services shall require a licence under state law. If the state supervisory authority for private

broadcasters, in agreement with all supervisory authorities, finds this to be the case the provider must, within six months of being notified, apply for a licence or provide the service in such a way that it does not fall into the category of broadcasting. Providers of media services are entitled to seek confirmation from the supervisory authority that they are acceptable under broadcasting law.

(3) A simplified licensing procedure may be provided for under state law where programmes are

1. presented and transmitted in the area where a public function is being held and within a close time span or

2. offered to establishments or institutions, provided the latter use them for the same purposes and they can be received exclusively by them and relate to their function.

Advertising shall not be permissible in programmes pursuant to No. 2 of the first sentence.

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

Article 21 Licensing principles

(1) The applicant shall furnish all information and documents needed for consideration of his application.

(2) The obligation to furnish information and documents covers in particular

1. a description of the direct and indirect holdings in the applicant within the meaning of Article 28 and of the capital and voting relationships in the applicant and connected companies within the meaning of the Companies Act,

2. information about relatives within the meaning of Article 15 of the Tax Code among the parties referred to in sub-paragraph 1; the same shall apply to representatives of the person or partnership or of a member of an organ of a juridical person,

3. the articles of association and statutory regulations of the applicant,

4. agreements existing directly or indirectly among the parties with holdings in the applicant within the meaning of Article 28 and relating to joint broadcasting as well as trustee relationships and relationships pursuant to Articles 26 and 28,

5. a written statement from the applicant that the information and documents furnished pursuant to sub-paragraphs 1 to 4 are complete.

(3) Should a matter which relates to events which lie outside the purview of this Inter-State Agreement be relevant to the licensing procedure the applicant must provide an explanation and the necessary evidence. In doing so he must exhaust all his legal and actual possibilities. The applicant may not claim that he is unable to provide an explanation or evidence if, judging by the nature of the case, he would have been able to have given himself or acquired the possibility to do so when forming his relationships.

(4) The obligations pursuant to paragraphs 1 to 3 shall apply *mutatis mutandis* to natural and juridical persons or partnerships who have a direct or indirect interest in the applicant within the meaning of Article 28 or who are a company connected with him or who may exercise an influence on him in some other way within the meaning of Articles 26 and 28.

(5) If the person or company required to furnish information or documents fails to meet his obligations under paragraphs 1 to 4 within a time limit fixed by the state supervisory authority for private broadcasters the application for a licence may be refused.

(6) Those required to furnish information and submit documents under the licensing procedure must notify the state supervisory authority for private broadcasters without delay about any change of circumstances which may have occurred since the application was submitted or the licence was issued. Paragraphs 1 to 5 shall apply mutatis mutandis. Article 29 shall remain unaffected.

(7) Notwithstanding any other notification obligations, the broadcaster and the parties with a direct or indirect holding within the meaning of Article 28 shall be required to submit a statement to the state supervisory authority for private broadcasters immediately upon the expiry of the calendar year indicating whether and to what extent within that calendar year any significant change has been made in the participation or programme attribution arrangements as described in Article 28.

Article 22 Information and investigation

(1) The state supervisory authority for private broadcasters may carry out all investigations and obtain all evidence necessary to perform its tasks pursuant to Articles 26 to 34. It shall avail itself of evidence which, in exercising its official discretion, it deems necessary to establish the facts. It may in particular

1. obtain information,
2. hear the views of the parties within the meaning of Section 13 of the Administrative Procedure Act, question witnesses and experts or obtain written statements from the parties, experts and witnesses,
3. demand relevant documents and files,
4. visit the premises of those concerned.

Persons other than those involved shall not be called upon to furnish information unless the information provided by the latter is deemed inadequate.

(2) Witnesses and experts shall be obliged to make oral statements or submit reports. The provisions of the Code of Civil Procedure relating to the obligation of witnesses to make statements or of experts to submit reports, the rejection of experts or the questioning of members of the public service as witnesses or experts, shall apply mutatis mutandis. Witnesses and experts shall receive recompense in accordance with the Witnesses and Experts (Recompense) Act.

(3) In order to lend credibility to the completeness and correctness of the information furnished the state supervisory authority for private broadcasters may demand an affidavit from those required to furnish information and submit documents under Article 21, paragraphs 1 and 4. An affidavit shall only be required if other means of establishing the truth are not available, have proved unsatisfactory, or would require a disproportionate amount of time and effort.

(4) The persons charged by the state supervisory authority for private broadcasters to perform the tasks ensuing from Articles 26 to 34 may enter the premises of the persons and partnerships referred to in Article 21, paragraphs 1, 3 and 4, during normal business and working hours and inspect the records and documents mentioned in paragraph 5 of this Article. The basic right established by Article 13 of the Basic Law shall to that extent be restricted.

(5) The persons or partnerships referred to in Article 21, paragraphs 1, 3 and 4, shall upon request make available records, books, business papers and other documents which may have some bearing on the application of Articles 26 to 34, give information and provide any assistance otherwise needed to carry out the measures provided for in paragraph 4. They may not take any steps which may impede those measures.

(6) Those required to furnish information may refuse to answer questions to replies to which would expose themselves or one of the relatives referred to in Article 383 (1), Nos. 1 to 3, of the Code of Civil Procedure to criminal prosecution or proceedings in accordance with the Finable Offences Act.

(7) Searches may only be made on the strength of an order from the magistrate in whose district the search is to be carried out. If there is danger in delay the persons referred to in paragraph 4 may carry out the necessary searches during business hours without a judicial warrant. A record shall be made at the place of search which contains the reasons for as well as the time and place of the search and its outcome which shall also indicate, where no judicial warrant has been issued, the facts which led to the assumption that any delay would be dangerous.

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

Article 23 Public disclosure and similar requirements

(1) Every broadcaster, irrespective of his legal form, shall in accordance with the provisions of the Commercial Code applying to large corporations draw up and publish an annual statement of accounts and appendix as well as a situation report by the end of the ninth month following the end of the financial year. The first sentence shall also apply *mutatis mutandis* to parties with a direct holding in the broadcaster to whom the latter's programme is attributable pursuant to Article 28, paragraph 1, first sentence, and parties with an indirect holding to whom the programme is attributable pursuant to Article 28, paragraph 1, second sentence.

(2) Within the same time limit the broadcaster shall submit to the state supervisory authority for private broadcasters a list of the programme sources for the period covered by the report.

Article 24 Confidentiality

Information on the personal or material circumstances of a natural or juridical person or a partnership or business secrets which are entrusted to the state supervisory authorities for private broadcasters, their organs, staff or third persons acting on their behalf in carrying out their responsibilities or which have become known to them in some other way may not be disclosed to unauthorized persons. Article 46, paragraph 9, of the Prevention of Restrictions on Competition Act shall apply *mutatis mutandis*. Where personal data are processed the data protection provisions of state law shall apply.

Subsection 2: Ensuring plurality of opinion

Article 25 Plurality of opinion, regional windows

(1) The content of private broadcasting must generally indicate a plurality of opinion. Important political, ideological and social groups shall be given adequate opportunity to express themselves in the full programme services; minority views shall be taken into account. It shall remain possible to offer specialised programmes.

(2) A single programme shall not influence public opinion in a largely imbalanced way.

(3) During the licensing procedure the supervisory authorities for private broadcasters shall seek to ensure that interested parties providing cultural contributions to programmes are able to acquire an interest in the broadcaster. No legal right to acquire such interest exists.

(4) Full television programmes which are transmitted nationwide by terrestrial means shall include window programmes in accordance with the provisions of state law. The broadcaster shall guarantee the organisation and financing of the window programmes. The supervisory authorities for private broadcasters shall coordinate the scheduling and technical organisation of the window programmes taking into account the interests of the broadcasters affected.

Article 26 Ensuring plurality of opinion in television

(1) A company (natural or juridical person or association) may itself or through companies attributable to it broadcast nationwide in the Federal Republic of Germany an unlimited number of television programme, unless it is thereby able to exercise a controlling influence in the manner described in the following provisions.

(2) If the programmes attributable to one company achieve an average annual viewer rating of 30 per cent it shall be assumed that it has a controlling influence. The same shall apply if the rating is only slightly less than that proportion where the company holds a dominant position in a related, media-relevant market or an overall assessment of its activities in television and in related, media-relevant markets concludes that the influence obtained as a result of those activities is equivalent to that of a company with a viewer rating of 30 per cent.

(3) If a company is able to exercise a controlling influence with the programmes attributable to it no licence may be issued for further programmes attributable to that company, nor may the acquisition of further attributable holdings in broadcasters be declared as acceptable.

(4) If a company has acquired a controlling influence with the programmes attributable to it the state supervisory authority for private broadcasters shall, through the Commission on Concentration in the Media (KEK, Article 35, paragraph 2, first sentence, No. 1), propose the following measures to the company:

1. The company may relinquish attributable holdings in broadcasters until the attributable viewer rating falls below the level stated in paragraph 2, first sentence, or
2. it may, in the case defined in paragraph 2, second sentence, reduce its market position to related, media-relevant markets or relinquish attributable holdings in broadcasters until it no longer exercises a controlling influence within the meaning of paragraph (2), second sentence, or
3. it may with regard to attributable broadcasters resort to the measures referred to in Articles 30 to 32 in order to secure plurality of opinion.

The KEK shall discuss the possible measures with the company in order to reach agreement. If no agreement is reached or the measures which the company and the KEK have agreed upon are not implemented within a reasonable period of time the state supervisory authority for private broadcasters may, after the KEK has established the facts, revoke as many of the programmes attributable to the company as necessary to ensure that the company no longer exercises a controlling influence. The KEK shall select the programmes to be revoked after considering the special circumstances of each case. No compensation shall be granted for any financial loss resulting from the revocation of the licence.

(5) If a broadcaster achieves with a full programme or an information-oriented specialized programme an annual average viewer rating of 10 per cent he must within six months after the establishment of this fact and after being informed by the state supervisory authority for private

broadcasters allocate transmission time to independent third parties pursuant to Article 31. If the broadcaster fails to carry out the prescribed measures the licence shall be revoked by the supervisory authority after the facts have been established by the KEK. Paragraph 4, fifth sentence, shall apply *mutatis mutandis*.

(6) The state supervisory authorities for private broadcasters shall together publish a KEK report every three years or upon the request of the states on the situation with regard to media concentration and on measures to secure plurality of opinion in the private broadcasting sector, taking into account

1. the interpenetration of television and related, media-relevant markets,
2. the horizontal interpenetration of broadcasters in different transmission areas, and
3. international interpenetration in the media sector.

The report shall also comment on the application of Articles 26 to 32 and on any necessity for change in these provisions.

(7) The state supervisory authorities for private broadcasters shall publish an annual list of programmes to be drawn up by the KEK. The list of programmes shall contain all programmes, their broadcasters and interest-holders.

Article 27 Viewer ratings

(1) The state supervisory authorities for private broadcasters shall ascertain through the KEK the viewer rating of each programme, taking into account all German language programmes transmitted by the public service broadcasting authorities and private broadcasters which can be received nationwide. Decisions shall be based on the average viewer rating of the programmes affected in the twelve months prior to the commencement of the procedure.

(2) The supervisory authorities for private broadcasters shall, on the basis of a decision by the KEK, contract a company to establish the viewer ratings; the contract shall be awarded by tender in accordance with the principles of sound management and economy. The results must be obtained by means of representative surveys among viewers from the age of three using generally accepted scientific methods. The supervisory authorities for private broadcasters shall reach agreement with the company to the effect that the data acquired in establishing viewer ratings pursuant to paragraph 1, first sentence, may also be used by third parties on a contractual basis. In that event the costs accruing to the supervisory authorities shall be reduced accordingly.

(3) The broadcasters shall be obliged to assist in establishing the viewer ratings. Should a broadcaster fail to comply with this obligation his licence may be revoked.

Article 28 Attribution of programmes

(1) All programmes shall be attributable to a company which are broadcast by itself or by another company in which it has a direct holding of 25 per cent or more of that company's capital or voting rights. Also attributable to that company shall be all programmes of companies in which it has an indirect holding in so far as those companies are connected with it within the meaning of Article 15 of the Companies Act and hold at least 25 per cent of the capital or voting rights of a broadcaster. The companies linked with one another within the meaning of the first and second sentences shall be treated as a single company and their shares in the capital or in the voting rights shall be combined. If as a result of an agreement or otherwise several companies cooperate in such a way that they are together able to exert a controlling influence on a holding company each of them shall be regarded as a controlling company.

(2) A holding as described in the first paragraph shall be considered to exist if a company either alone or together with others is able to exercise a comparable influence on a broadcaster. A comparable influence shall also be considered to exist where a company or a company already attributable to it for other reasons pursuant to paragraph 1 or paragraph 2

1. regularly fills a significant proportion of the transmission time of a broadcaster with programme parts provided by it or

2. holds a position by virtue of a contractual relationship or articles of association or on any other grounds which makes the fundamental decisions of a broadcaster as to programming or programme purchase or production subject to its approval.

(3) The attribution of programmes in accordance with paragraphs 1 and 2 shall also apply to companies whose registered offices are situated outside the sphere of application of this Agreement.

(4) In considering and assessing comparable influences on a broadcaster account shall also be taken of existing family relationships. The principles of economic and tax law shall apply.

Article 29 Changes in the ownership structure

Any proposed change in the ownership structure or other influences shall be reported to the state supervisory authority for private broadcasters in advance. Those required to report this information are the broadcaster and those with a direct or indirect holding within the meaning of Article 28. The state supervisory authority may only declare such changes to be acceptable if a licence could still be issued in the changed circumstances. If a proposed change is carried out which cannot be declared acceptable in accordance with the third sentence the licence shall be revoked; the details of the revocation procedure shall be governed by state law. The KEK may issue directives providing for exemptions from the obligation to report changes where only minor holdings in corporations are involved.

Article 30 Measures ensuring plurality

Where the aforementioned provisions relate to measures by a broadcaster or company to ensure plurality they shall include:

1. the provision of transmission time for independent third parties (Article 31),
2. the appointment of an Advisory Council for Programming (Article 32).

Article 31 Transmission time for independent third parties

(1) A window programme which is broadcast by virtue of the obligation to provide transmission time in accordance with the aforementioned provisions must, without violating the programming autonomy of the principal broadcaster, make a further contribution to his programme's plurality, notably in the fields of culture, education and information. The window programme shall be editorially independent of the main programme.

(2) The duration of the window programme must be at least 260 minutes a week including at least 75 minutes in the transmission time between 7 p.m. and 11.30 p.m. Regional window programmes totalling no more than 150 minutes per week shall be counted towards the weekly transmission time but no more than 80 minutes per week towards the transmission time provided for third parties outside the transmission time mentioned in the first sentence; if the weekly transmission time for the regional window is less the 80 minutes counting towards the

transmission time for third parties shall be reduced accordingly. These periods may only be included if the regional window programmes are editorially independent and together reach at least 50 per cent of television households nationwide.

(3) The provider of a window programme pursuant to paragraph 1 may not be legally dependent upon the broadcaster of the main programme. Such legal dependence within the meaning of the first sentence shall be deemed to exist if the main programme and the window programme can be attributed to the same company pursuant to Article 28.

(4) If the broadcaster of a main programme is obliged to provide transmission time for independent third parties the state supervisory authority for private broadcasters shall, after discussing the matter with the broadcaster of the main programme, invite applications for a licence to broadcast the window programme. The supervisory authority shall examine whether the applications received are consistent with the provisions of this Inter-State Agreement and other provisions of state law and inform the broadcaster of the main programme which of them qualify for a licence. It shall discuss the applications with the broadcaster of the main programme in order to reach agreement on the choice of applicant. If they fail to agree and the supervisory authority has received more than three applications which qualify for a licence it shall, after considering three proposals from the broadcaster of the main programme, select the one whose programme is likely to make the largest possible contribution to the plurality of the main programme and issue the licence. If there are only three or fewer applications the supervisory authority shall make the decision without consultation.

(5) When an applicant for the window programme has been chosen pursuant to paragraph 4 the broadcaster of the main programme and the applicant shall conclude an agreement providing for the broadcasting of the window programme as part of the main programme. That agreement shall contain in particular the obligation on the part of the broadcaster of the main programme to enable the broadcaster of the window programme to adequately finance the programme. The agreement must also provide that it may only be denounced during the validity of the licence pursuant to paragraph 6 because of a serious violation of the agreement or for another important reason, subject to six months' notice.

(6) On the basis of an agreement concluded on the basis of paragraph 5 and providing for suitable conditions the broadcaster of the window programme shall be issued with a licence to broadcast the window programme by the state supervisory authority for private broadcasters. The licence of the broadcaster of the main and window programme shall contain the main obligations arising out of the agreement pursuant to paragraph 5 as an integral part of the licence. No compensation shall be granted for any pecuniary loss caused by the partial revocation of the licence of the broadcaster of the main programme. The licence for the broadcaster of the window programme shall be issued for a period of three years or until the date on which the licence of the broadcaster of the main programme expires.

Article 32 Advisory Council for Programming

(1) The Advisory Council for Programming shall advise the persons responsible for programming, the management of the programme broadcaster and the partners in the company on the shaping of the programme. The Advisory Council for Programming shall make proposals to help ensure opinion and programme plurality (Article 25). When the broadcaster establishes an Advisory Council for Programming the council's effective influence on the television programme shall be guaranteed by agreement or articles of association.

- (2) The members of the Advisory Council for Programming shall be appointed by the broadcaster. Their membership of different sections of society must as a whole be a guarantee that the main opinions in the community are represented.
- (3) The Advisory Council for Programming shall be informed by the management about all matters relating to the broadcast programme. Its opinion shall be sought on any major change in the programme's structure, content or schedule and at any hearings relating to programmes conducted by the state supervisory authority for private broadcasters and in the case of complaints about programmes.
- (4) The Advisory Council for Programming may in order to perform its functions demand information from and make complaints to the management with regard to the programme or individual contributions. The management must comment on enquiries and complaints within a reasonable period of time. If in the opinion of the Advisory Council for Programming it does not take adequate account of the enquiries and complaints it may seek a decision regarding the management from the supervisory body or, if no supervisory body exists, from the company meeting. The proposal of the Advisory Council for Programming may only be rejected by the company meeting or the supervisory body with a majority of 75 per cent of the votes cast.
- (5) Where a change is made in the programme's structure, content or schedule or a decision on complaints about the programme is made the agreement of the Advisory Council for Programming shall be obtained prior to the decision by the management. If it does not agree or if no comment on the matter is made within a reasonable period of time the management may only introduce the proposed measure with the approval of the supervisory body or, if no such body exists, the company meeting subject to a majority of 75 per cent of the votes cast. The broadcaster shall communicate the result after the matter has been considered by the Advisory Council for Programming or the decision brought about by the second sentence to the state supervisory authority for private broadcasters.
- (6) If the broadcaster intending to appoint an Advisory Council for Programming is a one-man company, paragraphs 4 and 5 shall apply on condition that the Advisory Council instead of the company meeting or the supervisory body may submit the matter to the state supervisory authority for private broadcasters via the management for decision.

Article 33 Guidelines

The state supervisory authorities for private broadcasters shall issue joint guidelines for the implementation of Articles 31 and 32. The guidelines relating to Article 32 shall include in particular details regarding the appointment and composition of the Advisory Council for Programming.

Article 34 Transitional provision

Until the viewer ratings have been initially determined pursuant to Article 27 the existing data on viewer ratings shall be used as a basis for assessing whether plurality of opinion is assured in connection with the nationwide broadcasting of television programmes. Broadcasters are obliged to make their data concerning viewer ratings available to the KEK upon request. The state supervisory authorities for private broadcasters shall, by applying the rules of administrative procedure and taking account of the interests of the parties concerned, ensure that measures which are introduced under this Agreement and are based on the data referred to in the first sentence can be adapted without delay to the factual and legal situation arising from the initial determination of viewer ratings in accordance with Article 27.

Subsection 3: Organisation of media supervision, financing of special tasks

Article 35 Supervisory activities to ensure plurality of opinion

(1) The state supervisory authority for private broadcasters shall examine before and after the licence is issued whether the provisions for ensuring plurality of opinion under this Agreement applying to private broadcasters have been complied with. It shall make the corresponding decisions in accordance with the provisions of this Agreement.

(2) The following bodies shall be established to perform the functions referred to in paragraph 1:

1. the Commission on Concentration in the Media (KEK) and
2. the Conference of Directors of the State Supervisory Authorities for Private Broadcasters (KDLM).

These bodies shall serve the respective state supervisory authority for private broadcasters in the fulfilment of its tasks pursuant to paragraph 1:

(3) The KEK shall consist of six broadcasting and business experts, three of whom must be qualified for office in the judiciary. The members of the KEK and two substitute members in case any member is absent for more than a temporary period shall be appointed unanimously by the state minister presidents for five years; they may be reappointed. Excluded from membership of the commission are members and staff of institutions of the European Union, the constitutional organs of the Federation and the states, members of the governing bodies and staff of the state public broadcasting corporations of the ARD, the ZDF, Deutschlandradio, the European television cultural affairs channel "ARTE", the state supervisory authorities for private broadcasters and of private broadcasters as well as employees of companies who have a direct or indirect holding in them within the meaning of Article 28.

(4) The KDLM shall be composed of the statutory representatives of the state supervisory authorities for private broadcasters who shall be ex officio members; they may be represented by their permanent deputies if they are unable to attend. They shall serve in an honorary capacity.

(5) The members of the KEK and the KDLM shall not be bound by instructions in fulfilling their responsibilities under this Agreement. The obligation not to divulge information pursuant to Article 24 shall also apply in the relationship between the members of the KEK and of the KDLM with other bodies of the state supervisory authorities for private broadcasters.

(6) KEK experts shall receive adequate remuneration for their work and be reimbursed for necessary expenditure. The state which currently holds the chairmanship of the Broadcasting Commission shall attend to contractual arrangements with the experts.

(7) The state supervisory authorities for private broadcasters shall provide the KEK with the necessary staff and resources. The KEK shall draw up an economic plan based on the principles of thrift and business efficiency. Expenditure for the KEK and the KDLM shall be met from the funds allocated to the state supervisory authorities for private broadcasters pursuant to Article 10 of the Agreement on Funding. Those involved in the procedure shall be required by the state supervisory authorities for private broadcasters to meet an adequate proportion of the costs. The details shall be the subject of an administrative agreement between the state supervisory authorities. The location of the secretariat of the KEK shall be unanimously decided by the minister presidents.

Article 36 Competency

(1) The KEK and pursuant to Article 37, paragraph 2, the KDLM shall judge whether plurality of opinion is assured in connection with the nationwide transmission of television programmes. In accordance with the first sentence they shall examine such questions in particular when deciding on a licence or a licence modification, declaring changes in ownership relationships to be acceptable, and with regard to measures pursuant to Article 26, paragraph 4. The KEK and the KDLM may apply the procedures envisaged in Articles 21 and 22 through the appropriate state supervisory authority for private broadcasters. The KEK shall establish the viewer ratings attributable to each of the companies.

(2) The choice and licensing of broadcasters of window programmes as well as programme supervision shall be the responsibility of the competent body of the state supervisory authority for private broadcasters concerned. The KEK shall be consulted prior to the selection and licensing of broadcasters of window programmes.

Article 37 Licensing and supervisory procedures

(1) If the state supervisory authority for private broadcasters receives a licence application from a private broadcaster which would not be rejected for reasons other than that of ensuring plurality of opinion the authority's statutory representative shall immediately submit the application, together with the supporting documents, to the KEK for its assessment as to whether plurality of opinion is assured. The KEK shall decide with a majority of its statutory members. It shall state the main factual and legal reasons for its decision. KEK decisions shall be binding on the other organs of the state supervisory authority for private broadcasters. They shall form the basis for the authority's decisions. Paragraph 2 shall remain unaffected.

(2) Should the licensing decision of the competent body of the state supervisory authority for private broadcasters differ from that of the KEK that body shall within a period of one month after the decision of the KEK refer the matter to the KDLM. Such referral may not be made by another state supervisory authority for private broadcasters. All documents required in connection with the application shall be submitted to the KDLM. If the KDLM does not make a different decision with a majority of three-quarters of its statutory members within a period of three months after the referral the decision of the KEK shall remain binding, otherwise the decision of the KDLM shall supersede the decision of the KEK.

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

(4) Any television broadcaster licensed to transmit nationwide programmes who is affected by the decision of the state supervisory authority for private broadcasters pursuant to Articles 35 and 36 may challenge that decision.

Article 38 Supervision in other matters

(1) The state supervisory authority for private broadcasters shall examine before and after the licence is issued whether the other provisions of this Agreement which apply to private broadcasters have been complied with. It shall make its decision in accordance with the appropriate provisions of state law.

(2) The state supervisory authorities for private broadcasters shall consult one another with a view to establishing a standard procedure for the application of paragraph 1. They shall establish joint offices for this purpose and for the preparation of decisions in individual cases. The state supervisory authorities shall cooperate in the planning and technical preparations.

(3) Each state supervisory authority for private broadcasters may complain within the context of paragraph 1 to the state authority in which the licence has been issued that a programme transmitted nationwide violates the other provisions of this Inter-State Agreement. The state authority concerned shall be obliged to consider the complaint and to inform the complaining state supervisory authority of any steps taken.

Article 39 Field of application

Articles 21 to 38 shall apply only to television programmes transmitted nationwide. State law may not make provision for any divergences. Decisions by the KEK and, pursuant to Article 37, paragraph 2, the KDLM shall also be taken as the basis in accordance with state law of decisions on the allocation of transmission capacities by the state supervisory authority for private broadcasters.

Article 40 Financing of special tasks

(1) An additional two per cent of the standard television and radio licence fee may be used to finance the following tasks:

1. the licensing and supervisory functions of the state supervisory authorities for private broadcasters, including the necessary planning and, in particular, technical preparations,
2. the promotion of open channels.

On the basis of a special authorization from the state legislature, funds from the share provided for in the first sentence may also be used until 31 December 2000 for the installation of the technical infrastructure required under state law for terrestrial transmissions covering the entire state and for the promotion of projects for the development of new broadcasting technology. Forms of non-commercial transmission of local and regional programmes may be promoted from the share referred to in the first sentence on the basis of a special authorization from the state legislature.

(2) The right of the state legislature to allocate to the state supervisory authority for private broadcasters only a proportion of the share pursuant to paragraph 1 shall remain unaffected.

(3) In so far as the share pursuant to paragraph 1 is not claimed, the state public service broadcasting corporations concerned shall be entitled to it. Its use may be determined by state law.

Subsection 4: Programming principles, transmission time for third parties

Article 41 Programming principles

(1) Programmes which are broadcast shall be subject to the requirements of the constitution. They shall respect the dignity of man as well as the moral, religious and political convictions of others. They shall promote solidarity in united Germany as well as international understanding. The provisions of general legislation and those protecting personal honour shall be complied with.

(2) Full programmes shall contribute an appropriate share of information, culture and education towards the presentation of cultural diversity in German-speaking regions and in Europe as a whole; the possibility of offering specialised programmes shall remain unaffected.

(3) Current affairs and information programmes shall be consistent with recognised journalistic principles. They shall be independent and objective. The accuracy and source of news must be checked with the care demanded by the circumstances prior to its transmission. Commentary must be clearly separated from reporting and be identified as such by naming the author.

(4) Paragraphs 1 to 3 shall only apply to nationwide broadcasts.

Article 42 Transmission time for third parties

(1) The Protestant Churches, the Catholic Church and the Jewish Community shall, upon request, be granted reasonable time for the transmission of religious programmes; the broadcaster may demand reimbursement for costs.

(2) Any political party taking part in elections for the German Bundestag shall, subject to cost reimbursement, be granted a reasonable amount of transmission time if at least one state list of candidates has been approved for that party. Furthermore, any party or other political association taking part in the election of candidates from the Federal Republic of Germany for the European Parliament is entitled to a reasonable amount of transmission time if at least one electoral list has been approved, subject to cost reimbursement.

(3) Paragraphs 1 and 2 shall only apply to nationwide private broadcasts.

Subsection 5: Funding, advertising

Article 43 Funding

Private broadcasters may finance their broadcasts through income from advertising and through other income, in particular from subscribers' contributions (subscription fees or individual payments), as well as from their own funds. Private broadcasters shall not be financed from television and radio licence fees. Section 40 shall remain unaffected.

Article 44 Insertion of advertisements

(1) The transmission of religious services and programmes for children may not be interrupted by advertisements.

(2) Television advertisements shall be inserted in blocks between programmes; provided the conditions contained in paragraphs 3 to 5 are fulfilled, advertisements may also be inserted during programmes in such a way that the integrity and value of the programme are not prejudiced.

(3) In television programmes consisting of autonomous parts, or in sports programmes and similarly structured events and performances which include intervals, advertisements shall only be inserted between the parts or in the intervals. In other programmes a period of at least twenty minutes must elapse between successive advertising breaks within the programme. Paragraphs 4 and 5 shall remain unaffected.

(4) Notwithstanding the second sentence of paragraph 3, works such as feature films and films made for television, excluding series, serials, light entertainment programmes and documentaries, provided their duration is more than forty-five minutes, may be interrupted once for each complete period of forty-five minutes. A further interruption shall be allowed if their duration is at least twenty minutes longer than two or more complete periods of forty-five minutes.

(5) Television news, current affairs programmes, documentaries and religious programmes, when their duration is less than thirty minutes, shall not be interrupted by advertisements. If they last for thirty minutes or longer the provisions of paragraphs 2 and 3 shall apply.

(6) If advertisements in a television programme are specifically and with some frequency directed to audiences in another country which has ratified the European Convention on Transfrontier Television but which is not a member of the European Community, the television advertising laws in that country shall not be circumvented. The first sentence shall not apply where the provisions of this Agreement relating to advertising are stricter than the provisions in the country concerned nor where an agreement in this area has been concluded with that country.

Article 45 Duration of advertisements

(1) The total amount of advertising shall not exceed 20%, spot advertising 15%, of the daily transmission time.

(2) The amount of spot advertising within a given one-hour period shall not exceed 20%.

(3) Forms of advertisements such as direct offers to the public for the sale, purchase or rental of products or for the provision of services shall not exceed one hour per day. Broadcasters shall not act as contracting parties or agents for goods or services.

Article 46 Guidelines

The state supervisory authorities for private broadcasters shall issue joint guidelines for the implementation of Articles 3, 7, 8, 44 and 45. In so doing they shall consult the state public service broadcasting corporations forming the ARD, and the ZDF, for the purpose of exchanging information on the application of these guidelines.

Subsection 6: Data protection, revision, finable offences

Article 47 Data protection

(1) To the extent that paragraphs 2 to 6 do not provide otherwise, the provisions applicable to the protection of personal data shall apply even if the data are not processed or used in a data file.

(2) Personal data regarding the reception of individual programmes may only be collected, processed and used to the extent and for as long as necessary in order to

1. arrange the call-up of programmes offered (connection data),

2. permit the accounting of charges which subscribers have to pay for the use of the technical facilities and programmes offered (accounting data).

(3) The storage of accounting data shall not indicate the time, duration, nature, content or frequency of the programmes received by individual subscribers unless the subscriber makes a written application for a detailed account of charges on the basis of programmes offered.

(4) Connection or accounting data may not be communicated to third parties. This does not apply to the communication of accounting data to a broadcaster for debt collection purposes in the event of non-payment after a reminder.

(5) Accounting data shall be deleted as soon as they are no longer needed for accounting purposes. Connection data shall be deleted after the ending of each connection.

(6) Anyone who collects, processes or uses connection or accounting data shall take the necessary technical and organisational measures to ensure that

1. pursuant to paragraph 5, second sentence, connection data are deleted immediately after the ending of the connection,
2. pursuant to paragraph 5, first sentence, accounting data are deleted,
3. a subscriber may only communicate data through an unmistakable and conscious act,
4. codes allocated for data protection purposes afford best-available technical protection against unauthorised use.

Article 48 Appeal to the Federal Administrative Court

In judicial proceedings an appeal may be made to the Federal Administrative Court *inter alia* on the ground that the judgement being contested was based on a violation of the provisions of this Agreement.

Article 49 Finable offences

(1) A private broadcaster who operates a nationwide system commits a finable offence if it, with intent or negligence,

1. transmits programmes in contravention of Article 3, paragraph 1 (1), which are prohibited because they violate Section 130 of the Penal Code,
2. transmits programmes in contravention of Article 3, paragraph 1 (2), which are prohibited because they violate Section 131 of the Penal Code,
3. transmits programmes in contravention of Article 3, paragraph 1 (3), which are prohibited because they glorify war,
4. transmits programmes in contravention of Article 3, paragraph 1 (4), which are prohibited because they violate Section 184 of the Penal Code,
5. transmits programmes in contravention of Article 3, paragraph 1 (5), which are prohibited because they are obviously liable to seriously damage the morals of children and adolescents,
6. transmits programmes in contravention of Article 3, paragraph 1 (6), which are prohibited because they portray people who are dying or are or were exposed to severe physical or mental suffering in a manner which constitutes a violation of human dignity and show a real occurrence without any predominant, legitimate interest in especially this form of reporting,
7. transmits programmes which are liable to endanger the physical, mental or emotional well-being of children or adolescents in contravention of Article 3, paragraph 2, first sentence, without taking steps to ensure, through the timing of the broadcasts or in some other manner, that children or adolescents in the age groups concerned will not normally see or hear the programmes in question,
8. transmits programmes in contravention of Article 3, paragraph 2, second and third sentences, or paragraph 3, first sentence, in the cases of Article 3, paragraph 2, third sentence or paragraph 3, first sentence, or paragraph 3, first sentence, without permission under Article 3, paragraph 5, from the competent authority under state law,

9. transmits programmes pursuant to Article 3, paragraph 3, first sentence, without stating in writing before the transmission the reasons that led to a classification which diverges from paragraph 3, first sentence, or, in contravention of Article 3, paragraph 3, second sentence, communicating to the supervisory authority for private broadcasters, on request, the reasons that led to a classification which diverges from Article 3, paragraph 3, first sentence,
10. broadcasts in contravention of Article 3, paragraph 2 or 3, announcements with moving images for programmes subject to transmission time restrictions pursuant to Article 3, paragraph 4, outside the restricted times,
11. fails to separate advertisements from other programme items in contravention of Article 7, paragraph 3, second sentence,
12. fails to indicate a commercial presentation of greater length in contravention of Article 7, paragraph 4, second sentence,
13. fails to identify the sponsor at the beginning and at the end of a sponsored programme in contravention of Article 8, paragraph 2, first sentence,
14. transmits prohibited sponsored programmes (Article 8, paragraph 5 or 6),
15. fails to make available information in contravention of Article 9, paragraph 1, second sentence,
16. broadcasts programmes without a licence in contravention of Article 20, paragraph 1, first sentence, or paragraph 2,
17. fails in contravention of Article 21, paragraph 6, to immediately notify the state supervisory authority for private broadcasters of any major change in its circumstances after applying for or receiving a licence; this shall also apply to other persons who are required to provide information and submit documents within the framework of the licensing procedure,
18. fails in contravention of Article 21, paragraph 7, to immediately notify the state supervisory authority for private broadcasters after one calendar year whether and to what extent a change has occurred within that calendar year in the situation with regard to holdings in the company and the attribution of programmes; this shall also apply to those with a direct or indirect holding in the broadcaster within the meaning of Article 28,
19. fails in contravention of Article 23, paragraph 1, to prepare and publish his annual statement of accounts with appendix and situation report within the time limit; this shall also apply to those with a direct or indirect holding in the broadcaster within the meaning of Article 28,
20. fails in contravention of Article 23, paragraph 2, to submit the list of programme sources to the state supervisory authority for private broadcasters within the time limit,
21. omits in contravention of Article 29, first sentence, to report any proposed changes; this shall also apply to those who have a direct or indirect holding in the broadcaster within the meaning of Article 28,
22. fails in contravention of Article 34, second sentence, to submit available data on viewer ratings at the request of the KEK,
23. interrupts religious services and programmes for children with advertisements in contravention of Article 44, paragraph 1,
fails in television programmes consisting of autonomous parts, or in sport programmes and similarly structured transmissions of events and performances which include intervals, to insert the advertisements between the autonomous parts or in the intervals in contravention of Article 44, paragraph 3, or
interrupts other programmes with advertisements in contravention of Article 44, paragraph 3, second sentence and paragraphs 4 and 5,
24. exceeds the permissible total amount of daily advertising time in contravention of Article 45, paragraph 1,
exceeds the permissible amount of spot advertising within a given one-hour period in contravention of Article 45, paragraph 2, or
acts as contracting partner or agent for goods and services in contravention of Article 45, paragraph 3, second sentence,

25. collects, processes or uses personal data beyond the permissible scope provided for in Article 47, paragraph 2,
communicates personal data in contravention of Article 47, paragraph 4, or
fails to delete personal data in contravention of Article 47, paragraph 5.
Other provisions under state law relating to administrative offences shall remain unaffected.

(2) Such offences shall incur a fine of up to DM 500,000.

(3) The competent administrative authority within the meaning of Section 36, paragraph 1 (1), of the Finable Offences Act is the supervisory authority for private broadcasters of the state in which the licence was issued or applied for. The competent administrative authority shall inform the other supervisory authorities for private broadcasters immediately if proceedings are instituted. Insofar as proceedings pursuant to this paragraph are instituted in several states the authorities involved shall decide which will continue the proceedings.

(4) The supervisory authority for private broadcasters which issued a licence to a broadcaster of nationwide transmitted programmes may require the broadcaster to publish in its programme any complaints in consequence of a contravention of the provisions of this Agreement and any final decisions following proceedings concerning a finable offence under paragraph 1. The wording and date of the publication shall be determined by the supervisory authorities for private broadcasters exercising due discretion. Paragraph 3, second and third sentences, shall apply *mutatis mutandis*.

Section IV: Transmission capacities

Article 50 Principle

The states shall decide on the allocation and usage of transmission capacities in accordance with this Agreement and the relevant state legislation.

Article 51 Allocation of satellite channels

(1) The states shall decide on the allocation of satellite channels for broadcasting purposes pursuant to the provisions of paragraphs 2 to 5.

(2) The minister presidents shall decide on allocations pursuant to paragraph 1 to the state public service broadcasting corporations forming the ARD for the transmission of a joint programme, and to the ZDF, as well as on allocations to states unless such allocations are the subject of inter-state agreements.

(3) Allocations shall be governed by the following principles in particular:

a) Available satellite channels shall be notified to the ARD, the ZDF, and a body to be determined by the supervisory authorities for private broadcasters.

b) If there are enough satellite channels to meet demand they shall be allocated accordingly.

c) If there are not enough satellite channels to meet demand the minister presidents shall seek a compromise between the parties involved; in the case of private sector broadcasting the parties involved are the supervisory authorities for private broadcasters.

d) If the parties involved are unable to reach a compromise the minister presidents shall allocate the channels in accordance with the following criteria:

- maintenance of a basic service,
- equal treatment for private broadcasters,

- participation of the public service broadcasting corporations in all new technology and programme forms,
- programme variety, and
- the number of satellite channels already allocated to a state.

(4) The chairman of the conference of minister presidents shall allocate the satellite channels as agreed among all minister presidents under paragraph 2.

(5) The minister presidents shall agree on rules of procedure for the implementation of paragraphs 2 to 4.

Article 52 Retransmission

(1) The simultaneous and unchanged retransmission of television programme services which can be received nationwide, are operated lawfully in Europe and are consistent with the provisions of the European Convention on Transfrontier Television, shall be authorised under state law within the limits of available technical capacities. The retransmission of television programmes may be restricted in conformity with European broadcasting regulations.

(2) Details, in particular the order of priority in allocating cable channels, shall be governed by state law.

Article 53 Freedom of access

(1) Providers of services with access rights who produce or market access services for television services must offer all broadcasters technical services on equal, suitable and non-discriminatory conditions which ensure that their television services can be received by viewers entitled to access with the aid of decoders which are managed by the providers of services.

(2) The obligation pursuant to paragraph 1 shall also apply mutatis mutandis to providers of systems who control the selection of television programmes and which are used as navigators for all services offered via that system.

(3) Providers of services pursuant to paragraphs 1 and 2 shall notify the state supervisory authority for private broadcasters when the service is to commence.

Section V: Transitional and Concluding Provisions

Article 54 Denunciation

(1) This Agreement shall remain in force indefinitely. It may be denounced by any of the contracting states subject to twelve months' notice from the end of the calendar year. Notice may be given for the first time as from 31 December 2000. If the Agreement is not denounced as from that date the same period of notice may be given every two years subsequently. The denunciation shall be made in writing to the chairman of the conference of minister presidents. If one state gives notice it may denounce with effect from the same date the Agreement on Television and Radio Licence Fees and the Agreement on Funding; every other state may thereupon likewise denounce the Agreement with effect from the same date within a period of six months after receipt of the notice of denunciation. These Agreements shall remain in force as between the other states.

(2) In case of denunciation the allocation of satellite channels shall remain in force as long as entitlements to those channels exist. In the case of denunciation by individual states Article 19 shall remain unaffected.

(3) Article 11, paragraph 2, may be denounced by any of the contracting states with effect from the end of the calendar year subject to twelve months' notice. It may be denounced for the first time with effect from 31 December 2000. If Article 11, paragraph 2, is not denounced with effect from that date the same period of notice may be given every two years. The denunciation shall be made in writing to the chairman of the conference of minister presidents. If one state denounces the agreement every state may within three months after receipt of the denunciation denounce the Agreement on Broadcasting, the Agreement on the ARD, the Agreement on the ZDF, the Agreement on the Public Corporation "Deutschlandradio", the Agreement on Funding and the Agreement on the Television and Radio Licence Fees with effect from the same date. The denunciation by one state shall not affect the denounced provisions of this Agreement and the agreements referred to in the first sentence in the relationship existing between the other states.

(4) Article 15, paragraphs 1, 2 and 4 may also be denounced separately subject to six months' notice with effect from the end of the calendar year which follows the determination of the financial requirements of public service broadcasting pursuant to Article 13 if the Agreement on Funding is not amended owing to an increase in the licence fee after the determination of financial requirements pursuant to Article 13. Notice may be given for the first time as from 31 December 2000. If Article 15, paragraphs 1, 2 and 4, are not denounced with effect from one of these dates the same period of notice may be given every two years later. The denunciation shall be made in writing to the chairman of the conference of minister presidents. If one state gives notice each state may denounce the Agreement on Television and Radio Licence Fees and the Agreement on Funding with effect from the same date within three months of receipt of the notice of denunciation. In this case each state may additionally give notice with effect from the same date within a further three months after receipt of the notice of denunciation pursuant to Article 12, paragraph 2, fifth sentence, as well as Articles 13 and 17 with regard to individual or all provisions. The provisions of this Agreement thus denounced and the Agreements referred to in the fifth sentence shall remain in force as between the other states.

Article 55 Rule for Bavaria

The Free State of Bavaria is entitled to make provision for a proportion of the licence fee pursuant to Article 40 to be used for the financing of tasks of the Bavarian State Agency for New Media under state law within the framework of public service broadcasting. In all other respects the provisions of this Agreement shall apply mutatis mutandis to private broadcasters under Bavarian law.

Article 2: Agreement on the ARD (Association of German Public Service Broadcasting Corporations)

...

Article 3: Agreement on the ZDF (German Television Channel II)

...

Article 4: Agreement on Licence Fees

...

Article 5: Agreement on Funding

...

Article 6: Agreement on Interactive Videotext

...

Article 7: Transitional Provision, Denunciation, Entry into Force

...

Article 8: Expiration

...

° [Top of Page](#) ¶ [Statutes](#) □ [Homepage](#) «« [Previous page](#)

The above translation was first published by Inter Nationes as part of: Broadcasting Law in Germany. Reproduced with kind permission. © 1996 Inter Nationes. This HTML edition © 1998 Gerhard Dannemann. The contents of this page may be downloaded and printed out in single copies for individual use only. Making multiple copies without permission is prohibited.