

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

www.medialaw.lu

Member State: France

Act relative to audio-visual communication and to the new television public service

Important Notice

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

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

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

Member State: France

Act number 2009-258 dated 5 March 2009 relative to audio-visual communication and to the new television public service

Official Journal: Journal Officiel de la République Française

The French National Assembly and the Senate have adopted,

With regard to the Constitutional Council's decision number 2009-577 DC dated 3 March 2009;

The President of the French Republic promulgates the Act, the terms of which are as follows:

Title III

Adaptation of various clauses of directive 89/552/EEC dated 3 October 1989, modified by directive 2007/65/EC dated 11 December 2007

Article 36

Article 2 of the aforementioned Act 86/1067 dated 30 September 1986 shall be altered as follows:

1. The third paragraph shall read as follows:

“Audio-visual communication is understood as any communication of radio or television services to the public, whatever may be the mode of distribution to the public, any communication of services other than radio and television services through electronic means that do not come under on-line communication to the public, pursuant to article 1 of Act 1004-575 dated 21 June 2004 on confidence in the digital economy, and any communication of on-demand audio-visual media services to the public”;

2. An added paragraph reads as follows:

“One considers as on-demand audio-visual media service, any communication service to the public through electronic means allowing users to view programmes at the time they have chosen and at their request, from a list of programmes; the selection and the organisation of which are controlled by the producer of the service. One excludes the services that do not come under an economic activity pursuant to article 256 A of the General Tax Code, the ones whose audio-visual content is of secondary importance, the ones consisting in providing or broadcasting audio-visual content created by private users for the purpose of sharing and exchanging within a community of interests, the ones consisting in ensuring, for distribution to the public by on-line communication services to the public, the storage alone of audio-visual signals provided by recipients of these services and the ones the audio-visual

content of which is selected and organised under the control of a third party. An offer composed of on-demand audio-visual media services and other services which do not come under audio-visual communication shall be subject to the present act only for its first part.”

Article 37

Article 3-1 of the aforementioned Act number 86-1067 dated 30 September 1986 shall be altered as follows:

1. In the first paragraph, the words: “as regards radio and television” shall be suppressed.
2. In the first sentence of the second paragraph, the words: “radio and television” are replaced by the words: “audio-visual communication”.
3. In the second sentence of the third paragraph, the words: “radio and television” are replaced by the words: “audio-visual communication”.
4. In the first sentence of the fourth paragraph, the words: "radio and television and to the producers of the services mentioned in article 30-5" are replaced by the words: “audio-visual communication”.

Article 38

In the first sentence of the first paragraph of article 12 of the aforementioned Act number 86-1067, dated 30 September 1986, the words: "radio and television" are replaced by the words: "audio-visual communication".

Article 39

The first paragraph of article 14 of the aforementioned Act number 86-1067 dated 30 September 1986 shall be altered as follows:

1. In the first sentence, the words: "national programme companies and by holders of authorisations issued by the" shall be suppressed;
2. An added sentence shall read as follows:

"One may take into account the self-regulation authorities' recommendations implemented in the advertising sector"

Article 40

After article 14 of the aforementioned Act number 86-1067, dated 30 September 1986, Article 14-1 shall read as follows: "Art 14-1 – the Higher Council for the audio-visual sector shall determine the conditions under which the programmes of audio-visual communication services, in particular music videos, may include product placement.

“The higher council for the audio-visual sector shall ensure that the programmes including product placement are in compliance with the following requirements:

"1. Their content and, in the case of television broadcasting, their programming shall not be influenced on any account so as to undermine the responsibility and the editorial independence of the producer of media services.

"2. They shall not incite the purchasing or the renting of the products or services of a third party and shall not in particular include any specific promotional references to these products or to these services.

"3. They shall not give undue prominence to the product in question.

"4. Television viewers shall be clearly informed of the presence of product placement. Programmes including product placement shall be identified appropriately at the beginning and at the end of their broadcasting and when a programme starts again after a commercial, so as to prevent television viewers becoming confused."

Article 41

Article 15 of the aforementioned Act number 86-1067 dated 30 September 1986 shall be altered as follows:

1. In the second and in the fourth paragraph, the words: "radio and television" are replaced by the words: "audio-visual communication"

2. The last sentence in the third paragraph shall be completed with the words: "and to the implementation of any means adapted to the nature of on-demand audio-visual media services".

Article 42

The third paragraph of article 17-1 of the aforementioned Act number 86-1067 dated 30 September 1986 shall be completed with a sentence that reads as follows:

"When a failure is noticed within the framework of the provisions of this article, the chairman of the higher council for the audio-visual sector may implement the procedure provided for in article 42-10 to ensure compliance with the obligations and principles mentioned in the first paragraph of this article".

Article 43

Before the 30 September 2009, the Government shall deliver to the Parliament a report about the improvement of the minor's protection as regards the contents that may harm them in leisure software, cinematographic works, video recordings, on-line communication services to the public and publications. This report shall present propositions for legislative change, considering particularly the possibility of calling a meeting of the existing administrative commissions on the subject. A monitoring Committee composed of two members of Parliament and two senators, appointed by their respective assembly shall give recommendations and may express their opinions on the recommendations in this report.

Article 44

In the first paragraph of article 20-1 of the aforementioned Act number 86-1067 dated 30 September 2007, the words: "radio or of television" are replaced by the words: "audio-visual communication".

Article 45

1. After article 20-3 of the aforementioned Act number 86-1067 dated 30 September 1986, an inserted article 20-4 shall read as follows:

“Art. 20-4.- Article L . 333-7 of the code du sport shall apply to any event of major importance for the public. The terms of application of this article shall be determined by decree by the state Council after taking the opinion of the higher council for the audio-visual sector”.

II. In the last paragraph of article L. 333-7 of the Sports code, the words "if need be" shall be suppressed.

Article 46

Article 27 of the aforementioned Act number 86-1067 dated 30 September 1986 shall be altered as follows:

1. The first paragraph of part 3 shall be altered as follows:

a) In the first sentence, the words "particularly of the production" are replaced by the words: "completely or partly;

b) In the second sentence, after the words "This contribution may", the following words shall be inserted: "take into account the adaptation of the work for the blind or the partially sighted and";

2. The second paragraph of part 3 shall be altered as follows:

a) The words: "shall include a significant part in" are replaced by the words: "shall focus entirely or significantly on"

b) After the words: "creative documentaries", the following words shall be inserted: "including those which are inserted within a programme other than the television news or a light entertainment programme".

c) Two added sentences shall read as follows:

"It may include expenditure to train authors and to encourage the promotion of works. Under some conditions fixed by the conventions and the specifications, it may also focus globally on the television service and on other on-demand television or audio-visual media services of the same service producer or those produced by its subsidiaries or the subsidiaries of the ruling company, pursuant to part 2 of article 41-3".

3. The tenth paragraph shall be completed with a sentence that reads as follows:

"They may also determine some obligations adapted to the specific nature of on-demand audio-visual media services and exempt them from the compliance to some rules imposed on the other services".

Article 47

Article 28 of the aforementioned Act number 86-1067 dated 30 September 1986 shall be altered as follows:

1. Part 2 shall read as follows: "2. The modes ensuring the contribution to the development of the production of audio-visual works, while taking into account the agreements concluded

between the service producer and one or several professional organisations of the audio-visual industry, particularly as regards the duration of the rights".

2. In the second sentence of 5a, after the words: "For the services" the following words: "of television" shall be inserted

3. After part 5a, a part 5b shall be inserted and shall read as follows:

"5b. For the television services broadcasted in digital mode through terrestrial network whose average yearly audience reaches over 2.5% of the total audience of the television services, the proportions of programmes which, by adapted devices and particularly at prime time are accessible to the blind and to the partially sighted".

4. After part 14, a part 14a shall read as follows:

"14a. The mode of distribution, on an on-demand audio-visual media service, of the programmes of a television service in the framework of a so called re-broadcasting service. As regards radio and television, the obligations mentioned in part 3 and 4 of article 27, shall focus globally on these services".

Article 48

Article 30-1 of the aforementioned Act number 86-1067, dated 30 September 1986 is completed with VII, which shall read as follows:

"VII When a television service, broadcasted on personal mobile television is available, simultaneously, in full and without any change, on a mobile radio communication network, its broadcasting shall be done in this framework, notwithstanding any exclusive clause appearing in the agreements relative to the cession of the rights of audio-visual distribution. The agreements concluded before the enforcement of Act number 2009-258 dated 5 March 2009 relative to audio-visual communication and to the new public television service shall be effective, however, until their expiration".

Article 49

I. – Article 30-6 of the aforementioned Act number 86-1067 dated 30 September 1986 shall read as follows:

"Art.30-6 – The use of frequencies assigned to satellite broadcasting shall be authorised by the Higher Council for the audio-visual sector under the following conditions:

"1. The Council shall assign the corresponding radio resource to the holder of the authorisation issued pursuant to article L. 97-2 of the code of electronic post and communications. If needs be, this authorisation shall include elements mentioned in article 25 of this Act. The satellite network operator's authorisation issued by the Council shall include particularly the technical characteristics of the broadcasted signs and shall specify the modes of implementing the obligations provided in article 19 and in part III of article 33-1.

"2. The service distributors who ensure marketing to the public of the service producer's programmes shall make the statement provided for in part I of article 34. Any alteration of these elements shall first be notified to the higher council for the audio-visual sector. These service distributors shall be subject to articles 34-2 to 34-5.

"3. The services broadcasted on these frequencies shall be subject to articles 33 and 33-1.

"When the availability of the radio resource concerned is not sufficient to ensure the pluralism of the currents of socio cultural expression, the higher council for the audio-visual sector shall grant the right to use the radio resource to the service producers after a call for applications. They shall fix the deadline within which the applications should be left as well as the information, which should be given to them by the candidates. At the end of this deadline, they shall shortlist the candidates whose record is admissible. They may hear them publicly.

"Subject to article 26, they shall grant authorisations according to the essential requirements mentioned in the sixth paragraph of article 29 and while taking into account the requirements appearing in parts 1, 2 and 3 of the same article.

"They may also, within the limit of available radio resource and without prejudice to article 26, authorise the holder of the authorisation, issued according to part III of article 29-1, to ensure the complete and simultaneous resumption of an offer of digital radio services.

"the duration of the authorisations granted to the producers of television services, of on-demand audio-visual media, of digital radio and, if need be, of also service distributors mentioned in the previous paragraph cannot exceed 10 years. For radio services in analogical mode this duration cannot exceed five years.

II – From the first to the last paragraph in part II of article 39 and in the fifth paragraph of article 41 of the same Act, before the word: "exclusively", the following words: "in analogical mode" shall be inserted.

Article 50

The heading of chapter II – Title II of the aforementioned Act number 86-1067 shall read as follows:

"Provisions applicable to audio-visual communication services distributed by the networks that do not use frequencies assigned by the higher council for the audio-visual sector".

Article 51

The heading of section 1 chapter II of the aforementioned Act number 86-1067 dated 30 September 1986 shall read as follows:

"Production of audio-visual communication services, distributed by the networks that do not use frequencies assigned by The higher council for the audio-visual sector.

Article 52

Part 6 of article 33 of the aforementioned Act number 86-1067, dated 30 September 1986 shall be altered as follows:

1. The beginning of the first sentence shall read as follows: "Subject to the last sentence of the last paragraph of part 3 of article 27, the service producers' contribution to the development of the production, completely or partly independent (what follows has not been altered)".

2. The last sentence shall read as follows:

"This contribution may take into account the adaptation of the work to the blind or to the partially sighted, and as far as cinematographic works are concerned, include a part to be used for the distribution.

3. Two added sentences shall read as follows:

"As regards radio and television, it may include expenditure incurred to train authors and to encourage the promotion of works. Under some conditions fixed by the conventions, it may also focus globally on the television service and on other on-demand television or audio-visual media services of the same producer or those produced by his subsidiaries or the subsidiaries of the ruling company according to part 2 of article 41-3".

Article 53

Article 33-1 of the aforementioned Act number 86-1067, dated 30 September 1986 shall be altered as follows:

1. The fourth paragraph in part I shall be altered as follows:

a) In the second sentence, after the words: "For the services" the following words: "of Television" shall be inserted.

b) An added sentence shall read as follows:

"The convention of multilingual service producers, whose capital and voting rights are held up to at least 80% by public broadcasters from the states of the Council of Europe and whose share of the capital and of the voting rights held by one of the companies mentioned in article 14 is equal to at least 20%, shall not be subject to these provisions".

2. After the fourth paragraph of part I, an inserted paragraph shall read as follows:

"For the television services, broadcasted in digital mode whose average yearly audience reaches over 2.5% of the total audience of the television services, the convention shall also focus on the proportions of programme which, by adapted devices, and particularly at prime time, are accessible to the blind or to the partially sighted".

3. After the fifth paragraph in part I, an inserted paragraph shall read as follows:

"For the services contributing to the development of the production of audio-visual works, the convention shall specify the modes ensuring this contribution while taking into account the agreements concluded between the service producer and one or several professional organisations of the audio-visual industry".

4. Part I shall be completed with a paragraph, which reads as follows:

"By special dispensation from part III, the convention shall specify the mode of distribution, on an on-demand audio-visual media service, of the programmes of a television service in the framework of a so called re-broadcasting service. As regards radio and television, the obligations mentioned in part 6 and 7 of article 33 shall then focus globally on these services".

5. At the beginning of the first paragraph of part III, the following words: "The on-demand audio-visual media services and," shall be inserted.

Article 54

Before the 31 December 2011, the higher council for the audio-visual sector shall deliver to the Parliament a report about the efforts made by the producers of audio-visual communication services as regards the audio description and subtitling of programmes as well as adapted methods to improve access to the programmes for the blind or partially sighted and for the deaf or people with impaired hearing.

Article 55

Article 33-2 of the aforementioned Act number 86-1067 dated 30 September 1986 shall be re-established as follows:

"Art. 33-2 – A decree in State Council, taken after asking the opinion of the higher council for the audio-visual sector , shall determine for the networks that do not use frequencies assigned by the higher council for the audio-visual sector:

“1. The rules applicable to advertising, teleshopping and sponsorship

“2. The provisions that will ensure the respect of the French language and the influence of the French speaking world. This decree shall also determine for the services distributing cinematographic or audio-visual works to the public;

“3. The contribution of service producers to the development of the production – particularly the independent production – of cinematographic and audio-visual works;

“4. The provisions guaranteeing the offer and ensuring the effective development of cinematographic and audio-visual works which are European and typically French.”

Article 56

Article 41-4 of the aforementioned Act number 86-1067 dated 30 September 1986 shall be altered as follows:

1. In the first sentence of the second and of the last paragraphs, the words: "in the radio and television sectors" are replaced by the words: "in the radio, television sectors and in on-demand audio-visual media services"

2. An added paragraph shall read as follows:

"They may ask the opinion of the Competition Authority about the questions of competition and concentration they have knowledge of in the radio and television sector and in the on-demand audio-visual media services."

Article 57

In the first paragraph of article 42 of the aforementioned Act number 86-1067 dated 30 September 1986, the words: "radio or of television and also the producers of services mentioned in article 30-5" are replaced by the words: "audio-visual communication

Article 58

In part 1 of article 42-1 of the aforementioned Act number 86-1067 dated 30 September 1986, the words: "or of a part of a programme" are replaced by the words: "of a category of programme, of a part of the programme or of one or several advertising sequences".

Article 59

In the first sentence of article 42-4 of the aforementioned Act number 86-1067 dated 30 September 1986, the words: "radio or of television" are replaced by the words: "audio-visual communication".

Article 60

In the first sentence of the second paragraph in article 42-7 of the aforementioned Act number 86-1067 dated 30 September 1986, the words: "radio or television services to exploit a" shall be suppressed.

Article 61

The heading of chapter V – Title II - of the aforementioned Act number 86-1067 dated 30 September 1986 shall read as follows:

"Determination of on-demand television and audio-visual media services subject to this Act"

Article 62

In article 43-2 of the aforementioned Act number 86-1067 dated 30 September 1986, the words: "the owner of which" are replaced by the words: "and to on-demand audio-visual media services the owner of which".

Article 63

Article 43-3 in the aforementioned Act number 86-1067 dated 30 September 1986 shall be altered as follows:

1. The word: "owner" are replaced by the word: "producer"
2. In the first paragraph, after the word "television", the following words shall be inserted: "or of on-demand audio-visual media"

Article 64

Article 43-4 of the aforementioned Act number 86-1067 dated 30 September 1986 shall read as follows:

"Art. 43-4. – The producers of on-demand television or audio-visual media services to which none of the requirements defined in article 43-3 are applicable shall come under the French competence if they meet the following requirements:

"1. If they use a satellite uplink from a station located in France"

"2. If, as they do not use a satellite uplink from a station located in another member State of the European Community, or in another State, party to the agreement on the European Economic Area, they use a satellite capacity that comes under the French competence".

Article 65

Article 43-6 of the aforementioned Act number 86-1067 dated 30 September 1986 reads as follows:

"Art. 43-6 – This Act shall be applicable to the television services the producer of which comes under the French competence, according to the requirements provided by the European convention of the 5 May 1989, on television without boundaries and received by the States parties to this convention who are not members of the European Community."

Article 66

In chapter V – Title II of the aforementioned Act number 86-1067 dated 30th September 1986, articles 43-7 to 43-10 shall be re-established as follows:

"Art.43.7 – the television services coming under the competence of another State, member of the European Community or party to the agreement on the European economic area and the television services coming under the competence of another State party to the aforementioned European Convention of 5 May 1989 may be broadcasted by networks that do not use frequencies assigned by the higher council for the audio-visual sector without any prior procedures."

"Art 43-8 – The higher council for the audio-visual sector may suspend temporarily the broadcast of television services coming under the competence of another State, party to the aforementioned European Convention of the 5 May 1989 if the following requirements are met:

"1. The service has broadcasted more than twice during the previous twelve months programmes likely to impair obviously, seriously and gravely the minors on the grounds of physical, mental or moral development or programmes including an incitement to hatred for origin, sex, religion or nationality.

"2. After notifying the grievance and the possible measures to the European Commission and after consulting the broadcasting Member State and the European Commission, there is still violation put forward. "The higher council for the audio-visual sector may suspend temporarily the broadcast of television services coming under the competence of another State party to the aforementioned European Convention of the 5 May 1989 under the conditions provided for by the treaty.

"A decree by the State Council shall specify the conditions of application of this article.

"Art. 43-9 – The higher council for the audio-visual sector may suspend temporarily the broadcast of on-demand audio-visual media services under the competence of another state, member of the European Community or party to the agreement on the European Economic Area, if the following conditions are met":

"1. - The service undermines or is likely to seriously and gravely undermine the public order and safety, as well as the prevention or the prosecution of criminal offences, particularly as regards the protection of minors, the respect of human dignity or the fight against the

incitement to hatred based on origins, sex, religion or nationality, as well as the protection of public health, of consumers and of national defence".

"2. - After the request for suitable measures, addressed, except if it is a matter of urgency, to the member state under which the service comes and notification, except if it is a matter of urgency, to this member state and to the European Commission, of the measures to be taken, the violation put forward persists.

"A decree by the State Council shall specify the conditions of application of this article.

"Art. 43-10 – If an on-demand television service or audio-visual media service, the programming of which is intended entirely or mainly to the French public has settled on the territory of another state, member of the European Community, or party to the agreement on the European Economic Area mainly with the aim of evading French regulations, it shall be considered to be subject to the rules applicable to the services established in France, under the conditions determined by decree in the State Council"

Article 67

Article 48-2 of the aforementioned Act number 86-1067 dated 30 September 1986 shall be completed by a sentence, which reads as follows:

"The programme part may be particularly a programme category or one or several advertising sequences".

Article 68

Article 71 of the aforementioned Act number 86-1067 of 30 September 1986 shall be altered as follows:

1. In the first paragraph, the words: "or audio-visual" shall be suppressed.
2. The fifth paragraph shall be suppressed.
3. The last paragraph shall be suppressed.

Article 69

After article 71 of the aforementioned Act number 86-1067 dated 30th September 1986, an inserted article 71-1 shall read as follows:

"Art. 71-1 – The decrees provided in articles 27 and 33 shall specify the conditions under which an audio-visual work may be taken into account as a service producer's contribution to the independent production according to the share held --- directly or indirectly, by the service producer or by the shareholder (s) who control him as defined in part 2 of article 41-3 --- in the capital of the company producing the work.

"The service producer cannot hold, directly or indirectly, any producer shares".

Article 70

Article 73 of the aforementioned Act number 86-1067 dated 30th September 1986 shall be altered as follows:

1. The first paragraph shall read as follows:

"Without prejudice to the provisions of the intellectual property code, the broadcast by a television service of cinematographic or audio-visual work shall not be interrupted more than twice by commercials. Moreover, cinematographic works, audio-visual works which are neither series nor serials and nor documentaries and the programmes intended for the young may only include a number of interruptions proportional to the number of thirty-minute programmed slots. The commercial shall be clearly identified as such".

2. In the third paragraph, the words: "companies mentioned in article 44 and by the television services whose financing depends on a remuneration from the users" are replaced by the words: "television services mentioned in article 44 and by the cinema television services".