

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

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Member State: Luxembourg

Grand-ducal regulation on European works and the works of independent producers

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.

* We would like to thank the Service de Médias et des Communications Luxembourg (Media and Communications Service, www.mediacom.public.lu) for valuable support in the translation by providing drafts of earlier unofficial translations which could be used for this translation of the amended grand-ducal regulation.

Member State: Luxembourg

Grand-ducal Regulation dated 5 April 2001 fixing the rules applying in the matter of “promotion of (...)” European works and works of independent producers in audiovisual media services”¹

Originally:

Grand-ducal regulation dated 5 April 2001 fixing the rules applying in matters of content in terms of European works and works of independent producers of television programmes deemed to fall within the sphere of competence of Luxembourg in accordance with the European Directive "Television Without Frontiers"

Official Journal: Mémorial A-42 of 17 April 2001, pp.934

Amended by:

- Grand-ducal regulation of 17 December 2010, Mémorial A-241 of 24 December 2010, pp.4037

Coordinated text

I, Henri, Grand Duke of Luxembourg, Duke of Nassau,

Having regard to the amended Law dated 27 July 1991 on Electronic Media² and in particular its article 27,

Having regard to Directive 2010/13/EU of the European Parliament and the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive), codified version of Directive 2007/65/EC of the European Parliament and the Council of 11 December 2007 amending Directive 97/36/EC of the European Parliament and of the Council of 30 June 1997 amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities,

In view of the opinions of the *Chambre de Commerce* (hereinafter Chamber of Commerce) and the *Chambre des Métiers* (hereinafter Chamber of Trade),

Having heard my *Conseil d'Etat* (hereinafter Council of State),

¹ As amended by grand-ducal regulation of 2010.

² Mémorial A - 47 of 30 July 1991, p. 972 as further amended.

Upon the report of my Prime Minister, Minister of State, and further to deliberation of the government sitting in committee,

Order as follows:

(Grand-ducal regulation of 2010)

Article 1 - Scope of application

“The present grand-ducal regulation does not apply to local television services that do not form part of a national network or to television services exclusively devoted to teleshopping or self-promotion.”

Article 2 - Definitions

For the purposes of the present regulation, European works shall be understood to be the following works:

- a) works originating from Member States of the European Economic Area;
- b) works originating from third countries which are however party to the European Convention on Transfrontier Television of the Council of Europe, and which fulfil the conditions of paragraph (2) below; and
- c) “works co-produced within the framework of agreements related to the audiovisual sector concluded between the Union and third countries and fulfilling the conditions defined in each of those agreements.”³

The works referred to in paragraphs (b) and (c) above shall only be considered as European works if the works of the Member States of the European Economic Area are not the subject of discriminatory measures in the countries concerned.

(2) The works referred to at paragraph (1) a) and b) are works mainly made with the participation of authors and workers residing in one or more States referred to in the respective sub-paragraphs and which comply with one of the following three conditions:

- (a) they are made by one or more producers established in one or more of those States; or
- (b) the production of the works is supervised and actually controlled by one or more producers established in one or more of those States; or
- (c) the contribution of the co-producers of those States to the total co-production costs is preponderant and the co-production is not controlled by one or more producers established outside those States.

(3) *(repealed by grand-ducal regulation of 2010)*

“(4)”⁴ Works that are not European works within the meaning of paragraph (1) but that are produced within the framework of bilateral or multilateral co-production agreements concluded between Member States and third countries shall be deemed to be European works provided that the co-producers established in those Member States supply a majority

³ As amended by grand-ducal regulation of 2010.

share of the total production costs and provided that the production is not controlled by one or more producers established outside the territory of those Member States.

(5) *(repealed by grand-ducal regulation of 2010)*

“(6)”⁵ For the purposes of this regulation, an independent producer shall be understood to be any natural person producing audiovisual works without “exercising the activity of a television service provider”⁶ and any legal entity producing audiovisual works without “exercising the activity of a television service provider”⁷ and the capital of which is not controlled on a majority basis by a “television services provider”⁸.

Article 3 - Content in terms of European works “in television services”⁹

(1) Where practicable, every television “service”¹⁰ shall reserve for European works, within the meaning of Article 2 above, a majority proportion of its transmission time, excluding the time devoted to news, sports events, games, advertising, teletext services and teleshopping. This proportion having regard to the informational, educational, cultural and entertainment responsibilities of the “television services provider”¹¹ to its viewing public must be achieved progressively, on the basis of suitable criteria.

(2) Where the proportion laid down in paragraph (1) cannot be attained, it must not be lower than the average for 1988 for the television “service”¹² concerned.

Article 4 - Content in terms of European works by independent producers “in television services”¹³

Where practicable, all television “services”¹⁴ shall reserve at least 10% of their transmission time, excluding the time devoted to news, sports events, games, advertising, teletext services and teleshopping, to European works created by producers who are independent of “the television services provider”¹⁵. This proportion, having regard to the informational, educational, cultural and entertainment responsibilities of the “television services provider”¹⁶ to its viewing public must be achieved progressively on the basis of suitable criteria; it must be achieved by earmarking an adequate proportion for recent works, i.e. works transmitted within five years of their production.

⁴ New numbering introduced by grand-ducal regulation of 2010, previous paragraphs 3 and 5 were deleted.

⁵ New numbering introduced by grand-ducal regulation of 2010, previous paragraphs 3 and 5 were deleted.

⁶ As amended by grand-ducal regulation of 2010.

⁷ As amended by grand-ducal regulation of 2010.

⁸ As amended by grand-ducal regulation of 2010.

⁹ As amended by grand-ducal regulation of 2010.

¹⁰ As amended by grand-ducal regulation of 2010.

¹¹ As amended by grand-ducal regulation of 2010.

¹² As amended by grand-ducal regulation of 2010.

¹³ As amended by grand-ducal regulation of 2010.

¹⁴ As amended by grand-ducal regulation of 2010.

¹⁵ As amended by grand-ducal regulation of 2010.

¹⁶ As amended by grand-ducal regulation of 2010.

Article 5 - Statistical statements concerning television services¹⁷

Each “television service provider”¹⁸ shall provide the *Service des médias et des communications* (hereinafter Media and Communications Service) with a statistical statement on the achievement of the proportion referred to at Articles 3 and 4, indicating, as appropriate, the reasons for any failure to attain such proportion, as well as the measures adopted or planned in order to achieve it.

(Grand-ducal regulation of 2010)

“Art. 5bis - Promotion of European works in audiovisual media services

(1) On-demand audiovisual media service providers shall promote, where practicable and by appropriate means the production of and access to European works.

(2) On-demand audiovisual media service providers shall report to the Media and Communications Service, no later than the 30 September 2011 and every four years thereafter on the implementation of paragraph (1).”

Article 6 - Execution

Our Prime Minister, Minister of State, is entrusted with execution of this regulation which shall be published in the *Mémorial*.

¹⁷ As amended by grand-ducal regulation of 2010.

¹⁸ As amended by grand-ducal regulation of 2010.