

## Interstate Media Treaty

### *(Medienstaatsvertrag)*

from 14 / 28 April 2020  
in force since 7 November 2020

#### **Non-official translation**

The state of Baden-Württemberg,  
The free state of Bavaria,  
The state of Berlin,  
The state of Brandenburg,  
Free Hanseatic City of Bremen,  
Free and Hanseatic City of Hamburg,  
The state of Hessen,  
The state of Mecklenburg Western Pomerania,  
The state of Lower Saxony,  
The state of Northrhine-Westphalia,  
The state of Rhineland Palatinate,  
Saarland,  
The free state of Saxony,  
The state of Saxony-Anhalt,  
The state of Schleswig-Holstein,  
The free state of Thuringia

for the sake of transposing Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU 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) in view of changing market realities, adopt the following Interstate Treaty:

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## Preamble

This Interstate Treaty contains the principal regulatory framework for the organisation and the offer, the transmission, and the provision of broadcasting and telemedia in Germany. It takes account of the development of the broadcasting sector in Europe as well as the technical development.

Public-service broadcasting and commercial broadcasting are committed to the free formation of individual and public opinion and the plurality thereof. Both pillars of the dual broadcasting system must be able to meet the demands of national and international competition.

The existence and development of public-service broadcasting must be guaranteed. This includes its participation in all new technologies for the production and transmission as well as the provision of new forms of offers and the use of new transmission channels. Its funding basis, including the financial equalisation, is to be maintained and ensured.

The commercial broadcasters are to be put in a position enabling them to extend and develop a commercial broadcasting system, especially as regards technology and content. To this end, they should be provided with sufficient transmission capacities and access to adequate sources of revenue.

The increase in media offers (broadcasting and telemedia) in Europe, due to the potentialities of advancing digitisation, strengthens the diversity of information and the cultural offer in German-speaking countries as well. At the same time, especially in a media world that is increasingly shaped by the Internet, there is a need for guard rails following an interstate treaty, which ensure compliance with journalistic standards and promote equal opportunities for communication.

For the offers of the dual broadcasting system and the press, rules are required here that ensure access to transmission channels and non-discriminatory discoverability. This Interstate Treaty, in addition to other regulatory measures and promotional activities in Germany, provides sustained support for new European film and television productions.

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

## ***Section I Scope of Application, Definitions***

### **Article 1**

#### **Scope of Application**

(1) This Interstate Treaty applies to the provision and the offer, as well as the transmission and accessibility of broadcasting and telemedia in Germany.

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

(3) Television broadcasters shall be subject to the provisions of this Interstate Treaty and the provisions of state law if they are established in the Federal Republic of Germany. A television broadcaster shall be deemed to be established in the Federal Republic of Germany provided that

1. the head office is situated in Germany and the editorial decisions are taken there,
2. the head office is situated in Germany and the editorial decisions regarding the service are taken in another Member State of the European Union, however
  - a) a significant part of the workforce involved in the implementation of the programme-related activities operates in Germany, or
  - b) a significant part of the workforce involved in the exercise of the broadcasting-related activities operates both in Germany and in the other Member State of the European Union, or
  - c) a significant part of the workforce involved in the pursuit of the broadcasting-related activities neither operates in Germany nor in the other Member State of the European Union, but the television broadcaster first began its activity in Germany and a stable and effective link with the economy of Germany is maintained, or
3. the head office is situated in Germany and the editorial decisions regarding the service are taken in a third country, or vice-versa, and provided that a significant part of the workforce involved in the implementation of the programme-related activities operates in Germany.

(4) For television broadcasters unless they are already subject to the jurisdiction of Germany or another Member State of the European Union due to their establishment, this Interstate Treaty and the provisions of state law shall also apply if they

1. use a satellite up-link situated in the Federal Republic of Germany, or
2. do not use a satellite up-link situated in a Member State of the European Union but, however, use satellite capacity appertaining to the Federal Republic of Germany. If neither of these two criteria applies, this Interstate Treaty and the provisions of state law shall also apply to television broadcasters which are established in Germany pursuant to Articles 49 to 55 of the Treaty on the Functioning of the European Union (OJ C 202 of 07 June 2016, p. 47).

(5) This Interstate Treaty and the provisions of state law shall not apply to services of television broadcasters which are

1. intended exclusively for reception in third countries, and
2. not received by the general public with standard consumer equipment directly or indirectly in a state situated within the scope of Directive 2010/13/EC of the European Parliament and of the

Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) (OJ L 95 of 15 April 2010, p. 1), as amended by Directive (EU) 2018/1808 (OJ L 303 of 28 November 2018, p. 69).

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

(7) This Interstate Treaty applies to providers of telemedia if they are established in Germany in accordance with the provisions of the Telemedia Act.

(8) By derogation from (7), this Interstate Treaty applies to media intermediaries, media platforms, and user interfaces insofar as they are intended for use in Germany. Media intermediaries, media platforms, and user interfaces are to be regarded as intended for use in Germany if they are generally aimed at users in Germany, in particular through the language used, the content offered, or the marketing activities, or if they achieve a not insubstantial portion of their refinancing in Germany. For the purposes of Articles 97 to 99, this Interstate Treaty applies to video sharing services within the scope of Directive 2010/13/EU if they are established in Germany in accordance with the provisions of the Telemedia Act. In all other cases, sentence 1 applies.

(9) Television broadcasters are obligated to inform the competent authority under state law of any changes that could affect the determination of jurisdiction according to (3) and (4). The state media authorities create a list of the commercial television broadcasters subject to German jurisdiction, keep the list up to date, and state which criteria stipulated in (3) and (4) are the bases for the jurisdiction. The list and any updates will be sent to the European Commission together with the list of public-service television broadcasters.

## **Article 2**

### **Definitions**

(1) Broadcasting means a linear information and communication service; it means the provision and transmission of journalistic-editorial offers for the general public for simultaneous reception in moving images or sound along a schedule, using telecommunication. The term includes offers which are transmitted in encrypted form or can be received against special payment. Telemedia means all electronic information and communications services, as far as they are not telecommunications services pursuant to Article 3 no. 24 of the Telecommunications Act, which consist entirely in the conveyance of signals across telecommunications networks or telecommunications-supported services pursuant to Article 3 no. 25 of the Telecommunications Act, or broadcasting pursuant to sentences (1) and (2).

(2) For the purposes of this Interstate Treaty:

1. 'broadcasting service' means a sequence of contents arranged and timed on the basis of a schedule;
2. 'broadcasting schedule' means the permanent definition of the content and times on the basis of a schedule of broadcasts, which is determined by the broadcaster and cannot be changed by the user;

3. 'programme' means an individual part of a broadcasting schedule or catalogue limited in duration with related content, regardless of its length;
4. 'general channel' means a broadcasting service of varied content with information, education, advice, and entertainment forming a major part of the programming overall;
5. 'thematic channel' means a broadcasting service offering contents which are basically of the same type;
6. 'regional window service' means a broadcasting service of limited duration and extent offering predominantly regional contents transmitted as part of a main service;
7. 'advertising' means any form of announcement that serves to directly or indirectly promote the sale of goods and services, including immovable property, rights and obligations, or the appearance of natural or legal persons engaged in an economic activity, and in return for remuneration or a similar consideration, or as self-promotion, and is recorded on the radio or a telemedia channel. Advertising is, in particular, broadcast advertising, sponsoring, teleshopping, and product placement; Article 8 (9) and Article 22 (1) sentence 3 remain unaffected;
8. 'broadcast advertising' means any form of announcement in the exercise of a transaction, trade, handicraft, or liberal profession that is broadcast on the radio by a public-service or commercial broadcaster or a natural person either in return for remuneration or a similar consideration, or as self-promotion, with the aim of promoting the sale of goods or the provision of services, including immovable property, rights and obligations;
9. 'Surreptitious advertising' means the representation in words or pictures of goods, services, the name, the trade mark or the activities of a producer of goods or a provider of services in programmes when such representation is intended by the broadcaster to serve advertising purposes and might mislead the public as to the actual purpose of the representation. Such representation is considered to be intended for advertising purposes, in particular if it is done in return for payment or for similar consideration;
10. 'sponsorship' means any contribution by a natural or legal person or an association of persons not engaged in broadcasting activities, the provision of broadcast-like telemedia or video sharing services, or in the production of audiovisual works, to the direct or indirect financing of a broadcast programme, broadcast-like telemedia, video sharing services, user-generated videos or a programme, with a view to promoting the name, the trademark, the image of the person or association, their activities or their products;
11. 'teleshopping' means direct offers broadcast to the public with a view to the supply of goods or services, including immovable property, rights, and obligations, in return for payment, in the form of teleshopping channels, windows or spots;
12. 'product placement' means any form of advertising that consists of incorporating or referring to a product, service, or brand in return for remuneration or a similar consideration, so that it appears in a programme or user-generated video. The free provision of goods or services is product placement, provided that the goods or services in question are of significant value;
13. 'broadcast-like telemedia' means telemedia with content that is similar to radio or television in terms of form and design and which is made available from a catalogue specified by a provider

- for individual demand at a time selected by the user (audio and audiovisual media services on demand); contents include, in particular, radio plays, feature films, series, reports, documentaries, entertainment programmes, information programmes, and children's programmes;
14. 'media platform' means any form of telemedia, insofar as it combines broadcasting, broadcast-like telemedia, or telemedia in accordance with Article 19 (1) into an overall offer specified by the provider. The combination of broadcasting, broadcast-like telemedia, or telemedia in accordance with Article 19 (1) is also the combination of software-based applications which essentially serve the direct control of broadcasting, broadcast-like telemedia, telemedia in accordance with Article 19 (1), or telemedia within the meaning of sentence 1 . Media platforms in this sense do not include
    - a) offers that are broadcast in the same way via a cable system,
    - b) the overall offer of broadcasting, broadcast-like telemedia, or telemedia in accordance with Article 19 (1), which is solely the responsibility of one or more public-service broadcasters or a commercial provider of broadcasting, broadcast-like telemedia, or telemedia in accordance with Article 19 (1), or companies whose programmes can be attributed thereto in accordance with Article 62; content from window services recorded in accordance with Article 59 (4) or third-party broadcasting times within the meaning of Article 65 is irrelevant;
  15. 'user interface' means the textually, visually, or acoustically conveyed overview of offers or content from one or more media platforms which is used for the orientation and direct selection of offers, content, or software-based applications, which essentially enable direct control of broadcasting, broadcasting-like telemedia, or telemedia in accordance with Article 19 (1). User interfaces particularly include
    - a) offer or schedule overviews of a media platform,
    - b) offer or schedule overviews that are not also part of a media platform,
    - c) visual or acoustic presentations, including device-based media platforms, provided they perform the function according to sentence 1;
  16. 'media intermediary' means any telemedia that also aggregates, selects, and generally presents third-party journalistic-editorial offers without combining them into an overall offer;
  17. 'broadcaster' means a provider of a broadcasting service under his own editorial responsibility;
  18. 'provider of broadcast-like telemedia' means someone who decides on the selection of the content and is under his own editorial responsibility;
  19. 'provider of a media platform' means someone who is responsible for selecting the offers of a media platform;
  20. 'provider of a user interface' means someone who makes the final decision on the design of the overview;
  21. 'provider of a media intermediary' means someone who is responsible for the aggregation, selection, and the general presentation of content to the public;

22. 'video sharing service' means a telemedia in which the main purpose of the service, or a separable part of the service, or an essential function of the service, is to broadcast programmes to the general public with moving images or user-generated videos, for which the service provider bears no editorial responsibility, whereby the service provider also determines the organisation of the programmes or the user-generated videos by automated means or algorithms;
  23. 'video sharing service provider' means someone who operates a video sharing service;
  24. 'user-generated video' means a sequence of moving images with or without audio that is created by a user, which represents an individual component regardless of its length and which is uploaded to a video sharing service by this user or another user;
  25. 'information' means the following in particular: news and current affairs, political information, economics, reports from abroad, religion, sport, regional information, society news, service, and contemporary history;
  26. 'education' means the following in particular: science and technology, everyday life and advice, theology and ethics, animals and nature, society, children and minors, learning, history, and other countries;
  27. 'culture' means the following in particular: theatre plays, music, television plays, television films and radio plays, fine arts, architecture, philosophy, literature, and cinema;
  28. 'entertainment' means the following in particular: cabaret and comedy, films, series, shows, talk-shows, games, music;
  29. 'public service telemedia offers' means journalistically or editorially produced or edited telemedia offered by the state broadcasting corporations forming the ARD association (Arbeitsgemeinschaft der öffentlich-rechtlichen Rundfunkanstalten der Bundesrepublik Deutschland), the ZDF (Zweites Deutsches Fernsehen), and Deutschlandradio that are based on a procedure pursuant to Article 32 (4), which might contain image, sound, moving image, text, and Internet-specific design mediums and connect these to each other.
- (3) 'Non-broadcasting' refers to an offer that consists of programmes that are released for an individual fee.

## **Section II General Provisions**

### **Sub-Section 1 Broadcasting**

#### **Article 3 General Provisions**

- (1) The state broadcasting corporations forming the ARD, the ZDF, Deutschlandradio, and all providers of broadcasting services distributed nationally shall respect and protect human dignity in

their offers; the moral and religious beliefs of the population must be respected. Offers should further the respect for life, freedom, and physical integrity, for faith and the opinions of others. Further-reaching provisions under state law regarding the design of offers and Article 51 of this Interstate Treaty remain unaffected.

#### **Article 4**

##### **Information Obligation, Consumer Protection**

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

1. the name and geographical address,
2. details allowing rapid and immediate contact and efficient communication, including the provision of their e-mail address or their website,
3. the competent supervisory body,
4. the member state in which they are subject to jurisdiction.

(2) With the exception of Articles 2, 9, and 12, the provisions of the law implementing the EC consumer protection provisions concerning the provisions of this Interstate Treaty for transposing Articles 9, 10, 11, and Articles 19 to 26 of 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 Service Directive) (OJ L 95 of 15 April 2010, p. 1) shall apply accordingly to violations within the community. Sentence 1 shall also apply to teleshopping channels.

#### **Article 5**

##### **Right to Information**

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

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

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

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

## **Article 6**

### **Due Diligence Obligations**

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

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

## **Article 7**

### **Accessibility**

(1) The broadcasters in accordance with Article 3 sentence 1 should, in addition to their existing commitments, include accessible offers within the scope of their technical and financial abilities and expand the scope of such offers continuously and gradually.

(2) The broadcasters of national commercial television services report to the respective competent state media authority, and the state broadcasting corporations forming the ARD, the ZDF, and Deutschlandradio to their respective supervisory bodies, on the measures taken under (1) at least every three years. The reports will be subsequently transmitted to the European Commission.

## **Article 8**

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

(1) Advertising shall not

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

(2) Broadcast advertising is an integral part of the service. Broadcast advertising or advertisers shall not influence the editorial content or other parts of a service. Sentences 1 and 2 apply accordingly to teleshopping spots, teleshopping windows, and providers thereof.

(3) Advertising shall be readily recognisable as such and shall be clearly distinguishable from editorial content. Advertising and teleshopping shall not use subliminal techniques. New advertising techniques used shall also keep broadcast advertising and teleshopping quite distinct from other

parts of the programme by optical means, on radio by acoustic means in a manner that is adequate to the media.

(4) Broadcast advertising may occupy part of the broadcast image provided that the broadcast advertising is kept optically separate from the other parts of the service and is clearly identified as such. Such broadcast advertising will be included in the calculated duration of spot advertising pursuant to Articles 39 and 70. Article 9 (1) applies accordingly.

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

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

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

Other rights remain unaffected.

(7) Surreptitious advertising and thematic placement as well as similar practices shall be prohibited. Product placement is permitted, except in news programmes and programmes intended for political information, consumer programmes, regional window services according to Article 59 (4), window services according to Article 65, programmes with religious content, and children's programmes. Programmes that contain product placement must meet the following requirements:

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

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

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

(9) Advertising of a political, ideological, or religious nature shall be prohibited. Public service announcements transmitted free of charge, including appeals for funds as part of charity appeals, shall not be considered advertising within the meaning of sentence 1. Article 68 remains unaffected.

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

(11) The non-national transmission of advertising or other content in a service which has been commissioned or licensed for national transmission shall be permitted only if and insofar as the law of the state in which non-national transmission is effected so permits. The non-national transmission of advertising or other content of commercial broadcasters requires a separate permission under state law; this can be made subject to requirements governing content to be determined by law.

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

## **Article 9**

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

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

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

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

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

## **Article 10**

### **Sponsorship**

(1) If a sponsorship agreement exists, this must be clearly indicated; In programmes which are partly or fully sponsored, the financing by the sponsor shall be pointed out in justifiable brevity and in an appropriate manner at the beginning or at the end of the programme; the reference may also be by means of a moving image. Alongside or in place of the name of the sponsor the company logo or a

trademark, another symbol of the sponsor, a reference to his products or services or a similar distinctive sign may be shown.

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

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

(4) News and political information programmes must not be sponsored. The transmission of sponsorship logos shall be prohibited in children's programmes and religious broadcasts.

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

(6) Article 8 (3) sentence 3 and (8) to (10) shall apply accordingly.

## **Article 11**

### **Prize Games**

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

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

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

## **Article 12**

### **Data Protection in relation to Journalistic and Editorial Purposes, Media Privilege**

(1) Insofar as the state broadcasting corporations forming the ARD association, the ZDF, Deutschlandradio or commercial broadcasters process personal data for journalistic purposes, the persons involved are prohibited from processing this personal data for any other purposes (data confidentiality). These persons shall be bound to data confidentiality upon commencing their duties. Data confidentiality shall continue even after the termination of their duties. Moreover, data processing for journalistic purposes is governed by Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (Official Journal of the European Union, L 119 of 4 May 2016, p. 1; L 314 of 22 November 2016, p. 72; L 127 of 23 May 2018, p. 2). Except Chapters I,

VIII, X and XI, only point (f) of Article 5(1), in conjunction paragraph (2), together with Articles 24(2) and 32 shall apply. Articles 82 and 83 of Regulation (EU) 2016/679 shall apply, subject to the provision that liability shall be limited to data confidentiality breaches in accordance with sentences 1 to 3 and inadequate measures in accordance with point (f) of Articles 5(1), 24 and 32 of Regulation (EU) 2016/679. Sentences 1 to 5 shall apply accordingly to the ancillary companies and associated undertakings which are part of the bodies mentioned in sentence 1. The state broadcasting corporations forming the ARD association, the ZDF, Deutschlandradio and other broadcasters, as well as their corresponding federations and associations, may adopt codes of conduct which shall be issued and published subject to a transparent procedure. The data subjects shall only be entitled to the rights outlined in paragraphs (2) and (3).

(2) In the event that the processing of personal data for journalistic purposes leads to the dissemination of counterstatements of the data subject or to declarations of commitment, decisions or judgments on the omission of the distribution or on the revocation of the content of the data, these counterstatements, declarations of commitment and revocations shall hence be included in the stored data and stored there for the same duration as the data itself and transmitted together with the data.

(3) In the event that reporting causes prejudice to his or her personal rights, the data subject may request information concerning his or her stored personal data on which the report is based. The information may be refused after the interests of the participants with legitimate grounds for protection are considered, provided that:

1. the data may be used to infer the identity of persons who are or have been involved in the preparation, production, or distribution of broadcasts;
2. the data can be used to infer the identity of the sender or the guarantor of contributions, documents, and communications for the editorial unit; or
3. the communication of the researched or otherwise gathered data could impair the journalistic task of researching the information repository.

The data subject may request the immediate rectification of inaccurate personal data in the data records or the addition of an adequate amount of data to better represent him or her. The continued storage of personal data is lawful when this is necessary for the exercise of the right to freedom of expression and information or for the safeguarding of legitimate interests.

(4) The oversight of compliance with the applicable data protection regulations is governed by state law for the state broadcasting corporations forming the ARD association, the ZDF, Deutschlandradio and commercial broadcasters, as well as their associated undertakings and ancillary companies. The provisions of the Interstate Broadcasting Treaty remain unaffected.

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

## Article 13

### Broadcasting of Major Events

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

(2) For the purposes of this provision major events are:

1. the Summer and Winter Olympic Games;
2. all European Championship and World Cup matches involving the German national football team as well as the opening matches, the semi-finals, and the finals, irrespective of any participation of the German team;
3. the semi-finals and the final of the German Football Association Cup;
4. the home and away matches of the German national football team;
5. the final of any European football club competition (Champions League, Europa League) with German participation.

Where major events consist of several individual events, each individual event shall be considered to be a major event. Inclusion or removal of events pursuant to this provision is only permitted on the basis of an Interstate Treaty concluded by all states.

(3) If a Member State of the European Union notifies the European Commission of its provisions on the broadcasting of major events pursuant to Article 14 (2) of Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities, and if the Commission does not raise any objections within three months after notification and if the provisions of the Member State in question are published in the Official Journal of the European Union, the broadcasting of major events in encrypted form and in return for payment shall be permitted for said Member State only if the television broadcaster allows for transmission in a freely accessible service pursuant to the provisions of the respective Member State as published in the Official Journal.

(4) If provisions of a state that has ratified the European Convention on Transfrontier Television as amended according to the provisions of the Protocol of 9 September 1989 are published pursuant to the procedure laid down in Article 9a (3) of the Convention, said regulations shall apply for broadcasters in the Federal Republic of Germany in accordance with sentence 4 unless the Prime Ministers of the states within six months unanimously refuse to accept the regulations. Acceptance of the regulations can only be refused if the provisions of the respective state contravene the

German Constitution or the European Convention for the Protection of Human Rights and Fundamental Freedoms. The provisions applying to broadcasters in the Federal Republic of Germany under the aforementioned procedure shall be published in the official gazettes of the states. Upon the date of the last publication in the official gazettes of the states the broadcasting of major events in encrypted form and in return for payment shall only be permitted for the respective state if the television broadcaster allows for a transmission there in a free-to-air service pursuant to the provisions published by the respective state.

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

## **Article 14**

### **Short News Reporting**

(1) Any licensed television broadcaster established in Europe shall be entitled to provide free of charge for its own broadcasting purposes short news reports of performances and events which are open to the public and are of general interest. This right comprises the right of access, the right to conduct short live transmissions, the right to make recordings and to use them to produce a single report, and the right to pass on this information under the terms laid down in (2) to (12).

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

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

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

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

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

(7) The organiser may demand adequate payment which is appropriate to the nature of the short report in return for the right to short news reporting being exercised concerning professionally

conducted performances. If agreement concerning the amount of the payment cannot be reached, an arbitration proceeding pursuant to Article 1025 et seq. of the Code of Civil Procedure should be agreed. The lack of agreement concerning the amount of the payment or the implementation of arbitration proceedings does not conflict with the right to short news reporting being exercised; this also applies to litigation already pending on the amount to be paid.

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

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

(10) Television broadcasters who transmit short news reports must provide the signal and the recording without delay to the television broadcasters who could not be permitted to attend, in return for reimbursement of reasonable costs.

(11) If the organiser or sponsor of an event takes out a contractual agreement on a report with a television broadcaster, he shall ensure that at least one other television broadcaster has the opportunity to exercise the right of short news reporting of the event.

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

## **Article 15**

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

(1) The television broadcasters shall contribute to securing German and European film and television productions as a cultural asset and as part of the audio-visual heritage.

(2) In order to present the plurality of the German-language regions and of Europe as a whole and to promote European film and television productions, television broadcasters should reserve the majority proportion of the time devoted to the transmission of feature films, films made for television, series, documentaries and comparable productions overall for European works in accordance with European law.

(3) General television channels should comprise a significant proportion of own productions as well as commissioned and joint productions originating in the German-language regions and Europe as a

whole. The same requirement relates to thematic channels as far as this is feasible regarding their focus in terms of content.

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

## **Article 16**

### **Information Obligation and Competent Authorities according to the European Convention on Transfrontier Television**

(1) The broadcasting corporations governed by state law are required to make available, upon request, to the competent authority under state law the information specified in the provision in accordance with Article 6 (2) of the European Convention on Transfrontier Television. The same shall apply for commercial television broadcasters who shall make the information available upon request to the state media authority of the state in which the licence was granted or in which the television broadcaster within the meaning of Article 54 has its registered office, its domicile, or, in the absence thereof, its permanent residence. The state media authority shall forward the information to the authority exercising legal supervision

(2) The Heads of Government of the states shall designate by way of decision one or more of the authorities referred to in (1) which fulfil the tasks pursuant to Article 19 (2) and (3) of the European Convention on Transfrontier Television. The competent authorities of the individual states shall provide the authority or authorities thus designated with all information required for fulfilling their tasks.

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

## **Sub-Section 2 Telemedia**

### **Article 17**

#### **General Principles, Freedom of Admission and Registration**

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

## Article 18

### Information Obligations and the Right to Information

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

1. the name and address as well as
2. in the case of legal persons, also the name and address of the authorised representative.

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

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

Sentence 3, nos. 3 and 4, does not apply to minors who are responsible for telemedia that is intended for minors.

(3) In the case of content or messages created automatically by means of a computer programme, providers of telemedia in social networks are obligated to specify the fact of automation, provided that the user account used for this purpose appears to have been made available by natural persons. It must be made legibly clear, with or before the content or the message, that it was automatically created and sent using a computer programme that controls the user account. 'Creation' within the meaning of this provision does not only mean when content and messages are automatically generated immediately before they are sent, but also when prefabricated content or a pre-programmed message is used automatically with the transmission.

(4) For telemedia providers in accordance with (2) sentence 1, Article 5 applies accordingly.

## Article 19

### Due Diligence Obligations

(1) Telemedia with journalistic-editorial offers, particularly in which the entire or partial content of periodical print materials are reproduced in text or image, must comply with recognised journalistic principles. The same applies to other commercial, journalistic-editorial telemedia offers, which regularly contain news or political information and which do not fall under sentence 1. Before they are disseminated, news stories are to be checked by the provider for content, origin, and truth with the due diligence required for the circumstances.

(2) When showing opinion polls that have been carried out by telemedia providers, it must be expressly stated whether they are representative.

(3) 'Providers' according to (1) sentence 2, who are not subject to self-regulation by the Press Code and the Complaints Regulations of the German Press Council, can join a recognised institution of voluntary self-regulation in accordance with (4) to (8). Recognised voluntary self-regulation institutions check compliance with the obligations according to (1) and (2) at their affiliated providers. They are obligated to immediately investigate complaints about their affiliated providers in accordance with their rules of procedure under (4) no. 4.

(4) An institution is to be recognised as an institution of voluntary self-regulation within the meaning of (3), if

1. the independence and expertise of their designated examiner is guaranteed and representatives of social groups, who deal with questions of journalism in a particular way, are considered,
2. appropriate facilities are ensured,
3. specifications are in place for the examiners' decisions, which are suitable to ensure compliance with the requirements of (1) and (2) when making decisions,
4. rules of procedure are in place, which regulate the scope and sequence of the examination as well as possible sanctions, and the opportunity to review decisions must be given,
5. it is ensured that the providers concerned are heard before a decision is made, the grounds for the decision are issued in writing, and the parties involved are informed,
6. a complaints office has been established, and
7. the institution is open for other providers to join.

(5) The competent state media authority takes the decision on the recognition of the institution.

(6) The recognition of the institution can be revoked in whole or in part or associated with ancillary provisions if the prerequisites for recognition are no longer applicable or if the institution's decision-making practice does not comply with the provisions of this Interstate Treaty. No compensation is granted for financial disadvantages resulting from the revocation of recognition.

(7) The recognised voluntary self-regulation institutions should agree on the application of (1) and (2).

(8) The competent state media authority can object to decisions made by a recognised voluntary self-regulation institution that exceed the limits of the scope of assessment, and demand that they be lifted. If a recognised voluntary self-regulation institution does not fulfil its tasks and obligations, the competent state media authority can demand that it fulfil them. No compensation is granted for financial disadvantages resulting from such a demand.

## **Article 20**

### **Right to Reply**

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

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

1. the affected party has no legitimate interest in the reply,
2. the reply inappropriately exceeds the extent of the assertion of fact being refuted,
3. the reply is not restricted to factual information or includes contents which are liable to prosecution, or
4. the reply, in writing and signed by the affected party or its legal representative, is not made available to the provider against whom a right of reply is claimed, without delay, at the latest within six weeks following the last day of the offer including the refuted text being available, but in any event three months after the offer was first made available.

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

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

## **Article 21**

### **Accessibility**

Telemedia providers should support unencumbered access to television services and television-like telemedia within the framework of their technical and financial means.

## Article 22

### Advertising, Sponsorship, Prize Games (Telemedia)

(1) Advertising shall be clearly recognisable as such and shall be distinctly separate from the other parts of the offers provided. Advertising shall not use subliminal techniques. In the case of advertising of a political, ideological, or religious nature, the advertiser or commissioning party must be clearly indicated in an appropriate manner; Article 10 (1) sentence 2 applies accordingly.

(2) For sponsorship in television text services, Article 10 shall apply accordingly.

(3) For prize games in telemedia according to Article 19 (1), Article 11 shall apply accordingly.

## Article 23

### Data Protection in Relation to Journalistic and Editorial Purposes

1) Insofar as the state broadcasting corporations forming the ARD, the ZDF, Deutschlandradio, commercial broadcasters or companies and ancillary companies of the press—as providers of telemedia—process personal data for journalistic purposes, the persons involved are prohibited from processing this personal data for other purposes (data confidentiality). These persons shall be bound to data confidentiality when commencing their duties. Data confidentiality shall continue even after the termination of their duties. Except Chapters I, VIII, X and XI of Regulation (EU) 2016/679, only point (f) of Article 5(1) in conjunction paragraph (2), together with Articles 24 and 32 of Regulation (EU) 2016/679 shall apply to data processing for journalistic purposes. Articles 82 and 83 of Regulation (EU) 2016/679 shall apply, subject to the provision that liability shall be limited to data confidentiality breaches in accordance with sentences 1 to 3 and inadequate measures in accordance with point (f) of Articles 5(1), 24 and 32 of Regulation (EU) 2016/679. Chapter VIII of Regulation (EU) 2016/679 does not apply insofar as companies, ancillary companies and associated undertakings of the press are subject to self-regulation by the Press Code and the Complaints Procedure of the German Press Council. Sentences 1 to 6 shall apply accordingly to the ancillary companies and associated undertakings which are part of the bodies mentioned in sentence 1. The data subjects shall only be entitled to the rights outlined in paragraphs 2 and 3.

(2) In the event that personal data is stored, changed, transmitted, blocked or deleted for journalistic purposes by a provider of telemedia and this causes prejudice to the personal rights of the data subject, he or she may request information concerning his or her stored data. The information may be refused after the interests of the participants with legitimate grounds for protection are considered, provided that:

1. the data can be used to identify persons who have participated in the preparation, production, or distribution of the data;
2. the data can be used to infer the identity of the sender or the guarantor of contributions, documents, and communications for the editorial unit; or
3. the communication of the researched or otherwise gathered data could impair the journalistic task of researching the information repository.

The data subject may request the immediate rectification of inaccurate personal data in the data records or the addition of an adequate amount of data to better represent him or her. The continued storage of personal data is lawful when this is necessary for the exercise of the right to freedom of expression and information or for the safeguarding of legitimate interests. Sentences 1 to 3 shall not apply to offers by companies, ancillary companies and participating of the press insofar these are subject to self-regulation by the Press Code and the Complaints Procedure of the German Press Council.

(3) In the event that the processing of personal data for journalistic purposes leads to the dissemination of counterstatements of the data subject or to declarations of commitment, decisions or judgments on the omission of the distribution or on the revocation of the content of the data, these counterstatements, declarations of commitment and revocations shall hence be included in the stored data and stored there for the same duration as the data itself and transmitted together with the data.

## **Article 24**

### **Telemedia Act, Public Authorities**

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

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

(3) The monitoring of compliance with the provisions of the Telemedia Act is governed by state law.

## **Article 25**

### **Notification**

Amendments to this section as well as Section V. are subject to obligatory notification pursuant to Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015, laying down a procedure for the provision of information in the field of technical regulations and the provisions for the services of the information society (OJ L 241 of 17 September 2015, p. 1).

## **Section III**

### **Special Provisions for Public Broadcasting**

## **Article 26**

### **Remit**

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

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

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

(3) The public-service broadcasting corporations cooperate for the purpose of fulfilling their remit; they shall specify the cooperation in public-service contracts.

(4) Public service broadcasting corporations shall also be entrusted with the provision of services of general economic interest pursuant to Article 106 (2) of the Treaty on the Functioning of the European Union insofar as they collaborate in the production and distribution of offers pursuant to Article 27 to fulfil their order according to (1). In particular, the entrustment applies to the areas of production, production standards, purchase of programming rights, programme exchange, distribution and further distribution of offers, procurement, network operation, information technology and other infrastructure, standardisation of business processes, licence fee service and general administration. Commercial activities pursuant to Article 40 (1) sentence 2 are not covered by the entrustment.

## **Article 27**

### **Offers**

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

(2) Broadcasting services which are simultaneously distributed via different routes of transmission shall be counted as one offer.

## **Article 28**

### **Television Services**

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

1. the channel "Erstes Deutsches Fernsehen (Das Erste)",
2. two services as additional offers in accordance with the concepts attached as an annex, namely

a) "tageschau24", and

b) "EinsFestival".

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

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

a) Bayerischer Rundfunk (BR),

b) Hessischer Rundfunk (HR),

c) Mitteldeutscher Rundfunk (MDR),

d) Norddeutscher Rundfunk (NDR),

e) Radio Bremen (RB),

f) Rundfunk Berlin-Brandenburg (RBB),

g) Südwestrundfunk (SWR),

h) Saarländischer Rundfunk (SR), and

i) Westdeutscher Rundfunk (WDR),

2. the thematic channel "ARD-alpha" focusing on education, produced by BR.

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

1. The general channel "Zweites Deutsches Fernsehen (ZDF)",

2. two services as additional offers in accordance with the concepts attached as an annex, namely

a) "ZDFinfo", and

b) "ZDFneo".

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

1. the general channel "3sat" focusing on culture, with the participation of European public-service broadcasters,

2. the general channel "arte - Der Europäische Kulturkanal", with the participation of European public-service broadcasters,

3. the thematic channel "PHOENIX - Der Ereignis- und Dokumentationskanal", and

4. the thematic channel "KI.KA - Der Kinderkanal".

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

## **Article 29**

### **Radio Services**

(1) The state broadcasting corporations forming the ARD association shall, on the basis of the respective state law(s), individually or jointly provide radio services for their respective area(s) of coverage; national radio services must not be provided. Radio services exclusively distributed on the internet shall be acceptable only on condition that a procedure in accordance with Article 32 has been conducted.

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

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

1. the service "Deutschlandfunk",
2. the service "Deutschlandfunk Kultur",
3. the digital service "Deutschlandfunk Nova" distributed in accordance with the concept attached as an annex, in particular by resorting to the provisions pursuant to Article 5 (2) of Deutschlandradio Interstate Treaty; for this purpose, the state broadcasting corporations forming the ARD association shall cooperate with Deutschlandradio,
4. radio services for distribution exclusively on the internet offering contents from the services listed in numbers 1 to 3 in accordance with a procedure conducted pursuant to Article 32.

(4) Starting per 1 January, the state broadcasting corporations forming the ARD association and Deutschlandradio shall publish a list of all radio services provided by all corporations in the official gazettes of the states each year.

## **Article 30**

### **Telemedia Offers**

(1) The state broadcasting corporations forming the ARD association, the ZDF, and Deutschlandradio offer telemedia services pursuant to Article 2 (2) no. 29.

(2) The order referred to in (1) in particular includes

1. Broadcasting of their programmes on demand before and after their scheduled broadcasting as well as independent audiovisual content,
2. Broadcasting of their programmes on demand relating to purchased European feature films and purchased episodes of television series, productions which have not been commissioned, up to thirty days after their broadcasting, whereby the retrieval option is to be generally restricted to Germany,
3. Broadcasting of their programmes on demand of major events pursuant to Article 13 (2) as well as football games of the first and second German leagues up to seven days thereafter,
4. historical/cultural archives with informative, formative, and cultural telemedia.

Otherwise, offers pursuant to Articles 40 to 44 remain unaffected.

(3) The contemporary design of telemedia offers should serve to allow all groups of society to participate in the information society, offer orientation and possibilities of interactive communication, as well as promote the technological and contentual media competences of all generations and minorities. This design of telemedia offers should take the interests of people with disabilities in particular consideration, especially through the provision of audio descriptions and manuscripts or by providing telemedia in simple language.

(4) The state broadcasting corporations forming the ARD association, the ZDF, and Deutschlandradio provide their services through electronic portals with access unobstructed to the greatest possible extent and bundle their programmes in electronic programme guides. If this is necessary to reach a certain target audience from a journalistic or editorial point of view, these telemedia can also be offered outside of the own dedicated portals. The state broadcasting corporations forming the ARD association, 18 the ZDF, and Deutschlandradio should network those telemedia suitable for networking from a journalist-editorial perspective, especially through linking. They should also link to content offered by scientific and cultural institutions and content that is suitable for the telemedia offers for journalistic reasons.

(5) The following is not allowed in telemedia offers:

1. advertisement and sponsoring,
2. the on-demand offer of purchased feature films and episodes of television series which are not commissioned, except for those European works mentioned in (2) sentence 1 no. 2,
3. full-coverage local reporting,
4. the offer formats listed in the annex to this Interstate Treaty

For product placement according to sentence 1 no. 1, Article 8 (7) and Article 38 apply accordingly.

(6) If telemedia of the state broadcasting corporations making up the ARD association, the ZDF, and Deutschlandradio are broadcast outside of their own portals, they must ensure compliance with (5) sentence 1 no. 1. By using this broadcasting method, they are not allowed to generate any income through advertising or sponsorship.

(7) The telemedia offers may not be of a press-type nature. The focus of their design should be placed on moving images or sound, in which text may not be in the foreground. Offer overviews,

headlines, broadcast transcripts, information about the relevant broadcaster, and measures to ensure accessibility remain unaffected. Not affected are also those telemedia which serve to provide contents from a specific broadcast including background information, as well as the materials and sources which are referred to for the broadcast and support, accompany, and update the broadcast thematically or contextually, whereby the time and content-related reference to a certain broadcast must be disclosed in the relevant telemedia offer. For telemedia pursuant to sentence 4, moving images or sound should be integrated if possible. An arbitration board is to be set up by the public broadcasters and the umbrella press organisation to enforce sentences 1 to 5.

## **Article 31**

### **Statutes, Directives, Obligatory Reports**

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

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

(3) In the annual reports of the state broadcasting corporations forming the ARD association, of the ZDF and of Deutschlandradio, the scope of production by production companies which are linked, and by independent production companies shall be shown. At the same time, the manner in which the protocol declaration of all states on Article 11d (2) of the broadcasting Interstate Treaty, within the framework of the 22<sup>nd</sup> amended broadcasting Interstate Treaty, is taken into account, must be described.

## **Article 32**

### **Telemedia Concepts**

(1) The state broadcasting corporations forming the ARD association, the ZDF, and Deutschlandradio more specifically put the contentual orientation of their planned telemedia offers pursuant to Article 30 into concrete terms as regards telemedia concepts, the target audience, content, orientation, duration of media consumption, the use of internet-specific design means, as well as the measures to ensure compliance with Article 30 (7) sentence 1. Limitations which are differentiated according to the offer must be set forth for the duration of media consumption; exempt from this are archives pursuant to Article 30 (2) sentence 1 no. 4, which are allowed without limitation. If telemedia is to be offered outside of the own portals set up for that purpose, this must be substantiated. Any measures intended to take into consideration the rules on the protection of minors in the media, data protection, as well as Article 30 (6) sentence 1 are to be described.

(2) The description of all telemedia offers must allow for a review of the funding requirements by the Commission assessing the funding requirements of public-service broadcasting (KEF).

(3) The state broadcasting corporations forming the ARD association, the ZDF, and Deutschlandradio shall specify consistent criteria in statutes or guidelines cases of a new or significant change to an existing telemedia offer, which is to be verified in accordance with the following procedure laid out in (4) through (7). A significant change is particularly then considered to exist whenever the overall contentual orientation of the telemedia offer or the intended target audience changes. For significant changes, the procedure laid out in (4) through (7) only relates to changes to previously disseminated telemedia concepts.

(4) If a new telemedia offer pursuant to (1) is planned or if a significant change to an existing telemedia offer pursuant to (3) is planned, the broadcaster must demonstrate to its competent committee that the planned new telemedia offer or the significant change is covered by the order. Statements must be made on,

1. the extent to which the new telemedia offer or the significant change complies with the democratic, social, and cultural needs of the society,
2. the extent to which the new telemedia offer or the significant change contributes to media competition from a qualitative point of view, and
3. the financial means required for the new telemedia offer or the significant change.

The quantity and quality of the available, freely accessible telemedia offers which affect all relevant markets of the planned new telemedia offer or the significant change, as well as their opinion-forming function must be considered using available, freely accessible telemedia offers, including those of public broadcasters.

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

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

(7) Prior to publication, all information required for a legal assessment shall be submitted to the authority in charge of legal supervision. After completion of the procedure pursuant to (5) and (6)

and after an assessment by the authority responsible for legal supervision, the description of the new telemedia offer or the significant change must be published on the online presence of the state broadcasting corporations forming the ARD association, the ZDF, and Deutschlandradio. Reference must be made to the publication in the web presence through the official gazettes of the states involved.

### **Article 33**

#### **Offer for Young Audiences**

(1) The public-service broadcasting corporations forming the ARD association and the ZDF shall together provide an offer for young audiences comprising broadcasting and telemedia content. The offer for young audiences is to focus on the reality of life and the interests of young people, thereby effecting a specific contribution to fulfilling the public-service remit within the meaning of Article 26. For this purpose, the public-service broadcasting corporations forming the ARD association and the ZDF are to produce, in particular, original audiovisual contents for the offer for young audiences, or to commission their production, and to acquire the rights of use of content for the offer for young audiences. The offer for young audiences is to include journalistic edited interactive forms of offer and to provide contents supplied by the users themselves.

(2) The offer for young audiences shall be designed and transmitted in a dynamic manner concerning content and technology which is open to allow for new developments to meet the democratic, social, and cultural needs of the target audience. Interactive communication with the users reflecting the specificities of the target audience as well as stabilised opportunities for their participation are also to contribute to this objective.

(3) Other offers of the public-service broadcasting corporations forming the ARD association and the ZDF pursuant to this Interstate Treaty are to be linked to the offer for young audiences as regards content and technology. If an original content of the offer for young audiences is also used in another offer of the public-service broadcasting corporations forming the ARD association and the ZDF, the requirements laid down in this Interstate Treaty including a possible concept for telemedia applicable for the other offer shall be observed.

(4) The duration of availability of the contents of the offer for young audiences is to be set by the public-service broadcasting corporations forming the ARD association and the ZDF in such a manner that they reflect the reality of life and the interests of young people and meet the democratic, social and cultural needs of the generations which are part of the target group at any one time. The principles applied for assessing the duration of availability are to be examined by the public-service broadcasting corporations forming the ARD association and the ZDF on a regular basis. The duration of availability of acquired feature films and acquired episodes of television series not constituting commissioned productions shall be adequately limited.

(5) Advertising, with the exception of product placement in accordance with Article 8 (7) and Article 38, full-coverage local reporting, press-type offers not related to the offer for young audiences, an original audio service and the forms of offer for the offer for young audiences listed in the annex to this Interstate Treaty shall not be admissible in the offer for young audiences. If for the purpose of reaching the target audience for journalistic reasons the distribution of the offer for young audiences

outside the separate portable set up for the offer for young audiences by the public-service broadcasting corporations forming the ARD association and the ZDF is deemed necessary, the public-service broadcasting corporations forming the ARD association and the ZDF are to ensure that the provisions pursuant to sentence 1 are adhered to. They shall issue concordant directives / statutes for this mode of transmission, in particular for effecting the protection of minors in the media and for data protection. The offer for young audiences must not be distributed via broadcasting frequencies (cable, satellite, terrestrial).

(6) The public-service broadcasting corporations forming the ARD association and the ZDF shall together detail in the report to be published pursuant to Article 31 (2) the following in relation to the offer for young audiences in particular:

1. the specific contribution of the offer for young audiences to fulfilling the public-service remit;
2. how the target audience is reached, how communication reflecting the specificities of the target audience and stabilised opportunities allowing the target group to participate are achieved;
3. the result of the examination of the duration of availability pursuant to (4) above;
4. the use of the mode of transmission outside of the specific portal set up pursuant to (5) sentences 2 and 3;
5. the respective shares of the contents produced in Germany and in Europe for the offer for young audiences, and
6. the respective shares of own productions, commissioned productions and acquired rights of use for acquired feature films and acquired episodes of television series for the offer for young audiences.

#### **Article 34**

##### **Adequate Funding, Principle of Financial Equalisation**

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

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

#### **Article 35**

##### **Funding**

Public-service broadcasting shall be funded through licence fees, income from television and radio advertising and other sources of revenue. The main source of income shall be the licence fee. With

the exception of ancillary products, the provision of services and offers as part of its remit in return for special payment shall not be permitted. No income may be generated from offering premium rate telephone services.

## **Article 36**

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

(1) The funding requirements of public-service broadcasting shall be regularly reviewed and determined by the independent commission assessing the funding requirements of public-service broadcasting (KEF), taking into account the principles of efficiency and economy including the related potentials for rationalisation; the review will be based on the funding requirements presented by the state broadcasting corporations forming the association of public-service broadcasters in Germany (ARD), the ZDF and Deutschlandradio.

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

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

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

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

## **Article 37**

### **Reporting of the Audit Offices**

The audit office which is competent for conducting the audit shall notify the respective director general, the respective competent supervisory bodies of the broadcasting corporation and the management of the associated company as well as the KEF of the result of the conducted audit of a broadcasting corporation, the ZDF or Deutschlandradio. It shall provide to the director general of the respective broadcasting corporation and the management of the associated companies an

opportunity to comment on the findings of the audit and shall take the comments into consideration. The competent audit office shall notify the state parliaments and the governments of the states responsible for the broadcasting corporation as well as the KEF of the final report to be drafted on the basis of the result of the audit, and shall publish it. In so doing, the audit office must ensure that the competitiveness of the associated company audited is not impacted and in particular that operating and business secrets are kept confidential.

## **Article 38**

### **Admissible Product Placement**

In addition to the requirements according to Article 8 (7) sentence 2, product placement in movies, films, and series, sports programmes, and light entertainment programmes shall only be admissible

1. if these were not produced or commissioned by the broadcaster itself or by a company affiliated with the broadcaster, or
2. if there is no payment, but only the provision of specific goods or services free of charge such as production props and prices with a view to their inclusion in a programme, unless the programmes concerned are news programmes, current affairs programmes, advice and consumer programmes, programmes for children or religious broadcasts.

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

## **Article 39**

### **Duration of Broadcast Advertising, Sponsorship**

(1) The total amount of advertising in the ARD channel "Das Erste" and in the channel "Zweites Deutsches Fernsehen" shall not exceed 20 minutes per working day on an annual average. Broadcasting times including product placement shall not be included in the permitted advertising minutage. The subsequent utilisation of advertising minutage not fully exploited must not exceed 5 minutes per working day. Advertising shall not be broadcast after 20.00 hours, nor on Sundays or on national public holidays. Article 46 remains unaffected.

(2) There shall be no broadcast advertising in other television services of the ARD and the ZDF or in the regional television channels transmitted nationally ("Dritte Fernsehprogramme").

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

(4) References made by the broadcasting corporations to programmes, broadcasting services, or broadcast-like telemedia of public-service broadcasting, and to accompanying materials that are directly derived from these services and broadcasts, free contributions at the service of the public including appeals for charity donations, statutory mandatory information, and neutral individual

images between editorial content and television or teleshopping spots, as well as between individual spots, are not deemed to be advertising.

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

(6) There shall be no sponsorship on television after 8:00 pm as well as on Sundays and national public holidays; this shall not apply to sponsorship of the transmission of major events pursuant to Article 13 (2).

## **Article 40**

### **Commercial Activities**

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

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

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

## **Article 41**

### **Shareholdings in Companies**

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

1. this is in pertinent connection to their legal tasks,

2. the company is constructed as a legal person, and
3. the statute or the articles of association of the company provide for a supervisory board or comparable body.

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

(2) In the event of an investment in a company, the broadcasting corporations are required to secure the necessary influence upon the management of the company in an appropriate manner, in particular, an appropriate presentation in supervisory bodies. The activities of the corporations in the company must be reviewed by an auditor, paying due regard to commercial principles.

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

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

## **Article 42**

### **Control of Shareholdings in Companies**

(1) The state broadcasting corporations forming the ARD association, the ZDF and Deutschlandradio must establish an effective control system regarding their shareholdings established pursuant to Article 41. The Director General ("Intendant") must notify the respective competent supervisory body of the broadcasting corporation at regular intervals of the major operations of the associated companies, in particular as regards their financial development.

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

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

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

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

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

### **Article 43**

#### **Control of Commercial Activities**

(1) The state broadcasting corporations forming the ARD association, the ZDF and Deutschlandradio are further required to ensure that over and above the general audit competences of the audit offices for the majority shareholdings for companies within the meaning of Article 42 (3) commanding an audit by the competent audit office, the associated companies appoint a certified public accountant for the annual audit with the agreement of the competent audit offices only. The broadcasting corporations are required to ensure that the associated company authorizes the accountant to audit the annual accounts also regarding market conformity of their commercial activities on the basis of additional questions to be stipulated by the respective competent audit offices and that it authorizes the accountant to submit the result of its audit to the competent audit offices together with the annual report. These questions shall be specified by the audit office competent for the audit and shall include in particular proof of compliance with the provisions regarding commercial activities as provided for in this Interstate Treaty. The broadcasting corporations are required to ensure that the necessary provisions are included in the articles of association or the statute of the associated company. The accountants shall certify the annual account of the associated company and shall provide a report to the competent audit offices also regarding the questions detailed in sentences 2 and 3. They shall notify the competent audit offices of the result and the annual report. The competent audit offices shall evaluate the audit and are entitled to take their own audit measures concerning the respective associated companies in each individual case. Additional costs incurred for the additional audits shall be borne by the respective associated companies.

(2) In the event of commercial activities of limited relevance for the market pursuant to Article 40 (1) sentence 5, the broadcasting corporations are required upon request by the competent audit office to see to an appropriate procedure pursuant to (1) sentences 1, 2, 3 and 5 to 8. If breaches of the provisions governing market conformity are established during examinations of associated companies or the broadcasting corporation itself, Article 37 shall apply to the notification of the result.

### **Article 44**

#### **Liability for Associated Companies Pursuing Commercial Activities**

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

## **Article 45**

### **Directives**

The state broadcasting corporations forming the ARD association and the ZDF shall enact directives for the implementation of Articles 8 to 11, 38, and 39. The directive relating to Article 11 shall in particular specify in greater detail the conditions for the participation of minors. For enacting said directives, the state broadcasting corporations forming the ARD association and the ZDF shall consult with the state media authorities and shall conduct a joint exchange of experiences with regard to the implementation of these directives. The directive relating to Article 8 (7) and Article 38 shall specify in detail under which conditions, in which formats and to which extent free product placement may take place, by which means the independence of producers and editorial staff will be safeguarded and by which means undue prominence of the product will be avoided. Sentences 1 to 4 shall apply accordingly for the directives enacted by Deutschlandradio for the implementation of Articles 8, 11, and 38.

## **Article 46**

### **Changes to Advertising**

The states may agree to change the total duration of advertising, the daily limits for advertising and the restrictions regarding the transmission of advertising to working days for public-service broadcasting.

## **Article 47**

### **Exclusion of Teleshopping**

There shall be no teleshopping, with the exception of teleshopping spots, in public-service broadcasting.

## **Article 48**

### **Remit of Provisions**

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

## **Article 49**

### **Publication of Complaints**

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

## **Section IV**

### **Special Provisions for Commercial Broadcasting**

#### **Sub-Section 1**

#### **Scope of Applications, Programming Principles**

## **Article 50**

### **Scope of Application**

Articles 51 and 53 to 68 shall apply to national services only. Articles 52 to 55 (1), and Article 58 shall also apply to teleshopping channels. No deviation under state law shall be permitted. The decisions of the Commission on Concentration in the Media (KEK, Article 104 (2) sentence 1 no.3) form the basis for the designation of transmission capacities pursuant to this Interstate Treaty, as well as for the decision on the designation of transmission capacities under state law by the competent state media authority.

## **Article 51**

### **Programming Principles**

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

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

**Sub-Section 2  
Licence**

**Article 52**

**Principle**

(1) Commercial broadcasters require a licence for the purpose of providing broadcasting services; Article 54 remains unaffected. The licence approval of a broadcaster that is not nationally geared is based on state law. The provisions of this subsection apply to the licence approval of a broadcaster for nationwide broadcasting; In all other cases, state law applies.

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

1. the service of the broadcaster is directed entirely or to a significant extent at the population of another state that has ratified the European Convention on Transfrontier Television, and
2. the broadcaster has established himself in the Federal Republic of Germany for the purpose of circumventing the provisions of the respective state, and
3. the provisions of the respective state which the broadcaster is intending to circumvent are subject to the European Convention on Transfrontier Television.

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

**Article 53**

**Granting of Licences for Providers of National Broadcasting Services**

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

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

(2) The requirements pursuant to (1) nos. 1 to 3 and 6 must in the case of legal persons be fulfilled by the legal or statutory representatives. A provider with the legal form of a public limited company may be granted a licence only if the statutes of the public limited company specify that the shares may be issued only as registered shares or non-voting shares.

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

#### **Article 54**

##### **Licence-Free Broadcasting Services**

(1) No licence is required for broadcasting services

1. that have little importance for individual and public opinion formation, or
2. which, on average, reach fewer than 20,000 simultaneous users over a period of six months or which will not reach that number with the anticipated development.

The competent state media authority will confirm whether a broadcasting service is licence-free, upon application by means of a clearance certificate.

(2) The state media authorities regulate the further specifications of the ascertainment of whether a licence is required according to (1) by means of statutes.

(3) Radio broadcastings that were announced before this Interstate Treaty enters into force and which are broadcast exclusively on the Internet, are deemed to be permitted service programmes according to Article 52.

(4) The provisions of Articles 15, 57, and 68 do not apply to licence-free broadcasting services. Article 53 applies accordingly, with the exception of Article 53 (1) no. 1. The competent state media authority can request the information and documents specified in Articles 55 and 56 from broadcasters within the meaning of paragraph 1.

#### **Article 55**

##### **Principles of the Licensing Procedure**

(1) The licensing application must state the name and address of the applicant, media content, media category (full service or specialty media), media duration, transmission technology, and the planned broadcasting region.

(2) Where necessary, the competent state media authority must request information and the submission of further documents, which, in particular, extend to

1. a description of the direct and indirect interests in the applicant as defined in Article 62 and of the capital and voting rights in the applicant and associated companies as defined in the German Company Law;

2. information about relatives as defined in Article 15 of the Fiscal Code among the parties pursuant to no. 1. The same shall apply to representatives of the person or partnership or of the member of a body of a legal entity;
3. the articles of association and the statutory provisions of the applicant;
4. agreements existing among the parties holding a direct or indirect interest in the applicant within the meaning of Article 62 relating to the joint provision of broadcasting as well as to trustee relationships and relationships that are significant pursuant to Articles 60 and 62;
5. a written statement of the applicant to the effect that the documents and information pursuant to nos. 1 to 4 have been provided in full.

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

(4) The obligations pursuant to (1) to (3) shall apply accordingly to natural persons and legal entities or partnerships holding a direct or indirect interest in the applicant within the meaning of Article 62, or who represent an undertaking associated with the applicant, or who may exercise influence on him in some other manner within the meaning of Articles 60 and 62.

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

(6) Those obliged to provide information and to submit documents during the licensing procedure must notify the competent state media authority of any change in circumstances without delay which may have occurred since the application was submitted or the licence was issued. Paragraphs (1) to (5) apply accordingly. Article 63 remains unaffected.

(7) Notwithstanding any other notification requirements the broadcaster and the parties holding a direct or indirect interest in the broadcaster within the meaning of Article 62 are required to submit a statement to the competent state media authority upon expiry of the calendar year without delay, indicating whether and to what extent any change has occurred within that calendar year with regard to relevant participating interests and facts necessitating attribution pursuant to Article 62.

## **Article 56**

### **Information and Investigation Rights**

(1) The competent state media authority may carry out all investigations and obtain all evidence required to perform its tasks pursuant to Articles 60 to 67 and Article 120. It may make use of evidence which, in exercising its due discretion, it deems necessary to ascertain the facts. In particular, it may:

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

Persons other than the parties involved shall not be called upon to provide information unless the information provided by the latter does not clarify matters or is not likely to do so.

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

(3) In order to substantiate that the information provided is complete and accurate, the competent state media authority may require those obliged to provide information and to submit documents pursuant to Article 55 (1) and (4) to provide an affirmation. An affirmation shall be required only if other means of establishing the truth are not available, have been unsuccessful or require a disproportionate amount of time and effort.

(4) Those entrusted by the competent state media authority with performing the tasks pursuant to Articles 60 to 67 and Article 120 may enter the business premises of the persons and partnerships referred to in Article 21 (1), (3) and (4), during normal business and working hours and may inspect and review the documents mentioned in (5). The basic right codified in Article 13 of the Constitution shall be restricted to that extent.

(5) The persons or partnerships referred to in Article 55 (1), (3) and (4) shall submit records, books, business papers and other documents which may have a relevance with regard to the application of Articles 60 to 67 and Article 120, give information and provide any assistance otherwise required to carry out the measures pursuant to (4) upon request. Steps hindering or impeding those measures shall be avoided.

(6) Those obliged to provide information may refuse to answer questions, the replies to which would make them or one of the relatives referred to in Article 383 (1) nos. 1 to 3 of the Code of Civil Procedure liable to criminal prosecution or proceedings pursuant to the Administrative Offences Act.

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

(8) The person having actual authority over the premises to be searched may be present during the search. In the event of his absence, his representative or another witness shall be called in. The

person having actual authority over the searched premises or his representative must upon request be provided with a copy of the record specified in (7) sentence 3.

## **Article 57**

### **Duty of Public Disclosure and Other Submission Requirements**

(1) Every broadcaster, regardless of his legal form, shall prepare and publish annual accounts including notes to the annual accounts as well as a management report no later than the end of the ninth month following the end of the financial year in accordance with the provisions of the Commercial Code applying to companies limited by shares. Sentence 1 also applies accordingly to parties holding a direct interest in the broadcaster pursuant to Article 62 (1) sentence 1 to whom the service provided by the broadcaster is attributable, and to parties holding an indirect interest in the broadcaster to whom the service pursuant to Article 62 (1) sentence 2 is attributable.

(2) Within the same period the broadcaster shall submit to the competent state media authority a list of the programming sources for the period covered by the report.

## **Article 58**

### **Confidentiality**

Beyond the scope of application of the Regulation (EU) 2016/679, information about personal and material circumstances of a natural or legal person, as well as a partnership and trade or business secrets which have been entrusted, or otherwise become known to the media authorities, their executive bodies, their employees or third parties commissioned by them in carrying out their duties, may not be disclosed without authorisation.

## **Sub-Section 3**

### **Ensuring Plurality of Opinion**

## **Article 59**

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

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

(2) A single service must not exert a highly imbalanced influence on public opinion.

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

(4) The two general channels transmitted nationally with the largest audience reach shall incorporate window services providing up-to-date, authentic presentations of the political, economic, social and cultural life in the respective state at least in line with the scheduled and regionally differentiated extent of the programme activities as per 1 July 2002 pursuant to the respective state law. The main service provider shall guarantee the editorial independence of the window service provider by its organisation. The window service provider shall be granted a separate licence. Window service providers and main service providers should not be related to one another in the form of affiliated undertakings pursuant to Article 62, unless independence is secured in other ways through state provisions in force per 31 December 2009. Licences in place on 31 December 2009 shall remain unaffected. An extension shall be admissible. The organisation of the window services shall also comprise their funding by the main service providers. The state media authorities shall coordinate the scheduling and technical organisation of the window services, taking into account the interests of the main service providers affected.

## **Article 60**

### **Ensuring Plurality of Opinion on Television**

(1) An undertaking (natural person or legal entity or partnership) may itself or through undertakings attributable to it provide an unlimited number of television services transmitted nationally in the Federal Republic of Germany unless this results in the undertaking acquiring dominant power of opinion as specified in the following provisions.

(2) If the services attributable to an undertaking reach an annual average audience share of 30 percent of all viewers, dominant power of opinion shall be assumed to be given. The same applies for an audience share of 25 percent if the undertaking holds a dominant position in a media-relevant related market or an overall assessment of its activities in television and in media-relevant related markets shows that the influence on the formation of opinion obtained as a result of these activities corresponds to that of an undertaking with a 30 percent audience share. In the calculation of the relevant audience share pursuant to sentence 2, two percentage points shall be deducted from the actual audience share if window services are included in the general channel attributable to the undertaking with the highest audience share pursuant to Article 59 (4). If at the same time broadcasting time is included for third parties in accordance with (5), a further three percentage points shall be deducted from the actual audience share.

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

(4) If an undertaking has acquired dominant power of opinion with the services attributable to it, the state media authority shall, by means of the KEK, propose the following measures to the undertaking:

1. The undertaking may give up its participating interests in broadcasters attributable to it until the attributable audience share of the undertaking falls below the limit pursuant to (2) sentence 1, or

2. it may, in the case specified in (2) sentence 2, limit its market position in media-relevant related markets or give up its participating interests in broadcasters attributable to it until dominant power of opinion pursuant to (2) sentence 2 no longer prevails, or
3. it may, with regard to service providers attributable to it, take the measures within the meaning of Articles 64 to 66 in order to ensure plurality of opinion.

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

(5) If a service provider reaches an annual average audience share of 10 percent with a general channel or an information-oriented thematic channel, the service provider must allocate broadcasting time to independent third parties as specified in Article 65 within six months after this fact has been established and after having been informed accordingly by the state media authority. If a service provider reaches an annual average audience share of 20 percent with services attributable to him without one of the general channels or information-oriented thematic channels reaching an audience share of 10 percent, the obligation pursuant to 1 shall apply to the service provider of the service attributable to the undertaking with the highest audience share. If the service provider does not implement the required measures, the licence shall be revoked by the competent state media authority after the facts have been established by the KEK. Paragraph (4) sentence 5 applies accordingly.

(6) Every three years or upon the request of the states, the state media authorities shall jointly publish a KEK report on the development of concentration and on measures to ensure plurality of opinion in the commercial broadcasting sector, taking into account:

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

The report should also comment on the application of Articles 60 to 66 and on any necessary amendments to these provisions.

(7) The state media authorities shall publish an annual list of services to be drawn up by the KEK. The list of services shall include all services, their broadcasters, and parties with participating interests.

## **Article 61**

### **Establishing Audience Shares**

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

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

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

## **Article 62**

### **Attribution of Services**

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

(2) An interest pursuant to (1) also exists if an undertaking is able either by itself or together with others to exert a comparable influence on a broadcaster. Furthermore, a comparable influence exists if an undertaking or an undertaking already attributable to it for other reasons pursuant to (1) or (2) sentence 1:

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

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

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

### **Article 63**

#### **Changes in Participating Interests**

The competent state media authority must be notified in writing of any planned change in participating interests or other influences prior to their implementation. Notifications shall be made by the broadcaster and by parties holding a direct or indirect interest in the broadcaster within the meaning of Article 62. The competent state media authority may confirm that no objections exist to such changes only if a licence could still be issued under such changed conditions. If a planned change is implemented to which confirmation pursuant to sentence 3 cannot be given, the licence shall be revoked. Article 108 (2) and (3) shall apply to the revocation. For minor changes to the participating interests or other types of influence, the KEK may issue directives detailing exemptions concerning the obligation to report changes.

### **Article 64**

#### **Measures Ensuring Plurality**

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

1. granting broadcasting time to independent third parties (Article 65),
2. establishing a programme advisory council (Article 66).

### **Article 65**

#### **Broadcasting Time for Independent Third Parties**

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

(2) The duration of the window service shall be at least 260 minutes per week, of which at least 75 minutes shall be broadcast between 19.00 hours and 23.30 hours. Regional window services with a maximum of 150 minutes in duration shall be calculated with a maximum of 80 minutes per week towards the transmission time for third parties outside the transmission time specified in sentence 1 for the weekly broadcasting time; in the case of less than 150 minutes broadcasting time for the regional window service per week, the duration of 80 minutes to be calculated as transmission time

for third parties time shall be reduced accordingly. Regional window services may be taken into account for the weekly transmission time only if they are provided with editorial independence and jointly reach at least 50 percent of television households in national transmission. In the course of digitisation of the routes of transmission a lower level of coverage is acceptable.

(3) The window service provider pursuant to (1) must not be legally dependent upon the main service provider. Within the meaning of sentence 1, legal dependence shall be assumed if the main service provider and the window service provider pursuant to Article 62 can be attributed to the same undertaking.

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

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

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

## Article 66

### Programme Advisory Council

- (1) The programme advisory council must advise those responsible for programming, the management of the broadcaster and the partners or shareholders on how programming is to be designed. With its proposals and suggestions, the programme advisory council should contribute to ensuring plurality of opinion and programme diversity (Article 59). When setting up a programme advisory council the broadcaster must ensure effective influence on programming for the programme advisory council by means of an agreement or statute.
- (2) The members of the programme advisory council shall be appointed by the broadcaster. As members of the different groups of society they must as a whole ensure that the major views of society are represented.
- (3) The programme advisory council shall be informed by the management of all matters concerning programming. It shall be consulted on any major changes in the structure, content, and scheduling of a service as well as regarding any programme-related hearings conducted by the competent state media authority, and in the event of programme complaints.
- (4) For the purpose of performing its tasks, the programme advisory council may require information from the management and may make complaints to the management regarding programming or individual broadcasts. The management must comment on enquiries and complaints within a reasonable period. If in the opinion of the programme advisory council it does not take sufficient account of the enquiries and complaints, the programme advisory council may require a decision on this issue to be taken by the body supervising the management or, if no such supervisory body exists, by the partners' or shareholders' meeting. The requirement by the programme advisory council may only be rejected by the partners' or shareholders' meeting or by the members of the body supervising the management with a majority of 75 percent of the votes cast.
- (5) In the event of changes in the structure, content, or scheduling of a service or in the event of a decision on programme complaints, the approval of the programme advisory council shall be obtained prior to the decision being taken by the management. If such approval is withheld or if no comment on the matter can be obtained within a reasonable period, the management may introduce the measure in question only with the consent of the body supervising the management or, if no such supervisory body exists, of the partners' or shareholders' meeting, with such consent requiring a majority of 75 percent of the votes cast. The broadcaster shall notify the competent state media authority of the result of the deliberations by the programme advisory council or the decision pursuant to sentence 2.
- (6) If a programme advisory council is set up for a broadcaster which is an undertaking managed by a sole trader, paragraphs (4) and (5) shall apply on condition that the programme advisory council may refer the issue for decision to the competent state media authority in place of the partners' or shareholders' meeting or the body supervising the management.

## **Article 67**

### **Directives**

The state media authorities shall issue joint directives further specifying Articles 59, 65, and 66. The directives relating to Article 66 shall, in particular, detail the appointment of the members and the composition of the programme advisory council.

## **Article 68**

### **Broadcasting Time for Third Parties**

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

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

## **Sub-Section 4**

### **Funding, Advertising**

## **Article 69**

### **Funding**

Commercial broadcasters may fund their broadcasting services through advertising and teleshopping revenues, through other income, in particular fees payable by users (subscriptions or individual fees), as well as from their own means. Commercial broadcasters must not be funded by licence fee revenue. Article 112 remains unaffected.

## **Article 70**

### **Duration of Television Advertising**

(1) The proportion of airtime for television advertising spots and teleshopping spots between 6:00 am and 6:00 pm, from 6:00 pm to 11:00 pm, and from 11:00 pm to 00:00 am, shall not exceed 20 percent. Sentence 1 shall not apply to product placements and sponsorship announcements.

(2) References by the broadcaster to its own programmes and accompanying material that are directly derived from these programmes, or to programmes, broadcasting services, or broadcast-like telemedia of other parts of the same broadcasting group, content broadcast free of charge including

charity donation appeals, statutory mandatory information and neutral individual images between editorial content and television advertising or teleshopping spots, as well as between individual spots, are not considered to be advertising.

(3) Paragraphs (1) and (2) as well as Article 9 shall not apply to channels exclusively devoted to advertising.

## **Article 71**

### **Teleshopping Windows and Self-Promotion Channels**

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

(2) Articles 8 and 10 shall apply accordingly to self-promotion channels. Articles 9 and 70 shall not apply to self-promotion channels.

## **Article 72**

### **Statutes and Directives**

The state media authorities shall issue joint statutes or directives governing the implementation of Articles 8 to 11, 70, and 71; the statute or directive governing Article 11 shall in particular specify the prosecution of violations and the conditions for the participation of minors. In enacting said directives, they shall consult with the state broadcasting corporations forming the ARD association and the ZDF and shall conduct a joint exchange of experiences with regard to the implementation of these directives.

## **Article 73**

### **Exemptions for Regional and Local Television Broadcasters**

For regional and local television services provisions under state law may differ from Article 8 (4) sentence 2, Article 9 (3), and Article 70 (1).

**Section V**  
**Special Provisions for single Telemedia**

**Sub-Section 1**  
**Broadcast-Like Telemedia**

**Article 74**

**Advertising, Prize Games**

Articles 8, 10, 11 and 72 apply accordingly to broadcast-like telemedia. Articles 3 to 16, as well as Article 72, apply accordingly to offers pursuant to Article 2 (3) and other linear television-like telemedia.

**Article 75**

**Short News Reporting (Broadcast-Like Telemedia)**

Article 14 applies accordingly to television-like telemedia if the same programme is offered by the same television broadcaster with a time delay.

**Article 76**

**Accessibility (Broadcast-Like Telemedia)**

Article 7 applies accordingly to television-like telemedia.

**Article 77**

**European Productions (Broadcast-Like Telemedia)**

To represent the diversity in German-speaking and European countries, and to promote European film and television productions, providers of television-like telemedia ensure that the proportion of European productions in their catalogues makes up at least 30 percent. Sentence 1 does not apply to providers of television-like telemedia who draw low revenues or low viewer figures, or if this is impracticable or unjustified due to the nature or topic of the television-like telemedia. Productions according to sentence 1 are to be showcased in the catalogues. The state media authorities regulate the details of the implementation of sentences 1 to 3 in joint statutes.

**Sub-Section 2**  
**Media Platforms and User Interfaces**

**Article 78**

**Scope of Application**

The following provisions shall apply to all media platforms and user interfaces. With the exception of Articles 79, 80, 86 (1), and Article 109, the provisions do not apply to

1. infrastructure-related media platforms, which generally have fewer than 10,000 connected residential units and user interfaces, or
2. non-infrastructure-related media platforms and user interfaces that are not user interfaces of media platforms in accordance with no. 1, and which on an average monthly basis generally have fewer than 20,000 actual daily users.

The state media authorities specify criteria to establish the threshold values in the statutes and directives according to Article 88, in consideration of regional and local circumstances.

**Article 79**

**General Provisions**

(1) An infrastructure-related media platform may only be operated by those who meet the requirements stipulated under Article 53 (1) and Article 53 (2) sentence 1. Moreover, a provider of a media platform or a provider of a user interface or an authorised representative appointed by said provider must meet the requirements stipulated under Article 53 (1) and Article 53 (2) sentence 1.

(2) Providers who intend to offer a media platform or user interface must notify the competent state media authority of this at least one month prior to putting the platform into operation. The notification must contain:

1. information in accordance with (1),
2. information on the technical and presumptive range of use.

Sentences 1 and 2 apply accordingly in the event of substantial changes.

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

(4) Providers of media platforms and user interfaces shall be responsible for their own offers. In the event of orders issued by supervisory authorities against offers or content of third parties which are distributed across the media platform or are contained in user interfaces, the providers are obliged to meet the orders. If measures against those responsible for offers or content pursuant to sentence 2 cannot be effected or are not expected to achieve the desired success, measures may be taken to prevent access for offers or content also against the provider of media platforms or user interfaces, if such prevention is technically possible and reasonable.

## Article 80

### Signal Integrity, Overlays, and Scaling

(1) Without the consent of the respective broadcaster or provider of broadcast-like telemedia, its broadcast services, including the HbbTV signal, broadcast-like telemedia or parts thereof may not

1. be changed in terms of content or technology,
2. be overlaid or have its image scaled for this purpose, in the course of the image or acoustic reproduction, completely or partially with advertising, or content from broadcasting services or broadcast-like telemedia, including recommendations or references thereto,
3. be included in bundled offers, or otherwise marketed or made publicly available for a fee or free of charge.

(2) Deviating from (1) no. 1, technical changes that serve exclusively for efficient use of capacity and that do not affect compliance with the agreed quality standards or, in the event that no agreement has been concluded, quality standards customary for the market, are permitted. Deviating from (1) no. 2, overlays or scalings are permitted for the purpose of using individual communication services or if they are initiated by the user in individual cases. Sentence 2 does not apply to overlays or scaling for advertising purposes, unless it concerns recommendations or references to the content of broadcasting services or broadcast-like telemedia.

(3) In the case of an overlay or scaling for advertising purposes, the restrictions applicable to the overlaid or scaled offer apply accordingly, except in the cases of (2) sentence 2.

## Article 81

### Allocation of Media Platform Capacities

(1) The following provisions apply to the infrastructure-related media platform capacities.

(2) The provider of a media platform

1. must ensure that within a technical capacity amounting to a maximum of one third of the overall capacity available for the digital transmission of broadcasting
  - a) the required capacities are available for the nationwide statutory contribution-financed services as well as for the third-party services of public-service broadcasting including programme-related services; within the framework of the state windows broadcast by third-party services, this only applies to the countries for which they are legally determined,
  - b) the capacities are available for the commercial television services that contain regional windows in accordance with Article 59, including programme-related services; the television services are to be broadcast including the regional windows legally determined for the respective region,

- c) the capacities for the regional and local television services approved in the respective country, as well as the public access channels, are available; this only applies within the area for which they are determined; the special state regulations for public access channels and comparable offers remain unaffected,
  - d) the technical capacities according to letters a to c are technically equivalent in relation to other digital capacities,
2. takes its own decision, within a further technical capacity to the extent of the capacity according to no. 1, on the allocation of broadcasting services distributed in digital technology, including programme-related services, insofar as it includes a large number of broadcasters and a diverse range of full programmes, non-fee-funded programmes, specialty media with a focus on news, other specialty media and foreign-language programmes, in consideration of the interests of the associated participants, and appropriately takes teleshopping channels into account,
  3. takes the decision on the occupancy within the further technical capacities in accordance with Article 82 (2) and the general laws.

If the capacity is not sufficient for occupancy in accordance with sentence 1 no. 1, the principles of sentence 1 are to be applied according to the total capacity available; thereby, the subsidised programmes and programme-related services of the public-service broadcasting determined by law for the respective distribution area, have priority without prejudice to the appropriate consideration of the offers according to sentence 1 no. 1 letters b and c.

### (3) The provider of a media platform

1. must ensure that within a technical capacity amounting to a maximum of one third of the overall capacity available for the digital transmission of radio broadcasting
  - a) the required capacities are available for the contribution-financed services and programme-related services of public-service broadcasting in the respective distribution area,
  - b) the capacities for the radio broadcasting services approved in the respective country, as well as the public access channels, are available; the special national regulations for public access channels and comparable offers remain unaffected,
2. takes its own decision, within a further technical transmission capacity to the extent of the capacity according to no. 1, on the allocation of radio broadcasting services and programme-related services distributed in digital technology, insofar as it adequately takes into account, in consideration of the interests of the connected competitors, a diverse range of offers and, in particular, a variety of offers intended for the respective distribution area,
3. takes the decision on the occupancy within the additional technical capacities in accordance with Article 82 (2) and the general laws.

Paragraph (2) sentence 2 applies accordingly.

- (4) The provider of a media platform is exempt from the stipulations of (2) and (3), provided that

1. the provider can verify to the competent state media authority that it itself or a third party will enable the receipt of the corresponding offers by means of a similar transmission channel and the same end device directly and without additional expenditure, or
2. the requirement for diversity of opinion and diversity of offers has already been considered during the allocation or assignment decision according to Articles 101 or 102.

(5) Services that can be attributed to the provider of a media platform in accordance with Article 62 or that are exclusively marketed by said provider, are excluded if the requirements under (2) sentence 1 nos. 1 and 2, and (3) sentence 1 nos. 1 and 2 are met. The provider of a media platform must notify the competent state media authority of the occupancy of broadcasting services immediately upon request. If the requirements stipulated under (2) to (4) are not met, the selection of the broadcasting services is to be made by the competent state media authority in accordance with this Interstate Treaty and state law. Prior to this taking place, the provider of a media platform must be given a reasonable deadline to meet the legal requirements.

(6) State law may stipulate different regulations for regional and local media platforms that broadcast radio and television programmes by exclusively terrestrial means.

## **Article 82**

### **Access to Media Platforms**

(1) Providers of media platforms must ensure that the technology used enables a diverse range of offers.

(2) To ensure diversity of opinion and diversity of offers, radio broadcasting, broadcast-like telemedia, and telemedia in accordance with Article 19 (1) may not be directly or indirectly unduly hindered in access to media platforms and may not be treated differently from similar offers without justified grounds; this particularly applies to

1. conditional access systems,
2. application programming interfaces,
3. other technical specifications in relation to nos. 1 and 2 also with regard to manufacturers of digital broadcasting reception equipment,
4. the arrangement of access conditions, in particular fees and tariffs.

(3) The use of a conditional access system or an application programming interface and the related fees shall be reported to the competent state media authority without delay. Sentence 1 shall apply accordingly for amendments. The competent state media authority shall be provided with the necessary information upon request.

## **Article 83**

### **Conditions for Access to Media Platforms**

- (1) The conditions for access, in particular fees and tariffs, are to be disclosed to the competent state media authority.
- (2) Fees and tariffs are to be set in such a manner within the framework of the Telecommunications Act that regional and local offers can also be transmitted under adequate conditions. The special provisions of state law for open public access channels and comparable offers remain unaffected.
- (3) If the providers in question cannot agree on the inclusion of an offer on a media platform or the conditions for inclusion, each of the parties in question can call the competent state media authority. The competent state media authority will work with the parties involved to find an appropriate solution.

## **Article 84**

### **Discoverability in User Interfaces**

- (1) The following regulations apply insofar as user interfaces depict or convey information acoustically for broadcasting, broadcast-like teledmedia, and teledmedia pursuant to Article 19 (1), parts thereof or software-based applications that serve mainly to directly control broadcasting, broadcast-like teledmedia, and teledmedia pursuant to Article 19 (1).
- (2) Similar offers or content may not be treated differently in terms of their discoverability, in particular the sorting, arrangement, or presentation in user interfaces, without objectively justified grounds; the discoverability may not be unfairly impeded. Permissible criteria, in particular, for sorting or arrangement are the alphabet, genres, or scope of use. All offers must be discoverable without discrimination by using a search function.
- (3) The broadcast transmitted via a user interface has to be directly accessible and easy to find in its entirety on the first selection level. Within broadcasting, the statutorily defined contribution-funded programmes, the broadcast programmes that have to receive the window services (Article 59 (4)), as well as the commercial programmes that make a particular state-wide contribution to the diversity of opinions and offers, must be easy to find. If broadcasting services are displayed or acoustically transmitted and have to receive window services (Article 59 (4)), the area for which the window services are permitted or legally determined, the main programmes with window services must have priority in broadcasting compared to the main programmes broadcast without window services and compared to the window services that are approved for other areas or are statutorily defined.
- (4) The collective teledmedia offers, offered in a user interface, of the state broadcasting corporations combined in the ARD, the teledmedia offers of the ZDF, as well as those of Deutschlandradio or comparable broadcast-like teledmedia offers, or offers according to Article 2 (2) no. 14 (b) of commercial providers, which make a significant contribution to the diversity of opinions and offers in Germany, or software-based applications that serve to directly control them, have to be easy to find in the context of the presentation of broadcast-like teledmedia or software-based applications that serve their direct control.

(5) The commercial offers within the meaning of (3) sentence 2 and (4) are defined by the state media authorities for a period of three years and published in a list on the state media authorities' website. The following criteria must be considered when making the decision:

1. the amount of time spent reporting on political and historical events,
2. the amount of time spent reporting on regional and local information,
3. the ratio between in-house productions and programme content produced by third parties,
4. the quota of accessible offers,
5. the ratio between trained employees and employees who still need to be trained, involved in creating the programme,
6. the quota of European productions, and
7. the quota of offers for young target groups.

The state media authorities immediately determine the start and end of a cut-off period within which providers can submit written applications for inclusion in the list. The start and end of the application period, the procedure, and the key requirements for the application are to be determined by the state media authorities within the framework of calling for tenders; the call for tenders must be published in a suitable manner.

(6) The sorting or arrangement of offers or content must be easy and permanent for the user to customise.

(7) Paragraph 2 sentence 3, as well as paragraphs 3, 4, and 6 do not apply to user interfaces if the provider proves that subsequent implementation is technically impossible or only possible with a disproportionate amount of expenditure.

(8) The details of (2) to (7) are regulated by the state media authorities through joint statutes and directives.

## **Article 85**

### **Transparency**

The principles underlying a media platform or user interface for the selection of broadcasting, broadcast-like telemedia, and telemedia in accordance with Article 19 (1), and for their organisation, must be made transparent by the provider. This includes the criteria according to which content is sorted, arranged, and presented, how the sorting or arrangement of content can be individualised by the user, and the basic criteria according to which recommendations are made, as well as the conditions under which broadcasting or broadcast-like telemedia according to Article 80 are not displayed in their original format. Information in this regard is to be made available to users in an easily perceptible, directly accessible, and continuously available manner.

## **Article 86**

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

(1) Providers of media platforms and user interfaces are required to present the necessary information and documentation to the competent state media authority upon request. Articles 55, 56, and 58 shall apply accordingly.

(2) In the case of media platform providers who simultaneously are also providers of telecommunications services, the competent state media authority shall decide in cooperation with the regulatory authority for telecommunications whether the provisions of Article 82 (2) no. 1, 2, or 4, or Article 83 (2) have been violated.

(3) Upon request, providers of media platforms or user interfaces must disclose information to providers of broadcasting services, broadcast-like teledmedia, and teledmedia pursuant to Article 19 (1) on the actual sorting, arrangement, and display of offers and content, the utilisation of their metadata, and, as part of a legitimate interest, access conditions pursuant to Article 83 (1).

## **Article 87**

### **Confirmation of Clearance (Media Platforms and User Interfaces)**

In regard to the requirements of Articles 81 to 85, providers of media platforms or user interfaces are entitled to submit an application for confirmation of clearance with the competent state media authority. The confirmation of clearance can be provided with ancillary provisions.

## **Article 88**

### **Statutes, Directives**

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

## **Article 89**

### **Review Clause (Media Platforms and User Interfaces)**

The provisions of this subsection and the complementary state provisions are reviewed regularly every five years, for the first time per 1 October 2025, in accordance with Article 114 (2) of Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 on the European Electronic Communications Code (OJ L 321 of 17 December 2018, p. 36).

## **Article 90**

### **Existing Licences, Assignments, Designations, Notification of Existing Platforms or User Interfaces**

(1) Existing licences, assignments, and designations for national providers of services transmitted nationally shall remain valid until their expiry. Existing licences and designations for window service providers shall be extended until 31 December 2009 notwithstanding the provisions of Article 59 (4) sentence 4.

(2) Providers of media platforms and user interfaces that are already in operation when this Interstate Treaty comes into force but have not yet been designated, must undertake this designation pursuant to Article 79 (2) six months following this Interstate Treaty entering into force at the latest.

## **Sub-Section 3 Media Intermediaries**

### **Article 91**

#### **Scope of Application (Media Intermediaries)**

(1) The following regulations also apply if the intermediary function is integrated into third-party offers (integrated media intermediary).

(2) With the exception of Article 95, the regulations do not apply to media intermediaries which

1. have fewer than one million users, taking an average over six months, per month in Germany or will reach that number with the anticipated development,
2. specialise in the aggregation, selection, and presentation of content related to goods or services, or
3. exclusively serve commercial or familial purposes.

### **Article 92**

#### **Domestic Authorised Recipient (Media Intermediaries)**

Providers of media intermediaries must designate an authorised recipient in Germany and must call attention to said recipient in their offer in an easily recognisable and directly accessible manner. This person can effect deliveries in proceedings according to Article 115. This also applies to the delivery of documents that initiate or prepare for such proceedings.

## **Article 93**

### **Transparency (Media Intermediaries)**

(1) Providers of media intermediaries must make the following information easily understandable, directly accessible, and continuously available to ensure diversity of opinion:

1. the criteria that serve as the basis for the decision as to whether content is accessible to a media intermediary and whether it remains that way,
2. the central criteria of an aggregation, selection, and presentation of content and the weighting thereof, including information about the functionality of the implemented algorithms in plain language.

(2) Providers of media intermediaries who exhibit thematic specialisation are obligated to make this specialisation visible through the design of their offer. Article 91 (2) no. 2 remains unaffected.

(3) Changes to the criteria stipulated in (1) as well as the arrangement according to (2) must be made visible immediately and in the same manner.

(4) Providers of media intermediaries who offer social networks must ensure that telemedia are labelled in accordance with Article 18 (3).

## **Article 94**

### **Freedom from Discrimination (Media Intermediaries)**

(1) In order to safeguard diversity of opinion, media intermediaries are not allowed to discriminate against journalistic-editorial offers, the discernibility of which they have a particularly high influence on.

(2) It is deemed to be discrimination within the meaning of (1) if, for no objectively justified reason, the criteria to be published in accordance with Article 93 (1) to (3) are systematically deviated from, in favour or to the detriment of a specific offer, or if these criteria systematically and directly or indirectly impede offers unfairly.

(3) A violation can only be claimed by the provider of the journalistic-editorial content in question with the competent state media authority. The competent state media authority can also prosecute ex officio in self-evident cases.

## **Article 95**

### **Submittal of Documents (Media Intermediaries)**

Providers of media intermediaries are obligated to submit the necessary documentation to the competent state media authority on request. Articles 56 and 58 apply accordingly.

## **Article 96**

### **Statutes and Directives (Media Intermediaries)**

The state media authorities regulate the details of the provisions of this subsection by means of joint statutes and directives. In this process, the orientation function of the media intermediaries for the respective user groups must be considered.

## **Sub-Section 4 Video Sharing Services**

### **Article 97**

#### **Scope of Application (Video Sharing Services)**

This subsection applies to video sharing services within the meaning of Article 2 (2) no. 22. Other requirements according to Section V remain unaffected.

### **Article 98**

#### **Advertising (Video Sharing Services)**

(1) For advertisements in video sharing services, Article 8 (1), (3) sentences 1 and 2, (7) and (10) of this Interstate Treaty and Article 6 paras. 2 and 7 of the Interstate Treaty on the Protection of Minors apply.

(2) The provider of a video sharing service must ensure that advertisements that are marketed, sold, or composed by said provider comply with the requirements of (1).

(3) The provider of a video sharing service must take the following measures to ensure that advertisements that are not marketed, sold, or composed by it meet the requirements of (1):

1. the inclusion and implementation of provisions in its general terms and conditions, which obligate the provider to comply with the requirements of (1),
2. the provision of a function to label advertisements in accordance with Article 6 para. 3 of the Telemedia Act.

### **Article 99**

#### **Arbitration Body (Video Sharing Services)**

(1) The state media authorities are to establish a joint body for the settlement of disputes between the complainants, or users and providers of video sharing services affected by the complaint about measures that the providers of video sharing services have implemented or omitted in the procedure pursuant to Article 10 (a) and (b) of the Telemedia Act.

(2) The state media authorities regulate the further details of the organisation, the arbitration procedure, and the bearing of costs in joint statutes that are to be published online.

**Section VI**  
**Transmission Capacities, Retransmission**

**Article 100**

**Principle**

The decision on the assignment, designation, and use of transmission capacities for the distribution of broadcasting services and broadcast-like telemedia shall be governed by this Interstate Treaty and the respective state law.

**Article 101**

**Assignment of Wireless Transmission Capacities**

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

(2) The Prime Ministers of the states shall decide unanimously on the assignment of transmission capacities for the provision of contents or services to be distributed nationally to the state broadcasting corporations forming the ARD association, to the ZDF, to Deutschlandradio or to the state media authorities.

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

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

b) the concerns of commercial broadcasting and of the providers of telemedia.

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

(4) The chairperson of the Konferenz der Regierungschefinnen und Regierungschefs der Länder (Convention of Heads of Government of the Federal States) shall assign the transmission capacity in accordance with the decision taken by the government heads of the federal states in accordance with (2).

(5) If an assigned transmission capacity is not used for the distribution of contents or services within eighteen months following receipt of the decision of assignment, the assignment decision may be revoked by a decision of the government heads of the federal states; no compensation shall be granted. Upon application of the recipient of the assignment, the period may be extended by a decision of the government heads of the federal states.

(6) The government heads of the federal states shall agree on procedural rules for implementing (2) to (5).

## **Article 102**

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

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

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

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

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

1. further plurality of opinion and variety of offers,
2. also present public events, political issues, and cultural life, and

3. provide opportunities for political, ideological, and societal groups to present their views.

The decision on selection shall further take into account whether the offer appears to be economically viable and sufficiently takes into consideration the interests of and acceptance by consumers. In the event that the transmission capacity is assigned to a provider of a media platform, it must furthermore be considered to what extent it is ensured that the offer meets the requirements of Articles 82 and 83.

(5) The designation of transmission capacities shall be effected for a duration of ten years. A renewal by ten years shall be permitted once. The designation shall take immediate effect. If a designated transmission capacity is not made use of within twelve months following the decision on designation, the competent state media authority may revoke the designation decision pursuant to Article 108 (2) no. 2b. Upon application by the recipient of the designation, the period may be extended.

### **Article 103**

#### **Retransmission**

(1) The retransmission of offers that can be received nationwide, which are legally permissible in another member state of the European Union in accordance with Article 2 of Directive 2010/13/EU or in a state that has ratified the European Convention on Transfrontier Television, and is not a member of the European Union, in accordance with the provisions of the European Convention on Transfrontier Television, shall be permitted. The retransmission of the offers stipulated in sentence 1 from another member state of the European Union can only be carried out in accordance with Article 3 of Directive 2010/13/EU; the retransmission of the offers stipulated in sentence 1 from a state that has ratified the European Convention on Transfrontier Television, and is not a member of the European Union, shall only be carried out in accordance with the provisions of the European Convention on Transfrontier Television.

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

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

(4) Moreover, appropriate measures may be taken in accordance with Article 4 para. 3 of Directive 2010/13/EU, in compliance with the other provisions of Article 4, against the media service provider which is subject to the jurisdiction of another Member State and which provides an audiovisual

media service that is wholly or predominantly aimed at Germany, insofar as the Federal Republic of Germany has issued more detailed or stricter provisions in the public interest according to Article 4 para. 1 of Directive 2010/13/EU.

**Section VII  
Media Supervision**

**Article 104**

**Organisation**

(1) Unless otherwise agreed, the competent state media authority shall check compliance with the provisions of this Interstate Treaty. The authority takes the respective decisions in accordance with the provisions of this Interstate Treaty. Sentences 1 and 2 do not apply to offers from the regional broadcasting corporations that make up the ARD, from the ZDF, and from Deutschlandradio.

(2) The tasks pursuant to Article 105 and in accordance with the provisions of the Interstate Treaty on the Protection of Minors shall be fulfilled by the following bodies:

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

They shall serve the respective competent state media authority in fulfilling its tasks pursuant to Article 105.

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

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

(5) The KEK consists of

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

The members of the KEK pursuant to sentence 1 no. 1, and two substitute members for the event that a member is unable to attend shall be appointed unanimously by the Prime Ministers of the states for a term of office of five years. The following persons may not be members pursuant to

sentence 2: members and employees of institutions of the European Union, the federal and state constitutional organs, members of the governing bodies and employees of the state broadcasting corporations forming the ARD association, the ZDF, Deutschlandradio, the European cultural television channel ARTE, the state media authorities and commercial broadcasters and platform operators as well as employees of undertakings which have a direct or indirect interest in them within the meaning of Article 28. If a member of the KEK appointed pursuant to sentence 2 resigns, the Prime Ministers of the states shall unanimously appoint a substitute member or another expert as a member for the remainder of the term of office; the same applies if a substitute member resigns. The members pursuant to sentence 2 shall receive adequate remuneration for their function and reimbursement of their necessary expenses. The state holding the chair of the Broadcasting Commission shall conclude the contracts with the experts. The chairperson of the KEK and the deputy chairperson shall be elected from the group of members pursuant to sentence 1 no. 1. The six representatives of the state media authorities and two deputy members for the event of a member being unable to attend shall be elected by the state media authorities for the duration of the term of office of the KEK.

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

(7) The state media authorities shall set up a joint management office for the bodies pursuant to (2) sentence 1;

(8) In fulfilling their tasks pursuant to this Interstate Treaty, the members of the ZAK, the GVK and the KEK shall not be bound by instructions. For the members of the ZAK and the GVK, Article 58 shall apply accordingly. The obligation to maintain secrecy according to Article 58 shall also apply in the relationship of the members of the bodies pursuant to (2) sentence 1 with other bodies of the state media authorities.

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

(10) The state media authorities shall provide the bodies pursuant to (2) sentence 1 with the necessary human and material resources. The bodies shall each prepare a budget based on the principles of efficiency and economy. The costs for the bodies pursuant to (2) sentence 1 shall be covered from the funds allocated to the state media authorities pursuant to Article 10 of the Interstate Treaty on Broadcasting Funding. The details shall be governed by concurrent statutes of the state media authorities.

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

(12) The bodies pursuant to (2) sentence 1 are entitled to the procedural rights in accordance with Articles 55 and 56.

## Article 105

### Tasks

(1) The ZAK shall be responsible for the following tasks:

1. supervisory measures against commercial national broadcasters, unless the KEK is responsible under (3);
2. supervisory measures against commercial national providers according to Articles 18 to 22, as well as Articles 74 to 77;
3. recognising voluntary self-regulation institutions in accordance with Article 19 (4), as well as withdrawal or revocation of recognition in accordance with Article 19 (6);
4. supervising decisions made by voluntary self-regulation institutions in accordance with Article 19 (8);
5. licensing, and withdrawal or revocation of the licences of national broadcasters pursuant to Article 53 and Article 108 (1) no. 1 and (2) no. 1;
6. taking decisions on a licence requirement in the case of Article 54 (1);
7. establishing whether the prerequisites for regional window services, pursuant to Article 59 (4) sentence 1, and for broadcasting time for third parties, pursuant to Article 65 (2) sentence 4, exist;
8. the reporting of the operation of a media platform or user interface pursuant to Article 79 (2);
9. supervising media platforms and user interfaces according to Articles 79 to 87 and Article 103 (1) and (2), insofar as the GVK is not responsible according to (2);
10. supervising media intermediaries according to Articles 92 to 94;
11. supervising video sharing services according to Article 98;
12. performing the tasks according to Article 101 (3) sentence 1 nos. 1 and 3;
13. designating transmission capacities required for the provision of contents or services distributed nationally and their withdrawal or revocation according to Article 102 and Article 108 (1) no. 2 and (2) no. 2, insofar as the GVK is not responsible according to (2);
14. dealing with notifications pursuant to Article 109 (5).

For the tasks pursuant to sentence 1 nos. 1 and 2, the ZAK may set up examining committees. The examining committees shall decide each case unanimously in place of the ZAK. At the beginning of the term of office of the ZAK, the ZAK shall determine the distribution of procedures. The details shall be specified in the rules of procedure of the ZAK.

(2) The GVK shall have the competence for the selection decisions regarding the designation of transmission capacities pursuant to Article 102 (4) and for the decision concerning the allocation of platform capacities pursuant to Article 81 (5) sentence 3. The ZAK shall inform the GVK continually about its activities. It shall incorporate the GVK regarding matters of principle, in particular concerning the drafting of statutes and directives.

(3) The KEK shall have the competence for the final assessment of issues relating to securing plurality of opinion in connection with the provision of national television services. Within the framework of sentence 1, it shall, in particular, have the competence for assessing issues arising in connection with decisions relating to a licence being granted or amended, changes of the shareholder structures being confirmed as unproblematic, and regarding measures pursuant to Article 60 (4).

For cases that do not have a significant impact on ensuring diversity of opinion, the KEK specifies the conditions under which a submission according to Article 107 (1) can be renounced. At the request of a state media authority, an audit must be carried out in individual cases.

The KEK shall establish the audience shares attributable to each undertaking.

(4) The selection and licensing of regional window services pursuant to Article 59 (4) and of providers of television windows pursuant to Article 65 (4) as well as the supervision of these services shall be the task of the competent body of the competent state media authority which has the competence for the licensing of offers which are not transmitted nationally. For the selection and licensing of providers pursuant to sentence 1, the KEK shall be consulted.

## **Article 106**

### **Competent State Media Authority**

(1) Unless otherwise specified below for national offers, the state media authority has jurisdiction of the state in which the broadcaster, provider, authorised agent according to Article 79 (1) sentence 2, or the responsible body according to Article 18 (2) has its registered office, residence or, in the absence of this, the state where it permanently resides. If, pursuant to sentence 1, several state media authorities have jurisdiction or if the broadcaster or provider has its registered office abroad, the state media authority which was initially tasked with the matter will make the decision.

(2) The state media authority that has jurisdiction, in the cases of Article 105 (1) sentence 1 nos. 1, 7, 9 and 14 as well as in the case of withdrawal or revocation of the licence or the designation, is the state media authority which granted the broadcaster the licence, which undertook the allocation, or accepted the notification; (1) applies in all other cases. In the case of Article 105 (1) sentence 1, no. 10, the state media authority of the state in which the authorised recipient pursuant to Article 92 has its registered office has jurisdiction. As long as no authorised recipient has been designated, (1) applies. The competent state media authority shall submit the matter to the ZAK directly to be examined and for a decision to be taken. In the cases of Article 105 (1) sentence 1 nos. 3 and 4, the state media authority of the state in which the voluntary self-regulation institution has its registered office has jurisdiction. If this does not result in the assignment of a competent state media authority, the state media authority to which the application for recognition was submitted has jurisdiction.

(3) In all other cases, the jurisdiction is based on state law.

## **Article 107**

### **Licensing Procedures, Designation, Notification**

(1) Upon receipt of an application or notification pursuant to Article 105 (1) sentence 1 nos. 5, 6, 8 or 13, the legal representative of the competent state media authority shall present the application or the notification as well as the existing documentation to the ZAK and, for the cases governed by Article 105 (1) sentence 1 no.5, in addition to the KEK without delay.

(2) In the event that not all applications can be approved pursuant to Article 105 (1) sentence 1 no. 13, the decision shall be taken by the GVK.

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

## **Article 108**

### **Withdrawal, Revocation of Licences and Designations**

(1) The licence granted pursuant to Article 53 or the designation effected pursuant to Article 102 shall each be withdrawn if

1. a licensing requirement pursuant to Article 53 (1) or (2) was not fulfilled or a licensing restriction pursuant to Article 53 (3) was not considered when the licence was granted, or
2. during designation, the provisions in accordance with Article 102 (4) were not taken into consideration when the designation was effected, and within a period specified by the competent state media authority no remedial action has been taken.

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

1. in the case of the licence
  - a) a licensing requirement pursuant to Article 53 (1) or (2) subsequently no longer applies or a licensing restriction pursuant to Article 53 (3) arises and within the adequate period specified by the competent state media authority no remedial action is taken, or
  - b) the broadcaster has repeatedly and seriously violated its obligations under this Interstate Treaty or under the Interstate Treaty on the Protection of Minors and has not complied with the instructions of the competent state media authority within the period specified by it,
2. in the case of the designation
  - a) changes of the offer have subsequently occurred for which the provider is responsible, according to which the offer no longer meets the requirements laid down in Article 102 (4) and no remedial action is taken within the period specified by the competent state media authority, or
  - b) the offer is not provided or continued within the period specified for the duration specified for reasons for which the provider is responsible.

(3) The provider shall not receive any compensation for financial losses incurred as a result of the withdrawal or revocation pursuant to (1) or (2). In all other respects, the Law of Administrative Proceedings of the state of residence of the respective competent state media authority shall apply concerning the withdrawal and the revocation.

## **Article 109**

### **Measures in the Case of Statutory Violations**

(1) If the competent state media authority discovers a violation of the provisions of this Interstate Treaty with the exception of Article 17, Article 18 (2) and (4), Article 20, and Article 23 (2), it shall take the necessary measures. Measures include in particular complaints, prohibitions, blocks, withdrawal, and revocation. The provisions of the Interstate Treaty on the Protection of Minors remain unaffected. Sentence 1 does not apply to violations of Article 19 (1) and (2) by providers,

1. within the meaning of Article 19 (1) sentence 1,
2. that are subject to self-regulation by the Press Code and the Complaints Regulation of the German Press Council, or
3. that are affiliated with a recognised voluntary self-regulation institution within the meaning of Article 19 (3).

(2) No prohibition may take place if the measure to be implemented is disproportionate to the importance of the offer for the provider and the general public. A prohibition may only take place if its purpose cannot be achieved in any other manner. The prohibition, insofar as its purpose can be achieved, is to be restricted temporally or to certain kinds and parts of offers. In the case of journalistic-editorial offers, in which only the full or partial content of periodical printed products is reproduced in text or image form, blocking is only permitted under the stipulations of Article 97 (5) sentence 2 and Article 98 of the Code of Criminal Procedure. The capacity of the supervisory authorities to enforce the provisions of general laws and statutory provisions for the protection of personal honour remain unaffected.

(3) If measures vis-à-vis the broadcaster or provider prove to be impracticable or not promising, measures to block offers according to (1) can also be directed at third parties in compliance with the provisions of the Telemedia Act, insofar as blocking is technically feasible and reasonable. Article 7 para. 2 of the Telemedia Act remains unaffected.

(4) The retrieval of offers in the context of supervision is free of charge. Service providers must ensure this. The provider may not block its offers against retrieval by the competent supervisory authority.

(5) Any state media authority can notify the competent state media authority that a national offer violates the provisions of this Interstate Treaty. If a report pursuant to sentence 1 is received by the competent state media authority, the legal representative appointed under state law will immediately submit the report and the existing documents to the body responsible in accordance with Articles 104 and 105.

## **Article 110**

### **Preliminary Proceedings**

In the case of legal remedies against decisions pursuant to Article 104 (2) and Article 105, preliminary proceedings pursuant to Article 68 (1) of the Administrative Procedural Code do not take place.

## **Article 111**

### **Cooperation with Other Public Authorities**

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

(2) Paragraph (1) applies accordingly to the cooperation of the state media authorities with the state competition authorities and the gaming supervisory authorities.

## **Article 112**

### **Funding of Special Tasks**

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

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

On the basis of special authorisations granted by the state legislator, funds from the share pursuant to sentence 1 may also be used to fund the following tasks:

1. promotion of the technical infrastructure stipulated under federal state law to supply the state and to support projects for new types of broadcast transmission technologies, and
2. forms of non-commercial broadcasting of local and regional broadcasting and projects to promote media competency.

(2) The right of the state legislator to allocate to the state media authority only part of the share pursuant to (1) remains unaffected.

(3) As far as the share pursuant to (1) is not made use of, the respective state broadcasting corporations shall be entitled to it. An appropriation by state law shall be permitted.

## **Article 113**

### **Data Protection Monitoring for Telemedia**

The competent supervisory authorities in accordance with the general data protection regulations of the federal and state governments monitor compliance with the general data protection provisions and Article 23 for their areas. The controllers responsible for data protection in the journalistic area of public-service broadcasters and commercial broadcasters also monitor compliance with the data protection provisions for journalistic-editorial offers in telemedia. Monitoring takes place insofar as companies, auxiliary and affiliated companies of the press, are not subject to self-regulation under the Press Code and the Complaints Procedure of the German Press Council.

## **Section VIII**

### **Appeal, Administrative Offences**

## **Article 114**

### **Appeal to the Federal Administrative Court**

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

## **Article 115**

### **Administrative Offences**

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

1. in breach of Article 1 (9), does not inform the responsible body under state law of all changes that could affect the determination of jurisdiction pursuant to Article 1 (3) and (4);
2. in breach of Article 4 (1), does not make the information specified therein easily, directly, and permanently accessible in the context of the overall offer;
3. in breach of Article 8 (3) sentence 2, uses techniques for subliminal influencing in advertising,
4. in breach of Article 8 (3) sentence 3, does not appropriately and clearly distinguish broadcast advertising or teleshopping from other parts of the programme using optical, acoustic, or spatial means;
5. in breach of Article 8 (4) sentence 1, carries out a partial allocation of the broadcast image with broadcast advertising without clearly distinguishing the advertising from the rest of the programme, and identifying it as such;
6. in breach of Article 8 (5) sentence 2, does not announce an infomercial at the beginning or identify it as such during its entire broadcasting duration;
7. in breach of Article 8 (6) sentence 1, inserts virtual advertising into programmes,

8. in breach of Article 8 (7) sentence 1, engages in surreptitious advertising, topic placement, or similar practices;
9. in breach of Article 8 (7) sentence 2, engages in product placement in news programmes, programmes for political information, consumer programmes, regional window services according to Article 59 (4), window services according to Article 65, programmes with religious content, or programmes for children;
10. in breach of Article 8 (7) sentence 4 or 5, does not clearly identify a product placement or does not adequately identify it at the beginning and at the end of a programme or when the programme continues after an ad break or on the radio with a similar notification;
11. in breach of Article 8 (9), disseminates political, ideological, or religious advertising;
12. in breach of Article 9 (1), interrupts broadcasts of church services or programmes for children with broadcast advertising or teleshopping;
13. in breach of the requirements set out in Article 9 (3), interrupts films, with the exception of series and documentaries as well as cinema films and news programmes, with television advertising or teleshopping;
14. in breach of Article 10 (1) sentence 1, does not clearly specify that a sponsoring agreement has been concluded or does not clearly identify the sponsor at the beginning or at the end of the sponsored programme;
15. in breach of Article 10 (3) and (4), disseminates illegally sponsored programmes;
16. in breach of Article 13 (1) or (3), broadcasts major events in encrypted form and for an additional fee;
17. in breach of Article 16 (1) sentence 2, does not comply with the information obligation;
18. in breach of Article 52 (1) sentence 1, organises a broadcasting service without a licence;
19. in breach of Article 52 (1) sentence 1 in conjunction with Article 53, organises a broadcasting service that is subject to licensing but is not eligible for licensing;
20. in breach of Article 54 (4) sentence 2 in conjunction with Article 53, organises a broadcasting service;
21. in breach of Article 57 (2) in conjunction with (1), fails to submit the list of programme sources for the period under review to the competent state media authority in due time;
22. in breach of Article 70 (1) sentence 1, exceeds the permitted duration of advertising;
23. in breach of Article 71 (1) sentence 1, disseminates teleshopping windows that do not have a minimum duration of 15 minutes without interruption or, in breach of Article 71 (1) sentence 2, distributes teleshopping windows that are not visually and acoustically clearly identified as such;  
or
24. in breach of Article 120 (1) sentence 2, does not ensure provision of the data on audience shares upon request by the KEK.

A broadcaster also commits an administrative offence if it:

1. in breach of Article 18 (1), for telemedia, does not make available the name or address or, in the case of legal entities, the name or address of the authorised representative, or makes it available but incorrectly;
2. in breach of Article 18 (3) does not perform the required identification in telemedia,
3. in breach of Article 22 (1) sentence 1, does not clearly identify advertising as such or does not clearly distinguish it from the other content of the offers,
4. in breach of Article 22 (1) sentence 2, implements subliminal techniques in advertising,
5. in breach of Article 22 (1) sentence 3, does not properly and clearly indicate the advertiser or client in the case of political, ideological, or religious advertising;
6. in breach of Article 55 (6), does not immediately and directly notify the competent state media authority of a change in the relevant circumstances after the application has been submitted or the licence has been issued;
7. in breach of Article 55 (7), does not submit a declaration to the competent state media authority, immediately after the end of one calendar year, regarding whether and to what extent there was a change in the relevant ownership structure and attribution circumstances according to Article 62 in the course of the past calendar year;
8. in breach of Article 57 (1), fails to prepare or disclose its annual financial statements on time, including the annexes and management report;
9. in breach of Article 63 sentence 1, fails to notify the competent state media authority in writing of a planned change to the ownership structure or other influences prior to the implementation of said change;
10. violates a statute pursuant to Article 72 sentence 1 in conjunction with Article 11, insofar as the statute refers to this fine provision for a specific offence;
11. in breach of Article 74 sentence 1 or 2 in conjunction with Article 8 (3) sentence 2, implements techniques for subliminal influencing in advertising;
12. in breach of Article 74 sentence 1 or 2 in conjunction with Article 8 (3) sentence 3, does not appropriately distinguish broadcast advertising or teleshopping from other parts of the offer, either optically, acoustically, or by spatial means;
13. In breach of Article 74 in conjunction with Article 8 (4), supplements the transmitted offer of moving images by including broadcast advertising with corresponding advertising, without clearly distinguishing the advertising visually, and furthermore identifying it as such;
14. in breach of Article 74 sentence 1 or 2 in conjunction with Article 8 (5) sentence 2, does not announce an offer of moving images at the beginning of the offer as an infomercial, or identify it as such in the course of the infomercial;
15. in breach of Article 74 sentence 1 or 2 in conjunction with Article 8 (6) sentence 1, includes virtual advertising in its offers,

16. in breach of Article 74 sentence 1 or 2 in conjunction with Article 8 (7) sentence 1, engages in surreptitious advertising, topic placement, or corresponding practices;
17. in breach of Article 74 sentence 1 or 2 in conjunction with Article 8 (7) sentence 2, engages in product placement in news programmes, programmes for political information, consumer programmes, regional window services according to Article 59 (4), window services according to Article 65, programmes with religious content, or programmes for children;
18. in breach of Article 74 sentence 1 or 2 in conjunction with Article 8 (7) sentence 4 or 5, does not clearly identify a product placement or does not adequately identify it at the beginning and at the end of a programme or when the programme continues after an ad break or on the radio with a similar notification;
19. in breach of Article 74 sentence 1 or 2 in conjunction with Article 8 (9), disseminates political, ideological, or religious advertising;
20. in breach of Article 74 sentence 1 or 2 in conjunction with Article 9 (1), interrupts broadcasts of church services or programmes for children with broadcast advertising or teleshopping;
21. in breach of the requirements set out in Article 74 sentence 1 or 2 in conjunction with Article 9 (3), interrupts films, with the exception of series and documentaries as well as cinema films and news programmes, with television advertising or teleshopping;
22. in breach of Article 74 sentence 1 or 2 in conjunction with Article 10 (1) sentence 1, in the case of a sponsored moving image offer, does not clearly specify that a sponsoring agreement has been concluded or does not clearly identify the sponsor at the beginning or at the end of the sponsored programme;
23. in breach of Article 74 sentence 1 or 2 in conjunction with Article 10 (3) and (4), disseminates unlawfully sponsored programmes;
24. in breach of Article 79 (2) sentence 1 or 2, does not indicate the operation of a media platform or user interface, or does not indicate it in good time or in full, or, in breach of Article 79 (2) sentence 3 in conjunction with sentence 1 or 2, does not indicate a significant change in good time, or at all, or in its entirety;
25. in breach of Article 80 (1) in conjunction with (2), makes changes to broadcasting services including the HbbTV signal, broadcast-like telemedia, or parts thereof, overlays the services in the course of their transmission or acoustic reproduction completely or partially with advertising, content from broadcasting services, or broadcast-like telemedia, including recommendations or references thereto, or scales their reproduction for this purpose, or includes individual broadcasting services or content in packages, or otherwise markets it or makes it publicly available for a fee or free of charge;
26. in breach of Article 81 (2) to (4), does not make the necessary transmission capacities available for the programmes to be broadcast, or does not make them available to a sufficient extent or in accordance with the specified conditions, or, in breach of Article 81 (5) sentence 2, does not allocate them in due time at the request of the competent state media authority, or does not allocate them in their entirety;

27. in breach of Article 82 (2), indirectly or directly unfairly hinders broadcasting, broadcast-like telemedia, and telemedia pursuant to Article 19 (1) or treats these telemedia offers differently from similar offers without objective grounds to do so;
28. in breach of Article 82 (3) sentence 1 or 2, does not immediately notify the competent state media authority of the use or change of an access authorisation system or an interface for application programmes, or does not immediately notify the competent media authority of the fees related thereto, or, in breach of Article 82 (3) sentence 3, does not disclose the required information upon request by the competent state media authority;
29. in breach of Article 83 (1), does not disclose access conditions, or does not fully disclose said conditions, to the competent state media authority;
30. in breach of Article 83 (2), does not arrange fees or tariffs in such a manner that regional and local service offers can also be distributed under reasonable conditions,
31. in breach of Article 84 (2) sentences 1 and 2, treats similar offers or content in terms of discoverability, in particular the sorting, arrangement, or presentation in user interfaces, without objective justified grounds or unfairly hinders their discoverability, or, in breach of Article 84 (2) sentence 3, does not make all offers discoverable in a non-discriminatory manner by using a search function, insofar as the verification is not provided in accordance with Article 84 (7);
32. in breach of Article 84 (3) sentence 1, does not make the broadcasting transmitted in a user interface directly accessible in its entirety and easy to find on the first selection level, insofar as the verification is not provided in accordance with Article 84 (7);
33. in breach of Article 84 (3) sentence 2, does not make the statutorily determined contribution-funded programmes, the broadcast services which must include the window services (Article 59 (4)), and the commercial programmes, which are particularly important for the diversification of opinions and offers in the national territory, easy to find, insofar as the verification is not provided in accordance with Article 84 (7);
34. in breach of Article 84 (3) sentence 3, does not prioritise the main programmes with a window service over the main programmes broadcast without a window service, and over the window programmes that are licensed or legally determined for other regions, insofar as the verification is not provided in accordance with Article 84 (7);
35. in breach of Article 84 (4), does not make the collective telemedia offers, provided in a user interface, of the state broadcasting corporations forming the ARD association, telemedia offers of the ZDF, as well as those of Deutschlandradio, easy to find, or make comparable broadcast-like telemedia offers or offers pursuant to Article 2 (2) no. 14 letter b of commercial providers, which make a particularly significant contribution to the diversity of opinions and offers in the national territory, easy to find, or does not make software-based applications that serve the purpose of direct control within the framework of the presentation of broadcast-like telemedia or software-based applications that serve the purpose of direct control, easy to find, insofar as the verification is not provided in accordance with Article 84 (7);

36. in breach of Article 84 (6), does not ensure that the sorting or arrangement of offers or content can be easily and permanently customised by the user, insofar as the verification is not provided in accordance with Article 84 (7);
37. in breach of Article 85 sentence 1, does not make transparent the principles underlying a media platform or user interface for the selection of broadcasting, broadcast-like telemedia, and telemedia pursuant to Article 19 (1), and its organisation, or, in breach of Article 85 sentence 3, does not provide this information to users in a clear, immediately accessible, and constantly available manner;
38. in breach of Article 86 (1) sentence 1, does not immediately and directly disclose the required documents to the competent state media authority upon request;
39. in breach of Article 86 (3), upon request does not communicate to providers of broadcasting, broadcast-like telemedia, or telemedia pursuant to Article 19 (1), the actual sorting, arrangement, and reproduction of offers and content, the use of their metadata, and, within the framework of a legitimate interest, communicate the access conditions pursuant to Article 83 (1);
40. in breach of Article 90 (2), fails to comply with its notification duty pursuant to Article 79 (2) at the latest six months after this Interstate Treaty enters into force, insofar as the media platform or user interface is already in operation when this Interstate Treaty comes into force, but the competent state media authority has not been notified thereof;
41. in breach of Article 92 sentence 1, as the provider of a media intermediary, does not designate an authorised recipient in Germany;
42. in breach of Article 93 (1), as the provider of a media intermediary, does not keep the required information on hand or does not keep it available in the prescribed manner;
43. in breach of Article 93 (2), as the provider of a media intermediary who is specialised on a topic, does not make this specialisation discernible through the design of its offer;
44. in breach of Article 93 (3), as the provider of a media intermediary, does not make changes directly and immediately discernible in the same manner;
45. in breach of Article 93 (4), as the provider of a media intermediary who offers social networks, does not ensure that telemedia are identified within the meaning of Article 18 (3);
46. in breach of Article 94 (1), as the provider of a media intermediary, discriminates against journalistic-editorial offers which he has a particularly high influence on;
47. in breach of Article 95, as the provider of a media intermediary, fails to submit the required documentation to the competent state media authority upon request;
48. in breach of Article 103 (2) sentence 1 or 3, does not notify the competent state media authority, in whose area of application the programmes are to be broadcast, of the retransmission of television services, does not do so in good time, or does not do so fully, insofar as the notification pursuant to Article 103 (2) sentence 2 is not carried out by the provider of a media platform;

49. does not block an offer, in breach of an enforceable order by the competent supervisory authority pursuant to Article 109 (1) Sentence 2, also in conjunction with (4) sentence 1; or
50. in breach of Article 109 (4) sentence 3, blocks offers from being accessed by the competent supervisory authority.

Further provisions stipulated by state law regarding administrative offences remain unaffected.

(2) The administrative offence can be penalised by a fine of up to Euro 500,000, in the case of paragraph (1) sentence 2 no. 1 by a fine of up to Euro 50,000, and in the case of paragraph (1) sentence 2 nos. 49 and 50 by a fine of up to EUR 250,000.

(3) The competent administrative authority within the meaning of Article 36 (1) no. 1 of the Administrative Offences Act shall be the competent state media authority pursuant to Article 106 of the state in which the licence was granted or applied for provided no other authority has been designated under state law as the competent administrative authority to deal with administrative offences pursuant to (1) sentence 2 nos. 13 to 29. The competent administrative authority shall notify the other state media authorities without delay of any legal proceedings being instituted. In the event of proceedings being instituted in several states pursuant to this paragraph, the authorities involved shall decide which authority shall continue the proceedings.

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

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

## **Section IX Transitional and Final Provisions**

### **Article 116**

#### **Termination**

(1) This Interstate Treaty shall remain in force for an indefinite period. It may be terminated by any of the contracting parties subject to twelve months' notice at the end of the calendar year. It may be terminated at the earliest with effect from 31 December 2022. If the Interstate Treaty is not terminated as of this date, the same period of notice may be given for termination at a date two years later each time. Termination shall be made in writing to the chairman of the Convention of the Heads of Government of the States. If one state gives notice of termination, it may terminate the Interstate Treaty on Licence Fees and the Interstate Treaty on Broadcasting Funding with effect from the same date. Every other state may thereupon likewise terminate the Treaty or Treaties with effect from the same date within a period of six months following receipt of the notice of termination. These Interstate Treaties shall remain in force between the other states.

(2) In the event of termination, the assignment of satellite transmission capacities shall remain in force as long as entitlements to transmission capacities continue. In the event of termination by individual states, Articles 27 to 30 remain unaffected.

(3) Article 13 (1) and (2) may also be terminated separately by any of the contracting parties subject to twelve months' notice at the end of the calendar year. It may be terminated at the earliest with effect from 31 December 2022. If Article 13 (1) and (2) is not terminated with effect from that date, the same period of notice may be given for termination at a date two years later. Termination shall be made in writing to the chairman of the Convention of the Heads of Government of the States. If one state gives notice of termination of the Treaty, every state may terminate Article 13 (1) and (2) with effect from the same date within three months following receipt of notice of the termination. The termination by one state does not affect the validity of the terminated provisions of this Interstate Treaty with regard to the relationship of the remaining states to one another.

(4) Article 34 (2) may also be terminated separately by any of the contracting states subject to twelve months' notice from the end of the calendar year. It may be terminated at the earliest with effect from 31 December 2022. If Article 34 (2) is not terminated with effect from this date, the same period of notice may be given for termination at a date two years later. Termination shall be made in writing to the chairman of the Convention of the Heads of Government of the States. If one state gives notice, every state may give notice of termination of this Interstate Treaty, the ARD Interstate Treaty, the ZDF Interstate Treaty, the Interstate Treaty on the public corporation "Deutschlandradio" the Interstate Treaty on Broadcasting Funding and the Interstate Treaty on Licence Fees with effect from the same date within a period of three months following receipt of the notice of termination. The termination by one state does not affect the validity of the terminated provisions of this Interstate Treaty and the Treaties listed in sentence 5 with regard to the relationship of the remaining states to one another.

(5) Article 39 (1), (2) and (5) may be terminated separately by any of the contracting states subject to six months' notice at the end of the calendar year following determination of the funding requirements of public-service broadcasting in accordance with Article 36 unless the Interstate Treaty on Broadcasting is amended following the determination of the funding requirement in accordance with Article 36 as a result of an increase in the licence fee. It may be terminated at the earliest with effect from 31 December 2022. If Article 39 (1), (2) and (5) is not terminated with effect from one of these dates, the same period of notice of termination may be given for a date two years later. Termination shall be made in writing to the chairman of the Convention of the Heads of Government of the States. If one state gives notice of termination, every state may terminate the Interstate Treaty on Licence Fees and the Interstate Treaty on Broadcasting Funding with effect from the same date within three months following receipt of the notice of termination. In this case each state may furthermore terminate Articles 36 and 46 regarding individual or all provisions with effect from the same date within a further three months following receipt of the notice of termination pursuant to sentence 5. The terminated provisions of this Interstate Treaty and the Interstate Treaties referred to in sentence 5 remain in force between the remaining states.

#### **Article 117**

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

Article 8 (7) and Article 38 shall not apply for programmes produced prior to 19 December 2009.

#### **Article 118**

##### **Transitional Provision for Telemedia Concepts**

The telemedia concepts published until 1 May 2019 pursuant to Article 32 (7) shall remain unaffected.

#### **Article 119**

##### **Transitional Provision for Licences and Announcements**

(1) For licences that were granted prior to this Interstate Treaty coming into force and for licence extensions, the state media authority that issued the licence remains the competent one. The same applies to media platforms and user interfaces that were announced prior to this Interstate Treaty coming into force.

(2) Paragraph (1) only applies to national offers.

#### **Article 120**

##### **Transitional Provision to Determine Audience Shares**

(1) Prior to the audience shares being established pursuant to Article 61 for the first time, the existing data on audience shares shall form the basis for the assessment whether plurality of opinion is ensured in the context of the provision of national television services. Broadcasters are required to make their audience share data available to the KEK upon request. The state media authorities must, by applying rules of administrative procedure while respecting the interests of the parties concerned, ensure that measures taken pursuant to this Interstate Treaty which are based on the data pursuant to sentence 1 can be adapted without delay to the factual and legal situation resulting from audience shares being established pursuant to Article 61 for the first time.

(2) Paragraph (1) only applies to national offers.

#### **Article 121**

##### **Transitional Provision for User Interfaces**

Article 84 (3) to (6) applies as of 1 September 2021.

## **Article 122**

### **Regulation for Bavaria**

The Free State of Bavaria is entitled to provide for a proportion of the licence fee pursuant to Article 112 to be used for funding tasks of the "Bayerische Landeszentrale für neue Medien" under its public remit as defined by state law. In all other respects the provisions of this Interstate Treaty shall apply accordingly to providers under Bavarian law. Deviating regulations with regard to Article 8 (9), sentence 1, 1st variant for the implementation of provisions of the state constitution shall be permitted.