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TELEVISION WITHOUT FRONTIERS

GREEN PAPER ON THE ESTABLISHMENT OF THE COMMON MARKET FOR BROADCASTING, ESPECIALLY BY SATELLITE AND CABLE

(Communication from the Commission to the Council)

Part Four

Pages 63-104

PART FOUR:

LEGAL ASPECTS

The national regulations relevant to the applicability and the application of the EEC Treaty are summarized below; the emphasis is on television. An attempt has been made to make each legal system transparent, in order to obtain an overall picture of the Community's ten broadcasting systems and to enable the laws to be compared, which must be done before they can be brought closer together (the subject of Part Six). The Commission has already published an introductory outline in its Interim Report.[1]

A. Luxembourg

In Luxembourg, the broadcasting authority is a proft-making public limited company - Compagnie Luxembourgeoise de Télédiffusion (CLT) - which is incorporated in accordance with Luxembourg law and carries on business under the name of Radio-Télé-Luxembourg (RTL). The LFR 1 200 million ordinary capital is held chiefly by French private and public interests and Belgian private interests, and to a lesser extent by small shareholders.

RTL's activity is based on a licence which is required by private individuals under an Act of 19 December 1929.[2] Pursuant to this Act RTL has since 1930 concluded nine licence contracts with the Government (each time it has extended its activity). The conditions on which the licences were granted are in each case stipulated in a memorandum (Section 2, second subparagraph), which forms part of each contract. Inter alia, the contract guarantees the licensee company a broadcasting monopoly throughout the Grand Duchy. RTL also owns the necessary technical apparatus. A government auditor ('commissaire') is responsible for ensuring observance of the memorandum of conditions and protecting the State's interests.

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[1] Interim Report, loc. cit., pp. 161-191.

[2] Section 1, first subparagraph of the Gesetz betreffend die im Grossherzogtum bestehenden oder zu errichtenden Rundfunksendestationen (Act concerning broadcasting stations existing or to be established in the Grand Duchy), Memorial (Official Gazette) No 66 of 24 December 1929, p. 1110 (1111).

Under the memorandum, advertising is allowed within the limits determined by the Government. So far the Government has not determined limits. Some 95% of RTL's revenue comes from selling broadcasting time to advertisers through specialized subsidiary companies. The rest comes from investment and other income. The fees which listeners and viewers used to have to pay the Government (which were not passed on to RTL) were abolished in 1973. RTL pays the State two parafiscal levies for its licences and its monopoly.

RTL transmits radio programmes in French, German, Dutch and English, and a daily radio programme in Luxembourgish (letzebuergesch) on UHF channel 18. Television programmes, including news bulletins, are broadcast in Luxembourgish only for about 75 minutes in the early afternoon. RTL transmits a full programme in French and, under the title of RTL-Plus, has been transmitting a programme in German since 2 January 1984. The German media group Bertelsmann AG has signed a declaration of intent to finance RTL-Plus to the extent of 40%.

On 2 May 1984 the responsible Luxembourg and French ministers concluded an outline agreement which would allow RTL to broadcast two television programmes using the projected TDF1 and 2 satellites. The price is thought to be in the region of FF 75 to 100 million per channel per year. Details of the concession and of a memorandum of conditions for RTL have to be worked out before a treaty between the two states can be ratified by their parliaments. From 1986 on RTL is to broadcast a French-language programme and a German-language programme. The German language programme would be run jointly with Bertelsmann. A French partner is to be found for the French language service. That programme would comply with the rules on advertising and the protection of film rights which apply to French broadcasters.

The Government is contemplating concluding a concession agreement with the Societe Luxembourgeoise des Satellites (SLS). The company would thereby be granted the exclusive right to use sixteen frequencies on Luxembourg telecommunications satellites (thus not a satellite intended for direct reception by the public) for the purposes of television.

There are no special provisions for receiving broadcasts from the air and retransmitting them by cable ("passive" cable broadcasting), nor for the direct transmission of RTL's own programmes by cable ("active" cable broadcasting). The latter does not so far exist in Luxembourg. In 1958 the local authorities started to grant licences for passive cable broadcasting to private national and foreign profit-making undertakings (e.g. the Belgian company Coditel). The memorandum of conditions stipulates inter alia that RTL programmes must be relayed. Belgian, German and French programmes are also fed into the system. Licence fees are as a rule not payable.

B. Italy

In Italy the law has reserved a dual monopoly for the State: first, the installation and operation of apparatus for the wireless or cable transmission of radio and television, and second, the transmission of programmes of every kind by means of such apparatus.[1]

The law has, however, excluded two areas from this State monopoly and has made them subject to a licensing system (autorizzazione) which is also open to private individuals (Sections 2 and 45 of the Act whose title is given below): the first is the installation and operation of private apparatus for the wireless reception and retransmission of foreign and national radio and television programmes; the second is the installation and operation of local apparatus for the cable distribution of the operator's own sound and television programmes. Two Constitutional Court judgments removed a third area from the State monopoly and made it subject to the licensing system: the installation and operation of local apparatus for the wireless transmission of the operator's own sound and television programmes.[2]

The law justifies this limited State monopoly by the fact that at national level the activities described above are "an essential public service of pre-eminent general interest" within the meaning of Section 43 of the Constitution (first sentence of the first paragraph of Section 1 of the Act mentioned). Section 3 empowers the government "to provide for the public service of radio and television by any technical means by a grant of licence (atto di concessione) to a limited company in which all the shares are owned by official bodies". The grant also entitles the licensee company to call itself "a company of national interest" within the meaning of Section 2461 of the Civil Code (Section 3, second paragraph).

Under the 1975 Act the public limited company Radiotelevisione Italiana (RAI) was again licensed in the same year: since 1924 that company had been granted a series of licences on the basis of earlier Acts. The Istituto per la Ricostruzione Industriale (IRI), a State holding company, holds 99.55% of the 20 million RAI shares, of more than LIT 2 000 each (Section 47). RAI is therefore a public undertaking. 0.45% of the shares are owned by the Società Italiana degli Autori e Editori.

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[1] Section 1, first paragraph, second sentence, Sections 2 and 45 of Act No 103 of 14 April 1975 on new rules concerning radio and television broadcasting (Nuove norme in materia di diffusione radiofonica e televisiva)

[2] Official Gazette of the Italian Republic No 102 of 17 April 1975, page 2539

[2] Constitutional Court (Corte costituzionale) Judgment No 202 of 28 July 1976, Raccolta ufficiale 1976 p. 1267, and Judgment No 148 of 21 July 1981, Raccolta ufficiale 1981, page 1379.

The licence is granted for six years and is renewable for up to six years (Section 14, first paragraph, first sentence). The most recent licence contract of 10 August 1981 again grants RAI the installation and transmission monopoly for broadcasting and for cable transmissions at national level and for the larger regions - except, as stated, for the relaying by wireless of its own and foreign programmes (Section 12, first paragraph, first sentence in conjunction with Section 2). The Act does not, however, recognize a monopoly for access to broadcasting and for programme production: RAI must reserve at least 5% of total television broadcasting time and 3% of radio time in its regional and national transmissions for each of the important political, social, cultural, religious and ethnic groups (Section 6).

The Act contains detailed rules on the organization of the licensee public limited company and its tasks (Sections 8 to 13). It also describes the economic objectives and activities which under the licence RAI is entitled and bound to carry out. Priority must be given to "the production of programmes and news broadcasts and a balanced development of the organization's production capacities" (Section 13, first paragraph). Efficiency and good management are to be achieved by reorganization and decentralization (Section 13, second paragraph to thirteenth paragraph). The licensee company directly, or associated companies which it controls or wholly owns, must also effect the distribution of its own production and that of its associated companies (by means of specific publishing and bookselling activities, records, audio-visual material, etc.,) and commercial activities in general - in particular radio and television advertising (Section 13, fourteenth paragraph).

RAI has the right to engage in numerous and extensive business activities itself, to establish subsidiary companies and to transfer gainful activities to them. Earlier licence contracts between the Minister for Posts and Telecommunications and RAI had already stated that advertising must be produced either by RAI itself or through the interposition of another company. Accordingly, television advertising has since 1972 been contracted out to the profit-making public limited company Società Pubblicità Radiofonica e Televisiva (SIPRA), which is completely controlled by RAI. Certain technical activities associated with advertising are contracted out to a profit-making public limited company, the Società Anonima Commerciale Iniziative Spettacoli (SACIS), which is also controlled by RAI. Advertising may not exceed 5% of transmission time on either radio or television (Section 21, second paragraph).

The public broadcasting authority - RAI - is financed from radio and television "subscription fees", from the income from radio and television advertising and from other income permitted by the law (Sections 15, first paragraph and 21, first paragraph). The subscription fee is also payable by owners of equipment capable of receiving cable or foreign transmissions (Section 15, second paragraph). The subscription can be terminated (Section 17). RAI collects the subscription fees itself (Section 18). Advertising revenue accounted for 21% of RAI's income in 1981. RAI has no profit-making objective in the sense of trying to make a profit, but it does operate against payment.

A Parliamentary Committee is responsible for the general guidance and supervision of broadcasting services (Section 1, third paragraph). It comprises 40 Members of Parliament from the two Chambers and forms subcommittees such as the one which examines and decides on applications for transmission time (Section 1, fifth and sixth paragraphs). Its tasks and powers are important, namely with regard to access to broadcasting, programmes (guidance, planning, distribution of transmission time, supervision), advertising (guidelines and fixing of annual revenue ceiling), with regard to the managing bodies within the licensee company and its budget (Sections 4, 8 first and seventh paragraphs, 10, second phrase, 12, third paragraph and 21, third and fourth paragraphs).

In principle, under the 1975 Act, any national or company of a Member State may have access to local cable broadcasting (Section 26, second and third paragraphs), or more precisely to the installation and operation of networks and apparatus for the transmission of sound and television via cable and the distribution of programmes through such networks and apparatus to a single commune or to geographical areas comprising several communes with a maximum of 150'000 inhabitants (Section 24, first paragraph). Anyone wishing to engage in these activities requires two permits which must be issued subject to compliance with the conditions laid down in the Act: a licence from the Ministry for Posts and Telecommunications for the network and apparatus (Sections 25 and 26) and a programme distribution licence from the regional authority (Sections 25 and 30). In granting the licence the regional authority must ensure that three rules are observed: first, advertising, which must be reserved for local publicity, must not exceed 5% of total transmission time; second, local networks may not link up with other networks, including foreign ones, for simultaneous transmission, and lastly, the proportion of programmes purchased, hired or exchanged may not exceed the proportion of programmes produced by the operators themselves (Section 30, fifth paragraph).

The Interministerial Committee for Prices sets the level of the fees payable by users of the local cable network (Section 29). The licensee pays the Ministry for Posts and Telecommunications an annual tax for the grant of the licence (Section 33). It is also permitted to operate with a view to making a profit.

According to information from the Minister of Posts and Telecommunications, in May 1981 there were 972 private local wireless transmitters, of which 562 also broadcast television programmes. At the end of 1983, 158 of these private television companies belonged to four networks, each of which took the form of a group or an "interest grouping": CANALE 5 - RETE 10 - ITALIA 1 (31 transmitters), RETE QUATTRO (21 transmitters), EURO TV - TV PORT (59 transmitters), STP/RV (47 transmitters).[1] The transmitters of each network are not linked by a ring system, but simply transmit the same programmes (chiefly by using the same video cassette), though sometimes at different times, as the law permits. In this way the networks have attained considerable regional and national importance.

[1] The above information is taken from: Rauen, Platz für zwei Networks: Medienkonzentration in Italien, Media Perspektiven 1984, 161 (162-165).

In principle, any national or company of a Member State, whose main place of activity is in Italy, may retransmit foreign radio and television programmes: they are entitled and obliged first to apply to the Ministry for Posts and Telecommunications for a licence (Sections 38 and 39(1). More precisely, the licence entitles them to install and operate apparatus to receive and retransmit simultaneously and in full, in the national territory, radio and television programmes broadcast by the public broadcasting services of another State or by private organizations authorized by the law of that State (Section 38, first paragraph). A licence "obliges the licensee to remove from foreign programmes everything in the nature of advertising, in whatever form" (Section 40, first paragraph). Licences are granted for five years and are renewable; a tax for the grant of the licence is payable to the State (Section 41, second to fourth paragraphs).

Lastly, private individuals may also apply to the Minister for Posts and Telecommunications for a licence to install and operate apparatus to receive RAI television programmes and retransmit them simultaneously and in full (Section 43).

C. Netherlands

Broadcasting in the Netherlands requires government authorization, which is granted by way of the distribution and allocation of broadcasting time pursuant to the Broadcasting Act[1] (Section 62(1)). Under that Act, the Minister for Cultural Affairs, Recreation and Social Welfare is obliged to allocate broadcasting time to the broadcasting organizations (omroeporganisaties, Section 13(1)) and to the "candidate" organizations (aspirant-omroeporganisaties, Section 14(1)) that satisfy the conditions of the law, to the Dutch Broadcasting Foundation (Nederlandse Omroep Stichting - NOS, Section 15(2)(i), Section 39(1)), to political parties and groupings which in the most recent elections have gained at least one seat in the Upper Chamber of Parliament (Section 18), and to the Foundation for Broadcast Advertising (Section 20).

In addition the Minister may allocate broadcasting time to church associations (kerkgenootschappen) for religious broadcasts (Section 16), to associations (genootschappen) with an ideological basis for broadcasts of a spiritual (geestelijke) nature (Section 17), to institutions other than those previously specified (instellingen, the general term used in the Act), which satisfy the conditions of the Act - particularly where they satisfy a cultural requirement in the general interest previously not adequately catered for - (Section 19), and regional broadcasting institutions (omroepinstellingen), which satisfy the conditions of the Act (Section 47).

The last two and first two types of broadcasting institutions must be legal persons with unlimited legal capacity (Section 13(2)(1)(e), Section 14(2)(19)(1)(e), Section 47(3)(1)(e)). They must prove that their object is not to make a profit "in so far as this is not necessary to fulfilment of the broadcasting function", or to contribute to profit-making by third parties (Section 13(2)(5)(e), Section 14(2), Section 19(2)(e), Section 47(3)(5)(e)). The first two types of broadcasting institutions must produce and offer a complete programme (Section 13(2)(3)(e), Section 14(2), Section 35(2)). They must be representative of a certain social, cultural, denominational or ideological trend in the population and satisfy such requirements to such an extent that their broadcasts may be regarded as in the general interest (Section 13(2)(4)(e)). These broadcasting organizations and "candidate" organizations must raise contributions from their members, a term which includes, by virtue of a legal fiction, the subscribers to their respective programme magazines; the minimum contributions are fixed by the government (Section 13(2)(7)(e), section 14(2)). The broadcasting organizations must have a membership of at least 150 000 (Section 13(2)(8)(e), the "candidate" organizations at least 60 000 (Section 14(2)).

The division of broadcasting time between the organizations depends on their membership. Broadcasting time is shared between categories A (at least 450 000 members), category B (between 300 000 and 449 999 members) and category C (150 000 to 299 999 members) in the ratio 5 : 3 : 1 (Section 27(2) and (3)).

[1] Omroepwet of 1 March 1967, Staatsblad 1967, No 176, p. 591, as since amended.

The broadcasting times allocated to the remaining institutions are then subtracted therefrom (Section 27(1)): "candidate" organizations one hour on television per week, NOS at least 15 hours on television, a maximum of 40% of the entire broadcasting time fixed by the Minister, the Foundation for Broadcast Advertising at least seven hours on the radio and three hours on television per week, parties and other institutions together at least 10% of the entire broadcasting time established by the Minister (Sections 28 to 32).

There are now eight broadcasting organizations in the Netherlands: five category A (AVRO, TROS, KRO, NCRV, VARA), one category B (VOO) and two category C (VPRO, EO). The majority of them are societies, the remainder private-law foundations. In addition there are some 30 institutions (groupings) entitled to broadcast particular programmes, whose broadcasting time is strictly limited.

The organizations' broadcasts on television appear on both Dutch channels: Netherlands 1 and Netherlands 2. The creation of a third channel is under discussion. The societies and foundations have some set evenings for broadcasting and others that vary. The A societies alternate on channel 1. Each A society has a set evening on channel 2 which changes every year. The B and C societies broadcast on one of the two channels at specific times. The limited company NV Nederlandse Omroepzender Maatschappij (NOZEMA) is responsible for setting up and running transmitting stations. The State (posts and telecommunications administration) holds 60% of its shares and the NOS 40%.

The latter produces a ninth television programme (particularly news), which is broadcast daily on both channels and on certain evenings and/or days. The NOS is a public-law foundation, set up by the Broadcasting Act (Section 39(1)). Half the members of the Board of Governors (bestuur), responsible for running the Foundation, are appointed by the private broadcasting organizations, one quarter by representatives of cultural and social organizations and one quarter by the Minister for Cultural Affairs (Section 41). In addition, there is a management board (raad van beheer) which deals with the Foundation's day-to-day activities and implements the decisions of the Board of Governors (Section 43), a television programme board (one third of the members are appointed by the broadcasting organizations, one third by representatives of cultural organizations, one third by the Minister for Cultural Affairs, Section 44), and a television programme coordinating committee (Section 45). The Minister for Cultural Affairs is required to approve the Foundation's rules (Section 40(1)).

NOS deals primarily with cooperation between the broadcasting organizations (Section 39(1)). In addition, it is responsible for safeguarding the common interests of all the institutions and for programme coordination (Section 39(2)(a), (c)). It is entrusted with the production and broadcasting of a programme common to all the institutions (Section 36, Section 39(2)(b)) and also has to establish and maintain studios, facilities (e.g. orchestras), services and equipment for programme production by all the institutions (Section 39(2)(e),(f)). The broadcasting organizations are obliged to make use of these facilities (Section 25). Furthermore, NOS has to make programmes available for foreign countries (Section 39(2)(j)).

The Foundation for Broadcast Advertising (Stichting Ether Reclame - STER) is exclusively responsible for the production and broadcasting of the advertising of third parties. It is a public-law foundation, set up by the Broadcasting Act (Section 50(1)).

The responsibility for appointing and dismissing the six-member Board of Governors (bestuur) lies with the Minister for Cultural Affairs (Section 50(5), (6)). Both he and the Minister for Economic Affairs may delegate observers to the management board (Section 50(7)). The Minister for Cultural Affairs lays down the Foundation's rules (Section 50(8)). An advertising council (Reclameraad) set up under the Act lays down rules on the content of the Foundation's advertising broadcasts, supervises implementation of these rules and advises on other matters connected with broadcast advertising (Section 49(1)), particularly rates. These are set by the Foundation's Board of Governors on a yearly basis, at least six months in advance (Section 50a(1), (2)). The Minister for Cultural Affairs may set aside this decision wholly or in part and set the rates himself (Section 50a(4)).

Some 25% of financing for the Dutch radio and television broadcasting system comes from advertising revenue and approximately 75% comes from licensing fees levied directly by the State and contributions from the members of the private associations and foundations and from subscriptions to their programme magazines.

There is a legal connection between membership of a broadcasting organization and the obligation to pay a contribution (Section 13(1)(7)(e)). Anyone subscribing to a programme magazine is automatically regarded as being a member of the broadcasting organization which publishes it and holds copyright therein (Section 22), unless he expressly declares the contrary. This explains the large membership of a number of the organizations.

The services of these private societies and foundations are therefore rendered against payment. This also applies to the broadcasts by NOS, STER and the other institutions which are allocated broadcasting time, which together with these organizations receive a share of the fees and the advertising revenue. The Minister for Cultural Affairs is responsible for the distribution of these revenues (Sections 58 to 60a). Furthermore, the private-law societies and foundations may make a profit, provided that they are concerned with fulfilment of their broadcasting functions. They take an active part in economic life also by the production and distribution of programmes and programme magazines. With its studios, orchestras and so on, which it maintains for itself and the other institutions, NOS is an important service undertaking.

The Broadcasting Act also covers cable radio and television. It regulates firstly the transmission (doorgifte) of national programme broadcasts by cable rediffusion systems. This must be performed in full, simultaneously and without interruption (Section 48(1)).The cable rediffusion systems covered by the law include the reception facilities and cable networks that cover more than the area of a municipality.[1] The numerous central and community aerials do not therefore, fall within the scope of the Broadcasting Act. They merely

[1] Section 2(1)(k) of the Broadcasting Act in conjunction with the provision of the Telegraph and Telephone Act 1904 cited therein, Staatsblad No 7; Section 3(2) of the Order of the Minister for Transport and Inland Waterways 27 July 1970, Staatscourant No 144, version of the Order of 6 March 1974, Staatscourant No 48.

require a licence (machtiging) from the Director-General of PTT,[1] whereas the former require a licence from the Minister for Posts under the Telegraph and Telephone Act. Similarly, the over 200 large internal cable broadcasting systems (huisomroepen, above all in hospitals) do not fall within the scope of the Broadcasting Act.

Secondly, the Act regulates the transmission (doorgifte) via the designated reception stations and cable networks of the programmes broadcast by foreign stations. In agreement with the Minister for PTT the Minister for Cultural Affairs may designate the foreign broadcasting stations whose broadcasts are to be transmitted in full or in part by one or more cable networks (Section 48(2)(a)).

Thirdly, the Act authorizes the Minister for Cultural Affairs to provide opportunities for the institutions entitled to broadcast (the national, small and regional institutions within the meaning of Sections 13, 19 and 47) to transmit (overbrengen) their programmes via cable (Section 48(2)(b)).

This provision does not cover local institutions. Fourthly, however, paragraph 5 of this Section empowers the Minister for Cultural Affairs to draw up rules with regard to the use of cable networks for purposes other than the transmission of the programmes designated in paragraphs 1 and 2. Paragraph 5 has been interpreted by the Minister as entitling him to control the initial cable transmission (overbrengen) by local institutions of their own programmes. He has therefore issued an Order,[2] which authorizes such "active" cable broadcasting purely as an experiment and reserves it for certain institutions which he alone designates. They must have legal personality, be of a cultural nature and representative of their area, and may neither seek to make profit nor accept advertising.

On the basis of Article 48(5) the Minister for Cultural Affairs has recently made an order[3] whereby the relaying (overbrengen) by cable within the country of television programmes transmitted from abroad by means of a telecommunications satellite (and thus not a satellite intended for direct reception by the public) is permitted only if (i) the programmes contain no advertisements especially directed at the Dutch public, (ii) the transmission by satellite is made by or on behalf of an institution which distributes the programmes by means of a radio transmitter or a cable system in the country where it is established and (iii) the relay occurs at the same time as the original broadcast, without interruption and so far as possible without abridgement.

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[1] Section 4 of the Order.

[2] Order of 24 December 1971, Staatscourant No 251.

[3] Order of 15 September 1983, Staatscourant No 190 of 30.9.1983, p. 8, which entered into force on 2.10.1983, Article II.

The relay within the country of foreign programmes broadcast by means of direct satellites is and remains free[1] even if they contain advertisements especially directed at the Dutch public.

Whether they are so directed is considered to depend primarily on the following criteria:[2] whether the advertisement is in the Dutch language although it emanates from a distributor established abroad; whether the prices are expressed in Dutch currency; whether addresses of points of sale in the Netherlands are mentioned; whether the advertising is for products obtainable only in the Netherlands.

[1] Explanatory note to the Order, loc. cit.

[2] Explanatory note to the Order, loc. cit.

D. Belgium

The Flemish, French and German cultural communities are responsible for radio and television broadcasting in Belgium. However, the broadcasting of government communications and advertising have remained national concerns.[1] Advertising is prohibited,[2] but the authorities do not enforce this ban in regard to the advertising broadcast from other Member States and transmitted via cable.

Broadcasting in Belgium is organized as a public service (service public, openbare dienst), although the constitution does not rule out private ventures. Three institutions set up by law are responsible for this service: Radio Télévision belge de la Communauté culturelle française (RTBF),[3] Belgische Radio en Televisie, Nederlandse Uitzendingen (BRT)[4] and Belgische Rundfunk - und Fernsehzentrum für deutschsprachige Sendungen (BRF).[5]

However, the law does not grant a monopoly to the three institutions. BRT and (when the relevant rules are issued) RTBF and BRF are obliged to grant broadcasting time and to provide staff and technical support for the programmes of those societies and foundations which fulfil the conditions of the law, and are hence approved by the King subject to a legal limitation on their number.[6] They must be private-law, non-profitmaking societies or foundations in the public interest, whose exclusive object is to broadcast programmes with commentaries and points of view based on representative social, economic, cultural, ideological or philosophical trends.

Four television programmes in all are broadcast by RTBF and BRT on two channels: RTBF 1 and 2 (Télé 2) and BRT 1 and 2. BRF broadcasts a radio programme.

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[1] Sections 59 bis and 59 ter of the Constitution; Section 4(6) of the Special Act on Institutional Reforms of 8 August 1980, Moniteur belge, 15.8.1980, p. 9434.

[2] Section 28(3) of the Organic Law on the Institutions of Belgian Radio and Television Broadcasting of 18 May 1960, Moniteur belge, 21.5.1960, p. 3836.

[3] Decree having the force of law of the Council of the French Cultural Community of 12 December 1977, Moniteur belge, 14.1.1978, p. 365, Section 1(1), Section 2(1).

[4] Decree having the force of law of the Cultural Council of the Dutch Cultural Community of 28 December 1979, Belgisch Staatsblad, 25.1.1980, p. 1171, Section 1(1), Section 2(1).

[5] Section 7(1) of the Act of 18 February 1977 laying down certain provisions on the public service of radio and television broadcasting, Moniteur belge, 2.3.1977, p. 2491.

[6] Sections 24 to 30 of the abovementioned Flemish Decree; Section 26 of the abovementioned Walloon Decree; Section 9 of the abovementioned Act of 18 February 1977 (regarding BRF).

BRT, RTBF and BRF are public corporations (openbare instellingen, établissements publics) with legal personality.[1] Each institution draws up its own programmes.[2] These three public-law corporations are each governed by a Board of Directors appointed for a certain period by the appropriate cultural community, a Standing Committee and a General Manager or Director. The appropriate Minister for Cultural Affairs is responsible for supervising the BRF.[3] BRT comes under the Minister for Dutch Cultural Affairs.[4] The appropriate Minister for Cultural Affairs may attend the meeting of the Board of Directors as an observer.[5] The General Manager is appointed by the King or the Minister on a proposal from the Board of Directors.[6] The finances of BRT, RTBF and BRF are supervised by the State.[7]

The corporations' income comes from funds made available to it by the appropriate Cultural Council, loans which the corporation may raise upon authorization by Order, proceeds from the sale of publications and their own sound and film recordings, proceeds from the sale and hire of productions and fees for all types of services.[8] In financing their tasks as public undertakings the corporations may therefore take part in business life and seek to make a profit. Both BRT and RTBF may maintain a reserve fund of up to BF 500 million, while RTBF may also maintain a renewals and amortization fund.[9] The first-mentioned source of funds, from the budget of the respective Cultural Council, is financed from the licences (a form of tax), which the State imposes every year through the telephone and telegraph service on the owners of radio and television sets. The corporations therefore operate against payment. In 1981 RTBF's share of budget income amounted to 89.1%.

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[1] Section 1(1) of the Decrees; Section 7(1) of the 1977 Act.

[2] Section 2(2) of the Decree and Section 1(2) of the Order having force of a Decree by the German Cultural Council of 4 July 1977, Moniteur belge, 17.11.1977, p. 13630.

[3] Section 7(4) of the abovementioned Act of 18 February 1977.

[4] Section 1(1) of the abovementioned Flemish Decree.

[5] Section 12 of the abovementioned Flemish Decree; Section 11 of the abovementioned Walloon Decree; Section 13 of the abovementioned German Order.

[6] Section 13(2) of the abovementioned Flemish Decree; Section 17(1) of the abovementioned Walloon Decree.

[7] Section 18 of the Flemish Decree, Section 21 of the Walloon Decree and Section 7(5) of the Act of 18 February 1977, which refer to the Act of 16 March 1954 on the supervision of certain corporations of public interest, in the version of the Royal Decree of 18 December 1957, Moniteur belge, 25.12.1957.

[8] Section 22 of the Flemish Decree; Section 20 of the Walloon Decree; Section 41 of the German Order; Section 10(1) of the Act of 18 February 1977.

[9] Section 22 of the Walloon Decree; Section 22 of the Flemish Decree.

The corporations may perform all activities connected with their tasks or which ensure or facilitate their accomplishment.[1] These activities comprise the production, broadcasting and distribution of programmes, the setting-up, maintenance and use of the technical installations required to broadcast television programmes (including making them available to the BRF against payment),[2] cable and satellite transmissions,[3] conclusion of agreements with persons under public or private law both in Belgium and abroad (in particular for joint productions),[4] the use of broadcasting stations located outside Belgium,[5] the purchase, sale and creation of rights in rem over property and technical installations in Belgium and abroad,[6] and the expropriation of property in the public interest.[7] The RTBF corporation may set up and maintain regional production centres and related stations.[8] It is clear from these provisions that the three corporations are major service undertakings closely involved in business life, which broadcast their programmes against payment.

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[1] Section 4(1) of the Walloon Decree; Section 6(1) of the German Order; Section 4(1) of the Flemish Decree.

[2] Section 5 of the Flemish Decree; Section 4(1) of the German Order; Section 8 of the abovementioned Act of 18 February 1977.

[3] Section 3(4), Section 4(3) of the Walloon Decree; Section 5 of the German Order.

[4] Section 4(2) of the Flemish Decree; Section 4(2) of the Walloon Decree; Section 6(2) of the German Order.

[5] Section 3(3) of the Walloon Decree; Section 3(2) of the Flemish Decree.

[6] Section 3(1) of the Walloon Decree; Section 3(1) and (3) of the Flemish Decree; Section 4 of the German Order.

[7] Section 3(2) of the Walloon Decree; Section 3(4) of the Flemish Decree; Section 3 of the German Order.

[8] Section 12 of the Walloon Decree.

The reception of radio and television broadcasts and their cable transmission into the dwellings of third parties is governed by national law. The State has not assigned these activities to or reserved them for a public service, but merely made them dependent upon an authorization.[1] Any national of a Member State established in Belgium is entitled to apply for an authorization.[2] The authorization, issued by the Minister responsible for telegraph and telephone services, is valid for eighteen years and may then be extended on a nine-year basis.[3] It may cover part of a municipality, a whole municipality or a group of municipalities. The reception facilities may, however, be set up outside this area.[4]

All cable television networks must transmit all the Belgian corporations' broadcasts simultaneously and in full.[5] The distribution companies may also transmit broadcasts from foreign countries which are authorized there.[6] However, the transmission of advertising in such broadcasts is prohibited.[7] There is an overall ban on radio and television advertising in Belgium (see the beginning of this section), but the cable networks do not comply with Section 21 and it is not enforced by the authorities. The cable companies therefore transmit all the programmes which can be received from France, Germany, Luxembourg, the Netherlands and the United Kingdom, including the advertisements.

The Minister responsible for telegraph and telephone services fixes the maximum rates for connections to the cable network and the subscription.[8] The distribution companies therefore operate against payment. The system of charges imposed on those using the final reception apparatus connected to the network is similar to the arrangements previously outlined for the collection of radio and television licence fees.[9]

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[1] Section 2 of the Royal Decree concerning the distribution networks for the transmission of radio broadcasts to the dwellings of third parties of 24 December 1966, Moniteur belge, 24.1.1967, p. 609.

[2] This appears from Section 4(1) of the abovementioned Royal Decree in conjunction with the EEC Treaty, namely Articles 7, 52 and 58.

[3] Section 6 of the Royal Decree.

[4] Section 7 of the Royal Decree.

[5] Section 20 of the Royal Decree.

[6] Section 21(1) of the Royal Decree.

[7] Section 21(2)(1) of the Royal Decree.

[8] Section 16(1) of the Royal Decree.

[9] Section 32 of the Royal Decree.

About half the cable networks are operated by profit-making companies governed by private law. The remainder are public undertakings, mainly in the form of "intercommunals", i.e. private-law associations of municipalities (and/or associations) authorized by the State and having an object in the public interest, which are organized in one of the forms permitted by company law.[1]

"Active" cable television may so far be authorized only on a trial basis in the French-speaking area for social/cultural programmes of local interest.[2]

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[1] Act concerning the association of municipalities for a purpose in the public interest of 1 March 1922, Moniteur belge, 16.3.1922, in the version amended by the Royal Decrees of 1933 and 1936.

[2] Royal Decree of 4 May 1976 amending the abovementioned Royal Decree of 24 December 1966, Moniteur belge, 18.6.1976, p. 8275.

E. United Kingdom

In the United Kingdom broadcasting may be carried on only under a licence from the Home Secretary.[1] The British Broadcasting Corporation (BBC)[2] and the Independent Broadcasting Authority (IBA)[3] at present hold such a licence and concession agreement with the Home Secretary which are valid until 1996. The BBC was established by Royal Charter in 1926 for a fixed period which has been constantly renewed[4] and the IBA (a statutory corporation) was established by statute[5] in 1954.[6] Both are thus public law institutions known as corporations or bodies corporate.[7] Both are required to carry on their broadcasting services "as a public service for disseminating information, education and entertainment".[8]

These corporations consist of members[9] who in the case of the BBC are known as governors.[10] They are regarded as trustees of the public interest and are responsible for the corporation which they constitute. The members, the chairman and the deputy chairman are appointed in the case of the BBC by the Queen in Council[11] and in the case of the IBA by the Home Secretary[12] on the basis of their experience, qualifications and personal qualities. They are appointed for a fixed period. The members - at present twelve in the case of each corporation[13] - are also known as the Board of Governors.

In addition to and independent of the IBA there is a further public law corporation, the Broadcasting Complaints Commission, the functions which are obvious from its title.[14]

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[1] Section 1 Wireless Telegraphy Act 1949, 12, 13 and 14 Geo. 6 c. 54; Section 3(7) Broadcasting Act 1981, 1981 c. 68.
[2] Clause 3 Licence and Agreement of 2 April 1981 (Cmnd. 8233).
[3] Clause 1 IBA Licence of 22 December 1981 (Cmnd. 8467).
[4] The present Charter expires in 1996 (Clause 21).
[5] The IBA is to carry out its functions until 1996 or 2001 (Sections 2(1) and 5 Broadcasting Act 1981).
[6] Paragraph 4(1) of Schedule 1 to the Broadcasting Act 1981.
[7] Clause 1(1) of the current Royal Charter of the BBC of 7 July 1981, Cmnd. 8313; Section 1(1) Broadcasting Act 1981.
[8] Section 2(2)(a) Broadcasting Act 1981. Clause 3(a) of the BBC Charter 1981 also refers to "public services".
[9] Clause 1(2) BBC Charter 1981; Section 1(2) Broadcasting Act 1981.
[10] Clause 1(2) BBC Charter 1981.
[11] Clause 5(1) and (2) BBC Charter 1981.
[12] Section 1(2) and Paragraph 1 of Schedule 1 to the Broadcasting Act 1981.
[13] Clause 5(1)(2) BBC Charter 1981; Section 1(2) and (3) Broadcasting Act 1981.
[14] Section 53-60 Broadcasting Act 1981.

The BBC and the IBA are administered by their members, who are advised by numerous councils, committees and panels, some of which are prescribed by statute and others created by the institutions themselves. In 1982 they numbered more than 50 in the case of the BBC and 49 in the case of the IBA. They are concerned both with policy and programmes in general and with particular regions and subjects.[1] Each corporation is empowered to employ such staff as it may "consider necessary for the efficient performance of its functions and transaction of its business".[2] The corporations fix remuneration and conditions of employment, negotiate on them with the staff associations and conclude wage agreements.[3] The staff of each corporation is headed by its appointed Director-General.

Both corporations have the power to do all such things as appear to them necessary or conducive to the attainment of their objectives or the proper performance of their functions.[4] In performing their duties as broadcasting authorities they have in particular the following powers and obligations: to establish and use stations for wireless telegraphy[5] and in the case of the BBC also for satellite broadcasting;[6] in the case of the BBC to establish, acquire and use equipment for the transmission and reception of signals by wire or cable;[7] in the case of the IBA to arrange for the distribution of its programmes by cable companies;[8] to acquire, use and sell property of all kinds (land, buildings, easements, apparatus, machinery, plant and stock-in-trade);[9] to organize and subsidize concerts and other entertainments;[10] to collect news and information in any appropriate manner, to establish news agencies and subscribe to them;[11] to acquire copyrights, trade marks and trade names and to acquire and grant licences;[12] to make, acquire, lease and sell films, records, tapes, cassettes, etc., and ancillary material and apparatus;[13] to acquire patents and licences for inventions;[14] to form companies or acquire shares in companies and provide financial assistance to companies;[15] to invest its moneys and deal with

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[1] Clauses 8-11 BBC Charter 1981; Sections 16-18 Broadcasting Act 1981.
[2] Clause 12(1) BBC Charter 1981; similarly Section 12(1) Broadcasting Act 1981.
[3] Clause 12(2) and Clause 13 BBC Charter 1981; Section 44 Broadcasting Act 1981.
[4] Clause 1(1) and Clause 3(z) BBC Charter 1981; Sections 3(1), 12(1) Broadcasting Act 1981, Paragraph 4(1) of Schedule 1 Broadcasting Act 1981.
[5] Clause 3(c) BBC Charter 1981; Section 3(1)(a) Broadcasting Act 1981.
[6] Clause 3(h) BBC Charter 1981.
[7] Clause 3(d) BBC Charter 1981.
[8] Section 3(1)(c) Broadcasting Act 1981.
[9] Clause 3(g), (t) and (x) BBC Charter 1981; Section 12(2) in fine, Broadcasting Act 1981.
[10] Clause 3(m) BBC Charter 1981.
[11] Clause 3(n) BBC Charter 1981.
[12] Clause 3(o) BBC Charter 1981.
[13] Clause 3(p) BBC Charter 1981.
[14] Clause 3(q) BBC Charter 1981.
[15] Clause 3(u) BBC Charter 1981; Section 12(2) Broadcasting Act 1981.

them;[1] to take up loans and mortgages;[2] to conclude other agreements[3] or otherwise carry on business.[4]

The principal obligation of the BBC is the making and transmission of radio and television programmes.[5] The principal obligation of the IBA is the provision of broadcasting services of high quality additional to those of the BBC,[6] primarily through supervision and transmission of radio and television programmes made by private companies[7] and secondly by broadcasting an additional television programme of its own making.[8]

The BBC and the IBA broadcast their television programmes on two channels each: BBC 1, BBC 2, ITV and Fourth Channel.[9] They also arrange by means of contracts for the distribution of their broadcasts by the private cable companies. The BBC also makes its own programmes. As employer, as producer, purchaser and distributor of programmes, as builder, maintainer and user of its transmitters, as proprietor, investor and borrower, it performs a wide range of economic and business activities. It is not merely a legal but also an economic entity. It is thus an undertaking which participates in economic life both as a supplier and as a user of services. As a legal person under public law, it is a public undertaking.

The IBA carries on similar activities, but as regards the making of programmes only in relation to the Fourth Channel. For certain production activities it must, and for others it may, make use of a subsidiary company.[10] Thus at the end of 1980 a wholly-owned subsidiary was formed, Channel Four Television Company Limited. It is financed by the IBA from subscriptions from the programme contractors of IBA (see below). In return they have the right to sell advertising time on the new Channel Four programme.

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[1] Clause 3(v) BBC Charter 1981.
[2] Clause 3(w) BBC Charter 1981; Paragraph 4(1) of Schedule 1 to the Broadcasting Act 1981.
[3] Clause 3(y) BBC Charter 1981; Sections 2(3), 3(2) in fine, and 12(1) Broadcasting Act 1981.
[4] Section 3(3) Broadcasting Act 1981.
[5] Clause 3(a) BBC Charter 1981 and Clause 13(1), (2), (5) BBC Licence and Agreement 1981.
[6] Section 2(1) Broadcasting Act 1981.
[7] Section 2(3) Broadcasting Act 1981.
[8] Section 10(1) Broadcasting Act 1981.
[9] In Wales the functions of the IBA are partly carried out by the Welsh Fourth Channel Authority, Sections 46-52 Broadcasting Act 1981.
[10] Section 12(1) and (2) Broadcasting Act 1981.

For its ITV channel the IBA is not as a general rule permitted to make programmes itself.[1] It must obtain them from programme contractors.[2] These are natural or legal persons who, on the basis of contracts with the IBA and in return for payment for the services rendered by the IBA, have the right and the obligation to provide programmes or parts thereof for broadcasting by the IBA, which may include advertising.[3] The IBA thus provides its services - particularly the broadcasting of the programmes made for it - in return for payment.

The IBA must do all it can to ensure "that there is adequate competition to supply programmes between a number of programme contractors .....".[4] Accordingly, the IBA has concluded contracts, the most recent dating from 1982, with 15 makers of television programmes who are independent of each other; these include two new firms who have replaced former contractors. These are all limited companies operating in the private sector with a view to profit. Five of them are fairly large and produce nationally distributed programmes (central companies) in addition to regional programmes for the area in which they are established (two of them are in London). The other ten companies are substantially smaller and make programmes for their own regions (regional companies).

It is expressly provided by statute that nationals of the other Member States may be considered for appointment as contractors with the IBA, as also may bodies corporate formed in accordance with the law of another Member State and having their registered or head office or principal place of business within the Community.[5]

News broadcasts are supplied to the IBA not by any of the 15 programme companies but by a subsidiary company jointly owned by all of them, Independent Television News (ITN). This is a limited company on whose board of directors each of the 15 shareholders is represented.[6]

The IBA's new national breakfast programme, "Breakfast Television", has been entrusted to a further programme company, TV-AM Limited.

As well as establishing and operating the transmitters the IBA itself has three principal functions: firstly the choice of the programme contractors,

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[1] For exceptions, see Section 3(2) Broadcasting Act 1981.
[2] Section 2(3) Broadcasting Act 1981.
[3] Section 2(3) Broadcasting Act 1981.
[4] Section 20(2)(b) Broadcasting Act 1981.
[5] Section 20(2)(a) and (6)(a)(i) and (b)(i) Broadcasting Act 1981, which correspond with Article 58 EEC Treaty.
[6] This system is one of the options provided by Section 22 Broadcasting Act 1981.

secondly the supervision of the programmes from planning[1] to implementation[2] - as regards composition, content and quality, balance and variety, day and time of transmission,[3] respect for decency and public order,[4] impartiality in relation to political questions or industrial disputes[5] - and thirdly the supervision of advertisements.[6]

Both the BBC and the IBA are responsible for the programmes they broadcast. Only when they infringe a right laid down in their licences, charter or statute are they subject to the supervision of the courts.[7] The powers of the Government are limited to prescribing the transmission times,[8] requiring the broadcasting of Government announcements,[9] requiring technical work to be carried out or the establishment of additional stations,[10] preventing exclusive agreements in favour of the BBC or IBA for the broadcasting of events of national interest[11] and requiring cooperation between the IBA and the BBC in the use of transmitters.[12]

The two corporations are financed in different ways: the IBA by advertising revenues from the private sector (commercial television), the BBC from a public tax on television sets.

The BBC is prohibited from broadcasting advertisements for payment without the consent of the Home Secretary.[13] Its internal services are therefore financed primarily by grants made by Parliament out of the Home Office budget.[14]

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[1] Section 6 Broadcasting Act 1981.
[2] Section 5 Broadcasting Act 1981.
[3] Section 2(1) and (2) Broadcasting Act 1981.
[4] Section 4(1)(a) Broadcasting Act 1981.
[5] Section 4(1)(f) Broadcasting Act 1981.
[6] Section 8(3), Schedule 2 and Section 9 Broadcasting Act 1981.
[7] Attorney-General (ex relator McWhirter) v. IBA /1973/ Q.B. 629 (652).
[8] Section 28 Broadcasting Act 1981; Clause 14 BBC Licence and Agreement 1981.
[9] Section 29(1) to (4) Broadcasting Act 1981; Clause 14 BBC Charter 1981.
[10] Section 29(5) Broadcasting Act 1981; Clause 3(i) BBC Charter 1981, Clauses 4, 5, 9 BBC Licence and Agreement 1981.
[11] Section 30 Broadcasting Act 1981.
[12] Section 31 Broadcasting Act 1981; Clause 3(j) BBC Charter 1981, Clause 6 BBC Charter 1981.
[13] Clause 12 BBC Licence and Agreement 1981; Clause 16(1)(b) BBC Charter 1981.
[14] Clause 16(1)(a) BBC Charter 1981.

These correspond to the net revenue from television licences.[1] The Home Secretary is empowered to fix the charge for these licences, which is collected by the Post Office on his behalf. The amount of revenue entered in the Home Office budget after deduction of the costs of collection is allocated to the BBC, which thus provides its services - the broadcasting of its programmes - for payment. The BBC has some additional income (1% - 2%) from the sale of publications and from the sale of films and programmes abroad. The external services of the BBC are financed from grants in aid made out of the budget.[2] The BBC is obliged to apply all its revenue solely to the furtherance of its objectives.[3] None of its revenue may be distributed as profit among its members.[4]

The IBA finances its expenditure and reserve fund from the contractually agreed payments made by programme contractors.[5] Its revenues come from the sale of broadcasting time for television advertising. Any surpluses of the IBA are dealt with in accordance with the direction of the Home Secretary.[6] Thus, the corporation, just like its sister the BBC, is not carried on for profit but provides its services - especially the broadcasting of programmes - in return for payment. The programmes broadcast by the IBA may, as already mentioned, include advertising.[7] With the income derived from the sale of the available broadcasting time to advertisers and advertising agents, the programme companies finance themselves, the IBA and a tax ("Exchequer Levy") imposed on their profits from the sale of advertising time. This levy amounts in the case of television programmes to two-thirds and in the case of radio programmes to 40% of their profits, in so far as those profits exceed 250 000 UKL or 2% of their advertising revenues.[8] In this way the State received in the financial year 1981/82 a revenue of 57 512 767 UKL. The Home Secretary may, with the consent of Parliament, increase or reduce the rates of this tax on advertising profits and alter its basis of assessment.[9]

The transmission of broadcasts by cable, like wireless broadcasting, requires a licence from the Home Secretary. Among the conditions of such licences is that television and radio programmes are relayed in their entirety and that generally speaking as many programmes are relayed as is technically possible.

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[1]
[2] Clause 16 BBC Licence and Agreement 1981.
[3] Clause 17 BBC Licence and Agreement 1981.
[4] Clause 1, first sentence, in fine, BBC Charter 1981.
[5] Clause 16(3) BBC Charter 1981.
[6] Section 32(1) and (2), 36 Broadcasting Act 1981.
[7] Section 37 Broadcasting Act 1981.
[8] Section 2(3), 13 Broadcasting Act 1981.
[9] Section 32(3) and (4) Broadcasting Act 1981.
Section 32(8) and (9) Broadcasting Act 1981.

Foreign television programmes may be relayed only with the consent of the Home Secretary. The IBA has the power, by means of appropriate agreements with the public body known as British Telecommunications and with private individuals and public bodies which maintain broadcast relay stations, to arrange for the programmes it has transmitted to be relayed.[1]

Up to 1983 there were only occasional cases in which cable television companies were permitted to carry on "active" cable television, i.e. the transmission of their own programmes. For these pilot projects an experimental licence is granted, for which again a charge is made. Advertising is permitted on these programmes.

On 1 December 1983 a Bill was published setting out framework rules for the development of new cable services and the setting up of a "Cable Authority" with powers to permit and regulate cable services.[2] In the same month the Government granted eleven privately financed consortia, out of 37 applicants, provisional authorization to set up and operate new cable systems, each with about 30 channels, on which their own programmes would be transmitted as well as those of the BBC and ITV.

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[1] Section 3(1)(c) Broadcasting Act 1981.

[2] Cable and Broadcasting (H.L.) A Bill, (83) A 49/1, London 30.11.1983.

F. Ireland

In Ireland broadcasting may be carried on only under licence from the Minister for Posts and Telegraphs.[1] Such a licence is held only by the Broadcasting Authority, known as Radio Telefís Eireann (RET).[2] The authority was created by statute[3] and is thus a public law institution.[4] Its legal form is that of a body corporate. Its function is to "establish and maintain a national television and sound broadcasting service".[5]

The body corporate known as RTE consists of not less than seven and not more than nine members appointed by the Government for a fixed term,[6] who are responsible for its activities.[7] The Government appoints a chairman from among the members.

The authority is responsible for its own administration. Its chief executive officer is the Director-General;[8] both he and the staff are appointed by the authority. Appointment and removal of the Director-General requires the consent of the Minister.[9] With his consent RTE may also appoint advisory committees and advisers.[10] There is also a Broadcasting Complaints Committee independent of RTE.[11]

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[1] Sections 3 and 5, Wireless Telegraphy Act 1926, 1926, No 45.
[2] Section 3 Broadcasting Authority (Amendment) Act 1966, 1966, No 7.
[3] Section 3(1) Broadcasting Authority Act 1960, 1960, No 10.
[4] Section 3(2) Broadcasting Authority Act 1960.
[5] Section 16 Broadcasting Authority Act 1960.
[6] Section 4(1) Broadcasting Authority Act 1960.
[7] Section 7(1) Broadcasting Authority Act 1960.
[8] Section 11, 12(1) Broadcasting Authority Act 1960.
[9] Section 13(4) Broadcasting Authority Act 1960.
[10] Section 5 Broadcasting Authority (Amendment) Act 1976, 1976, No 37.
[11] Section 4 Broadcasting Authority (Amendment) Act 1976.

RTE has all the powers necessary for or incidental to the abovementioned functions.[1] In particular it may establish, maintain and operate broadcasting stations, arrange for the distribution of programmes by means of relay stations, originate programmes and procure programmes from any source, make contracts and other arrangements incidental or conducive to its objects, acquire and make use of copyrights, patents and licences, collect news and information and subscribe to news services, organize, provide and subsidize concerts and other entertainments in connection with the broadcasting service, prepare, publish and distribute, with the consent of the Minister,[2] relevant printed matter or recorded aural and visual material.[3] It may acquire land (even compulsorily) and dispose of it,[4] exercise borrowing powers with the consent of the Minister[5] and invest its funds.[6]

RTE may also broadcast advertisements, reject any advertisement offered and fix charges and conditions for such broadcasts.[7] With the consent of the Minister it fixes the amount of time each day to be devoted to the broadcasting of advertisements and the maximum period of advertising permit in each hour.[8]

RTE broadcasts two television programme: RTE 1 and RTE 2. As already explained, it carries on numerous economic and business activities. It is not merely a legal but also an economic entity. It is thus an undertaking which participates in economic life both as a supplier and as a user of services. As a legal person under public law, it is a public undertaking.

In 1981 RTE was financed to the extent of 48% from advertising revenue and 42% from grants made by Parliament out of the budget of the Minister for Posts and Telegraphs. These grants correspond to the net revenue received by the Minister from broadcasting licence fees.[9] RTE may be empowered by the Minister to grant these licences and collect the fees for them.[10] RTE is thus not a profit-making body but performs its services - broadcasting of its programmes, including advertisements - for payment.

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[1] Section 16(1) Broadcasting Authority Act 1960.
[2] Section 16(2) Broadcasting Authority Act 1960, Section 5 Broadcasting Authority (Amendment) Act 1966, Section 12 Broadcasting Authority (Amendment) Act 1976.
[3] Sections 3(2), 30 Broadcasting Authority Act 1960.
[4] Section 27 Broadcasting Authority Act 1960, Sections 10, 15 Broadcasting Authority (Amendment) Act 1976.
[5] Section 29 Broadcasting Authority Act 1960.
[6] Section 20(1) and (2) Broadcasting Authority Act 1960.
[7] Section 14(2) Broadcasting Authority (Amendment) Act 1976.
[8] Section 8 Broadcasting Authority (Amendment) Act 1976.
[9] Section 34(d) and Part I of Third Schedule, Broadcasting Authority Act 1960.

The reception of radio and television programmes by wireless installations and their transmission by cable to the homes of third parties is not allotted or restricted to particular bodies but merely made subject to a licence.[1] Anyone may apply to set up, maintain and operate such a cable service.[2] The Minister for Posts and Telegraphs, who is responsible for the issue of such licences, has complete discretion whether to grant or to refuse a licence.[3] It remains in force so long as it is not withdrawn.[4] The Minister decides on the area to be served and the site of the receiving installation.[5] One person may receive several licences.[6]

Every licence holder must transmit the national television programmes of RTE at the same time as they are broadcast.[7] He may in addition transmit the other (foreign) programmes mentioned in the licence.[8] The licence does not entitle him to infringe any copyright in the programmes transmitted.[9]

Licence holders are entitled to charge a fee for their service.[10] In order to compensate RTE for its loss of advertising revenue, licence holders have to pay a fee corresponding to 15% of their revenues (unless they transmit only RTE programmes).[11] The licence fee is payable to the Ministry for Posts and Telegraphs.[12] A subsidy corresponding to the net revenue from this fee is granted annually by Parliament from the State budget and paid to RTE.

Cable licences have been granted to a number of private cable companies and to RTE. In 1982 there were 21 cable networks, of which the three largest were in Dublin. They are in the east and the north of the Republic, where British television programmes can be picked up.

"Active" cable television has so far been allowed only on an experimental and local basis.

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[1] Wireless Telegraphy (Wired Broadcast Relay Licence) Regulation 1974, Statutory Instrument No 67 of 1974 (Prl. 3754).
[2] Section 4 Regulations 1974.
[3] Section 5 Regulations 1974.
[4] Sections 7, 8 Regulations 1974.
[5] Section 6(1) Regulations and paragraph 1 of the Schedule thereto.
[6] This follows from Section 9(3) Regulations 1974.
[7] Paragraph 3(a) of the Schedule to the Regulations 1974.
[8] Paragraph 3(b) of the Schedule.
[9] Section 17 Regulations 1974.
[10] Section 10(a) Regulations 1974.
[11] Section 9(1) and (2) Regulations 1974.
[12] Section 9(5) Regulations 1974.

G. France

The 1982 Act[1] declares that audio-visual communication shall be free (Article 1, first paragraph). It defines audio-visual communication as the making available to the public of sound, images, documents, data or messages of any kind, whether over the air (i.e. by radio link) or by cable (Article 1, second paragraph), including user-interrogated services (Article 77). Article 2 goes on to state that citizens have the right to free, pluralistic audio-visual communications.

To safeguard these rights the latest Act breaks the three monopolies which the public sector held under the earlier legislation - on broadcasting (i.e. on use of the frequency band), on the installation of transmitters and relay stations and on programming - and replaces them by a system where the State licenses the private or public agencies concerned (Articles 4, 7, 8, 9 and 77 to 87). In principle all operators, except private local radio stations (Article 81), are entitled to raise up to 80% of their funds from advertising revenue (Article 84).

The long-established public radio and television service remains (Article 5), but has been radically reformed, decentralized and relaxed. Now, however, other public or private broadcasting companies are also free to operate alongside the public radio and television service in the three areas mentioned above. No licence is now required to broadcast television programmes to the public at large (as opposed to a limited audience) by radio link, but a public service concession agreement must be concluded with the Government in order to do so (Article 79, contrat de concession de service public).

Article 85 allows an exemption from these rules in respect of broadcasting licences for persons operating stations under an international agreement to which France is party.

First, this clause legalizes the position of Radio Monte Carlo (RMC) broadcasts from stations on French territory. A French State holding company - Sofirad (Société financière de radiodiffusion) - owns 83.34% of Radio Monte Carlo.

Second, it makes it possible to grant other foreign broadcasting companies wishing to use transmitters and relay stations on French territory licences deviating from the requirements laid down in Articles 79 to 84 of the French Act (examples include RTL, Europe 1 - Images et Son, where Sofirad holds 34.19% of the shares and 45.79% of the voting rights, Sud-Radio, of which Sofirad owns 99.99% and neighbourhood radio stations).

Third, the exemption clause in Article 85 empowers the authorities to authorize cable networks to retransmit programmes picked up in France from other countries, whether direct or via satellite, without imposing conditions which the cable companies cannot possibly satisfy since the programmes were made in another country (where perhaps different advertising laws apply, for example) or which would add considerably to the cost of retransmission or make retransmission impossible (for instance, by requiring companies to blank out parts of the programme or advertisements).

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[1] Loi No 82-652 sur la communication audiovisuelle of 29 July 1982, Journal officiel de la République française, 30 July 1982, p. 2431.

On the other hand the licensing system introduced by the French Act does not apply to stations sited in another country, covered by that country's law and broadcasting on frequencies allocated in the international plan and hence approved by the French Government.[1]

The public radio and television service need not necessarily be run solely by public institutions. Instead, Article 5 stipulates that it must be run "in particular" by the two public corporations and by the series of companies provided for in the Act (Article 5). It therefore follows that the service can also be catered for by concluding concession agreements with other public or private agencies (Article 79).

The main task of the public radio and television service is to serve the general public, partly by providing a variety of information, entertainment and culture but also partly by making a contribution towards producing and disseminating literary or artistic works and towards the development of audio-visual communication in line with user demand and with the changes brought about by new technologies (Article 5). Rules governing the content, length and methods of advertising and the level of advertising revenue are laid down in the companies' general conditions of service (cahiers de charges) year by year (Article 66). Advertising is therefore allowed in principle.

Télédiffusion de France (TDF) - a public industrial/commercial corporation which is completely free to administer its own affairs and finances - is responsible for broadcasting radio and television programmes and for all related problems concerning the planning, installation, utilization and maintenance of all the audio-visual communications networks (Article 34). TDF is a public corporation set up by the Act. It is run by a 16-member Administrative Board made up of two Members of Parliament, one representative of the High Authority for Audio-visual Communication (see below), six representatives of the State, four representatives of the national programme companies and three TDF staff representatives (Article 35).

TDF is funded primarily by payments made by the programme companies for its services and by a small proportion of the revenue from the parafiscal charge which the State levies on TV-owners in return for their right to use a set (redevance pour droit d'usage, assise sur les appareils récepteurs de télévision, Articles 36 and 62). Thus it does not seek to make profits, but pays its suppliers, charges its customers and makes a contribution to the economy in the form of its technical work and its standardization and research activities.

The main television companies set up, or about to be set up, by government decree based on the Act are the three national television companies set up by Articles 38 and 40 - télévision française 1 (TF 1), Antenne 2 (A 2) and France-Régions 3 (FR 3) - the twelve regional television companies (Article 51), the television

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[1] See the comments made by the French Minister for Communications during the reading of the bill before the French Parliament, as published in "TF 1, Loi sur la communication audiovisuelle", Paris, 1982, p. 24. See also p. 137.

production company (Article 45) and the marketing company set up by Article 58. RFP-TF 1, RFP-A 2 and RFP-F3 - the three subsidiaries of the Régie française de publicité (RFP) - are responsible for attracting advertising and for making commercials. 51% of the capital of the RFP is held by the State, and the remaining 49% shared by Sofirad (13.5%) and representatives of the advertising industry, the press and consumers.

All these companies are limited by shares. They are governed by company law, apart from those of its rules incompatible with their unique structure and their public service function (Article 75). This role and its economic impact was described earlier. Turning to the structure of the companies, the State is the sole shareholder in the programme companies (Article 44). The national programme companies are the majority shareholder in the three regional television companies founded to date (Article 53), which are therefore subsidiaries of the national programme companies. Under Article 45 the State has a majority holding in the production company, with 51.68% of the registered shares; TF 1 and A 2 hold 22% each and FR 3 the other 4%. Only the State (which holds 23.33% of the shares) and private companies in which the State owns the majority of the capital (Sofirad holds 33.33%) and the national agencies and corporations provided for by the abovementioned Act are entitled to hold shares in the marketing company (Article 59).

All the limited companies referred to above are, therefore, public corporations. This clearly emerges from the decrees setting them up, which state that the rules concerning State control over public corporations apply.[1] Each of the national programme companies is run by a 12-member board consisting of two (three in the case of FR 3) representatives of the State in its capacity as sole shareholder, four (FR 3 : one) representatives of the High Authority, two (FR 3 : one) representatives of the Institut national de la communication audiovisuelle (INCA) - which, like the TDF, is also a public industrial/commercial corporation set up by the Act (Article 47) - plus two members of Parliament, two staff representatives and, in the case of FR 3, three administrators from the steering committee (Articles 39 and 41 respectively).

All the abovementioned companies are funded by an annual payment made by the Government, with the consent of Parliament (this consists of part of the revenue from the parafiscal charge and from the advertising revenue) and by sundry revenue from their own activities (Articles 61 to 64). The 1983 Finance Act set aside FF 11 718 thousand million for the broadcasting stations and companies already set up, some 49.5% or FF 5.8 thousand million of it from the revenue from the parafiscal charge and the remaining 50.5% or FF 5.9 thousand million from advertising and sundry revenue. Advertising is expected to generate 61% of the funds for TF 1, 53% of those for A 2 and 13% for FR 3.

None of the companies mentioned is profit-making in the conventional company law sense of generating profits for shareholders, though they all pursue commercial aims (amongst other objectives) and contribute to the economy (Article 5 and above). For instance Articles 38, second paragraph, 40, second paragraph and 51, third paragraph, expressly assign the programme companies and the regional companies the task of producing radio and TV works and

[1] Journal officiel de la République française, 18 September 1982, p. 2811 and 2812; Journal officiel de la République française, 26 April 1983, p. 1286.

production company (Article 45) and the marketing company set up by Article 58. RFP-TF 1, RFP-A 2 and RFP-F3 - the three subsidiaries of the Régie française de publicité (RFP) - are responsible for attracting advertising and for making commercials. 51% of the capital of the RFP is held by the State, and the remaining 49% shared by Sofirad (13.5%) and representatives of the advertising industry, the press and consumers.

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[1] Journal officiel de la République française, 18 September 1982, p. 2811 and 2812; Journal officiel de la République française, 26 April 1983, p. 1286.

During 1984 viewers through France are to be offered a fourth programme ("quatrième chaine") on subscription. It will be devoted to entertainment and consist primarily of films. At the beginning of 1984 a concession agreement was concluded between the Secretary of State responsible for communications technology and Agence Havas SA, a company in which the French State holds a 52% share. The agreement consists of a contract and a memorandum of conditions. The contract provides for the setting up of a limited company under private law as holder of the concession. The company is called Canal Plus. Agence Havas SA is required to take at least a 35% share in the capital of Canal Plus. This agreement amounts to a concession to provide a public service (concession de service public) under Article 79 of the Act of 1982. It has been granted for 12 years and is renewable. After five years the functioning of the concession is to be reviewed; the State can then re-purchase it.

Canal Plus is not financed from licence fees or advertising revenue (except by sponsors) but by its subscribers (télévision payante) and from payments for the sponsorship of broadcasts (parrainage d'émissions). By way of compensation for the lack of revenue from licences and advertising Canal Plus has been granted a clause in the agreement making it the most favoured medium (clause de media le plus favorisé). Canal Plus thus always enjoys the most favourable situation enjoyed by any of its future competitors as regards the conditions for using the concession, for planning, obtaining and marketing programmes (particularly as regards its relationship with the film industry) and for the transmission of broadcasts (by all means, e.g. via cable networks). Canal Plus has to spend a quarter of its income on obtaining films for its programmes.

H. Federal Republic of Germany

According to the decisions of the Federal Constitutional Court, in Germany broadcasting is a public service, which means that it must be governed by law and that the arrangements made must satisfy specific requirements stemming from the Court's interpretation of the freedom of broadcasting protected by the Basic Law.

The Länder are responsible for arrangements for broadcasting services inside Germany. Each of the eleven Länder - acting alone or with others - has adopted an Act or inter-State contract assigning responsibility for broadcasting on its territory to a non-profit-making public corporation. Some of these corporations have been assigned exclusive responsibility,[1] others not;[2] generally the question of monopolies has not been discussed.[3] The majority of the Länder intend however to abrogate the de jure or de facto monopoly position of these corporations and to license private broadcasters (or suppliers of programmes) in addition to the respective existing regional public corporation. Draft laws to this effect exist so far in Baden-Württemberg (1982), Bavaria (1984), Lower Saxony (1982), the Saarland (1984) and Schleswig-Holstein (1983). This option was open in the Saarland between 1964 and 1981.[4]

Few of these Acts or inter-State contracts explicitly include cable transmissions amongst the corporations' activities.[5] Only one expressly lists direct broadcasting satellites amongst the transmission methods.[6]

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[1] Section 4 of the inter-State contract of 27 August 1951 on Südwestfunk, as amended by the inter-State contract of 29 February 1952 between Baden-Württemberg and Rheinland-Pfalz, published in the Rheinland-Pfalz Gesetz- und Verordnungsblatt, p. 71; Section 2(2) of the statutes of Südwestfunk, Bundesanzeiger 1975 No 24, p. 7; Section 1(3) of the Act of 18 June 1979 on Radio Bremen, Gesetzblatt Bremen, p. 245.

[2] Section 37 of the Act of 2 December 1964 on broadcasting in the Saarland (Gesetz über die Veranstaltung von Rundfunksendungen im Saarland), as published in the Amtsblatt Saar of 1 August 1968, p. 558; Section 38 of the inter-State contract of 20 August 1980 between Hamburg, Lower Saxony and Schleswig-Holstein on Norddeutschen Rundfunk, as published in the Niedersächsisches Gesetz- und Verordnungsblatt, p. 482.

[3] Many points are still disputed.

[4] Sections 38 to 46 of the Act for the Saarland, op. cit.; on 16 June 1981 the Federal Constitional Court ruled that these Sections were contrary to the Constitution and therefore annulled them, Entscheidungen des Bundesverfassungsgerichts, 57, 295.

[5] Section 3(3) of the contract on Südwestfunk, op. cit.; Section 2(2) of the statutes of Südwestfunk, op. cit.; Section 3(1) of the Act of 25 May 1954 on Westdeutscher Rundfunk, Cologne, as published in Gesetze- und Verordnungen Nordrhein-Westfalens, p. 151; Section 1(2) of the Act of the Land of Bremen, op. cit.; Section 38(2) of the NDR contract, op. cit.

[6] Section 38(2) of the NDR contract.

In all there are nine regional stations in Germany: Bayerischer Rundfunk (BR), Hessischer Rundfunk (HR), Norddeutscher Rundfunk (NDR), Radio Bremen (RB), Saarländischer Rundfunk (SR), Sender Freies Berlin (SFB), Süddeutscher Rundfunk (SDR), Südwestfunk (SWF) and Westdeutscher Rundfunk (WDR) in Cologne. The eleven Länder have also set up a tenth nationwide channel - Zweites Deutsches Fernsehen (ZDF) under an inter-State contract.

These broadcasting companies are neither a branch of the State administration nor independent authorities. Instead as public corporations they enjoy a legal status which safeguards their legal autonomy, economic independence and freedom of programming. Each of the stations is entitled to run its own affairs. They provide a public service but are protected from any interference by the State. But they are subject to limited supervision by the government of the Land or Länder in which they operate to ensure that they abide by the relevant legislation. The Boards which govern the stations manage and deploy the production facilities and the revenue and expenditure, which is separate from and independent of the budgets of the Länder. The Broadcasting Board and Administrative Board include representatives of all the leading shades of political opinion, religious and philosophical beliefs and sectors of society.

There are three television channels. Channel One is a joint venture run by the nine Land stations and broadcasts nationwide. It broadcasts a mix of programmes from the individual Land stations, the selection being coordinated by the Arbeitsgemeinschaft der öffentlich-rechtlichen Rundfunkanstalten der Bundesrepublik Deutschland or ARD (Association of public broadcasting corporations in the Federal Republic of Germany). Channel Two is Zweites Deutsches Fernsehen (ZDF) and likewise broadcasts nationwide. Finally, Channel Three broadcasts five different regional programmes, one of which is shown in each of the six TV regions in Germany. Three of the TV regions are served by one Land station, the other three by more than one. Channel One also transmits ten regional programmes from the Land stations between 1800 hours and 2000 hours. In the mornings a single joint ARD/ZDF programme schedule is shown nationwide.

Construction and operation of broadcasting stations falls into the "telecommunications" category, for which the federal authorities are responsible. The Deutsche Bundespost holds a monopoly on telecommunications.[1] However, it is authorized to entrust other bodies with the task of constructing and operating broadcasting stations.[2] As a result, Channel One is broadcast from the broadcasting companies' own transmitters and Channels Two and Three from the PTT's. The Bundespost receives fees for its services and thereby contributes to the economy.

As public-service utilities, the broadcasting corporations are not profit-earning in the conventional company law sense. None the less they are expected to run their affairs along commercial or economic lines, to generate earnings or surplus funds to finance their own expenditure or for cultural purposes[3] and to further technical and economic development in broadcasting.[4] Radio and TV licence fees are the main source of funds for the Land broadcasting stations (they accounted for between 31.6% and 75.2% of their funds in 1981), with advertising second (on between 15.9% and 29.5% in 1981) and other revenue from, for example, revenue equalization payments between stations, programme sales, lease of premises and plant and returns on investment third. ZDF receives 30% of the TV licence fees. In 1981 these provided 53.5% of its funds, with 36% of the remainder drawn from advertising, 4.4% from sundry revenue and the final 6.1% from ZDF's reserves. In 1982 advertising generated roughly 40% of ZDF's funds and over 30% of ARD's.

Licence fees are collected by a fee collection centre - part of a public management company which may not act as a separate legal entity but is run jointly under the administrative arrangements concluded between the Land broadcasting companies and the ZDF. Since, as described above, the corporations charge for all their broadcasts they are also engaged in an economic activity with commercial purposes (i.e. to finance the corporation) and make an important contribution to the economy.

Added to these tasks, for which the corporations make charges and some of which are run on commercial lines, the broadcasting companies also perform other important profit-making commercial functions. They are

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[1] Section 1 of the Telecommunications Act (Gesetz über Fernmeldeanlagen) of 24 January 1982, Reichsgesetzblatt I, p. 8.

[2] Section 2 of the abovementioned Act.

[3] See, for example, Section 15 of the Act of 10 August 1948 on Bayerischer Rundfunk as published in the notification of 26 September 1973, Gesetz- und Verordnungsblatt Bayern, p. 563; Section 16(3) of the Act of the Land of Bremen; Sections 30(1) and 31(1) of the NDR contract; Section 40(2) of the statutes of Südwestfunk; Section 23 of the WDR Act; Sections 23(3) and 24 of the inter-State contract of 6 June 1961 between all the Länder setting up the public corporation "Zweites Deutsches Fernsehen" (ZDF), Gesetz- und Verordnungsblatt Rheinland-Pfalz, p. 179.

[4] See, for example, Section 10(1) of the Bavarian Act.

entitled to conduct all business in line with their objectives and in their field.[1] Amongst other things they are empowered to make their programmes of all kinds in their own production studios, to order programmes from third parties (and in particular from private companies), to buy programmes, to exchange programmes with other broadcasting companies in Germany and elsewhere and to make programmes for other broadcasting corporations.[2] They are also authorized to found, to buy or to hold shares in profit-earning private corporations to help them fulfil their legal obligations.[3] They have exercised this right on numerous occasions to help them produce, buy and market programmes. They have also founded private limited companies capable of acting as a separate legal entity to attract advertising and to make the commercials and the filler programmes broadcast with them. Both the profits earned and losses incurred by these companies as they perform the tasks assigned in their statutes fall on the broadcasting corporations.

Another method - as yet in its infancy - is cable transmission of TV and radio programmes which could be picked up only by high-capacity individual aerial systems or switched through to the cable centre by radio or by wideband optical fibre links. In 1982 the Bundespost started to lay wideband cable networks in Ludwigshafen and Munich ready for the two trials with interactive and passive cable TV and telephone services planned under the Ludwigshafen[4] and Munich pilot projects on cable communications. Rheinland-Pfalz has adopted an Act setting up a public corporation called the "Institute for Cable Telecommunications" (Anstalt für Kabelkommunikation) to coordinate and monitor the trial. It commenced transmissions on 1 January 1984. A number of private limited companies are supplying programmes. The same applies to the limited company responsible for the pilot project on cable communications in Munich (Münchner Pilot-Gesellschaft für Kabel-Kommunikation mit beschränkter Haftung), which has been transmitting since 1 April 1984 and whose shareholders include a consortium of newspaper and magazine publishers, film-makers, Bayerischer Rundfunk, ZDF, the City of Munich and the State of Bavaria. Two other cable trials are in preparation - one in Berlin, the other in Dortmund.[5]

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[1] Expressly provided for in Section 1(2) of the statutes of Süddeutscher Rundfunk, Stuttgart, as annexed to the Baden-Württemberg Broadcasting Act (Rundfunkgesetz) of 21 November 1950, published in the Regierungsblatt Württemberg-Baden, p. 1.

[2] Expressly provided for in Section 22(2) of the ZDF contract; Section 18(3) subparagraph 6 of the NDR contract.

[3] Expressly provided for in Section 22(a) of the WDR contract; Section 13(2)(a) of the Bremen Act; Sections 29(7) and 34 of the NDR contract.

[4] Rheinland-Pfalz Act of 4 December 1980 on trials with a wideband cable network (Landesgesetz über einen Versuch mit Breitbandkabel), Gesetz- und Verordnungsblatt Rheinland Pfalz, p. 229.

[5] North Rhine-Westphalia Act of 14 December 1983 on the implementation of a pilot project with wideband cable (Gesetz über die Durchführung eines Modellversuchs mit Breitbandkabel). Media Perspektiven 1983, 886.

I. Denmark

In Denmark, Danmarks Radio enjoys a monopoly by virtue of an Act of Parliament: "Danmarks Radio has the sole right to broadcast sound radio and television programmes for the general public."[1]

"Danmarks Radio shall broadcast radio and television programmes covering news, information, entertainment and culture for the public at large" (Section 7). Advertising is not expressly forbidden, but is not in fact broadcast.

Responsibility for the installation and operation of transmitters to broadcast programmes by Danmarks Radio lies with the post and telecommunications authority (Section 4).

Danmarks Radio (DR) was established under an earlier Act and is thus a public institution, being "an independent public corporation" (Section 6) with legal personality.[2]

It is administered by a Radio Council (radioråd, Section 6), which comprises about twenty-four members: two are appointed by the Minister for Cultural Affairs, one by the Minister for Public Works, two by the permanent staff of Danmarks Radio, twelve by Parliament to represent viewers and listeners, and one by each of the parties represented on the Finance Committee of Parliament (Section 8(1)). The Minister for Cultural Affairs appoints the Chairman and his Deputy from among the members (Section 8(4)).

The Radio Council is responsible for Danmarks Radio and must ensure that the provisions of the Broadcasting Act concerning the institution's activities are respected (Item 1 of Section 9(1)). It sets out general guidelines for the institution's activity within the framework laid down by the Act (Item 2 of Section 9(1)) and has the final decision on programmes (Section 9(2)). Its decisions as regards complaints about programmes can be challenged by an appeal to a three-man Radio Adjudication Commission appointed by the Minister for Cultural Affairs (Sections 16 and 17), which can order Danmarks Radio to make corrections (Section 18). The Radio Council also draws up the budget (Section 9(3)) and recommends the establishment chart to the Minister for Cultural Affairs (Section 9(5)). It also sets up a Programme Committee and an Administrative Committee (Section 10). The day-to-day management of DR is in the hands of a Director-General, who is appointed by the Minister for Cultural Affairs on the recommendation of the Radio Council (Section 13).

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[1] Section 1 of the Radio and Television Broadcasting Act (1973) (Lov nr 421 af 15 Juni 1973, om radio- og fjernsynsvirksomhed), Karnov's lovsamling, p. 3143.

[2] This is implied by Section 23(1), under which DR is liable for certain damages.

Danmarks Radio carries out all activities necessary for the performance of its task. It broadcasts television programmes on a single channel; it produces programmes of all kinds; it gathers news and information; it enters into contracts with other parties; it maintains buildings, studios, an orchestra and choir, and eight regional offices. It is thus engaged in a number of economic or economically significant activities. As well as being a legal entity, Danmarks Radio is an economic unit, a business enterprise involved in economic life as both a supplier and consumer of services. However, being a public institution, it has the character of a publicly owned enterprise.

Its activities are largely financed (89%) from radio and television licence fees (see Section 6). The amount of the fees is fixed by the Minister for Cultural Affairs on a recommendation from the Radio Council, after approval by the Finance Committee of Parliament (Section 14(1)). The fees are collected by Danmarks Radio and paid into a special fund (the Broadcasting Fund) which is managed by the Radio Council (Section 14(2)). It is not a profit-making enterprise, but it does charge for its services.

Danmarks Radio also has the right to distribute radio and television programmes via cable (Section 2(1)). However, the Broadcasting Act does not exclude other parties under public or private law from these activities on a trial basis.[1] Under the Act the Minister for Public Works (Transport and Communications) has the power to adopt rules on the installation and operation of communal aerials and other cable networks for the distribution of radio and television programmes to private homes, to require that a licence be obtained for this purpose from the post and telecommunications authority, to fix the licence fees for the installation of such systems and to grant technical approval.[2]

Over 10 000 private associations (mainly home owners) and public bodies (especially municipalities) hold a licence to install and operate communal aerials and other local cable networks. These cable associations may relay only programmes broadcast by Danmarks Radio or by foreign stations.[3] Programmes must be carried without any changes - i.e. including advertising in the case of foreign broadcasts - and must be relayed simultaneously with the original broadcast.[4] The associations are financed from contributions by their members.

The Minister for Cultural Affairs may authorze "participatory" local cable television on a trial basis[5] and has done so in a number of cases.

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[1] Section 2(2) as amended by the Act of 27 May 1981.

[2] Section 5 as amended by the 1981 Act.

[3] Section 3(1). Section 3 allows for special licences, and this option has been used frequently.

[4] Section 3(2).

[5] Section 1(2) as amended by the 1981 Act.

On 7 February 1984 the Minister for Cultural Affairs introduced into the Folketing a bill to amend the Radio and Television Broadcasting Act (abrogation of the monopoly of Danmarks Radio for the transmission of television programmes, distribution of radio and television programmes by means of community aerials, etc.).[1]

The explanatory memorandum to the bill states: "The main purpose of the bill is to provide the legal basis for an abrogation of the exclusive right of Danmarks Radio to transmit television programmes and at the same time to create the legal basis on which other undertakings can carry on television broadcasting independently Danmarks Radio. The bill also contains provisions for creating the legal basis for increased access to the retransmission of foreign radio and television programmes by means of Danish community aerials."[2] This refers to the further transmission by microwave link or cable of those foreign programmes which for geographical reasons cannot be received by individual equipment. It includes also those foreign programmes received by the Post Office by means of telecommunications satellities.[3]

[1] Lovforslag No L 42, Folketinget 1983-84 (2. samling) Blad no 43.

[2] Loc. cit. p. 3.

[3] Loc. cit. p. 8.

K. Greece

By contrast with Article 14 of the Greek Constitution of 1975, which guarantees the freedom of the press, Article 15 places broadcasting (radio and television, including cable transmission) "under the immediate control of the State". The aim is to provide "the objective transmission, on equal terms, of information and news reports as well as works of literature and art; the qualitative level of programmes shall be assured in consideration of their social mission and the cultural development of the country". The State's responsibility does not cover the actual broadcasting itself, but only its supervision; it is therefore for Parliament to decide what form broadcasting should take, in other words whether it should be carried out by one or more public and/or private organizations.

Two bodies have been established by law: Elliniki Radiophonia Tileorassis (ERT - Greek Radio and Television) was set up in 1975[1] and Elliniki Radiophonia Tileorassis (ERT 2) in 1982[2] - at which time ERT was renamed ERT 1.[3] They each operate one television channel. ERT 2 is the universal successor of YENED (Information Service of the Greek Armed Forces).[4]

Article 4(1) of the 1975 Act stipulates that "no legal or natural person other than ERT and YENED, as long as YENED and ERT have not been merged, has the right to broadcast sound and images of any kind by way of radio and television transmissions". The merger was due to be enacted in 1978 "provided the necessary economic, technical and organizational prerequisites were satisfied" (Article 4(4)). As a first stage, YENED was transformed to ERT 2 in 1982 (Article 15(1)(1) of the Act of 1982).

The monopoly (or duopoly) granted to ERT 1 and 2 under the Act also covers wireless and cable transmission of programmes. No other persons have a right to claim broadcasting time or to produce programmes. Programme production is the responsibility of the two organizations themselves or must be carried out on their instructions and under their supervision. Recently a number of private companies have been awarded contracts to produce programmes.

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[1] Act No 230/1975 of 3 December 1975 concerning the establishment of the "Greek Radio and Television Company", Government Gazette, I, p. 272.

[2] Chapter C of Act No 1288/1982 of 1 October 1982 concerning the responsibilities of the Ministry attached to the Prime Minister's Office and of YENED and other provisions, Government Gazette, I, p. 120.

[3] First sentence of Section 15(1)(2) of Act No 1288/1982.

[4] Section 15(1) of Act No 1288/1982.

ERT 1 is a "public corporation " (Article 2(2) of the 1975 Act) whose aims are to organize, operate and develop broadcasting (Article 1(1)). It is not, therefore, a commercial enterprise. Its legal form is that of a joint stock company (Section 2(1)). Its capital is owned by the State which holds the single registered share. ERT 1 enjoys "complete economic and administrative independence and operates in the public interest along private sector lines under State supervision" (Section 2(1)). Its accounts are thus not subject to scrutiny by the Court of Auditors and it is governed by company law, except where the provisions are incompatible with its status as a public enterprise (Section 2(2)). The 1975 Act provides for articles of association to be drawn up for ERT 1, with approval to be granted by the President of the Republic by way of decree (Article 2(3)), but this has not yet happened.

ERT 1 may undertake any activity necessary for or conducive to the achievement of its given objectives. In particular it may engage staff, install and operate transmission facilities and studios, produce and transmit programmes of all kinds, including television films, enter into contracts (e.g. for the transmission of cinema films), found subsidiaries, acquire and sell property rights and publish a radio and television magazine.

The corporation is supervized by the Press and Information Secretariat, a Department of the Ministry attached to the Prime Minister's Office (Section 2(4)). The Minister can intervene in the affairs of ERT 1 in three cases: he may, if he considers it necessary, order a review of management by way of a presidential order (Section 5(1)(a)); he has the right to call for any information he may require about its operations and activities (Section 5(1)(b)); in very exceptional circumstances he may issue written instructions that a transmission should be cancelled in part or in full (Section 5(1)(c)). ERT 1 is also obliged under the Act to transmit Government announcements upon request (Section 5(2)).

ERT 1 is managed by a Board of Directors (Sections 10 and 11). The Board has seven members, who are appointed for three years by the Cabinet from among respected personalities able to be of service to the corporation. Except where otherwise laid down by law, the Board has the same duties as in any other limited company. In particular it decides on the production and planning of programmes, which must be "democratic in spirit, of a high cultural standard, humanistic and objective" and which must "reflect the current situation in Greece" (Section 3(1)). The Board regularly draws up a development plan for ERT 1, which it submits to the Minister attached to the Prime Minister's Office for his approval, and informs the General Assembly (Section 11(4)). Day-to-day management is in the hands of a Director-General (Section 12(3)), who is appointed for three years by the Board of Directors and whose contract is approved by the Minister (Section 12(4)).

The General Assembly consists of 20 members (Section 13(1)): the Director of the Bank of Greece (Chairman); the President of the Academy of Athens; the Rectors of the universities of Athens and Thessaloniki and the Technical University; the President of the Council of State; six members (who may not be members of Parliament) appointed by the President of Parliament on a proposal of the Prime Minister and the Leader of the Opposition (three each); the General Secretaries of the Ministries of Economic Affairs, Foreign Affairs, Finance, Culture and Science, Education and Religion, and Transport and of the Ministry attached to the Prime Minister's Office and the Director of the Information Service of the Armed Forces.

The responsibilities of the General Assembly (Article 14) include: approval of the annual statement of accounts; granting a discharge to the Board of Directors in accordance with the Company Act; the appointment of the auditors and approval of their annual report; delivering an opinion on the removal of a member of the Board of Directors from office or on the advisability of taking up a loan not covered by the corporation's own revenue or on any other question put to it by the Minister of the Presidency of the Government. The General Assembly also states its views on the enterprise's policy, programmes and results and sets them out in a report to the Government.

ERT 1 is financed from two main sources (Section 8): a broadcasting fee and revenue from advertising. The fee is payable by every natural person who resides in Greece and by every legal person carrying out an activity in the country. The rate is fixed by the Council of Ministers and the fee is collected by the Public Electricity Authority. It is a flat-rate charge, determined according to the amount of the fee-payer's electricity bill, irrespective of whether he owns a radio and/or television set. The other main source of revenue comes from the transmission of advertising. If necessary, ERT 1 may also be granted funds from the national budget. Thus, although it is a non-profit making body, ERT 1 charges for its services.

Revenue from fees in 1982 amounted to DR 2 154 million, while advertising yielded DR 617 706 000 - 22.3% of the combined total. Sales of the radio and television magazine published by ERT 1 brought in a further DR 97 million.

The Second Greek Radio and Television organization (ERT 2) is "an independent public body under the Ministry of the Presidency of the Government" (Section 15(1)(1) of the 1982 Act). It is managed by a five-member board appointed by the Minister of the Presidency (Section 15(2)). The organization and the operation of ERT 2, the tasks and responsibilities of its constituent bodies, and staff matters are decided by the Minister of the Presidency (Section 15(5)).

The legal status of ERT 2 can be altered on a proposal from the Minister of the Presidency by order of the President of the Republic. The same applies to its objectives, tasks, organization, its staff breakdown and other aspects of its operation (Section 15(6)).

By means of a Presidential order on a proposal from the Minister of the Presidency rules can also be laid down for the establishment of a unit for the processing and production of any object, item, or service in connection with broadcasting. Responsibility for such production is to be entrusted to a publicly owned enterprise - either already existing or still to be established - under private law (Section 20(1)).

ERT 2 is financed in the same way as YENED used to be, i.e. from the national budget and from advertising revenue. In 1982 the latter was somewhat higher than for ERT 1. Thus ERT 2 also charges for its services.

The monopoly granted to ERT 1 and 2 under the Act also covers the rediffusion of radio and television broadcasts via cable. However, no specific provisions exist and no cable networks have yet been established in Greece.