

Luxembourg, 18 July 2023

The undersigned Claudine Bohnenberger, certified translator with the Court of Justice in Luxembourg by ministerial decree of 18 December, 1991 in application of the Law of 7 July, 1971 hereby certifies that the translation of the document regarding Autorité luxembourgeoise indépendante de l'audiovisuel corresponds in content and in form to the document submitted for the translation.

In case of litigation the original version is binding.

Claudine Bohnenberger  
Certified translator

## 7. ELECTRONIC MEDIA

### Law of 27 July 1991 on electronic media

(Mem. A - 47 of 30 July 1991, p. 972; doc. parl. 3396)

Amended by the:

Law of 2 April 2001 (Mem. A - 42 of 17 April 2001, p. 924; doc. parl. 4584; dir. 89/552/CEE and 97/36/CE)

Law of 19 December 2003 (Mem. A - 189 of 31 December 2003, p. 3990; doc. parl. 4861; dir. 98/27/CE)

Law of 8 June 2004 (Mem. A - 85 of 8 June 2004, p. 1202; doc. parl. 4910)

Law of 23 April 2008 (Mem. A - 55 of 29 April 2008, p. 760; doc. parl. 5699)

Law of 17 December 2010 (Mem. A - 241 of 24 December 2010, p. 4024; doc. parl. 6145; dir. 2007/65/CE)

Law of 8 April 2011 (Mem. A - 69 of 12 April 2011, p. 1120; doc. parl. 5881A; dir. 2008/48/CE and 2008/122/CE)

Law of 27 August 2013<sup>1</sup> (Mem. A - 163 of 9 September 2013, p. 3114; doc. parl. 6487)

Law of 14 December 2015 (Mem. A - 236 of 17 December 2015, p. 5186; doc. parl. 6407)

Law of 6 January 2018 (Mem. A - 22 of 10 January 2018; doc. parl. 7133)

Law of 26 February 2021 (Mem. A - 174 of 8 March 2021; doc. parl. 7651; dir. (EU) 2018/1808).

Law of 19 November 2021 (Mem. A. – 833 of 2 December 2021; doc. Parl. 7456)

Law of 22 July 2022 (Mem. A. – 394 of 25 July 2022; doc. Parl. 7877)

Law of 12 August 2022 (Mem. A. – 460 of 17 August 2022; doc. Parl. 7749)

### Coordinated version applicable as of 21 August 2022

#### «Chapter 1.- Object of the Law and definitions»<sup>2</sup>

##### Art. 1. Object of the Law

The object of the present Law is to warrant, in the field of electronic media, the exercise of the free access by the population of the Grand Duchy to a multitude of information and entertainment, by guaranteeing freedom of expression and information as well as the right to receive and transmit, on the territory of the Grand Duchy any «audio-visual or audio media services»<sup>2</sup> in accordance with the legal provisions.

(1) It organises the operation of Luxembourg electronic media, with the following objectives:

- a) the right to free and pluralist audio-visual communication;
- b) the guarantee of the independence and pluralism of information;
- c) the respect of individuals and their dignity;
- d) the emphasising of our cultural heritage and the support of contemporary cultural creation;
- e) the promotion of communication, intercultural exchanges and integration of immigrants;
- f) the safeguarding of the existence and pluralism of the written press.

(Law of 26 February 2021)

«g) the cultural and linguistic diversity;

h) the protection of consumers, accessibility and non-discrimination ;

i) the promotion of fair competition ;

j) the proper functioning of the internal market.»

(Law of 26 February 2021)

##### «Art. 1bis. Conflict of laws

The amended Law of 14 August 2000 on electronic commerce shall apply, except as otherwise provided in the present Law. In case of conflict between the amended Law of 14 August 2000 on electronic commerce and the present Law, the present Law shall prevail, except as otherwise provided in the present Law.»

<sup>1</sup> The present Law provides in art. 1 : In all provisions of the amended Law of 27 July 1991 on electronic media, the words «Conseil national des programmes» and «Commission indépendante de la transmission» are replaced by the word «Autorité...»

<sup>2</sup> As amended by the Law of 17 December 2010

(Law of 17 December 2010)

**«Art. 2. Definitions**

The following definitions shall apply in the present Law:

«1) «Authority», Autorité luxembourgeoise indépendante de l'audiovisuel;»<sup>1</sup>

«2)»<sup>2</sup> «audio-visual commercial communication», images, whether or not combined with sound, which are designed to promote, directly or indirectly, goods, services or the image of a natural or legal person performing an economic activity; such images accompany an audio-visual programme «or a video created by a user»<sup>3</sup> or are included therein against payment or other consideration, or for the purpose of self-promotion. Audio-visual commercial communication may in particular take the following forms: television advertising, sponsoring, tele-shopping and product placement;

«3)»<sup>2</sup> «surreptitious audio-visual commercial communication», the verbal or visual presentation of goods, services, the name, the trademark or the activities of a manufacturer of goods or the provider of services in programmes, when such presentation is made intentionally by the audio-visual media provider with an advertising goal and the risk of misleading the audience with regard to the nature of this presentation, the presentation being considered intentional in particular if it was made against payment or any other consideration;»

(Law of 26 February 2021)

«3bis) « editorial decision », a regular decision taken in order to exercise editorial responsibility and relating to the daily operation of the audio-visual media service;»

(Law of 17 December 2010)

««4)»<sup>2</sup> «Member state of the European Economic Area », any signatory State of the Agreement of the European Economic Area or any other state that has signed a reciprocity agreement with the European Union on the application of the directive on audio-visual media services;»

(Law of 26 February 2021)

«4bis) « video sharing platform provider », the natural or legal person providing a video sharing platform service ;»

(Law of 17 December 2010)

««5)»<sup>2</sup> «audio-visual media services provider », the natural or legal person taking editorial responsibility for the choice of audio-visual content of the audio-visual media service and determining its organisation;

«6)»<sup>2</sup> «Luxembourg audio-visual media services provider », an audio-visual media services provider under the competence of the Grand Duchy of Luxembourg, because such provider

- meets one of the criteria provided for this purpose by article 2bis « paragraph»<sup>3</sup> below ,

- falls under the application of article 2, paragraph 5 of the Directive 2010/13/UE of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audio-visual media services hereinafter «audio-visual media services directive»;

«7)»<sup>2</sup> «Luxembourg radio service provider», the natural or legal person established in the Grand Duchy of Luxembourg, producing or causing the production of an audio radio service, for which such provider takes responsibility and transmits or has transmitted to third parties;

«8)»<sup>2</sup> «Luxembourg radio broadcasting frequency», is a frequency for the terrestrial broadcasting of determined television or radio services the Grand Duchy of Luxembourg is entitled to operate under international agreements of which it is a party in this field;»

(Law of 26 February 2021)

«9) « sponsoring », any contribution by a public or private undertaking or a natural person, not performing the activities of audio-visual media service provider or video sharing platform services or the production of audio-visual works, to the financing of audio-visual media services, video sharing platform services, videos created by users or programmes, in order to promote their name, trademark, image, activities or products ;»

(Law of 17 December 2010)

««10)»<sup>2</sup> «product placement», any form of audio-visual commercial communication consisting in including a product, a service, or their trademark, or to refer to them, by including them in a programme «or in videos created by users »<sup>3</sup>, against payment or any other consideration;»

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<sup>1</sup> Added by the Law of 27 August 2013

<sup>2</sup> Numbering as amended by the Law of 27 August 2013

<sup>3</sup> Added by the Law of 26 February 2021

(Law of 26 February 2021)

«11) « programme », a set of moving images with or without sound, forming a single element, regardless of the length, as part of a schedule or catalogue established by a provider of audio-visual or audio media services, including features, video clips, sport events, sitcoms, documentaries, programmes for children or original fictions;»

(Law of 17 December 2010)

«12)»<sup>1</sup> «television advertising», any form of television message, whether against payment or any other consideration, or a transmission for the purpose of self-promotion by a public or private undertaking or a natural person in the context of a commercial, industrial or trade activity or a profession, to promote the provision, against payment, of goods or services, including immovable property, or of rights and obligations;

«13)»<sup>1</sup> «cable network», any essentially wired terrestrial network with the main purpose of transmitting or broadcasting television and radio services for the public, among which in particular collective antennae and cable television networks as well as any other terrestrial network, even virtual, wired or wireless, except networks using Luxembourg radio broadcasting frequencies, used for the transmission or the broadcasting of television or radio services and of which the operator chooses the transmitted or broadcast television and radio services;

«14)»<sup>1</sup> «editorial responsibility», the exercise of actual control both over the selection of programmes and their organisation, either in a chronological schedule or a catalogue in the case of on-demand audio-visual media services;»

(Law of 26 February 2021)

«15) « audio-visual media service »,

i) a service, for which the main object as such or of a dissociable part of this service, is the provision of programmes to the general public, under the editorial responsibility of a media service provider in order to inform, entertain or educate, through electronic communication networks; such audio-visual media service is either a television service or an on-demand audio-visual media service;

ii) an audio-visual commercial communication;»

(Law of 17 December 2010)

«16)»<sup>1</sup> «on-demand audio-visual media service», an audio-visual media service provided by an audio-visual media service provider for the viewing of audio-visual programmes at the time chosen by the user and on individual demand, based on a catalogue of programmes chosen by the audio-visual media services provider;

«17)»<sup>1</sup> «audio-visual or audio media service», or «media service» any service that is either an audio-visual media service or a radio service;

«18)»<sup>1</sup> «Luxembourg audio-visual or audio media service», any audio-visual or audio media service of a Luxembourg provider of audio-visual media services or a Luxembourg radio service provider;

«19)»<sup>1</sup> «Foreign audio-visual or audio media service», any audio-visual or audio media service of a provider of audio-visual or audio media services other than a Luxembourg audio-visual media service provider or a Luxembourg radio service provider;»

(Law of 26 February 2021)

«19bis) « video sharing platform service », a service as defined in articles 56 and 57 of the Treaty on the functioning of the European Union, for which the main object as such or of a dissociable part of this service or an essential functionality of the service, is the provision to the general public of programmes, of videos created by users, or both, not subject to the editorial responsibility of the video sharing platform provider, in order to inform, entertain or educate through electronic communication networks and of which the organisation is determined by the video sharing platform provider with the use, in particular of automatic means or algorithms, more specifically display, mark-up and sequencing;»

(Law of 17 December 2010)

«20)»<sup>1</sup> «radio service», any service under the editorial responsibility of a media service provider and of which the main object is the provision, through electronic communication networks, in order to inform, entertain or educate the public, of audio services for simultaneous listening on the basis of a programme schedule;

«21)»<sup>1</sup> «television service », any audio-visual media service provided by an audio-visual media service provider for the simultaneous viewing of audio-visual programmes on the basis of a programme schedule;

«22)»<sup>1</sup> «Luxembourg cable service », any non-broadcast Luxembourg television or radio service provided to the public through a cable network, without being transmitted by satellite, in particular any live television or radio service, injected through recording supports or through a telecommunication line;

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<sup>1</sup> Numbering as amended by the Law of 27 August 2013

- «23)»<sup>1</sup> «Luxembourg satellite service», any non-broadcast Luxembourg television or radio service transmitted by satellite;
- «24)»<sup>1</sup> «Luxembourg broadcast service », a) any Luxembourg television or radio service transmitted with a Luxembourg radio broadcasting frequency as well as b) any Luxembourg television or radio service that was granted a licence of a Luxembourg broadcast service, even in absence of transmission of this service with a Luxembourg radio broadcasting frequency;
- «25)»<sup>1</sup> «Luxembourg broadcast service with international reach», any television or radio service meeting the definition of «Luxembourg broadcast service », able to reach, in addition to the resident public, international audiences or national audiences not residing in the Grand Duchy of Luxembourg;
- «26)»<sup>1</sup> «Luxembourg broadcast service for a resident public», any television or radio service meeting the definition of «Luxembourg broadcast service », and which, based on its specific design, confirmed in the pertaining authorisation, mainly targets all or part of the public residing in the Grand Duchy of Luxembourg;
- «27)»<sup>1</sup> «Foreign broadcast service», any foreign television or radio service transmitted with a Luxembourg radio broadcasting frequency;
- «28)»<sup>1</sup> «Luxembourg satellite system», any system comprising one or more satellites and using satellite frequencies the Grand Duchy of Luxembourg is allowed to operate under the terms of international agreements, of which it is a party in this field, whether such frequencies belong to the broadcasting service or to another service;
- «29)»<sup>1</sup> «tele-shopping», the transmission of direct offers to the public for the provision, against payment, of goods or services, including immovable property, and of rights and obligations.»

(Law of 26 February 2021)

«30) « video created by users », a set of moving images with or without sound, forming a single element, regardless of the length, created by a user and downloaded to a video sharing platform by this same user or by any other user.»

**Art. 2bis. « Providers of audio-visual media services»<sup>2</sup> deemed to be established in the Grand Duchy of Luxembourg**

«(1)»<sup>3</sup> For the purpose of the present Law, «an audio-visual media service provider »<sup>2</sup> is deemed to be established in the Grand Duchy of Luxembourg in the following cases:

- a) The registered office of «the audio-visual media service provider »<sup>2</sup> is located in the Grand Duchy of Luxembourg and editorial decisions on «audio-visual media services»<sup>2</sup> are also taken in this country;
- b) The registered office of «the audio-visual media service provider »<sup>2</sup> is located in the Grand Duchy of Luxembourg and a significant part of staff in charge of «the activities of the audio-visual media services»<sup>2</sup> «in connection with a programme»<sup>4</sup> is working in this country;
- c) The registered office of «the audio-visual media service provider»<sup>2</sup> is located in a Member state of the European Economic Area, but editorial decisions regarding the «audio-visual media services»<sup>2</sup> are taken in the Grand Duchy of Luxembourg and a significant part of staff in charge of «the activities of the audio-visual media services»<sup>2</sup> «in connection with a programme»<sup>4</sup> is working in this country, if a significant part of staff in charge of «the activities of the audio-visual media services»<sup>2</sup> «in connection with a programme»<sup>4</sup> is not operating in the State, in which the «audio-visual media service provider »<sup>2</sup> has its registered office »<sup>2</sup>;
- d) «The registered office of «the audio-visual media service provider »<sup>2</sup> is located in the Grand Duchy of Luxembourg and the editorial decisions regarding the «audio-visual media services»<sup>2</sup> are taken in another Member state of the European Economic Area, or vice versa, and a significant part of staff in charge of «the activities of the audio-visual media services»<sup>2</sup> «in connection with a programme»<sup>4</sup> is not operating in the Grand Duchy of Luxembourg, nor in the other Member state of the European Economic Area, but «the audio-visual media services provider»<sup>2</sup> started «its activities»<sup>2</sup> in Luxembourg in accordance with Luxembourg law and maintains stable economic and actual ties with Luxembourg;
- e) «The registered office of «the audio-visual media service provider »<sup>2</sup> is located in the Grand Duchy of Luxembourg and «editorial decisions»<sup>2</sup> are taken in a State that is not a member of the European Economic Area or vice versa, but a significant part of staff in charge of «the activities of the audio-visual media services»<sup>2</sup> is working in Luxembourg.»

(Law of 26 February 2021)

«(2) Audio-visual media service providers inform the minister in charge of media of any modification, which may have repercussions on the determination of competence, in accordance with paragraph 1.»

(Law of 26 February 2021)

«(3) The minister in charge of media compiles and updates a list of audio-visual media service providers under the competence of the Grand Duchy of Luxembourg and provides the criteria defined in paragraph 1 as well as in article 23quater, paragraph 1, on which such competence is based.»

1 Numbering as amended by the Law of 27 August 2013.

2 As amended by the Law of 17 December 2010.

3 Changed to a paragraph by the Law of 26 February 2021.

4 Inserted by the Law of 26 February 2021.

## Chapter «II».1 - Broadcasting

### A – JOINT PROVISIONS

#### Art. 3. Broadcasting licences and permissions

(Law of 2 April 2001)

«(1) Nobody may transmit a «Luxembourg broadcast service»<sup>2</sup> or a «foreign broadcast service»<sup>2</sup> without having previously obtained a licence or a permission, in accordance with the provisions of the present chapter.»

(2) Licences or permissions are granted after the publication of a call for tender, except if otherwise provided by the present Law «and in the law of 12 August 2022 on the organisation of public institution «Media de service public 100,7 »»<sup>3</sup> .

(3) Any licence or permission is subject to specifications, the provisions of which must be complied with by the beneficiary at all times.

(4) The licence or permission is personal and may not be transferred. It is limited in time but can be renewed, it can be withdrawn at any time:

- a) if the conditions required to obtain the licence are no longer met, or
- b) if the terms provided in the specifications are not complied with, or
- c) if it is not duly operated, in accordance with the specified modalities.

The modalities of such withdrawal are governed by the provisions of «article 35sexies»<sup>3</sup>.

(5) Expiring licences or permissions can be renewed for the same beneficiary, without the necessity to proceed by means of a new call for tender. Provisions of the new licence or permission can differ from those that were previously applicable.

(6) A copy of any licence or permission and of any decision of withdrawal is communicated to the minister in charge of telecommunications, to launch the procedure as provided in article «5»<sup>4</sup>.

(Law of 2 April 2001)

#### «Art. 4. Luxembourg radio broadcasting frequencies

A grand ducal regulation establishes and updates the list of Luxembourg radio broadcasting frequencies. Frequencies can be allocated to different categories, corresponding in particular to the different uses provided by the present Law. It can also specify more precisely the categories of frequencies.»

(Law of 17 December 2010)

#### «Art. 5. Licences

The minister in charge of the management of radio waves, upon information that a licence or permission was granted in accordance with article 3, will launch the procedure for granting the beneficiary or a third party specified by the latter, a licence as provided in article 3 paragraph (2) of the Law of 30 May 2005 on the organisation of the management of radio waves.»

(Law of 27 August 2013) «In the event a licence or permission is not operated for a period of one year, it may be subject to withdrawal »

**Art. 6. (...)** (repealed by the Law of 17 December 2010)

**Art. 7. (...)** (repealed by the Law of 17 December 2010)

### B- «BROADCAST SERVICES »<sup>2</sup> WITH INTERNATIONAL REACH

**Art. 8. (...)** (repealed by the Law of 2 April 2001)

#### Art. 9. «Luxembourg broadcast services with international reach»<sup>2</sup>

(1) A grand ducal regulation, to be taken after the opinion of the State council (...)<sup>5</sup> determines the modalities on the basis of which the Government will grant, upon a proposal of the minister in charge of media and in consultation with the «Authority» , the licences for «Luxembourg broadcast services with international reach»<sup>2</sup> as well as the general rules governing the licences and the pertaining specifications.

(2) The various licences for the «services»<sup>2</sup> referred to under «article 2,»<sup>2</sup> «point 24)»<sup>3</sup>, «letter a)»<sup>5</sup> may be granted to one or more holders and include, if required by or beneficial for commercial or financial imperatives in the interest of the country, elements of exclusivity. In the event an additional licence is granted to an existing licensee, it is not necessary to proceed by means of a call for tender.

1 New numbering of the chapters introduced by the Law of 2 April 2001.

2 As amended by the Law of 17 December 2010

3 Added by the Law of 12 August 2022

4 As amended by the Law of 27 August 2013.

5 Implicitly amended by the Law of 2 April 2001.

6 Aa amended / deleted by the Law of 2 April 2001.

(3) Licences for the «services»<sup>1</sup> referred to under «article 2»<sup>1</sup> «point 24)»<sup>2</sup>, «letter b)»<sup>3</sup> may only be granted if the final management or the uplink is located in the territory of the Grand Duchy and if the licensee is a company under the laws of Luxembourg. It is not required to proceed by way of call for tender.

#### **Art. 10. Specifications**

(1) Specifications referred to under article 9, paragraph (1) may include, depending on the case, in particular provisions on:

- a) the licence fee to be paid to the Treasury (Trésor public) and the cultural services to be provided in the interest of the country;
- b) the activities to be performed on the territory of the Grand Duchy;
- c) the presentation of information in a spirit of impartiality and objectivity and in respect of pluralism of opinions and freedom of information;
- d) the promotion of culture and artistic creativity in the design and implementation of the «service»<sup>1</sup>;
- e) the conditions under which the Government may broadcast at its cost Luxembourg socio-cultural «services»<sup>1</sup> on request of the public institution referred to under article 14, paragraph (2);
- f) the conditions under which the licensee makes available its installations to «television and radio services»<sup>1</sup> targeting a resident public other than those referred to under letter e);
- g) the limits of advertising messages (commercials) included in the «services»<sup>1</sup>;
- h) the monitoring of the content of the «service»<sup>1</sup> by «the Authority »;
- i) the scrutiny right of the Government on the articles of association, shareholders and bodies of the licensee company and of any companies involved in the operation of the licence;
- j) the monitoring of the activity of the licensee by one or more Commissioners of the Government;
- k) the obligation to identify as a Luxembourg «service»<sup>1</sup> and to contribute by its programmes to the image and international reach of the Grand Duchy;
- l) the conditions to comply with for the licensee to work with other companies for the operation of the licence ;
- m) the obligation to make available the installations free of charge to the State for the broadcasting of official messages or information on the safety of human life and police requirements, this transmission is made upon request of the Government and takes priority over other «programmes»<sup>1</sup>.

(2) Specifications for «services»<sup>1</sup> using Luxembourg radio broadcasting frequencies other than in frequency modulation, may include the obligation either to broadcast «short daily programmes »<sup>1</sup> in Luxembourgish for Luxembourg citizens living abroad or to make available the transmitter for the broadcasting «of such programmes»<sup>1</sup>

*(Law of 2 April 2001)*

#### **«Art. 10bis. Foreign broadcasting «services»<sup>1</sup>**

(1) The Government can, upon proposal of the minister in charge of media and in consultation with the «Authority», grant licences for foreign broadcast «services»<sup>1</sup>. This licence will allow the beneficiary to broadcast, using a Luxembourg broadcast frequency, a specific «service»<sup>1</sup> transmitted by a «service provider»<sup>1</sup> subject to the competence of another Member state of the European Economic Area in accordance with the rules applicable in this Member state. Such licence may be granted either to a company under the laws of Luxembourg, or to the foreign « television and radio service provider»<sup>1</sup>.

(2) Licences for foreign broadcast «services»<sup>1</sup> are granted after the publication of a public call for tender, except in the following specific circumstances:

- a) the licence is granted to the beneficiary of a licence for Luxembourg broadcast «service»<sup>1</sup> with international reach to allow such beneficiary to continue to broadcast, using a Luxembourg radio broadcasting frequency, a «service»<sup>1</sup> which lost the quality of Luxembourg «service»<sup>1</sup> because it falls under the competence of another Member state of the European Economic Area ; or
- b) the licence is granted to the beneficiary of a licence for Luxembourg broadcast «service»<sup>1</sup> with international reach to allow such beneficiary to broadcast with the Luxembourg radio broadcasting frequency granted in the context of the existing licence of a foreign «service»<sup>1</sup> on a part time or temporary basis.

#### **Art. 10ter. Specifications**

(1) Any licence referred to under article 10bis is subject to specifications, the provisions of which must be complied with by the licensee at all times.

(2) The specifications determine that the licence is only applicable for the full or partial broadcasting of the specified foreign «service»<sup>1</sup> and duly authorised in its country of origin.

<sup>1</sup> As amended by the Law of 17 December 2010

<sup>2</sup> As amended by the Law of 27 August 2013.

<sup>3</sup> As amended / deleted by the Law of 2 April 2001.

- (1) The specifications may include, depending on the case, in particular provisions on:
- a) the considerations at charge of the licensee;
  - b) the scrutiny right of the Government on the articles of association, shareholders and bodies of the licensee company;
  - c) the obligation to make available the installations free of charge to the State for the broadcasting of official messages or information on the safety of human life and police requirements, this transmission is made upon request of the Government and takes priority over other «programmes»<sup>1</sup>

*C - «BROADCAST SERVICES»<sup>1</sup> FOR A RESIDENT PUBLIC*

**Art. 11. «Enumeration of relevant<sup>2</sup> « broadcast services»<sup>1</sup>»**

(...)<sup>2</sup>

«(1)»<sup>3</sup> The Luxembourg broadcast «services»<sup>1</sup> for a resident public include:

- a) television «services»<sup>1</sup> (...)<sup>2</sup>,
- b) high power transmitter radio «services»<sup>1</sup>, i.e.,
  - «radio services»<sup>1</sup> with commercial purpose,
  - «radio services»<sup>1</sup> with socio-cultural purpose, as well as
- c) low power transmitter radio «services»<sup>1</sup> with i.e.,
  - local radio «services»<sup>1</sup>, and
  - transmission network «radio services»<sup>1</sup>

*(Law of 2 April 2001)*

«d) digital multiplex transmission radio «services»<sup>1</sup>, and possibly

e) digital multiplex transmission television «services»<sup>1</sup>.»

«(2)»<sup>3</sup> the «broadcast services»<sup>1</sup> provided in the present article are subject to a permission issued at the risks of the beneficiaries.

**Art. 12. «Television services»<sup>1</sup> (...)<sup>2</sup>**

*(Law of 2 April 2001)*

«(1) A grand ducal regulation, to be taken after an opinion of the State council (...)<sup>5</sup>, determines the modalities on the basis of which the Government will grant, upon proposal of the minister in charge of media and in consultation with the «Authority», the licences for television «services»<sup>1</sup> as well as the general rules governing these permissions and the pertaining specifications.»

(2) Specifications referred to under «paragraph»<sup>2</sup> (1) may include, depending on the case, in particular provisions on:

- a) the licence fee to be paid to the Treasury (Trésor public) and the cultural services to be provided in the interest of the country;
- b) the respect of pluralism in the presentation of news and opinions;
- c) the promotion of culture and artistic creativity in the design and implementation of the «television service»<sup>1</sup>;
- d) the monitoring of the content of the «television service»<sup>1</sup> by «the Authority»;
- e) the conditions under which the Government may broadcast at its cost Luxembourg socio-cultural «services»<sup>1</sup> on request of the public institution referred to under article 14, «paragraph»<sup>2</sup> (2);
- f) the conditions under which the beneficiary makes available the installations of the «services»<sup>1</sup> for a resident public other than those referred to under letter e);
- g) the limits of advertising messages (commercials) included in the «services»;
- h) the scrutiny right of the Government on the articles of association, shareholders and bodies of the licensee company and of any companies involved in the operation of the permission;
- i) the monitoring of the activity of the licensee by one or more Commissioners of the Government;
- j) the obligation to make available the installations free of charge to the State for the broadcasting of official messages or information on the safety of human life and police requirements, this transmission is made upon request of the Government and takes priority over other «programmes»<sup>1</sup>
- k) the proportion of «programmes»<sup>1</sup> to be acquired from producers that are independent of the beneficiary;
- l) the conditions for the beneficiary to involve other companies in the operation of the permission.

(...)<sup>2</sup>

(3) (...) *(repealed by the Law of 17 December 2010)*

**Art. 13. High power transmitter radio «services»<sup>1</sup>**

(1) A grand ducal regulation, to be taken after an opinion of the State council (...)<sup>2</sup>, determines the modalities under which the Government grants, upon a proposal of the minister in charge of media and in consultation with the «Authority», permissions for high power transmitter radio «services»<sup>1</sup> together with the general rules governing these permissions and the pertaining specifications.

<sup>1</sup> As amended by the Law of 17 December 2010.

<sup>2</sup> As amended / deleted by the Law of 2 April 2001.

<sup>3</sup> New numbering introduced by the Law of 2 April 2001; the former paragraph (1) is deleted.



Such modalities and rules vary based on the finality of the «services».<sup>1</sup>

(1) High power transmitter «radio services»<sup>1</sup> are subdivided into «radio services with commercial purpose»<sup>1</sup> and «radio services with socio-cultural purpose».<sup>1</sup>

(2) «Radio services with socio-cultural purpose»<sup>1</sup> are exempted from advertising messages (commercials) and subject to the provisions of article 14. «Radio services with commercial purpose»<sup>1</sup> can include advertising messages (commercials) within the limits specified or determined by « article 28sexies»<sup>1</sup>.

(3) Specifications referred to under «paragraph»<sup>1</sup> (1) may include, depending on the case, in particular provisions on:

- a) the licence fee to be paid to the Treasury (Trésor public) and the cultural services to be provided in the interest of the country, unless the relevant «service»<sup>1</sup> is without commercial purpose;
- b) the respect of pluralism in the presentation of news and opinions;
- c) the promotion of culture and artistic creativity in the design and implementation of the «radio service»<sup>1</sup>;
- d) the monitoring of the content of the «radio service»<sup>1</sup> by «the Authority»;
- e) the scrutiny right of the Government on the articles of association, shareholders and bodies of the licensee company and of any companies involved in the operation of the permission;
- f) the monitoring of the activity of the licensee by one or more Commissioners of the Government;
- g) the obligation to make available the installations free of charge to the State for the broadcasting of official messages or information on the safety of human life and police requirements, this transmission is made upon request of the Government and takes priority over other «programmes»<sup>1</sup>;
- h) the conditions for the beneficiary to involve other companies in the operation of the permission.

**Art. 14. (...)** (*repealed by the law of 12 August 2022*)

(*Law of 17 December 2010*)

«(1) One or more Luxembourg radio broadcasting frequencies for radio services with high power transmitter are reserved completely or partially to the broadcasting of socio-cultural radio services.»

(2) A public institution will be created in order to operate «this or these frequency(ies)»<sup>1</sup> and to organise «radio services»<sup>1</sup> with socio-cultural purpose, for which it will be responsible. A grand ducal regulation, to be taken after the opinion of the State council (...)<sup>2</sup>, will determine the modalities for the structure and the operation thereof.

(*Law of 2 April 2001*)

«(3) The public institution is holding a permission for a high power transmitter «radio service»<sup>1</sup> which will be allocated without a call for tender.

(3bis) The State will sign a pluri-annual agreement with the institution defining the public service missions and the financial consideration or other at charge of the State.»

(4) The socio-cultural radio «services»<sup>1</sup> will provide broad access to «social and cultural organisations of Luxembourg»<sup>2</sup>

(5) «The Authority» is «habilitated»<sup>3</sup> to submit to the governing bodies of the public institution proposals on a balanced content, meeting the socio-cultural objectives. «It»<sup>3</sup> is also in «charge»<sup>3</sup> of monitoring the socio-cultural radio «services»<sup>1</sup>. (...)<sup>3</sup>.

(...)<sup>2</sup>

**Art. 15. Low power transmitter radio «services»<sup>1</sup>**

(1) Low power transmitter radio services»<sup>1</sup> are either local «radio services»<sup>1</sup> or network «radio services»<sup>1</sup>.

(2) Permissions for low power transmitter radio «services»<sup>1</sup> are granted subject to the provisions of articles 15 to 18 by «the Authority». Applicable modalities and rules can be specified by a grand ducal regulation.

(*Law of 2 April 2001*)

«(3) The permission referred to in paragraph (2) is refused to any natural or legal person having operated without authorisation a broadcasting transmitter, if such lack of authorisation is acknowledged by the Institut Luxembourgeois de Régulation, and if such acknowledgment dates less than six years back.»

(4) Any permission granted for a «radio service»<sup>1</sup> not broadcast on a full-time basis, specifies the hours allocated to this «radio service»<sup>1</sup>.

<sup>1</sup> As amended by the Law of 17 December 2010.

<sup>2</sup> As amended/deleted by the Law of 2 April 2001.

(5) «The Authority» can reduce the number of hours allocated if, outside any case of force majeure, the broadcasting is not regular and does not fully cover the allocated hours.

(6) The beneficiary association or company shall submit to «the Authority» before the 10<sup>th</sup> day of each month, a report on the content of the «radio service»<sup>1</sup> during the previous month. This report will include any useful information on the broadcasting time, the hours, the airtime time taken by advertising messages (commercials), as well as revenues from commercials. It shall submit every year an annual report and a copy of the corporate accounts.

#### **Art. 16. Modalities for the allocation of frequencies for low power transmitters**

(1) «The Authority» will publish call for tenders with the list of available frequencies and locations for low power transmitter radio «services»<sup>1</sup> together with the pertaining characteristics and the specification of the deadline to submit applications and files.

(2) Applications for a permission shall be submitted to «the Authority», in order to be valid, in writing and using a special form provided for this purpose.

(3) The file to include with the application must specify in particular:

- a) the denomination adopted by the «radio service»<sup>1</sup>;
- b) the technical data regarding the transmitter, which must, for the application to be valid, comply with the parameters specified in the publication referred to «in paragraph»<sup>2</sup> (1);
- c) the general characteristics of the «radio service»<sup>1</sup>, and in particular the proposed airtime;
- d) the projected expenses and revenues, as well as the origin and the extent of any planned financing; and
- e) the articles of association and the list of the members and directors of the association or of the company submitting the application, as well as the composition of the managing bodies of the operating structures.

(4) The file can furthermore specify the arguments of the applicant, with regard to the allocation criteria referred to under « paragraph»<sup>2</sup> (7) below.

(5) «The Authority» specifies in each case the list of admissible applications, and it may, before making its final choice in accordance with the allocation referred to «in paragraph»<sup>2</sup> (7) below, encourage the grouping of applicants it deems to be in the interest of the public, considering the objectives defined in the allocation criteria.

(6) «The Authority» assesses in each case the public interest of the reception area, and it may, if applicable, by making its choice in accordance with the allocation criteria referred to «in paragraph»<sup>2</sup> (7) below, grant to various applicants, airtime for the frequencies and locations.

(7) For the selection, if necessary, of applicants «the Authority» considers, based on the objectives defined in article 1, «paragraph»<sup>2</sup> 2, in particular:

- a) the merits that the association or the company, its members or partners and its directors have acquired in the social and cultural field, as well as their moral integrity and general representativity; and
- b) the experience that the association or the company, its members or partners and its directors have acquired in the communication field, however not considering unauthorised broadcasting; and
- c) the informative, cultural and entertaining value of the proposed «radio service»<sup>1</sup> as well as the originality of its design and the complementary nature with regard to other media and other «radio services»<sup>1</sup> available in the relevant region; and
- d) the credibility of the file, in particular with regard to the availability of sufficient human and material resources to implement the proposed «radio service»<sup>1</sup>.

*(Law of 17 December 2010)*

«(8) The permission for a local radio service specifies the frequency and the location the beneficiary may use to broadcast the programme. Should it appear that the frequency does not allow to cover the locality in which the radio is located in a satisfactory way, «the Authority» can, upon request of the beneficiary of the permission and without proceeding through a new call for tender, replace the radio broadcasting frequency specified in a permission by another frequency. Such frequency must be specified together with the same location in the list of frequencies for local radios determined by the grand ducal regulation referred to in article 4.

(9) The permission for a radio service with emission network specifies the frequency or frequencies the beneficiary may use to broadcast the programme. Should it appear that the frequency does not allow to cover the specific parts of the country in a satisfactory way, «the Authority» may, upon request of the beneficiary of the permission and without proceeding through a new call for tender, add an additional frequency or replace a frequency specified in a permission by another frequency. Such frequencies must be specified in the list of frequencies for emission network radios determined by the grand ducal regulation referred to in article 4.»

<sup>1</sup> As amended by the Law of 17 December 2010.

<sup>2</sup> As amended/deleted by the Law of 2 April 2001.

#### **Art. 17. Local radio «services»<sup>1</sup>**

(1) The permission for a local radio «service»<sup>1</sup> may only be granted to non-profit association for a renewable period of time of five years.

(2) No association may be granted more than one permission for a local radio «service»<sup>1</sup>.

(3) The operation of the permission for a local radio «service»<sup>1</sup> must be performed by the beneficiary association itself and may not be entrusted to third parties.

(4) The technical interconnection and the grouping between two or more transmitters of local radio «services»<sup>1</sup> is forbidden.

(5) Local radio «services»<sup>1</sup> can be authorised to include advertising messages (commercials) within the limits to be provided by a grand ducal regulation, to be taken after the opinion of the State council (...)<sup>2</sup>.

(6) Specifications granted in accordance with article 3, «paragraph (3)»<sup>2</sup> for a local radio «service»<sup>1</sup> may contain, depending on the case, in particular provisions on:

- a) the promotion of local life, local culture and artistic creativity in the design and implementation of the «radio service»<sup>1</sup>;
- b) the absence of a lucrative purpose and the prohibition, within the determined limits, of advertising messages (commercials) in accordance with «paragraph (5)»<sup>2</sup>;
- c) the monitoring of the content of the «radio service»<sup>1</sup> by «the Authority» ;
- d) the scrutiny rights of «the Authority» on the status and operation of the beneficiary association;
- e) the obligation to make the installations available free of charge to the State and the local authorities for the broadcasting of official messages or information on the safety of human life and police requirements, this transmission is made upon request of the Government and takes priority over other «programmes»<sup>1</sup>
- f) the deadline for the start of the broadcasting;
- g) the respect of pluralism in the presentation of local news and opinions.

#### **Art. 18. Emission network «radio services»<sup>1</sup>**

(1) The permission for an emission network «radio service»<sup>1</sup> may only be granted to a «commercial»<sup>1</sup> company, for a renewable period of time of ten years.

(2) (...) (*repealed by the Law of 17 December 2010*)

(3) Emission network «radio service»<sup>1</sup> may include advertising messages (commercials) provided they don't exceed 6 minutes per hour on a daily average, nor 8 minutes for a specific period of time «on a weekly average except Sunday»<sup>1</sup>.

(4) A grand ducal regulation, to be taken after the opinion of the State council (...)<sup>1</sup>, may change the limitations referred to «under paragraph (3)»<sup>2</sup>.

(5) Specifications granted in accordance with article 3, «paragraph (3)»<sup>2</sup> for emission network «radio services»<sup>1</sup> may contain, depending on the case, in particular provisions on:

- a) the licence fee to be paid to the Treasury (Trésor public), unless the relevant «radio service»<sup>1</sup> does not include advertising messages;
- b) the specific requirements for the «radio service»<sup>1</sup> determined by «the Authority» on the basis of the submitted concept, which led to the choice of the applicant as beneficiary;
- c) the limits of advertising messages (commercials) in accordance with «paragraphs»<sup>2</sup> (3) and (4);
- d) the monitoring of the content of the «radio service»<sup>1</sup> by «the Authority»;
- e) the scrutiny rights of «the Authority» «on the allocation of shares or parts»<sup>1</sup> in the beneficiary company ;
- f) the obligation to make available the installations free of charge to the State for the broadcasting of official messages or information on the safety of human life and police requirements, this transmission is made upon request of the Government and takes priority over other «programmes»<sup>1</sup>;
- g) the deadline for the start of the broadcasting.

(*Law of 2 April 2001*)

#### **«Art. 19. Digital multiplex radio «services»<sup>1</sup>**

(1) A grand ducal regulation determines the modalities on the basis of which the Government, upon proposal of the Minister in charge of media and in consultation with «the Authority», will grant permissions for digital multiplex radio «services»<sup>1</sup> with frequencies reserved to terrestrial digital radio, as well as the general rules governing such permissions and the pertaining specifications, it being understood that the priority will be given to existing high power transmitter radios and emission network radios.

<sup>1</sup> As amended by the Law of 17 December 2010.

<sup>2</sup> As amended/deleted by the Law of 2 April 2001.

(2) The «services»<sup>1</sup> referred to in paragraph (1) can be existing Luxembourg broadcast «services»<sup>1</sup>, new radio «services»<sup>1</sup>, existing Luxembourg non-broadcast «services»<sup>1</sup> or foreign broadcast «services»<sup>1</sup> transmitted by «radio service providers»<sup>1</sup> under the competence of another Member state of the European Economic Area in accordance with the rules applicable in this Member state.

(3) In the case of a new Luxembourg «service»<sup>1</sup> of an existing Luxembourg non-broadcast «service»<sup>1</sup>, «the radio service provider»<sup>1</sup> will be granted a permission for a digital multiplex radio «service»<sup>1</sup>.

(4) In the case of an existing Luxembourg broadcast «service»<sup>1</sup>, «the radio service provider»<sup>1</sup> will be granted an additional permission for the simultaneous and unaltered broadcasting of the relevant «service»<sup>1</sup> as Luxembourg digital multiplex radio «service»<sup>1</sup>.

(5) In the case of a foreign «service»<sup>1</sup> the beneficiary will be granted a permission for the broadcasting of the relevant «service»<sup>1</sup> as digital multiplex radio «service»<sup>1</sup>.

(6) The grand ducal regulation referred to in paragraph (1) may specify the provisions for the implementation of digital radio, in particular with regard to the signal transmission, the determination of the network operator and the granting of the broadcasting authorisation, the various types of services to be provided through frequencies reserved to digital radio, the modalities for the choice of the providers of services not connected to a radio «service»<sup>1</sup> and the allocation of the available bandwidth.

#### **Art. 19bis. Digital multiplex television «services»<sup>1</sup>**

A grand ducal regulation to be taken after the opinion of the State council may determine the modalities for the implementation of terrestrial digital television in analogy with the provisions of article 19 above.»

### **Chapter «III.»<sup>2</sup> Other broadcasting modes «and on-demand audio-visual media services»<sup>1</sup>**

#### **A- SATELLITE BROADCASTING**

*(Law of 2 April 2001)*

#### **«Art. 20. Luxembourg satellite systems**

(1) Nobody may establish and operate a Luxembourg satellite system, without having previously obtained a licence, granted by the Government, upon joint proposal of the minister in charge of telecommunications and the minister in charge of media.»

(2) Such licence may include, should commercial and financial imperatives so require or make it necessary in the interest of the country, elements of exclusivity, in particular for the use of certain frequency bands or orbital positions or certain types of applications in the satellite communication field.

(3) Any licence is subject to specifications, the provisions of which must be complied with by the licensee at all times.

(4) The licence is personal and may not be transferred. It is limited in time but can be renewed, it can be withdrawn at any time, based on the conditions and modalities determined by the licence agreement and the specifications :

- a) if the conditions required to obtain the licence are no longer met; or
- b) if the terms provided in the specifications are not complied with; or
- c) if it is not duly operated, in accordance with the specified modalities.

*(Law of 2 April 2001)*

«(5) The licence includes the right for the licensee to make available transmission capacity to Luxembourg or foreign users for the broadcasting of «audio-visual or audio media services»<sup>1</sup>. The identity of the users and the provisions of the user contracts are subject to opposition from the Government.

The licensee shall file and update with the «Service des médias et des communications»<sup>1</sup> a list of the broadcast «audio-visual or audio media services»<sup>1</sup> or bundles of «audio-visual or audio media services»<sup>1</sup> as well as of other services. The licensee shall provide useful information to the Government allowing the latter to determine for each «audio-visual media service or audio service»<sup>1</sup> provided through a Luxembourg satellite «the provider of the audio-visual or audio media service»<sup>1</sup> and the competent country.»

(6) The licensee shall require full compliance with the constraints provided in the specifications from any user.

(7) Specifications referred to «in paragraph (3)»<sup>3</sup> may include, depending on the case, in particular provisions on:

- a) the licence fee to be paid to the Treasury (Trésor public);
- b) the activities to be performed on the territory of the Grand Duchy;
- c) the scrutiny right of the Government on the articles of association, shareholders and bodies of the licensee company;

<sup>1</sup> As amended by the Law of 17 December 2010.

<sup>2</sup> New numbering introduced by the Law of 2 April 2001.

<sup>3</sup> As amended/deleted by the Law of 2 April 2001.

- d) the monitoring of the activity of the licensee by one or more Commissioners of the Government;
- e) the content requirements regarding the «audio-visual or audio media services»<sup>1</sup>;
- f) the technical requirements to comply with for the configuration of the satellite system and its operation;
- g) the conditions for the licensee to make available transmission capacity to users and the cooperation with third parties for the operation of the licence ;
- h) the obligation to make available transmission capacity to the Government (...)<sup>2</sup>.

(...)<sup>2</sup>

**Art. 21. «Luxembourg»<sup>1</sup> satellite « Services»<sup>1</sup>**

(...)<sup>1</sup>

«(1)»<sup>3</sup> «Nobody may broadcast a Luxembourg satellite «service»<sup>1</sup> without having previously obtained a licence from the Government, upon proposal of the minister in charge of media and in consultation with «the Authority».

«(2)»<sup>3</sup> Any licence referred to «in paragraph (1)»<sup>1</sup> is subject to specifications, the provisions of which must be aligned on those of licences governing the Luxembourg broadcast «services»<sup>1</sup> and must be complied with by the licensee at all times.

«(3)»<sup>3</sup> A grand ducal regulation, to be taken after the opinion of the State council (...)<sup>2</sup>, determines:

- a) the modalities under which the Government grants the licences referred to «in paragraph (1)»<sup>1</sup>; and
- b) the general rules governing these licences and the pertaining specifications.

*(Law of 2 April 2001)*

«(4) The beneficiary of a licence for a Luxembourg satellite «service»<sup>1</sup> must have the form of a legal entity under Luxembourg laws.»

«(5)»<sup>3</sup> The licence is personal and may not be transferred. It is limited in time but can be renewed, it can be withdrawn at any time:

- a) if the conditions required to obtain the licence are no longer met, or
- b) if the terms provided in the specifications are not complied with. Modalities for the withdrawal are governed by the provisions of «article 35sexies»<sup>4</sup>.

«(6)»<sup>3</sup> Specifications referred to «in paragraph (1)»<sup>2</sup> may include, depending on the case, in particular provisions on:

- a) the licence fee to be paid to the Treasury (Tresor public);
- b) the activities to be performed on the territory of the Grand Duchy;
- c) the presentation of information in a spirit of impartiality and objectivity and in respect of the freedom of information;
- d) the promotion of culture and artistic creativity in the design and implementation of the «service»<sup>1</sup>;
- e) the monitoring of the content of the «service»<sup>1</sup>;
- f) the scrutiny right of the Government on the articles of association, shareholders and bodies of the licensee company and any company involved in the operation of the licence ;
- g) the monitoring of the activity of the licensee by one or more Commissioners of the Government;
- h) the obligation to identify as a Luxembourg «service»<sup>1</sup> and to contribute by its programmes to the image and international reach of the Grand Duchy;
- i) the conditions for the licensee to collaborate with other companies for the operation of the licence .

(7) (...) *(repealed by the Law of 17 December 2010)*

**B - « CABLE TRANSMISSION AND BROADCASTING »<sup>1</sup>**

*(Law of 2 April 2001)*

**«Art. 22. Cable networks**

(1) Nobody may establish and operate on the territory of the Grand Duchy a cable network for the transmission or broadcasting of «television and radio services»<sup>1</sup> without complying with the provisions of the applicable legislation in the field of telecommunications.

(2) Cable network operators referred to in paragraph (1) are authorised to the free reception and simultaneous and unaltered broadcasting of any Luxembourg broadcast «service»<sup>1</sup>, of any Luxembourg satellite «service»<sup>1</sup> and any Luxembourg cable «service»<sup>1</sup> holding a licence or permission in accordance with the present Law.

1 As amended by the Law of 17 December 2010.

2 As amended/deleted by the Law of 2 April 2001.

3 New numbering introduced by the Law of 2 April 2001.

4 As amended by the Law of 27 August 2013.

- (3) They are also authorised for the simultaneous and unaltered reception and broadcasting of any foreign «television or radio service »<sup>1</sup> for the public subject to paragraph (4) below.
- (4) Cable network operators are not authorised to transmit or broadcast
- Luxembourg «television and radio services»<sup>1</sup> for which no licence or permission was granted, or
  - foreign «television and radio services»<sup>1</sup> subject to an interdiction in their country of origin or a broadcasting interdiction in accordance with article 25, paragraphs (2) to (5) of the present Law.

They shall file with the «Service des médias et des communications»<sup>1</sup> and update a list of the «television or radio services»<sup>1</sup> or bundles of «television and radio services»<sup>1</sup> transmitted or broadcast and other services.

- (5) A grand ducal regulation may establish a list of Luxembourg broadcast services»<sup>1</sup> to be transmitted on a priority basis.»

**Art. 23. «Luxembourg»<sup>2</sup> cable «services»<sup>1</sup>**

(...)<sup>2</sup>

«(1)»<sup>3</sup> Nobody may broadcast a Luxembourg cable «service»<sup>1</sup> without having obtained a licence from the Government, upon proposal of the minister in charge of media and in consultation with «the Authority» .

«(2)»<sup>3</sup> Any licence referred to «in paragraph (1)»<sup>2</sup> is subject to specifications, the provisions of which must be aligned on those of the licences and permissions governing Luxembourg broadcast «services»<sup>1</sup> and must be complied with by the licensee at all times.

«(3)»<sup>3</sup> A grand ducal regulation, to be taken after the opinion of the State council (...)<sup>2</sup>, determines:

- a) «the criteria and»<sup>2</sup> modalities under which the Government grants the licences referred to «in paragraph (1)»<sup>2</sup>; and
- b) the general rules governing the licences and specifications pertaining thereto.

«(4)»<sup>3</sup> The licence is personal and may not be transferred. It is limited in time but can be renewed, it can be withdrawn at any time:

- a) if the conditions required to obtain the licence are no longer met, or
- b) if the terms provided in the specifications are not complied with. Modalities for the withdrawal are governed by the provisions of «article 35sexies»<sup>4</sup>

- (5) (...) (*repealed by the Law of 17 December 2010*)

(*Law of 17 December 2010*)

«C. - SERVICES SUBJECT TO NOTIFICATION»<sup>5</sup>

**Art. 23bis. Television services transmitted by electronic communication networks other than broadcasting frequencies, satellites or cable networks**

Any Luxembourg audio-visual media services provider intending to provide a television service, which is neither a Luxembourg broadcast service nor a Luxembourg satellite service, nor a Luxembourg cable service must, not later than twenty days before the start of the service, inform the minister in charge of media of such intention. This notification clearly identifies the audio-visual media service provider and the name of the television service together with a description of the service to be provided as well as the date planned for the launch of the activities. By this notification the provider of the audio-visual media service commits to grant free and uncoded access to its service «to»<sup>4</sup> «the Authority» or to provide to «the Authority»<sup>4</sup> any information required to allow «it»<sup>4</sup> to ensure the monitoring thereof.

**Art. 23ter. Audio-visual media services on demand**

Any Luxembourg audio-visual media services provider intending to provide an on-demand service must, not later than twenty days before the start of the service, inform the minister in charge of media of such intention. This notification clearly identifies the audio-visual media service provider and the name of the on-demand service together with a description of the service to be provided as well as the date planned for the launch of the activities. By this notification the provider of the audio-visual media service commits to grant free and uncoded access to its service «to»<sup>4</sup> «the Authority» or to provide to «the Authority»<sup>4</sup> any information required to allow «it»<sup>4</sup> to ensure the monitoring thereof.

<sup>1</sup> As amended by the Law of 17 December 2010.

<sup>2</sup> As amended/deleted by the Law of 2 April 2001.

<sup>3</sup> New numbering introduced by the Law of 2 April 2001.

<sup>4</sup> As amended by the Law of 27 August 2013.

<sup>5</sup> Heading amended by the Law of 26 February 2021.

**Art. 23quater. Audio-visual media services of third countries using a Luxembourg uplink or Luxembourg satellite**

(1) Shall be deemed as falling under the competence of the Grand Duchy of Luxembourg any audio-visual media service transmitted by an audio-visual media services provider not established in a Member state of the European Economic Area, but using an uplink to a satellite located on the territory of the Grand Duchy of Luxembourg or, without using an uplink to a satellite located on the territory of a Member state of the European Economic Area, using Luxembourg satellite capacity except if the audio-visual media service is exclusively meant to be received in one or more countries that are not part of the European Economic Area and is not received directly or indirectly through standard equipment by the public of one or more Member states of the European Economic Area.

(2) Any audio-visual media services provider intending to provide a service likely to be subject to the competence of Luxembourg under paragraph (1) must, not later than twenty days before the start of the service, inform the minister in charge of media of such intention. This notification clearly identifies the audio-visual media service provider and the name and a description of the service to be provided together with the date planned for the launch of the activities. By this notification the provider of the audio-visual media service commits to grant free and uncoded access to its service «to»<sup>1</sup> «the Authority» or to provide to «the Authority»<sup>1</sup> any information required to allow «it»<sup>1</sup> to ensure the monitoring thereof. « Audio-visual media service providers must inform the minister in charge of media of any modification likely to have repercussions on the determination of the competence.»<sup>2</sup>

(3) Any person providing an audio-visual media service including a service for the use of an uplink located on Luxembourg territory or a Luxembourg satellite capacity must, not later than ten days before the start of this service, inform the minister in charge of media specifying the name of the audio-visual media service, the name and coordinates of the provider of the audio-visual media service as well as the elements to assess the competence of the relevant State. «The notification referred to in the present paragraph may also be made by the person subject to the obligation referred to in paragraph (2)»<sup>3</sup>

(4) The services referred to in paragraph (1) shall comply with the rules of Chapter V «as well as with article 34bis of the present Law»<sup>3</sup>. In case of television services, they must also grant a right of reply in accordance with the Law of 8 June 2004 on the freedom of expression in the media.»

*(Law of 26 February 2021)*

**«Art. 23quinquies. Video sharing platform services**

(1) A video sharing platform provider established in the Grand Duchy of Luxembourg, within the meaning of the amended Law of 2 September 2011 on the access of trade, commercial, industrial and some liberal professions falls under the competence of the Grand Duchy of Luxembourg.

(2) A video sharing platform provider not established in the Grand Duchy of Luxembourg is deemed to be established in the Grand Duchy of Luxembourg, if such video sharing platform provider :

- a) has a parent company or a subsidiary established in the Grand Duchy of Luxembourg; or
- b) is part of a group having another undertaking established in the Grand Duchy of Luxembourg. For the purpose of the present article, the following definitions shall apply:
  - a) «parent company », an undertaking controlling one or more subsidiaries ;
  - b) «subsidiary », an undertaking controlled by a parent company, including any subsidiary of the parent company at the head of the group ;
  - c) «group », a parent company, any subsidiaries and any other undertakings having an organisational, economic and legal connection with the latter.

(3) For the application of paragraph 2, if the parent company, the subsidiary or the other undertakings of the group are each established in a different Member state, the video sharing platform provider shall be deemed to be established in the Grand Duchy of Luxembourg, if the parent company is established in this country or, in absence of such establishment in another Member state, if the subsidiary is established in this country or in absence of such establishment in another Member state, if the other undertaking of the group is established in this country.

(4) For the application of paragraph 3, if there are more subsidiaries and each of them is established in a different Member state, the video sharing platform is deemed to be established in the Grand Duchy of Luxembourg if this is the first Member state in which one of the subsidiaries started its activities, provided that it keeps a stable economic and actual tie with the Grand Duchy of Luxembourg.

<sup>1</sup> As amended by the Law of 27 August 2013.

<sup>2</sup> Inserted by the Law of 26 February 2021.

<sup>3</sup> Added by the Law of 27 August 2013.

If there are more undertakings that are part of the group with each of them established in a different Member state, the video sharing platform provider is deemed to be established in the Grand Duchy of Luxembourg, if this is the first Member state in which one of these undertakings started its activities, provided that it keeps a stable economic and actual tie with the Grand Duchy of Luxembourg.

(5) Article 2, paragraphs 5 and 6, as well as articles 60 to 63 of the amended Law of 14 August 2000 on electronic commerce shall apply to the providers of video sharing platforms deemed to be established in the Grand Duchy of Luxembourg in accordance with paragraph 2.

(6) The minister in charge of media compiles and updates a list of video sharing platform providers established or deemed to be established on the territory of the Grand Duchy of Luxembourg, specifying the criteria defined in paragraphs 1 to 4 on which the competence is based.

(7) Any video sharing platform provider intending to provide a service deemed to fall under the competence of Luxembourg must, not later than twenty days before the start of the service, inform the minister in charge of media about this intention. This notification clearly identifies the video sharing platform provider together with the useful information for the minister to determine if the service falls under the competence of Luxembourg, the name and a description of the service to be provided, as well as the expected date of the launch of these activities. By this notification the provider of the audio-visual media service commits to grant free and uncoded access to its service to the Authority or to provide to the Authority any information required to allow it to ensure the monitoring thereof.»

*(Law of 2 April 2001)*

#### **«Chapter «IV»<sup>1</sup> Reception and broadcasting of «audio-visual or audio media services»<sup>2</sup>**

##### **Art. 24. Freedom of reception and broadcasting**

(1) Freedom of reception is warranted on the territory of the Grand Duchy for any «Luxembourg audio-visual or radio media service»<sup>2</sup> transmitted in accordance with the provisions of the present Law and for any «foreign audio-visual or radio media service»<sup>2</sup> that is not subject to an interdiction in its country of origin.

(2) Simultaneous and unaltered broadcasting of any «audio-visual or radio media service»<sup>2</sup> referred to in paragraph (1) and not subject to the measures provided in article 25, paragraphs (2) to (5), is permitted to any cable network referred to under article 22.

##### **Art. 25. Restrictions regarding broadcasting and marketing freedom»**

*(Law of 17 December 2010)*

«(1) Any withdrawal, in accordance with the provisions of «article 35sexies»<sup>3</sup> of the licence or the permission granted for the transmission of a television or radio service and any interdiction, in accordance with the provisions of «article 35sexies»<sup>3</sup> of an audio-visual media service subject to prior notification pursuant to article 23bis, article 23ter or article 23quater will lead to the interdiction for the cable networks to broadcast the relevant service.»

*(Law of 26 February 2021)*

«(2) Broadcasting and marketing of a foreign audio-visual or radio media service can be forbidden on a temporary basis if such service is in obvious, serious and severe violation of the provisions of articles 26bis, point a), 27ter, paragraph 1, or is harming or representing a serious and severe risk of harming public health.

The derogation referred to in paragraph 1 is subject to the following conditions:

- a) In the course of the twelve preceding months, the audio-visual media service provider already committed, at least on two occasions, one or more of the acts described in the first paragraph;
- b) Luxembourg authorities have informed the audio-visual media service provider, the Member state competent for such provider and the European Commission in writing of the alleged violations and the appropriate measures they intend to take should such violation reoccur;
- c) The rights of defence of the audio-visual media service provider were complied with and in particular the latter had the occasion to express his point of view on the alleged violations; and
- d) Consultations with the Member state competent for the audio-visual media service provider and the European Commission did not lead to an amicable solution within one month as of the reception by the European Commission of the notification as provided under point b).

Should the European Commission decide that the measures taken are incompatible with European Union Law, such measures will be stopped immediately.

(3) Broadcasting or marketing of a foreign audio-visual or radio media service can be forbidden on a temporary basis if such service is in obvious, serious and severe violation of the provisions of article 26bis, point b), or is harming or representing a serious and severe risk of harming public health, including the protection of national security and defence.

<sup>1</sup> Material error in the text of the Law of 2 April 2001; it should read Chapters IV and V.

<sup>2</sup> As amended by the Law of 17 December 2010.

<sup>3</sup> As amended by the Law of 27 August 2013 .



The derogation referred to in paragraph is subject to the following conditions:

- a) The actions referred to in the first paragraph already occurred at least once during the previous twelve months; and
- b) Luxembourg authorities have informed the audio-visual media service provider, the Member state competent for such provider and the European Commission in writing of the alleged violations and the appropriate measures they intend to take should such violation reoccur.

The audio-visual media service provider has the right to express his point of view regarding the alleged violations.

(3bis) In case of emergency, not later than one month after the alleged violation, the minister in charge of media may derogate to the conditions listed in paragraph 3, points a) and b). In this case, measures taken are notified as soon as possible to the European Commission and the Member state competent for the media service provider, together with the reasons for which it is deemed that there is an emergency.

Should the European Commission decide that the measures taken are incompatible with European Union Law, such measures will be stopped immediately.

(4) A temporary interdiction referred to in paragraphs 2 and 3 is pronounced by the Government upon proposal of the minister in charge of media and after opinion of the Authority.»

*(Law of 2 April 2001)*

«(5) It is published in the Memorial (Official Journal) and entails the broadcasting interdiction for the cable networks and for any person to market the relevant « audio-visual or radio media service »<sup>1</sup> in the Grand Duchy of Luxembourg.»

*(Law of 17 December 2010)*

#### **«Chapter V.- Rules applicable to audio-visual or audio media services**

##### **Art. 26. Field of application**

(1) Provisions specified or taken under the present chapter must be complied with

- a) by any Luxembourg audio-visual or radio media service, subject to paragraph (2) and
- b) by any audio-visual media service under the competence of the Grand Duchy of Luxembourg in accordance with article 23quater.

(2) Luxembourg audio-visual or audio media services with the exclusive purpose to be received in third countries of the European Economic Area and that are not received directly or indirectly through standard equipment by the public of one or more Member states of the European Economic Area must comply with the provisions of article 26bis and, as the case may be, the provisions of articles 27ter, 28quater or 28quinquies, as well as, if applicable, the provisions of the specification pertaining to the licence.

##### **A – APPLICABLE RULE TO ALL AUDIO-VISUAL OR AUDIO MEDIA SERVICE »**

*(Law of 26 February 2021)*

##### **«Art. 26bis. Prohibition of incitement to violence, hatred and terrorism**

Without prejudice to the obligation to respect and protect human dignity, audio-visual media services of providers under the competence of the Grand Duchy of Luxembourg will not contain :

- a) any incitement to violence or hatred against a group of individuals or a member of a group based on one of the grounds referred to in article 21 of the Charter of fundamental rights of the European Union ;
- b) any public provocation to perpetrate an act of terrorism as referred to under article 135-11, paragraphs 1 and 2 of the Criminal Code.»

*(Law of 17 December 2010)*

##### **«B.- RULES APPLICABLE TO AUDIO-VISUAL MEDIA SERVICES»**

##### **Art. 27. Promotion of the distribution and production of «European»<sup>1</sup> programmes**

(1) A grand ducal regulation will determine the rules applicable to the content of European works and works of independent producers «and to the promotion of these works »<sup>1</sup> in accordance with the «audio-visual media services»<sup>1</sup> directive.

(2) «Audio-visual media service providers will not broadcast»<sup>1</sup> cinematographic works outside the times agreed with the beneficiaries.

<sup>1</sup> As amended by the Law of 17 December 2010.

*(Law of 17 December 2010)*

**«Art. 27bis. Audio-visual commercial communications**

(1) Audio-visual commercial communications comply with the following requirements:

- a) They are easily recognisable as such. Surreptitious (hidden) audio-visual commercial communications are forbidden.
- b) They don't use subliminal techniques;
- c) They don't harm human dignity;
- d) They don't include any discrimination based on gender, racial or ethnic origin, nationality, religion or beliefs, a disability, age or sexual orientation, and are not promoting such discrimination;
- e) They don't encourage behaviours that are harmful to health or safety;
- f) They don't encourage behaviours that are seriously damageable to the environment.

(2) Any form of audio-visual commercial communication for cigarettes or other tobacco products « as well as for electronic cigarettes and refills»<sup>1</sup> is forbidden.

(3) Audio-visual commercial communications for alcoholic beverages may not expressly target minors and may not encourage the immoderate consumption of such beverages.

(4) Audio-visual commercial communication for medication and medical treatments that are only available upon prescription is forbidden.

(5) Audio-visual commercial communications will not cause any physical or moral damage to minors. Therefore, they may not directly incite minors to buy or rent a product or a service by using their inexperience or credulity, directly incite minors to persuade their parents or third parties to buy the products or services that are the object of the advertisements, use the special trust minors have in their parents, their teachers or other persons, or show, without ground, minors in dangerous situations.

(6) A grand ducal regulation will determine the restrictive rules with regard to sponsoring.»

*(Law of 26 February 2021)*

«(7) Product placement is authorised in any audio-visual media service produced after 19 December 2009, except in information and news programmes, consumer programmes, religious programmes and children's programmes.

A grand ducal regulation will determine the restrictive rules with regard to product placement.»

*(Law of 26 February 2021)*

**«Art. 27ter. Protection of minors**

(1) Programmes offered by an audio-visual media service provider likely to harm the physical, mental or moral development of minors may only be made available to the public under conditions normally preventing minors to hear or see them.

(2) A grand ducal regulation will determine the measures to be taken by audio-visual media service providers to prevent minors to see or hear such programmes. These measures include the choice of the airtime of the programme, the use of a tool to check the age or other technical tools.

Such measures will be in proportion with the harm the programme may cause.

The most detrimental content, such as pornography and free violence, will be subject to the strictest measures.

(3) In the event programmes referred to in paragraph (2) are aired uncoded, they must be preceded by an acoustic warning or identified by a visual symbol during their entire airtime.

A grand ducal regulation will determine the acoustic signals or visual symbols to be used for this purpose.

The grand ducal regulation may :

- a) Differentiate between various age categories and determine the corresponding acoustic signals or visual symbols;
- b) Include the interdiction to broadcast, before a certain time in the day, programmes likely to harm the physical, mental or moral development of minors of one of these age categories;
- c) Determine the modalities for an audio-visual media service provider to identify such programmes by acoustic signals or visual symbols ;
- d) Determine the conditions for an audio-visual media service provider to apply the acoustic signals or visual symbols used in another State.

(4) Personal data of minors collected or generated in any other way by audio-visual media service providers under paragraph 1 may not be processed for marketing purposes as solicitation, profiling and advertisements based on behavioural targeting.

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<sup>1</sup> Inserted by the Law of 26 February 2021.

(5) Audio-visual media service providers will provide viewers with sufficient information on content likely to harm the physical, mental or moral development of minors.

For this purpose, audio-visual media service providers use a system describing the potentially detrimental nature of the content of an audio-visual media service.

(6) A grand ducal regulation will determine the modalities for the audio-visual media service provider to describe the potentially detrimental nature of the content of an audio-visual media service.»

*(Law of 26 February 2021)*

**«Art. 27quater. Accessibility of audio-visual media services**

(1) Audio-visual media service providers prepare action plans regarding the continuous and progressive improvement of their services for disabled people.

(2) Audio-visual media service providers will submit to the Authority, not later than 30 September 2022, and thereafter every three years, a report on the implementation of their action plans.

Not later than 19 December 2022, and thereafter every three years, the Authority will submit to the European Commission a report on the implementation of paragraph 1.

(3) Communications and public announcements in natural disaster situations made available to the public, shall be provided in a way that is accessible to disabled people.»

*(Law of 26 February 2021)*

**«Art. 27quinquies. Banner superposition for marketing purposes**

(1) Audio-visual media services provided by audio-visual media service providers are not the object, without the explicit agreement of these audio-visual media service providers, of banner superpositions for marketing purposes or are not modified.

(2) In derogation of paragraph 1, are authorised, without the prior agreement of the audio-visual media service providers :

- a) banners that are activated or authorised by the recipients of a service for private use ;
- b) elements for the control of user interfaces that are necessary for the operation of an equipment or the navigation between programmes, i.e., sound volume indication, search functions, navigation menus and the list of channels;
- c) alerts;
- d) information of general interest for the public ;
- e) subtitles ;
- f) marketing banners provided by the media service provider.»

*(Law of 17 December 2010)*

«C. – RULES ONLY APPLICABLE TO TELEVISION SERVICES»<sup>1</sup>»

**Art. 28. «Television»<sup>2</sup> advertisement (...) <sup>2</sup> and tele-shopping**

*(Law of 17 December 2010)*

«(1) Television advertising and tele-shopping must be easily identifiable as such and be distinguished from editorial content. Without prejudice to the use of new advertising techniques, television advertising and tele-shopping must be clearly distinguished by visual, acoustic or spatial means. «Isolated television advertising and tele-shopping spots are authorised during sport events.»<sup>3</sup> Isolated television advertising and tele-shopping spots must be exceptional, except during the transmission of sport events.»

(2) (...) *(repealed by the Law of 17 December 2010)*

(3) (...) *(repealed by the Law of 17 December 2010)*

(4) The restrictive conditions regarding advertising and tele-shopping for medications and medical treatments as well as for alcoholic beverages pursuant to the «audio-visual media service »<sup>2</sup> directive are determined by a grand ducal regulation.

This grand ducal regulation will furthermore specify the rules regarding the insertion of advertisements and tele-shopping «during»<sup>2</sup> programmes, (...) <sup>2</sup> and the airtime for advertising and tele-shopping.

<sup>1</sup> Heading moved by the Law of 26 February 2021.

<sup>2</sup> As amended/deleted by the Law of 17 December 2010.

<sup>3</sup> Amended by the Law of 26 February 2021.

*(Law of 8 April 2011)*

«(5) The magistrate presiding the Chamber of the District Court of Luxembourg in commercial matters, on request of the organisations referred to in article L. 313-1 and following of the Consumer Code<sup>4</sup>, the minister in charge of consumer protection, the Commission de surveillance du secteur financier or the Commissariat aux Assurances may order any measure to stop or « to forbid »<sup>5</sup> any action that is contrary to «articles 26, 26bis, 27bis, 27ter as well as»<sup>5</sup> to the present article or the grand ducal regulation referred to in paragraph (4) above.

The application is submitted in accordance with the procedure for interim relief applications. The magistrate presiding the Chamber of the District Court of Luxembourg in commercial matters will rule on the merits. The period of appeal is fifteen days « in accordance with the procedure for interim relief applications»<sup>5</sup> »

*(Law of 19 December 2003)*

«Are also applicable articles 2059 to 2066 of the Civil Code.

It may be ordered that the decision shall be posted inside or outside the business premises of the convicted party and at the latter's cost. The decision will specify the duration of this posting and it may also order the publication of the decision, in full or in part, at the costs of the convicted party, in newspapers or in any other way.

Such posting or publication is only possible based on a final and enforceable judicial decision.

Any failure to comply with the injunctions or interdictions specified in a judicial decision rendered pursuant to the present article and that has become enforceable shall be subject to a fine between 251 and 50,000 Euro.»

#### **Art. 28bis. Exclusive rights for major events**

(1) A grand ducal regulation can establish a list of major events for society, whether they are national or not. This grand ducal regulation is sent to the European Commission in accordance with paragraph 2 «article 14 of the audio-visual media services directive»<sup>1</sup>.

(2) «Television service providers»<sup>1</sup> will not exercise the exclusive rights they have acquired after the entry into force of this grand ducal regulation so as to deprive an important part of the Luxembourg public of the possibility to follow the events on the list, fully or partially live or, if necessary or appropriate for objective reasons of general interest, fully or partially in deferred broadcasting, on a freely accessible television. Said grand ducal regulation may also provide the implementation measures for the provisions of the present paragraph.

(3) «Television service providers»<sup>1</sup> will not exercise the exclusive rights they have acquired after 30 July 1997 so as to deprive an important part of the public of another Member state of the European Economic Area of the possibility to follow fully or partially live or, if necessary or appropriate for objective reasons of general interest, fully or partially in deferred broadcasting, on a freely accessible television, pursuant to the provisions taken by this other Member state, the events that such other Member state determined in accordance with paragraphs 1 and 2 of «article 14 of the audio-visual media services directive»<sup>1</sup>.

*(Law of 17 December 2010)*

#### **«Art. 28ter. Access right to excerpts of major events**

(1) Providers of television services broadcasting in exclusivity events of high interest for the public must grant access to these events to allow for the production of short news reports, to any Luxembourg television service provider under fair, reasonable and non-discriminatory conditions.

(2) The obligation referred to in paragraph (1) also applies if the television service provider «requesting access»<sup>2</sup> is established in another Member state of the European Economic Area, except if another television service provider established in the same Member state has acquired the exclusivity rights for this event.

(3) Access is granted either through free choice of short excerpts from a signal of the television service provider having acquired the exclusive rights, if this is possible, or by an equivalent service granting access under fair, reasonable and non-discriminatory conditions. In both cases television service providers using the excerpts shall specify the source thereof.

(4) Short excerpts are used exclusively in general news programmes and may only be used in the context of on-demand audio-visual media services, if «the same programme is offered»<sup>3</sup> in deferred broadcasting by the same audio-visual media service provider.

(5) The holder of the exclusive rights can request a financial compensation, which may not exceed the additional costs directly caused by providing the access.

(6) The maximum time of the excerpts may not exceed 90 seconds. This duration can be changed by a grand ducal regulation. This regulation may also determine a maximal time period for the broadcasting of the excerpts.

*D. (...)»<sup>4</sup>*

#### **Art. 28quater. (...) (repealed by the Law of 26 February 2021)**

<sup>1</sup> Heading moved by the Law of 26 February 2021

<sup>2</sup> As amended / deleted by the Law of 17 December 2010.

<sup>3</sup> Added by the Law of 26 February 2021.

<sup>4</sup> The amendment provided for in article 21, point 1° of the law of 19 November 2021 may not be effected, in course of rectification.

<sup>5</sup> Added/completed by the law of 19 November 2021 in course of rectification.

*E. - RULES APPLICABLE ONLY TO THE RADIO*

**Art. 28quinquies. Protection of minors**

Paragraphs (1) and (2) of article 27ter also apply to Luxembourg radio services.

**Art. 28sexies. Advertising content**

(1) A grand ducal regulation

- a) may specify the general restrictions as to the quantity and nature of advertising messages (commercials) included in Luxembourg radio services; and
- b) may specify that the provisions of articles 27bis or 28 or of a grand ducal regulation taken pursuant to these articles, or some of its provisions, apply either to certain categories, or all of Luxembourg radio services.

(2) Luxembourg radio services may not advertise tobacco or tobacco products.»

*(Law of 26 February 2021)*

*«F. -RULES APPLICABLE ONLY TO VIDEO SHARING PLATFORM SERVICES »*

*(Law of 26 February 2021)*

**«Art. 28septies. Appropriate measures to be taken by providers of video sharing platforms**

(1) Without prejudice to articles 60 to 63 of the amended Law of 14 August 2000 on electronic commerce, video sharing platform providers under the competence of the Grand Duchy of Luxembourg take appropriate measures to protect :

- a) minors from programmes, videos created by users and audio-visual commercial communications likely to harm their physical, mental or moral development in accordance with article 27ter, paragraphs 1 and 2 ;
- b) the general public from programmes, videos created by users and audio-visual commercial communications including incitements to violence or hatred targeting a group of individuals based on the grounds referred to in article 21 of the Charter of fundamental rights of the European Union ;
- c) the general public from programmes, videos created by users and audio-visual commercial communications including content the broadcasting of which is a criminal offence, i.e., public provocation to commit acts of terrorism as provided in article 135-11, paragraphs 1 and 2 of the Criminal code, violations related to child-pornography as listed in article 379, point 2° of the Criminal code and violations relating to racism and xenophobia as listed in articles 457-1 and 457-3 of the Criminal code.

(2) Video sharing platform providers under the competence of the Grand Duchy of Luxembourg comply with the requirements as specified in article 27bis, paragraphs 1 to 5 on audio-visual commercial communications subject to promotional action, sold or organised by said video sharing platform providers.

Video sharing platform providers under the competence of the Grand Duchy of Luxembourg take appropriate measures to warrant compliance with the requirements specified in article 27bis, paragraphs 1 to 5 on audio-visual commercial communications that are not subject to promotional actions, are not sold and not organised by said video sharing platform providers, considering the limited control that such video sharing platforms exercise on these audio-visual commercial communications.

Video sharing platform providers inform users clearly if programmes and videos created by users contain audio-visual commercial communications provided that such communications are reported under paragraph 3, indent 3, letter c), or that the provider has knowledge of this fact.

(3) For the purpose of the application of paragraphs 1 and 2, appropriate measures are determined by considering the nature of the relevant content, the prejudice it may cause, the characteristics of the category of people to protect as well as the rights and legitimate interests at stake, including those of the video sharing platform providers and those of the users who have created the content or put it online, as well as the interest of the general public.

All video sharing platform providers under the competence of the Grand Duchy of Luxembourg shall apply these measures. Such measures are feasible and in proportion considering the size of the video sharing platform service and the nature of this service. These measures will not lead to an ex-ante control nor to the filtering of the content at the time it is put online, that are not in compliance with article 63 of the amended Law of 14 August 2000 on electronic commerce and trust services. For the purpose of the protection of minors provided in paragraph 1, letter a) the most detrimental content will be subject to the strictest control measures.

Such measures will consist, as may be appropriate, in :

- a) Including and applying, in the terms and conditions of the video sharing platform services, the requirements referred to in paragraph 1;
- b) Including and applying, in the terms and conditions of the video sharing platform services, the requirements referred to in article 27bis, paragraphs 1 to 5 for audio-visual commercial communications that are not subject to promotional actions, are not sold and are not organised by the video sharing platform providers ;

- c) Having a functionality allowing users putting online videos created by users to declare if such videos include, to their knowledge or to the extent as may reasonably be expected from them to know, audio-visual commercial communications;
- d) Implementing and using transparent and user-friendly mechanisms allowing the users of a video sharing platform to specify or report to the video sharing platform provider the content referred to in paragraph (1) available on this platform;
- e) Implementing and using systems allowing video sharing platform providers to explain to the users of these platforms what measures were taken for the specifications and reports referred to under letter d) ;
- f) Implementing and using systems allowing to check the age of the users of the video sharing platforms for content likely to harm the physical, mental or moral development of minors ;
- g) Implementing and using systems that are easy to use allowing users of video sharing platforms to classify content referred to in paragraph 1 ;
- h) Foreseeing parental control systems controlled by the end-users on content likely to harm the physical, mental or moral development of minors;
- i) Implementing and using transparent, easy to use and efficient procedures for the processing and the solution of claims of users with the video sharing platform provider in connection with the implementation of measures referred to under letters d) to h) ;
- j) Providing efficient educational measures and tools with regard to the use of media and make users aware of these measures and tools.

Personal data of minors collected or generated in another way by video sharing platform providers in accordance with paragraph 3, letters f) and h) may not be processes for marketing purposes as solicitation, profiling and advertisements based on behavioural targeting»

## **Chapter «VI»<sup>1</sup> – Other provisions**

### **A – INSTITUTIONAL MEASURES**

#### **Art. 29. «Service des médias et des communications»<sup>2</sup>**

(1) In the governmental administration, under the minister in charge of media, a «Service des médias et des communications»<sup>2</sup> is created.

(2) The missions of the «Service des médias et des communications»<sup>2</sup> are in particular, to:

- a) assist the minister in defining and implementing the media «and communication»<sup>2</sup> policy;
- b) promote the development, in the field of media, of a programme offering for the population of the Grand Duchy;
- c) promote, together with other relevant services, the Grand Duchy as European centre for audio-visual and communication activities;

*(Law of 2 April 2001)*

- d) assist the Commissioners of the Government in charge of monitoring the beneficiaries of licences or permissions, (...) <sup>3</sup>, the Commission consultative des médias (Advisory commission for media) created by article 33 and the commission implemented by the Law on the promotion of the written press;
- e) ensure contact with international and foreign organisms in charge of monitoring the audio-visual sector, and in particular represent the Grand Duchy at the Contact Board to be implemented under the « audio-visual media services directive»<sup>2</sup> and at the permanent board to be implemented under (...) <sup>2</sup> the European Convention on transborder television;»
- f) work together with other public services with responsibilities in related fields and offer them its expertise.

(3) The «Service des médias et des communications»<sup>2</sup> is managed by a senior civil servant of the governmental administration who will be authorised to carry the title of Director.

(4) A grand ducal regulation will specify the internal organisation of the «Service des médias et des communications»<sup>2</sup>

**Art. 30. (...) (deleted by the Law of 27 August 2013) Art.**

**31. (...) (deleted by the Law of 27 August 2013) (Law of 6 January 2018)**

**«Art. 32.**

(1) A Service information et presse (Press and information service) will be created under the authority of the member of the Government in charge of the Presidency of the Government.

<sup>1</sup> New numbering of the chapters introduced by the Law of 2 April 2001.

<sup>2</sup> As amended/deleted by the Law of 17 December 2010.

<sup>3</sup> Deleted by the Law of 27 August 2013.

- (2) The missions of the Service information et presse consist in :
- a) providing information to the press, the media, the public and those interested in the activities of the State ;
  - b) defining and implementing a communication strategy of the Government with regard to the internet and social media ;
  - c) keeping the Government informed on subjects covered by the press and the media ;
  - d) assisting the Government and the administrations in the effort to increase the visibility of the Grand Duchy abroad and to cultivate its image at the national and international level ;
  - e) publishing and distributing documents and information of any type ;
  - f) defining and implementing an open data promotion strategy and access to information;
  - g) organising press conferences and other events ;
  - h) receiving foreign journalists and official visitors ;
  - i) facilitating the work of journalists and media representatives.

(3) The director is in charge of managing the administration and is the hierarchical head thereof.

The director is appointed by the Grand Duke upon proposal of the member of the Government in charge of the Presidency of the Government.

(4) Staff of the Service information et presse includes a director and civil servants of various salary categories as specified by the amended Law of 25 March 2015 on the salary regime and the conditions and modalities of civil servant careers.

Staff may be completed by candidate civil servants and employees paid by the State in line with the requirements of the service and within the limits of the budget.»

**Art. 33.** (...) (deleted by the Law of 26 February 2021)

#### B.- MISCELLANEOUS

##### «Art. 34. Advertising resources of the written press»<sup>1</sup>

(1) (...) (implicitly repealed by the Law of 3 August 1998 on the promotion of the written press)

(2) (...) (implicitly repealed by the Law of 3 August 1998 on the promotion of the written press)

(3) (...) (implicitly repealed by the Law of 3 August 1998 on the promotion of the written press)

(4) A commission of delegates of the Government, representatives of editors, of «press bodies subject to the regime for the promotion of the written press»<sup>1</sup> and experts chosen by mutual agreement, is in charge of monitoring and assessing the consequences of the introduction of new radio and television «services»<sup>2</sup> on the advertising resources of «press bodies subject to the regime for the promotion of the written press»<sup>1</sup>, and of proposing, if applicable, a compensation to be paid out of the State budget (...)»<sup>1</sup>.

(...)<sup>1</sup>

(Law of 17 December 2010)

##### «Art. 34bis. Information to be provided and records to be kept

(1) Any television or radio service «under the competence of the Grand Duchy of Luxembourg»<sup>3</sup> must regularly identify itself with regard to the public by its official denomination.

(2) Any audio-visual media services provider «under the competence of the Grand Duchy of Luxembourg»<sup>4</sup> must provide to the recipients of the service and the competent authorities easy, direct and permanent access to at least the following information:

- a) its name;
- b) the address where it is established;
- c) the coordinates, including its e-mail address or website, allowing a direct and efficient contact;
- d) the coordinates of the minister in charge of media and «of the Authority».

(3) Every television or radio service and every programme offered on demand must be recorded in its entirety and the recording must be kept for one month. In the event the programme is subject to a claim regarding the compliance with the present Law or the specifications, the recording must be kept for as long as it is likely to be used as evidence. This also applies to a programme subject to the right of reply or subsequent information in accordance with article 61 of the Law of 8 June 2004 on the freedom of expression in the media.

(4) A copy of the recording of a programme must be submitted on request to the supervisory authorities or the judicial bodies in charge of the claim regarding such programme.»

<sup>1</sup> As amended/deleted by the Law of 2 April 2001.

<sup>2</sup> As amended by the Law of 17 December 2010.

<sup>3</sup> Added by the Law of 27 August 2013.

<sup>4</sup> Added by the Law of 26 February 2021.

*(Law of 26 February 2021)*

**«Art. 34ter. Information exchange**

(1) The minister in charge of media communicates to the European Commission or to the regulating authorities or organisms of the other Member states the necessary information for the purpose of the application of articles 2bis, 23quater, paragraph 1, and 25.

(2) In the context of the information exchange under paragraph (1), in the event the minister in charge of media receives information from an audio-visual media service provider under the competence of Grand Duchy of Luxembourg, specifying that such provider will offer services that are entirely or mainly targeting the public of another Member state, the minister in charge of media informs the regulating authorities or organisms of the target Member state.

(3) In the event the regulating authorities or organisms of a Member state, of which the territory is the target of a Luxembourg audio-visual media service provider, submits a request regarding the activities of this provider to the minister in charge of media, the latter will undertake best efforts to process this request within two months, without prejudice to shorter deadlines that may apply.

In case of such request the minister in charge of media provides the regulating authorities or organisms of the competent Member states with an information likely to help them process the request.

(4) In the exercise of its powers and the fulfilment of its missions, the Authority exchanges information with the other national regulation authorities or organisms and the European Commission, should this is necessary for the fulfilment of their missions.»

*(Law of 27 August 2013)*

**«Chapter VII. - Monitoring and application of the Law**

**Art. 35. The « Autorité luxembourgeoise indépendante de l'audiovisuel » (the Authority)**

(1) The Authority is a public institution of independent administrative type with a legal personality.

The main office of the Authority is located in Luxembourg. It can be transferred at any time to any other locality of the Grand Duchy of Luxembourg by a grand ducal regulation.

The Authority has financial and administrative autonomy under the guardianship of the minister in charge of media.

It carries out in full independence and in compliance with the objectives defined in article 1 of the present Law, the missions entrusted to it pursuant to the present Law.»

*(Law of 26 February 2021)*

«It does not request or accept instructions from any other body on the fulfilment of the tasks assigned to it.

It is exercising its powers in an impartial, independent and transparent way.»

*(Law of 27 August 2013)*

«(2) The mission of the Authority is:

- a) to allocate and withdraw the permissions referred to in articles 15 to 18 of the present Law,
- b) to prepare proposals to warrant an increased choice and balance of programme elements for the resident public, in particular for the implementation of the provisions of article 12, paragraph (2), letter e), and article 14, paragraph (5) of the present Law,»

*(Law of 26 February 2021)*

«c) to encourage audio-visual media service providers to make their services continuously and progressively more accessible to disabled people,»

*(Law of 27 August 2013)*

«d) to encourage audio-visual media service providers to define codes of deontology on inappropriate audio-visual commercial communications during programmes for children or included in such programmes, and on food products or beverages containing nutrients or substances with a nutritional or psychologic effect, such as fat, trans fatty acids, salt/sodium and sugar, the presence in excessive quantities in the overall nutritional regime is not recommended,

- e) to encourage on-demand audio-visual media service providers under its competence to ensure that the on-demand services they are offering promote, to the extent feasible and with appropriate means, European products as well as the access to the latter,
- f) to exercise the powers conferred under article 6 of the Law of 20 April 2009 on the access to public cinematographic representations,
- g) to supervise, monitor and ensure compliance with the legal and regulatory provisions and the provisions of the specifications of audio-visual or audio media services under the competence of Luxembourg authorities in application of the present Law, either because they are the beneficiaries of a licence or permission granted pursuant to the present Law or because they have notified their services in accordance with article 23bis, 23ter or 23quater (2) of the present Law.



*(Law of 14 December 2015)*

«h) to exercise the powers conferred under articles 2 and 4 of the Law of 14 December 2015 on political opinion polls and amending 1. the amended electoral Law of 18 February 2003; 2. the amended Law of 27 July 1991 on electronic media; 3. the amended Law of 4 February 2005 on national referendums.»

*(Law of 26 February 2021)*

- «i) to encourage the use of coregulation and the promotion of self-regulation based on codes of conduct prepared by audio-visual media service providers, video sharing platform service providers or organisations representing them, in cooperation, if applicable, with other sectors as industrial, commercial, professional or consumer associations or organisations. Such codes will be designed to be widely accepted by the main actors; they define their objectives in a clear and unambiguous way; they specify how the implementation of these objectives is monitored and assessed on a regular, transparent and independent basis; and they warrant the efficient implementation thereof, in particular through efficient and proportionate sanctions,
- j) to encourage the development of media education for citizens of any age and in all sectors of society,
- k) to implement mechanisms to assess the appropriate type of measures taken by video sharing platforms pursuant to article 28septies, paragraph 3,
- l) to make available to users and video sharing platform providers a mechanism for extra-judicial settlement of disputes.»

*(Law of 22 July 2022)*

«m) to determine the guidelines regarding the conditions for the production, programming and broadcasting of electoral messages of the political parties and candidate groupings as well as the programmes relating to the electoral media campaign that providers of audio-video or audio media services with a public service mission must broadcast. The determination of the guidelines is made in close collaboration with the above-named providers of audio-video or audio media services as well as with the political parties and candidate groupings.

n) to determine the guidelines regarding the conditions for the production, programming and broadcasting of political information programmes reserved to the political parties and candidate groupings that providers of audio-video or audio media services with a public service mission must broadcast outside the electoral media campaigns.»

*(Law of 27 August 2013)*

«(3) The Authority will be consulted by the Minister in charge of media before granting a licence or permission applied for in accordance with articles 9, 10bis, 12, 13, 19, 21 and 23, as well as prior to the withdrawal of a permission or licence referred to above.»

*(Law of 27 August 2013)*

#### **«Art. 35bis. Bodies of the Authority**

The bodies of the Authority are the Board of directors, the director and the consultative assembly.

##### **A. Board of directors**

(1) 1. Competences of the Board of directors:

- a) It rules on the admissibility of a complaint and the launch of an investigation, acknowledges violations of the present Law and the regulations taken for the implementation thereof, as well as failures to meet the obligations of licences, permissions and pertaining charges and pronounces, if applicable, one of the penalties specified by article 35sexies of the present Law, after hearing the opinion of the director.
  - b) Should the Board of directors arrive at the conclusion that the facts revealed by the investigation do not represent a failure with regard to the provisions of the present Law and that no provision of the present Law was violated, it decides to drop the charges.
  - c) Should the Board of directors deem useful, it may request the director to proceed with the investigation.
  - d) Also, should the Board deem useful, it may decide to hear the persons under investigation.
2. It prepares a prior opinion on every application for a licence or permission submitted to it by the minister in charge of media and before any decision of withdrawal to be pronounced by the Government.
  3. It allocates and withdraws the permissions referred to in articles 15 to 18 of the present Law.
  4. It approves the internal regulation as well as the procedural rules governing the investigation prepared by the director.
  5. It approves the budget and the annual accounts of the Authority.
  6. It approves the management report prepared by the director and submits it to the Government in accordance with article 35quinquies, paragraph (6).
  7. It approves its internal regulation.
  8. It appoints the réviseur d'entreprise agréé (independent auditor) of the Authority.
  9. It approves the decisions of the director as well as the administrative acts likely to impact the budget.
  10. It approves the staff inventory and submits, in case of a vacancy, proposals to the competent authorities upon opinion of the director.
  11. It issues an opinion on the applicants for the position of director.
  12. It performs the missions entrusted to the Authority by article 6 of the Law of 20 April 2009 on the access to public cinematographic representations.

The decisions sub 5), to the extent they regard the budget, and sub 8) are submitted for approval to the competent minister, the decisions sub 5), to the extent they regard the annual accounts, and sub 10) are submitted for approval to the Government council.

## (2) Composition of the Board of directors

The Board of directors has 5 members, including a chairman, appointed by the Grand Duke upon proposal of the Government council.

The chairman represents the Authority at the judicial and extra-judicial level.

The members of the Board of directors may not be members of the Government, the Chambre des Deputés, the State council or the European parliament. They may not hold a mandate at the municipal level or an office or mandate at the level of the monitoring of the Authority nor hold, directly or indirectly, interests in an undertaking or any other organism under the competence of the Council.

They are appointed for a renewable term of 5 years.

The appointment of a new member in replacement of a resigning, deceased or permanently incapacitated member must occur in the shortest possible time under the modalities specified in the previous paragraphs. Such members are appointed for the remaining time of the mandate of the member they are replacing.

The Board of directors appoints a secretary among the agents of the Authority.

The members of the Board of directors as well as the secretary receive a monthly compensation to be paid by the Authority. This compensation is determined by a grand ducal regulation based on the extent and importance of their respective tasks.

## (3) Functioning of the Board of directors

The Board of directors meets as often as required for the performance of its missions. It is called by the chairman, or if the latter is prevented, by the most senior member.

Meetings must be called upon request of three members at least or upon request of the director.

Deliberations of the Board of directors are valid if the majority of the members are present. A member of the Board of directors may only represent one other member. Power of attorney may only be given to another member of the Board of directors.

Decisions of the Board of directors are taken at the simple majority of the members present.

Deliberations of the Board of directors are secret. Decisions of the Board of directors to drop the charges with regard to a complaint or an investigation, those ordering the continuation of the investigation or pronouncing a penalty are published.

« (Law of 22 July 2022)

The Board of Directors publishes the guidelines referred to in article 35, paragraph 2, letters m) and n) as well as a report on the conduct of every electoral media campaign.»

## **B. Director**

### (1) Modalities for the appointment of the director:

The director is appointed by the Grand Duke, upon proposal of the Government council and upon opinion of the Board of directors for a renewable term of 5 years.

The Government council may, after requesting the opinion of the Board of directors, propose to the Grand Duke to revoke the director should the latter be permanently incapacitated to perform his functions or if he no longer meets the conditions required for such functions.

The director must be holder of a university degree of the level of master or a diploma recognised as equivalent.

The director is a civil servant.

The director may not be a member of the Government, of the Chambre des Deputés, of the State council or the European parliament. He may not hold a mandate at the municipal level or exercise an activity that is incompatible with his function, nor directly or indirectly hold interest in an undertaking or any other organism under the competence of the Authority.

### (2) Missions of the director

The director monitors the compliance with the legal provisions of the present Law, the regulations taken for its implementation and the provisions of the licences and permissions as well as of the pertaining specifications.

1. Complaints submitted to the Authority are transmitted, after they were checked as to their admissibility by the Board of directors, to the director to be investigated.

2. The director is in charge of the investigation. At the end of the investigation, he submits the file to the Board of directors proposing either to close the investigation without further prosecution or to pronounce one of the penalties provided in article 35sexies.

He has an advisory role at the meetings of the Board of directors, unless otherwise decided by the Board of directors.

3. He performs any acts of administrative management and implements the decisions of the Board of directors.

4. He is the hierarchical head of the staff of the Authority.

5. He prepares internal regulations as well as the procedural rules for the investigation, which will enter into force after they were approved by the Board of directors.

6. He establishes or requests the establishment of the annual accounts and the budget as well as the management report and submits them to the Board of directors for approval.»

*(Law of 27 August 2013)*

**«Art. 35ter. Consultative assembly**

(1) The consultative assembly is the advisory body of the Authority with a maximum of twenty-five members, delegated for five years by the most representative organisations of social and cultural life of the country. A grand ducal decree with determine the list of represented organisations and the number of their delegates.

(2) It may only validly decide if the majority of its members are present. Deliberations are adopted at the majority of the members present. In case of a tie, the vote of the chairman shall prevail.

Deliberations of the assembly are secret.

The director assists the deliberations of the assembly with an advisory vote.

(3) It prepares internal regulations specifying the modalities of the internal operation.

(4) It has the following missions:

1. it must be consulted in the context of an investigation regarding articles 26bis, 27ter, 28quater and 28quinquies of the present Law;
2. it must be consulted if the Authority received a complaint in accordance with article 6 paragraph 2 of the Law of 20 April 2009 on the access of cinematographic representations;
3. it can be consulted, upon decision of the Board of directors, in the context of other powers of the Authority.

The members of the consultative assembly receive a fee to be paid by the Authority, which will be determined by a grand ducal regulation.»

*(Law of 27 August 2013)*

**«Art. 35quater Staff»**

*(Law of 26 February 2021)*

«(1) Staff of the Authority includes civil servants of various salary categories as provided by the amended Law of 25 March 2015 on the salary regime and the conditions and modalities of civil servant careers.»

*(Law of 27 August 2013)*

«(2) Staff as provided in paragraph (1) above can be completed by candidate civil servants and employees of the State «as may be required by the service and»<sup>1</sup> within the limits of the available budget.

(3) The director may, upon approval of the Board of directors, in specific and punctual cases, use external experts of which the services are defined and retributed on the basis of a contract under private Law.»

*(Law of 27 August 2013)*

**«Art. 35quinquies. Financial provisions**

(1) The Authority receives an annual dotation from the state budget. The State makes available the necessary premises for the good operation and the fulfilment of its missions.

(2) The Authority may take the part of its staff and operational costs not covered by the annual funding allocated by the state budget from fees to be levied from audio-visual media service providers or persons submitted to its supervision.

A grand ducal regulation will determine the amount of the fees and the implementation modalities of the present paragraph.

(3) The accounts of the Authority are kept based on the principles and modalities of corporate accounting. The financial year of the Authority coincides with the calendar year.

At the closing of the financial year, the director prepares a draft balance sheet and profit and loss accounts and submits them to the Board of directors for approval.

(4) An auditor appointed by the Board of directors is in charge of auditing the accounts of the Authority and the regularity of the operations that were carried out as well as of the accounting records.

The auditor must meet the conditions required by the Law of 18 December 2009 on the audit profession.

The auditor is appointed for a renewable mandate of three years. The auditor is paid by the Authority. The auditor submits his report to the Board of directors not later than the first of April. He can be asked by the Board of directors to make specific verifications.

(5) Each year before 30 April, the director prepares a draft budget for the following year and submits this to the approval of the Board of directors.

(6) Not later than the first of May the Board of directors submits the annual account to the Government together with a management report as well as the report of the auditor. The Government council decides on the discharge to be granted to the bodies of the Authority. This decision as well as the annual accounts will be published in the Memorial (Official journal).

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<sup>1</sup> Added by the Law of 26 February 2021.

(7) The financial management of the Authority is subject to the supervision of the Cour des Comptes (Court of Audit).»

*(Law of 27 August 2013)*

**«Art. 35sexies. Penalties**

(1) Any natural or legal person, residing or not in the Grand Duchy of Luxembourg, may submit a written complaint to the Authority regarding the non-compliance by an audio-visual or radio media service under the competence of Luxembourg with a provision of the present Law or taken for the implementation of the present Law or a specification.

(2) Complaints are registered and the plaintiff receives an acknowledgment of receipt. The Authority immediately informs the provider of the relevant media service. The latter must keep a copy of the recording of the disputed programme, if such recording is still available given the deadline specified under 34bis (3). The Authority may request the communication of the recording and also allow the plaintiff to take knowledge of this recording.

(3) Should the Authority become aware, either upon its own initiative or through a complaint, of a failure of an audio-visual or radio media service provider offering an audio-visual or radio media service referred to by the present Law, to comply with the provisions of articles 3, 5, 13(3), 15(6), 17(4), 17(5), 18(3), 20, 21(1), 21(2), 22(1), 22(4), 23(1), 23(2), 23bis, 23ter, 23quater (2), 23quater (3), 23quater (4), 25(1), 25(5), 26bis, 27, 27bis, «27ter,»<sup>1</sup> 28, 28bis, 28ter, 28quater, 28quinquies, 28sexies «28septies,»<sup>1</sup> 34, 35quinquies (2), with a provision of one of the grand ducal regulations taken for the implementation of the present Law as well as with the provisions of the licences/permissions and pertaining specifications, it invites this provider by registered letter to submit explanations. This procedure may however not be launched for facts dating back more than one year. Should the Authority come to the conclusion, at the end of the procedure, that the service has obviously, seriously and severely violated the applicable provisions, it will pronounce, based on the seriousness of the facts, one of the following disciplinary penalties:

- a) a reprimand,
- b) a reprimand with the obligation to read a press release during the airtime,
- c) a fine between 250 and 25,000 Euro.

Reprimands and fines can be pronounced only if failures are not leading to a criminal penalty.

(4) In all the cases referred to in the present article, the decision is taken after a procedure conducted in the presence of all parties, after hearing the media service provider as to his arguments of defence or duly convened by registered letter. The media service provider can be assisted or represented.

(5) If a media service provider does not comply with the provisions referred to in paragraph (3) after a fine was pronounced pursuant to paragraph (3), or in case of a new violation of the same provision within six months after the fine was pronounced, the maximum of the fine referred to in paragraph (3) c) can be doubled, or the Authority can,

- for an audio-visual media service referred to in articles 9, 10bis, 12, 13, 14, 19, 21 and 23 of the present Law, report this to the minister in charge of the Authority and propose the temporary suspension or the withdrawal of the permission or licence;
- for an audio-visual media service referred to in articles 23bis, 23ter or 23quater of the present Law, report this to the minister in charge of the Authority and propose the temporary suspension or permanent interdiction. For a service referred to under article 23quater, the interdiction will lead to the prohibition to use the Luxembourg uplink or satellite capacity;
- for a radio media service referred to in articles 15 to 18 of the present Law, pronounce the temporary suspension or the withdrawal of the permission.

In the cases referred to under the first two indents of the present article, the Government, upon proposal of the minister in charge of the Authority, will pronounce the penalty without that the latter may be higher than the one proposed by the Authority in its report.

(6) Withdrawal decisions are subject to publication in the Memorial (Official journal).

(7) An appeal before the administrative courts is possible against the decisions of the Authority taken pursuant to the present article.

(8) The collection of fines pronounced in accordance with paragraphs (3) and (5) above is performed by the Administration de l'enregistrement et des domaines (Registration department) in the same way as for registration fees.»

*(Law of 26 February 2021)*

**«Art. 35septies. Extra-judicial settlement of disputes for users and providers of video sharing platforms**

A grand ducal regulation determines the procedural rules applicable to requests for extra-judicial settlement of complaints submitted to the Authority.»

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<sup>1</sup> inserted by the Law of 26 February 2021.

*(Law of 26 February 2021)*

**«Art. 35octies. Request for information**

(1) For the performance of its tasks assigned by the present Law, the Authority may request media service providers to provide any necessary information. The request is submitted, and the penalty payment provided under article 35nonies is determined, in accordance with their field of competence, either by the Board of directors or by the director.

(2) Should the Authority request media service providers to provide information, it shall specify, in order for the request to be valid, the legal basis and the purpose of the request, the information requested and the deadline for such information to be provided, such deadline may not be less than one month. The Authority also specifies the penalties provided under 35sexies and 35nonies and the terms of appeal and procedures before the administrative court.

(3) The requested information shall be provided by the managers, the executive officers or, in absence thereof, by the chairman of the board of directors, or other legal or de facto managers. Duly mandated lawyers may provide the requested information in the name of their clients. The latter remain fully liable for the correct, complete and unaltered content of the requested information.

(4) These requests for information will not oblige the recipient of the request to admit the existence of a violation of the Law.»

*(Law of 26 February 2021)*

**«Art. 35nonies. Penalty payments**

(1) The Authority may, by way of a decision, require penalty payments from media service providers of a daily amount between 200 Euro and 2,000 Euro for each day of delay as of the date provided in the decision, to force them to provide the correct, complete and unaltered information within the required deadline pursuant to a decision taken in application of article 35octies, paragraph 2. The amount of the penalty payment will, in particular, be based on the economic capacity of the relevant person.

(2) Should media service providers have complied with the obligation, which was subject to the penalty payment, the Authority may determine the final amount of such payment to be lower than the one specified in the initial decision.

(3) The collection of fines pronounced in accordance with paragraphs (3) and (5) above is performed by the Administration de l'enregistrement et des domaines (Registration department) in the same way as for registration fees.»

(4) Penalty payments inflicted by the Authority are subject to appeal before the administrative court.»

**Art. 36.** (...) *(repealed by the Law of 8 June 2004)*

**Art. 37.** (...) *(repealed by the Law of 8 June 2004)*

**Art. 38.** (...) *(repealed by the Law of 27 August 2013)*

**Art. 39. Entry into force and transitory provisions**

(1) The present Law will enter into force on the first day of the second month after its publication in the Memorial.

(2) By derogation to paragraph (1), the provisions of chapter «V»<sup>1</sup> will enter into force on 1 October 1991.

(3) (...) *(implicitly repealed by the Law of 21 March 1997 on telecommunications)*

(4) Any legal provision contrary to the present Law is repealed as of the entry into force of the present Law.

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<sup>1</sup> Implicitly amended by the Law of 2 April 2001.