

## The Legislative Framework for the Media in Luxembourg

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### Law on the creation of ALIA

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**Law of 27 August 2013 creating the public '*Autorité luxembourgeoise indépendante de l'audiovisuel*' and amending:**

- 1. the Law of 27 July 1991 on the Electronic Media as amended;**
- 2. the Law of 22 June 1963 establishing the System of Remuneration for Civil Servants as amended; and**
- 3. the Law of 20 April 2009 on Access to Public Cinematographic Performances.**

**Official Journal:** Mém. A N° 163 of 9 September 2013, p. 3114-3120

We, Henri, Grand Duke of Luxembourg, Duke of Nassau,

Having heard our Council of State,

With the consent of the Chamber of Deputies;

Having regard to the decision of the Chamber of Deputies of 10 July 2013; and to the decision of the Council of State of 12 July 2013 dispensing with a second vote;

Have ordered and do order that:

**Art. 1.** In all provisions of the Law of 27 July 1991 on the Electronic Media as amended, the terms '*Committee national des programmes*' (National Programme Committee) and '*Commission indépendante de la radiodiffusion*' (Independent Broadcasting Commission) shall be replaced by 'the Authority'.

**Art. 2.** Article 2 of the same law shall be supplemented by a new point 1) as follows:

'1) 'Authority', the *Autorité luxembourgeoise indépendante de l'audiovisuel* (Independent Luxembourg Audiovisual Authority);

The current wording of article 2 shall be maintained without change but the definitions at 1 to 28 shall now be renumbered 2 to 29.'

**Art. 3.** In article 3(4) of the same law, the words 'article 35' shall be replaced by 'article 35sexies'.

**Art. 4.** In article 5 of the same law a new sentence shall be added as follows:

'Should a concession or permit not be operated for one year, the licence may be withdrawn.'

**Art. 5.** In article 9, sub-sections (2) and (3) of the same law, the two references to 'figure 23)' shall be replaced by 'point 24)'.

**Art. 6.** In article 14(5) of the same law the following amendments shall be made:

1. The word 'authorised' in the first sentence shall be shown in its feminine form. In the second sentence the masculine form of 'it' shall be replaced by the feminine form of the same word and the adjective 'responsible' shall be used in its feminine form.

2. The final sentence shall be deleted.

**Art. 7.** In article 21(5) of the same law, the words 'article 35' shall be replaced by 'article 35sexies'.

**Art. 8.** In article 23(4) of the same law, the words 'article 35' shall be replaced by 'article 35sexies'.

**Art. 9.** In the final sentence of article 23*bis* of the same law, the words 'to the Media Minister and to' shall be deleted and replaced by 'to' and the word 'them' occurring after 'supply' and 'permit' shall in each case be replaced by 'it'.

**Art. 10.** In the last sentence of article 23*ter* of the same law, the words 'to the Media Minister and to' shall be deleted and replaced by 'to' and the word 'them' occurring after 'supply' and 'permit' shall in each case be replaced by 'it'.

**Art. 11.** The following amendments shall be made to article 23*quater* of the same law:

1. In the last sentence of (2), the words 'to the Media Minister and to' shall be deleted and replaced by 'to' and the word 'them' occurring after 'supply' and 'permit' shall in each case be replaced by 'it'.

2. The following sentence shall be added under (3) of the same article: 'The notification required under this sub-section may also be made by the person performing the duty referred to in (2) hereabove'.

3. In the first sentence of (4) of the same article, the words 'in chapter V' shall be followed by 'and article 34*bis* of this law'.

**Art. 12.** Article 25 of the same law shall be amended as follows:

1- In (1) the two occurrences of the words 'article 35' shall be replaced by 'article 35sexies'.

2. At (4), the word 'heard' shall be used in the feminine form.

**Art. 13.** Article 28<sup>ter</sup> of the same law shall be amended as follows:

1. At (2), after the words 'if the provider of the television service' shall be added 'requiring access'.
2. At (4) the words 'the same broadcast is offered' shall be replaced by 'the same programme is offered'.

**Art. 14.** At article 29(2)(d) of the same law, the words 'the *Commission indépendante de la radiodiffusion* created under article 30, the *Committee national des programmes* created under article 31' shall be deleted.

**Art. 15.** Article 30 of the same law is deleted.

**Art. 16.** Article 31 of the same law is deleted.

**Art. 17.** Article 34<sup>bis</sup>(1) of the same law shall be supplemented as follows:

The words 'every television and radio station' shall be followed by 'falling within the authority of the Grand Duchy of Luxembourg'.

**Art. 18.** Article 34<sup>bis</sup> of the same law shall be followed by a new chapter VII that shall include articles 35 to 35<sup>sexies</sup> and shall be entitled 'Monitoring application of the law'.

**Art. 19.** Article 35 of the same law shall be amended as follows:

#### **Chapter VII 'Monitoring application of the law'**

'Art. 35. **The *Autorité luxembourgeoise indépendante de l'audiovisuel***

(1) The Authority is an independent administrative public body with a legal personality. The registered office of the Authority is in Luxembourg. It may be transferred at any time to any other location in Luxembourg by Grand Ducal order.

The Authority is financially and administratively independent and reports to the Media Minister.

It operates totally independently in pursuance of the objectives set out in article 1 of this law and of its duties under this law.

(2) The duties of the Authority are to:

- a) grant and withdraw the permits specified in articles 15 to 18 hereabove;
- b) develop proposals for that will ensure increased choice and a better balance of programmes for the resident public, particularly with respect to the implementation of articles 12(2)(e) and 14(5) of this law;

c) encourage the providers of audiovisual media services that fall within its scope to ensure that the services they offer become increasingly accessible to persons who are sight or hearing impaired;

d) encourage the providers of audiovisual media services to develop ethical codes on inappropriate commercial audiovisual communications that are broadcast to accompany, or broadcast during, children's programmes, where such communications concern foods or drinks that contain nutrients or substances with a nutritional or physiological effect, such as fats, trans fatty acids, salt/sodium or sugars, and whose inclusion in the diet in excessive quantities is not recommended;

e) encourage the providers of on-demand audiovisual media services that fall within its scope to ensure that, where possible and using appropriate means, the on-demand services they offer promote the production of, and access to, European works;

f) exercise its powers under article 6 of the Law of 20 April 2009 on Access to Public Cinematographic Performances;

g) supervise, control and ensure compliance with the law, regulations and specifications by audiovisual and sound media services that fall within the scope of the Luxembourg authorities under this law, either because they have received a concession or permit under this law, or because they have reported their services pursuant to article 23*bis*, 23*ter* or 23*quater* (2) of this law.

(3) The Authority shall be consulted by the Media Minister before any request for a concession or permit is granted under articles 9, 10*bis*, 12, 13, 19, 21 or 23, and before withdrawal of any such permit or concession.'

**Art. 20.** A new article 35*bis* shall be inserted after article 35 of the same law as follows:

'Art. 35*bis*. **Authority executive**

The Authority executive comprises the Board of Directors, the Director and the Consultative Committee.

A. The Board of Directors

(1) 1. Duties of the Board of Directors

a) It decides on the admissibility of complaints and the start of investigations, identifies violations of this law and its implementing regulations and failures to perform the duties connected with concessions, permits and their associated obligations, and where appropriate imposes one of the penalties set out in article 35*sexies* of this law after having obtained the opinion of the Director.

b) Where the Board of Directors concludes that the facts stated in the investigation file do not constitute failure to comply with this law and that no provision of this law has been violated, it shall dismiss the case.

- c) The Board of Directors may, if it wishes, request the Director to carry out an additional investigation.
- d) Similarly, the Committee may, if it wishes, itself question the persons investigated.
2. It gives a preliminary opinion on all requests for concessions and permits put to it by the Media Minister and before any Government decision to withdraw a concession or permit.
  3. It grants and withdraws the permits referred to in articles 15 to 18 of this law.
  4. It approves the internal regulations and rules of procedure for investigations that have been prepared by the Director.
  5. It closes the Authority's budget and annual accounts.
  6. It approves the management report prepared by the Director and submits it to the Government pursuant to article 35*quinquies*(6).
  7. It decides its own internal regulations.
  8. It appoints the registered auditor of the Authority.
  9. It approves the actions of the Director and all administration actions that may be charged to the budget.
  10. It approves the statement of employees and in the event of vacancies makes recommendations to the relevant authorities, having first obtained the opinion of the Director.
  11. It issues opinions on candidates for the position of Director.
  12. It performs the duties entrusted to the Authority under article 6 of the Law of 20 April 2009 on Access to Public Cinematographic Performances.

Decisions concerning the budget referred to under 5 hereabove and those under 8 hereabove are submitted for approval to the relevant minister. Decisions concerning the annual accounts referred to under 5 hereabove and those under 10 hereabove are submitted for approval to the Governing Committee.

## (2) Composition of the Board of Directors

The Board of Directors has 5 members, one of whom is its Chairman and all of whom are appointed by the Grand Duke at the recommendation of the Government in Council.

The Chairman represents the Authority before the courts and out of court.

Members of the Board of Directors may not be members of the Government, the Chamber of Deputies, the Council of State or the European Parliament. They may not hold any municipal position, or position or mandate in any entity supervised by the Authority, nor may they hold any direct or indirect interest in any company or other body that comes within the scope of the Committee.

Their 5-year terms of office are renewable.

The replacement of Board members who have resigned or died or who are permanently incapable of performing their duties shall be made as quickly as possible in the manner set out

hereabove. The term of office of a replacement member is the remainder of the term of office of the member being replaced.

The Board of Directors selects a secretary from among the officers of the Authority.

Members of the Board of Directors and its secretary receive monthly remuneration from the Authority. The amount of their remuneration is set by Grand Ducal order based on the scope and extent of their respective duties.

### (3) Operation of the Board of Directors

The Board of Directors meets whenever its duties require. It is convened by the Chairman or if he/she is unable to do so by the member who is oldest in age.

It must be convened if a meeting is requested by at least three members or by the Director.

The Board of Directors is quorate when the majority of its members are present. Each member of the Board of Directors may act as proxy for no more than one other member. Proxies must be given exclusively to other members of the Board of Directors.

Decisions of the Board of Directors are taken by simple majority vote of members present.

All deliberations of the Board of Directors are secret. Decisions by the Board of Directors as to the dismissal of complaints and investigations, decisions ordering additional investigation and decisions applying a penalty are published.

## B. The Director

### (1) Appointment of the Director

The Director is appointed by the Grand Duke for a renewable 5-year term of office at the recommendation of the Government in Council and after having obtained the opinion of the Board of Directors.

The Government in Council may, having requested the opinion of the Board of Directors, recommend that the Grand Duke revoke the mandate of the Director if the latter is permanently incapable of performing his/her duties or no longer meets position requirements.

The Director shall hold a university Masters degree or recognised equivalent.

The Director is a civil servant.

The Director may not be a member of the Government, the Chamber of Deputies, the Council of State or the European Parliament.

He/she may not hold any municipal position, undertake any activity that is incompatible with his/her position, or hold any direct or indirect interest in any company or other body that comes within the scope of the Authority.

### (2) Duties of the Director

The Director supervises compliance with this law, its implementing regulations, the rules governing concessions and permits and their associated specifications.

1. Complaints addressed to the Authority shall be sent to the Director for action after the Board of Directors has checked their admissibility.
2. The Director manages investigations. Once an investigation is concluded, he/she shall submit the file to the Board of Directors, recommending either dismissal without action or application of one of the penalties specified in article 35*sexies* hereunder.  
He/she shall attend Board meetings in an advisory capacity unless otherwise decided by the Board of Directors.
3. He/she undertakes all administrative management and implements the decisions of the Board of Directors.
4. Authority personnel report to the Director.
5. The Director establishes the internal regulations and the procedural rules for investigations, which do not come into force until approved by the Board of Directors.
6. He/she prepares or has prepared the annual accounts, budget and management report and submits them to the Board of Directors for approval.'

**Art. 21.** A new article 35*ter* shall be inserted after article 35*bis* of the law as follows:

'Art. 35*ter*. **The Consultative Committee**

(1) The Consultative Committee is the consultative body of the Authority and has up to twenty-five members, each appointed for five years by the organisations that best represent the social and cultural life of the country. The list of organisations represented and the number of members each appoints is fixed by Grand Ducal order.

(2) The Consultative Committee is quorate when a majority of its members is present. Resolutions are adopted by majority vote of the members present. In the event of a tie, the Chairman has the casting vote.

The deliberations of the Consultative Committee are secret.

The Director attends the deliberations of the Committee in an advisory capacity.

(3) It establishes its own internal regulations governing its internal operation.

(4) It has the following duties:

1. it must be consulted in the event of investigations concerning articles 26*bis*, 27*ter*, 28*quater* and 28*quinquies* of this law;
2. it must be consulted if the Authority is seised within the meaning of article 6(2) of the Law of 20 April 2009 on Access to Cinematographic Performances;
3. it may be consulted by decision of the Board of Directors in connection with the other duties of the Authority.

The members of the Consultative Committee receive attendance fees from the Authority, the amount of which is set by Grand Ducal order.'



**Art. 22.** A new article 35*quater* shall be inserted after article 35*ter* of the law as follows:

'Art. 35*quater*. **Personnel structure**

(1) Apart from the Director, the personnel structure, organised by rank, includes the following functions and jobs:

1. senior administration career, seniority pay scale 12:

- a) first-class management advisors,
- b) management advisors,
- c) deputy management advisors,
- d) Government attachés, first class,
- e) Government attachés,

2. middle administration career, seniority pay scale 7:

- a) senior inspectors, first class,
- b) senior inspectors,
- c) inspectors,
- d) office managers,
- e) deputy office managers,
- f) chief editors,
- g) editors,

3. lower administration career, seniority pay scale 4:

- a) senior clerks, first class,
- b) senior clerks,
- c) clerks,
- d) deputy clerks,
- e) forwarding clerks.

(2) The structure at (1) hereabove may be supplemented by trainees, State employees and State workers subject to budget.

(3) The Director may, if approved by the Board of Directors and in particular and *ad hoc* circumstances, call on external experts whose services are specified and remunerated under private law contracts.'

**Art. 23.** A new article 35*quinquies* shall be inserted after article 35*quater* of the law as follows:

'Art. 35*quinquies*. **Financial**

(1) The Authority receives an annual contribution from the State budget. The State provides the property the Authority requires to be able to operate and perform its duties.

(2) The Authority may obtain the proportion of its payroll and operating costs that is not covered by the annual contribution from the State budget by taxing all providers of audiovisual media services and persons subject to its supervision.

The amount of the tax and the method of implementing this sub-section are set by Grand Ducal order.

(3) The Authority's accounts shall be kept in accordance with commercial accounting principles and methods.

The Authority's financial year is the calendar year.

At closing of each financial year, the Director prepares a draft balance sheet and a draft income statement and submits both to the Board of Directors for approval.

(4) An authorised auditor appointed by the Board of Directors audits the Authority's accounts and control the propriety of all transactions and accounting entries.

The authorised auditor shall meet the requirements of the Law of 18 December 2009 on the Audit Profession.

Auditors are appointed for a renewable three-year period. Their remuneration is for the account of the Authority. They submit their report to the Board of Directors by 1 April. The Board of Directors may require them to undertake specific controls.

5) Before 30 April each year the Director prepares a draft budget for the following year and submits it to the Board of Directors for approval.

(6) By 1 May the Board of Directors submits the annual accounts to the Government along with a management report and the audit report. The Government in Council decides whether to give discharge to the Authority executive. Both this decision and the annual accounts are published in the *Mémorial*.

(7) The Authority's financial management is subject to control by the Court of Accounts.'

**Art. 24.** A new article 35*sexies* shall be inserted after article 35*quinquies* of the Law as follows:

'Art. 35*sexies*. **Penalties**

(1) Physical and moral persons, whether or not resident in the Grand Duchy of Luxembourg, may submit written complaints to the Authority concerning non-compliance with this law, implementation of this law or specifications by any audiovisual or sound service subject to Luxembourg law.

(2) Complaints shall be registered and a receipt sent to the complainant. The Authority shall immediately inform the provider of the media services concerned. Said supplier shall keep a copy of the recording of the programme, so long as the recording is still available given the time limit set in article 34*bis*(3) hereunder.

The Authority may require receipt of the recording and may also ensure the complainant is able to see or hear the recording.

(3) Should the Authority become aware through its own actions or through a complaint that an audiovisual or sound media provider broadcasting an audiovisual or sound media service covered by 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, 28, 28bis, 28ter, 28quater, 28quinquies, 28sexies, 34 or 35quinquies(2) of this law has violated any Grand Ducal regulation implementing this law or any concession/permit or associated specification, it shall send the provider concerned a registered letter requesting explanations. Said procedure shall not apply to events that are over one year old. If the Authority concludes at the end of the procedure that the service manifestly, seriously and gravely violated the relevant provisions of the law, it shall order, based on the seriousness of the facts, one of the following penalties:

- a) reprimand,
- b) reprimand with duty to read an announcement on air,
- c) a fine of 250-25 000 euro.

Reprimands and fines may not be applied to violations that are subject to a criminal penalty.

(4) In all cases covered by this article, decisions shall follow procedures involving all parties, the media service provider either having presented a defence or having been duly summonsed to do so by registered letter. The media service provider may have legal assistance or be legally represented.

(5) Should a media service provider fail to comply with an order made in accordance with subsection (3) hereabove following the imposition of a fine under (3) hereabove or if it should repeat the same violation within six months of the fine order, the amount of the fine as per (3)(c) hereabove may be doubled or the Authority may:

- if an audiovisual media service within the meaning of articles 9, 10bis, 12, 13, 14, 19, 21 or 23 of this law is involved, inform the minister with responsibility for the Authority and recommend the temporary suspension or permanent withdrawal of the permit or concession;
- if an audiovisual media service within the meaning of articles 23bis, 23ter or 23quater is involved, inform the minister with responsibility for the Authority and recommend temporary suspension or a permanent ban.

In the case of services within the meaning of article 23quater, service bans shall include a ban on the use of the Luxembourg satellite uplink and capacity;

- if a sound media service within the meaning of articles 15 to 18 of this law is involved, order the temporary suspension or permanent withdrawal of its permit.

With regard to the first two bullet points in this article, the Government, acting on the recommendation of the minister responsible for the Authority, shall order the penalty, which may not be heavier than the penalty recommended by the Authority in its report.

(6) Decisions to withdraw licences shall be published in the *Mémorial*.

(7) Appeals from Authority decisions made by virtue of the present article may be brought before the administrative courts.

(8) Responsibility for the recovery of fines ordered under (3) and (5) hereabove lies with the *Administration de l'enregistrement et des domaines* (Indirect Tax Office and Registry), which shall act as in the case of register entries.'

**Art. 25.** Article 38 of the same law is repealed.

**Art. 26.** The **Law of 20 April 2009 on Access to Public Cinematographic Performances** shall be amended as follows:

1. In article 4(2), 'this shall apply as of 12 years of age' shall be replaced by 'this shall apply as of 6 years of age'.

2. Article 6 shall be replaced as follows:

'Art. 6. The *Autorité luxembourgeoise indépendante de l'Audiovisuel*, hereafter 'the Authority' shall control film ratings and compliance with, and the mandatory publication of, such ratings pursuant to article 3 hereabove.

In addition to taking action *proprio motu*, the Authority may also be seised by the Family, Justice, Culture or National Education Ministers and by the Luxembourg Committee for the Rights of the Child (the *Ombuds-Comité fir d'Rechter vum Kand*). Where different organisations apply different ratings, the Authority shall be seised of the matter as of right.

The Authority may change film ratings by issuing a decision with grounds. Authority ratings shall replace all previous ratings and shall apply to organisers and the public as of the date of the decision.'

**Art. 27.** The **Law of 22 June 1963 establishing the System of Civil Servant Remuneration** as amended shall be amended as follows:

1. In article 22(IV)(9), the following shall be added 'the Director of the *Autorité luxembourgeoise indépendante de l'Audiovisuel*'.

2. In Annex A – Classification of positions – under I (General Administration) '*Autorité luxembourgeoise indépendante de l'Audiovisuel* – Director' shall be added under grade 17.

3. In Annex D – Lower, middle and senior career paths – under I (General Administration) under 'Senior administration career path' and at seniority pay scale 12, 'Director of the *Autorité luxembourgeoise indépendante de l'Audiovisuel*' shall be added under grade 17.'

**Art. 28.** Subject to completion of at least ten years' service, State employees holding the educational qualifications required for admission to the senior career of Government attaché and who, before entry into effect of this law, had already been engaged by the *Committee national des programmes* (National Programme Committee) may be admitted to the career of

Government attaché without taking the examination for admission to the training course, the training course itself or the end of training course examination so long as they have passed a special examination, the terms and conditions of which shall be set by Grand Ducal order. Employees who have passed said examination shall obtain special entry to the civil service at the career level, grade and rank they had already attained before their special entry. Advancement in terms of grade and rank shall depend on the date of appointment. Further advancement along the new career path shall be subject to the relevant laws and regulations applying to civil servants. Civil servants to whom this provision applies may obtain special advancement to positions within the closed structure of their new careers if positions of equal grade have been obtained by equally ranked or immediately lower ranked civil servants within their new career paths.

**Art. 29.** This law shall come into effect on the first day of the third month after its publication in the *Mémorial*.

We order and instruct that this law be entered in the *Mémorial* to ensure its application and compliance by all concerned.