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TELEVISION WITHOUT FRONTIERS

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

(Communication from the Commission to the Council)

Part Six

Pages 209-331

PART SIX

HARMONIZATION OF LEGISLATION

To avoid repetition, the reader's attention is directed to Part Four of this Green Paper, which deals with the situation in each country, for any information concerning the relevant national broadcasting system or broadcasting legislation, for an indication of the various provisions governing broadcasting and for an explanation of the abbreviations used for broadcasting organizations, etc.

A. Rules on advertising

Radio and television advertising (broadcast advertising) is subject, in all the Member States, to rules and regulations of various types. These are made up partly of the law applying to advertising in general and partly of provisions specific to radio and television advertising. The regulations differ in directness and severity; in two Member States, broadcast advertising is forbidden.

It is obvious that a ban of this type can inhibit trans-frontier broadcasting of advertisements, but even less stringent regulations can hamper it. Such is the effect especially of differing levels of regulation of advertising.

This section gives an outline of the categories of relevant national rules and regulations (I), examines their effects on the common market and the need for harmonization (II) and discusses the scope for harmonization (III).

I. National legislation

1. Overview

For the purposes of this Green Paper, the main national laws applying to radio and television advertising can be broken down into the following categories; first and foremost, there are the rules and regulations which specifically determine whether and how broadcast advertising may be carried on, restricting TV advertising time, dealing with the form and content of advertisements and separating advertisements from other programmes; the second category is that of general law on advertising, particularly the law on the prevention of misleading or unfair advertising; the third category is made up of the advertising regulations for specific branches, particularly food and beverages, tobacco products, pharmaceuticals, cosmetics and textiles and also takes in related labelling and advertising rules as well as regulations on advertising by certain professions. Lastly, radio and television advertising is subject not only to national statutory provisions but also to self-regulation of a general or specific nature.

For the purpose of achieving freedom to provide broadcasting services, these rules and regulations have varying degrees of impact. By far the most significant are the specific advertising regulations for broadcasting, which generally apply to all advertisements in the relevant sphere and forbid broadcast advertisements altogether at certain times if they have a specific content or take specific forms. They can be expected to be the most direct and most perceptible obstacles to the freedom to provide broadcasting services. They certainly need to be dealt with in any analysis of harmonization measures (see Section 2 below).

The situation is different for general law on advertising and advertising regulations for specific branches. The relevant rules do not apply specifically to broadcast advertising, but normally to all forms of advertising and to all media. Broadcast advertising as such is neither forbidden nor in general restricted by these rules. It is only from time to time that a particular statement made during a broadcast advertisement may happen to conflict with the provisions of general or specific advertising law, for example because it is regarded as misleading or flouting the advertising rules for medicines. Sanctions are directed only against that statement in the advertisement. Retransmission of the statement in question may be prohibited and, in the worst hypothesis, the advertiser may be punished. But broadcast advertising as a whole is not normally restricted by such rules.

The differences in general and specific advertising law may, in certain cases, act as an obstacle to cross-frontier broadcast advertising and hamper the dissemination of individual advertising messages across internal frontiers. Even so, they should be excluded from this analysis because, on the one hand, they do not act as obstacles generally but only in isolated, individual cases and, on the other, they can be dealt with only as part of a general and comprehensive harmonization drive. The proposal for a directive on misleading and unfair advertising, drafted in 1978 and amended in 1979,[1] thus covers "advertising" generally, defined in Article 2 of the proposal as "the making of a representation in any form in the course of a trade, business or profession for the purpose of promoting the supply of goods or services". Broadcast advertising transmitted via satellite or by cable is clearly caught by this definition.

The same applies to specific advertising rules for certain branches of the economy such as foodstuffs, pharmaceuticals, textiles and the like. Where moves towards harmonization have already been launched in those areas, they rightly extend to all forms of advertising, including broadcast advertising. Thus, Article 1(2) of the proposal of 13 April 1981 for a directive on the approximation of the laws in the Member Staes relating to claims made in the labelling, presentation and advertising of foodstuffs for sale to the ultimate consumer[2] gives the following definition of a "claim": "any statement intended to promote the sale of a foodstuff, transmitted by any medium, including generic advertising". Subsequent work on harmonization should also avoid any media-specific fragmentation of the relevant provisions. In the general and the specific law on advertising and competition, all advertising media should, as a matter of principle, be treated on equal terms. Any obstacles to broadcast advertising should be removed as part of the general harmonization process. We must, therefore, exclude from the following analysis of harmonization as it affects the individual media the general law on advertising and competition and the specific law in both areas as it is applied to particular branches of the economy.

However, one exception must be made: the bans on advertising applicable to specific goods and/or services, particularly tobacco products and alcoholic beverages. In some Member States, bans on advertising of this sort form part of the regulations relating specifically to broadcast advertising while, in others, they are contained in the general law on advertising or in the law on advertising in specific branches, which once again applies to specific media or is general in scope. Lastly, bans are imposed on advertising under semi-official or voluntary self-regulation arrangements. For the purposes of our harmonization study, it is irrelevant which laws or other arrangements provide for a ban on advertising. They must all be taken into account. This is because they not only have an ad hoc or sporadic effect in individual cases but also prohibit advertising for specific products and/or services in a general and absolute manner and can, therefore, be equated with a partial ban on broadcast advertising. Bans on advertising for specific products and/or services must, therefore, be dealt with after the media-specific

[1] OJ No C 70, 21.3.1978, p.4; OJ No C 194, 1.8.1979, p.3.
[2] OJ No C 198, 6.8.1981, p.4.

advertising regulations where they can be isolated from the specific law on advertising and are likely to have an appreciable effect on the cross-frontier provision of services (see Section 3).

In this context, special attention should be paid to regulatory arrangements, particularly self-regulation, whether they exist on a purely voluntary basis or whether they have been established by statute or in some other way with State involvement. General arrangements or arrangements tailored to specific branches are of less interest here. They are the counterpart to general and specific law on advertising and competition and they too have at best a sporadic and ad hoc effect on broadcast advertising; they can therefore be dealt with only as part of a general harmonization programme, and not as part of a harmonization process confined to specific media. Accordingly, the proposal for a directive on misleading and unfair advertising includes in its scope such self-regulatory arrangements as exist in the Member States (see Articles 5 and 6).

For the purposes of this Green Paper, it is the regulatory bodies set up specifically for broadcast advertising that are important; such bodies have been set up by a number of broadcasting authorities in particular or operate at national level though their responsibility is confined to broadcast advertising. These will be dealt with following discussion of the national broadcast advertising regulations (see Section 4).

2. Broadcast advertising regulations in the individual Member States

(a) Member States in which broadcast advertising is forbidden

Denmark

Although not expressly laid down, an advertising ban applies to Danmarks Radio, which broadcasts one national television programme and three national radio programmes, together with regional radio programmes. It is laid down in Section 6 of the Broadcasting Act of 1973 that Danmarks Radio is to be financed by fees levied for the use of radio and television receiving apparatus. Section 15 provides that the State may make grants for the fulfilment of specific tasks. The Act leaves no scope for revenue from commercial advertising.

Even in the cases where the Minister of Culture has given authorization under Section 3(2) for the trial operation of "active" local cable television, financing from advertising is not permitted. The cable programmes are financed by the cable subscribers and partly through contributions from local authorities and central government.

However, cable operators in Denmark are allowed to relay advertisements contained in foreign broadcasting programmes ("passive" cable broadcasting). This is apparent from Section 3(1) of the Act, whereby foreign programmes have to be transmitted unchanged and simultaneously. The following is an extract from the observations on the proposal amending the 1973 Broadcasting Act made by the Minister for Culture on 12 February 1984:[1]

"The Ministry of Culture has considered ... whether the /proposed/ wider transmission of foreign programmes /received via microwave links, long-distance cable and telecommunications satellites/ by Danish cable networks necessitates special provisions relating to responsibility for the content of the programmes relayed, including provisions on the content of any advertising. The Minsitry of Culture is, however, of the opinion that there is not at the moment a sufficient basis for proposals for such new provisions. In this connection, it would point out in particular that the synchronous retransmission unchanged of neighbouring countries' television programmes via Danish cable networks has not yet given rise to any problems of responsibility and that so far we have not experienced any problems of responsibility in connection with the transmission via Danish cable networks of foreign programmes beamed from telecommunications satellites".

[1] Lovforslag nr. L 42, Folketinget 1983-84 (2. samling) Blad nr. 43, S.9.

Under the Government's amending proposal, (private) companies, associations and the like will, in future, be able to broadcast television programmes in Denmark(alongside and independently of Danmarks Radio) provided they have been authorized to do so by a committee to be set up for this purpose. The intention is that they should be able to beam or broadcast their programmes throughout the country or on a regional basis using a new channel (TV2) and a new network of transmitters. These future competitiors of Danmarks Radio are to finance their programmes in whole or in part from a licence fee (in the same way as Danmarks Radio) and/or advertising revenue; if need be, they could also rely on revenue from subscriptions. The committee mentioned above will have the task of proposing rules on financing and on the authorization procedure.[1]

The observations regarding the proposed legislation contain the following:[2] "... the Ministry of Culture is of the opinion that programme activities on a new TV channel should not be financed solely out of revenue from licence fees. Financing from advertising should also be permitted to some extent so that advertisements could be broadcast in slots at fixed times. Rules should, however, be drawn up to ensure that advertisers are unable to influence programme content ... the Committee is to formulate proposals for more detailed rules on the production of advertisements, the overall ceiling for advertising time, the duration of advertisements and their placing, advertising guidelines and the setting up of a special advertising body ...

The Ministry takes the view that there is a clear case for advertising time on a new Danish TV channel being sold by a special company not dependent on those with responsibility for programme activities. Consideration should, however, be given to whether the prices charged for the blending in of advertisements should, in the final analysis, be fixed by the Folketing's Finance Committee ... . Advertising revenue should be restricted so that it accounts for the smaller share, e.g. 25% of total revenue."

Talks between the representatives of the parties in the Folketing have revealed that the part of the proposal dealing with the authorization of advertising will not find majority support and, as a result, will probably have to be dropped.

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[1] Section 1(3) of the proposal on a new Section 19a(1)(2) to be incorporated in the 1973 Act; Lovforslag, loc.cit., p.2.

[2] Lovforslag, loc.cit., pp.5, 13 and 14.

Belgium

In the case of the RTBF and BRT broadcasting organizations,[1] advertising is banned under the Broadcasting Act of 1960.[2] By decree of the "Communauté culturelle française" of 8 July 1983, the RTBF has been allowed to broadcast non-commercial advertising since the beginning of 1984.[3]

The cable companies too are forbidden from relaying advertisements.[4] The Court's judgement in the Debauve case declared this ban to be fundamentally compatible with the EEC Treaty.[5] However, at the present time, the Belgian cable networks transmit a large number of Luxembourg, Dutch and to a lesser extent, German and French broadcasts which carry advertisements; some of the advertisements are directly aimed at a target audience of Belgian consumers. The reason given for the decision to continue relaying these advertisements is the technical difficulty of removing the commercial breaks from continuous broadcasts. By and large, the transmission of this advertising is tolerated. The authorities with power to prosecute refrain from so doing. Judgments in the Belgian courts have described the ban as having been "suspended".[6]

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[1] There is also the Belgian "Rundfunk- und Fernsezentrum für deutschsprachige Sendungen (the German-language counterpart of the RTBF and the BRT).

[2] Article 28(3) of the Loi organique des Instituts de la Radiodiffusion.

[3] Télévision belge.

[4] Moniteur belge of 13 August 1983, p. 10305.

[4] Article 21 of the Arrêté Royal relatif aux réseaux de distribution d'émissions de radiodiffusion aux habitations de tiers of 24 December 1966 (Law relating to networks for the distribution of broadcasts to the residences of third parties).

[5] /1980/ ECR, at 833. See also the prior judgment by the Tribunal Correctionel de Liège of 23 February 1979 in Jurisprudence de Liège of 1 September 1979, at 309, and the judgment given, following the Court's ruling, by the Tribunal Correctionel de Liège on 27 June 1980 in Jurisprudence de Liège of 6 September 1980, at 210.

[6] Cour d'appel de Bruxelles, 17 May 1978, in Revue de droit intellectuel - Ingénieur-Conseil 1978, at 311. Tribunal civil de Bruxelles, 10 May 1978 in Journal des Tribunaux 1978, at 524 A.A. Tribunal commercial de Bruxelles, Jurisprudence Commerciale de Belgique 1977, III, 593.

Mention should also be made of the local radio broadcasting companies provided for in the Act of 30 July 1979.[1] The authorization and operation of such companies are defined in the Regulation of 20 August 1981,[2] which stipulates in Article 16 that broadcasts must not be in the nature of commercial advertising. It is debatable whether this provision is valid under the Belgian constitution. The same is also true for a similar provision in the decree by the Conseil de la Communauté culturelle française which reiterates the ban on advertising.[3] In practice, even local radio broadcasters have gone over to broadcasting advertisements. However, in its judgment of 27 September 1982,[4] the Tribunal Correctionel de Liège found against the local radio company "Radio Basse-Meuse" in a case brought by the public broadcasting authorities for violation of the ban on advertising contained in Article 16 of the Arrêté Royal of 20 August 1981 and ordered it to pay damages. The Liège court considered the provision to be valid and not in conflict with the EEC Treaty.

A "Projet de Loi relatif à l'émission de publicité commerciale par les Instituts chargés d'assurer le service public de la radio et de la télévision" (Bill on advertising broadcast by the Institutes entrusted with providing public-service radio and television broadcasting), drawn up in 1982, provides that only the public broadcasting authorities may transmit commercial radio and television advertising. It also states that legislation will be enacted banning advertising for specific goods and services and defining the days, times and maximum duration for advertisements. Advertising is to be clearly separated from the other programme material and must not interrupt programmes. Further provisions are to be enacted in regulations. A "Conseil de la Publicité" (Advertising Council) is to be created, under the Prime Minister, to draw up a code on the content and form of advertising, to ensure that the provisions are adhered to and to rule on disputes. Bodies with their own legal personality are to be set up to produce the advertisements. Any other person or body broadcasting advertisements or participating in their broadcasting, even as promoter or sponsor, will be committing an offence. The relaying in Belgium of foreign broadcasts may be forbidden by law where they do not meet the criteria laid down for national broadcast advertising.

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[1] Loi relative aux radiocommunications, 30 July 1979 (Act relating to broadcasting).

[2] Arrêté Royal réglement l'établissement et le fonctionnement des stations de radiodiffusion sonore locale, 20 August 1981 (Act regulating the creation and operation of local radio broadcasting stations).

[3] Décret fixant les conditions de reconnaissance des radios locales, 8 September 1981, Article 8 (Decree determining the terms for the recognition of local radio stations.)

[4] Jurisprudence de Liège, 23 October 1982, at 382; Gewerblicher Rechtsschutz und Urheberrecht, Internationaler Teil 1983, at 302, with observation by Henning-Bodewig (Industrial property rights and copyright).

(b) Member States in which broadcast advertising is permitted

Germany

Radio advertisements have been broadcast in Germany for more than thirty years. Nowadays, all the public land broadcasting authorities - with the exception of Westdeutscher Rundfunk in Cologne - carry advertisements on their radio stations. Radio advertising is the responsibility of privately organized subsidiaries of the broadcasting organizations, which also exercise supervision over their subsidiaries.[1] The basic rules on radio advertising are enshrined in a number of Land broadcasting acts and in the statutes of the broadcasting organizations.[2] The actual details of radio advertising are regulated by the Land governments or the broadcasting organizations. They vary from one broadcaster to another, but some degree of harmonization does exist. Radio advertising is broadcast in the mornings and afternoons until 1900 hours and on the Drittes Programme (service channels - third programmes) until 2100 hours, up to a maximum of ten minutes per hour. On Sundays and holidays there is no radio advertising. Some channels (BR 3, HR 3, SDR 2, SR 3, SDR 3 and SWF 3) broadcasting advertising blocks only while others (HR 1, SR 1 and SFB 1) transmit only advertising spots in the course of programmes. Both types of advertising are to be found on a number of channels (BR 1, RB 1, SDR 1 and SWF 1).[3]

Under Section 23(2) of the Charter of 6 June 1961 incorporating under public law the Zweites Deutsches Fernsehen (ZDF - second German television channel), the latter is required to cover that portion of its expenditure not financed from fees with revenue from television advertising.[4] Section 22(3) of the Charter stipulates that advertisements are to be kept clearly separate from other programme material. Total advertising time is laid down by agreement with the Land Prime Ministers. After 2000 hours and on Sundays and Federal holidays, advertisements are not allowed to be shown. There must be no question of advertising organizations or media influencing programmes.

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[1] On the establishment of the advertising subsidiaries, see, for example, the Statute of Radio Bremen of 18 September 1981 (Section 3(2)), the Charter of 20 August 1980 concerning the Norddeutscher Rundfunk (Section 34(1)(i)), the Statute of the Norddeutscher Rundfunk of 20 March 1981 (Article 27), and Section 35(2) of Act No 806 of 1 December 1964 on the organization of broadcasting in Saarland (in the version of 1 August 1968).

[2] See Article 5(3) of the Act of 10 August 1948 on the creation and duties of a public-law organization, the Bayerische Rundfunk (in the version of 26 September 1973); Section 3(10) of the Act of 2 October 1948 on the Hessischer Rundfunk; Section 35(2) of the Charter of 20 August 1980 on the Norddeutscher Rundfunk; Section 35(1) of Act No 806 of 2 December 1964 on the organization of broadcasting in Saarland (in the version of 1 August 1968); Section 4 of the Statute of the broadcasting organization "Sender Freies Berlin", Annex to the Act establishing a broadcasting oranization, the "Sender Freies Berlin" (in the version of 5 December 1974).

[3] On the above, see the comparative report entitled "Rundfunkwerbung in Europa und in den USA - Eine Ubersicht, Media Perspektiven 1979, p. 210 (at 212); ARD - Jahrbuch 1983, Hamburg 1983, p. 357.

[4] In 1979, 41% of the ZDF's revenue was obtained from broadcast advertising. For the first television channel authorities, the figure was 31%. The situation remained unchanged in subsequent years; see also Part Four, at H.

In the final protocol to the Charter (No I.1), the signatory Länder undertake to impose on the authorities set up under the respective Land legislation governing broadcast advertising on the first television channel operated by them the same obligations as are imposed on the ZDF under the Charter and under the agreement between the Land Prime Ministers provided for in the Charter.

The Land Prime Ministers decided[1] that total advertising time on the first TV channel, which is produced jointly by the Länder broadcasting organizations,[2] and on the second channel should be set at an annual working-day average of twenty minutes. Up to five minutes per working day of unused advertising time may be carried over.

All advertisements are shown in four advertising blocks between 1730 and 1930 hours on the second channel (ZDF) and between 1800 and 2000 hours on the first channel (ARD 1). During the latter period the nine regional organizations making up the ARD broadcast their own regional programmes. There is no advertising on the third channel (ARD 2), which has only regional coverage and which the nine regional organizations also transmit.

The advertising subsidiaries of the Land broadcasting organizations have agreed jointly to draw up a high-quality framework programme for television advertising which is designed to attract viewers by entertaining and educating them but which must not contain any direct or indirect advertising.[3]

The provisions governing the duration and implementation of television advertisements are spelt out and supplemented by a special set of guidelines. Section 2 of the guidelines lists the public holidays on which no advertising may be broadcast. Section 6(1) stipulates that advertising shall be presented only for commercial reasons, but not for political purposes or for expressing religious views or ideological convictions. Advertisement in respect of writings, recordings, drawings, performances or objects which clearly cause offence of annoyance, put young people at risk or have been banned under criminal law because of their content are not permitted. Advertising spots must not violate laws, be offensive, have a harmful effect or cause embarassment. Special regard is to be had to the interests of children and young people (Section 7).

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[1] Decision of 6 June 1961. See Section 3 of the "Richtlinien für die Werbesendungen des Zweiten Deutschen Fernsehens" (Guidelines for advertisements broadcast by the ZDF) of 14 April 1967. For Saarland, the detailed guidelines were reproduced in Section 2 of the Verordnung zur Durchführung des Gesetzes über die Veranstaltung von Rundfunksendungen in Saarland (Regulation implementing the Act on the organization of broadcasting in Saarland) of 22 December 1964.

[2] Cf. Agreement between the Länder of 17 April 1959 on the coordination of the first television channel.

[3] See Programmebeitragsvertrag (Programme contribution agreement), Section 1, in the version of 12 July 1977.

In order to investigate the effects of a wider supply of television programmes, trials with private and public "active" and "passive" cable television have been under way in Ludwigshafen/Vorderpfalz since 1 January 1984[1] and in Munich since 1 April 1984.[2] Two further trials are to be launched in Berlin[3] and Dortmund[4] in 1985. The trial programmes to be broadcast in Dortmund must not contain any advertising (Section 1(5)(2)). The rules governing the trials in Berlin (Section 51), Ludwigshafen Section 3(7)) and Munich (Section 9) permit advertising as a matter of principle.

In the case of the Ludwigshafen trials, advertising time must not account for more than 20% of total broadcasting time (Section 14(10)). The agreement on the Munich trials does not impose any such restriction (Section 9). In Berlin, advertising is to be permitted in continuous blocks lasting not more than nine minutes per hour of broadcasting time (Section 51(3)).

Under the draft Bavarian Act concerning the media,[5] cable companies are allowed to put together new radio and television programmes with local or wider coverage from contributions by (private) suppliers of material ("active" cable broadcasting). Advertising forming part of such new programmes must not account for more than a fifth of the supplier's broadcasting time (Section 30(2)). However, in the case of transmissions by suppliers with less than one hour's daily broadcasting time, the amount of advertising time may exceed the 20% ceiling (Section 30(4)(2)).

A 20% ceiling is also to be found in the draft broadcasting legislation for Lower Saxony,[6] Schleswig-Holstein[7] and Saarland[8] but not (as yet) in the

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[1] Landesgesetz über einen Versuch mit Breitbandkabel, 4 December 1980, Gesetz- und Verordnungsblatt Rheinland-Pfalz, p. 229.

[2] Grund- und Gesellschaftervertrag für das Kabelpilotprojekt München, 16 July 1982.

[3] Entwurf eines Gesetzes über die Durchführung des Kabelpilotprojekts Berlin, sent by the Berlin Senate to the Chamber of Deputies on 30 March 1984, Abgeordnetenhaus - Drucksache 9/1718.

[4] Nordrhein-westfälisches Gesetz über die Durchführung eines Modelversuchs mit Breitbandkabel, 20 November 1983, Gesetz- und Verordnungsblatt Nordrhein-Westfalen 1983, p. 640.

[5] Entwurf eines Gesetzes über die Erprobung und Entwicklung neuer Rundfunkangebote and anderer Mediendienste in Bayern, adopted by the Bavarian Council of Ministers on 24 January 1984, Media Perspektiven 1984, p. 140.

[6] Entwurf Landesrundfunkgesetz Niedersachsen, sent by the Land Government to the Land Parliament on 4 May 1983, Section 38(2), Landtags-Drucksache 10/1120 of 5 May 1983.

[7] Entwurf eines Rundfunkgesetzes für das Land Schleswig-Holstein, sent by the Land Government to the Land Parliament on 29 March 1984, Section 24(1), Landtags-Drucksache X/450 of 29 March 1984.

[8] Referentenentwurf eines Rundfunkgesetzes für das Saarland, 9 April 1984, Section 44(2).

somewhat older draft legislation for Baden-Württembert,[1] which is being examined at the moment by the Land Government. The legislative instruments in question will grant each private individual, as a matter of principle, the right to broadcast, on the basis of an authorization or concession, radio and television via ground transmitters and to finance the programmes broadcast out of advertising revenue.[2]

Advertising may also be transmitted in the evenings and on Sundays and public holidays. It must be kept clearly separate from the rest of the programme. Advertisements may be shown in blocks at appropriate times. However, advertising time must not exceed 15 minutes per hour in Schleswig-Holstein and 15 minutes in the case of television and 18 minutes in the case of radio in Saarland. Moreover, in Schleswig-Holstein and Saarland, advertising blocks may appear only at the beginning or the end of a transmission. A television transmission may be interrupted on one occasion at a pre-determined moment if it lasts more than 60 minutes (Schleswig-Holstein), 80 minutes (Saarland) or 100 minutes (Lower Saxony).

Transmissions financed by a third party (sponsor or promoter) will be permitted but, in the case of Schleswig-Holstein and Saarland, only if their content is unrelated to the third party's business interests.

In Lower Saxony and Schleswig-Holstein, local and regional advertising, i.e. advertising not broadcast country-wide, is to be banned even from local and regional programmes ("Fenster"), the aim being to protect advertising revenue accruing to the local and regional press.

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[1] Entwurf für ein Gesetz über die Neuen Medien, adopted as a discussion document by the Land Government on 16 March 1982, Section 26(1)(6), Media Perspektiven 1982, p. 202. Under this provision, advertising in any one hour may not exceed three minutes in the case of television and
[2] five minutes in the case of radio.
The draft acts also govern the re-transmission of existing programmes by cable ("passive" cable broadcasting).

France

The Act of 29 July 1982 on broadcasting and communications reorganized broadcasting as a whole and placed broadcast advertising on a new basis.

It permits broadcasting by private as well as by public organizations.

For public broadcasting organizations, the object, duration and conditions for broadcasting advertisements, and the permissible amount of advertising revenue are laid down in a so-called memorandum of conditions, which also sets the upper limit on the amount of advertising which can be accepted from the same advertiser (Article 66(1) and (2)). The memorandum contains the permanent provisions, laid down by decree, and the annual provisions, laid down by order (Article 32(1)). The new memoranda are to be published shortly; until then, the existing memoranda remain in force. The Régie Française de Publicité (RFP) is responsible for monitoring and implementing the provisions on broadcast advertising (Article 66(3)).

In addition, the Haute Autorité de la Communication Audiovisuelle, established under Article 12 of the Act, is responsible for ensuring that the public broadcasting organizations respect the fundamental principles governing the content of broadcast advertisements as derived from current laws, regulations and professional practice (Article 19(1)). To this end, the Haute Autorité recommends standards which it may publish (Article 19(2)). It also consults the Conseil National de la Communication Audiovisuelle on advertising decisions and recommendations (Article 27(2)). Should a national programme company seriously or repeatedly violate the memorandum of conditions or the acts, decisions and recommendations of the Haute Autorité with regard to broadcast advertising, the Haute Autorité requires the President of that company to take th necessary measures to bring such violations to an end (Article 26(3)).

With regard to the use of advertising revenue, each year when the Finance Act is voted, Parliament has to authorize allocation of the expected revenue from commercial television advertising (Article 62). Revenue is shared out between the domestic public radio and television broadcasting organizations (Article 63).

Private broadcasting companies require authorization (Article 78). However, for television broadcasting over the air to the general public, only public-law concessions can be awarded (Article 79). Local radio stations operating over the air are not allowed to carry advertising (Article 81(4)). They receive State support financed out of radio and television advertising revenue. The memorandum of conditions also determines the amount and object of the advertising which the applicant may carry on in order to finance the proposed service (Article 84(1)). Advertising revenue may not amount to more than 80% of total financing (Article 84(2)).