

Media System of Luxembourg

report by our correspondent

Jacques Neuen

for the

Study on Co-Regulation Measures in the Media Sector

Study commissioned by the European Commission, Directorate Information Society
Unit A1 Audiovisual and Media Policies, Digital Rights,
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The above study aims at providing a complete picture of co-regulatory measures taken to date in the media sector in all 25 Member States and in three non-EU-countries, as well as of the research already done. The study will especially indicate the areas in which these measures mainly apply, their effects and their consistency with public interest objectives. In this context, the study will examine how best to ensure that the development of national co- and self-regulatory models does not disturb the functioning of the single market by re-fragmenting the markets. This study started at the end of December 2004, the final report will be compiled by the end of December 2005.

More information on the study can be found at <http://co-reg.hans-bredow-institut.de>

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If you have any questions or comments feel free to contact the contractor of the study

Hans-Bredow-Institute for media research (HBI)

Heimhuder Str. 21

D- 20148 Hamburg

info@hans-bredow-institut.de / <http://www.hans-bredow-institut.de>

or the sub-contractor, who is responsible for coordinating and organizing the research in the EU Member States:

Institute of European Media Law (EMR)

Nell-Breuning-Allee 6

D-66115 Saarbrücken

emr@emr-sb.de / <http://www.emr-sb.de>

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Luxembourg

Introduction

Sociological characteristics of the Grand-Duchy of Luxembourg

With its 451.600 inhabitants (source: Statec 2004) living in a territory of 2.586 square kilometers, Luxembourg is one of the smallest countries of the European Union, but has a very cosmopolitan population, as nearly 39% of the residents are foreigners (mostly Portuguese, French, Italian, Belgian and German). Such characteristics of the Grand-Duchy of Luxembourg show the relatively small size of its marketplace (which is overall practically a national one) and explain the multicultural and multilingual configuration of the media market in this country of consensus and compromise rather than of confrontation.

Main specificity of the Luxembourg media landscape

Despite its small dimensions in size and population, Luxembourg has a relatively large number of diversified media in all main sectors.

The **written press** is typically multilingual in content and close to political parties or trade unions in terms of ownership and/or editorial policy. The publishers of (significant) newspapers receive public subsidies and benefit furthermore from legal or contractual limitations in advertising imposed upon audiovisual media targeting the domestic public.

Six daily newspapers are published and circulated in Luxembourg, with articles written in French, German, Luxembourgish and sometimes English. Furthermore there are twelve weekly magazines and a lot of periodical publications, mostly of social, professional, associative or specialised interest, like automobile for instance. Such Luxembourg made offer is competing with numerous foreign newspapers and magazines also available on the market.

The largest daily newspaper, *d'Wort* (formerly *Luxemburger Wort*) has a dominant position in the Luxembourg media landscape, forming the characteristic duopoly on the local media marketplace with the other dominant player in the sector of audiovisual media, namely the radio station *RTL Radio Lëtzebuerg* and the television channel *RTL Télé Lëtzebuerg* operated by the commercial corporation *CLT-UFA (RTL Group)*.

The Luxembourg **audiovisual media** are based on a dual organisation: an important private sector and a rather marginal public sector limited to the “socio-cultural” radio station *100,7* (named after its FM broadcasting frequency) which is operated by an organisation of public law, with a mission of public service and financed by public funding only.

In the fields of **radio**, *CLT-UFA* had from 1930 till 1991, on a contractual basis, the monopoly for broadcasting in and from Luxembourg, building up *i.a.* the still existing *RTL* radio programs having a substantial audience in France and Germany, and operating since the late fifties also the national radio program in Luxembourg language, now known as *RTL Radio Lëtzebuerg*. The media law of July 1991 opened the way for granting radio broadcasting licenses also to other operators in Luxembourg. Thus, besides the two nationwide receivable stations (the commercial program *RTL Radio Lëtzebuerg* and the non-

commercial station *100,7*), four medium range radio networks have been licensed to groups where mostly press publishers are involved: *Eldorado*, *DNR*, *Radio Latina*, and *Radio Ara*. The Luxembourg radio landscape is completed by about 15 local stations, which are bound by strict structural and technical limitations and by restrictions in advertising revenue.

In the fields of **television**, besides the historic player *RTL Télé Lëtzebuerg*, recently completed by a new “sister” channel *RTL2* targeting the younger audience, there exist for the time being five television stations *i.e.* *Nordlicht TV*, *Uelzechkanal*, *T.TV*, *Chamber en direct*, and *.dok*, all broadcast by cable (some by satellite too). More than 90% of the population of the Grand-Duchy of Luxembourg are connected to a cable network and mostly watch television by such means of reception, while 15,5% of the households have individual dishes for satellite reception, and about 2,5% are on terrestrial reception only.

Both in radio and television, Luxembourg is historically also an important place for trans-national and international broadcasting, through terrestrial, cable or satellite licenses granted to *CLT-UFA (RTL Group)*. On such international grounds, *SES Global* (with its *Astra* satellite system) is the other important player in the Luxembourg media scene, involved in technical signal distribution. In the fields of **electronic communication over the Internet**, 74% of the households in Luxembourg have at least one computer (21% of them own two or more computers) and 59% of the adult population in Luxembourg regularly use the Internet, essentially at home and mainly for e-mail purposes (91%), e-banking (53%) or search for information (55%). About half of the users buy goods or services over the Internet (*statnews* nr. 2/2005 published by Statec). On the side of the providers, about 70% of the Luxembourg businesses had a website at the end of 2003 (about 80% expected for end of 2004) (Source : CEPS/Instead-Statec ILRES).

As concerns **audiovisual production**, a diversified professional sector has been developed as a consequence of the legislation on financial incentives, favouring local activities and international co-productions. For the time being, the Luxembourg cinematographic industry counts about thirty approved production companies employing about five hundred persons, producing between eight and fifteen feature films per year, essentially in co-production with foreign companies (source: www.gouvernement.lu/tout_savoir/medias/prodaudi.html).

Developments in regulatory policy

For more than sixty years (and even longer for the written press), the Luxembourg media landscape was relatively “unregulated”, based upon a light framework legislation, contractual consensus and some self-regulatory measures (advertising, right of reply, etc..). In the early nineties, the political will to de-regulate the media sector paradoxically generated rather an increase in authoritarian regulation, as show the detailed and constraining provisions of the law of 27 July 1991 on electronic media (explained hereinafter). With the beginning of the new millennium, a more liberal trend has come up for reducing state regulation and favouring self-regulation and co-regulation in the media sector.

Considering that co-regulation is based upon the idea that the state, the business community and the civil society should share a common responsibility in building rules, by giving all the

players an opportunity to reach a consensus facilitating the respect of the adopted rules, such a policy is not new in Luxembourg. An illustration for this is for instance an institutional mechanism in the fields of economics and labour, the so-called “Luxembourg model”. Based upon the law of 24 December 1977 authorizing the government to take measures for stimulating economic growth and for safeguarding full employment, a grand-ducal decree of 26 January 1978 has established and determined the functioning of the “tripartite coordination committee”, which has an equal number of representatives of the government, the private industry (through the professional chambers) and the employees (through the main unions). Being in charge of monitoring the national economy and labour market developments and advising the legislator for remedies and incentives in these fields, such committee is a forum for searching consensus on all important social and economic issues in this country.

Based upon the European directive 95/46/CE, the law of 2 August 2002 on the protection of persons with regard to the processing of personal data (*Mémorial A n° 91* dated 13 August 2002) protects the fundamental rights and freedoms of natural persons, particularly their private lives, as regards the processing of personal data, and ensures the respect of the legally protected interests of corporations and other legal entities. The law provides for some kind of co-regulation in this matter, by encouraging the development of codes of conduct from the professionals concerned and by granting the possibility for the operators of personal data processing to appoint an independent data protection officer, to be approved by the national commission for data protection (“*Commission Nationale pour la Protection des Données (CNPD)*”), which has investigative powers to ensure compliance of the data processing operator with the legal provisions.

Constitutional law

The Constitution of the Grand-Duchy of Luxembourg guarantees freedom of speech and freedom of the press in its article 24, subject to the repression of criminal offence in the use of such rights. Article 11 paragraph (6) of the Constitution guarantees freedom of commerce and industry, subject to the restrictions determined by the legislator.

Furthermore, article 1 of the law of 27 July 1991 on electronic media gives a “quasi-constitutional” statement on the objectives of the broadcasting legislation, proclaiming that the law aims at assuring, in the fields of electronic media, free access of the population to a multitude of sources of information and entertainment, by guaranteeing the freedom of expression and of information, as well as the right to receive and retransmit on the Luxembourg territory all programs complying with the law. The organisation of broadcasting is to be based upon the principles of a free and pluralistic audiovisual communication, independence and pluralism of information, respect of the human person and dignity, highlighting of the cultural heritage and of contemporary creation, promotion of communication, intercultural exchange and integration of immigrants, safeguarding of a pluralistic written press.

There are no specific constitutional provisions on youth protection. Luxembourg applies the European chart of fundamental rights (Art.24 on children’s rights) and has ratified, by a law

dated 20 December 1993, the Convention on children's rights adopted by the general assembly of the United Nations.

The Luxembourg Constitution has no provisions on public service broadcasting or on media regulatory authorities. There are no constitutional provisions on public policy goals by public administration or on public service in broadcasting. Such matters are treated at the level of ordinary legislation.

Public service in broadcasting was introduced relatively late (after a long period of licensed private broadcasting) and limited to the radio sector, with the creation of the socio-cultural station *100,7* by virtue of the law of 27 July 1991 on electronic media (article 14) and the subsequent grand-ducal decree of 19 June 1992 on the structure and functioning of the public organisation in charge of such station. Article 2 paragraph (4) of such decree provides that in the performance of its mission, the socio-cultural station must promote cultural life, favour artistic creation, contribute to social communication, including intercultural life and transfrontier cooperation, participate in free and pluralistic information, and grant a large access to cultural and social organisations of the country. More specific missions of public service for such station may be defined in multi-annual agreements between the government and the public organisation in charge of the station *100,7*.

In the fields of television, there is no public service broadcaster as such, but the private broadcast organisation *CLT-UFA* is entrusted - to some extent - with a mission of public service. Holder of several commercial radio and television licenses from the Luxembourg government, *CLT-UFA* has committed - as a counterpart for the grant of such licenses - to provide for certain performances of public service in its Luxembourgish radio and television programs. Thus, both *RTL Radio Lëtzebuerg* and *RTL Télé Lëtzebuerg* must broadcast - for a determined minimum of time within their ordinary schedule - programs devoted to news, culture, sports, and foreign speaking communities and transmit a number of events of national interest. By virtue of the license agreement, *RTL*'s income from advertising in the Luxembourg territory has been limited - in television - to an annual maximum amount, the surplus of costs of the national TV program being borne by the broadcaster. In radio, the costs for *RTL Radio Lëtzebuerg* are to be covered by advertising revenue (limited in daily time) and to be fully borne by the broadcaster *CLT-UFA*, provided however that the possible losses of such radio exploitation are contractually limited to a certain annual amount, the excess of which would entitle the broadcaster to get a compensation from the Government.

Such situation will normally go on until the expiration of the present broadcasting licences of *CLT-UFA* at the end of 2010. However the debate about what should be public service in broadcasting and who should be in charge of it has already started. Some opinions are in the sense of a merger of both radio and television public service within the existing socio-cultural structure *100,7*. But it is more likely that public service in radio will stay separately with the public organisation *100,7* and that public service in television will continue to be entrusted to one or more private operators, who will have to commit to observe certain obligations in terms of pluralistic access and balanced information for instance. In its political program

published in August 2004, the new Luxembourg government confirmed its intention in this sense, announcing the creation of a legal basis for such purpose.

Some provisions of general application in all media

a) Advertising

The law of 30 July 2002 on commercial practices and fair competition, *i.a.* regulates comparative advertisement in all media, upon the principles laid down by the directive 97/55/CE.

The Code of advertising practices issued by a professional committee named “*Commission luxembourgeoise pour l'éthique en publicité*” (*CLEP*) sets a number of rules based on principles like decency, honesty, social responsibility, truthful presentation, to be observed in all commercial communication. Such self-regulatory code contains specific provisions on presentation of men and women, protection of children, health care, environmental issues, tobacco and alcoholic beverages, car driving, finance and electronic commerce, for advertisements in all media. The observance of such code is supervised by the above mentioned *CLEP*, a self-disciplinary body competent for advising the advertising community and for treating complaints.

The commission for ethics in advertisement “*CLEP*” (which is the Luxembourg member in EASA, the European Advertising Standard Alliance) has been put in place about 10 years ago by the Luxembourg Council for Advertisement (*Conseil Luxembourgeois de la Publicité*), a non-profit association of private law (*association sans but lucratif*, or *asbl*) formed by the major players active in the fields of marketing and commercial communication in the Grand-Duchy of Luxembourg (agencies through their federation named *Markcom*, electronic and print media, space providers, advertising businesses, etc...). *CLEP* is a committee of twelve members from the different sectors of the advertising business community, appointed by the privately organised Luxembourg Council for Advertisement among its own members. The committee is chaired by a thirteenth person elected by majority vote by the *CLEP* members themselves. The costs of such ethics committee are borne by the above mentioned advertisement council, which is financed by annual contributions from its members. Thus, *CLEP* is a self-regulatory body, independent from public authority, which considers itself as being the guarantor for loyalty and ethics in advertisements appearing on the territory of the Grand-Duchy of Luxembourg. The committee monitors advertising messages from the point of view of the public. It may get active on its own initiative or upon complaint of a third party. In case the committee considers that a given advertisement violates the Code of advertising practices, it advises the advertiser to comply and, in case of refusal, addresses to the faulty advertiser a written blame (which might be made public, in case of serious violation).

Protection of minors against harmful contents in the media

Besides the general regulations on protection of minors, it might be interesting to mention that in its session of 7 November 2003, the Luxembourg government decided to initiate the elaboration of an amendment to article 383 of the criminal code for including the repression

of violent contents in the media in addition to the existing regulation on sexual contents, and to create a legal basis for sectorial systems of self- and co-regulation in such fields. This governmental intention has however not yet been implemented by law for the time being.

Sectorial provisions

1. Broadcasting

1.1. Regulatory framework

1.1.1. Legal provisions

a) The law of 27 July 1991 on electronic media, as amended (*Mémorial* A 1991 page 972, and *Mémorial* A 2001 page 924), has liberalised the Luxembourg media landscape after a period of more than 60 years of broadcasting monopoly of *CLT-UFA*, with the objectives to assure *i.a.*

- free and pluralistic audiovisual communication
- independence and pluralism in information
- respect of the human person and dignity
- valorization of the cultural heritage and support for cultural creation
- promotion of communication, intercultural exchange and integration of immigrants
- continuity of a pluralistic written press.

The media law laid down the basis for two markets of audiovisual communication, (i) by creating the possibility for operators established in Luxembourg to get a license (“*concession*”) for broadcasting television or radio programs of international range destined to reach audiences beyond the domestic population in Luxembourg (so-called « *programmes à rayonnement international* ») and (ii) by providing for the grant of authorisations (“*permissions*”) for sound and/or visual programs targeting the domestic public only (so-called “*programmes visant un public résident* ”). On the other hand, the domestic programs for the resident audience are divided into (i) television programs, (ii) high power radio programs and (iii) low power radio programs, which are again divided into radio networks and local radio stations.

The Luxembourgish speaking radio station “*RTL Radio Lëtzebuerg*” is based upon a permission granted by the Government upon the provisions of article 13 of the law of 27 July 1991 for a high power commercial radio program, using two terrestrial FM frequencies covering the whole territory of the Grand-Duchy of Luxembourg. As mentioned above, a schedule of obligations has been imposed on the operator of such national general interest radio program, more specifically as concerns mandatory programming and advertising rules.

The public organisation (“*établissement public*”) in charge of the radio station “*100,7*” has been granted by law (article 14 of the media law) a license for a high power non-commercial

radio program, using one high power terrestrial FM frequency (being 100,7 MHz). The mission of public service and the financing of the station are defined as mentioned above.

Concerning the low power radio networks (“*programmes à réseau d’émission*”), article 18 of the media law of 1991 sets the basic terms and conditions for qualifying for a license and enumerates the main items to be addressed in the schedule of obligations to be attached to the license. The programs broadcast by such a network may contain commercial messages, subject to certain limits in time.

The legislator created also the possibility for granting licenses for low power local radio stations for which article 17 of the media law sets the basic terms and conditions for being eligible for such a license and enumerates the main items to be addressed in the schedule of obligations attached to the license. A permission for a local radio program can only be granted to a non-profit organisation. The local radio programs may contain commercial messages in very restricted limits.

Besides the rather diversified sector of terrestrial radio (to which an amending law of 2 April 2001 has added the possibilities for admitting digital radio), the media law provides for a system of “permission” for television programs targeted at the domestic public only (article 12 of the law of 1991) and a system of “concession” for television programs of international range and for programs by satellite (article 21 of the law) or by cable (article 23 of the law). As mentioned above, the only permission for a television program aimed at the domestic audience and using terrestrial frequencies has been granted to *CLT-UFA*, with particular programming obligations and a limitation of income from advertising. The other Luxembourg television operations licensed more recently have been granted concessions for programs by cable (and some also by satellite). They target also the domestic public but on specific segments and/or certain parts of the territory only. Originally advertising income was prohibited for such channels, but the government decided at the end of 2002 to grant also such operators the same rights to collect advertising income as *RTL Télé Lëtzebuerg*.

The law of 27 July 1991, as amended, contains general provisions on program content, advertising rules, and items to be possibly addressed in the schedule of obligations connected to the different broadcasting licenses. For television, a specific chapter of the law is dedicated to the transposition of the Directive “Television without frontiers” 89/552/EEC as amended by the Directive 97/36 EC.

Article 6 of the media law provides for quality standards and obligations in content to be observed in general by all licensed programs, based upon the principles of respect of the audience, decency, non-discrimination, protection of minors (through a rather generic “no harm” obligation), etc.

According to article 7 of the law of 1991, the licensed programs may carry advertisements, subject to prohibitions or limitations established by law, decree or schedule of obligations (paragraph 3 of such article 7 expressly prohibits advertising for tobacco products).

Article 10 of the law provides that the schedules of obligations attached to the broadcasting licenses may provide for obligations to pay a royalty to the state or to perform specific

cultural services in the general interest of the country. Other conditions which may be imposed upon the licensees in the schedules of obligations are impartiality and objectivity in the presentation of the news, respect of pluralism, promotion of culture and creative activities, limitations in advertising, compulsory broadcast of governmental communications, provision of technical facilities, etc.

Chapter 5 of the law of 27 July 1991, as amended, is devoted to the European rules for television, transposed from the relevant directives mentioned above. Besides the rules about the proportion of European works in the transmission of television programs and the access to major events, the law provides (in article 28) for regulations on advertising, sponsoring and tele-shopping. Such rules are detailed in a Grand-Ducal Decree of 5 April 2001.

Concerning access to cable, there is no must-carry rule in Luxembourg which would actually apply as such for the time being. Article 22 paragraph (5) of the media law provides for a possibility to establish - through a Grand-Ducal Decree - a list of programs which might benefit from a priority of retransmission in cable networks, but such a decree has not been issued up to now. However, in its program declaration of August 2004 (mentioned above), the new Luxembourg government announced that, besides the public service, programs of particular interest for the domestic public might benefit from a right of access to the cable networks and/or could possibly get an access to terrestrial frequencies made available for digital transmission, upon transparent, pluralistic and equitable criteria.

b) In March 2002, the Luxembourg government in place at that time published a policy paper on basic orientations for a reform of the legislation on electronic media ("*Orientations pour une nouvelle législation sur la radio et la télévision*") outlining its intention for the upcoming reform of the existing legislation on electronic media. The paper announces the plan of the government to simplify the legislation and to streamline administrative process. Development of digital broadcasting would make it possible to abandon or at least soften the current restrictive legislation requiring television and radio stations to apply for complex broadcasting licenses. Restrictions on the use of frequencies would be maintained only where they are necessary because of technological bottlenecks.

Future legislation could also draw a clearer distinction between technical regulations and their supervision (falling within the framework of telecommunication legislation supervised by the sectorial regulator "*Institut Luxembourgeois de Régulation (ILR)*") and rules relating to the content of the broadcast (to be dealt with under the new radio and television legislation). The objectives of general interest should be achieved by the selection of programs having priority access to certain networks and frequencies and by missions of public service to be conferred by the Government.

An important section of the policy paper sets out proposals for a new regulatory framework that would involve the creation of a new independent regulatory authority ("*Autorité de Régulation Indépendante (ARI)*"), which would be in charge of both the authorisation process and the control of authorised activities, including the power to impose sanctions.

In its program declaration published in August 2004, the new Luxembourg government confirmed its intention to draft a new legislation on the basis of the above mentioned orientations.

1.1.2. Administrative regulation/rules

Nothing to report in particular.

1.1.3. Other provisions, especially co-regulatory or self-regulatory measures, codes of conduct, etc.

Apart from the code of conduct on advertising practices (mentioned above) and the deontology code of the press (mentioned hereinafter), applicable to all media, the commercial broadcaster *CLT-UFA* has adopted in 2003 a charter for its journalists, followed in January 2004 by the institution of an internal supervisory board named “*Conseil des sages*”, in charge of an overall supervision of the content of the Luxembourg speaking *RTL* radio and television programs. Such self-regulatory system has been put into place by *CLT-UFA* as a reaction against critics and proposals for co-regulation made by the national program council (“*Conseil national des Programmes*”(CNP)) established by the media law of 1991.

1.2 Regulatory authorities/bodies

1.2.1. Authority/ies

Under Luxembourg law, the regulation of the media is presently still largely vested in the government, acting through or upon proposal of its Prime Minister and its delegated Minister for Communications. On the administrative level, media matters are handled by the media and communications service (“*Service des Médias et des Communications*”) functioning as a department of the Ministry of State (within the competence of the Prime Minister and the delegated Minister for Communications). Such department has been created by the media law of 27 July 1991 (article 29) and has been assigned administrative missions in the fields of advising the Prime Minister in matters of media policy, representing the country in international committees dealing with media matters, assuming respectively assisting the functions of government commissioner for the supervision of the execution of the broadcasting licenses of *CLT-UFA*, *SES* and the public radio station *100,7*. Furthermore, such “*Service des Médias et des Communications*” administratively assists the hereafter mentioned supervising commissions in their tasks of radio and television licensing or monitoring, and has cooperative connections with the Luxembourg Regulation Institute (*ILR*), which is the competent regulator for telecommunications (and since more recently also for the energy sector: electricity, gas...). Apart from this, Luxembourg law has determined one or the other body in the fields of the media, which might be considered as being vested - to some extent - with functions of a media regulator.

a) The Independent Broadcasting Commission (“Commission Indépendante de la Radiodiffusion”)

Legal basis

The Independent Broadcasting Commission has been created by virtue of article 30 of the law of 27 July 1991 on electronic media.

Functions/competencies

The Independent Broadcasting Commission is in charge of :

- a) applying the provisions of the media law relating to the authorisation and the functioning of radio programs with low power transmitters;
- b) advising the Government for the authorisation and the functioning of the other programs (radio or television) to be licensed ;
- c) settling possible disputes between the management of the socio-cultural radio station (100,7) and the National Program Council.

Thus the Independent Broadcast Commission decides upon the grant and the withdrawal of the broadcasting licenses for local radio stations and for radio networks (“*programmes à réseau d’émission*”), in independence towards the Government, and supervises the compliance with the legal provisions (*i.a.* articles 15 to 18 of the media law) and the schedule of obligations of such stations (article 30 paragraph 2 of the media law).

According to article 35 paragraph 1bis of the media law of 1991 (as amended), if the *Commission indépendante de la radiodiffusion* notices (or is made aware of by complaint) a violation by a program under its supervision of a provision of the law or of the licence terms and conditions, the commission first requests explanations from the license holder. If after such preliminary procedure, the commission is of the opinion that the program “obviously, seriously and heavily” infringes the applicable provisions, the commission notifies by registered mail its statement of violation to the licence holder and exhorts him to comply with the provisions concerned. If the thus notified violation persists or if a same violation occurs again, the Independent Broadcast Commission decides to withdraw the licence. Such a withdrawal of the licence is published in the *Mémorial* (official gazette) and does not entitle the licence holder to indemnification. It may be appealed before the administrative courts. In practice, the commission has apparently not yet withdrawn a licence under such provisions, but has indirectly exercised its sanction rights by refusing - in 2002 - to renew the licence of a local radio station which had not complied with structural constraints and technical limitation of transmission power as provided by law.

The Independent Broadcast Commission is presently the only “nearly real” regulator in the fields of audiovisual media in Luxembourg (apart from the government), insofar it delivers domestic radio licences and monitors their execution. The National Program Council (“*Conseil National des Programmes*”) mentioned hereafter and - even less - a third body created by the media law, the Advisory Media Commission (“*Commission Consultative des Médias*”), are not to be considered really media regulators as such.

As mentioned above, the government intends to propose a merger of the existing media commissions and to set up a real regulating body for the media in the form of a new independent regulatory authority (“ARI”) to be in charge of both the authorisation process and the monitoring of authorised activities, including the power to impose sanctions.

Organisation

According to article 30 paragraph 3 of the media law of 1991, the Independent Broadcast Commission is a collegial body of five members appointed for five years by grand-ducal decree. It is chaired by a judge and one of its members is appointed upon proposal of the Press Council (mentioned hereafter). For the time being, its members are a teacher, a former press editor, two judges and an attorney at law. The members of the Independent Broadcast Commission receive a compensation from the government and the working costs of the commission are covered by the state budget (Art.30 par. 5 of the media law). The commission gets administrative assistance from the above mentioned media and communications service (“*Service des Médias et des Communications*”) and gets technical support from the Luxembourg Regulation Institute - *ILR* (Art.30 par. 6 of the media law).

A grand-ducal decree of 17 December 1991 governs the internal organisation of the commission. According to such regulation, the Independent Broadcast Commission must come together if two members or the Minister competent for the media ask for a meeting. Its decisions need a quorum of half the number of the members and an absolute majority vote. Applications made upon public call for tender for a licence for operating radio programs with low power transmitters must be decided by the commission within three months.

b) The National Programme Council (“*Conseil National des Programmes (CNP)*”)

Legal basis

The National Programme Council has been created by virtue of article 31 of the law of 27 July 1991 on electronic media.

Functions/competencies

The National Program Council is in charge of:

- advising the government for the supervision of all kinds of programs licensed, authorised or distributed in the Grand-Duchy of Luxembourg, as to their compliance with program content regulations;
- submitting proposals for a balanced content of the programs of the (public) socio-cultural radio station *100,7*, and monitoring such programs;
- making proposals for increased and balanced choice of program content for the domestic audience.

Such Council makes and delivers its opinions in independence towards the government, but has no power to make decisions of its own with a direct impact on the media operators, such as the grant of licences or authorisations or the sanctioning of non-complying behaviours.

According to article 35 paragraph 2 of the media law of 1991 (as amended), if the National Program Council notices a violation by a program under its supervision of a provision of the law or of the licence terms and conditions, the Council has no direct sanction power, but has to inform the Minister competent for the media, who will then be responsible for initiating against the licence holder the procedure which might end in a withdrawal of the licence.

Organisation

The National Program Council has a maximum of 25 members delegated for 5 years by the representative organisations of the social and cultural circles of the country, including recognised religions and political parliamentary groups, trade unions and employers' organisations, national federations of associations active in the fields of culture, sports, family, charity, ecology, youth and immigration. A grand-ducal decree dated 27 February 1992 governs the internal organisation of the council.

The National Program Council considers itself as a co-regulator in the fields of electronic media. It has launched several program monitoring studies in cooperation with the University of Trier (Germany) and published opinions *i.a.* in connection with the national election campaign 2004 and is elaborating - on its own initiative - a code of conduct for radio and television.

c) The Advisory Media Commission ("*Commission Consultative des Médias*") created by virtue of article 33 of the media law of 27 July 1991 is not a media regulator as such. Composed by representatives of the media professionals it has a mere consulting role delivering opinions or positions to the government in the fields of media.

1.2.2. Self- or Co-regulatory bodies

As mentioned above, the commercial broadcaster *CLT-UFA* has put into place in January 2004 an internal board named "*Conseil des sages*" in charge of an overall supervision of the content of the Luxembourg speaking *RTL* radio and television programs. Such self-regulatory body of five members (from the management and the news departments of the stations concerned) handles possible complaints from viewers or listeners and issues opinions to the station concerned. In a press release of 10 February 2004, the National Program Council expressed its satisfaction on such initiative of *RTL*, but insisted on the necessity of co-regulation through an organisation which should be independent from the media operators.

2. Press

2.1. Regulatory framework

2.1.1. Legal provisions

After having been in force for more than hundred and thirty years, the "old" law of 20 July 1869 on the press and on criminal offences committed by the different means of publication has finally been replaced by a new legislation, which has a broader scope, as it applies in all

cases when a person communicates to the public by way of any media, irrespective the technology and the vector used.

The law of 8 June 2004 on freedom of expression in the media (*Mémorial A 2004 n° 85*) is intended to achieve a balance between freedom of expression and protection of privacy and is largely inspired by the Convention for the protection of human rights and fundamental freedoms (essentially its article 10) and the case law related thereto established by the European court of human rights.

The new legislation regulates the status of the journalists and introduces the protection of journalistic sources, whereby a journalist gets the right to refuse to reveal his sources when testifying in court, except in matters of blood crime, drug dealing, money laundering, terrorism or attack on state security.

Concerning measures in favour of the individual citizen, the law confirms the principle of protection of privacy and introduces the principles of presumption of innocence and the right of information follow-up ("*droit d'information postérieure*") of any person involved in criminal proceedings. The right of reply, formerly regulated separately for the written press and for the electronic media, has been harmonized and united in one set of rules applicable to all media. The law regulates protection of reputation and dignity (article 16) and protection of minors (article 18) in the information media.

Freedom of expression is strengthened by the introduction of the possibility for a journalist to terminate his employment contract (with the right to receive indemnities) in case of a significant change in editorial policy of his employer, and by the "*cascade*" principle by which the civil and criminal liability for any fault committed through a media lies in first instance with the author of the communication, or - if he is not known - with the publisher, or - if he is not known - with the distributor of the publication.

2.1.2. Administrative regulation/rules

Nothing to report in particular.

2.1.3. Other provisions, especially co-regulatory or self-regulatory measures, codes of conduct, etc.

The Press Council (explained hereafter) has adopted in December 1995 a self-regulatory code of conduct named "*Code de déontologie de la presse*", which states that the right of information and the freedom of expression guaranteed by the Constitution and the Declaration on human rights has as a counterpart the responsibility of the journalist and of the publisher, and that such responsibility implies certain obligations in terms of truth, fairness, identification and verification of the information, respect of human dignity and privacy, prohibition of piracy, offence, libel and discrimination, and the observance of news embargo upon exceptional and legitimate constraints. On the other hand, such responsibility implies also that the journalist and the publisher enjoy certain indispensable rights, such as access to all information sources, refusal of obeying to anything contrary to the personal conviction of the journalist or to an agreed editorial policy, and the right to refuse any pressure or influence

from the advertising industry. This code of conduct is currently under review in the light of the provisions of the new press law mentioned above.

2.2 Regulatory authorities/bodies

2.2.1. Authority

There is no regulatory authority as such for the press sector.

2.2.2. Self- or co-regulatory body/ies

Legal basis

The Press Council (“*Conseil de Presse*”), created by the law of 20 December 1979 on the recognition and the protection of the professional title of journalist (*Mémorial A* 1979 nr. 98 and *Mémorial A* 1998 nr. 81) has been re-organised under article 23 of the law of 8 June 2004 on freedom of expression in the media, and is henceforth not only competent for handling the attribution or withdrawal of press cards, but got a real mission of self- and co-regulation.

Functions/competencies

Article 23 paragraph (2) of the law of 8 June 2004 on freedom of expression in the media provides that the Press Council is in charge of (a) working out a deontology code defining the rights and obligations of the journalists and publishers, (b) putting in place a complaints commission for handling possible complaints from individuals about publication of news and statements in the press, and (3) studying all questions relating to freedom of expression in the media. The Press Council is entitled to issue recommendations and directives for the work of journalists and publishers and may organise professional training for them.

Organisation

The Press Council is composed of 14 members, appointed by grand-ducal decree, half of which represent the publishers and half represent the journalists, upon proposal of their respective professional sector. The Council is chaired alternatively for a duration of 2 years by a representative of the publishers and a representative of the journalists (articles 24, 25 and 26 of the press law). The press law furthermore regulates the organisation of the commission of press cards (articles 27 to 30) and of the complaints commission within the Press Council (articles 31 to 35).

3. Online Services

3.1. Regulatory framework

3.1.1. Legal provisions

In order to create an appropriate legal framework for the the new means of electronic communication, the Luxembourg government has initiated in 2001 an action plan named *e-*

Luxembourg and has put in place an inter-ministerial committee ("*Commission Nationale pour la Société de l'Information*" (CNSI)) for piloting the necessary developments for the implementation of such plan.

As regards the technical matters involved (which are presently still governed by the law of 21 March 1997 on telecommunications), the government has worked out a new set of rules for electronic communications, derived from the so-called "Telecom Directives Package" (Framework Directive (2002/21/EC); Authorization Directive (2002/20/EC); Access Directive (2002/19/EC) ; Universal Service Directive (2002/22/EC; Radio Spectrum Decision (676/2002/EC)) favouring technological neutrality and equal access, and securing safety of the electronic communication networks and services (four draft laws have been introduced before parliament in July 2003, but have not yet been voted: draft 5178 on networks and services, draft 5179 on management of radio-electric frequencies, draft 5180 on re-organisation of the regulating body *ILR*, draft 5181 on protection of personal data).

In its program declaration of August 2004, the government confirmed its intention to continue its policy for electronic governance on the basis of the above mentioned orientations and to adopt a holistic approach for the development of its strategy in the fields of electronic information and knowledge society, by involving all parties concerned. Particular attention will be brought to the development of communication networks, protection of minors, use of information technologies in education, democratization of the access for all citizens to the communication technologies, data protection and safety of networks.

Thus, the legal framework for online services is still largely in progress. It can however be reported about some legal provisions already in place.

First it appears that online services made available over the Internet are not subject to ordinary media law, as it stands now. In the course of the procedure for the grant of a license to operate a Luxembourg radio station primarily on the Internet, the Independent Broadcasting Commission expressed the opinion that the transmission of data on a tele-computer network using the IP protocol is not subject to the law on electronic media and thus is not of the competence of the authorities put in place by such law, so that for a program distributed exclusively by Internet there is no need for a license.

Certain aspects of access and content of online services are treated in the law of 14 August 2000 (*Mémorial* A 2000 nr. 96 p. 2176), as amended by the laws of 19 December 2003 (*Mémorial* A 2003 nr. 189 p. 3990) and of 5 July 2004 (*Mémorial* A 2004 nr. 125 p. 1848) on electronic commerce.

Article 4 of the law of 14th August 2000 relating to e-commerce provides that, without prejudice to the provisions of the law relating to authorisation of businesses in general, access to the activity of a service provider on the Internet is not, in itself, subject to prior specific authorisation.

The e-commerce law defines the concept of information society service as being any service performed normally against remuneration, on distance by electronic means and at the individual demand of the user of the service. The law provides for protection of the consumer

through obligations of information, procedures of contract formation, rules on commercial communication, electronic payment, encryption of signatures, liability of providers, all based upon the European Directive 2000/31/EC on electronic commerce.

The law of 2 August 2002 on protection of services of conditional access has transposed into national law the corresponding EU Directive 98/84/EC of 20 November 1998 protecting encrypted pay services against piracy. Such legislation prohibits the possession and the marketing for commercial purposes of decoders without the authorisation of the service provider. Referring to the notion of "protected services" the law refers to the concept of information society service being defined as in the law of 14 August 2000 on e-commerce.

3.1.2. Administrative regulation/rules

Nothing to report in particular.

3.1.3. Other provisions, especially co-regulatory or self-regulatory measures, codes of conduct, etc.

There is no code of conduct specifically for online services, but the code of advertising practices of the Luxembourg federation of marketing and advertising agencies (mentioned above) has dedicated one special chapter 2.9. to self-regulatory provisions applying to advertisements in electronic commerce. To some extent the set of references (of 41 criteria on identification, presentation of products and services, handling of complaints, customer protection, advertisement...etc) to be fulfilled by a candidate for the award of the Luxembourg e-commerce certification (mentioned hereafter) could be considered as some kind of a code of conduct for service providers over the Internet (www.e-certification.lu).

3.2 Regulatory authorities/bodies

3.2.1. Authority

Except for the Luxembourg Regulation Institute "ILR" competent for technical matters in the fields of telecommunications, there is for the time being no regulatory authority as such for the sector of online services. It may however be mentioned that the law of 14 August 2000 relating to electronic commerce (in connection with the law of 22 March 2000 about accreditation, certification and normalisation in general) has created a National Accreditation and Monitoring Authority ("*Office Luxembourgeois d'Accréditation et de Surveillance (OLAS)*"), with the mission to implement a quality policy through the accreditation of *i.a.* certification-service providers delivering qualified certificates linked to electronic signatures. Such authority supervises also the delivery of certificates delivered by certification organisations to websites doing e-commerce and complying with all legal and technical requirements. The first certification body accredited by OLAS was *Société Nationale de Certification et d'Homologation (SNCH)*, a corporation of limited liability (*s.à.r.l.*) held by the state together with professional organisations and federations, which awards the certificates "Luxembourg e-commerce certified".

According to the program declaration of the government of August 2004, the future independent media regulatory authority “*Autorité de Régulation Indépendante (ARI)*” will get the mission to assure the respect of human dignity and the protection of minors in all audiovisual media, including online services (and even, as reported hereafter, for films in movie theatres).

3.2.2. Self- or co-regulatory body/ies

Possibly with the exception - to a certain extent - of the certification organisations mentioned above, there is no self- or co-regulatory body specifically dedicated to online services. However the sector is covered by the organisations of broader scope, such as the press council and the commission for ethics in advertisement (CLEP), mentioned above.

4. Film

a) In order to promote audiovisual creativeness in Luxembourg and its widest possible distribution, the Grand-Duchy has adopted a law dated 11 April 1990 (as amended by a law of 21 December 1998), which sets up a national fund for the support of audiovisual production (“*Fonds National de Soutien à la Production Audiovisuelle*”).

Furthermore, a law dated 13 December 1988 (as amended by a law of 21 December 1998), destined to favour investments of venture capital in the production of audiovisual works to be made in whole or in part in Luxembourg, provides for a temporary special fiscal treatment of so-called “*audiovisual investment certificates*” (presently in force until end of 2008).

Such legislation on financial incentives for audiovisual production expressly excludes pornography and works conflicting with public order or morality from the benefit of the tax shelter and of other subventions for cinematographic creation.

b) The law of 13 June 1922 on supervision of public movie theatres (*Mémorial A 1922* page 653) provides that access to movie shows is prohibited for minors under the age of 17 years, except for films authorized by the cinema control commission organised under the provisions of a grand-ducal decree of 16 June 1922 amended by decrees dated 14 November 1925, 22 August 1938 and 18 december 1950. Such commission has a broad competence of control not only on content of the films and related material but also on technical equipment of the movie theatres. According to its political program declaration, the government intends to abolish such commission and to have it replaced by the future media regulating authority “*Autorité de Régulation Indépendante (ARI)*” which will thus be competent for assuring the respect of human dignity and the protection of minors also in the film sector.