



OBSERVATOIRE EUROPÉEN DE L'AUDIOVISUEL  
EUROPEAN AUDIOVISUAL OBSERVATORY  
EUROPÄISCHE AUDIOVISUELLE INFORMATIONSTELLE

# Access to TV platforms: must-carry rules, and access to free-DTT

European Audiovisual Observatory  
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- DG COMM

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# Introduction and context of study

This report is based on work carried out for the European Commission in 2015 and looks at the way in which national systems prioritise the delivery of certain types of television content over distribution platforms. The report involved researching the current status in the EU28 and six additional countries: Albania, Bosnia and Herzegovina, Iceland, Norway, the Republic of Serbia and Switzerland.

This is done from two perspectives:

- A comprehensive overview of must-carry obligations in 34 countries
- An examination of access for channels to free-to-air digital terrestrial television networks and a presentation of the state of play regarding channels on free DTT

Chapter one outlines the status of must-carry rules in Europe on the basis of the investigation into the rules in 34 European countries. It covers the platforms and services that are relevant in national rules and looks at the aims of regulation and what types of services are deemed relevant to fulfil these aims.

Where relevant, other content rules such as must-offer, or must-find are addressed. The focus of the report is on linear services, however in the context of discussions on must-find, some reference was made to the issue of prominence in the response of regulators, with regard to the “findability” of services in on-demand audiovisual services.

Must-carry rules serve to ensure the delivery of specific types of content (public service and /or special interest) and the rules place obligations (and sometimes burdens of costs) on distribution platforms. Chapter one also makes reference to some of the legal challenges initiated by distributors with regard to must-carry regimes. The need for the must-carry rules to be consistent with the Universal Services Directive has also led to investigations of regimes by the European commission and these are also outlined in chapter one.

Chapter two provides information on the status of digital terrestrial television (DTT) in Europe, also on the basis of the research into the 34 countries, and on other data from the MAVISE database and the European Audiovisual Observatory.

It provides a brief overview of DTT licensing regimes for free-DTT platforms, and outlines the obstacles to accessing such platforms. In this context, the distinctions between the types of systems are explained – where the multiplex operator has the strongest influence over the content of the multiplex, or alternatively where the licensing process and the regulator determines the content of the multiplexes.

The extent to which non-national (those licensed in another jurisdiction) channels can be distributed over national free DTT platforms has also been examined in the context of this study. In some jurisdictions, certain foreign channels may be considered as must-carry and/or must-carry over DTT. This is usually the case with regard to certain public service content from neighbouring countries. In others, there is a requirement to have a national licence.

Access for TV channels to the capacity of the DTT multiplexes is therefore influenced by licensing or “gate-keeping” or both. It is also determined by the remaining capacity on DTT - in many countries a mature DTT system may no longer have space for additional services. The cost of development of the systems can also influence the levels of capacity, as in several countries, such as Ireland and Portugal where the DTT systems were never completely developed due to the economic challenges of building the networks.

A range of comparative tables are provided

- Summary of the types of platforms and types of channels/ content under must-carry rules
- Summary of the channels and services under must-carry rules
- Overview of relevant legislation/ links concerning must-carry rules 2015
- Status of DTT at end 2015: Multiplexes, channels, public and private, free and pay DTT
- Television channels on DTT end 2015

Chapters 3 to 36 provide the national overviews of the status of must-carry rules and implementation of DTT.

The analysis provided in this report is under the editorial responsibility of the European Audiovisual Observatory and does not imply any editorial liability on the part of the European Commission. The study was originally prepared for the DG COMM of the European Commission in the context of examining a set of issues linked to questions of access to content for the public.

A brief questionnaire on these issues was sent to the broadcasting regulatory authorities in Europe in 2015 (with the kind assistance of the Secretariat of the EPRA). The questionnaire was sent to all members of the network (e.g. 52 regulatory authorities from 46 countries). Replies were received from 26 regulatory authorities, 21 of which were from EU countries and six from other countries. Additional in-house research was carried out on the other 7 EU countries (in some cases using external experts).

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Most of the data collection for this report was completed between April and December 2015. Efforts have been made to provide information on changes or updates to national regulations on must-carry or DTT status. Recent changes (to April 2016) have been added under the section “Recent legal developments” based mainly on news in the IRIS Merlin database. Changes to the status of DTT implementation have been added (based on end of 2015 data from MAVISE and the Yearbook of the European Audiovisual Observatory).

# Executive Summary

## Key findings

- Must-carry regimes with the aim of ensuring public access to particular content for linear audiovisual services continue to exist throughout Europe
- For the most part the content that should be carried concerns that of public service broadcasters but in several countries the concept of content of special interest or public interest broadens the must-carry beyond the public broadcaster
- In several countries, the legacy free to air commercial broadcasters may also be included as must-carry. A range of other types of channels including local, community, regional channels may also be designated must-carry
- There are some exceptional cases where the public channels of neighbouring countries, or international cultural or news channels may also be must-carry
- The traditional approach of the focus of must-carry on cable networks has certainly changed with most countries adapting to the Universal Services Directive requirement that such rules focus on platforms with a “significant number of end users using the service as their main means of accessing television broadcasts”
- Must-carry remains contentious due to the obligations placed on distributors and the issues of cost which may affect the distributor and/or the broadcaster and this is apparent in the continuing legal battles over these regimes, such as the on-going dispute between German public broadcasters and cable operators
- There are also several examples of where must-carry rules have not been implemented as the public content tends to be desirable content without which the distributors would not attract subscribers
- Other access issues such as must-offer (the corollary of must-carry) and must-find or must-see also exist to a lesser extent. In this context many regulators already refer to the issue of prominence of content in the on-demand world. However, this area of regulation is not well developed
- The content available over free DTT networks (which are universal in terms of technical access and free to the citizen) also represents an opportunity to provide access for the public to specific types of content and ensure that publicly funded content is available to all. The significance of DTT as a distribution platform also varies widely throughout Europe
- There are very few countries where must-carry rules apply in the DTT environment. Regarding public service content this is for the most part due to the direct allocation of multiplexes to the PSBs or the requirement that the operators allocate space to the PSBs
- The access of channels to free DTT platforms generally follow two types of regulatory strategy – either the regulator driven “beauty contest” or the multiplex operator “gate-keeper” approach
- Regarding the possibilities for foreign (licensed in a different jurisdiction) channels to find space on a national free DTT platform, these vary across Europe with many countries requiring that all channels on free DTT have national licences
- There are however, several examples of foreign channels and of international channels on the free DTT networks in other countries
- The potential for channels to be added to a national free DTT network is influenced by a wide variety of additional factors aside from must-carry, or licensing regimes including:
  - The capacity of the networks which may either be well developed, mature and hence completely full, or under-developed (due to economic reasons) and hence lacking in space
  - The cost to the channel for transmission on the platform

## Overview

- The aim of this study was to provide an overview of must-carry rules for television in Europe and to examine whether must-carry rules applied to digital terrestrial television (DTT) platforms. Hence alongside the information on must-carry regimes, a brief overview on the licensing regime for DTT platforms, in particular the free-DTT platforms (as pay DTT can be considered as similar to any other pay package such as those provided by cable, satellite, IPTV etc.) is also presented.

## Must-carry rules and other rules on access to content for the public

- The report first places the discussion on national must-carry rules in the context of European Union law. The Universal Services Directive requires that such obligations should be applied only to “networks that have a significant number of end users using the service as their main means of accessing television broadcasts. Such obligations shall only be imposed where they are necessary to meet clearly defined general interest objectives and shall be proportionate and transparent.” (Article 31)
- There have been several legal challenges brought by the European Commission concerning national must-carry rules and compatibility with the Universal Services Directive, and by distribution platforms at the national level. Section 1.1 outlines some of these cases.
- This research was not intended to provide an overview of the implementation of Article 31 but does refer to the relevant legislation as it was either provided by the regulators or identified during the research as being relevant to the must-carry rules. Hence there is no exhaustive overview of this legal framework (but references are included on table 2 in chapter 2, which provides an overview of relevant legislation with regard to must-carry).
- One can assume that the selection of platforms to be designated as must-carry matches their significance as distribution systems in the national markets. The history of the development of must-carry rules shows that they were originally focused on cable systems. In this context it should be noted that these types of rules have no strong tradition in countries like Cyprus, Greece and Italy where there are no cable services.
- The research revealed that there are no must-carry rules in Greece (must-carry were formerly in place for satellite as the only digital platform, but these were removed after the implementation of digital terrestrial television), Cyprus, Luxembourg and Italy (except in relation to local channels on DTT).
- Although present in the UK law, these rules have never been imposed on an operator as all the must-carry channels represent desirable content for the operator, the content with the highest audience ratings without which the service would not be attractive to the audience. In Croatia and Greece the legal framework exists to introduce must-carry rules but no channels have been designated as must-carry.
- There are examples of where the obligations regarding must-carry were amended following the completion of the switchover from analogue to terrestrial digital broadcasting. In Spain, for example, the obligations on cable to carry the national analogue terrestrial stations were amended in a Royal Decree making them obligations for the transition only until the completion of switch-over from analogue to digital terrestrial broadcasting (see Spanish profile). In the Czech Republic must-carry obligations for cable (of national private terrestrial channels) ended in 2012 with the switch-off of analogue terrestrial signals. In the case of Greece, the obligations were removed from satellite operators after the introduction of digital terrestrial broadcasting.
- Those countries where must-carry still only applies to cable are: Austria, the German-speaking Community of Belgium, the Czech Republic, Malta, Romania, and Spain. The most recent change in rules took place in Latvia in January 2016, which extended obligations to all platforms (see table 1 for details on the platforms included).
- Regarding the specific types of content that should be carried, must-carry rules apply only to the carriage of content from public broadcasters in a range of countries: Austria,

Belgium (German speaking community), Bosnia and Herzegovina, Bulgaria (for cable and satellite), France (plus the parliamentary channel), Ireland (plus the parliamentary channel), Hungary, and the Netherlands.

- Another criterion refers to “channels of public interest/special interest/general interest” and is used in designating types of channels that should be must-carry in Switzerland, Finland, Malta, Latvia and Sweden.
- Public **and free to air commercial channels** are both included as must-carry in Albania, Bulgaria (only for DTT), Estonia, Finland, Iceland, Lithuania, Poland, Portugal, Romania, the Slovak Republic, and the UK.
- Public **and local channels** are included in Belgium (French Community) and the Czech Republic, while public **and regional** are included in Belgium (Flemish Community). The rules in Italy cover local only (and just those carried over DTT).
- Public, **free to air commercial, local and non-profit channels** are also included in Germany. **Public, regional, local and non-profit** are included in Slovenia.
- **Access services** are another example of specific content/ services which must be carried and included the following: specific programmes and services for disabled people, i.e. teletext (UK); services for disabled people associated to the channels to be carried (France); services for the visually and hearing impaired which are coupled with must-carry television programmes (Switzerland); services for the visually impaired and hearing impaired population, namely sign language interpreted news and programmes from the public channels DR1 and DR2 with audio descriptions (DK).
- There are a few instances where foreign or international channels are included in the must-carry obligations: in Belgium there are obligations to carry TV5 (in the French Community) and the channels of the Dutch public service broadcaster NPO (in the Flemish Community); in the Netherlands obligations apply to the three channels of the public service broadcaster of the Belgian Flemish Community (Eén, Canvas, Ketnet/OP Twaalf); in Romania the list includes the French international television channel TV5, and the Moldovan international channel Moldova 1; and in Switzerland the list includes ARTE, 3sat, TV5, ARD Das Erste, ORF 1, France 2, Rai Uno (throughout Switzerland) and Euronews (in the language of the linguistic region concerned).
- The international cultural channels 3sat and Arte are must-carry in Germany, and the channels TV5 and ARTE are must-carry in France.
- See table 1 for details on the types of channels included and table 2 for a complete list of channels included in must-carry rules.

### **Digital terrestrial television and the access of channels to free DTT platforms**

- The second aspect of the analysis looked at the state of play of DTT platforms, their licensing, the services on free DTT and the presence of, or potential access for, foreign channels.
- It should be noted that the extent to which digital terrestrial television is a significant means of delivery of television services varies widely between countries. The free DTT platform is very important in three of the largest European countries: the UK, Italy and Spain, plays an important role in France, and is of much less significance in Germany.
- As a free service with (almost) technical universal reach in all European countries, DTT is of course technically available to all homes (assuming they have a set-top box or built-in tuner in the TV set) and may in many cases be used on a second set (i.e. not on the main set used in the household). For example, data from IHS (2013) shows that 40% of Irish homes, 50% of Czech homes and 60% of French homes have TV sets capable of receiving DTT (and possibly use this on a second TV set).
- 10% or less of the population rely on DTT for access to television services in Switzerland, the Slovak Republic, Austria, Belgium, Germany, Ireland and the Netherlands.
- Wide distribution of a TV channel requires a presence on DTT in Italy and Spain, Cyprus, Croatia, Greece, Lithuania, Malta and the United Kingdom. Ensuring an adequate reach (in combination with other platforms such as cable and satellite) and capturing

the additional 20-30% of homes requires a presence on DTT in Bulgaria, the Czech Republic, Estonia, Finland, Latvia, Poland, Sweden and Slovenia (for more detail see Chapter 2, section 2.1).

- When considering the extent to which must-carry is applied to DTT platforms, it should be noted that in many jurisdictions the legislation implementing DTT and the policies for authorising multiplexes have generally ensured that the public service broadcasters are allocated at least one multiplex. Where this is the case, it can be assumed that it would be unnecessary to apply a must-carry rule over DTT for the services of the public broadcaster.
- Must-carry rules in relation to DTT were identified in Estonia, Denmark, Italy, Finland, Portugal and Slovenia. However, for digital terrestrial television a different approach was taken in most countries regarding content selection either via the channel licensing system and /or the licensing of the operators of the multiplexes.
- DTT licensing regimes vary widely throughout Europe. There are two main approaches: where the regulator plays a more significant role in allocating frequencies and granting licences (France, Belgium (French Community), Germany, Sweden, Finland, Slovenia); and where the multiplex operator plays a “gate-keeper” role in selecting content (the Czech Republic, Latvia, the Slovak Republic, Denmark, Italy, the UK, Norway, and Portugal).
- With regard to access for foreign channels, Albania, France, Croatia, Slovenia, Latvia, Portugal and the Czech Republic appear to have systems that allow only domestic channels to be carried on the free DTT. Similarly all foreign channels have to apply for a DTT licence in both Sweden and in Finland. Channels (including foreign) have to apply for a DTT license in the UK after securing an agreement of carriage with the DTT multiplex operator.
- Further obstacles to the carriage of channels include the limited capacity of the platform, and where the system is mature all frequencies may have been allocated.
- In several countries (Ireland, Slovenia, Portugal) the DTT systems were not developed to their full potential as all the planned multiplexes were not built. This was either due to lack of content, economic reasons, or lack of desire to invest in the system. It may be the case that since there were few multiplexes launched there is no capacity left on those that exist, or that there are half empty multiplexes with space available.
- Channels are not “free” over the free-DTT networks. The access for the viewer is free, but channels must pay the multiplex operator for carriage (unless they have themselves been allocated a multiplex, as is the case with many public service broadcasters and sometimes private channels). However, even in this case, the broadcasters have had to build the infrastructure which is also costly. Hence, issues of cost have been identified that make it difficult to either fill multiplexes or to access space in the multiplexes.
- Table 3 provides an update of the status of implementation of DTT throughout Europe, while table 5 provides complete lists of the channels available on DTT throughout Europe.
- On the issue of presence of foreign channels (those not licensed in the member state) on free DTT platforms, there are very few examples. From the 34 countries covered in this report, there are no foreign channels (i.e. licensed and established in another country) on the free DTT networks in 18 countries: Bulgaria, Croatia, the Czech Republic, Denmark, Finland, France, Ireland, Latvia, the Netherlands, Norway, Malta, Poland, Romania, Serbia, the Slovak Republic, Slovenia, Spain, and Switzerland.
- Although certain foreign/ international channels are listed as must-carry in the Netherlands, Romania and Switzerland, these rules clearly do not apply to DTT networks but rather to cable networks.
- The public service channels of neighbouring countries are sometimes included on free DTT networks: in the United Kingdom (Irish public channels on the Northern Ireland multiplex); Sweden (the Finnish public channel), and in Austria (the first Swiss public channel). Regarding international cultural channels, the pan-European channel 3sat is available on free DTT in Austria and in Germany, while ARTE is available in Germany

and France. The cultural channel TVP Polonia is available in Lithuania. The Cypriot channel Rik Sat is available in Greece.

- Examples of (foreign) international news channels on the free DTT networks include BBC World News (in Saxony in Germany, and in Greece), and Euronews (in Berlin, Belgium, Cyprus, Greece, Hungary, and in Ireland – as a window). The broadcast of CNN on the free DTT network in North Rhine Westphalia (Germany) ceased in November 2014. In addition, France 24 is available on the free DTT platform in Estonia. The international Chinese state television channel CCTV news is on the free DTT network in Iceland. A wide range of international news channels are on the free DTT network in Greece including: BBC World, TV5 Europe, Deutsche Welle, and Euronews.
- Other types of foreign channels include Nickelodeon in Greece, M6 in Luxembourg and C8TV in Hungary (a Czech based channel).

# 1 Must-carry

Must-carry rules were originally developed to ensure the carriage of public channels (and other channels of special interest) over cable systems with the intention of securing the access for the public to these channels. It is important to note that these types of rules have no strong tradition in countries like Cyprus, Greece (must-carry were formerly in place for satellite as the only digital platform, but these were removed after the introduction of DTT) and Italy where in all cases there are no cable services.

Must-carry rules give rise to debates in both competition policy and cultural policy.

Regarding competition policy, there are frequent claims that a must carry regime creates an imbalance in competition in many states where certain broadcasting organisations retain unfair advantages over others. It is also claimed that the abundance of information and reception possibilities in the digital age makes the need for such rules redundant.

From the cultural perspective, on the other hand, it is considered that must-carry rules are still valid where market intervention is required to ensure certain cultural and political objectives are achieved, those that address the “public interest” or the “general interest”, while at the same time promoting market diversity.

As Valcke (2005) notes: “... governments still consider it as their task – even in an era of abundant information flow and lack of transmission scarcity – to ensure all citizens have access to a minimum and specific package of information services at an affordable price.”<sup>1</sup>

## 1.1 Universal Services Directive

The Universal Services Directive<sup>2</sup> adopted in 2002 addressed the issue of must-carry under Article 31 with the aim of clarifying the conditions applicable to must-carry:

*Universal Services Directive, Article 31: must-carry obligations*

*1. Member States may impose reasonable must-carry obligations, for the transmission of specified radio and television broadcast channels and services, on undertakings under their jurisdiction providing electronic communications networks used for the distribution of radio or television broadcasts to the public where a significant number of end-users of such networks use them as their principal means to receive radio and television broadcasts. Such obligations shall only be imposed where they are necessary to meet clearly defined general interest objectives and shall be proportionate and transparent. The obligations shall be subject to periodical review.*

*2. Neither paragraph 1 of this Article nor Article 3(2) of Directive 2002/19/EC (Access Directive) shall prejudice the ability of Member States to determine appropriate remuneration, if any, in respect of measures taken in accordance with this Article while ensuring that, in similar circumstances, there is no discrimination in the treatment of undertakings providing electronic communications networks. Where remuneration is provided for, Member States shall ensure that it is applied in a proportionate and transparent manner.*

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<sup>1</sup> Valcke, P (2005): “*The Future of Must-Carry: from Must-Carry to a concept of Universal Service in the Info-Communications Sector*”. In S. Nikoltchev (Ed): *To Have or Not To Have Must-Carry Rules*. Strasbourg: European Audiovisual Observatory.

<sup>2</sup> Universal Services Directive <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32002L0022&from=EN>

### 1.1.1 Legal challenges to must-carry regimes<sup>3</sup>

Several infringement procedures have been initiated over the years by the European Commission against Member States regarding the implementation of the Universal Service Directive 2002/22/EC. These mainly addressed the question as to whether or not the obligations were: strictly necessary to meet clearly defined general interest objectives; proportionate and transparent; and subject to periodic review.

The Commission initiated a procedure against Belgium in 2006 regarding the must-carry rules of the Belgian French Community, claiming that the procedures for designating must-carry channels lacked transparency and clarity, and that the law should limit the number of channels to be listed as must-carry.

At the same time, a case was heard at the Court of Justice of the European Union (CJEU) on this issue. The case was brought by cable operators against the Belgian state relating to the obligation imposed on them to broadcast television programmes transmitted by certain private broadcasters designated by the authorities.

The cable operators claimed that must-carry rules were distorting competition and constituted an unjustified restriction on freedom to provide services. The Court ruled that Article 49 EC does not preclude legislation such as must-carry rules where they both: pursue an aim of general interest such as pluralism of television programmes; and where they are proportionate, transparent and non-discriminatory. It was therefore the task of the national court to establish if these criteria were being met. Although the Belgian French Community media law was updated in 2007, the Commission (communicating in a press release of May 6th 2008) did not feel that this had addressed its concerns regarding “the issue of proportionality, transparency and non-discrimination”.

In October 2012, Belgium faced proceedings before the Court of Justice of the European Union (CJEU) for non-compliance of must-carry obligations as provided for in Article 31 of the Universal Service Directive (2002/22/EC). The European Commission justified its application for an order against Belgium to pay a fine based on the fact that the country had not amended its national legislation after repeated warnings dating back to 2008. It criticised the lack of clarity and transparency of the regime in place in the Brussels-Capital region.<sup>4</sup> As a consequence, the federal legislator amended the legislation via the law of 27 December 2012.<sup>5</sup>

On 8 October 2009, the European Commission decided to close an infringement procedure against Germany relating to European must-carry provisions, as set out in the Universal Services Directive. The proceedings against Germany were initiated by a complaint concerning rules obliging cable operators in Germany to broadcast certain public television channels. The legal situation was clarified by means of a preliminary ruling by the European Court of Justice (ECJ) in December 2008. According to the Court, EU rules do not for-

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<sup>3</sup> This section relies also on several articles from the IRIS Merlin database: <http://merlin.obs.coe.int/> Also on a paper prepared for the European platform of Regulatory Authorities in 2008: *Must-Carry rules: Valuable Tool or Sacred Cow? Background paper: EPRA/2008/06*, prepared by Deirdre Kevin for the EPRA Secretariat. 27th EPRA meeting, Riga May 14-16 2008 (amended version). <http://www.epra.org/attachments/riga-plenary-2-must-carry-background-paper>

<sup>4</sup> Jassersand, Catherine (2012): *Action against Belgium for Failure to Perform Obligations in its Incorrect Trans-position of the Must-Carry Broadcasting Obligation into National Law*. IRIS Merlin. 2012. Available from: <http://merlin.obs.coe.int/iris/2012/10/article3.en.html> AND European Commission. 2012. Digital Agenda: Commission asks Court of Justice to fine Belgium over non-transparent must-carry TV and radio rules. Available from: [http://europa.eu/rapid/press-release\\_IP-12-1144\\_en.htm](http://europa.eu/rapid/press-release_IP-12-1144_en.htm)

<sup>5</sup> Service Public Fédéral Justice. 2012. Loi modifiant la loi du 30 mars 1995 concernant les réseaux de Communications électroniques et services de Communications électroniques et l'exercice d'activités de radiodiffusion dans la région bilingue de Bruxelles-Capitale. Available from: [http://www.ejustice.just.fgov.be/cgi\\_loi/change\\_lg.pl?language=fr&la=F&table\\_name=loi&cn=2012122716](http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&table_name=loi&cn=2012122716)

bid such must-carry rules, provided that the obligations imposed do not give rise to unreasonable economic consequences.<sup>6</sup>

A more recent case concerns the obligation in France for cable and IPTV operators to carry local public channels. This was challenged by several IPTV operators and referred by the Conseil d'Etat to the Constitutional Council for a preliminary ruling on the constitutionality of the obligation. In conclusion the Court in March 2016 found that: "to a limited degree, the disputed provisions infringed the distributors' freedom to conduct business and the freedom to enter into a contract. It also found that the obligation thus instituted pursued an objective of general interest and did not cause an unequal discharge of public burdens."<sup>7</sup>

The following overview of must-carry rules is based on the research carried out for each country, and on a questionnaire sent to national regulatory authorities in 2015, and also on a previous survey carried out by the EPRA in 2008.<sup>8</sup> (Most recent updates have been included to March 2016).

## 1.2 Platforms referred to in must-carry rules

Decisions regarding which platforms are subject to must-carry may be clearly outlined in the law, or may sometimes be the remit of the regulator, based on whether the platform is serving a significant number of people. In Belgium for example, the CSA (French Community) assesses which distribution platforms should have must-carry obligations on the basis of the "significant number of end-users". This is also the case in Malta, where the MCA has the right to review the situation in the case of significant market developments and to adapt the selection of platforms under must-carry rules.

In the UK, Section 64 allows the regulator Ofcom to set general conditions of entitlement in relation to Must-Carry Obligations, and the power to set General Conditions on appropriate electronic communications networks requiring carriage of the specified services.

### 1.2.1 Cable as the main focus of must-carry rules

Traditionally, cable television has been the distribution platform to which must-carry rules have been applied (both analogue and digital cable). Such regimes were first introduced in European countries with the emergence of cable as there were concerns that cable companies would not otherwise carry those public service channels that were paid for by the public (Roukens, 2005).<sup>9</sup>

In the EPRA survey of 2008, it emerged that there were several countries that applied must-carry to cable only: Andorra, the Flemish Community of Belgium, Bosnia and Herzegovina, the Czech Republic, Hungary, Latvia, Luxembourg, the Netherlands, Poland and Sweden.

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<sup>6</sup> Christina Angelopoulos (2009): *German must-carry Case Closed, but Belgium Is Taken to Court*. IRIS 2009-10: Extra. <http://merlin.obs.coe.int/iris/2009/10/article102.en.html>

<sup>7</sup> Blocman, Amélie (2016): *Obligation to carry local public television services judged compliant with Constitution*. IRIS 2016-5:1/11: <http://merlin.obs.coe.int/iris/2016/5/article11.en.html>

<sup>8</sup> *Must-Carry rules: Valuable Tool or Sacred Cow? Background paper*: EPRA/2008/06. Prepared by Deirdre Kevin for the EPRA Secretariat. 27th EPRA meeting, Riga May 14-16 2008 (amended version). <http://www.epra.org/attachments/riga-plenary-2-must-carry-background-paper>

<sup>9</sup> Roukens, T (2005): *What Are We Carrying Across the EU these Days?: Comments on the Interpretation and Practical Implementation of Article 31 of the Universal Service Directive*. In S. Nikoltchev (Ed): *To Have or Not To Have – MC Rules*. Strasbourg: European Audiovisual Observatory.

With the 2015 update (based on the questionnaire and additional research), it is clear that this situation has changed in the Flemish Community of Belgium, Bosnia and Herzegovina, Hungary, the Netherlands, Latvia (since 2016), Poland and Sweden. In these countries, must-carry rules may now also apply to other distribution platforms.

Countries where must-carry still only applies to cable are: Albania, Austria, the German-speaking Community of Belgium, the Czech Republic, Malta, Romania, and Spain.

The must-carry rules of Latvia were updated in January 2016 and now apply to all distributors of television services (see 26.2 for update).

In several cases, the obligations regarding must-carry were amended following the completion of the switchover from analogue to terrestrial digital broadcasting. In Spain, for example the obligations on cable to carry the national analogue terrestrial stations were amended in a Royal decree making these transition obligations only until the completion of switch-over from analogue to digital terrestrial broadcasting (see Spanish profile).

In the Czech Republic must-carry obligations for cable (to carry national private terrestrial channels) ended in 2012 with the switch-off of analogue terrestrial signals. In the case of Greece, the obligations were removed from satellite operators after the introduction of digital terrestrial broadcasting.

### 1.2.2 Technology neutral

It is important to note again the text from the Universal Services Directive: “Member States may impose reasonable must-carry obligations, for the transmission of specified radio and television broadcast channels and services, on undertakings under their jurisdiction providing electronic communications networks used for the distribution of radio and television broadcasts to the public where a significant number of end-users of such networks use them as their principle means to receive radio and television broadcasts.”

Here it stresses the electronic communications networks “*where a significant number of end-users of such networks use them as their principle means to receive radio and television broadcast.*”

In many countries, the focus is no longer on a “particular type of platform” but rather on the platforms that are serving a “significant number of end-users”, who use this as their “principle means” of reception.

An example is the Flemish Community of Belgium, where the respondent to the questionnaire stressed that “must-carry rules do not apply to specific platforms or technologies”. These rules must be reviewed every three years, and the must-carry networks designated by the government. This last happened in 2013 (and designated the platforms Telenet, Coditel and Nethys as having these obligations).

Also in Hungary where the focus is on digital platforms, the rules are technologically neutral. The obligations extend to “providers and operators distributing media services on other transmission systems or networks, if this transmission system or network is the one which is widely used by subscribers and users as the main instrument for receiving radio and audiovisual media services.” Additionally, the rules are described (by respondents to the questionnaire in Iceland and Denmark) as applying to all platforms. This principle is also the basis for placing obligations on operators in the UK, where, to date no operator has been placed under these obligations.

Table 1 (page 20) provides an overview of the types of channels and platforms referred to in these rules.

### 1.2.3 Various platforms

The following outlines countries that are part of this report where various (but not all) platforms are subject to must-carry rules. One can assume that the selection of platforms

matches their significance as distribution systems in the national markets.

One could assume that the choice of platforms here may also be based on those networks “where a significant number of end-users of such networks use them as their principle means to receive radio and television broadcast.”

In the French and Flemish Communities of Belgium must-carry rules concern platforms that are used by a significant number of people as the primary means of receiving audiovisual media services. Similarly, the rules in Hungary concern all platforms widely used as the main means of reception and in Ireland “appropriate networks ... used by a significant number of end-users” as principal means of receiving programmes are subject to must-carry rules.

In Sweden, the rules apply to cable, including IPTV. In Finland must-carry rules “apply to Cable, IPTV and joint antenna networks within a real estate (DTT)”. In Denmark and Estonia (where the respondent notes that there are no satellite packagers established in the country), cable/IPTV and DTT are subject to must-carry rules.

The rules in France cover cable, IPTV, satellite, and mobile networks.

In Germany, the rules concern platform providers that offer linear audiovisual media services via closed networks (e.g. cable and IPTV).

In Bosnia and Herzegovina (where the questionnaire respondent explains that DTT has not properly launched in the country), in Slovenia and in Poland, the rules apply to all platforms except DTT.

In Switzerland, the rules apply to anyone providing TV services via wire affecting all technologies and platforms (e.g. cable, IPTV, streaming and mobile platforms).

#### 1.2.4 DTT and must-carry

In most jurisdictions the legislation implementing DTT and the policies for authorising multiplexes have generally ensured that the public service broadcasters are allocated at least one multiplex, hence already fulfilling the aim of ensuring access for the public to PSB channels. In chapter 2, table 2 illustrates a range of countries where the public service broadcasters operate a multiplex: Austria, Belgium, Cyprus, Denmark (joint ownership DR and TV2), Germany (regional PSBs), Greece, Ireland, Italy, Malta, Slovenia, Spain, the United Kingdom and Switzerland.

***Hence, in the above cases, it can be assumed that it would be unnecessary to apply a must-carry rule over DTT for the services of the public broadcaster where the public broadcaster itself was managing a multiplex.***

In contrast those countries (included in this report) where the public broadcaster is not managing a multiplex include: Bulgaria, Croatia, Estonia, Luxembourg (RTL Group), the Netherlands, Portugal, Romania, the Slovak Republic and Sweden.

Although the public service broadcaster was not specifically designated to run a multiplex, in many countries a multiplex run by a separate company was designated as being intended for carrying public service channels: for example in the Czech Republic, the first multiplex (run by Radiokomunikace, A.S.) was attributed to the public service provider.

Must-carry obligations regarding DTT have been identified in Estonia, Denmark, Italy, Finland, Portugal and Slovenia.

For other countries, the licensing system for DTT (see 2.5) has been extremely varied and introduced a range of mechanisms for controlling the content (and the channels) on the networks.

## 1.3 Must-carry channels and services

In some jurisdictions, the law lists the specific services (names of channels and/or broadcasters) that should be must-carry. In others there is no list of channels, but rather a set of characteristics, or types of channels that should be must-carry. It can often be the task of the media regulator to create the list of the must-carry channels. In several countries, the relevant ministry and minister decides on which channels fall under must-carry.

The EU directive stresses that these obligations “shall be subject to periodical review” (Universal Services Directive, Art 31 (1)).

### 1.3.1 General interest objectives

The decisions to nominate channels as must-carry and create obligations for distributors should be “imposed where they are necessary to meet clearly defined general interest objectives and shall be proportionate and transparent” (Universal Services Directive, Art 31 (1)).

In a survey carried out for the EPRA in 2008, an overview was provided of the “regulatory aims” of must-carry rules. Such “regulatory aims” can be equated with the “clearly defined general interest objectives” referred to in the Directive. At that time in 2008, these objectives included the following:

*The regulatory aims of the MC rules in most jurisdictions have been primarily focused on providing access for all to the public service channels. This is the case in most jurisdictions, and in many it represents the only aim of this regime (for example in Denmark, Greece, Hungary, Latvia, Macedonia, Malta, Montenegro, Netherlands, Norway, Romania, Sweden). For most other countries, there are at least two to three regulatory aims that concern access to public service channels and diversity (of content and/or the market). Only in Israel, Austria, Ireland and Germany are must-carry rules described as having also a regulatory aim of promoting new services.<sup>10</sup>*

Examples regarding the “clearly defined general interest objectives” of the must-carry rules from the current report are outlined below. It is not always the case that the legislation explicitly includes these regulatory aims or general interest objectives.

In Austria, the purpose of the provisions applying to cable operators and their digital and analogue networks is to “disseminate, upon inquiry, television channels which make a special contribution to the diversity of opinions in the coverage area on the conditions applicable to the overwhelming number of other channels disseminated in the cable network”

In each of the three language communities in Belgium who separately regulate broadcasting, the issue of promoting cultural diversity is emphasised (with also a need to take account of the cultural specificity of the German-speaking Community in the laws of the German speaking Community). In Belgium, this is reflected in the fact that each community includes the public service channels of the other communities in the must-carry lists.

In Denmark the rules ensure access to the Danish parliamentary television channel and specific services for the visually and hearing impaired population.

In Germany, the overall purpose of the must-carry rules is to safeguard the plurality of opinion and variety of offers.

In Hungary the rules are intended “to preserve, protect and further develop Hungarian and European culture and the culture of nationalities, support and sustain the languages of nationalities, satisfy the information needs of citizens and facilitate their participation in democratic public affairs and preserve diversity of opinions”

In Sweden, the purpose of the provisions applying to cable and IPTV operators is to provide services that offer impartiality and objectivity and to ensure a diversified range of programmes that must include news coverage. In addition, the provisions applying to local cable network operators specify that these “must endeavour to achieve broad freedom of expression and information to the greatest possible extent” (Chapter 9, Section 6 Radio and Television Act).

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<sup>10</sup> *Must-Carry rules: Valuable Tool or Sacred Cow? Background paper: EPRA/2008/06*, prepared by Deirdre Kevin for the EPRA Secretariat. 27th EPRA meeting, Riga May 14-16 2008 (amended version). <http://www.epra.org/attachments/riga-plenary-2-must-carry-background-paper>

### 1.3.2 Where specific channels are listed

Countries where the law lists specific services (names of channels and/or broadcasters) include Austria, Belgium (the French and Flemish Communities and the German-speaking Community), Bosnia and Herzegovina, Bulgaria (PSB), Finland, Denmark, Estonia, France, Ireland, Lithuania, Poland, Romania, Slovenia, Switzerland and the UK.

### 1.3.3 Where types of services are listed

In Sweden, the rules do not apply to a list of specific channels (by name). The rules apply to specific types of services, i.e. television broadcasts for which the licence is subject to impartiality and objectivity requirements and a condition concerning a diversified range of programmes that must include news coverage (currently, they are only applied to public channels, see under 1.3.3). There is also a must-carry obligation for programmes by local cable transmission organisations, formed to conduct local cable transmissions and which may be required to permit the expression of a variety of interests and opinions in its operations.

As the rules in Spain no longer apply to specific channels, they now impose the obligation on cable operators that one third of Spanish language channels be from independent providers (not linked to the distributor itself).

In Germany, the rules apply to certain types of channels that include license-fee funded television as well as the regional television channels the “Dritte”, state-related windows, commercial television channels with local windows, regional and local television services, open access channels, thematic channels, foreign-language and teleshopping channels.

In Malta, the law refers to specified radio and television broadcast channels and complementary services meeting general interest objectives.

In Italy, the law only refers to right holders of frequencies on the local level.

In Hungary the law mentions media services of the public media service provider and in the Czech Republic, public service channels and local channels are mentioned.

In the Netherlands, the services under must-carry regulation include three national channels each by the Dutch public service broadcasters and that of the Flemish Community of Belgium, as well as the Dutch regional and local public broadcasters.

#### (1) Public service only

Must-carry rules apply to public service channels only in Bosnia and Herzegovina, Ireland, France, Lithuania, the Netherlands and the UK.

Although the rules in Sweden do not apply to a list of specific channels (by name), they currently (de facto) only apply to the public service Company SVT and its four different channels and the UR (Swedish Educational Broadcasting Company, part of the public service broadcasting group). The must-carry rules did previously also apply to the commercial Company TV4 between 2002 and 2008.

In Bosnia and Herzegovina the must-carry channels are the public channels: Radio and Television of Bosnia and Herzegovina, Radio and Television of the Federation of BiH and the Radio and Television of Republika Srpska.

In Denmark, the rules apply to the parliamentary television channel TV fra Folketinget, and to services for the visually and hearing impaired.

Foreign public service channels are included in obligations: in Belgium for the channels of the Dutch public service broadcaster NPO (Flemish Community); in the Netherlands for the three channels of the public service broadcaster of the Flemish Community (e.g. Eén, Canvas, Ketnet/Op Twaalf); and in Switzerland for ARD Das Erste, ORF 1, France 2, Rai Uno (throughout Switzerland).

## (2) Public, private and/ or others

In Slovenia, the services that are must-carry are: those of the public service broadcaster Radiotelevizija Slovenija radio and television programme services; Local radio and television programme services; Regional radio and television programme services; Student radio and television programme services; Non-profit radio and television programme services. These should be carried and broadcast free of charge.

In Romania the must-carry channels include the public service channels and also a priority list of 28 channels ranked according to audience share, which should be carried. The total must-carry list should not take up more than 25% of the total capacity of the operator.

In Poland, the rules include the two main public service channels and one public regional television channel broadcast. In addition, platform operators are obliged to retransmit those programme services that were broadcast on the basis of a broadcasting licence in analogue form terrestrially on the day of the entering into force of the Act on the introduction of terrestrial digital television, by the four commercial broadcasters Telewizja Polsat S.A., TVN S.A., Polskie Media S.A., Telewizja Puls S.A. This includes the channels Polsat, TVN, TV4 and TV Puls.

In Estonia and Latvia, the rules apply to public television broadcasting programmes and national free-to-air commercial television programmes available. The Czech rules apply to public service channels and local channels. In Iceland all channels under Icelandic jurisdiction (except teleshopping channels) are subject to must-carry rules.

From the responses received from the questionnaires sent to the regulators, several examples of other services which must be carried included the following: specific programmes and services for disabled people, i.e. teletext (UK); services for disabled people associated to the channels to be carried (France); services for the visually and hearing impaired which are coupled with must-carry television programmes (Switzerland); services for the visually and hearing impaired population, namely sign language interpreted news from DR and TV2/DENMARK A/S and programmes from DR1 and DR2 with audio descriptions (DK).

## (3) Foreign/ international

As noted above, foreign national public service broadcasters are listed as must-carry in Belgium, Netherlands and Switzerland. In France, Germany and Switzerland ARTE is a must-carry channel as is 3sat in Switzerland and Germany. In Switzerland Euronews is a must-carry channel.

Table 1 provides an overview of the types of channels and platforms referred to in the rules and table 2 focuses on the actual channels and services mentioned in the regulatory frameworks.

**Table 1 Summary of the types of platforms and types of channels/ content under must-carry rules (2015)**

| Country                                | Platforms   | Channels/ Services / types of channels or services listed in the law  |
|--|---|---|
| AL – Albania                           | Cable   | <b>PSB:</b> Public broadcaster<br><b>Commercial:</b> National free to air: Top Channel and TV Klan  |
| AT- Austria                            | Cable   | <b>PSB:</b> Services of the ORF<br><b>Local:</b> television channels which make a special contribution to the diversity of opinions in the coverage area  |
| BA - Bosnia and Herzegovina            | Cable/ satellite/ IPTV  | <b>PSB:</b> Radio and Television of Bosnia and Herzegovina, Radio and Television of the Federation of BiH and the Radio and Television of Republika Srpska  |
| BE - Belgium French Community          | All platforms/ technologically neutral “widely used... as main platform of reception” | <b>PSB:</b> Services of the RTBF<br><b>PSB:</b> 2 services of the PSB Flemish Community,<br><b>PSB:</b> One + services of the PSB German-speaking Community<br><b>International:</b> TV5<br><b>Local:</b> Local services in area of coverage  |
| BE - Belgium Flemish Community         | All platforms/ technologically neutral “widely used... as main platform of reception” | <b>PSB:</b> Services of the PSB Flemish Community,<br><b>Regional:</b> broadcasting programme of the regional TV broadcaster.<br><b>PSB:</b> Two radio and two television programmes of the French-speaking community<br><b>PSB:</b> Radio broadcasting programme of the German-speaking Community;<br><b>PSB:</b> Two radio programmes and the television broadcasts of the Dutch public broadcaster;                      |
| BE - Belgium German-speaking Community | Cable   | <b>PSB:</b> Services of the BRF<br><b>PSB:</b> 2 channels by the RTBF<br><b>PSB:</b> 2 channels by the VRT  |
| BG - Bulgaria                          | DTT (one set of criteria)<br>Cable and satellite                                      | <b>PSB (on all platforms):</b> BNT and BNR<br><b>Commercial (only for carriage on DTT):</b> FTA TV channels on analogue terrestrial   |
| CH- Switzerland                        | cable (digital)/ IPTV/ streaming and mobile platforms                                 | <b>PSB:</b> Services of the SRG SSR,<br><b>International:</b> Foreign television programmes which contribute to public service objectives,<br><b>Public interest/special interest/general interest:</b> Channels on a license to fulfil a public service mandate, channels that contribute to the fulfilment of public service goals,<br><b>Services disability:</b> Services coupled with must-carry television programmes |

| Country            | Platforms  | Channels/ Services / types of channels or services listed in the law  |
|--------------------|--|---|
| CY- Cyprus         | n/a  | n/a   |
| CZ- Czech Republic | Cable  | <b>PSB:</b> Public service channels<br><b>Local:</b> Local channels   |
| DE- Germany        | Cable/ IPTV  | <b>PSB:</b> Television as well as the regional television channels the "Dritte", related windows,<br><b>Commercial:</b> Commercial television channels with local windows,<br><b>Local:</b> Regional and local television services,<br><b>Non-profit:</b> Open access channels,<br><b>Other:</b> Thematic channels, foreign-language and teleshopping channels. |
| DK- Denmark        | Cable/ IPTV/ DTT   | <b>Parliament:</b> Parliamentary channel TV fra Folketinget<br><b>Services disability:</b> Sign language/ audio descriptions from DR and TV2/DENMARK A/S  |
| EE- Estonia        | Cable/ IPTV/ DTT   | <b>PSB:</b> Services of ERR<br><b>Commercial:</b> FTA TV channels   |
| ES- Spain          | Cable  | <b>Independent:</b> Must-carry channels of independent operators<br>Must-carry rules for specific channels removed after analogue terrestrial switch-off (2010)   |
| FI- Finland        | Cable/ IPTV/ DTT   | <b>PSB:</b> Services of the YLE<br><b>Public interest/special interest/general interest:</b> Channels of public interest  |
| FR- France         | Cable/ satellite/ IPTV/ mobile   | <b>PSB:</b> France 2, France 3, France 5, France 4 (only for digital), Arte , TV5,<br>Services of Réseau France Outre-Mer (RFO) that are destined to the metropolitan public,<br><b>Parliament:</b> La Chaîne Parlementaire<br><b>Local:</b> local public channels (not applicable to satellite)  |
| GB- United Kingdom | Those used by a significant number of end-users" as principal means of receiving programmes (but no provider has so far been made subject to these rules ) | <b>PSB:</b> All public service channel BBC services,<br><b>Commercial PSB:</b> Commercial channels with public service obligations: Channel 3 (all), Channel 4, Channel 5, S4C  |
| GR- Greece         | n/a  | n/a   |

| Country         | Platforms   | Channels/ Services / types of channels or services listed in the law  |
|-----------------|---|---|
| HR- Croatia     | In principle those with significant market power (SMP)  | As yet no channels designated as must-carry   |
| HU- Hungary     | All platforms/ technologically neutral<br>"widely used... as main platform of reception"                        | <b>PSB:</b> media services of the public media service provider   |
| IE- Ireland     | "appropriate networks ... used by a significant number of end-users" as principal means of receiving Programmes | <b>PSB:</b> Free-to-air services of public service broadcaster RTÉ and TG4.<br><b>Parliament:</b> Parliamentary channel ,<br><b>Other:</b> (Irish Film Channel)   |
| IS- Iceland     | All platforms   | <b>National:</b> Channels under Icelandic jurisdiction with the exception of teleshopping channels.   |
| IT- Italy       | DTT only  | <b>Local:</b> Local channels  |
| LT- Lithuania   | All platforms   | <b>PSB:</b> National terrestrial television of the Lithuanian public service broadcaster LRT and<br><b>Commercial:</b> national FTA TV channels   |
| LU- Luxembourg  | n/a   | n/a   |
| LV- Latvia      | All platforms (since 2016)  | <b>PSB:</b> Channels of the public service broadcaster LTV (for cable)<br>For all distribution companies there is a new list (since 2016) of types of programming: news, science, youth etc. (see 26.2)               |
| MT- Malta       | Cable   | <b>Public interest/special interest/general interest:</b> Specified radio and television broadcast channels meeting general interest objectives<br><b>Services disability:</b> Complementary services allowing access |
| NL- Netherlands | All platforms   | <b>PSB:</b> Six national channels by the public service broadcasters of the Netherlands and the Flemish Community of Belgium (3 each), and Dutch regional and local public broadcasters.                              |
| NO - Norway     | Cable   | <b>PSB:</b> Public channels, TV 2 and Frikanalen  |

| Country              | Platforms  | Channels/ Services / types of channels or services listed in the law   |
|----------------------|--|--|
| PL- Poland           | All platforms, except DTT  | <b>PSB:</b> TVP1, TVP2 and one regional public television channel from Telewizja Polska S.A<br><b>Commercial:</b> National FTA TV channels   |
| PT- Portugal         | "appropriate networks ... used by a significant number of end-users" as principal means of receiving programmes. Currently DTT and cable                 | For DTT and cable<br><b>PSB:</b> RTP 1, RTP 2<br><b>Commercial:</b> SIC and TVI<br><b>Regional:</b> Public channels RTP Azores and RTP Madeira in their respective Regions.<br><b>Other:</b> Planned reservation of capacity for a new Channel 5 (not yet been created).<br>Services disability: complementary services allowing access                              |
| RO- Romania          | Cable  | <b>PSB:</b> Public channels<br><b>Commercial:</b> Private channels under Romania's jurisdiction regional/local (2 in each area),<br><b>International:</b> Two international foreign services,<br><b>Linguistic:</b> Programmes in minority language (more than 20%)  |
| RS- Serbia, Republic | - Must-carry rules apply to all platforms except DTT.<br>- (There are separate specific rules for must-carry of the public service broadcaster over DTT) | <b>PSB:</b> Services of public service media<br><b>Other:</b> Regulator to create a list of other services that should be must-carry on the basis of the criteria of public interest and media pluralism.  |
| SE- Sweden           | Cable/ IPTV  | <b>Public interest/special interest/general interest:</b> Specific types of services, i.e. "television broadcasts for which the licence is subject to impartiality and objectivity requirements and a condition concerning a diversified range of programmes that must include news coverage",<br><b>Local:</b> Programmes by local cable transmission organisations |
| SI- Slovenia         | All platforms except DTT<br>must-carry rules for DTT only apply to channels of special importance: local/regional, student and non-profit                | <b>PSB:</b> Radiotelevizija Slovenija radio and television programme services<br><b>Local:</b> Local radio and television<br><b>Regional:</b> Regional radio and television<br><b>Non-profit:</b> Non-profit radio and television, Student radio and television  |
| SK - Slovak Republic | Cable/ IPTV/ MMDS  | <b>PSB:</b> The programme services of a public service broadcaster<br><b>Commercial:</b> Licensed broadcasters that can be received free of charge;<br><b>Local:</b> Public broadcaster licensed for local digital broadcasting  |

**SOURCE: EUROPEAN AUDIOVISUAL OBSERVATORY 2015**

**Table 2 Summary of the channels and services under must-carry rules (2015)**

| Public service channels   | Public interest/ special interest/ general interest  | Commercial free to air channels   | Commercial channels (other)   | Local / regional  | International  | Foreign   | Other services   |
|---|--|---|---|---|--|---|--|
| <p>Albania<br/>Austria<br/>Bosnia and Herzegovina<br/>Belgium French Community<br/>Belgium Flemish Community<br/>Belgium German-speaking Community<br/>Bulgaria<br/>Switzerland<br/>Czech Republic<br/>Germany<br/>Estonia<br/>Finland<br/>France<br/>United Kingdom<br/>Hungary<br/>Ireland<br/>Lithuania<br/>Latvia<br/>Netherlands<br/>Poland<br/>Portugal<br/>Romania<br/>Serbia, Republic<br/>Slovenia<br/>Slovak Republic</p> | <p>Finland<br/>Republic of Serbia</p> <p><b>television channels which make a special contribution to the diversity of opinions in the coverage area</b><br/>Austria</p> <p><b>Channels meeting general interest objectives</b><br/>Malta</p> <p><b>Channels on a license to fulfil a public service mandate</b><br/>Switzerland</p> <p><b>Channels with licence obligations: impartiality, objectivity, diversity, news.</b><br/>Sweden</p> <p>Additional obligations to facilitate <b>access to diverse information and to promote democracy and plurality of opinions.</b><br/>Latvia (see 26;2)</p> | <p><b>Free to air</b><br/>Albania<br/>Bulgaria (on DTT only)<br/>Estonia<br/>Lithuania<br/>Poland<br/>Portugal<br/>Slovak Republic</p> <p><b>Commercial channels with public service obligations</b><br/>United Kingdom</p> | <p><b>Commercial television channels with local windows</b><br/>Germany</p> <p><b>Thematic channels, foreign language and teleshopping channels</b><br/>Germany</p> <p><b>Channels under Icelandic jurisdiction with the exception of teleshopping channels</b><br/>Iceland</p> <p><b>Private channels under Romania's jurisdiction</b><br/>Romania (must-carry decided based on audience share)</p> <p><b>TV 2 and Frikanalen</b><br/>Norway</p> | <p>Belgium French Community<br/>Belgium Flemish Community<br/>Belgium<br/>German-speaking Community<br/>Czech Republic<br/>France (public)<br/>Germany<br/>Italy (DTT only)<br/>Netherlands (public)<br/>Poland (public)<br/>Portugal (public)<br/>Romania<br/>Sweden<br/>Slovenia<br/>Slovak Republic (public)</p> | <p>Belgium French Community<br/>Switzerland<br/>France<br/>Romania</p> | <p>In the Belgium Flemish Community and the Netherlands each include the other's public broadcaster in must-carry rules</p> | <p><b>Disability access services</b><br/>Switzerland<br/>Denmark<br/>Malta<br/>Portugal</p> <p><b>Non-profit</b><br/>Germany<br/>Slovenia<br/>Belgium French Community</p> <p><b>Parliamentary channels</b><br/>Denmark<br/>France<br/>Ireland</p> <p><b>Must-carry channels of independent operators</b><br/>Spain</p> <p><b>Channels with significant market power</b><br/>Croatia</p> <p><b>Film channel</b><br/>Ireland</p> <p><b>Minority language programmes</b><br/>Romania</p> |

**SOURCE: EUROPEAN AUDIOVISUAL OBSERVATORY 2015 BASED ON REGULATOR SURVEY, NATIONAL LAWS**

## 1.4 Other content access rules

### 1.4.1 Must offer

An alternative or complement to must-carry rules are the must-offer rules. While must-carry rules ensure that certain channels have access to the distribution platforms, the must-offer idea ensures that channels must offer their content to distribution platforms. In Hungary, for example, the rules apply to services with “significant influence power” i.e. those channels with a large audience share that can influence opinion-forming.

In this sense, the concept is not just about diversity of offer but also has an economic goal. Access to certain content is often the only way to ensure the viability of certain platforms. In many states the public service and/or commercial channels are necessary for the success of a service, particularly where they have strong audience figures. This is the reason why no must-carry rules have been implemented in the UK, as the channels considered as must-carry are generally those most desirable for the audiences and hence the transmission platforms. The Croatian system also has not implemented any must-carry rules but claims these would apply to channels with significant market power.

The 2015 survey of the regulatory authorities (via EPRA) revealed that such rules do not exist in Albania, Austria, Bosnia and Herzegovina, the Flemish and German-speaking Communities of Belgium, Cyprus, Denmark, Estonia, Finland, Germany, Greece, Italy, Lithuania, Luxembourg, the Netherlands, Romania, the Slovak Republic, Slovenia, Sweden, and Switzerland.

However, there are rules in the French Community of Belgium, Bulgaria, the Czech Republic, France, Hungary, Iceland, Ireland, Latvia, Malta, Poland, Portugal, Spain, and the UK.

In Italy, these are not in the legislation but must-offer applies to the public service broadcaster by means of the PBS service contract between the government and RAI.<sup>11</sup> Similarly, Austria provides an example of where must-offer is not specifically described as such but derives from the obligations placed on the public service broadcaster to be present on platforms without specifying which platforms. These may also be the case in those countries where there are no must-offer rules. However a full examination of public broadcaster obligations was not part of the remit of this study.

Must-offer rules are also of relevance in wholesale markets for TV content and frequently applied in the context of competition law (for example where mergers may strengthen a dominant position and limit access for other broadcasters and platforms to certain content).<sup>12</sup>

### 1.4.2 Must-see and must-find

The aim of the so-called must-see and must find rules is to ensure that content by public service broadcasters or content of special interest is easy to find in the new media environment. Existing regulation concerns linear audiovisual services on Electronic Programme Guides (EPGs). In the future this may be extended to catch-up services of public service broadcasters, or the catalogues of video on demand service providers. For example, there are current discussions in the UK to also apply the regime of ‘appropriate prominence’ for PSB channels in the future to catch-up services (e.g. BBC iPlayer).

The 2015 survey of the regulatory authorities (via EPRA) revealed that such rules exist in the following countries included in this report: Austria, Finland, Germany, Hungary, Iceland,

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<sup>11</sup> adopted according to art. 47 of “Testo Unico dei servizi media e radiofonici”; d.lgs n. 177 2005 <http://www.rai.it/dl/sociale/website/ContentItem-d340c524-2bed-4b95-9a6f-81d89e74fbbb.html>

<sup>12</sup> These issues are not dealt with here, but are examined in European Audiovisual Observatory (2012): Converged markets- Converged Power? Regulation and Case Law.

Ireland, Italy, Switzerland, and the UK.

No such rules were identified in Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, the Czech Republic, Estonia, Lithuania, Luxembourg, the Netherlands, Poland, Portugal, Romania, Slovenia, the Slovak Republic, Spain, and Sweden.

In many cases the must-carry channels are also must-find channels. In Austria, the DTT license issued to transmitter company ORS specifies that the order of television channels in the electronic programme guide “has to be based on objective criteria (for example, programmes with must-carry obligations shall come before other programmes)”. In Hungary, channels that are designated as must-carry should be given prominence in the order of channels as a default. In Switzerland, the broadcasting law specifies that priority be given to must-carry channels (e.g. access-entitled programmes): “anyone providing services as a higher-level user interface which control programme service selection must use the state of the art to ensure that reference is clearly made in the first stage of use to access-entitled programme service”.

In Finland, the provisions concerning channel numbering specify that the numbering has to be clear and appropriate from the users’ point of view and that channels from the Finnish Broadcasting Company and public interest channels shall be given priority.

In Germany, platform providers have to grant open, equal, and non-discriminatory access for services such as EPGs. The legislative aim is to ensure non-discriminatory access for content providers to these platforms. Further “fair, equal and non-discriminatory conditions” shall be applied to all digital channels and additional channels included in electronic programme guides of terrestrial multiplex operators.

In Iceland, the law stresses that “television broadcasts in Icelandic have priority, being ranked in front of foreign retransmission channels in the order on the remote control” (Article 46 of section VII of the Media Law No. 38/2011).

The Irish regulator (Broadcasting Authority of Ireland - BAI - IE) is required to develop rules with respect to programme guide contracts. There are no contracts in place prior to analogue switch-off as no EPG services are regulated in the Irish state. Rules and contracts currently under development take account of domestic DTT provider.

In Italy, there is regulation concerning the placement of DTT channels specifying that the numbering plan must be in compliance with the habits and preferences of users, giving particular reference to the national generalist channels and local broadcasters.

Although there is no specific legislation, there are rules regarding the EPG in the Danish DTT network. As a result of these rules, the Danish public service channels are on top of the list of channels in the EPG in the DTT network. The EPG has to be made in collaboration between the multiplex operator and the public broadcaster.

In the UK this is dealt with under “prominence” in the context of the UK legislation and regulation. The regulator should provide codes with guidance for EPGs. The services that should be given prominence are any service of television programmes provided by the BBC in digital form, any channel 3 service in digital form, Channel 4, Channel 5, S4C Digital, digital public teletext service, and a local television service.

The Latvian regulatory authority NEPLP has recently prepared amendments to the legislation which require must-carry channels to be placed on the top of electronic programme guides. This has come into being with the amendment to the law in January 2016 (see section 26.2)

The Belgian Flemish Community can stipulate rules regarding EPG but this has not been done so far. In Malta, the broadcasting law stresses that a code may be drawn up, giving guidance regarding standards and practice for teletext transmissions (which includes electronic programme guides).

## 1.5 Issues of cost in relation to must-carry

If an operator (provider of a communications network such as over cable, DTT, satellite IPTV etc.) is obliged to carry (must-carry) a range of TV channels at its own cost, then this places the operator at an economic disadvantage. Likewise, if a broadcaster is obliged to offer (must-offer) content to operators (cable, satellite, DTT, IPTV etc.) in order that they may add these channels to the channel package being offered to the public, and if the broadcaster then has to pay for the transmission fees for its channel, it is placed at an economic disadvantage.

In the majority of must-carry regimes the broadcasters should not charge for their content, and the distributors should not charge for the transmission of the channels.

However, administration costs and remuneration for copyright are regulated in the laws. The study carried out for the European Commission by Cullen International in 2006<sup>13</sup> revealed that this issue is addressed in a variety of ways across the EU: in some cases copyright fees are paid by operators who in turn receive payments for carriage from the broadcasters, as in Germany; whereas in Latvia, the legislation ensures that no copyright fees apply to must-carry channels.

Not all must-carry rules make direct reference to issues of costs. In Austria, Cable operators are obliged to transmit the ORF radio and television programmes if this is possible without disproportionate major economic and technical expense.<sup>14</sup> For cable, the amount of remuneration to be paid shall be determined by the KommAustria.

In Germany, in the past cable operators were being paid for the retransmission of content. The question as to whether public service television is entitled to stop its payments for cable carriage is a highly contested one. After the ARD and ZDF cancelled their agreements concerning the retransmission of their TV channels at the end of 2012, the cable TV operators Kabel Deutschland and Unitymedia have sued the public service broadcasters for payment but without success. A final decision by the German Federal Court of Justice is still pending.

A similar controversy has emerged in Estonia. An amendment (2013) to the legal framework states that “broadcasters offering free to air television services have the right to ask from cable operators a reasonable charge for retransmitting their television programmes”. The Article, however, does not provide details on how to calculate these charges and hence the amendment did not solve the on-going disputes between commercial broadcasters and cable operators regarding the amount of payable fees.<sup>15</sup>

Also, the aforementioned case regarding the obligation of IPTV and cable operators in France to carry local public channels free of charge was subject to a constitutional challenge in the French courts. The Constitutional Court ruled in March 2016 that the obligation was compliant with the Constitution (see page 16 above). The Court stated that in terms of costs “the obligation was, moreover, limited to the transport and broadcasting of the services’ programmes, without any requirement to carry out connection or civil engineering work. The legislator also explicitly intended to exclude the responsibility to bear the cost of digitising programmes from the scope of the obligation.”<sup>16</sup>

<sup>13</sup> Cullen International (2006): CI Broadcasting Study: Database of regulatory information for the broadcasting sector. Data collection by country December 22, 2006. <http://www.cullen-international.com/asset/?location=/content/assets/research/studies/2006/12/broadcasting-study-report-2007-annex2.pdf/broadcasting-study-report-2007-annex2.pdf>

<sup>14</sup> On the criteria of disproportionate expense see KommAustria, 13. 06. 2012, KOA 1.920/12-006, <https://www.rtr.at/de/m/KOA192012006>

<sup>15</sup> IRIS Merlin. 2013. Amendment to the Electronic Communication Act: New Phase in the Must Carry Dispute. Available from: <http://merlin.obs.coe.int/iris/2013/2/article18.en.html>

<sup>16</sup> Blocman, Amélie (2016): Obligation to carry local public television services judged compliant with Constitution. IRIS 2016-5:1/11: <http://merlin.obs.coe.int/iris/2016/5/article11.en.html>

**Table 3 Overview of relevant legislation/ links concerning must-carry rules 2015**

| Country                        | Reference to Universal Services Directive Article 31 in must-carry obligations/ or in other legislation                                      | Media/ broadcasting laws/ bylaws : must-carry rules  |
|--------------------------------|--|--|
| AL - Albania                   | <a href="#">Law Nr. 97/2013 On Audio and Audio-Visual Media Services in the Republic of Albania</a>  | Decision no. 4, dated 26.03.2014   |
| AT - Austria                   |  | <a href="#">Federal Act on Audiovisual Media Services</a> (AMD-G)<br><a href="#">Federal Act on the Austrian Broadcasting Corporation</a> (ORF Act – ORF-G)  |
| BA - Bosnia and Herzegovina    |  | <a href="#">Rule 56/2011</a> on Licences for the Distribution of Audiovisual Media Services and Radio Media Services:  |
| BE - Belgium French Community  | <a href="#">Décret coordonné sur les services de médias audiovisuels</a> (version consolidée par le CSA) (Act on Audiovisual Media Services) | <a href="#">Décret coordonné sur les services de médias audiovisuels</a> (version consolidée par le CSA) (Act on Audiovisual Media Services)<br><a href="#">Loi du 30 mars 1995 concernant les réseaux de distribution d'émissions de radiodiffusion et l'exercice d'activités de radiodiffusion</a> dans la région bilingue de Bruxelles-Capitale |
| BE - Belgium Flemish Community | <a href="#">Act on radio and television broadcasting</a> (Media Act) from 27 March 2009.   | <a href="#">Act on radio and television broadcasting</a> (Media Act) from 27 March 2009.<br>Governmental Decree from 22 November 2013<br><a href="#">Loi du 30 mars 1995 concernant les réseaux de distribution d'émissions de radiodiffusion et l'exercice d'activités de radiodiffusion</a> dans la région bilingue de Bruxelles-Capitale        |
| BE - Belgium German Community  | <a href="#">Dekret vom 27. Juni 2005</a> über [die audiovisuellen Mediendienste] und die Kinovorstellungen                                   | <a href="#">Dekret vom 27. Juni 2005</a> über [die audiovisuellen Mediendienste] und die Kinovorstellungen<br><a href="#">Must-carry Resolution</a> on Radio Broadcasting and Cinema Exhibitions   |
| BG - Bulgaria                  |  | <a href="#">Law on Radio and Television</a>  |
| CH - Switzerland               |  | <a href="#">Federal Radio and Television Act</a> (RTVA),<br>the <a href="#">Swiss Ordinance on Radio and Television</a> (ORTV)   |
| CZ - Czech Republic            | <a href="#">ACT of 22 February 2005 on Electronic Communications</a> and on Amendment to Certain Related Acts                                | <a href="#">Broadcasting Act of 2001</a> (last amended in 2012)  |
| DE - Germany                   |  | <a href="#">Interstate Broadcasting Treaty</a><br><a href="#">Statute on freedom to access digital services and on the regulation of platforms</a><br><a href="#">Landesmediengesetz Baden-Württemberg</a> (LMedienG)  |

| Country            | Reference to Universal Services Directive Article 31 in must-carry obligations/ or in other legislation                                    | Media/ broadcasting laws/ bylaws : must-carry rules  |
|--------------------|--|--|
|                    |  | <a href="#">Bayerisches Mediengesetz-BayMG</a><br><a href="#">Medienstaatsvertrag Berlin-Brandenburg</a> (MStV)<br><a href="#">Bremisches Landesmediengesetz</a> (BremLMG)<br><a href="#">Staatsvertrag über das Medienrecht in Hamburg und Schleswig-Holstein</a> (Medienstaatsvertrag HSH)<br><a href="#">Gesetz über den privaten Rundfunk in Hessen</a> (Hessisches Privatrundfunkgesetz-HPRG)<br><a href="#">Rundfunkgesetz für das Land Mecklenburg-Vorpommern</a> (Landesrundfunkgesetz - RundfG M-V)<br><a href="#">Niedersächsisches Mediengesetz</a> (NMedienG)<br><a href="#">Landesmediengesetz Nordrhein-Westfalen</a> (LMG NRW)<br><a href="#">Landesmediengesetz</a> (LMG) Rheinland-Pfalz<br><a href="#">Saarländisches Mediengesetz</a> (SMG)<br><a href="#">Gesetz über den privaten Rundfunk und neue Medien in Sachsen</a> (Sächsisches Privatrundfunkgesetz-SächsPRG)<br><a href="#">Mediengesetz des Landes Sachsen-Anhalt</a> (MedienG LSA)<br><a href="#">Thüringer Landesmediengesetz</a> (ThürLMG) |
| DK - Denmark       |  | <a href="#">Executive Order on the distribution of television programmes in communal antenna systems</a>   |
| EE - Estonia       |  | <a href="#">Electronic Communications Act</a>  |
| ES - Spain         |  | <a href="#">Royal Decree 920/2006</a> , of July 28, 2006   |
| FI - Finland       |  | <a href="#">Information Society Code</a>   |
| FR - France        | <a href="#">Loi n° 2004-669 du 9 juillet 2004</a> relative aux communications électroniques et aux services de communication audiovisuelle | <a href="#">loi n° 86-1067 du 30 septembre 1986 relative à la liberté de communication</a>   |
| GB- United Kingdom | <a href="#">Communications Act of 2003</a> .   | <a href="#">Communications Act of 2003</a> .   |
| GR- Greece         | Law 407/ 2012  |  |
| HR - Croatia       | <a href="#">Electronic Communications Act</a> 2008   |  |
| HU - Hungary       | <a href="#">Act CLXXXV of 2010 on Media Services and Mass Media</a>  | <a href="#">Act CLXXXV of 2010 on Media Services and Mass Media</a>  |
| IE- Ireland        | <a href="#">Broadcasting Act of 2009</a>   | <a href="#">Broadcasting Act of 2009</a>   |

| Country               | Reference to Universal Services Directive Article 31 in must-carry obligations/ or in other legislation                    | Media/ broadcasting laws/ bylaws : must-carry rules  |
|-----------------------|--|--|
| IS- Iceland           | <a href="#">Media Law No. 38/2011</a>  | <a href="#">Media Law No. 38/2011</a>  |
| IT- Italy             |  | <a href="#">Decree-law of 31 March 2011, no. 34</a> as converted by Law of 26 May 2011, no. 75<br><a href="#">AGCOM resolution no. 353/11/CONS of 23 June 2011</a><br><a href="#">Decree-law of 23 December 2013, no. 145</a> as converted by Law of 21 February 2014, no. 9 |
| LT- Lithuania         |  | <a href="#">Law on Provision of Information to the Public</a>  |
| LV- Latvia            | January 2016, amendments to the <a href="#">Electronic Mass Media Law</a>  | <a href="#">Electronic Mass Media Law</a>  |
| MT- Malta             | <a href="#">Electronic Communications Networks and Services (General) Regulations</a>                                      | <a href="#">Electronic Communications Networks and Services (General) Regulations</a>  |
| NL- Netherlands       | <a href="#">Mediawet 2008</a>  | <a href="#">Mediawet 2008</a>  |
| NO - Norway           |  | <a href="#">Norwegian Broadcasting Act</a>   |
| PL- Poland            |  | <a href="#">Broadcasting Act of 29 December 1992.</a>  |
| PT- Portugal          | <a href="#">Electronic Communications Act</a> (approved by Law 5/2004, of 10 February, and several times further amended). | <a href="#">Law 27/2007, of 27 July</a> , amended by Law 8/2011, of 11 April, and Law 40/2014, of 9 July   |
| RO - Romania          |  | <a href="#">Audiovisual Law 2014</a>   |
| RS - Serbia, Republic | <a href="#">Law on Electronic Communications</a> 44/2010   | Law on Electronic Media (OG RS, 83/14)<br>Law on Public Media Services(OG RS, 83/14)   |
| SE - Sweden           | <a href="#">Radio and Television Act</a>   | <a href="#">Radio and Television Act</a>   |
| SI- Slovenia          |  | <a href="#">Mass Media Act</a>   |
| SK- Slovak Republic   | <a href="#">The Law 308/2000 on Broadcasting and Retransmission</a>  | <a href="#">The Law 308/2000 on Broadcasting and Retransmission</a>  |

## 2 Digital Terrestrial Television

### 2.1 DTT licensing and obstacles to access

The way in which the move to digital terrestrial television has been (and is continuing to be) implemented varies between different European countries. One of the significant differences between groups of countries is whether the broadcasters have control over the content of multiplexes, or whether the multiplex operators (as a separate company) have control. There are many countries where public or state companies run their own multiplexes. Sometimes these include the participation of private broadcasters, but not always (see 2.2).

#### (1) Approach to Licensing

Research from the European Platform of regulatory authorities (EPRA) in 2010<sup>17</sup> showed that “in several countries the Multiplex operator strongly influences the content of the multiplex and is close to the licensing process (the UK, Denmark, Norway, the Slovak Republic, the Czech Republic (from 2012), and Latvia). In other countries (Slovenia, ME, BA), while TV channels also do not apply for the assignment of each separate radio frequency as they did in analogue broadcasting, they are granted a right to disseminate their programme on DTT via a public tender. After obtaining this right via public tender, they have to achieve an agreement with the multiplex operator that holds a frequency intended for digital broadcasting. The Swedish system revolves around the TV broadcasters, who are also selected by beauty contest but who have to agree about whom should handle the multiplexing as well as about other technical issues. In Belgium (French Community), the TV channels, selected by beauty contest are also in charge of selecting a network operator.”

A further summary of the research for EPRA<sup>18</sup> outlined the following with regard to DTT licensing:

“- The varied approaches show that a licensing regime may be relevant for a) the network operator, b) the multiplex (MUX) operator and c) the TV channel, or a combination of the above. Also the responsible authorities may be a) the broadcasting regulator, b) the telecom regulator (or the convergent regulator) and c) the government.

- Capacity (spectrum) allocation was in most cases directed to the one or more network/multiplex operators. Exceptions included Sweden where the capacity is allocated directly to channels.

- Mostly the process is done via a “beauty contest procedure”. Again some exceptions were noted where an auction system (Cyprus, Croatia) or a combination of auction and beauty contest are possible (Norway). In the case of Estonia the selection procedure was based on a political decision – to allow a monopoly of one operator for the development period.

- Regarding the channels’ access to the multiplexes, the analysis showed that there are two main approaches: For some (France, Belgium (French Community), Germany, Swe-

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<sup>17</sup> Plenary Session 2: *Regulatory and Licensing Models for DTT. Summary of the answers to the questionnaire*. 32nd EPRA Meeting, Belgrade, 6-8 October 2010. (Revised version), by Emmanuelle Machet, EPRA Secretariat: <http://www.epra.org/attachments/belgrade-plenary2-dtt-comparative-background-paper>

<sup>18</sup> Working Group II: *Digital TV: Regulation and the economic viability of DTT platforms*. 34th EPRA Meeting, Brussels (La Hulpe), 5-7 October 2011. Background paper by Miha Krišelj, Group coordinator: <http://www.epra.org/attachments/brussels-2011-wg2-digital-tv-background-paper>

den, Finland, Slovenia) the line-up of channels is selected by the regulator via public procedures similar to those used in the analogue environment – or also via the direct allocation of frequencies to the broadcasters.

- In contrast, others (the Czech Republic from 2012, Latvia, The Slovak Republic, Denmark, Italy, UK, Norway, Portugal) have allowed the multiplex/network operator to manage the capacity and hence play a role in selecting channels for the line-up – and act as gate-keeper. Channels must however still negotiate with the operator for access and distribution.

- Certain tools are used in the latter case in order to ensure diversity and pluralism such as must-carry, or capacity reserved for special categories of broadcasters.

- Generally speaking the public service channels have been treated differently - for the same goals of diversity and pluralism – PSBs have frequently been granted entire MUXs and the additional spectrum has allowed public service providers to launch additional digital services and channels.”

## (2) Access for foreign channels

Regarding content, the results of the EPRA study showed that:

*- One of the factors, by no means the only one, driving the popularity of DTT in many countries was certainly the desire to retain some degree of national control on the overall composition of platform and thus on the national media landscape, and counterbalancing the development of the offers on satellite and cable. Hence having foreign channels on DTT was certainly not the main purpose.*

*- Very few countries restrict foreign channels on free-to-air DTT (Greece, Croatia, Slovenia, Latvia and the Czech Republic), but not on a potential Pay DTT platform. The majority allow channels licensed in another jurisdiction to be present on the free platform, although in Norway (and Sweden) a licence from the national authority is required.”*

The most recent questionnaire distributed to the EPRA network (2015) also highlighted the differences regarding the treatment of foreign broadcasters on the DTT networks. Channels carried on the Irish DTT platform require a licence from any EC jurisdiction. In Sweden, foreign broadcasters are subject to the same licensing process as domestic applicants. The choice of business model whether free to air or pay TV is up to the broadcaster and is not a factor in the licensing process.

Research carried out by the South East Europe Digi.TV project<sup>19</sup> provided an overview of the licensing process in several countries and confirmed that channels wishing to be broadcast on DTT networks required a national licence issued by the national regulator in the cases of Austria, Croatia and Slovenia. Further obstacles to access to the DTT networks such as capacity of networks and the costs of distribution over DTT networks are outlined below.

### 2.1.2 Capacity of free DTT

The issue of lack of capacity on the DTT networks as an obstacle to access to the free DTT networks for TV channels was raised by respondents to the questionnaire in Croatia, Iceland, Denmark, Germany, Portugal, Finland and the Slovak Republic. Despite the fact that the development of digital television greatly expanded the capacity for carriage of digital channels, there are several reasons why the issue of scarcity or lack of capacity has re-emerged.

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<sup>19</sup> South-east Europe Digital Television (SEE Digi. TV) Project (2011): *Analysis of existing legal framework for the digital switchover*: [http://www.see-digi.tv/shared\\_files/wp3/wp3a1.pdf](http://www.see-digi.tv/shared_files/wp3/wp3a1.pdf)

On the one hand, many of the DTT markets are quite mature and the re-assignment of frequencies after switch-off (after switch-off, there was no longer a need to broadcast simultaneously in analogue and digital form), or the re-allocation of frequencies following the move from DVB-T to DVB-T2, have already taken place.

In several countries (Ireland, Slovenia, Portugal) the DTT systems were not developed to their full potential as all planned multiplexes were not built. This was either due to lack of content, economic reasons, or lack of desire to invest in the system. It may be the case that since there were few multiplexes launched there is no capacity left on those that exist, or there are half empty multiplexes with space available. A similar situation exists in Portugal.

### 2.1.3 Costs of distribution on DTT

As in the analogue terrestrial system, the free-to-air DTT system involves significant costs. Broadcasters have to pay to be transmitted over the network. The former analogue television system allowed for one TV channel to be carried over each frequency channel. Digital terrestrial TV allows for 4 to 5 channels to be carried over one frequency channel in the case of DVB-T, and for DVB-T2 up to 8 channels.

In the analogue system, each broadcaster was allocated a frequency and had to build a network throughout the relevant geographic area to cover the population. With digital terrestrial TV one frequency constitutes a multiplex which can carry several channels. Hence one broadcaster, such as the public service broadcasters can carry a range of channels. Or an independent multiplex operator can offer space to a range of channels. In both cases, these systems present an expense to the broadcasters to either build a network, or to rent space on a network built by the operator. The systems of costing for space on a network vary between countries.

In several countries (such as Slovenia, Ireland and Portugal), there is no desire to build further multiplexes without any guarantee that there will be broadcasters willing to go on the multiplex and hence cover the costs of their development. Such issues do not arise in the larger countries where there are a range of strong broadcasters who have lots of channels and content (such as the UK, France or Spain).

According to the response to the questionnaire from the Irish regulator: "While there are no legal impediments to carriage on DTT, the cost of carriage is seen as a significant factor for broadcasters in deciding whether to broadcast on DTT, particularly in view of the financial return that can be expected. Given the significant market penetration of satellite and cable services in the Irish TV market, viewing on the DTT platform is low by general European standards."

In 2011, the Broadcasting Authority of Ireland expressed concern regarding the cost structure of the carriage on the free DTT platform operated by RTÉ/RTÉNL. In its Report and Recommendations, it was outlined that "*the cost structure of RTE was based on the first DTT multiplex already being full, meaning that the cost associated with each multiplex would be borne by the content providers on each multiplex. It means that if only one television channel was on the second multiplex, the entire operating costs of the second multiplex (€3.5m to €5m per annum) would be borne by the single content provider.*

*Were the content provider to be included on the first multiplex the equivalent cost would be €500, 000 per year for a standard definition channel. By making the calculation on a cross-platform basis transmission provider RTÉNL is guaranteed a fixed income. The total DTT platform cost of between €8 and €11m annually would be divided between the content providers on the platform and not on a per multiplex basis. This means a content provider would have a variable and unpredictable annual transmission cost for a standard definition channel of between circa €600K and €1m per annum depending on the total number of content providers on the platform. The annual DTT transmission costs for an HD channel*

are variable and could range from circa €1.2m to €2.4m per annum".<sup>20</sup>

Similarly in Portugal, there is some controversy over the cost of DTT transmission. The regulator ANACOM announced in March 2014 its intention to launch an investigation into the amount charged by Portugal Telecom to distribute channels over the country's terrestrial network. This followed a request for an intervention by the public broadcaster RTP. However, it stated no immediate action is required and it will not intervene to fix the prices charged as requested by public broadcaster RTP. RTP is looking to reduce the fees it pays to broadcast over DTT. In a draft decision published by ANACOM on its website, the regulator says it cannot be argued unequivocally that the price is excessive, adding that there was no evidence identified of anti-competitive activity by the transmission company.<sup>21</sup> RTP considers the prices to be "manifestly excessive and unaffordable."<sup>22</sup>

## 2.2 Public service broadcasters MUXs

Table 4 provides an overview of the companies who were allocated multiplexes in the planning of DTT strategies. Those countries where the public broadcasters (or their subsidiaries) were granted digital television multiplexes include: Austria, Belgium, Cyprus, Denmark (joint ownership DR and TV2), France, Germany (regional PSBs), Greece, Ireland, Italy, Malta, Slovenia, Spain, the United Kingdom (and Switzerland).

***In these cases, it can be presumed that it would be unnecessary to apply a must-carry rule over DTT for the services of the public broadcaster where the public broadcaster itself was managing a multiplex.***

In some countries a separate state-owned company manages a multiplex, where the frequencies are reserved for the public broadcaster. Examples include Estonia, Hungary (see also below), Latvia, and Romania. Those countries where private companies were selected to run the multiplexes include: Bulgaria, Croatia, Luxembourg (RTL Group), the Netherlands, Portugal, Romania, Republic of Serbia, the Slovak Republic and Sweden.

It should be noted that the private company Antena Hungaria, which runs the free and pay DTT services in Hungary was formerly owned by the French company TDF. They sold Antena Hungaria to the Hungarian state in 2014, so it is now a state operated company that also runs a pay TV service. Although the public service broadcaster was not always specifically designated to run a multiplex, in many countries a multiplex run by a separate company was designated as being intended for carrying public service channels: e.g. in the Czech Republic, the first multiplex (run by Radiokomunikace, A.S.) was attributed to the public service provider.

## 2.3 Must-carry rules and digital terrestrial television

The existence of must-carry rules is examined in detail in the country reports provided (chapters 3-36). In relation to digital terrestrial television (DTT), these platforms are less likely to have any such must-carry rules in comparison with cable and other TV platforms.

<sup>20</sup> Broadcasting Authority of Ireland (2011): Report and Recommendations by the Broadcasting Authority of Ireland on the exercise of its functions under Statutory Instrument No.67 : [http://www.bai.ie/wordpress/wp-content/uploads/20110815\\_BAIDTTEOI\\_FINAL.pdf](http://www.bai.ie/wordpress/wp-content/uploads/20110815_BAIDTTEOI_FINAL.pdf)

<sup>21</sup> Broadband TV News: <http://www.broadbandtvnews.com/2014/03/24/no-anacom-intervention-in-dtt-pricing/>

<sup>22</sup> RTP perde primeira batalha na Anacom contra preços da Televisão Digital Terrestre (RTP loses first battle with Anacom on prices for digital terrestrial television). Negócios. March 21 2014: [http://www.jornaldenegocios.pt/empresas/detalhe/rtp\\_perde\\_primeira\\_batalha\\_na\\_anacom\\_contra\\_preços\\_da\\_televisao\\_digital\\_terrestre.html](http://www.jornaldenegocios.pt/empresas/detalhe/rtp_perde_primeira_batalha_na_anacom_contra_preços_da_televisao_digital_terrestre.html)

One reason for this is the fact (as explained under 2.2 above) that in many countries the public service broadcaster (the main provider of content that is generally assumed to be must-carry) has been allocated its own DTT multiplex in the strategic planning of the implementation of DTT. As outlined above, there are a range of countries where the public broadcaster is not managing a multiplex: Bulgaria, Croatia, Estonia, Hungary, Luxembourg, the Netherlands, Portugal, Romania, Republic of Serbia, the Slovak Republic and Sweden. Must-carry obligations regarding DTT have been identified in Bulgaria, Estonia, Denmark, Italy, Finland, Republic of Serbia, Slovenia and Portugal.

This report also provides some brief information on the licensing systems for DTT (under 2.5), which are extremely varied and introduced a range of mechanisms for controlling the content (and the channels) on the networks. As far as public service channels (or other channels of particular interest or importance) these have frequently been assigned multiplexes, or given priority access to frequencies.

## 2.4 DTT across Europe

Table 4 below includes the data on the % of homes that completely rely on DTT. It is also important to consider the importance of DTT as a complementary or second mode of access to TV in many countries. As a free service with (almost) technical universal reach in all European countries, DTT is of course technically available to all homes (assuming they have a set-top box or built-in tuner in the TV set) and may in many cases be used on a second set (i.e. not on the main set used in the household. For example, additional data from IHS (2013) shows that 40% of Irish homes and 60% of French homes have TV sets capable of receiving DTT and possibly use this on a second set).

It should be noted that digital terrestrial television as a means of delivery of television services has a very marginal significance in several European countries. Less than 10% of the population rely on DTT for access to television services in Switzerland (3, 2%), the Slovak Republic (3%), Austria (6%), Belgium (1%), and the Netherlands (8%). In these countries, the most important platforms for receiving television services are the following: in Switzerland (cable and IPTV), the Slovak Republic (satellite), Austria (satellite and cable), Belgium (cable and IPTV), and the Netherlands (cable and IPTV).

The figures are 10%, 11%, 12%, 14%, 16% and 18% for Ireland, Germany, Luxembourg, Denmark, France and Portugal respectively. In these countries, the most important platforms for receiving television services are the following: Ireland (cable), Germany (cable and satellite), Luxembourg (cable), Denmark (cable), France (IPTV and satellite), and Portugal (cable and IPTV).

For several countries, digital terrestrial broadcasting is a very important part of the media landscape with 82% of Spanish households using this as a primary means of access to television, 73% of Italian households, 63% of Cypriot homes, 61% of Greek homes, 55% of Croatian households, almost 50% of Lithuanian and Maltese homes, and 45% of homes in the UK (see table 2 below for more detail). In these countries, other significant platforms for receiving television services are the following: in Greece (satellite), Croatia (IPTV and satellite), Malta (cable), and United Kingdom (satellite).

Between 20% and 30% of homes rely on the DTT system in Bulgaria, the Czech Republic, Estonia, Finland, Latvia, Poland, Sweden and Slovenia. In these countries, the significant platforms for receiving television services are the following: in Bulgaria (satellite and cable), the Czech Republic (satellite), Estonia (IPTV), Finland (cable), Latvia (IPTV and cable), Poland (satellite and cable), Sweden (cable, satellite and IPTV), Slovenia (IPTV and cable). There are no DTT household data as yet for Romania but estimates suggest around 20% of homes will have to switch from analogue to terrestrial DTT. For Romania, satellite and cable are the most important TV delivery platforms.

Hence a good distribution of a TV channel requires a presence on DTT in Italy and Spain, Cyprus, Croatia, Greece, Lithuania, Malta and the United Kingdom. Ensuring an adequate

reach (in combination with other platforms such as cable and satellite) and capturing the additional 20-30% of homes requires a presence on DTT in Bulgaria, the Czech Republic, Estonia, Finland, Latvia, Poland, Sweden and Slovenia. From the data above, we can see that the free DTT platform is very important in three of the largest European countries: the UK, Italy and Spain, and of much less significance in Germany (in particular).

**Table 4 Status of DTT at end 2015: Multiplexes, channels, public and private, free and pay DTT**

| Status of DTT: MUXs, Public Broadcaster MUXs, Pay TV, End 2015  |                |                                   |  |   |  |   |   | 2015                              |
|---|----------------|-----------------------------------|--|---|--|---|---|-----------------------------------|
| Country   | Business       | Operational MUXs                  | Public broadcaster multiplex   | Other Free DTT MUX  | Pay DTT  | Free DTT channels national/local                            | Free DTT: Foreign/ international channels   | Estimated primary DTT (secondary) |
| Countries where a <u>very high</u> proportion of homes rely on digital terrestrial television (DTT) for reception of TV channels (45% and more) |                |                                   |  |   |  |   |   |                                   |
| ES  | FTA            | 8 national ,<br>1 for each region | RTVE (2)<br>Regional public broadcasters (1)                         | Antenna 3 de television,<br>Telecinco, La Sexta,<br>Vevo Television,<br>Albertis                  | Pay TV closed in 2015  | 19 national,<br>68 regional/ windows,<br>234 local channels |   | 73%                               |
| IT  | FTA +<br>PayTV | 19                                | Rai Way  | Elettronica Industriale<br>(Mediaset), Persidera,<br>Prima TV, Tivùitalia, Cairo<br>Communication | Centro Europa 7,<br>"Mediaset Premium"<br>(and regional: Profit Group,<br>Conto TV, Pangea etc.) | 45 national,<br>of which 15 public<br>200+ local            | DMAX,<br>MTV Music  | 69%                               |
| CY  | FTA            | 3                                 | CyBC   | Velister Ltd  | Pay TV closed 2014   | 3 public, 9 private   | Euronews  | 63%                               |
| GR  | FTA +<br>PayTV | 5                                 | ERT  | Digea<br>(private channels),<br>Digital Union (regional).   | Pay TV closed 2014.  | 5 public, 11 private, 70<br>local                           | BBC World, Rik<br>Sat, TV5 Europe,<br>Deutsche Welle,<br>Euronews,<br>Nickelodeon | 61%                               |
| HR  | FTA +<br>PayTV | 5                                 | –  | Odašiljači Veze (OIV)   | HP Produkcija (EVO TV)   | 5 public, 7 private, 21<br>local                            |   | 55%                               |
| LT  | FTA +<br>PayTV | 4                                 | -Lietuvos radijo ir<br>televizijos centras,<br>-Teo LT (TeliaSonera) |   | -Teo LT (TeliaSonera),<br>-Balticum TV (Vilnius,<br>Klaipėda and Plungė)                         | 11 national of which 2<br>public, and 3 local               | TVP Polonia   | 49%                               |

| Status of DTT: MUXs, Public Broadcaster MUXs, Pay TV, End 2015  |             |                                |                                   |   |   |   |  | 2015                              |
|---|-------------|--------------------------------|-----------------------------------|---|---|---|--|-----------------------------------|
| Country   | Business    | Operational MUXs               | Public broadcaster multiplex      | Other Free DTT MUX  | Pay DTT                                 | Free DTT channels national/local                      | Free DTT: Foreign/international channels | Estimated primary DTT (secondary) |
| MT  | FTA + PayTV | 5                              | Public Broadcasting Services Ltd. |   | Go Ltd                                  | 2 public, 5 private                                   |  | 48%                               |
| GB  | FTA + PayTV | 8 (plus N.Ireland, plus local) | BBC                               | ITV plc, Digital 3 and 4, Arqiva Services Ltd, DTV Services/Freeview, Comux (local) | BT Vision                               | 19 public, 74 private, 77 local/windows               | RTE1, RTE2, TG4 Al Jazeera (Arabic)      | 45% (90%)                         |
| Countries where <u>a high</u> proportion of homes (more than 25%) rely on digital terrestrial television (DTT) for reception of TV channels |             |                                |                                   |   |   |   |  |                                   |
| RS  | FTA         | 2                              | -                                 | ETV (Emission Tehnika i Veze)   |   | 3 public, 6 private, (84 regional, 2 public regional) |  | 38%                               |
| CZ  | FTA         | 4                              | -                                 | Radiocumikace, Digital Broadcasting, Progress Digital                               | Trials only                             | 9 public, 16 private 7 regional/ local                |  | 32%                               |
| NO  | FTA + PayTV | 5                              | -                                 | Norges Televisjon AS (NTV)  | Riks TV                                 | 5 public, 1 open channel, 7 local                     |  | 32%                               |
| LV  | FTA + PayTV | 7                              | -                                 | -Digitalais Latvijas Run TV Centrs (LVRTC)  | -Lattelecom (Latvian State/TeliaSonera) | 2 public, 3 commercial                                |  | 31%                               |
| FI  | FTA + PayTV | 8                              | -                                 | Digita (TDF) (1 MUX), DNA Finland (3 MUX), Anvia ( MUX)                             | DNA Finland                             | 27, of which 7 public                                 |  | 28%                               |

| Status of DTT: MUXs, Public Broadcaster MUXs, Pay TV, End 2015   |             |                  |                               |   |   |   |  | 2015                              |
|--|-------------|------------------|-------------------------------|---|---|---|--|-----------------------------------|
| Country  | Business    | Operational MUXs | Public broadcaster multiplex  | Other Free DTT MUX  | Pay DTT   | Free DTT channels national/local            | Free DTT: Foreign/international channels | Estimated primary DTT (secondary) |
| SE   | FTA + PayTV | 7                | –                             | Teracom   | Boxer TV-Access (Teracom)                                     | 10, of which 8 public                       | YLE Areena (TV Finland)                  | 28%                               |
| BG   | FTA         | 3 (1 test)       | –                             | First Digital EAD<br>NURTS EAD  |   | 4 public, 9 private national                |  | 27%                               |
| <b>Countries where <u>less homes</u> (less than 25%) rely on digital terrestrial television (DTT) for reception of TV channels</b> |             |                  |                               |   |   |   |  |                                   |
| PL   | FTA + PayTV | 4                | –                             | 1: TP Emitel (Alinda Capital Partners); Info-TV FM, (Cyfrowy Polsat) runs the mobile TV services on MUX 4 | Polsat Cyfrowy  | 28, of which 10 public                      |  | 23%                               |
| SI   | FTA         | 2                | RTV SLO has MUX A and MUX C   | 6 local MUX operator.   |   | 11 national (5 public), 4 regional, 6 local |  | 22%                               |
| EE   | FTA + PayTV | 3                | –                             | Levira (Estonian State 51%/TDF 49%)   | Starman (East Capital Explorer)                               | 6, of which 3 public                        | France 24                                | 21%                               |
| RO   | FTA         | 3 ( test phase)  | –                             | SN Radiocom (5 regional operators)  |   | 5 public, 6 private                         |  | Estimate 20%                      |
| PT   | FTA         | 1                | –                             | Portugal Telecom  |   | 3 public, 2 private, 2 public regional      |  | 18%                               |
| FR   | FTA + PayTV | 8                | Owns R1 (shares in R2 and R5) | 8 different companies run the various multiplexes.  | Canal+ Distribution; Leclerc/ TF1 Distribution ("Reglo TV" ). | 10 public, 19 private, 48 regional/ local,  | ARTE                                     | 16% (59%)                         |

| Status of DTT: MUXs, Public Broadcaster MUXs, Pay TV, End 2015   |             |                  |   |   |  |   |  | 2015                              |
|--|-------------|------------------|---|---|--|---|--|-----------------------------------|
| Country  | Business    | Operational MUXs | Public broadcaster multiplex                            | Other Free DTT MUX  | Pay DTT  | Free DTT channels national/local  | Free DTT: Foreign/international channels | Estimated primary DTT (secondary) |
| DK   | FTA + PayTV | 6                | Digi TV, jointly owned by DR and TV 2, operates MUX 1&2 |   | Boxer (Teracom)  | 8 national (all public), 179 local  |  | 14%                               |
| LU   | FTA         | 4                | –   | BCE - Broadcasting Center Europe (RTL group)              |  | 12 (of which 11 from RTL)   |  | 12%                               |
| DE   | FTA         | 4                | 9 ARD regional stations                                 | Media Broadcast   | closed 2014  | 48 (total 21 public) (private channels not available in all regions), 15 local and 25 windows | BBC World Euronews 3sat, ARTE            | 11%                               |
| IE   | FTA         | 2                | RTÉ (RTENL)   |   |  | 9 public, 3 private   |  | 10% (40%)                         |
| <b>Countries where DTT plays a <u>very minor role</u> in the reception of TV channels (10% or less) in homes</b> |             |                  |   |   |  |   |  |                                   |
| HU   | FTA + PayTV | 6                | –   | Antenna Hungaria ("Mini-dig")                             | Antenna Hungaria ("Mini-dig Extra")  | 5 public, 34private   | Euronews (x3)                            | 9,3%                              |
| NL   | FTA + PayTV | 4                | –   | KPN   | 7: KPN, Caiw Diensten, EDPnet, Stipte (formerly Scarlet), TELE2, Technos, T-Mobile | 3 national (public), 13 regional  |  | 8%                                |
| AT   | FTA + PayTV | 6                | ORS   | MUX C: 16 regional/local operators (3 of them by the ORS) | Simpli TV  | 7 public, (8 private channels in some regions).   | 3sat/ 3sat HD, SRF 1                     | 6%                                |

| Status of DTT: MUXs, Public Broadcaster MUXs, Pay TV, End 2015 |             |                  |   |  |              |   |  | 2015                              |
|--|-------------|------------------|---|--|--------------|---|--|-----------------------------------|
| Country  | Business    | Operational MUXs | Public broadcaster multiplex                | Other Free DTT MUX   | Pay DTT      | Free DTT channels national/local  | Free DTT: Foreign/international channels | Estimated primary DTT (secondary) |
|  |             |                  |   |  |              | 22 local/ regional, 19 windows  |  |                                   |
| CH   |             | 8                | SRG-SSR<br>idée suisse.                     | Most Swiss cable operators (except for Cablecom) offer free DVB-T packages |              | 4 public (each in French and Italian) / 5 (each in German and Rhaeto-Romanic area). 1 regional channel and 6 windows. |  | 3.2%                              |
| SK   | FTA + PayTV | 4                | –   | Towercom   | Towerhome    | 4 public, 9 private   |  | 3%                                |
| BE   | FTA         | 2                | RTBF (and VRT has part ownership of second) | Norkring Belgie (25% owned by the VRT),                                    | closed 2014. | 9 public channels (4 in French Community, 4 in Flemish Community), 1 private  | Euronews                                 | 1%                                |

Sources: MAVISE database; [Yearbook of the European Audiovisual Observatory 2015](#), using IHS and other national data for DTT homes. No data for AL, IS or BA

## 2.5 Channels on Free DTT services

Table 5 outlines the channels available on free DTT networks at the end of 2015.

From the 34 countries covered in this report, there are no foreign channels (i.e. licensed and established in another country) on the free DTT networks in Bulgaria, Croatia, the Czech Republic, Denmark, Finland, France, Ireland, Latvia, the Netherlands, Malta, Poland, Romania, Serbia, the Slovak Republic, Slovenia, Spain, Switzerland and the UK.

So although certain foreign/ international channels are listed as must-carry in the Netherlands, Romania and Switzerland, these rules clearly do not apply to DTT networks but rather to cable networks.

The public service channels of neighbouring countries are included on free DTT networks in the United Kingdom (Irish public channels), Sweden (Finnish public channel), and in Austria (Swiss public channel). In addition, the pan-European channel 3sat is available on free DTT in Austria and in Germany, and ARTE in Germany and France.

Examples of foreign international news channels on the free DTT networks include Al Jazeera Arabic in the UK, France 24 in Estonia, BBC World News (in Germany, only in Saxony and in Greece), and Euronews (in Berlin, in Belgium, in Cyprus, Greece, Hungary and in Ireland). The broadcast of CNN on the free DTT network (in North Rhine Westphalia in Germany) ceased in November 2014. A particularly wide range of international channels are on the free DTT in Greece: BBC World, TV5 Europe, Deutsche Welle, Rik Sat, Nickelodeon, and Euronews.

The public service channels of neighbouring countries are included on free DTT networks in the United Kingdom, where the Irish public service channels RTE1, RTE2 and TG4 are on the Northern Ireland MUX. This has been carried out as part of the peace (Good Friday) agreement. In Sweden, the Finnish public channel YLE Areena (TV Finland) is on the free DTT platform. The Swiss public channel SRF 1 (Switzerland) is available on the Austrian DTT.

In Belgium, all the main public channels of the different communities are available over free DTT throughout the country. In Hungary, the channel C8TV is on the free DTT network. This channel is actually established in the Czech Republic.

Regarding the pay-DTT services, there are many examples of foreign channels included in the packages. We do not list the examples here as the Pay DTT packages can be considered as similar in status to any other pay TV service such as via cable, IPTV or satellite.

In many countries it is also possible in border regions to receive foreign channels from neighbouring countries over DTT. This is an effect of overspill with the system picking up signals from neighbouring countries. Examples include the German public channels being picked up in the Alsace region of France, and Austrian channels being picked up in the north of Slovenia. While these channels are technically available, they are not part of the national DTT systems.

Table 5 illustrates the TV channels available over DTT at the end of 2015 (according to the MAVISE database). The table does not include Albania or Bosnia and Herzegovina where at the time of writing free DTT services had not been launched.

**Table 5 Television channels on DTT end 2015**

| Country | Free National public  | Free National private (licensed in the country)  | Free local/ regional/ windows          | International and /or foreign channels on free DTT               | Pay DTT channels |
|---------|---|--|--|--|------------------|
| AT      | ORF1, ORF2, ORF Sport Plus, ORF III, ORF Sport Plus HD, ORF III HD  | ATV, ATV2, ATV HD, Puls 4, Schau TV, Servus TV, Sat.1 Gold   | 43 services                            | 3sat, 3sat HD, SRF 1 (Switzerland)                               | 33 (Simpli TV)   |
| BE      | La Deux HD, La Deux, La Trois HD, La Trois, La Une, Één (VRT), VRT Canvas, VRT Ketnet, VRT Op12   |  |  |  | closed 2014.     |
| BG      | BNT 1, BNT 1 HD, BNT 2  | Nova TV (Bulgaria), bTV, Bulgaria On Air, TV7, (Alfa TV, The Voice TV, TV Evropa, Vest TV in trials)   |  |  |                  |
| CH      | RSI La 1, RSI La 2, RTS 1, RTS 2, SFR1, SFR ZWEI, SFR INFO  |  | 14 regional channels                   |  | 20 (Swisscom)    |
| CY      | RIK 1, RIK2, RIK HD   | ANT1 TV, Capital TV, Extra TV Limassol, Mad Cyprus, MEGA, Music TV, Plus TV, Prime Sports, SIGMA   |  | Euronews, ERT World  | closed 2014.     |
| CZ      | CT1, CT2, CT Sport, CT24, CT ART, CT:D, CT1 HD, CT2 HD, CT Sport HD   | Nova, Nova Cinema, Prima, Prima Cool, TV Barrandov, Prima Love, Prima Zoom, Ocko, Ocko Gold, TV Slagr, Active TV, (Prima HD, Prima Cool HD in Prague), Fanda TV, Pohoda Rebel, Pohoda Relax, TIP TV, TV TELKA, Smíchov TV, kino, Svět, Retro Music TV, Barrandov Plus, Kino Barrandov, OCKO Express, TV Noe                | 7 services                             |  |                  |
| DE      | ARD1 (Das Erste), ARD Alpha, ARD EinsFestival, ARD EinsPlus, ARTE, PHOENIX, KIKA, ZDF, ZDF Infokanal, ZDF NEO (many areas ONLY public channels) <sup>23</sup> | Super RTL, Anixe SD, SIXX TV, Tele 5, Kabel Eins, ProSieben, RTL, RTL 2, Sat.1, VOX, Channel 21 Shop, Bibel TV, Disney Channel, N24, HSE 24, Eurosport, QVC, VIVA (NRW only), Nickelodeon (Niedersachsen only), Comedy Central (Niedersachsen only), Juwelo TV (Berlin only), n-tv (Berlin only), Sat.1 Gold (Bayern only) | 15 local 16 regional PSB (+21 windows) | BBC World (Sachsen only)<br>Euronews (Berlin only)<br>3sat, ARTE | closed 2014.     |

<sup>23</sup> See details of German DTT channels here: <http://www.ueberallfernsehen.de/dvbt/downloads127.pdf>

| Country | Free National public  | Free National private (licensed in the country)   | Free local/ regional/ windows         | International and /or foreign channels on free DTT   | Pay DTT channels |
|---------|---|---|---------------------------------------|--|------------------|
| DK      | DR1, DR2, DR3, DR K, DR Ramasjang, DR Synstolkning, TV fra Folketinget  |   | 179 local/regional<br>6 regional PSBs |  | 38               |
| EE      | ETV2, ETV, Tallinna TV  | Kanal 2, TV3 (Estonia)  |                                       | France 24  |                  |
| ES      | TVE La Primera, TVE La 2, Canal 24 Horas, Clan TVE, Teledporte, Teledporte HD, TVE HD   | Antena 3, La Sexta, Telecinco, Cuatro, FDF, Divinity, Energy, Boing, Neox, Nova, Discovery Max, 13 TV,  | 68 regional/ windows<br>234 local     |  | Closed 2015      |
| FI      | YLE TV1, YLE TV2, YLE TV1 HD, YLE TV2 HD, YLE FEM, YLE FEM HD, YLE Teema, YLE Teema HD  | MTV3, Nelonen, Sub, TV5, Alfa TV (Finland), FOX TV (Finland), Hero, IskelmäTV Harju & Pöntinen, JIM, Kutonen, LIV, Reality TV   | 2 services                            |  | 31               |
| FR      | France 2, France 3, France 4 , France 5, France Ô, France 2 HD, Arte, Arte HD, Public Sénat, LCP  | TF1, M6, TF1 HD, M6 HD, I-Télé, BFM TV, D 8, Gulli, D 17, W9, NT1, NRJ 12, TMC, HD1, Chérie 25, L'Equipe 21, 6ter, RMC Découverte, Numéro 23 (and LCI since 2016)   | 48 regional/local                     | ARTE, ARTE HD  | 9                |
| GB      | (19 services)<br>BBC1, BBC2, BBC3, BBC2 HD, CBBC, Cbeebies, BBC4, BBC1 HD (and NI, Scotland and Wales versions), BBC3 HD, BBC4 HD, BBC News 24, BBC Alba, BBC Parliament, BBC Red Button, BBC News HD, S4C Digidol<br><br>Private with public obligations<br>Channel 4, , ITV1, Channel 5, UTV, STV | (74 services)<br>Film 4, 4music, E4, 4Seven, More 4, ITV2, ITV3, ITV4, ITV1 HD, ITV Be, CITV, STV Scottish TV, STV HD, UTV HD, 5 star, 5 USA, Pop!, Tiny Pop, Yesterday, Dave, Drama, Really, Food Network, Challenge, CBS Action, BS Reality, Pick TV, True Entertainment, truTV, Movie Mix, Movies4men, VIVA (UK), Travel Channel, Community Channel, Community Channel HD, Motors TV, Sky News, RT (Russia Today), Al Jazeera (version in English), Al Jazeera HD (version in English), Arise News, 10 home shopping , 14 Time-shifted, 4 dating | 63 local and windows                  | RTE1, RTE2 and TG4 (Irish public channels on NI MUX as part of peace (Good Friday) agreement), Al Jazeera Arabic | 3 (BT Sports)    |
| GR      | ERT1, ERT2, ERT3, ERT HD  | 4ETV, Action 24, Alpha TV, ANT1 (Greece), EXTRA CHANNEL 3, Mad Greeks, MEGA (Greece), SKAI TV, Star Channel, MTV Greece   | 67 local/regional                     | BBC World, Rik Sat, TV5 Europe, Deutsche Welle, Euronews, Nickelodeon  | Closed 2014.     |
| HR      | HRT1, HRT2, HRT3, HRT4, HRT HD  | RTL TV, NOVA, RTL2, RTL Kockica, DOMA TV, CMC Music, Sportska Televizija  | 19 services                           |  | 21 (EVo TV)      |

| Country | Free National public   | Free National private (licensed in the country)   | Free local/ regional/ windows | International and /or foreign channels on free DTT                               | Pay DTT channels  |
|---------|--|---|-------------------------------|--|-------------------|
| HU      | M1, M2, M4 Sport, M1 HD, M2 HD, Duna HD, Duna World,   | RTL Klub, TV2 Hungary   | 1 service                     | Euronews (English, French, German, Hungarian), C8TV (licensed in Czech Republic) | 52 (Mindig Extra) |
| IE      | RTE1, RTE2, RTE 1 HD, RTE 2 HD, RTE 1+1, RTE News Now, RTE jnr, Ireland, RTE Aertel Digital, TG4   | TV3, 3e, UTV Ireland  |                               |  |                   |
| IS      | Alþingi, RÚV Íþróttir, Sjónvarpið (RUV) Sjónvarpið+ (RUV+), Sjónvarpið (RUV) HD  | INN (Iceland), iSTV, N4 (Iceland), Omega Channel (Iceland)  |                               | CCTV News  | 26                |
| IT      | (15 services)<br>RAI Uno, RAI Due, RAI Tre, RAI 4, RAI 5, RAI Gulp, RAI HD, RAI Movie, RAI News, RAI Premium, RAI Scuola, RAI Sport 1, RAI Sport 2, RAI Storia, RAI Yoyo | (45 services)<br>Canale 5, Canale 5 HD, Italia 1, Italia 1 HD, Rete 4, La 7, La 7 HD, Boing TV, Cartoonito, Cielo, Class News, Coming Soon Television, DeeJay, DMax, Frisbee, GIALLO, Iris, K2 (Italy), La 5 (Italy), MTV Italia, Odeon TV, Radio Capital TV, Radio Italia TV, Mediaset Extra, Mediaset Italia 2, Real Time (Italy), Repubblica TV, RTL 102.5 Hit Channel, Sportitalia, Sportitalia 2, Sportitalia 24, Tele Padre Pio, TGCom 24, TV2000, 4 Time-shifted, 4 home shopping, 3 games/betting | 200+ services                 | DMAX, MTV Music  | 69                |
| LT      | LRT TELEVIZIJA, LRT KULTŪRA,   | BTV, LNK, TV3, TV6, TV1, Info TV, LIUKSI, TV8, Lietuvos rytas.tv  |                               | TVP Polonia  | 55                |
| LU      |  | Luxe TV Luxembourg, Den 2. RTL, RTL Télé Lëtzebuerg, RTL Télé Lëtzebuerg HD, RTL 4, RTL 5, RTL 7, RTL 8 (target Netherlands) Club RTL, Plug RTL, RTL-TVI (target Belgium)   |                               | M6 France  |                   |
| LV      | LTV1, LTV2   | Rīga TV 24, OTV, Re:TV  |                               |  | 79                |
| MT      | TVM, TVM2  | ONE TV (Malta), Net TV, Smash TV, F Living (formerly Favourite Channel), Xejk TV (formerly Calypso Music Television)  |                               |  | 58                |

| Country | Free National public  | Free National private (licensed in the country)  | Free local/ regional/ windows             | International and /or foreign channels on free DTT | Pay DTT channels |
|---------|---|--|---|--|------------------|
| NO      | NRK1, NRK2, NRK3, NRK Super, NRK Tegnspåk and Frikanalen                                  |  |   |  | 57               |
| NL      | NPO1, NPO2, NPO3  |  | 13 regional                               |  | 25               |
| PL      | TVP ABC, TVP1 HD, TVP2 HD, TVP Info, TVP Kultura, TVP Historia, TVP Rozrywka, TVP Polonia | Stopklatka TV, TV Trwam, ATM Rozrywka, TTV, Fokus TV, Eska TV, Polo TV, Polsat, TVN, TV4, TV Puls, Polsat Sport News, TVN7, TV6, Puls 2, | TVP Regionalna                            |  | 11               |
| PT      | RTP1, RTP2 (Dois), Canal Parlamento (Artv),   | SIC, TVI   | 2 regional public RTP Azores, RTP Madeira |  |                  |
| RO      | TVR1, TVR2, TVR3, TVR News, TVR HD  | Antena 3, Kanal D, Prima TV, Pro TV HD, Sport.ro HD  |   |  |                  |
| RS      | RTS 1, RTS 2, RTS 3,  | TV PINK, TV B92, TV PRVA, TV HAPPY   | RTV 1, RTV 2 (+84 regional)               |  |                  |
| SE      | SVT1, SVT1 HD, SVT2, SVT2 HD, SVT24, Kunskapskanalen, Barnkanalen                         | TV4, TV6   |   | public Finnish channel YLE Areena (TV Finland)     | 48               |
| SI      | TV Slovenija 1, TV Slovenija 2 and TV Slovenija 3   | Kanal A, Pop TV, TV3 Medias, Planet TV, Top TV (Slovenia), TV Petelin, Gorica TV   | 3 regional PSB channels and 9 local       |  |                  |
| SK      | STV1 (Jednotka), STV2 (Dvojka), STV1 HD, STV2 HD  | TV Markiza, Television Doma, Joj TV, Joj Plus, TA3, Dajto TV, Senzi TV, TV WAU   |   |  | 13               |

Sources: MAVISE database and the websites of the operators of DTT services. See also [Yearbook of the European Audiovisual Observatory 2015](#)

## Recent legal developments

The following outlines the most recent developments in the areas of “must-carry” and “DTT licensing”.

### Must-carry

In June of 2015, amendments to the Finnish Copyright Act reintroduced remuneration for retransmission of programmes subject to a “must-carry” obligation.<sup>24</sup>

In June of 2015, the German BGH (Federal Supreme Court) referred two pending cases back to the appeal courts in the dispute over the cable feed-in fee between the public service broadcasters and a cable network operator, The BGH found that they had failed to sufficiently establish the facts of the case, and therefore referred the proceedings back to them. They need to explore whether the public service broadcasters had taken a joint decision to cancel the feed-in agreements, or individual business decisions. In addition, “the BGH also ruled that the public service broadcasters were not obliged to sign a feed-in agreement with the cable network operator under broadcasting law”..... and “the decision to cancel the feed-in agreements did not constitute an abuse of a dominant market position by the public service broadcasters”.<sup>25</sup>

In July 2015, the Romanian National Audiovisual Council modified the conditions for issuing and amending the retransmission notification. This decision mainly concerns the carriage of regional and local TV channels.<sup>26</sup>

In January 2016, Dutch telecommunications company KPN was granted an exemption to the must-carry rules regarding its new television service “Play” which is an OTT service in the form of an app. The regulator decided that the market for apps like Play is different from traditional cable networks.<sup>27</sup>

In Latvia, in January 2016, the amendments to the Electronic Mass Media Law included substantial changes regarding must-carry. “Firstly, the scope of subjects of must-carry obligations is broadened: now the must-carry obligation applies not only to the retransmission operators who retransmit programmes by cable, but also to any “provider of the service of the distribution of television programmes”.<sup>28</sup>

The update also concerned content and obliged distributors to include in their offer of programmes (citing below from IRIS Merlin):

- At least one programme that mainly includes news, analytic and information broadcasts made within the EU and in one of the official languages of the EU; - At least one programme of which within at least 50% of the total broadcasting time is the state language, provided that the total broadcasting time of this programme is at least 18 hours daily, and the broadcaster has received the broadcasting permit for this programme in Latvia; - At least one programme that mainly includes popular science broadcasts made within the EU and in one of the official languages of the EU; - At least one programme that mainly includes broadcasts for children and youth audience made within the EU and in one of the official languages of the EU; The listed programmes must be included in the programme catalogue before other programmes and in the order as provided above. According to the

<sup>24</sup> Anette Alén-Savikko (2015): *Finland: Reintroduction of remuneration for “must-carry” retransmission*. IRIS 2015-7:1/13 <http://merlin.obs.coe.int/iris/2015/7/article13.en.html>

<sup>25</sup> Katrin Welker (2015): *Germany: Federal Supreme Court quashes lower-instance rulings in dispute over feed-in fees*. <http://merlin.obs.coe.int/iris/2015/8/article10.en.html>

<sup>26</sup> Eugen Cojocariu (2015): *Romania: Modification of the conditions for issuing and amending the retransmission notification*. IRIS 2015-8:1/29. <http://merlin.obs.coe.int/iris/2015/8/article29.en.html>

<sup>27</sup> Eskens, Sarah Johanna (2016): *Netherlands: Dutch telecom company granted exemption from must-carry rules for new app*. IRIS 2016-1:1/26. <http://merlin.obs.coe.int/iris/2016/1/article26.en.html>

<sup>28</sup> Andersone, Ieva (2016): *Amendments adopted to the Electronic Mass Media Law*. IRIS 2016-3:1/24: <http://merlin.obs.coe.int/iris/2016/3/article24.en.html>

annotation of the amendments to the EMML, the new must-carry provisions are introduced in order to facilitate access to diverse information and to promote democracy and plurality of opinions.<sup>29</sup>

In France, the obligation of cable and IPTV operators to carry local public channels (and at the cost of the operator) faced a constitutional challenge from several IPTV operators. In December 2015, “the Conseil d’Etat made a referral to the Constitutional Council for a preliminary ruling on the constitutionality of the guarantee of the rights and freedoms contained in the second paragraph of Article 34-2 of the Act of 30 September 1986.” In conclusion the Court in March 2016 found that: “to a limited degree, the disputed provisions infringed the distributors’ freedom to conduct business and the freedom to enter into a contract. It also found that the obligation thus instituted pursued an objective of general interest and did not cause an unequal discharge of public burdens.”<sup>30</sup>

### **Digital terrestrial television**

In October 2015, the Greek parliament passed a new law on the licensing of content providers of digital terrestrial television. This will lead to ten year licences being awarded via auction held by the regulatory authority. The ministry will decide in advance the different categories of licence to be awarded.<sup>31</sup> The ministry plans to reduce the number of licences attributed to the main private broadcasters.

In France, the (2014) decision of the CSA refusing to allow the pay news channel LCI to move to the free to air DTT network was overturned on December 17<sup>th</sup> 2015.<sup>32</sup> However, the channels Paris Première and Planète+ remain in the pay-TV category. LCI is now available on Multiplex R3.

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<sup>29</sup> Ibid

<sup>30</sup> Blocman, Amélie (2016): Obligation to carry local public television services judged compliant with Constitution. IRIS 2016-5:1/11: <http://merlin.obs.coe.int/iris/2016/5/article11.en.html>

<sup>31</sup> Alexandros Economou (2015): *Greece: New law regulating licensing of content providers of digital terrestrial television*. IRIS 2016-1:1/16. <http://merlin.obs.coe.int/iris/2016/1/article16.en.html>

<sup>32</sup> Blocman, Amélie (2016): *CSA authorises LCI channel to shift to free DTT*. IRIS 2016-2:1/12: <http://merlin.obs.coe.int/iris/2016/2/article12.en.html>

# Country Reports

## 3 AL - ALBANIA

Must-carry rules are legislated in Albania under the *Law Nr. 97/2013 on Audio and Audio-Visual Media Services in the Republic of Albania*<sup>33</sup> The regulation of the media (and the communications sector) is carried out by the Audiovisual Media Authority (AMA).<sup>34</sup>

### 3.1 Must-carry rules<sup>35</sup>

The Albanian legislation provides for “must carry” rules in the Law no. 97/2013 as well as in the AMA’s Decision no. 4, dated 26.03.2014 “On establishing the obligation of carrying the national programs from cable electronic communications networks of entities authorized to re-transmit the content of the audio and audiovisual programs on these networks”. The AMA adopted this Decision in order to guarantee access to public broadcasting services and to ensure a diverse choice of programming. The rules apply only to electronic communications operators whose networks are used by a significant number of users as the main access to audiovisual programmes.

**Table 1 Law Nr. 97/2013 on Audio and Audio-Visual Media Services in the Republic of Albania**

Law no. 97/2013 “On Audiovisual Media in Republic of Albania”

cited Article 87 of the law, “Retransmission obligations”

“The AMA has the right to impose reasonable obligations on the media service providers for broadcasting one or more audio and audiovisual programmes of general interest to the public to ensure their reception in the territory of the Republic of Albania at a national, regional or local level. The retransmission obligations pursuant to point 1 of this article shall be imposed in conformity with the principles of proportionality and transparency only on electronic communication operators, whose networks are utilised by a considerable number of users as the main way of receiving audiovisual programmes and only if this is in the interest of the public.”

Must-carry applies to cable networks. The AMA claimed (end 2015) that the current two commercial TV stations cover an area significantly lower than their license terms, respectively 54% and 51% of the territory and hence the decision to approve the “must-carry” rule of the programmes of national TV stations by cable networks in the country was necessary and in line with the law. The decision also states that rebroadcasting of the programmes of national television stations by cable networks should be free of charge. This decision was opposed by the television stations, who claimed that this was similar to legalising theft and piracy, and considered AMA’s decision as harmful to their own activity. The main national television stations, the respective multiplexes they own, and the regulator are also locked in a legal dispute dating back to the summer of 2013, when the multiplexes filed a lawsuit that has temporarily suspended AMA’s plans to start the licensing of existing digital multiplexes.<sup>36</sup>

#### 3.1.1 Distribution platforms and services

The rules apply only to electronic communications operators whose networks are used by a significant number of users as the primary means of access to audiovisual programmes.

<sup>33</sup> Law Nr. 97/2013 On Audio and Audio-Visual Media Services in the Republic of Albania: [http://ama.gov.al/preview/wp-content/uploads/2015/03/1per\\_mediati\\_audiovizive.pdf](http://ama.gov.al/preview/wp-content/uploads/2015/03/1per_mediati_audiovizive.pdf)

<sup>34</sup> Albanian Audiovisual Media Authority (AMA) : <http://www.ama.gov.al/>

<sup>35</sup> On the basis of text provided by the regulator AMA

<sup>36</sup> From: Londo, Ilda (2014): *Albania - Regulator approves decision on must-carry rules for cable televisions*. IRIS 2014 – 6:1/6 <http://merlin.obs.coe.int/iris/2014/6/article6.en.html>

Cable companies are obliged to carry the programmes of the national analogue terrestrial channels such as "TV Klan", "Top Channel" and the Public Television RTSH, for the entire area within which they are authorized to provide the service of re-transmission of the content of audio and audiovisual programmes of third parties. Thus, the must-carry rules apply only to cable. AMA's Decision no. 4, dated 26.03.2014 lists these national programs "Klan" and "Top Channel" as well as the public television RTSH, which are considered as programmes of general interest to the public. "Klan" and "Top Channel" are licensed to provide programming services that are open and free to the public.

### 3.2 Other access rules

No must-offer rules were identified by the regulator (except with regard to the types of content that certain licensed channels should offer). Currently there are no rules that relate to must-see or must-find, but the AMA is preparing regulation in this area, which will include some basic conditions regarding the presentation of EPGs, including the order of priority of listing media services.

### 3.3 DTT networks and platform operators

With regard to DTT licensing, the response from the regulator indicates that channels that wish to be distributed over the free DTT networks should be licensed in Albania.

*"The provision of audio and audiovisual programmes that are supported on terrestrial analogue or digital networks is made under license issued by the AMA through competition of applications in accordance with the requirements of Article 56 of this law and special rules approved by the AMA".*

In Albania, pay-DTT services have been operating since 2004 (from both Tring and Digitalb). The launch of a free DTT system was delayed for many years. In May 2012, the Council of Ministers approved a strategy for Digital Switch-over and a planned switch-off of analogue broadcasting in 2015.<sup>37</sup> In March 2015, the Albanian public broadcaster Radio Televizioni Shqiptar (RTSH) signed a contract with the German company Rohde & Schwarz to build two national digital networks that will belong to and be managed by the public broadcaster. The public broadcaster also has the obligation to host local programme operators in one of the two networks, according to the Strategy for Digital Switchover.<sup>38</sup> The launch has been further delayed by legal challenges to the tender process for building the network, a case that was finally resolved in 2014. However the process for granting licences to the channels has been delayed due to a lack of a quorum of the Board of the AMA, and additional lawsuits from the TV channels.<sup>39</sup>

### 3.4 Summary and conclusion

Must-carry rules apply to cable only for the carriage of public television and the two main national free to air private channels. Free DTT is still under development in Albania.

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<sup>37</sup> Yearbook of the European audiovisual Observatory 2013

<sup>38</sup> Londo, Ilda (2015) : *Albania - Public Broadcaster signs contract on building digital networks*: IRIS 2015-6:1/5 <http://merlin.obs.coe.int/iris/2015/6/article5.en.html>

<sup>39</sup> Londo, Ilda (2016) : *Albania - Audiovisual Media Authority fails to grant national digital licenses*: IRIS 2016-3:1/3 <http://merlin.obs.coe.int/iris/2016/3/article3.en.html>

## 4 AT – AUSTRIA

The main legislative acts relevant to audiovisual media in Austria are the Federal Act on Audiovisual Media Services (Audiovisual Media Services Act – AMD-G)<sup>40</sup> and the Federal Act on the Austrian Broadcasting Corporation (ORF Act). In addition, the Federal Act on the establishment of an Austrian Communications Authority ("KommAustria") and a Federal Communications Board (KommAustria Act - KOG)<sup>41</sup> established the regulatory authority KommAustria.

### 4.1 Must-carry rules

Must-carry obligations are outlined under § 20(1) of the Audiovisual Media Services Act – AMD-G, which includes obligations for cable operators. The purpose of the provisions applying to cable operators and their digital and analogue networks is to *“disseminate, upon inquiry, television channels which make a special contribution to the diversity of opinions in the coverage area on the conditions applicable to the overwhelming number of other channels disseminated in the cable network”* (§ 20(2)). Accordingly must-carry rules apply only to cable networks.

**Table 2** Federal Act on Audiovisual Media Services (Audiovisual Media Services Act – AMD-G)

|  |
|--|
| <p><b>Federal Act on Audiovisual Media Services (Audiovisual Media Services Act – AMD-G)</b><br/><b>§ 20 Dissemination Mandate for Cable Networks</b></p> <p>(1) Cable network operators shall retransmit the radio and television channels of the Austrian Broadcasting Corporation (§ 3 of the ORF Act), if this is possible without any unreasonable major input and expense.</p> <p>(2) Cable network operators shall disseminate, upon inquiry, television channels which make a special contribution to the diversity of opinions in the coverage area on the conditions applicable to the overwhelming number of other channels disseminated in the cable network.</p> <p>(3) When evaluating whether a special contribution to the diversity of opinions is made, the proportion of programme formats that are self-created, self-produced or contracted to third parties and have a primarily Austrian, regional or local content, as well as the existing allocation of channels and the number of schedules available shall be taken into account.</p> <p>[...]</p> <p>(Unofficial translation provided by the RTR)</p> |
|--|

Regarding multiplex-platforms for DTT, there are no explicit must-carry rules in the law, but the regulatory authority shall impose in the multiplex licenses corresponding “must carry” provisions (see Art.25 and Art.15b AMD-G).

**Table 3** Federal Act on Audiovisual Media Services (Audiovisual Media Services Act – AMD-G)

|   |
|---|
| <p><b>Federal Act on Audiovisual Media Services (Audiovisual Media Services Act – AMD-G)</b><br/><b>§ 25 Granting Licenses and Imposing Conditions for Terrestrial Multiplex Operators</b></p> <p>[...]</p> <p>(2) When granting the multiplex license, the regulatory authority shall ensure the following by imposing the relevant conditions:</p> <p>[...]</p> |
|---|

<sup>40</sup> Federal Act on Audiovisual Media Services (Audiovisual Media Services Act–AMD-G). Available from: [https://www.ris.bka.gv.at/Dokumente/ErV/ERV\\_2001\\_1\\_84/ERV\\_2001\\_1\\_84.pdf](https://www.ris.bka.gv.at/Dokumente/ErV/ERV_2001_1_84/ERV_2001_1_84.pdf)

<sup>41</sup> Federal Act on the establishment of an Austrian Communications Authority ("KommAustria") and a Federal Communications Board (KommAustria Act–KOG). Available from: [https://www.ris.bka.gv.at/Dokumente/ErV/ERV\\_2001\\_1\\_32/ERV\\_2001\\_1\\_32.pdf](https://www.ris.bka.gv.at/Dokumente/ErV/ERV_2001_1_32/ERV_2001_1_32.pdf)

2. that the two analogue television channels broadcast by the Austrian Broadcasting Corporation (§ 3 of the ORF Act) are integrated into the package of digital channels in the respective coverage area upon request and against a reasonable remuneration and that a sufficient data volume is available for their dissemination, to the extent such channels are not yet disseminated in a digital terrestrial manner in the respective coverage area (with the exception of dissemination via a multiplex platform for mobile terrestrial broadcasting);

3. that the channel of that broadcaster who was issued a license for nationwide analogue terrestrial television is integrated into the package of digital channels in the respective coverage area upon request and against a reasonable remuneration and that a sufficient data volume is available for its dissemination, to the extent such channels are not yet disseminated in a digital terrestrial manner in the respective coverage area (with the exception of dissemination via a multiplex platform for mobile terrestrial broadcasting);

[...]

(Unofficial translation provided by the RTR)

Regarding the other channels of the ORF, the law is unclear. In the Federal Act on the Austrian Broadcasting Corporation (ORF Act), reference is made to the two public channels ORF Sport and ORF Culture and Information. These are described as channels with a special mandate which “shall be broadcast via satellite and may be broadcast through digital terrestrial multiplex platforms”.

Similar to the television channels ORF eins and ORF2, the universal supply also applies to all other programmes of the ORF (see Art.3 ORF-G). A clear must-carry obligation only applies to cable networks whereas it is the responsibility of the Austrian Broadcasting Corporation (ORF) to take appropriate measures to disseminate their programmes on other platforms.

#### **Table 4 Federal Act on the Austrian Broadcasting Corporation (ORF Act – ORF-G)**

##### **Federal Act on the Austrian Broadcasting Corporation (ORF Act – ORF-G) § 3. Service provision mandate**

- (1) The Austrian Broadcasting Corporation, together with all regional studios, must provide
1. three nation-wide and nine province-wide radio channels, and
  2. two nation-wide television channels.

The Austrian Broadcasting Corporation must ensure that, subject to technical development and economic feasibility, all inhabitants of the national territory who are authorised to operate a radio or television receiver are consistently and permanently provided with one province-wide and two nation-wide radio channels and two nation-wide television channels.

(2) The nine province-wide radio channels are produced by the regional studios. Some radio programmes which are produced by a regional studio and in which there is a special public interest may also be broadcast on a nation-wide basis. In the television channels, the interests of the provinces must be taken into account by regional programmes at regular intervals and by reasonable shares of nation-wide channels. The relevant programmes are determined by the Regional Directors.

(3) The channels specified in paragraph 1 subparagraphs 1 and 2 must in any case be provided by terrestrial distribution. With regard to the third nation-wide radio channel with predominant foreign-language content, in deviation from paragraph 1 second sentence, the same provision level that was applicable to that channel on 1 May 1997 shall apply.

(4) Subject to technical development and availability of transmission capacities, economic feasibility and the digitisation concept devised under § 21 of the Audiovisual Media Services Act, Federal Law Gazette I No. 84/2001, the Austrian Broadcasting Corporation shall ensure that the channels specified in paragraph 1 are supplied by terrestrial distribution, using digital technology pursuant to paragraph 1 (using the DVB-T transmission standard in respect of the channels specified in paragraph 1 subparagraph 2). Broadcasts of channels via satellite must be carried out in conformity with the technical development and economic feasibility and by using digital technology.

[...]

##### **Special mandate for a special-interest channel for sports**

#### § 4b [...]

(2) The channel shall be broadcast via satellite and may be broadcast through digital terrestrial multiplex platforms. § 25 paragraph 2 subparagraph 2 of the Audiovisual Media Services Act shall remain unaffected. § 20 paragraph 1 of the Audiovisual Media Services Act shall apply. To calculate the duration of the maximum permissible advertising time, the number of hours broadcast daily shall be multiplied by 1 minute and 45 seconds. The share of television advertising may not exceed 20 per cent of one full hour. Hours mean 24 equal parts of one calendar day.

[...]

Special mandate for a special-interest channel for information and culture

#### § 4c

(2) The channel shall be broadcast via satellite and may be broadcast through digital terrestrial multiplex platforms. § 25 paragraph 2 subparagraph 2 of the Audiovisual Media Services Act shall remain unaffected. § 20 paragraph 1 of the Audiovisual Media Services Act shall apply. The provisions on the prior evaluation (§ 6 to § 6b) shall also apply to such channel. To calculate the duration of the maximum permissible advertising time, the number of hours broadcast daily shall be multiplied by 1 minute and 45 seconds. The share of television advertising may not exceed 20 per cent of one full hour. Hours mean 24 equal parts of one calendar day.

(Unofficial translation provided by the RTR)

While these provisions do not seem to clearly create must-carry obligations on DTT and satellite, the ORF itself has interpreted this as being so. This is probably due to the fact that the ORF has obligations to have universal reach regarding the population. On the website of the RTR<sup>42</sup>, the following statement is made:

*"Further, the KommAustria executes the so-called "must-carry" provisions: On the one hand cable operators are obliged to transmit the ORF radio and television programmes (including ORF Sport + and ORF III - Culture and Information) provided that this is possible without disproportionate (economic and / or technical) expenses (§ 20 para. 1- AMD G). This obligation also applies to multiplex and satellite operators (§§ 4b para. 2 and 4c para 2 ORF). On the other hand, cable operators are obliged to transmit upon request television programmes that make a particular contribution to diversity of opinion in the distribution area based on conditions that apply to the majority of programme services distributed in other cable networks (§ 20 para. 2, AMD G). The obligations for the dissemination of these programmes on cable networks are valid for both digital and analogue broadcasting."*

The ORF provides its own satellite package and the ORS is the operator of several multiplex-platforms. It should be noted that the must-carry obligations of the KommAustria would also apply if an independent third party were the MUX operator. Hence, the commitments of the decision are not related to the fact that the ORF is a co-owner of the ORS.

### 4.1.2 Which services

Cable network operators are obliged to "retransmit the radio and television channels of the Austrian Broadcasting Corporation (§ 3 of the ORF Act)" including ORF Sport Plus und ORF III (§§ 4b(2) and 4c(2) ORF Act).

Further, cable operators are obliged to "disseminate, upon inquiry, television channels which make a special contribution to the diversity of opinions in the coverage area" (Audiovisual Media Services Act § 20(2)) based on the conditions applicable to the majority of other channels broadcast on the cable network. With regard to the channels that fall into this category, the Audiovisual Media Services Act (§ 20(6)) specifies that the regulator KommAustria is responsible for determining the duration and "a reasonable remuneration" for the cable operator to transmit these channels<sup>43</sup> and limits their number to a maximum of three.

<sup>42</sup> <https://www.rtr.at/de/m/Infrastruktur>

<sup>43</sup> i.e. last must carry decision of the KommAustria <https://www.rtr.at/de/m/KOA196013093>

### 4.1.3 Costs

Cable operators are obliged to transmit the ORF radio and television programmes (including ORF Sport + and ORFIII - Culture and Information), if this is possible without disproportionate major economic and technical expense<sup>44</sup> (Audiovisual Media Services Act § 20(1); ORF-Act §§ 4b(2) and 4c(2)).

With regard to multiplex platforms the principle applies that the distribution of the programmes of the ORF has to be done in exchange for a reasonable fee. For satellite there is no corresponding rule with regard to costs.

For cable, the amount of remuneration to be paid shall be determined by the KommAustria.

**Table 5 Federal Act on Audiovisual Media Services (Audiovisual Media Services Act – AMD-G)**

**Federal Act on Audiovisual Media Services (Audiovisual Media Services Act – AMD-G)  
§ 20 Dissemination Mandate for Cable Networks**

[...]

(6) The regulatory authority shall fix the duration of the dissemination or retransmission of the channel in the cable network, as well as a reasonable remuneration for the cable network operator. When fixing the remuneration, attention shall be paid to the conditions applied by the cable network operator in question for accepting channels. If no such conditions exist, comparable conditions shall be taken into consideration. A maximum of three transmission obligations pursuant to paragraphs 2 and 3 may be imposed on the cable network operator.  
(Unofficial translation provided by the RTR)

## 4.2 Other access rules

### 4.2.1 Must offer

There are no must-offer obligations included in the legal framework of broadcasting in Austria. A must-offer can be assumed from the obligations of the public service broadcaster to be present on various platforms i.e.: “ORF must ensure that, subject to technical development and economic feasibility, all inhabitants of the national territory who are authorised to operate a radio or television receiver are consistently and permanently provided with one region-wide and two nation-wide radio programmes and two nation-wide television programmes” (Art. 3 ORF-G; Art. 15b(2 Z 2) PrR-G; Art. 25(2 Z 2) AMD-G).

### 4.2.2 Must-see/ must-find

The license issued to the transmission transmitter ORS for 10 years to 2016<sup>45</sup> specifies that the order of television channels in the electronic programme guide “has to be based on objective criteria (for example, programmes with must-carry obligations shall come before other programmes)” (unofficial translation).

Further, § 25(6) of the Audiovisual Media Services Act stipulates to apply “fair, equal and non-discriminatory conditions” to all digital channels and additional channels included in electronic programme guides of terrestrial multiplex operators.

<sup>44</sup> On the criteria of disproportionate expense see KommAustria, 13. 06. 2012, KOA 1.920/12-006, <https://www.rtr.at/de/m/KOA192012006>

<sup>45</sup> KommAustria. 2006. Bescheid vom 23.02.2006 (KOA 4.200/06-002). Available from: [https://www.rtr.at/de/m/KOA4200-06-02-MUX-ORS/3594\\_KOA4200-06-002-MUX-ORS.pdf](https://www.rtr.at/de/m/KOA4200-06-02-MUX-ORS/3594_KOA4200-06-002-MUX-ORS.pdf)

**Table 6 Federal Act on Audiovisual Media Services (Audiovisual Media Services Act – AMD-G)**

**Federal Act on Audiovisual Media Services (Audiovisual Media Services Act – AMD-G)  
Granting Licenses and Imposing Conditions for Terrestrial Multiplex Operators**

§ 25(1) The regulatory authority shall grant the multiplex license for a period of ten years. The license shall be issued in writing, or is otherwise void.

2) When granting the multiplex license, the regulatory authority shall ensure the following by imposing the relevant conditions:

[...]

6. that, in the event that digital channels and additional services are integrated into a global package under one electronic programme guide (navigator), consumers are able to find all digital channels and additional services under fair, equal and non-discriminatory conditions;

(Unofficial translation provided by the RTR)

### 4.3 Access to free DTT

Research carried out by the South East Europe Digi.TV project<sup>46</sup> provided an overview of the licensing process in Austria:

*According to § 3 AMD-G, any person who provides terrestrial and mobile terrestrial television or satellite television and is established in Austria requires a licence. A media service provider is deemed to be established in Austria if its head office is in Austria and the editorial decisions on the audiovisual media service are made in Austria. Applications for being granted a licence for providing terrestrial television services (including mobile terrestrial television) or satellite television services must be filed with the regulatory authority.*

In addition, when applying for the licence, the broadcaster must have a prior agreement with the Multiplex operator for use of the transmission capacities.

The amendments to the Audiovisual Media Services Act, adopted by the Austrian National Assembly on 29 February 2012, included a relaxation of the license restrictions for private television companies to broadcast via digital terrestrial networks. Instead of limiting private broadcasters to a maximum of two television channels on DTT networks, the new provisions foresee that they can transmit one radio and no more than one-third of the terrestrial channels available in a particular region or town. Under the new rules it is also possible for a person or partnership to own more than one DTT license as long as no more than three of the supply areas covered by its licenses overlap.<sup>47</sup>

The Austrian law also includes some public service provisions regarding the selection of channels for DTT (as outlined in the SEE Digi.TV report):

*AMD-G provides that KommAustria must give priority to that applicant for multiplex licence, who will better ensure an offer of digital channels providing a diversity of opinions, with channels including Austria-specific content being disseminated preferentially. The regulatory authority must secure this public policy goal additionally, by laying down the relevant conditions in the multiplex licence itself.*

*Furthermore, KommAustria must ensure, by imposing appropriate conditions when granting a multiplex licence, that the two analogue television channels of the Austrian national public service broadcaster ORF remain available nationally. Therefore, they must be integrated by the multiplex operator in the package of digital channels in the respective coverage area upon request and against a reasonable remuneration if they are not yet disseminated in a digital terrestrial manner in the respective coverage area.<sup>48</sup>*

<sup>46</sup> South-east Europe Digital Television (SEE Digi. TV) Project (2011): *Analysis of existing legal framework for the digital switchover*: [http://www.see-digi.tv/shared\\_files/wp3/wp3a1.pdf](http://www.see-digi.tv/shared_files/wp3/wp3a1.pdf)

<sup>47</sup> IRIS Merlin. 2012. Parliament Adopts Audiovisual Media Services and ORF Act Amendments. Available from: <http://merlin.obs.coe.int/iris/2012/4/article9.en.html>

<sup>48</sup> South-east Europe Digital Television (SEE Digi. TV) Project (2011): *Analysis of existing legal*

### 4.3.1 Platform operator and TV channels

Austria's national free DTT service is operated by the transmitter company ORS, which is owned by public broadcaster ORF (60%) and the Medicur Sendeanlagen GmbH (40%). Since April 2013, ORS also operates a pay DTT service: Simpli TV. The ORS operates a total of five national terrestrial multiplex platforms: MUX A and B, MUX D, E and F. Three of these are in DVB-T2 standard (MUX D, E, F). By the end of 2016, the conversion of MUX B to the new DVB-T2 standard will be completed. MUX C with 16 multiplex-platforms is operated by different companies in each region (three by the ORS) and carries regional and local stations.<sup>49</sup> The television channels available on free DTT include those of the Austrian Broadcasting Corporation (e.g. ORF eins, ORF2, ORF Sport Plus and ORF III) and 3sat. Commercial channels on the ORS multiplex are ATV, Puls 4, Schau TV (in Vienna) and Servus TV. The public Swiss channel SRF 1 is available in Carinthia, Vorarlberg and Eastern Tyrol.

## 4.4 Conclusion and summary

The main must-carry obligations are outlined under §20(1) of the Federal Act on Audiovisual Media Services (Audiovisual Media Services Act – AMD-G) which includes must-carry provisions for cable operators. The purpose of the provisions is to disseminate television channels which make a special contribution to the diversity of opinions.

A clear must-carry obligation only applies to cable networks whereas it is the responsibility of the Austrian Broadcasting Corporation (ORF) to take appropriate precautions to disseminate their programmes on other platforms.

Cable network operators are obliged to “retransmit the radio and television channels of the Austrian Broadcasting Corporation (§ 3 of the ORF Act)” including ORF Sport Plus und ORF III (§§ 4b(2) and 4c(2) ORF Act).

Austria's national free DTT service is operated by the transmitter company ORS, which is owned by public broadcaster ORF (60%) and the Medicur Sendeanlagen GmbH (40%). The television channels available on free DTT include those of the Austrian Broadcasting Corporation (e.g. ORF eins, ORF2, ORF Sport Plus and ORF III), 3sat and the commercial channels ATV, Puls 4, Schau TV and Servus TV. In addition, the Swiss channel SRF 1 is available in Carinthia and Eastern Tyrol.

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*framework for the digital switchover:* [http://www.see-digi.tv/shared\\_files/wp3/wp3a1.pdf](http://www.see-digi.tv/shared_files/wp3/wp3a1.pdf)

<sup>49</sup> Rundfunk & Telekom Regulierungs-GmbH. 2015. Terrestrische Multiplex-Plattformen. Available from: <https://www.rtr.at/de/m/MUX>

## 5 BA – BOSNIA AND HERZEGOVINA

The main legislative acts that regulate broadcasting in Bosnia and Herzegovina include the Communication Law.<sup>50</sup> The regulation of the media (and the communications sector) is carried out by the converged regulator, Communications Regulatory Agency (CRA).<sup>51</sup>

### 5.1 Must-carry rules

Must-carry rules are addressed in the by-laws of the BiH audiovisual framework, under Rule 56/2011 on Licences for the Distribution of Audiovisual Media Services and Radio Media Services.<sup>52</sup> These rules underline the must-carry status of the public service broadcasters (Article 8). Under Article 9, there is an obligation to carry all licensed terrestrial broadcast services on the network in so far as there is adequate capacity and the services (in particular local) cover the zone of the network.

**Table 1 Rule 56/2011 on Licences for the Distribution of Audiovisual Media Services and Radio Media Services**

#### **Rule 56/2011 on Licences for the Distribution of Audiovisual Media Services and Radio Media Services**

##### **Article 8 (Programme Distribution Obligation of the Public Broadcasting Services in Bosnia and Herzegovina)**

(1) The licensee is obliged to distribute programs of the public broadcasting services in Bosnia and Herzegovina which include Radio and Television of Bosnia and Herzegovina, Radio and Television of the Federation of BiH and the Radio and Television of Republika Srpska.

(2) Once the licensee distributes the programs stemming from paragraph (1) of the Article herewith, he shall do so without charging any special fee and within the limits of its technical capacities.

##### **Article 9 (Obligations Relating to the Distribution of Audiovisual Media Services and Radio Media Services)**

(1) The licensee is obliged to announce on non-commercial basis a permanent offer to all licensed providers of audiovisual media services and radio media services in Bosnia and Herzegovina in terrestrial broadcasting, whose zone of broadcasting is within the zone of the telecommunication network used for the distribution, and for which there are adequate reception capacities.

According to the regulator the above provisions of the Rule were in the process of being amended, “however the amendments are aimed to clarify the provisions, there’ll be no substantive changes to the obligation itself.”

#### 5.1.1 Distribution platforms and services

The rules apply to all platforms, except DTT, as BiH has not yet switched-over to DTT. The Regulatory Agency is currently considering the need to make more specific rules related to DTH technology. The law makes no reference to transmission costs.

As mentioned above, the article 8 specifies the three public service broadcasters. Article 9 is more general in relation to services with terrestrial licences.

<sup>50</sup> Communication Law <http://rak.ba/eng/index.php?uid=1272017637>

<sup>51</sup> Communications Regulatory Agency (Agency) CRA <http://rak.ba/eng/index.php?uid=1265547993>

<sup>52</sup> Rule 56/2011 on Licences for the Distribution of Audiovisual Media Services and Radio Media Services can be downloaded here: <http://rak.ba/eng/index.php?uid=1328108149>

## 5.2 Other access rules

Currently there are no must-offer provisions in the law, and no regulation of must-see provisions.

## 5.3 DTT development

In Bosnia and Herzegovina, DTT has not yet been launched. A Strategy on the Digital Switchover in BiH was developed by the regulator. The strategy stipulated that PSB and other existing holders of analogue licenses will all be awarded licenses for DTT in the transition period using MUX A (PSB) and MUX B (others). In March 2014, multiplexes were assigned to Croatian company Odašiljači Veze (OIV). In 2015 the ministry allocated equipment to the public broadcasters to begin the process of switchover.

## 5.4 Summary and conclusion

Must-carry rules (Rule 56/2011 on Licences for the Distribution of Audiovisual Media Services and Radio Media Services) underline the must-carry status of the public service broadcasters (Article 8). The rules apply to all platforms except DTT, which is not yet developed. Under article 9, there is an obligation to carry all licensed terrestrial broadcast services on the network in so far as there is adequate capacity and the services (in particular local) cover the zone of the network. There are no must-offer or must-see provisions in the legal framework.

## 6 BE – BELGIUM

In the French Community, the must-carry regulation is under the Décret coordonné sur les services de médias audiovisuels (Coordinated Decree on Audiovisual Media Services, hereinafter AVMS Decree)<sup>53</sup>. The audiovisual regulatory authority (Conseil supérieur de l'Audiovisuel – CSA) is responsible for monitoring the compliance with media regulations of editors and distributors of broadcasting services and network operators falling within the area of responsibility of the French Community.

In the Flemish Community, the must-carry regulation is based on the Act on radio and television broadcasting (Media Act) from 27 March 2009.<sup>54</sup> The regulatory authority is the Vlaamse Regulator voor de Media (VRM).

In the German-speaking Community, the must-carry regulation is via the Dekret vom 27. Juni 2005 über [die audiovisuellen Mediendienste] und die Kinovorstellungen (Decree of 27 June 2005 on Audiovisual Media Services and Cinema Exhibitions)<sup>55</sup>. The Medienrat is the regulatory authority of the German-speaking Community.

### 6.1 Must-carry rules

#### The French Community of Belgium

The must-carry rules applicable in the French Community of Belgium are specified in Art. 82, 83 and 87 of the AVMS Decree. The purpose of the must-carry rules is the promotion of cultural diversity and local television.

**Table 1 Act on Audiovisual Media Services**

Décret coordonné sur les services de médias audiovisuels (version consolidée par le CSA)  
(Act on Audiovisual Media Services)

#### Section II - The distribution of audiovisual media services via cable

Art. 82.

§ 1. Provided that a significant number of people use their networks as the primary means of receiving audiovisual media services, network operators referred to in Article 97 must guarantee the distribution on their networks of a basic offer comprising at least the services being subject to mandatory distribution referred to in Article 83.

The basic offer is provided by a service distributor. Otherwise, the network operators are required to exercise the distribution business by providing the basic offer.

§ 2. Any service distributor can only offer complementary offers of audiovisual media services to users who have access to the basic offer.

Art. 83.

§ 1. Service distributors referred to in Article 82, § 1, second paragraph, must distribute the following linear television services at the time of their broadcasting and in their totality:

- 1° services of the RTBF that are firstly intended for the public of the French Community;
- 2° local television services in their coverage area;

<sup>53</sup> Act on audiovisual media services – consolidated version last modified by the Act of 29 January 2015 (Décret sur les services de médias audiovisuels -version consolidée par le CSA), available at <http://www.csa.be/documents/1440>

<sup>54</sup> Flemish Act on radio and television broadcasting. Available: [http://www.vlaamseregulatormedia.be/sites/default/files/act\\_on\\_radio\\_and\\_television\\_broadcasting.pdf](http://www.vlaamseregulatormedia.be/sites/default/files/act_on_radio_and_television_broadcasting.pdf)

<sup>55</sup> 27. Juni 2005 - Dekret über [die audiovisuellen Mediendienste] und die Kinovorstellungen (German version only; this version includes all changes up until 25 March 2013): [http://medienrat.be/files/Dekret\\_27\\_Juni\\_2005\\_Stand\\_25\\_Maerz\\_2013.pdf](http://medienrat.be/files/Dekret_27_Juni_2005_Stand_25_Maerz_2013.pdf)

3° services, appointed by the Government, of international service providers in which the RTBF has a share of the capital;  
4° two services of the public service provider of the Flemish Community, provided that the service distributors of this Community are required to transmit two television services of the RTBF;  
5° one or more services of the public service provider of the German-speaking Community, provided that the services distributors of this Community are required to transmit one or more television services of the RTBF.

Service distributors referred to in Article 82, § 1, second paragraph, must distribute the following non-linear television services:

1° services of the RTBF appointed by the Government;  
2° local television services, appointed by the Government, in their coverage area;  
3° services, appointed by the Government, of international service providers in which the RTBF has a share of the capital;

§ 2. Service distributors referred to in Article 82, § 1, second paragraph, must distribute at the time of their broadcasting and in their totality the linear television services of providers declared or authorized under this decree and enjoying a mandatory distribution right.

§ 3. Service distributors referred to in Article 82, § 1, second paragraph, must distribute at the time of their broadcasting and in their totality the television services, appointed by the Government, of any service provider of the European Union who concluded a convention with the Government for the promotion of cultural production in the French Community and the European Union in particular to provide a financial contribution to this promotion.

§ 4. Service distributors referred to in Article 82, § 1, second paragraph, must distribute at the time of their broadcasting and in their totality the following linear audio services:

1° services of RTBF issued in frequency modulation;  
2° two services of the public service provider of the Flemish Community provided that the service distributors of this community are required to transmit two RTBF audio services;  
3° one service of the public service provider of the German-speaking Community provided that the service distributors of this community are required to transmit one audio service of the public service broadcaster of the French Community.

Service distributors referred to in Article 82, § 1, 2nd paragraph, must distribute non-linear audio services of the RTBF appointed by the Government.

Art. 87.

Provided that a significant number of people use their networks as their primary means of receiving audiovisual media services, network operators referred to in Articles 123 and 125 guarantee the distribution on their network, at the time of their broadcasting and in their totality, of linear audiovisual media services of the RTBF and of linear services, appointed by the Government, of international service providers in which the RTBF has a share of the capital. They also guarantee the distribution on their network of non-linear audiovisual media services, appointed by the Government, of the RTBF and of international service providers in which the RTBF has a share of the capital.

These services are provided by a service distributor. Otherwise, network operators are required to exercise the distribution business by providing the audiovisual media services referred to in the first paragraph.

The first two paragraphs of this Article shall not apply if the RTBF itself distributes audiovisual media services referred to in paragraph 1 on networks similar to those referred to in Articles 123 and 125 which were made available to it by the Government.

(Unofficial translation by the European Audiovisual Observatory)

## **The Flemish Community of Belgium**

The must-carry-rules that apply in the Flemish Community of Belgium can be found in Art. 185-188 of the Media Act. The must-carry rules relate to linear media services (television and radio). The purpose of the must-carry rules is "to ensuring pluralism and cultural diversity in the broadcasting offer" (Art. 185 § 1 Media Act).

The Media Act distinguishes between three types of market players which fall under its

scope: broadcasters, service providers and network operators.

The must-carry rules apply to service providers that use “electronic communications networks used for the distribution of radio or television broadcasts to the public where a significant number of end-users of such networks use them as their principal means to receive radio and television broadcasts” (Art. 185, § 1 Media Act).

Art. 185, § 1/1 of the Media Act stipulates that service providers who have access to electronic communications networks as a result of measures imposed by the VRM – in application of Art. 192 of the Media Act - have no must-carry obligations. Art. 192 is a transposition of the EU Electronic Communications Framework and gives the VRM the power to carry out market analyses and impose measures on electronic communications network operators who have significant market power.

## **Table 2 Act on radio and television broadcasting (Media Act) from 27 March 2009**

### **Act on radio and television broadcasting (Media Act) from 27 March 2009**

#### **TITLE II**

#### **Transmission possibilities and transmission duties**

##### **Article 185**

§ 1. The service providers using networks that serve as the most important resource to receive broadcasting programmes for a significant number of end users, will offer their services in accordance with the provisions of Article 186.

The linear broadcasting programmes, [and associated services] as mentioned in article 186, § 1 and § 2, have to be offered unabridged and in their entirety, with a view to ensuring pluralism and cultural diversity in the broadcasting offer. [In this title, associated services is understood to mean: subtitling, audio description, sign language and audio subtitling.]

[§1/1. The provisions of paragraph 1 of this article shall not apply to service providers who have access to electronic communication networks as a result of measures taken by the Flemish Regulator for the Media imposed in application of article 192 of this Act. These service providers can transmit their programmes in accordance with article 187].

§ 2. Service providers using networks that do not serve as the most important resource to receive broadcasting programmes for a significant number of end users, can offer their services in accordance with the provisions of article 187.

§ 3. The networks, as mentioned in § 1, first indent, will be laid down at least once every three years by the Flemish Government, on the recommendation of the Flemish Regulator for the Media. The Flemish Government will lay down these networks for the first time in the calendar year following on the date that this Act takes effect and can review this provision after at least one year, and every subsequent year after this date.

##### **Article 186**

§ 1. The service providers, referred to in article 185, § 1, first indent, have to distribute the following linear broadcasting programmes in their basic offer, as soon as they are broadcast:

- 1° the broadcasting programme of the public broadcaster of the Flemish Community;
- 2° the broadcasting programme of the regional television broadcaster. This will be broadcast free of charge, unabridged and simultaneously within the regional television broadcaster's service area. The free aspect applies to the provision and the transmission of the broadcasting programme;
- 3° two radio programmes and two television programmes of the public broadcaster of the French-speaking community and the radio broadcasting programme of the German-speaking Community;
- 4° two radio broadcasting programmes and the television broadcasts of the Dutch public broadcaster;

[5° the associated services of the television programmes indicated in point 1 to 4° and in §2.]

The Flemish Community shall not be required to pay a fee to a cable network provider for the compulsory transmission of the aforementioned programmes [and associated services].

§ 2. On the recommendation of the Flemish Regulator for the Media, the Flemish Government may decide to include other broadcasting programmes of linear broadcasters in this transmission duty, on condition that these broadcasters meet the following requirements:

- 1° they broadcast a full news programme, produced by an in-house editorial team mainly consisting of accredited professional journalists;
- 2° they provide a varied, diverse and multicultural offer, which includes information and cultural programmes and their programming includes a certain percentage of Dutch-language programmes;
- 3° they subtitle a given percentage of their programmes for the deaf and the hearing impaired.

The Flemish Government sets the percentages, as mentioned in indent 1, 2° and 3°.

§ 3. The service providers, referred to in article 185, § 1, first indent, may distribute the following broadcasts in their entirety, as soon as they are broadcast:

1° broadcasts by licensed broadcasters that are not included in paragraph 1, which are accredited by the Flemish Community or registered with the Flemish Regulator for the Media;

2° the non-linear broadcasts of the broadcaster, mentioned in paragraph 1;

3° digital radio broadcasts of the public broadcaster of the Flemish Community and radio broadcasts of the accredited and registered radio broadcasters; in the case of the accredited radio broadcasters the provisions of the broadcasting permits, i.e., as regards the service area for national, local and regional radio broadcasters are respected;

[4° without prejudice to the second paragraph of Article 168, the programmes of the regional television broadcasters recognised by the Flemish Community;];

5° broadcasts of the broadcasters of the French-speaking and German-speaking Communities of Belgium, which do not fall under paragraph 1, and which are aimed at the entire Community;

6° broadcasts of broadcasters, which fall under the competence of another member of the European Community;

7° if prior permission is granted by the Flemish Regulator for the Media, which can impose conditions in this regard, the broadcasts of broadcasters that are the competence of a country that is not an EU Member State.

§ 4. The Flemish Regulator for the Media must be notified in advance about the transmission of new programmes. The notification comprises the location of the broadcast, the location of the establishment and the mention of the country that is competent for the broadcaster.

Article 187

The service providers that use the network of providers of electronic communication networks, whose network is not the most important means of receiving broadcasts for a significant number of end users, can transmit the following broadcasts:

1° broadcasts of the public broadcaster of the Flemish Community;

[2° broadcasting programmes from the broadcasters indicated by the Flemish Regulator for the Media;]

[2°/1 the broadcasting programme from the regional television broadcaster within the service area of that regional television broadcaster;

2° /2 without prejudice to the second paragraph of Article 168, the programmes of the regional television broadcasters recognised by the Flemish Community;

3° broadcasts of the public broadcasters of the French-speaking and German-speaking Community of Belgium;

4° broadcasts of the broadcasters of the French-speaking and German-speaking Communities of Belgium, and which are aimed at the entire Community;

5° broadcasts of broadcasters, which fall under the competence of another Member State of the European Community;

6° if prior permission is granted by the Flemish Regulator for the Media, which can impose conditions in this regard, the broadcasts of broadcasters that are the competence of a country that is not an EU Member State.

The Flemish Regulator for the Media must be notified in advance about the broadcast of new programmes. This notification comprises the location of the broadcast, the location of the establishment and the mention of the country that is competent for the broadcaster.

Article 188

Service providers are prohibited from transmitting other broadcasts than those for which transmission is authorized under this title, except in case of permission by the Flemish Regulator for the Media, who can impose certain conditions.

A service provider may use one analogue and two digital channels if it mainly uses these to provide information about the broadcasts and services that it transmits or offers and about the difficulties that influence the service's operations.

*(Unofficial translation by the European Audiovisual Observatory)*

## The German-speaking Community

The must-carry rules are specified in *Art. 81 of the Decree of 27 June 2005 on Audiovisual Media Services and Cinema Exhibitions*, and in the *Must-carry Resolution on Radio Broadcasting and Cinema Exhibitions*.<sup>56</sup> The purpose of the must-carry rules is to promote

<sup>56</sup> Medienrat. 2012. Beschluss der Beschlusskammer des Medienrates der Deutschsprachigen Gemeinschaft gemäß Artikel 81 § 2 des Dekretes vom 27. Juni 2005 über den Rundfunk und die Kinovorstellungen. Available from: [http://www.medienrat.be/files/Must\\_Carry\\_Beschluss.pdf](http://www.medienrat.be/files/Must_Carry_Beschluss.pdf)

the plurality of opinion and diversity of culture and to take account of the cultural specificity of the German-speaking Community (Art. 81 §1 Decree of 27 June 2005 on Audiovisual Media Services and Cinema Exhibitions).

In addition, Art. 26.1 of the Decree of 27 June 2005 on Audiovisual Media Services and Cinema Exhibitions specifies the regulation concerning the award of a right to must-carry status for linear television services. According to this, a must-carry status can be awarded by the Government of the German-speaking Community based on an agreement between the broadcaster and the Government (§ 1). The right holder of the must-carry status can then assert a claim for carriage on cable networks with a significant number of users who use it as a main means of reception for linear audiovisual services pursuant to Art. 81(2).

A must-carry status is granted under fulfilment of the following conditions (§3): 1) showcase the heritage, particularly the cultural heritage, of the German-speaking Community; 2) a minimum number of programming hours per day; 3) a daily news and information programme. So far, there has been no private channel that was granted must-carry status by the Government of the German-speaking Community of Belgium.

### **Table 3 Act on Audiovisual Media Services**

#### **Decree of 27 June 2005 on Audiovisual Media Services and Cinema Exhibitions Article 81 - Must-carry**

§1 - Without prejudice to Article 79, cable operators whose networks are used by a significant number of end-users as the principal means to receive [linear audiovisual media services] have to completely re-distribute the following [linear audiovisual media services] at the time of its appearance, in order to promote the plurality of opinion and diversity of culture and to take account of the cultural specificity of the German-speaking Community [as a border region in a multilingual country with no national broadcaster]:

1. the [linear audiovisual media services] of the BRF and trading companies with which the BRF has a co-operation agreement and in which he is directly or indirectly involved financially;
2. [the linear audiovisual media services, that are entitled to a must-carry status under Article 26.1];
3. two linear audio services and [the linear audiovisual media services] of the public broadcaster of the French Community];
4. two linear audio services and [the linear audiovisual media services] of the public broadcaster of the Flemish Community];
5. the programmes referred to in Article 16 §1.]

§2 - [The Ruling Chamber can oblige cable operators, whose networks are used by a significant number of end-users as the main means for receiving linear audiovisual media services, to offer additional audiovisual media services. The Government defines the rules concerning this matter and hereby explicitly expresses the pursued objectives of general interest. Before adopting its decision, the Chamber invites the relevant cable operators and consumers via its website to give an opinion on the draft decision within a period of at least sixty days. If no opinion is given within this period, the Chamber may issue its decision].

The Chamber can assign a channel for use at different times or can assign it in regular rotation to several programmes.

[§3 - The obligations referred to in this Article shall be reviewed every three years, for the first time on 31 March 2008, by the Ruling chamber. [The results of the review will be published on the website of the Media Council.]

This provision is intended to implement Article 31, paragraph 1 of the Directive 2002/22 / EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive).]  
(Unofficial translation by the European Audiovisual Observatory)

#### **6.1.1 Which distribution platforms**

##### **French Community**

The law applies must-carry rules on the following distribution platforms:

cable networks (Art. 82 of the Act); satellite (Art. 87 of the Act); any other transmission

system than cable, satellite and wireless (analogue and digital) (Art. 87 of the Act).

The rules apply to the network operators in “so far as a significant number of people are using their networks as the primary means of receiving audiovisual media services” (Art. 83 and 87 of the Act on Audiovisual Media Services).

An exception is made if the RTBF (Radio Télévision Belge Francophone – the public service provider of the French Community of Belgium) itself distributes services on networks similar to satellite and networks other than cable and wireless which were made available to it by the Government. In this case, the RTBF must not apply the must carry rules.

The Collège d'autorisation et de contrôle of the CSA regularly assesses which service distributors are subject to must-carry rules and in what areas, based on the number of users and the market shares. In its *Opinion No. 2/2014 of 13 March 2014*<sup>57</sup>, the College noted that the must-carry rules apply to Coditel (Numéricable), Brutélé, Tecteo (now Nethys) and Telenet (each in their broadcasting area) and to Belgacom (now Proximus) (throughout its coverage area in the French-speaking region). In this Opinion, the College further specified in which cases new distributors benefiting from the opening of cable networks<sup>58</sup> and who choose to distribute their services on a network of an operator which is already subject to must-carry regulation will themselves be subject to this requirement.

Cable operators in the bilingual region of Brussels Capital are subject to the jurisdiction of the Federal Government<sup>59</sup>. For these the must-carry rules specified in the *Loi du 30 mars 1995 concernant les réseaux de distribution d'émissions de radiodiffusion et l'exercice d'activités de radiodiffusion dans la région bilingue de Bruxelles-Capitale*<sup>60</sup> apply. The responsible regulatory authority is the Belgian Institute of Post and Telecommunications (BIPT).

### **Flemish Community**

Must-carry rules do not apply to specific platforms or technologies. The Media Act stipulates, however, that the must-carry platforms have to be designated, at least every three years, by the Flemish Government (advised by the VRM) (Art. 185, § 3 Media Act).

The must-carry networks that were designated by *Governmental Decree from 22 November 2013*<sup>61</sup> include the following cable networks in the Flemish Community: Telenet, Coditel and Nethys.

### **German-speaking Community**

The must-carry rules apply to cable operators whose networks are used by a significant number of end-users as the principal means to receive linear audiovisual media services (Art. 81 §1 Decree of 27 June 2005 on Audiovisual Media Services and Cinema Exhibi-

<sup>57</sup> Conseil Supérieur de l'Audiovisuel. 2013. Suivi des avis relatifs au droit de distribution obligatoire (must-carry). Available from: <http://www.csa.be/documents/2264>

<sup>58</sup> The *Conférence des régulateurs du secteur des communications électroniques*, in which the CSA takes part with the other Belgian regulators (BIPT, VRM and Medienrat) has forced the opening of cable coax networks (of Telenet, Brutélé, Nethys and Numéricable) and of the DSL network (IPTV) of Proximus for the provision of TV broadcasting and internet.

<sup>59</sup> Unless their activities can be linked only to the French Community but none of the existing network operators finds themselves in this situation.

<sup>60</sup> Institut belge des services postaux et des télécommunications. 1995. Loi du 30 mars 1995 concernant les réseaux de distribution d'émissions de radiodiffusion et l'exercice d'activités de radiodiffusion dans la région bilingue de Bruxelles-Capitale. Available from: <http://www.bipt.be/fr/operateurs/media/regulateur-medias/loi-du-30-mars-1995-concernant-les-reseaux-de-distribution-d-emissions-de-radiodiffusion-et-l-exercice-d-activites-de-radiodiffusion-dans-la-region-bilingue-de-bruxelles-capitale>

<sup>61</sup> Belgisch Staatsblad. 2013. Besluit van de Vlaamse Regering houdende vaststelling van de netwerken die voor een significant aantal eindgebruikers het belangrijkste middel zijn om omroep-programma's te ontvangen: [http://www.vlaamseregulatormedia.be/sites/default/files/besluit\\_vlaamse\\_regering\\_22\\_november\\_2013.pdf](http://www.vlaamseregulatormedia.be/sites/default/files/besluit_vlaamse_regering_22_november_2013.pdf)

tions). In the German-speaking Community there is one cable operator to which these rules apply: Tecteo.

## 6.1.2 Which services

### French Community

Must-carry rules apply to the linear television services of public service provider RTBF (i.e. La Une (RTBF 1), La Deux (RTBF 2) and La Trois (RTBF 3)), (non-profit) local channels in their respective coverage areas, two channels provided by the public service provider of the Flemish Community of Belgium (i.e. Eén and Canvas/Ketnet), and the channel provided by the public service provider of the German-speaking Community (i.e. BRF TV).

In addition, the Government of the French Community of Belgium can grant a must-carry status to specified linear services provided by international companies in which the RTBF holds a share (e.g. TV5), and to non-linear services from the RTBF, from (non-profit) local TV providers or from international companies in which the RTBF holds a share (no case).

The law also foresees that the Government may grant must-carry status to private channels but this has not been the case yet as strict content obligations apply (Art. 47 to 50 of the AVMS Decree). These strict requirements to be fulfilled by private service providers to be granted must-carry status are mentioned in Art. 49 of the AVMS Decree. This includes showcasing the cultural heritage of the French Community of Belgium, providing a daily news and information programme, contributing to the audiovisual production of the French Community and creating a minimum of 60 full-time jobs.

#### **Table 4 Décret coordonné sur les services de médias audiovisuels (version consolidée par le CSA)**

Décret coordonné sur les services de médias audiovisuels (version consolidée par le CSA) (Act on Audiovisual Media Services)

Art. 49

§ 1. A mandatory distribution right can only be attached to a linear television service if it meets the following minimum requirements:

- 1° Showcase the heritage - especially the cultural heritage - of the French Community at large and in its regional aspects;
- 2° Propose a daily minimum number of hours of programmes, of which one part must be first run;
- 3° Propose an at least daily general information and news programme.

§ 2. In addition, to qualify for a mandatory distribution rights attached to a linear television service, the service provider must meet the following minimum requirements:

- 1° Contribute to the audiovisual production of the French Community. To this end, in addition to the proportion referred to in Article 41, § 3, it devotes at least 24% of its turnover, as referred to in Article 41, § 4, to its own production, to partially or totally ordered production, to the acquisition of programmes, to- external performances, to pre-purchase and to coproduction of programmes. The turnover is the figure generated by the services benefiting from mandatory distribution right. In calculating the minimum proportion of 24% referred to in paragraph 1, the percentage of the turnover devoted to coproduction or pre purchase is equivalent to 8 times its nominal value.
- 2° create in the French Community a minimum of 60 full-time jobs under an employment contract, regardless of the number of services provided.

§ 3. The convention referred to in Article 47 regulates the procedures for implementing the obligations contained in §§ 1 and 2.

§ 4. The convention may provide for additional requirements to those specified in §§ 1 and 2 based on the size and nature of the linear television service for which the editor claims a mandatory distribution right.

§ 5. The service provider who has a mandatory distribution right must mentions in its annual report referred to in Article 40, the information relating to the obligations contained in the convention referred to in Article 47.

*(Unofficial translation by the European Audiovisual Observatory)*

Must-carry rules also apply to some audio services (radio), for some automatically and for some others if the Government grants them a must-carry status (see above, Art. 83, § 4, of the Act on Audiovisual Media Services).

### **Flemish Community**

The Media Act lists the specific must-carry channels under Art. 186, § 1. It includes public service television channels of the Flemish, French and German-speaking Communities in Belgium, the Netherlands and local channels.

The Media Act stipulates that the must-carry obligations can be extended by the Flemish Government to other linear channels if they meet the following three conditions: news and information, plurality of content and subtitling (Art. 186, § 2). So far, no other services have been granted must-carry status.

### **German-speaking Community**

The services that must be transmitted under must-carry rules are specified in Art. 81 §1(1-5). They include the audiovisual services of the BRF, additional channels with must-carry status as stipulated under Article 26.1, two channels by the public service broadcaster of the French Community and two channels by the public service broadcaster of the Flemish Community (BRF TV, Offener Kanal Ostbelgien, La Une (RTBF 1), La Deux (RTBF 2), Eén, Canvas/Ketnet).

Based on Art. 81 §2 the regulatory authority has the right to also grant must-carry status to additional radio and audiovisual services other than those already mentioned in Art. 81 §1. This right is specified in the Must-carry Resolution on Radio Broadcasting and Cinema Exhibitions. So far, the right has not been exercised.

## **6.1.3 Costs**

In the French Community, the Act on Audiovisual Media Services does not mention any specific rules concerning the costs incurred by the compulsory transmission of services.

In the Flemish Community, local broadcasters have to be transmitted completely free of charge (Art. 186 §1 2° Media Act). In addition, the last sentence of article 186 §1 of the Media Act states “The Flemish Community shall not be required to pay a fee to a cable network provider for the compulsory transmission of the aforementioned programmes [and associated services]”. This does not imply that these channels are exempt from transmission charges. It means that the Flemish Government does not provide any (financial) compensation for the must-carry it imposes. The channels might nevertheless pay the network operator for the transmission, and this is why there is a rule to protect local channels from such payments.

In the German-speaking Community, the Decree of 27 June 2005 on Audiovisual Media Services and Cinema Exhibitions does not mention any specific rules concerning the costs incurred by the compulsory transmission of services.

## **6.2 Other access rules**

### **6.2.1 Must offer**

In the French Community of Belgium, must offer obligations apply exclusively to non-profit local channels fulfilling public service tasks. They have to be available for distributors or network operators covered by must carry rules (last sentence of Art. 65 of the AVMS Decree).

There are no additional must-offer obligations included in the legal framework of broad-

casting in the Flemish Community of Belgium. Likewise, there are no additional must-offer obligations included in the legal framework of broadcasting in the German-speaking Community of Belgium.

## 6.2.2 Must-see/ Must-find

In the Flemish Community of Belgium, the Flemish Government can set rules concerning the presentation of EPG's (Art. 181 Media Act) but this possibility has not been used so far.

**Table 5 Act on radio and television broadcasting (Media Act) from 27 March 2009**

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| <p><b>Act on radio and television broadcasting (Media Act) from 27 March 2009</b><br/><b>Article 181</b></p> <p>A service provider is allowed to offer an electronic programme guide by means of the electronic communication network used.<br/>Service providers may be required by the Flemish Regulator for the Media, where necessary, to guarantee that end users of specified digital broadcasting services have access to the application program interfaces and to provide electronic programme guides subject to fair, reasonable and non-discriminatory conditions.<br/>The Flemish Government may impose conditions on installing, accessing and presenting electronic programme guides used in the context of digital programmes when required to guarantee the end user's access to a number of clearly specified digital programmes available in the Flemish Community.<br/>[...]<br/>(Unofficial translation by the European Audiovisual Observatory)</p> |
|--|

There are no must-see or must-find rules in the French Community of Belgium. According to Art. 130 of the AVMS Decree, the Government is nevertheless empowered to set conditions relating to the installation, the access and the presentation of EPG in order to ensure pluralism and non-discrimination with regards to the presentation of AVMS. Consideration is being given to introduce these kinds of rules.

**Table 6 Décret coordonné sur les services de médias audiovisuels (Coordinated Decree on Audiovisual Media Services - AVMS Decree)**

|  |
|--|
| <p><b>Décret coordonné sur les services de médias audiovisuels (Coordinated Decree on Audiovisual Media Services - AVMS Decree)</b></p> <p><b>Art. 130.</b></p> <p>After consulting the CSA and to the extent that is necessary to ensure accessibility for end users to all the digital audiovisual media services available in the French Community, the Government may impose conditions in relation to the installation, access and presentation of electronic programme guides used as part of the diffusion of digital audiovisual media services.</p> <p>These conditions may include the following requirements:</p> <ul style="list-style-type: none"><li>1° installation on the receivers of digital audiovisual media services of a basic electronic programme guide capable of searching an audiovisual media service on all audiovisual media services available without discrimination;</li><li>2° safeguarding a fair and effective competition regarding the access of service providers to electronic programme guides;</li><li>3° respect of pluralism and of the principle of non-discrimination regarding the presentation of the available audiovisual media services by the electronic programme guides.</li></ul> <p>(Unofficial translation by the European Audiovisual Observatory)</p> |
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In the German speaking Community, there are no must-see or must-find rules.

## 6.3 Access to free DTT

### French and German-speaking Communities

Art. 116 of the AVMS Decree states that the Government can organise a call for tenders for DTT, which is open to any national or foreign broadcasters. The CSA will arbitrate between the different candidates (beauty contest) and will grant DTT licenses to broadcasters by taking into account the pluralism and cultural diversity of the TV offer in the French Community of Belgium. In addition, the Decree specifies that any commitment towards contributing to the production and promoting audiovisual works from the French Community of Belgium will be taken into account by the regulatory authority when assessing the applications.

So far, the Government has never activated this process due to a lack of (commercial) interest from Belgian broadcasters as well as foreign broadcasters. As a consequence, the only DTT operator in the French Community of Belgium today is the RTBF. The public service provider applies DTT in order to fulfil its obligation to provide universal service of public service channels. The RTBF is allowed to promote its DTT service through giving access to other public service broadcasters.

Channels already licensed in another member state and authorized as a DTT service in the French Community of Belgium would fall under the full application of the AVMS Decree (Art. 118 § 2 of the AVMS Decree).

In the French Community of Belgium the public service provider RTBF owns and operates the only DTT platform which offers its services without subscription and free of charge. The RTBF platform also transmits news programmes of the public channel BRF TV via a window on Euronews (French version). The channel BRF TV is not fully available on DTT but only on cable.<sup>62</sup>

### Flemish Community

In the Flemish Community access to DTT-multiplexes is organized as a “wholesale-model” (Art. 201-205 Media Act). One license is given to a DTT-network-operator, who can, on a commercial basis, provide access to its network to service providers (who can acquire a maximum of 1/3 of the DTT-capacity (Art. 184 Media Act) and broadcasters. Among other things, this DTT network operator has to be a Flemish undertaking.

The Flemish public service broadcaster VRT (Vlaamse Radio- en Televisieomroep) can manage its own reserved frequencies (Art. 201, § 3 Media Act). No specific requirements are imposed on DTT channels compared to channels distributed via other networks. This means that the channels do not have to be licensed (or notified) in the Flemish Community, nor do they have to meet specific linguistic or production requirements. The pay-OTT platform Teletenne, owned by Belgium’s largest cable operator Telenet, closed at the end of March 2014 due to lack of demand. The closure does not affect the free-to-air distribution of the three VRT channels Eén, Canvas and Ketnet / Op Twaalf (OP12).<sup>63</sup>

### 6.3.1 Platform operator and TV channels

The public service provider RTBF owns and operates the free DTT platform in the French Community of Belgium, which was launched on 30 November 2007.<sup>64</sup>

Norkring België owns the DTT transmitter networks for TV and radio in Flanders and Brussels. The company is owned by the Norwegian Telenor AS (75%) and Participatiemaatschappij Vlaanderen (25%), an independent organisation owned by the Flemish

<sup>62</sup> BRF 2015 Frequentzen: <http://brf.be/empfang/>

<sup>63</sup> Broadband TV News. 2014. *Telenet pulls the plug out of its DVB-T2 network*: <http://www.broadbandtvnews.com/2014/02/17/telenet-pulls-the-plug-out-of-its-dvb-t2-network/>

<sup>64</sup> RTBF 2015. 100 questions sur la TNT: <http://ds.static.rtbf.be/article/pdf/faq-tnt-2-pour-liens-hypertextesok-1382085642.pdf>

Government. Norkring Belgie operates the MUX of public broadcaster VRT under a managed service and also owns the licenses for additional commercial MUXs.

Since November 2007, the following channels are available on the free DTT platform of RTBF: La Une (RTBF 1), La Deux (RTBF 2), La Trois (RTBF 3) and the international news channel Euronews (version in French). The channel BRF TV has a two-hour window on Euronews.<sup>65</sup> Since 1 December 2011, Télé Bruxelles is also available on free DTT, covering the Brussels area.

After the closure of the pay-DTT platform Telenet there remain three channels by Flemish public service broadcaster VRT (Eén, Canvas, Ketnet / Op Twaalf (OP12)) that are available on DTT free-to-air<sup>66</sup>.

## 6.4 Conclusion and summary

In the French Community, the must-carry rules are specified in Art. 82, 83 and 87 of the Décret coordonné sur les services de médias audiovisuels (AVMS Decree). The rules apply to cable networks and also to other transmission systems (satellite and other transmission systems than cable and wireless) when they are used by a significant number of people.

The must-carry rules apply to the linear television services of public service provider RTBF which include La Une (RTBF 1), La Deux (RTBF 2), La Trois (RTBF 3), non-profit local television channels, French public channel TV5, Eén, Canvas/Ketnet (Flemish Community), and BRF TV (German-speaking Community). They also apply to non-linear services appointed by the Government and to some radio services.

The channels that are available on the free DTT platform of the RTBF are La Une (RTBF 1), La Deux (RTBF 2), La Trois (RTBF 3), the international news channel Euronews (version in French, with a two-hour window for BRF TV), and the local TV channel Télé Bruxelles in its coverage area.

In October 2012, Belgium faced proceedings before the Court of Justice of the European Union (CJEU) for non-compliance of must-carry obligations as provided for in Article 31 of the Universal Service Directive (2002/22/EC). The European Commission justified its application for an order against Belgium to pay a fine based on the fact that the country had not amended its national legislation after repeated warnings dating back to 2008. It criticised a lack of clarity and transparency of the regime in place in the Brussels-Capital region, an excessive number of channels that were designated and the uncertainty of rights and obligations faced by network operators and broadcasters.<sup>67</sup> As a consequence, the federal legislator has amended the legislation involved by a law of 27 December 2012<sup>68</sup> to remedy these shortcomings.

<sup>65</sup> RTBF. 2015. La télévision : [http://www.rtbef.be/entreprise/rtbf-et-vous/recevoir\\_la-television?id=5959](http://www.rtbef.be/entreprise/rtbf-et-vous/recevoir_la-television?id=5959)

<sup>66</sup> Norkring Belgie. 2015: <http://en.norkring.be/news/faq/>

<sup>67</sup> Jassersand, Catherine (2012): *Action against Belgium for Failure to Perform Obligations in its Incorrect Trans-position of the Must-Carry Broadcasting Obligation into National Law*. IRIS Merlin. 2012. Available from: <http://merlin.obs.coe.int/iris/2012/10/article3.en.html>

Angelopoulos, Christina (2009): *German must-carry Case Closed, but Belgium Is Taken to Court*. IRIS 2009-10:Extra. <http://merlin.obs.coe.int/iris/2009/10/article102.en.html>

European Commission. 2012. Digital Agenda: Commission asks Court of Justice to fine Belgium over non-transparent must-carry TV and radio rules. Available from: [http://europa.eu/rapid/press-release\\_IP-12-1144\\_en.htm](http://europa.eu/rapid/press-release_IP-12-1144_en.htm)

<sup>68</sup> Service Public Fédéral Justice. 2012. Loi modifiant la loi du 30 mars 1995 concernant les réseaux de Communications électroniques et services de Communications électroniques et l'exercice d'activités de radiodiffusion dans la région bilingue de Bruxelles-Capitale. Available from: [http://www.ejustice.just.fgov.be/cgi\\_loi/change\\_lg.pl?language=fr&la=F&table\\_name=loi&cn=2012122716](http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&table_name=loi&cn=2012122716)

In the Flemish Community of Belgium the must-carry rules are specified in Art. 185-188 of the Act on radio and television broadcasting (Media Act) from 27 March 2009 and concern linear media services. The main purpose of these rules is to ensure pluralism and cultural diversity in the broadcasting offer (Art. 185 § 1 Media Act). The must-carry platforms are designated by the Flemish Government per Governmental Decree after consultation of the regulator VRM. They include the major cable networks in the Flemish Community (Telenet, Coditel and Nethys). The must-carry channels are public service channels of the Flemish, French and German-speaking Communities in Belgium and of the Netherlands and local channels (Art. 186, § 1). Local broadcasters have to be transmitted completely free of charge. Following the closure of pay-DTT platform Teletenne in March 2014 the three free-to-air channels by public broadcaster VRT remain.

In the German-speaking Community, the must-carry rules are specified in Art. 81 of the Decree of 27 June 2005 on Audiovisual Media Services and Cinema Exhibitions and in the Must-carry Resolution on Radio Broadcasting and Cinema Exhibitions. The purpose of the must-carry rules is to promote the plurality of opinion and diversity of culture and to take account of the cultural specificity of the German-speaking Community. The must-carry rules apply to cable operators whose networks are used by a significant number of end-users as the principal means to receive linear audiovisual media services.

The channels included in the must-carry regulation are the public service channels of the Flemish, French and German-speaking Communities of Belgium and the community channel Offener Kanal Ostbelgien. Under Art. 26.1 of the Decree of 27 June 2005 on Audiovisual Media Services and Cinema Exhibitions a must-carry status can also be awarded to other channels if they fulfil certain criteria (e.g. showcase the cultural heritage of the German-speaking Community, include a daily news programme).

BRF TV, the public channel of broadcaster BRF, is transmitted as a window on Euronews (version in French) on the free DTT platform of RTBF.

## 7 BG – BULGARIA

The main laws that regulate the market in Bulgaria are the Electronic Communications Act (2007)<sup>69</sup> (including issues such as frequency spectrum and digital broadcasting development), and the Radio and Television Law (2011).<sup>70</sup> The media in Bulgaria is regulated by the CEM – Council for Electronic Media,<sup>71</sup> who carries out supervision of the public and the private broadcasters. Electronic communications networks are regulated by the Communications Regulation Commission.<sup>72</sup>

### 7.1 Must-carry rules

The Bulgarian law first focuses on digital terrestrial broadcasting. Articles 37 and 37a of the Law on Radio and Television<sup>73</sup> stipulate the conditions for being “must carry”.

The criteria in the law for channels to be must-carry on DTT platforms are:

- They should have a licence for national coverage for TV or radio
- They should be distributing their channels over the analogue terrestrial broadcasting system
- They reach at least 50% of the population
- They must be in unencoded form<sup>74</sup>

The Council for Electronic Media established the list of channels that satisfy these criteria. The multiplex operator (NURTS Digital EAD) is obliged to distribute channels that fulfil the criteria of § 37 and § 37a from the Bulgarian Law for radio and television: BTV, BTV Action (BTV Media Group), Nova Television (Nova Broadcasting), TV7, Bulgaria on Air, News 7 (Balkan Bulgarian Television), Darik radio and television. First Digital EAD (multiplex operator) is obliged to distribute the public broadcasters – BNT 1, BNT 2, BNT HD, and the Bulgarian National Radio.

The law also covers cable and satellite platforms under article 44 and obliges the cable and satellite service providers to carry the programmes of the public service broadcasters BNT and BNR.

#### 7.1.1 Platforms, services and costs

There is one set of rules for DTT and another for cable and satellite. The public service channels are covered by both, while free to air national coverage channels reaching at least 50% of the population over analogue terrestrial networks are must-carry only on DTT.

According to article 44, paragraph 5 from the Law for Radio and Television, BNT and BNR have to provide their channels free of charge.

### 7.2 Must offer

The law requires mandatory distribution of the national public broadcasters – the Bulgarian National Television, and the Bulgarian National Radio by the cable and satellite networks. According to article 44, paragraph 5 from the Law for Radio and Television, BNT and BNR have to provide their programmes free of charge. There are no additional regulations with

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<sup>69</sup> Bulgaria’s Electronic Communications Act : [http://www.crc.bg/files/en/ZES\\_ENG.pdf](http://www.crc.bg/files/en/ZES_ENG.pdf)

<sup>70</sup> Available in Bulgarian only : <http://lex.bg/laws/ldoc/2134447616>

<sup>71</sup> Council for Electronic Media : <http://cem.bg/>

<sup>72</sup> Communications Regulation Commission: <http://www.crc.bg/index.php?lang=en>

<sup>73</sup> Law on Radio and Television (Bulgarian only) <http://www.cem.bg/infobg/81>

<sup>74</sup> Unofficial translation of Article 37 Law on Radio and Television

regard to must-see or must-find.

## 7.3 Access to free DTT

The response from the Bulgarian regulator to the questionnaire indicated that channels must be licensed in Bulgaria in order to be broadcast over the free DTT networks.

There are additionally some restrictions regarding language: programmes should be in the official language. There are some exceptions including where: they are distributed for educational purposes, when they target Bulgarian citizens whose mother language is not Bulgarian, when they target audiences from abroad, etc.

### 7.3.1 Platform operator and TV channels

First Digital EAD (multiplex operator) carries the public broadcasters – BNT 1, BNT 2, BNT HD, (and BNT World) and the Bulgarian National Radio.

The other multiplex operator NURTS Digital EAD carries ten channels including those outlined under 5.1 above (except for Darik radio and television which currently has no service). In addition the multiplex has test broadcasts in Sofia with Alfa TV, The Voice, VTV and TV Europa.

The allocation of the licences to operate the multiplexes in Bulgaria has been going through a process of investigation by the European commission. In April 2015, the court of Justice of the European Union found that Bulgaria had committed infringements in relation to three Directives in the process of allocation of the licences.<sup>75</sup>

## 7.4 Summary and conclusion

The Bulgarian law first contains two sets of must-carry rules: one for DTT and another for cable and satellite. The public service channels are covered by both, while free to air national coverage channels reaching at least 50% of the population over analogue terrestrial networks are must-carry only on DTT.

The response from the Bulgarian regulator to the questionnaire indicates that channels which can broadcast over the free DTT networks must be licensed in Bulgaria. There are currently two companies running multiplexes: First Digital EAD (multiplex operator) carries the public broadcaster (4 channels) and NURTS Digital EAD carries ten private channels including those outlined as must-carry for DTT.

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<sup>75</sup> IRIS 2015-6:1/2: Court of Justice of the European Union: Licensing of multiplex operators infringed EU law: <http://merlin.obs.coe.int/iris/2015/6/article2.en.html>

## 8 CH – SWITZERLAND

In Switzerland the must-carry regulations are in the *Federal Radio and Television Act (RTVA)*<sup>76</sup>, the *Swiss Ordinance on Radio and Television (ORTV)*<sup>77</sup> and the *SRG licence*<sup>78</sup>. The regulatory authority, the Federal Office of Communications, supervises compliance with these rules.

### 8.1 Must-carry rules

The Swiss broadcasting law distinguishes between must-carry regulation that applies to broadcasting by wire (cable) and to wireless terrestrial broadcasting. There are separate provisions for each and some provisions that apply to both.

#### **Must-carry rules for broadcasting by wire (cable)**

There are several legal provisions on “access-entitled services” (e.g. must-carry channels) laid down in the Swiss Federal Act on Radio and Television (RTVA), and more detailed, in the Ordinance on Radio and Television (ORTV). These apply to programme services broadcasted by wire.

The general broadcasting obligations for telecommunications service providers (TSPs) are laid down in Art. 59 (i.e. access-entitled and foreign programme services) and Art. 60 of the RTVA (i.e. other broadcasting obligations) and in Article 52 of the ORTV (i.e. programme services of foreign broadcasters). Concrete provisions for the broadcasting of SRG programme services are to be found under Article 8 of the SRG licence.

Further, Art. 53 of the ORTV concerns the maximum number of access-entitled programme services, Art. 54 of the ORTV defines the telecommunications service providers obliged to broadcast, and Annex 3 of the ORTV provides a detailed list of foreign programmes to be broadcast by wire.

**Table 1 784.40 Federal Act on Radio and Television (RTVA) of 24 March 2006 (status as of 1 February 2010)**

**784.40 Federal Act on Radio and Television (RTVA) of 24 March 2006 (status as of 1 February 2010)**

#### **Chapter 3: Broadcasting by Wire**

##### **Art. 59 Access-entitled and foreign programme services**

1 In their coverage area, the following must be broadcast by wire:

- a. programme services of the SRG SSR within the framework of the licence;
- b. programme services based on a licence with a performance mandate.

2 The Federal Council may also specify programme services of foreign broadcasters which are to be transmitted by wire because of their special contribution to education, cultural development or free opinion-forming. [...]

6 The Federal Council may extend the transmission obligation to services which are coupled with access-entitled programme services.

##### **Art. 60 Other broadcasting obligations**

1 On application by a broadcaster, the Federal Office shall require a telecommunications service

<sup>76</sup> The Federal Authorities. 2010. 784.40 Federal Act on Radio and Television (RTVA) of 24 March 2006 (status as of 1 February 2010): <http://www.admin.ch/opc/en/classified-compilation/20001794/index.html>

<sup>77</sup> The Federal Authorities of the Swiss Confederation. 2010. SR 784.401 Ordinance on Radio and Television. Annex 3. List of foreign programme services to be broadcast by wire: [http://www.admin.ch/ch/e/rs/784\\_401/app3.html#ahref0](http://www.admin.ch/ch/e/rs/784_401/app3.html#ahref0)

<sup>78</sup> Federal Office of Communications. 2012. Konzession für die SRG SSR idée suisse (Konzession SRG) vom 28. November 2007 (Stand 1. Dezember 2012): [http://www.bakom.admin.ch/themen/radio\\_tv/01214/03883/03884/index.html?lang=de](http://www.bakom.admin.ch/themen/radio_tv/01214/03883/03884/index.html?lang=de)

provider for a specific period to provide broadcasting by wire of a programme service within a specific area, if:

- the programme service contributes to a significant extent to the fulfilment of the mandate under the Constitution; and
- broadcasting can reasonably be expected from the telecommunications service provider taking account of the available transmission capacities and its economic capacity.

2 The Federal Council determines the maximum number of programme services. [...]

*(Unofficial translation provided by the website of the Federal Authorities of the Swiss Confederation)*

## **Table 2 SR 784.401 Ordinance on Radio and Television**

### **SR 784.401 Ordinance on Radio and Television Art. 52 Programme services of foreign broadcasters (Art. 59 para. 2 RTVA)**

1 Foreign programme services that are to be broadcast by wire in accordance with Article 59 paragraph 2 RTVA may be such programme services that are transmitted in a Swiss national language and which make a special contribution to fulfilling the performance mandate provided for by the Federal Constitution, in particular in that they:

- report in depth on social, political, economic or cultural phenomena within the framework of extensive editorial formats;
- give considerable space to artistic film productions;
- make special editorial contributions to the education of the public;
- broadcast special editorial productions for young people, old people or people with sensory disabilities; or
- regularly broadcast Swiss productions or regularly deal with Swiss topics.

2 The foreign programme services in accordance with paragraph 1 as well as the area in which they must be broadcast by wire are listed in the Annex of this Ordinance.

*(Unofficial translation provided by the website of the Federal Authorities of the Swiss Confederation)*

### **Must-carry rules for wireless terrestrial broadcasting**

There are also specific provisions for access-entitled programme services to be distributed via terrestrial broadcasting. These are detailed in Art. 53-55 of the RTVA and Art. 47 of the ORTV. Art. 53 RTVA defines the access-entitled programme services that must be distributed on terrestrial broadcasting, namely the services of the SRG SSR and services of broadcasters in possession of a license with a performance mandate. Art. 54 RTVA which concerns DTT frequencies, stipulates that the regulator "shall ensure that sufficient frequency capacities are available to fulfil the performance mandate of radio and television (Art. 93 para. 2 FC) in accordance with constitutional law. In particular, it shall ensure that access-entitled programme services can be transmitted using wireless terrestrial technology in the intended coverage area."

Art. 55 of the RTVA specifies the broadcasting obligation and broadcasting conditions for access-entitled programme services on DTT and Art. 47 of the ORTV specifies the use of radio frequencies for the broadcasting of radio and television programme services.

### **Must-carry rules applying to wireless terrestrial broadcasting as well as to broadcasting by wire**

Some provisions apply to wireless terrestrial broadcasting as well as broadcasting by wire. These are detailed in Art. 45 and 46 of the ORTV.

Art. 45 of the ORTV stresses that "access-entitled programme services and coupled services which are subject to a broadcasting obligation in accordance with Article 46 of this Ordinance must be broadcast without delay, unchanged and in full" and Art. 46 of the ORTV specifies that providers of access-entitled programme services are obliged to broadcast coupled services (e.g. services for the visually and hearing impaired, multiple sound channels etc.)

### 8.1.2 Purpose of rules

The purpose of the provisions is to transmit the programme services of the SRG SSR, services on a license with a performance mandate and services transmitted in a Swiss national language which make a special contribution to fulfilling the performance mandate provided for by the Federal Constitution (Art. 59-60 RTVA and Art. 52 ORTV).

### 8.1.3 Which distribution platforms

Anyone who provides television programme services via wire in Switzerland is obliged to broadcast certain programme services. These provisions affect all telecommunications service providers that reach more than 100 households. They affect all technologies and platforms (e.g. cable, IPTV, streaming, and also mobile broadband platforms).

The must-carry obligation to broadcast certain television programmes in the analogue services on cable networks has been gradually phased out. The broadcasting obligation is now limited to digital services only, as they are used by the vast majority of the Swiss population.

### 8.1.4 Which services

The must-carry rules apply to the following services:

- Television programmes by national/regional-linguistic public service broadcaster SRG SSR, as defined in Art. 8 of the SRG license: SRF 1, SRF 2, TSR 1, TSR2, RSI LA 1, RSI LA 2 (throughout Switzerland) and SF Info (in the German-speaking part of Switzerland).
- Foreign television programmes which contribute especially to public service objectives (Art. 59(2) RTVG). According to Annex 3 of the Swiss Ordinance on Radio and Television these services include the following: ARTE, 3Sat, TV5, ARD Das Erste, ORF 1, France 2, Rai Uno (throughout Switzerland) and Euronews (in the language of the linguistic region concerned).
- Television programmes based on a license to fulfil a public service mandate (e.g. local channels in the respective regions according to Art. 59(1b) RTVG (13 in total)
- Other television programmes, which contribute to the fulfilment of public service goals
- Services which are coupled with access-entitled television programmes (such as services for the visually and hearing impaired or information for EPGs).

### 8.1.5 Costs

As a principle, according to Art. 59 para. 3 RTVA transmission by wire of access-entitled programmes must be free of charge and in adequate quality.

The law states that in case of an unreasonable economic burden, access-entitled broadcasters have to pay appropriate compensation to the telecommunications service provider (Art. 59 RTVA).

With regard to the carriage cost of access-entitled channels on terrestrial broadcasting Art. 55(2) of the RTVA mentions that "broadcasters pay the owner of a radio communication licence cost-based compensation for the broadcasting of access-entitled programme services". The specific details of this cost-based compensation are mentioned in Art. 48 of the ORTV.

## 8.2 Other access rules

There are no must offer obligations in the Swiss radio and television law. In case of discriminatory behaviour by a market actor, the Swiss competition law applies.

Regarding must-find rules, these are linked to the prominence of must-carry channels. According to Art. 63(2) of the RTVA “anyone providing services as a higher-level user interface which control programme service selection must use the state of the art to ensure that reference is clearly made in the first stage of use to access-entitled programme service”.

## 8.3 Access to free DTT

Digital terrestrial television plays a minor role in Switzerland with only 2% of households relying on it for delivery of television channels.

### 8.3.1 Platform operator and TV channels

The SRG-SSR operates a total of four multiplexes that cover the whole territory of Switzerland. The television channels of the SRG-SSR that are available on free DTT include SRF 1, SRF 2, SRF Info, RTS 1, RTS 2, RSI La 1, RSI La 2.

The television offer of the –pay DTT network operator Tele Rätia (i.e. “Digital TV”) includes 20 television channels, most of which are Austrian, German and Swiss services. Tele Rätia AG, a subsidiary of Swisscom, operates 4 multiplexes providing services in the German-speaking part of Switzerland. This operator has been granted a license for operating a DTT network but there are no conditions regarding the composition of channel offerings on the platform.

There are no general obstacles, no channel licensing and no specific requirements included in the Swiss radio and television law.

## 8.4 Conclusion and summary

The Swiss broadcasting law distinguishes between must-carry regulation that applies to broadcasting by wire and to wireless terrestrial broadcasting. There are separate provisions for one or the other and some provisions that apply to both transmission forms.

The general broadcasting obligations for telecommunications service providers (TSPs) are laid down in Art. 59 (i.e. access-entitled and foreign programme services) and Art. 60 of the RTVA (i.e. other broadcasting obligations) and in Article 52 of the ORTV (i.e. programme services of foreign broadcasters). Concrete provisions for the broadcasting of SRG programme services are to be found under Article 8 of the SRG licence.

They apply to providers of television programme services via wire in Switzerland that reach more than 100 households (e.g. cable, IPTV, streaming, and also mobile broadband platforms). The rules apply to specific services as well as to particular types of services. This includes the specific services of the SRG SSR and channels that contribute to public service objectives such as ARTE, 3sat, TV5, ARD Das Erste, ORF 1, France 2, Rai Uno (throughout Switzerland) and Euronews (in the language of the linguistic region concerned).

The must-carry rules for wireless terrestrial broadcasting are detailed in Art. 53-55 of the RTVA and Art. 47 of the ORTV. They apply only to the services of the SRG SSR and services of broadcasters in possession of a license with a performance mandate.

Digital terrestrial television plays a minor role in Switzerland serving only 2% of households. The channels available on free DTT are those from the SRG-SSR (7 in total).

## 9 CY – CYPRUS

The *Law on Radio and Television Broadcasting N. 7(I)/1998*<sup>79</sup> (amended 2009) is the main legal framework for commercial broadcasting in Cyprus. The main legal basis for public service broadcasting in Cyprus is the *Law on the Cyprus Broadcasting Corporation (2010)*<sup>80</sup>. The broadcast sector is supervised by the Cyprus Radio-Television Authority, an independent body, in charge of licensing procedures and the monitoring of broadcasting.

### 9.1 Must-carry rules

In response to a questionnaire sent to its members by the EPRA in 2008, the regulator confirmed that there are no must-carry rules in Cyprus. Following a search of the laws and communication with the regulatory authority in Cyprus in 2015 (via a further questionnaire), it has again been confirmed that there are no must-carry rules in Cyprus. In addition, there are also no must-offer, must-see or must-find types of rules.

### 9.2 Licensing of DTT

Regarding the licensing of DTT, the Policy and Regulation Framework for Licensing Networks of Digital Terrestrial Television was established in 2009. According to this “the public broadcaster will carry audiovisual services only, must avoid competition with private operators and will not be allowed to develop other electronic communications services except very specific public utility ones. It must offer TV services for all with universal coverage. The private network will have the obligation to carry the signal of all licensed TV (and radio) channels, on special contracts and terms set in a framework decided by the CECPR. Only the operator of the commercial network will be allowed and obliged to offer services of both electronic communications and information society.”<sup>81</sup>

In Cyprus, the Public Service Broadcaster was allocated a multiplex which carries three national public services and Euronews. In addition, a second operator - Velister - carries 9 private channels. The pay DTT service closed in 2014.

### 9.3 Conclusion and summary

There are no must-carry rules in Cyprus. In addition, there are also no must-offer, must-see or must-find types of rules. In Cyprus, the Public Service Broadcaster was allocated a multiplex which carries three national public services and the international news channel Euronews. A second operator - Velister - carries 9 private channels.

<sup>79</sup> Ο περί Ραδιοφωνικών και Τηλεοπτικών Σταθμών Νόμος του 1998 εκδίδεται με δημοσίευση στην Επίσημη Εφημερίδα της Κυπριακής Δημοκρατίας σύμφωνα με το Άρθρο 52 του Συντάγματος (in Greek): <http://www.crt.a.org.cy/images/users/1/CRTA-LAW7%281%2998%20FINAL%202011.pdf>

<sup>80</sup> Ο περί Ραδιοφωνικού Ιδρύματος Κύπρου Νόμος (ΚΕΦ.300Α) (in Greek): [http://www.cylaw.org/nomoi/enop/non-ind/0\\_300A/index.html](http://www.cylaw.org/nomoi/enop/non-ind/0_300A/index.html) ; Act amending the Cyprus Broadcasting Corporation Act (2010)/ Law to amend the Radio and Television Station Acts of 1998 to (Art. 2) and of 2009 (in English):

[http://www.en.uni.lu/content/download/34612/419163/file/Cyprus\\_translation\\_1.pdf](http://www.en.uni.lu/content/download/34612/419163/file/Cyprus_translation_1.pdf)

<sup>81</sup> Christophoros Christophorou (2010) : *Cyprus: Auction Process, Adopted Standard and Strategy for Digital Terrestrial Television Networks*. IRIS 2010-2:1/7. Available here : <http://merlin.obs.coe.int/iris/2010/2/article7.en.html>

# 10 CZ – CZECH REPUBLIC

The main legal basis for the broadcasting sector in the Czech Republic is the *Broadcasting Act of 2001*<sup>82</sup> (last amended in 2012). This law included the incorporation of the Audiovisual Media Services Directive, the establishment of the Council for Radio and Television Broadcasting in 2001, and it outlined rules for licensing and registering of services, and the media ownership rules. Other relevant laws include the *2010 Act on Audiovisual on-demand services*, and the *Act on Czech Television*.<sup>83</sup> The Council for Radio and Television Broadcasting has a supervisory role in the functioning of public service television.

## 10.1 Must-carry rules

In the case of the must-carry regime, the legislative basis is in the telecommunications law, *ACT of 22 February 2005 on Electronic Communications and on Amendment to Certain Related Acts* (Electronic Communications Act).<sup>84</sup>

**Table 1 ACT of 22 February 2005 on Electronic Communications and on Amendment to Certain Related Acts**

**ACT of 22 February 2005 on Electronic Communications and on Amendment to Certain Related Acts**

**Section 72**

The Obligation to Distribute Designated Radio and Television Programme and Services in Public Interest

(1) The Office is entitled through its decision to impose the obligation to distribute designated radio or television programme and provide services associated thereto on an undertaking through whose public communications network the broadcasting distribution service is provided, which is used by end users as the main means of reception of broadcasting.

The must-carry rules have changed with the switch-off of analogue terrestrial broadcasting. The services which were must-carry were the national public channels, certain national private channels and local and regional channels. According to the Mapping Digital Media report on the Czech Republic: “Providers of cable televisions and IPTV operators were obliged to comply with must-carry rules and have to provide digital terrestrial broadcasting in the package of their services free of charge. The must-carry obligation ended on 30 June 2012, when the last analogue transmitter was switched off.”<sup>85</sup>

Hence the cable operators were obliged to carry the package of channels available via digital terrestrial television until the final implementation of the switch to digital terrestrial television in 2012. This implied that also the private terrestrial channels were also must-carry. However, the *Broadcasting Act of 2001*<sup>86</sup> (including amendments) under Article 54 (2) retains must-carry rules for public service channels and local channels.

<sup>82</sup> Czech Republic Broadcasting Act 2001 (in Czech) : <http://www.rrtv.cz/cz/static/cim-se-ridime/stavajici-pravni-predpisy/pdf/231-2001.pdf> ; and unofficial English translation provided by the regulator : <http://www.rrtv.cz/cz/static/cim-se-ridime/stavajici-pravni-predpisy/pdf/Act-on-RTV-broadcasting-reflecting-AVMSD.pdf>

<sup>83</sup> Act on Czech Television in English : <http://www.ceskatelevize.cz/english/act-on-czech-television/> and in Czech: <http://img.ceskatelevize.cz/boss/image/contents/zakony/pdf/zakon-o-ceske-televizi.pdf?verze=2014-06-17-14:38:49>

<sup>84</sup> Available here : <http://www.mpo.cz/dokument147108.html>

<sup>85</sup> Rybková, Eva and Vera Rihácková (2013): Mapping Digital Media Czech Republic 2013: A Report by the Open Society Foundations.. <http://www.opensocietyfoundations.org/sites/default/files/mapping-digital-media-czech-20130820.pdf>

<sup>86</sup> <http://www.rrtv.cz/cz/static/cim-se-ridime/stavajici-pravni-predpisy/pdf/231-2001.pdf>

## 10.2 Other access rules

The Broadcasting Act of 2001 (including amendments) under Article 54 (3) contains must-offer rules for public service channels. There are no must-see or must-find rules in the Czech Republic.

## 10.3 Access to free-DTT

According to a report prepared for the EPRA in 2010<sup>87</sup>, the Czech Republic is one of the countries where “ *the multiplex operator is at the core of the new licensing process (gate-keeper model)*”..... here the “*multiplex/network operator manage the capacity and hence play a role in selecting channels for the line-up – and ask as gate-keeper. Channels must however still negotiate with the operator for access and distribution.*”

- *Very few countries restrict foreign channels on free-to-air DTT (Greece, Croatia, Slovenia, Latvia and the Czech Republic), but not on a potential Pay DTT platform. The majority allow channels licensed in another jurisdiction to be present on the free platform, although in Norway (and Sweden) a licence from the national authority is required.*”

The Czech Republic hence restricts free-DTT licences to national channels.

### 10.3.1 Platform operator and TV channels

Analogue terrestrial television was switched off in June 2012 in the Czech Republic and digital terrestrial television is the most important distribution platform with services available in more than 50% of homes. There are four DTT multiplexes in operation. These carry seven public channels CT1, CT2, CT Sport, CT24, CT ART, CT:D, CT1 HD.

In addition there are the following 17 private channels (Nova, Nova Cinema, Prima, Prima Cool, TV Barrandov, Prima Love, Prima Zoom, Ocko, Ocko Gold, TV Slagr, Active TV, (with Prima HD, Prima Cool HD in Prague), Fanda TV, Pohoda Rebel, Pohoda Relax, TIP TV (Czech Republic), TV TELKA, Smíchov TV and eight regional/local services. Two additional channels (Eurosport and Film Europe HD) are encrypted as part of a trial pay-DTT service. Three multiplexes are operated by Ceske Radiokomunikace (who took over the Czech Digital Group CDG in 2011). The fourth multiplex is operated by Digital Broadcasting s.r.o. (carrying private entertainment channels and some local channels). Some smaller regional multiplexes are also in operation.

## 10.4 Conclusion and summary

Some Czech must-carry rules (which applied only to cable) were removed in 2012, according to the Mapping Digital Media report, following the completion of the switch-over to digital terrestrial television. However, they were only removed in relation to the national private terrestrial channels. Must-carry rules remain for public channels and local channels. The Czech DTT licensing system for free DTT platforms applies only to broadcasters established in the Czech Republic.

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<sup>87</sup> Machet, Emmanuelle (2012): Plenary Session 2: Regulatory and Licensing Models for DTT. Summary of the answers to the questionnaire. 32nd EPRA Meeting, Belgrade, 6-8 October 2010. (Revised version), , EPRA Secretariat: <http://www.epra.org/attachments/belgrade-plenary2-dtt-comparative-background-paper>

# 11 DE – GERMANY

The main legal framework relevant to must-carry regulation in Germany comprises the *Interstate Treaty on Broadcasting and Telemedia (Interstate Broadcasting Treaty)*<sup>88</sup> (as amended on 1 January 2013) and the broadcasting laws of the Bundesländer (federal states). In Germany, the regulation of broadcasting is the responsibility of the Bundesländer. Hence, the 14 regulatory authorities are in charge of licensing and controlling private radio and television. They are organised in a joint management office, the Association of Media Authorities (ALM).<sup>89</sup>

According to Art. 53 of the Interstate Broadcasting Treaty, the media authorities are responsible for the promulgation of joint statutes and directives specifying the details for the provisions in the section on distribution platforms and transmission capacities that include must-carry rules (Art. 52). These provisions are detailed in the *Statute on freedom to access digital services and on the regulation of platforms*<sup>90</sup> that has been adopted by each regulatory authority of the German federal states.

## 11.1 Must-carry rules

Art. 52 of the *Interstate Broadcasting Treaty*, which deals with the regulation of distribution platforms and transmission capacities, sets out the provisions that apply to “platforms for all technical transmission capacities” (Art 52(1)). Must-carry rules concerning digitally transmitted programmes (e.g. digital cable networks) are defined in Art. 52b. In addition, Art. 52d includes provisions concerning the composition of fees and tariffs. Art. 51b of the Interstate Broadcasting Treaty forms the framework for the must-carry rules in the laws of the Federal states with regard to analogue cable networks.

### 11.1.1 Purpose of rules

The overall purpose of the must-carry rules is to safeguard the plurality of opinion and variety of offers (Art. 52b). The purpose of the must-carry rules applicable to analogue cable networks is defined as serving the general public interest and as “securing a pluralistic media order orientated along the principle of plurality of opinion and variety of offers” (Art. 51b(3) Interstate Broadcasting Treaty).

### 11.1.2 Which distribution platforms

The must-carry rules apply to the digital transmission of broadcasting to all forms of distribution by private platform providers that are not privileged platforms in the sense of Art. 52 (1) of the Interstate Broadcasting Treaty. The rules concern platform providers (as defined in Art. 2 (2) No. 13 of the Interstate Broadcasting Treaty) that offer linear audiovisual media services via closed networks (e.g. cable and IPTV). The must-carry rules only apply if the platform provider also operates the technical infrastructure.

### 11.1.3 Which services

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<sup>88</sup> Interstate Treaty on Broadcasting and Telemedia (Interstate Broadcasting Treaty) ([in English](#)):

<sup>89</sup> ALM-Statut. Available here: [http://www.die-medienanstalten.de/fileadmin/Download/Rechtsgrundlagen/Satzungen/ALM-Statut\\_20.11.2013.pdf](http://www.die-medienanstalten.de/fileadmin/Download/Rechtsgrundlagen/Satzungen/ALM-Statut_20.11.2013.pdf)

<sup>90</sup> Die Medienanstalten. 2013. Satzung über die Zugangsfreiheit zu digitalen Diensten und zur Plattformregulierung gemäß § 53 Rundfunkstaatsvertrag. Available here: [http://www.die-medienanstalten.de/fileadmin/Download/Rechtsgrundlagen/Satzungen/Zugangs-und\\_Platformsatzung\\_04.03.2009.pdf](http://www.die-medienanstalten.de/fileadmin/Download/Rechtsgrundlagen/Satzungen/Zugangs-und_Platformsatzung_04.03.2009.pdf)

The provisions oblige platform operators to allocate up to one third of the overall technical platform's capacity for license-fee funded television as well as the regional television channels the "Dritte" (although not specifically mentioned, this also includes 3sat and ARTE), state-related windows, commercial television channels with local windows, regional and local television services and so-called open access channels licensed in the respective state. Further, the provisions foresee the inclusion of certain non-fee-funded services in the categories thematic channels, foreign-language and teleshopping channels.

**Table 1 Interstate Broadcasting Treaty and Telemedia (1991) as amended 1 January 2013**

| Interstate Broadcasting Treaty and Telemedia (1991) as amended 1 January 2013   |
|---|
| <p><b>Article 52b</b><br/><b>Allocation of Platform Capacities</b></p>  |
| <p>(1) The allocation of platform capacities for television services shall be governed by the following provisions:</p>   |
| <p>1. The platform provider shall ensure that within a technical capacity amounting to a maximum of one third of the overall capacity available for the digital transmission of broadcasting</p> <ul style="list-style-type: none"> <li>a) the capacities required for the national distribution of licence-fee funded legally specified services as well as for the "Dritte" (regional) services of public-service broadcasting including programme-related services are available; the state-related windows distributed within the "Dritte" (regional) services may be distributed only within those states for which they are legally determined,</li> <li>b) the capacities for the commercial television services which contain regional windows pursuant to Article 25 are available,</li> <li>c) the capacities for the regional and local television services and open access channels licensed in the respective state are available; specific state provisions for open access channels and comparable offers remain unaffected,</li> <li>d) the technical capacities referred to in (a) to</li> </ul> <p>(c) offer the same technical standard in relation to other digital capacities.</p> |
| <p>2. Within a further technical capacity amounting to the capacity referred to under no. 1, the platform provider shall decide on the allocation of capacities for television services and telemedia distributed in digital technology, taking into consideration the interests of users connected, a variety of content providers as well as a varied range of general channels, non-fee-funded services, thematic channels and foreign-languages services and adequately taking into consideration comparable telemedia and teleshopping channels.</p>   |
| <p>3. For the technical capacities exceeding the capacities above, it shall take the decision on capacity allocation solely with due regard to general law. If the capacity available does not suffice for allocation pursuant to sentence 1, the principles laid down in sentence 1 shall be applied in line with the capacity available overall; in this process, the legally specified licence fee funded services and programme-related services of public-service broadcasting for the respective area of distribution shall be given priority, notwithstanding the adequate consideration of offers as specified in sentence 1 no. 1 (b) and (c).</p> <p>[...]</p> <p>(Unofficial translation as provided by the website of Die Medienanstalten)</p>  |

### 11.1.4 Costs

In Germany, cable operators are being paid for the retransmission of content instead of paying for it.

The question as to whether public service television is entitled to stop its payments for cable carriage is a highly contested one. After the ARD and ZDF cancelled their agreements concerning the retransmission of their TV channels at the end of 2012, the cable TV operators Kabel Deutschland and Unitymedia have sued the public service broadcasters

for payment but without success.<sup>91</sup> A final decision by the German Federal Court of Justice is still pending<sup>92</sup>. As a consequence of the dispute, only the SD versions of the public service broadcasting channels are carried on the cable networks of Kabel Deutschland and Unitymedia, as is required by law, but not all HD channels.<sup>93</sup>

With regard to the costs of the carriage of must-carry services, Art. 52d generally specifies that the “structure of fees and tariffs must not unduly impede providers of broadcasting services and comparable telemedia nor result in their being treated differently to comparable providers without justified cause”. The Article also refers to a particular adequacy regarding the pricing of the carriage of must-carry services and that these fees and tariffs must be made public.

The broadcasting laws of the Federal states foresee no independent sovereign regulation of fees and tariffs with regard to the costs of the carriage of must-carry services.

**Table 2 Interstate Broadcasting Treaty and Telemedia (1991) as amended 1 January 2013**

**Interstate Broadcasting Treaty and Telemedia (1991) as amended 1 January 2013**  
**Article 52d**  
**Fees, Tariffs**

The structure of fees and tariffs must not unduly impede providers of broadcasting services and comparable telemedia nor result in their being treated differently to comparable providers without justified cause. The distribution of offers pursuant to Article 52b (1) no. 1 and no. 2 or Article 52b (2) in conjunction with (1) sentence 1 must be effected at adequate conditions. Fees and tariffs for services pursuant to Article 52b (1) sentence 1 or (2) sentence 2 shall be laid open. Fees and tariffs are to be set in such a manner within the framework of the Telecommunications Act that regional and local offers can also be transmitted at adequate and non-discriminatory conditions. The special provisions of state law for open access channels and comparable offers remain unaffected.

(Unofficial translation as provided by the website of Die Medienanstalten)

## 11.2 Other access rules

There are no specific must offer rules. There are also no must-see or must-find rules for specific channels. However, platform providers have to grant open, equal, and non-discriminatory access for services such as EPGs. The legislative aim is to ensure non-discriminatory access for content providers to these platforms. Art. 15 of the *Statute on freedom to access digital services and on the regulation of platforms*<sup>94</sup> defines the provisions regarding the access to user interfaces according to Art 52c (1) No. 3 of the Interstate Broadcasting Treaty. The article stresses that “there shall be equal opportunity and non-discriminatory access to the offers of broadcasters and comparable telemedia services including electronic programme guides, their equal opportunity and non-discriminatory findability and the free choice of programmes by the viewer should be ensured in user interfaces” (unofficial translation). Further, Art. 15(5) mentions that “pro-

<sup>91</sup> Bachmeier, Cristina (2013): IRIS Merlin. 2013. Cologne District Court Confirms ARD/ZDF Content Supply Agreement Cancellation. IRIS 2013-5:1/15:

<http://merlin.obs.coe.int/iris/2013/5/article15.en.html>

<sup>92</sup> Focus. 2015. Kabel Deutschland und ARD-Sender streiten vor dem BGH. Available from:

[http://www.focus.de/regional/karlsruhe/prozesse-kabel-deutschland-und-ard-sender-streiten-vor-dem-bgh\\_id\\_4516416.html](http://www.focus.de/regional/karlsruhe/prozesse-kabel-deutschland-und-ard-sender-streiten-vor-dem-bgh_id_4516416.html)

<sup>93</sup> Digital Fernsehen. 2015. Entscheidung im Kabelstreit vertagt. Available from:

<http://www.digitalfernsehen.de/Entscheidung-im-Kabelstreit-vertagt.125419.0.html>

<sup>94</sup> Die Medienanstalten. 2013. Satzung über die Zugangsfreiheit zu digitalen Diensten und zur Plattformregulierung gemäß § 53 Rundfunkstaatsvertrag. Available here [http://www.die-medienanstalten.de/fileadmin/Download/Rechtsgrundlagen/Satzungen/Zugangs-und\\_Platformsatzung\\_04.03.2009.pdf](http://www.die-medienanstalten.de/fileadmin/Download/Rechtsgrundlagen/Satzungen/Zugangs-und_Platformsatzung_04.03.2009.pdf)

grammes by public and private broadcasters shall be indicated in an equal manner” (unofficial translation).

### 11.2.1 Must-carry rules for analogue cable networks in the laws of the federal states

There are specific provisions regarding must-carry rules for analogue cable networks in the respective state broadcasting laws. Art. 51b (3) of the Interstate Broadcasting Treaty forms the legal framework for these must-carry rules. Cable is the only infrastructure still broadcasting in simulcast mode with 62,9% of cable customers receiving digital television programmes on at least one television set in mid-2014.

The general principles of the must-carry rules for analogue cable networks can be summarised as follows:

services of public service broadcasters that are legally designated for the respective federal state; local/regional channels in the respective area of the federal state; national commercial channels (e.g. with the largest average annual audience share); channels that are retransmitted on terrestrial networks (mentioned in the media laws of Bremen, Schleswig-Holstein, Lower Saxony, Rhineland-Palatinate, Saarland, Saxony, Thuringia)

Some laws have specific provisions with regard to news and information channels.

#### **Berlin-Brandenburg**

Based on a *decision from 19 May 2000*<sup>95</sup>, the allocation of private channels on analogue cable networks in the area of Berlin and Brandenburg has been given to the operators of the network on condition of fulfilling certain requirements. In a separate *decision concerning Kabel Deutschland*<sup>96</sup>, the cable operator is obliged to include the international news channels BBC World, CNN and the channel TV5 (A.2b). The Council of the federal state regulator MABB considers these channels as particularly important for the capital city of Germany for reasons of diversity. In addition, it sees them at particular risk of being excluded from transmission in case of pure economic considerations of the cable network operator.

#### **Lower Saxony**

On 13 September 2012, the regulator NLM published a *ranking list of must-carry and other television channels in analogue cable networks*<sup>97</sup> in the federal state of Lower Saxony. The ranking also includes a number of international news channels that shall be given preference to but which are not must-carry by law. These include BBC World News, Euronews, and CNN International. In addition, the list specifies that during the time when the must-carry community channel is not transmitted, Euronews shall take its place (p.2, No. 24).

#### **Rhineland-Palatinate**

The basic principles regarding the allocation of slots for television channels on analogue

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<sup>95</sup> Medienanstalt Berlin-Brandenburg. 2000. Beschluss nach § 42 Abs. 2 Satz 1 MStV über die Belegung der Kanäle in Kabelanlagen im Land Brandenburg durch die Netzbetreiber. Available here <http://www.mabb.de/regulierung/rechtsgrundlagen.html?file=files/content/document/Rechtsgrundlagen/Richtlinien%20BB/18-Kanalbelegung%20Brandenburg%20%28Spielraume%29.pdf>

<sup>96</sup> Medienanstalt Berlin-Brandenburg. 2009. Beschluss nach § 41 Abs. 1 Satz 2 MStV über die Belegung der Kanäle im Berliner Kabelnetz der Kabel Deutschland GmbH durch die Netzbetreiber. Available here <http://www.mabb.de/regulierung/rechtsgrundlagen.html?file=files/content/document/Rechtsgrundlagen/Richtlinien%20BB/17-Kanalbelegung%20Berlin%20%28Spielraume%29.pdf>

<sup>97</sup> Niedersächsische Landesmedienanstalt. 2012. Rangfolge für die Belegung der analogen Kabelkanäle für das Fernsehen in Niedersachsen. Available here [http://www.nlm.de/fileadmin/dateien/aktuell/Rangfolge\\_13.09.2012.pdf](http://www.nlm.de/fileadmin/dateien/aktuell/Rangfolge_13.09.2012.pdf)

cable networks are specified in the LMK *Statute from 18 April 2005*<sup>98</sup> (last amended on 22 March 2010). The *LMK programme list from 1 July 2013*<sup>99</sup> details the ranking of television channels according to Art. 33. For the group of channels that fall under information and education the programme list ranks the two German news channels N24 and n-tv before Bloomberg TV, BR-alpha, CNBC, CNN and Euronews.

Some laws have specific provisions to include foreign DTT channels from neighbouring countries: the media law of Schleswig-Holstein specifies to include two Danish terrestrial television channels and the media law of North Rhine-Westphalia to carry the Dutch public channel NPO.

Specific language requirements exist in the media law of the Saarland. According to the *LMS Statue from 31 May 2007*<sup>100</sup>, each analogue cable network operator must include one English-speaking and one French-speaking channel.

For further information on the specific must-carry rules applicable to analogue cable networks in the federal states please find a summary of each of the 14 federal state media laws in the following section below.

## Overview of must-carry rules in analogue cable networks in the 14 federal state media laws

### Landesmediengesetz Baden-Württemberg (LMedienG)

According to Art. 21 of the *Landesmediengesetz Baden-Württemberg (LMedienG)*<sup>101</sup> analogue cable networks are obliged to retransmit services “that serve the supply of the population in Baden-Württemberg with radio and television services according to the provisions under constitutional law” (Art. 21(1)(1); unofficial translation).

With regard to further television services Art. 21 specifies to include the following:

one private local or regional channel “that is best suited to contribute to the plurality of opinions and to the local and regional identity of viewers” (Art. 21(1)(3); unofficial translation); “two national commercial channels with the largest average annual audience share of the previous calendar year” and “a further three national commercial channels with the largest average annual audience share of the previous calendar year that are ranked after the channels specified under (4)” (Art. 21(1)(4)(6); unofficial translation); “further services of public service broadcasters that are legally designated for Baden-Württemberg” and to decide over the ranking of these services with the state regulatory authority (Art. 21(1) No.5); unofficial translation).

### Bayerisches Mediengesetz (BayMG)

The Bayerisches Mediengesetz (BayMG)<sup>102</sup> specifies under Art. 36(1) to distribute the following services in analogue cable networks:

“services of public service broadcasters that are legally designated for Bavaria: ARD1 (Das

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<sup>98</sup> Landeszentrale für Medien und Kommunikation Rheinland-Pfalz. 2010. Kanalbelegungssatzung. Available here <http://www.lmk-online.de/service/rechtsgrundlagen/rechtsgrundlagen-lmk/kanalbelegungssatzung/>

<sup>99</sup> Landeszentrale für Medien und Kommunikation Rheinland-Pfalz. 2013. Programmliste. Available from: [http://www.lmk-online.de/fileadmin/webdateien/PDF/Kanalbelegung\\_Programmliste\\_2010x.pdf](http://www.lmk-online.de/fileadmin/webdateien/PDF/Kanalbelegung_Programmliste_2010x.pdf)

<sup>100</sup> Landesmedienanstalt Saarland. 2007. Satzung der Landesmedienanstalt Saarland (LMS) über die Grundsätze der Kanalbelegung für die Kabelanlagen im Saarland. Available from: [https://www.lmsaar.de/wp-content/uploads/2014/01/II\\_2\\_KBS\\_Stand\\_2007-05.pdf](https://www.lmsaar.de/wp-content/uploads/2014/01/II_2_KBS_Stand_2007-05.pdf)

<sup>101</sup> Landesanstalt fuer Kommunikation Baden-Wuerttemberg. 2009. Landesmediengesetz Baden-Württemberg. Available from: [http://www.lfk.de/fileadmin/media/recht/2009\\_September\\_LmedienG.pdf](http://www.lfk.de/fileadmin/media/recht/2009_September_LmedienG.pdf)

<sup>102</sup> Bayerische Landeszentrale fuer neue Medien. 2012. Gesetz über die Entwicklung, Förderung und Veranstaltung privater Rundfunkangebote und anderer Telemedien in Bayern (Bayerisches Mediengesetz-BayMG). Available from: [http://www.blm.de/files/pdf1/BayMG\\_Nov121.pdf](http://www.blm.de/files/pdf1/BayMG_Nov121.pdf)

Erste), Bayerisches Fernsehen (BR), BR-Alpha, ZDF, 3sat, ARTE, PHOENIX, KIKa" (unofficial translation) ; two national commercial television channels with the largest audience reach; one local or regional television channel; four private television channels (these must contribute to the diversity of offers, have a local and regional connection to Bavaria and shall be in the interests of the participants); one teleshopping channel

The BLM *Statute on the allocation of services on analogue cable in Bavaria*<sup>103</sup> (as amended on 12 February 2015) provides the full scope of detailed selection criteria and a list of television channels that fall under the definition of the first two bullet points as outlined above.

### **Medienstaatsvertrag Berlin-Brandenburg (MStV)**

The *Medienstaatsvertrag Berlin-Brandenburg (MStV)*<sup>104</sup> specifies under Art. 40(1) that the services of public service broadcasters that are legally designated for the states of Berlin and Brandenburg have to be included on analogue cable networks.

In a *decision from 19 May 2000*<sup>105</sup>, the regulatory authority Medienanstalt Berlin-Brandenburg (MABB) decided to leave the allocation of slots for other television channels on analogue cable in the state of Brandenburg to the operators of the networks. The allocation must comply with the principles specified in Art. 40 and 41 of the MStV. The criteria for the allocation of slots for television channels are as follows:

- the contribution of the broadcasting service to the variety of other broadcasting services in the cable network;
- the demand of the participants ;
- the local connection of the broadcasting service to the area of transmission

In a decision from 10 October 2007, the MABB decided to leave the allocation of slots for analogue television services in the Berlin cable network of Kabel Deutschland GmbH to the operator. The decision specifies with regard to news channels to include the international news channels BBC World, CNN and the channel TV5 (A.2b).<sup>106</sup> The Council of the MABB considers these channels as particularly important for the capital city of Germany for reasons of diversity. In addition, it sees them at particular risk of being excluded from transmission in case of pure economic considerations of the cable network operator.

### **Bremisches Landesmediengesetz (BremLMG)**

The Bremisches Landesmediengesetz (BremLMG)<sup>107</sup> mentions under Art. 36(1) that in the case of insufficient transmission capacities a set of rules for the allocation of slots for channels on the cable network apply to secure a pluralistic media offer, based on the principle of diversity of opinion. The law obliges cable network operators to retransmit the following broadcasting services (Art. 36(2)):

broadcasting services legally designated for the Free Hanseatic City of Bremen; broadcasting services whose terrestrial reception on 1 December 2003 was generally possible in

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<sup>103</sup> Bayerische Landeszentrale für neue Medien. 2015. Satzung über die Belegung von Kanälen mit in analoger Technik verbreiteten Fernsehprogrammen und Telemedien in Kabelanlagen in Bayern (Kanalbelegungssatzung–KBS). Available from: [http://www.blm.de/files/pdf1/KBS\\_Febr15.pdf](http://www.blm.de/files/pdf1/KBS_Febr15.pdf)

<sup>104</sup> Rundfunk Berlin-Brandenburg. 2013. Staatsvertrag über die Zusammenarbeit zwischen Berlin und Brandenburg im Bereich der Medien (MStV). Available from: [http://www.rbb-online.de/unternehmen/der\\_rbb/struktur/grundlagen/medienstaatsvertrag.file.html/140121-mediensstaatsvetrag-2013.pdf](http://www.rbb-online.de/unternehmen/der_rbb/struktur/grundlagen/medienstaatsvertrag.file.html/140121-mediensstaatsvetrag-2013.pdf)

<sup>105</sup> Medienanstalt Berlin-Brandenburg. 2000. Beschluss nach § 42 Abs. 2 Satz 1 MStV über die Belegung der Kanäle in Kabelanlagen im Land Brandenburg durch die Netzbetreiber. Available from: <http://goo.gl/pmro7Q>

<sup>106</sup> Medienanstalt Berlin-Brandenburg. 2009. Beschluss nach § 41 Abs. 1 Satz 2 MStV über die Belegung der Kanäle im Berliner Kabelnetz der Kabel Deutschland GmbH durch die Netzbetreiber. Available from: <http://goo.gl/vgibXQ>

<sup>107</sup> Bremische Landesmedienanstalt. 2012. Bremisches Landesmediengesetz (BremLMG). Available from: <http://goo.gl/l6X17B>

the state of Bremen without particular antenna costs ; other broadcasting services established in the state of Bremen and commercial channels.

### **Staatsvertrag über das Medienrecht in Hamburg und Schleswig-Holstein (Medienstaatsvertrag HSH)**

The *Staatsvertrag über das Medienrecht in Hamburg und Schleswig-Holstein (Medienstaatsvertrag HSH)*<sup>108</sup> stipulates under Art. 30(3) that in the case of insufficient transmission capacities the following ranking order for the allocation of slots for television channels on analogue cable network applies:

services of public service broadcasters legally designated to the respective state, services licensed by the regulatory authority that are retransmitted on terrestrial networks and which fall into the category of general interest and information programmes; two Danish terrestrial television channels; other terrestrial channels including teleshopping channels licensed by the state regulatory authority

If channels defined under point 3 are equally ranked preference is given to those whose programmes contribute the most to the diversity of programming, the plurality of different opinions and the decision-making of the population. In addition, the diversity of languages, the regional relevance and the parallel retransmission on other digital cable networks should be taken into account.

According to the above the selection of services should at least include the following:

1. at least two national private television channels
2. at least three foreign language channels of which one shall be in English or French
3. at least two information or education channels
4. at least one music channel
5. at least one sports channel
6. national television channels shall only be transmitted with the appropriate windows for the region as stipulated in Art. 25(4) of the Interstate Broadcasting Treaty
7. the allocation of further slots for television channels shall be decided by the cable operator according to common law. (Unofficial translation)

### **Hessisches Privatrundfunkgesetz (HPRG)**

The *Gesetz über den privaten Rundfunk in Hessen (Hessisches Privatrundfunkgesetz-HPRG)*<sup>109</sup> specifies the allocation of slots for television channels on analogue cable networks according to the following ranking (Art. 42(1)):

television channels that ensure basic supply and those that are legally designated for the state; television channels licensed by this law that include regional or local information, channels with regional windows and open channels; national television channels

With regard to national channels under point 3, Art. 42(3) stresses that for the securing of the plurality of opinions and offers the following programme groups have to be considered:

other "Dritte" television channels of public service broadcasting of which at least two have to be included (those neighbouring the state of Hessen); other television channels; information and education channels as well as foreign language channels; entertainment, music, sport and teleshopping channels

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<sup>108</sup> Medienanstalt Hamburg Schleswig-Holstein. 2014. Staatsvertrag über das Medienrecht in Hamburg und Schleswig-Holstein (Medienstaatsvertrag HSH). Available from: [http://www.mahsh.de/cms/upload/downloads/Rechtsvorschriften/1.1\\_5\\_MStV\\_HSH\\_Web.pdf](http://www.mahsh.de/cms/upload/downloads/Rechtsvorschriften/1.1_5_MStV_HSH_Web.pdf)

<sup>109</sup> Hessische Landesanstalt fuer privaten Rundfunk und neue Medien. 2014. Gesetz über den privaten Rundfunk in Hessen (Hessisches Privatrundfunkgesetz-HPRG). Available from: [http://www.lpr-hessen.de/files/HPRG\\_291114.pdf](http://www.lpr-hessen.de/files/HPRG_291114.pdf)

Further, Art. 42(4) mentions that the state regulatory authority can determine that a foreign language channel is equal to other German language channels if there is a significant share of foreigners living in the distribution area.

The basic principles for the allocation of television channels are regulated through the LPR *Statute concerning the principles of channel allocation in cable networks in Hesse from 18 February 2008* (last amended on 1 November 2010).<sup>110</sup> The Statute does not mention specific channels but stresses that terrestrial channels are to be given preference over those distributed by satellite or other distribution platforms (Art. 4(4)).

### **Rundfunkgesetz für das Land Mecklenburg-Vorpommern (RundfG-M-V)**

The *Rundfunkgesetz für das Land Mecklenburg-Vorpommern (Landesrundfunkgesetz - RundfG M-V)*<sup>111</sup> stipulates under Art. 50 that in the case of insufficient transmission capacities the operator of an analogue cable network is obliged to retransmit the following channels:

services legally designated to the state of Mecklenburg-Vorpommern, channels licensed by the state regulator; pilot projects and open channels.

Channels not covered under point 1. and 2. are to be selected by the cable operator for one third of the networks capacity. The remaining channels are to be selected by the state regulatory authority taking into account the diversity of offers and including all regional channels relevant for the federal state.

Art. 9 of the MMV *Statute on the cable allocation plan (Kanalbelegungsplan) from 27 January 2010*<sup>112</sup> gives a detailed list of the must-carry channels to be included in the analogue cable network.

### **Niedersächsisches Mediengesetz (NMedienG)**

The *Niedersächsisches Mediengesetz (NMedienG)*<sup>113</sup> specifies for the allocation of slots for television channels on analogue cable networks that these shall include the channels that are distributed on terrestrial networks according to this law, a community channel, a local or regional channel and other channels licensed by the state regulatory authority the Niedersächsische Landesmedienanstalt (NLM) (Art. 34).

On 13 September 2012, the NLM published a new *ranking list of must-carry and other television channels in analogue cable networks*<sup>114</sup> in the federal state of Lower Saxony. The ranking also includes a number of international news channels that shall be given preference to but which are not must-carry by law. These include BBC World News, Euronews, and CNN International. In addition, the list specifies that during the time when the must-carry community channel is not transmitted, Euronews shall take its place (p.2, number 24).

### **Landesmediengesetz Nordrhein-Westfalen (LMG NRW)**

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<sup>110</sup> Hessische Landesanstalt für privaten Rundfunk und neue Medien. 2010. Satzung über die Grundsätze der Kanalbelegung in Kabelanlagen in Hessen (Kanalbelegungssatzung - KBS) vom 18. Februar 2008 in der Fassung vom 1. November 2010. Available from: [http://www.lpr-hessen.de/files/kbs\\_011110.pdf](http://www.lpr-hessen.de/files/kbs_011110.pdf)

<sup>111</sup> Medienanstalt Mecklenburg-Vorpommern. 2010. Rundfunkgesetz für das Land Mecklenburg-Vorpommern (Landesrundfunkgesetz - RundfG M-V). Available from: <http://www.medienanstalt-mv.de/media/legal/48/RundfunkgesetzMVzuletztgeaendert11Maerz2010.pdf>

<sup>112</sup> Medienanstalt Mecklenburg-Vorpommern. 2010. Satzung der Medienanstalt Mecklenburg-Vorpommern (MMV) über die Verbreitung und Weiterverbreitung von Rundfunkprogrammen in analogen Kabelanlagen – Kanalbelegungsplan –. Available from: <http://www.medienanstalt-mv.de/media/legal/18/zweiteAenderungKanalbelegungsplan29092010.pdf>

<sup>113</sup> Niedersächsische Landesmedienanstalt. 2010. Niedersächsisches Mediengesetz (NMedienG). Available from: [http://www.nlm.de/fileadmin/dateien/infothek/pdf/NMedien\\_01.01.2011.pdf](http://www.nlm.de/fileadmin/dateien/infothek/pdf/NMedien_01.01.2011.pdf)

<sup>114</sup> Niedersächsische Landesmedienanstalt . 2012. Rangfolge für die Belegung der analogen Kabelkanäle für das Fernsehen in Niedersachsen. Available from: [http://www.nlm.de/fileadmin/dateien/aktuell/Rangfolge\\_13.09.2012.pdf](http://www.nlm.de/fileadmin/dateien/aktuell/Rangfolge_13.09.2012.pdf)

The *Landesmediengesetz Nordrhein-Westfalen (LMG NRW)*<sup>115</sup> specifies under Art. 18 for the allocation of slots for television channels on analogue cable networks that these have to include the services of public service broadcasters legally designated to the state of North Rhine-Westphalia. In case of limited transmission capacities the state regulatory authority selects up to a maximum of 17 television channels ranked by preference according to the following criteria (Art. 18(2)): the diversity of opinion in programmes (i.e. share of information, education, entertainment, the treatment of minorities and minority interests) and plurality of programme offers (i.e. contribution to diversity in the transmission area, contribution to cultural and language diversity). Of the channels referred to in Art. 18(2) up to two local or regional channels shall be included, a foreign channel distributed in a country that borders on the transmission area, one teleshopping channel, and up to two foreign-language channels shall be included.

In its decisions of 27 September 2013, the Düsseldorf Administrative Court stressed that the provision of Article 18(4) of the *Landesmediengesetz Nordrhein-Westfalen* (North Rhine-Westphalia Media Act - LMG) had not become redundant as a result of the switch to digital terrestrial broadcasting technology. The provisions in Article 18(4) oblige the state media authority LfM to ensure that analogue cable networks in border-regions transmission zones carry a channel that is easy to receive by terrestrial means across the border (i.e. the German NDR and the Dutch NPO).<sup>116</sup>

### **Landesmediengesetz (LMG) Rheinland-Pfalz**

The *Landesmediengesetz (LMG) Rheinland-Pfalz*<sup>117</sup> specifies under Art. 33 that in the case of insufficient transmission capacities in analogue cable networks a specific ranking order of channels applies. The ranking gives preference to the television channels that are legally designated for the state, channels transmitted on terrestrial networks, regional channels and channels with regional windows for the state of Rhineland-Palatinate.

According to Art. 33(3) a cable operator can decide freely over the selection of five television channels in addition to those defined under points 1-3. For the selection of channels proposed by a cable operator, the LMK applies a set of rules (Art. 33(4)). Preference is given to channels from the following programme groups: generalist channels, "Dritte" television channels of the public service broadcasters, information and education channels, foreign-language channels, and entertainment, music and sport channels.

The basic principles regarding the allocation of slots for television channels on analogue cable networks are specified in the *LMK Statute from 18 April 2005*<sup>118</sup> (last amended on 22 March 2010). The *LMK programme list from 1 July 2013*<sup>119</sup> details the ranking of television channels according to Art. 33. For the group of channels that fall under information and education the programme list ranks the two German news channels N24 and n-tv before Bloomberg TV, BR-alpha, CNBC, CNN and Euronews.

For digital cable networks the provisions under Art. 52b of the Interstate Broadcasting Treaty apply.

### **Saarländisches Mediengesetz (SMG)**

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<sup>115</sup> Landesanstalt fuer Medien Nordrhein-Westfalen. 2015. *Landesmediengesetz Nordrhein-Westfalen (LMG NRW)*. Available from: [http://www.lfm-nrw.de/fileadmin/lfm-nrw/Medienrecht/Dokumente\\_2014/Lesefassung-LMG\\_Dezember\\_2014\\_Aenderung.pdf](http://www.lfm-nrw.de/fileadmin/lfm-nrw/Medienrecht/Dokumente_2014/Lesefassung-LMG_Dezember_2014_Aenderung.pdf)

<sup>116</sup> IRIS Merlin. 2014. Düsseldorf Administrative Court Confirms Border-Region Cable Network Rules. Available from: <http://merlin.obs.coe.int/iris/2014/1/article20.en.html>

<sup>117</sup> Landeszentrale für Medien und Kommunikation Rheinland-Pfalz. 2013. *Landesmediengesetz (LMG)*. Available from: <http://www.lmk-online.de/service/rechtsgrundlagen/landesmediengesetz/>

<sup>118</sup> Landeszentrale für Medien und Kommunikation Rheinland-Pfalz. 2010. *Kanalbelegungssatzung*. Available from: <http://www.lmk-online.de/service/rechtsgrundlagen/rechtsgrundlagen-lmk/kanalbelegungssatzung/>

<sup>119</sup> Landeszentrale für Medien und Kommunikation Rheinland-Pfalz. 2013. *Programmliste*. Available from: [http://www.lmk-online.de/fileadmin/webdateien/PDF/Kanalbelegung\\_Programmliste\\_2010x.pdf](http://www.lmk-online.de/fileadmin/webdateien/PDF/Kanalbelegung_Programmliste_2010x.pdf)

The *Saarländisches Mediengesetz (SMG)*<sup>120</sup> specifies under Art. 53 that for the operators of cable networks the paragraphs 2-4 apply whilst Art. 52(2-5) of the Interstate Broadcasting Treaty remain unaffected. According to Art. 53(2) cable operators have to provide sufficient transmission capacities for the channels that are legally designated to the Saarland, commercial channels licensed by the state regulatory authority Landesmedienanstalt Saarland (LMS), and channels transmitted on terrestrial networks. In addition, Art. 53(3) specifies that in the case of transmission areas close to border regions a minimum of one trans-border television channel shall be transmitted.

According to Art. 53(4) the LMS is responsible for the allocation of two thirds of the transmission capacities in analogue cable networks. The allocation of channels on the remaining transmission capacities is to be decided by the cable operator.

For television channels licensed outside the Saarland (Art. 53(6)) the following rules apply as defined in the *LMS Statute from 31 May 2007*<sup>121</sup>. According to the Statute each cable network has to include a minimum of:

- a) two private generalist channels
- b) two "Dritte" channels by the public service broadcasters
- c) two information and education channels
- d) one English-speaking channel
- e) one French-speaking channel
- f) one entertainment channel
- g) one music channel
- h) one sport channel

A detailed list of channels for analogue cable in each region is published on the website of the LMS.<sup>122</sup>

### **Sächsisches Privatrundfunkgesetz (SächsPRG)**

The *Gesetz über den privaten Rundfunk und neue Medien in Sachsen (Sächsisches Privatrundfunkgesetz-SächsPRG)*<sup>123</sup> specifies under Art. 38(1) that an operator of analogue cable networks has to include ARD1 (Das Erste), ZDF, MDR-Sachsen, and ARTE as must-carry channels. Further, the law stresses to give preference to the following television channels: channels that are licensed according to Art. 11 and three additional public service channels. In addition, the state regulatory authority can order the transmission of up to two television channels that hold a license according to Art. 11(1) and which are only transmitted on digital terrestrial networks in Sachsen. In all other cases the cable operator decides on the allocation of slots for television channels according to the following criteria: demand, diversity of programme offer, diversity of the programme categories information, education, culture, sport, film, music and foreign language channels, diversity of broadcasters. Art. 38(3) specifies the rules for the allocation of slots for television channels on digital cable networks.

On 19 February 2015, the *Statute on the promotion of local television in Saxony*<sup>124</sup> took

<sup>120</sup> Presserecht. 2012. Saarländisches Mediengesetz (SMG). Available from:

[http://www.presserecht.de/index.php?option=com\\_content&task=view&id=32&Itemid=26#\\_ftn43](http://www.presserecht.de/index.php?option=com_content&task=view&id=32&Itemid=26#_ftn43)

<sup>121</sup> Landesmedienanstalt Saarland. 2007. Satzung der Landesmedienanstalt Saarland (LMS) über die Grundsätze der Kanalbelegung für die Kabelanlagen im Saarland. Available from:

[https://www.lmsaar.de/wp-content/uploads/2014/01/II\\_2\\_KBS\\_Stand\\_2007-05.pdf](https://www.lmsaar.de/wp-content/uploads/2014/01/II_2_KBS_Stand_2007-05.pdf)

<sup>122</sup> Landesmedienanstalt Saarland. 2015. Analoges Kabel. Available from:

<https://www.lmsaar.de/medien/verbreitung/kabel-tv/>

<sup>123</sup> Sächsische Landesanstalt fuer privaten Rundfunk und neue Medien. Year. Gesetz über den privaten Rundfunk und neue Medien in Sachsen (Sächsisches Privatrundfunkgesetz-SächsPRG). Available from: <http://www.slm-online.de/wp-content/uploads/2014/08/i1-2-saechsprg.pdf>

<sup>124</sup> Sächsische Landesanstalt für privaten Rundfunk und neue Medien. 2015. Bekanntmachung der

effect applying the amendment of the *Privatrundfunkgesetz* from 9 July 2014. Under the changes, local channels are to be considered as basic supply and to be distributed on DTT.

### **Landesrundfunkgesetz Sachsen-Anhalt (MedienG LSA)**

The *Mediengesetz des Landes Sachsen-Anhalt (MedienG LSA)*<sup>125</sup> specifies under Art. 36 the ranking of the allocation of slots for services on analogue cable networks. The ranking requires operators to give preference to services from broadcasters licensed under Art. 37, other channels legally established according to the law of the state of Saxony-Anhalt, open channels and commercial local and regional channels. In case of insufficient capacities the criteria of plurality of opinion and additional criteria apply.

### **Thüringer Landesmediengesetz (ThürLMG)**

The *Thüringer Landesmediengesetz (ThürLMG)*<sup>126</sup> specifies the ranking of services on analogue cable networks. The state of Thuringia does not have a specific statute or programme plan detailing must-carry channels. The law foresees the following ranking order in accordance with Art. 36:

channels that serve the basic supply of the state including the channels 3sat, ARTE, PHOENIX and KI.KA; channels in the transmission area of the cable network that are transmitted on the terrestrial network, channels licensed by the state regulatory authority and other channel legally destined for the state; pilot projects; community channels; at least one teleshopping channel

## **11.3 Access to free DTT**

The designation of wireless transmission capacities to commercial providers is conducted by the respective media authority (for detailed rules see Art. 51a Interstate Broadcasting Treaty and the media laws of the federal states). The media authorities carry out a so-called “beauty contest” under consideration of provisions regarding ensuring plurality of opinion and variety of offers. There are no general obstacles for foreign broadcasters to get access to free DTT multiplexes.

Channels do not need to be licensed in the country in order to gain access to free DTT. Foreign broadcasters should have a licence from an EU member state or from a party of the European Convention on Transfrontier Television. Providers of services from third countries shall notify the media authority and submit full details regarding editorial responsibility, content of service and proof of license. There are no specific requirements with regard to production or languages.

It is an important provision in German law that a licence must not be granted to legal persons of public law (with the exception of churches and universities, their legal representatives and senior staff), nor to political parties and voter associations. This also includes foreign public or state institutions (Art. 20a Interstate Broadcasting Treaty).

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Sächsischen Landesanstalt für privaten Rundfunk und neue Medien (SLM) über die Satzung zur Förderung der Verbreitungskosten lokaler Fernsehveranstalter in Sachsen (Förderprogramm Verbreitungskosten lokaler Fernsehveranstalter) Vom 26. Januar 2015. Available from: <http://www.slm-online.de/wp-content/uploads/2015/02/slm-foerdersatzung-lokal-tv.pdf>

<sup>125</sup> Landesjournal Sachsen-Anhalt. 2013. Mediengesetz des Landes Sachsen-Anhalt (MedienG LSA) in der Fassung der Bekanntmachung vom 2. Januar 2013. Available from: <http://www.landesrecht.sachsen-anhalt.de/jportal/?quelle=jlink&query=MedienG+ST&psml=bssahprod.psml&max=true&aiz=true>

<sup>126</sup> Thüringer Landesmedienanstalt. 2014. Thüringer Landesmediengesetz (ThürLMG). Available from: [http://www.tlm.de/tlm/die\\_tlm/rechtsgrundlagen/gesetze/thueringer\\_landesmediengesetz/Thruinger\\_Landesmediengesetz\\_endg.pdf](http://www.tlm.de/tlm/die_tlm/rechtsgrundlagen/gesetze/thueringer_landesmediengesetz/Thruinger_Landesmediengesetz_endg.pdf)

From 2017 onwards, after the switch-over to the second generation, the selection decision will be dealt with by a nationwide platform provider who has to comply with equivalent rules on allocation of platform capacities as mentioned in Art. 52 (b) (1) of the Interstate Broadcasting Treaty (e.g. consideration of the licence-fee funded services of public-service broadcasting; commercial television services which contain regional windows according to Article 25; regional and local television services and open access channels licensed in the respective federal state).

Some general principles for the selection of commercial channels for the terrestrial network as mentioned in some of the media laws of the federal states can be summarised as follows:

- ensuring basic supply with broadcasting services
- safeguard/contribution to the diversity of programmes and plurality of opinions
- consideration of regional or local issues

With regard to the selection criteria for commercial channels on free DTT please find a summary of each of the 14 federal state media laws in the following section below.

## **Overview of the selection criteria for channels on free DTT in the 14 federal state media laws**

### **Landesmediengesetz Baden-Württemberg (LMedienG)**

For the allocation of transmission capacities for broadcasting services (including terrestrial networks) the rules specified in Art. 21 of the *Landesmediengesetz Baden-Württemberg (LMedienG)* apply (e.g. services designated for the federal state by law, a private local/regional channel, two national commercial channels with the largest audience share etc.).

### **Bayerisches Mediengesetz (BayMG)**

The *Bayerisches Mediengesetz (BayMG)* does not hold any specific criteria for the allocation of slots for channels on the terrestrial network.

### **Medienstaatsvertrag Berlin-Brandenburg (MStV)**

In the *Medienstaatsvertrag Berlin-Brandenburg (MStV)* the selection criteria for channels to be included on the terrestrial network are defined in Art. 33 and include - among others - their contribution to the diversity of programmes and plurality of opinions (Art. 33(2) No.1).

The DTT Statute from 20 September 2010<sup>127</sup> by the regulator MABB specifies the rules according to which slots for television channels on the digital terrestrial network are allocated. According to Art. 2(1) a slot on the digital terrestrial network can be allocated to the rbb, the ZDF and any commercial broadcaster.

According to the DTT programme list provided by the website of the Task Force DVB-T Deutschland of the ARD and ZDF (from August 2014)<sup>128</sup>, the German language version of Euronews is available on the free DTT network in Berlin.

### **Staatsvertrag über das Medienrecht in Hamburg und Schleswig-Holstein (Medienstaatsvertrag HSH)**

Art. 22 specifies the rules for the allocation of analogue terrestrial transmission capacities for broadcasting services and Art. 23 stipulates the rules for the allocation of digital terres-

<sup>127</sup> Medienanstalt Berlin-Brandenburg. 2010. Satzung über die Vergabe der für die digitale terrestrische Rundfunkübertragung zur Verfügung stehenden Fernseh-Frequenzen. Available from: <http://www.mabb.de/regulierung/rechtsgrundlagen.html?file=files/content/document/Rechtsgrundlagen/Richtlinien%20BB/13-DVB-T-Satzung%20mabb.pdf>

<sup>128</sup> DVB-T: Das UeberallFernsehen. 2014. Sender- und Programmliste Deutschland. Available from: <http://www.ueberallfernsehen.de/dvbtdownloads127.pdf>

trial transmission capacities for broadcasting services. Art. 26 defines the rules applicable to the allocation of new terrestrial transmission capacities for commercial broadcasting services (including open channels). For both Art. 22 and Art. 23 the rules for the channel allocation specified in Art. 22(1) No. 2 apply. These include the following criteria:

- ensuring basic supply with broadcasting services
- ensuring an equivalent variety of private broadcasting services
- consideration of regional or local issues
- coverage of gaps in the supply of services
- consideration of minority interests
- the participation of broadcasting services in the further technological and programme development

The criteria also specify that in the decision-making of the allocation the securing of basic supply takes priority; for the rest public and commercial broadcasting is to be treated equally.

### **Hessisches Privatrundfunkgesetz (HPRG)**

With regard to the allocation of digital terrestrial frequencies Art. 9(4) mentions that the regulatory authority can define service packages as to how to apply the selection criteria mentioned in Art. 9(2,3). These rules give preference to those channels that can legally provide a better guarantee for a larger plurality of opinions. In particular, the evaluation considers criteria such as the scope of information, consultation and entertainment in the programming format, regional windows, and cultural formats.

### **Rundfunkgesetz für das Land Mecklenburg-Vorpommern (RundfG-M-V)**

The *Rundfunkgesetz für das Land Mecklenburg-Vorpommern (Landesrundfunkgesetz - RundfG M-V)* specifies under Art. 5 the allocation of transmission capacities (e.g. digital terrestrial). The law defines a use zoning plan (Nutzungsplan) that allocates transmission capacities for public and commercial broadcasters for the purpose of national transmission, regionalisation, the supply of gaps (Lückenversorgung) and pilot projects. The use zoning plan has to ensure that the public service broadcasters are able to fulfil their legal obligation of basic supply. In addition, the use zoning plan has to include two national commercial channels and has to safeguard the largest possible plurality of opinions and information.

### **Niedersächsisches Mediengesetz (NMedienG)**

The *Niedersächsisches Mediengesetz (NMedienG)* specifies under Art.3 stresses that the allocation of free terrestrial transmission capacities shall guarantee the basic supply of services of the public service broadcasters as specified under constitutional law. In addition, it specifies that it should include a pluralistic offer of commercial channels and community channels.

### **Landesmediengesetz Nordrhein-Westfalen (LMG NRW)**

The *Landesmediengesetz Nordrhein-Westfalen (LMG NRW)* specifies under Art. 29(3) that for the selection of channels on digital terrestrial networks the principle of the freedom of access (Art. 34) and the rules of channel allocations in digital cable networks (Art. 21) apply. With regard to the allocation of channels Art. 21 refers to the rules specified in Art. 52b of the Interstate Broadcasting Treaty.

The international news channel CNN was available on the DTT network in North Rhine-Westphalia until November 2014. The transmission seized by request of the channel.<sup>129</sup> The slot was re-allocated to commercial entertainment channel RTL Nitro.

### **Landesmediengesetz (LMG) Rheinland-Pfalz**

The *Landesmediengesetz (LMG) Rheinland-Pfalz* specifies under Art. 29(3) that channels

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<sup>129</sup> Digitalfernsehen. 2014. NRW: CNN beendet DVB-T-Verbreitung. Available from: <http://www.digitalfernsehen.de/NRW-CNN-beendet-DVB-T-Verbreitung.121403.0.html>

on terrestrial networks shall broadcast for at least five hours per day. No further criteria are included in the text.

#### **Saarländisches Mediengesetz (SMG)**

The *Saarländisches Mediengesetz (SMG)* specifies under Art. 52 the allocation of transmission capacities for commercial channels on terrestrial networks. If the demand for slots exceeds of what is available, the state regulatory authority decides on the allocation while paying particular attention to the following criteria: strengthening of the plurality of opinions in the Saarland, coverage of public life, political and cultural events in the region and the equal reflection of all significant political, ideological and social groups.

#### **Sächsisches Privatrundfunkgesetz (SächsPRG)**

The *Gesetz über den privaten Rundfunk und neue Medien in Sachsen (Sächsisches Privatrundfunkgesetz-SächsPRG)* specifies under Art. 10(2) that for the allocation of slots on terrestrial networks those broadcasters are given preference that have already been providing analogue services in the area of the Free State of Saxony on 1 January 2001.

According to the DTT programme list provided by the website of the Task Force DVB-T Deutschland of the ARD and ZDF (from August 2014)<sup>130</sup>, the international news channel BBC World News is available on the free DTT network in Sachsen.

#### **Landesrundfunkgesetz Sachsen-Anhalt (MedienG LSA)**

With regard to the allocation of slots for television channels on terrestrial networks, Art. 16 of the *Mediengesetz des Landes Sachsen-Anhalt (MedienG LSA)* stipulates that in the case of multiple applicants the following criteria should apply: strengthening of the plurality of opinion and variety of offers, representation of political, economic, social and cultural events in Saxony-Anhalt and programmes with a local and regional connection.

#### **Thüringer Landesmediengesetz (ThürLMG)**

With regard to the allocation of transmission capacities for private channels on terrestrial networks Art. 20(1) of the *Thüringer Landesmediengesetz (ThürLMG)* specifies that this is the responsibility of the state regulatory authority. There is no legal claim for such allocation.

### **11.3.1 Platform operator**

Launched in 2002, Germany's national free DTT service is operated by the Media Broadcast GmbH and 9 ARD regional stations<sup>131</sup>. Media Broadcast emerged from T-Systems Media&Broadcast GmbH which was sold by Deutsche Telekom to the French TDF-Group in 2008.

On 17 March 2015, the media regulatory authorities (Kommission für Zulassung und Aufsicht (ZAK) der Medienanstalten) approved the bid by transmitter network operator Media Broadcast to operate the DTT platform for commercial TV in DVB-T2 broadcasting standard. Services will launch in the first quarter of 2017 offering several encrypted and free DTT channels, mainly in HD quality.<sup>132</sup>

<sup>130</sup> DVB-T: DasUeberallFernsehen. 2014. Sender- und Programmliste Deutschland. Available from: <http://www.ueberallfernsehen.de/dvbtdownloads127.pdf>

<sup>131</sup> Bayerischer Rundfunk (BR), Hessischer Rundfunk (HR), Mitteldeutscher Rundfunk (MDR), Norddeutscher Rundfunk (NDR), Radio Bremen (RB), Rundfunk Berlin-Brandenburg (rbb), Saarländischer Rundfunk (SR), Südwestrundfunk (SWR), Westdeutscher Rundfunk (WDR)

<sup>132</sup> Die Medienanstalten. 2015. ZAK-Pressemitteilung 03/2015; DVB-T2-Plattformbetrieb: Media Broadcast erhält Übertragungskapazitäten. from: <http://www.die-medienanstalten.de/presse/pressemitteilungen/kommission-fuer-zulassung-und-aufsicht/detailansicht/article/zak-pressemitteilung-022015-media-broadcast-bewirbt-sich-fuer-dvb-t2-plattformbetrieb.html>

The only German pay-DTT platform Viseo+ from Eutelsat visAvision GmbH that was available in Halle, Leipzig and Stuttgart closed on 31 December 2014.<sup>133</sup>

### 11.3.2 TV channels

The channels on the free terrestrial network include those of the public service broadcasters ARD and ZDF (including “Dritte”, 3sat and ARTE) and those of the major commercial television channels, namely the RTL group (RTL, VOX, Super RTL, RTLII, n-tv) and the ProSiebenSat.1 Media AG (ProSieben, ProSieben MAXX, Sat.1, Sat.1 Gold, kabel eins). A full list of national, regional and local television channels for each federal state on the free terrestrial television network is available on the website of the Task Force DVB-T Deutschland of the ARD and ZDF.<sup>134</sup>

Following an announcement by RTL Deutschland in January 2013 to end terrestrial transmissions of its free-TV channels RTL, VOX, Super RTL, RTLII and n-tv by the end of 2014, the broadcaster reversed its decision in June 2014 by extending its contract with distribution partner Media Broadcast for another two years until the end of 2017.<sup>135</sup>

The following international news channels are or were until recently available on free DTT. According to the DTT programme list provided by the website of the Task Force DVB-T Deutschland of the ARD and ZDF (from August 2014)<sup>136</sup>, the German language version of Euronews is available on the free DTT network in Berlin and the international news channel BBC World News is available on the free DTT network in Saxony.

The international news channel CNN was available on the DTT network in North Rhine-Westphalia until November 2014. The transmission ceased upon request of the channel.<sup>137</sup> The slot was re-allocated to commercial entertainment channel RTL Nitro.

## 11.4 Conclusion and summary

In Germany, the must-carry rules that apply to digitally transmitted programmes are specified in Art. 52b and Art. 52d of the Interstate Broadcasting Treaty. Further, Art. 51b forms the framework for the must-carry rules in the laws of the federal states with regard to analogue cable networks. The overall purpose of the must-carry rules is to safeguard the plurality of opinion and variety of offers. The rules concern platform providers that offer linear audiovisual media services via closed networks (e.g. cable and IPTV).

The provisions oblige platform operators to allocate up to one third of the overall technical platform’s capacity for license-fee funded television as well as the regional television channels the “Dritte” (although not specifically mentioned, this also includes 3sat and ARTE), state-related windows, commercial television channels with local windows, regional and local television services and so-called open access channels licensed in the respective state. Further, the provisions foresee to include certain non-fee-funded services in the categories thematic channels, foreign-language and teleshopping channels.

Apart from the legally designated channels, the laws of the federal states apply rules and

<sup>133</sup> Viseo+. 2014. VISEO+ | Premium DVB-T wurde eingestellt. Available from: <http://www.viseo.tv>

<sup>134</sup> DVB-T: DasÜberallFernsehen. 2014. Sender- und Programmliste Deutschland. Available from: <http://www.ueberallfernsehen.de/dvbtdownloads127.pdf>

<sup>135</sup> Presseportal. 2014. Mediengruppe RTL Deutschland verlängert DVB-T-Engagement mit Fokus auf Einführung von DVB-T2. Available from: <http://www.presseportal.de/pm/72183/2752281/mediengruppe-rtl-deutschland-verlaengert-dvb-t-engagement-mit-fokus-auf-einfuehrung-von-dvb-t2>

<sup>136</sup> DVB-T: DasÜberallFernsehen. 2014. Sender- und Programmliste Deutschland. Available from: <http://www.ueberallfernsehen.de/dvbtdownloads127.pdf>

<sup>137</sup> Digitalfernsehen. 2014. NRW: CNN beendet DVB-T-Verbreitung. Available from: <http://www.digitalfernsehen.de/NRW-CNN-beendet-DVB-T-Verbreitung.121403.0.html>

rankings to the allocation of channels on analogue cable that can differ from state to state. Some laws, for example, have specific provisions with regard to news and information channels (Berlin-Brandenburg, Lower Saxony, Rhineland-Palatinate). In Lower Saxony, the ranking list of must-carry and other television channels includes BBC World News, Euronews, and CNN (these, however, are not must-carry by law). In Rhineland-Palatinate the programme list by the regulator LMK ranks the two German news channels N24 and n-tv before Bloomberg TV, BR-alpha, CNBC, CNN and Euronews and in Berlin and Brandenburg, Kabel Deutschland is obliged to include the international news channels BBC World, CNN and the channel TV5.

With regard to costs, the cable operators are being paid for the retransmission of content instead of paying for it. The question as to whether public service television is entitled to stop its payments for cable carriage is currently subject of a dispute between the public service broadcasters ARD and ZDF and the cable TV operators Kabel Deutschland and Unitymedia with a final decision still pending.

The designation of DTT transmission capacities to commercial providers is conducted by the respective media authority by carrying out a so called beauty contest under consideration of provisions regarding ensuring plurality of opinion and variety of offers. From 2017 onwards, after the switch-over to the second generation, the selection decision will be dealt with by a nationwide platform provider who has to comply with equivalent rules on allocation of platform capacities as mentioned in Art. 52 (b) (1) of the Interstate Broadcasting Treaty.

International news channels that are available on free DTT include BBC World News in Saxony and the German version of Euronews in Berlin. The transmission of CNN International on the DTT network in North Rhine-Westphalia seized in November 2014 upon request of the news network.

## 11.5 Recent legal updates of interest

In June of 2015, the German BGH (Federal Supreme Court) referred two pending cases back to the appeal courts in the dispute over the cable feed-in fee between the public service broadcasters and a cable network operator. The BGH found that they had failed to sufficiently establish the facts of the case, and therefore referred the proceedings back to them. They need to explore whether the public service broadcasters had taken a joint decision to cancel the feed-in agreements, or individual business decisions. In addition, “the BGH also ruled that the public service broadcasters were not obliged to sign a feed-in agreement with the cable network operator under broadcasting law”..... and “the decision to cancel the feed-in agreements did not constitute an abuse of a dominant market position by the public service broadcasters”.<sup>138</sup>

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<sup>138</sup> Katrin Welker (2015): Germany: Federal Supreme Court quashes lower-instance rulings in dispute over feed-in fees. <http://merlin.obs.coe.int/iris/2015/8/article10.en.html>

## 12 DK – DENMARK

In Denmark the must-carry regulation is based on the *Executive Order on the distribution of television programmes in communal antenna systems*<sup>139</sup> which entered into force on 1 June 2013. The rules provide that owners of communal antenna distribution networks are obliged to distribute certain programmes. Kulturstyrelsen, the regulatory body for media and responsible body for tourism and cultural heritage, supervises compliance with these rules.

### 12.1 Must-carry rules

The must-carry rules are specified in Art. 1-4 of the Executive Order on the distribution of television programmes in communal antenna systems. The rules define which programme services must be distributed and outline the quality requirements for the distribution of such services. Further, the rules stipulate if the distribution platform offers more than one channel package, the programme services mentioned in Art. 1 must be included in every channel package.

**Table 1 Executive Order on the distribution of television programmes in communal antenna systems**

**Executive Order on the distribution of television programmes in communal antenna systems**

Pursuant to § 6 paragraph. 2 and § 93 paragraph. 2 of the Law on Radio and Television Broadcasting, see. Legislative Decree no. 255 of 20 March 2014<sup>140</sup>, provides:

**Distribution of programmes in communal antenna systems**

§ 1. Owners of communal antenna systems must ensure the distribution of sign language interpreted newscasts from DR and TV 2 / DENMARK A / S, programmes from DR1 and DR2 with audio description and the TV channel FOLKETINGET.

§ 2. The programmes mentioned in § 1 above must be distributed in at least the same sound and picture quality, as the programmes that are broadcast on the terrestrial broadcasting network. The programmes can be distributed in other audio and visual qualities, provided that they are also distributed in at least the same sound and picture quality, as the programmes broadcast on the terrestrial broadcasting network.

Paragraph. 2. Paragraph. 1 shall not apply where the programmes are distributed in the telecommunications / Internet (IP TV).

§ 3. If the distribution of programmes in shared antenna system occurs in more than one channel package:

- 1) all the packages contain the programmes covered by § 1, and
- 2) it must be possible to buy a package that does not include premium/expensive TV channels.

Paragraph. 2. In accordance with the executive act, premium TV channels are defined as channels which are part of the TV-package in relation to the connected households and which cost more than 32 kr. per channel per month (incl. VAT and rights payment). The amount is adjusted annually in late January based on the development in consumer pricing index (annual average) published by Statistics Denmark. The first adjustment will take place in 2014. The amounts are rounded to the nearest whole kr.

§ 4. The Kulturstyrelsen supervises compliance with §§ 1-3. The Kulturstyrelsen monitors owners of communal antenna systems on compliance with §§ 1-3. Decisions concerning §§ 1-3 cannot be brought before another administrative authority.

Penalties

§ 5. Violation of the provisions of §§ 1-3 and breach of the order issued pursuant to § 4 fined.

<sup>139</sup> retsinformation.dk. 2013. Bekendtgørelse om fordeling af billedprogrammer i fællesantenne-anlæg. Available from: <https://www.retsinformation.dk/Forms/R0710.aspx?id=151890>

<sup>140</sup> retsinformation.dk . 2014. Bekendtgørelse af lov om radio- og fjernsynsvirksomhed. [Available from: <https://www.retsinformation.dk/Forms/R0710.aspx?id=161625>

Paragraph. 2. Companies etc. (legal persons) may be held liable under the provisions of the Penal Code Chapter 5.

(Unofficial translation by the European Audiovisual Observatory)

## 12.2 Purpose of rules

The purpose of the rules is to provide access to specific public service broadcasting content: the Danish parliamentary television channel and specific services for the visually and hearing impaired population.

### 12.2.1 Distribution platforms and services

Must-carry rules apply to DTT, cable and IPTV platforms. The Danish legislation does not positively state that the rules apply to all three platforms. However, the Danish Ministry of Culture stated in the past that the rules must be interpreted as such to include all distribution platforms named above. Must-carry rules do not apply to satellite platforms. The rules do not specify any details regarding costs.

The legislation lists specific channels and services by name to which the must-carry rules apply. These include the parliamentary television channel TV fra Folketinget and services for the visually and hearing impaired population, namely sign language interpreted news from DR and TV2/DENMARK A/S and programmes from DR1 and DR2 with audio descriptions.

## 12.3 Other access rules

There are no specific must-offer rules. There is no specific legislation regarding must-see or must-find. There are, however, rules regarding the EPG in the Danish DTT network. The license of pay-TV operator Boxer<sup>141</sup> specifies that the EPG has to be made in collaboration between Boxer and DIGI TV, a company owned by the Danish public service broadcasters. As a result of these rules, the Danish public service channels are on top of the list of channels in the EPG in the DTT network.

According to the Danish regulator, it has been specified in the contract between the Ministry of Culture and Denmark's main PSB (DR) that DR as a main rule has to make their content available on-demand on the internet.<sup>142</sup>

## 12.4 Access to free DTT

Foreign and national television channels broadcasting on the digital terrestrial network in Denmark are required to have a license from the Radio and Television Board. The only exceptions to this requirement are the public service broadcasters DR and the regional TV2 stations, whose right to broadcast is specified in the Radio and Television Act. Further, the publicly owned television company TV2/DANMARK A/S has a public service-license for its main channel TV2 issued directly by the Minister of Culture.

There are no particular obstacles for foreign channels.

<sup>141</sup> Kulturstyrelsen. 2008. TILLADELSE TIL BOXER TV A/S. Available from:

[http://www.kulturstyrelsen.dk/fileadmin/user\\_upload/dokumenter/medier/radio\\_og\\_tv/distributoerer/boxer/boxer\\_tilladelse.pdf](http://www.kulturstyrelsen.dk/fileadmin/user_upload/dokumenter/medier/radio_og_tv/distributoerer/boxer/boxer_tilladelse.pdf)

<sup>142</sup> EPRA Country Reports covering developments from October 2014 to April 2015. Prepared by Emmanuelle Machet, EPRA Secretariat for the 41st EPRA Meeting in Berne, 13 - 15 May 2015 FINAL VERSION of 7 September 2015

### 12.4.1 Platform operator

Teracom A/S, formerly known as “Broadcast Service Denmark,” is the owner and operator of the Danish terrestrial network. It is part of the Teracom Boxer Group which consists of Teracom AB, Teracom A/S, Boxer TV-Access AB and Boxer TV A/S. Teracom is a Swedish limited liability company wholly owned by the Swedish state.

Launched in March 2006, DIGI-TV is the service provider for the digital platform on behalf of the public service broadcasters and is owned jointly by DR and TV 2 (two thirds by DR, one third by TV2). Boxer TV A/S is licensed as a pay-TV operator in Denmark since 2008.

The Danish DVB-T network comprises six nationwide DVB-T multiplexes with two multiplexes operated by the public service provider DIGI-TV and four by the commercial provider Boxer TV.

### 12.4.2 TV channels

The free-DTT channels provided by DIGI-TV comprise 8 national channels. The national free channels are DR1, DR2, DR Ramasjang, DR K, DR 3, DR Ultra, DR Synstolkning and Folketinget.

## 12.5 Summary and conclusion

In Denmark the legal basis relevant to must-carry regulation is the Executive Order on the distribution of television programmes in communal antenna systems (Art. 1-4) which entered into force on 1 June 2013. The rules define which programme services must be distributed and outline the quality requirements for the distribution of such services.

The purpose of the rules is to provide access to specific public service broadcasting content: the parliamentary television channel TV fra Folketinget and specific services for the visually and hearing impaired population, namely sign language interpreted news from DR and TV2/DENMARK A/S and programmes from DR1 and DR2 with audio descriptions. The rules apply to all platforms, except satellite.

Channels available on the free DTT platform DIGI-TV include the 8 national public channels DR1, DR2, DR Ramasjang, DR K, DR 3, DR Ultra, DR Synstolkning and Folketinget.

## 13 EE – ESTONIA

In Estonia the main legal framework for must-carry rules is the *Electronic Communications Act*<sup>143</sup> which entered into force on 1 January 2005, amended in 2011 and 2012. On 7 November 2012, the Estonian Parliament adopted an amendment to Article 90 of the Electronic Communication Act which concerns must-carry provisions for cable networks. According to the amended legal text, broadcasters offering free to air television services are entitled to ask for a reasonable retransmission fee from cable operators.

### 13.1 Must-carry rules

The must-carry rules are stipulated in Articles 90 and 90<sup>1</sup> of the Electronic Communications Act. The rules specify the requirements for the distribution of particular types of services on cable/IPTV (Art. 90) and digital terrestrial platforms (Art. 90<sup>1</sup>). The purpose of the must-carry rules is to guarantee the distribution of particular types of services (e.g. public service television channels and free DTT channels) on cable, IPTV and DTT networks.

**Table 1 Electronic Communications Act**

#### Electronic Communications Act

#### Chapter 8 REQUIREMENTS FOR PROVISION OF COMMUNICATIONS SERVICES

[...]

#### § 90. Special requirement for provision of cable distribution services

(1) A communications undertaking which provides cable distribution services must guarantee the continuous retransmission of the following programmes:

- 1) television programmes of the Estonian public provider of media services;
- 2) television programmes transmitted by a provider of television services with unrestricted access that are received in the cable network area at a signal intensity compatible with the technical requirements and for the transmission of which the provider of television services requires no charge. [RT I, 06.01.2011, 1 - entry into force 16.01.2011]

(11) A provider of television services with unrestricted access has the right to require a reasonable charge for retransmission of television programmes from the communications undertaking which provides cable distribution services. [RT I, 07.11.2012, 1 - entry into force 08.11.2012]

(2) The programmes specified in subsection (1) of this section shall be transmitted as a single package based on a subscription contract entered into between the communications undertaking which provides cable distribution services and the end-user.

(3) The programmes not specified in subsection (1) of this section shall be transmitted based on an agreement between the communications undertaking and the end-user.

(4) A communications undertaking must ensure the end-user with the possibility to view the programmes offered by way of cable distribution services to the full extent of the duration of the broadcasting time, unless the contracting parties agree otherwise.

(5) The requirements for the provision of the cable distribution services provided for in clause (1) 2) of this section shall be established by the minister responsible for the area.

#### § 90<sup>1</sup>. Special requirement for provision of multiplexing services

(1) A provider of multiplexing services must ensure, at the request of a public provider of media services, the transmission of television programmes of the latter. A public provider of media services must give the provider of multiplexing services an advance written notice of its wish for

<sup>143</sup> Riigi Teataja. 2005. Electronic Communications Act. Available from: <https://www.riigiteataja.ee/en/eli/ee/Riigikoгу/act/523012015010/consolide>

transmission of its television programmes at least six months prior to the commencement of transmission.

[RT I, 23.03.2011, 1 - entry into force 25.05.2011]

(2) A provider of multiplexing services who transmits television programmes of the public provider of media services and the holder of an activity licence for the provision of television services with unrestricted access may change the transmission parameters such that the reception of television programmes is guaranteed in conformity with the requirements provided for in this Act and legislation issued on the basis thereof.

(3) The requirements for the transmission and retransmission of television programmes with both conditional access and unrestricted access shall be established by the minister responsible for the area.

[RT I, 06.01.2011, 1 - entry into force 16.01.2011]

*(Unofficial translation provided by Riigi Teataja)*

### 13.1.2 Platforms and services

The rules apply to cable, IPTV and DTT networks. These rules specify particular types of services that are subject to must-carry regulation (Art. 90(1) Electronic Communications Act). They include:

television channels ETV and ETV2 of the public service media provider - the Estonian Public Broadcasting (ERR);

television programmes transmitted by a holder of a licence for provision of free access television service that are received in the cable network area at a signal intensity compatible with the technical requirements and for the transmission of which the provider of television services requires no charge.

The television channels under must-carry rules are the public service television channels ETV and ETV2, and channels having licences for provision of free access television services: Tallinn municipal Tallinna TV (TTV) and private commercial channels Kanal2 and TV3.

### 13.1.3 Costs

Art. 90 of the Electronic Communications Act states that broadcasters offering free to air television services have the right to ask from cable operators a reasonable charge for retransmitting their television programmes. The Article, however, does not provide details on how to calculate these charges and hence the amendment did not solve the on-going disputes between commercial broadcasters and cable operators regarding the amount of payable fees.<sup>144</sup>

## 13.2 Other access rules

There are no must-offer and no must-see or must-find obligations included in the legal framework in Estonia. There is no regulation concerning the placement of channels on EPGs in Estonia.

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<sup>144</sup> Jõesaar, Andres(2013): IRIS Merlin. 2013. *Amendment to the Electronic Communication Act: New Phase in the Must Carry Dispute*. Available from: <http://merlin.obs.coe.int/iris/2013/2/article18.en.html>

### 13.3 Access to free DTT

There are no obstacles for national or foreign channels regarding access to free-DTT multiplexes in Estonia. The allocation of slots for channels is based on agreements between the broadcasting companies and the network operators and is not regulated by law.

Estonian law regulates production and linguistic requirements of channels under Estonian jurisdiction as stipulated in Art. 18 of the *Language Act*<sup>145</sup> and Art. 2 and 8 of the *Media Services Act*<sup>146</sup>. There are no such requirements for foreign channels.

#### 13.3.1 Platform operator and TV channels

In Estonia the national DTT network is operated by Levira which is jointly owned by the Republic of Estonia (51%) and the French transmission company TDF Group (49%). Levira broadcasts six free-to-air channels (ETV, ETV2, TV3, Kanal2, TallinnaTV, France 24), as well as pay-TV channels, offered by AS Starman under its ZUUMtv brand name.

### 13.4 Summary and conclusion

In Estonia the main legal framework for must-carry rules is the Electronic Communications Act (Articles 90 and 90<sup>1</sup>) which entered into force on 1 January 2005, amended in 2011 and 2012. The purpose of the must-carry rules is to guarantee the distribution of particular types of services (e.g. public service television channels ETV, ETV2 and free DTT channels TTV, Kanal2, TV3) on cable, IPTV and DTT networks.

There are no obstacles for national or foreign channels regarding access to free-DTT multiplexes in Estonia. The allocation of slots for channels is based on agreements between the broadcasting companies and the network operators and is not regulated by law.

In Estonia the national DTT network is operated by Levira which is jointly owned by the Republic of Estonia (51%) and the French telecom and broadcasting company TDF Group (49%). It broadcasts six free-to-air channels (ETV, ETV2, TV3, Kanal2, TallinnaTV, France 24), as well as pay-TV channels, offered by AS Starman.

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<sup>145</sup> Riigi Teataja. 2011. Language Act. [Available from: <https://www.riigiteataja.ee/en/eli/514012015007/consolide>

<sup>146</sup> Riigi Teataja. 2010. Media Services Act. Available from: <https://www.riigiteataja.ee/en/eli/509072014004/consolide>

## 14 ES – SPAIN

Ley 7/2010, de 31 de marzo, General de la Comunicación Audiovisual (*Audiovisual Act 7/2010 of 31 March 2010*) provides the general legal framework for both private and public service audiovisual media in Spain and transposes the Audiovisual Media Services Directive into Spanish law. The Audiovisual Act also introduced an independent regulatory authority, the Consejo Estatal de Medios Audiovisuales (National Council for Audiovisual Media – CEMA), but the current government decided not to launch the CEMA and instead introduced a “super authority”, the Comisión Nacional de los Mercados y la Competencia (national commission for markets and competition - CNMC), which is responsible for the enforcement of competition law and the supervision of the telecommunications, postal, media, energy and transport sectors.

### 14.1 Must-carry rules

The Audiovisual law covers the framework for broadcasting, while different legislation deals with the obligations of distributors such as telecommunications operators and cable operators. The obligations for cable operators were previously outlined under the *Law 42/1995 of December 22, 1995 on Cable* (art. 11)

In the *Royal Decree 920/2006, of July 28, 2006*, the must-carry obligations of the cable operators were made transitional until the completion of the switch to digital terrestrial television.<sup>147</sup>

The obligations covered the public channels TVE 1, La Segunda, and private channels Antena 3 TV, Telecinco, Cuatro, La Sexta, and the autonomous public service broadcasters (in their own territories). As the DTT switch-over was completed in 2010, cable operators have had no must-carry obligations regarding these channels since 2010<sup>148</sup>.

The same royal decree does, however, include the obligation to carry channels of independent operators. Where a distributor has more than 30 TV channels in its service, at least 30% of the Spanish language channels should be from independent operators not owned by the distributor (Article 14).

### 14.2 Other access rules

#### 14.2.1 Must-offer

The current Audiovisual Act contains no must-carry obligations but does have must-offer obligations. Article 31 of the Audiovisual Act<sup>149</sup> imposes on electronic communications service providers the obligation to grant access to their networks to audiovisual media service providers and independent producers in accordance with the legislation on telecommunications and the technical capacities of their network. They also have to guarantee that the images and sound are broadcast in conditions allowing effective interactivity.

The terms and conditions for access shall be freely agreed upon between the parties. However, the Audiovisual Act introduces some must-offer/carry obligations in order to ensure that pluralism is maintained. The RTVE Corporation has to grant cable, satellite and

<sup>147</sup> Royal Decree 920/2006, of July 28, 2006: <http://www.boe.es/boe/dias/2006/09/02/pdfs/A31532-31538.pdf>

<sup>148</sup> It should be noted that the autonomous governments may have rules regarding cable carriage of regional public channels. The only Spanish regional regulator that responded to the questionnaire was that of Andalusian autonomous regulator which stated that there were no must-carry rules applicable in that region.

<sup>149</sup> Article 31 of the Ley 7/2010, de 31 de marzo, General de la Comunicación Audiovisual : [http://noticias.juridicas.com/base\\_datos/Admin/l7-2010.t3.html#a31](http://noticias.juridicas.com/base_datos/Admin/l7-2010.t3.html#a31)

Internet Protocol (IPTV) broadcast transmission services free access to its radio and television channels. Private audiovisual media services licensed for national coverage have to facilitate access to their main free-to-air television channels, after agreeing on suitable remuneration with the retransmitting party.

This is a fundamental change in Spanish legislation, since previously private free-to-air broadcasters had to provide their broadcasts free of charge to cable and satellite platforms. However, this obligation only applies to their main channels and not to thematic channels such as Neox, Nova, Divinity, Energy and FDF. Local and regional channels are also excluded from this obligation.<sup>150</sup>

No specific rules were identified regarding must-see or must-find.

## 14.3 Access to free DTT

### 14.3.1 Platform operator and channels

ABERTIS, is the Spanish telecommunications infrastructure operator, who owns and manages the only national terrestrial network for the broadcasting of DTT signals in Spain, is the only provider of transport services (from the television broadcaster offices to the terrestrial broadcasting stations) and distribution services (from the terrestrial broadcasting stations to viewers homes) of DTT signals to Spanish national television broadcasters. Regarding competition in the transmission market Abertis was found guilty of abusing a dominant position in May 2009 and again in 2012.

On 24 August 2012 the Council of Ministers approved a plan, entitled Plan de Impulso de la TDT y de la Innovación Tecnológica (Promotion Plan for DTT and technological innovation), which aims to support high definition television and 4G mobile broadband services but which will also affect DTT services. In 2014 the Spanish government approved plans to re-organise the DTT transmission infrastructure in order to allocate spectrum to telecommunications operators (800MHz range for LTE mobile services).<sup>151</sup>

The estimated cost of this for the consumers and government was 260 million euros as reception devices would have to be re-tuned or replaced. These changes had an impact on the capacity of the multiplexes. There will be 8 rather than 10 national multiplexes. The autonomous regions will have just one, rather than 2 multiplexes, and the public broadcaster RTVE will have the capacity of 1.5 rather than 2 multiplexes. There are in addition local multiplexes (2-4 in each allocated region).

Licences in Spain are issued by the national ministry (for the national multiplexes, and by the regional governments for the regional multiplexes. Irregularities have led to the cancellation of licensing procedures in certain regions. For example, in July 2012 the Spanish Supreme Court declared null and void all local allocations of Digital Terrestrial Television (DTT) granted at the beginning of 2006 by the Generalitat Valenciana (Valencian regional government). The Court found that the Generalitat had lacked objectivity and impartiality in the allocation process.

The new local and regional channels, which have to contend with the costs of digital transmission and with increased competition, are also struggling to transmit local content and to set themselves apart from the national stations. Finally, local “pirate” transmissions appear to be increasing in number despite the completion of the digital switchover.

At the end of 2015, 7 national public channels (TVE La Primera, TVE La 2, Canal 24 Horas, Clan TVE, Teledeporte, Teledeporte HD, TVE HD) were accessible free of charge

<sup>150</sup> Cabrera Blazquez (2012) : Spain. In Converged markets –converged Power ? Regulation and case Law. Iris Special. European Audiovisual Observatory 2012.

<sup>151</sup> DigitalTV Europe (2014): *Spain approves DTT reorganisation to make way for LTE*: <http://www.digitalteurope.net/245412/spain-approves-dtt-reorganisation-to-make-way-for-lte/>

on the Spanish digital terrestrial platform. 12 Private channels (Antena 3, La Sexta, Telecinco, Cuatro, FDF, Divinity, Energy, Boing, Neox, Nova, Discovery Max, 13 TV) were available on free DTT (and three on pay). In addition, there were 68 regional channels and windows and more than 230 local services.

In April 2015, the Spanish Government approved the rules for the process to grant six new DTT nation-wide licenses according to a “beauty contest” scheme. A tender launch was expected by the end of 2015.<sup>152</sup>

## 14.4 Conclusion and summary

Must-carry rules currently apply only to the obligation for a distributor which has more than 30 TV channels in its service, whereby at least 30% of the Spanish language channels should be from independent operators not owned by the distributor.

Licences in Spain are issued by the national ministry for the national multiplexes, and by the regional governments for the regional multiplexes. A re-organisation of the DTT system had led to less capacity on the system as frequencies were re-allocated to telecommunications services.

However, many local channels are struggling to survive and to deal with the costs of transmission.

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<sup>152</sup> Joan Barata Mir (2015): Spain. Spanish Government approves rules to grant six new nation-wide DTT licenses. IRIS 2015-6:1/11. <http://merlin.obs.coe.int/iris/2015/6/article11.en.html>

## 15 FI – FINLAND

As part of a comprehensive legislative reform in the broadcasting sector, a new *Information Society Code*<sup>153</sup> was enacted by the Parliament at the end of 2014, entering into force on 1 January 2015. The code places several laws under one umbrella<sup>154</sup>, functioning as a codification of previous legislation while also introducing major amendments. Some provisions of previous acts have an extended applicability. This includes the must-carry rules for content other than public service which remain in force until the end of 2016.

The Code introduces a new broadcasting licensing system suitable for new technological and economic demands. In particular, the Code emphasises competitive tendering, simplifies the administration of licenses - where no scarcity of frequencies applies - and attributes a greater role to the regulatory authority FICORA.<sup>155</sup>

### 15.1 Must-carry rules

The must-carry rules are specified in Chapter 27, Section 227 of the new Information Society Code.

**Table 1 Information Society Code 917/2014**

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| <p><b>Information Society Code 917/2014</b></p> <p><b>Chapter 27</b><br/><b>Must-carry obligation of television programmes and Channel Numbering</b><br/><b>Section 227</b><br/><b>Must-carry obligation of television programmes</b></p> <p>A telecommunications operator providing a network service in a cable television network has an obligation to transmit the following in the network without charge:</p> <ol style="list-style-type: none"><li>1) public service television and radio programmes that are receivable in the municipality in which the network is located, as referred to in section 7(1) of the Act on Yleisradio Oy, freely receivable material edited for programmes, and ancillary and supplementary services related to the programmes in terms of television and radio broadcasting in terrestrial mass communications networks;</li><li>2) television programmes that are receivable in the municipality in which the network is located and in the public interest referred to in section 26 and broadcast by virtue of a national programming licence;</li><li>3) freely receivable material supplied for a programme referred to in subsection 2, advertisements included in the programmes, and ancillary and supplementary services related to the programmes.</li></ol> <p>The must-carry obligation referred to in subsection 1 above also applies to a telecommunications operator providing a network service in a cable television network, if:</p> <ol style="list-style-type: none"><li>1) the telecommunications operator uses other than traditional cable television technology in the transmission of programmes; and</li><li>2) the reception of the programmes is possible with conventional reception devices.</li></ol> <p>However, a telecommunications operator has no must-carry obligation if the cable television network capacity is for the operator's use in its television or radio broadcasting or if it is necessary for this purpose in order to meet an operator's reasonable future need. In fulfilling its must-carry obligation, a telecommunications operator need not make any improvements in network capacity that would require significant financial investments.</p> |
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<sup>153</sup> Finlex. 2014. Information Society Code. Available from:

<https://www.finlex.fi/fi/laki/kaannokset/2014/en20140917.pdf>

<sup>154</sup> Act on Television and Radio Operations (744/1998); Communications Market Act (393/2003); Act on the Protection of Privacy in Electronic Communications (516/2004); Domain Name Act (228/2003); Act on Radio Frequencies and Telecommunications Equipment (1015/2001); Act on the Provision Of Information Society Services (458/2002)

<sup>155</sup> Alén-Savikko, Anette(2015): IRIS Merlin. 2015. *Entry into Force of the New Information Society Code*: <http://merlin.obs.coe.int/iris/2015/3/article11.en.html>

The programmes and associated services referred to in subsection 1 shall be provided to users free of charge. However, a telecommunications operator may require users to pay a reasonable fee for maintenance of the network.

The programmes and services referred to in subsection 1 above shall be provided to users unmodified and simultaneously with the original broadcast.

A community aerial system in a housing company or a real estate company, or any similar system administrator that owns or manages a joint antenna network within a real estate or between real estates used for transmitting mass communications to users' terminals shall ensure that programmes and services referred to in section 1 are available to users at the real estate unmodified and simultaneously with the original broadcast.

(Unofficial translation provided by the Ministry of Transport and Communications, Finland)

### 15.1.2 Purpose of rules

The purpose of the must-carry rules is to transmit services that are in the public interest (Section 227(2)).

### 15.1.3 Distribution platforms and services

Must-carry rules apply to cable, IPTV and joint antenna networks within a real estate (DTT).

The must-carry rules apply to public service television and radio programmes, which includes all the channels of the Finnish Broadcasting Company YLE that are receivable in the municipality through antenna network: YLE TV1, YLE TV2, YLE Fem, YLE Teema and their HD versions YLE TV1 HD, YLE TV2 HD, YLE Fem HD and YLE Teema HD.<sup>156</sup>

The rules also apply to channels that are receivable in the municipality that are broadcasted by virtue of a national programme license for public interest television operations (referred to in Section 26 of the Information Society Code). As this is new legislation (entered into force in January 2015), there have been no licenses granted specifically to public interest television operations yet. Therefore transitional provisions state that until licenses complying with Section 26 of the Information Society Code enter into force, the rules apply to freely receivable television and radio programmes that are in the public interest and broadcast by virtue of a national programming licence, and that must be accompanied by an audio-subtitling and a subtitling service. Such programmes are MTV3 and Nelonen.<sup>157</sup>

### 15.1.4 Costs

Cable and IPTV networks must transmit the programmes and services of must-carry channels free of charge, unmodified and simultaneously with the original broadcast. However, a telecommunications operator may require users to pay a reasonable fee for maintenance of the network (Section 227 Information Society Code). In June of 2015, amendments to the Finnish Copyright Act reintroduced remuneration for retransmission of programmes subject to a "must-carry" obligation.<sup>158</sup>

<sup>156</sup> Yle's HD channels can also be seen in cable TV networks in the coverage areas of DNA's terrestrial network and Digita's multiplex D (in Finnish)

<sup>157</sup> Finnish Communications Authority. 2015. Obligation to transmit programmes and services (must-carry). Available from: <https://www.viestintavirasto.fi/en/tvradio/broadcastingandreception/cabletv/must-carryobligation.html>

<sup>158</sup> Anette Alén-Savikko (2015): *Finland: Reintroduction of remuneration for "must-carry" retransmission*. IRIS 2015-7:1/13 <http://merlin.obs.coe.int/iris/2015/7/article13.en.html>

## 15.2 Other access rules

There are no particular must offer obligations specified in the Information Society Code. Regarding must-see and must-find rules, Section 228 of the Information Society Code holds provisions concerning channel numbering. These specify that the numbering has to be clear and appropriate from the users' point of view and that channels by the Finnish Broadcasting Company and public interest channels (see Section 26) shall be given priority.

**Table 2 Information Society Code 917/2014**

### Information Society Code 917/2014

#### Chapter 27

[...]

#### Section 228

##### Channel numbering

A telecommunications operator in a terrestrial mass communications network and a television and radio broadcaster shall, for its part, ensure that the channel numbering of programmes is clear and appropriate from the users' point of view. In channel numbering, programmes of the Finnish Broadcasting Company Ltd and a licence holder referred to in section 26 shall receive priority.

Ficora may issue further regulations on channel numbering referred to in subsection 1.

(Unofficial translation provided by the Ministry of Transport and Communications, Finland)

## 15.3 Access to free DTT

The rules for programming licences for digital terrestrial television are stipulated in Chapter 4 of the Information Society Code. According to these, channels on terrestrial networks require a license issued by the regulatory authority FICORA (Section 22-23). The FICORA also ensures sufficient terrestrial transmission capacities for the channels by the public service broadcaster YLE for which no license is necessary (Section 24). Foreign broadcasters are free to apply for DTT broadcasting licenses on the same terms as domestic broadcasters.

With regard to production and linguistic requirements, the Information Society Code contains provisions for European works and states that a broadcaster shall reserve a major part of its annual broadcasting time for European works (Section 209). Further, a television broadcaster shall reserve for programmes produced by independent European producers 19% of its broadcasting time, or alternatively 19% of his or her programming budget (Section 210). Half of the programmes included in said share of the independent producers referred to above have to have been produced within the past five years.

The Government has the right to attach terms to the licence that relate to the programme service and are necessary to safeguard the diversity of programmes and the needs of special groups of the public (Section 27(3)). Some licenses contain linguistic requirements in terms of obligations to offer some programmes in Finnish and obligations to include dubbing or subtitles in Finnish.

The channels of public interest also have requirements concerning subtitling service and audio-subtitling service for the visually and hearing impaired.

### 15.3.1 Platform operator

The Finnish digital terrestrial network consists of three different network operators<sup>159</sup>:

DNA DVB-T2 network: DNA's network contains three multiplexes (VHF A, VHF B, VHF C)

<sup>159</sup> Digita. 2014. Rules of Operation of Service Information in the Finnish DTTV Networks Version 1.1. Available from: [http://digita.fi/files/1160/Finnish\\_DTTV\\_RoO\\_versio\\_1\\_1\\_final.pdf](http://digita.fi/files/1160/Finnish_DTTV_RoO_versio_1_1_final.pdf)

DIGITA<sup>160</sup> DVB-T and T2 networks: Digita's DVB-T network contains four multiplexes: A, B, C, E; Digita's DVB-T2 network contains two multiplexes (D and H)

ANVIA DVB-T network (regional): Anvia has a regional DVB-T network; in the Helsinki region OtaDigi/VTT is operating a local network

DIGITA transmits both free-to-air and pay TV channels. The latter are packaged by DNA FINLAND OY under the brand "Welho". It is the only pay DTT packager, after Digi TV Plus was bought by DNA in April 2013 and its service "Plus TV" converged with the DNA service. The pay DTT packager TDF Entertainment closed a year earlier in April 2012.

In spring 2015, the Finnish Government issued a tender for nine network operating licenses for providing network services in terrestrial digital mass communications networks for 2017-2026. According to information by FICORA, the Government received four applications for different multiplexes and the licenses will be granted at the end of 2015.<sup>161</sup>

### 15.3.2 TV channels

The television channels of the Finnish Broadcasting Company Yleisradio Oy (YLE), which include YLE TV1, YLE TV2, YLE FEM and YLE TEEMA, are part of the must-carry rules (Section 227 Information Society Code). All of them are available on free DTT.

The pay-TV packager DNA Welho offers the widest range of terrestrial channels with a total of 20 free-to-air channels and several other pay channels (60 in total).<sup>162</sup> Added in March 2015, the platform also includes the HD versions of public service broadcaster YLE (TV1 HD, YLE TV2 HD, YLE FEM HD and YLE TEEMA HD). It is the goal of DNA to match the terrestrial network channel offering with that of its cable network. Digita's terrestrial platform has a total of 27 free-to-air channels and 28 pay-TV channels<sup>163</sup> and ANVIA's local terrestrial Svea TV has a total of 8 free-to-air TV channels.<sup>164</sup>

In some parts of the countries it is also possible to receive Swedish Norwegian and Estonian digital terrestrial services.

## 15.4 Conclusion and summary

As part of a comprehensive legislative reform in the broadcasting sector, a new Information Society Code was enacted by the Parliament at the end of 2014, entering into force on 1 January 2015. The must-carry rules are specified in Chapter 27, Section 227 of the new Information Society Code. Their purpose is to transmit services that are in the public interest (Section 227(2)).

Must-carry rules apply to cable, IPTV and DTT networks. The services under must-carry regulation include all the channels of the Finnish Broadcasting Company YLE that are receivable on DTT (i.e. YLE TV1, YLE TV2, YLE Fem, YLE Teema, YLE TV1 HD and YLE TV2 HD) and public interest channels defined in Section 26 of the Information Society Code (e.g. MTV3 and Nelonen). These services must be transmitted free of charge, unmodified and simultaneously with the original broadcast.

The three digital terrestrial network operators DNA, Digita and ANVIA offer a range of free-to-air channels.

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<sup>160</sup> Digita is a Finnish company owned by First State Investments. In 2012, the company was sold by the French broadcasting group TDF to the Australian private equity group First State Investments.

<sup>161</sup> Liikenne- ja viestintäministeriö (Finnish Ministry of Transport and Communications). 2015. Ministeriölle neljä antennitelevisiotoimilupahakemusta. Available from: <http://www.lvm.fi/uutinen/4439237/ministeriölle-nelja-antennitelevisiotoimilupahakemusta>

<sup>162</sup> DNA. Year. Kaikki kanavat. Antenni-TV. Available from: <https://www.dna.fi/kanavalista-antenni>

<sup>163</sup> DIGITA. 2015. Digitan monipuolinen AntenniTV. Available from: <http://digita.fi/kuluttajat/tv>

<sup>164</sup> ANVIA. 2015. SveaTV. Available from: <http://www.anvia.fi/yksityisille/asiakastuki/ohjeet-ja-vinkit/sveatv>

## 16 FR – FRANCE

The *loi n° 86-1067 du 30 septembre 1986 relative à la liberté de communication*<sup>165</sup> (Law n° 86-1067 of 30 September 1986 on freedom of communication) provides the general legal framework for both private and public broadcasters in France.

Under the conditions laid down in the Law, the Conseil supérieur de l’audiovisuel (CSA) is the public regulatory authority<sup>166</sup> which supervises the exercise of freedom of communication in France. The CSA is responsible for managing and allocating frequencies and monitoring the compliance of the audiovisual programmes provided by the broadcasters with the regulatory framework (law and decrees) and broadcasters obligations under the terms of reference (*cahier des charges*).

Also of relevance is the Law implementing the telecommunications package of the European Union (*Loi n° 2004-669 du 9 juillet 2004 relative aux communications électroniques et aux services de communication audiovisuelle*)<sup>167</sup>.

### 16.1 Must-carry

The must-carry obligations are outlined under the *loi n° 86-1067 du 30 septembre 1986 relative à la liberté de communication* (Law n° 86-1067 of 30 September 1986 on freedom of communication).

#### 16.1.1 Distribution platforms and services

Following a 2004 review of the must-carry rules, the rules were modified by Law 2004-669, which added networks over ADSL and UPTs to the list of those networks with obligations to carry certain channels. Hence the rules now cover cable, satellite, ADSL and UPTS networks.

The services which are must-carry under Law 86-1067 (as modified by Law 2004-669) are outlined below:

*Except if television editors consider that it would be manifestly incompatible with the fulfilment of their public service missions, distributors must freely (art 34-2) make available to their subscribers: Arte and France Television that are transmitted by analogue terrestrial networks; TV5 channel; Réseau France Outre-Mer that are destined to the metropolitan public; the above channels that are transmitted by digital terrestrial networks when the distributor proposes a digital offering.*

*They must also carry the Parliamentary channel (art 45-3 Law 86-1067) and services for disabled people associated with the channels to be carried (art 34-2)*

Distributors (except on satellite) must also carry local channels that so request. There are a number of exceptions to this rule, e.g. where the number of subscribers does not exceed

<sup>165</sup> Loi n° 86-1067 du 30 septembre 1986 relative à la liberté de communication (consolidated version of 29 November 2013, in French only):

<http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000006068930>

<sup>166</sup> Décrets fixant le cahier des charges de la société nationale de programme France Télévision, consolidated version, April 2013, <http://csa.fr/Espace-juridique/Decrets-et-arretes/Decrets-portant-cahiers-des-charges-des-services-publics-de-communication-audiovisuelle/Decrets-fixant-le-cahier-des-charges-de-la-societe-nationale-de-programme-France-Televisions>

<sup>167</sup> Loi n° 2004-669 du 9 juillet 2004 relative aux communications électroniques et aux services de communication audiovisuelle, <http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT00000439399&idArticle=&categorieLien=id>

3% of the households in the geographic area of the local channel (art 34 -2 and decree 2005-1355).

The obligation of cable and IPTV operators to carry local public channels (and at the cost of the operator) faced a constitutional challenge from several IPTV operators. In December 2015, “the Conseil d’Etat made a referral to the Constitutional Council for a preliminary ruling on the constitutionality of the guarantee of the rights and freedoms contained in the second paragraph of Article 34-2 of the Act of 30 September 1986.”<sup>168</sup> In conclusion the Court in March 2016 found that: “The Constitutional Council concluded that, to a limited degree, the disputed provisions infringed the distributors’ freedom to conduct business and the freedom to enter into a contract. It also found that the obligation thus instituted pursued an objective of general interest and did not cause an unequal discharge of public burdens.”

Any distributor must accept requests of editors of private free-to-air (analogue and digital) channels to have access to their distribution terminal, under fair, reasonable and non-discriminatory conditions and to ensure the presentation of their services in the „engine referencing services“ (outils de référencement) of such offer (art 34-4 Law <sup>169</sup>86-1067).<sup>170</sup>

The channels outlined in the law are France 2, France 3, France 5, France 4 (only for digital), Arte, TV5, Services of Réseau France Outre-Mer (RFO) that are destined to the metropolitan public, La Chaîne Parlementaire. Distributors, except for satellite are also required to carry local channels (see above).

## 16.2 Other access rules

### 16.2.1 Must-offer

Must-offer rules apply to the public service channels (France 2, France 3, France 5, Arte, TV5, France O, la Chaîne Parlementaire and for digital offers, France 4) on all networks. Must-offer rules applied to all terrestrial channels for a five year period from 2004-2009.

### 16.2.2 Must- see and Must-find

As mentioned above, Art. 34-4 of the law of 86-1067 stresses that distributors have to ensure the presentation of services of private free-to-air channels in the “engine referencing services” (outils de référencement).

Further, the CSA ensures the logical numbering of services in engine referencing services. In particular, the law empowers the CSA to organize the logical numbering of television services broadcast on DTT and other networks (cable, satellite and IPTV).

For DTT networks, the *Resolution of 24 juillet 2012* gives priority to national free DTT channels (numbers 1-29), local DTT channels (numbers 20-39), pay TV channels (numbers 40-49), HD versions of services broadcast simultaneously in SD (numbers 51-79) (Art. 1).

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<sup>168</sup> Blocman, Amélie (2016): Obligation to carry local public television services judged compliant with Constitution. IRIS 2016-5:1/11: <http://merlin.obs.coe.int/iris/2016/5/article11.en.html>

<sup>169</sup> Délibération du 24 juillet 2012 relative à la numérotation logique des services de communication audiovisuelle diffusés par voie hertzienne terrestre en métropole: <http://goo.gl/I35B40>

<sup>170</sup> Translation and description from Cullen International (2006) : CI Broadcasting Study : Database of regulatory information for the broadcasting sector. Data collection by country December 22, 2006. <http://www.cullen-international.com/asset/?location=/content/assets/research/studies/2006/12/broadcasting-study-report-2007-annex2.pdf/broadcasting-study-report-2007-annex2.pdf>

## 16.3 Access to free-DTT

According to the Mapping Digital Media France report<sup>171</sup>, “in the digital licensing process, as in the preceding analogue era, the CSA must take into account “the interest of each project for the public,” with regard to safeguarding pluralism, the diversification of operators, and preservation of free competition. In DTT licensing, the CSA is also to consider “the need to provide services likely to meet a wide audience and to encourage a rapid development of DTT.” Priority rights to use DTT frequencies have also been granted to channels with public service missions (France Télévisions, Audiovisuel extérieur de la France, ARTE, and the Parliamentary Channel) to allow them to have the resources needed to accomplish these tasks in the general interest. The government has made use of this right to obtain DTT frequencies for public channels in terrestrial digital broadcasting (2002), as well as high-definition (HD) television and personal mobile television (2008).”

A 2014 decision of the French CSA which did not allow three channels to move from pay to free DTT highlights the lack of capacity in the system and the desire to protect the sustainability of the DTT platform in its current state.

*“On 29 July 2014, the audiovisual regulatory authority (Conseil Supérieur de l’Audiovisuel – CSA) found that the conditions for authorising the move from digital pay-TV to freeview requested by three channels (LCI – Groupe TF1, Paris Première – Groupe M6) and Planète Plus (Groupe Canal Plus) were not met. The channels are suffering a serious drop in income, which is generated mainly by the fees received from distributors offering the channels to their subscribers (CanalSat, Numericable, etc).....*

*The CSA therefore considered the consequences of the applications, taken individually and as a whole, with regard to their effect in terms of both competition and editorial content, carrying out an impact study, covering the economic aspects in particular, holding a public hearing of the applicants, and hearing all the third parties who wished to be heard. It also obtained the opinion of the Competition Authority. ....*

*The CSA referred firstly to the prevailing situation of the advertising market, which features a substantial drop in the television services’ income from advertising. It considered that the arrival of one or more additional freeview channels could not currently be borne by market growth. The CSA also took account of the financial situation of the existing digital freeview channels, which it found to be fragile. Lastly, in terms of the offer and demand for television consumption, it found that the arrival of one or more additional freeview channels, with 25 channels already present, would result in audience transfer phenomena likely to be detrimental to the existing freeview channels. ....*

*Thus, regarding the application for LCI, the CSA noted that the arrival of a third freeview continuous news channel financed exclusively by advertising might destabilise the two news channels already in existence (I>Télé and BFM TV), one of which had recently reached a point of equilibrium, while the other was currently operating at a loss.”<sup>172</sup>*

As a final update, the decision of the CSA regarding LCI was overturned on December 17<sup>th</sup> 2015, allowing LCI to move to the free to air DTT network.<sup>173</sup> However, the channels Paris Première and Planète+ remain in the pay-TV category. LCI is now available on Multiplex R3.

<sup>171</sup> Koc-Michalska, Karolina and Thierry Vedel, Agnes Granchet, Christine Leteinturier, and Gael Villeneuve (2013): *Mapping Digital Media France 2013*. A Report by the Open Society Foundations. <http://www.opensocietyfoundations.org/sites/default/files/mapping-digital-media-france-20130419.pdf>

<sup>172</sup> Blocman, Amélie (2014): CSA Refuses Authorisation For Three Digital TV Channels To Move From Pay-TV to Freeview. IRIS 2014-8:1/22: <http://merlin.obs.coe.int/iris/2014/8/article22.en.html>

<sup>173</sup> Blocman, Amélie (2016): CSA authorises LCI channel to shift to free DTT. IRIS 2016-2:1/12: <http://merlin.obs.coe.int/iris/2016/2/article12.en.html>

### 16.3.1 Platform operators and channels

The French DTT system consists of eight multiplexes operated by eight different companies. Regarding the public service broadcaster France Télévisions, it owns R1 and has shares in R2 and R5.

There are a total of eight multiplexes run by different companies. These carry the ten public channels (France 2, France 3, France 4, France 5, France Ô, France 2 HD, Arte, Arte HD, Public Sénat, LCP), and 19 private channels (TF1, M6, TF1 HD, M6 HD, I-Télé, BFM TV, D 8, Gulli, D 17, W9, NT1, NRJ 12, TMC, HD1, Chérie 25, L'Equipe 21, 6ter, RMC Découverte, Numéro 23) (and since 2013 the former pay channel LCI). In addition, there are 48 local services and 8 pay DTT channels. The French system is mature and well-developed. Licences to broadcast over free DTT have been based on the „beauty contest“ system. In this case the line-up of channels is selected by the regulator via public procedures (tenders) similar to those used in the analogue environment.

As a free service with (almost) technical universal reach in all European countries, DTT is of course technically available to all homes (assuming they have a set-top box or built-in tuner in the TV set) and may in many cases be used on a second set (i.e. not on the main set used in the household. For example, additional data from IHS shows that 60% of French homes have TV sets capable of receiving DTT and possibly use this on a second set).

## 16.4 Conclusion and summary

Must-carry rules cover cable, satellite, ADSL and UPTS networks and they relate to the channels outlined in the law: France 2, France 3, France 5, France 4 (only for digital), Arte, TV5, Services of Réseau France Outre-Mer (RFO) that are destined to the metropolitan public, La Chaîne Parlementaire. Distributors, except for satellite are also required to carry local channels.

The DTT platform is mature and developed. Each stage of the implementation of DTT (including after switch-off) lead to tenders for specific services and the channels were chosen by the regulator on the basis of a „beauty contest“.

## 17 GB – UNITED KINGDOM

### 17.1 The regulation of broadcasting in the UK

In the United Kingdom, the media sector is legislated via the *Communications Act of 2003*.<sup>174</sup> This act established the converged regulator Ofcom.

### 17.2 Must-carry rules

The must-carry rules in the UK are outlined under Article 64 of the Communications Act 2003.

This section implements Article 31 of the Universal Service Directive. Section 64 allows Ofcom to set general conditions of entitlement in relation to Must-carry Obligations, i.e. it gives Ofcom the power to set General Conditions on appropriate electronic communications networks requiring carriage of the specified services.

While the following outlines what the must-carry rules are, it should be noted that the Ofcom have not to date officially imposed them on any operator. One reason for this could be that all operators of the communications networks have without obligation wished to include the public service channels in their service, as the channel package would be less attractive without.

Section 64(1) provides that “general conditions may include conditions making any provision that OFCOM consider appropriate for securing that particular services are broadcast or otherwise transmitted by means of the electronic communications networks described in the conditions.”

These “general conditions” include Condition 7<sup>175</sup> which “applies to providers of an “Appropriate Network”. This is a term defined in the Communications Act which relates to communications services which are used by significant numbers of people as their principle means of receiving television programmes. The condition allows Ofcom to require such providers to transmit or broadcast the services of public service broadcasters. The condition also requires providers to comply with any order by the Secretary of State concerning the terms on which such material is to be broadcast or transmitted. Ofcom has not as yet made any requirements of Appropriate Network providers under this condition”.

Section 64(2) makes it clear that general conditions can only impose Must-carry Obligations in relation to a specified list of services and in relation to networks of a certain type (networks that provide public electronic communications services “that are used by a significant number of end-users as their principal means of receiving television programmes”).

#### 17.2.1 Which distribution platforms

The rules apply to “electronic communications services” and hence are technologically neutral. The law under Article 64 (2(b)) describes these as “networks by means of which public electronic communications services are provided that are used by a significant number of end-users as their principal means of receiving television programmes”.

Section 64 gives Ofcom the power to set General Conditions on appropriate electronic communications networks requiring carriage of the specified services. Ofcom has implemented section 64 through General Condition 7 which provides “shall, on a direction from Ofcom .....broadcast or otherwise transmit any service specified in that direction which is

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<sup>174</sup> Communications Act 2003 : Available here:

<http://www.legislation.gov.uk/ukpga/2003/21/contents>

<sup>175</sup> General conditions guidelines: <http://stakeholders.ofcom.org.uk/telecoms/ga-scheme/general-conditions/general-conditions-guidelines/>

also set out in section 64(3) of the Act...”

As noted above, Ofcom has not to date made any direction under General Condition 7 and no provider is subject to a must-carry obligation.

**Table 1 Communications Act 2003**

|   |
|---|
| <p><b>Communications Act 2003</b></p> <p><b>General conditions: must-carry obligations</b></p> <p><b>64 Must-carry obligations</b></p> <p>(1) General conditions may include conditions making any provision that OFCOM consider appropriate for securing that particular services are broadcast or otherwise transmitted by means of the electronic communications networks described in the conditions.</p> <p>(2) A general condition containing provision authorised by this section is not (subject to subsection (4)) to require a service to be broadcast or otherwise transmitted by means of an electronic communications network unless—</p> <p>(a) the service is included in the list of must-carry services; and</p> <p>(b) the effect of the requirement is confined to networks by means of which public electronic communications services are provided that are used by a significant number of end-users as their principal means of receiving television programmes.</p> |
|---|

### 17.2.2 Which services

There is a specific list of services which may be subject to must-carry obligations, and it is the duty of the Secretary of State to review it from time to time. The Secretary of State may add or remove services.

The specified services are set out in section 64(3) Comms Act . The current list of “Must-carry Services” is: BBC services, Channel 3 (all licensed), Channel 4, Channel 5, S4C, and teletext.

**Table 2 Communications Act 2003**

|  |
|--|
| <p><b>Communications Act 2003</b></p> <p><b>General conditions: must-carry obligations</b></p> <p><b>64 Must-carry obligations</b></p> <p>(3) That list is as follows—</p> <p>(a) any service of television programmes provided by the BBC so far as it is provided in digital form and is a service in relation to which OFCOM have functions;</p> <p>(b) the Channel 3 services so far as provided in digital form;</p> <p>(c) Channel 4 so far as provided in digital form;</p> <p>(d) Channel 5 so far as provided in digital form;</p> <p>(e) S4C Digital;</p> <p>(f) the digital public teletext service.</p> <p>(4) General conditions making provision authorised by this section in relation to a listed service must, to such extent as OFCOM consider appropriate (and subject to subsection (5))—</p> <p>(a) apply the requirement to broadcast or otherwise transmit that service to every service which is an ancillary service by reference to the listed service;</p> <p>and (b) provide for the listed service to be treated for the purposes of the conditions as constituting such other services comprised in or provided with that service as may be determined by OFCOM.</p> |
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## 17.3 Other access rules

### 17.3.1 Must offer

The Communications Act 2003 also covers must-offer provisions under section 272. Comms Act. That provision requires must-offer obligations to be included in the regulatory regime for:

- every licensed public service channel;

- the public teletext service; and
- every licensed television service added to the list of must-carry services in section 64.

The services currently covered are the public service channels, Channel 3 (all licences), Channel 4 and Channel 5. The Secretary of State could add must-offer services as a result of amending the list of must-carry services but only to the extent that she were to add a licensed service.

The provisions apply to any “appropriate network” means (subject to subsection (8)) an electronic communications network by means of which public electronic communications services are provided that are used by a significant number of end-users as their principal means of receiving television programmes.

### 17.3.2 Must-see and Must-find

Must-see is referred to as “prominence” in the context of the UK legislation and regulation.

- Under section 310(1) of the Communications Act 2003, Ofcom has a duty “to draw up, and from time to time to review and revise, a code giving guidance as to the practices to be followed in the provision of electronic programme guides.”

- Under section 310(2) of the Communications Act 2003, “The practices required by the code must include the giving, in the manner provided for in the code, of such degree of prominence as Ofcom consider appropriate to (a) the listing or promotion, or both the listing and promotion, for members of its intended audience, of the programmes included in each public service channel; and (b) the facilities, in the case of each such channel, for members of its intended audience to select or access the programme included in it.”

The services covered by the prominence regime services are specified in the act:

- The original list as per section 310(4): “Any service of television programmes provided by the BBC in digital form...” “Any channel 3 service in digital form, Channel 4, Channel 5, S4C Digital, The digital public teletext service ( note that there is no such service in the UK at the moment), the addition of local television as per section 310(4)(g)-(h), Local digital television programme service, a simulcast local service.<sup>176</sup>

## 17.4 Access to free DTT, and platform operators

According to the documentation of the Ofcom,<sup>177</sup> multiplexes are licensed by Ofcom under the Broadcasting Act 1996 or, in the case of multiplex 1, granted by the Government.

There were originally six television multiplexes:

Multiplex 1 (PSB1 / BBCA) is operated by the BBC under their Royal Charter and Agreement with the Secretary of State for Culture, Media and Sport. It contains 9 TV channels and an interactive channel (and 18 radio services).

Multiplex 2 (PSB2/ D3 and 4) is operated by Digital 3 and 4 Ltd (jointly owned by Channel 3 and Channel 4) and the capacity on this multiplex is split between Channel 3 (48.5%) and Channel 4 (48.5%). This contains 16 TV channels.

Multiplex A (COM4) is operated by SDN Ltd (controlled by ITV plc), and 50% of the capacity on this multiplex is reserved for Channel 5 and (in Wales) S4C. It contains 22 TV channels and 7 interactive channels (and 3 radio services).

Multiplex B (PSB3/ BBC B) is operated by BBC Free to View Ltd. This contains 9 TV chan-

<sup>176</sup> Code on Electronic Programme Guides: <http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/epg-code/>

<sup>177</sup> Ofcom: Digital Television Programme Services/ Digital Television Additional Services: Guidance notes for licence applicants <http://licensing.ofcom.org.uk/binaries/tv/dtps-dtas-guidance.pdf>

nels, eight of which are HD.

Multiplexes C and D (COM 5 and COM6) are operated by Arqiva Limited. They have a total of 37 TV channels, 11 radio channels and 8 interactive services. These multiplexes host RT (Russia Today) and Al Jazeera (English).

A seventh multiplex is being developed by Arqiva Limited (COM7), which will carry 12 TV channels (8 of these in HD), and will include Al Jazeera HD (English) and Al Jazeera Arabic.

There are in addition: a local multiplex (to carry the new local TV services); the Northern Ireland Multiplex (carrying Irish TV services); and a Manchester Multiplex.

### 17.4.1 TV channels

In order to be carried over the free-DTT networks a television channel must apply for a licence with the Ofcom. Before applying for the licence, they must have an agreement with the multiplex operator that they will be given space on the multiplex.

There are several kinds of licences for TV channels in the UK. The Television Licensable Content Service (TLCS) licences are required for services that have the principle purpose of the provision of television programmes or electronic programme guides or both, on satellite, cable, delivery over IP and mobile.

For digital terrestrial television, a different licence is needed, known as a Digital Television Programme Service (DTPS).<sup>178</sup> There are no specific restrictions that apply only to foreign broadcasters. But the application for the DTPS licence must include an agreement with the multiplex licensee that will carry the service.

It is worth noting that some DTT multiplex capacity is reserved for the use of public service broadcasters. The rest is allocated by commercial agreement by the multiplex operator who must use fair, reasonable and non-discriminatory practices when seeking content providers for the available capacity.

## 17.5 Conclusion and summary

Although rules exist for must-carry in the UK, it has so far not been necessary to impose them on any distributor as the channels represent desirable content necessary for an attractive offer.

Access for channels to the free DTT service involves firstly having an agreement with a multiplex operator that they will carry the channel, and then the application for an appropriate licence with the Ofcom.

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<sup>178</sup> The licensing system for linear DTT channels is set out here:  
<http://licensing.ofcom.org.uk/binaries/tv/dtps-dtas-guidance.pdf>.

## 18 GR – GREECE

### 18.1 Must-carry

There is a range of legislation relevant to the audiovisual sector in Greece.<sup>179</sup>

Regarding must-carry rules In the Greek legislation, the Universal Services Directive was implemented via the Law 407/ 2012. In fact the act simply regulated the way in which must-carry rules may be established in line with the Universal Services Directive. According to its provisions, the Minister of Infrastructure, Transport and Networks acting jointly with the Minister entrusted with the competences of the abolished Ministry of Press and Mass Media may impose to network providers used for the distribution of radio and television broadcasts to the public reasonable Must Carry obligations for the transmission of special broadcasting channels and additional Services and in particular Services to enable appropriate Access of disabled end-users.

To date the regulator has not designated any channels as must-carry, or any operator as being subject to must-carry rules. Hence, according to the Greek regulatory authority the National Council for Radio and Television (NCRTV) there are no must-carry rules applicable to the Greek distribution platforms.

**Table 1 Law 407/2012**

#### Law 407/2012

#### Must-carry obligations

#### Article 73 (translated summary provided by the regulator)

Article 73 of the said Law regulates the must carry obligations of network providers. According to its provisions, the Minister of Infrastructure, Transport and Networks acting jointly with the Minister entrusted with the competences of the abolished Ministry of Press and Mass Media may impose to network providers used for the distribution of radio and television broadcasts to the public reasonable Must Carry obligations for the transmission of special broadcasting channels and additional Services and in particular Services to enable appropriate Access of disabled end-users.

The Law provides that the obligation is imposed to network providers of electronic communications networks used for the distribution of radio and television broadcasts to the PUBLIC.

However it is mentioned that such obligations shall only be imposed where they are necessary to

a) meet clearly defined General interest objectives and

b) in cases where these networks are the principal means to receive radio and TV signals by a significant Number of end users

### 18.2 Other access rules

Art. 48 of Law 4070/2014 on electronic Communications, e-commerce and other provisions. Regulation No 732/4/11.9.2014 of the Hellenic Telecommunications and Post Commission regulates terms and conditions of Access and interconnections, including access to APIs and EPGs.

<sup>179</sup> The Presidential Decree on Audiovisual Media Services <http://www.esr.gr/arxeion-xml/uploads/PD.109-2010.pdf> in Greek

And English: [http://www.en.uni.lu/content/download/31285/371490/file/Greece\\_translation.pdf](http://www.en.uni.lu/content/download/31285/371490/file/Greece_translation.pdf)

For private broadcasting, the Legal Regime of Private TV and Radio Broadcasting Law (Law 2328/1995) <http://www.minpress.gr/minpress/scriptpage.html?id=4692784> in Greek

Concerning the public service broadcaster the Act 4173/2013 "New Hellenic Radio, Internet and Television" Act 4173/2013 "New Hellenic Radio, Internet and Television", ΦΕΚ Α' 169/26.7.2013 available in Greek only : <http://nomoi.info/%CE%A6%CE%95%CE%9A-%CE%91-169-2013.html> enacted in July 2013.

### 18.3 Licensing of DTT

Regarding the licensing of DTT, the response from the regulator claimed that there were no obstacles to foreign channels being broadcast over the free to air networks. Indeed the public multiplex carries BBC World, TV5 Europe, Deutsche Welle, Rik Sat, and Euronews. The Digea (see below) multiplex carries Nickelodeon. (The public multiplex was run by the ERT, then the NERIT after the closure of ERT, and since 2015 again by ERT).

The second operator of multiplexes is the DIGEA ,a company that has been formed by the privately-owned nationwide television stations ALPHA, ALTER, ANTENNA, MAKEDONIA TV, MEGA, SKAI and STAR. The multiplex carries: Action 24, Alpha TV, ANT1 (Greece), EXTRA CHANNEL 3, Mad Greekz, MEGA (Greece), SKAI TV, Star Channel, Zoom, MTV Greece, and Nickelodeon. See also 18,5 below.

### 18.4 Conclusion and summary

Regarding must-carry rules In the Greek legislation, the Universal Services Directive was implemented via the Law 407/ 2012 and regulated the way in which must-carry rules may be established in line with the Universal Services Directive. To date the regulator has not designated any channels as must-carry, or any operator as being subject to must-carry rules. Hence, according to the Greek regulatory authority the National Council for Radio and Television (NCRTV) there are no must-carry rules applicable to the Greek distribution platforms.

There appear to be no obstacles to foreign channels being broadcast over the free to air networks, with BBC World, TV5 Europe, Deutsche Welle, Rik Sat, Nickelodeon, Euronews and Nickelodeon available free to air.

### 18.5 Recent legal updates of interest

In October 2015, the Greek parliament passed a new law on the licensing of content providers of digital terrestrial television. This will lead to ten year licences being awarded via auction held by the regulatory authority. The ministry will decide in advance the different categories of licence to be awarded.<sup>180</sup> The ministry plans to reduce the number of licences attributed to the main private broadcasters.

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<sup>180</sup> Economou, Alexandros (2015): Greece: New law regulating licensing of content providers of digital terrestrial television. IRIS 2016-1:1/16. <http://merlin.obs.coe.int/iris/2016/1/article16.en.html>

## 19 HR – CROATIA

The main legislative act that regulates broadcasting in Croatia is the *Electronic Media Act (2009)*.<sup>181</sup> With regard to must-carry rules, these are addressed in the *Electronic Communications Act*.<sup>182</sup>

There are two regulatory bodies relevant to the audiovisual market. The Agency for Electronic Media of the Republic of Croatia – AEM (Agencija za elektronicke medije)<sup>183</sup> regulates audiovisual media and the Croatian Post and Electronic Communications Agency - HAKOM<sup>184</sup> is responsible for telecommunications and the allocation of frequencies used in broadcasting.

### 19.1 Must-carry rules

The *Electronic Communications Act* deals must-carry rules, which are addressed under Article 97. In fact the act simply regulated the way in which must-carry rules may be established in line with the Universal Services Directive. To date the Croatian regulator has not designated any channels as must-carry, or any operator as being subject to must-carry rules.

**Table 1 Electronic Communications Act 2008**

#### Electronic Communications Act 2008

##### Must-carry obligations Article 97

(1) On the basis of a decision adopted by the authority competent for electronic media on must-carry obligations concerning one or more radio and/or television programmes in the Republic of Croatia at the national, regional or other levels, the Agency shall adopt a decision designating operators of public communications networks which are obliged to carry such programmes.

(2) The must-carry obligations referred to in paragraph 1 of this Article may be imposed, in compliance with the principles of proportionality and transparency, only on those operators of public communications networks which are used by a significant number of end-users as their main means of receiving radio and television programmes, and only if there is a public interest thereof.

(3) The fee for the carrying of programmes in accordance with the obligations referred to in paragraph 1 of this Article shall be determined in accordance with the principles of proportionality, transparency and non-discrimination.

(4) The Agency shall regularly verify the implementation of the must-carry obligations referred to in paragraph 1 of this Article and every operator of the public communications network, that has been imposed the must-carry obligations, shall be entitled to request the Agency to re-examine these obligations after the expiry of the period of four years following the adoption of the decision referred to in paragraph 1 of this Article.

### 19.2 Platforms and services

In principle this is established in line with the Universal Services Directive. To date the Croatian regulator (Agency for Electronic Media) has not designated any channels as must-carry. The HAKOM have however designated one IPTV operator as having signifi-

<sup>181</sup> Electronic Media Act with amendments to 2013 (in Croatian):

[http://narodnenovine.nn.hr/clanci/sluzbeni/2013\\_07\\_94\\_2133.html](http://narodnenovine.nn.hr/clanci/sluzbeni/2013_07_94_2133.html) in English:

[http://www.emediji.hr/files/repozitorij/ELECTRONIC\\_MEDIA\\_ACT\\_12\\_December\\_2009.pdf](http://www.emediji.hr/files/repozitorij/ELECTRONIC_MEDIA_ACT_12_December_2009.pdf)

<sup>182</sup> Croatian Electronic Communications Act (in English) :

[http://www.hakom.hr/UserDocImages/dokumenti/Electronic%20Communications%20Act%20OG\\_73\\_2008.pdf](http://www.hakom.hr/UserDocImages/dokumenti/Electronic%20Communications%20Act%20OG_73_2008.pdf)

<sup>183</sup> Website of the Agency for electronic Media : <http://www.e-mediji.hr/en/>

<sup>184</sup> Website of the Croatian Post and Electronic Communications Agency : <http://www.hakom.hr/>

cant market power (SMP). Hence in the case where channels were made must-carry, this operator would be obliged to carry them.

Regarding costs, the law states under 97 (3) that “the fee for the carrying of programmes in accordance with the obligations referred to in paragraph 1 of this Article shall be determined in accordance with the principles of proportionality, transparency and non-discrimination”.

### 19.3 Other access rules

The only other access rules referred to must-find/ prominence in relation to the prominence of European works in the catalogue of programmes offered by the on-demand audiovisual media service is regulated by the Electronic Media Act.

### 19.4 Access to free DTT

According to the Croatian regulator, potential obstacles to access to the free DTT platforms could include the obligations for terrestrial broadcasters as stipulated in the Electronic Media Act. These include issues that deal with media pluralism, quality content, own production quotas, and the public tender procedure and the capacities of the various multiplexes. The free to air multiplexes are confined to broadcasters with a legal presence in Croatia, who are licensed in Croatia. There are also certain language requirements for services licensed in Croatia, which are stipulated in the Electronic Media Act, Article 4.

**Table 2 Electronic Media Act**

#### **Electronic Media Act Article 4**

(1) Media service providers are obliged to broadcast programme in the Croatian language and the Latin script or with the translation into the Croatian language, in accordance with the provisions of this Act.

(2) Media service providers may also promote works in the dialects of the Croatian language, which is considered as fulfilment of the obligations referred to in paragraph 1 of this Article.

(3) The use of the Croatian language is not obligatory:

- if films and other audio and audiovisual works are broadcast in the original;
- if music works with lyrics are broadcast which are either partially or fully in a foreign language,
- if broadcasts are either partially or fully intended for the learning of foreign language and script.

(4) The use of the Croatian language is not obligatory in the broadcasts intended for members of national minorities.

(5) By way of derogation from the provisions of paragraph 1 of this Article, media service providers may broadcast informative programme and service information for the needs of foreign guests in the languages according to the representation of foreign guests in the area of its concession).

#### 19.4.2 Platform operator and TV channels

Three DTT Multiplexes (free to air) are operated by the transmission company OiV with 12 national and 20 regional channels. In 2012, the company HP Produkcija, (which is a joint venture between OiV and HP, the Croatian Post service) were granted licences for two DVBT-2 multiplexes. They launched a pay-DTT service which provides (July 2015) 45 channels including 4 HD channels.

### 19.5 Summary and conclusion

Croatian legislation has been adapted to the Universal Services Directive via the Electronic Communications Act deals must-carry rules. In fact the act simply regulated the way in which must-carry rules may be established in line with the Universal Services Directive. To

date the Croatian regulator has not designated any channels as must-carry, or any operator as being subject to must-carry rules.

Regarding access to the free DTT platforms, broadcasters must have a legal presence in Croatia, and be licensed in Croatia.

## 20 HU – HUNGARY

Following the change of government in 2010, a range of media laws were introduced in Hungary: *Act CLXXXV of 2010 on Media Services and Mass Media*<sup>185</sup> and the *Act CIV of 2010 on the Freedom of the Press and the Fundamental Rules of Media Content*<sup>186</sup> (version in force from March 2014).

The media in Hungary is regulated by the National Media and Infocommunications Authority (NMHH). This authority was established by the *Act CLXXXV of 2010 on Media Services and Mass Media* and is a converged authority (dealing with both audiovisual media services and communications networks such as telecommunications). It involved the merger of the former National Communications Authority (NHH) and the National Radio and Television Commission (ORTT).

### 20.1 Must-carry rules

The *Act CLXXXV of 2010 on Media Services and Mass Media* outlines the must-carry rules applicable to the media in Hungary (articles 73-81).

#### 20.1.1 Purpose of rules

The main purpose of the must-carry rules are as follows: “to preserve, protect and further develop Hungarian and European culture and the culture of nationalities, support and sustain the languages of nationalities, satisfy the information needs of citizens and facilitate their participation in democratic public affairs and preserve diversity of opinions” (Art 73 (1)).

#### 20.1.2 Which distribution platforms

The law outlines the transmission systems or networks as: “including, in particular, cable television networks, satellite and terrestrial media service distribution networks (with the exception of analogue audiovisual broadcasting networks), as well as transmission systems allowing for transmission of media services by use of Internet Protocol, if the nature and conditions of the service are identical to those of media service distribution, or if this substitutes the media service distribution carried out by any other means”.

Hence the rules are technology neutral and (similar to other countries) the obligations extend to “providers and operators distributing media services on other transmission systems or networks, if this transmission system or network is the one which is widely used by subscribers and users as the main instrument for receiving radio and audiovisual media services.” (Art 73 (3-4)).

**Table 1 Act CLXXXV of 2010 on Media Services and Mass Media**

**Act CLXXXV of 2010 on Media Services and Mass Media**  
**Chapter VI: PROTECTION OF DIVERSITY IN MEDIA SERVICE DISTRIBUTION**  
**Article 73**

(1) In order to preserve, protect and further develop Hungarian and European culture and the culture of nationalities, support and sustain the languages of nationalities, satisfy the information needs of citizens and facilitate their participation in democratic public affairs and preserve diversity of opinions, the media service distributor defined under Paragraphs (2) - (3) shall be subject to the

<sup>185</sup> Act CLXXXV of 2010 on Media Services and Mass Media

[http://hunmedialaw.org/dokumentum/153/Mttv\\_110803\\_EN\\_final.pdf](http://hunmedialaw.org/dokumentum/153/Mttv_110803_EN_final.pdf)

<sup>186</sup> Act CIV of 2010 on the Freedom of the Press and the Fundamental Rules of Media Content

[http://hunmedialaw.org/dokumentum/152/Smtv\\_110803\\_EN\\_final.pdf](http://hunmedialaw.org/dokumentum/152/Smtv_110803_EN_final.pdf)

obligations defined in Articles 74-75 (hereinafter as: must-carry obligation).

(2) Media service distributors distributing media services on a transmission system or network used for broadcasting radio and audiovisual media services to the public shall be subject to a must-carry obligation.

(3) Transmission systems or networks used for broadcasting radio and audiovisual media services to the public include, in particular, cable television networks, satellite and terrestrial media service distribution networks (with the exception of analogue audio visual broadcasting networks), as well as transmission systems allowing for transmission of media services by use of Internet Protocol, if the nature and conditions of the service are identical to those of media service distribution, or if this substitutes the media service distribution carried out by any other means.

(4) The must-carry obligation shall also extend to service providers and operators distributing media services on other transmission systems or networks, if this transmission system or network is the one which is widely used by subscribers and users as the main instrument for receiving radio and audiovisual media services.

There is more information on the platforms in the next section (as regards local services).

The law also provides a definition of “influential media service distributors”, which are those that either have a “*number of subscribers to its media service distribution, irrespective of the media service distribution platform or network used, exceeds one hundred thousand*”, or “*covers more than one - third of the population of Hungary, and the sales revenue of the media service distributor or any undertaking having a qualifying holding in it or in its owner, or of any other undertaking operating under the qualifying holding of the media service distributor or its owner, arising from media service distribution or related services, with the exception of analogue e broadcasting transmission, performed in the territory of Hungary, exceeds one billion forints annually*” (Art 73 (7a -7b)).

### 20.1.3 Which services

The distribution platforms are obliged to carry “a total of four linear audiovisual media services and three linear radio media services of the public media service provider free of charge, with the exception of media service distribution performed by means of broadcasting transmission”.

For operators of digital platforms, a further 2 services from the public broadcaster can be added to must- carry. For operators who provide HD services, they are obliged to also add the HD services of the public service media. (Art 74 (1), (1a), (1b)).

## Table 2 Act CLXXXV of 2010 on Media Services and Mass Media

### Act CLXXXV of 2010 on Media Services and Mass Media

#### Chapter VI: PROTECTION OF DIVERSITY IN MEDIA SERVICE DISTRIBUTION

##### Article 74

(1) The media service distributor shall be obliged to transmit a total of four linear audiovisual media services and three linear radio media services of the public media service provider free of charge, with the exception of media service distribution performed by means of broadcasting transmission. The media service distributor may not claim an additional fee from subscribers in excess of the costs of access related to ensuring access to such media services. The public media service provider shall not claim consideration from the media service distributor for the distribution of its media services.

(1a) The media service distributor defined in Article 73 (2), operating a digital transmission system, shall be obliged to transmit, in addition to the linear audiovisual media services specified in Paragraph (1), two further linear audiovisual media services of the public media service provider, under the terms specified in Paragraph (1).

(1b) The media service distributor defined in Article 73 (2) that also transmits audiovisual media services in HD quality on the given transmission system shall be obliged to transmit on that transmission system the public media service provider’s audiovisual media services defined in Paragraphs (1) and (1a) in HD quality, under the terms specified in Paragraph (1)

The media service distributors that cover regional areas via terrestrial distribution (regional

multiplex) are not subject to the must-carry obligations (Art 74 (1)-(3)).

However local services must be carried by other media distributors. For other media service providers, they should reserve up to 10% of capacity, and should carry at least three regional / local services. It is expressed as being “*subject to an obligation to contract regarding the technically and economically founded contract offers made by the media service providers regarding the provision of their regional or local audiovisual community media services*” (art 75 (1)).

A further two local TV services should be included where it can be shown that their area of reception falls within the area of reception of the media service distributor (Art 75 (2)).

This article then has a clause excluding digital terrestrial and satellite distributors from the obligation of must-carry of local services (art 75 (2)).

Hence we can assume the must-carry for local services mainly relate to cable (and possibly IPTV, and local DTT multiplexes). In Hungary there are approximately 400 cable operators, many of them operating at a local or regional level.

The Media Council (of the regulator NMHH) can allocate up to two more public services and one community television broadcaster as must-carry (art 75 (3)).

Recently on December 15<sup>th</sup> 2014, the Hungarian National Assembly adopted a new amendment to the Hungarian Media Act. One provision that proved controversial (where stakeholders in the industry have voiced their protest) ensured a must-carry status for two further public service television channels that are not yet functional.<sup>187</sup>

#### 20.1.4 Costs

The costs of the carriage of the must-carry services should not be passed on to the consumer: “The media service distributor may not claim an additional fee from subscribers in excess of the costs of access related to ensuring access to such media services”. In addition, the public broadcaster cannot “claim consideration” from the media service distributor for the distribution of its services (Art 74 1).

### 20.2 Other access rules

“Must-offer obligations are connected either to events of major importance to society or to the provider’s status as a public service provider or a provider of significant influence power”<sup>188</sup>.

Must-offer obligations are present for media service providers with “significant market power”. They are obliged to “*contract in respect of all its linear media services according to the fair and reasonable contract offers of the media service distributor*” (78 (2)).

Channels that are designated as must-carry should be given prominence. Under Article 74 (1c): “The media service distributor defined in Article 73 (2) shall be obliged to set the audiovisual media services defined in Article 74 (1) - (1c) on the first places of the channel order, as a default”.

### 20.3 Access to free DTT and platform operator

In 2008, the (former regulator) the National Communications Authority of Hungary (NHH) officially allocated the license to operate DTT services to the broadcast network operator

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<sup>187</sup> Gábor Polyák (2015): Hungary - New Amendment to the Media Act. IRIS 2015-2:1/22.  
<http://merlin.obs.coe.int/iris/2015/2/article22.en.html>

<sup>188</sup> Koppanyi and Polefko (2012) : Hungary. In Converged markets –converged Power ? Regulation and case Law. Iris Special. European Audiovisual Observatory 2012.

Antenna Hungaria, implying the right to operate 5 multiplexes for a 12 year period.

The allocation was on the basis of a “beauty contest”, whereby a set of conditions outlined by the regulator had to be fulfilled. This is in contrast to an “auction”, whereby a tender is won by the highest bidder.

The DTT platform is operated by one company in Hungary: Antenna Hungaria R.T., which was recently purchased by the Hungarian state (via state owned company NISZ<sup>189</sup>) from the French company TDF (in May 2014). The company offers both the free-to-air DTT service Mindig TV (with 11 channels) and a pay DTT service Mindig TV Extra (with a further 50 channels).<sup>190</sup> This creates an unusual situation where the state owns a pay-TV platform.

### 20.3.1 TV channels

The public service channels came under the must-carry rules for DTT. A must-carry rule was not applied to the two commercial channels that had been available over the analogue terrestrial network. However these channels did not have to go through a tender process to get a DTT licence.<sup>191</sup>

## 20.4 Summary and conclusion

Must-carry rules apply to all platforms and apply to public service channels only.

While this report does not provide in-depth detail regarding the licensing process to DTT (as to date no further information has been provided by the regulator), it should be noted that there are foreign channels on the free DTT networks in Hungary, including four linguistic versions of Euronews and Nickelodeon.

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<sup>189</sup> Nemzeti Infokommunikációs Szolgáltató Zrt. (NISZ): <http://www.nisz.hu/>

<sup>190</sup> According to the MAVISE database: <http://mavise.obs.coe.int/company?id=6437>

<sup>191</sup> *Licensing policies and criteria in Hungary regarding to Transition to Digital Terrestrial Television Broadcasting*. Regional Seminar for Europe on Transition to Digital Terrestrial Television Broadcasting and Digital Dividend in Europe, Budapest, Hungary 29 – 31 January, 2014  
[http://www.itu.int/en/ITU-D/Regional-Presence/Europe/Documents/ITU\\_sem\\_bp\\_2014\\_session3\\_kissne\\_rev.pdf](http://www.itu.int/en/ITU-D/Regional-Presence/Europe/Documents/ITU_sem_bp_2014_session3_kissne_rev.pdf)

## 21 IE – IRELAND

In Ireland, the main legislation for the media sector is the *Broadcasting Act of 2009*.<sup>192</sup> This Act outlines the must-carry rules and provides the framework for the establishment of digital terrestrial broadcasting.

One of the principle roles of the regulator, the Broadcasting Authority of Ireland (BAI) to “prepare a strategy for the provision of broadcasting services in the State additional to those provided by RTÉ, TG4, the Houses of the Oireachtas Channel and the Irish Film Channel,” (Broadcasting Act 2009, Article 26 1 (a))

The 2012 strategy of the BAI<sup>193</sup> provides a useful description of the broadcasting landscape that the regulator should ensure: *Broadly, the Broadcasting Act 2009 envisages that three principal strands of broadcasting will shape the Irish broadcasting environment – public, commercial and community. While, in reality, from an audience perspective there may be similarities in some of the content delivered by the various broadcasters within these strands, they have nonetheless particular characteristics or features which are unique to that strand such as: the way in which they are owned and controlled; the means by which, and the persons to whom, they are accountable; the mechanisms by which they are funded; and, of course, the nature of the content provided.*

The 2009 Act includes the development of a number of different services: Services offered by designated public service providers with detailed public service requirements and governed by a public service remit (specifically RTE, T64) or clearly public bodies (specifically the Oireachtas/ Parliament); Services offered by non-PSBs but which, by virtue of their existing licences, or their new Television Programme Service Contract, are required to meet the specific public service goals set out in Section 70 (for example TV3, see more below); Services that are simply bound by a contract under Section 71 of the Act, which simply requires them to abide by the content standards set out by the BAI (for example editorial codes, protection of minors etc.).

### 21.1 Must- Carry

In the *Broadcasting Act of 2009*, under PART 6: Broadcasting Contracts and Content Provision Contracts — Commercial and Community Broadcasters, article 77 addresses the issue of Must-Carry.

#### 21.1.1 Distribution platforms and services

Must-Carry rules apply to “appropriate networks” and these are defined as: “an electronic communications network provided by a person (“appropriate network provider”) which is used for the distribution or transmission of broadcasting services to the public” (77 (1a)). An appropriate network provider must be “used by a significant number of end-users as their principal means of receiving transmissions of programme material” (77 (2)). In the case of digital cable, there is a ‘must-carry’ obligation for community television services.

The channels that are must-carry are listed under 77 (3) and 77(4):

*(3) In the case where the appropriate network is a digital system, the appropriate network provider shall ensure the re-transmission, by or through his or her appropriate network, of the Houses of the Oireachtas Channel and the Irish Film Channel.*

*(4) An appropriate network provider shall ensure the re-transmission, by or through his or her appropriate network, of each free- to-air television service provided for the time being*

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<sup>192</sup> Broadcasting act 2009: <http://www.bai.ie/wordpress/wp-content/uploads/Broadcasting-Act-2009.pdf>

<sup>193</sup> Strategy BAI: <http://www.bai.ie/wordpress/wp-content/uploads/BAI-BSS-2012-BF.pdf>

by RTE', TG4 and the free-to-air service provided under section 70 by the television service programme contractor which that body or contractor requests the appropriate network provider to so re-transmit.

In total this includes:

the Houses of the Oireachtas Channel (Parliamentary channel) and the Irish Film Channel (not yet established); the free-to-air services of public service broadcaster RTÉ; TG4.

**Table 1 Broadcasting Act of 2009**

**Broadcasting Act of 2009, under PART 6 : Broadcasting Contracts and Content Provision Contracts — Commercial and Community Broadcasters**

77 .—(1)

( a ) In this Part “appropriate network” means an electronic communications network provided by a person (“appropriate network provider”) which is used for the distribution or transmission of broadcasting services to the public.

( b ) For the purposes of this section a multiplex contractor in relation to multiplexes referred to in section 132(1) , (2) , (3) and (4) or in section 133 is not an appropriate network provider by virtue of being a multiplex contractor or associated activities.

( c ) For the purposes of this section a holder of a licence referred to in section 76(1) , the terms of which authorise the transmission by means of a MMD system of programme material, is not an appropriate network provider by virtue of being a licensee or associated activities.

( d ) For the purposes of this section a holder of a licence issued under section 59 or 121 , the terms of which authorise the transmission of programme material, is not an appropriate network provider by virtue of being a licensee under that section or associated activities.

(2) Where the Authority is of the view, after carrying out a review and after consultation with the Communications Regulator, that a type or class of network system, rather than an individual network system, is not used by a significant number of end-users as their principal means of receiving transmissions of programme material, it may propose to the Minister the full or partial removal of the obligations set out in subsections (3), (4) , (5) , (6) , (7) , (8), (9) and (10) on that type or class of network system. The Minister may make an order to that effect.

(3) In the case where the appropriate network is a digital system, the appropriate network provider shall ensure the re-transmission, by or through his or her appropriate network, of the Houses of the Oireachtas Channel and the Irish Film Channel.

(4) An appropriate network provider shall ensure the re-transmission, by or through his or her appropriate network, of each free-to-air television service provided for the time being by RTE' , TG4 and the free-to-air service provided under section 70 by the television service programme contractor which that body or contractor requests the appropriate network provider to so re-transmit.

However it also includes “*the free-to-air service provided under section 70*”. In the law reference is made under article 70 (5) to TV3.

**Table 2 Broadcasting Act of 2009**

**Broadcasting Act of 2009,**

**PART 6 : Broadcasting Contracts and Content Provision Contracts — Commercial and Community Broadcasters**

70 .—(1) The Authority, on the recommendation of the Contract Awards Committee, shall enter into a contract (“television programme service contract”) with a person or persons (“television programme service contractor”) who shall have the right and duty to establish and maintain a television programme service and who, subject to section 139 , shall have the right and duty, subject to the terms of the contract, to establish, maintain and operate television broadcasting transmitters for the purpose of transmitting the television programme service as a free-to-air service.

(2) The Authority shall ensure that a television programme service provided by a television programme service contractor under this section shall in its programming

( a ) be responsive to the interests and concerns of the whole community, be mindful of the need for understanding and peace within the whole island of Ireland, ensure that the programmes reflect the varied elements which make up the culture of the people of the whole island of Ireland, and have special regard for the elements which distinguish that culture and in particular for the Irish language,

( b ) uphold the democratic values enshrined in the Constitution, especially those relating to rightful liberty of expression,  
( c ) have regard to the need for the formation of public awareness and understanding of the values and traditions of countries other than the State, including in particular those of other Member States, and  
( d ) include a reasonable proportion of news and current affairs programmes.

(3) A television programme service contractor shall in its programming comply with the requirements set out in paragraphs (a) to (d) of subsection (2)

(4) For the purpose of ensuring compliance with subsection (2) the Authority shall ensure that a reasonable proportion of the television programme service— (a) is produced in the State or in another Member State, and (b) is devoted to original programme material produced therein by persons other than the contractor, its subsidiary, its parent or existing broadcasting organisations.

(5) The television programme service contract entered into between TV3 Television Network Limited trading as TV3 and the BCI under section 17 of the Radio and Television Act 1988 and section 6 of the Broadcasting Act 1990, if in force immediately before the passing of this Act, continues as if entered into under this section.

(6) The Authority shall ensure that any contract entered into by it under this section and any such contract renewed by it under this Act, contains a term providing that the expression “independent television programme”, where used in the contract, has the same meaning as it has in section 116.

So the full list of must-carry channels are: the Houses of the Oireachtas Channel (Parliamentary channel) and the Irish Film Channel (not yet established); the free-to-air services of public service broadcaster RTÉ; TG4; and TV3. The second channel of the TV3 company 3e, has been included in the list of those channels that should be carried on the free-to-air DTT multiplex.

Irish TV and UTV Ireland were licensed under the Section 71 Content provisions (as noted above, which simply requires them to abide by the content standards set out by the BAI). In December 2014, the Irish Minister responsible for communications designated the channel UTV Ireland as public channel and it is also now carried on the RTE multiplex.

## 21.2 Other access rules

### 21.2.1 Must-offer

Must Offer services are listed under Section 77 (11-12) as TG4, RTÉ 1, RTÉ 2, TV3/ 3e.

*(11) Without prejudice to the requirements imposed under subsection (4), RTE, TG4 and the television service programme contractor shall ensure that their must-offer services are at all times offered for re-transmission (subject to agreement as to fair, reasonable and non-discriminatory terms of use) by means of any appropriate network that is available for reception in an intelligible form by members of the public in the whole of or in part of the State.*

### 21.2.2 Must- see and Must-find

The Broadcasting Act also provides for what are commonly known as must-see or must-find rules. These relate to the Electronic Programme Guide (EPG) and the order of placement of channels in the guide (and the order of numbering of channels in the service). Sections 74, 75, 77 (14) of the Broadcasting Act set out the requirements in respect of EPGs. Section 75 requires the BAI to develop rules with respect to programme guide contracts. There are no contracts in place prior to analogue switch-off as no EPG services are regulated in the Irish state. Rules and contracts are currently under development to take account of domestic DTT provider.

## 21.3 Access to free-DTT

The public service broadcaster was required to carry certain channels on the multiplex which it operated.

Under Article 130 (1) (a) “A national television multiplex established, maintained and operated by RTE

*Under section 114(1)(i) shall provide for the broadcasting by digital means of—*

*(i) the national television broadcasting service commonly known as RTE One and RTE Two, (ii) TG4, (iii) where required by the Minister—*

*(I) The Houses of the Oireachtas Channel, and (II) The Irish Film Channel,*

*(iv) such other television services, having the character of a public service, as may be designated by the Minister by order, and*

*(v) where required by RTE or where required by the Minister, after consultation with the Authority, transmissions of data necessary to ensure the proper maintenance and functioning and updating of receiving equipment required for reception and viewing of services referred to in this paragraph and the multiplexes referred to in section 132(3) and (4)”*

In Ireland, the introduction of DTT was problematic. The first DTT licence for the three national commercial multiplexes was awarded to Boxer DTT Limited in 2008. In 2009 Boxer decided to withdraw its application due to the economic crisis and they also reporting the difficulties in negotiating with RTÉ Networks Limited. The regulator (formerly the Broadcasting Commission of Ireland) then awarded the license for the three national DTT multiplexes to the One Vision consortium (Eircom, TV3 and Setanta Sports). Later on One vision reported problems with negotiations with RTE. They had stated the need for a 20m EUR guarantee to secure the DTT operation, namely the investment into the DTT network, for the period of the licence. The third company offered the commercial DTT license was Easy TV, a joint venture between RTE and Liberty Global. The license was not issued as Easy TV decided to turn down the offer due to the financial difficulties in the Irish DTT market. The major obstacle in the DTT market is the access and the cost of the infrastructure.<sup>194</sup>

According to the response to the questionnaire from the Irish regulator: “While there are no legal impediments to carriage on DTT, the cost of carriage is seen as a significant factor for broadcasters in deciding whether to broadcast on DTT, particularly in view of the financial return that can be expected. Given the significant market penetration of satellite and cable services in the Irish TV market, viewing on the DTT platform is low by general European standards.”

In 2011, the Broadcasting Authority of Ireland expressed concern regarding the cost structure of the carriage on the free DTT platform operated by RTÉ/RTÉNL. In its Report and Recommendations, it was outlined that “the cost structure of RTE was based on the first DTT multiplex already being full, meaning that the cost associated with each multiplex would be borne by the content providers on each multiplex. It means that if only one television channel was on the second multiplex, the entire operating costs of the second multiplex (€3.5m to €5m per annum) would be borne by the single content provider.

Were the content provider to be included on the first multiplex the equivalent cost would be €500, 000 per year for a standard definition channel. By making the calculation on a cross-platform basis transmission provider RTÉNL is guaranteed a fixed income. The total DTT platform cost of between €8 and €11m annually would be divided between the content providers on the platform and not on a per multiplex basis. This means a content provider would have a variable and unpredictable annual transmission cost for a standard definition

<sup>194</sup> EPRA (2011): Working Group II: Digital TV: Regulation and the economic viability of DTT platforms 34th EPRA Meeting, Brussels (La Hulpe), 5-7 October 2011. Summary of the discussion by group coordinator Miha Kriselj (SI).

channel of between circa €600K and €1m per annum depending on the total number of content providers on the platform. The annual DTT transmission costs for an HD channel are variable and could range from circa €1.2m to €2.4m per annum.<sup>195</sup>

## 21.4 Platform operator and channels

Currently the public service company RTÉNL manages two multiplexes. The channels available are public services RTE1, RTE2, RTE 1 HD, RTE 2 HD, RTE 1+1, RTE News Now (with a Euronews window), RTE jnr, Ireland, RTE Aertel Digital, TG4, and the private channels TV3, 3e, UTV Ireland.

## 21.5 Conclusion and summary

Must-carry rules exist for all platforms where they are “used by a significant number of end-users as their principal means of receiving transmissions of programme material. The full list of must-carry channels are:

the Houses of the Oireachtas Channel (Parliamentary channel) and the Irish Film Channel (not yet established); the free-to-air services of public service broadcaster RTÉ; TG4; and TV3, 3e and UTV Ireland.

Due in part to the economic crisis in Ireland the DTT system was never fully developed with only 2 multiplexes established and the commercial multiplex plans abandoned. This has implications for the capacity of the multiplex and also the costs of transmission. In principle there are no obstacles to the presence of non-domestic channels on the free DTT platform aside from the issues of cost.

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<sup>195</sup> BAI says RTE carriage model not sustainable: <http://www.broadbandtvnews.com/2011/08/19/bai-says-rte-carriage-model-not-sustainable/>

## 22 IS – ICELAND

In Iceland, the legal framework for must-carry rules is the *Media Law No. 38/2011*<sup>196</sup>. The Act stipulates that must-carry and must-offer provisions are introduced to regulate the relationship between media service providers and network operators.<sup>197</sup> The Post and Telecom Administration supervises compliance with these rules.

### 22.1 Must-carry rules

Section VII of the Icelandic Media Law No. 38/2011 stipulates the rules on the transmission of audiovisual media content. In particular, it specifies must-carry obligations (Article 44), must-offer obligations (Article 45), the procedure and application of these rules (Article 46) and the rules for payment for transmissions (Article 47).

**Table 1 Media Law No. 38/2011 – must-carry rules**

**Media Law No. 38/2011**

**SECTION VII**

**Rules on the transmission of audiovisual media content.**

**Article 44 Must-carry obligation.**

An electronic communications undertaking operating an ordinary digital telecommunications network which is used to transmit television broadcasts shall be obliged to comply with normal and reasonable requests by media service providers to transmit television broadcasts, providing that the following conditions are met:

the content which it is sought to have transmitted is a television broadcast by a media service provider which is established in Iceland under this Act; this shall not apply to television broadcasts that are exclusively devoted to teleshopping.

the television broadcast is transmitted in real time and is of traditional digital quality, and a considerable proportion of the consumers in the country, or in a specific region, use the electronic communications network in question to receive television broadcasts.

Even though the conditions of the first paragraph of this Article are met, the electronic communications undertaking shall only be obliged to carry television broadcasts under this provision up to one third of the transmission capacity of the electronic communications network in question. If requests for transmission are in excess of the capacity of the electronic communications network, the undertaking shall transmit those television broadcasts that have the highest viewing figures. At all times, however, television broadcasts by the National Broadcasting Service (RÚV) shall be transmitted if this is requested. The media service provider shall arrange for the broadcasting signal to be delivered to the electronic communications undertaking's contact point in the appropriate format.

(Unofficial translation provided by the Icelandic Media Commission)

#### 22.1.2 Purpose of rules

The purpose of the must-carry rules is to guarantee the transmission of Icelandic channels on all platforms, except those classified as teleshopping channels.

#### 22.1.3 Platforms and services

<sup>196</sup> Fjölmiðlanefnd. 2011. Media Law No. 38 of 20 April 2011. Available from: <http://fjolmidlanefnd.is/wp-content/uploads/2011/12/Media-Act-38-English-translation-nov-2011.pdf>

<sup>197</sup> Þórhallsson, Páll (2011): New Media Law in Iceland. IRIS Merlin. 2011. Available from: <http://merlin.obs.coe.int/iris/2011/6/article22.en.html>

The must-carry rules apply to channels under Icelandic jurisdiction with the exception of teleshopping channels. The rules apply to all platforms.

#### 22.1.4 Costs

With regard to costs for transmissions, the Media Law No. 38/2011 mentions that based on an agreement of the parties involved the Post and Telecom Administration may determine whether the media service provider will receive payment for the transmission and the amount of these payments. The main factors for the calculation of fees are the bandwidth occupied and the number of users.

## 22.2 Other access rules

### 22.2.1 Must offer

Article 45 in Section VII of the Media Law No. 38/2011 specifies the must-offer rules. These rules stress that those channels which must offer their content to distribution platforms must be established in Iceland or are foreign channels for which an Icelandic audiovisual media service provider has concluded an exclusive contract. In addition, broadcasts of particular events such as sporting and artistic events are subject to must-offer regulation.

#### Table 2 Media Law No. 38/2011 – must-offer rules

##### Article 45 Must-offer obligation

Media service providers shall be obliged to comply with normal and reasonable requests that an electronic communications undertaking be permitted to carry television broadcasts on its digital electronic communications network, providing that the following conditions are met:

That the transmission of television broadcasts to consumers via the electronic communications network in question is effected with satisfactory quality, and also with sufficient security, as to defend the legally-protected interests of the holders of copyright in the content transmitted. In the case of a paid-access television transmission, it shall be possible to apply access control. The Post and Telecom Administration shall set rules on minimum requirements regarding quality and security of transmissions.

That the content which permission is being sought to carry on an electronic communications network consists of an Icelandic television broadcast by an audiovisual media service provider which is established in Iceland under this Act, or a foreign television broadcast for which an Icelandic audiovisual media service provider has concluded an exclusive contract, or a broadcast of coverage of particular events which does not constitute an entire programme as provided for above, e.g. sporting or artistic events.

That provision in contracts with copyright holders in the content which were made prior to the commencement of this Act do not prevent the carrying of the content on the electronic communications network.

The provisions of the first paragraph of this Article shall also apply to deferred television transmissions, transmissions according to high-definition standards or other standards which require considerably greater bandwidth.

If the media service provider holds a local licence, then the offer obligation under this Article shall not extend beyond the region covered by the local licence.

When purchasing television content, media service providers shall be obliged to negotiate with copyright holders so as to ensure that the television content may be transmitted on all digital electronic communications networks that meet the conditions of item a of the first paragraph of this Article.

Audiovisual media service providers may not direct their customers' business to an affiliated electronic communications network.

(Unofficial translation provided by the Icelandic Media Commission)

### 22.2.2 Must-see and Must-find

Article 46 of section VII of the Media Law No. 38/2011 stresses that “television broadcasts

in Icelandic have priority, being ranked in front of foreign retransmission channels in the order on the remote control”.

### 22.3 Access to free DTT

There are no obstacles for foreign broadcasters regarding access to free-DTT multiplexes. All Icelandic channels within the jurisdiction require a license. However, that is not the case for foreign channels from abroad.

According to Article 29 of the Media Law No. 38/2011, there are linguistic requirements for channels. The law stresses that the Icelandic language shall be promoted by media service providers and that foreign language content shall be at all times be accompanied by Icelandic voice-over or subtitles.

In Iceland, the national DTT network is operated by Fjarskipti ehf. (Vodafone Iceland). Vodafone Iceland broadcasts ten free-to-air channels (Alþingi, CCTV News, INN (Iceland), iSTV, N4 (Iceland), Omega Channel (Iceland), RÚV Íþróttir, Sjónvarpið (RUV), Sjónvarpið+ (RUV+), Sjónvarpið (RUV) HD), as well as pay-TV channels.

### 22.4 Summary and conclusion

In Iceland, the legal framework for must-carry rules is the Media Law No. 38/2011 (section VII). The purpose of the must-carry rules is to guarantee the transmission of Icelandic channels on all platforms, except those classified as teleshopping channels.

There are no obstacles for foreign broadcasters regarding access to free-DTT multiplexes. All Icelandic channels within the jurisdiction require a license. However, that is not the case for foreign channels from abroad.

In Iceland, the national DTT network is operated by Fjarskipti ehf. (Vodafone Iceland). It broadcasts ten free-to-air channels, as well as pay-TV channels.

## 23 IT – ITALY<sup>198</sup>

In Italy, the main legal framework relevant to must-carry regulation and digital terrestrial broadcasting includes *the Decree Law no. 34 of 31 March 2011, as converted by Law no. 75 of 26 May 2011*<sup>199</sup> as well as the *AGCOM Resolution 353/11/CONS*<sup>200</sup> and the *Decree Law no. 145 of 23 December 2013, as converted by Law no. 9 of 21 February 2014, as modified by Art. 1, comma 147, of Law no. 190 of 23 December 2014*<sup>201</sup>.

The regulatory authority is AGCOM (Autorità per le garanzie nelle comunicazioni) who supervises compliance with the regulation.

### 23.1 Must-carry rules

The must-carry rules concern the following sections of the regulation mentioned above: Art. 4 of the Decree-Law no. 34 of 31 March 2011, as converted by Law no. 75 of 26 May 2011, Art. 6, paras 8, 9 and 9-bis, of the Decree-Law no. 145 of 23 December 2013, and Art. 27 of the AGCOM Resolution 353/11/CONS. These rules are only applicable at local level in terms of quantity and economic conditions.

Art. 4 of the Decree-Law no. 34 of 31 March 2011, as converted by Law no. 75 of 26 May 2011 stresses that the Ministry of Economic Development (Ministero dello sviluppo economico) allocates the rights of use for terrestrial broadcasting. In particular, it establishes with regard to television frequencies at local level a ranking of the subjects entitled by law to operate at local level on the basis of a set of general criteria (e.g. coverage of the population, etc.).

Further, the Decree mentions that AGCOM establishes the criteria and economic conditions under which the right holder is required to transfer a quota of the transmission capacity assigned to them to at least two programmes legitimately operating in the local area as of 1 January 2011.

**Table 1 Decree-Law no. 34 of 31 March 2011, as converted by Law no. 75 of 26 May 2011**

**Decree-Law no. 34 of 31 March 2011, as converted by Law no. 75 of 26 May 2011  
Art. 4**

The deadline to establish, according to the criteria referred to by art. 8-novies, para 5, of decree law 8 April 2008, no. 59, converted with amendments by law of 6 June 2008, no. 101, the calendar for the final switchover to digital terrestrial broadcasting is extended to 20 September 2011.

The Ministry of Economic Development assigns the rights of use for television broadcasting according to the criteria established by paras 8-12 of art. 1 of law of 13 December 2010, no. 220, as well as establishes with regard to television frequencies at local level, for each technical area or region, a ranking of the subjects legitimately operating at local level on the basis of the following

<sup>198</sup> This chapter was written with the help of Maja Capello, Head of the Legal Department at the European Audiovisual Observatory.

<sup>199</sup> Coordinated text of the decree-law of 31 March 2011, no. 34 (Gazzetta Ufficiale of 31 March 2011, no. 74) as converted by Law of 26 May 2011, no. 75 (Gazzetta Ufficiale 27 May 2011, no. 75). Available from: <http://www.altalex.com/index.php?idnot=13790>

<sup>200</sup> AGCOM resolution no. 353/11/CONS of 23 June 2011, “Nuovo regolamento relativo alla radiodiffusione televisiva terrestre in tecnica digitale” Available from: <http://www.agcom.it/documents/10179/539615/Delibera+353-11-CONS/b4baf7ff-be58-4e3d-abad-57169e9074d0?version=1.0>

<sup>201</sup> Coordinated text of the decree-law of 23 December 2013, no. 145 (Gazzetta Ufficiale of 23 December 2013, no. 300) as converted by Law of 21 February 2014, no. 9 (Gazzetta Ufficiale 21 February 2014, no. 43) Available from: <http://www.altalex.com/index.php?idnot=65680>

criteria: a) net budget balance; b) number of employees with contract of indefinite duration; c) coverage of the population; d) chronological order of service provision in the covered area. In the areas where switchover to digital transmission has not been completed by 1 January 2011, the Ministry of Economic Development does not assign the rights of use to local network providers with regard to the frequencies referred to by the first sentence of para 8 of art. 1 of law of 13 December 2010, no. 220.

In the areas where at the same date of 1 January 2011 digital switchover has been achieved, the Ministry of Economic Development makes available the frequencies mentioned by the first sentence of para 8, and assigns to the right holder of the frequencies in band 790-862 Mhz, provided that they are in a useful position in the ranking, the rights of use of the frequencies of bands 174-230 Mhz and 470-790 Mhz.

AGCOM establishes the criteria and the economic conditions according to which the right holder are obliged to transfer a quota of the transmission capacity they have been assigned, which must in any case not be less than two programmes, in favour of local broadcasters legitimately operating at the date of 1 January 2011 who have not been assigned rights of use according to the mentioned rankings.

(Unofficial translation by the European Audiovisual Observatory)

Art. 6, paras 8, 9 and 9-bis, of the Decree-Law no. 145 of 23 December 2013 concerns measures regarding the frequencies for digital terrestrial television services, including the modalities of the freeing of frequencies (paras 8, 9). With regard to right holders on local level, the Article mentions that AGCOM defines the means and economic conditions according to which they are obliged to transfer a quota of their assigned transmission capacity to at least one programme legitimately operating in the local area as of 23 December 2013.

## Table 2 Decree-Law no. 145 of 23 December 2013

### Decree-Law no. 145 of 23 December 2013

8. Within 15 days from the entry into force of the present decree, AGCOM launches the procedures to exclude from the planning of the frequencies for digital terrestrial television broadcasting the frequencies recognised at international level and used by bordering countries, the frequencies planned and assigned to television network operators in Italy and subject to interferences at the date of entry into force of the present decree, as well as the frequencies mentioned by the EU Pilot which are existing at the same date. The freeing of the frequencies mentioned in the first sentence must take place not after 31 December 2014. After this deadline, in case the frequencies have not been freed, the competent administration deactivates without further notice the plants with the help of postal and communications police according to art. 98 of the electronic communications code adopted by legislative decree of 1 August 2003, no. 259.

9. A decree of the Minister of Economic Development, to be adopted within 30 days from the entry into force of the present decree in agreement with the Minister of Economy and Finance, establishes the criteria and the means to provide, by 31 December 2014, audiovisual media providers with economical compensative measures - to be deducted from the quota that has not been spent on contributions for digital television set-top-boxes within the maximum limit of 20 million Euros, transferred beforehand to Poste Italiane according to the decree of the Minister of Communications of 30 December 2003, published in the Official Journal of 23 January 2004, no. 18 -, finalised to the voluntary freeing of spectrum portions that are functional to the freeing of the frequencies under para 8. After 31 December 2014, the resources mentioned by the first sentence that remain unused after the distribution of the compensatory economic measures mentioned in the same sentence, may be employed, for the same purpose, for the payment of indemnities possibly due to subjects that are no longer in a useful position in the rankings established by art 4 of the decree-law of 31 March 2011, no. 34, converted with amendments by law of 26 May 2011, no. 75 and further amendments, following the planning made by AGCOM pursuant to para 8 of this article.

9-bis. AGCOM establishes the means and the economic conditions according to which the right holder at local level is obliged to transfer a quota of the transmission capacity they have been assigned, in any case not less than one programme, in favour of subjects legitimately operating at local level at the date of entry into force of the present decree, who voluntarily free the employed frequencies under para 8 or the frequencies to which the rights of use have been revoked according to the new planning of AGCOM and to the non-useful position in the rankings foreseen by art. 4 of decree-law of 31 March 2011, no. 34, converted with amendments by law of 26 May 2011, no. 75 and further amendments.

The AGCOM Resolution no. 353/11/CONS concerns the regulation of television broadcasting in digital terrestrial technology. Art. 27 of the Resolution mentions the criteria and economic conditions according to which right holders of local frequencies must transfer a set quota of their transmission capacity to non-right holders (e.g. minimum transmission capacity for two programmes, publication of price list, demand, duration of quota contracts, etc.).

### Table 3 AGCOM Resolution no. 353/11/CONS

#### AGCOM Resolution no. 353/11/CONS Art. 27

1. The right holder of frequencies according to the rankings foreseen by art. 4, para 1, of decree-law no. 34/2011, converted with amendments by law no. 75/2011, is obliged to transfer a quota of their transmission capacity to subjects legitimately operating at local level at the date of 1 January 2011 and not holding rights of use on the basis of the mentioned rankings, according to the criteria and economic conditions foreseen by the following paragraphs.
2. The transmission capacity subject to transfer pursuant to para 1 must not be less than what is necessary for the transportation of two programmes and, in any case, not less than 6 M/bits.
3. Within 30 days from the publication, in each region, of the rankings mentioned in para 1 the right holder must inform AGCOM about the price lists for transfers of transmission capacity according to the present article, which tariffs cannot be below 0,010 Euros and not above 0,016 Euros per 1 M/bits per inhabitant, without prejudice for conditions of favour for community audiovisual media service providers. These price lists are made public by AGCOM on its website within five days from their reception. The tariffs according to the present para are subject to annual update according to statistical indexes.
4. Within 15 days from the publication of the price lists under para 4 the subjects legitimately operating at local level at the date of 1 January 2011, who are not recipients of rights of use of frequencies according to the rankings mentioned by para 1 and who would like to benefit from the transmission capacity foreseen by para 2 for the provision of audiovisual media services, must inform AGCOM about their interest and indicate the network operator, the required transmission capacity and the territorial area of interest.
5. AGCOM associates the transmission capacity of network operators to audiovisual media services providers who require it pursuant to the preceding paras within the following 15 days and, in any case, before the switch-off of the concerned technical area or region. In case of requests that are not compatible with each other, AGCOM, after having heard the interested parties, satisfies the requests according to the order of the rankings foreseen by para 1, also considering, with the aim of satisfying the maximum number of requests, the quantity of transmission capacity required by each of the applicant and of the territorial areas of major interest of the applicant.
6. The contracts of transfer of transmission capacity concluded pursuant to the present article: a) must have a duration equal to the duration of the authorisation title for the provision of audiovisual media services of the applicant. The expiry for any reason of that title determines the resolution of the contract, without prejudice to the effects already produced but without any right for damages; b) must foresee the possibility of automatic renewal at the expiry of the title in case of renewal and right of pre-emption in case of the conclusion of new contracts at similar conditions after the end of the contract; c) must foresee the possibility for the network operator to declare the resolution of the contract in case the fees for their rental have not been paid within 15 days after the reception by registered letter of the payment injunction.
7. After 4 months following the switch-off of the concerned technical area or region the transmission capacity not allocated pursuant to the present article may be used directly by the network operator or transferred to third parties.
8. In case of disputes on the application of the present article, AGCOM, pursuant to art. 1, para 11, of the law of 31 July 1997, no. 249, decides according to the procedures established by resolution no. 352/08/CONS.

(Unofficial translation by the European Audiovisual Observatory)

## 23.1.2 Purpose of rules

The overall purpose of the must-carry rules is to ensure the efficient use of frequencies.

The two sets of relevant rules, however, have different public goals.

The rules from 2011 aim at a more efficient use of frequencies in the areas where switch off has been realised before the closing date. The rules ensure that those local broadcasters, who may not have the necessary means to act as network providers and satisfy certain criteria of solidity and general interest, are also present on the operating multiplexes.

The rules from 2013 concern the complex management of frequencies in border regions (e.g. see Pilot procedure) and the problem of interferences and uses compensatory economic measures as an incentive to the freeing of the concerned frequency bands.

### 23.1.3 Distribution platforms and services

The law applies must-carry rules to digital terrestrial multiplex platforms.

Digital terrestrial multiplex platforms are obliged to transport local channels as stipulated by Art. 27 of the AGCOM Resolution no. 353/11/CONS.

### 23.1.4 Costs

With regard to the costs for transfers of transmission capacity the regulation specifies the range of costs (minimum of 0,010 Euros and maximum of 0,016 Euros per 1 M/bits per inhabitant) and stipulates that the price lists are to be made public on the website of AGCOM (Art. 27 AGCOM Resolution no. 353/11/CONS).

## 23.2 Other access rules

### 23.2.1 Must offer

The public service broadcaster RAI (Radiotelevisione italiana S.p.A.) has obligations towards all Italian citizens to provide its services free-to-air to all distribution platforms (*Legislative Decree no. 177 of 31 July 2005; consolidated text of radio and television, so-called Testo Unico*)<sup>202</sup>.

Art. 22, para 4, of the *PSB service contract*<sup>203</sup> adopted according to art. 47 of the Italian AVMS Code ("*Testo Unico dei servizi media e radiofonici*") foresees that RAI has to make available all its public service programming for any commercial platform who makes a request thereto within fair, transparent and non-discriminatory negotiations and on the basis of conditions to be verified by the competent authorities.

### 23.2.2 Must-see and Must-find

There is regulation concerning the placement of DTT channels (*AGCOM Resolutions no. 366/10/CONS*<sup>204</sup> and *237/13/CONS*<sup>205</sup> on channel numbering for DTT) which is subject to

<sup>202</sup> Legislative decree of 31 July 2005, no. 177 ((*Testo unico dei servizi di media audiovisivi e radiofonici*)). Available from: <http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2005-07-31;177!vig=>

<sup>203</sup> The current contract of service between RAI and the Ministry of economic development is still the one covering the three years 2010-2012, available at <http://www.sviluppoeconomico.gov.it/images/stories/documenti/Contratto-servizio-Rai-2010-2012.pdf>. The contract for the years 2013-2015 has still to be formally signed.

<sup>204</sup> Agcom resolution no. 366/10/CONS of 8-15 July 2010, "Piano di numerazione automatica dei canali della televisione Digitale terrestre, in chiaro e a pagamento, modalità di Attribuzione dei numeri ai fornitori di servizi di media audiovisivi Autorizzati alla diffusione di contenuti audiovisivi in tecnica digitale terrestre e relative condizioni di utilizzo". Available from: <http://www.agcom.it/documents/10179/539397/Allegato+15-07-2010+13/e4f34a86-0c4f-4737-a506-64d1618b5f34?version=1.0>

some pending legal arguments. Art. 3(1) of the AGCOM Resolution no. 366/10/CONS specifies that the numbering plan must be in compliance with the habits and preferences of users, giving particular reference to the national generalist channels and local broadcasters.

### 23.3 Access to free DTT

The Ministry of Economic Development (Ministero dello sviluppo economico) is the competent authority for awarding authorisations with regard to digital terrestrial broadcasting according to the rules defined by AGCOM. Authorisations are required both for audiovisual media providers and network operators.

An authorisation is granted to every applicant fulfilling certain minimum requirements concerning professional and economic standards defined by AGCOM resolution no 353/11/CONS already mentioned. However, an authorisation does not secure access to the digital terrestrial transmission network and the AVMS provider must negotiate with the multiplex operator to be distributed. This is due to the fact, that the capacity of DTT is managed by the multiplex/network operator who decides on how the capacity is used and what channels are to be transmitted on the platform.

There are no general obstacles for foreign broadcasters to get access to free DTT multiplexes. The required authorisation can be obtained by AVMS providers that are established in the European Economic Area (EEA) or outside the EEA but with a mutual recognition agreement with Italy. There is also no requirement for channels to be licensed in the country. Foreign broadcasters should have a licence from an EU member state or from a party of the European Convention on Transfrontier Television.

There are specific production requirements for the channels. These are related to the promotion of European works (50% of programming), independent works (10% investment quota) and cinematographic works of Italian original expression (1% of programming time for generalist channels and 3% of transmission time for thematic channels). Quotas are defined by Art. 44 of the Italian AVMS Code and implemented in detail by AGCOM regulation 66/09/CONS<sup>206</sup> and the interministerial decree of 22 February 2013<sup>207</sup>.

#### 23.3.1 Platform operator

In Italy there are two broadcasting tower networks with national coverage (EI Towers owned by Mediaset and state-controlled Rai Way) and six MUX operators that manage a total of 19 multiplexes<sup>208</sup>: Rai Way, Elettronica Industriale (Mediaset), Persidera<sup>209</sup> (formerly Telecom Italia Media Broadcasting – TIMB which merged with Rete A in May 2014),

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<sup>205</sup> Agcom resolution no. 237/13/CONS of 21 March 2013, “Nuovo piano di numerazione automatica dei canali della televisione digitale terrestre, in chiaro e a pagamento, modalità di attribuzione dei numeri ai fornitori di servizi di media audiovisivi autorizzati alla diffusione di contenuti audiovisivi in tecnica digitale terrestre e relative condizioni di utilizzo”. Available from:

<http://www.agcom.it/documents/10179/0/Documento/87f9649f-544a-461d-8c49-5973387b9e84>

<sup>206</sup> AGCOM resolution 66/09/CONS, “Regolamento approvato con la delibera n. 66/09/CONS - testo coordinato con le modifiche apportate dalla delibera n. 397/10/CONS”. Accessed 30 March 2015]. Available from: <http://www.agcom.it/documents/10179/539397/Allegato+13-02-2009+2/ac8fe5a2-940d-485f-9c8a-0212e67eb2fc?version=1.0>

<sup>207</sup> Interministerial decree of Ministry of cultural affairs and of economic development, of 22 February 2013, available from [http://www.sviluppoeconomico.gov.it/images/stories/documenti/Definizione\\_opere\\_cinematografiche.pdf](http://www.sviluppoeconomico.gov.it/images/stories/documenti/Definizione_opere_cinematografiche.pdf)

<sup>208</sup> The reason for the significantly greater number of MUXs is that many of them are single-frequency networks.

<sup>209</sup> TI Media and GRUPPO ESPRESSO hold respectively 70% and 30% of the shares of Persidera which controls the whole capital of Rete A.

Prima TV, Tivùitalia, and Cairo Communication.

Launched in 2008, the free DTT platform Tivù is a joint venture by the three main Italian free-to-air television operators RAI, Mediaset, and Telecom Italia to retransmit programmes by its parent companies and third parties.

Further, there are two national pay DTT packagers Centro Europa 7 and RTI's "Mediaset Premium" and several regional pay DTT packagers (e.g. Profit Group, Conto TV, Pangea etc).

One-third of available television multiplexes are reserved for local television broadcasters to promote pluralism and diversity.

### 23.3.2 TV channels

The public service broadcaster RAI has obligations towards all Italian citizens to provide its services free-to-air to all distribution platforms. This includes 15 channels that are available on the free DTT platform Tivù: RAI Uno, RAI Due, Rai Tre, RAI 4, RAI 5, Rai Movie, Rai Premium, RAI Gulp, Rai Yoyo, RAI News24, RAI Storia, RAI Sport 1, RAI Sport 2, RAI Scuola, RAI HD.

The total number of services transmitted on the free DTT platform Tivù includes 41 television channels.

## 23.4 Conclusion and summary

In Italy, the main legal framework relevant to must-carry regulation and digital terrestrial broadcasting includes the Decree Law no. 34 of 31 March 2011, as converted by Law no. 75 of 26 May 2011 as well as the AGCOM Resolution 353/11/CONS and the Decree Law no. 145 of 23 December 2013, as converted by Law no. 9 of 21 February 2014, as modified by Art. 1, comma 147, of Law no. 190 of 23 December 2014.

The overall purpose of the must-carry rules is to ensure the efficient use of frequencies. The rules apply to digital terrestrial multiplex platforms that are obliged to transport local channels as stipulated by Art. 27 of the AGCOM Resolution 353/11/CONS. One-third of available television multiplexes are reserved for local television broadcasters.

The Ministry of Economic Development (Ministero dello sviluppo economico) is the competent authority for awarding authorisations with regard to digital terrestrial broadcasting according to the rules defined by AGCOM. Authorisations are required both for audiovisual media providers and network operators. The public service broadcaster RAI (Radiotelevisione italiana S.p.A.) has obligations towards all Italian citizens to provide its services free-to-air to all distribution platforms.

There are no general obstacles for foreign broadcasters to get access to free DTT multiplexes and there is no requirement for channels to be licensed in the country. There are specific production requirements for the channels related to the promotion of European and independent works and cinematographic works of Italian original expression.

## 24 LT – LITHUANIA

The legal framework for must-carry rules in Lithuania is the *Law on Provision of Information to the Public of 2 July 1996 (amended 6 November 2012)*.<sup>210</sup> The revised rules of the law on the licensing of broadcasting and re-broadcasting activities, which also specify the must-carry rules, came into force on 13 April 2011. According to the rules, the regulatory authority RTCL (Radio and Television Commission of Lithuania) can grant a must-carry programme status, or exempt the obligatory television programme from re-broadcasting.<sup>211</sup> Previously, the law obliged network operators to transmit one terrestrial public TV programme and all Lithuanian national free-DTT channels.<sup>212</sup>

### 24.1 Must-carry rules

The must-carry rules are specified in *Art. 33 of the Law on Provision of Information to the Public*. The rules specify which services are subject to must-carry obligations, the competences of the regulatory authority with regard to granting must-carry status and exempting services from it, payment rules and the terms of re-broadcasting.

**Table 1 Law on Provision of Information to the Public of 2 July 1996 (amended 6 November 2012)**

Law on Provision of Information to the Public of 2 July 1996 (amended 6 November 2012)

#### Article 33. Re-broadcasting of Radio and Television Programmes

1. Re-broadcasters of television programmes under the jurisdiction of the Republic of Lithuania must re-broadcast all the unencoded national television programmes of the LRT.
2. The Commission may take a decision to exempt from the obligation to re-broadcast the unencoded national television programmes of the LRT specified in paragraph 1 of this Article where such a decision does not limit the possibilities of the user to view these programmes by the available technical means.
3. Re-broadcasters and the LRT shall not pay each other for must-carry television programmes.
4. It shall be prohibited to alter the re-broadcast radio and/or television programmes or parts of the programmes or insert therein any other information. The use of special technical measures with a view to ensuring the protection of minors against the detrimental effect of public information on their physical, mental or moral development, adapting for the disabled or ensuring the exclusive rights of other broadcasters of radio and/or television programmes to television programmes or parts thereof shall not be considered an alteration of the re-broadcast television programme.
5. In re-broadcasting licences, the Commission shall determine the specific re-broadcast television programmes, languages in which television programmes are re-broadcast and/or shown with subtitles and other re-broadcasting conditions.
6. Upon establishing the cultural or public value of a special television programme broadcast, the Commission may, at the request of the broadcaster, grant it the must-carry programme status and provide that re-broadcasters of programmes must re-broadcast it free of charge. Only special cultural, educational, scientific, news, sports or regional television programmes shall be recognised as must-carry television programmes. When taking such a decision, the Commission shall define the

<sup>210</sup> Lietuvos Respublikos Seime. 1996. Law on Provision of Information to the Public. [Available from: [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=458157&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=458157&p_tr2=2)

<sup>211</sup> Iešmantaitė, Jurgita (2011): *Rules on the Licensing of Broadcasting and Re-broadcasting Activities Adopted*. IRIS Merlin. 2011. Available from: <http://merlin.obs.coe.int/iris/2011/6/article23.en.html>

<sup>212</sup> Iešmantaitė, Jurgita (2009): *Must-Carry Rules Revised*. IRIS Merlin. 2009. Available from: <http://merlin.obs.coe.int/iris/2009/9/article21.en.html>

### 24.1.2 Purpose of rules

The purpose of the must-carry rules is to ensure the re-broadcasting of all unencoded national terrestrial television programmes of the Lithuanian public service broadcaster LRT on all platforms regardless the technology.

### 24.1.3 Platforms and services

The rules apply to all platforms regardless the technology.

The must-carry rules apply to all unencoded national terrestrial television programmes of the Lithuanian public service broadcaster LRT (e.g. LRT televizija and LRT kultūra).

### 24.1.4 Costs

With regard to costs, Art. 33(3) of the Law on Provision of Information to the Public mentions that “re-broadcasters and the LRT shall not pay each other for must-carry television programmes”.

## 24.2 Other access regulations

There are no must-offer, must-see or must-find regulations in Lithuania.

## 24.3 Access to free DTT

There are no specific obstacles for a foreign broadcaster regarding access to free-DTT multiplexes, except that the broadcaster must be established in Lithuania as a legal person. Licenses for content providers are awarded on a tender basis.

According to Art. 34 of the Law on Provision of Information to the Public, television programmes must be broadcast in the Lithuanian language, translated into Lithuanian or broadcast with Lithuanian subtitles.

### 24.3.1 Platform operator and TV channels

The national DTT network in Lithuania is operated by Lithuanian Radio and Television Centre-LRTC (Lietuvos radijo ir televizijos centras) and Teo LT. LRTC is a state-owned stock company under the supervision of the Ministry of Transport and Communications. Teo LT is a stock company with more than 88 per cent of Teo shares owned by telecommunications company TeliaSonera AB. It offers the pay DTT channels on its platform, Digital Gala. In addition, Balticum TV offers a regional DTT service (in Vilnius, Klaipėda and Plungė). The free-DTT services available in Lithuania include the following national channels: BTV (Baltijos TV), Info TV (Lithuania), Lietuvos Rytas TV, LIUKSI, LNK, LRT, LRT Kultūra, TV1 (Lithuania), TV3 (Lithuania), TV6 (Lithuania), TV8 (Lithuania) and the Polish international linguistic and cultural channel TVP Polonia.

## 24.4 Summary and conclusion

The legal framework for must-carry rules in Lithuania is the *Law on Provision of Information to the Public of 2 July 1996* (amended 6 November 2012). The purpose of the rules, which are specified in Art. 33 of the law, is to ensure the re-broadcasting of all unen-

coded national terrestrial television programmes of the Lithuanian public service broadcaster LRT (e.g. LRT televizija and LRT kultūra) on all platforms regardless the technology.

There are no specific obstacles for a foreign broadcaster regarding access to free-DTT multiplexes, except that the broadcaster must be established in Lithuania as a legal person. Television programmes must be broadcast in the Lithuanian language, translated into Lithuanian or broadcast with Lithuanian subtitles.

The national DTT network in Lithuania is operated by the state-owned Lithuanian Radio and Television Centre-LRTC (Lietuvos radijo ir televizijos centras) and Teo LT (TeliaSonera). There are 12 national and channels available on free-DTT in Lithuania.

## 25 LU – LUXEMBOURG

The general framework for the regulation of audiovisual media services in Luxembourg is the *Loi du 27 Juillet 1991 sur les médias électroniques*<sup>213</sup> (Law of 27 July 1991 on Electronic Media), last amended in 2013.

The Autorité Luxembourgeoise Indépendante de l'Audiovisuel (Independent Audiovisual Authority of Luxembourg – ALIA) was established by the *Loi du 27 août 2013 portant création de l'établissement public "Autorité luxembourgeoise indépendante de l'audiovisuel"*<sup>214</sup> (Law of 27 August 2013 on the creation of the Independent Audiovisual Authority of Luxembourg). The authority supervises and monitors the compliance by broadcasters with the Luxembourgish regulatory framework and the cahier des charges (terms of references) which accompanies each broadcasting concession.

Luxembourg does not have a public service broadcaster. Instead, commercial operator CLT-UFA (RTL Group/Bertelsmann AG) has committed to provide television and radio public services in Luxembourg (e.g. RTL-Télé Lëtzebuerg and the radio RTL Radio Lëtzebuerg) through an agreement (Règles de base concernant le service public) which lays down the basic rules on public service.<sup>215</sup>

### 25.1 Must-carry rules

There are no must-carry obligations that apply to distribution platforms in Luxembourg. In addition, no other access rules (must-offer, must-see, or must-find) were identified.

### 25.2 Access to free DTT

The government is responsible for granting concessions and permits to broadcast services under Luxembourgish jurisdiction after a proposal by the Minister responsible for the Media and consultation of the Independent Audiovisual Authority of Luxembourg – ALIA. The Electronic Media Law does not distinguish between the commercial or public nature of the services using Luxembourgish broadcasting frequencies. It does, however, distinguish between broadcasting services aimed at an audience residing in Luxembourg from other services targeting foreign countries.

#### 25.2.1 Platform operator and TV channels

CLT-UFA SA, a subsidiary of RTL Group, owns the technical service provider BCE - Broadcasting Center Europe and the programme distribution activity CLT-UFA International. The company has been allocated with national and international TV and radio broadcasting licenses by the Luxembourgish Government.

BCE owns the television tower in Dudelange which broadcasts DTT channels. CLT-UFA International distributes the main commercial radio and television services in Luxembourg (both national services and those targeting other countries).

<sup>213</sup> Legilux. 2013. TC - Loi du 27 juillet 1991 sur les médias électroniques. Available from: <http://www.legilux.public.lu/leg/a/archives/2001/0088/2001A17881.html>

<sup>214</sup> Legilux. 2013. Loi du 27 août 2013 portant création de l'établissement public «Autorité luxembourgeoise indépendante de l'audiovisuel», et modifiant . Available from: <http://eli.legilux.public.lu/eli/etat/leg/loi/2013/08/27/n5>

<sup>215</sup> This chapter is partly based on information from a previous chapter written by Amélie Lepinard of the Department for Legal Information of the European Audiovisual Observatory for the report *Public service broadcasters: remits and coverage of Europe (September 2014)*.

The channels that are available free-to-air on the national DTT network include a total of 12 channels, eleven of which are controlled by the RTL Group. The only independent channel is Luxe TV: Club RTL, Den 2. RTL, Luxe TV Luxembourg, M6, Plug RTL, RTL 4, RTL 5, RTL 7, RTL 8, RTL Télé Lëtzebuerg, RTL Télé Lëtzebuerg HD, and RTL-TVI.

### 25.3 Summary and conclusion

There are no must-carry obligations in the regulatory framework for audiovisual media services in Luxembourg. In addition, no other access rules (must-offer, must-see, or must-find) were identified.

The national DTT network is operated by BCE – Broadcasting Center Europe (RTL Group) which offers a total of 12 channels, eleven of which are owned by the RTL Group.

## 26 LV – LATVIA

In Latvia, the legal basis for must-carry rules is the *Electronic Mass Media Law (2010)*<sup>216</sup>. The amendments for the must-carry rules, which entered into force on 1 January 2014, concerned the wording but not the substance of the rules. (NB: Please see also section 26.2 regarding changes in January 2016).

### 26.1 Must-carry rules

The must-carry rules are specified in Art. 19 of the *Electronic Mass Media Law*. The rules stipulate which services and platforms are under must-carry regulation and also mention a non-discrimination rule for operators that retransmit the programmes of national commercial broadcasters. (NB: Please see also section 26.2 regarding changes in January 2016).

**Table 1 Electronic Mass Media Law (2010)**

#### Electronic Mass Media Law (2010)

##### Article 19. Permit retransmission and relay additional conditions

[...]

(6) The electronic mass media which re-transmit television programmes utilising cable television shall ensure the supply of television programmes of the public electronic mass media distributed in Latvia to all subscribers of the relevant cable television in unchanged form. A retransmission permit shall not be necessary for the distribution of such programmes in the relevant public electronic communications networks. The electronic mass medium shall not collect a fee for the provision of retransmission of the television programmes from public electronic mass media, and in turn the public electronic mass media, whose programmes are retransmitted, shall not charge the electronic mass medium for retransmitting its programmes.

(6<sup>1</sup>) The electronic mass media which re-transmit television programmes utilising cable television shall ensure the supply of television programmes of the public electronic mass media distributed in Latvia to all subscribers of the relevant cable television in unchanged form, as well as the supply of such television programmes of the national electronic mass media to all subscribers of the relevant cable television in unchanged form which are available for an end-user via terrestrial broadcasting technical means free of charge. A retransmission permit shall not be necessary for the distribution of such programmes in the relevant public electronic communications networks.

(6<sup>2</sup>) Commercial national electronic media shall provide for equal and non-discriminatory rules vis-à-vis all electronic media who retransmit or wish to retransmit their programmes.

(7) (Eliminated from 01.01.2014. To 11.21.2013. Act. See. Transitional Provisions 25 of these Regulations)

(8) Electronic media, who retransmit television programmes through cable, the conclusion of the service contract includes in its programme offering relevant territory receivable regional or local electronic media of television programmes via terrestrial technical means, the end user is available free of charge. This condition applies to the distribution of programmes, the amount of broadcasting time is at least six hours per day, unless the electronic media, which retransmit television programmes via cable, has agreed with the regional or local electronic media for a smaller amount of air time. For such retransmission ensuring the electronic media does not charge the electronic media, whose programmes it retransmits, as well as electronic media, whose programmes are retransmitted, does not charge the electronic media that the program retransmitted.

(9) If the electronic media, which retransmit television programmes via cable TV, a public electronic communications network operational zone exceeds this Article eight of those regional or local electronic media broadcast television programmes specified in the permit area of terrestrial broadcasting, electronic media, which retransmits TV programmes via cable is required, subject to the electronic media sector development strategy of the national provisions to include in its program offer-

<sup>216</sup> NEPLPADOME. 2014. Elektronisko plašsaziņas līdzekļu likums. Available from: [http://www.neplpadome.lv/lv/assets/documents/EPLL\\_28\\_05\\_2014\\_%5B1%5D.pdf](http://www.neplpadome.lv/lv/assets/documents/EPLL_28_05_2014_%5B1%5D.pdf)

ing relevant territory receivable regional or local electronic media of television programmes via terrestrial technical means, the end user is available free of charge, following an appropriate service contract, and the right of the regional and local electronic media for the service charge fees that do not exceed the actual costs incurred if the following conditions exist:

1) local or regional electronic media wants to constitute a television programme to be broadcast to retransmit outside broadcast area specified in the permit;

2) the electronic media, which retransmits television programmes via cable, has the technical capability to ensure the inclusion of television programmes in its program offer;

3) covered shall regional or local electronic media of television programme broadcasting time amounting to at least six hours per day, unless the electronic media, which retransmit television programmes via cable, has agreed with the regional or local electronic media for a smaller amount of air time.

(10) If the electronic media, which retransmit television programmes via cable, in accordance with this Article, the eighth or the ninth part of the terms of the obligation to disseminate the regional or local electronic media of television programmes, but such regional or local electronic media of television program content is poor or distribution of television programmes for technical or commercial reasons may cause the electronic media in disproportionate losses, Electronic Media Council motivated by electronic media to examine the application is entitled to the electronic media, exempt from the performance with regard to the regional or local electronic media television programme distribution or negotiate with the electronic medium of administrative contracts, agreeing on conditions of performance of the obligation.

(11) The provisions of this Article in the eighth or ninth part of that agreement, by itself, does not relieve the parties of this Article, the eighth or the ninth part of that obligation. Paragraphs in the eighth and ninth paragraphs distribution of television programmes relevant public electronic communications networks retransmission shall not require authorization.

(As amended by the 14.02.2013., 18.04.2013. And 11.21.2013. Law, which comes into force on 30.11.2013. 1.1, 6.1 and 6.2 part of the third and the sixth paragraph of the new version with effect from 1.1.2014. See the transitional provisions of Articles 21 and 25 of these Regulations)  
(Unofficial translation by the European Audiovisual Observatory)

## 26.1.2 Purpose of rules

The purpose of the must-carry rules is to ensure the retransmission of public television broadcasting programmes and free-to-air commercial television programmes on cable platforms.

## 26.1.3 Distribution platforms and services

Must-carry rules only applied to cable operators until the beginning of January 2016 (see 26.2 below).

The must-carry rules comprise the public television broadcasting programmes (e.g. LTV1 and LTV7) and also apply to national commercial television programmes available free-to-air (e.g. Rīga TV 24, OTV and Re:TV).

## 26.1.4 Costs

With regard to costs the amended Electronic Mass Media Law mentions that for the retransmission of must-carry services neither broadcasters nor retransmission operators may request a fee. The amendments regarding must-carry rules, which entered into force on 1 January 2014, also introduced a non-discrimination rule according to which national commercial broadcasters are obliged to treat all operators retransmitting their programmes in a

fair and non-discriminatory manner.<sup>217</sup>

## 26.2 Major update to must-carry in January 2016

In Latvia, in January 2016, the amendments to the Electronic Mass Media Law (05 January 2016) included substantial changes regarding must-carry. „Firstly, the scope of subjects of must-carry obligations is broadened: now the must-carry obligation applies not only to the retransmission operators who retransmit programmes by cable, but also to any “provider of the service of the distribution of television programmes”.<sup>218</sup>

The update also concerned content and obliged distributors to include in their offer of programmes (citing below from IRIS Merlin):

„- At least one programme that mainly includes news, analytic and information broadcasts made within the EU and in one of the official languages of the EU; - At least one programme of which within at least 50% of the total broadcasting time is the state language, provided that the total broadcasting time of this programme is at least 18 hours daily, and the broadcaster has received the broadcasting permit for this programme in Latvia; - At least one programme that mainly includes popular science broadcasts made within the EU and in one of the official languages of the EU; - At least one programme that mainly includes broadcasts for children and youth audience made within the EU and in one of the official languages of the EU; The listed programmes must be included in the programme catalogue before other programmes and in the order as provided above. According to the annotation of the amendments to the EMLL, the new must-carry provisions are introduced in order to facilitate access to diverse information and to promote democracy and plurality of opinions.”<sup>219</sup>

## 26.3 Other access rules

The must-offer rules are specified in Art. 19(6) in the Electronic Mass Media Law.

There are no must-see or must-find regulations. The regulatory authority NEPLP, however, has recently prepared amendments to the legislation which require must-carry channels to be placed on the top of electronic programme guides.

## 26.4 Access to free DTT

With regard to access to free-DTT multiplexes there are no obstacles for foreign broadcasters. All channels on DTT platforms require a national license. There are no specific production or linguistic requirements for channels.

### 26.4.1 Platform operator and channels

The national DTT network in Latvia is operated by Digitalais Latvijas Run TV Centrs (DLRTC), a subsidiary of the Latvian State Radio and Television Centre-LVRTC (the state-owned terrestrial transmission company). LVRTC has been providing the digital terrestrial TV infrastructure in the country, whereas Lattelecom LLC is the business entity in charge of digital terrestrial TV broadcasting. Lattelecom is owned by the Latvian State (51%) and the Scandinavian company TeliaSonera AB (49%) and provides both free to air and pay

<sup>217</sup> Andersone, Ieva (2014). *Amendments to Electronic Media Law Concerning Public Remit Programmes*. IRIS Merlin. 2014. Available from: <http://merlin.obs.coe.int/iris/2014/3/article33.en.html>

<sup>218</sup> Andersone, Ieva (2016): *Amendments adopted to the Electronic Mass Media Law*. IRIS 2016-3:1/24: <http://merlin.obs.coe.int/iris/2016/3/article24.en.html>

<sup>219</sup> Ibid

DTT broadcasting services in collaboration with LVRTC. As of 1 January 2014 until 31 December 2021, the transmission of free to air channels is done solely by the LVRTC with Lattelecom providing the pay services.

As of 1 January 2014, the free DTT channels available in Latvia are the public channels LTV1 and LTV7 and the three commercial channels Rīga TV 24, OTV and Re:TV. The commercial channels won a bid for tenders organised by the NEPLP to find companies that could handle part of the public service remit in terms of terrestrial broadcasting. The tender was launched after the commercial channels LNT and TV3 (both owned by the MTG Group) announced to leave the free-to-air broadcasting as of 1 January 2014.<sup>220</sup>

On 19 March 2015, the NEPLP approved the establishment of State SIA “Latvijas Televīzija” (Latvian Television, LTV) Programme 3 which will be broadcast in the Russian language in the entire territory of Latvia.<sup>221</sup>

## 26.5 Summary and conclusion

In Latvia, the legal basis for must-carry rules is the Electronic Mass Media Law (2010). The amendments for the must-carry rules (Art. 19), which entered into force on 1 January 2014, concerned the wording but not the substance of the rules. The amended regulations introduced a new non-discrimination rule for operators that retransmit the programmes of national commercial broadcasters.

The purpose of the must-carry rules is to ensure the retransmission of public television broadcasting programmes (e.g. LTV1 and LTV7) and free-to-air commercial television programmes (e.g. Rīga TV 24, OTV and Re:TV) on cable platforms.

The national DTT network in Latvia is operated by Digitalais Latvijas Run TV Centrs (DLRTC), a subsidiary of the Latvian State Radio and Television Centre-LVRTC (the state-owned terrestrial transmission company). As of 1 January 2014, the free DTT channels available in Latvia are the public channels LTV1 and LTV7 and the three commercial channels Rīga TV 24, OTV and Re:TV.

On 19 March 2015, the NEPLP approved the establishment of State SIA “Latvijas Televīzija” (Latvian Television, LTV) Programme 3 which will be broadcast in the Russian language in the entire territory of Latvia.

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<sup>220</sup> NEPLPADOME. 2014. Country report – Latvia September 2014. Available from: <http://www.neplpadome.lv/en/home/news/country-report-%E2%80%93-latvia-july-2014.html>

<sup>221</sup> NEPLPADOME. 2015. Country report – Latvia March 2015. Available from: <http://www.neplpadome.lv/en/home/news/country-report-latvia-march-2015.html>

## 27 MT – MALTA

The main legal basis for imposing must-carry rules are the *Electronic Communications Networks and Services (General) Regulations, 2011*<sup>222</sup> transposing Article 31 of the Universal Service Directive.

### 27.1 Must-carry rules

The must-carry rules are specified in regulation 49 of the *Electronic Communications Networks and Services (General) Regulations, 2011*. The rules require operators to reserve sufficient network capacity for the retransmission of general interest television channels and to transmit complementary services, particularly accessibility services to enable appropriate access for disabled end-users.

**Table 1 Electronic Communications Networks and Services (General) Regulations, 2011**

**Electronic Communications Networks and Services (General) Regulations, 2011, as amended by Legal Notices 335 and 485 of 2011, 60 of 2012 and 298 of 2014**

49.

(1) The Authority may impose reasonable must-carry obligations for the transmission of specified radio and television broadcast channels and complementary services, particularly accessibility services to enable appropriate access for disabled end-users, on undertakings providing electronic communications networks used for the distribution of radio or television broadcasts channels to the public where a significant number of end-users of such networks use them as the principal means to receive radio and television broadcasts:

Provided that such obligations shall only be imposed where they are necessary to meet clearly defined general interest objectives and shall be proportionate and transparent.

(2) The Authority may determine, in a proportionate and transparent manner, the appropriate remuneration, if any, in respect of measures taken in accordance with subregulation (1):

Provided that in doing so the Authority shall ensure that in similar circumstances there is no discrimination in the treatment of undertakings providing electronic communications networks.

(3) The Authority shall review must-carry obligations on a regular basis.

(Official translation by the Ministry for Justice, Culture and Local Government)

Following a consultation by the Malta Communications Authority (MCA) on must-carry obligations from 1 September 2011, the authority published its *Guidelines on Must-carry Obligations*<sup>223</sup> (hereafter “the Guidelines”) which specify how must-carry obligations are imposed on pay TV operators.

The Guidelines specified that any subsequent must-carry obligation would be valid for three years. The MCA, however, reserved the right to review the situation in the case of significant market developments by conducting a *Review of Must-Carry Obligations*<sup>224</sup> published on 26 April 2013. The final revisions are specified in the *Review of Must-carry Obli-*

<sup>222</sup> Ministry for Justice, Culture and Local Government. 2011. SUBSIDIARY LEGISLATION 399.28. *Electronic Communications Networks and Services (General) Regulations*. from: <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=10563&l=1>

<sup>223</sup> Malta Communications Authority. 2012. *Must-Carry Obligations. Designation of Obligations on Providers of Networks used for Television and Radio Distribution Services*. Available from: <https://www.mca.org.mt/sites/default/files/attachments/decisions/2012/must-carry-designations-obligations%20%28MCAD12-0768%29.pdf>

<sup>224</sup> Malta Communications Authority. 2013. *Review of Must-Carry Obligations. Consultation Document*. Ref: MCA/C/13-1560. 26th April, 2013. Available from: <http://www.mca.org.mt/sites/default/files/attachments/consultations/2013/review-of-must-carry-obligations3-250413.pdf>

gations: *Final Decision*<sup>225</sup> published on 30 August 2013. The major changes include the decision to remove the must-carry obligations from analogue cable networks and to add a seventh must-carry channel (e.g. Xejk TV, formerly known as Calypso Music Television).

### 27.1.2 Purpose of rules

The purpose of the provisions is to ensure that TV broadcasting networks that are used by a significant number of end-users as the main means to receive TV broadcasts reserve part of their network capacity for the retransmission of TV channels qualifying as meeting general interest objectives (Reg. 49 Electronic Communications Networks and Services (General) Regulations) and S. L. 350.32 General Interest Objectives (Television Services) (Selection Criteria) Regulations<sup>226</sup>).

### 27.1.3 Distribution platforms and services

The law applies must-carry rules to cable networks. According to the Review of Must-carry Obligations<sup>227</sup>, Melita Cable plc is designated with must-carry obligations of general interest television channels on its digital TV network. The rules do not apply to the pay DTT platform Go or its IPTV network.

The Broadcasting Authority is the competent authority that identifies channels qualifying to meet general interest objectives. The selection criteria are specified in Subsidiary Legislation 350.32. General Interest Objectives (Television Services) (Selection Criteria) Regulations. S.L.350.32. from 21 June 2011. These channels are thus entitled for carriage on the free-to-air DTT broadcast network managed by Public Broadcasting Services Limited (PBS) and for must-carry status.

According to the Guidelines, general interest objectives equate to a public service remit which is carried out in part by the national public service broadcaster PBS through its two TV channels TVM and TVM2 (formerly Education 22). The private channels identified by the BA as meeting general interest objectives have been issued with a general interest broadcast content license. These include the following: F Living (formerly Favourite Channel), Net TV, ONE TV, Smash TV, and Xejk TV (formerly Calypso Music Television).

### 27.1.4 Costs

In accordance with Reg. 49 of the Regulations the MCA notes the following with regard to the costs incurred by carriage of must-carry channels:

- Where must-carry obligations place an excessive or undue burden on the operator of a particular network, the MCA will, where it deems appropriate, consider alternative measures for the General Interest (hereafter 'GI') TV channels to be seamlessly available to all end-users of that network provided that no undue burdens are placed on end-users.
- When determining whether remuneration for the retransmission of the GI TV channels should be provided, the MCA will need to satisfy itself that any remuneration provided can be justified.

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<sup>225</sup> Malta Communications Authority. 2013. Review of Must-carry Obligations. Final Decision. Available from:

<http://www.mca.org.mt/sites/default/files/attachments/decisions/2013/Decision%20Document%20Must%20Carry%20publ%2030-09-13.pdf>

<sup>226</sup> Broadcasting Authority Malta. 2011. Subsidiary Legislation 350.32. General Interest Objectives (Television Services) (Selection Criteria) Regulations. S.L.350.32. 21st June, 2011. LEGAL NOTICE 240 of 2011. [Available from: [www.ba-malta.org/file.aspx?f=1248](http://www.ba-malta.org/file.aspx?f=1248)]

<sup>227</sup> Guideline 1: Network is used by a significant number of users; Guideline 2: Network is used as the principal means to receive TV broadcasts; Guideline 3: Alternative measures for the GI TV channels to be seamlessly available to all end-users of that network provided that no undue burdens are placed on end-users.

## 27.2 Other access rules

### 27.2.1 Must offer

The must-offer requirements are laid down in article 7(2) of the Copyright Act (Chapter 415 of the Laws of Malta). Must-offer obligations require the broadcasters of general interest television channels to offer their content, free of charge, to the operators of those TV networks subjected to must-carry obligations in order for such content to be universally available to the public.

### 27.2.2 Must-see and must-find

Art. 21 of the *Broadcasting Act 1991 (consolidated version 2011)*<sup>228</sup> stresses that the Authority may, in conjunction with the Minister, draw up a code giving guidance regarding standards and practice for teletext transmissions (which includes electronic programme guides).

## 27.3 Access to free DTT

The Maltese Government appointed Public Broadcasting Services Limited as the network operator responsible for setting up, operating, and managing a DTT network<sup>229</sup> for the initial transmission of the general interest television channels which is unencrypted, and thus available to all viewers on a free-to-air basis.

### 27.3.1 Platform operator and TV channels

Public Broadcasting Services Limited (PBS) operates the free-to-air DTT network. The free DTT network is set up solely for the initial transmission of channels that meet general interest objectives.

Launched in 2005, the commercial DTT network Go plc offers around 60 SD digital TV channels. It is the only pay-DTT network in the country after it bought its rival Multiplus in 2007.

The television channels available on free DTT include the seven must-carry channels: TVM, TVM2, F Living, Net TV, ONE, Smash TV, and Xejk TV.

## 27.4 Conclusion and summary

The main legal basis for imposing must-carry rules are the *Electronic Communications Networks and Services (General) Regulations, 2011* transposing Article 31 of the Universal Service Directive.

The Malta Broadcasting Authority (BA) published specific Guidelines on Must-carry Obligations that specify how must-carry obligations are imposed on pay TV operators. These Guidelines have been updated with the Review of Must-carry Obligations: Final Decision published on 30 August 2013. Major changes include removing the must-carry obligations from analogue cable networks and adding a seventh must-carry channel (e.g. Xejk TV).

The must-carry rules ensure that TV channels qualifying as meeting general interest objec-

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<sup>228</sup> European Platform of Regulatory Authorities. 1991. The Broadcasting Act, 1991 (ACT No. XII of 1991), consolidated version 2011 (chapter 350 of the Laws of Malta). 2015]. Available from: <http://www.epra.org/articles/media-legislation#MALTA>

<sup>229</sup> Article 40 of the Broadcasting Act Chapter 350 of the Laws of Malta

tives are provided by TV broadcasting networks used by a significant number of end-users. The rules apply to cable networks (e.g. Melita Cable plc) and include seven channels identified by the MCA that qualify to meet general interest objectives.

This includes the two public service channels TVM and TVM2 (formerly Education 22) and five private channels: F Living, Net TV, ONE , Smash TV, and Xejk TV. These channels are available on the free DTT network by Public Broadcasting Services Limited.

## 28 NL – NETHERLANDS

The legal basis for must-carry regulation in the Netherlands is the *Media Act 2008*<sup>230</sup>. New must-carry rules have been introduced by a change in the law on 1 January 2014.

The regulatory authority, the Commissariat voor de Media, supervises adherence to the must-carry rules and has the power to impose an order subject to a penalty for non-compliance with the must-carry rules.

### 28.1 Must-carry rules

The must-carry rules are specified in Art. 6.12 to 6.14d of the Media Act 2008, specifying which services and platforms are subject to the regulation.

The scope of this new regulation which entered into force on 1 January 2014, is technology neutral and platform independent. This means that the new regulation applies in principle to all network operators. Before, only cable operators were subject to must-carry regulation and other access related rules. Cable operators were also obliged to follow the advice of programme councils (i.e. programmaraden) regarding the composition of the packages offered to the public. Since 1 January 2014, these programme councils have been abolished and in general all cable operators with at least 100.000 subscribers are obliged to transmit a minimum of 15 analogue and at least thirty digital TV channels and a certain number of radio channels.

There are some exceptions though: satellite and DTT operators are not obliged to offer the local and regional PSB channels and for DTT only a minimum of 25 television channels applies. Within the minimum number of channels the must-carry channels (the Dutch national, regional and local public RTV channels and Flemish public TV and radio stations) should be included. Under the new regime, the transmission of at least 30 channels is considered to provide sufficient diversity. Under certain conditions, temporary exemptions can be granted by the Commissariaat voor de Media. Furthermore, the Commissariaat voor de Media monitors the diversity of the packages and the degree of consumer-satisfaction.<sup>231</sup>

**Table 1 Media Act 2008, Articles 6.12 to 6.13**

#### Media Act 2008

##### Article 6.12

1. This section applies to package providers who distribute one or more programme packages to at least 100,000 subscribers in the Netherlands.

2. If a package provider distributes its programme services through two or more broadcasting networks or broadcasting transmitters, for the purposes of the first subsection the applicable number of subscribers will be merged/added up.

3. If a package provider is a legal person, for the purposes of this article the number of subscribers of the package provider and the number of subscribers of the subsidiary companies which the package provider maintains will be merged/added up. If the package provider is a legal entity and a subsidiary company is maintained by another package provider, for the purposes of this article the number of subscribers of that subsidiary company, the number of subscribers of the package provider that maintains this subsidiary company, and the number of subscribers of other subsidiaries that sustain this package provider, will be merged/added up.

##### Article 6.13

<sup>230</sup> Overheid.nl. 2014. Mediawet 2008:

[http://wetten.overheid.nl/BWBR0025028/volledig/geldigheidsdatum\\_03-07-2014#Opschrift](http://wetten.overheid.nl/BWBR0025028/volledig/geldigheidsdatum_03-07-2014#Opschrift)

<sup>231</sup> Sluiter, Saba K. (2015): *Report of the Dutch Media Authority on the Effect of the New Dutch Must-Carry Rules*. IRIS Merlin. 2015: <http://merlin.obs.coe.int/iris/2015/1/article34.en.html>

1. If a package provider distributes or enables to be distributed one or more digital programme packages, all subscribers that reached an agreement with this package provider regarding the reception of one or more digital programme packages, should at least receive the digital standard programme package.

2. The standard programme package consists of at least thirty digital television channels and a certain number of radio channels, to be determined by the package provider in accordance with the fourth subsection of this article. The programme channels are distributed unchanged. Ministerial regulations can designate services of which signals have to be distributed as an integral part of the programme channels and can provide in further rules on the distributions of those services.

3. As far as it concerns television channels, the standard programme package in each case contains:

- a. three general television channels of the national public service media;
- b. one television channel of regional public service media offering programme services as referred to in Article 2.70, which is intended for the province or the part of the province within which the subscribers reside;
- c. the television channels of the regional public service media offering programme services as referred to in Article 2.70, which is intended for the province adjacent to the province in which subscribers reside;
- d. one television channel of the local public service media offering programme services as referred to in Article 2.70, which is intended for the municipality in which subscribers reside;
- e. no more than two television channels of local public service media offering other programme services than those specified in subsection d, which are provided by a local public service broadcaster and which are aimed at specific population and age groups, including minorities; and
- f. three television channels from the Belgian national public service broadcaster, in Dutch language.

[Note: subsection 4, contains similar must-carry regulation for radio services]

5. When determining whether a package provider has met the requirement referred to in the first sentence of the second subsection, the following rules are applicable:

- a. at least thirty unique television channels are offered in a broadcast quality that is to be determined by the package provider;
- b. if TV channels are offered in various broadcast quality, programmes channels with the same name and organization of the programme service will be classified as one programme channel;
- c. if TV channels are offered in various broadcast quality, programme channels with the same name but with different arrangements of the programme services, will be considered as individual programme channels; and
- d. if television channels are distributed via broadcasting channels without the need to pay for the reception costs other than the cost of the purchase and the use of technical provisions which enable reception, and these programme channels are included in the electronic program guide which is part of the technical provisions, these programme channels are regarded as television channels as referred to in subsection a.

(Unofficial translation by the European Audiovisual Observatory)

While Articles 6.12 to 6.13 apply to package providers that distribute digital programme packages, Articles 6.14 and 6.14a apply to package providers that (also) distribute analogue programme packages. They are obliged to transmit a minimum of 15 analogue television channels and a certain number of radio channels (according to rules in subsection 4 of Article 6.13).

Article 6.14 further determines which provisions laid down in Article 6.13 apply equally to analogue programme packages.

Article 6.14b concerns distribution of the digital standard programme package by means of satellite and Article 6.14c concerns must carry rules for (25 television channels for) the specific DTT operator KPN Digitenne. Under the conditions set out in Article 6.14d, the Commissariaat voor de Media can grant temporary exemptions to the must-carry rules.

## Table 2 Media Act 2008, Articles 6.14 to 6.14a

### Media Act 2008

#### Article 6.14

1. If a package provider distributes or enables to be distributed one or more analogue programme packages, all subscribers that reached agreement with this package provider regarding the reception of one or more analogue programme packages, should at least receive one analogue standard programme package.

2. The standard programme package consists of at least fifteen television channels and a certain number of radio channels, to be determined by the package provider in accordance with the fourth subsection of this article. The programme channels are distributed unchanged.

3. Article 6.13, subsection, opening words and a, b, d and e apply. Article 6.13, subsection, opening words and f apply with the provision that the number of television channels is two.

4. Article 6.13, fourth paragraph, preamble and parts a, b, c and d applies. Section 6.13, paragraph preamble and part shall apply except that the number of radio channels is two.

#### Article 6.14a

1. The provider of a broadcasting network that distributes analogue programming, provides its programme offerings at the wholesale level at a cost-oriented tariff available for resale.

2. By council order rules can be set on the amount or the conditions of the tariff and other conditions under which the provider of a broadcasting network, referred to in the first paragraph, makes programming available for resale.

(Unofficial translation by the European Audiovisual Observatory)

It should be noted that Article 2.1 of the Media Act stipulates that public service media are charged with broadcasting their programmes using all available networks and to make their services available to the entire population in the area for which the programme is intended.

### 28.1.2 Purpose of rules

The purpose of the rules is to maintain a sufficiently varied media offer in the standard television packages and to ensure a level playing field.

### 28.1.3 Distribution platforms and services

The rules are technology neutral and platform independent and apply to all platforms. The rules on must-carry obligations include no specifics with regard to costs.

The services under must-carry regulation include six national channels by the public service broadcasters of the Netherlands and the Flemish Community of Belgium (e.g. NPO1, NPO2, NPO3, Eén, Canvas, Ketnet/Op Twaalf), as well as the Dutch regional and local public broadcasters.

In addition, the rules stipulate that operators serving more than 100,000 households must offer a minimum of 30 digital and 15 analogue television channels and a certain number (to be determined according to rules in subsection 4 of Article 6.13) of radio programme channels.

Some exceptions apply to the provision of local and regional public service channels: satellite and DTT operators are not obliged to offer the local and regional public service channels and for DTT only a minimum of 25 channels applies.

As a general rule, the minimum number of channels must always include the must-carry channels.

## 28.2 Other access rules

While no specific must-offer rules are noted, the remit of the PSB requires their presence on all platforms. Article 2.1 of the Media Act stipulates that public service media are charged with broadcasting their programmes using all available networks and to make their services available to the entire population in the area for which the programme is intended.

## 28.3 Access to free DTT

On 31 January 2017 all current DTT licenses, including the one held by public service broadcaster NPO for its free-to-air distribution and that of KPN's encrypted service Digitenne, will expire. A public consultation on the future of the DTT services, launched by the Dutch Ministry of Economic Affairs, was conducted in the first half of 2015. The proposal is to extend the licences for DTT for three years.

### 28.3.1 Platform operator and TV channels

The national DTT network in the Netherlands is operated by the telecommunication company KPN. Digitenne is KPN's pay-DTT platform offering a number of national and international channels. The Dutch public broadcasters (national and regional), transmit their signals over the DTT network free-to-air.

The channels that are available on free-DTT include the national public television channels NPO 1, NPO 2, NPO 3 and the regional public television channels.<sup>232</sup>

## 28.4 Summary and conclusion

The legal basis for must-carry regulation in the Netherlands is the Media Act 2008. New must-carry rules have been introduced by a change in the law on 1 January 2014. The new rules are specified in Art. 6.12 to 6.14d of the Media Act 2008. They are technology neutral and platform independent and apply to all platforms.

Platforms are obliged to include six national channels by the public service broadcasters of the Netherlands and the Flemish Community of Belgium (e.g. NPO1, NPO2, NPO3, Eén, Canvas, Ketnet/Op Twaalf), as well as the Dutch regional and local public broadcasters. Some exceptions apply to the provision of local and regional public service channels. The purpose of the rules is to maintain a sufficiently varied media offer in the standard television packages.

The national DTT network in the Netherlands is operated by the telecommunication company KPN. The channels that are available on free-DTT include the national public television channels NPO 1, NPO 2, NPO 3 and the regional public television channels.

## 28.5 Recent legal updates of interest

In January 2016, telecommunications company KPN was granted an exemption to the must-carry rules regarding its new television service "Play" which is an OTT service in the form of an app. The regulator decided that the market for apps like Play is different from traditional cable networks.<sup>233</sup>

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<sup>232</sup> Since 1 August 2014, these channels are no longer free to receive via satellite.

<sup>233</sup> Sarah Johanna Eskens (2016): Netherlands: Dutch telecom company granted exemption from must-carry rules for new app. IRIS 2016-1:1/26. <http://merlin.obs.coe.int/iris/2016/1/article26.en.html>

## 29 NO – NORWAY

The main legal basis for broadcasting in Norway is *kringkastingsloven*, the *Norwegian Broadcasting Act*<sup>234</sup> from 1992. The Act defines specific must-carry rules that apply to cable networks only.

The Norwegian Media Authority provides licenses and supervises television- and radio channels for compliance with the broadcasting legislation. This includes overseeing the responsibilities of the national public service broadcaster NRK and private commercial public service broadcaster TV 2.<sup>235</sup>

With regard to must-carry rules the regulator is responsible for supervising compliance with the provisions stipulated in the Norwegian Broadcasting Act.

### 29.1 Must-carry rules

The must-carry rules are specified in Chapter 4 of the Norwegian Broadcasting Act. Article 4.3 which deals with the “duty to retransmit” specifies that must-carry rules apply to cable networks and that these must be “reasonable, proportional and transparent and meant to fulfil a purpose in the public interest”. In addition, Chapter 4, Article 4.2 of the regulations<sup>236</sup> deals with more specific rules mentioning which services have must-carry status.

**Table 1 The Norwegian Broadcasting Act (1992)**

|   |
|---|
| <p><b>The Norwegian Broadcasting Act (1992)</b><br/><b>Chapter 4. Retransmission via broadcasting networks, etc.</b><br/>[...]<br/><b>Section 4-3. Duty to retransmit, etc.</b><br/>The King can issue regulations to the effect that certain broadcasts shall be retransmitted through networks able to transmit broadcasting. Rules on the retransmission obligation must be reasonable, proportional, transparent and necessary to achieve clearly set goals in the public interest. The King can issue rules on the further conditions for such retransmissions. The Norwegian Media Authority may in special cases reduce the number of broadcasts subject to the retransmission obligation.<br/>The owner or operator of the cable network shall, in accordance with rules prescribed by the King, transmit announcements from government authorities when it is of major importance to do so.</p> <p>(Unofficial translation by the Norwegian Media Authority)</p> |
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<sup>234</sup> The Norwegian Media Authority. 2013. Act relating to broadcasting and audiovisual on-demand services (the Broadcasting Act). Available from: [http://www.medietilsynet.no/globalassets/engelsk/engelsk\\_kringkastingsloven\\_2013.pdf](http://www.medietilsynet.no/globalassets/engelsk/engelsk_kringkastingsloven_2013.pdf)

<sup>235</sup> The Norwegian Media Authority. 2015. Tasks. Available from: <http://www.medietilsynet.no/en/about-medietilsynet/tasks/>

<sup>236</sup> The Norwegian Media Authority. 2013. Regulations relating to broadcasting and audiovisual on-demand services. Available from: [http://www.medietilsynet.no/globalassets/engelsk/engelsk\\_kringkastingsforskriften\\_2013.pdf](http://www.medietilsynet.no/globalassets/engelsk/engelsk_kringkastingsforskriften_2013.pdf)

**Table 2 Regulations relating to broadcasting and audiovisual on-demand services**

|   |
|---|
| <p><b>Regulations relating to broadcasting and audiovisual on-demand services</b><br/><b>Chapter 4. Cable broadcasts, etc.</b><br/>[...]<br/><b>Section 4-2. Duty to retransmit, etc.</b><br/>Cable owners have a duty to retransmit the television broadcasts of the Norwegian Broadcasting Corporation and the Free Channel. The cable owner is also required to retransmit on commercial terms, the television broadcasts to the broadcaster that the authorities have appointed to safeguard public interests.<br/>Each broadcast to which the retransmission duty applies shall have the disposal of one channel in the cable network.<br/>Programmes to which the retransmission duty apply shall be transmitted via channels available to all subscribers to the network.<br/>Entities who own or manage a network with a small channel capacity can apply to the Norwegian Media Authority for exemption from the retransmission duty according to this provision.</p> <p>(Unofficial translation by the Norwegian Media Authority)</p> |
|---|

### 29.1.2 Purpose of rules

The purpose of the provisions applying to cable operators is to provide programme services that are in the public interest. Section 4-3. of the Norwegian Broadcasting Act stipulates that “Rules on the retransmission obligation must be reasonable, proportional, transparent and necessary to achieve clearly set goals in the interest of the general public”.

### 29.1.3 Distribution platforms and services

The must-carry rules stated in the Norwegian Broadcasting Act apply to cable networks only. They do not apply to fibre optic or satellite distribution networks. In addition, there are must-carry rules for the national digital terrestrial television network (DTT), but these have its legal basis in the network licence.

The legislation both lists specific services (e.g. public service), specific channels by name and states that NRK’s television channels have a must-carry status. Hence, the must-carry rules apply to the Norwegian public service channels, both the state-funded public broadcaster NRK and the private commercial public service channel TV 2. In addition, the provisions also apply to the open television channel “Frikanalen” which is owned by more than 60 different non-profit organizations in Norway.

### 29.1.4 Costs

With regard to the costs for the retransmission of must-carry channels the provisions stipulate that the retransmission of TV 2 shall be based on commercial terms (see first paragraph in section 4-2 of the regulations and the agreement between TV 2 and the government).

There are no must offer, must-see or must-find obligations in the Norwegian legislation. The DTT licence, however, has rules concerning the EPG which state that the EPG should be available to all channels/content providers and that the EPG shall facilitate general findability to the audience. The rules do not mention any requirements for the prominence of specific channels.

The agreement between the Norwegian Government and TV 2 requires that TV 2 shall make its main channel available to all distributors with must carry obligations.

## 29.2 Access to free DTT

Due to the limitations of the radio frequency spectrum for terrestrial television broadcasting, it is obligatory in Norway to issue licenses for this form of broadcasting. NRK, however, has a right to broadcast established in the Norwegian Broadcasting Act, Chapter 2, Article 2.1.

For channels under Norwegian jurisdiction that broadcast on the terrestrial network a license is required. There are no obstacles concerning foreign broadcasters. They are free to apply for DTT broadcasting licenses on the same terms as domestic broadcasters.

The requirements in the AVMS Directive on European works are implemented in Article 2-6 of the Norwegian Broadcasting Act.

### 29.2.1 Platform operator and TV channels

Norkring owns and operates the majority of transmission installations for terrestrial broadcasting in Norway, providing services based on both analogue and digital technologies. The company is owned by Telenor Broadcast which is part of the Norwegian Telenor Group. Norkring has planned and rolled out the digital terrestrial transmission network for TV and is carrying out this mission for Norges Televisjon AS (NTV), which owns the licence.<sup>237</sup>

Norges Televisjon AS (NTV) is the company that operates the national digital terrestrial network in the country. The company is owned in equal parts by the Norwegian Broadcasting Corporation (NRK), TV 2 Gruppen AS (TV 2) and Telenor Media Invest AS (Telenor) who also own the pay-DTT packager RiksTV.

The television channels that are available free-to-air on the DTT platform of Norges Televisjon include NRK's TV and radio offerings, including NRK1, NRK2, NRK3/NRK Super, NRK Tegnspråk and the channel Frikanalen. All other broadcasts in the Norwegian DTT network are encrypted. RiksTV offers a pay-DTT package with more than 50 television channels, including the international news channel BBC World News.<sup>238</sup>

## 29.3 Conclusion and summary

The main legal basis for broadcasting in Norway is *kringkastingsloven*, the *Norwegian Broadcasting Act* from 1992. The Act defines specific must-carry rules that apply to cable networks only (Chapter 4). In addition, there are must-carry rules for the national digital terrestrial television network (DTT), but these have its legal basis in the network licence. Hence, the must-carry rules apply to the Norwegian public service channels, both the state-funded public broadcaster NRK, the private commercial public service channel TV 2 and the channel Frikanalen. The purpose of the provisions applying to cable operators is to provide programme services that are in the public interest.

For channels under Norwegian jurisdiction that broadcast on the terrestrial network a license is required. The channels of the national public service broadcaster NRK do not need a licence, as NRK has a right to broadcast following from the Broadcasting Act, Article 2.1. There are no obstacles for foreign broadcasters.

The channels that are available free-to-air on the national DTT platform operated by Norges Televisjon AS (NTV) include NRK1, NRK2, NRK3/NRK Super, NRK Tegnspråk and the channel Frikanalen. RiksTV offers a pay-DTT package with more than 50 television channels, including the international news channel BBC World News.

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<sup>237</sup> Norkring. 2015. Available from: <http://www.norkring.com/services/broadcasting/>

<sup>238</sup> Norges Televisjon. 2015. Available from: <http://www.ntv.no/Kanaltilbud>

## 30 PL – POLAND

The legal framework for must-carry rules in Poland is the *Broadcasting Act of 29 December 1992*<sup>239</sup>. On 30 June 2011 the Polish Parliament enacted the Act on the introduction of terrestrial digital television which also contained significant changes to the Broadcasting Act, introducing a new legal must-carry regime.<sup>240</sup>

An analysis of the realisation of these requirements is conducted at least once every two years by the Chairman of the Polish National Broadcasting Council.

### 30.1 Must-carry rules

The must-carry rules are stipulated in Art. 43 and Art. 43a of the Broadcasting Act. Article 43 specifies the services and platforms under must-carry rule (paragraph 1), rules regarding the non-payment of broadcasters for the retransmission of programmes by platform operators (paragraph 2), and rules concerning the assessment of the fulfilment of the obligations (paragraph 3 and 4).

Article 43a mentions the must-offer requirements applicable to broadcasters under must-carry rule to make their services available free of charge and specifies the actions in case of non-compliance.

**Table 1 Broadcasting Act of 29 December 1992**

#### Broadcasting Act of 29 December 1992

##### Article 43

1. An operator that retransmits a programme service, with the exception of an entity that retransmits a programme service by digital terrestrial diffusion in multiplex, shall retransmit the programme services “Telewizja Polska I”, “Telewizja Polska II” and one regional television programme service transmitted by Telewizja Polska S.A. as well as the programme services transmitted on the date of entry into force of the Act of 30 June 2011 on the Launch of Digital Terrestrial Television (official journal “Dz.U.” No. 153, item 903) on the basis of the licence to transmit these programme services by analogue terrestrial diffusion by Telewizja Polsat S.A., TVN S.A., Polskie Media S.A., Telewizja Puls Sp. z o.o. In case of an operator that retransmits programme services in other telecommunications networks than the networks used for transmission by terrestrial diffusion or by satellite, the obligation to retransmit a regional television programme service shall apply to a regional television programme service relevant for a given area.
2. A broadcaster that transmits the programme service referred to in paragraph 1 may not refuse an operator that retransmits the programme service in the telecommunications network referred to in paragraph 1 the consent for the retransmission of this programme service, and may not make such consent conditional upon payment of any remuneration, including in particular any fee for the award of a licence for the use of the broadcast.
3. The Chairman of the National Council shall assess the fulfilment of the obligation referred to in paragraph 1 not less frequently than once every two years, being guided by social interest with regard to provision of information, ensuring access to culture and art, facilitating access to learning, sport and scientific achievements as well as dissemination of civil education.
4. The Chairman of the National Council shall submit the results of the assessment to the minister in charge of culture and national heritage who shall take actions necessary to ensure that the obligations referred to in paragraph 1 are proportionate and transparent as well as imposed solely when required for purposes of attainment of the objectives set

<sup>239</sup> KRRIT. 1992. Broadcasting Act of 29 December 1992. Available from:

[http://www.krrit.gov.pl/Data/Files/\\_public/Portals/0/angielska/Documents/Regulations/broadcasting\\_act\\_28022013.pdf](http://www.krrit.gov.pl/Data/Files/_public/Portals/0/angielska/Documents/Regulations/broadcasting_act_28022013.pdf)

<sup>240</sup> Pęk, Małgorzata (2011): *New Regime of Must-carry / Must-offer*. IRIS Merlin. 2011. Available from: <http://merlin.obs.coe.int/iris/2011/10/article35.en.html>

out in paragraph 3

#### **Article 43a**

1. A broadcaster that transmits the programme service referred to in Article 43 paragraph 1 shall make this programme accessible free of charge on an application of the operator retransmitting the programme service, within 14 days from submission of the application.
2. If the broadcaster fails to fulfil the obligation to make the programme service accessible free of charge, the Chairman of the National Council, acting on an application of the operator retransmitting the programme service, shall request the broadcaster to make the programme service accessible to this operator, within 14 days from service of the request.
3. The operator retransmitting the programme service shall:
  - 1) retransmit and offer the programme service made accessible to it free of charge,
  - 2) inform in its offering that the programme service is intended for general and free of charge reception, also by digital terrestrial diffusion.

(Unofficial translation provided by the regulatory authority KRRiT)

### **30.1.2 Purpose of rules**

The purpose of the must-carry rules is to ensure the transmission of public and specific commercial channels (e.g. those holding a license for analogue terrestrial TV at the time of the introduction of digital terrestrial television) on all platforms, apart from DTT.

### **30.1.3 Distribution platforms and services**

The must-carry rules apply to all platforms, apart from DTT.

The must-carry rules specify that all operators retransmitting programme services, with the exception of DTT platform operators, are obliged to retransmit the public service channels TVP1 and TVP2 and one regional television channel broadcast by the public service broadcaster Telewizja Polska S.A (e.g. TVP Regionalna).

In addition, platform operators are obliged to retransmit those programme services that were broadcast on the basis of a broadcasting licence in analogue form terrestrially on the day of the entering into force of the Act on the introduction of terrestrial digital television, by the four commercial broadcasters Telewizja Polsat S.A., TVN S.A., Polskie Media S.A., Telewizja Puls S.A. This includes the channels Polsat, TVN, TV4 and TV Puls.

### **30.1.4 Costs**

With regard to costs the law stipulates that broadcasters under must-carry rules cannot demand fees from platform operators for the retransmission of their services. In addition, platform operators are obliged to inform viewers that these channels are available on free-DTT.

## **30.2 Other access rules**

Art. 43a of the Broadcasting Act obliges a broadcaster under must-carry rule to make its programme services accessible for free to the platform operator.

There are no must-see or must-find regulations.

## **30.3 Access to free DTT**

According to chapters 3 and 5 of the Broadcasting Act, all channels should be licensed in the country under the same obligations. Broadcasting licences are awarded by the National Council (KRRiT). All channels broadcast on DTT require a Polish licence. The main public service channels (e.g. TVP1, TVP2 and regional programme services) and the channel

for viewers abroad (e.g. TV POLONIA) mentioned in Art. 26 do not require a license. Other thematic public service channels require a licence (Art. 21.1.2).

The Broadcasting Act mentions specific linguistic (Art. 15) and production requirements (Art. 15a). According to these rules, television broadcasters are obliged to reserve at least 33% of their quarterly transmission time for programmes originally produced in Polish. Further, the rules stipulate that television broadcasters shall reserve at least 10% of their quarterly transmission time for European works produced by independent producers.

### 30.3.1 Platform operator and channels

The Krakow-based company TP Emitel is the owner of the national DTT network and technical operator of MUX1-MUX3 (on the basis of the agreements with broadcasters). The reservation of frequencies is for broadcasters whose programme services are transmitted in these multiplexes.

Emitel was bought from the Polish incumbent operator Telekomunikacja Polska S.A. in June 2011 and sold to investment funds managed by Alinda Capital Partners in February 2014. Info-TV FM (subsidiary of Cyfrowy Polsat) runs the mobile TV services on MUX 4. There is also a pay DTT platform in Poland provided by Cyfrowy Polsat.

In May 2015, the Office of Electronic Communication (UKE) published the names for the bidders for the eighth DTT multiplex. The winner will become the operator of MUX-8 and should offer channels of the state-funded broadcaster (TVP) and commercial broadcasters free of charge.

The free-DTT channels available in Poland on the three multiplexes operated by TP Emitel are as follows:

MUX-1: TVP ABC, Eska TV, TTV, Polo TV, ATM Rozrywka, TV Trwam, StopklatkaTV, FokusTV.

MUX-2: Polsat, TVN, TVN7, TV4, TV Puls, PULS 2, TV6 i Polsat Sport News.

MUX-3: TVP1 HD, TVP2 HD, TVP Regionalna, TVP Info, TVP Kultura, TVP Polonia, TVP Historia, TVP Rozrywka.

## 30.4 Summary and conclusion

The legal framework for must-carry rules in Poland is the Broadcasting Act of 29 December 1992. The must-carry rules are stipulated in Art. 43 and Art. 43a. of the Broadcasting Act. The purpose of the must-carry rules is to ensure the transmission of public (e.g. TVP1, TVP2 and one public regional television channel) and specific commercial channels (e.g. those holding a license for analogue terrestrial TV at the time of the introduction of digital terrestrial television: Polsat, TVN, TV4 and TV Puls) on all platforms, apart from DTT.

The Krakow-based company TP Emitel is the owner of the national DTT network and technical operator of MUX1-MUX3 (on the basis of the agreements with broadcasters) offering 27 free-to-view channels (including 2 HD channels).

## 31 PT – PORTUGAL

There are a range of legislative acts relevant for broadcasting in Portugal.<sup>241</sup>

The Television and On-demand Services Law (Law no. 27/2007, of 30 of July as amended by Law no. 8/2011, of 11 April, and Act no. 40/2014 ) is the main legislative framework for audiovisual services.

In addition, a further significant law is the Electronic Communications Act (approved by Law 5/2004, of 10 February, which has been amended several times).

The media regulator is the ERC – Entidade Reguladora para a Comunicação Social (Regulatory Entity for the Media) who is responsible for television, radio and press. The Autoridade Nacional de comunicações (ICP-ANACOM) is the regulatory authority for electronic and postal communications in Portugal. The third important actor in the regulation of the Portuguese market is the competition authority – the Autoridade da Concorrência (AdC) .

### 31.1 Must-carry rules

The must-carry rules are addressed in the Electronic Communications Act (implementing the Universal Services Directive) and regulate the way in which must-carry rules can be established.

**Table 1 Electronic Communications Act (approved by Law 5/2004, of 10 February, and several times further amended)**

**Electronic Communications Act (approved by Law 5/2004, of 10 February, and several times further amended).**

**CHAPTER IV**

**Operation rules**

**SECTION I**

**Undertakings providing publicly available networks and services**

**Article 43**

**«Must carry» obligations**

1 –The NRA shall impose “must carry” obligations upon undertakings providing electronic communications networks used for the distribution of radio or television broadcasts where such networks are used by a significant number of end-users as the principal means of receiving radio and television broadcasts, which obligations shall be to transmit radio and television broadcast channels and services as specified under law by competent authorities.

2 – The obligations set out in the preceding paragraph shall be imposed only where they are necessary to meet clearly defined objectives of general interest and shall be reasonable, proportionate, transparent and subject to periodical review.

3 – The NRA may determine appropriate remuneration in respect of imposed “must carry” obligations, which remuneration shall be applied in a proportionate and transparent manner, while ensuring that, in equivalent circumstances, there is no discrimination in the treatment of undertakings providing electronic communications networks. Article 25, paragraphs 2 et seq. of the Television Act (approved by Law 27/2007, of 27 July, further amended by Law 8/2011, of 11 April, and Law 40/2014, of 9 July)

(English non-official version from Anacom)

The Law 27/2007 (and various amendments) outline the must-carry rules. The television services that qualify as must-carry are: services in original Portuguese language of gen-

<sup>241</sup> All of these laws are available in English and Portuguese on the web site of the Anacom.  
<http://www.anacom.pt/render.jsp?categoryId=4600>

eral contents, with general information contents, or with a scientific, educational or cultural nature, taking into account its coverage scope and conditions for access (Article 25 (1)). No specific channels are named but this can be assumed to include the main generalist public service channels of RTP and the generalist channels SIC and TVI.

Article 25 (6) also obliges operators of electronic communications networks and distribution operators to „provide network and distribution capacity to regional and local television programme services, as well as to the broadcast of educational or cultural activities, given the characteristics of the composition of the offer and technical and market conditions assessed at a given time by the Regulatory Entity for the Media in the scope of authorization procedures, having heard, where it so deems necessary, the Competition Authority or the national communications regulatory authority“.

## **Table 2 Law 27/2007, as amended by Law 8/2011 and Law 40/2014**

Law 27/2007, of 27 July, further amended by Law 8/2011, of 11 April, and Law 40/2014, of 9 July)

### **CHAPTER III**

#### **Distribution of television programme services**

##### **Article 25**

##### **Distribution operators**

1 - Distribution operators shall give precedence, in organising and presenting the respective television offer, in succession, to television programme services in original Portuguese language of general contents, with general information contents, or with a scientific, educational or cultural nature, taking into account its coverage scope and conditions for access.

2 - Operators of electronic communications networks used in the television activity must provide, following a decision of the national communications regulatory authority, issued according to paragraphs 1 and 2 of article 43 of Law no. 5/2004, of 10 February, the transport of television programme services specified by the Regulatory Entity for the Media under point s) of paragraph 3 of article 24 of Law no. 53/200, of 8 November.

3 - For the purposes of the preceding paragraph, television operators responsible for the organization of the television programme services referred therein must provide the respective signal.

4 - The national communications regulatory authority, pursuant to paragraph 3 of article 43 of Law no. 5/2004, of 10 February, may determine an appropriate compensation for imposed transport obligations.

5 - The Regulatory Entity for the Media may determine, in a proportionate, transparent and non-discriminatory way, an appropriate compensation for imposed signal provision obligations under paragraph 3.

6 - Operators of electronic communications networks dealing with television programme services and distribution operators must provide network and distribution capacity to regional and local television programme services, as well as to the broadcast of educational or cultural activities, given the characteristics of the composition of the offer and technical and market conditions assessed at a given time by the Regulatory Entity for the Media in the scope of authorization procedures, having heard, where it so deems necessary, the Competition Authority or the national communications regulatory authority.

7 - Any alteration to the composition of the offer of distributed television programme services or to the respective access conditions shall take into account the diversification and pluralism obligations and the respect for consumer rights.

8 - Irrespective of the preceding paragraph, the consumer shall be notified 30 days of advance of any alterations to the contracted conditions.

9 - The communication referred in the preceding paragraph shall attach the indication of the power to terminate the contract where alterations concern the composition or price of the offer of distributed television programme services.

10 - The Regulatory Entity for the Media may adopt decisions, pursuant to the respective Bylaws, that ensure compliance with the provisions of this article.

### 31.1.2 Platforms and services

According to the Electronic Communications Act, must carry obligations can be imposed upon undertakings “providing electronic communications networks used for the distribution of radio or television broadcasts where such networks are used by a significant number of end-users as the principal means of receiving radio and television broadcasts, which obligations shall be to transmit radio and television broadcast channels and services as specified under law by competent authorities.”

Feedback from the regulator indicated that according to the Portuguese legal system, the adoption of must carry obligations on undertakings providing electronic communications networks used for the distribution of radio and television broadcasts is a task endorsed to two different regulatory authorities: ERC (responsible for the media sector) and ANACOM (in charge for the electronic communications sector). At a first stage, ERC should specify the services to be subjected to must carry obligations, which should be further imposed by ANACOM on ‘eligible’ providers and electronic communications networks.

The ERC conducted an exhaustive consultation in May 2011 which resulted in the conclusion that on one hand, DTT and cable should be the only platforms wherein such obligations can be placed, given that they are currently the only ones that are used by a significant number of end-users as their principle means of receiving television broadcasts.

On the other hand, ERC has identified the television services that should be subjected to must carry obligations in each one of these platforms. A similar procedure was adopted with regard to the must carry of a set of complementary services adequate to enable accessibility for disabled end-users to the TV channels abovementioned.

For DTT, the Public tender Regulations for the Multiplex A operator (which was won by Portugal Telecom) obliged the operator to reserve frequencies for the public channels RTP 1, RTP 2, the private channels SIC and TVI throughout the territory and also the public channels RTP Azores and RTP Madeira in their respective Autonomous Regions. There was also a planned reservation of capacity for a new Channel 5 which has not yet been created. For cable, the same services are listed plus services that enhance access to the audiovisual services for people with disabilities. These are all outlined in a Deliberation from the ERC in 2011.<sup>242</sup>

### 31.1.3 Costs

The costs are regulated in a reciprocal fashion under the Electronic Communications Act whereby the “national communications regulatory authority, pursuant to paragraph 3 of article 43 of Law no. 5/2004, of 10 February, may determine an appropriate compensation for imposed transport obligations.” (Article 25(4)). At the same time the Regulatory Entity for the Media “may determine, in a proportionate, transparent and non-discriminatory way, an appropriate compensation for imposed signal provision obligations under paragraph 3.” (Article 25 (5)).

<sup>242</sup> Deliberação 5/OUT-TV/2011 Especificação de serviços televisivos e de serviços complementares sujeitos a obrigações de transporte e de entrega em redes de comunicações electrónicas <http://www.erc.pt/download/YToyOntzOjg6ImZpY2hlaXJvIjtzOjM5OjJtZWRRpYS9kZWNPc29lcy9vYmptY3RvX29mZmxpbmUvMTYzMy5wZGYiO3M6NjoidGI0dWxvIjtzOjIzOjIkJkZWxpYmVvYWVhby01b3V0LXR2MjMjAxMSI7fQ==/deliberacao-5out-tv2011>

## 31.2 Must offer

Must-offer rules are also present in the Law 27/2007 (Article 25 (3)) and mirror the must-carry rules: “For the purposes of the preceding paragraph, television operators responsible for the organization of the television programme services referred therein must provide the respective signal.” There are no additional access rules (such as must-see or must-find).

## 31.3 Access to free DTT

In Portugal, as in many other countries the regulator pointed out that the main obstacle to access to free-DTT is the scarcity of spectrum. The DTT Portuguese model is currently confined to FTA services offered in a Multiplex with national coverage. Any further envisaged increase of the free-DTT must be decided by the Executive and may require adjustments to the current legal framework. The allocation of the pay DTT multiplex was handed back by Portugal Telecom in 2010.

The Television Law ([Law no. 27/2007, of 30 of July](#)) of July 2007 dealt with the legal criteria for the granting and renewal of television licenses, and addressed the introduction of Digital Terrestrial TV. The free-DTT multiplex operation was conceived to only convey channels already licensed or to be licensed in Portugal and therefore submitted to Portuguese jurisdiction.

Channels under Portuguese jurisdiction are required to as a general principle, broadcast in spoken or subtitled in Portuguese. Other languages may be used with regard to specific programmes, such as those that fulfil occasional informative requirements, as well as programmes intended for the learning of foreign languages or specially aimed at immigrant communities.

According to research carried out by the European Platform of Regulatory Authorities (EPRA), Portugal is one of several countries (alongside the Czech Republic, Latvia, the Slovak Republic, Denmark, Italy, UK and Norway) where the capacity is managed as a whole by a multiplex/network operator who enjoys some leeway in using the capacity and selecting the channels which compose the line-up. Broadcasters no longer have to take part in a tendering process. An authorisation (rather than a licence) is granted to every applicant fulfilling certain minimum requirements concerning professional and economic standards. However, such an authorisation does not secure the access to the digital terrestrial transmission network and the licensee must negotiate with the multiplex operator to get access and be distributed.<sup>243</sup>

Hence, access to the DTT Multiplex in Portugal is negotiated with Portugal Telecom (PT).

### 31.3.1 Platform operator and TV channels

PT Comunicações (Portugal Telecom) was awarded the license for the free-to-air Multiplex, and the service was officially launched in April 2009. It carries the four national terrestrial channels (RTP1 and 2, TVI and SIC) and two autonomous regional channels. The parliamentary channel ARTV was added at the end of 2012. Switch-off of the analogue signal took place in April 2012.

As noted earlier, the Public tender Regulations for the Multiplex A operator (which was won by Portugal Telecom) obliged the operator to reserve frequencies for the public channels RTP 1, RTP 2, the private channels SIC and TVI throughout the territory. And also the public channels RTP Azores and RTP Madeira in their respective Autonomous Regions.

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<sup>243</sup> Machet, Emmanuelle (2012): Plenary Session 2: Regulatory and Licensing Models for DTT. Summary of the answers to the questionnaire. 32nd EPRA Meeting, Belgrade, 6-8 October 2010. (Revised version), EPRA Secretariat: <http://www.epra.org/attachments/belgrade-plenary2-dtt-comparative-background-paper>



## 31.4 Summary and conclusion

According to the Electronic Communications Act, must carry obligations can be imposed upon undertakings “providing electronic communications networks used for the distribution of radio or television broadcasts where such networks are used by a significant number of end-users as the principal means of receiving radio and television broadcasts, which obligations shall be to transmit radio and television broadcast channels and services as specified under law by competent authorities.”

The ERC conducted an exhaustive consultation in May 2011 which resulted in the conclusion that on one hand, DTT and cable should be the only platforms wherein such obligations can be placed, given that they are currently the only ones that are used by a significant number of end-users as their principle means of receiving television broadcasts.

PT Comunicações (Portugal Telecom) operates the free-to-air Multiplex, and the service was officially launched in April 2009. It carries the four national terrestrial channels (RTP1 and 2, TVI and SIC) and two autonomous regional channels. The parliamentary channel ARTV was added at the end of 2012. Switch-off of the analogue signal took place in April 2012.

## 32 RO – ROMANIA

The main legislative documents for regulation of the media in Romania include the *Audiovisual Law No. 504/ 2002*, which has a focus on the implementation of the AMS Directive, on the licencing and regulation of broadcasting, and on the role and functioning of the regulator. In addition, the *Act on Electronic Communications (140/2012)* covers the broader field of electronic communications networks, which includes broadcasting frequencies, and the regulation of telecommunications.<sup>248</sup>

The Audiovisual Law (including several amendments) mainly deals with the provision of audiovisual services and their licencing, the function and organisation of the regulator, the implementation of the EU Directives (first the TVWF, and then the AVMS), and issues concerning media ownership and concentration.

The broadcasting system in Romania is regulated by the National Audiovisual Council - NAC (Consiliul Național al Audiovizualului),<sup>249</sup> who is responsible for licencing and supervising (with regard to regulations on content and advertising) audiovisual media services. The National Authority for Management and Regulation in Communications (ANCOM) is the body that protects the interests of the communications users in Romania, by promoting competition in the communications market, ensuring the management of scarce resources and encouraging innovation and efficient investments in infrastructure.<sup>250</sup>

### 32.1 Must-carry rules

The 'must-carry' rules are outlined in the Audiovisual Law, Art. 82<sup>251</sup>, and states that the cable operators should include in their offer the channels of public television and private stations under the jurisdiction of Romania, free for retransmission and free of technical or financial restraints. Currently, the obligation is not applied to DTH operators. The total must-carry list should not take up more than 25% of the total capacity of the operator.

**Table 1 Audiovisual Law 2014**

#### Audiovisual Law 2014

##### ART. 82

(1) Any distributor retransmitting program services by means of electronic communication networks, except those using radio spectrum shall include in its offer the program services of the Romanian Television Corporation broadcast for the public in Romania, as well as other program services of private broadcasters under Romania's jurisdiction, free for retransmission and free of technical or financial restraints, within a limit of 25% of the total number of the program services distributed by the respective network, as well as TV services for which the retransmission is made compulsory by means of international agreements for which Romania is party. The criteria for evaluating private broadcasters is the decreasing order of their annual rating.

(1) Distributors retransmitting program services shall include in their offer at regional and at local level at least two regional and two local programs, where such programs exist; the criteria for choosing programs shall be that of decreasing order of their audience.

(2) In rural areas, for networks with less than 100 subscribers, the Romanian Television Corporation may provide for free reception, with a view to retransmission, of the public programs.

(3) In those areas where a national minority represents more than 20% of the population, distribu-

<sup>248</sup> Act on Electronic Communications: <http://www.legex.ro/Legea-140-2012-121721.aspx>

<sup>249</sup> Website of the <http://www.cna.ro/>

<sup>250</sup> ANCOM website : [http://www.ancom.org.ro/en/ancom\\_106](http://www.ancom.org.ro/en/ancom_106)

<sup>251</sup> Audiovisual Law 2014 :

[http://www.cna.ro/IMG/pdf/LEGEA\\_AUDIOVIZUALULUI\\_CU\\_MODIFICARI\\_SI\\_COMPLETARI\\_DI\\_N\\_2014.pdf](http://www.cna.ro/IMG/pdf/LEGEA_AUDIOVIZUALULUI_CU_MODIFICARI_SI_COMPLETARI_DI_N_2014.pdf)

Law no. 504/July 11th, 2002 The Audiovisual Law (Text in force as of November 22nd, 2009), <http://www.cna.ro/The-Audio-visual-Law,1655.html>

tors shall also provide for the free reception of programs in the language of the respective minority.  
(4) Where practicable, distributors retransmitting program services by means of electronic communication services, shall include in their offer the public program services of the Romanian Broadcasting Corporation, those of a national coverage radiobroadcaster and those of a local, private broadcaster.

### 32.1.2 Distribution platforms and services

Must-carry obligations in Romania apply only to cable.

The law specifies public and private TV channels but does not provide a specific list of channels. The regulator develops the list of must-carry channels on the basis of audience shares.

For 2015, the list of must-carry channels was published on the website of the regulator<sup>252</sup>. This list included the following public services: TVR 1, TVR 2, TVR 3 and TVR NEWS, and also 5 regional windows of the public service broadcaster (STUDIOUL TERITORIAL CLUJ, STUDIOUL TERITORIAL CRAIOVA, STUDIOUL TERITORIAL IAȘI, STUDIOUL TERITORIAL TÂRGU MUREȘ, and STUDIOUL TERITORIAL TIMIȘOARA.

The list also includes two international foreign services (on the basis of binding international agreements): the French international television channel TV5, and the Moldovan international channel Moldova 1.

A list of 28 Romanian private channels are also on the 2015 list, and these are ranked according to audience shares: Antena 1, Kanal D, Antena 3, Romania TV, Prima TV, Național TV, B1 TV, Realitatea TV, Antena Stars, Digi24, Favorit TV, Euforia Lifestyle TV, Kiss TV, Taraf TV, ZU TV, Trinitas TV, U TV, Music Channel, National 24 Plus, TV H, Neptun TV, Speranta TV, Nasul TV, Hit Music Channel, Inedit TV, Alfa Omega TV, Travel Mix, Credo TV.

The list of private channels is organised according to audience share. The total must-carry list should not take up more than 25% of total capacity of the operator. Private channels are chosen for the programme offer on the basis of the priority list above.

Local and regional channels are also included in the must-carry rules: “Distributors retransmitting program services shall include in their offer at regional and at local level at least two regional and two local programs, where such programs exist; the criteria for choosing programs shall be that of decreasing order of their audience.” (Art 82 (3)).

This extensive list of must-carry channels has been rather controversial. In 2014 before the publication of the must-carry list there was a “*dispute of the CNA members about the shortening of the must-carry list and by a recommendation of the Consiliul Concurenței (Competition Council) to the CNA suggesting modifications of the must-carry legislation. Several CNA members campaigned for a shortening of the must-carry list and thus not to oblige the distributors to use up to 25% of their offer for stations which often have hardly any audience. The CNA members’ intentions, however, could not be implemented due to clear legal provisions. In spite of that, the Consiliul Concurenței (Competition Council) recommended on 3 February 2014 that the CNA review the must-carry principle. The Consiliul Concurenței recommended to the CNA that the must-carry principle be applied in line with technological neutrality regardless of the way of retransmission, be it cable or satellite direct-to-home (DTH) and not only to cable operators, as it is done today.*”

*The Consiliul Concurenței also suggested that the must-carry status be given only to channels whose overall content is of public interest (public service channels and television*

<sup>252</sup> Must-carry list for 2015: <http://www.cna.ro/Lista-sta-ilor-TV-pentru-2015-in.html>

And also <http://www.paginamedia.ro/2015/02/lista-must-carry-28-de-posturi-comerciale-in-lista-posturilor-libere-la-retransmisie/>

services whose retransmission is prescribed by international agreements). This status may be granted to private channels only if they are deemed to be of general interest (cultural and information channels, etc.) and have an appropriate audience share. As a result, the number of channels in the must-carry list would be reduced (taking into account the forthcoming introduction of digital television), and the status would be granted within a competitive procedure. The suggestions, however, could not be implemented in the selection procedure as set out in Art. 82 of the Audiovisual Law.<sup>253</sup> .....

### 32.1.3 Costs

According to the Mapping Digital Media Romania report, the operators are not allowed to demand any fees for transmission under the must-carry rule. No rules relating to must-offer, must-see or must-find were identified.

## 32.2 Access to DTT platforms

Digital terrestrial broadcasting is in the very early stages in Romania, with pilot broadcasts currently being carried out. This follows several years of delay and the eventual adoption of a DTT strategy in 2013.<sup>254</sup> In March 2015, the regulator ANCOM launched a consultation on proposals to amend the procedure for granting DTT licences. The amendments proposed for 2015 are outlined for consultation.

The document also clearly describes the current status which requires regarding requirements for holding a licence for “a provider of audio-visual programme services must hold an audiovisual licence issued by the National Audiovisual Council, as well as a transmission licence – for broadcasting in analogue format -, or a licence for the use of the radio spectrum in digital terrestrial system – for television programme services broadcast in digital terrestrial system – and the corresponding technical authorisation issued by ANCOM.”

### 32.2.1 Platforms and services

In 2014, the ANCOM auctioned five multiplexes in the DVB-T2 standard, four in UHF and one in VHF. The first multiplex in UHF (MUX 1) will be used to broadcast the public and private television stations free to air that are currently broadcast in the analogue terrestrial system under transparent, competitive and non-discriminatory conditions.<sup>255</sup>

Three out of five multiplexes were awarded to the state-owned National Broadcasting Company S.A. - RADIOCOM (Societatea Națională de Radiocomunicații S.A. - RADIOCOM) in June 2014. One of these will be free to air.

At the beginning of 2015, ANCOM awarded a series of regional multiplexes to five companies: 2KTelecom (5 regional multiplexes), Regal, Cargo Speed, Digital Video Broadcast, Radio M Plus (1 regional multiplex each). Tests have been launched for DTT by SNR Radiocom (11 channels including 3 HD).

In April 2015, five new regional and local multiplexes in Suceava, Botosani, Bacau, Buzau and Piatra Neamt (the northern and eastern parts of Romania) were awarded in the third auction held by the National Authority for Management and Regulation in Communications (Autoritatea Națională pentru Administrare și Reglementare în Comunicații - ANCOM).<sup>256</sup>

<sup>253</sup> Eugen Cojocariu (2014): Romania New must-carry List for 2014. IRIS 2014-3:1/39.

<http://merlin.obs.coe.int/iris/2014/3/article39.en.html>

<sup>254</sup> <http://www.cna.ro/HOT-RARE-Nr-403-din-19-iunie-2013.html>

<sup>255</sup> Cojocariu (2014): Romania: Three out of five multiplexes awarded. IRIS 2014-9:1/27.

<http://merlin.obs.coe.int/iris/2014/9/article27.en.html>

<sup>256</sup> Eugen Cojocariu (2015): Romania: New digital terrestrial television multiplexes granted. IRIS 2015-7:1/28. <http://merlin.obs.coe.int/iris/2015/7/article28.en.html>

### 32.3 Conclusion and summary

Must-carry rules apply to cable and concern the public channels and a (priority) list of 28 Romanian private channels, and local and regional channels (according to the geographic range of the distribution company). DTT is in the very early stages of implementation and a consultation was launched in March 2015 regarding the procedure for DTT licensing.

### 32.4 Recent legal updates of interest

In July 2015, the Romanian National Audiovisual Council modified the conditions for issuing and amending the retransmission notification. This decision mainly concerns the carriage of regional and local TV channels.<sup>257</sup>

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<sup>257</sup> Eugen Cojocariu (2015): Romania: Modification of the conditions for issuing and amending the retransmission notification. IRIS 2015-8:1/29. <http://merlin.obs.coe.int/iris/2015/8/article29.en.html>

## 33 RS – REPUBLIC OF SERBIA

The relevant legislation regarding audiovisual services in the Republic of Serbia are the Law on Electronic Media (OG RS, 83/14)<sup>258</sup> and the Law on Electronic Communications 44/2010.<sup>259</sup> The Regulatory Authority of Electronic Media - REM has the role of ensuring an effective implementation and promotion of the broadcasting policy in the Republic of Serbia in a manner befitting a democratic society and integration needs.

### 33.1 Must-carry rules

Must-carry obligations are regulated by the *Law on Electronic Media*, the *Law on Public Media Services* and the *Law on Electronic Communications*. The Law on Electronic Communications incorporates article 31 of the Universal Services Directive. The regulatory authority for electronic communications (Regulatory Agency for electronic Communications and Postal Services) can designate an operator of an electronic communications network as being subject to must-carry obligations “if a significant number of end-users use the electronic communications network of that operator as the only or primary way of receiving media content.”

**Table 1 Law on Electronic Communications (OG RS 44/ 10, 62/14)**

**Law on Electronic Communications (OG RS, 44/10, 62/14)**

**Article 101. of Law on Electronic Communications (OG RS, 44/10, 62/14)**

*(Translated summary provided by regulator)*

At request of the regulatory authority for electronic media, the regulatory authority for electronic communications designates operator of electronic communications network for media content distribution and broadcasting, who has to distribute one or more radio and/or television programmes at the national, provincial, regional or local level, if a significant number of end-users use the electronic communications network of that operator as the only or primary way of receiving media content.

These rules apply to all platforms, except for terrestrial broadcasting platform (multiplex).

The *Law on Electronic Media* outlines the services which are must-carry. These are the services of the public service media (Article 100), and other services which should be drawn up in a list by the regulatory authority for electronic media. This list can include national, provincial media and must be reviewed every three years.

Other media services could be included in “must carry” only if the criteria of public interest and media pluralism are satisfied, whether radio or TV programme of a commercial or non-profit media service provider. It is not clear whether such a list has been created.

**Table 2 Law on Electronic Media (OG RS, 83/14)**

**Law on Electronic Media (OG RS, 83/14)**

**Article 100 para. (10) and (11) of Law on Electronic Media (OG RS, 83/14)**

*(Translated summary provided by regulator)*

Must carry of public media services programmes

The operator is obliged to distribute without charge:

a) basic programmes of public service media in their broadcasting area, and

<sup>258</sup> Law on Electronic Media (OG RS, 83/14)

<sup>259</sup> Law on Electronic Communications 44/2010

[http://www.paragraf.rs/propisi/zakon\\_o\\_elektronskim\\_komunikacijama.html](http://www.paragraf.rs/propisi/zakon_o_elektronskim_komunikacijama.html) [in original language]

b) programmes which the public media service provides in the mode of new media services, in terms of the Law on Public Media Services, if the regulatory authority for electronic media decides that it is necessary for implementing the public interest.

These rules apply to all platforms, except for terrestrial broadcasting platform (multiplex).

#### **Must carry of other media services**

#### **Article 106. of Law on Electronic Media (OG RS, 83/14)**

*(Translated summary provided by regulator)*

In order to protect the public interest and media pluralism, the regulatory authority for electronic media is obliged to at least once every three years in the national, provincial, or specific geographic relevant market establish a list of radio or television programmes, which operators whose electronic communications network for media content distribution and broadcasting is used by a significant number of end-users as the only or primary way for receiving media content will be compelled to distribute. The regulatory authority must respect principles of proportionality and transparency.

Request for determination of the obligation of distribution and the list mentioned above have to be submitted to the regulatory authority for electronic communications.

The Law on Public Media Services regulates the access to the digital terrestrial network for the public service media (see table 3).

### **Table 3 Law on Public Media Services (OG RS 83/14)**

#### **Law on Public Media Services(OG RS, 83/14)**

#### **Article 15. para. (3) of Law on Public Media Services (OG RS, 83/14)**

*(Translated summary provided by regulator)*

Rule which refers to the operator of the network for terrestrial broadcasting

According to that rule, operator of terrestrial broadcasting platform (multiplex) is obliged to secure to public service broadcaster:

a high-quality reception of digital signal for at least 95% of the population in the areas where the public service broadcaster's service is provided, multiplex capacities for the broadcast and distribution of public service programmes, the technical conditions for broadcast in standard and high image resolution and technical support for other technical and technological, programming, and service improvements.

On the other side, public media service broadcaster is obliged to pay fee to operator for these services. Fee and other important issues are regulated by contract, which these two parts have to conclude.

### **33.1.2 Purpose of rules**

Must-carry rules are described by the regulator as being based on the criteria of public interest and media pluralism.

### **33.1.3 Platforms and services**

As described above, the general must-carry rules apply to all platforms except DTT. The rules oblige operators to carry the services of the public service media, and allow the regulator to create a list of other services that should be must-carry on the basis of the criteria of public interest and media pluralism.

There are separate specific rules for must-carry of the public service broadcaster over DTT specifying the capacity that must be reserved and the type of technical conditions and quality standards.

### **33.1.4 Costs**

Costs are only outlined with reference to the digital terrestrial broadcasting system. Article 15. para. (3) of Law on Public Media Services (OG RS, 83/14) states that the public media

service broadcaster is obliged to pay fee to the operator for transmission on these services. The fee and other important issues are regulated by contract, which these two parts have to conclude.

## 33.2 Other access rules

There are no specific must-offer rules, aside from the general public service obligations of the public media. Regarding must-see or must-find the rules on EPG (Article 100 para. (13) of Law on Electronic Media (OG RS, 83/14)) state that the operator of electronic communications network is obliged to respect the logical channel numbering, which is determined by the regulatory authority for electronic media, taking into account the nature of media services and area for which the license was issued for the provision of media services.

## 33.3 Access to free DTT

According to the response from the regulator, there are no obstacles for foreign broadcasters to access the DTT networks, aside from the fact that there is limited capacity on the multiplexes.

The regulatory framework for the Digital Switch-Over (DSO) consisted of the Strategy for the Transition from Analogue to Digital Signal in the Republic of Serbia (adopted in 2009 and amended in 2012 and 2013), the Law on Electronic Communications (adopted in 2010 and amended in 2014), the Law on Electronic Media (adopted in 2014) and the Rulebook on the DSO (adopted in 2010 and amended several times).<sup>260</sup>

Terms of access will depend on the contract with the operator. Only media service providers under jurisdiction of Republic of Serbia will need to obtain licence to access to DTT-multiplex. The holder of a broadcasting licence may only be a domestic legal entity or natural person who is registered to produce and broadcast radio and television programmes and which has its seat or domicile in the Republic of Serbia.

The Regulatory Authority for Electronic Media has replaced all the analogue terrestrial television broadcasting licenses with digital ones. All licensed broadcasters will continue to provide services in accordance with the original terms of their licenses and they are all guaranteed a sufficient capacity in the multiplex. The major concern at the moment is the future of the local broadcasters, since their transmission costs will now be higher. ETV granted significant discounts, however these will only be valid until the end of 2016.<sup>261</sup>

### 33.3.1 Platform operator and channels

The National Broadcasting Agency “Broadcasting Technology and Links” (Emisiona Tehnika i Veze - ETV) founded by the Government of the Republic of Serbia in the year 2009 is responsible for the technical aspects of the digital transition, as it is the exclusive operator of digital terrestrial networks and multiplexes. Switchover finished on 7th of June 2015

ETV (Emisiona Tehnika i Veze) operates 2 DVB-T2 MUXes. The 1st MUX 9 channels (RTS 1, RTS 2, TV PINK, TV B92, TV PRVA, TV HAPPY, RTV 1, RTV 2, RTS 3) in some places 7) and the second 2nd MUX has 84 Regional channels.

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<sup>260</sup>IRIS 2015-7:1/29. *Serbia: Digital switch over completed*. Slobodan Kremenjak  
<http://merlin.obs.coe.int/iris/2015/7/article29.en.html>

<sup>261</sup>IRIS 2015-7:1/29. *Serbia: Digital switch over completed*. Slobodan Kremenjak  
<http://merlin.obs.coe.int/iris/2015/7/article29.en.html>

## 33.4 Summary and conclusion

In the Republic of Serbia, must-carry rules exist for all platforms except DTT. The rules oblige operators to carry the services of the public service media, and allow the regulator to create a list of other services that should be must-carry on the basis of the criteria of public interest and media pluralism.

There are separate specific rules for must-carry of the public service broadcaster over DTT specifying the capacity that must be reserved and the type of technical conditions and quality standards.

Emisiona Tehnika i Veze (ETV) is a state agency that runs two multiplexes carrying 7 national, 2 regional public and 84 regional channels. According to the response from the regulator, there are no obstacles for foreign broadcasters to access the DTT networks, aside from the fact that there is limited capacity on the multiplexes.

## 34 SE – SWEDEN

The main legal basis for broadcasting in Sweden is the *Radio and Television Act*<sup>262</sup> from 2010. It defines specific must-carry rules for cable and IPTV networks (Chapter 9).

The Swedish Broadcasting Authority supervises television and radio broadcasting, including on-demand services and teletext. It is also responsible for licenses, fees and registration for radio and television.<sup>263</sup>

With regard to must-carry rules the regulator is responsible for supervising compliance with Chapter 9 of the Radio and Television Act.

### 34.1 Must-carry rules

The must-carry rules are specified in Chapter 9 of the Swedish Radio and Television Act. Section 1 of Chapter 9 refers to cable networks as the main subject to which must-carry rules apply (this also includes IPTV networks). Section 2 defines that a maximum of four public service television channels are covered under the must-carry rules. Section 3 specifies that the rules apply to analogue and digital cable networks and Section 6 details the rules that apply particularly to local cable networks.

**Table 4 The Radio and Television Act (2010)**

**The Radio and Television Act (2010)  
Chapter 9. Cable network retransmissions  
Obligation to retransmit programmes**

Section 1. Any natural or legal person owning or otherwise controlling an electronic communication network used to relay television broadcasts by cable to the general public shall, if a significant number of households that are connected to the network use it as their main means of receiving television broadcasts, ensure that residents in the households that are connected can receive television broadcasts conducted pursuant to a licence from the Government and which can be received in the area without conditions regarding separate payment.

This obligation only applies to television broadcasts for which the licence is subject to impartiality and objectivity requirements and a condition concerning a diversified range of programmes that must include news coverage. This broadcasting obligation only applies if the conditions for retransmission in accordance with the Copyright in the Literary and Artistic Works Act (1960:729) have been satisfied.

It should be possible to receive television broadcasts according to the first paragraph above in a satisfactory manner and at no cost for the reception itself. Pursuant to the first paragraph, the broadcasting obligation also applies to television broadcasts which a licence holder conducts to fulfil the obligation to broadcast throughout the country or to parts of the country, but where the form of broadcast does not require a licence from the Government.

Number of programmes covered by the broadcasting obligation

Section 2. The broadcasting obligation in accordance with the first paragraph does not cover more than four programmes broadcast simultaneously by licence holders whose operations are financed by television fees pursuant to the Act on Financing of Public Service Radio and Television (1989:41).

**Technology to be used in retransmissions**

Section 3. In a network where television broadcasts take place using both analogue and digital

<sup>262</sup> Ministry of Culture. 2010. Radio and Television Act. from: <http://www.mrtv.se/Documents/Styrdokument/Radio%20and%20Television%20Act.pdf> ; Sveriges Riksdag. 2010. Radio- och tv-lag (2010:696). Available from: [http://www.riksdagen.se/sv/Dokument-Lagar/Lagar/Svenskforfattningssamling/Radio--och-tv-lag-2010696\\_sfs-2010-696/#K3](http://www.riksdagen.se/sv/Dokument-Lagar/Lagar/Svenskforfattningssamling/Radio--och-tv-lag-2010696_sfs-2010-696/#K3)

<sup>263</sup> The Swedish Broadcasting Authority. 2014. Available from: <http://www.mrtv.se/en/about-us/>

technology, retransmission of at least two programmes referred to in section 2 shall take place using analogue technology if they are being transmitted or have been transmitted using analogue technology. In other cases retransmission may be carried out using digital technology.

#### **Exemption from broadcasting obligation**

Section 4. The broadcasting obligation pursuant to the section 1 paragraphs 1 and 2 do not include broadcasts based on licences to re-transmit according to Chapter 4 section 7.

#### **Broadcast frequency for TV programmes from local cable transmission organisations**

Section 5. Any natural or legal person owning or otherwise controlling a cable transmission network in which television programmes are relayed to the general public and reach more than 100 homes connected to that network as their primary means of receiving television broadcasts, shall provide, without charge, specifically determined frequencies for television programme broadcasts of TV programmes by one or more cable broadcasting organisations appointed by the Broadcasting Authority for each municipality in which the natural or legal person has such a network. In networks where TV is broadcast with analogue and digital technology, frequencies must be provided to local cable transmission organisations with both analogue and digital technology.

#### **Requirements for local cable transmission organisations**

Section 6. A local cable transmission organisation shall be a legal person formed to conduct local cable transmissions and which may be required to permit the expression of a variety of interests and opinions in its operations. In conducting its transmission activities, a local cable transmission organisation must endeavour to achieve broad freedom of expression and information to the greatest possible extent. The appointment of local cable transmission organisations by the Broadcasting Authority shall be limited to three years.

#### **Exemptions**

Section 7 The Broadcasting Authority may grant an exemption from the obligations pursuant to sections 1-3 and 5, if there are special reasons to do so.

(Official translation by the Swedish Ministry of Culture)

### **34.1.2 Purpose of rules**

The purpose of the provisions applying to cable and IPTV operators is to provide programme services that offer impartiality and objectivity and to ensure a diversified range of programmes that must include news coverage (Swedish Radio and Television Act, Chapter 9, Section 1).

The provisions applying to local cable network operators specify that these “must endeavour to achieve broad freedom of expression and information to the greatest possible extent” (Chapter 9, Section 6).

### **34.1.3 Distribution platforms and services**

The must-carry rules apply to cable and IPTV networks. They do not apply to terrestrial networks or satellite.

The must-carry rules do not apply to a list of specific channels (by name). Instead, the rules apply to specific types of services, i.e. “television broadcasts for which the licence is subject to impartiality and objectivity requirements and a condition concerning a diversified range of programmes that must include news coverage” (Swedish Radio and Television Act, Chapter 9, section 1, paragraph 2).

This means that the must-carry rules apply only to the public service Company Swedish Television (Sveriges Television AB, SVT) and its four channels SVT1, SVT2, SVT24 and SVT Barnkanalen (SVTB). The channel of UR (Swedish Educational Broadcasting Company), which is part of the public service broadcasting group and transmitted by SVT, is also included in the must-carry obligations (i.e. Kunskapskanalen). At least one of these channels shares a slot with another one (i.e. SVTB/SVT 24) as only a maximum of four public service television channels are covered under the must-carry rules (Section 2 Radio and Television Act). The must-carry rules did previously also apply to the commercial company TV4 in the period from 2002 to 2008, but they do not apply anymore.

### 34.1.4 Costs

Cable and IPTV providers are obliged to ensure that those connected to the television network can receive the public service channels without separate payment. The provider, however, has the right to charge a reasonable service and maintenance fee for the network.<sup>264</sup>

With regards to costs, Chapter 9, Section 1 of Swedish Radio and Television Act specifies for the transmission of must-carry channels that “[i]t should be possible to receive television broadcasts [...] in a satisfactory manner and at no cost for the reception itself”.

The provisions applying specifically to local cable network operators (Chapter 9, Section 5 of the Swedish Radio and Television Act) stress that these “shall provide, without charge, specifically determined frequencies for television programme broadcasts of TV programmes by one or more cable broadcasting organisations appointed by the Broadcasting Authority for each municipality in which the natural or legal person has such a network”.

There are no must offer, must-see or must-find obligations in Sweden.

## 34.2 Access to free DTT

As the radio frequency spectrum for terrestrial television broadcasting is more limited than that of other distribution platforms, the Swedish Parliament (Riksdag) made it obligatory to issue licenses for this form of broadcasting. The issuing of licenses for the public service broadcasters is the responsibility of the Swedish Government. Licenses for all other channels are issued by the Swedish Broadcasting Authority. The allocation of slots for channels on other platforms – except DTT – is based on agreements between the broadcasting companies and the network operators.<sup>265</sup>

The broadcasting licenses for public service broadcasters are valid until 31 December 2019. All other licenses to broadcast on terrestrial TV expire on 31 March 2020. On 31 March 2014, the Swedish Broadcasting Authority issued 51 national and 6 regional licenses for the period 1 April 2014 to 31 March 2020.<sup>266</sup>

There are no obstacles concerning foreign broadcasters. They are free to apply for DTT broadcasting licenses on the same terms as domestic broadcasters. Foreign broadcasters are subject to the same licensing process as domestic applicants. The choice of business model (e.g. free-to-air or pay TV), is not a factor in the licensing process. A license may only be issued to a broadcasting company that has the financial and technical capabilities to broadcast for the duration of the license period.

With regard to production and linguistic requirements, Chapter 15, § 7 of the Radio and Television Act contains provisions for European works and states that unless there are special reasons to the contrary, non-cable television broadcasters shall ensure that more than half of the annual transmission time shall be reserved for European works. Further, at least ten per cent of the annual broadcasting time or at least ten per cent of the programming budget shall be used for European works created by the producers who are independent of broadcasters. The proportion of programmes produced during the preceding five years should be as high as possible.

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<sup>264</sup> Swedish Broadcasting Authority. 2013. Must-carry obligation for cable networks. Available from: <http://mrtv.se/en/licensing/television/cable-television-and-iptv/must-carry-obligation/>

<sup>265</sup> Media Managers Club. 2014. Media development 2014 - The Swedish Broadcasting Authority. Available from: <http://mediamanagersclub.org/media-development-2014-swedish-broadcasting-authority>

<sup>266</sup> The Swedish Broadcasting Authority. 2015. Licenses for terrestrial television. Available from: <http://mrtv.se/en/licensing/television/terrestrial-television/>

### 34.2.1 Platform operator and TV channels

Sweden's national DTT service is operated by the television and radio network company Teracom, broadcasting a number of free-to-air and encrypted television channels on 7 multiplexes. Teracom<sup>267</sup> is a Swedish limited liability company wholly owned by the Swedish state. Teracom AB is part of the Teracom Boxer Group that consists of Boxer TV-Access AB (the packager for digital terrestrial television in Sweden), Teracom A/S (the owner and operator of the Danish terrestrial network), and Boxer TV A/S (licensed as a pay-TV operator in Denmark since 2008). Boxer TV-Access, which is owned by Teracom AB, carries a total of 10 free DTT channels.

The television channels that are available free-to-air on the terrestrial pay-TV platform Boxer (a total of 10) include the SVT public service broadcasting channels SVT1, SVT1 HD, SVT2, SVT2 HD, SVT24, Kunskapskanalen, Barnkanalen, the commercial channels TV4, TV6 (Modern Times Group) and the public Finnish channel YLE Areena (TV Finland).<sup>268</sup>

A total of 50 national and 6 regional DTT channels are licensed by the Swedish Broadcasting Authority,<sup>269</sup> including the international news channels Al Jazeera (version in English), BBC World News and CNN International (available on pay-TV platform Boxer).

## 34.3 Conclusion and summary

In Sweden the main legal basis for broadcasting in Sweden is the Radio and Television Act from 2010. Chapter 9 of the Act includes the provisions on must-carry rules which apply to cable and IPTV networks. The purpose of the must-carry rules is to provide services that offer impartiality and objectivity and to ensure a diversified range of programmes that must include news coverage (Swedish Radio and Television Act, Chapter 9, Section 1).

The must-carry channels include SVT1, SVT2, SVT24 and SVT Barnkanalen (SVTB) by the public service Company Swedish Television (SVT) and UR's Kunskapskanalen. The must-carry channels must be made available at no extra cost.

Channels on the terrestrial network require a license issued by the Swedish Broadcasting Authority except for public service channels, which require a license from the Swedish Government. There are no obstacles for foreign broadcasters. As of 1 April 2014 there are a total of 63 television channels holding DTT licenses that, with some exceptions, are valid until 31 March 2020 in the case of channels licensed by the Swedish Broadcasting Authority or 31 December 2019 in the case of public service channels.<sup>270</sup> This includes 10 channels that are available free-to-air (SVT1, SVT1 HD, SVT2, SVT2 HD, SVT24, Kunskapskanalen, Barnkanalen, the commercial channels TV4, TV6 (Modern Times Group) and the public Finnish channel YLE Areena (TV Finland)) and the channels Al Jazeera, BBC World News and CNN which are available on the pay-DTT platform Boxer.

<sup>267</sup> Teracom. 2015. About Teracom Boxer Group. from: [https://www.teracom.se/about-teracom/about\\_teracom\\_group/](https://www.teracom.se/about-teracom/about_teracom_group/)

<sup>268</sup> Boxer. 2015. Alla våra TV-kanaler. FRIA KANALER. Available from: <https://www.boxer.se/vart-utbud/alla-kanaler/tv-via-antenn-kanaler/>

<sup>269</sup> Swedish Broadcasting Authority. 2014. Marksänd tv. Available from: <http://www.mrtv.se/sv/tillstand-och-registrering/sok-i-registret/>

<sup>270</sup> The channels TV3, TV4 and Kanal 5 are licensed to broadcast in parallel in SD and HD until 31 March 2017.

## 35 SI – SLOVENIA

The main legislative acts that regulate broadcasting in Slovenia include the Media Act (last amended in 2012) and the Act on Audiovisual Media Services (2011). There were several attempts to update the Media Act, particularly in the context of implementing the Audiovisual Media Service Directive, but several drafts were rejected by Parliament. Hence, the Act on Audiovisual Media Services was introduced in order to complete the implementation of the Directive. In addition, the Electronic Communications Act, dealing with electronic communications and spectrum management and the Digital Broadcasting Act, related to the licensing of the digital terrestrial broadcasting platforms are complementing the broadcasting regulation framework in Slovenia. The regulation of the media (and the communications sector) is carried out by the converged regulator, the Agency for Communication Networks and Services of the Republic of Slovenia - AKOS (formerly APEK).

### 35.1 Must-carry rules

The rules on must-carry are outlined in the *Media Act*<sup>271</sup> (last amended in 2012), under the section entitled “management of the technical infrastructure”.

#### 35.1.1 Platforms and services

Section 10 on the management of the technical infrastructure defines an operator as “a legal entity or a natural person that transmits and broadcasts programme via terrestrial networks, via satellites, or via cable distribution or cable communications systems or in any other method, and thus provides broadcasters of media with technical capacity for disseminating programme to the interested public.

**Table 1 Media Act Slovenia**

**Media Act**

**Section 10: MANAGEMENT OF TECHNICAL INFRASTRUCTURE**

**Operators**

**Article 111**

(1) Under the present Act an operator is a legal entity or a natural person that transmits and broadcasts programme via low-lying terrestrial networks, via satellites, or via cable distribution or cable communications systems or in any other method, and thus provides broadcasters of media with technical capacity for disseminating programme to the interested public.

(2) The operator shall provide the services on the basis of the notification defined in Article 5 of the Electronic Communications Act (Official Gazette of the Republic of Slovenia nos. 43/04 and 86/04) and the entry of the operator in the official records in accordance with the fifth paragraph of Article 5 of the Electronic Communications Act (Official Gazette of the Republic of Slovenia nos. 43/04 and 86/04).

(3) The Agency shall inform the competent ministry of the termination of the status of operator or the deletion from the official register of operators.

**Article 112**

(1) Operators must allow all broadcasters that have been issued the licence specified in Article 105 of the present Act to disseminate programme services under equal conditions, if there are technical possibilities for the quality reception of signal at the operator's main receiving programme service, within ninety days of the beginning of the distribution of such programme services, in such a way that they are accessible to all users of their services.

(2) Operators must within the period specified in the previous paragraph allow the dissemination free-of-charge of radio and television programme services specified in Articles 76, 77, 79, 80 and

<sup>271</sup> Mass Media Act: [http://www.rtv slo.si/files/razno/mass\\_media\\_act.pdf](http://www.rtv slo.si/files/razno/mass_media_act.pdf) In Slovenian, consolidated from 2007

81 of the present Act, if there are technical possibilities for the quality reception of signal at the operators main receiving programme service, in such a way that they are accessible to all users of their services.

(3) In the case specified in the previous paragraph the broadcaster must allow the operator to disseminate the operator's programme service free-of-charge, excluding the obligations deriving from the collective protection of copyright and related rights.

(4) An operator may not allow the dissemination of a radio or television programme service of a broadcaster that falls under the jurisdiction of the Republic of Slovenia if the programme service is not entered in the mass media register at the relevant ministry.

(5) In addition to the programme services specified in the first and second paragraph of this article, operators shall also allow the dissemination of other programme services if the programme council specified in Article 114 of the present Act so rules.

However the obligations in section 112 (amendment of 2006) did not apply to DTT operators: *(1) The provisions laid down in Article 112 of this Act shall not apply to an operator of a terrestrial digital network.* In 2012 provisions of must-carry were extended also for DTT but only in case of TV and Radio channels with the special importance status (local, regional, student and non-profit channels). This rule is limited to 10% of the multiplex capacity per region.

Article 112 (2) of the Media Act outlines the requirement for operators to broadcast free-of-charge a range of television services, as are outlined under Articles 76, 77, 79, 80 and 81 (under the section: Radio and Television Programmes and Services of Special Importance). The requirements for DTT platform are defined in Article 114a (amendment of 2012).

These programmes and services are: the public service broadcaster Radiotelevizija Slovenija radio and television programme services (Art 76); Local radio and television programme services (Art 77); Regional radio and television programme services (Art 79); Student radio and television programme services (Art 80); Non-profit radio and television programme services (Art 81).

According to a recent report on the media landscape in Slovenia, the must-carry system has not always worked for smaller broadcasters (in relation to being included in the offers of operators, the payment, and the location on the list of channels). To counteract this, a short amendment of the media act, allowing free use of RTV SLO's broadcasting infrastructure and multiplex capacities for certain groups of broadcasters, was adopted by a new Parliament in June 2012<sup>272</sup> (Article 114a).

In case of DTT, Article 114a outlines the obligation of the RTV Slovenia as a DTT multiplex operator to broadcast free-of-charge the range of TV and Radio channels with the special importance status (local, regional, student and non-profit channels). The capacity of DTT must-carry is limited to 10% of the multiplex capacity per region. However, TV and Radio channels are obliged to pay the proportional costs related to the depreciation and maintenance costs. Similar provision is applicable for TV and Radio channels which are licenced as network operators using own transmitting equipment co-located at the RTV Slovenia transmitting sites. Those channels/network operators do not pay the co-location costs except when they broadcast channels without the special importance status.

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<sup>272</sup> *Mapping Digital Media: Slovenia.* A Report by the Open Society Foundations. Written By Marko Milosavljevic and Tanja Kerševan Smokvina:

<http://www.opensocietyfoundations.org/sites/default/files/mapping-digital-media-slovenia-20130605.pdf>

### 35.1.2 Costs

The Media Act distinguishes between the cable/satellite platform and terrestrial broadcasting platform. According to Article 112, which relates to the cable and satellite platform, TV and radio channels with the status of special importance should be must carried free-of-charge.

In case of DTT, TV and Radio channels of special importance are obliged to pay the proportional costs of depreciation and maintenance expenses. When TV or Radio channel holds the licence to operate the network/multiplex, the cost of co-location at the transmitting site of RTV Slovenia is free-of-charge. However this is true only if the content of the multiplex is composed from a range of TV or Radio channels of special importance.

## 35.2 Other access rules

There are no must-offer obligations in Slovenia and there are no must-see or must-find rules.

## 35.3 Access to free DTT

Licensing of TV channels is defined in Media Act. Electronic media must be registered in the Slovenian media register. Among other conditions, the obligation to use Slovenian language and being resident and registered under Slovenian Laws. In order to start the production of Radio or TV channel, the license for production has to be obtained by the regulatory authority (AKOS). To disseminate the content another license is needed, but only in case of terrestrial broadcasting platform. The beauty content is used during the licensing procedure.

Research carried out by the South East Europe Digi.TV project<sup>273</sup> provided an overview of the licensing process in Slovenia. The report notes that: *Only a broadcaster in possession of the licence for a particular radio or television programme service (licence for performing television or radio activities for this service, hereinafter: the licence) can be granted the right to be present in a digital multiplex..... This licence is issued by APEK to a broadcaster for radio or television programme service meeting the following conditions: registered radio or television activities and the decision of the Ministry of Culture on the entry of the radio or television programme in the register of media.*

Hence channels on the Free DTT must be licensed in Slovenia.

### 35.3.1 Platform operator and channels

The history of DTT in Slovenia is quite complex. The first multiplex (A) was allocated to the public service broadcaster RTV Slovenija. Up until 2012, a second multiplex (B) existed. The Norwegian company Norkring (multiplex B) left in February 2012 claiming that the public service broadcaster violated competition regulations by hosting commercial channels offering a low price for the service. Norkring dismantled the second multiplex in Slovenia. The commercial channels, except the TV3 had not come to financial agreements with the Norkring. In the end Norkring just had one commercial channel on the multiplex - TV3 (Modern Times Group - MTG), which ceased operating and left the Slovenian market on 29.2.2012 claiming an unfair domination of the CME Group/Pro Plus in the advertising market. In 2013 the Agency for Protection of Competition (AVK) issued a decision which

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<sup>273</sup> South-east Europe Digital Television (SEE Digi. TV) Project (2011): *Analysis of existing legal framework for the digital switchover*. [http://www.see-digi.tv/shared\\_files/wp3/wp3a1.pdf](http://www.see-digi.tv/shared_files/wp3/wp3a1.pdf)

found that the local company Pro Plus has abused its dominant position in the television advertising market on the territory of the Republic of Slovenia

A tender was launched for a third multiplex (C) in October 2012, and this multiplex was also granted to RTV Slovenija. This multiplex C now carries the commercial channels Kanal A, Pop TV, TV3 Medias, Planet TV, and Golica TV. Multiplex A carries TV Slovenija 1 (SD and HD), TV Slovenija 2 (SD and HD) and TV Slovenija 3, two regional PSB services and one TV channel with special importance status (Vaš Kanal). In June 2012, the Media Act was amended providing for the semi-cost free transmission of TV channels of special importance on the DTT multiplex operated by RTV Slovenija. Six local multiplexes carry eight local channels.

Also in June 2012, the Digital Broadcasting Act was amended to forbid the hosting of commercial TV channels on the public multiplex when other DTT multiplexes are available.<sup>274</sup>

## 35.4 Conclusion and summary

The Slovenian legislation (Media Act) places must-carry obligations on operators to broadcast free-of-charge the public service broadcaster Radiotelevizija Slovenija radio and television programme services; Local radio and television programme services; Regional radio and television programme services; Student radio and television programme services; Non-profit radio and television programme services. The rules apply to all platforms (but are slightly different for DTT);

Currently just the public service broadcaster is managing multiplexes on the free to air DTT networks at the national level and carries 10 national and two regional channels. Six local multiplexes carry eight local channels. Hence channels on the Free DTT networks must be licensed in Slovenia.

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<sup>274</sup> Yearbook of the European Audiovisual Observatory 2013

## 36 SK – SLOVAK REPUBLIC

The broadcast media in the Slovak Republic is regulated by the Council for Broadcasting and Retransmission of the Slovak Republic (Rada pre vysielanie a retransmisiiu). The Council grants licences and registrations and supervises both private and public broadcasters. The monitoring of broadcasters is in relation to content issues and not financial issues. The Council can also issue sanctions and develop regulatory codes.

The Regulatory Authority for Electronic Communications and Postal Services<sup>275</sup> manages frequencies and authorisations related to broadcasting. The legal framework for broadcasting in the Slovak Republic includes the following. *The Law 308/2000 on Broadcasting and Retransmission*,<sup>276</sup> (and the *Law 498/2009*<sup>277</sup> amending the Law No. 308/2000). The Law 308/2000 regulated the role of the Council for Broadcasting and Retransmission, and also the rights and duties of broadcasters, operators of retransmission systems, licensing, registration etc.

### 36.1 Must-carry rules

The must-carry rules are outlined under the *Law 308/2000 on Broadcasting and Retransmission*, Section 17 paragraph 1.

**Table 1 Law 308/2000 on Broadcasting and Retransmission**

#### Law 308/2000 on Broadcasting and Retransmission Media Act

##### Section 17

##### Basic duties of retransmission operator

(1) A retransmission operator shall have the following duties:

a) to ensure, while occupying channels in a telecommunication network or on telecommunications facility, that the basic programme package includes the programme services of a public service broadcaster and licensed broadcasters that can be received by standard receiving equipment at the location of reception on telecommunications equipment, free of charge to either side;

such reception shall not be deemed to include the reception of coded programme services and programme services reception of which requires a special receiver besides a standard radio or television receiver, nor the reception of digital broadcasts of a programme service other than programme services of a public service broadcaster that is not monothematic programme service, (Section 3(4) of Act no. 220/2007)

b) to ensure, while occupying channels in a telecommunication network or on telecommunications facility, that the basic programme package includes, free of charge, the programme service of a broadcaster licensed for local digital broadcasting of a television programme service, for which public capacity was reserved in the local multiplex available at the place of reception pursuant to specific legislation, (Section 49(2) to (4) of Act no. 220/2007) if the broadcaster agrees with such inclusion;

and if such inclusion is not possible, the operator shall be obliged to ensure that the channels in a telecommunications network or on telecommunications facility include one channel reserved for local broadcasting free of charge available to the public in the basic programme package;

<sup>275</sup> Regulatory Authority for Electronic Communications and Postal Services:  
<http://www.teleoff.gov.sk/index.php?ID=9>

<sup>276</sup> The Law 308/2000 on Broadcasting and Retransmission, consolidated version  
<http://www.rvr.sk/sk/spravny/index.php?aktualitaId=925> [in Slovak]  
[http://www.culture.gov.sk/extdoc/3626/308\\_aj\\_342](http://www.culture.gov.sk/extdoc/3626/308_aj_342) [in English, amendments to 2012]

<sup>277</sup> Law 498/2009 amending the Law No. 308/2000  
[http://www.en.uni.lu/content/download/31318/371622/file/Slovakia\\_translation.pdf](http://www.en.uni.lu/content/download/31318/371622/file/Slovakia_translation.pdf)  
[unofficial English translation, University of Luxembourg] - See more at:  
<http://www.epra.org/articles/media-legislation#SLOVAK%20REPUBLIC>

on this programme service advertising and teleshopping cannot be broadcasted without the retransmission operator's consent;  
if public capacity in the local multiplex available at the place of reception was reserved under other specific legislation (Section 49(2) to (4) of Act no. 220/2007) for multiple programme services free of charge, or for multiple programme services, for none of which public capacity was reserved free of charge, the retransmission operator may decide which of them to include in the basic programme package otherwise the operator shall include in the basic programme package the programme service for which public capacity in the local multiplex available at the place of reception was reserved free of charge under other specific legislation (Section 49(2) to (4) of Act no. 220/2007)

Under section 17 Article 2, the law states that the rule applies only to cable. In the response from the regulator, it was stated that this includes IPTV, MMDS, MVDS.

Article 3 refers to exemptions from the obligation, in particular where “a) a significant proportion of the users of the telecommunications network do not use this telecommunications network as their main means for receiving radio or television programme services, or b) full or partial fulfilment of this duty is not necessary to ensure public access to information, in particular to public interest programmes, important events for the public and short news reports, and to broadcasts of the programme services of a public service broadcaster.”

## **Table 2 Law 308/2000 on Broadcasting and Retransmission**

### **Law 308/2000 on Broadcasting and Retransmission Media Act**

#### **Section 17**

#### **Basic duties of retransmission operator**

(2) Duties under subsection (1) shall not apply to an operator of retransmission without registration under this act.

Duties under subsection (1)(a) and (b) shall apply only to an operator of cable retransmission.

(3) The Council may decide, in accordance with the principles of transparency and proportionality, on a request of a retransmission operator for a full or partial exemption from the duty laid down in subsection (1)(a) if it finds that a) a significant proportion of the users of the telecommunications network do not use this telecommunications network as their main means for receiving radio or television programme services, or

b) full or partial fulfilment of this duty is not necessary to ensure public access to information, in particular to public interest programmes, important events for the public and short news reports, and to broadcasts of the programme services of a public service broadcaster.

(4) The Council shall make a decision under subsection (3) in particular if a) the total number of users is insignificant in comparison with the number of households using other methods of reception in the geographical area concerned or

b) the extent of the retransmission of programme services under subsection (1)(a) is disproportionate to the capacity of the telecommunications network through which retransmission is delivered to users.

(5) If the Council decides pursuant to subsections (4) that the duty under subsection

(1)(a) shall be applicable to a retransmission operator only in part, it must include in its decision a list of the programme services that the duty applies to.

(6) The Council shall cancel an exemption under subsection (4) should the reasons for which the exemption was granted cease to apply.

(7) An applicant may submit an appeal to the Supreme Court of the Slovak Republic (hereinafter only “the Supreme Court”) against a decision of the Council rejecting an application for an exemption or a decision that does not grant the full extent of a requested exemption or a decision cancelling an exemption, within 15 days after the delivery of the Council decision.<sup>41)</sup>

### **36.1.1 Platforms and services**

Under section 17 Article 2, the law states that the rule applies only to cable. In the response from the regulator, it was stated that this includes IPTV, MMDS, and MVDS.

The types of services that are must-carry:

- the programme services of a public service broadcaster
- and licensed broadcasters that can be received ....free of charge;
- the programme service of a broadcaster licensed for local digital broadcasting of a television programme service, for which public capacity was reserved in the local multiplex available at the place of reception pursuant to specific legislation
- and if such inclusion is not possible, the operator shall be obliged to ensure that the channels in a telecommunications network or on telecommunications facility include one channel reserved for local broadcasting free of charge available to the public in the basic programme package;

There are no references to cost in the rules.

## 36.2 Other access rules

There are no must-offer obligations in the Slovak Republic and there are no must-see or must-find rules.

## 36.3 Access to free DTT

According to the response from the regulator, the only major obstacle is the lack of space on the DTT networks. All terms and conditions depend on the contract with the platform operator. Hence in the Slovak Republic the multiplex operator is the gatekeeper.

### 36.3.1 Platform operator and channels

The company Towercom operates four DTT Multiplexes. They carry four public service channels (including two PSB HD channel), and eight private channels. Dajto TV, Joj Plus, Joj TV, Senzi TV, STV1 HD, STV1 (Jednotka), STV2 (Dvojka), STV2 HD, TA3, Television Doma, TV Markiza, TV WAU.

The Towercom subsidiary, Towerhome, launched pay DTT services in 2013 offering 12 additional channels.

## 36.4 Conclusion and summary

According to the legislative framework must-carry rules apply only to cable. In the response from the regulator, it was stated that this includes IPTV, MMDS, MVDS.

Platforms are exempt according to the provisions of Article 31 of the Universal Services Directive (where a significant pro-portion of the users of the telecommunications network do not use this telecommunications network as their main means for receiving radio or television programme services, or full or partial fulfilment of this duty is not necessary to ensure public access to information).

There are no particular obstacles to accessing the free DTT platform. This is dependent on the arrangements with the multiplex operator, and the availability of space.

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