

# **Regulation of television and information society services in the different Member States of the European Union**

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(As of 30/04/05)

## **I. REGULATION OF TELEVISION AND INFORMATION SOCIETY SERVICES IN AUSTRIA**

### **1.1. MAIN ELEMENTS OF THE DEFINITION OF TELEVISION SERVICES**

Ausgangspunkt der Definition des Fernsehens ist die Definition des Überbegriffes "Rundfunk" im Bundesverfassungsgesetz über die Sicherung der Unabhängigkeit des Rundfunks. Demnach ist unter Rundfunk die für die Allgemeinheit bestimmte Verbreitung von Darbietungen aller Art in Wort, Ton und Bild mit oder ohne Benutzung eines Leiters zu verstehen. Als Fernsehen sind daher alle über die reine Wort-/Ton-Darbietung (= "Hörfunk") hinausgehenden Rundfunkdienste zu verstehen.

Die gesetzlichen Grundlagen für die Veranstaltung von Fernsehen sind einerseits das ORF-Gesetz (§ 2 Abs. 1 Z 1) für das öffentlich-rechtliche Fernsehen und das Privatfernsehgesetz (§ 2 Z 1) für private Veranstalter (Kabel-, Satelliten- und terrestrisches Fernsehen)

### **1.2. LEGAL TEXTS CONCERNING THE DEFINITION OF TV SERVICES IN ORIGINAL LANGUAGE**

I.) Bundesverfassungsgesetz vom 10. Juli 1974 über die Sicherung der Unabhängigkeit des Rundfunks, BGBl. Nr. 396/1974 (BVG-Rundfunk):

#### *Artikel I*

*(1) Rundfunk ist die für die Allgemeinheit bestimmte Verbreitung von Darbietungen aller Art in Wort, Ton und Bild unter Benützung elektrischer Schwingungen ohne Verbindungsleitung bzw. längs oder mittels eines Leiters sowie der Betrieb von technischen Einrichtungen, die diesem Zweck dienen.*

*[...]*

II.) Bundesgesetz über den Österreichischen Rundfunk, BGBl. Nr. 379/1984 idF BGBl. I Nr. 97/2004 (ORF-Gesetz):

#### *Unternehmensgegenstand und Finanzierung der Tätigkeiten*

*§ 2. (1) Der Unternehmensgegenstand des Österreichischen Rundfunks umfasst, soweit in diesem Bundesgesetz nicht anderes bestimmt ist,*

*1. die Veranstaltung von Rundfunk,*

*[...]*

III.) Bundesgesetz mit dem Bestimmungen für privates Fernsehen erlassen werden, BGBl. I Nr. 84/2001 idF BGBl. I Nr. 97/2004 (Privatfernsehgesetz):

#### *Begriffsbestimmungen*

*§ 2. Im Sinne dieses Gesetzes ist*

*1. Rundfunkveranstalter: wer, mit Ausnahme des Österreichischen Rundfunks, Hörfunk- oder Fernsehprogramme (analog oder digital) für die Verbreitung in Kabelnetzen oder über Satellit oder Fernsehprogramme für die Verbreitung auf drahtlosem terrestrischen Wege schafft, zusammenstellt und verbreitet oder durch Dritte vollständig und unverändert verbreiten lässt. Rundfunkveranstalter ist nicht, wer Rundfunkprogramme ausschließlich weiter verbreitet;*  
[...]

### **1.3. LEGAL TEXTS CONCERNING THE DEFINITION OF TV SERVICES IN TRANSLATION (EN/FR/DE), IF AVAILABLE**

I.) Act of the Federal Constitution from 10th July 1974, Federal Law Gazette No. 396, concerning the protection of the independence of broadcasting:

#### *Article I*

*(1) Broadcasting is the dissemination of all kinds of items in the form of words, sounds or images, intended for the general public and communicated by means of electrical oscillations without recourse to connecting circuits, or alternatively through or via a conductor, as also the operation of technical facilities serving this end.*  
[...]

II.) Federal Act on the Austrian Broadcasting Corporation (ORF Act), Federal Law Gazette No. 379/1984 as amended by Federal Law Gazette I No. 97/2004:

#### *Business objective and financing of activities*

*Section 2. (1) The business objective of the Austrian Broadcasting Corporation, unless otherwise specified in this Federal Act, comprises the following:*  
*1. the organisation of broadcasting programmes,*  
[...]

III.) Federal Law Stipulating Provisions for Private Television (Private Television Act), Federal Law Gazette I No. 84/2001 as amended by Federal Law Gazette I No. 97/2004:

#### *Definitions*

*Section 2. The following definitions shall apply to the present law:*  
*1. Broadcasting organizer: Any person, with the exception of the Austrian Broadcasting Corporation (ORF), who creates, puts together and broadcasts radio or television programs (analog or digital) for dissemination via cable networks or via satellite, or television programs for dissemination by means of wireless terrestrial transmission, or who arranges for third parties to disseminate these in full and unchanged. Those persons shall not be broadcasting organizers who exclusively re-disseminate broadcasting programs;*  
[...]

#### **1.4. MAIN ELEMENTS OF THE DEFINITION OF INFORMATION SOCIETY SERVICES**

Dienste der Informationsgesellschaft werden in Österreich entsprechend den Vorgaben der Richtlinie 98/34/EG idF 98/48/EG gesetzlich definiert, und zwar einerseits im Notifikationsgesetz (§ 1 Abs. 1 Z 1) und im E-Commerce-Gesetz (§ 3 Z 1).

Unter einem Dienst der Informationsgesellschaft ist demnach jede in der Regel gegen Entgelt elektronisch im Fernabsatz und auf individuellen Abruf eines Empfängers erbrachte Dienstleistung zu verstehen. Als Beispiele nennt das ECommerce-Gesetz insbesondere den Online-Vertrieb von Waren und Dienstleistungen, die Online-Werbung, elektronische Suchmaschinen und Datenabfragemöglichkeiten sowie Dienste in Zusammenhang mit elektronischen Netzen.

Nicht als Dienste der Informationsgesellschaft gelten nach dem Notifikationsgesetz z.B. Rundfunk, Teletext, Sprachtelefon- und Telefaxdienste, Off-Line-Dienste (Software) oder auch Untersuchungen mit elektronischen Geräten am Patienten.

#### **1.5. LEGAL TEXTS CONCERNING THE DEFINITION OF INFORMATION SOCIETY SERVICES IN ORIGINAL LANGUAGE**

I.) Bundesgesetz zur Durchführung eines Informationsverfahrens auf dem Gebiet der technischen Vorschriften, der Vorschriften für die Dienste der Informationsgesellschaft und der Normen, BGBl. I Nr. 183/1999, (Notifikationsgesetz):

##### *Begriffsbestimmungen*

*§ 1. (1) Im Sinne dieses Bundesgesetzes bedeuten:*

*[...]*

*2. „Dienst“ eine Dienstleistung der Informationsgesellschaft, das ist jede in der Regel gegen Entgelt elektronisch im Fernabsatz und auf individuellen Abruf eines Empfängers erbrachte Dienstleistung, wobei im Sinne dieser Definition bedeuten:*

*a) „im Fernabsatz erbrachte Dienstleistung“: eine Dienstleistung, die ohne gleichzeitige physische Anwesenheit der Parteien erbracht wird,*

*b) „elektronisch erbrachte Dienstleistung“: eine Dienstleistung, die mittels Geräten für die elektronische Verarbeitung, einschließlich digitaler Kompression, und Speicherung von Daten am Ausgangspunkt gesendet und am Endpunkt empfangen und vollständig über Draht, über Funk, auf optischem oder anderem elektromagnetischen Weg gesendet, weitergeleitet und empfangen wird,*

*und*

*c) „auf individuellen Abruf eines Empfängers erbrachte Dienstleistung“: eine Dienstleistung, die durch die Übertragung von Daten auf individuelle Anforderung erbracht wird; Anlage 1 enthält eine nicht abschließende Liste jener Dienstleistungen, die nicht unter diese Definition fallen;*

*[...]*

## *Anlage 1*

*Dienste, die jedenfalls nicht als Dienste der Informationsgesellschaft im Sinne von § 1 Abs. 1 Z 2 anzusehen sind*

*A. Nicht „im Fernabsatz“ erbrachte Dienste, das sind Dienste, bei deren Erbringung der Erbringer und der Empfänger gleichzeitig physisch anwesend sind, selbst wenn dabei elektronische Geräte benutzt werden:*

- 1. Untersuchung oder Behandlung in der Praxis eines Arztes mit Hilfe elektronischer Geräte, aber in Anwesenheit des Patienten;*
- 2. Konsultation eines elektronischen Katalogs in einem Geschäft in Anwesenheit des Kunden;*
- 3. Buchung eines Flugtickets über ein Computernetz, wenn sie in einem Reisebüro in Anwesenheit des Kunden vorgenommen wird;*
- 4. Bereitstellung elektronischer Spiele in einer Spielhalle in Anwesenheit des Benutzers.*

*B. Nicht „elektronisch“ erbrachte Dienste, das sind*

*1. Dienste, die zwar mit elektronischen Geräten, aber in materieller Form erbracht werden:*

- a) Geldausgabe- oder Fahrkartenautomaten;*
- b) Zugang zu gebührenpflichtigen Straßennetzen, Parkplätzen usw., auch wenn elektronische Geräte bei der Ein- und Ausfahrt den Zugang kontrollieren und/oder die korrekte Gebührenentrichtung gewährleisten;*
- 2. „Off-line“-Dienste: Vertrieb von CD-ROM oder Software auf Disketten;*
- 3. Dienste, die nicht über elektronische Verarbeitungs- und Speicherungssysteme erbracht werden:*
  - a) Sprachtelefondienste;*
  - b) Telefax-/Telexdienste;*
  - c) über Sprachtelefon oder Telefax erbrachte Dienste;*
  - d) medizinische Beratung per Telefon/Telefax;*
  - e) anwaltliche Beratung per Telefon/Telefax;*
  - f) Direktmarketing per Telefon/Telefax.*

*C. Nicht „auf individuellen Abruf eines Empfängers“ erbrachte Dienste, das sind Dienste, die im Wege einer Übertragung von Daten ohne individuellen Abruf gleichzeitig für eine unbegrenzte Zahl von einzelnen Empfängern erbracht werden (Punkt-zu-Mehrpunkt-Übertragung):*

- 1. Fernsehdienste (einschließlich zeitversetzter Video-Abruf) nach Art. 1 lit. a der Richtlinie 89/552/EWG;*
- 2. Hörfunkdienste;*
- 3. Teletext (über Fernsehsignal).*

II.) Bundesgesetz mit dem bestimmte rechtliche Aspekte des elektronischen Geschäfts- und Rechtsverkehrs geregelt werden, BGBl. I Nr. 152/2001 (ECommerce- Gesetz):

### *Begriffsbestimmungen*

*§ 3. Im Sinne dieses Bundesgesetzes bedeuten:*

- 1. Dienst der Informationsgesellschaft: ein in der Regel gegen Entgelt elektronisch im Fernabsatz auf individuellen Abruf des Empfängers bereitgestellter Dienst (§ 1 Abs. 1 Z 2 Notifikationsgesetz, 1999),*

*insbesondere der Online-Vertrieb von Waren und Dienstleistungen, Online-  
Informationsangebote, die Online-Werbung, elektronische Suchmaschinen  
und Datenabfragemöglichkeiten sowie Dienste, die Informationen über ein  
elektronisches Netz übermitteln, die den Zugang zu einem solchen vermitteln  
oder die Informationen eines Nutzers speichern;  
[...]*

**1.6. LEGAL TEXTS CONCERNING THE DEFINITION OF INFORMATION  
SOCIETY SERVICES - TRANSLATION (EN/FR/DE), IF AVAILABLE**

I.) There is no English text of the “Federal Act on Notification”, Federal Law  
Gazette I No. 189/1999 available. The definitions of “information society  
services” in this Federal Law are though identical to those given in Article 1 and  
Annex V of the Directive 98/34/EC as amended by 98/48/EC.

II.) Federal Act with which certain legal aspects of electronic commercial and  
legal transactions are to be regulated, Federal Law Gazette I No. 152/2001 (E-  
Commerce Act):

*Definitions*

*Section 3. In the terms of this Federal Act:*

*1. "information society service" shall mean a service normally provided in return  
for consideration electronically by distance selling at the individual retrieval of  
the recipient (§ 1(1)2 of the Notification Act of 1999), particularly the online  
marketing of goods and services, online information offers, online advertising  
electronic search engines and data enquiry options as well as services which  
transmit information via an electronic network and provide access to such a  
network or store the information of a user; [...]*

**1.7. DOES THE NATIONAL LEGAL ORDER DEFINE OTHER  
CATEGORIES OF SERVICES IN RELATION TO THE TRANSMISSION  
OF AUDIOVISUAL CONTENT? IF YES, WHAT ARE THEIR MAIN  
FEATURES?**

NO

**1.8. LEGAL TEXTS CONCERNING THE DEFINITION OF THESE  
SERVICES IN ORIGINAL LANGUAGE, IF AVAILABLE**

NONE

**1.9. LEGAL TEXTS CONCERNING THE DEFINITION OF THESE  
SERVICES – TRANSLATION (EN/FR/DE), IF AVAILABLE**

NONE

## 2. REGULATION OF TELEVISION AND INFORMATION SOCIETY SERVICES IN *BELGIQUE - COMMUNAUTE FRANÇAISE*

### 2.1. Main elements of the definition of television services:

Les éléments essentiels de la définition de la radiodiffusion télévisuelle sont les suivants :

- L'émission de programmes télévisuels à l'aide de signaux codés ou non ;
- L'émission doit avoir un caractère de **communication publique** (par opposition à la correspondance privée) quelle que soit la technique de transmission utilisée (y compris le point-à-point)

### 2.2. Legal Texts concerning the Definition of TV Services in original Language

Il n'y a pas de définition légale stricto sensu, mais une définition résultant de la jurisprudence de la Cour constitutionnelle belge.

Extrait de l'arrêt 156/2002 du 6 novembre 2005 de la Cour d'arbitrage:

« La radiodiffusion, qui comprend la télévision, se distingue des autres modes de télécommunication, en particulier par les caractères suivants :

- la radiodiffusion concerne l'émission de programmes radiophoniques ou télévisuels à l'aide de signaux codés ou non;
- un programme de radiodiffusion est destiné, dans le chef de celui qui l'émet, au public en général ou à une partie de celui-ci, et n'a aucun caractère de confidentialité, même si l'émission se fait sur demande individuelle et quelle que soit sa technique de diffusion, en ce compris celle dite *point to point* qui précédemment n'était pas utilisée pour la radiodiffusion. En revanche, un service qui fournit de l'information individualisée et caractérisée par une forme de confidentialité ne relève pas de la radiodiffusion. »

### 2.3. Legal Texts concerning the Definition of TV Services in Translation (EN/FR/DE), if available

Disponible uniquement en Allemand :

« Der Rundfunk, der das Fernsehen umfaßt, kann von den anderen Arten der Telekommunikation insbesondere anhand folgender Merkmale unterschieden werden:

- Rundfunk bezieht sich auf das Ausstrahlen von Hörfunk- und Fernsehprogrammen mittels verschlüsselter oder nicht verschlüsselter Signale;
- ein Rundfunkprogramm ist, vom Standpunkt des betreffenden Senders, für das Publikum im allgemeinen oder für einen Teil davon bestimmt und hat keinen vertraulichen Charakter, selbst wenn es auf individuellen Wunsch hin ausgestrahlt wird und ungeachtet der für seine Ausstrahlung angewandten Technik, einschließlich der sog. point-to-point-Technik, die früher für den Rundfunk nicht angewandt wurde. Eine Dienstleistung, die individualisierte und durch eine Form der Vertraulichkeit gekennzeichnete Information liefert, gehört hingegen nicht zum Rundfunk. »



## **2.4. Main Elements of the Definition of Information Society Services**

Les éléments essentiels sont les mêmes que ceux de la directive « commerce électronique », si ce n'est que l'exclusion des services de radiodiffusion a été interprétée par la Cour constitutionnelle belge selon sa définition de la radiodiffusion.

## **2.5. Legal Texts concerning the Definition of Information Society Services in Original Language**

Article 2, 1° de la loi du 11 mars 2003 sur certains aspects juridiques des services de la société de l'information :

“service de la société de l'information : tout service presté normalement contre rémunération, à distance, par voie électronique et à la demande individuelle d'un destinataire du service”

La Cour d'arbitrage a eu l'occasion de préciser la portée de cet article dans son arrêt 132/2004 du 14 juillet 2004 :

« B.10.1. La radiodiffusion, qui comprend la télévision, peut être distinguée des autres formes de télécommunications en ce qu'un programme de radiodiffusion diffuse des informations publiques, est destiné, du point de vue de celui qui les diffuse, à l'ensemble du public ou à une partie de celui-ci et n'a pas de caractère confidentiel. Les services qui fournissent une information individualisée, caractérisée par une certaine forme de confidentialité, ne ressortissent par contre pas à la radiodiffusion et relèvent de la compétence du législateur fédéral.

B.10.2. La caractéristique essentielle de la radiodiffusion et de la télévision est le fait de fournir des informations publiques à l'ensemble du public. Dans une interprétation évolutive de la notion de diffusion, cela inclut également la diffusion sur demande individuelle. Les activités de diffusion ne perdent pas leur nature au motif que, par suite de l'évolution des techniques, une plus large possibilité de choix est offerte au téléspectateur ou à l'auditeur.

(...)

B.11.2. A la lumière de ce qui précède, l'article 2, 1°, de la loi du 11 mars 2003 sur certains aspects juridiques des services de la société de l'information doit être interprété en ce sens qu'il ne comprend pas les services de radiodiffusion et de télévision tels qu'ils sont définis au B.10. »

## **2.6. Legal Texts concerning the Definition of Information Society Services - Translation (EN/FR/DE), if available**

Disponible uniquement en Allemand :

Gesetz vom 11. März 2003 über bestimmte rechtliche Aspekte der Dienste der Informationsgesellschaft – Artikel 2,1° : « Dienste der Informationsgesellschaft : jede in der Regel gegen Entgelt elektronisch im Fernabsatz und auf individuellen Abruf eines Empfängers erbrachte Dienstleistung »

Extrait de l'arrêt de la Cour d'arbitrage 132/2004 :

« B.10.1. Der Rundfunk, der das Fernsehen umfaßt, ist von den anderen Formen der Telekommunikation zu unterscheiden, weil ein Rundfunkprogramm öffentliche Informationen verbreitet und vom Standpunkt des Sendenden aus für ein allgemeines Publikum oder für einen Teil davon bestimmt ist und nicht vertraulich ist. Dienste, die individualisierte und durch eine Form der Vertraulichkeit gekennzeichnete Informationen liefern, gehören hingegen nicht zum Rundfunk und unterliegen der Zuständigkeit des föderalen Gesetzgebers.

B.10.2. Ausschlaggebend für Rundfunk und Fernsehen ist die Bereitstellung öffentlicher Informationen für das Publikum im allgemeinen. In einer evolutiven Auslegung des Rundfunkbegriffs umfaßt dies auch das Senden auf individuellen Abruf hin. Rundfunktätigkeiten verlieren nicht ihre Beschaffenheit, weil durch die Entwicklung der Technik dem Zuschauer oder Zuhörer eine breitere Möglichkeit der eigenen Auswahl geboten wird.

(...)

B.11.2. Im Lichte der vorstehenden Erwägungen ist Artikel 2 Nr. 1 des Gesetzes vom 11. März 2003 « über bestimmte rechtliche Aspekte der Dienste der Informationsgesellschaft » so auszulegen, daß er nicht Rundfunk- und Fernsehdienste in dem in B.10 dargelegten Sinne umfaßt. »

**2.7. Does the National Legal order define other Categories of Services in Relation to the Transmission of Audiovisual Content? If Yes, what are their main Features?**

Non.

**2.8. Legal Texts concerning the Definition of these Services in Original Language, if available**

./.

**2.9. Legal Texts concerning the Definition of these Services - Translation (EN/FR/DE), if available**

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### **3. REGULATION OF TELEVISION AND INFORMATION SOCIETY SERVICES IN *VLAAMSE GEMEENSCHAP VAN BELGIË***

#### **3.1. Main elements of the definition of television services:**

- ✓ oorspronkelijkuitzenden van radio- of televisieprogramma's;
- ✓ bestemd voor een publiek;
- ✓ ongeacht de gebruikte techniek;
- ✓ met inbegrip van op individueel verzoek.

Zijn NIET bedoeld geïndividualiseerde en door een vorm van vertrouwelijkheid gekenmerkte informatie.

*Zie opmerking bij sub 4.*

#### **3.2. Legal Texts concerning the Definition of TV Services in original Language**

Art. 2, 1° van de decreten betreffende de radio-omroep en de televisie, gecoördineerd op 25 januari 1995 (B.S. 30/03/1995) (zoals gewijzigd bij het decreet van 7 mei 2004).

"Omroepen: het oorspronkelijk uitzenden via elektronische communicatienetwerken, al dan niet in gecodeerde vorm, van radio- of televisieprogramma's, of van andere soorten programma's, bestemd voor het publiek in het algemeen of voor een deel ervan. Hieronder zijn ook de programma's begrepen die op individueel verzoek worden uitgezonden, ongeacht de techniek die voor de uitzending wordt gebruikt, met inbegrip van de punt-tot-punt techniek, en het overdragen van programma's tussen ondernemingen met het oog op het doorgeven daarvan aan het publiek. Hieronder zijn diensten die geïndividualiseerde en door een vorm van vertrouwelijkheid gekenmerkte informatie leveren niet begrepen."

#### **3.3. Legal Texts concerning the Definition of TV Services in Translation (EN/FR/DE), if available**

"Art. 2 Pour l'application de ces décrets coordonnés, il faut entendre par:

1° radiodiffuseur: l'émission primaire, par le biais de réseaux de communications électroniques, codée ou non, de programmes de radio et de télévision ou d'autres genres de programmes, destinés au public en général ou à une partie du public. Sont également visés ici les programmes diffusés sur appel individuel, quelle que soit la technique utilisée pour cette diffusion, en ce compris la technique de bout en bout, et la communication de programmes entre entreprises en vue d'une rediffusion à l'intention du public. Ne sont pas visés les services fournissant des éléments d'information individualisés et caractérisés par une certaine forme de confidentialité.

### **3.4. Main Elements of the Definition of Information Society Services**

- ✓ elke dienst langs elektrische weg verricht;
- ✓ op individueel verzoek;
- ✓ gewoonlijk tegen betaling

*Arrest van Arbitragehof op 14/06/2004. is doorslaggevend om uit te maken of het om radio of televisie ( dus: omroep) gaat : bestemd voor publiek, zelfs op individueel verzoek.*

### **3.5. Legal Texts concerning the Definition of Information Society Services in Original Language**

Art. 2, 1° van de wet van 11 maart 2003 betreffende bepaalde juridische aspecten in de informatiemaatschappij (B.S. 17/04/2003).

"Dienst van de informatiemaatschappij: elke dienst die gewoonlijk tegen vergoeding, langs elektronische weg op afstand en op individueel verzoek van een afnemer van de dienst verricht wordt."

### **3.6. Legal Texts concerning the Definition of Information Society Services - Translation (EN/FR/DE), if available**

"Service de la société de l'information: tout service presté normalement contre rémunération, à distance, par voie électronique et à la demande individuelle d'un destinataire du service."

### **3.7. Does the National Legal order define other Categories of Services in Relation to the Transmission of Audiovisual Content? If Yes, what are their main Features?**

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### **3.8. Legal Texts concerning the Definition of these Services in Original Language, if available**

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### **3.9. Legal Texts concerning the Definition of these Services - Translation (EN/FR/DE), if available**

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**4. REGULATION OF TELEVISION AND INFORMATION SOCIETY SERVICES IN CYPRUS**

**4.1. MAIN ELEMENTS OF THE DEFINITION OF TELEVISION**

The Legislative Framework for Television Broadcasting is currently under review and will include, *inter alia*, a definition of what constitutes a television service. ( NOTE: The Draft Text is not yet finalized).

**4.2. LEGAL TEXTS CONCERNING THE DEFINITION OF TV SERVICES IN ORIGINAL LANGUAGE**

The Legislative Framework for Television Broadcasting is currently under review and will include, *inter alia*, a definition of what constitutes a television service. ( NOTE: The Draft Text is not yet finalized).

**4.3. LEGAL TEXTS CONCERNING THE DEFINITION OF TV SERVICES IN TRANSLATION (EN/FR/DE), IF AVAILABLE**

See above.

**4.4. MAI ELEMENTS OF DEFINITION OF INFORMATION SOCIETY SERVICES**

Text to be prepared.

**4.5. LEGAL TEXTS CONCERNING THE DEFINITION OF INFORMATION SOCIETY SERVICES IN ORIGINAL LANGUAGE**

Text to be prepared.

**4.6. LEGAL TEXTS CONCERNING THE DEFINITION OF INFORMATION SOCIETY SERVICES – TRANSLATION (EN/FR/DE), IF AVAILABLE**

Text to be prepared.

**4.7. DOES THE NATIONAL LEGAL ORDER DEFINE OTHER CATEGORIES OF SERVICES IN RELATION TO THE TRANSMISSION OF AUDIOVISUAL CONTENT? IF YES, WHAT ARE THEIR MAIN FEATURES?**

No.

**4.8. LEGAL TEXTS CONCERNING THE DEFINITION OF THESE SERVICES IN ORIGINAL LANGUAGE, IF AVAILABLE.**

Not available.

## **5. REGULATION OF TELEVISION AND INFORMATION SOCIETY SERVICES IN THE CZECH REPUBLIC**

### **5.1. Main elements of the definition of television services:**

- broadcasting to public
- primary dissemination of original programmes
- transmission through terrestrial, cable, satellite facilities

### **5.2. Legal Texts concerning the Definition of TV Services in original Language**

Zákon č. 231/2001 Sb., o provozování rozhlasového a televizního vysílání a o změně dalších zákonů - § 2 odstavec 1 písm. a)

Pro účely tohoto zákona se rozumí:

“rozhlasovým a televizním vysíláním prvotní šíření původních rozhlasových a televizních programů a teletextu, určených k příjmu veřejností v kódované nebo nekódované formě, prostřednictvím zemských vysílačích rádiových zařízení (dále jen "vysílač"), kabelových systémů a družic, a to analogově i digitálně”

### **5.3. Legal Texts concerning the Definition of TV Services in Translation (EN/FR/DE), if available**

Law No. 231/2001 Coll. on radio and television broadcasting operation and on changes of other acts – Art. 2 paragraph 1 point a)

For the purposes of this law:

“radio and television broadcasting shall mean primary dissemination of original radio and television programmes and teletext, both intended to be received by the public in encoded or unencoded form, through ground radio transmission facilities (hereinafter only "transmitters"), cable systems and satellites, both in analogue and digital form”

### **5.4. Main Elements of the Definition of Information Society Services**

- individual request submitted by electronic means
- provided by electronic means

**5.5. Legal Texts concerning the Definition of Information Society Services in Original Language**

Zákon č. 480/2004 Sb., o některých službách informační společnosti a o změně některých zákonů - § 2 odstavec 1 písm. a)

Pro účely tohoto zákona se rozumí:

“službou informační společnosti jakákoliv služba poskytovaná elektronickými prostředky na individuální žádost uživatele podanou elektronickými prostředky, poskytovaná zpravidla za úplatu; služba je poskytnuta elektronickými prostředky, pokud je odeslána prostřednictvím sítě elektronických komunikací a vyzvednuta uživatelem z elektronického zařízení pro ukládání dat”

**5.6. Legal Texts concerning the Definition of Information Society Services - Translation (EN/FR/DE), if available**

Law No. 480/2004 Coll. on certain services of information society and on changes of other acts – Art. 2 paragraph 1 point a)

“Any service provided through electronic means at individual request by electronic means normally for remuneration; a service is provided by electronic means if it is sent initially by means of electronic communication network and collected by the user from the electronic equipment for data storage.

**5.7. Does the National Legal order define other Categories of Services in Relation to the Transmission of Audiovisual Content? If Yes, what are their main Features?**

no

**5.8. Legal Texts concerning the Definition of these Services in Original Language, if available**

no

**5.9. Legal Texts concerning the Definition of these Services - Translation (EN/FR/DE), if available**



## 6. REGULATION OF TELEVISION AND INFORMATION SOCIETY SERVICES IN GERMANY

### 6.1. Main elements of the definition of television services:

Kernelemente der Definition von **Fernsehdienstleistungen**:

In Deutschland ist das Rundfunkwesen im Rundfunkstaatsvertrag der Länder geregelt. Dort wird bei der Definition nicht zwischen Hörfunk- und Fernsehdienstleistungen unterschieden. Der Rundfunkbegriff definiert also auch Fernsehdienstleistungen.

Die **Kernelemente des Rundfunks** sind:

- Rundfunk richtet sich an die Allgemeinheit (im Gegensatz zur Individualkommunikation).
- Rundfunk enthält Darbietungen in Wort, Ton oder Bild, die für den öffentlichen Meinungsbildungsprozess relevante Kommunikationsinhalte aufweisen; es kommt darauf an, inwieweit ein Inhalt bestimmt und geeignet ist, die individuelle und öffentliche Meinungsbildung zu beeinflussen.
- Rundfunk liegt nur dann vor, wenn durch die Verbreitung bereits die Öffentlichkeit erreicht wird (im Gegensatz zu einem im Vorhinein begrenzten Nutzerkreis).
- Die Verbreitung erfolgt (im Gegensatz zur Presse) unter Benutzung elektromagnetischer Schwingungen ohne Verbindungsleiter (Terrestrik, Satellit) oder längs oder mittels eines Leiters (Kabel).

#### Abgrenzung Rundfunk - Mediendienste

Wesentliches Unterscheidungskriterium ist die Relevanz der Rundfunkinhalte für den Meinungsbildungsprozess. § 2 Abs. 2 MDStV erfasst also Dienste, die sich hinsichtlich ihrer Verbreitungsform zwar nicht vom herkömmlichen Rundfunk unterscheiden, aber wegen ihrer „engen inhaltlichen Begrenzung auf Angebote, die nur im geringen Maße der öffentlichen Meinungsbildung dienen“ (z.B. Teleshopping), nicht aktuell sind oder denen wie beim Fernsehtext „die Suggestivkraft der bewegten Bilder fehlt“. Deshalb sollen diese Dienste nicht in jeder Hinsicht dem strengen Ordnungsrahmen unterworfen werden, den der Rundfunkstaatsvertrag für den Rundfunk im engeren Sinne festlegt. Zur besseren Abgrenzung dient eine - nicht abschließende - Aufzählung von typischen Mediendiensten wie „Teleshopping“ oder „Fernsehtext“.

### 6.2. Legal Texts concerning the Definition of TV Services in original Language

Der Wortlaut entspricht dem der Fernsehrichtlinie 89/552/EG:

§ 2 Abs. 1 Satz 1, 2 RStV:

“Rundfunk ist die für die Allgemeinheit bestimmte Veranstaltung und Verbreitung von Darbietungen aller Art in Wort, in Ton und in Bild unter Benutzung elektromagnetischer Schwingungen ohne Verbindungsleitung oder längs oder mittels eines Leiters. Der Begriff schließt Darbietungen ein, die verschlüsselt verbreitet werden oder gegen besonderes Entgelt empfangbar sind.“

### 6.3. Legal Texts concerning the Definition of TV Services in Translation (EN/FR/DE), if available

s.o.

### 6.4. Main Elements of the Definition of Information Society Services

#### Kernelemente der Definition von Dienstleistungen der Informationsgesellschaft (Mediendienste und Teledienste)

Das deutsche Recht verwendet nicht den Begriff „Dienste der Informationsgesellschaft“. Noch wird in Deutschland nach der Verteilung der Gesetzgebungskompetenzen zwischen Bund und Ländern unterschieden in Mediendienste (geregelt im Mediendienstestaatsvertrag - MedStV) und Teledienste (geregelt im Teledienstegesetz – TDG) unterschieden. Die Abgrenzung erfolgt anhand des Begriffspaares „an die Allgemeinheit gerichtet“ (=Mediendienst) und „zur individuellen Nutzung bestimmt“ (=Teledienst). Ergänzend herangezogen wird das Kriterium der publizistischen Relevanz des Dienstes.

*Geplant ist eine Zusammenführung unter dem neuen Begriff „Telemedien“, wie bereits im Jugendmedienschutz-Staatsvertrag geschehen, der am 1. April 2003 in Kraft getreten ist. Die Gesetzgebungszuständigkeiten sollen im Rahmen einer Reform der Medienordnung zwischen Bund und Ländern neu verteilt werden. Künftig folgt die Gesetzgebungskompetenz Rechtsgebieten (Jugendschutz, Datenschutz, E-Commerce, Telekommunikation).*

**Mediendienste** sind in Deutschland im Mediendienstestaatsvertrag (MDStV) in der Fassung vom 1. April 2003 definiert.

Die Kernelemente der abstrakten Definition in § 2 Abs. 1 Satz 1 MDStV sind:

- die Allgemeinheit als Adressatenkreis
- Verbreitung in Text, Ton oder Bild unter Benutzung elektromagnetischer Schwingungen ohne Verbindungsleitung oder längs oder mittels eines Leiters.
- In Abgrenzung zum Rundfunkbegriff fehlt hier das Element der „Darbietungen“, d.h. es fehlt die gesteigerte Relevanz für die öffentliche Meinungsbildung.

Im Teledienstegesetz in der Fassung vom 22.07.1997, gültig ab 01.08.1997, werden die **Teledienste** geregelt.

**Kernelemente der Definition der Teledienste** sind:

- Elektronische Informations- und Kommunikationsdienste (z.B. Telebanking; Wetterdienste; Börsendienste),
- Bestimmung für individuelle Nutzung von kombinierbaren Daten (Zeichen, Bilder, Töne)
- Übermittlung mittels Telekommunikation

## 6.5. Legal Texts concerning the Definition of Information Society Services in Original Language

### In § 2 des Staatsvertrags über Mediendienste

(Mediendienstestaatsvertrag – MDStV), Fassung vom 1. April 2003 sind die Mediendienste definiert:

„§ 2

(1) Dieser Staatsvertrag gilt **für das Angebot und die Nutzung von an die Allgemeinheit gerichteten Informations- und Kommunikationsdiensten (Mediendienste) in Text, Ton oder Bild, die unter Benutzung elektromagnetischer Schwingungen ohne Verbindungsleitung oder längs oder mittels eines Leiters verbreitet werden.** Die Bestimmungen des Rundfunkstaatsvertrages und des Jugendmedienschutz-Staatsvertrages bleiben unberührt. Ferner bleiben die Bestimmungen des Teledienstegesetzes in der in einem Bundesgesetz erstmalig beschlossenen Fassung, die Bestimmungen des Telekommunikationsgesetzes sowie der Bereich der Besteuerung unberührt. Ferner bleiben die Bestimmungen des Teledienstegesetzes in der in einem Bundesgesetz erstmalig beschlossenen Fassung, die Bestimmungen des Telekommunikationsgesetzes sowie der Bereich der Besteuerung unberührt.

(2) Mediendienste im Sinne von Absatz 1 sind insbesondere

1. Verteildienste in Form von direkten Angeboten an die Öffentlichkeit für den Absatz von Waren oder Erbringung von Dienstleistungen, einschließlich unbeweglicher Sachen, Rechte und Verpflichtungen, gegen Entgelt (Teleshopping),
2. Verteildienste, in denen Messergebnisse und Datenermittlungen in Text oder Bild mit oder ohne Begleitton verbreitet werden,
3. Verteildienste in Form von Fernsehtext, Radiotext und vergleichbaren Textdiensten,
4. Abrufdienste, bei denen Text-, Ton- oder Bilddarbietungen auf Anforderung aus elektronischen Speichern zur Nutzung übermittelt werden, mit Ausnahme von solchen Diensten, bei denen der individuelle Leistungsaustausch oder die reine Übermittlung von Daten im Vordergrund steht, ferner von Telespielen.“

**Teledienste** sind nach **§ 2 Absatz 1 des Gesetzes über die Nutzung von Telediensten (Teledienstegesetz, TDG)** „alle elektronischen Informations- und Kommunikationsdienste, die für eine individuelle Nutzung von kombinierbaren Daten wie Zeichen, Bilder oder Töne bestimmt sind und denen eine Übermittlung mittels Telekommunikation zugrunde liegt (Teledienste)“.

**§ 2 Absatz 2 TDG** enthält eine nicht abschließende Aufzählung von Telediensten:

„Teledienste im Sinne des Absatzes 1 sind insbesondere

1. Angebote im Bereich der Individualkommunikation (zum Beispiel Telebanking, Datenaustausch),
2. Angebote zur Information oder Kommunikation, soweit nicht die redaktionelle Gestaltung zur Meinungsbildung für die Allgemeinheit im Vordergrund steht (Datendienste, zum Beispiel Verkehrs-, Wetter-, Umwelt- und Börsendaten, Verbreitung von Informationen über Waren und Dienstleistungsangebote),
3. Angebote zur Nutzung des Internets oder weiterer Netze,
4. Angebote zur Nutzung von Telespielen,
5. Angebote von Waren und Dienstleistungen in elektronisch abrufbaren Datenbanken mit interaktivem Zugriff und unmittelbarer Bestellmöglichkeit.“

**6.6. Legal Texts concerning the Definition of Information Society Services - Translation (EN/FR/DE), if available**

s.o.

**6.7. Does the National Legal order define other Categories of Services in Relation to the Transmission of Audiovisual Content? If Yes, what are their main Features?**

Nein.

**6.8. Legal Texts concerning the Definition of these Services in Original Language, if available**

-

**6.9. Legal Texts concerning the Definition of these Services - Translation (EN/FR/DE), if available**

## **7. REGULATION OF TELEVISION AND INFORMATION SOCIETY SERVICES IN DENMARK**

### **7.1. MAIN ELEMENTS OF THE DEFINITION OF TELEVISION SERVICES**

Denmark has no legal definition of television services – but there are some elements that taken together describe the Danish understanding and interpretation of television services.

In Denmark the main element of the definition of television services is that it concerns traditional transmission from point to multipoint. This means that normal TV-programmes and text-TV are covered by the definition.

### **7.2. LEGAL TEXTS CONCERNING THE DEFINITION OF TV SERVICES IN ORIGINAL LANGUAGE**

Radio- og fjernsynslovens § 2 indeholder følgende bestemmelse:

”§ 2. Ved udøvelse af programvirksomhed forstås:

- 1) udsendelse af lyd- og billedprogrammer til almenheden ved hjælp af radioanlæg, og
- 2) fordeling ved hjælp af fællesantenneanlæg af lyd- og billedprogrammer, som ikke tillige udsendes som nævnt i nr. 1.

*Stk. 2.* Ved fællesantenneanlæg forstås i denne lov fællesantenneanlæg og andre kabelanlæg til fordeling af lyd- og billedprogrammer til lokaler, som anvendes til beboelse.”

### **7.3. LEGAL TEXTS CONCERNING THE DEFINITION OF TV SERVICES IN TRANSLATION**

The Danish Radio- and Television Broadcasting Act has the following article:

“2. Provision of programme services shall be taken to mean

- 1) broadcasting of sound and television programmes to the general public by means of radio equipment, and
- 2) distribution through communal aerial installations of sound and television programmes which are not also broadcast as mentioned in item 1.

(2) Within the meaning of this Act, the term "communal aerial installation" shall mean communal aerial installations and other cable systems for the distribution of sound and television programmes to premises used for private residence.

**7.4. MAIN ELEMENTS OF THE DEFINITION OF INFORMATION SOCIETY SERVICES**

The Danish Act on e-commerce which implements the Directive on electronic commerce contains a definition of information society services. According to article 1 information society services are: All services which have a commercial element and are provided on-line by electronic means over a distance, and at the individual request of a recipient.

This mean that telephone services, (some) news services and on-line services are elements of information society services whether in return for remuneration or not.

**7.5. LEGAL TEXTS CONCERNING THE DEFINITION OF INFORMATION SOCIETY SERVICES IN ORIGINAL LANGUAGE**

See above

**7.6. LEGAL TEXTS CONCERNING THE DEFINITION OF INFORMATION SOCIETY SERVICES – TRANSLATION**

See above and see Directive 98/34/EEC as changed by Directive 98/48/EEC

**7.7. DOES THE NATIONAL LEGAL ORDER DEFINE OTHER CATEGORIES OF SERVICES IN RELATION TO THE TRANSMISSION OF AUDIOVISUAL CONTENT**

No

**7.8. LEGAL TEXTS CONCERNING THE DEFINITION OF THESE SERVICES IN ORIGINAL LANGUAGE**

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**7.9. LEGAL TEXTS CONCERNING THE DEFINITION OF THESE SERVICES - TRANSLATION**

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## **8. REGULATION OF TELEVISION AND INFORMATION SOCIETY SERVICES IN *ESTONIA***

### **8.1. Main elements of the definition of television services:**

Television is described in Broadcasting Act (see below), there is no other television service definitions in legal texts.

### **8.2. Legal Texts concerning the Definition of TV Services in original Language**

Broadcasting Act § 2

Ringhääling käesoleva seaduse tähenduses on raadio- või televisiooniprogrammide edastamine eetri (sealhulgas satelliidi) või kaabelvõrgu kaudu kodeerimata või kodeeritud kujul eesmärgiga teha need üldkasutatavate vastuvõtuvahenditega üldsusele kättesaadavaks.

### **8.3. Legal Texts concerning the Definition of TV Services in Translation (EN/FR/DE), if available**

Broadcasting Act

For the purposes of this Act, “broadcasting” means the transmission over the air (including that by satellite) or via a cable network, in unencoded or encoded form, of radio or television programme services intended for reception by the public with commonly used receivers.

### **8.4. Main Elements of the Definition of Information Society Services**

### **8.5. Legal Texts concerning the Definition of Information Society Services in Original Language**

#### **INFOÜHISKONNA TEENUSE SEADUS<sup>1</sup>**

Passed 14 April 2004, entered into force 1 May 2004.

1) *infoühiskonna teenus* – teenus, mida osutatakse majandus- või kutsetegevuse raames teenuse kasutaja otsesel taotlusel ja mille puhul andmeid töödeldakse, säilitatakse ja edastatakse digitaalkujul andmete töötlemiseks ja säilitamiseks mõeldud elektrooniliste vahendite abil, kusjuures osapooled ei viibi üheaegselt samas kohas. Infoühiskonna teenus peab olema täielikult üle kantud, edastatud ja vastu võetud elektrooniliste sidevahendite abil. Infoühiskonna teenus ei ole faksi ja telefonikõne abil edastatud teenus ning ringhääling ringhäälinguseaduse (RT I 1994, 42, 680; 66, 1145; 1995, 83, 1437; 97, 1664; 1996, 49, 953; 1997, 29, 448; 52, 834; 93, 1564; 1998, 2, 42 ja 44; 1999, 16, 268; 25, 364; 59, 613; 2000, 25, 143; 35, 220; 102, 666; 2001, 53, 310; 2002, 3, 5; 21, 117; 53, 336; 57, 357; 61, 375; 63, 387; 2003, 4, 22; 83, 560; 88, 594) tähenduses;

2) *reguleeritud kutseala* – iga kutseala, millel tegutsemiseks on seadusega sätestatud kutsekvalifikatsiooni omamise nõue.

**8.6. Legal Texts concerning the Definition of Information Society Services - Translation (EN/FR/DE), if available**

Not available, but see Article 1(2) of Directive 98/34/EC as amended by Directive 98/48/EC

**8.7. Does the National Legal order define other Categories of Services in Relation to the Transmission of Audiovisual Content? If Yes, what are their main Features?**

Cable Distribution Act

Passed 31 May 2001, entered into force 21 July 2001

**8.8. Legal Texts concerning the Definition of these Services in Original Language, if available**

Cable Distribution Service

§ 2. Kaabelviteenus

Kaabelviteenus käesoleva seaduse tähenduses on televisiooni- või raadiosaadete ja televisiooni- või raadioprogrammide (edaspidi *programmid*) tasuline või tasuta edastamine tarbijale kaabellevivõrgu või ühisantennisüsteemi kaudu.

**8.9. Legal Texts concerning the Definition of these Services - Translation (EN/FR/DE), if available**

§ 2. Cable distribution services

For the purposes of this Act, cable distribution services is the transmission of television or radio broadcasts and television or radio programmes (hereinafter programmes) to consumers for a charge or without charge through cable networks or by master antenna systems.



## 9. REGULATION OF TELEVISION AND INFORMATION SOCIETY SERVICES IN *SPAIN*

### 9.1. Main elements of the definition of television services:

The existing legal *definition of "Television"* is laid down by Law 25/1994, 12 July (amended by Law 22/1999, 8 June), which makes up of three main features to be stressed:

**Distance communication service**, independently of the technical means employed (cable, wireless, terrestrial, satellite, etc.) or the way of access (unencoded or encoded), and different from telecommunication services or information society services, **but legally different from Telecommunication Services or Information Society Services**, which are under their specific legislation.

**Transmission of audiovisual contents:** That is the idea behind "television programmes".

**Intended for reception by the public.** The criteria of "one-to-many" (point-multipoint) is, thus, retained, excluding communication services operating on individual demand such as those providing information items or others like telefacsimil, electronic data banks and similar communication services. That's the main reason why television services fall outside either the category of Telecommunication Services (under the General Telecom Act 32/2003) or Information Society Services (regulated by ISS Act 34/2002).

### 9.2. Legal Texts concerning the Definition of TV Services in original Language

*Law 25/1994, 12 July*, amended by Law 22/1999, 7 June (please find attached a consolidated version). The definition of Television is set by article 3.a).

### 9.3. Legal Texts concerning the Definition of TV Services in Translation (EN/FR/DE), if available

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### 9.4. Main Elements of the Definition of Information Society Services

In the light of the definition set out by Law 34/2002, 11 July (of information society services and electronic commerce), 5 elements may be pointed out:

(a) **distance communication service**

(b) **carried out by electronic means**

(c) **normally provided in return for payment or for similar consideration** (although within the concept of ISS are comprised those services not against payment but represent an economic activity for the services' provider)

(d) operating **on individual demand**

(e) subject to the **principle of free movement and provision of services**: on one side, possible restrictions are therefore very limited –on grounds of public order, criminal investigations, public safety , public health, national defence, human dignity, non-discrimination principle or the protection of youth and childhood-; on the other, no prior authorisation is required for the provision of ISS.

By way of examples, the aforementioned Law sets an open list (“among others”) of ISS, and an additional list of non-ISS. *They are deemed as ISS the following*:

- contracts of goods or services made by electronic means
- organization and management of auctions by electronic means or of virtual markets and shopping centres
- purchase management in the web carried out by groups of people
- sending of commercial communications
- furnishing information by telematic means
- video on demand

Conversely, *services which do not comply with the features required to be an ISS* are the following:

- services provided by vocal phone, fax or telefax
- the exchange of information through e-mail or by any other equivalent means of electronic communication for reasons beyond the economic activity of those who are using them
- television broadcasting services (including near video on demand)
- radio broadcasting services
- teletext services and similar, such as electronic programme guides offered by tv platforms.

#### **9.5. Legal Texts concerning the Definition of Information Society Services in Original Language**

Law 34/2002, 11 July (the definition is laid down in the Annex of the said Law)

#### **9.6. Legal Texts concerning the Definition of Information Society Services - Translation (EN/FR/DE), if available**

- 9.7. Does the National Legal order Define other Categories of Services in Relation to the Transmission of Audiovisual Content? If Yes, what are their main Features?**
- 9.8. Legal Texts concerning the Definition of these Services in Original Language, if available**
- 9.9. Legal Texts concerning the Definition of these Services - Translation (EN/FR/DE), if available**

## **10. REGULATION OF TELEVISION AND INFORMATION SOCIETY SERVICES IN *FINLAND***

### **10.1. Main elements of the definition of television services:**

According to the Act on Television and Radio Operations the definition of *television broadcasting* refers to the initial transmission or provision by wire or over the air, including that by satellite, in unencoded or encoded form, of television programmes intended for reception by the public (The Act on Television and Radio Operations, Section 2). All legislation referred to can be accessed at [www.finlex.fi](http://www.finlex.fi)

### **10.2. Legal Texts concerning the Definition of TV Services in original Language**

Please find attached file Laki televisio- ja radiotoiminnasta (744/1998).

### **10.3. Legal Texts concerning the Definition of TV Services in Translation (EN/FR/DE), if available**

Please find attached The Act on Television and Radio Operations (file TV- ja radiolaki engl)

### **10.4. Main Elements of the Definition of Information Society Services**

The definition of information society services is the same as the definition in the directive. (See definition in Section 2 of the E-commerce law (458/2002).

### **10.5. Legal Texts concerning the Definition of Information Society Services in Original Language**

See attached file *Laki tietoyhteiskunnan palvelujen tarjoamisesta (458/2002)*.

### **10.6. Legal Texts concerning the Definition of Information Society Services - Translation (EN/FR/DE), if available**

See attached file E-commerce law.

### **10.7. Does the National Legal order define other Categories of Services in Relation to the Transmission of Audiovisual Content? If Yes, what are their main Features?**

Implemented as prescribed in the directive on the legal protection of services based on, or consisting of, conditional access (98/84/EC).

**10.8. Legal Texts concerning the Definition of these Services in Original Language, if available**

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Eräiden suojauksen purkujärjestelmien kieltämisestä annettu laki  
(1117/2001)

**10.9. Legal Texts concerning the Definition of these Services Translation (EN/FR/DE), if available**

-

## **II. REGULATION OF TELEVISION AND INFORMATION SOCIETY SERVICES IN FRANCE**

Le droit français de la communication, qui ne retient pas *stricto sensu* les termes de services de radiodiffusion et de services de la société de l'information, a été récemment modifié<sup>1</sup> et repose désormais sur une nouvelle architecture qui se fonde sur les deux distinctions fondamentales suivantes :

correspondance privée / communication au public par voie électronique ;

communication audiovisuelle / communication au public en ligne.

### **11.1. Distinction entre la correspondance privée et communication au public par voie électronique**

La communication au public par voie électronique s'entend comme « *toute mise à disposition du public ou de catégories de public, par un procédé de communication électronique, de signes, de signaux, d'écrits, d'images, de sons ou de messages de toute nature qui n'ont pas le caractère d'une correspondance privée* » (2<sup>ème</sup> alinéa de l'article 2 de la loi du 30 septembre 1986).

Ainsi, tout service par voie électronique qui, mettant à disposition d'un public des contenus, ne s'adresse pas qu'à une ou plusieurs personne(s) individualisée(s) et déterminée(s) (courrier, conversation téléphonique, mail), sera qualifié de service de communication au public par voie électronique. En conséquence, certains messages (les messages électroniques ou téléphoniques) pourront être qualifiés soit de correspondance privée, soit de communication au public, selon qu'ils s'adressent à une ou plusieurs personnes individualisées avec un contenu qui leur est spécifiquement destiné (messages électroniques classiques) ou à une catégorie de public (*newsletters* par exemple).

Il convient de noter qu'un même service peut successivement relever de la communication au public et de la correspondance privée (exemple d'un site Internet marchand, où les pages d'accueil relèvent de la communication au public et les transactions de la correspondance privée).

Cette distinction permet d'appliquer en fonction de la nature du service, soit le régime juridique de la correspondance privée, notamment la garantie du secret des correspondances, soit les règles applicables à la communication au public par voie électronique.

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<sup>1</sup> Voir en annexe les extraits de la loi n° 86-1067 du 30 septembre 1986 sur la liberté de communication modifiée notamment par la loi n° 2004-575 du 21 juin 2004 pour la confiance dans l'économie numérique.

## **11.2. Distinction entre la communication audiovisuelle et la communication au public en ligne**

Les services de communication au public par voie électronique se subdivisent en :

services de communication audiovisuelle, régis par la loi du 30 septembre 1986 relative à la liberté de communication, loi récemment modifiée par la loi du 21 juin 2004 ;

services de communication au public en ligne, régis par la loi du 21 juin 2004 relative à la confiance dans l'économie numérique.

## **11.3. La communication audiovisuelle**

La communication audiovisuelle comprend la télévision, la radio et les autres services diffusés (par exemple, le télétexte). Les notions de télévision et de radio sont définies de la manière suivante :

on entend par service de télévision « *tout service de communication au public par voie électronique destiné à être reçu simultanément par l'ensemble du public ou par une catégorie de public et dont le programme principal est composé d'une suite ordonnée d'émissions comportant des images et des sons* » (article 2 de la loi du 30 septembre 1986 précitée) ;

on entend par service de radio « *tout service de communication au public par voie électronique destiné à être reçu simultanément par l'ensemble du public ou par une catégorie de public et dont le programme principal est composé d'une suite ordonnée d'émissions comportant des sons* » (article 2 de la loi du 30 septembre 1986 précitée).

Les services de communication audiovisuelle relèvent de la compétence du Conseil supérieur de l'audiovisuel (CSA).

## **11.4. La communication au public en ligne**

La communication au public en ligne est ainsi définie : « ... *toute transmission, sur demande individuelle, de données numériques n'ayant pas un caractère de correspondance privée, par un procédé de communication électronique permettant un échange réciproque d'informations entre l'émetteur et le récepteur* » (article 1<sup>er</sup> IV de la loi du 21 juin 2004 précitée).

## 11.5. TABLEAU RÉCAPITULATIF DES CATÉGORIES DE SERVICES

<b>Correspondance privée</b>	<b>Communication au public par voie électronique</b>			
Exemples : - courriers électroniques privés - téléphonie - transactions de commerce électronique (achat par internet)	<b>Communication audiovisuelle</b>			<b>Communication au public en ligne</b>
	Radio	Télévision	Les autres services qui ne relèvent pas de la communication publique en ligne (télétexte, services de diffusion de données)	Exemples : - sites internet - <i>newsletters</i>



## 11.6. ANNEXE

### Extraits de la loi n° 86-1067 du 30 septembre 1986 modifiée<sup>2</sup> relative à la liberté de communication

#### Article premier

(art. 1<sup>er</sup> L n° 89-25 du 17.01.89 / art. 28 & 32 L n° 2000-719 du 01.08.00 / art. 1<sup>er</sup>, 13 L n° 2004-575 du 21.06.04 / art. 109 L n° 2004-669 du 09.07.04)

La communication au public par voie électronique est libre.

L'exercice de cette liberté ne peut être limité que dans la mesure requise, d'une part, par le respect de la dignité de la personne humaine, de la liberté et de la propriété d'autrui, du caractère pluraliste de l'expression des courants de pensée et d'opinion et, d'autre part, par la protection de l'enfance et de l'adolescence, par la sauvegarde de l'ordre public, par les besoins de la défense nationale, par les exigences de service public, par les contraintes techniques inhérentes aux moyens de communication, ainsi que par la nécessité, pour les services audiovisuels, de développer la production audiovisuelle.

Les services audiovisuels comprennent les services de communication audiovisuelle telle que définie à l'article 2 ainsi que l'ensemble des services mettant à disposition du public ou d'une catégorie de public des œuvres audiovisuelles, cinématographiques ou sonores, quelles que soient les modalités techniques de cette mise à disposition.

#### Article 2

(art. 1-II L n° 2004-575 du 21.06.04)

On entend par communications électroniques les émissions, transmissions ou réceptions de signes, de signaux, d'écrits, d'images ou de sons, par voie électromagnétique.

On entend par communication au public par voie électronique toute mise à disposition du public ou de catégories de public, par un procédé de communication électronique, de signes, de signaux, d'écrits, d'images, de sons ou de messages de toute nature qui n'ont pas le caractère d'une correspondance privée.

On entend par communication audiovisuelle toute communication au public de services de radio ou de télévision, quelles que soient les modalités de mise à disposition auprès du public, ainsi que toute communication au public par voie électronique de services autres que de radio et de télévision et ne relevant pas de la communication au public en ligne telle que définie à l'article 1<sup>er</sup> de la loi n° 2004-575 du 21 juin 2004 pour la confiance dans l'économie numérique<sup>3</sup>.

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<sup>2</sup> Les dernières modifications ont été introduites à la suite de l'adoption de la loi n° 2004-575 du 21 juin 2004 pour la confiance dans l'économie numérique et de la loi n° 2004-669 du 09 juillet 2004 relative aux communications électroniques et aux services de communication audiovisuelle.

<sup>3</sup> « On entend par communication au public en ligne toute transmission, sur demande individuelle, de données numériques n'ayant pas un caractère de correspondance privée, par un procédé de

Est considéré comme service de télévision tout service de communication au public par voie électronique destiné à être reçu simultanément par l'ensemble du public ou par une catégorie de public et dont le programme principal est composé d'une suite ordonnée d'émissions comportant des images et des sons.

Est considéré comme service de radio tout service de communication au public par voie électronique destiné à être reçu simultanément par l'ensemble du public ou par une catégorie de public et dont le programme principal est composé d'une suite ordonnée d'émissions comportant des sons.

## **12. REGULATION OF TELEVISION AND INFORMATION SOCIETY SERVICES IN GREECE**

### **12.1. Main elements of the definition of television services:**

**“Television broadcasting”** means the initial transmission by wire or over the air, including that by satellite, in unencoded or encoded form, of television programmes intended for reception by the public. **It does not include communication services providing items of information or other messages on individual demand** such as telecopying, electronic data banks and other similar services, so long as they are not used to transmit works of any kind audiovisually.

### **12.2. Legal Texts concerning the Definition of TV Services in original Language**

Presidential Decree 100/2000 (Government Gazette I 98, 17 March 2000) which brought Greek national legislation into line with Directive 97/36/EC amending Directive 89/552/EEC.

### **12.3. Legal Texts concerning the Definition of TV Services in Translation (EN/FR/DE), if available**

### **12.4. Main Elements of the Definition of Information Society Services**

**“Service”** means any information society service, that is to say, any service normally **provided for remuneration, at a distance, by electronic means and at the individual request of a recipient of services.**

For the purposes of this definition:

- “at a distance” means that the service is provided without the parties being simultaneously present;
- “by electronic means” means that the service is sent initially and received at its destination by means of electronic equipment for the processing (including digital compression) and storage of data, and entirely transmitted, conveyed and received by wire, by radio, by optical means or by other electromagnetic means;
- “at the individual request of a recipient of services” means that the service is provided through the transmission of data on individual request;

**“Information society services”:** any information society service, that is to say, any service normally provided for remuneration, at a distance, by electronic means and at the individual request of a recipient of

**services within the meaning of Article 2(2) of Presidential Decree 39/2001** (provisions previously referred to).

- “service provider”: any natural or legal person providing an information society service;
- “recipient of the service”: any natural or legal person who, for professional ends or otherwise, uses an information society service, in particular for the purposes of seeking information or making it accessible.

**12.5. Legal Texts concerning the Definition of Information Society Services in Original Language**

- **Presidential Decree 39/2001** (Government Gazette I 28, 20 February 2001) laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on **information society services** in conformity with Directives 98/34/EC and 98/48/EC.
- **Presidential Decree 131/2003** (Government Gazette I 116, 16 May 2003) which brought Greek national legislation into line with Directive 2000/31/EC of the European Parliament and of the Council on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market.

**12.6. Legal Texts concerning the Definition of Information Society Services - Translation (EN/FR/DE), if available**

**12.7. Does the National Legal order define other Categories of Services in Relation to the Transmission of Audiovisual Content? If Yes, what are their main Features?**

**Pay radio and television services** means “the direct transmission to the public, by any system, method (analogue or digital) or means (terrestrial transmitters, cable or satellite networks), of radio and television programmes, access to which is subject to the conditions laid down by the holder of the licence provided for in this law, irrespective of whether or not the user of these services must pay for a fee for them”.

**12.8. Legal Texts concerning the Definition of these Services in Original Language, if available**

Law No 2644/1998 regulating the provision in Greece of pay radio and television services.

**12.9. Legal Texts concerning the Definition of these Services - Translation (EN/FR/DE), if available**

## **13. REGULATION OF TELEVISION AND INFORMATION SOCIETY SERVICES IN *HUNGARY***

### **13.1. Main elements of the definition of television services:**

- broadcasting to public
- production and exhibition by the broadcaster
- transmission to the receivers via any distribution or dissemination system.

### **13.2. Legal Texts concerning the Definition of TV Services in original Language**

A rádiózásról és televíziózásról szóló 1996. évi I. törvény, 2. §, 30. pont:

“Műsorszolgáltatás: a nyilvánosság számára vételre szánt rádió-, illetve televízió-műsornak a műsorszolgáltató általi előállítás, elektronikus jelek formájában történő megjelenítése és a felhasználó vevő készülékéhez történő továbbítása bármely műsorszélesztő és műsorterjesztő rendszeren.”

### **13.3. Legal Texts concerning the Definition of TV Services in Translation (EN/FR/DE), if available**

Act I of 1996 on Radio and Television Broadcasting, Section 2, 30:

“Program broadcasting service: shall mean the production of radio or television programs by a broadcaster intended for reception by the public, and their transmission to the receivers of the users in the form of electronic signals through any broadcast transmission and retransmission network.”

### **13.4. Main Elements of the Definition of Information Society Services**

- service provided by electronic means
- individual access by the user
- usually for consideration

### **13.5. Legal Texts concerning the Definition of Information Society Services in Original Language**

2001. évi CVIII. Törvény az elektronikus kereskedelmi szolgáltatások, valamint az információs társadalommal összefüggő szolgáltatások egyes kérdéseiről, 2. §, f) pont:

“Információs társadalommal összefüggő szolgáltatás: elektronikus úton, távollevők részére, rendszerint ellenszolgáltatás fejében nyújtott szolgáltatás, amelyhez a szolgáltatás igénybe vevője egyedileg fér hozzá;”

**13.6. Legal Texts concerning the Definition of Information Society Services - Translation (EN/FR/DE), if available**

Act CVIII of 2001 On Certain Aspects of Electronic Commerce Services and of Services Related to the Information Society, Section 2, f)

“Service related to the information society: a service normally provided for consideration, at a distance, by electronic means and at the individual request of a recipient of services;”

**13.7. Does the National Legal order define other Categories of Services in Relation to the Transmission of Audiovisual Content? If Yes, what are their main Features?**

No

**13.8. Legal Texts concerning the Definition of these Services in Original Language, if available**

Not available

**13.9. Legal Texts concerning the Definition of these Services Translation (EN/FR/DE), if available**

Not available

## **14. REGULATION OF TELEVISION AND INFORMATION SOCIETY SERVICES IN *IRELAND***

### **14.1. Main elements of the definition of television services:**

Irish legislation does not provide a definition of television services. However, a “broadcasting service” is defined as

“a service which comprises a compilation of programme material of any description and which is transmitted or relayed by means of

- i) wireless telegraphy
- ii) cable/MMD system or
- iii) a satellite device

directly or indirectly for reception by the general public; whether that service is actually received or not but does **not** include such a service that is provided by means of the Internet.”

### **14.2. Legal Texts concerning the Definition of TV Services in original Language**

Section 2 of the Broadcasting Act, 2001

### **14.3. Legal Texts concerning the Definition of TV Services in Translation (EN/FR/DE), if available**

Not available

### **14.4. Main Elements of the Definition of Information Society Services**

The definition of Information society services is aligned with the definition set out in Article 1(2) of Directive 98/34/EC as amended by Directive 98/48/EC.

### **14.5. Legal Texts concerning the Definition of Information Society Services in Original Language**

European Communities (Directive 2000/31/EC) Regulations 2003 (S.I. No 68 of 2003)

### **14.6. Legal Texts concerning the Definition of Information Society Services - Translation (EN/FR/DE), if available**

Not available

### **14.7. Does the National Legal order define other Categories of Services in Relation to the Transmission of Audiovisual Content? If Yes, what are their main Features?**

No

**14.8. Legal Texts concerning the Definition of these Services in Original Language, if available**

Not available

**14.9. Legal Texts concerning the Definition of these Services Translation (EN/FR/DE), if available**

Not available



## **15. REGULATION OF TELEVISION AND INFORMATION SOCIETY SERVICES IN ITALY**

### **15.1. Main elements of the definition of television services:**

Italian legislation draws a line of equivalence between TV services and broadcasting services, where the qualifying aspect is the technical one concerning the transmission activity, independently of the means of transmission (whether terrestrial, cable or satellite).

See also answer to question 7.

### **15.2. Legal Texts concerning the Definition of TV Services in original Language**

The main definition derives from the TVWF directive, art. 1, lit. a), which has not been literally implemented in Italian legislation, but is mentioned indirectly in the opening of law n. 223/90 (available at [http://www.agcom.it/L\\_naz/L223\\_90.htm](http://www.agcom.it/L_naz/L223_90.htm)) which implemented the TVWF directive:

*“La diffusione di programmi radiofonici o televisivi, realizzata con qualsiasi mezzo tecnico, ha carattere di preminente interesse generale”.*

The only literally corresponding definition derives from art. 1, para 1, lit. f), legislative decree n. 191/99 (available at <http://www.camera.it/parlam/leggi/deleghe/testi/99191dl.htm>), implementing directive 95/47/CE (now abrogated):

*“Servizio televisivo: la diffusione di programmi televisivi, effettuata via cavo, via satellite o con sistemi radio terrestri destinati alla generalità del pubblico”*

The Regulation on dtt transmissions (AGCOM deliberation 435/01/CONS, available at [http://www.agcom.it/provv/d\\_435\\_01\\_CONS.htm](http://www.agcom.it/provv/d_435_01_CONS.htm)) defines at art. 1, lit. g) network operators, who actually will be in charge of the transmission services as:

*“Operatore di rete”: il soggetto titolare del diritto di installazione, esercizio e fornitura di una rete di comunicazioni elettroniche e di impianti di messa in onda, moltiplicazione, distribuzione e diffusione e delle risorse frequenziali che consentono la trasmissione agli utenti dei blocchi di diffusione.*

### **15.3. Legal Texts concerning the Definition of TV Services in Translation (EN/FR/DE), if available**

#### **15.4. Main Elements of the Definition of Information Society Services**

Whatever service provided that it is provided electronically, on distance and on individual request.

#### **15.5. Legal Texts concerning the Definition of Information Society Services in Original Language**

Legge n. 317/86 as amended by Decreto Legislativo 23 novembre 2000, n. 427 “Modifiche ed integrazioni alla legge 21 giugno 1986, n. 317”, implementing directives 98/34/EC and 98/48/EC

(available at <http://www.camera.it/parlam/leggi/deleghe/testi/00427dl.htm> )

Art. 1, lit. b)

*“Servizio prestato normalmente dietro retribuzione, a distanza, per via elettronica e a richiesta individuale di un destinatario di servizi”*

#### **15.6. Legal Texts concerning the Definition of Information Society Services - Translation (EN/FR/DE), if available**

#### **15.7. Does the National Legal order define other Categories of Services in Relation to the Transmission of Audiovisual Content? If Yes, what are their main Features?**

Law no. 66/2001 (available at <http://www.camera.it/parlam/leggi/01066l.htm>) has divided the existing vertically integrated broadcaster into 2 subjects:

- the network operator (operatore di rete) who manages the network and the frequencies and
- the content provider (fornitore di contenuti) who is the editor of the channels.

Who provides conditional access services etc is called service provider (fornitore di servizi). These subjects have been defined in the above mentioned AGCOM regulation 435/01/CONS.

#### **15.8. Legal Texts concerning the Definition of these Services in Original Language, if available**

Art. 1, lit. g), h) and i)m AGCOM regulation no. 435/01/CONS

*“operatore di rete”: il soggetto titolare del diritto di installazione, esercizio e fornitura di una rete di comunicazioni elettroniche e di impianti di messa in onda, multiplazione, distribuzione e diffusione e delle risorse frequenziali che consentono la trasmissione agli utenti dei blocchi di diffusione.*

*"fornitore di contenuti": il soggetto che ha la responsabilità editoriale nella predisposizione dei programmi destinati alla radiodiffusione televisiva e sonora.*

*"fornitore di servizi": il soggetto che fornisce, attraverso l'operatore di rete, servizi al pubblico di accesso condizionato mediante distribuzione agli utenti di chiavi numeriche per l'abilitazione alla visione dei programmi, alla fatturazione dei servizi, ed eventualmente alla fornitura di apparati, ovvero che fornisce servizi della società dell'informazione ai sensi dell'articolo 1, punto 2, della direttiva n. 98/34/CE, come modificata dalla direttiva n. 98/48/CE, ovvero fornisce una guida elettronica ai programmi.*

**15.9. Legal Texts concerning the Definition of these Services - Translation (EN/FR/DE), if available**

## **16. REGULATION OF TELEVISION AND INFORMATION SOCIETY SERVICES IN LITHUANIA**

### **16.1. Main elements of the definition of television services:**

Definition of „Broadcasting“ is stipulated in the Law on Provision of Information to the Public Article 2: „33. Broadcasting means the production of programmes and their initial transmission to the public by any type of terrestrial transmitter, cable, satellite or any other electronic communications network. Broadcasting does not include communication services providing items of information or other messages on individual demand such as telecopying, electronic data banks and other similar services.“

Main elements:

- 1) production of programmes and primary transmission to the public;
- 2) transmitting through terrestrial transmitters or by cable, satellite or other electronic communication networks;
- 3) intended for the general public excluding services on individual demand.

### **16.2. Legal Texts concerning the Definition of TV Services in original Language**

Lietuvos Respublikos visuomenės informavimo įstatymo 2 straipsnio 33 dalis:

„**Transliavimas** – programų rengimas ir jų pirminis perdavimas visuomenei visų rūšių antžeminiais siųstuvais, kabeliniais, palydoviniais ar bet kokiais kitais elektroninių ryšių tinklais. Transliavimas neapima tokių perdavimo paslaugų kaip telekopijos, elektroniniai duomenų bankai ar panašaus pobūdžio paslaugos, kai atskiru kiekvieno paslaugos gavėjo prašymu yra pateikiama kokia nors informacija ar kitokie pranešimai.

### **16.3. Legal Texts concerning the Definition of TV Services in Translation (EN/FR/DE), if available**

„**Broadcasting** means the production of programmes and their initial transmission to the public by any type of terrestrial transmitter, cable, satellite or any other electronic communications network. Broadcasting does not include communication services providing items of information or other messages on individual demand such as telecopying, electronic data banks and other similar services.“

### **16.4. Main Elements of the Definition of Information Society Services**

Definition of „Information society services“ is stipulated in the Law on Electronic Communication Article 3:

„23. **Information society service** means any service normally provided for remuneration, at a distance, by electronic means and at the individual request of a user.“

Main elements:

- 1) service is normally provided for remuneration and at a distance;
- 2) provided by electronic means;
- 3) provided at the individual request of a user.

#### **16.5. Legal Texts concerning the Definition of Information Society Services in Original Language**

„**Informacinės visuomenės paslaugos**“ – paprastai už atlyginimą elektroninėmis priemonėmis ir per atstumą individualiu paslaugų gavėjo prašymu teikiamos paslaugos.

#### **16.6. Legal Texts concerning the Definition of Information Society Services - Translation (EN/FR/DE), if available**

„**Information society service**“ means any service normally provided for remuneration, at a distance, by electronic means and at the individual request of a user.

#### **16.7. Does the National Legal order define other Categories of Services in Relation to the Transmission of Audiovisual Content? If Yes, what are their main Features?**

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#### **16.8. Legal Texts concerning the Definition of these Services in Original Language, if available**

Elektroninių ryšių įstatymo 3 straipsnis:

„**32. Plačiaekranės skaitmeninės televizijos paslaugos** – televizijos paslaugos, kurias visiškai ar tik daugiausiai sudaro programos, pagamintos ir suredaguotos rodyti viso aukščio plačiaekranio formatu. Plačiaekranės televizijos paslaugos nurodomos kaip formatas 16:9.“

#### **16.9. Legal Texts concerning the Definition of these Services - Translation (EN/FR/DE), if available**

Law on Electronic Communication Article 3:

„**32. Wide-screen digital television service**” means a television service that consists wholly or partially of programmes produced and edited to be displayed in a full height wide-screen format. The 16:9 format is the reference format for wide-screen television services.

## **17. REGULATION OF TELEVISION AND INFORMATION SOCIETY SERVICES IN LUXEMBOURG**

### **17.1. Main elements of the definition of television services**

La législation luxembourgeoise ne contient pour l'instant pas de définition de la notion de « programme de télévision » ou de « service télévisuel ».

La loi du 27 juillet 1991 sur les médias électroniques (la « Loi »), telle que modifiée, définit la notion de « transmission d'un programme », en visant à la fois les programmes TV et les programmes radio.

La notion de « transmission d'un programme » définit implicitement le champ d'application de la Loi, car elle exclut expressément les « *les services de communication fournissant, sur appel individuel, des éléments d'information ou d'autres prestations, tels que les services de télécopie, les banques de données électroniques et autres services similaires* ».

Cette définition de services de communication date de 1991. A cette époque la notion de services de la société de l'information n'existait pas encore.

### **17.2. Legal texts concerning the definition of TV services in original language**

L'article 2 paragraphe 1 définit la transmission d'un programme comme « *l'émission primaire, avec ou sans fil, terrestre ou par satellite, codée ou non, de programmes de télévision ou de radio destinés au public. Est visée la communication de programmes entre entreprises en vue d'une rediffusion à l'intention du public. Ne sont pas visés les services de communication fournissant, sur appel individuel, des éléments d'information ou d'autres prestations, tels que les services de télécopie, les banques de données électroniques et autres services similaires* ».

### **17.3. Legal texts concerning the definition of TV services in translation, if available**

Il n'existe pas de traduction officielle de la Loi en EN ou DE.

### **17.4. Main elements of the definition of information society services**

Selon la loi du 14 août 2000 sur le commerce électronique, un service de la société de l'information est défini comme tout service presté, normalement

contre rémunération, à distance par voie électronique et à la demande individuelle d'un destinataire de services.

### **17.5. Legal texts concerning the definition of information society services in original language**

Loi du 14 août 2000 relative au commerce électronique modifiant le code civil, le nouveau code de procédure civile, le code de commerce, le code pénal et transposant la directive 1999/93 relative à un cadre communautaire pour les signatures électroniques, la directive relative à certains aspects juridiques des services de la société de l'information, certaines dispositions de la directive 97/7/CEE concernant la vente à distance des biens et des services autres que les services financiers :

Article 1 :

Au sens de la présente loi, on entend par:

«Services de la société de l'information»: tout service presté, normalement contre rémunération, à distance par voie électronique et à la demande individuelle d'un destinataire de services.

Aux fins de la présente définition, on entend par les termes

«à distance»: un service fourni sans que les parties soient simultanément présentes;

«par voie électronique»: un service envoyé à l'origine et reçu à destination au moyen d'équipements électroniques de traitement (y compris la compression numérique) et de stockage de données, et qui est entièrement transmis, acheminé et reçu par fils, par radio, par moyens optiques ou par d'autres moyens électromagnétiques;

«à la demande individuelle d'un destinataire de services»: un service fourni par transmission de données sur demande individuelle;

«prestataire»: toute personne physique ou morale qui fournit un service de la société de l'information;

«prestataire établi»: prestataire qui exerce d'une manière effective une activité économique au moyen d'une installation stable pour une durée indéterminée. La présence et l'utilisation des moyens techniques et des technologies utilisées pour fournir le service ne constituent pas en tant que telles un établissement du prestataire;

«destinataire du service»: toute personne physique ou morale qui, à des fins professionnelles ou non, utilise un service de la société de l'information, notamment pour rechercher ou pour rendre accessible une information

**17.6. Legal texts concerning the definition of information society services in translation, if available**

Il n'existe pas de traduction officielle de la Loi en EN ou DE.

**17.7. Does the national legal order define other categories of services in relation to the transmission of audiovisual content? If yes, what are their main features?**

Le cadre actuel ne contient pas d'autres définitions.

**17.8. Legal texts concerning the definition of these services in original language, if available**

N/A

**17.9. Legal texts concerning the definition of these services in translation, if available**

N/A



## **18. REGULATION OF TELEVISION AND INFORMATION SOCIETY SERVICES IN LATVIA**

### **18.1. Main elements of the definition of television services:**

Television services are not specifically defined under Latvian law. The Radio and Television law provides the term “broadcasting”, which refers to both television and radio services. The definition contained in Article 2 Paragraph 1 states the following: “broadcasting is the production of programmes (compilation) and initial distribution for reception by the public. As broadcasting shall also be deemed to be the transfer of programmes for distribution between undertakings (companies) in order to ensure their initial distribution for reception by the public. Distribution of information to closed, local audiences in hotels, means of transportation, and individual buildings, as well as the distribution of programmes in several buildings, if the total number of consumer (cable connections) does not exceed 25, shall not be considered broadcasting”.

### **18.2. Legal Texts concerning the Definition of TV Services in original Language**

Radio and Television Law, adopted on August 24, 1995.

### **18.3. Legal Texts concerning the Definition of TV Services in Translation (EN/FR/DE), if available**

Radio and Television Law. Translation into English provided by the Translation and Terminology Centre (for information purposes; only the Latvian text is authentic), available at <http://www.ttc.lv>

### **18.4. Main Elements of the Definition of Information Society Services**

- information society services are services within a distance (the parties do not meet simultaneously);
- information society services are usually rendered for compensation;
- information society services are usually rendered by electronic means (devices for electronic data processing and storing, including compressing);
- information society services are usually rendered when there is an individual demand of the receiver of services;
- information society services include: electronic trade of goods and services, sending of commercial notices, supply of instruments ensuring the search, access and acquisition of information, services securing the

transmission of information in the electronic communications networks or access to the network of electronic communications, the storage of the information offered by the service provider.

**18.5. Legal Texts concerning the Definition of Information Society Services in Original Language**

The draft of the Law on Information Society Services (not adopted yet; the draft approved at the Meeting of the Cabinet of Ministers on March 29, 2004). The draft is available in the website <http://www.em.gov.lv/em/2nd/?cat=3664>.

**18.6. Legal Texts concerning the Definition of Information Society Services - Translation (EN/FR/DE), if available**

Translation is not available yet. After the adoption of the law it shall be translated at least in English by the Translation and Terminology Centre.

**18.7. Does the National Legal order define other Categories of Services in Relation to the Transmission of Audiovisual Content? If Yes, what are their main Features?**

An arguable issue. The Law on Electronic Communications, adopted on October 28, 2004, Article 3 paragraph 2 stipulates that this law refers also to electronic communication networks necessary for the transmission of radio and television programs. Paragraph 3 envisages that the law does not refer to information society services (on this point there were heavy discussions when adopting the law).

There is an opinion that the electronic networks necessary for transmission of audiovisual content shall be considered as intermediary services suppliers within the understanding of the draft of the Law on the Information Society Services. However, as this law is not adopted yet, it is not clear if such understanding will be approved.

The draft of the Law on the Information Society Services Article 10 provides the responsibility clauses of the intermediary services supplier, and Article 11 defines the main obligations.

The intermediary services supplier is responsible for the transmission and storage of information in the electronic services network, however, there are several exceptions to this responsibility. Also, the intermediary services supplier is generally not responsible for the contents of the information transmitted or stored if it does not change the information and does not violate the provisions of its transmission or storage. The intermediary services supplier is not obliged to supervise the information transmitted or stored, however, if it acknowledges that the receiver of services has violated the law, it has an obligation to inform the supervisory authorities.

**18.8. Legal Texts concerning the Definition of these Services in Original Language, if available**

Law on Electronic Communications, adopted October 28, 2004. (

Draft Law on Information Society Services, not adopted yet. Available at <http://www.em.gov.lv/em/2nd/?cat=3664> (Latvian only).

**18.9. Legal Texts concerning the Definition of these Services - Translation (EN/FR/DE), if available**

Translations are not available yet.

## **19. REGULATION OF TELEVISION AND INFORMATION SOCIETY SERVICES IN MALTA**

### **19.1. Main elements of the definition of television services:**

Although sound and television broadcasting services are repeatedly referred to in the Broadcasting Act, Maltese Law does not provide for a specific definition of Television Services. However, these services may be considered to be defined by the term “Broadcast” under Article 2 of the Broadcasting Act which refers to the meaning of “Broadcast” as “the initial transmission by wire or over the air, including that by satellite, in unencoded or encoded form, of radio or television programmes intended for reception by the public ...” A copy of the Broadcasting Act may be viewed on the website of the Malta Broadcasting Authority:

[http://www.ba-malta.org.mt/legislation/index\\_broadcasting.htm](http://www.ba-malta.org.mt/legislation/index_broadcasting.htm)

“Television services” is a wide phrase. It may also refer to television distribution services, in which case Legal Notice 412 of 2004 (Electronic Communications Networks and Services Regulations) states that “*television and radio distribution services*” means the delivery of television and, or radio broadcasts or other television services to a subscriber through an electronic communications network; (Regulation 3). A copy of the Regulations may be viewed on the Malta Communications Authority (MCA) website:

<http://www.mca.org.mt/library/show.asp?id=533&lc=1>

### **19.2. Legal Texts concerning the Definition of TV Services in original Language**

Maltese and English are the two official languages of Malta and the legal text concerning the definition of “Broadcast” as indicated in the answer to question 1 may be found in both the Maltese and English version of such text. Should there be a conflict between the Maltese and English versions of the text of the law, it is the Maltese version which prevails.

### **19.3. Legal Texts concerning the Definition of TV Services in Translation (EN/FR/DE), if available**

Available only as in 2 above.

### **19.4. Main Elements of the Definition of Information Society Services**

The term “Information Society Services” is defined in Article 2 of the Electronic Commerce Act, as follows:

“any service which is provided at a distance, by electronic means and at the individual request of a recipient of the services, whether such service is provided for consideration or not, and for the purposes of this definition:

- (a) “at a distance” means that the service is provided without the parties being simultaneously present;
- (b) “by electronic means” means that the service is sent initially and received at its destination by means of electronic equipment for the processing (including digital compression) and storage of data, and entirely transmitted, conveyed and received by wire, by radio, by optical means or by any electromagnetic means;
- (c) “at the individual request of a recipient of the service” means that the service is provided through the transmission of data on individual request.

#### **19.5. Legal Texts concerning the Definition of Information Society Services in Original Language**

See 4 above. The text of the Electronic Commerce Act in English and Maltese may be viewed or downloaded from the following websites:

[http://docs.justice.gov.mt/lom/legislation/english/leg/vol\\_13/chapt426.pdf](http://docs.justice.gov.mt/lom/legislation/english/leg/vol_13/chapt426.pdf)

<http://www.mca.org.mt/library/show.asp?id=68&lc=3>

Note that the Electronic Commerce Act, Article 26 states that “In the case of conflict between the Maltese and English texts of this Act, the English text shall prevail”.

#### **19.6. Legal Texts concerning the Definition of Information Society Services - Translation (EN/FR/DE), if available**

As for 4 and 5 above.

#### **19.7. Does the National Legal order define other Categories of Services in Relation to the Transmission of Audiovisual Content? If Yes, what are their main Features?**

See 4 and 5 above.

#### **19.8. Legal Texts concerning the Definition of these Services in Original Language, if available**

Part I of the Broadcasting Act includes definitions for advertising, teleshopping, sponsorship and retransmission as well as that for a nationwide

radio service in its list of definitions of categories of services which may be viewed on:

[http://www.ba-malta.org.mt/legislation/index\\_broadcasting.htm](http://www.ba-malta.org.mt/legislation/index_broadcasting.htm)

Article 2 of the Electronic Communications (Regulation) Act identifies the following category of service: “Television and radio distribution services”. These are defined under Article 3 of the same Act as:

“the delivery of television and, or radio broadcasts or other television services to a subscriber through an electronic communications network”.

The Act may be viewed or downloaded from the following web-site:

<http://www.mca.org.mt/library/show.asp?id=548&lc=1>

**19.9. Legal Texts concerning the Definition of these Services - Translation (EN/FR/DE), if available**

Available in both English and Maltese being the official languages of Malta

**19.10. Legal Texts concerning the Definition of these Services - Translation (EN/FR/DE), if available**

Only in English as described above.

## 20. REGULATION OF TELEVISION AND INFORMATION SOCIETY SERVICES IN THE NETHERLANDS

### 20.1. Main elements of the definition of television services:

Article 1 (under d and f) of the Media Act:

- an electronic media service engaged in the provision and broadcasting of television programmes;
- intended to be broadcasts to and to be received by the general public or a part thereof;
- with the exception of data services, services available only on individual demand, and other interactive services.

### 20.2. Legal Texts concerning the Definition of TV Services in original Language

**Televisie-omroep:** een elektronische mediadienst die betrekking heeft op het verzorgen en uitzenden van televisieprogramma's.

**Programma:** een elektronisch product met beeld- of geluidsinhoud, dat bedoeld is te worden uitgezonden en bestemd is voor ontvangst door het algemene publiek of een deel daarvan, met uitzondering van datadiensten, diensten die uitsluitend op individueel verzoek beschikbaar zijn, en andere interactieve diensten.

### 20.3. Legal Texts concerning the Definition of TV Services in Translation (EN/FR/DE), if available

**Television broadcasting:** an electronic media service engaged in the provision and broadcasting of television programmes.

**Programme:** an electronic product with visual or audio content intended to be broadcast to and to be received by the general public or a part thereof, with the exception of data services, services available only on individual demand, and other interactive services.

### 20.4. Main Elements of the Definition of Information Society Services

**Elektronische communicatiedienst** (artikel 1.1(f), van de Telecommunicatiewet) :

- gewoonlijk tegen vergoeding aangeboden dienst
- die geheel of hoofdzakelijk bestaat in het overbrengen van signalen via elektronische communicatienetwerken
- waaronder telecommunicatiediensten en transmissiediensten op netwerken die voor omroep worden gebruikt

- doch niet de dienst waarbij met behulp van elektronische communicatienetwerken en –diensten overgebrachte inhoud wordt geleverd of redactioneel wordt gecontroleerd.

**20.5. Legal Texts concerning the Definition of Information Society Services in Original Language**

Elektronische communicatiedienst: gewoonlijk tegen vergoeding aangeboden dienst die geheel of hoofdzakelijk bestaat in het overbrengen van signalen via elektronische communicatienetwerken, waaronder telecommunicatiediensten en transmissiediensten op netwerken die voor omroep worden gebruikt, doch niet de dienst waarbij met behulp van elektronische communicatienetwerken en –diensten overgebrachte inhoud wordt geleverd of redactioneel wordt gecontroleerd. Het omvat niet de diensten van de informatiemaatschappij zoals omschreven in artikel 1 van notificatierichtlijn die niet geheel of hoofdzakelijk bestaan uit het overbrengen van signalen via elektronische communicatienetwerken.

**20.6. Legal Texts concerning the Definition of Information Society Services - Translation (EN/FR/DE), if available**

Not available

**20.7. Does the National Legal order define other Categories of Services in Relation to the Transmission of Audiovisual Content? If Yes, what are their main Features?**

**20.8. Legal Texts concerning the Definition of these Services in Original Language, if available**

**20.9. Legal Texts concerning the Definition of these Services - Translation (EN/FR/DE), if available**



## **21. REGULATION OF TELEVISION AND INFORMATION SOCIETY SERVICES IN POLAND**

### **21.1. Main elements of the definition of television services:**

The term “**broadcaster**” is defined as a person, who produces or assembles programme services and transmits them or has them transmitted, in a complete and unchanged form, by other persons.

Television services are divided into:

1) **transmission** (activity of broadcasters), which should be understood as:

- over-the-air transmission of a programme service for simultaneous reception by the general public (general reception system), or
- introduction of a programme service into a cable network (collective reception system)

2) **retransmission** (activity of cable network operators), which means the reception and simultaneous transmission of a complete and unchanged programme service transmitted by a domestic or foreign broadcaster, with an exception of programme services transmitted by way of cable network.

There are also definitions of “**programme service**” and “**programme**”, as a part of programme service.

### **21.2. Legal Texts concerning the Definition of TV Services in original Language**

Artykuł 4 ustawy z dnia 29 grudnia 1992 r. o radiofonii i telewizji ((Dz.U. z 2001 r., Nr 101, poz.1114, z późn. zm.) pkt 1, 2-4 i 5.

„1) nadawcą jest osoba, która tworzy lub zestawia programy i rozpowszechnia je lub przekazuje innym osobom w celu rozpowszechnienia w całości i bez zmian,”;

„2) rozpowszechnianiem jest:

- a) bezprzewodowa emisja programu do równoczesnego, powszechnego odbioru (system powszechnego odbioru),
- b) wprowadzanie programu do sieci kablowej (system zbiorowego odbioru),

3) rozprowadzaniem jest przejmowanie w całości i bez zmian programu nadawcy krajowego lub zagranicznego, z wyjątkiem programu rozpowszechnianego w sieci kablowej, i równoczesne jego rozpowszechnianie,

4) programem jest uporządkowany zestaw audycji radiowych lub telewizyjnych, reklam i innych przekazów, regularnie rozpowszechniany, pochodzący od jednego nadawcy,”;

„5) audycją jest część programu radiowego lub telewizyjnego, stanowiąca odrębną całość ze względu na treść, formę, przeznaczenie lub autorstwo,”.

### **21.3. Legal Texts concerning the Definition of TV Services in Translation (EN/FR/DE), if available**

Article 4 of the Act of 29 December 1992 on Broadcasting (Official Journal from 2001 No 101, Item 1114 with amendments), points 1, 2-4 and 5:

“1) „broadcaster” shall mean a person who produces or assembles programme services and transmits them or has them transmitted, in a complete and unchanged form, by other persons,”;

“2) „transmission” shall mean:

- a) over-the-air transmission of a programme service for simultaneous reception by the general public (general reception system),
- b) introduction of a programme service into a cable network (collective reception system),”;

“3) „retransmission” shall mean the reception and simultaneous transmission of a complete and unchanged programme service transmitted by a domestic or foreign broadcaster, with an exception of programme services transmitted by way of cable network,”;

“4) „programme service” shall mean a scheduled composition of radio or television programmes, advertising and other broadcasts, transmitted regularly by a single broadcaster,”;

“5) „programme” shall mean a separate item of a radio or television programme service which is distinct in terms of its content, form, purpose or authorship,”

### **21.4. Main Elements of the Definition of Information Society Services**

**Services Provided by Electronic Means** are defined as a way of rendering a service, which comprises transmitting and collecting data by means of teleinformation systems, at the individual request of a service recipient, without the parties being simultaneously present, while the data are transmitted through public networks. **Public network** is a telecommunications network used mainly for the provision of publicly available telecommunications services.

## **21.5. Legal Texts concerning the Definition of Information Society Services in Original Language**

Ustawa z dnia 18 lipca 2002 r. o świadczeniu usług drogą elektroniczną (Dz. U. Nr 144, poz. 1204 z późn. zm.), artykuł 2 pkt 3 i 4:

„3) system teleinformatyczny - zespół współpracujących ze sobą urządzeń informatycznych i oprogramowania, zapewniający przetwarzanie i przechowywanie, a także wysyłanie i odbieranie danych poprzez sieci telekomunikacyjne za pomocą właściwego dla danego rodzaju sieci urządzenia końcowego w rozumieniu ustawy z dnia 21 lipca 2000 r. - Prawo telekomunikacyjne (Dz. U. Nr 73, poz. 852, z 2001 r. Nr 122, poz. 1321 i Nr 154, poz. 1800 i 1802 oraz z 2002 r. Nr 25, poz. 253 i Nr 74, poz. 676),

4) świadczenie usługi drogą elektroniczną - wykonanie usługi, które następuje przez wysyłanie i odbieranie danych za pomocą systemów teleinformatycznych, na indywidualne żądanie usługobiorcy, bez jednoczesnej obecności stron, przy czym dane te są transmitowane za pośrednictwem sieci publicznych w rozumieniu ustawy, o której mowa w pkt 3,”.

Ustawa z dnia 14 lipca 2004 r. – Prawo telekomunikacyjne (Dz.U. Nr 171, poz. 1800), artykuł 2 pkt 29:

„Publiczna sieć telekomunikacyjna - sieć telekomunikacyjną wykorzystywaną głównie do świadczenia publicznie dostępnych usług telekomunikacyjnych”.

## **21.6. Legal Texts concerning the Definition of Information Society Services - Translation (EN/FR/DE), if available**

The Act of 18 July 2002 on Providing Services by Electronic Means (Official Journal No 144, Item 1204 with amendments), implementing Directive 2000/31/EC on electronic commerce, article 2 point 3 and 4:

“3) teleinformation system – a set of co-operating information devices and software ensuring processing and saving, and also transmitting and collecting data within telecommunications networks by means of a terminal appropriate for the kind of the given network within the meaning of the Telecommunications Law,

4) providing services by electronic means – such way of rendering a service, which comprises transmitting and collecting data by means of teleinformation systems, at the individual request of a service recipient, without the parties being simultaneously present, while the data are transmitted through public networks within the meaning of the act referred to under point 3 herein”.

The Act of 16 July 2004 – Telecommunications Law (Official Journal No 171, Item 1800), implementing the 2002 telecommunications directives, article 2 point 29:

“Public telecommunications network – a telecommunications network used mainly for the provision of publicly available telecommunications services”.

**21.7. Does the National Legal order define other Categories of Services in Relation to the Transmission of Audiovisual Content? If Yes, what are their main Features?**

The following additional services should be taken into account:

**Teletext services** – defined in the Broadcasting Act .

**Electronic programme guide** – defined in Telecommunication Law.

**21.8. Legal Texts concerning the Definition of these Services in Original Language, if available**

Artykuł 4 pkt 9 ustawy o radiofonii i telewizji:

„9) przekazem tekstowym jest zbiór tekstów i nieruchomych obrazów, rozpowszechnianych za pomocą sygnału telewizyjnego równocześnie z programem,”.

Artykuł 2 pkt 7 ustawy Prawo Telekomunikacyjne

„7) elektroniczny przewodnik po programach - środki lub rozwiązania techniczne umożliwiające wybór programów, stosowane w systemach telewizji cyfrowej, zawierające dodatkowe dane opisujące programy występujące w cyfrowym sygnale telewizyjnym;”

**21.9. Legal Texts concerning the Definition of these Services - Translation (EN/FR/DE), if available**

Article 4 point 9 of the 1992 Broadcasting Act.

“9) „teletext service” shall mean a set of texts and motionless images transmitted by means of a television signal simultaneously with the programme service,”.

Article 2 point 7 of Telecommunications Law

“7) electronic programme guide – technical means or solutions enabling selection of programmes, used in digital television systems, which contain additional descriptions of programmes included in digital television signal”

## **22. REGULATION OF TELEVISION AND INFORMATION SOCIETY SERVICES IN PORTUGAL**

### **22.1. Main elements of the definition of television services:**

Under the terms of Television Broadcasting Act currently in force, a "television programme service" is defined as the series of programming items, sequential and unitary, provided by a television operator (i.e., the legal person legally entitled to carry out television broadcasting). The law also provides a definition of "television", understood as the organisation of programme services in the form of non-permanent images and sounds broadcast by means of electromagnetic waves or any other appropriate vehicle over the air, or by wire, and able to be received by the general public, excluding telecommunication services available only upon individual request. Also excluded from the definition of television are (a) the occasional transmission of events, by means of technical mechanisms installed at places of transmission and intended for the public gathered there, and (b) the simple retransmission of third party broadcasts.

### **22.2. Legal Texts concerning the Definition of TV Services in original Language**

Lei nº 32/2003 (Television Broadcasting Act), published on 22 August 2003 in the Diário da República (i.e., the Portuguese Official Journal), Series I-A, nº193:

«Artigo 2º (Definições)

1 - Para efeitos da presente lei, entende-se por:

a) "Televisão", a organização de serviços de programas sob a forma de imagens não permanentes e sons através de ondas electromagnéticas ou de qualquer outro veículo apropriado, propagando-se no espaço ou por cabo, e susceptível de recepção pelo público em geral, com exclusão dos serviços de telecomunicações apenas disponibilizados mediante solicitação individual;

(...)

c) "Serviço de programas televisivo", o conjunto dos elementos da programação, sequencial e unitário, fornecido por um operador de televisão;

(...)

2 - Exceptua-se do disposto na alínea a) do número anterior:

a) A transmissão pontual de eventos, através de dispositivos técnicos instalados nas imediações dos respectivos locais de ocorrência e tendo por alvo o público aí concentrado;

b) A mera retransmissão de emissões alheias.»

### **22.3. Legal Texts concerning the Definition of TV Services in Translation (EN/FR/DE), if available**

Law n° 32/2003 (Television Broadcasting Act), published on 22 August 2003 in the Diário da República, Series I-A, n°193:

*English version (unofficial translation) – available at <http://www.ics.pt>*

«Article 2 (Definitions)

1 - For the purposes of this law:

a) "Television" means the organisation of programme services in the form of non-permanent images and sounds broadcast by means of electromagnetic waves or any other appropriate vehicle over the air, or by wire, and able to be received by the general public, excluding telecommunication services available only upon individual request;

(...)

c) "Television programme service", the series of programming items, sequential and unitary, provided by a television operator;

(...)

2 - The following are exceptions to the provision of sub-paragraph a) of the previous paragraph:

a) The occasional transmission of events, by means of technical mechanisms installed at places of transmission and intended for the public gathered there;

b) The simple retransmission of third party broadcasts.»

### **22.4. Main Elements of the Definition of Information Society Services**

The definition of information society services can be found in our national legal system in two legal instruments.

- Decree-Law n° 58/2000, of 18 April 2000 - transposes to the internal legal system Directive 98/34/CE, of the European Parliament and Council, of 22 June, as altered by Directive 98/48/CE, of the European Parliament and Council, of 20 July; and

- Decree-Law no. 7/2004, of 7 January 2004 - transposes to the internal legal system Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce), as well as article 13 of Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications).

For the application purposes of Decree-Law n° 58/2000, a «service» is understood as any provision of an activity at a distance, by electronic means

and upon the individual request of its receiver, generally upon remuneration. For the purposes of this definition, (i) «at a distance» means that the service is provided without both parties being simultaneously present; (ii) «by electronic means» means that the service is sent from the origin and received at its destination by electronic means for processing and storing data, and entirely transmitted, conveyed and received by wire, radio, optical means or by other electromagnetic means; (iii) «upon the individual request of its receiver» means that the service is supplied by data transmission upon individual request.

Under the terms of Decree-Law no. 7/2004, an “information society service” is understood as any service provided at a distance by electronic means, for remuneration or at least in the scope of an economic activity at the individual request of a recipient of services.

## **22.5. Legal Texts concerning the Definition of Information Society Services in Original Language**

1. Decreto-Lei n.º 58/2000, published on 18 April 2000 in the Diário da República, Series I-A, n.º92: sets out the administrative procedures which the information exchange in the technical norms and regulations area adhere to, as well as the rules related to the services of the information society, transposing to the internal legal system Directive 98/34/CE, of the European Parliament and Council, of 22 June, as altered by Directive 98/48/CE, of the European Parliament and Council, of 20 July.

### «Artigo 2º (Definições)

Para efeitos de aplicação do presente diploma, entende-se por:

(...)

b) «Serviço» qualquer prestação de actividade à distância, por via electrónica e mediante pedido individual do seu destinatário, geralmente mediante remuneração, considerando-se, para efeitos da presente definição:

i) «à distância»: um serviço prestado sem que as partes estejam simultaneamente presentes;

ii) «por via electrónica»: um serviço enviado da origem e recebido no destino através de meios electrónicos de processamento e de armazenamento de dados que seja inteiramente transmitido, encaminhado e recebido por cabo, rádio, meios ópticos ou outros meios electromagnéticos;

iii) «mediante pedido individual do seu destinatário»: um serviço fornecido por transmissão de dados mediante um pedido individualizado.»

2. Decreto-Lei n.º 7/2004, published on 7 January 2004 in the Diário da República, Series I-A, n.º5: transposes to the internal legal system Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 (Directive on electronic commerce), as well as article 13 of Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 (Directive on privacy and electronic communications).

### «Artigo 3º (Princípio da liberdade de exercício)

1 - Entende-se por «serviço da sociedade da informação » qualquer serviço prestado a distância por via electrónica, mediante remuneração ou pelo menos no âmbito de uma actividade económica na sequência de pedido individual do destinatário.

(...))»

## 22.6. Legal Texts concerning the Definition of Information Society Services - Translation (EN/FR/DE), if available

*English versions (unofficial translations) – available at <http://www.anacom.pt>*

1. Decree-Law n° 58/2000, published on 18 April 2000 in the Diário da República, Series I-A, n°92:

«Article 2 (Definitions)

For the application purposes of this law, the following definitions shall apply:

(...)

b) «service»: any provision of an activity at a distance, by electronic means and upon the individual request of its receiver, generally upon remuneration. For the purposes of this definition,

(i) «at a distance» means that the service is provided without both parties being simultaneously present;

(ii) «by electronic means» means that the service is sent from the origin and received at its destination by electronic means for processing and storing data, and entirely transmitted, conveyed and received by wire, radio, optical means or by other electromagnetic means;

(iii) «upon the individual request of its receiver» means that the service is supplied by data transmission upon individual request.

(...))»

2. Decree-Law n°. 7/2004, published on 7 January 2004 in the Diário da República, Series I-A, n°5:

«Article 3 (Principle of freedom of exercise)

1. “Information society services” shall mean any service provided at a distance by electronic means, for remuneration or at least in the scope of an economic activity at the individual request of a recipient of services.

(...))»



**22.7. Does the National Legal order define other Categories of Services in Relation to the Transmission of Audiovisual Content? If Yes, what are their main Features?**

As noted above, the definitions of «television» and of «information society services» currently in force in the portuguese legal system are both the result of the transposition of community law instruments dealing with this topics. Accordingly, we also share the well-recognised limitations deriving from the distinction reciprocally established concerning «television» and «information society» services, which is unable or insufficient to provide a clear answer to the question to know on what should be the regulatory regime to be applied to a whole set of in-between cases of new audiovisual services.

Among us, and despite the emergence of some concrete problems to face and solve in this context, the debate concerning this issue is still in a very early stage.

Notwithstanding that, we take this opportunity to recall the Commission that this important topic is also currently being discussed in the Standing Committee of the European Convention on Transfrontier Television of the Council of Europe, and that some ideas and suggestions therein expressed will surely have some added value in the context of the review of the TWF Directive.

**22.8. Legal Texts concerning the Definition of these Services in Original Language, if available**

**22.9. Legal Texts concerning the Definition of these Services - Translation (EN/FR/DE), if available**

## 23. REGULATION OF TELEVISION AND INFORMATION SOCIETY SERVICES IN SWEDEN

### 23.1. Main elements of the definition of television services:

**The Swedish Radio and Television Act** defines television broadcasts as transmissions directed towards the general public and designed to be received using technical devices. A broadcast is only considered to be directed to the general public if it:

- is simultaneously accessible, without specific request, to anyone who wishes to receive it.
- can be received by an undetermined number of viewers
- is started by the transmitting party, i.e. the party that supplies the content of the transmission

This means that transmissions that are started on the demand of the viewer, for example video-on-demand-services do not fall within the definition of television broadcasts.

**The Fundamental Law of Freedom of Expression** is included in the Swedish Constitution and guarantees a far-reaching protection of the freedom of expression. The content of media and technical recordings are protected specifically. The provisions of the Law are applicable for all different broadcasts as far as they are directed to the general public and designed to be received using technical devices, regardless of which type of transmission is used. This means that the Constitution protects the freedom of broadcast content whether the broadcast is in the form of radio or TV transmissions or other types of transmission like for example the Internet, and regardless of which technique is used (analogue or digital for example) and whether they are encrypted or not.

According to the Swedish Constitution, freedom of speech in media and technical recordings is the general rule and it can only be limited through legislation in certain specific instances. Such a possibility exists for certain television broadcasts. For broadcasts transmitted by cable (or as the Constitution reads: “transmissions through wire”) no limitations on the freedom of establishment is accepted. For these transmissions only certain general conditions can be introduced. These include prohibition of certain descriptions of violence and some type of advertisement of opinions and conditions regarding quotas. For terrestrial and satellite broadcasts, however, the Constitution gives a somewhat wider possibility for the legislator and certain provisions on conditions and licensing are allowed.

### 23.2. Legal Texts concerning the Definition of TV Services in original Language

Radio- och TV-lagen (1996:844)

Yttrandefrihetsgrundlagen (1991:1469)

**23.3. Legal Texts concerning the Definition of TV Services in Translation (EN/FR/DE), if available**

The Radio and Television Act can be found on the homepage of The Swedish Radio and TV Authority:  
[http://www.rtvv.se/\\_upload/uk/download/rtvact.pdf](http://www.rtvv.se/_upload/uk/download/rtvact.pdf)

The Fundamental Law on Freedom of Expression can be found on the homepage of the Swedish Parliament:  
<http://www.riksdagen.se/english/work/fundamental/expression.asp>

**23.4. Main Elements of the Definition of Information Society Services**

The definition of information society services in Swedish legislation is based on the definition in art 2 a in Dir 2000/31/EC. The definition covers a variety of businesses that take place on-line and usually for economic remuneration, such as sale of goods. In addition to these commercial services, the definition also includes forwarding or making available information as well as financial services or search-engine services. These services can be defined as point-to-point-services. Interactive entertainment such as video-on-demand also falls under the definition.

The services that fall under the definition must be services that are made available online and presume interactivity. Broadcasting of radio and television is not covered, as it does not take place through the individualized request of a service receiver. The same is true for near-video-on-demand, which is defined as a television broadcast service.

**23.5. Legal Texts concerning the Definition of Information Society Services in Original Language**

Lag (2002:562) om elektronisk handel och andra informationssamhällets tjänster

**23.6. Legal Texts concerning the Definition of Information Society Services - Translation (EN/FR/DE), if available**

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**23.7. Does the National Legal order define other Categories of Services in Relation to the Transmission of Audiovisual Content? If Yes, what are their main Features?**

Yes, implemented as prescribed in Dir 98/84/EC on the legal protection of services based on, or consisting of, conditional access.

**23.8. Legal Texts concerning the Definition of these Services in Original Language, if available**

Lag (2000:171) om förbud beträffande viss avkodningsutrustning

**23.9. Legal Texts concerning the Definition of these Services - Translation (EN/FR/DE), if available**

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## **24. REGULATION OF TELEVISION AND INFORMATION SOCIETY SERVICES IN SLOVENIA**

### **24.1. Main elements of the definition of television services:**

- original dissemination and forwarding or transmission of programming
- via cables or over the air, including via satellite
- in a coded or uncoded form
- for the purpose of publicising the programming among the public

### **24.2. Legal Texts concerning the Definition of TV Services in original Language**

Article 65 of the Mass Media Act (Zakon o medijih):

Radijska in televizijska dejavnost po tem zakonu je izvirno razširjanje oziroma prenašanje ali oddajanje programskih vsebin prek kablov ali po zraku, vključno prek satelita, v kodirani ali dekodirani obliki, z namenom priobčevanja teh vsebin javnosti. V ta pojem so vključene tudi oblike medsebojnega posredovanja radijskih in televizijskih programskih vsebin med posameznimi izdajatelji z namenom, da bi bile priobčene javnosti.

### **24.3. Legal Texts concerning the Definition of TV Services in Translation (EN/FR/DE), if available**

Article 65 of the Mass Media Act (Zakon o medijih):

Under the present act radio and television activities encompass the original dissemination and forwarding or transmission of programming via cables or over the air, including via satellite, in a coded or uncoded form, for the purpose of publicising the programming among the public. The term includes forms of mutual transmission of radio and television stations between individual publishers with the intent of reaching the public.

### **24.4. Main Elements of the Definition of Information Society Services**

- services, provided for remuneration
- at a distance
- with electronic means
- upon individual request of the recipient of the service

#### **24.5. Legal Texts concerning the Definition of Information Society Services in Original Language**

Article 3/35 of the Electronic Communications Act (Zakon o elektronskih komunikacijah):

Storitev informacijske družbe je storitev, ki se ponavadi zagotavlja za plačilo, na daljavo, z elektronskimi sredstvi in na posamezno zahtevo prejemnika storitev. Pri tem "na daljavo" pomeni, da se storitev zagotavlja, ne da bi bili strani sočasno prisotni. "Z elektronskimi sredstvi" pomeni, da se storitev na začetku pošlje in v namembnem kraju sprejme z elektronsko opremo za obdelavo (vključno z digitalnim stiskanjem) in shranjevanje podatkov in v celoti pošlje, prenese in sprejme po žici, radiu, optičnih sredstvih ali drugih elektromagnetnih sredstvih. "Na posamezno zahtevo prejemnika storitev" pa pomeni, da se storitev zagotavlja s prenosom podatkov na posamezno zahtevo. Storitve informacijske družbe vključujejo zlasti storitve prodaje blaga ali storitev, dostopa do podatkov ali oglaševanja na svetovnem spletu ter storitve dostopa do komunikacijskega omrežja, prenosa podatkov ali shranjevanja prejemnikovih podatkov v komunikacijskem omrežju.

#### **24.6. Legal Texts concerning the Definition of Information Society Services - Translation (EN/FR/DE), if available**

Article 3/35 of the Electronic Communications Act (Zakon o elektronskih komunikacijah):

Information society services mean services provided for remuneration, at a distance, with electronic means and upon individual request of the recipient of the service. "At a distance" shall mean that the service is provided without the two parties being present simultaneously. "With electronic means" shall mean that the service is sent at the point of origin and received at the final destination by electronic equipment for processing (including digital compression) and data storage and is sent, transmitted and received wholly via cable, radio, optical means, or other electromagnetic means. "Upon individual request of the recipient of the service" shall mean that the services are provided with the transmission of data upon individual request. Information society services include, in particular, the sales of goods and services, services of access to information or advertising over the internet and the access to the communications network services, transmission of data, or storing the recipient's data in the communications network.

#### **24.7. Does the National Legal order define other Categories of Services in Relation to the Transmission of Audiovisual Content? If Yes, what are their main Features?**

Yes, in Article 115 of the Mass Media Act there is a definition of Electronic publications, which includes the possibility of linear audiovisual content dissemination. Main features of the Electronic publications category:

- mass media by which legal and natural persons disseminate programming
- via computer links
- accessible to the public at large
- irrespective of size

**24.8. Legal Texts concerning the Definition of these Services in Original Language, if available**

Article 115 of the Mass Media Act (Zakon o medijih):

(1) Elektronske publikacije so mediji, s katerimi fizične ali pravne osebe razširjajo programske vsebine prek računalniških povezav tako, da so dostopne širši javnosti, ne glede na njihov obseg.

(2) Za elektronske publikacije, katerih izdajatelji so pravne osebe, se smiselno uporabljajo določbe od 1. do vključno 8. oddelka prvega poglavja tega zakona.

(3) Za elektronske publikacije, katerih izdajatelji so fizične osebe, se smiselno uporabljajo določbe od 1. do vključno 8. oddelka prvega poglavja tega zakona, razen določb 5., 10., 12., 13., 14., 15., 16., 17., 19., 20. in 25. člena tega zakona.

**24.9. Legal Texts concerning the Definition of these Services - Translation (EN/FR/DE), if available**

Article 115 of the Mass Media Act (Zakon o medijih):

(1) Electronic publications are mass media by which legal and natural persons disseminate programming via computer links such that it is accessible to the public at large, irrespective of size.

(2) The sense of the provisions of Sections 1 to 8 inclusive of Title I of the present act shall apply to any electronic publication the publisher of which is a legal person.

(3) The sense of the provisions of Sections 1 to 8 inclusive of Title I of the present act, with the exception of the provisions of Articles 5, 10, 12, 13, 14, 15, 16, 17, 19, 20 and 25 of the present act shall apply to any electronic publication the publisher of which is a natural person.

## 25. REGULATION OF TELEVISION AND INFORMATION SOCIETY SERVICES IN UK

### 25.1. Main elements of the definition of television services.

- The statutory provisions are described below. A principal aim of these statutory definitions is to require the licensing of those audio-visual services that are available for general reception simultaneously by members of the public on any platform (including one using Internet protocols) but not on demand services or those available over the World Wide Web.
- The Communications Act 2003 defines a ‘television broadcasting service’ as consisting of ‘ a service of television programmes provided with a view to its being broadcast, whether in digital or analogue form’ and which is ‘provided so as to be available for reception by members of the public’ (section 362).
- For reasons connected with the regulatory system this basic definition is written so as to exclude restricted (that is, local) television services, television multiplex services, television licensable content services, and digital television services. The 2003 Act and other UK legislation do however provide for all these types of television service which are excluded from the basic definition to be regulated and licensed either by OFCOM or under the arrangements which pertain to the BBC or to S4C.
- Section 232 of the Communications Act contains a definition of a ‘television licensable content service’ (tlcs). This is a service intended for reception by members of the public, consisting of digital or analogue television programmes or electronic programme guides or both, which is to be broadcast via satellite or by means of any electronic communications network.
- Where a tlcs is provided with a relevant ancillary service, the latter is treated as being part of the tlcs. Relevant ancillary services are defined as services or facilities, which are made available by the provider of the main service and essentially either provide assistance for disabled people or are ancillary and directly related to programmes in the service. An example would be a choice of alternative viewing angles of a televised sporting event. Not all services accessible from a service will meet this definition, however. For example, if a link were provided to an Internet site, that site would fall outside the definition, as it would not be provided so as to be ‘available for reception by members of the public’.
- The definition of a ‘television licensable content service’ excludes television multiplex services, and services which are otherwise authorised to be provided by digital or analogue terrestrial transmission (effectively, this avoids overlaps with other areas of the regulatory regime). More importantly, by virtue of section 233(3) of the Communications Act, it also excludes any service provided via the Internet where the given service is only



part of a wider service or is one of a number of services made available by such a wider service (e.g. and ISP), and that wider service is not provided wholly or mainly in order to make television &/or radio programmes available for reception by members of the public.

**25.2. Legal texts concerning the definition of TV services in original language.**

- The main text is the Communications Act 2003, taken together with the Broadcasting Act 1990 and the Broadcasting Act 1996.

**25.3. Legal texts concerning the definition of TV services in translation (EN/FR/DE), if available.**

- As far as we are aware these Acts are not available in any languages other than English.

**25.4. Main elements of the definition of information society services.**

- Regulation 2(1) of the Electronic Commerce (EC Directive) Regulations 2002 (SI 2002/2013) defines an "information society service" as having the meaning set out in Article 2(a) of Directive 2000/31/EC, which refers to Article 1(2) of Directive 98/34/EC (the Technical Standards Directive) as amended by Directive 98/48/EC.
- Regulation 2(1) of UK Regulations SI 2002/2013 also refers directly to recital 17 of Directive 2000/31/EC, which summarises an information society service as "any service normally provided for remuneration, at a distance, by means of electronic equipment for the processing (including digital compression) and storage of data, and at the individual request of a recipient of a service".
- Article 1.2 of Directive 98/34/EC (as amended) makes it clear that 'information society services' do not extend to radio broadcasting or to television broadcasting services covered by point (a) of Article 1 of the TVWF Directive (89/552/EEC, as amended).

**25.5. Legal texts concerning the definition of information society services in original language.**

- See 4 above

**25.6. Legal texts concerning the definition of information services in translation (EN/FR/DE), if available.**

- As far as we are aware translations of UK Regulations SI 2002/2013 into languages other than English are not available.

**25.7. Does the national legal order define other categories of services in relation to the transmission of audiovisual content? If yes, what are their main features?**

- An ‘additional television service’ – defined in section 48 of the Broadcasting Act 1990, where it is referred to simply as an ‘additional service’ – is an analogue service transmitted by wireless telegraphy using spare capacity within the signals carrying a television broadcasting service. The digital equivalent is defined in section 24(1) of the Broadcasting Act 1996.
- An ‘ancillary service’ – defined in section 24(2) of the Broadcasting Act 1996 – is a digital service provided by an operator who is authorised to provide a digital television service and which consists of
  - assistance for disabled people, or
  - any other services – other than advertising – which are ancillary to the programmes in the service and directly relate to their contents or to the promotion or listing of these programmes.
- A ‘technical service’ – defined in section 24(3) of the Broadcasting Act 1996 – is a service which is provided for purposes connected with the encryption or decryption of one or more digital television services or digital additional services and which is of a description specified in secondary legislation.

**25.8. Legal texts concerning the definition of these services in original language, if available.**

- The texts are the Broadcasting Act 1990 and the Broadcasting Act 1996.

**25.9. Legal texts concerning the definition of these services in translation (EN/FR/DE), if available.**

- As far as we are aware these are not available in any language other than English.