



***Independent Study on
Indicators for Media Pluralism
in the Member States – Towards
a Risk-based Approach***

Prepared for the European Commission
Directorate-General Information Society and Media
SMART 007A 2007-0002

by

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Final Report - Annex III

COUNTRY REPORTS

Germany

Contract No.: 30-CE-0154276/00-76

Leuven, July 2009



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By the Commission of the European Communities
Directorate-General for Information Society and Media

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Important Notice

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The country reports are not in any way intended to be an implementation of the Media Pluralism Monitor in the Member States. They were drafted during the initial stages of the study, with the intention of obtaining a better view of regulatory measures in the broad sense – including co- and self-regulatory measures – adopted in the Member States to promote or safeguard, directly or indirectly, pluralism in the media. The intention was to obtain a high-level snapshot of possible implementation problems and not to express any value judgements on existing rules. The resulting overview facilitated the development of methods for assessing the effective implementation of regulatory safeguards, which had to be, according to the Terms of Reference for the study, an intrinsic element of the legal indicators. We strongly recommend that you also download the file containing our Introduction as it sets out our approach to the initial stages of the project in detail and includes a short manual on how to read the country reports. We draw your attention to the Overview file as well.

Please note that the country reports were finalized in the middle of 2008 and do not therefore reflect progress made with the transposition of the Audiovisual Media Services Directive or any subsequent initiative by Member States. They are made available not as final deliverables of the study, but as interim deliverables, intended to illuminate part of the route taken by the study team and thereby to contribute towards the full transparency of the MPM project.

10. Overview of legal and policy measures promoting/supporting media pluralism

[GERMANY]

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National regulations relevant in the area of media pluralism

- **Legislation**

- Interstate Treaty on Broadcasting (Rundfunkstaatsvertrag, “RStV”), adopted on 31 August 1991, as amended most recently by the Ninth Interstate Treaty for Amending the Interstate Treaties
- Telecommunications Act (Telekommunikationsgesetz, TKG), adopted on 26 June 2004
- Law on book price (Gesetz über die Preisbindung für Bücher (Buchpreisbindungsgesetz - BuchPrG), adopted on 1 October 2002
- Equal opportunities law (Allgemeines Gleichbehandlungsgesetz), adopted on 14 August 2006
- Statutes of the Press Council (Presserat statutes), adopted on 25 February 1985
- Law on information freedom, law on regulating access to information (Informationsfreiheitsgesetz, Gesetz zur Regelung des Zugangs zu Informationen des Bundes (IFG)), adopted 5 September 2005
- Telemediengesetz (TMG), adopted on 26 February 2007
- Law on political parties (Parteiengesetz), adopted on 31 January 1994
- Competition Act (Gesetz gegen Wettbewerbsbeschränkungen (GWB) Bekanntmachung der Neufassung), adopted on 15 July 2005
- Merger control Act against Restraints of Competition (Pressefusionsgesetz)

- **Codes of conduct**

- Code of fundamental journalistic standards (*Pressekodex*)

TABLE 1. Constitutional protection of press and communication freedoms

Measure	Source	Scope of application	Key features
1.1. Freedom of expression	Art. 5 (1) Constitution		Everyone shall have the right freely to express and disseminate his opinions in speech, writing, and pictures. Freedom of the press and freedom of reporting by means of broadcasts and films shall be guaranteed. There shall be no censorship.
	Constitutional Court: BVerfGE 7, 198 (204 f.); 57, 295 (319 f.)		According to the Court's point of view, Art.5 (1) sentence 2 of the Constitution containing the freedom of media is not merely a subjective right, but also an objective guarantee, which states the obligation for the lawmaker to ensure freedom of public communication
<i>Implementation problem: Discussion whether the arguments given by the constitutional court can be applied to new media services as well.</i>			
1.2. Freedom of/ right to information	Art. 5 (1) Constitution		Everyone shall have the right to inform himself without hindrance from generally accessible sources.
	Preamble Code of fundamental journalistic standards		Freedom of press implicates the freedom of information.
	Art. 1 Law on information freedom, law on regulating access to information		Everyone has the right to access official federal information from public service administrative bodies. The type of access can be decided by the respective body. There are however a number of restrictions, e.g. as far as person-related information is concerned. Other public bodies such as social security institutions, churches, publicly financed theatres and museums, universities, etc have to provide access but can limit this access in certain exceptional cases.
<i>Implementation problem: There has been criticism regarding restrictive interpretation of the new law and high fees for accessing information.</i>			
1.3. Explicit recognition of media pluralism	Code of fundamental journalistic standards		Journalists should provide plurality of opinion.
	Preamble RStV	AAVM (TV + R)	Public service broadcasting and private broadcasting are committed to encourage plurality of opinion.
	Art. 25 (1) RStV	AAVM (private TV + R)	The content of private broadcasting must generally indicate a plurality of opinion.
	Case law Constitutional Court, for instance Decision of 16.6.1981 (Dritte Rundfunkentscheidung; FRAG/Saarländisches Rundfunkgesetz), 57, 295; NJW 1981, 1774; Decision of 4.11.1986 (Vierte Rundfunkentscheidung; Landesrundfunkgesetz Niedersachsen), 73, 118; ZUM 1986, 602; NJW 1987, 239		The Constitutional Court derives from Art. 5 Constitution a duty for the state to organize the broadcasting sector so (and to create the appropriate legal framework, such as anti-concentration rules) that pluralism is ensured, via a model of internal pluralism (“binnenpluralistische Struktur”) and/or via external pluralism (“ausenpluralistische Modell”).
1.4. Protection of journalistic sources	Art. 5 Code of fundamental journalistic standards		Indicating sources, while guaranteeing anonymity of sources where appropriate.
1.5. Right of reply		P (print and online)	Each Lander in the Federal Republic has a Press Law which obliges newspapers and periodicals to publish replies (or ‘counter-versions’) from people affected by an assertion of fact in an article.

1.6. Ratification of international instruments: - CoE's Framework Convention For The Protection Of National Minorities - UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions (Oct 2005)	-Yes -Yes		
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TABLE 2. Editorial independence

Measure	Source	Scope of application	Key features
2.1. Journalists	Art. 7 Code of fundamental journalistic standards		Journalists should reject any offers that might jeopardise journalistic objectivity.
<i>Implementation problem: Potential dangers to intellectual property are one of the restrictions that limit the information freedom law (see above).</i>			
<i>Note: In Germany, there is no legal obligation for newspapers to have an editorial statute. Only a few newspapers do have an editorial statute.</i>			
2.2. News / information programmes	Art. 10 (1) RStV	AAVM (private TV + R)	Current affairs and information programmes shall be independent and objective. (only apply to nationwide broadcasts)
2.3. Other media content	Art. 7 (8) RStV	AAVM (TV + R)	Advertisements of a political, ideological or religious nature shall not be allowed.
<i>Implementation problem: German jurisprudence states that it is not within the power of the TV channel to deny an election spot with the argument that the content appears unconstitutional, since the competence to decide upon unconstitutionality of a party and its messages lies only with the Federal Constitutional Court”.</i>			
	Art. 7 Code of fundamental journalistic standards		Maintain a clear separation between journalistic content and advertising.
	Art. 7 (2) RStV	AAVM (TV + R)	The advertisement or advertiser may not exercise any editorial influence over the content of programmes.
	Art. 7 (7) RStV	AAVM (TV + R)	Television advertisements and teleshopping may not feature individuals who regularly present news or current affairs programmes.
	Art. 8 (3) RStV	AAVM (TV + R)	The content and scheduling of a sponsored programme shall not be influenced by the sponsor in such a way as to prejudice the broadcaster's responsibility and editorial independence.
2.4. Subsidies/ Training of journalists (independence, ethic, recruitment, etc.)			
2.5. Consultative programming structure for participation of the public/citizens to media (i.e. a mechanism to allow citizens to participate in editorial decisions, under the form of e.g. an ombudsman, ethics or liaison committee, "Société des rédacteurs" ...)		P	Some newspapers have “Ombudsmen”.

TABLE 3. Cultural pluralism

Measure	Source	Scope of application	Key features
3.1. Structural rules (guaranteeing or promoting access by the various cultural groupings to media companies' bodies, structures...)			
3.1.1. Special representation requirements in media company structures			
3.1.2. Special representation requirements in media advisory bodies	ARD-Staatsvertrag, ZDF-Staatsvertrag Landesmediengesetze (individual legislations of each of the Länder, i.e. the 16 German states)	AAVM	In the internal supervisory bodies (<i>Rundfunkräte</i>), ZDF: (<i>Fernsehrat</i>), socially relevant groups, like trade unions, employers associations, churches, environmentalist groups, are represented. The exact composition is defined in each regional legislation. It is the task of these bodies to monitor the legal requirements and ensure that diversity in programming, i.e. representing the manifold opinions to be found in society itself, is achieved.
<i>Implementation problem: In theory, the influence of these supervisory bodies is substantial. They advise on content decisions, elect the directors and the administrative board, approve the budget and major investments. In practice, there are strong differences between resourceful, well-trained and knowledgeable members (who are influential) and less well-prepared or resourced (and thus less influential) members. Party representatives often play a larger role than independent members.</i>			
	Art. 32 (2) RStV	AAVM (Private broadcasters)	The members of the Advisory Council for Programming shall be appointed by the broadcaster. Their membership of different sections of society must as a whole be a guarantee that the main opinions in the community are represented.
	ARD-Staatsvertrag, ZDF-Staatsvertrag	AAVM (Public Service Broadcasters)	Similarly to the supervisory bodies (<i>Rundfunkräte</i>), the administrative boards (<i>Verwaltungsräte</i>) of public service broadcasters have to include members of the socially relevant groups.
		Regional media authorities	Similarly, the advisory councils (<i>Medienräte</i>) of the regional media authorities (<i>Landesmedienanstalten</i>) include members of the public and of socially relevant groups.
3.1.3. Legal or policy measures either prohibiting discrimination in recruitment or promoting equal opportunities (ethnic minorities, gender, age, disabled...)	Equal opportunities law		The aim of the equal opportunities law is to prevent discrimination with regards to race, ethnic origin, gender, religion, sexual identity, age, etc.
	Some laws concerning specific PSBs (for example, DLR StV, 17.6.1993)...		Requirement of equal gender distribution amongst council members.
3.2. Representation of the various cultural groupings in the media			
3.2.1. Access to airtime for cultural groupings	Art. 25 (1) RStV	AAVM (private TV + R)	Important political, ideological and social groups shall be given adequate opportunity to express themselves in the full programme services; minority views shall be taken into account.
	Art. 42 (1) RStV	AAVM (nationwide private TV + R)	The Protestant Churches, the Catholic Church and the Jewish Community shall, upon request, be granted reasonable time for the transmission of religious programmes.

	Art. 31 (1)-(2) RStV	AAVM (TV + R)	<p>A window programme which is broadcast by virtue of the obligation to provide transmission time must, without violating the programming autonomy of the principal broadcaster, make a further contribution to his programme's plurality, notably in the fields of culture, education and information. The window programme shall be editorially independent of the main programme.</p> <p>The duration of the window programme must be at least 260 minutes a week including at least 75 minutes in the transmission time between 7 p.m. and 11.30 p.m. Regional window programmes totalling no more than 150 minutes per week shall be counted towards the weekly transmission time but no more than 80 minutes per week towards the transmission time provided for third parties outside the transmission time mentioned in the first sentence; if the weekly transmission time for the regional window is less the 80 minutes counting towards the transmission time for third parties shall be reduced accordingly. These periods may only be included if the regional window programmes are editorially independent and together reach at least 50 per cent of television households nationwide.</p>
3.2.2. Content obligations			
3.2.2.1. <i>Promotion of European works</i>	Art. 6 (1) RStV	AAVM (TV + R)	Television broadcasters shall reserve the greater part of total time scheduled for the transmission of feature films, television plays, series, documentaries and comparable productions for European works in accordance with European law.
3.2.2.2. <i>Promotion of European independent works</i>	Art. 6 (2) RStV	AAVM (TV + R)	A significant proportion of full television programmes shall be own, commissioned and joint productions from the German-speaking regions.
3.2.2.3. <i>Promotion of national/regional works</i>	Art. 6 (2) RStV	AAVM (TV + R)	A significant proportion of full television programmes shall be own, commissioned and joint productions from the German-speaking regions.
3.2.2.4. <i>Language requirements</i>	Art. 6 (1) RStV	AAVM (TV + R)	Presentation of the diversity of the German speaking regions.
3.2.3. Representation of minorities on the screen (e.g. presenting the news, in drama, movies...; can be engagement in an internal charter or can be imposed statutory)			
3.2.4. Subsidies (apart from general PSB funding)			State subsidies do exist neither within the print sector nor in the electronic media, although special aids as a reduced valued added tax rate and reduced prices for distributing print products via mail serve as a state generated support for the press.
3.3. Accessibility (i.e. special measures to promote access to media contents by special needs groupings in society, like the elderly, disabled...)			<p>Action Plan of the abm – arbeitsgemeinschaft behinderung und medien for the Disability and Media Project (German Branch). The abm is an association of NGOs. It supports media access for disabled people, but it does so on a private level (with trainings and other initiatives), not on a policy level.</p> <p>The general target of this plan is to provide people with disabilities with a better access into the media. This takes place on various levels: better employment in the media and technical access by means of subtitles, audio description, sign language etc.</p>

TABLE 4. Political pluralism

Measure	Source	Scope of application	Key features
4.1. Structural rules (relating to the organization and structures of media companies/advisory bodies)			
4.1.1. Restrictions to politicians' ownership/control of media (avoid one dominating voice)	German State Media Laws		Political parties and organisations are excluded from holding a licence for TV or radio channels.
	Constitutional Court, Decision of 12 March 2008:		Absolute exclusion of political parties who participate in broadcasting channels is unconstitutional.
<i>Note: Political parties and politicians are allowed to participate in newspaper ownership structures. They could be owners and they could also be on the board (the latter right they do not use in practice).</i>			
4.1.2. Requirements of independence from political parties / politicians			
4.1.3. Incompatibility of political mandate with membership in media advisory or regulatory bodies			Most advisory councils (<i>Rundfunkräte</i> and <i>Medienräte</i> , see above) include party representatives, as parties are seen as “socially relevant groups”. However they make up only a small section of the councils.
<i>Implementation problem: There has repeatedly been criticism as well as legal challenges against the inclusion of party representatives. It is an issue of ongoing debate.</i>			
4.1.4. Representation requirements in media companies' bodies (board of directors...)			
4.1.5. Representation requirements in media advisory bodies and/or regulators	See above (cultural pluralism). Requirements differ from state to state, but all broadcast councils etc need to be composed of members of socially relevant groups and therefore also of different political perspectives.		
4.2. Content rules (relating to media programmes, press articles, other content)			
4.2.1. (Equal/proportionate) Access to airtime for political groupings	Various state-level laws on PSB, for example WDR-Gesetz v. 23.3.1985, §5 Programmgrundsätze		Public Service Broadcasters are to reflect the diversity of political opinions and perspectives, give voice to all relevant social groups in their geographic area of broadcasting, and make sure that the overall programme does not serve one particular party or interest group.
4.2.1.a. Non-paid access, e.g. right to insert own programmes or messages on the public channels			Free political advertising is only permitted in the period before elections. The duration of the free political advertising is limited. The time is divided proportionally, with a minimum for small parties. Each participating party receives 2,5 minute slots. Parties represented in the parliament receive additional slots based on their number of seats.
<i>Implementation problem: German jurisprudence says that it is not within the power of the TV channel to deny an election spot with the argument that the content appears unconstitutional, since the competence to decide upon unconstitutionality of a party and its messages lies only with the Federal Constitutional Court.</i>			
4.2.1.b. Paid access: rules on political advertising			

4.2.2. Government announcements	Landesmediengesetze (separate laws of the 16 different states)		For official announcements, broadcasters have to provide appropriate broadcasting time immediately and for free (unverzöglich und unentgeltlich angemessene Sendezeit)
4.2.3. Impartiality obligations	Art. 5 Law on political parties		Public broadcasters should accord equal treatment to all parties.
<i>Implementation problem: Formally, this applies only to the free political advertising, and not to editorial coverage. Political parties do not have constitutional or legal rights to fairness or participation in editorial programmes. These decisions are made autonomously by the broadcasters.</i>			
4.2.4. Fair representation of political viewpoints; special rules in election periods	Code of fundamental journalistic standards		Practice balanced campaign reporting.
	Art. 42 (2) RStV	AAVM (nationwide private TV + R)	Any political party taking part in elections for the German Bundestag shall be granted a reasonable amount of transmission time if at least one state list of candidates has been approved for that party. Furthermore, any party or other political association taking part in the election of candidates from the Federal Republic of Germany for the European Parliament is entitled to a reasonable amount of transmission time if at least one electoral list has been approved, subject to cost reimbursement.
	Art. 7 (8), 42 (2) RStV „Rechtliche Hinweise der DLM zu den Wahlsendezeiten für politische Parteien im bundesweit verbreiteten privaten Rundfunk vom 6. Juli 2005” (Legal political advertising guideline for airtime accorded for political advertising for private broadcasters from the Directors’ Conference of the German Media Authorities)		Prior to elections to the German Bundestag (German Parliament) , the European Parliament or the Landtag (legislative assembly of a German state) principally every nation- and country-wide broadcaster is engaged to offer adequate airtime to political parties for their spot advertisement. Entitled for this right is every political party (or similar political organization) which is admitted at least to one election. Because of the federal structure of Germany there are minor differences between the different German states.

TABLE 5. Geographical pluralism

Measure	Source	Scope of application	Key features
5.1. Licensing policy fostering local/regional types of media (for instance: is part of the spectrum explicitly reserved for regional/ local media; are there any rules safeguarding the local character of these media once they are operating, e.g. restrictions to cooperate or centralize programming/advertising decisions...)	Various state-level legislations which differ substantially.		Licensing process is designed to guarantee that a maximum of diversity is achieved.
<i>Note: In some states a “third media sector” is recognised, in others there is recognition of “non-commercial local radio”, in others there is no recognition at all for media that are neither public service nor commercial.</i>			
	Art. 25 RStV		The largest broadcasters have to provide window programmes for “current and authentic presentation of political, economic, social and cultural events” in the respective state where the programme is received. The window programme provider has to be independent from the main programme provider.
	Various state-level laws for PSB, for example WDR-Gesetz v. 23.3.1985, §4 Programmauftrag	Public Service Broadcasting	PSB programme is to reflect regional backgrounds, cultural diversity, the process of European integration and the diversity of the population within the broadcaster's reach, including migrants.
	Various state-level laws for PSB, for example RBB-Staatsvertrag v. 7.11.2002, §2 Sitz und Regionalstudios		Public Service Broadcasters are required to establish local and regional broadcasting/production studios.
5.2. Structural measures: access of various localities to media (e.g. obligation to have branches throughout country)			
5.3. Content obligations: requirements to cover local events, etc.			See above
5.4. Regional State Aids			
5.5. Rules on national minorities			
5.6. Rules on social inclusion of remote areas (Aménagement du territoire)			

TABLE 6. Pluralism of ownership/control

Measure	Source	Scope of application	Key features
6.1. Sector specific rules limiting media ownership			
6.1.1. Moment of intervention			
6.1.1.1. At moment of market entry (licensing procedure)			
6.1.1.2. At the moment of mergers & acquisitions			
6.1.1.3. Other (constant monitoring/supervision)	Art. 26 (6) RStV	AAVM (TV)	The state supervisory authorities for private broadcasters shall together publish a KEK report every three years or upon the request of the states on the situation with regard to media concentration and on measures to secure plurality of opinion in the private broadcasting sector, taking into account 1. the interpenetration of television and related, media-relevant markets, 2. the horizontal interpenetration of broadcasters in different transmission areas, and 3. international interpenetration in the media sector. The report shall also comment on the application of Articles 26 to 32 and on any necessity for change in these provisions.
	Art. 26 (7) RStV	AAVM (TV)	The state supervisory authorities for private broadcasters shall publish an annual list of programmes to be drawn up by the KEK. The list of programmes shall contain all programmes, their broadcasters and interest-holders.
6.1.2. Scope (i.e. trying to prevent one of the following forms of concentrated ownership and/or control)			
6.1.2.1. Monomedia	Art. 26 (1)-(2) RStV	AAVM (TV)	A company (natural or juridical person or association) may itself or through companies attributable to it broadcast nationwide an unlimited number of television programmes, unless it is thereby able to exercise a controlling influence (<i>vorherrschende Meinungsmacht</i>). If the programmes attributable to one company achieve an average annual viewer rating of 30% it shall be assumed that it has a controlling influence.
	Art. 26 (4) RStV	AAVM (TV)	If a company has acquired a controlling influence with the programmes attributable to it the state supervisory authority for private broadcasters shall, through the Commission on Concentration in the Media (KEK, Article 35, paragraph 2, first sentence, No. 1), propose the following measures to the company: 1. The company may relinquish attributable holdings in broadcasters until the attributable viewer rating falls below the level stated in paragraph 2, first sentence, or 2. it may, in the case defined in paragraph 2, second sentence, reduce its market position to related, media-relevant markets or relinquish attributable holdings in broadcasters until it no longer exercises a controlling influence within the meaning of paragraph (2), second sentence, or 3. it may with regard to attributable broadcasters resort to the measures referred to in Articles 30 to 32 in order to secure plurality of opinion.
6.1.2.2. Crossmedia			

Note: Primarily the established media concerns have started to develop new markets motivated by technical progress, in particular by digitisation of content and transmission capacities. Existing content now can be used cross-medial and new revenues can be found. These changes pose challenges for supervision of plurality. Actual cross-media relations have been documented in the third concentration report of the KEK (<http://www.kekonline.de/Inhalte/summary2007.pdf>). The KEK arrived at the conclusion that the German media concentration rules allow an adequate and flexible consideration of cross-media activities of broadcasters.

	Art. 26 (2) RStV	AAVM (TV)	Interdiction for companies to exercise a predominant impact (<i>vorherrschende Meinungsmacht</i>) on public opinion e.g. a company reaches an audience share of 25% and holds a dominant position in a related media market or an overall assessment of its activities in TV and media related markets suggest an influence equivalent to a company with a viewer rating of 30%.
	Art. 33 (3) Landesmediengesetz Nordrhein-Westfalen		Press companies with a dominant position in either the newspaper or magazines market must not at the same time have a controlling stake in any broadcaster located in the same area served by its press products.
	Art. 59 (2) Landesmediengesetz Nordrhein-Westfalen		Local broadcasters, companies “with one or more newspapers” are not allowed to own more than 75% of shares and/or voting rights in the operating company.
6.1.2.3. Vertical integration with networks			
6.1.2.4. Integration with advertising sector	Art. 26 (1)-(2) RStV	AAVM (TV)	<i>Supra</i> The notion of such a media -related market introduces the possibility of considering other media assets owned by the company, including those in press and advertising.
6.1.2.5. Integration with other (e.g. energy) sectors			
6.1.2.6. Control over both commercial and public media			
6.1.3. Criteria used to define thresholds for maximum ownership and/or control			
6.1.3.1. Number of licences			
6.1.3.2. Market shares	Merger Control Act against Restraints of Competition	Print	<i>Supra</i>
6.1.3.3. Circulation and audience shares	Art. 26 (1)-(2) RStV	AAVM (TV)	<i>Supra</i>
	Art. 26 (5) RStV	AAVM (TV)	If a broadcaster achieves with a full programme or an information-oriented specialized programme an annual average viewer rating of 10 per cent he must within six months after the establishment of this fact and after being informed by the state supervisory authority for private broadcasters allocate transmission time to independent third parties pursuant to Article 31. If the broadcaster fails to carry out the prescribed measures the licence shall be revoked by the supervisory authority after the facts have been established by the KEK.

6.1.3.4. <i>Capital shares</i>	Art. 28 (1)-(2) RStV	AAVM (TV)	<p>All programmes shall be attributable to a company which are broadcast by itself or by another company in which it has a direct holding of 25 per cent or more of that company's capital or voting rights. Also attributable to that company shall be all programmes of companies in which it has an indirect holding in so far as those companies are connected with it within the meaning of Article 15 of the Companies Act and hold at least 25 per cent of the capital or voting rights of a broadcaster. The companies linked with one another within the meaning of the first and second sentences shall be treated as a single company and their shares in the capital or in the voting rights shall be combined. If as a result of an agreement or otherwise several companies cooperate in such a way that they are together able to exert a controlling influence on a holding company each of them shall be regarded as a controlling company.</p> <p>(2) A holding as described in the first paragraph shall be considered to exist if a company either alone or together with others is able to exercise a comparable influence on a broadcaster. A comparable influence shall also be considered to exist where a company or a company already attributable to it for other reasons pursuant to paragraph 1 or paragraph 2</p> <ol style="list-style-type: none"> regularly fills a significant proportion of the transmission time of a broadcaster with programme parts provided by it or holds a position by virtue of a contractual relationship or articles of association or on any other grounds which makes the fundamental decisions of a broadcaster as to programming or programme purchase or production subject to its approval.
6.1.3.5. <i>Voting shares</i>	Art. 28 (1)-(2) RStV	AAVM (TV)	<i>Supra</i>
6.1.3.6. <i>Advertising revenues</i>			
6.1.3.7. <i>Involvement in number of media sectors</i>			
6.2. Sector specific rules preventing cooperation between media companies			
6.3. (Sector specific or general) rules preventing (non-EU) foreign ownership	No restrictions		
6.4. General competition rules			
6.4.1. Antitrust			
6.4.1.1. <i>Specific provisions for media sectors</i>			
6.4.1.2. <i>Case law in media sectors (examples of leading cases; any specificities?)</i>			
6.4.2. Merger control			
6.4.2.1. <i>Specific provisions for media sector (e.g. possibility for government to overrule NCA decision)</i>	Art. 38 (3) GWB		<p>The thresholds which will invoke the merger control procedure are lowered to one twentieth (5 %) of the normal values, for companies involved in the “publication, production and distribution of newspapers, magazines and parts thereof, the production, distribution and broadcasting of radio and television programmes, and the sale of radio and television advertising time.</p> <p>The number of thresholds to be passed to invoke the procedure is lowered from two to one where a merger affects competition in the markets related to newspapers and magazines (as outlined above e.g. publication, production and distribution): in this case, the only factor to be considered is the domestic turnover of any one of the companies involved in the merger, where otherwise world turnover is also a threshold.</p>

	Merger Control Act against Restraints of Competition	Print	In cases of mergers of printed media publishers a maximum share of only 24,5 % is permitted.
6.4.2.2. <i>Case law in media sectors (examples of leading cases; any specificities?)</i>			
6.5. Transparency obligations			
6.5.1. Transparency towards consumer (e.g. identification obligation; cf. Art. 3a AVMS Directive)			
6.5.2. Transparency obligations towards regulator or in general (info on capital structure, balance sheets, either in specific media laws or in general company laws...)	Art. 29 RStV	AAVM (TV)	Any proposed change in the ownership structure or other influences shall be reported to the state supervisory authority for private broadcasters in advance. The state supervisory authority may only declare such changes to be acceptable if a licence could still be issued in the changed circumstances. If a proposed change is carried out which cannot be declared acceptable in accordance with the third sentence the licence shall be revoked.
	Merger Control Act against Restraints of Competition	Print	Filing of the Federal cartel office is required if at least one party amounts 25 million Euro turnover in the last business year.

TABLE 7. Pluralism of media types and genres

Measure	Source	Scope of application	Key features
7.1. Minimum service in a number of programme strands for commercial / community / public service media	Constitutional Court, Decision of 4.11.1986 (Vierte Rundfunkentscheidung; Landesrundfunkgesetz Niedersachsen), 73, 118; ZUM 1986, 602; NJW 1987, 239		A basic provision (<i>Grundversorgung</i>) has to be offered by public broadcasters (also including minority interests).
	Art. 41 (2) RStV	AAVM (private TV + R)	Full programmes shall contribute an appropriate share of information, culture and education towards the presentation of cultural diversity in German-speaking regions and in Europe as a whole; the possibility of offering specialised programmes shall remain unaffected.
7.1bis. Special framework for community media (“medias associatifs”): Is there a special legal framework granting protection to community media (including rules determining the criteria - e.g. being independent of political parties, non-profit, respecting the law, etc. - in order to qualify as community media; granting certain privileges to that type of media, like guaranteed access to spectrum or networks, etc.)			Various state-level legislations which differ substantially. In some states a “third media sector” is recognised, in others there is recognition of “non-commercial local radio”, in others there is no recognition at all for media that are neither public service nor commercial. Public service requirements of licenced community media are stipulated in the regional laws. In addition to this the state media laws also include provisions for non-commercial Open Channels on Cable. Those channels are quite often described as “broadcasting of the third kind”. Here, citizens and social groups, associations or institutions are allowed to create and broadcast programs they have prepared themselves for television. The arrangement and administration of Open Channels on Cable are part and parcel of the efforts made by the Media Authorities to support the development of media literacy among television users. Because of the diversity of opinion Media Authorities also have licensed Non-commercial Local Radio. These radio channels shall give as much as possible groups of the community a platform for issues, which are attended less in other media.
7.2. Events list (please indicate what type of events are listed, e.g. only sports events or also cultural, political events...)	Art. 5 (a) RStV	AAVM (TV + R)	The German list only contains sports events. In the Federal Republic of Germany, events of major importance for society (major events) may be broadcast in encrypted form on pay-TV only where the broadcaster or a third party makes it possible, under appropriate conditions, for the event to be broadcast on a free and generally accessible television channel at the same time or, where individual events running in parallel make this impossible, slightly deferred.
7.3. Short news reporting	Art. 5 RStV	AAVM (TV + R)	Every licensed television broadcaster in Europe is entitled to short coverage free of charge for his own broadcasting purposes of functions and events which are open to the public and of general interest. This includes access, the right to make short, direct transmissions and recordings, the right to use the material to prepare a single report, and the right to transmit.
7.4. Fixed book price	BuchPrG		During the first 18 months after publication only the fixed price is allowed. Booksellers must not vary the price at all.
7.5. Public service media	Constitutional Court 90, 60, 87		Broadcasting is to be independent from state and government and all direct as well as indirect influence on the programme is prohibited.

7.5.1. Structural rules - organization	Broadcasting falls under the regulatory powers of the Länder, the 16 German states.		There are 9 regional broadcasters, one Germany-wide radio (Deutschlandradio), one Germany-wide TV station (ZDF). The regional broadcasters are combined within a federal structure (ARD) and broadcast a further nation-wide programme. Furthermore, there is the international broadcaster Deutsche Welle. All these broadcasters are based on 3 main bodies: Broadcast Council (<i>Rundfunkrat</i>), Administrative Council (<i>Verwaltungsrat</i>) and Director (<i>Intendant</i>). Rundfunkrat and Verwaltungsrat represent the public (see above).
7.5.1.1. Independence (from government, political powers, economic powers; is this explicitly guaranteed, how?)	See above (7.5.)		
7.5.1.2. Election of management, composition of board members (government? Parliament? Other?)	ARD-Staatsvertrag, ZDF-Staatsvertrag		Members of the Rundfunkrat (broadcast council) are appointed by the groups they represent, e.g. the unions decide on the union members, etc. The Rundfunkrat elects the Intendant (director).
7.5.1.3. Specific representation requirements for board of directors, other bodies			
7.5.1.4. Advisory bodies: ensured broad representation of cultural, political and geographic groupings	ARD-Staatsvertrag, ZDF-Staatsvertrag Specific state-based legislations (exact composition of bodies changes from state to state)		In the internal supervisory bodies (<i>Rundfunkräte</i> , ZDF: <i>Fernsehrat</i>), socially relevant groups, like trade unions, employers associations, churches, environmentalist groups, are represented.
	Some laws concerning specific PSBs (for example, DLR StV, 17.6.1993)...		Requirement of equal gender distribution amongst council members.
7.5.1.5. Employment: ensured broad representation of cultural, political and geographic groupings			
7.5.2. Structural rules - funding			
7.5.2.1. Source of funding (state / tax money, public / licence fees, advertising, merchandising...)	Art. 12 (1) - Art. 15 (1) RStV	AAVM (public TV + R)	Public service broadcasting shall finance itself through television and radio licence fees, income from television and radio advertising and other income; the main source of income shall be the television and radio licence fee.
<i>Note: The annual average for the entire duration of advertising on German Television Channel I (ARD) and on German Television Channel II (ZDF) shall in each case not exceed twenty minutes on working days. Advertisements shall not be broadcast after 8.00 p.m. nor on Sundays or on public holidays which are observed throughout the country.</i>			
7.5.2.2. Sufficiency of resources (taking into account the missions and new media activities)	Art. 11 (1) RStV	AAVM (public TV + R)	Public service broadcasting shall be funded in such a way that it is able to meet its constitutional and statutory responsibilities; in particular the funding shall be sufficient to safeguard the existence and development of public service broadcasting.
7.5.3. Definition of public service remit			
7.5.3.1. Obligation to provide a varied and pluralistic offer			

7.5.3.2. <i>Obligation to engage in new media activities</i>	Preamble RStV	AAVM (TV + R)	The existence and development of public service broadcasting must be secured. This includes its participation in all new technical means of production and transmission and in the provision of new forms of broadcasting.
	Art. 19 RStV	AAVM (public TV + R)	The public broadcasters which are members of the ARD and the ZDF were given permission to use digital transmission, to offer programme guides and bundle programmes.
	Art. 11 (1) second sentence RStV	AAVM (public TV + R)	They are allowed to offer so-called programme-aligned online services.
7.5.4. Content obligations (not yet mentioned in table 3, 4 or 5)			
7.5.5. Universal coverage obligations	Constitutional Court: Decision of 11 September 2007 (1 BvR 2270/05; http://www.bverfg.de/entscheidungen/rs20070911_1bvr227005.html)		There is no explicit obligation for public service broadcasters to have a presence on all platforms, but the jurisdiction of the Constitutional Court gives public service broadcasting a very strong role.

TABLE 8. Distribution (networks/network facilities/print distribution)

Measure	Source	Scope of application	Key features
8.1. Guarantees for 'public contents' to be distributed (must carry or other)	Art. 52 RStV		Cable operators and analogue terrestrial operators has must-carry obligation
8.2. Guarantees for network operators to distribute 'public contents' (must offer or other)	,		No explicit must-offer regulation.
<i>Note: It could be argued that the regime of carriage obligations also obliges many content operators, especially the public service broadcasters, to offer.</i>			
8.3. Ex ante regulation (in electronic communications): SMP market analysis for broadcasting transmission	BNetzA decision of February 25, 2007 for on market 18.		
8.3.1. Implementation of market analysis procedure in ECNS Directives			
8.3.2. Result of (first) round of market analysis of market 18			
8.4. Ex ante regulation for associated facilities of networks, so-called 'bottleneck facilities'			
8.4.1. Conditional access	Art. 53 (1) RStV	AAVM (TV + R)	Conditional access services have to be offered on non-discriminatory basis, and under fair and reasonable conditions.
	Art. 48 Telecommunications Act		Transposition of Annex VI of the Universal Service Directive.
	Art. 50 Telecommunications Act		Access to CAS systems, accounting separation, and a dispute resolution mechanism.
8.4.2. EPG (or other search tools)	Art. 53 (2) RStV	AAVM (TV + R)	EPG services which have access to all services offered on a platform have to be offered on non-discriminatory basis, and under fair and reasonable conditions.
8.4.3. API	Art. 53 (2) RStV	AAVM (TV + R)	Content providers must not be unreasonably hindered or discriminated against in the distribution of their content by a API.
	Art. 49 Telecommunications Act		
8.4.4. Other			
8.5. Interoperability requirements	Art. 48-49 Telecommunications Act		Interoperabilität der Übertragung digitaler Fernsehsignale, Interoperabilität von Fernsehgeräten
8.6. Specific rules for distribution systems in print media			
8.7. General competition law			
8.8. Policies fostering distribution systems (libraries, broadband networks...) - are these in line with EU state aid rules?			

<p>8.9. State Aids to distribution platforms and/or schemes (can be based on one or more of the following criteria: - Regional - Linguistic/minority - National)</p>			
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TABLE 9. Supervision

Measure	Source	Scope of application	Key features
9.1. National Regulatory Authority			State Media Authorities (http://www.alm.de/)
			Commission on Concentration in the Media (Kommission zur Ermittlung der Konzentration im Medienbereich – KEK) (http://www.kek-online.de/)
9.1.1. Structure/ organisation			
9.1.1.1. Guarantees for independence	Art. 35 (5) RStV		The members of the KEK shall not be bound by instructions in fulfilling their responsibilities.
9.1.1.2. Representation requirements			
9.1.2. Credibility and efficiency			
9.1.2.1. Sufficient resources			
9.1.2.2. Tasks and duties	Art. 35 (2) RStV; Art. 36 (1) RStV		The state supervisory authority for private broadcasters shall examine before and after the licence is issued whether the provisions for ensuring plurality of opinion under this Agreement applying to private broadcasters have been complied with.
9.1.2.3. Effective sanctioning powers			
9.1.3. Cooperation with other regulators			
9.1. National Regulatory Authority			Conference of Directors of the State Supervisory Authorities for Private Broadcasters (KDLM)
9.1.1. Structure/ organisation			
9.1.1.1. Guarantees for independence	Art. 35 (5) RStV		The members of the KDLM shall not be bound by instructions in fulfilling their responsibilities.
9.1.1.2. Representation requirements			
9.1.2. Credibility and efficiency			
9.1.2.1. Sufficient resources	Art. 35 (7) RStV		The state supervisory authorities for private broadcasters shall provide the KEK with the necessary staff and resources. The KEK shall draw up an economic plan based on the principles of thrift and business efficiency.
9.1.2.2. Tasks and duties	Art. 35 (2) RStV; Art. 36 (1) RStV		The state supervisory authority for private broadcasters shall examine before and after the licence is issued whether the provisions for ensuring plurality of opinion under this Agreement applying to private broadcasters have been complied with.
9.1.2.3. Effective sanctioning powers			
9.1.3. Cooperation with other regulators			
9.1.1. Structure/ organisation			
9.2. Press Council	Press Council (Presserat)	N	

9.2.1. Broad representation of sector	Art. 7 (1) Statute; Art. 2 (1) Statute.		<p>The German Press Council is a conglomerate of the publisher and journalist associations [Bundesverband Deutscher Zeitungsverleger e.V. (BDZV), Verband Deutscher Zeitschriftenverleger e.V. (VDZ), Deutscher Journalistenverband e.V. (DJV) and Deutsche Journalisten Union in Ver.di (dju)].</p> <p>The Council consists of 28 members, seven persons each come from the four organisations, who built the agency Trägerverein des Deutschen Presserats e.V. and represent their journalists and publishers in the public.</p>
9.2.2. Sufficient resources			The Press Council receives public funding, but is totally independent from government (no co-decisions).
9.2.3. Credibility			
9.3. Competition Authority			Bundeskartellamt (http://www.bundeskartellamt.de/)
			It prohibited the acquisition of the commercial ProSieben/Sat1 broadcasting group by the Springer newspaper group.
9.3.1. Structure/ organization <i>(What this row should learn is whether there is a problem for media pluralism because NCA does not function properly; it should not contain an in-depth analysis of functioning of NCA!)</i>			
9.3.2. Cooperation with other regulators			