

Cultural and Regional Remits in Broadcasting

by *Thorsten Ader*

EDITORIAL

The term "culture" comes from the Latin *cultura* which simply meant farming: the tending of crops and the rearing of stock. In the 17th century the meaning shifted to denote education for life in society, knowledge of the arts and how to live respectably. Eventually the word entered into the popular vocabulary where it took on a wider signification.

Whereas, in the past, culture stood for a range of social objectives, it is primarily understood today to denote regionally differentiated ideas about specific aspects – formal and substantive – of social existence. Inevitably, therefore, culture also plays a role in the media – and the media, of course, are a major influence on society.

It has to be said that defining the conceptions of culture which shape particular media is far from straightforward. Moreover, whether by chance or as a logical result of the ever-expanding signification of the word, such conceptions continue to differ from country to country and region to region.

This edition of *IRIS plus* explores how broadcasters' remits may be closely bound up with culture and geography. In particular, the following article focuses on legal stipulations about respect for culture and territorial specificities, which have been the subject of transnational or regional agreements.

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Susanne Nikoltchev

IRIS Coordinator

*Head of the Department for Legal Information
European Audiovisual Observatory*

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76 ALLEE DE LA ROBERTSAU • F-67000 STRASBOURG
TEL. +33 (0)3 88 14 44 00 • FAX +33 (0)3 88 14 44 19
<http://www.obs.coe.int>
e-mail: obs@obs.coe.int



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by Thorsten Ader

Institute for European Media Law (EMR), Saarbrücken/Brussels

A. Introduction

When we speak of a “cultural remit” in broadcasting we tend to think firstly of the obligation placed on public-service broadcasters to design their programming in a certain way. The basis for that obligation is the public-service remit – referred to in the Amsterdam protocol – which each Member State must determine and confer on its broadcasters. This article explores the extent to which, and the conditions under which, conferral of that remit gives broadcasters cultural duties. The term “cultural remit” is used here in a broad sense and the article also considers the duties placed upon *commercial* broadcasters with regard to the promotion of culture.

There is some justification for the view that attempting to define a term like “culture” is like attempting to square the circle.¹ Therefore, in the following, we shall forego any such attempt.² What is certain is that a whole range of ideas and regulatory objectives can dictate how the term “culture” is used in relation to broadcasting. Some culture-related rules are based primarily on the notion that culture consists of ambitious performances of high artistic merit. National legislation in many countries is designed, for example, to ensure that broadcasters include in their programming high-quality content from the realms of music, art, theatre etc. Such is the thinking behind, for instance, the requirement for original transmission of cultural events (opera performances, for example). Television, with its widespread impact, can bring cultural events to a mass audience. On the other hand, the aim of rules requiring broadcasters to make their own cultural programmes is to promote their role as *creators* of works of artistic merit. The idea is not only that broadcasters should offer artists a platform for dissemination of their work, but also and more importantly that they should furnish a professional context for the creative process. That is why, for example, radio and television stations in many countries have their own symphony orchestras. A distinction has to be drawn between the transmission of cultural events and reporting about culture. In the latter case, culture is the subject of radio and television feature coverage involving, for example, critical appraisal of current cultural events, performances and works, or depiction of the links between culture and history.

The term “culture” can also be understood, however, in the sense of a national, regional or linguistic identity³ and this conception too plays an important role in broadcasting regulation. The emphasis here is not so much on the ambitious or high-quality aspects of cultural content but rather on those dimensions of “culture” that confer identity or have a historically integrating function. Thus, state support measures are framed not with regard to the fine arts, but rather in relation to the lifestyle and language of specific social groups and their socio-cultural heritage. This is the conception of culture that underpins media-law provisions seeking to promote regional programme production and regional coverage. As we shall demonstrate below, broadcasting legislation in many different European countries makes a connection between culture and regionality. Where culture is understood as something that confers identity or promotes integration, these two aspects, far from being clearly separate, are closely correlated.

The European Parliament, in a Resolution passed in 2004,⁴ has also acknowledged the importance of local and regional

media in promoting a plurality of information sources and protecting linguistic and cultural diversity. In the context of promoting culture at regional level, the much used (and occasionally overused) catchphrase “cultural diversity” has particular resonance, and it is true that protecting and promoting regional cultural specificities helps to counter cultural homogenisation and the impoverishing trend towards a uniform “national” culture. The correlation between “culture” and “regionality” is most obvious in those countries with a legal framework whereby culture-related support measures are contingent on regional production. At the same time, promoting an indigenous media-production sector is another major motivating factor behind national legislation in this area.⁵

We need to consider more closely, however, how we apply the term “regional” because there is no suitable standard European definition of what is “regional” or “local”. These concepts need not necessarily coincide with national borders: they can also be used to delimit particular communication areas. In some cases, indeed, it is up to the regulatory authorities themselves to draw the dividing lines. Specific regulatory contexts can also lend quite different meanings to the terms “local” and “regional”: whereas, in some circumstances, a municipal or local-level measure can affect a mass audience – in municipalities like London (with a population of some 7.4 million) or Paris (with around 2.1 million) – “regional” legislation in Belgium’s German-speaking Community will affect scarcely more than 73 000 people. For simplicity’s sake, therefore, the term “regional” is used in this article to describe all sub-national (ie non-nationwide situations).

The need for regional coverage has sometimes been questioned on the grounds that digitisation has spawned a huge number of specialist channels covering virtually all fields of interest.⁶ The counter-argument here, however, is the significant way in which regional coverage promotes people’s awareness of their democratic rights. It makes sense to hold municipal or regional elections (in the German *Länder* for example) only if voters are in a position to inform themselves adequately about matters of regional interest and the performance of the representatives they are to elect. No matter how wide the range of fishing, cooking or shopping channels, they can never perform this particular regional-coverage function.

B. The Cultural Remit and Regional Support for Production and Coverage in the Light of National and European Law

There is increasing pressure at international level for individual countries to justify cultural-policy measures and support for regional production. A particular source of such pressure is international legislation to deregulate trade in goods and services. The role of the European Union is interesting in this regard: on the one hand it energetically advocates creation of an international legal instrument to protect cultural diversity; on the other, it objects as and when necessary to support measures introduced by its Member States, on the grounds that they are incompatible with the single market and/or fundamental freedoms. This ambivalent stance could have the effect of weakening the EU’s hand in the ongoing negotiation of international rules about the promotion of culture – which we shall discuss below.

I. UNESCO

When the 33rd UNESCO General Conference agreed the Convention on the Protection and Promotion of the Diversity of Cultural Expressions⁷ it created a legal instrument of the utmost importance to the audiovisual industry. The ambitious aim of those who drafted the convention was that it should counter-balance the World Trade Organisation's General Agreement on Trade and Services (GATS) – in future to be applied increasingly to the audiovisual industry as well as other sectors. The Convention's purpose is to protect the scope for national cultural legislation, including media-policy measures, which appears to be threatened by the GATS' predominantly economic agenda. Thus Article 6(1) of the Convention stipulates that, within the framework of their cultural policies and measures, the contracting parties "may adopt measures aimed at protecting and promoting the diversity of cultural expressions within [their] territory". The "cultural policies and measures" referred to in this article are defined in Article 4(6) as "policies and measures relating to culture, whether at the local,⁸ national, regional or international level". It is clear here that the Convention is concerned not only with cultural-policy measures designed to protect or promote cultural diversity nationally, but that its provisions logically extend to a sub-national level, which it terms "local". Given that many countries place particular conditions on public-service broadcasters with regard to the provision of cultural information and to regional coverage and/or production, it is instructive to look at Article 6(2)(h) stipulating that the Convention's provisions cover "measures aimed at enhancing diversity of the media, including through public-service broadcasting". It is still too early to predict how successful the Convention will be in practice as a counterweight to international legal instruments framed in the interests of trade policy. The contracting parties have given a clear signal, however, that cultural goods – in the broadcasting sector as elsewhere – can certainly not be legislated for on the basis of a policy driven solely by economic considerations.

II. Council of Europe

The Council of Europe Recommendation on measures to promote media pluralism⁹ states explicitly that a multiplicity of autonomous and independent media outlets at national, regional and local levels enhances pluralism and democracy. The Council's Member States are therefore urged to consider measures to support broadcasting, particularly at regional and local levels. They are asked to develop their media policy in line with Article 10 of the European Convention on Human Rights (ECHR) and with due respect for the principle of independence of the media.

Article 10 ECHR is thus the primary yardstick for culture-related national measures and provisions directed at broadcasters with a view to supporting regional production and regional coverage. Broadcasters' activities protected under the freedom to broadcast that is guaranteed by Article 10¹⁰ range from organising broadcasting companies through designing programme content to transmitting and relaying information.¹¹ In its rulings in the "Groppera", "Autronic" and "Informationsverein Lentia and others" cases, the European Court of Human Rights established that national measures restricting these activities – whether or not they had a communication-related purpose – were to be treated as infringements of broadcasting freedom.¹² National measures must therefore be assessed in the light of the limitations imposed by Article 10(2) ECHR.

Measures interfering with the award of broadcasting licences – for example by favouring bidders who give certain pledges in

relation to cultural or regional coverage – can be justified under the third sentence of Article 10(1) ECHR. The decision to grant or refuse a licence can also be made dependent on the type of broadcaster applying, its aims, its potential national, regional or local audience as well as the rights or needs of specific audiences.¹³

The interference must be provided for in law, must serve one of the purposes enumerated in Article 10(2) ECHR and must be necessary in a democratic society. The broad interpretation given to Article 10(2) ECHR¹⁴ by the European Court of Human Rights means that interference is also permissible for the purpose of "protecting the rights of others" if it is directed at promoting pluralism and, in particular, diversity of opinion. There is therefore no doubt that culture-specific objectives can be ranked as legitimate aims under Article 10(2). The contracting states also have discretion with regard to what constitutes a necessary measure by the state in a democratic society, although they are constrained in this respect by the principle of proportionality. It is hard to find rulings on proportionality that are applicable beyond specific cases. In assessing the appropriateness of measures, however, it is clear that the preservation of cultural diversity in broadcasting – given its importance in shaping public opinion – must be regarded as a pressing social need.

III. European Union

When the Maastricht Treaty was ratified in 1992, the so-called culture article, Article 151 EC (ex Article 128) for the first time gave the European Community responsibility – albeit restricted responsibility in several respects – for the cultural sector. The scope for Community action provided for in Article 151 is limited to measures aimed at supporting and supplementing action by the Member States in the cultural sphere. The "mainstreaming" provision in Article 151(4) EC requires the Community in all its activities to take account of cultural aspects concerning the Member States. This cautious formulation offers no scope for a "cultural exception" in Member States' legislation. What Article 151(4) does, however, is to justify a remit for what has been termed "culture-friendly" public policy making.¹⁵ This means that, in any conflict between Member States' cultural concerns and European competition law or other areas governed by internal-market rules, the European Community bodies must give specific (and sympathetic) consideration to cultural traditions and objectives.

With regard to support for regional broadcasting, the Community has no provisions for legally binding quotas comparable to those aimed at protecting "European works". By contrast, regional support measures, particularly if they include stipulations about the geographical origin of productions, are sometimes considered to be at odds with the Treaty provisions on free movement of services and freedom of establishment. The Commission takes a sceptical view, for example, of rules making it compulsory for programmes to be produced within the territory of the legislating Member State.¹⁶

If rules introduced by the Member States (for example about quotas or the geographical origin of productions) are framed in such a way as to restrict the freedoms guaranteed in the internal market, it has to be asked whether they serve a higher purpose that would justify such restriction. In the case of formal discrimination against non-national services, there is potential for justification under Article 55 EC in conjunction with Article 46 EC, whereby discriminatory measures may be permissible on grounds of public policy, public security or public health. This exception needs to be interpreted in a narrow sense, however, and the European Court of Justice has consistently ruled that

measures taken to defend national languages and culture do not enjoy protection under the headings of public policy or security.¹⁷

Compelling reasons of public interest can thus be advanced to justify measures that curb fundamental freedoms in this way, only if such measures do not inherently create formal discrimination. The European Court of Justice has acknowledged that cultural policy – and specifically the promotion of pluralism as discussed here – is capable of constituting a compelling reason, in the public interest, justifying limitations of the fundamental freedoms.¹⁸ Where problems arise is when cultural policy is used as a cover for economically motivated measures to promote a country's resident production industry. Such cases have to be closely investigated and assessed individually.

The type of problem that can occur is exemplified by a case which the European Commission took against Germany for an alleged Treaty violation. The case had its origin in a complaint by a German commercial television company which broadcasts nationwide. The company objected to provisions on regional coverage in the media legislation of certain *Länder*. The disputed provisions included, for example, the stipulations that "production and post-production" (in Lower Saxony) and "compilation of contributions to a programme" (in Schleswig-Holstein) should take place in the respective legislating *Land* – the aim being to ensure that so-called regional "window programmes" would be made there.¹⁹ Both *Länder* have since told the Commission that they will review their media legislation with a view to removing any relevant reservations about its compatibility with European law.²⁰

The case highlights a dilemma: as a rule, regional coverage, or at least its editorial aspect, requires that the broadcaster should have a certain territorial attachment to the region. It is reasonable, on the other hand, to assume – especially in the digital era – that purely technical (i.e. post-production) processes can take place anywhere. Producers, however, often counterargue that such an assumption reflects ignorance of the actual procedures and processes involved – presuming as it does a clear division between the technical and creative aspects of audiovisual creation that does not exist in practice. National parliaments are likely to be suspected of protectionist motives, and thus of breaching Community law, if they introduce overly rigid stipulations about where production should take place.

C. The Legal Position at National Level

In the following we will look at a range of national measures that fall under the headings of "promoting culture" and "regionality" in broadcasting. Under the general term "regional measures" we include both provisions requiring broadcasters to provide regional coverage and provisions designed to support regional production. The fact that there is often a degree of overlap between these two types of provision is a further argument for considering them jointly. Such overlap occurs, for example, where there is a requirement that contributions to regional coverage should be produced within the region in question.

I. Belgium

Regulation of the media in Belgium reflects the federal structure of the State, which consists of three Communities (Flemish, French and German-speaking) and three regions (Flanders, Wallonia and Brussels Capital). Responsibility for culture, which includes the audiovisual media, lies with the language Commu-

nities.²¹ It should be noted, however, that the Communities' respective sovereign territory does not coincide exactly with that of the regions.

1. Culture

In the French-speaking Community the public-service broadcaster RTBF has a duty under Article 3 of the Order of 14 July 1997²² to ensure programming diversity and to transmit programmes that provide information about general, international, European, federal, Community and regional affairs, programmes geared to cultural development, further education and entertainment, and youth programmes. This provision crystallises the public-service broadcaster's cultural remit with regard to the transmission of programmes with an ambitious cultural content (the French term used is *culture cultivée*) inasmuch as it requires that preference be given in programming to works involving writers, producers or performers from the French-speaking Community. This remit is fleshed out in RTBF's *contrat de gestion* (a form of public-law contract between the Government and the broadcaster). It requires, for example, that RTBF should broadcast at least 50 musical, vocal or dance events every year, of which at least 12 have been produced in the French-speaking Community, and four of these must be new productions (*contrat de gestion*, Article 13). At least 12 programmes every year must be devoted to cultural coverage (*contrat de gestion*, Article 12). In addition, the broadcaster is required to offer a weekly programme about cultural events in the French-speaking Community. In the area of fictional programming, too, the law imposes extensive obligations on programme planners: RTBF is required to transmit no fewer than 120 feature-length films and 40 films of a culturally ambitious nature, intended for a particular audience, under the heading of *cinéma d'auteur*.²³

The French-speaking Community is by no means content, however, to impose culture-related obligations solely on its public-service broadcaster. Commercial providers of television content must devote at least 4.5% of their music output to "local" works – i.e. works composed, produced or performed by natural persons or legal entities resident or established in the French-speaking Community (Articles 42 and 43 of the Broadcasting Act of 2003).

The Flemish public-service broadcaster VRT is also required – under Article 8(2) of the Coordinated Radio and Television Regulations of 25 January 1995²⁴ – to offer quality programming in the fields of information, culture, education and entertainment. In contrast with the detailed quota requirements in the French-speaking Community, the "*beheersovereenkomst*"²⁵ (contract between VRT and the government) makes no stipulations about the proportion of programming that must be culture related.²⁶

2. Regional Measures

Media legislation in both the Flemish-speaking and French-speaking Communities includes regionally targeted provisions. In the Flemish-speaking Community, regional television stations²⁷ are defined as television services that offer local news, information and entertainment over a limited (regional) territory.²⁸ Because they have a remit to serve the public interest by promoting local culture and fostering social cohesion, they must be organised as public utility institutions. Yet they are financed exclusively through advertising and sponsorship. They are exempt from the rules on quotas for European works.²⁹ The regional television stations have a duty, however, to transmit "own" productions, i.e. programmes that have either been produced in-house or for which employees of the regional station

have editorial responsibility (Flemish Broadcasting Act, Article 73). There is no mention in the corresponding French Community legislation of regional television stations; the term used there is "local television services"³⁰ but the meaning is very similar.

II. Germany

1. Culture

The cultural obligations for public-service broadcasters are laid down in Article 11(2), fourth sentence, of the *Rundfunkstaatsvertrag* (German Interstate Broadcasting Agreement, RStV).³¹ Among various stipulations about programming, this Article provides that public-service broadcasters have a specific duty to offer cultural programmes, but it does not include any fixed quota requirements. In fact, such requirements would be highly problematic in Germany in the light of its constitutional provisions for freedom of programming.³²

2. Regional Measures

The remit for public-service broadcasters is spelled out in Article 11(2) of the Interstate Broadcasting Agreement (RStV) whereby they are required in their "services and programmes to give a comprehensive overview of international, European, national and regional events in all major areas of life". ARD, one of the two major public-service companies, undertakes in its programming guidelines, in accordance with Article 11(4) RStV, to commission approximately 70% of ARD productions from other companies "in order to provide significant support for the German film industry".³³ For structural reasons, pursuing this self-imposed aim means in ARD's case supporting regional-level production. ARD is a corporation comprising nine autonomous federal-state broadcasters which are independent of their respective governments and most of which represent different regions of Germany.³⁴ It is widely believed that this structure places the public-service broadcasters at an advantage. It is argued, for example, that ARD has considerably more freedom on its main channel between 6 pm and 8 pm because it can shift regional news programmes to Channel 3.³⁵ ZDF's self-imposed obligation is less specific, stipulating that "ZDF will – in so far as company financing permits – stabilise Germany's production industry by steadily increasing the volume of programmes that it commissions, while working towards a regionally balanced sharing of production planning in the context of existing infrastructural arrangements".³⁶

In accordance with Germany's federal structure, the *Länder* make the rules for private-sector broadcasters, whereby the provision of regional content is taken into account when broadcasting licences are awarded and transmission capacity is allocated. North Rhine-Westphalia's *Landesmediengesetz* (State Media Act, LMG), for example, stipulates in Article 10(2)(3) that "attention to national, regional and local interests" should be a consideration in the allocation of capacity. If there is a shortage of transmission capacity the state media regulating authority is required under Article 14 LMG to decide where priority should be given. It has to consider what contribution a given channel makes to the diversity of programming generally, and in particular to diversity of services or specialist channels, to regional diversity and to cultural and linguistic diversity.

In a measure designed to safeguard freedom of opinion,³⁷ the two full-programme channels with the most extensive nationwide coverage are required under Article 25(4) RStV to offer "regional windows". The purpose is to give "window programming" providers, who are editorially independent from the main

broadcaster, an opportunity for up-to-date and authentic coverage of events in the political, economic, social and cultural life of the respective *Länder*. It is widely held that the impact of these "windows" (in relation to programming freedom) is greater than that of fixed quotas, inasmuch as broadcasters are required to fill their schedules with content which they have not themselves produced and also to finance it.³⁸

III. France

1. Culture

In the case of public-service broadcasters, the legally binding *cahier des charges* (list of franchise terms and conditions) contains a number of stipulations on the transmission of "cultural programmes". Article 24 of the *cahier* for public-service company France 2 states, for example, that at least 15 dance or drama performances, festivals etc. must be screened every year. In addition, at least two hours of airtime every month must be reserved for different types of music and new talent. (These are "culture quotas" in the strict sense).³⁹ Similar obligations apply to France's other public-service broadcasters.

By contrast, commercial broadcasters (with a few exceptions) are subject to no such obligations. One of the exceptions is the requirement that TF1 should transmit at least 10 hours of concerts by French national or regional orchestras every year. TF1 also has a duty – which is not spelled out in greater detail – to broadcast *spectacles vivants* (live shows), and it has discretion in this regard to choose between different genres (literary or dance performances or theatrical productions).⁴⁰

2. Regional Measures

Public-service broadcasters in France have a range of basic obligations under Article 43(11) of the Freedom of Communication Act of 1986.⁴¹ This provision requires broadcasters to reflect the diversity of cultural heritage in its regional and local dimensions. Beyond that, there are no specific rules in France about promoting and supporting regional culture. The *cahiers des charges* refer simply to "cultural diversity" as a general requirement in public-service programming. The public-service channel France 3 is, however, required by law to transmit programmes on national, regional and local themes – targeting all, or specific parts, of the mainland France and its European islands. In particular, France 3 must provide information about specific areas and report on regional and local events.⁴² The company fulfils this task by transmitting daily regional and local news magazines and other programmes, which are made in 13 regional directorates and 37 local facilities.⁴³

IV. Italy

In Italy the duties of public-service broadcaster Radiotelevisione Italiana (RAI) were laid down, *inter alia*, in the so-called Gasparri Act (Act No 112/2004) of 3 May 2004.⁴⁴ Under Article 17 of the Act, the general public broadcasting service has to transmit a reasonable number of programmes with content in the following areas: education, information and culture, the promotion of culture, theatre performances, and cinematic, television and musical works. A proportion of the works must be recognisably of high artistic merit or be deemed particularly innovative. Although this stipulation, in itself, is somewhat loose, it is reinforced by the provision that the amount of airtime devoted to such programmes is to be fixed every three years by the independent *Autorità per le Garanzie nelle Comunicazioni* (Communications Authority, AGCOM).⁴⁵ AGCOM has consequently been given responsibility for the planning and

implementation of RAI's programming in the fields of education, information, news, culture and cultural affairs. The involvement of an external authority in programme planning represents an approach quite different from, for example, the German concept whereby public-service broadcasters themselves are responsible, via self-imposed undertakings, for specific arrangements to fulfil the programming remit (see above). RAI's duties as a broadcasting institution governed by public law are laid down in greater detail in a service agreement with the Ministry for Communication.⁴⁶

V. Lithuania

Stipulations on public-service programming in Lithuania are contained in the Act governing Lithuanian National Radio and Television (the LRT Act).⁴⁷ In practice, responsibility for implementing programming requirements under the public-service remit lies with LRT's board, which is an internal body. One of the ways in which the board exercises its responsibility is through allocation of the programming budget. Under the terms of the LRT Act it decides what proportion of revenue should be spent on different areas of programming, such as information, current affairs or culture-related programmes.⁴⁸

The Lithuanian Act contains no provisions for quotas requiring broadcasters to transmit or produce a given volume of ambitious, culture-related programmes. However, legal provisions governing the award of broadcasting licences by the regulatory authority *Lietuvos Radijo ir Televizijos Komisija* (LRTK) do stipulate that preference will be given to bidders who undertake to produce cultural and informative programmes. To improve their chances in the tendering procedure, therefore, bidders regularly state that they plan to ring-fence transmission time for these types of programmes. When a broadcasting licence is awarded, the quotas proposed in the winning bid are incorporated into it and their observance is monitored by LRTK, which imposes fines if the targets are not met.⁴⁹

VI. Slovenia

1. Culture

The cultural remit of public-service broadcaster Radiotelevizija Slovenija (RTV Slovenija) is contained in Article 3 of the Radiotelevision Slovenia Act.⁵⁰ It requires the broadcaster to ensure that the following are included in its programming:

- a varied range of high-quality programmes in the fields of information, culture and entertainment;
- production and transmission of cultural and artistic works, produced both within and outside Slovenia.

Accordingly, RTV Slovenija's programming remit requires it not only to transmit culture-related programmes but also to produce a certain volume of such programmes. There are plans for more precise and detailed legislation on the public-service broadcasting remit, particularly in the cultural sphere.⁵¹

2. Regional Measures

The television output of RTV Slovenija comprises two channels with nationwide coverage and two more for the regional centres of Koper and Maribor. Article 3 of the Radiotelevision Slovenia Act requires the relevant channels to cover events in the regions and to reflect regional areas of interest.

Alongside public-service and commercial broadcasting organisations, Slovenia has a further category, namely broadcasters

"of special importance". These include local and regional stations, channels of benefit to the public and student channels. Broadcasters in this category have the advantage of receiving part of their financing from licence-fee revenue. There is also a provision for such stations to benefit from a special tariff for the use of works under copyright (Article 81 of the Mass Media Act⁵²).

The seven television and 17 radio broadcasters currently classed as "stations of special importance" are required to transmit programmes with local or regional content (news, current affairs and culture).⁵³ With regard to the theme of this article, it is interesting to note the statutory conditions for classification as a "regional station". Under Article 79(1) of the Mass Media Act the only stations that qualify are those intended for the inhabitants of an area (region or town) in which more than 10% and no more than 50% of the Slovenian population lives. The same Article requires that regional television stations should carry regional programming produced in-house for at least 30% of their transmission time between 8 am and noon. Under Article 78 of the Mass Media Act, one of the conditions for classification as a "local station" is that a broadcaster should provide objective and unbiased information for the inhabitants of the local community and balanced presentation of different opinions and views on political, cultural, religious, economic and other issues important to the life and work of the local inhabitants. In addition, stations wishing to be classed as "local" must carry a higher proportion of programming of a local character than other radio and television stations - a stipulation intended to trigger an "upward spiral" in favour of local output.

VII. United Kingdom

1. Culture

The primary reference for the culture-related obligations of the UK public-sector broadcaster, the British Broadcasting Corporation (BBC), is the legal document under which it is established, the so-called Royal Charter.⁵⁴ The Charter's most interesting provisions in this respect are those which determine the BBC's organisational structure. Section 12(2), for example, requires the establishment of three "National Broadcasting Councils" for Scotland, Wales and Northern Ireland respectively. In carrying out their functions these bodies must have regard to the distinctive culture, language, interests and tastes of people in the areas for which they are responsible.⁵⁵ This provision is a further example of national lawmakers recognising the need for broadcasting to promote culture specifically at regional level.

Culture-related provisions applicable to programming are set out in the BBC Agreement,⁵⁶ a contractual arrangement between the government and broadcasting organisation. Under the heading of "programme content", the Agreement requires the BBC to:

"stimulate, support and reflect, in drama, comedy, music and the visual and performing arts, the diversity of cultural activity in the United Kingdom"⁵⁷.

2. Regional Measures

The UK media regulatory authority, the Office of Communications (Ofcom), is empowered under Section 263 of the Communications Act of 2003 to impose licensing conditions on what are termed "commercial public-service broadcasters" (those with a certain public-service remit), and these may include the obligation to produce and screen a sufficient quantity of regional

programmes. Similar conditions are also imposed on the BBC under the BBC Agreement.

The UK media industry is heavily concentrated in London and its immediate hinterland. In order to sustain and promote a market for smaller and medium-sized production companies based outside the London catchment area, and to ensure that matters of regional interest are covered, the M25⁵⁸ orbital motorway around the city is taken as the cut-off line for regional support measures. With regard to regional production, the stipulation is that an appropriate proportion of programmes must be made outside the M25 area. Moreover, within that proportion, there must be an appropriate range of subject matter, and a suitable proportion of expenditure must be allocated to the production of these programmes in a suitable range of production centres. *Commercial public-service broadcasters* must therefore devote a specific proportion of their airtime to programmes that come under the heading of regional productions. In order to count towards the regional production quota,⁵⁹ relevant productions must meet two out of the following three criteria:

- a) the production company must have a substantive business and production facilities based in the UK outside the M25. A base will be taken to be substantive if it is the usual place of employment of executives managing the regional business, of senior personnel involved in the production in question, and of senior personnel involved in seeking programme commissions;
- b) at least 70% of the production budget (excluding the cost of on-screen talent, archive material and copyright costs) must be spent in the UK outside the M25; and
- c) at least 50% of the production talent (i.e. not on-screen talent) by cost must have their usual place of employment in the UK outside the M25. Freelancers without a usual place of employment outside the M25 will nonetheless count for this purpose if they live outside the M25.

With regard to regional coverage, it should be noted that not only Channel 3⁶⁰ but also BBC programming must offer a sufficient volume and a suitable spectrum of regional content. For the award of regional Channel 3 broadcasting licences, the required proportion of regional programming produced in the area to which the broadcaster transmits is 90%. This constitutes a slightly modified application of the production-origin criteria described above: programmes must be produced not (or not only) outside the M25 area, but actually within the region in question. There are also a number of stipulations about programme content. Specifically, regional programmes must:

- a) deal with subject matter of specific interest to the region and of less interest elsewhere (e.g. regional events, concerns and interests); and
- b) be clearly set within the region and/or feature people known to be residents of, or who have close connections with, the region.

D. Conclusions

The interdependence between regionality and culture is reflected in the legal provisions of the Member States that we have studied. It is interesting here to note the very different ways in which the concept of regionality is interpreted. Whereas in Slovenia the relevant criterion is the population density of specific areas, the UK rules (broadly speaking) classify every-

thing outside the London catchment area as “regional”. Moreover, it is a characteristic of federally structured countries like Belgium and Germany that they pay special attention to regionality. The correlation between regionality and culture is most strongly evident in those countries that directly link the promotion of culture with the requirement that regional specificities be reflected in programming, an example being the French-speaking Community in Belgium where all commercial broadcasters must observe a strict quota for “local works”.⁶¹ An example of a different approach is where national broadcasting organisations are structured so as to involve regional forums or bodies – such as the BBC’s National Broadcasting Councils – concerned with the promotion of the cultural specificities of particular regions.

Broadcasting is subject at national level to a whole spectrum of regulatory measures designed to promote both culture and regionality and, in some cases, a combination of the two. Such measures include fixed quotas (as provided for in the EC “Television without Frontiers” Directive) and “soft quotas” involving, for example, self-regulation by broadcasters or rules whereby those that offer relevant content are favoured in the award of broadcasting licences.

As a rule, the Member States place much heavier obligations on public-service broadcasters than they do on commercial stations with regard to the promotion of culture and regionality. Because public-service broadcasters are financed (to some extent) by licence-fee revenue they are able to include in their output programmes that will not necessarily attract a mass audience. Licence-fee financing is also a justification for interference in broadcasters’ programming autonomy in the interests of media pluralism and the promotion of culture. Public-service broadcasters in most European countries are obliged to transmit a specific proportion of culture-related programmes and to promote local culture and works. In many cases they are also required to produce and transmit programmes of relevance to all the regions in a given country.⁶² Many programming-oriented requirements of this type are very loosely formulated and leave the broadcasters a considerable margin of discretion.⁶³ This is to some extent inevitable given that broadcasters’ programming freedom enjoys different levels of protection under different legal systems. The decisive factor is thus how well or otherwise broadcasters translate their obligations into practice in the day-to-day business of programme transmission. Certain criticisms – indicated at various points in this article – have been levelled in that regard. The concern has been voiced, for example, that public-service broadcasters in general make too little space for cultural programmes in their overall output or that such programmes are screened at unpopular times.⁶⁴ On the other hand, such practices do not necessarily leave viewers short of information about culture if, for example, public-service broadcasters also operate specialised culture channels. Examples are the 3sat channel run by German, Austrian and Swiss broadcasting companies, the specialised public-service channel TVR Cultural in Romania and Poland’s TVP Kultura.

Despite what are sometimes considerable differences from one country to another, we can identify, broadly speaking, two distinct models. The first involves a number of more or less independent regional television stations (in some cases linked as a network), which operate their own television channels covering their own respective regions: examples include the German third-channel stations and ITV in the UK. The other model works through regional centres under the overall control of a national broadcaster with countrywide coverage,⁶⁵ and in this case regional “window programmes” are inserted into the nationwide output.⁶⁶

- 1) Hermann-Josef Blanke, "Kommentierung zu Art. 151 EGV", in Callies & Ruffert (eds), *Kommentar des Vertrages über die Europäische Union und des Vertrages zur Gründung der Europäischen Gemeinschaft*, 2nd edition, 2002, paragraph 2.
- 2) Detailed observations on various approaches to a definition are to be found in Rolf H. Weber, Alexander Roßnagel, Simon Osterwalder, Alexander Scheuer & Sonnia Wüst, *Kulturquoten im Rundfunk*, 2006, pp 70 et seq.
- 3) Thomas Kleist & Alexander Scheuer, "Kultur und Quoten", *ZUM* 2006, p. 96 (100).
- 4) European Parliament resolution on the risks of violation, in the EU and especially in Italy, of freedom of expression and information (Article 11(2) of the Charter of Fundamental Rights) (2003/2237(INI)), Article 10.
- 5) Thomas Kleist & Alexander Scheuer, *op. cit.*, *ZUM* 2006, p. 96 (102).
- 6) Stephen Hopkins, "Regionalism: a spent force?", available at: http://www.transdiffusion.org/emc/insidstv/regionalism/regionalism_a_s.php
- 7) Convention on the Protection and Promotion of the Diversity of Cultural Expressions, 20 October 2005; for the text of the Convention see <http://unesdoc.unesco.org/images/0014/001429/142919e.pdf>
- 8) Author's emphasis. The term "local" defined in Article 4(6) should probably be regarded as synonymous with "regional" (in the sense of "non-nationwide") as used in this article, whereas systematic comparison with other provisions of the Convention suggests that the term "regional" as used there refers to supra-national entities or "world regions" such as the European Union.
- 9) *Recommendation No R (99) 1 of the Committee of Ministers to Member States on Measures to Promote Media Pluralism, adopted on 19 January 1999*; available at: [http://www.coe.int/t/e/human_rights/media/4_documentary_resources/CM/Rec\(1999\)001&ExpMem_en.asp](http://www.coe.int/t/e/human_rights/media/4_documentary_resources/CM/Rec(1999)001&ExpMem_en.asp)
- 10) According to consistent case law of the European Court of Human Rights, Article 10 ECHR includes a guarantee of broadcasting freedom, see judgment of 28 March 1990 (Groppera), Ser. A 173, para. 55; judgment of 22 May 1990 (Autronic), Ser. A 178; and judgment of 24 November 1993 (Lentia), Ser. A 276.
- 11) Christoph Grabenwarter, *Europäische Menschenrechtskonvention*, Vienna 2003, p 271.
- 12) See Thomas Hoeren, "Rechtliche Fragen der Einführung einer Hörfunkquote zugunsten neuer, deutschsprachiger Musiktitel", *MMR*, special supplement 8/2003, pp 20 et seq.
- 13) European Court of Human Rights, judgment of 24 November 1993 (Lentia), Ser. A 276, para. 32.
- 14) See Thomas Hoeren, *op. cit.*, *MMR*, special supplement 8/2003, p. 20.
- 15) Martin Nettesheim, "Das Kulturverfassungsrecht der Europäischen Union", *JZ* 2002, p. 157 (164).
- 16) See, on the parallel debate about "territorialisation clauses" in aid schemes for film production, Sabina Gorini in *IRIS* 2004-4: 6, available at: <http://merlin.obs.coe.int/iris/2004/4/article6.de.html>
- 17) ECJ, judgment of 4 May 1993, Case C-17/92 (Distribuidores cinematograficos), Rec. 1993, p. I-2239, para. 20.
- 18) ECJ, judgment of 25 July 1991, Case C-288/89 (Stichting Collectieve Antennevoorziening Gouda), Rec. 1991, p. I-4007, para. 23.
- 19) Annette Kümmel & Hubertus Meyer-Burckhardt, *MMR* 2005, p. 288 (289), argue that an attempt by the relevant Federal State media authorities to implement the provisions in question would breach EC law.
- 20) See *IRIS* 2004-6: 9 and *Funkkorrespondenz*, No 24/2006 of 19 June 2006, "Regionalfenster: EU bewirkt Änderungen in Mediengesetzen".
- 21) We shall confine ourselves in this article to considering the situations in the Flemish and French-speaking Communities. In the German-speaking Community the relevant provisions relate only to radio.
- 22) *Décret portant statut de la Radio-Télévision belge de la Communauté française 14.07.1997* (Legislative decree of 14 July 1997 on the Charter of Radio-Télévision belge de la Communauté française (RTBF)), *Moniteur Belge*, 28 August 1997, p. 22018.
- 23) 33% of the films in question must be distributed in cinemas by an independent company with its registered office in Belgium (*contrat de gestion*, Article 20). On further stipulations of the *contrat de gestion* see Thomas Kleist & Alexander Scheuer, *op. cit.*, *ZUM* 2006, p. 96 (100).
- 24) Legislative decrees on radio and television, coordinated by Flemish Government decision of 25 January 1995, *Moniteur Belge*, 30 May 1995.
- 25) *Beheersovereenkomst tussen de VRT en de Vlaamse Gemeenschap 2002-2006*, available at: <http://www.vrt.be/extra/beheersovereenkomst2006.pdf>
- 26) Rolf H. Weber, Alexander Roßnagel, Simon Osterwalder, Alexander Scheuer & Sonnia Wüst, *op. cit.*, p. 299.
- 27) Defined in Article 58(2) and subject to Articles 56-64, Articles 71-80 and Articles 96 et seq. of the Flemish Broadcasting Act of 2005.
- 28) There are approximately two such broadcasters in each province, who enjoy monopoly status in their own areas.
- 29) Articles 115 and 116 of the Flemish Broadcasting Act of 2005.
- 30) Articles 63-74 et seq. of the Flemish Broadcasting Act of 2003. See also general provisions in Articles 3-31, 36, 43, 44 and 46 of the French-speaking Community Broadcasting Act of 2003.
- 31) Interstate Broadcasting Agreement of 31 August 1991, last amended by Article 1 of the Eighth Amending Agreement of 8-15 October 2004; available at: http://www.lfm-nrw.de/downloads/istv_8.pdf
- 32) Thomas Kleist & Alexander Scheuer, *op. cit.*, *ZUM* 2006, p. 96 (100).
- 33) ARD's programming guidelines 2005/2006, documented in *epd medien*, 9 October 2004, No 79, p. 19.
- 34) Here again we are dependent on a definition of the word "region". It is also doubtful whether, for example, NDR and Radio Bremen cover distinct "regions".
- 35) Annette Kümmel & Hubertus Meyer-Burckhardt, *MMR* 2005, p. 288 (290).
- 36) ZDF's programming forecast 2004-2006, documented in *epd medien*, 9 October 2004, No 79, p. 19.
- 37) Kümmel & Meyer-Burckhardt (*op. cit.*, p. 290) question whether this is the true aim of the regulation and argue that the prime considerations are to do with economic policy and securing business and jobs in certain areas.
- 38) Thomas Kleist & Alexander Scheuer, *op. cit.*, *ZUM* 2006, p. 96 (103). In relation to federal-state legislation stipulating that production (or particular steps in the production process) must take place in a given *Land*, see B III, section 1, above.
- 39) Thomas Kleist & Alexander Scheuer, *op. cit.*, *ZUM* 2006, p. 96 (101).
- 40) Rolf H. Weber, Alexander Roßnagel, Simon Osterwalder, Alexander Scheuer & Sonnia Wüst, *op. cit.*, p. 330.
- 41) *Loi no 86-1067 du 30 septembre 1986 relative à la liberté de communication*.
- 42) Rolf H. Weber, Alexander Roßnagel, Simon Osterwalder, Alexander Scheuer & Sonnia Wüst, *op. cit.*, p. 331.
- 43) Open Society Institute, *op. cit.*, p. 667.
- 44) The relevant legislation is now *Decreto Legislativo No 177/2005 "Testo unico della radiotelevisione"* of 31 July 2005, Articles 45-49.
- 45) See Maja Cappello in *IRIS* 2004-6: 12; available at: <http://merlin.obs.coe.int/iris/2004/6/article25.de.html>
- 46) See Maja Cappello in *IRIS* 2003-6: 9; available at: <http://merlin.obs.coe.int/iris/2003/6/article18.de.html>.
- 47) *Lietuvos Respublikos Lietuvos nacionalinio radijo ir televizijos įstatymas No VIII-1780, 2000-06-29* (Act of the Republic of Lithuania No VIII-1780 on Lithuanian National Radio and Television, of 29 June 2000); available at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=123324
- 48) Open Society Institute, *op. cit.*, p. 1049.
- 49) Rolf H. Weber, Alexander Roßnagel, Simon Osterwalder, Alexander Scheuer & Sonnia Wüst, *op. cit.*, p. 364.
- 50) Radiotelevision Slovenia Act (*zakon o radioteleviziji slovenija*) of 29 March 1994, *Official Gazette* No 36/94, most recently amended by the Act of 15 July 2005, see *IRIS* 2005-9:19.
- 51) Rolf H. Weber, Alexander Roßnagel, Simon Osterwalder, Alexander Scheuer & Sonnia Wüst, *op. cit.*, p. 401.
- 52) Mass Media Act (*zakon o medijih*) of 25 April 2001, *Official Gazette* No 35/01, available at: <http://www.gov.si/srd/eng/main23.html>
- 53) Rolf H. Weber, Alexander Roßnagel, Simon Osterwalder, Alexander Scheuer & Sonnia Wüst, *op. cit.*, pp. 393 and 423.
- 54) The Royal Charter is available at: <http://www.bbc.co.uk/info/policies/charter/pdf/charter.pdf>
- 55) Section 12(4) reads: "Each National Broadcasting Council shall be charged with the following functions which shall be exercised with full regard to representing the distinctive culture, language, interests and tastes of Our People in the country for which the Council is established".
- 56) The BBC Agreement is available at: <http://www.bbc.co.uk/info/policies/charter/pdf/agreement.pdf>
- 57) BBC Agreement, section 3.2(b).
- 58) The M25 is also used as a geographical boundary line in the BBC Agreement: see, in this regard, Section 5H of the Agreement, inserted under the amendment of 4 December 2003 (available at: http://www.bbc.co.uk/info/policies/charter/pdf/agreement_amend.pdf).
- 59) The definitions of regional production and regional programmes are available at: http://www.ofcom.org.uk/tv/ifi/guidance/reg_prod/
- 60) Following the merger of Carlton and Granada, Channel 3 is run by ITV plc; see Alexander Scheuer, *MMR* 2004, vol. 8, XXIII.
- 61) See C. I, above.
- 62) Open Society Institute, *op. cit.* p. 57.
- 63) Open Society Institute, *op. cit.* p. 58.
- 64) Open Society Institute, *op. cit.* p. 58.
- 65) In Germany, by contrast, the companies that make regional "window programmes" must be independent of the commercial broadcasters which are required to transmit them (see above).
- 66) David Graham and Associates Limited, Impact Study of Measures (Community and National) Concerning the Promotion, Distribution and Production of TV Programmes, final report, May 2005, available at: <http://ec.europa.eu/comm/avpolicies/docs/library/studies/finalised/4-5/27-03-finalreport.pdf>, p. 55. See also RAI/Circom regional, Survey of regional television in Europe, 2003, available at: <http://www.circom-regional.org/crdocs/report-regpubTV-2003.pdf>, p. 2 - in which this distinction relates only to public-service broadcasting.