L.N. 158 of 2000

BROADCASTING ACT
(CAP. 350)

Broadcasting (Jurisdiction and European Co-operation) Regulations, 2000

IN exercise of the powers conferred by subarticle (2) of article 37 of the Broadcasting Act, the Prime Minister has made the following regulations:–

Citation and entry into force.

1. (1) The title of these regulations is the Broadcasting (Jurisdiction and European Co-operation) Regulations, 2000.

(2) These regulations shall come into force on such date as the Prime Minister may appoint by notice in the Gazette and different dates may be appointed for different provisions and purposes of these regulations.

Interpretation.

2. (1) For the purposes of these regulations –

"the Act" means the Broadcasting Act;

"broadcaster" means a broadcaster of a television broadcasting service;

"producers who are independent of broadcasters" means any person who:

(a) is not an employee (whether or not on temporary leave of absence) of a broadcaster;

(b) does not have a shareholding greater than 15% in a broadcaster:

Provided that a company shall not be considered as an independent producer if a broadcaster has a shareholding greater than 15% in such company;

"scheduled State" means a state included in the Schedule to these regulations or which is a party to, or is bound by, an international legal instrument listed in the said Schedule.

(2) Expressions used in these regulations shall have the same meaning assigned to them in the Act.

Scope of regulations.

3. These regulations shall apply to broadcasters under the jurisdiction of Malta but shall not apply to broadcasts intended exclusively for reception in countries outside Malta which are scheduled States.

Jurisdiction of Malta.

4. (1) A broadcaster shall be under the jurisdiction of Malta:–

(a) where a broadcaster has its head office in Malta and the editorial decisions about programme schedules are taken in Malta;

(b) where a broadcaster has its head office in Malta but editorial decisions about programme schedules are taken in a Scheduled State, the broadcaster shall be under the jurisdiction of Malta if a significant part of the workforce involved in the pursuit of the television broadcasting activity operates in Malta;

(c) where a broadcaster has its head office in a scheduled State but editorial decisions about programme schedules are taken in Malta, the broadcaster shall be under the jurisdiction of Malta if a significant part of the workforce involved in the pursuit of the television broadcasting activity operates in Malta;

(d) where a significant part of the workforce referred to in paragraphs (b) and (c) above operates both in Malta and in a scheduled State, the broadcaster shall be under the jurisdiction of Malta if it has its head office in Malta;

(e) where a significant part of the workforce referred to in paragraphs (b) and (c) above operates neither in Malta nor in a scheduled State, the broadcaster shall be under the jurisdiction of Malta if it first began broadcasting in Malta in accordance with the laws of Malta provided that the broadcaster maintains a stable and effective link with the economy of Malta;

(f) where a broadcaster has its head office in Malta but decisions on programme schedules are taken in a third country not being a scheduled State, or vice-versa, the broadcaster shall be under the jurisdiction of Malta if a significant part of the workforce involved in the pursuit of the television broadcasting activity operates in Malta.

(2) Broadcasters to whom the provisions of sub-regulation (1) of this regulation are not applicable shall be under the jurisdiction of Malta in the following cases:

(a) if they use a frequency granted by Malta;

(b) if although they do not use a frequency granted by Malta, they use a satellite capacity appertaining to Malta;

(c) if although they use neither a frequency granted by Malta nor a satellite capacity appertaining to Malta they use a satellite up-link situated in Malta.

Broadcasting of European works.

5. (1) A broadcaster shall reserve for European works within the meaning of sub-regulations (1) to (7) of this regulation, a majority proportion of its transmission time, excluding the time appointed to news, sports events, games, advertising, teletext services and teleshopping. This proportion, having regard to the broadcaster's informational, educational, cultural and entertainment responsibilities to its viewing public, shall be achieved progressively, on the basis of suitable criteria.

(2) Broadcasters shall:

(a) either reserve at least 10% of their transmission time, excluding the time appointed to news, sports events, games, advertising, teletext services and teleshopping; or

(b) reserve at least 10% of their programming budget,

for European works created by producers who are independent of broadcasters. This proportion shall be achieved progressively having regard to the broadcasters' informational, educational, cultural and entertainment responsibilities to the viewing public. Such proportion shall be achieved on the basis of suitable criteria and by earmarking an adequate proportion for works transmitted within five years of their production.

(3) For the purposes of sub-regulations (1) to (7) of this regulation, "European works" means:

(a) works originating from Malta;

(b) works originating from scheduled States and fulfilling the conditions of sub-regulation (4) of this regulation;

(c) works originating from other European States and fulfilling the conditions of sub-regulation (5) of this regulation.

(4) The works referred to in paragraphs (a) and (b) of sub-regulation (3) of this regulation are works mainly made with authors and workers residing in one or more States referred to in the aforesaid

paragraphs, provided that they comply with any one of the following three conditions:

(a) they are made by one or more producers established in one or more of those States; or

(b) production of the works is supervised and actually controlled by one or more producers established in one or more of those States; or

(c) the contribution of co-producers of those States to the total co-production costs is preponderant and the co-production is not controlled by one or more producers established outside those States.

(5) The works referred to in paragraph (c) of sub-regulation (3) of this regulation are works made exclusively or in co-production with producers established in one or more States mentioned in paragraph (a) and (b) of sub-regulation (3) by producers established in one or more European third States with which Malta has directly or through its adherence to a multilateral international legal instrument concluded agreements relating to the audiovisual sector, if those works are mainly made with authors and workers residing in one or more European States.

(6) Works that are not European works within the meaning of sub-regulation (3) of this regulation but that are produced within the framework of bilateral co-production treaties concluded between the States mentioned in paragraphs (a) and (b) of sub-regulation (3) and third States shall be deemed to be European works provided that co-producers from States mentioned in paragraphs (a) and (b) of sub-regulation (3) supply a majority share of the total cost of the production and that the production is not controlled by one or more producers established outside the territory of the said States mentioned in paragraphs (a) and (b) of sub-regulation (3).

(7) Works which are not European works within the meaning of sub-regulations (3) and (6) of this regulation, but are made mainly with authors and workers residing in one or more States mentioned in paragraphs (a) and (b) of sub-regulation (3), shall be considered to be European works to an extent corresponding to the proportion of the contribution of co-producers from States mentioned in paragraphs (a) and (b) of sub-regulation (3) to the total production costs.

(8) A broadcaster shall draw up and send to the Broadcasting Authority an annual report which shall include:–

(a) a statistical statement on the achievement of the proportions referred to in sub-regulations (1) and (2) of this regulation also showing seperately the proportion of programmes originally produced in the Maltese language in respect of the television programme services broadcast by the said broadcaster;

(b) the reasons for failure to attain any of the said proportions in cases where the broadcaster has not attained this aim;

(c) the measures adopted or envisaged in order to achieve the said proportions.

Transmission of major events.

6. (1) Broadcasters shall not broadcast on an exclusive basis events which are regarded by the Authority as being of major importance for society in such a way as to deprive a substantial proportion of the public of the possibility of following such events via live coverage or deferred coverage on free television. The Authority shall draw up a list of designated events, national or non-national, which it considers to be of major importance for society and it shall do so in a clear and transparent manner in due and effective time. In so doing the Authority shall also determine whether such events should be available via whole or partial live coverage or, where necessary or appropriate for objective reasons in the public interest, whole or partial deferred coverage.

(2) Broadcasters shall not exercise the exclusive rights purchased by them in such a way that a substantial proportion of the public in a scheduled State is deprived of the possibility of following events which are designated by that other State in accordance with the applicable provisions of any international legal instrument in respect of broadcasting to which Malta is a party or which is applicable to Malta, *via* whole or partial live coverage or, where necessary or appropriate for objective reasons in the public interest, whole or partial deferred coverage on free television as determined by that other state in accordance with such legal instrument.

Administrative offences.

7. Without prejudice to the provisions of subarticle (4) of article 16 of the Act, or to the conditions of any broadcasting licence, any violation of the provisions of regulations 5 and 6 of these regulations shall constitute an administrative offence and shall be cognizable by the Broadcasting Authority in terms of article 41 of the Act.

SCHEDULE

States included in this Schedule are the following:

Austria
Belgium
Bulgaria
Cyprus
Denmark
Estonia
Finland
France
Germany
Greece
Holy See
Hungary
Ireland
Italy
Latvia
Liechtenstein
Luxembourg
Netherlands
Norway
Poland
Portugal
San Marino
Slovakia
Slovenia
Spain
Sweden
Switzerland
Turkey
United Kingdom