**TRANSPARENCY OF MEDIA OWNERSHIP – THE LEGAL FRAMEWORK**

**GERMANY**



**1. Media-Specific Disclosure Requirements I : *Disclosure to a Media Authority or other Public Body***

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **QUESTIONS** |  |  | **YES/** | **COMMENTS** |  |
|  |  |  | **NO** |  |  |
| 1.1 Who is required | a) | Are media organisations which disseminate information |  |  |  |
| to disclose |  | or those who have interests in such media organisations |  |  |  |
| information, when |  | specifically required to report ownership information to a | Y |  |  |
| and to whom? |  | media authority or other public body or bodies? |  |  |
|  |  |  |  |  |  |
|  | b) | If YES, what is the legal basis of this requirement? |  | The legal basis is the *Interstate Treaty on Broadcasting and Telemedia* (RStV) in the |  |
|  |  |  |  | version of the 13th Amendment to the Interstate Broadcasting Treaties. It entered into |  |
|  |  |  |  | force on 1 April 2010).1 The relevant provisions are Art. 21 (2) no. 1, Art. 21 (7), Art. 29 |  |
|  |  |  |  | Sentence 1 of the RStV. |  |
|  |  |  |  | The Interstate Treaty is a federal law which sets out the general framework for uniform |  |
|  |  |  |  | state broadcasting regulations, across Germany. It serves to harmonise state law on all |  |
|  |  |  |  | the major aspects of broadcasting and prevents German states from adopting laws of |  |
|  |  |  |  | their own which diverge to any material extent. |  |
|  |  |  |  | There are 14 separate State Media Authorities2 in Germany covering the 16 federal |  |
|  |  |  |  | states3 (most states have their own media authority whilst Hamburg & Schleswig- |  |
|  |  |  |  | Holstein and Berlin & Brandenburg have each merged theirs). Each State Media |  |
|  |  |  |  | Authority has its own state media law to cover the provision of broadcasting services |  |
|  |  |  |  | (radio and TV). |  |
|  |  |  |  | *In the interests of simplicity and avoiding significant duplication, this section only* |  |
|  |  |  |  | *covers the RStV since the procedure in each state law is comparable to that described* |  |
|  |  |  |  | *here and must comply with the RStV*. |  |
|  | c) | Who exactly is covered by this requirement, |  | **National private broadcast media (in practice just television)** |  |
|  |  |  |  | 1 |  |

**Name of Country:** Germany

**Source of information:** Bernd Malzanini, Managing director, KEK

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|  |  |  | Broadcasting within the meaning of the Treaty means both radio and television *in* |  |
|  |  |  | *theory* with Article 20(a) defining those covered as “commercial broadcasters”. |  |
|  |  |  | However there are no national private radio providers in Germany (except recently |  |
|  |  |  | some new DAB+- providers). In addition, the terminology in the RStV is not always |  |
|  |  |  | consistent; the provisions concerning concentration control and ownership disclosure |  |
|  |  |  | requirements relate only to nationwide television. So for both these reasons, in |  |
|  |  |  | practice this section *refers only to* ***national private television*.4** |  |
|  |  |  | Online media are not covered by the requirement to disclose information under these |  |
|  |  |  | provisions. |  |
|  | d) To whom must the information be reported? |  | Due to the federal structure of Germany, there are 14 state media authorities which |  |
|  |  |  | are in charge of licensing and controlling, as well as structuring and promoting |  |
|  |  |  | commercial broadcasting in Germany. The information must be reported to “the |  |
|  |  |  | competent state media authority” (e.g. Art. 20 (2), Art 29 sent. 1 RStV). |  |
|  |  |  | Under Art 23 (1) RStV and Art. 160 (1) No. 8 of the Company Law5, the annual |  |
|  |  |  | accounts and report should be submitted to the Commercial Registry.6 |  |
|  | e) Who must report the information? |  | The information has to be given by “the broadcaster **and** … parties holding a direct or |  |
|  |  |  | indirect interest in the broadcaster within the meaning of Article 28 (RStV)”. |  |
|  | f) Where notification is by those with an interest, is this |  |  |  |
|  | dependent on the size or scale of the interest, e.g. only |  |  |  |
|  | where a shareholding exceeds a certain size or | N |  |  |
|  | percentage? |  |  |
|  |  |  |  |
|  | If YES, what is the required threshold? |  |  |  |
|  | g) Are foreign as well as domestic media organisations | Y |  |  |
|  | covered by these requirements? |  |  |  |
|  | If YES, do these requirements apply to EU as well as non- | Y |  |  |
|  | EU foreign organisations? |  |  |  |
|  |  |  |  |  |
|  | h) When is information to be notified? |  | The competent state media authority must be notified: |  |
|  |  |  |  when applying for a licence (Art. 21 para (1) and para (2) RStV); and |  |
|  |  |  |  when changes are planned in participating interests or other influences, in writing |  |
|  |  | 2 |  |
| **Name of Country:** Germany |  |  |  |
| **Source of information:** Bernd Malzanini, Managing director, KEK |  |  |  |

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|  |  |  |  | *prior to* their implementation (Art. 29 RStV). |  |
|  |  |  |  | Annual accounts should be submitted to the Commercial Register (Art 23 (1) RStV and |  |
|  |  |  |  | Art. 160 (1) No. 8 of the Company Law) and an announcement should be made in the |  |
|  |  |  |  | Federal (electronic) Gazette7 according to Art. 325 of the German Commercial Code8 |  |
|  |  |  |  | (which sets out the procedure for the required disclosure). |  |
|  |  |  |  |  |  |
| 1.2 What | a) | Name and contact details of media organisation? |  |  |  |
| information is to be |  |  | Y |  |  |
| provided? |  |  |  |  |  |
|  | b) Name and contact details of owner? | Y |  |  |
|  | c) | Country of domicile of company with an interest? | Y |  |  |
|  | d) | Citizenship/residence status of individual with an | Y |  |  |
|  |  | interest? |  |  |
|  |  |  |  |  |
|  | e) | Size of shareholding? |  | According to Article 21 (1) RStV (Principles for the Licensing Procedure) the applicant |  |
|  |  |  |  | shall provide all information and documents required for the consideration of its |  |
|  |  | If YES, please provide details |  | licence application. According to Art. 21 (2) no. 1, the obligation to provide |  |
|  |  |  | Y | information and documents in particular relates to: “a description of the direct and |  |
|  |  |  | indirect interests of the applicant as defined in Article 28 (RStV) [*see 1.2(g) below*] and |  |
|  |  |  |  |  |
|  |  |  |  | of **the capital and voting rights** of the applicant and associated companies as defined |  |
|  |  |  |  | in the German Company Law”. |  |
|  |  |  |  |  |  |
|  | f) | If shares are held on behalf of another, e.g. through |  |  |  |
|  |  | brokerage, must the name of the beneficial owner be | Y |  |  |
|  |  | disclosed? |  |  |  |
|  | g) | Details of companies or individuals with an indirect |  | According to Article 21 (1) RStV (Principles for the Licensing Procedure) the applicant |  |
|  |  | controlling or significant interest? | Y | shall provide all information and documents required for the consideration of its |  |
|  |  |  |  | licence application. According to Art. 21 (2) no. 1, the obligation to provide |  |
|  |  | If YES, please explain. |  | information and documents in particular relates to: “a description of the **direct and** |  |
|  |  |  |  | **indirect interests** of the applicant as defined in Article 28 (RStV) and of the capital and |  |
|  |  |  |  | voting rights of the applicant and associated companies as defined in the German |  |
|  |  |  |  | Company Law”. |  |
|  |  |  |  | Art. 21(2) no. 4. requires disclosure of “agreements existing among the parties holding |  |
|  |  |  |  | a direct or indirect interest in the applicant within the meaning of Article 28 relating to |  |
|  |  |  |  | the joint provision of broadcasting as well as to trustee relationships and |  |
|  |  |  |  | 3 |  |
| **Name of Country:** Germany |  |  |  |  |
| **Source of information:** Bernd Malzanini, Managing director, KEK |  |  |  |

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|  |  |  |  | relationships that are significant pursuant to Articles 26 and 28”. |  |
|  | h) | Political, religious or other affiliations of shareholder / | N |  |  |
|  |  | owner? |  |  |
|  |  |  |  |  |
|  | i) | Interests by owners in other media organisations? |  |  |  |
|  |  |  | N |  |  |
|  |  | If YES, please explain. |  |  |  |
|  | j) | Interests by owners in non-media businesses? |  |  |  |
|  |  |  | N |  |  |
|  |  | If YES, please explain. |  |  |  |
|  | k) | Interests in the media organisation by individuals (e.g. |  | According to Art. 21 (2) no. 2 RStV (Principles for the Licensing Procedure), the |  |
|  |  | family members or organisations) affiliated to the |  | obligation to provide information and documents in particular relates to: “information |  |
|  |  | owner? |  | about relatives as defined in Article 15 of the Fiscal Code9 among the parties pursuant |  |
|  |  |  |  | to Art 21(1) [*which is set out in 1.1(g) above*]. The same shall apply to representatives |  |
|  |  | If YES, how is ‘affiliation’ defined in the relevant |  | of the person or partnership or of the member of a body of a legal entity” |  |
|  |  | instruments and what details are to be disclosed? |  |  |  |
|  |  |  |  | Article 15 of the Fiscal Code defines relatives as: fiancé(e)s, spouses, relations by |  |
|  |  |  | Y | blood or by marriage in direct line, siblings, children of siblings, spouses of siblings, |  |
|  |  |  |  | and siblings of spouses, siblings of the parents, persons who are related to each other |  |
|  |  |  |  | like parents and children through a permanent foster relationship involving a common |  |
|  |  |  |  | household (foster parents and foster children). |  |
|  |  |  |  | See also Art. 28 (4) RStV (Attribution of Services): “The analysis and assessment of |  |
|  |  |  |  | comparable influences on a broadcaster shall also take into account existing family |  |
|  |  |  |  | relationships. It shall apply the principles of commercial or fiscal law.” |  |
|  | l) | Management details: for example, directors (if a |  | Art. 20 (a) (2) RStV determines that certain requirements (e.g. unlimited legal |  |
|  |  | company), key executive officers, managing editor? |  | capacity) must be fulfilled by *the legal or statutory representatives* of the company (ie |  |
|  |  |  | Y | the person responsible must always be a natural person). In order to prove this, it |  |
|  |  |  |  | follows that there is an obligation to provide information on a company’s key |  |
|  |  |  |  | positions. |  |
|  | m) Subsequent changes in ownership (resulting from a | Y |  |  |
|  |  | merger or acquisition by other entities, etc.)? |  |  |
|  |  |  |  |  |
|  | n) Sources of media revenue? |  |  |  |
|  |  |  | N |  |  |
|  |  | If YES, please explain. |  |  |  |
|  | o) | Other. |  |  |  |
|  | p) | Are these obligations sufficient to establish who the legal | Y |  |  |
|  |  |  |  | 4 |  |

**Name of Country:** Germany

**Source of information:** Bernd Malzanini, Managing director, KEK

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|  |  |  |  | or natural persons are who effectively own and |  |  |  |
|  |  |  |  | ultimately control the media organisations? |  |  |  |
|  |  |  |  |  |  |  |
|  | 1.3 Effectiveness of | a) Are there any sanctions for non-reporting? |  | According to Art. 49(2), nos. 1, 2 and 4 RStV, a commercial broadcaster providing a |  |
|  | the | disclosure |  |  | service transmitted nationally commits an administrative offence if it, either |  |
|  | regime |  |  |  | Y | intentionally or through negligence, fails to fulfil its notification obligations. According |  |
|  |  |  |  |  |  | to Art. 49 (2) the administrative offence can be punished with a fine of up to |  |
|  |  |  |  |  |  | €500,000. |  |
|  |  |  |  | i. If YES, have they have been applied in practice? |  | To date, there have been almost no cases of a broadcaster being sanctioned because |  |
|  |  |  |  | ii. If NO, why not? |  | they comply with the law. |  |
|  |  |  |  | b) Can the public obtain access to this information? |  | According to Art. 26 (7) RStV the state media authorities publish on their websites an |  |
|  |  |  |  |  |  | annual list of nationwide commercial services. The list of includes all services, their |  |
|  |  |  |  | If YES, how? |  | broadcasters and parties with participating interests.10 The list is also published on the |  |
|  |  |  |  |  |  | website of KEK (Commission on Concentration in the Media).11 (The KEK is an |  |
|  |  |  |  |  |  | independent regulatory body with nationwide jurisdiction which is responsible for |  |
|  |  |  |  |  |  | monitoring and enforcing compliance with the legal provisions designed to ensure |  |
|  |  |  |  |  |  | diversity of opinion in nationally-transmitted private television.) The annual reports |  |
|  |  |  |  |  | Y | drawn up by the KEK, mentioned above, are available free of charge upon request. It is |  |
|  |  |  |  |  |  | also available from the KEK’s website http://www.kek- |  |
|  |  |  |  |  |  | online.de/Inhalte/jahresberichte.html. |  |
|  |  |  |  |  |  | The list is also separately available via http://www.kek- |  |
|  |  |  |  |  |  | online.de/Inhalte/programmliste\_2010.pdf and via the state media authorities |  |
|  |  |  |  |  |  | website http://www.die-medienanstalten.de/service/publikationen/programmliste- |  |
|  |  |  |  |  |  | kek.html |  |
|  |  |  |  | c) Is this information required to be made available to any |  | There is no legal requirement to make this available to any other body. |  |
|  |  |  |  | other body, for instance, parliament? | N |  |  |
|  |  |  |  |  | However, KEK sends this report to more than 280 media professionals, journalists, |  |
|  |  |  |  |  |  |  |
|  |  |  |  | If YES, please specify. |  | politicians, state parliaments, universities, libraries and other institutions. |  |
|  |  |  |  | d) Can certain information be withheld, for instance on |  | The scope of this provision is very limited. Art. 24 RStV says: “Data on the personal or |  |
|  |  |  |  | grounds of commercial sensitivity? |  | material circumstances of a natural person or legal entity, or a partnership, or |  |
|  |  |  |  |  |  | operating or business secrets which are entrusted to the state media authorities, their |  |
|  |  |  |  | If YES, please specify | N | bodies, employees or third persons acting on their behalf within the framework of the |  |
|  |  |  |  |  |  | execution of their tasks or which have become known to them in some other way |  |
|  |  |  |  |  |  | must not be disclosed without authorisation. As regards the processing of personal |  |
|  |  |  |  |  |  | data, the data protection provisions of state law apply”. |  |
|  |  |  |  |  |  | 5 |  |
|  | **Name of Country:** Germany |  |  |  |
|  | **Source of information:** Bernd Malzanini, Managing director, KEK |  |  |  |

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| --- | --- | --- | --- | --- | --- | --- | --- | --- |
|  |  |  | e) Are there any bureaucratic or other constraints, for |  |  |  |  |  |
|  |  |  | instance charges, on public access? | N |  |  |  |  |
|  |  |  |  |  |  |  |  |  |
|  |  |  | If YES, please specify |  |  |  |  |  |
|  |  |  | f) Would a reasonable, nontechnical individual be able to |  |  |  |  |  |
|  |  |  | ascertain who effectively owns and ultimately controls |  |  |  |  |  |
|  |  |  | the media organisation concerned from the | Y |  |  |  |  |
|  |  |  | information available? |  |  |  |  |
|  |  |  |  |  |  |  |  |
|  |  |  | If NO, please explain. |  |  |  |  |  |
|  |  |  | g) Has the public made use of this facility in practice? |  |  |  |  |  |
|  |  |  |  |  | Y |  |  |  |  |
|  |  |  |  |  |  |  |  |  |  |
|  |  |  | i. If YES, is it common practice? Do the media pick up |  |  | Yes. There are regular requests from the press, the public, politicians and other |  |
|  |  |  | the information? |  |  | organisations to the KEK or to the state media authorities for such information. As |  |
|  |  |  | ii. If NO, why not? |  |  | mentioned, the information is published by law on the websites of KEK and state |  |
|  |  |  |  |  |  |  | media authorities. The media publish information on ownership when it is a matter of |  |
|  |  |  |  |  |  |  | public concern, eg when a merger is planned. |  |
|  |  |  |  |  |  |  |
| **2A. Media-Specific Disclosure Requirements II: *Disclosure Directly to the Public*** |  |  |  |  |
| **QUESTIONS** |  |  |  | **YES/** |  | **COMMENTS** |  |  |
|  |  |  |  |  | **NO** |  |  |  |  |
| 2A.1 Who has to | a) Are media organisations and/or their owners specifically |  |  |  |  |  |  |
| disclose |  | required to disclose ownership details directly to the |  | Y |  |  |  |  |
| information and |  | public? |  |  |  |  |  |
|  |  |  |  |  |  |  |
| when? |  |  |  |  |  |  |  |  |
|  |  |  | b) If YES, please specify the legal basis for this requirement |  |  | The legal basis is the *Interstate Treaty on Broadcasting and Telemedia* (RStV) in the |  |  |
|  |  |  |  |  |  | version of the 13th Amendment to the Interstate Broadcasting Treaties. Entry into |  |  |
|  |  |  |  |  |  | force: 1 April 2010).12. |  |  |
|  |  |  |  |  |  | The Interstate Treaty is a federal law which provides the general framework for |  |  |
|  |  |  |  |  |  | uniform state broadcasting regulations, across the 16 German states.13 It serves to |  |  |
|  |  |  |  |  |  | harmonise state law on all the major aspects of broadcasting and prevents German |  |  |
|  |  |  |  |  |  | states from adopting laws of their own which diverge to any material extent. See |  |  |
|  |  |  |  |  |  | 1.1(b) above for more detail on the legal structure. |  |  |
|  |  |  |  |  |  | 6 |  |  |
|  | **Name of Country:** Germany |  |  |  |  |  |
|  | **Source of information:** Bernd Malzanini, Managing director, KEK |  |  |  |  |  |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | c) Who exactly is covered by this requirement? |  | Broadcasting within the meaning of the Treaty means both radio and television *in* |  |
|  |  |  |  | *theory* with Article 20(a) defining those covered as “commercial broadcasters”. |  |
|  |  |  |  | However there are no national private radio providers in Germany (except recently |  |
|  |  |  |  | some new DAB+- providers). In addition, the terminology in the RStV is not always |  |
|  |  |  |  | consistent; the provisions concerning concentration control and ownership disclosure |  |
|  |  |  |  | requirements relate only to nationwide television. So for both these reasons, in |  |
|  |  |  |  | practice this section *refers only to* ***national private television*.** |  |
|  |  |  |  | Online media (telemedia14) are only covered by the law if they can be defined as |  |
|  |  |  |  | “broadcasting”; in practice the differentiation is often quite difficult. The criterion for |  |
|  |  |  |  | deciding this is: are they broadcasting or not? The legal (negative) definition can be |  |
|  |  |  |  | found here: |  |
|  |  |  |  | Art. 2 (3) RStV: |  |
|  |  |  |  | “Broadcasting does not in any case mean programming which is offered to fewer than |  |
|  |  |  |  | 500 potential users for simultaneous reception” |  |
|  | d) Does the duty apply to foreign as well as domestic media | Y |  |  |
|  |  | organisations? |  |  |
|  |  |  |  |  |
|  | e) Are there are any differences in the requirements that | N |  |  |
|  |  | apply to European and non-European organisations. |  |  |  |
|  | f) | Where exactly is the information to be disclosed? |  | The annual accounts and report should be made public in the Federal (electronic) |  |
|  |  |  |  | Gazette15 (http://www.bundesanzeiger.de/) under Art 23 (1) RStV and Art. 325 of the |  |
|  |  |  |  | German Commercial Code16 (which sets out the procedure for the required |  |
|  |  |  |  | disclosure). |  |
|  | g) | When is information to be made available to the public? |  | This should be done annually for television. |  |
|  |  |  |  | When telemedia are covered by the law (see 3.1c above). Their information should |  |
|  |  |  |  | always be visible; this might be on the homepage of their website under the term |  |
|  |  |  |  | *“Impressum” (*which would equate to something like “About Us” or “Legal |  |
|  |  |  |  | Information” in English). Under Article 55(1) of the RStV providers of telemedia not |  |
|  |  |  |  | exclusively serving personal or familial purposes must keep the name and address as |  |
|  |  |  |  | well as, in the case of legal persons, the name and address of the authorised |  |
|  |  |  |  | representative visible. |  |
|  |  |  |  | Article 55(2) requires providers of telemedia containing journalistic edited work which |  |
|  |  |  |  | completely or partially reproduce texts or visual contents of periodical print media |  |
|  |  |  | 7 |  |
| **Name of Country:** Germany |  |  |  |  |
| **Source of information:** Bernd Malzanini, Managing director, KEK |  |  |  |

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|  |  |  |  | must, also name an accountable person, including their name and address. |  |
|  |  |  |  |  |
| 2A.2 What | a) Name of owner? |  |  |  |
| information must |  |  | Y |  |  |
| be disclosed? |  |  |  |  |  |
|  | b) | Country of domicile if a company? / | N |  |  |
|  |  | Citizenship/residence status if an individual? |  |  |
|  |  |  |  |  |
|  | c) | Size of shareholding? |  | Only when exceeding the respective thresholds, starting at 3%. (Art 23 (1) RStV and |  |
|  |  |  | Y | Art. 325 of the German Commercial Code). |  |
|  |  | If YES, please provide details |  |  |  |
|  | d) | If shares are held on behalf of another, e.g. through |  |  |  |
|  |  | brokerage, must the name of the beneficial owner be | N |  |  |
|  |  | disclosed? |  |  |  |
|  | e) | Details of companies or individuals with an indirect |  |  |  |
|  |  | controlling or significant interest? | N |  |  |
|  |  |  |  |  |
|  |  | If YES, explain. |  |  |  |
|  | f) | Political, religious or other affiliations of shareholder / | N |  |  |
|  |  | owner? |  |  |
|  |  |  |  |  |
|  | g) | Interests by owners in other media organisations? |  |  |  |
|  |  | If YES, explain. | N |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
|  | h) Management details: for example, directors (if a |  | Annual reports would contain names of members of the board of management. A |  |
|  |  | company), key executive officers, managing editor? |  | detailed example is: |  |
|  |  |  | Y | http://www.bertelsmann.com/bertelsmann\_corp/wms41/customers/bmir/pdf/JA\_Be |  |
|  |  |  |  | rtelsmann\_AG\_2010\_deutsch.pdf |  |
|  |  |  |  |  |  |
|  | i) | Sources of media revenue? | Y | Under RStV Article 23(1), the balance sheet and profit and loss account must be |  |
|  |  |  | publicised. |  |
|  |  |  |  |  |
|  | j) | Other. |  |  |  |
|  | k) | Are these obligations sufficient to establish who the legal |  | The provisions of Art. 23 (1) (RStV) concern only nationwide commercial (TV) |  |
|  |  | or natural persons are who effectively own and |  | broadcasters, not local and regional radio and (TV) broadcasters. The provisions on the |  |
|  |  | ultimately control the media organisations? | N | telemedia provide very little information. Beneficial ownership and indirect control / |  |
|  |  |  |  | interests are not disclosed directly to the public so it is not possible to identify the |  |
|  |  |  |  | owner behind the owner. |  |
|  |  |  |  | 8 |  |
| **Name of Country:** Germany |  |  |  |  |
| **Source of information:** Bernd Malzanini, Managing director, KEK |  |  |  |

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  |  |  |  |  |  |
| 2A.3 Effectiveness | a) | Are there any sanctions for non-reporting? |  | According to Art. 49 sent. 2, no. 3 RStV, a commercial broadcaster providing a service |  |
| of the disclosure |  |  |  | transmitted nationally commits an administrative offence if it, either intentionally or |  |
| regime |  | If YES, what is the range of potential sanctions and who | Y | through negligence, fails in its notification obligations. According to Art. 49 (2) the |  |
|  |  | has power to impose them? | administrative offence can be penalised by a fine of up to €500,000. Until now, there |  |
|  |  |  |  |
|  |  |  |  | have not been any cases where a broadcaster has been sanctioned because they are |  |
|  |  |  |  | comply with the law. |  |
|  | b) Are sanctions, if available, applied in practice? |  | Unknown |  |
|  |  | If NO, why not? |  |  |  |
|  | c) | Can certain information be withheld, for instance on |  | Article 24 of the RStV requires that state media authorities must obtain authorisation |  |
|  |  | grounds of commercial sensitivity? |  | to disclose personal information, or business secrets. Other than that the data |  |
|  |  |  |  | protection provisions of state laws apply. |  |
|  |  | If YES, please specify | Y |  |  |
|  |  |  | Art. 160 of the Companies Act states that “reporting must be omitted to the extent |  |
|  |  |  |  |  |
|  |  |  |  | that it is necessary for the good of the Federal Republic of Germany or one of their |  |
|  |  |  |  | states.” This provision is often criticised in commentaries to the Companies Act for |  |
|  |  |  |  | being too broad. |  |
|  | d) | Are there any bureaucratic or other constraints, for |  |  |  |
|  |  | instance charges, on public access? | N |  |  |
|  |  |  |  |  |
|  |  | If YES, please specify |  |  |  |
|  | e) | Would a reasonable, nontechnical individual be able to |  |  |  |
|  |  | ascertain who effectively owns and ultimately controls |  |  |  |
|  |  | the media organisation concerned from the information |  | See 2A.2(k) above |  |
|  |  | available? | N |  |  |
|  |  | If NO, please explain. |  |  |  |
|  | f) | Has the public made use of this facility in practice? |  | There are regular requests from the media, the public, politicians and other |  |
|  |  |  |  | organisations to the KEK or to the state media authorities for such information. As |  |
|  |  | If NO, why not? | Y | mentioned, the information is published by law on the websites of KEK and state |  |
|  |  |  |  | media authorities. The media publish information on ownership when it is a matter of |  |
|  |  |  |  | public concern, eg merger plans. |  |

9

**Name of Country:** Germany

**Source of information:** Bernd Malzanini, Managing director, KEK

**2B. Media-Specific Disclosure Requirements II: *Disclosure Directly to the Public***

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **QUESTIONS** |  |  | **YES/** | **COMMENTS** |
|  |  |  | **NO** |  |
| 2B.1 Who has to | a) | Are media organisations and/or their owners specifically |  | The press is largely unregulated in Germany. |
| disclose |  | required to disclose ownership details directly to the |  |  |
| information and |  | public? |  |  |
| when? |  |  |  |  |
|  | b) | If YES, please specify the legal basis for this requirement |  |  |
|  | c) | Who exactly is covered by this requirement? |  | **Print media in Bavaria, Saxony, Thüringia, Hesse and Rhineland-Pfalz** |
|  |  |  |  | Only the press laws of the states of Bavaria (Art. 8 (3)), Saxony, Thuringia (Art. 8), |
|  |  |  |  | Hesse (Art. 5 (2) and Rhineland-Pfalz (Art. 8) contain provisions on the disclosure of |
|  |  |  |  | ownership for periodic printing units. The regulations are quite complicated: normally |
|  |  |  |  | the owners are obliged to publish in their newspapers at intervals ranging from once |
|  |  |  |  | to several times a year (depending on the press law concerned) details of the |
|  |  |  |  | ownership including name, address of the owner and shareholders. There is no |
|  |  |  |  | precise specification of what kind of shareholder this is and so it is not clear whether |
|  |  |  |  | beneficial shareholders or those with a direct or indirect interest would be disclosed. |
|  |  |  |  | It is worth noting that all the state media laws contain press-broadcasting cross- |
|  |  |  |  | ownership rules to prevent what the Constitutional Court called “double monopolies”. |
|  |  |  |  | As mentioned this rules vary from state to state, since they are not covered by the |
|  |  |  |  | Interstate Treaty. So if a publishing company has a dominant share of the local |
|  |  |  |  | periodicals distributed in the broadcast coverage area the ownership of local stations |
|  |  |  |  | is restricted. Because of this potential cross-ownership-relations the publishing |
|  |  |  |  | companies are obliged to disclose their ownership structure in the case of any |
|  |  |  |  | planned merger. |
|  |  |  |  | Furthermore big media companies as Bertelsmann are publishing annual reports and |
|  |  |  |  | corporate brochures. In general it is well known who owns the main print media |
|  |  |  |  | outlets (cf. for this “alle Pressetitel anzeigen” = “show all print titles” on the KEK- |
|  |  |  |  | Mediadatabase: http://www.kek-online.de/db/index.php?mt=3&s=&f=0&pq=1). |
|  | d) Does the duty apply to foreign as well as domestic media |  | See 2B.1(c) above |
|  |  | organisations? |  |  |
|  | e) Are there are any differences in the requirements that |  | See 2B.1(c) above |
|  |  | apply to European and non-European organisations. |  |  |
|  | f) | Where exactly is the information to be disclosed? |  | See 2B.1(c) above |
|  |  |  |  | 10 |

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**Source of information:** Bernd Malzanini, Managing director, KEK

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  |  | g) | When is information to be made available to the public? |  |  |
|  |  |  |  |  |
| 2B.2 What | a) | Name of owner? |  | See 2B.1(c) above |
| information must |  |  |  |  |  |
| be disclosed? |  |  |  |  |  |
|  |  | b) | Country of domicile if a company? / |  | See 2B.1(c) above |
|  |  |  | Citizenship/residence status if an individual? |  |  |
|  |  | c) | Size of shareholding? |  | See 2B.1(c) above |
|  |  |  | If YES, please provide details |  |  |
|  |  | d) | If shares are held on behalf of another, e.g. through |  | See 2B.1(c) above |
|  |  |  | brokerage, must the name of the beneficial owner be |  |  |
|  |  |  | disclosed? |  |  |
|  |  | e) | Details of companies or individuals with an indirect |  | See 2B.1(c) above |
|  |  |  | controlling or significant interest? |  |  |
|  |  |  | If YES, explain. |  |  |
|  |  | f) | Political, religious or other affiliations of shareholder / |  | See 2B.1(c) above |
|  |  |  | owner? |  |  |
|  |  | g) | Interests by owners in other media organisations? |  | See 2B.1(c) above |
|  |  |  | If YES, explain. |  |  |
|  |  |  |  |  |  |
|  |  | h) | Management details: for example, directors (if a |  | See 2B.1(c) above |
|  |  |  | company), key executive officers, managing editor? |  |  |
|  |  | i) | Sources of media revenue? |  | See 2B.1(c) above |
|  |  | j) | Other. |  | See 2B.1(c) above |
|  |  | k) | Are these obligations sufficient to establish who the legal |  | See 2B.1(c) above |
|  |  |  | or natural persons are who effectively own and |  |  |
|  |  |  | ultimately control the media organisations? |  |  |
|  |  |  |  |  |  |
| 2B.3 Effectiveness |  | a) | Are there any sanctions for non-reporting? |  | See 2B.1(c) above |
| of the disclosure |  |  |  |  |  |
| regime |  |  | If YES, what is the range of potential sanctions and who |  |  |
|  |  |  | has power to impose them? |  |  |
|  |  | b) | Are sanctions, if available, applied in practice? |  | See 2B.1(c) above |

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**Source of information:** Bernd Malzanini, Managing director, KEK

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| --- | --- | --- | --- | --- |
|  |  | If NO, why not? |  |  |
|  | c) | Can certain information be withheld, for instance on |  | See 2B.1(c) above |
|  |  | grounds of commercial sensitivity? |  |  |
|  |  | If YES, please specify |  |  |
|  | d) | Are there any bureaucratic or other constraints, for |  | See 2B.1(c) above |
|  |  | instance charges, on public access? |  |  |
|  |  | If YES, please specify |  |  |
|  | e) | Would a reasonable, nontechnical individual be able to |  | See 2B.1(c) above |
|  |  | ascertain who effectively owns and ultimately controls |  |  |
|  |  | the media organisation concerned from the information |  |  |
|  |  | available? |  |  |
|  |  | If NO, please explain. |  |  |
|  | f) | Has the public made use of this facility in practice? |  | See 2B.1(c) above |
|  |  | If NO, why not? |  |  |

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**Name of Country:** Germany

**Source of information:** Bernd Malzanini, Managing director, KEK

**3. Non Media-Specific Transparency Requirements (ie laws applying to companies)**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **QUESTIONS** |  |  | **YES/** | **COMMENTS** |
|  |  |  |  | **NO** |  |
| 3.1 Who is required | a) | Are there non media-specific transparency requirements |  |  |
| to disclose what, to |  | that require media organisations to disclose ownership | Y |  |
| whom and when? |  | information? |  |  |
|  |  | b) What is the relevant legal basis for disclosure? |  | Art. 21 (2) German Companies Law17 (AktG); Art. 21 (1); and Art. 26 German Securities |
|  |  |  |  |  | Trading Act18 (WPHG). |
|  |  |  |  |  | *Please note that the Interstate Treaty (Sections 1 and 2 above) is a special law* |
|  |  |  |  |  | *concerning the media sector and gives more power in this field than company law.* |
|  |  | c) To whom do the disclosure requirements apply (e.g., |  | The provisions are only relevant for companies which are listed on the stock exchange. |
|  |  |  | companies) and, In particular, where companies are |  |  |
|  |  |  | required to provide ownership details, which types of |  |  |
|  |  |  | companies are covered? |  |  |
|  |  | d) To whom is the information to be disclosed? |  | According to Art. 21 (2) AktG, as soon as a company owns a controlling interest (which |
|  |  |  |  |  | is the majority of the shares, as defined in Art 16(1)) in another company, it shall |
|  |  |  |  |  | notify the company in which there is a majority interest in writing immediately. |
|  |  |  |  |  | Under § 21 section 1 of the German Securities Trading Act (WpHG), any person, |
|  |  |  |  |  | through acquisition, sale or any other means, whose total voting rights in an issuer - |
|  |  |  |  |  | the country of origin of which is the Federal Republic of Germany - reaches, exceeds |
|  |  |  |  |  | or falls below 3 percent, 5 percent, 10 percent, 15 percent, 20 percent 25 percent, 30 |
|  |  |  |  |  | percent, 50 percent or 75 percent, shall inform the issuer immediately. Notice must be |
|  |  |  |  |  | given within four trading days, at the latest. Pursuant to § 26 WpHG the issuer must |
|  |  |  |  |  | immediately, at the latest three trading days after receipt, publish these notifications |
|  |  |  |  |  | and inform the Federal Financial Supervisory Authority (BaFin)19. |
|  |  |  |  |  | The annual accounts must be submitted to the Commercial Register and the Federal |
|  |  |  |  |  | Gazette (see 4.2(a) below). |
|  |  |  |  |  | *These provisions have no real meaning for the state media supervision. The special* |
|  |  |  |  |  | *provisions in the RStV go far beyond that, because Article 29 RStV states that* |
|  |  |  |  |  | *notification must be before planned changes are implemented.* |
|  |  |  |  |  |  |
|  |  | e) | When is the information to be notified? |  | When there is a stock transfer – see 3.1(d) above. |
|  |  |  |  |  | 13 |

**Name of Country:** Germany

**Source of information:** Bernd Malzanini, Managing director, KEK

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  |  |  | Annually, in the case of annual accounts. |  |
|  | f) What information must be disclosed? |  | According to Art. 21 of the WPHG in conjunction with Art. 17 (1) of the **“**Regulation on |  |
|  |  |  | the notification, disclosure and publication duty and the duty to maintain directories |  |
|  |  |  | of insider trading under the Securities Act20 (WpAIV), the information to be disclosed |  |
|  |  |  | includes the name, address, seat and country of the shareholder, relevant threshold, |  |
|  |  |  | exact size of shareholding, date of transaction. It is not explicitly required that |  |
|  |  |  | information on trustee relationships (a case of beneficial ownership) or existing family |  |
|  |  |  | relationships be disclosed so there is no guarantee of obtaining such information. |  |
|  | g) Do these obligations enable the public to obtain |  | It is unlikely that a member of the public without some technical understanding would |  |
|  | sufficient information to establish which legal or natural |  | be able to interpret the materials sufficiently to work out who owns the media. |  |
|  | persons effectively own or ultimately control media | N |  |  |
|  | organisations? | In addition, because of the various thresholds of the Companies Act and the Securities |  |
|  |  |  |
|  |  |  | Trading Act, it might be possible to disguise the true ownership. |  |
|  | If NO, please explain. |  |  |  |
|  |  |  |  |  |
| 3.2 Effectiveness | a) Where is the information recorded? |  | According to Art. 160 (1) No. 8 of the Company Law21, the annual accounts and report |  |
|  |  |  | should be submitted to the Commercial Register 22 and an announcement made in the |  |
|  |  |  | Federal (electronic) Gazette23 according to Art. 325 of the German Commercial Code24 |  |
|  |  |  | (which sets out the procedure for the required disclosure). Additionally the |  |
|  |  |  | information must be put on the website of the Commercial Register25 (Art. 8b HGB). |  |
|  |  |  | According to Art. 26 (1) of the WPHG the information is also “to be published”. There |  |
|  |  |  | are a broad range of possibilities as to what “publish” might mean according to Art. |  |
|  |  |  | 21(1) of Transparency Directive 2004/109/EC – ranging from newsagencies, to |  |
|  |  |  | websites, or in the print media etc. Following is an example of web publication. |  |
|  |  |  | http://www.centrotec.de/investor-relations/aktie/veroeffentl-26-abs-1-wphg.html. |  |
|  | b) Are there any sanctions for non-reporting? | Y | According to Art. 39 (2) WPHG an administrative offence can be penalised by a fine of |  |
|  |  |  | up to €200,000. Additionally Art. 28 WPHG stipulates the loss of voting rights for a |  |
|  | If YES, what form do they take and who applies them? |  | shareholder that has not disclosed information until all information is disclosed. |  |
|  | c) Are any applicable sanctions for violations applied in |  | Unknown |  |
|  | practice? |  |  |  |
|  | If NO, why not? |  |  |  |
|  | d) Can the public obtain access to this information? | Y | Under Article 8(b) of the HGB, the information must be available on the Company |  |
|  |  |  | Register website. |  |
|  | If YES, how? |  |  |  |
|  |  |  | 14 |  |
| **Name of Country:** Germany |  |  |  |
| **Source of information:** Bernd Malzanini, Managing director, KEK |  |  |  |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | e) Are there any practical conditions or charges that could |  | It is free to register to use the Company Register portal. No fees are charged for |  |
|  | serve to restrict public access? | N | viewing company data and using the announcements in the register. For obtaining |  |
|  |  | hard copy printouts, the fees range from free to €4.50 per document, depending on |  |
|  |  |  |  |
|  | If YES, please specify, |  | what the document is.26 |  |
|  | f) Would a reasonable, nontechnical individual be able |  | The information is not easy to understand and because of the various thresholds of |  |
|  | to understand who effectively owns and ultimately |  | the Companies Act and the Securities Trading Act, it might be possible to disguise the |  |
|  | controls the media organisations using the | N | true ownership. |  |
|  | information indicated in this section? |  |  |
|  |  |  |  |
|  |  |  | Also it only covers those companies which are trading on the stock exchange and not |  |
|  | If NO, why not? |  | those that do not. |  |
|  | g) Have the public made use of this facility to establish |  | Unknown |  |
|  | media ownership information in practice? |  |  |  |
|  | If NO, or limited, use has been made, why not? |  |  |  |
| **ENDNOTES** |  |  |  |

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**Name of Country:** Germany

**Source of information:** Bernd Malzanini, Managing director, KEK

8 In German - *Handelsgesetzbuch*

9 Fiscal Code of Germany in the version promulgated on 1 October 2002 (Federal Law Gazette [*Bundesgesetzblatt*] I p. 3866; 2003 I p. 61), last amended by Article 9 of the Ordinance of 8 December 2010 (Federal Law Gazette I p. 1768). In German

*Abgabenordnung.*

1. See http://www.kek-online.de/Inhalte/programmliste\_2010.pdf ; see also TV-Senderdatenbank ( TV- services database, created by the KEK) http://www.die-medienanstalten.de/service/datenbanken/tv-senderdatenbank.html
2. Kommission zur Ermittlung der Konzentration im Medienbereich
3. In German - *Staatsvertrag für Rundfunk und Telemedien (Rundfunkstaatsvertrag - RStV),*
4. In German - *Länder*
5. Telemedia is a legal term for electronic information and communication services. In addition to the RStV of the states (Länder) Telemedia are regulated by the federal Telemedia Act (Telemediengesetz – TMG: http://www.gesetze-im-internet.de/tmg/BJNR017910007.html ) Telemedia are (almost) all available services on the internet, for example, web shops, online auction sites, search engines, webmail services, information services (for example, to weather, traffic updates), podcasts, chat rooms, dating communities and web portals. Even private websites and blogs are considered as Telemedia unless they are used exclusively for private or family purposes and has absolutely no effect on the market (see Article 5 (1) TMG). Further information on this can be found at http://www.sibeth.com/fileadmin/media/PDF\_Files/Newsletter/SIBETH\_Newsletter\_March09\_Eng.pdf (Page 9 ff.) An example of an “Impressum you’ll find on the end of this article, because it is considered as a “telemedium”.
6. In German - *Bundesanzeiger*
7. In German - *Handelsgesetzbuch*
8. In German – *Aktiengesetz*, http://www.gesetze-im-internet.de/aktg/
9. In German – *Wertpapierhandelsgesetz*, http://www.gesetze-im-internet.de/wphg
10. In German *- Bundesanstalt für Finanzdienstleistungsaufsicht*
11. In German - *Verordnung zur Konkretisierung von Anzeige-, Mitteilungs- und Veröffentlichungspflichten sowie der Pflicht zur* *Führung von Insiderverzeichnissen nach dem Wertpapierhandelsgesetz* -http://www.gesetze-im-internet.de/wpaiv/
12. In German - *Aktiengesetz*
13. In German - *Handelsregister*
14. In German - *Bundesanzeiger*
15. In German - *Handelsgesetzbuch*
16. In German - *Unternehmensregister*