Publication of consolidated measures in accordance with Article 3a(2) of Council Directive 89/552/EEC (1) on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities, as amended by Directive 97/36/EC of the European Parliament and of the Council (2)

(2002/C 189/02)

In accordance with Article 3a(2) of the Directive, the Commission shall publish at least once a year the consolidated list of the measures taken by the Member States. To date, the measures taken by the following Member States have been published (3): Italy (OJ C 277, 30.9.1999, p. 3, corrected by current publication), Germany (OJ C 277, 29.9.2000, p. 4), the United Kingdom (OJ C 328, 18.11.2000, p. 2) and Austria (OJ C 16, 19.1.2002).

ITALY (4)

CORRIGENDUM to 1999/C 277/03

Publication pursuant to Article 3a(2) of Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities, as amended by Directive 97/36/EC of the European Parliament and of the Council — ITALY

(2001/C 208/27)

The measures taken pursuant to Article 3a(1) of the Directive and notified to the Commission in accordance with the procedure laid down in Article 3a(2) by ITALY are set out in the following extracts from Decision No 8/1999 of the Communications Authority adopted on 9 March 1999 as amended by its Decision No 172/1999 of 28 July 1999:

Article 1

1. This Decision concerns television broadcasting of events considered of major importance for society.
2. An ‘event of major importance for society’ means an event of a sporting or non-sporting nature which satisfies at least two of the following four criteria:
   (a) the event and its outcome are of special and widespread interest in Italy, interesting persons other than those who usually watch this type of event on television;
   (b) the event enjoys widespread recognition by the general public, has particular cultural significance and strengthens the Italian cultural identity;
   (c) the event involves a national team in a specific sporting discipline in a major international tournament;
   (d) the event has traditionally been broadcast on free television and has enjoyed high viewing figures in Italy.

Article 2

1. The Authority has drawn up the following list of events considered to be of major importance for society which may not be transmitted by television broadcasters under Italian jurisdiction on an exclusive basis and in encoded form, in order to make it possible for a substantial proportion (more than 90%) of the Italian public to follow them on free television without incurring additional costs for the acquisition of technical equipment:
   (a) the summer and winter Olympic games;
   (b) the football World Cup final and all matches involving the Italian national team;
   (c) the European football Championship final and all matches involving the Italian national team;
   (d) all matches involving the Italian national football team, at home and away, in official competitions;
   (e) the final and the semi-finals of the Champions’ League and the UEFA Cup where an Italian team is involved;
   (f) the Tour of Italy (Giro d’Italia) cycling competition;
   (g) the Formula One Italian Grand Prix;
   (h) the San Remo Italian music festival.
2. The events referred to in paragraph 1(b) and (c) above are to be given full live coverage. For the other events, the television broadcasters are free to decide on the arrangements for unencoded transmission.

(4) Only the text in the Italian language is authentic.
Publication pursuant to Article 3a(2) of Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities, as amended by Directive 97/36/EC of the European Parliament and of the Council

The measures taken pursuant to Article 3a(1) of the Directive and notified to the Commission in accordance with the procedure laid down in Article 3a(2) by the FEDERAL REPUBLIC OF GERMANY are set out in the following extracts from Article 5a of the Fourth Interstate Treaty on Broadcasting

**Article 5a**

**Broadcasting major events**

1. In the Federal Republic of Germany events of major importance for society (major events) may be broadcast in encrypted form on pay-TV only where the broadcaster or a third party makes it possible, under appropriate conditions, for the event to be broadcast on a free and generally accessible television channel at the same time or, where individual events running in parallel make this impossible, slightly deferred. Should the parties fail to reach agreement on appropriate conditions, they shall agree to accept arbitration under section 1025 et seq. of the Code of Civil Procedure in due time before the event takes place. Should they be unable to agree on an arbitration procedure for reasons which must be justified by the television broadcaster or the third party, the broadcast under paragraph 1 shall be viewed as not made possible under appropriate conditions. Only channels which can be received by more than two-thirds of all households shall be deemed to be generally accessible.

2. For the purposes of these provisions major events are:

1. the summer and winter Olympic games;

2. all European Championship and World Cup matches involving the German national football team, as well as the opening match, the semi-finals and finals, irrespective of whether the German team is involved;

3. the semi-finals and final of the German FA Cup;

4. the German national football team’s home and away matches;

5. the final of any European football club competition (Champions League, UEFA Cup) involving a German Club.

Where major events consist of more than one individual event, each event shall be considered to be a major event. Inclusion or exclusion of events in these provisions is possible only on the basis of an agreement concluded by all Länder.
United Kingdom

Publication pursuant to Article 3a(2) of Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities, as amended by Directive 97/36/EC of the European Parliament and of the Council — United Kingdom

(2000/C 328/02)

The measures taken pursuant to Article 3a(1) of the Directive and notified to the Commission in accordance with the procedure laid down in Article 3a(2) by the United Kingdom are set out in the following extracts:

[Extracts from Part IV of the Broadcasting Act 1996]

**Broadcasting Act 1996**

**Chapter 55**

**Part IV**

**Sporting and other events of national interest**

Listed events:

97. (1) For the purposes of this Part, a listed event is a sporting or other event of national interest which is for the time being included in a list drawn up by the Secretary of State for the purposes of this Part.

(2) The Secretary of State shall not at any time draw up, revise or cease to maintain such a list as is mentioned in subsection 1 unless he has first consulted:

(a) the BBC;

(b) the Welsh Authority;

(c) the Commission; and

(d) in relation to a relevant event, the person from whom the rights to televise that event may be acquired;

and for the purposes of this subsection a relevant event is a sporting or other event of national interest which the Secretary of State proposes to include in, or omit from, the list.

(3) As soon as he has drawn up or revised such a list as is mentioned in subsection 1, the Secretary of State shall publish the list in such manner as he considers appropriate for bringing it to the attention of:

(a) the persons mentioned in subsection 2; and

(b) every person who is the holder of a licence granted by the Commission under Part I of the 1990 Act or a digital programme licence granted by them under Part I of this Act.

(4) In this section ‘national interest’ includes interest within England, Scotland, Wales or Northern Ireland.

(5) The addition of any relevant event to such a list as is mentioned in subsection 1 shall not affect:

(a) the validity of any contract entered into before the date on which the Secretary of State consulted the persons mentioned in subsection 2 in relation to the proposed addition; or

(b) the exercise of any rights acquired under such a contract.

(\(^{(*)}\) Only the text in the English language is authentic.)
(6) The list drawn up by the Secretary of State for the purposes of section 182 of the 1990 Act, as that list is in force immediately before the commencement of this section, shall be taken to have been drawn up for the purposes of this Part.

Categories of service:

98. (1) For the purposes of this Part, television programme services and EEA satellite services shall be divided into two categories as follows:

(a) such of the services specified in subsection 2 as are provided without any charge being made for the reception of programmes included in the service;

(b) all television programme services not for the time being falling within paragraph (a).

(2) The services referred to in subsection 1(a) are:

(a) regional and national Channel 3 services;

(b) Channel 4; and

(c) the television broadcasting services provided by the BBC.

(3) The Secretary of State may by order amend subsection 2 so as to remove any service from, or add any service to, the services specified in it.

(4) An order under subsection 3 shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Restriction on televising of listed event:

101. (1) A person providing a service falling within either of the categories set out in subsection 1 of section 98 ('the first service') for reception in the United Kingdom or in any area of the United Kingdom shall not, without the previous consent of the Commission, include in that service live coverage of the whole or any part of a listed event unless:

(a) another person, who is providing a service falling within the other category set out in that subsection ('the second service'), has acquired the right to include in the second service live coverage of the whole of the event or of that part of the event; and

(b) the area for which the second service is provided consists of or includes the whole, or substantially the whole, of the area for which the first service is provided.

(2) The Commission may revoke any consent given by them under subsection 1.

(3) Failure to comply with subsection 1 shall not affect the validity of any contract.

(4) Subsection 1 shall not have effect where the television programme providing the first service is exercising rights acquired before the commencement of this section.

Power of Commission to impose penalty:

102. (1) If the Commission:

(a) is satisfied that the holder of a licence under Part I of the 1990 Act or a digital programme licence under Part I of this Act has failed to comply with subsection 1 of section 101; and

(b) is not satisfied that in all the circumstances it would be unreasonable to expect him to have complied with that subsection;
they may require him to pay, within a specified period, a specified financial penalty to the Commission.

(2) If the Commission are satisfied that, in connection with an application for consent under subsection 1 of section 101, the holder of a licence under Part I of the 1990 Act or a digital programme licence under Part I of this Act has:
(a) provided them with information which was false in a material particular; or
(b) withheld any material information with the intention of causing the Commission to be misled;
they may require him to pay, within a specified period, a specified financial penalty to the Commission.

(3) The amount of any financial penalty imposed on any person under subsections 1 or 2 shall not exceed the amount produced by multiplying the relevant consideration by the prescribed multiplier.

(4) In subsection 3:
(a) ‘the relevant consideration’ means an amount determined by the Commission as representing so much of any consideration paid by the person on whom the penalty is being imposed as is attributable to the acquisition of the rights to televise the event in question; and
(b) ‘the prescribed multiplier’ means such number as the Secretary of State may from time to time by order prescribe.

(5) An order under subsection 4(b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(6) Where the Commission receive any amount payable to them by virtue of subsections 1 or 2, that amount shall not form part of the revenues of the Commission but shall be paid into the Consolidated Fund.

(7) Any amount payable by any person to the Commission by virtue of subsections 1 or 2 shall be recoverable by them as a debt due to them from that person.

Report to Secretary of State:

103. If the Commission:
(a) is satisfied that a broadcasting body has failed to comply with subsection 1 of section 101; and
(b) is not satisfied that in all the circumstances it would be unreasonable to expect the body to have complied with that subsection;
they shall make a report on the matter to the Secretary of State.

(2) If the Commission are satisfied that, in connection with an application for consent under subsection 1 of section 101, a broadcasting body has:
(a) provided them with information which was false in a material particular; or
(b) withheld any material information with the intention of causing the Commission to be misled;
they shall make a report on the matter to the Secretary of State.

(3) In this section ‘broadcasting body’ means the BBC or the Welsh Authority.
Code of guidance: 104. (1) The Commission shall draw up, and may from time to time review, a code:

(a) specifying the circumstances in which the televising of listed events generally, or of a particular listed event, is, or is not, to be treated as live for the purposes of this Part; and

(b) giving guidance as to the matters which they will take into account in determining:

(i) whether to give or revoke their consent under section 101(1), or

(ii) for the purposes of section 102(1) or 103(1), whether in all the circumstances it is unreasonable to expect a television programme provider to comply with section 101(1).

(2) In exercising their powers under this Part, the Commission shall have regard to the provisions of the code.

(3) Before drawing up or revising the code the Commission shall consult such persons as appear to the Commission to be appropriate.

(4) As soon as the Commission have drawn up or revised such a code, the Commission shall publish the code in such manner as they consider appropriate for bringing it to the attention of:

(a) the BBC;

(b) the Welsh Authority;

(c) every person from whom the rights to televise a listed event may be acquired; and

(d) every person who is the holder of a licence granted by the Commission under Part I of the 1990 Act or a digital programme licence granted by them under Part I of this Act.

Interpretation of Part IV and supplementary provisions: 105. (1) In this Part (unless the context otherwise requires):

'Channel 4' has the same meaning as in Part I of the 1990 Act;

'the Commission' means the Independent Television Commission;

'listed event' has the meaning given by section 97(1);

'live' shall be construed in accordance with the code drawn up under section 104;

'national Channel 3 service' and 'regional Channel 3 service' have the same meaning as in Part I of the 1990 Act;

'television broadcasting service' has the same meaning as in Part I of the 1990 Act;

'television programme provider' has the meaning given by section 99(2);

'television programme service' has the same meaning as in Part I of the 1990 Act.

(2) Section 182 of the 1990 Act (certain events not to be shown on pay-per-view terms) shall cease to have effect.
[Extracts from the Television Broadcasting Regulations 2000]

STATUTORY INSTRUMENTS

2000 No 54

BROADCASTING

The Television Broadcasting Regulations 2000

Made: 14 January 2000

Laid before Parliament: 14 January 2000

Coming into force: 19 January 2000

Whereas the Secretary of State is a Minister designated (8) for the purposes of section 2(2) of the European Communities Act 1972 (9) with regard to measures relating to television broadcasting:

Now, therefore, the Secretary of State, in exercise of the powers conferred on him by section 2(2) of the European Communities Act 1972 and all other powers enabling him in that behalf, hereby makes the following Regulations:

Citation and commencement

1. (1) These Regulations may be cited as the Television Broadcasting Regulations 2000.

(2) These Regulations shall come into force on 19 January 2000.

[.. .]

Amendments of Broadcasting Act 1996

3. Part IV of the Broadcasting Act 1996 (10) (sporting and other events of national interest) is amended in accordance with the Schedule to these Regulations.

[.. .] 14 January 2000

Chris Smith

Secretary of State for Culture, Media and Sport

(8) S.I. 1997/1174.
(9) 1972 c. 68; by virtue of the amendment of section 1(2) of the European Communities Act by section 1 of the European Economic Area Act 1993 (c. 51) regulations may be made under section 2(2) of the European Communities Act to implement obligations of the United Kingdom created by or arising under the Agreement on the European Economic Area signed at Oporto on 2 May 1992 (Cm 2073) and the Protocol adjusting that Agreement signed at Brussels on 17 March 1993 (Cm 2183).
(10) 1996 c. 55.
AMENDMENTS OF BROADCASTING ACT 1996: SPORTING AND OTHER EVENTS OF NATIONAL INTEREST

1. For section 98 there is substituted:

Categories of service: 98. (1) For the purposes of this Part, television programme services and EEA satellite services shall be divided into two categories as follows:

(a) those television programme services and EEA satellite services which for the time being satisfy the qualifying conditions; and

(b) all other television programme services and EEA satellite services.

(2) In this section, 'the qualifying conditions', in relation to a service, means the conditions:

(a) that the service is provided without any consideration being required for reception of the service; and

(b) that the service is received by at least 95 % of the population of the United Kingdom.

(3) There shall be disregarded for the purposes of subsection 2(a) any fee payable in respect of a television licence, as defined by section 1(7) of the Wireless Telegraphy Act 1949.

(4) The condition in subsection 2(b):

(a) is to be taken to be satisfied in relation to a regional Channel 3 service if it is satisfied in relation to Channel 3 as a whole; and

(b) is to be taken to be satisfied in relation to Channel 4 if it is satisfied in relation to Channel 4 and S4C taken together.

(5) The Commission shall from time to time publish a list of the television programme services and EEA satellite services which appear to them to satisfy the qualifying conditions.

(6) In this section, ‘EEA satellite service’ means any service which:

(a) consists in the transmission for general reception of television programmes by satellite; and

(b) is provided by a person who for the purposes of Council Directive 89/552/EEC is under the jurisdiction of an EEA State other than the United Kingdom.

3. In section 101 (restriction on televising of listed event), in subsection (1), for ‘person’, in the first place where it occurs, there is substituted ‘television programme provider’.
9. In section 105(1) (interpretation of Part IV):

(a) after the definition of 'the Commission' there is inserted: 'designated event, in relation to an EEA State other than the United Kingdom, has the meaning given by section 101A';

(b) in the definition of 'live', before 'shall' there is inserted 'in relation to the televising of a listed event'; and

(c) after the definition of 'national Channel 3 service' and 'regional Channel 3 service' there is inserted: 'S4C has the same meaning as in Part I of the 1990 Act'.

[Extracts from the ITC Code on Sports and other Listed Events, revised January 2000]

CODE ON SPORTS AND OTHER LISTED EVENTS

Foreword

1. The Broadcasting Act 1996, (the 'Act') as amended by the Television Broadcasting Regulations 2000 (the 'Regulations'), requires the ITC to draw up, and from time to time review, a code giving guidance on certain matters relating to the televising of sports and other events of national interest which have been listed by the Secretary of State for Culture Media and Sport. This Code has been produced by the ITC, after consultation with broadcasters, sports bodies, the holders of sports rights and other interested parties, for the purpose of fulfilling this statutory duty, as defined under section 104 of the Act. [. . .]

2. The Act restricts the acquisition by television programme providers of exclusive rights to the whole or any part of live television coverage of listed events and the broadcasting on an exclusive basis of such coverage without the previous consent of the ITC (see Part IV of the Act). Under the Act the ITC has powers to impose a financial penalty on its licensees if the restrictions on broadcasting live coverage of listed events have not been observed, if the ITC has been given false information or if material information has been withheld. In the case of the BBC and S4C the ITC must report the matter to the Secretary of State. The ITC will have regard to the provisions of the Code in exercising these powers.

3. 'Listed events' are drawn up by the Secretary of State in accordance with the Act, and the current list is at Appendix 1. The Secretary of State may add events to and delete events from the list at any time, but only after consultation with the BBC, the Welsh Authority, the ITC and the holder of the rights for the event in question. In June 1998 the Secretary of State extended the list to include Group B events on the understanding that they would be treated differently from Group A events. Group A events are those events which may not be covered live on an exclusive basis unless certain criteria are met. The criteria and matters to be taken into account by the ITC are set out at paragraphs 12-16. Group B events are those events that may not be broadcast live on an exclusive basis unless adequate provision has been made for secondary coverage. The minimum standard of secondary coverage the ITC will regard as adequate provision is set out at paragraphs 17 and 18.

[. . .]

General provision and background

6. For the purpose of the live broadcasting of listed events the Act defines two categories of television programme services: those television programme services and EEA satellite services which for the time being satisfy the qualifying conditions ('the first category') and all other television programme services and EEA satellite services ('the second category'). The qualifying conditions are defined as (a) that the service is provided without any consideration being required for reception of the service and (b) that the service is received by at least 95 % of the population of the United Kingdom. Television programme services and EEA satellite services which fall within the first category will appear in a list published from time to time by the ITC (see Appendix 2). These requirements are set out in the Act as amended by the Television Broadcasting Regulations 2000. Any contract for televising live coverage of a listed event which is entered into by a broadcaster must state that the rights are available for showing the event on a service falling within only one of the two categories, i.e. separate contracts must exist for each category. A broadcaster providing a service in either category ('the first service') is prohibited from showing exclusively live coverage of the whole or any part of a Group A event without the previous consent of the Commission unless a broadcaster providing a service in the other category ('the second service') has acquired the right to show live coverage of the event or the same part of the event. The area served by the second service must consist of or include the whole, or substantially the whole, of the area served by the first service. The first and second services may be provided by licensees in the same ownership, but between them they must include a broadcaster in each of the two categories described above.
7. The restrictions apply only to rights acquired either after the commencement of section 101 of the 1996 Act, i.e. 1 November 1996 or after the Secretary of State began to consult rights holders about changes to the list i.e. 25 November 1997, as shown in Appendix 1.

8. An event may be listed because it is of ‘national’ interest within England, Scotland, Wales or Northern Ireland separately. This is the basis on which the Scottish FA Cup Final, for example, has been listed. The Act allows for those events to be shown only in the relevant part of the UK in which there is likely to be most viewer interest. The reference to Channel 3 in Appendix 2, therefore, means individual or groups of regional Channel 3 services, or Channel 3 as a whole.

9. The Act is concerned with providing an opportunity for live coverage to be made available. It is important to emphasise that the Act does not require or guarantee live coverage of listed events, including coverage on Channel 3, Channel 4 and the BBC. Nor does the Act prohibit exclusive live coverage of listed events on these or other services subject to the ITC being satisfied that certain criteria have been met (see paragraphs 12-18).

10. The specific guidance which the ITC is required to give is set out below. The ITC will keep this guidance under review and may amend it in the light of experience.

Definition of ‘live’

11. Section 104 of the Act requires the ITC to specify the circumstances in which the coverage of listed events generally, or of a particular listed event, is, or is not, to be treated as live. In considering this matter the ITC has taken the view that the interests of viewers lie in allowing them to participate in the event as it happens, as far as possible. This suggests that live television coverage of most sports events, including those taking place in different time zones, should be defined as coverage which is simultaneous with the event (i.e. as the event is happening). However, given the different nature and length of events, no single definition is possible. The following interpretation should allow for necessary flexibility:

— the restrictions on live coverage will apply while the event concerned is in progress,

— if the event involves separate games or matches, the restrictions will apply while each game or match is in progress,

— in the case of a single event which is scheduled to last over several days, the restrictions will apply to each day’s play, while it is in progress,

— in the case of an event which consists of defined separate parts which overlap in time (e.g. the Olympic Games or the FIFA World Cup Finals) and cannot therefore be televised simultaneously in full, the restrictions will apply to each match or competition as if it was a single event.

Matters to be taken into account in giving or revoking consent for exclusive coverage

12. Under section 104(1)(b) of the Act the ITC is required to provide guidance as to the matters it will take into account in determining whether to grant its consent to a broadcaster providing a service in one category (the first service) to provide exclusive live coverage of an event (or part of an event) where no broadcaster providing a service in the other category (the second service) has acquired the same rights, or where the area for which the second service is to be provided does not consist of or include the whole, or substantially the whole, of the area for which the first service is provided.

13. In deciding whether to give its consent it may be sufficient for the ITC to establish that the availability of the rights was generally known and no broadcaster providing a service in the other category had expressed an interest in their acquisition to the rights holder, or had not bid for the rights. However, the ITC will wish to be satisfied that broadcasters have had a genuine opportunity to acquire the rights on fair and reasonable terms and, in reaching a view, will take account of some or all of the following criteria:

— any invitation to express interest, whether in the form of public advertisement or closed tender, in the acquisition of the rights must have been communicated openly and simultaneously to broadcasters providing services in both categories,

— at the beginning of any negotiation the documentation and/or marketing literature must set out in all material respects the process for negotiating and acquiring the rights and all material terms and conditions, including what rights were available,

— if the rights to the listed event were included in a package of rights, the package must not have been more attractive to broadcasters providing services in one of the two categories. Preferably, the rights should be capable of being purchased independently of other rights, e.g., to highlights, delayed transmissions, other events,

— the conditions or costs attached to the acquisition of the rights (for example, production costs) must have been clearly stated and must not be preferential to one category of service,

— the price sought for the rights must have been fair, reasonable and non-discriminatory as between the two categories of programme service. What is a fair price will depend upon the rights being offered and the value of those rights to broadcasters. A wide range of prices is likely to be regarded as fair but when required to make its own judgement on the matter the ITC will have regard to, inter alia:
17. For those events listed in Group B in Appendix 1, the ITC will give its consent to exclusive live coverage of an event by a broadcaster providing a service in one category (the first service) if adequate provision has been made for secondary coverage by a broadcaster providing a service in the other category (the second service). The minimum which the ITC will consider to be adequate is where the second service has acquired rights for the provision of edited highlights or delayed coverage amounting to at least 10% of the scheduled duration of the event (or the play in the event taking place on any day), subject to a minimum of 30 minutes for an event (or the play in the event on any day) lasting an hour or more, whichever is the greater. For these purposes, where an event has a number of different components taking place concurrently the scheduled duration of the event is defined as the time elapsed between the scheduled beginning of the first component of the event taking place on any day and the scheduled finish of the last component of the event on that day. The second service must have editorial control over the content and scheduling of the edited highlights or delayed coverage except that a restriction may be imposed that the second service shall not begin broadcasting the edited highlights or delayed coverage until a period has elapsed following the scheduled conclusion of the event (or the play in the event on any day). The maximum period which may be set is as follows:

<table>
<thead>
<tr>
<th>For an event scheduled to finish</th>
<th>Maximum delay</th>
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<tbody>
<tr>
<td>After midnight and up to 8 am</td>
<td>Edited highlights or delayed coverage to start not later than 10 am</td>
</tr>
<tr>
<td>Between 8 am and 8.30 pm</td>
<td>Up to 2 hours</td>
</tr>
<tr>
<td>Between 8.30 pm and 10 pm</td>
<td>Edited highlights or delayed coverage to start not later than 10.30 pm</td>
</tr>
<tr>
<td>Between 10 pm and midnight</td>
<td>Up to 30 minutes</td>
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</tbody>
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18. In addition to the above, the right to provide live radio commentary on the event must have been acquired by a radio station with national coverage or an organisation providing a sports service to radio stations which form a national (or near national) network.

19. The situation may arise where a second service is unable or unwilling to provide adequate secondary coverage or any secondary coverage at all. The ITC will then consider whether to give its consent to exclusive live coverage without secondary coverage and the same or similar criteria as set out in paragraphs 12-16 will apply.

**Circumstances in which sanctions might not be imposed**

20. Section 104 also requires the ITC to give guidance on the matters which it will take into account in deciding whether it is unreasonable to expect a television programme provider to comply with the restrictions on broadcasting live coverage of listed events and therefore whether sanctions should be imposed if the restrictions are not observed. Given the long lead times which are generally available for offering, selling and acquiring the rights, the ITC believes that there are very few circumstances in which it would be reasonable for a broadcaster to proceed with exclusive coverage without the ITC’s consent. A broadcaster who proceeds to broadcast a listed event live without the ITC’s consent and where circumspect in the spirit of the Act. In determining what is reasonable, the ITC will consider the following criteria as set out in paragraphs 12-16 will apply.

- previous fees for the event or similar events,
- time of day for live coverage of the event,
- the revenue or audience potential associated with the live transmission of the event (e.g., the opportunity to sell advertising and sponsorship; the prospects for subscription income),
- the period for which rights are offered, and
- competition in the market place.

15. The ITC’s consent is also required where the area for which the service is to be provided does not consist of or include the whole, or substantially the whole, of the area for which the other service is to be provided. In considering whether to give its consent the ITC will take account of the interests of the viewers in the different areas and the transmission coverage areas of the different broadcasters.

16. Consent will normally be given for the full period for which rights are acquired in recognition of the fact that the price paid will, inter alia, reflect the duration of the rights. However, the ITC will revoke its consent if the broadcaster to whom the consent has been given requests it, or if the consent has been given on the basis of false or misleading information. Additionally, the ITC will consider revoking its consent if it appears that rights have been acquired for an extended period in order to circumvent the spirit of the Act. In determining what is an extended period the ITC will have regard to precedents for this and similar events, including the periods for which rights are granted to non-UK broadcasters for overseas transmissions.

14. A genuine opportunity to acquire the rights also requires that broadcasters are given a reasonable time in which to do so. What constitutes a reasonable time will depend upon the circumstances of each case, including the complexity of the negotiations and the production and transmission of the programme surrounding the event, and the proximity of the event to the date on which the rights are offered. The time allowed should give all parties a realistic opportunity to negotiate and reach agreement, but should not be unduly protracted, thereby preventing or restricting broadcasters from complying with this Code.
he had complied but that belief was based on false
information. In the latter situation, however, the ITC will
need to be convinced that the broadcaster had taken all
reasonable steps to satisfy himself that another broadcaster
providing a service in the other category had acquired the
rights.

Procedures for seeking consent

21. A request for the ITC's consent for exclusive live coverage
of a listed event must be made in writing to the ITC's
Secretary and be accompanied by full reasons and justifi-
cation for the request and all relevant supporting
information. Requests should be made well in advance
(wherever possible, no less than three months) of the
event taking place to give the ITC sufficient time to
consider whether consent should be given. As a first
step in considering the request the ITC will normally
issue a public notice inviting any broadcasters providing
a service in the other category from the one to which the
applicant belongs, or rights holders and other interested
parties to comment on the request. Depending on the
response and on the ITC's own investigations into the
matter, the applicant may be asked to supply additional
information in writing and/or to attend a meeting with
ITC staff.

22. Broadcasters should note that under the Act ITC consent is
needed for exclusive live coverage of Group B events even
if the minimum requirements set out in paragraphs 17 and
18 are met. However, in these circumstances consent will
be given automatically.

23. The ITC will respond as quickly as possible to any request.
The ITC will publish its decisions and its reasons, but, in
doing so, will have regard to the legitimate interest of the
parties in the protection of confidentiality.

[...]

January 2000.

Appendix 1

UK LISTED SPORTING EVENTS

GROUP A

The Olympic Games
The FIFA World Cup Finals Tournament
The FA Cup Final
The Scottish FA Cup Final (in Scotland)
The Grand National
The Derby
The Wimbledon Tennis Finals
The European Football Championship Finals Tournament
The Rugby League Challenge Cup Final (*)
The Rugby World Cup Final (*)

GROUP B

Cricket Test Matches played in England
Non-Finals play in the Wimbledon Tournament
All Other Matches in the Rugby World Cup Finals Tournament (*)
Six Nations Rugby Tournament Matches Involving Home Countries (*)
The Commonwealth Games (*)
The World Athletics Championship (*)
The Cricket World Cup — the Final, Semi-finals and Matches Involving Home Nations' Teams (*)
The Ryder Cup (*)
The Open Golf Championship (*)

NOTE: Restrictions apply to rights acquired after 1 October 1996 except for those events marked by an
asterisk where the relevant date is 25 November 1997.
Appendix 2

LIST OF SERVICES MEETING THE ‘QUALIFYING CONDITIONS’ AS SET OUT IN THE TELEVISION REGULATIONS 2000’

CHANNEL 3 (ITV)

CHANNEL 4

BBC 1

BBC 2

[Written answer from the Secretary of State to a Parliamentary Question of Hugh Bayley MP, 25 November 1997]

CULTURE, MEDIA AND SPORT

Sports broadcasting

Mr Bayley: To ask the Secretary of State for Culture, Media and Sport what progress he has made in his review of the sports events listed under Part IV of the Broadcasting Act 1996; and if he will make a statement. [17935]

Mr Chris Smith: I have consulted interested parties about the principles which should guide the listing process, and I am today publishing criteria which I hope will make the process more transparent. I have also appointed an advisory group of individuals with knowledge of the sporting, broadcasting and public policy issues involved. The members of the group are:

Lord Gordon of Strathblane (chairman)
Mr Alastair Burt
Mr Jack Charlton
Mr Steve Cram
Kate Hoey, MP
Mr Michael Parkinson
Mr Clive Sherling
Prof. David Wallace

I have invited this group to consider the issues against these published criteria:

(a) whether events or parts of events should be removed from the list; and

(b) whether other major sporting events should be added to the list.

As an initial step in the process of reviewing the list, the rights holders for the events currently listed and a number of other major sports events are being formally consulted, as the 1996 Act requires. The submissions received from them will be made available to the advisory group.

The rights holders for the following events are to be consulted:

Events currently listed:

The Olympic Games
The FIFA World Cup Finals
The FA Cup Final
The Scottish FA Cup Final (listed only in Scotland)
Cricket Test matches involving England
Wimbledon Tennis Tournament (finals weekend only currently listed)
The Grand National
The Derby
Other major sports events:

The Cricket World Cup
The Rugby World Cup
The European Football Championships
The Commonwealth Games
The World Athletics Championship
The British Grand Prix
The Six Nations Rugby Tournament
The Open (golf)
The Ryder Cup

The group may request that other events be included in the review and the rights holders for these events will be consulted.

The group will begin its work immediately and I expect it to make its recommendations to me before Easter. I shall then decide what changes, if any, to make to the current list.

[Extracts from a communication by the Ministry of Culture, Media and Sports, 25 November 1997]

[...] 3. The criteria to be used by the review group in their considerations are as follows:

Notes for guidance on the listing of major sports events

In considering whether to list an event, the Secretary of State is required to consult the broadcasting regulators and the holders of the rights in question. The following note sets out the factors which the Secretary of State will take into account in deciding whether to list an event.

In order to be eligible to be listed, an event must meet the following main criterion:

— the event has a special national resonance, not simply a significance to those who ordinarily follow the sport concerned; it is an event which serves to unite the nation; a shared point in the national calendar.

Such an event is likely to fall into one or both of the following categories:

— it is a pre-eminent national or international event in the sport,
— it involves the national team or national representatives in the sport concerned.

An event which satisfies the essential criterion is likely to be considered for listing, but listing of such an event is not automatic. It is more likely to be listed if it exhibits particular characteristics making listing an apt response, such as:

— it is likely to command a large television audience,
— it has a history of being broadcast live on free-to-air services.

In considering whether to list such an event, the Secretary of State will have regard to other factors affecting the likely costs and benefits to the sport concerned, to the broadcasting industry and to viewers, such as:

— whether it is practical to offer full live coverage on a general channel — extended events such as season-long championships involving many matches will not normally be listed in their entirety,
— the impact of listing in reducing the income or potential income of the sport, and the consequences of that reduction for its investment in increasing participation and/or improving levels of performance and/or in creating safe facilities,
— the likely impact of listing on the broadcasting market, including future investment in sports broadcasting, the level of competition and the position of public service broadcasters,

— whether there are arrangements to ensure that access to the event is available to all viewers by means of highlights, delayed coverage and/or radio commentary.

In considering events for listing, the Secretary of State will have regard to these other factors cumulatively. No single factor automatically commands listing as a response, nor does failure to meet an individual criterion disqualify an event from consideration.

4. The Secretary of State made his announcement in a written Answer to a Parliamentary Question from Hugh Bayley MP (City of York).

[Written answer from the Secretary of State to a Parliamentary Question of Gareth R. Thomas MP, 25 June 1998]

CULTURE, MEDIA AND SPORT

Listed sporting events

Mr Gareth R. Thomas: To ask the Secretary of State for Culture, Media and Sport if he will make a statement about the outcome of his review of major events listed under Part IV of the Broadcasting Act 1996. [47969]

Mr Chris Smith: My review of the list is now complete. I have conducted it in the light of the criteria which I published last year. I consulted widely on the criteria and the content of the list and I have carefully considered the many representations made to me. I have accepted the general principles of the report produced by the Advisory Group chaired by Lord Gordon of Strathblane.

With immediate effect, I am revising the list of events under Part IV of the Broadcasting Act 1996.

I am retaining the following events on the list, requiring live coverage to be made available to free-to-air terrestrial television broadcasters (in Category A as specified in the 1996 Act):

The Olympic Games
The FIFA World Cup Finals Tournament
The FA Cup Final
The Scottish FA Cup Final (in Scotland)
The Grand National
The Derby
The Wimbledon Tennis Finals.

I am adding the following events to the list on the same basis:

The European Football Championship Finals Tournament
The Rugby League Challenge Cup Final
The Rugby World Cup Final.

After careful consideration of the Advisory Group's recommendations, I have concluded that a number of the matches in the World Cup and European Championships football qualifying tournaments meet the criteria for listing. I believe that it is important that crucial ties in these competitions should be available to all viewers and therefore intend to seek Europe-wide arrangements for protecting free-to-air live broadcasts of crucial matches in these competitions.
I am also listing some further events on a different understanding. For these events, I have recommended to the Independent Television Commission that live coverage might be allowed to be shown exclusively by a Category B broadcaster (as specified in the 1996 Act), provided there are satisfactory arrangements for secondary coverage by a Category A broadcaster. I have asked the ITC to consider setting a minimum acceptable standard for such secondary coverage, to include some combination of delayed full coverage, highlights and live radio commentary.

The events I am listing on this understanding are:

- Cricket Test Matches played in England
- Non-Finals play in the Wimbledon Tournament
- All Other Matches in the Rugby World Cup Finals Tournament
- Six Nations Rugby Tournament Matches Involving Home Countries
- The Commonwealth Games
- The World Athletics Championship
- The Cricket World Cup — the Final, Semi-finals and Matches Involving Home Nations’ Teams
- The Ryder Cup
- The Open Golf Championship.

AUSTRIA (11)


(2002/C 16/08)

The measures taken by the REPUBLIC OF AUSTRIA pursuant to Article 3a(1) of the Directive and notified to the Commission in accordance with the procedure laid down in Article 3a(2) are set out in the following extracts from the Bundesgesetzblatt (Federal Law Gazette — I No 85/2001 and II No 305/2001):

85. Federal Act on the exercise of exclusive television broadcasting rights (Exclusive Television Rights Act (Fernseh-Exclusivrechtesgesetz — FERG)).

The Nationalrat has decreed the following:

Article 1

Scope

§ 1. (1) This Act shall, with the exception of § 5, apply only to television broadcasters covered by the Austrian Broadcasting Act (Österreichisches Rundfunkgesetz — ORF-Gesetz), published in the Federal Law Gazette (BGBl.) No 379/1984, or the Private Television Act (Privatfernsehgesetz), BGBl. I No 84/2001.

(2) § 3 shall not apply to television broadcasting rights acquired prior to the entry into force of this Act, unless the underlying agreements were extended after this Act took effect.

Events of substantial social interest

§ 2. An ‘event of substantial social interest’ shall for the purposes of this Act mean only those events referred to in an Ordinance issued under § 4 hereof.

Obligations of television broadcasters

§ 3. (1) Where a television broadcaster has acquired exclusive broadcasting rights for an event referred to in an Ordinance issued under § 4 hereof, it shall allow the event to be seen on a television channel, freely accessible in Austria, by at least 70 % of licence-payers and viewers exempted from the licence fee, whereby the arrangements set out in the Ordinance (whole or partial live or deferred coverage) shall be complied with. For the purposes of this subparagraph, coverage shall be deemed ‘deferred’ where no more than 24 hours elapse between the beginning of the event and the beginning of the broadcast.

(1) Only the text in the German language is authentic.
(2) For the purposes of this Act, ‘free-access television channels’ shall mean channels which viewers are able to receive without any additional or regular payments for the use of technical equipment for decoding. ‘Additional payments’ within the meaning of this subparagraph shall not include the licence fee (§ 2 of the Licence Fees Act (Rundfunkgebührengesetz — RGG)), the programme charge (§ 20 RFG), a cable network connection fee and the standing charge payable to a cable operator.

(3) The obligation referred to in subparagraph 1 shall be deemed to have been met if evidence is provided that the television broadcaster did all that could be reasonably expected under normal market conditions in an attempt to enable the event as referred to in subparagraph 1 to be viewed on free-access television channels. A television broadcaster may, in order to reach an amicable agreement about what constitutes such conditions, refer the matter to the Federal Communication Senate (Bundeskommunikationssenat). The latter shall involve all parties in efforts to reach a settlement and shall draw up a written record of the negotiations and their outcome.

(4) Where no agreement is reached, the Federal Communication Senate shall, at the request of one of the television broadcasters involved, decide whether the broadcaster concerned has adequately fulfilled its obligations under subparagraphs 1 and 3. In the event that the broadcaster has not adequately fulfilled these obligations, the Federal Communication Senate shall take the place of the broadcaster in determining what is meant by ‘normal market conditions’ as referred to in subparagraph 3. In particular, the Federal Communication Senate shall lay down an appropriate market price for the granting of broadcasting rights.

(5) A television broadcaster which has not adequately fulfilled its obligations under subparagraph 1 may be sued for damages in a civil action. The claim to damages shall also include compensation for loss of earnings.

(6) Action for damages shall only be permissible once a decision has been given as referred to in subparagraph 4. Without prejudice to subparagraph 7, the court and the parties to the proceedings referred to in subparagraph 4 shall be bound by a non-appealable ruling.

(7) Where, in proceedings referred to in subparagraph 6, the court considers that the decision is unlawful, it shall discontinue the proceedings and file a complaint with the Higher Administrative Court (Verwaltungsgerichtshof — VwGH) under Article 131 subparagraph 2 of the Federal Constitution (B-VG) requesting a declaratory ruling confirming the unlawfulness of the decision. When a ruling has been issued by the VwGH, the court shall continue its proceedings and rule on the dispute in keeping with the legal view of the VwGH.

**Ordinance on events of substantial social interest**

§ 4. (1) The Federal Government shall determine, by means of an Ordinance, what events referred to in § 2 are of substantial social interest in Austria. The Ordinance shall include only events which meet at least two of the following criteria:

1. the event already commands widespread attention in Austria, particularly as a result of reports in the media;

2. the event is an expression of Austria’s cultural, artistic or social identity;

3. the event is — particularly because of the involvement of top-level Austrian sportsmen/women — a sporting event of special national significance or commands widespread attention among viewers in Austria owing to its international importance;

4. the event has previously been broadcast on free-access television.

(2) The Ordinance shall stipulate whether an event shown on free-access television is to have live or deferred coverage, and whether the whole event or only parts of it are to be broadcast. An event shall be covered live and in full unless there are objective reasons (e.g. different time zones, various events/parts of the same event being organised simultaneously) why it is necessary and appropriate not to provide such coverage.

(3) Before the Ordinance is issued or amended, a cross-section of television broadcasters, holders of rights, the business sector, consumers, employees and persons from the fields of culture and sport shall be consulted. The draft Ordinance shall be published in the official gazette supplement (Amtsblatt) to the Wiener Zeitung, and provision shall be made for any person to comment on it within a period of eight weeks. The draft shall then be submitted to the European Commission. The Ordinance may only be issued if, within a period of three months following submission to the European Commission, the latter has not raised any objections to its being issued.

[. . .]

**Federal Communication Senate**

§ 6. Responsibility for the supervision of the provisions of this Act on points of law shall lie with the Federal Communication Senate in so far as such provisions relate to television broadcasters (§ 11 of the KommAustria Act (KOG), BGBl. I No 32/2001).

**Penalties and procedures**

§ 7. (1) Any person who infringes obligations under:

1. § 3 subparagraph (1); or

[. . .]
shall be deemed to have committed an administrative offence and be subject to a fine of EUR 36 000 to EUR 58 000 from the Federal Communication Senate.

(2) In the procedure provided for in subparagraph 1, the Federal Communication Senate shall conduct a public oral hearing.

(3) The Federal Communication Senate shall apply the 1991 General Administrative Procedures Act (Allgemeine Verwaltungsverfahrensgesetz 1991) (BGBl. No 51) and, in cases provided for in subparagraph 1, the 1991 Administrative Penalties Act (Verwaltungsstrafgesetz 1991) (BGBl. No 52).

(4) In the event of repeated and serious infringements of this Act by a television broadcaster (§ 2(1) of the Private Television Act, BGBl. I No 84/2001), the Federal Communication Senate shall initiate the procedure for withdrawing licences or prohibiting cable broadcasts as provided for in § 63 of the Private Television Act.

Enforcement

§ 9. (1) Enforcement of this Act shall be entrusted to the Federal Government with respect to § 4 subparagraphs 1, 2 and 3, final sentence, to the Minister for Justice with respect to § 3 subparagraphs 5-7, and to the Federal Chancellor with respect to all other provisions.

(2) The requirements of the first and second sentences of § 4(3) can be disregarded when an Ordinance is issued for the first time after this Federal Act comes into force, if, as part of the preparation of the notification procedure pursuant to Article 3a(1) and (2) of Directive 89/552/EEC as amended by Directive 97/36/EC, the parties concerned have already been consulted and the content of the Ordinance to be issued has been made known in an appropriate manner as part of this consultation.

Note on transposition


Entry into force

§ 11. This Act shall enter into force on 1 August 2001.

Klestil

Schüssel

305. Ordinance on events of substantial social interest

The following Order is made pursuant to § 4(1) of the Federal Act on the exercise of exclusive television broadcasting rights (Exclusive Television Rights Act (Fernseh-Exclusivrechtegesetz — FERG)), BGBl. I No 85/2001:

§ 1. Events of substantial social interest are:

1. the Summer or Winter Olympic Games;

2. FIFA World Cup football matches (for men) if the Austrian national team is involved, as well as the opening match, the semi-finals and the final of the football World Cup (for men);

3. European Championship football matches (for men) if the Austrian national team is involved, as well as the opening match, the semi-finals and the final of the football European Championship (for men);

4. the final of the Austrian Football Cup;

5. FIS World Alpine skiing championships;

6. World Nordic skiing championships;

7. the Vienna Philharmonic Orchestra's New Year concert;

8. the Vienna Opera Ball.

§ 2 (1) Television broadcasters who have obtained exclusive broadcasting rights for the events mentioned in § 1 must ensure that these events can be viewed live and in their entirety on free-access television.

(2) A recorded or partial version of the events in § 1 1), 5), 6) and 8) may be broadcast if:

1. parts of one of the events under § 1 or more than one of the events mentioned in § 1 take place at the same time; or

2. the event has, in the past, not been broadcast in its entirety because of its length.

§ 3. This Ordinance shall enter into force on 1 October 2001.

Schüssel — Riess-Passer — Ferrero-Waldner — Gehrler — Grasser — Strasser — Böhmldorfer — Molterer — Haupt — Forstinger — Bartenstein
<table>
<thead>
<tr>
<th>ITALY</th>
<th>GERMANY</th>
<th>UNITED KINGDOM</th>
<th>AUSTRIA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Olympic Games (summer and winter)</td>
<td>Olympic Games (summer and winter)</td>
<td>Group A (full live coverage protected)</td>
<td>The Summer or Winter Olympic Games</td>
</tr>
<tr>
<td>The football World Cup final and all matches involving the Italian</td>
<td>The European football Championship and the football World Cup: all</td>
<td>The FIFA World Cup Finals Tournament</td>
<td>FIFA World Cup football matches (for men) if the Austrian national team</td>
</tr>
<tr>
<td>national team</td>
<td>matches with German participation, opening game, semi-finals and final</td>
<td>The European Football Championship Finals Tournament</td>
<td>is involved, as well as the opening match, the semi-finals and the final</td>
</tr>
<tr>
<td>The European football Championship final and all matches involving</td>
<td>German football Cup (Vereinspokal des Deutschen Fußballbundes):</td>
<td>of the football World Cup (for men)</td>
<td>of the football European Championship (for men)</td>
</tr>
<tr>
<td>the Italian national team</td>
<td>semi-finals and final</td>
<td></td>
<td>The final of the Austrian Football Cup</td>
</tr>
<tr>
<td>All matches involving the Italian national football team, at home</td>
<td>Matches involving the German national football team: at home and away</td>
<td></td>
<td>FIS World Alpine skiing championships</td>
</tr>
<tr>
<td>and away, in official competitions</td>
<td>Champions League, UEFA-Cup: where a German team is involved</td>
<td></td>
<td>World Nordic skiing championships</td>
</tr>
<tr>
<td>The final and the semi-finals of the football's Champion's League and</td>
<td></td>
<td>The Vienna Philharmonic Orchestra's New Year concert</td>
<td>The Vienna Opera Ball</td>
</tr>
<tr>
<td>the UEFA Cup where an Italian team is involved</td>
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<tr>
<td>The Tour of Italy (Giro d'Italia) cycling competition</td>
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<tr>
<td>The Formula One Italian Grand Prix</td>
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<td></td>
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<tr>
<td>The San Remo Italian music festival</td>
<td></td>
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