

IRIS 2015-8/24

LU-Luxembourg: Regulator imposes warning on RTL for breach of commercial communication rules

On 1 July 2015, the Independent Audiovisual Authority of Luxembourg (Autorité luxembourgeoise indépendante de l'audiovisuel, ALIA) issued a decision concerning a radio programme transmitted in Luxembourg. The complaint was initiated by ALIA's Director and brought to the Board of Directors as the result of a self-referral procedure, provided for by Article 35sexies (3) of the Luxembourgish Law on Electronic Media (Loi des medias électroniques - LEM) (see IRIS 2011-2/31), which sets out that ALIA can on its own initiative investigate an alleged breach by any provider of an audio and audiovisual media service established in Luxembourg.

On 1 September 2014, the radio programme in question was broadcast by RTL Radio Lëtzebuerg, the license holder of which is CLT-UFA. Its title was taken from an annual fair "Schueberfouer" taking place in August. The programme of about ten minutes was aimed at promoting the Schueberfouer and the products sold and undertakings present at the fair, as well as the sponsors of the radio programme. It consisted of a mix of infomercials, quizzes and commercial messages, which were connected by the same background music. ALIA examined four issues which raised concerns under present Luxembourgish legislation, the main issue relating to one of the fundamental rules concerning commercial communications. The outcome of the decision may thus be applicable to audiovisual media services.

First, ALIA considered whether the programme had violated the rules concerning the separation of editorial content and commercial communications in programmes. In its decision, ALIA explicitly mentions Article 26 LEM, which defines the scope of application of that chapter of the law concerning rules which apply to audiovisual and sound services, and the Grand-Ducal regulation of 5 April 2001 setting the rules on advertising, sponsorship, teleshopping and self-promotion in television programmes (Règlement grand-ducal fixant les règles applicables en matière de publicité, de parrainage, de télé-achat et d'autoproduction dans les programmes de télévision), as last amended in 2010 (see IRIS 2008-7:Extra and IRIS 2011-4/28). The regulation is based on Article 28 LEM, which can be found in the same chapter of the legislation as Article 26 LEM. This provision is not expressly mentioned in ALIA's decision, but requires the passing of a regulation defining advertising placement and duration in television programmes. The provisions in the law and regulation stipulate that any inclusion of commercial communication must respect the integrity of the programme and require the separation of commercial and editorial content. After hearing the defendant, ALIA determined that a clear separation between commercial and editorial content was lacking, since the different elements of the programme "Schueberfouer" were connected by the same background music, giving it the appearance of a single programme constituting commercial communication. Additionally, the transition to other programmes was too fluid to allow the average listener to discern the commercial nature of the programme. This therefore constituted a breach of the law.

Second, ALIA examined whether the transmission of the programme violated the authorised time limits for commercial communication. For this commercial provider, which also offers some content under a public service mission, there are specific time limits laid down in an agreement concluded between the Luxembourg government and CLT-UFA - Convention on the Provision of a Public Service concerning radio and television in Luxembourgish (Convention portant sur la prestation du service public en matière de radio et de télévision en langue luxembourgeoise). According to the convention, commercial messages may not exceed 6 minutes per hour of broadcasting on a daily average, nor 8 minutes per fixed time slot calculated on a weekly average excluding Sundays. ALIA rejected the defendant's claim that only traditional commercial messages, nominally mentioning an enterprise or product, should be taken into account for calculating the total of aired commercial messages. In this respect, ALIA argued that the Audiovisual Media Services Directive, as well as the Grand-Ducal regulation on commercial communications, governs different forms of commercial communications. ALIA considered that the programme in its entirety pertained to the category of commercial communication. Since the duration of the programme amounted to 9 minutes, adding to this 50 seconds of commercial messages aired within the same clock hour, the authorised maximum of 8 minutes was exceeded.

The third and fourth grounds discussed by ALIA concerned the lack of transparency in informing listeners about the costs of text messages, whereby listeners could participate in games played during the programme and compliance with legislation on games of chance. Even though ALIA found that the presenters did not inform listeners about the actual costs incurred, it noted that it was not competent to assess these two issues which concern rules established in laws outside the scope of the authority.

ALIA thus sanctioned the violations concerning the principle of separation between commercial communications and editorial content and the hourly advertising limit. Since this was the provider's first infringement of this sort, and in view of the constructive proposals CLT-UFA had made to remedy the infringements, ALIA resorted only to

a warning pursuant to the catalogue of sanctions outlined in Article 35sexies (3) LEM, in addition to requesting compliance with the advertising rules.

• *Décision DEC022/2015-A001/2015 du 1er juillet 2015 du Conseil d'administration de l'Autorité luxembourgeoise indépendante de l'audiovisuel concernant une autosaisine à l'encontre du service de radio RTL Radio Lëtzebuerg* (Decision DEC022/2015-A001/2015 of 1 July 2015 of the Board of Directors of the Independent Audiovisual Authority of Luxembourg on its motion against the radio service RTL Radio Lëtzebuerg)

<http://merlin.obs.coe.int/redirect.php?id=17683>

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