

209. L-Onor. Joseph Brincat M.P. jipproponi:

Illi dan il-Parlament jgħaddi mill-istadji kollha u jagħmel liġi l-abbozz hawn anness.

01.03.85

A BILL

entitled

AN ACT to regulate ~~off-shore~~ ^{off-shore} broadcasting, ~~†~~

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same, as follows:-

1. This Act may be cited as the Off-shore Broadcasting Offences Act, 1985.

2. In this Act:-

"broadcast" means a broadcast by wireless telegraphy of sounds or ~~images~~ visual images intended for general reception (whether the sounds or images are actually received by any person or not), but does not include a broadcast consisting in a message or signal sent in connection with navigation or for the purpose of securing safety;

"offshore station" includes also any radio or television station ~~which~~ privately owned wherever situated, ^{outside Malta}

"ship" includes every description of vessel used in navigation.

3. Prohibition of broadcasting from ships and aircraft

(1) It shall not be lawful for a broadcast to be made from a ship or aircraft while it is in or over ~~the~~ ~~Malta~~ nor shall it be lawful for a broadcast to be made from a ship registered in ~~Malta~~

Malta or its territorial waters

~~the ship or aircraft is elsewhere than in or over the United Kingdom or external waters.~~ ^{its territorial waters}

Malta or

(2) If a broadcast is made from a ship in contravention of the foregoing subsection, the owner of the ship, the master of the ship and every person who operates, or participates in the operation of, the apparatus by means of which the broadcast is made shall be guilty of an offence; and if a broadcast is made from an aircraft in contravention of that subsection, the operator of the aircraft, the commander of the aircraft and every person who operates, or participates in the operation of, the apparatus by means of which the broadcast is made shall be guilty of an offence.

(3) A person who procures the making of a broadcast in contravention of subsection (1) above shall be guilty of an offence.

(4) In subsection (2) above--

(a) "master", in relation to a ship, includes any other person (except a pilot) having command or charge of the ship;

(b) "operator", in relation to an aircraft, means the person for the time being having the management of the aircraft.

† in terms of the European Convention Agreement For the Prevention of Broadcasts transmitted from Stations Outside National Territories, and making use of the option in Article 4 (a) thereof.

Short title

Interpretation

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4. Prohibition of broadcasting from marine structures

- (1) It shall not be lawful for a broadcast to be made from— *The territorial waters*
- (a) a structure in ~~external waters or in tidal waters in the United Kingdom~~, being a structure affixed to, or supported by, the bed of those waters and not being a ship; or
 - (b) any other object in such waters, being neither a structure affixed or supported as aforesaid nor a ship or aircraft;

and if a broadcast is made in contravention of the foregoing provision, every person who operates, or participates in the operation of, the apparatus by means of which the broadcast is made shall be guilty of an offence.

(2) A person who procures the making of a broadcast in contravention of the foregoing subsection shall be guilty of an offence.

5. Prohibition of acts connected with broadcasting from certain ships and aircraft, and from marine structures outside ~~United Kingdom~~ *Malta*

- (1) If a broadcast is made—
- (a) from a ship other than one registered in ~~the United Kingdom, the Isle of Man or any of the Channel Islands~~ *Malta* while the ship is on the high seas; or
 - (b) from an aircraft other than one so registered while the aircraft is on or over the high seas; or
 - (c) from a structure on the high seas, being a structure affixed to, or supported by, the bed of those seas and not being a ship; or
 - (d) from any object on those seas, being neither a structure affixed or supported as aforesaid nor a ship or aircraft;

any of ~~the persons mentioned in subsection (3) below~~ who operates, or participates in the operation of, the apparatus by means of which the broadcast is made shall be guilty of an offence.

(2) A person who procures a broadcast to be made as mentioned in the foregoing subsection shall be guilty of an offence.

6. Prohibition of acts relating to matter broadcast from ships, aircraft, etc.

(1) A person who does any of the acts mentioned in subsection (3) below, and, if any intent or circumstances is or are specified in relation to the act, does it with that intent or in those circumstances, shall be guilty of an offence if—

- (a) he does the act in ~~the United Kingdom or external waters or in a ship registered in the United Kingdom, the Isle of Man or any of the Channel Islands or an aircraft so registered while the ship or aircraft is elsewhere than in or over the United Kingdom or external waters;~~ *Malta* or
- (b) being a ~~person mentioned in section 3 (3) of this Act~~ *Maltese citizen* ~~he~~ *he* does the act on or over the high seas.

(2) A person who, in ~~the United Kingdom~~ *Malta*, procures another person to do, outside ~~the United Kingdom~~ *Malta*, anything which, if it had been done in ~~the United Kingdom~~ *Malta* by the last-mentioned person, would have constituted an offence under the foregoing subsection, shall be guilty of an offence.

(3) The acts, and, where relevant, the intent and circumstances, referred to in subsection (1) above are the following namely:—

- (a) supplying a cinematograph film or a record with intent that a broadcast of the film or, as the case may be, the recording embodied in the record may be made in contravention of section 1 (1) or 2 (1) of ~~this Act or as mentioned in section 3 (1) thereof~~ *Malta*

- (b) making a literary, dramatic or musical work with intent that a broadcast of the work may be made as aforesaid;
- (c) making an artistic work with intent that the work may be included in a television broadcast made as aforesaid;
- (d) participating in a broadcast made as aforesaid, being actually present as an announcer, as a performer or one of the performers concerned in an entertainment given, or as the deliverer of a speech;
- (e) advertising by means of a broadcast made as aforesaid or inviting another to advertise by means of a broadcast to be so made;
- (f) publishing the times or other details of any broadcasts which are to be so made, or (otherwise than by publishing such details) publishing an advertisement of matter calculated to promote, directly or indirectly, the interests of a business whose activities consist in or include the operation of a station from which broadcasts are or are to be so made.

(5) For the purposes of this section advertising by means of a broadcast shall be deemed to take place as well wherever the broadcast is received as where it is made.

(6) In this section "speech" includes lecture, address and sermon,

thereto

Broadcasting received in Malta from offshore stations.

(1) Where a programme broadcast from any ~~place~~ ^{offshore station} outside Malta is received in Malta, and by reason of the language used or of the contents of the programme, such broadcast may reasonably be deemed to be intended to be received primarily in Malta, it shall not be lawful for any person who is a citizen of Malta or who is ordinarily resident in Malta, whether in his own behalf or in behalf or for account of any other person, to participate in any such broadcast or in any manner to aid or abet the making of such broadcast, or to do anything which may directly or indirectly be of assistance or encouragement to such broadcast or to its reception in Malta, and in particular, but without prejudice to the generality of the foregoing, to publish the times or other details of any such broadcast.

(2) For the purpose of this section a person whose actions or voice appear or are reproduced on any programme broadcast as aforesaid, except where such person is merely a spectator, shall be deemed to have participated therein unless he proves that the programme was recorded without his knowledge or that the programme was recorded or broadcast against his express instructions.

(3) For the purposes of this section but without prejudice to the generality of sub-section (1) of this section, a person who advertises or invites or encourages others to advertise any goods, service or other matter on a broadcasting station from which programmes are broadcast in contravention of sub-section (1) of this section, shall be deemed to have participated in such broadcast.

(4) The provisions of this section shall not apply if the broadcast is made with the written permission or concurrence of the Broadcasting Authority, given in observance of its functions under the constitution as if such broadcasting originated in Malta, and in strict compliance with any condition, limitation or restriction to which such permission or concurrence may have been subjected.

(5) The provisions of subsection (1) of this section shall not apply to an activity consisting in the use and operation of a broadcasting station and carried on in pursuance of an agreement with the government approved by a resolution of the House of Representatives, unless such agreement has ceased to be operative or to have effect or the activity is not carried on strictly in compliance with the approved agreement: and for this purpose a declaration by the Minister published in the Gazette shall be conclusive evidence of the facts so declared.

Penalties

5. (1) Any person acting in contravention of any of the provisions of the foregoing sections of this Act shall be guilty of an offence against this Act and for each such offence shall be liable, upon a first conviction, to a fine (multa) not exceeding £1,000, upon a second conviction to a fine (multa) of not less than £1,000 and not exceeding £5,000 and upon a third or subsequent conviction to imprisonment for a term not exceeding six months and to a fine (multa) not exceeding £5,000 and, in the case of a continuing offence upon any conviction, to an additional fine (multa) not exceeding £100 for each day during which the offence has continued.

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(2) Without prejudice to the provisions of any other law relating to forfeiture, any funds, equipment or other moveable thing whatsoever, whether of the same kind or not, kept or used for or in connection with any ~~foreign activity or broadcast made~~ in contravention of any of the provisions of this Act, shall be forfeited in favour of the government, and such forfeiture shall be ordered by the court in any case and whether or not such funds, equipment or other thing are the property of, or are kept or used by, the person convicted or are the property or are used or kept by any other person whatsoever.

made

Objects and Reasons.

This Bill is being proposed to give effect to the European Agreement for the Prevention of Broadcasts Transmitted from Stations Outside National Territories. The agreement itself was inspired by the appearance and operation of pirate radios on ships, which were rightfully considered as an unwelcome innovation. The Agreement under Article 4(a) gives the right to extend the cases of such piracy.

When the Agreement came into being the idea of private television stations, as opposed to state-owned or publicly owned stations, was still in the distant future. In actual fact, many countries in Europe still deny the automatic right of individuals to set up private television stations.

The provisions of this bill are taken mainly from 'The Marine, Etc., Broadcasting (Offences) Act 1967' regarding transmissions from ships etc. Regarding 'pirate' transmissions from private stations wherever situate, ~~xx~~ the matter has to be dealt with according to our geographical context. The bill does in no way within the context of the European Agreement hinder or impede the ~~xxxx~~ full freedom of national and publicly owned television and radio stations. The principles of good neighbourly relations should prevail in such matters. In private stations, the element of profit for a service rendered may infringe the rights of others.