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The Public Service Broadcasting Culture



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The Public Service Broadcasting Culture**

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The Public Service Broadcasting Culture

Published by the European Audiovisual Observatory

In the recent Report “Public service media in the information society”, commissioned by the Council of Europe, Christian S. Nissen points to a provocative argument in the vibrant discussions about public service broadcasting. He writes that public service media can be seen as a remedy for a market failure inasmuch as the content offered by commercial providers is characterised by a lack of national and cultural diversity, and as such, does not reflect the diversity of European nations and regions. As the author stresses this argument was not the rationale for establishing public broadcasting systems. It might, however, be very relevant for its future.

Should we follow this line of thought, we need to know how public service broadcasting and culture connect. This IRIS Special looks at their bond from two different angles. Firstly, it addresses what one might call the culture of public service broadcasting: how did public service broadcasting develop, what does it entail, why does it continue to exist, what are its rules and principles? Secondly, it examines how public service broadcasting contributes to cultural diversity: does it serve different groups of society, does it offer a wide range of high quality broadcasting services, does it contribute to major societal/cultural needs?

Being a legal publication, these questions are approached from a **regulatory** perspective. In other words, this IRIS Special examines how national rules reflect and account for an important part of the actual culture of public service broadcasting while ensuring that public service broadcasters promote cultural goals.

As a result, this publication contains detailed information on the public service broadcasting systems of 14 different countries. For each of them, it presents in a first chapter the rules underlying the mission, the economic and financing model of public service broadcasting as well as the structures and procedures that apply to public service broadcasters’ decision making. Based on this information, this IRIS Special analyses in a second chapter, and again country by country, the influence that relevant national, cultural or societal aspects have on the respective public service broadcasting system. Furthermore, it examines to what extent diversity reflects in the organisational structure of public service broadcasters.

The countries have been chosen with a view to the particularity of their public service broadcasting system and in order to document different blueprints for regulation. A further reason for the choice was to get to the bottom of the question of how and to what extent considerations of specific cultural, historical or societal features for each country shaped the respective national legal frameworks for public service broadcasting. This goal makes looking at different approaches even more important.

The emphasis that this IRIS Special puts on the country reports reflects the fact that the law-making for public service broadcasting is largely in the hands of national legislators. Nevertheless, pan-European rules and standards play a certain role, be it by supporting the goals and functioning of public service broadcasters or by looking after the interests of their competitors, the private broadcasters. Therefore, the publication puts upfront a short overview of some of the questions dealt with at the pan-European level.

Finally, this publication pays special attention to one particular aspect of the culture of public service broadcasting. In the new democracies of Europe, public service broadcasting is a relatively

recent achievement. This has not only had its influence on the way the regulatory framework for public service broadcasting has been established but also on how broadcasting reflects culture and society. For this reason, the publication includes a special introduction alluding to the difficulties that had to be overcome for replacing state by public service broadcasters. It is thanks to Karol Jakubowicz, PhD, former chair of the CDMC of the Council of Europe and former Director of the Strategy and Analysis Department of the Polish National Council of Broadcasting (*Krajowa Rada Radiofonii i Telewizji – KRRiT*), that this IRIS Special can offer some insight into this issue.

And to reach out even further, a sister study of this IRIS Special deserves to be mentioned, namely the Observatory's very recent publication on ***Public Service Broadcasting Regulation in the Commonwealth of Independent States***. It is a Special Report (available at http://www.obs.coe.int/online_publication/reports/publicservicebroadcasting_cis.pdf or as hard copy from the Observatory) on the Legal Framework for Public Service Broadcasting in Azerbaijan, Georgia, Moldova, Russia and Ukraine, authored by Andrei Richter and Dmitry Golovanov (MMLPC). As already stated in Recommendation 1641 (2004) of the Parliamentary Assembly of the Council of Europe, these countries (to a lesser extent Moldova) have particular difficulties in meeting the standards that the Council of Europe has set with regard to public service broadcasting.

The combined information of this IRIS Special and the Special Report are meant to give you a rather comprehensive picture of public service broadcasting and Culture, the culture of broadcasting as well as how much broadcasters contribute to culture.

This is the tenth IRIS Special that the Observatory has devised, commissioned, edited and published in three languages. At each step we enjoyed the indispensable support of our two partner institutions, the Institute of European Media Law (EMR) and the Institute for Information Law (IViR). We are grateful for this excellent co-operation. The foundations for this project were laid, however, by the national experts, who agreed to share their knowledge about the public service broadcasting culture of their respective countries. Our thanks go especially to them as well as to our very committed translators and proof readers.

Strasbourg, February 2007

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TABLE OF CONTENTS

European Backing for Public Service Broadcasting Council of Europe Rules and Standards.....	7
Systemic Parallelism	16
BG - BULGARIA.....	19
CH - SWITZERLAND	29
DE - GERMANY	39
DK - DENMARK	51
ES - SPAIN.....	61
FI - FINLAND	75
FR - FRANCE	89
GB - UNITED KINGDOM	103
HU - HUNGARY.....	115
IT - ITALY.....	125
LT - LITHUANIA	137
NL - THE NETHERLANDS	149
PL - POLAND	159
RO - ROMANIA	173
Appendix.....	183

European Backing for Public Service Broadcasting Council of Europe Rules and Standards

Susanne Nikoltchev

For many years, the well-being of public service broadcasting has been a main preoccupation of the Council of Europe. This is evidenced by a long list of resolutions, recommendations and declarations issued by the two organs of the Council of Europe.¹ This is significant given that many of today's salient debates about public service broadcasting concern questions already addressed by either the Parliamentary Assembly² or the Committee of Ministers³ of the Council of Europe.

Among the topics that have long taken centre stage are, for example, broadcasters' engagement in new technologies⁴ and the control of broadcasting.⁵ As early as 1975, these and other issues caused the Parliamentary Assembly to adopt its first "broadcasting" recommendation. Titled, **Recommendation 748 (1975) on the role and management of national broadcasting**, the document – as various of its recitals reveal – does in fact address public service broadcasting.

The Recommendation was only a prelude to regular intervention by the Council of Europe on broadcasting in general, and public service broadcasting in particular. The promotion of **Article 10 of the ECHR**, and especially the right to receive information,⁶ is one of the driving forces behind this strong commitment of the Council of Europe.

The European Union also had had its impact on the development of public service broadcasting. The EU's concerns about public service broadcasting were clearly illustrated in the **Amsterdam Protocol**, which states:

"...that the system of public broadcasting in the Member States is directly related to the democratic, social and cultural needs of each society and to the need to preserve media pluralism"

and that

"The provisions of the Treaty establishing the European Community shall be without prejudice to the competence of Member States to provide for the funding of public service broadcasting insofar as such funding is granted to broadcasting organisations for the fulfilment of the public service remit as conferred, defined and organised by each Member State, and insofar as such funding does not affect trading conditions and competition in the Community to an extent which would be contrary to the common interest, while the realisation of the remit of that public service shall be taken into account."⁷

1) A list of Committee of Ministers' Recommendations, Resolutions and Declarations adopted in the media field is available at:

http://www.coe.int/t/e/human_rights/media/4_documentary_resources/CM_en.asp#TopOfPage/

For all texts adopted by the Committee of Ministers see http://www.coe.int/t/cm/adoptedTexts_en.asp

A complete list of the texts adopted by the Parliamentary Assembly is available at:

http://assembly.coe.int/ASP/Doc/DocumentGuide_E.asp

- 2) The Parliamentary Assembly can be considered the oldest international parliamentary assembly with a pluralistic composition of democratically elected members of parliament established on the basis of an intergovernmental treaty. It has the power to adopt recommendations, which contain proposals addressed to the Committee of Ministers, the implementation of which is within the competence of governments. It may adopt resolutions that embody decisions by the Assembly on questions, which it is empowered to put into effect or expressions of view, for which it alone is responsible. In addition it may express opinions on questions put to it by the Committee of Ministers.
- 3) The Committee of Ministers is the Council of Europe's decision-making body. It comprises the Foreign Affairs Ministers of all the Member States or their permanent diplomatic representatives in Strasbourg. The Committee of Ministers issues declarations, adopts (non binding) recommendations to Member States and concludes Conventions and agreements. An additional source for relevant Resolutions and Political Declarations are the specialised Ministerial Conferences organised periodically by the Council of Europe.
- 4) In Recommendation 748 (1975) described as "the flexibility of broadcasters to introduce new techniques".
- 5) In Recommendation 748 (1975) mentioned as "the question of how to control broadcasting".
- 6) Art. 10 para. 1 ECHR reads: "Everyone has the right to freedom of expression. *This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.* This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises." [Emphasis added]
- 7) Protocol on the system of public broadcasting in the Member States of The Treaty of Amsterdam amending the Treaty on the European Union, the Treaties Establishing the European Communities and Related Acts (OJ C 340 of 10 November 1997). Available at <http://eur-lex.europa.eu/en/treaties/dat/12004V/htm/C2004310EN.01037201.htm>
The Protocol is one of the texts proposed as annex to the draft Treaty establishing a Constitution for Europe, see OJ C 310 of 16 December 2004.

Nevertheless the European Union's means of addressing public service issues are severely limited. The strongest tool utilised by the European Commission is competition law. Its very purpose, however, is to guard against unfair competition and market imbalances, for example caused by state intervention. As a result (often sought for by private broadcasters), EC competition law acts rather to curb than to promote privileges that a country might wish to confer upon companies offering public broadcasting services. With regard to the financing of public service broadcasting, the European Commission in 2001 sought to defuse the inevitable conflicts with private broadcasters by issuing the **Communication on the application of State aid rules to public service broadcasting**.⁸

More recently but without concrete results so far, the European Commission has begun to take a more proactive role on media pluralism. In this context, a working paper⁹ recognizes the important contributions of public service broadcasters placing them on an equal footing with those of commercial broadcasters.¹⁰ The document acknowledges that public service broadcasting faces various challenges insofar as its editorial independence, staffing issues and funding are concerned. Moreover, it points to the political pressure and interference that trouble public service broadcasting in some of the countries that joined the European Union this century.¹¹

To date the leading role in matters concerning public service broadcasting in Europe lies with the Council of Europe.

Culture and Commerce

In 1987, the Parliamentary Assembly issued **Recommendation 1067 (1987)**¹² which deals explicitly with **the cultural dimension of broadcasting in Europe**. At that time, the broadcasting landscape was being repainted by, on the one hand, newly introduced transmission techniques using satellite as well as cable for broadcasting and, on the other hand, the progressing commercialization of public service broadcasters and the broadcasting market in general. Competition between private and public service enterprises became more and more apparent. The Assembly recognized that new transmission techniques were apt to allow more cultural creation and expression, to widen the range of programmes, and increase cultural awareness. The Assembly, however, seemed more occupied with the risks which these opportunities might generate. According to the Recommendation, threats to public service broadcasting could consist of a "reduction in programme diversity and the erosion of socially accepted standards of behaviour" (point 6.b.), "the undermining of the cultural identity of smaller countries and minor language groups and of the cultural diversity of Europe as a whole" (point 6.c.), and "economic and thereby cultural dependence on outside (largely commercial) factors" (point 6.e.). In order to face these risks, the Assembly envisaged that governments should strengthen "the public service nature of broadcasting, and of the political, educational and cultural roles of the mass media, ...". It was stressed that mass media should be used as a means of "cultural diversity". Twenty years before the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions entered into force,¹³ the importance of cultural diversity was proclaimed by the Parliamentary Assembly in the broadcasting context.

Recommendation 1067 (1987) also expressed the idea of equal treatment for public and private broadcasting (point 9). Corresponding to this thought and responding to the fact that the dual broadcasting system had developed literally across Europe, the Council of Europe, on 5 May 1989, adopted the **European Convention on Transfrontier Television (ECTT)**.¹⁴ The Convention offers a

8) Communication from the Commission on the application of State aid rules to public service broadcasting, see OJ C 320 of 15 November 2001.

9) Commission Staff Working Paper on Media pluralism in the Member States of the European Union, SEC(2007) 32 of 16 January 2007, available at http://ec.europa.eu/information_society/media_taskforce/doc/media_pluralism_swp_en.pdf

10) Commission Staff Working Paper, point 2.7.

11) Commission Staff Working Paper, point 2.2.

12) Recommendation 1067 (1987) on the cultural dimension of broadcasting in Europe, adopted by the Parliamentary Assembly on 8 October 1987.

13) See Mara Rossini, Convention on Cultural Diversity Enters into Force on 18 March 2007, in IRIS 2007-2: 2.

14) European Convention on Transfrontier Television (ETS No. 132) of 5 May 1989, which entered into force on 1 May 1993. The text has been amended according to the provisions of the Protocol (ETS No. 171) of 1 October 1998, which entered into force on 1 March 2002. For the text of the Convention, see <http://conventions.coe.int/Treaty/en/Treaties/Html/132.htm>

European-wide legal framework applicable to both types of broadcasting in transborder constellations. Separating itself from its non-identical twin, the EC's "Television without Frontiers" Directive,¹⁵ the Convention explicitly embraces the objectives of promoting the freedom of expression (across borders) and pluralism.¹⁶ The preceding *IRIS Special: Audiovisual Media Services without Frontiers*¹⁷ treats the differences between the two parallel, and otherwise largely congruous, European instruments on cross-border television in more detail.¹⁸

The Changing Environment for Broadcasting

If technical developments led the Council of Europe to focus on broadcasting across borders, the end of the cold war caused it to deal with broadcasting and politics. In **Recommendation 1147 (1991) on democratic reform of broadcasting** the Parliamentary Assembly considered both aspects. It described how Eastern models for broadcasting struggled to overcome former totalitarian structures. In the countries concerned the existing legal, organizational and financial structures for broadcasting lagged behind the development of democratic society and the market economy (point 6. i.). The Assembly also looked at the other end of the spectrum. It stressed that established Western broadcasting concepts were challenged by new technologies and the growing reality of transborder services.¹⁹ But how did the Parliamentarians seek to address these issues? One key objective was pluralism, another the independence and accountability of broadcasters. In furtherance of these goals, the Assembly formulated several basic principles. Legislators were asked to take account of, among others, the informational, educational and entertaining role of broadcasting systems. It was agreed that broadcasters' role could be performed by private and public service broadcasters alike, provided that they understood their task to be the offering of a public service concerning a public good. At the same time, the Assembly underlined that public service broadcasting could not only be left to the rules of the free market.

The Parliamentary Assembly again considered broadcasters' embracing new technologies in its **Recommendation 1228 (1994) on cable networks and local television stations and their importance for Greater Europe**, which it adopted on 24 January 1994. This time, it proposed that broadcasters, and in particular public service broadcasters, from West European countries assist their counterparts in East and Central Europe in exploring cable and other technologies.

Equal but Different

The so called **Prague Resolution No. 1 on the future of public service broadcasting** confirms that the expectations towards public service broadcasters justify different treatment. According to its third Recital public service broadcasting "supports the values underlying the political, legal and social structure of democratic societies, and in particular respect for human rights, culture and political pluralism". The Resolution was adopted at the 4th European Ministerial Conference on Mass Media Policy that took place in Prague on the 7 and 8 December 1994.²⁰ It speaks of public service broadcasting, which, as stated in various other Council of Europe documents and practiced in several

15) Council Directive of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities (89/552/EEC) as amended by Directive 97/36/EC of the European Parliament and of the Council of 30 June 1997. A consolidated version of the text is available at http://europa.eu.int/eur-lex/en/consleg/pdf/1989/en_1989L0552_do_001.pdf

16) Arts. 4 and 10*bis* of the Convention. For comparison, the twelve's paragraph of the Recitals of the TVwF Directive refers to Article 10 ECHR only insofar as it has implications on the free movement of services; pluralism is not addressed at all.

17) Susanne Nikoltchev, Ed., *IRIS Special: Audiovisual Media Services without Frontiers – Implementing the Rules* (Strasbourg, European Audiovisual Observatory 2006).

18) See in particular Karol Jakubowicz, *Implementation and Monitoring: Upholding Human Rights and Cultural Values*, in *IRIS Special: Audiovisual Media Services without Frontiers*, pages 35-44 (41). For additional background, Pierre Goerens, *Interplay between Relevant European Legal Instruments – ECTT and TVwF Directive: Competition or Complementarity*, in *IRIS Special: Audiovisual Media Services without Frontiers*, page 1-11.

19) "The impact of transfrontier broadcasting services on television markets in individual Member States" was the issue of the March 2004 Informal Ministerial Conference that the Irish EU Presidency organised in Drogheda. For this event the Observatory prepared a background paper on "Transfrontier television in the European Union: market impact and selected legal aspects", which points to some of the issues triggered by across-border television. The document is available at http://www.obs.coe.int/online_publication/transfrontier_tv.pdf.en

20) The text is available at http://www.ebu.ch/CMSimages/en/leg_ref_coe_mcm_resolution_psb_07_081294_tcm6-4274.pdf

countries, might be provided for by private or public service enterprises.²¹ Nevertheless, the text of the Resolution predominantly refers to public service broadcasters. This corresponds to the reality that most countries established public service broadcasting companies (together with respective legal frameworks) in order to charge them with the delivery of the public broadcasting service.²²

Resolution No. 1 renews the recognition of the importance of a public service broadcasting system in light of increasing competition and rapid technological change. It calls for permitting public service broadcasters to provide additional programme services, for defining clearly their role, missions and responsibilities. The Resolution requires Member States to ensure editorial independence of public broadcasters against political and economic influence, and to guarantee public service broadcasters secure and appropriate means for fulfilling their missions. The Resolution describes the policy framework for public service broadcasting in great detail. Under the headings public service requirements, funding, economic practices, independence and accountability, means of transmission, new communications technologies, and European co-operation and solidarity, it draws a relatively comprehensive picture of the conditions that participating states should provide for public service broadcasters.

This “check list” for legislators has barely lost topicality. It continues to inspire legislators and is generally worth a read. The concept for the country reports of this IRIS Special also endorse several of its aspects and we will return to some of the issues in the course of this overview.

At this juncture it is useful to recall a complementary element for the frame of public service broadcasting introduced by the Committee of Ministers on 22 November 1994 in the form of **Recommendation No. R (94) 13 on measures to promote media transparency**. This is another legal instrument approaching broadcasting unison while allowing special treatment of public service broadcasters. National legislation shall guarantee and promote media transparency and aim to facilitate exchanges of information between Member States. This links closely to Art. 6 ECTT, to which Recommendation No. R (94) 13 therefore refers.²³ The Guidelines (No. 3 to 5) specify what broadcasters must disclose, namely information related to the application for a licence and consecutively, information on how the licensed service is being operated. Transparency is also a must for the authorities charged with controlling the implementation of broadcasters’ transparency obligations. The Explanatory Memorandum (Points 21 and 22) to the Recommendation focuses on the application of these general rules to public service broadcasting companies. Because they are financed by public money, they should in principal respect the transparency standards (in particularly with regards to financial resources and results). They might, however, benefit from different procedures for ensuring transparency. National provisions dealing with the specificity of public service missions and their mechanisms for accountability (often including public participation) need to be taken into account.²⁴

Independence

Of all the elements, identified by the Prague Resolution as essential for a public service broadcasting system, the aspect of independence triggered the next important legal act of the Committee of Ministers. **Recommendation No. R (96) 10 on the guarantee of the independence of public service broadcasting**, adopted on the 11 September 1996, offered guidelines for state legislators, broadcasting regulatory authorities and the management and staff of public service broadcasting organisations. The guidelines insist on editorial independence and institutional autonomy of public service broadcasting organisations, highlighting 10 areas where these aspects are of particular

21) The most recent example is formulated as Guiding principle I.1 of Draft Recommendation Rec(2007)3 of the Committee of Ministers to member states on the remit of public media in the information society, adopted on 31 January 2007. The relevant passage reads: “Member States have the competence to define and assign a public service remit to one or more specific media organisation, in the public and/or private sector, ...”

22) Possibly the most prominent exception to this rule is described in the country report on the Netherlands. Some other countries, however, have considered or are considering the privatisation of incumbent public service broadcasters.

23) Art. 6 ECTT specifies that broadcasters’ responsibilities shall be determined in the authorization or other legal measure that entitles a company to broadcast and that this information shall be made available upon request.

24) Public service broadcasters might be held closer to the transparency guidelines with regard to services offered over and above the services of their main (public service) activity.

importance. They set the elementary rules that shall apply to the boards of management and the staff of public service broadcasting organisations, the bodies supervising public service broadcasters, and the funding of public service broadcasting organisations as well as their programme policy. They also open the door to public service broadcasting using new communications technologies. The attached Explanatory Memorandum goes into remarkable detail.

Not only the Committee of Ministers but also the Parliamentary Assembly focused on the guarantee of the independence of public service broadcasters. The Assembly had already underlined the importance of independent public service broadcasting especially in new democracies in two earlier Recommendations.²⁵ On 27 January 2004, the Assembly passed **Recommendation 1641 (2004) on public service broadcasting** stressing its specific remit, namely to operate independently of those holding economic and political power. The Assembly emphasized the failure of many European countries to meet their existing commitments towards public service broadcasting – and in particular to implement the fundamental principle concerning broadcasters' independence contained in Recommendation No. R (96) 10 of the Committee of Ministers.

The Committee of Ministers in its reply to Recommendation 1641 (2004) sided with the Assembly's view. At the occasion of the 7th Ministerial Conference on Mass Media, that took place on 10-11 March 2005 in **Kyiv**, it adopted **Resolution No. 2 on Cultural diversity and media pluralism in times of globalization**. Therein the representatives of the States requested that the Council of Europe monitor the implementation by Member States of Recommendation No. R (96) 10.

Some monitoring had already taken place before the Assembly had passed its Recommendation 1641 (2004). It had confirmed that while almost all Council of Europe Member States had established legal frameworks governing public service broadcasting and a fair number of them met the standards set by Recommendation No. R (96) 10, a number of Member States had nonetheless only partially, incorrectly or not at all implemented the Recommendation. Furthermore, in some of the countries, whose laws were compliant with the standards, their application was not secured or the enforcement insufficient.²⁶

In line with the monitoring results as well as the Kyiv commitment, the Committee of Ministers, **on 27 September 2006**, adopted a **Declaration** to reaffirm the vital role of public service broadcasting for pluralist communication and social cohesion.²⁷ The Declaration also emphasises that public service broadcasting ought to be free from undue controls and constraints, that it needed institutional autonomy and an adequate legal framework. Once more, Member States were reminded of the importance of implementing Recommendation (96) 10.

The necessity of being independent from political and economic influences has been recognized not only for the providers of public service broadcasting but also for the national authorities in charge of regulating and controlling public or private broadcasting companies. The link between the independence of public service broadcasters and the independence of "other bodies" to whom broadcasters might be accountable had already been made in Prague (see point two of the Prague Resolution under independence and accountability). It was restated by Recommendation No R (96) 10, which explained that supervisory bodies should not be subjected to any political or other interference.²⁸ This was in spite of the recognition that States were responsible for the general organisation of regulatory authorities. The Committee of Ministers underlined the crucial need for independence of regulatory authorities, correlative to the independence of broadcasters, even more pointedly by adopting **Recommendation Rec (2000) 23** on 20 December 2000. The Recommen-

25) **Rec. 1506 (2001) on freedom of expression and information in the media in Europe**, adopted 24 April 2001 and **Rec. 1589 (2003) on freedom of expression in the media in Europe**, adopted 28 January 2003.

26) See the Report "Public service broadcasting" by the Committee on Culture, Science and Education, Doc. 10029 of 12 January 2004 (Rapporteur: Mr Paschal Mooney). The Report refers in more detail to the varying degrees of political influence in Russia, Azerbaijan, Georgia, Ukraine, Bosnia and Herzegovina, Armenia, Moldova, Serbia, Bulgaria, "the former Yugoslav Republic of Macedonia", Croatia, the Czech Republic, Hungary, Slovakia, the United Kingdom, Greece, Italy, Portugal and Spain. It also mentions the increasing financial and competitive pressure on public service broadcasting in the Netherlands, France, Denmark, and Germany (see points 3 to 16 of the Report).

The Report is available at: <http://assembly.coe.int/ASP/Doc/RefRedirectEN.asp?Doc=Doc.10029>

27) Committee of Ministers' Declaration on the guarantee of the independence of public service broadcasting in the member States, adopted 27 September 2006.

28) See Guideline No. 11 of the Explanatory Memorandum.

dation was titled “**on the independence and functions of regulatory authorities for the broadcasting sector**”. The idea of independent supervisory bodies was also supported by the Parliamentary Assembly in its **Recommendation 1506 (2001)** of 24 April 2001 **on freedom of expression and information in the media in Europe**.²⁹

Public Service Remit

Independence, however, has been only one of several aspects retained by the Council of Europe over the years. Another primary concern has been the public service remit itself. It is undoubtedly strongly linked to the independence issue given that the mandate of public service broadcasting is essential for the autonomy of the service provider. As already mentioned, Recommendation 1641 (2004) even held that the specific remit of public service broadcasting was “essentially to operate independently of those holding economic and political power”.³⁰

How one defines the public service remit of broadcasting depends on what one expects of that service. What might count as a justifiable and even desirable expectation has been touched upon many times by the Council of Europe. For broadcasting in general, many of the Council of Europe texts mentioned so far tell us directly or indirectly that broadcasting has to inform, educate and entertain the audience.³¹ Concerning requirements for public service in particular, the Prague Resolution (1994) has set very specific expectations. The public service broadcasting missions shall include the provision of (i) a reference point for all members of the public and elements for social cohesion and integration, (ii) a forum for broad public debate,³² (iii) a pluralistic, innovatory and varied programming based on high ethical and quality standards, (iv) programme schedules and services of interest to a wide public, also considering minorities’ interest, (v) some reflection of different philosophical ideas and religious beliefs in society aimed at enhancing mutual understanding and tolerance and promoting community relations in pluriethnic and multicultural societies, (vi) programming that contributes to diversity of national and European cultural heritage (vii) programmes with a significant proportion of original productions and use of independent producers (viii) programme services normally not offered by commercial broadcasters.

The Committee of Ministers in its **Recommendation No. R (99) 1 on measures to promote media pluralism**, adopted on 19 January 1999, re-emphasized that public service broadcasting (and the media in general) should enable different groups and interests in society to express themselves. The Committee of Ministers had already reiterated the Prague Resolution in **Recommendation No. R (97) 21**³³ and had drawn attention to the special commitment of public service broadcasting in terms of promoting a culture of tolerance and understanding, paying particular attention to needs of minority groups.

In Recommendation No. R (99) 1, the Committee of Ministers explained further that the concepts of democracy, human rights, and the free circulation of information and ideas are inextricably linked to the notion of public service broadcasting. Again it affirms that public service broadcasting serves pluralism and shall cater to the needs of different groups in society. For that reason, the Recommendation proposes to draw on the benefits of letting the public participate in the shaping of programme

29) The European Commission in its proposal for an Audiovisual Media Service Directive now also calls explicitly for independent national regulatory authorities that exercise their powers impartially and transparently. See Art. 23 para. 1 b of the proposal for a Directive of the European Parliament and of the Council amending 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, COM(2005) 646 final of 13 December 2005.

The European Parliament’s legislative resolution of 13 December 2006 on that proposal supports this principle.

30) Point 2 of Recommendation 1641 (2004)

31) For example, this is explicitly stated in point i. Recommendation 1147 (1991) of the Parliamentary Assembly.

32) The coverage of election campaigns might be seen as a very particular aspect of public debate. Therefore it is no wonder that the Committee of Ministers in **Recommendation No. R (99) 15 on measures concerning media coverage of election campaign** assigned public service broadcasters a particular responsibility in ensuring that their programmes portray fair and thorough coverage of elections. The Recommendation was adopted on 29 April 1999.

33) Committee of Ministers, Recommendation No. R (97) 21 on the media and the promotion of a culture of tolerance, adopted on 30 October 1997.

policy.³⁴ The Committee of Ministers followed up on this idea with another **Declaration, issued on 7 December 2000**, addressing cultural diversity and the important role that public service broadcasting plays in safeguarding this diversity.

The idea of involving the public in the making of programme-policy has been accommodated, at least to some extent, by almost all of the countries³⁵ whose public service broadcasting systems are examined in this IRIS Special. The degree of power conferred upon representatives of the general public differs from country to country and is dependent upon the concept chosen for public participation. The variety of concepts reaches from supervising and governing bodies staffed at least partially with representatives of the public (Germany, Hungary) to bodies composed of public representatives, who comment and advise on the programme activities, (Switzerland, Spain, the United Kingdom) to various forms of facilitated comment and/or complaints procedures. The latter include Ombudsman (Switzerland), Audience Service (Finland), Mediators (France), and Viewers' editor (Denmark). Denmark additionally imposes on public service broadcasters the general statutory obligations to be in "dialogue" with the general public while leaving the "how" entirely to each broadcaster. The Netherlands simply trusts the influence of the specific societal groups represented in the individual membership organisations (called "*omroepverenigingen*") that (mainly) supply public service broadcasting.

Shortly after the Committee of Ministers had issued its Recommendation No. R (99) 1 on measures to promote media pluralism, the Parliamentary Assembly backed this approach with its **Recommendation 1407 (1999) on media and democratic culture** of 29 April 1999. Therein it stresses the function of independent public service broadcasters in guaranteeing the general reception of impartial and diverse programmes which provide information, education, culture and entertainment. The Assembly also expresses its concerns about existing political and economic pressure and increasing competition from commercial broadcasters, highlighting the need to pursue the goals of Recommendation No. R (96) 10 on the guarantee of the independence of public service broadcasting.

Towards Public Service Media

With Recommendation **Rec (2003) 9 on measures to promote democratic and social contribution of digital broadcasting**, adopted on 28 May 2003, the Committee of Ministers places the opportunities offered by the change in technology to the fore of its considerations. However, it espouses particular concern about the means that public service broadcasting will need in order to use these opportunities for accomplishing its public service mandate and serving public interest objectives. It therefore recommends that public service broadcasters obtain the financial support as well as legal, economic, technical and other conditions necessary to be present on the different digital platforms. Must-carry rules³⁶ should be applied to this end as far as reasonably possible. According to the Committee of Ministers, public service broadcasting should lead the transition to terrestrial digital broadcasting.³⁷ It should be enabled to offer new specialized channels and interactive services such as electronic programme guides³⁸ and programme-related online services.

34) In line with previous Council of Europe documents, Recommendation No. R (99) 1 also confirms that public service broadcasters need adequate structural and financial support as well as opportunities to develop in light of the new communications technologies and the digital environment. With regard to the latter, the Committee recommends the maintaining of must-carry rules for cable networks. For this specific issue see also Susanne Nikoltchev, Ed., IRIS Special: To Have or Not to Have - Must-carry Rules (Strasbourg, European Audiovisual Observatory 2005).

35) Bulgaria recently established a Public Council, apparently with the aim to give the public some voice in the shaping of public service broadcasting. Yet the tasks of and rules for composing the Council are still to be worked out. See country report Bulgaria. Similarly, there is uncertainty about the concrete mission, composition and operation mode of the French Consultative Council of Programmes, which shall have some right to engage the CSA in sanction procedures. Italy, Poland and Romania are still struggling with how to give the public influence in addition to their *de facto* voting on programmes via audience shares.

36) More insight into the reasons why must-carry rules were established and the pros and cons for keeping or even expanding them is provided for in IRIS Special: To Have or Not to Have - Must-carry Rules, *op. cit.*

37) The Study on Digital Terrestrial Television in EPRA Countries (resulting from a Working Group of Regulatory Authorities established in the framework of EPRA) examines the role and success of public service broadcasters in the roll out of DTT. The full study, which was coordinated by AGCOM (Italy) and presented in March 2004 is available at http://www.epra.org/content/english/press/papers/DTTWG_finalreport.doc, an executive summary is available at http://www.epra.org/content/english/press/papers/DTTWG_summary.doc

38) For further explanation on the functions of EPGs, see Alexander Scheuer, Michael Knopp, Digital Television Glossary, Supplement to the IRIS Special: Regulating Access to Digital Television, at X. 1. (European Audiovisual Observatory, Strasbourg 2004).

The key role that public service broadcasting plays for democracy makes it essential to guarantee universal access to its programmes in a digital environment.

Recommendation 1641 (2004) of the Parliamentary Assembly, which was already mentioned in the context of the independence of public service broadcasters, seconded the tenor of Recommendation (2003) 9. It underlines the potential problems that the lack of a legal framework for digital television and Internet activities might pose for respective engagements of public service broadcasters. Likewise it underlines how indispensable it is for public service broadcasters to dispose of an appropriate institutional and financial framework in order to adapt and “upgrade” themselves to the digital era.³⁹

Also according to the Kyiv Resolution No. 2, Member States need to be aware of the important role of public service broadcasting in the digital environment. As stated in Point 12, it is “an element of social cohesion, a reflection of cultural diversity and an essential factor for pluralistic communication accessible to all”. In light of digitization and convergence, it is especially important to ensure free and universal access to the services of public service broadcasters across various platforms and to develop further the public service broadcasting remit. States are called upon to ensure the legal, financial and technical conditions to enable public service broadcasters to accomplish their mission in an effective manner so that they contribute in particular to cultural diversity and media pluralism. The Ministers of States participating in the Kyiv Conference therefore reaffirmed their commitment entered into under Recommendation Rec (2003) 9.

One of the Kyiv promises has very recently been upheld. The Committee of Ministers studied the conditions, which public service broadcasting needs in the digital environment in order to continue honouring its particular tasks aimed at promoting the values of democratic societies.⁴⁰

An important common denominator was found in the conviction that, in the information society, public service organisations should use diverse platforms and offer various services to fulfill the public service remit. The Committee underlines this point by introducing the notion of “public service media”, for which it “overhauled” the public service remit as it had originally been determined by Recommendation 1641 (2004) for broadcasting. This resulted in **Recommendation Rec (2007) 3 on the remit of public service media in the information society**, which the Committee adopted on 31 January 2007. It is no surprise that this latest Recommendation embraces to a large extent the main guidelines of Recommendation 1641 (2004). It lacks, of course, the explicit references to the special “broadcasting language” of its kindred spirit. Being geared towards public service media, the claim of public service broadcasters to expand towards new platforms and new services is inherently accepted.

In the information society, the public service remit shall continue to be a reference point for all members of the public, delivering news, information, educational, cultural, sports and entertainment programmes and content for the various societal groups, and it shall offer universal access. Public service media shall take user habits into consideration, shall offer generalist and specialized contents and services, as well as personalized interactive and on-demand services. Public service media shall contribute to social cohesion and integration, a task even more important in a globalised world. To this end public service media should be adapted to the new digital environment and should promote digital inclusion. The Recommendation calls public service media a source of impartial and independent information and comment, a source of innovative and varied content which complies with high ethical and quality standards. Public service media should help to bridge fragmentation, reducing social and political alienation and promoting the development of civil society. The Committee of Ministers felt that the classical tasks of public service broadcasting in terms of the to promotion of broader democratic debate and participation may be even better fulfilled with the

39) The Committee of Ministers in its Reply to Recommendation 1641 (2004), already mentioned above, re-confirmed the need for such an adequate legal, institutional and financial framework.

40) A lot of background on where to situate public service broadcasting in the information society has been provided by the Report of Christian S. Nissen on Public Service Media in the Information Society. The Report was prepared for the Council of Europe’s Group of Specialists on Public Service Broadcasting in the Information Society (MC-S-PSB) and published in February 2006. It is available at [http://www.coe.int/t/e/human_rights/media/1_Intergovernmental_Co-operation/MC-S-PSB/1hinf\(2006\)003_en.pdf](http://www.coe.int/t/e/human_rights/media/1_Intergovernmental_Co-operation/MC-S-PSB/1hinf(2006)003_en.pdf)

additional help of new interactive technologies. Public service media shall also help foster the audiovisual creativity and production as well as the diversity of national and European cultural heritage.

Last but not least, the Recommendation (2007) 3 calls on Member States to provide the specific legal, technical, financial and organizational conditions that public service media need to satisfy their public service mandate.

The Committee of Ministers remains faithful to the common understanding that while governments are asked to respect the standards set by this and previous recommendations, they are free to organize their own national systems of public service media. This being so, governments are, however, expected to pay particular attention to the challenges of the information society.

Summary

A thick package of various Council of Europe standards exist. Some key expectations towards public service broadcasting have been consistently formulated over almost 30 years. These ideas have just been updated to meet the needs of the information society. States must provide a certain structure and minimum standards but are quite free in the concrete settings of the public service broadcasting/media systems. Therefore the country reports of this IRIS Special have been composed with two goals in mind: firstly, to check whether or not states respect the existing skeleton of Council of Europe rules and standards and secondly, to examine whether or not the national laws filling in the pan-European legal structure respond to the demands of the public for the service of a public good.

Inasmuch as one stands more solidly on two legs than on one, public service broadcasting systems are not only based on legal standards. They also build, and heavily so, on the historical, societal, and political situation into which they were born. In this regard, the contribution on Systemic Parallelism, which follows, provides further insight and paves the way for the ensuing country reports.

Systemic Parallelism

Karol Jakubowicz

Majid Tehranian¹ has pointed out that in order to understand any communication system in its full complexity, one should look at all its parts, including its spatial and temporal environments, system inputs, structures, processes, output, impact and feedback. Above all, one should examine such a communication system in its own terms. This is why he has proposed a “historical and holistic approach” to the study of mass communication.

Along similar lines, DeFleur² has said that in order to understand the media of a society, proper attention should be given to the social, cultural, economic and political events which shaped the media’s directions of growth at particular times. Accordingly, DeFleur believes that:

Within differing social and political structures, economic systems and historical-cultural settings, the structures of the mass media can be expected to take different forms ... this is influenced by questions such as whether the country is a free enterprise democracy, an outright totalitarian dictatorship or something in between.

Hallin and Mancini³ have taken this further and shown that there are different media systems also within developed capitalist democracies of Western Europe and North America, especially as concerns the relation between media and political systems. What they call the liberal system (to be found in the United States, the UK, Canada and Ireland) affords the media a high degree of autonomy. The democratic-corporatist system (Austria, Belgium, Denmark, France, the Netherlands, Norway, Switzerland etc.) has developed in countries whose socio-political systems, traditions, cultural and religious divisions required the accommodation of various group interests. This combines substantial autonomy of the media with “politics-in-broadcasting” arrangements, especially in PSB.

The “Mediterranean” (polarized pluralism) system (France and Italy in addition to Greece, Spain and Portugal) involves a high degree of political parallelism in the media, weak professionalization of journalists and “politics-over-broadcasting” arrangements in PSB. All this is no doubt due to the relatively short period of democratic consolidation in those countries and/or the lack of elite and State acceptance of constraints on the exercise of power.

One could therefore posit the existence of “systemic parallelism”, i.e. a situation whereby media systems reflect the systemic features of the society within which they operate.

Summing up a symposium dedicated to answering the question whether the media of mass communication lead or follow change, mirror or mould society, whether they should be conceptualized as agents of social change or as agents of reinforcement and the status quo, Katz⁴ noted the wide divergence of views on the subject. However, consideration of whether it is a relationship of interdependence, idealism, materialism or autonomy⁵ leads to the conclusion that it is one of “non-equivalent interdependence”.⁶ This means that society and the media do influence each other, but as the stronger entity, society moulds the media and sets the parameters of their influence on itself: it is social conditions, including social change, which create conditions for, or trigger, media action in this area. In other words, the effectiveness of the media’s influence on society depends to a large extent on the congruence of their impact with the larger process of change unfolding in society. As McQuail⁷ has noted, “the media are generally instruments, not instigators, of other social forces. They are not primary social actors.”

1) Tehranian, M. (n.d.) *Socio-economic and Communication Indicators in Communication Planning: A Case Study of Iran*. Paris: UNESCO.

2) DeFleur, M.L. (1972) *Theories of Mass Communication*. New York: David McKay Co., Inc.

3) Hallin Daniel C., Paolo Mancini (2004) *Comparing Media Systems: Three Models of Media and Politics*. Cambridge: Cambridge University Press.

4) Katz E. (1981) Epilogue: Where Do We Stand? In E. Katz and T. Szecskö (Eds.) (1981) *Mass Media and Social Change*. London: Sage Publications, pp. 265-267.

5) Rosengren, K.E. (1981). *Mass Media and Social Change: Some Current Approaches*. In E. Katz, and T. Szecskö (Eds.) *Mass Media and Social Change*. London: Sage Publications, pp. 247-264.

6) See Jakubowicz, K. (2007) *Rude Awakening: Social and Media Change in Central and Eastern Europe*. N.J.: Hampton Press, Inc.

7) McQuail, D. (1992) *Media Performance. Mass Communication and the Public Interest*. London: Sage Publications.

Recognition of this is crucial for understanding the development of public service broadcasting in post-Communist countries.

We may identify three main models of the creation of public service broadcasting, or the transformation of state into public service broadcasting:

1. Paternalistic – as in the UK, where PSB was originally born in 1926 in the form of the BBC, an independent public corporation with a public-service remit, understood in part as playing a clearly normative role in the country's cultural, moral and political life;
2. Democratic and emancipatory – as in some other Western European countries, where erstwhile state broadcasting organisations began to be transformed into public service broadcasters in the 1960s and 1970s, a time when State (government) control of the then monopoly broadcasters could no longer be justified or claim legitimacy, and a way was sought to associate them more closely with the civil society and turn them into autonomous PSB organisations;
3. Systemic – as in West Germany after World War II, Spain, Portugal and Greece in the 1970s, and in Central and Eastern Europe after 1989, when change of the broadcasting system was part and parcel of broader political change, typically transition to democracy after an authoritarian or totalitarian system.

Introduction of PSB in post-Communist countries should be seen as an element of a “mimetic” media policy orientation and as an example of what Polish sociologist Marek Ziółkowski⁸ has called “imitative transformation”, based on assimilating institutions, behaviour patterns and values characteristic of different stages of development of capitalist societies. Szczepański⁹ has called this the “mechanical transplantation of patterns tested in the West”.

“Paternalistic” and “democratic and emancipatory” models of PSB introduction flow naturally from the ideological and axiological evolution of society, especially consolidation of democracy and development of the political culture of mature democracy. On the other hand, the “systemic” model in post-Communist countries has involved the transplantation of foreign legal and institutional concepts and arrangements associated with PSB. This meant that PSB was introduced “ahead of its time”, so to speak, long before the full development of a social, political and cultural enabling environment for its successful operation. It is well known that post-Communist transformation involves the introduction of new organizational frameworks as part of the top-down social engineering element of transformation. The underlying cultural and axiological foundations of these frameworks usually have to be introduced, disseminated and internalised by the general population later,¹⁰ sometimes long after the fact. The reason for introducing PSB is, in part, the hope that it will contribute to the growth of these cultural and axiological foundations.

Introduction of PSB in post-Communist countries has run into major difficulties¹¹ precisely because the general societal and political context is not yet ripe for PSB, properly so called, to flourish. Hence the problems these broadcasting organizations have encountered. This confirms the phenomenon of “systemic parallelism” and non-equivalent interdependence between societal and media change: social circumstances create the parameters within which newly introduced PSB organizations can operate: for the time being, in most cases they impede, rather than promote, successful development and functioning of these organizations.

8) Ziółkowski, M. (1999). *O imitacyjnej modernizacji społeczeństwa polskiego*. In: P. Sztompka (Ed.) *Imponderabilia wielkiej zmiany. Mentalność, wartości i więzi społeczne czasów transformacji*. Warszawa-Kraków: Wydawnictwo Naukowe PWN, pp. 38-64.

9) Szczepański, M. S. (1992). *Pokusy nowoczesności. Polskie dylematy rozwojowe*. Katowice: Andrzej Matczewski Publisher, p. 14.

10) Offe, Claus (1997) *Cultural Aspects of Consolidation: A Note on the Peculiarities of Postcommunist Transformations*, East European Constitutional Review, 6(4), Fall, available at: <http://www.law.nyu.edu/eecr/vol6num4/special/culturalaspects.html>

11) Jakubowicz, K. (2003) “Ideas in Our Heads: Introduction of PSB as Part of Media System Change in Central and Eastern Europe”, *European Journal of Communication*, Vol. 19, No. 1.

BG BULGARIA

*Nelly Ognyanova**

Chapter I: Regulatory Framework

A. Mission, Economic and Financing Model

The Radio and Television Law (RTL) was adopted in 1998.¹ It establishes the system for radio and television broadcasters in Bulgaria. By virtue of this law, the electronic media sector was liberalised; it comprises both public service and commercial operators.

The public radio broadcaster Bulgarian National Radio (BNR) broadcasts on two 24-hour national channels – Horizont and Hristo Botev. BNR's third channel, Radio Bulgaria, is oriented towards audiences abroad – it broadcasts every day to 100 countries (but not to Bulgaria), in ten languages. BNR also has five regional channels: Varna (24-hour broadcasting) and Plovdiv, Stara Zagora, Shumen and Blagoevgrad (18-hours of broadcasting).

Public television, Bulgarian National Television (BNT), has one national channel, Kanal 1 (Channel One), and four regional centres, located in the cities of Blagoevgrad, Varna, Plovdiv and Rousse. In addition to Channel One, BNT also broadcasts the satellite programming service TV Bulgaria.

1. Mission

Bulgarian National Radio (BNR) and Bulgarian National Television (BNT) are so-called *ex lege* legal persons.² The Bulgarian State is their owner. BNR and BNT are successors to state monopoly organisations which were part of the structures of the executive power during the era of socialism.

BNT and BNR are regulated by Chapter Three of the RTL. Both operators are licensed for programming services and for terrestrial transmission of services. The programming licence, issued by the media regulator (the Council on Electronic Media – CEM) without auction or tender, sets the basic requirements for programming policy and other aspects of the activities of public service broadcasters. The licence for transmission of services is issued by the telecommunications regulator (the Committee on Regulation of Communications – CRC) without auction or tender. These licences entitle BNT and BNR to act as transmission service operators, i.e. to broadcast their programmes via their own means or to have them broadcast by other persons. In Bulgaria the programming services of public service broadcasters are still transmitted terrestrially by the Bulgarian Telecommunications Company – the incumbent operator which has now been privatised.

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1) This Law has been amended many times. With the amendment of 2000, full compliance with Community law was achieved. The RTL was last amended in 2006.

2) Article 42: "The Bulgarian National Radio and the Bulgarian National Television shall be legal persons with head offices in Sofia. The Bulgarian National Radio and the Bulgarian National Television shall exercise the day-to-day management of the State-owned property allocated thereto prior to the entry into force of this Act."

According to Bulgarian law different types of public broadcasters exist. Some public service broadcasters are established on the basis of communal or private property. They also have access to public funds in accordance with the provisions of the law.³

The law envisages common requirements for all public service broadcasters and additional requirements for BNT and BNR. All public service broadcasters (subjects of public law or of private law) have the obligation to:

- broadcast political, business, cultural, scientific, educational and other socially relevant information;
- afford access to national and global cultural values and popularise advances in science and technology by broadcasting Bulgarian and foreign educational and cultural programmes addressed to all age groups;
- ensure, through their programming policy, the protection of national interests, universal human cultural values, national science, education and culture of all Bulgarian citizens, regardless of their ethnic identity;
- encourage the creation of works by Bulgarian authors;
- encourage Bulgarian performing arts.⁴

The law explicitly defines the **public service remit** of the Bulgarian National Radio (BNR) and the Bulgarian National Television (BNT) – they are the national PSB – which is to:

- ensure programme services for all citizens of the Republic of Bulgaria;
- assist the development and popularisation of Bulgarian culture and the Bulgarian language, as well as of the culture and language of citizens in accordance with their ethnic identity;
- afford access to the national and European cultural heritage through their programme services;
- insert informational, educational and entertainment broadcasts in their programme services;
- apply the new information technologies;
- reflect the diversity of ideas and convictions in society by means of pluralistic coverage of viewpoints in each of the news and current affairs broadcasts on political and business subjects;
- foster mutual understanding and tolerance in relations between people;
- afford citizens the opportunity to become familiar with the official position of the State on important issues of public life.⁵

The law specifies **the basic principles** by which radio and television operators shall be guided; these are:

- right to freedom of expression and opinion;
- right to information;
- protection of confidential sources of information;
- protection of citizens' personal inviolability;
- inadmissibility of broadcasts inciting to intolerance among citizens;
- inadmissibility of broadcasts which are contrary to good morals, especially if they contain pornography, extol or condone brutality or violence, or incite to hatred on grounds of race, sex, religion or nationality;
- right of reply;
- copyrights and neighbouring rights in broadcasts and programmes;
- purity of the Bulgarian language.⁶

Freedom of speech is guaranteed by the Constitution in a balanced manner. This right cannot be used to the detriment of the rights and reputation of others, or for the incitement of a forcible change to the constitutionally established order, the perpetration of a crime, or the incitement of enmity or violence against anyone.⁷ There is a specific prohibition for broadcasting in violation of the above-mentioned principles and broadcasts inciting to national, political, ethnic, religious or racial intolerance, extolling or condoning brutality or violence, or that are likely to impair the physical, mental and moral development of infants and minors.⁸

3) This part of the law is not yet operative and there are only a few public service broadcasters of this type.

4) RTL, Article 6 para. 3.

5) RTL, Article 7.

6) RTL, Article 10.

7) Constitution, Article 39 para. 2.

8) RTL, Article 17 para. 2.

According to the Bulgarian law, at least 50 per cent of the total annual transmission time, excluding the time appointed to news and sports broadcasts, radio and television games, advertising, teletext services and radio- and teleshopping, shall be reserved for European works whenever this is practically possible. This is a common requirement for nearly all broadcasters.⁹ The specific proportion (*European quota*) is envisaged in every programming licence.

In accordance with the "Television without Frontiers" Directive, at least 10 per cent of the total annual transmission time, excluding the time appointed to news and sports broadcasts, radio and television games, advertising, teletext services, and radio- and teleshopping, is reserved for European works created by independent producers. This proportion should be achieved progressively through the allocation of sufficient resources for new works, i.e. works broadcast not later than five years after their creation.¹⁰

2. Corporate Structure

As already mentioned, BNR and BNT are so-called *ex lege* legal persons. The Bulgarian State owns the assets of BNR and BNT. Both legal persons operate with State property. According to the law, the State implements a licensing policy in the field of telecommunications which guarantees the broadcasting of the BNR and the BNT programming services throughout the territory of the country.¹¹

Bulgarian National Radio and Bulgarian National Television pursue radio and television broadcasting activities as national public service operators by virtue of licences. Public service broadcasters are licensed for programming services and for terrestrial transmission of services without auction or tender.

The governing bodies of Bulgarian National Television and Bulgarian National Radio are their respective Management Board and the Director General.¹² The monitoring and control over their activity are undertaken by the media regulator, CEM. It elects and discharges the Directors General of the BNR and the BNT and approves, upon the proposal of the Directors General, the members of the Managing Boards of the BNR and the BNT.¹³

At the beginning of the democratic transition in Bulgaria, the Directors General were elected and dismissed by the Parliament upon the proposal of the parliamentary Media Commission. The Radio and Television Law (RTL) envisaged the establishment of an independent regulator. This was considered to be a main guarantee of the independence of the media sector from the state.

Another guarantee, envisaged by the law, is the legal status of the Directors General during their term of office. They cannot be dismissed before the expiration of their term of office, except in cases defined by law, such as continued factual inability of the person to perform her or his duties for more than 6 months.

Thirdly, the law stipulates that all decisions regarding the appointment and dismissal of a Director General should be made by qualified majority and that they are subject to judicial review.

Directors General are elected by virtue of their proposed conception for management, which is subject to public discussion.

Regardless of all these legal guarantees, there are examples which show that the governing bodies of public service broadcasters are still encountering external influences. An illustration might be the fact that in recent years none of the Directors General of the BNT has completed the term of office as envisaged by the law.

3. Financing

The Bulgarian National Radio and the Bulgarian National Television prepare, implement, balance and present a self-contained budget. The Management Boards, within the limits of their budgets, endorse a budget or a budget account for the expenses of the regional radio and television centres and the other structural units.

9) RTL, Article 10 para. 2.

10) RTL, Article 10 para. 3.

11) RTL, Article 44q para. 2.

12) RTL, Article 55.

13) RTL, Article 32 para. 1.

The RTL¹⁴ envisages that the funding of public service broadcasters shall be based on various resources, including monthly fees from the audience, advertising and sponsoring. However, the provisions devoted to the collection of fees are not operative. After the RTL entered into force, no effective system for collecting licence fees has ever been organised, for different reasons. Firstly, the RTL requires the payment of a licence fee “on the basis of each registered electric meter” (as an indicator for “household”). The monthly amount comes to 0.6 per cent of Bulgaria’s monthly minimum wage per registered electric meter. There were disputes between the broadcast operators and the general public about the amount of the licence fee, which the operators argued was insufficient. But, for social reasons, the monthly licence fee remained rather low. In addition, the RTL allowed exemptions for people with disabilities, or for educational, social, and cultural institutions.

The collecting of the fees had to be carried out together with the collecting of sums due for the use of electric power through the cash desks of the National Electric Company (NEC). At that time the privatisation of NEC was launched. The former state company has been replaced by seven private companies and the collecting of fees has never begun.

Finally, the RTL’s original approach to attach the licence fee obligation to the possession of a television seems no longer to be a viable alternative because nowadays people can also receive television content on computers and mobile phones.

This suggests that Bulgaria needs a new “secure and predictable” funding model for public service broadcasters. After Spain and the Netherlands, Bulgaria could be the next country to re-examine the concept of its licence fee-based system.

In practice the public service broadcasters are funded by budget subsidies. Additionally, they receive income from their own revenues from advertising and sponsorship, proceeds from additional radio and television broadcasting related activities, interests and other income related to radio and television broadcasting activities or donations.

According to the law, advertising and sponsorship of programmes are allowed. BNT is subject to restrictions specified in the RTL and can only sell up to 15 minutes of advertising time daily. It can broadcast up to four minutes of advertising per hour, as compared to six minutes per hour for the commercial broadcasters performing public service functions, and 12 minutes per hour for other commercial broadcasters. The total duration of advertising for each separate programming service of the BNR may not exceed 6 minutes per hour.

The budget subsidy is provided for the preparation, creation and broadcasting of national and regional programming services. The subsidy’s amount is determined per hour of programming on the basis of a standard endorsed by the Council of Ministers. Additionally the subsidy includes a grant for tangible fixed assets according to a list endorsed annually by the Ministry of Finance, mainly in regard to the modernisation of the public service broadcasters’ real estate.¹⁵ The public service broadcasters prepare their draft budgets which are to be confirmed by the media regulator and adopted by the Parliament during the annual adoption of the National Budget Act for the next year. The National Audit Office of the Republic of Bulgaria performs an independent audit on the budget of public service broadcasters.

Debates related to the funding of public service broadcasters in Bulgaria mainly concern the duration of advertising. In particular, commercial operators insist that the BNT ought not to broadcast any advertising at all. However, many politicians and media professionals believe that the right moment for introducing a licence fee has already passed. As already outlined above, mobile phones that receive radio or television programmes via, for example, DVB-H (“TV-capable mobile phones”), are broadcasting reception devices. The same applies to internet-capable computers. If the fee-related provisions of the RTL were implemented, the users of TV-capable devices other than a television set would also have to pay licence fees.

Thus, there is a tendency to believe that the budgetary subsidy shall remain the main source of funding for public service broadcasters, while implementing the Community competition law principles: the subsidy should be granted transparently as compensation for the additional function of public service broadcasters in respect of public interest, and in virtue of the standard market prices.

14) RTL, Article 70.

15) The list includes a broadcasting centre (the National Radio and Television Centre located in Sofia), regional centres and vacation homes.

As a result, the BNT needs to provide for more transparency concerning the concordance between its expenditures and the services it renders under its public service mandate. In exchange for the financial support the BNT receives, it must deliver public service value that benefits the whole nation, and the individuals who pay. The decision-making processes of the BNT must be transparent and it must keep separate accounts for subsidies obtained from the State budget and income from advertising/sponsorship.

B. Decision Making: Structures and Procedures

The collective governing body – the Management Board – consists of five members, appointed by the media regulator CEM upon nomination by the Director General. The term of office of the Management Boards of BNR and BNT is three years.

Eligibility for appointment to the Management Board is limited to persons holding Bulgarian citizenship, who reside within the territory of Bulgaria, hold a university degree and possess professional experience in the sphere of radio and television broadcasting activities, of culture, journalism, the audio-visual area, telecommunications, law or economics. The following persons shall be ineligible for membership of the management board:

- any person who has been sentenced to imprisonment for premeditated offences under public law;
- any sole trader, owners of the capital of commercial corporations, partners, managing directors, managerial agents or members of management and auditing bodies of commercial corporations and cooperatives;
- any person who has been a full-time staff member or informer of the former State Security.¹⁶

The Management Boards perform different functions.¹⁷ They are mainly entrusted with taking economic and budgetary decisions in regard to the PSB, but also perform administrative tasks. Among these are, for example, (i) the determination of basic guidelines for the development, scope and structure of the programme service; (ii) the adoption of rules for the structure and organisation of operation, for wages, for payment of part-time contributors, for editing, for advertising, for the storage and use of stock material, and for external productions and co-productions; (iii) the taking of decisions on the establishment of expert and advisory boards, and the establishing of the procedure for their work; (iv) the adoption of the structure and staffing schedules of employees, the terms and procedure for conclusion of contracts with part-time contributors and journalists; (v) the endorsement of all advertising and sponsorship contracts, as well as any other contracts for a value exceeding a level specified in the rules of organisation and operation etc.

An important scope of competence is budget-related questions. The Management Boards adopt the draft budget and, after co-ordination with the Council on Electronic Media, transmit the subsidy request to the Ministry of Finance for inclusion in the draft National Budget Act. Furthermore, they adopt the budget as well as the report on its utilisation.

The Director General is elected by the media regulator. To be eligible for the position of a Director General, a person must possess Bulgarian citizenship, have a permanent address within the territory of Bulgaria, must have obtained a higher education degree, and professional experience. The term of office of the Director General is three years. A Director General may not be elected to the same office for more than two successive three-year terms.

The Directors General of the public service broadcasters implement the programming policy, manage operatively BNT and BNR respectively, and their property, and they conclude and terminate the labour contracts of their employees. They organise the preparation of the draft budget, submit the said draft to the Management Board for endorsement and organize the implementation, balancing and reporting of the budget, and submit it to the Management Board for adoption.¹⁸

The Director General is personally liable for the lawful performance of the public service broadcasters' activities. The term of office of a Director General could be terminated prior to the expiration of the said term if he commits or allows others to commit gross or systematic violations of the provisions regarding the principles of pursuit of the broadcasting activities of radio and television operators.¹⁹

16) RTL, Article 59.

17) RTL, Article 62.

18) RTL, Article 68.

19) RTL, Article 67 para. 1 p.2.

The media regulator, CEM, was set up under the RTL as an independent specialised regulatory body to guarantee the freedom of expression and the independence of the broadcasters, as well as the public interest. The Council is composed of nine members, of whom five are elected by the National Assembly and four are appointed by the President of the Republic. The CEM fulfils its regulatory competence on the basis of standardised monitoring. This includes monitoring compliance with the legal requirements for advertising, sponsorship, copyright and related rights, protection of minors etc., and licences. As already mentioned, the media regulator has additional competencies in the field of the establishment and the monitoring of the governing bodies of the public service broadcasters.

The Ministry of Finance and the National Audit Office of the Republic of Bulgaria have the competence to monitor the financial aspects of public service broadcasting activities. The "Internal Auditing" department, managed directly by the Director General, acts as an independent unit for improving the activities of BNT. Its work is regulated by the Statute of BNT and other internal rules.

A Public Council has been established recently. The members of the Council are well-known public figures, scientists, artists etc., but there is no visibility of the tasks and results of their work. There is neither any public announcement of the criteria for the nominations and selection of the members nor any information on the functions and meetings of the Council.

The Management Board decides on the establishment of additional expert and advisory boards. These boards have specific missions, relating to programming content, organisation of production, development of internal legal regulation, and management of conflicts. Several boards have been set up:

- The **Art Board for TV Programmes** – examines and takes an attitude towards the visual aspect of every television broadcast included in the BNT programming scheme. The members of this board are nominated by the Management Board and its chairman is the main producer of BNT.
- The **Assessment Board for TV Films** – assesses and accepts Bulgarian television films, created by BNT, according to the internal rules of the BNT.
- The **Programming Board** – is an operative body subordinate to the Management Board, established to ensure the coordination and control of planning and production activities in BNT. Its members are elected by the Management Board. The board approves all broadcasts before they are included in the programming scheme and expresses an opinion as to whether a programme should be broadcast, changed or stopped.
- The **Technological Development Council** – is an operative body of the Management Board for assessing the technological equipment. The Council is in charge of drafting strategies for technological development in BNT.
- The **Board for Implementation of TV Production** – is an operative body subordinate to the Management Board, it assesses the budget for the expenditures for TV production created by external producers, and for BNT participation in co-productions. In its work it shall follow the BNT regulations for making TV productions. All BNT directors and the legal adviser are members of this Board. The Executive Director acts as its chairman.
- The **Budget Board for Film-making** – is an operative body of the Management Board, established to assess the budget expenditures for making Bulgarian television films at the BNT. The members of this board are proposed by the Director General and approved by the Management Board.
- The **Supervisory Board** – is an operative body subordinate to the Management Board, established to analyse the effectiveness of, and audience reaction to, BNT broadcasts; to assess the work of BNT staff connected with the realisation and broadcasting of programming services, in other words – to assess the co-ordination, interaction and the exchange of information and documents between different units.

Finally, a special unit for analysing the opinion of viewers was established - the Department for Audience Opinion Analysis and Special BNT Initiatives. This unit:

- organises, analyses and summarises information regarding audience opinion;
- informs TV programme producers about audience opinion;
- initiates, proposes, co-ordinates and takes part in BNT initiatives in order to help fulfil the public service mandate.

Chapter II: Cultural Diversity

Despite the alignment of the Bulgarian media legislation with Community law, important governance and regulatory issues remain. The RTL sets out the arrangements which ensure that the interests of both members of society and the public service broadcasters are taken into account, but

nevertheless there are still public debates concerning the remit, the transparency of management, the accountability for the use of public money and the independence of the public service operators.

A. Influence of Relevant National or Cultural Aspects

As regards the public service broadcasters' remit, the legislation explicitly envisages that the programming services be designed for different audiences and categories of viewers: the BNT and the BNR create national and regional programming services; programming services for abroad, including for those Bulgarians abroad whose mother tongue is not Bulgarian.²⁰

According to the Constitution of the Republic of Bulgaria, the official language is Bulgarian. However, parts of the Bulgarian population are of Turkish or Romany ethnic origins. According to the last census, taken in 2001, 7,973,671 Bulgarian citizens live in Bulgaria, of whom the Turkish population accounts for 9.3 per cent, and the Romany population for about 5 per cent.

Bulgaria has a fast-growing tourist industry and is becoming more and more attractive as a destination for tourists from neighbouring countries as well as from all over Europe. For that reason the RTL stipulates:

"The programming services of the radio and television operators shall be broadcast in the official language according to the Constitution of the Republic of Bulgaria.²¹ In addition, however, the programming services or individual broadcasts of the radio and television operators can be in other languages when:

1. they are broadcast with an educational purpose;
2. they are designated for Bulgarian citizens whose mother tongue is not Bulgarian;
3. they are designated for listeners or viewers from abroad;
4. foreign radio and television programming services are retranslated."

Every day at 5 p.m. Bulgarian National Television broadcasts news in Turkish. This meets with different reactions in Bulgarian society and is periodically criticised. Nevertheless, for the time being, BNT continues to broadcast the transmission in Turkish.

For an effective interaction with the regional audience BNT maintains four regional television centres in Plovdiv, Rousse, Varna and Blagoevgrad. According to the law, the regional programming services report events of local importance. They are created by regional radio and television centres and are designated for both the population of the respective region and for participation in the national radio and television programming services.²²

The Bulgarian National Television provides programming time to address believers and to broadcast important religious ceremonies upon request of the Bulgarian Orthodox Church and other officially registered religions. The conditions and the order of providing programming time are determined in bylaws.²³

As already stated, the Community law requirements concerning European production and production of independent producers have been transposed into Bulgarian law.²⁴ There are no statistical data publicly available on the general observance of these rules by television operators, but BNT and BNR have developed internal monitoring mechanisms to ensure that their programming services meet the obligations specified in their programming licenses. They regularly report to the media regulator on their implementation of the obligations contained in their licenses.

According to the licence of the BNT (Channel One) these obligations include:

- European and Bulgarian production – not less than 74.9 per cent of the qualified annual programming time;
- BNT own production – not less than 36.7 per cent of the qualified annual programming time;
- production of "independent producers" – not less than 10 per cent of the qualified annual programming time;

20) RTL, Article 49 para. 1.

21) RTL, Article 12 para. 1.

22) RTL, Article 49 para. 2.

23) RTL, Article 53.

24) RTL, Article 10 para. 2.

- news – not less than 5.1 per cent of the daily programming time, of which not less than 15.6 per cent of the entire news programming time should be dedicated to regional news and not less than 0.7 per cent of the news should be accompanied by a translation for deaf people;
- current affairs programmes – not less than 16.6 per cent of the weekly programming time;
- educational programmes – not less than 3.7 per cent of the weekly programming time;
- cultural, scientific and religious programmes – not less than 4.7 per cent of the weekly programming time;
- programmes for children and youth – not less than 7.6 per cent of the weekly programming time;
- programmes in support of the integration of underprivileged groups and groups at risk – not less than 1.8 per cent of the monthly programming time;
- programmes for Bulgarian citizens whose mother tongue is not Bulgarian – not less than 0.3 per cent of the annual programming time.

BNT reports for 2005:

- European and Bulgarian production - 76.5 per cent of the qualified annual programming time;
- BNT own production - 41 per cent of the qualified annual programming time.

The requirement to provide diversified and pluralistic content is explicitly stated in the public service mandate of BNT. The public service broadcaster is obliged to contribute to mutual understanding and tolerance in the relations between people.²⁵

In recent years BNT's programming services were focused on Bulgaria's forthcoming membership of the European Union and on the changes which this will bring to Bulgarian society. This is reflected in the structure of news and current affairs programmes (Panorama, See who, 100 questions about the EU) in which the topic of European integration predominates. BNT actively takes part in the communication campaign concerning Bulgaria's accession to the EU. The support for European integration is relatively high – three quarters of Bulgarians approve of membership of the EU.

B. Reflections of Diversity in Organisational Structure

BNT's management mirrors the general problems that Bulgaria faces on its way to democratic governance – difficulties in the establishment of the representative civil society structures, lack of civil control on administration, non-transparency of decision-making processes.

The level of transparency, for example, of BNT's strategy for further reforms could be judged as insufficient. The governing bodies do not provide the information needed for public supervision of BNT (information which could result in public pressure for revising the organisational structure or replacing the management). Likewise the decisions of the BNT's management board are not published.

The interrelations between the ruling majority, the media regulator and the media are symptomatic of the long road to real independence of public service broadcasters.

In the past 10 years Bulgaria has been governed by three different political majorities: right-wing majority (1997–2001), liberal majority (2001–2005) and a coalition dominated by the Socialist Party (from 2005). During the first period, the media regulator elected Lilyana Popova as Director General of BNT. When the liberal majority assumed power in 2001, the RTL was amended, the regulator enforced the new law *ex tunc*, and as a result Popova was dismissed. Popova appealed to the Supreme Administrative Court (SAC), which in 2002 nullified the CEM's decision, stating that "Popova's dismissal was a violation of the law".²⁶ Popova was not reinstated, as her mandate had expired in the meantime, although she did receive compensation. In her place Kiril Gotzev was elected. Soon thereafter Kiril Gotzev lost the trust of the governing liberal majority, most probably because of BNT's advertising policy. Without a profound analysis of his management and his achievements in implementing public service obligations, the media regulator terminated Kiril Gotzev's contract alleging formal offences against the law. He successfully appealed against the decision of the CEM. However, the decision in favour of Gotzev was then further appealed by the CEM. In January 2005, the Supreme Administrative Court ruled against Gotzev and in favour of the CEM.²⁷ Meanwhile, the Court has overturned so many CEM decisions that it has been described as "an upper chamber" of the CEM. Obviously, there is much to be done towards the creation of a system of governance which would pass a "public confidence test".

25) RTL, Article 7 para. 7.

26) Supreme Administrative Court Decision No. 2999, of 28 March 2002.

27) Supreme Administrative Court Decision No. 1554, of 18 February 2005.

Very soon the public service broadcasters in Bulgaria will be authorised to transmit their (analogue) programming services digitally. The main challenge ahead of them is to safeguard the public service nature of their broadcasting activities in the digital environment. According to this line of thought, the real reforms and the transformation of BNT into an independent and accountable public service television broadcaster, which after Bulgaria's accession to the EU on 1 January 2007 will act smoothly within the legal framework of the Community law, are still forthcoming.

CH SWITZERLAND

Rolf H. Weber*

Chapter I: Regulatory Framework

A. Mission, Economic and Financing Model

Switzerland, as a small country with a total population of less than 7 Million inhabitants, is characterized by some particular features which are to be taken into account by the legislator in the preparation and implementation of regulations in the field of broadcasting. As far as the extent is concerned, broadcast markets are very small in Switzerland, in particular due to the fact that four languages are spoken; furthermore, three geographical areas are exposed to much larger linguistically identical foreign markets.¹ The relatively small number of consumers of broadcast services has a direct influence on financing possibilities. In addition, Switzerland is open to the programmes of foreign broadcast providers; their programmes have a quite high popularity rating in Switzerland.² Furthermore, since foreign broadcast providers are allowed to include advertisements in their programmes which are exclusively directed towards Swiss consumers (“*Werbefenster*”), the differentiation of the programmes of Swiss broadcast providers becomes quite small; financially speaking, about 20% of the advertising market in Switzerland goes to foreign broadcast providers.³

1. Mission

Switzerland does not know the concept of a “public service broadcast provider” directly controlled by governmental bodies. Moreover, the fulfillment of the traditional conditions for public service broadcasting (PSB) is placed in the hands of a private organization which assumes public tasks, namely the *Schweizerische Radio- und Fernsehgesellschaft* (SRG).⁴

The Swiss Constitution requires broadcast providers to offer a set of programmes to the public which adequately reflects the interests of the different sections of the population and supports social, democratic and cultural comprehension (Art. 93 par. 2 BV). The Constitution does not say that the SRG (or any other “public” entity) is responsible for the fulfillment of these criteria; moreover, the mandate is given to the broadcast system in its entirety.⁵ Nevertheless, in light of the above-mentioned particular features of the Swiss broadcast markets it is obvious that the main tasks in the context of

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1) *Botschaft des Bundesrates zur Totalrevision des Bundesgesetzes über Radio- und Fernsehen (RTVG)* of 18 December 2002, BBl 2003, 1569, 1584/85.

2) The market share of foreign broadcast providers in the receivers’ market exceeds 50% in Switzerland (*Botschaft* [fn. 1], 1770).

3) For more details see *Botschaft* (fn. 1), 1580.

4) The SRG constantly emphasizes in its official statements that it is not a public, but rather a private, entity; nevertheless, the SRG fulfills public tasks and it functionally behaves like a public entity.

5) See Martin Dumermuth, *Die Revision des Radio- und Fernsehgesetzes und das duale System*, ZSR 2006 I 229, 232; see also Rolf H. Weber, *Neues Schweizer Rundfunkrecht*, UFITA 2007 I (forthcoming).

public service broadcasting must be assumed by the (not legally, but factually) “public” service broadcast provider SRG.⁶ In order to reflect this fact (and to improve its reputation), the Schweizerische Radio- und Fernsehgesellschaft has enlarged its corporate name to “SRG *idée suisse*”.

The new Radio and Television Law (*Radio- und Fernsehgesetz – RTVG*), adopted in Parliament on 24 March 2006, and which enters into force on 1 April 2007, contains in its first part two sections on the transmission of broadcast programmes, namely a section on general conditions (Arts. 3 - 22 RTVG) and a section on the SRG (Arts. 23 - 37 RTVG). Further details are contained in the not yet finally released Ordinance to the RTVG. In principle, the new law does not substantially deviate from the previous law; only, to a certain extent, the public service commitments are slightly strengthened. Looking at their substance, the regulations are quite strict even if the binding effects concern a formally “private” entity, which however, is in practice an entity obliged to fulfill tasks in the public interest.

The main goals of the public service broadcasting are outlined in detail in Art. 24 par. 1 RTVG. In particular, the SRG has to fulfill the following tasks:

- Making available radio and television programmes in three languages (French, German, Italian) to the whole Swiss population in a substantively wide coverage;
- promoting comprehension, cooperation and exchange of opinions between the different parts of the country, the linguistic communities, the cultures and the societal groups; furthermore, due care must be taken to respect the particular features of the country and its cantons;
- promoting better relations between Switzerland and Swiss persons living abroad and improving knowledge of Switzerland and comprehension of its interests abroad.

Furthermore, the SRG should contribute to the following aspects (Art. 24 par. 4 RTVG):

- Free formation of opinion by the public based on extensive, manifold and adequate information, in particular regarding political, economic and social contexts;
- Improvement of cultural developments and strengthening of cultural values of the country including the promotion of Swiss culture, with particular attention to Swiss literature, music and film production;
- education of the public, for instance through the transmission of educational programmes;
- provision of entertainment programmes.

Obviously, the general principles binding every broadcast provider (Arts. 4 - 8 RTVG) are also binding upon the SRG. In particular, the programmes must reflect human rights and the integrity of the personality of referenced persons; instances of discrimination are to be avoided and the programmes should not induce undesirable behaviour (Art. 4 par. 1 RTVG). Furthermore, disseminated information must correspond to factual reality and allow the public to form its own opinions (Art. 4 par. 2 RTVG). The programmes should also mirror an adequately sensible picture of the different values in society (Art. 4 par. 4 RTVG). Programme activities must be independent from and neutral to governmental interests (Art. 6 RTVG). Finally, the Federal Council can require broadcast providers to specifically observe functions in the country’s interest, such as cultural quotas (Art. 7 RTVG).⁷

Already the previous law, but also the new RTVG, grants the SRG a right to be active in and cover new markets, for instance the online media markets (Art. 25 par. 3 lit. b RTVG). The legal doctrine refers to a so-called “*Entwicklungsgarantie*” (“development guarantee”) of the public service broadcast provider which includes the possibility of playing an important role in online media markets.⁸ Possible activities are online programmes as complementary products, online delivery as additional distribution channel, content syndication etc. This “development guarantee”, even if it is now partly limited (Art. 29 RTVG), is not really in line with competitive thinking and often gives rise to discussions if the SRG tries to “occupy” a specific market with its large budget, thereby building substantial market entry barriers for competitors.⁹

6) See Otfried Jarren/Patrick Donges, *Der öffentliche Rundfunk in der Gesellschaft – Begründung, Wandel und Konflikte um eine Leitidee am Beispiel Schweiz*, in: Christa-Maria Ridder et al. (Hrsg.), *Bausteine einer Theorie des öffentlich-rechtlichen Rundfunks*, Wiesbaden 2005, 185.

7) For the comparable previous law see Martin Dumermuth, *Rundfunkrecht*, in: Rolf H. Weber (editor), *Informations- und Kommunikationsrecht*, SBVR, Bd V, Basel 1996, part D, nos. 65 ss.

8) Dumermuth (fn. 5), 249/50.

9) See the critical remarks, expressed by Urs Saxer, *SRG ohne Grenzen? Rundfunkfremde Aktivitäten der SRG unter dem neuen RTVG*, ZSR 2006 I 309 ss and Denis Barrelet, *Les activités de la SSR dans la domaine de la presse écrite périodique, mediale* 1/1996, 26 ss.

2. Corporate Structure

As already mentioned, the *Schweizerische Radio- und Fernsehgesellschaft* (SRG) is not a governmental organization or agency; such a corporate structure would contravene the constitutional principle that the broadcast provider must be independent from governmental bodies and enjoy structural autonomy (Art. 93 par. 3 of the Constitution).¹⁰

The SRG is incorporated as a private association according to Arts. 60-79 of the Swiss Civil Code (CC), but with a corporate structure similar to a holding company. Therefore, capital investments in the form of shares do not exist.¹¹ The association consists of four regional entities (*Radio- und Fernsehgesellschaft der deutschen und rätoromanischen Schweiz*, *Société de radiodiffusion et de télévision de la Suisse romande*, *Società cooperativa per la radiotelevisione nella Svizzera italiana*, *Cumünanza rumantscha radio et televisiun*), also constituted as associations and oriented to the four linguistic regions in Switzerland; each of the four regional associations may again be composed of different private entities.¹² This structure should reflect the decentralizing concept of the SRG as well as the federalist constitution of Switzerland. Particularly since three linguistic regions are exposed to a much larger foreign geographical area with the same language (Germany/Austria, France, Italy resulting in the “next-door-giant”-phenomenon),¹³ the Swiss legislator considered it important that the linguistic regions would have their own standing.

The corporate organization of the association SRG is composed of three parts, namely (1) the entrepreneurial bodies, (2) the professional organization and (3) the involvement of the public.¹⁴ The details are contained in the licence granted by the Federal Council, and the statutes of the SRG, to be approved by the Communications Department of the Federal Council.

(1) The highest body of the SRG is the “Zentralrat” or, with the new Art. 33 RTVG, the “Verwaltungsrat”, respectively (functionally similar to a supervisory body), composed of 21 members. Its most important functions consist in the appointment of the general director, the approval of the financial statements and the preparation of a proposal for the ascertainment by the Federal Council of the fees payable by consumers of broadcast services. The Federal Council appoints five members (including the Chairman), the regional associations appoint twelve members and four members are co-opted through the “Zentralrat” (“Verwaltungsrat”).¹⁵

In respect of all matters which are not explicitly stated to be within the competence of the “Zentralrat”, this body is entitled to establish an executive committee composed of seven to nine members. The executive committee assumes the operative functions and leaves the “Zentralrat” (“Verwaltungsrat”) with mainly supervisory functions.¹⁶

Similar to the national level, regional associations are also composed of a supervisory body and an executive committee with different numbers of members. The appointment procedures for members of the regional organizational bodies follow the historic, cultural and legal circumstances of the respective regions. Often, elderly politicians are appointed due to the fact that these persons are known to, and have good relations with, different “groups” in society; furthermore, each geographical area and cities as well as rural villages should be represented. As far as the allocation of competences between the national level and the regional levels is concerned, the principle of decentralization applies; wherever a task can be fulfilled on a regional level, the national body should not intervene.¹⁷

(2) The professional organization of the SRG is established as a business-oriented management structure with a general director at the top of the hierarchy. This professional organization carries out the day-to-day work; the general director has the right to issue guidelines and directives for the different business entities within the SRG, including the individual right to intervene in programming aspects if this is in the interest of the public service tasks.¹⁸

10) See Herbert Burkert, in: *Die schweizerische Bundesverfassung, Kommentar*, edited by Ehrenzeller/Mastronardi/Schweizer/Vallender, Lachen/Zürich 2002, Art. 93 no. 8.

11) An association is composed of members (Art. 70 CC); a specific investment must not be made by the members, except that they should contribute equally to the necessary expenses incurred in carrying out the object(s) of the society (Art. 71 par. 2 CC).

12) Dumermuth (fn. 7), no. 234; Leo Schürmann/Peter Nobel, *Medienrecht*, 2. Aufl., Bern 1993, 149.

13) Dumermuth (fn. 5), no. 238.

14) For more details see Dumermuth (fn. 7), no. 237 ss; Schürmann/Nobel (fn. 12), 150/51.

15) Dumermuth (fn. 7), no. 237; Schürmann/Nobel (fn. 12), 150; according to the new Art. 33.

16) Dumermuth (fn. 7), no. 238.

17) See also Dumermuth (fn. 7), no. 239 with further references.

18) Dumermuth (fn. 7), no. 242; Schürmann/Nobel (fn. 12), 151/52.

In general, the SRG is structured as a “normal” business organization with department heads etc. Apart from (or instead of) managerial capabilities, the employees of SRG should also have knowledge of programme production. Furthermore, persons being in touch with the public are supposed to execute their functions in an intelligent manner.

(3) The SRG is obliged to organize itself in such a way that the public is represented in the organization. This requirement is fulfilled by the regional associations which regularly observe a statutory obligation to establish a body composed of public representatives. This body of the public should judge the programme activities of SRG and make recommendations to those persons responsible for programme policy, for example by submitting proposals, requests and wishes for future programme activities.¹⁹ In fact, however, the actual influence of this public body is rather weak. The entrepreneurial body and the public representatives do not fulfill the same functions; however, in certain circumstances it is possible that the same person can be appointed to both bodies.

As long as the SRG observes the legal obligations and the provisions of its license (“*Konzession*”), the Federal Council is not entitled to directly intervene in the programme activities. The legal supervisory tasks of the *Bundesamt für Kommunikation* (Office for Communications – OFCOM) is mainly concentrated on the compliance of the SRG with the advertising and sponsorship rules of the RTVG. As mentioned, however, the Federal Council has the right to appoint five members of the “*Zentralrat*” as well as 20% of the members of the regional bodies. Furthermore, the appointment of the general director must be approved by the Federal Council. These rights could indeed endanger the neutrality and the autonomy of the SRG, but the compatibility of these rights with the Swiss Constitution has not yet been tested in court.

3. Financing

For many decades the SRG has enjoyed a double financing: on the one hand, the major part of the fees paid by the receivers (consumers) to a specialized legal entity (Art. 69: “*Gebühren-erhebungsstelle*”), which is not controlled by the government, but fulfills a public function,²⁰ is further channeled to the SRG (Arts. 34 and 68 RTVG). In the meantime, the total yearly amount exceeds CHF 1 billion (approx. EUR 630 million). Only a minor part of the fees goes to small radio and television stations in rural and alpine areas which could not finance the transmission of broadcast programmes through the market (so-called splitting of charges).²¹ On the other hand, the SRG is entitled to place advertisements and sponsorship in its programmes within certain legal limits; this principle applies only to television, not to radio which is free of advertisements in Switzerland.

This financing model should allow the SRG as “public” service broadcast provider to finance the programme production without regard to market restrictions. In particular, the objectives to be achieved with the programme activities should consist in the realization of a widely accepted public service, independent of the economic interests of the advertising firms.²² This concept, however, cannot overcome the problem that each public service broadcast provider is exposed to market conditions to a certain extent; if, for example, the prices for the transmission rights of the Olympic Games are substantially increasing, such a provider must cope with the problem that high prices need to be paid in order not to be excluded from the respective programme activities.²³ The procedure for the establishment of the charges is not very transparent: The SRG submits its budget to the Federal Council with a motion concerning its financial needs; based on this budget and general political considerations, the Federal Council fixes the charges.²⁴ In its latest decision on charges of 8 December 2006 the Federal Council assigned an increase by 2.5 per cent as from 1 April 2007; this increase, however, is not as high as the percentage of 6.5 per cent the SRG had initially filed as its additional financial requirement.

19) Dumermuth (fn. 7), no. 244; Schürmann/Nobel (fn. 12), 151.

20) The legislator was of the opinion that the handling and “distribution” of the fees would not have to be done by a governmental agency; the choice of the private entity has been made on the basis of a “merits” procedure (“beauty contest”).

21) The foreign broadcast providers are not entitled to receive any charges irrespective of the quality of their programmes (see also the critical remarks of Karl-Jascha Schneider-Marfels, *Auslandsmedien: Heimatschutz oder Wettbewerb?*, ZSR 2006 I 339, 343 ss).

22) Dumermuth (fn. 5), 252.

23) See Rolf H. Weber/Simon Osterwalder (Ed.), *Zugang zu Premium Content*, Zürich 2006.

24) Art. 35 RTVG contains a few rules as to the use of the fees payable to the SRG, however, it might be quite difficult to supervise the spending of money based on the given accounting system of SRG.

In the course of the preparation of the new Radio and Television Law, the Federal Council has proposed the strengthening of the idea of a so-called “dual” model of financing, meaning that the public service broadcast provider, namely the SRG, should more or less exclusively benefit from the fees (and have some limited possibilities for financing from advertisements) whereas the private broadcast stations would not receive any fees, but would have more possibilities for financing through the market.²⁵ This model had some similarities with the structure in the United Kingdom, without, however, going as far as the financing model of the BBC; nevertheless, the Parliament did not welcome this stricter “dual” regime and has strengthened the idea of the above-mentioned splitting of charges.²⁶

Due to the fact that the SRG is usually calling on the Federal Council to increase the charges if the impression exists that the programme activities could no longer be sufficiently funded, it is possible to say that the SRG has a special kind of “guarantee of continuity”. This “unusual security” to survive in the market which is not typical of a liberal economic system is not contested in principle by the competitors and the public. However, the transparency of the funding framework could be improved and in particular it is being questioned whether the SRG has the possibility of using the fees for funding services being offered equally by its competitors. Almost continual discussions concern the publication of a special magazine and in particular the internet services offered by SRG; indeed, a cross-subsidization could occur which does not seem to be in line with a competitive framework in broadcast markets²⁷.

B. Decision Making: Structures and Procedures

1. Decision-Making Process

Legally the decision-making power within the SRG corresponds to the rules of the association in accordance with civil law principles. Additional regulations are contained in the license under which the SRG carries out its activities and in the statutes. In particular, these documents provide for the specific, already mentioned appointment rules relating to the supervisory board.²⁸

(1) The power of the general director is rather broad and extensive. The general director liaises informally with the political bodies (Federal Council and Parliament) and issues the main guidelines relating both in general and in detail to the programme activities. Looking at the fact that the general director is appointed by the “Zentralrat” (“Verwaltungsrat”), such appointment subject only to the approval of the Federal Council, it cannot be said that the political influence is very strong. Nevertheless, since the Federal Council decides on the amount of the fees payable by the consumers to the SRG,²⁹ it is unlikely that the key actors of the SRG would be inclined to constantly criticize the political bodies because such kind of programme activity could easily have detrimental financial effects in the long run. Furthermore, since the general director must be an acceptable person throughout the whole country of Switzerland, it is likely that only a person having a substantial amount of political experience and being generally accepted by the public is appointed.

The power of the general director is also remarkably broad due to the fact that the supervisory body is relatively “weak” and that many of its members do not have much experience in the field of production of broadcast programmes.

As already mentioned,³⁰ the supervisory body is partly appointed by political bodies. Therefore, a certain risk of governmental interference cannot be fully excluded; nevertheless, the independence of the supervisory body is not endangered. The remuneration of the members of the supervisory body is relatively modest, but this fact does not seem to have an influence on the execution of the given tasks.

(2) The management of SRG is structured in the same way as a “normal” business corporation, even if the hierarchical order is relatively flat. Apart from the general director, management functions are assumed by a director who takes the responsibility for the day-to-day operations. In particular, the

25) *Botschaft* (fn. 1), 1618 ss.

26) See also Dumermuth (fn. 5), 252/53; critically to this concept Andreas Meili, *Gründe und Scheingründe für eine Sonderregelung des Rundfunks: Der Weg zum neuen RTVG aus Sicht des Gesamtmediensystems*, ZSR 2006 I 263, 273.

27) For a more detailed discussion see the contributions of Saxer (fn. 9) and Barrelet (fn. 9), each with further references.

28) See above Chapter I, A.2.

29) See above Chapter I, A.3.

30) See above Chapter I, A.2.

director is accountable for the actual programme activities and the decisions on specific television series and political emissions. The allocation of competences between the general director and the director does not seem to be always clear; however, actual disputes have not arisen so far.

The employees work on the basis of a private labour contract. In principle, normal business rules apply and discrimination should not be possible.

The level of transparency is not very high for two reasons: (1) The SRG is structured as a holding "company" in the form of associations in a rather complicated way; the law governing the associations does not provide for much transparency and the licence granted to SRG has not yet put emphasis on this aspect. (2) The accounting system does not always allow for easy identification of the product-directed cost calculation.³¹

2. Impact of Politics

As already outlined, the Federal Council has several possibilities for "influencing" the SRG as the public service broadcast provider: On the one hand, the Federal Council is entitled to include specific provisions and rules into the licence granted to the SRG, on the other, it can appoint five out of 21 members of the supervisory board and must approve the appointment of the general director.

However, the political bodies do not really have a factual influence on the determination of programme schedules, the conception and production of programmes, the editing and presentation of news and current affairs programmes, the organization of the activities of the public service, the recruitment, employment and management of staff, the purchase, hire, sale and use of goods and services, the management of financial resources, the preparation and execution of the budget, the negotiation, preparation and signature of legal acts relating to the operation of the broadcast services as well as the representation of the SRG in legal proceedings. A factual influence would also legally contravene the constitutional provision of independence and autonomy of broadcast providers (Art. 93 par. 3 BV).

3. Impact of Civil Society

The licence of the SRG provides for the establishment of a body of public representatives on the national level and on the regional levels. Looking at the wording of the licence, the influence of civil society is a given fact. Nevertheless, it cannot be overlooked that the factual input given by the representatives of the public is relatively weak. Actual control mechanisms are not installed, the public representatives do not have legal "tools" for control, and assessment studies on broadcast programmes have only been done in rare cases.

A direct participation of the public in specific programme activities and other relevant services is not legally envisaged, in particular things like a civil "society channel" does not exist. So far the SRG as public service broadcast provider has not introduced editorial, consultative or programming boards or councils within its structures. The Federal Council wanted to introduce the instrument of an "associated body" ("*Beirat*") in the course of the preparation of the new RTVG.³² However, the Parliament did not follow this idea of stronger public participation; moreover, it seems to have been afraid of undue influence by expert representatives. Therefore, the previous system has not been changed by the new law.

Every person offended by a programme has the right to complain to an Ombudsman ("*Ombudsstelle*") who is to be appointed by the radio or television station concerned, in particular by the SRG (Arts. 91 - 93 RTVG). The "*Ombudsstelle*" does not have the right to make a binding decision; the person in charge has the function of a mediator. If the mediation is not successful, the offended person is entitled to file a complaint to an independent regulatory agency ("*unabhängige Beschwerdeinstanz*") which deals with complaints regarding programme activities (Arts. 82 - 85 and Arts. 94 - 98 RTVG). This independent regulatory agency has quasi-judicial functions; a decision of this body can be appealed to the Federal Court. The independent regulatory agency supervising the programme activities of the SRG (and the other broadcast providers) from a legal angle, however, is restricted insofar as the legal "review" must address the question of a possible violation of a person's right in his/her integrity; furthermore, a complaint can be made that a specific programme did not comply with the minimal standards for

³¹) See also above Chapter I, A.3.

³²) *Botschaft* (fn. 1), 1604 ss, 1701 ss.

programme activities as in Arts. 4 and 24 RTVG (for example correct information, compliance with human rights). Consequently, the independent regulatory agency is not entitled to give a judgment on the general quality of the programme activities.³³

Chapter II: Cultural Diversity

Cultural diversity is an important aspect in Swiss legislation. The reason for this importance is the already mentioned fact that Switzerland has four (or at least three main) languages and that cultural development in the different geographical areas in Switzerland is not at all identical.

A. Influence of Relevant National or Cultural Aspects

Language requirements are not directly envisaged in the Radio and Television Law, however, the linguistic aspects of programme activities play a crucial role. The three main regional associations conducting public service broadcasting in the German, French and Italian languages are obviously producing the programmes in their respective languages without any legal obligation to translate the programmes into the language of another geographical area in Switzerland. A special problem concerns the (largest) German part: In relatively constant discussions it is to be considered whether speakers should use the so-called “written” or “literary” German or the Swiss dialect of their origin, taking into account that the dialects differ considerably from East to West in Switzerland. During the last few years a certain tendency to use the Swiss dialect more frequently than in the past cannot be overlooked. One reason for speaking the written German could be the hope to be understood by the population in the French and Italian geographical areas. However, this argument has lost importance since in the meantime French and Italian programmes can also be received in the German part of Switzerland by cable; in other words, French-speaking persons living in Zurich would probably not watch German language television, but rather French language television produced in the Romandie.

As far as content is concerned, the Radio and Television Law states the above-mentioned obligation to take adequate account of the particularities of the different geographical areas and of the specific interests of the cantons (Art. 24 par. 1 RTVG).³⁴ In this regard, the three regional associations of the SRG are obliged to comply with special policy goals. Specific requirements as to the subjects to be discussed and, for example, as to the requirement to have educational programmes do not exist; however, the applicable regulations require the SRG to contribute to informed debates and critical thought (Art. 24 par. 4 RTVG).

Switzerland has regional programmes, offered by the regional associations of the SRG and by private broadcast providers. In general, the private broadcast providers are opposed to an extension of regional programmes offered by the SRG since this competition could undermine the financial standing of the private broadcast providers. So far, all attempts of private enterprises to offer a Swiss-wide television programme in competition with the SRG have failed for financial reasons (too small markets); therefore, the private sector claims some basic protection against the SRG in the regional markets.

Specific regulations in respect of the obligation of the SRG to respond to specific audience categories (for example children, visually impaired persons, non-citizens, immigrants etc.) do not exist; an indirect “obligation” could only be drawn from the above-mentioned general principles. Obviously detailed provisions in the (future) SRG licence could bring more legal certainty than the general undertaking to consider the interests of all members of civil society.

Swiss legislation provides for qualitative criteria insofar as, in particular, politically influencing programmes must be offered to the public in a fair and neutral way (Art. 4 RTVG); furthermore, quality standards are set in such a way that high professional education is expected. The suitability of the quality of programmes and the fulfillment of legal requirements is assessed by a specific “review body” which is formally independent from the SRG (a university expert together with his institute); in fact, however, it is doubtful whether this formal independence also constitutes a material neutrality since the “review body” permanently receives its respective mandates from the SRG. The new RTVG provides now for the establishment of a special foundation (Arts. 78 - 81 RTVG) which will have the task of assessing programs; the details of its organization are not yet known.

33) For an overview see Denis Barrelet, *Droit de la communication*, Berne 1998, nos. 718 ss.

34) Critically to this argument Meili (fn. 26), 267/68.

For many years, Switzerland did not have quota regulations, similar to Art. 4 and Art. 5 of the Television Directive of the European Union. In the context of the Bilateral Agreements between Switzerland and the European Union and in particular in view of the participation of Switzerland in the EU-Media Programmes, Switzerland has given a commitment to the European Commission to introduce quota regulations. This undertaking was realized at the beginning of 2006: The new quota regulations in Swiss law (Art. 7 RTVG) largely correspond to the provisions of the EC Directive "Television without Frontiers".³⁵

In Switzerland it is very important that the SRG as public service broadcast provider advances democratic values, such as fostering tolerance and intercultural understanding. The legal provisions do not explicitly use these terms, however, the general understanding of the legal concept based on Arts. 4 and 24 RTVG is along these lines. Religious requirements are not a legal topic in the sense of positive conditions since Switzerland has for many decades observed the principle of neutrality, meaning that religions and their official representatives should not have a direct political influence on civil society.

Finally, an important requirement of the Radio and Television Law is seen in the obligation of the SRG to support Swiss film production (Art. 7 par. 2 and Art. 24 par. 4 lit. b RTVG): The SRG as public service broadcast provider finances Swiss film production and grants the possibility that the successfully produced films are shown in Swiss television programming.³⁶ This financial support is important for the quite small film market in Switzerland which could not solely finance production from third party sources.

B. Reflections of Diversity in Organisational Structure

Switzerland has, as described, a decentralized, federal system in the organization of the public service broadcast provider. The regional associations are designed to reflect the manifold needs and desires of the linguistically different geographical areas in Switzerland. However, the observance of and the compliance with cultural diversity elements does not really come from the supervisory boards being composed of representatives of the civil society, but is realized by the management of SRG itself. This fact which might also be influenced by the political stability over decades with governments comprising all relevant political parties ("*Konkordanzregierungen*") should not be seen as disadvantage per se, but a certain reservation must be made in respect of the viability of a civil society concept.

In this regard, it can be regretted that the Parliament has refused to accept the proposal of the Federal Council to establish an independent board of experts representing qualitative elements of civil society in the context of the recent revision of the Radio and Television Law. Probably, the Parliament was afraid of the fact that experts would have a stronger influence on the programme activities than politicians sitting on the supervisory boards. Since the present (and future) control systems are not very well advanced and considering that the level of transparency in SRG is not far-reaching, further initiatives to give broader participation possibilities to civil society should be developed.

35) For more details see Rolf H. Weber/Alexander Rossnagel/Simon Osterwalder/Alexander Scheuer/Sonnja Wüst, *Kulturquoten im Rundfunk*, Zürich/Baden-Baden 2006.

36) See Rolf H. Weber, *Presse- und Filmverwaltungsrecht*, in: Rolf H. Weber (Ed.), *Informations- und Kommunikationsrecht*, SBVR V/1, 2. Aufl. Basel 2003, part C, no. 89. See also Patrice Aubry, country report on Switzerland in: Susanne Nikoltchev, (Ed.), *IRIS Special: Broadcasters' Obligation to Invest in Cinematographic Production* (Strasbourg, European Audiovisual Observatory, 2006), pp 29-33.

DE GERMANY

*Carmen Palzer**

In Germany there are 11 public broadcasting corporations in total: *ZDF*, a national television broadcaster which covers all the *Länder*, and nine regional public service broadcasters,¹ which operate a joint television channel ("*Das Erste*") as well as regional radio and television channels and have joined forces with Germany's international broadcaster, *Deutsche Welle*,² to form the *Arbeitsgemeinschaft der öffentlich-rechtlichen Rundfunkanstalten in Deutschland* (Association of Public Broadcasting Corporations in Germany – *ARD*). National public service television in Germany is therefore essentially based on two pillars: *ARD* and *ZDF*.

The German television system was created after the Second World War as a federally structured public service television system. Following Nazi rule and the associated abuse of the media, the western allies were keen to establish a pluralistic broadcasting system that was as independent as possible of the State and free from political interference. Therefore, between 1948 and 1950, regional public service broadcasting companies were set up in accordance with the federal structure of Germany. They joined together to form the *ARD* in 1950 with the aim of protecting their common interests. In 1954, "*Das Erste Deutsche Fernsehen*" was launched as a joint national television channel. The *Land* broadcasting companies also operate regional, so-called "third" channels. In 1991, after German reunification, two bodies were founded in the new *Bundesländer*, each covering more than one *Land*,³ and these also became members of the *ARD*.

To counterbalance the *ARD*, *ZDF* ("*Zweites Deutsches Fernsehen*") was created in 1961 as a joint television company covering all the *Länder*. *ZDF* was supposed to be different from the federally structured *ARD*, broadcasting a common, centrally organised channel throughout the country. The "*Zweites Deutsches Fernsehen*" channel went on the air on 1 April 1963.

Chapter I: Regulatory Framework

A. Mission, Economic and Financial Structure

1. Mission

The constitutional basis for the demands made on the broadcasting system as a whole is found in Art. 5 of the *Grundgesetz* (Basic Law – *GG*), which guarantees freedom of expression and freedom of broadcasting and prohibits state censorship. This fundamental provision is implemented in practical terms by judgments of the *Bundesverfassungsgericht* (Federal Constitutional Court), which therefore

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1) These include some which broadcast to only one *Land* and some which cover several *Länder*.

2) This article does not cover foreign broadcasting services or radio.

3) *MDR* (*Mitteldeutscher Rundfunk*) and *ORB* (*Ostdeutscher Rundfunk Brandenburg*); the latter merged with *SFB* (*Sender Freies Berlin*) in 2002 to become *RBB* (*Rundfunk Berlin-Brandenburg*).

plays a central role in the organisation of the broadcasting system.⁴ The regulation of broadcasting is the responsibility of the *Bundesländer* and therefore takes the form of regional laws. In areas where standard national regulations are required, joint agreements have been signed by all the *Länder*.⁵ However, where only individual *Länder* require common regulations, the *Länder* concerned conclude agreements between themselves.⁶ Legal principles that apply specifically to the *ARD* are set out in the *ARD Statutes*⁷ and the *ARD-Staatsvertrag* (*ARD Inter-State Agreement*).⁸ Further regulations covering the activities of *ZDF* are found in the *ZDF Statutes* and the *ZDF-Staatsvertrag* (*ZDF Inter-State Agreement*).⁹

Article 11 of the Inter-State Broadcasting Agreement (*RStV*) sets out the key tasks of public service broadcasters. By producing and broadcasting radio and television channels, they are meant to act as a medium and factor in the process of the free formation of individual and public opinion. Through their programmes, they are required to provide a comprehensive overview of international, European, national and regional affairs in all essential areas of life in order to promote international understanding, European integration and social cohesion at national and regional levels. Public service channels should provide information, education, advice and entertainment, as well as cultural programmes in particular (so-called "full programme").¹⁰ There are specific *Land* regulations covering the obligations of the regional broadcasting corporations. In fulfilling their remit, public service broadcasters must respect the principles of objective and impartial reporting, plurality of opinion and well-balanced services and programmes.¹¹ *ARD* and *ZDF* are responsible for defining the programming remit in more detail by laying down rules and guidelines.¹² As well as provisions aimed specifically at public service broadcasters, the Inter-State Broadcasting Agreement contains general programming principles that apply to all broadcasters, e.g. the need to respect human dignity and the moral and religious convictions of others.¹³ Current affairs and information programmes are subject to particular requirements and must comply with recognised journalistic principles.¹⁴ The broadcasting laws of the *Länder* and the Inter-State Broadcasting Agreements for *ARD*, *ZDF* and the corporations that cover several *Länder* often include additional, detailed regulations.¹⁵

Under the terms of Art. 11 para. 1 *RStV*, public service broadcasters can offer online services; however, these must be linked to their programmes and provide programme-related content. Exactly how far these services are allowed to go is under debate and being discussed (*inter alia*) as part of a procedure launched in 2002 by the European Commission following various complaints about state aid.¹⁶ One target for criticism was the financing of the online activities of *ARD* and *ZDF* through licence fee revenue. Since online activities are not part of the universal service remit of public broadcasting corporations, it was argued that the licence fee revenue used to fund them constitutes prohibited state aid under Art. 87 of the EC Treaty.¹⁷ In order to dispel the European Commission's concerns, the public service remit will be more clearly defined and distinguished in particular from the commercial activities of broadcasting corporations.¹⁸

4) See, for example, the Constitutional Court judgment of 22 February 1994, 1 BvL 30/88, *BVerfGE* 90, 60 ff. (concerning the broadcasting licence fee).

5) e.g. *Rundfunkstaatsvertrag* (Inter-State Broadcasting Agreement), *Rundfunkgebührenstaatsvertrag* (Inter-State Agreement on the Broadcasting Licence Fee), *Rundfunkfinanzierungsstaatsvertrag* (Inter-State Agreement on the Financing of Broadcasting), *Jugendmedienschutzstaatsvertrag* (Inter-State Agreement on the Protection of Young People in the Media), available at <http://www.zdf.de/zdfde/inhalt/19/0,1872,2122419,00.html>, <http://www.ard.de/intern/organisation/rechtsgrundlagen/-/id=54434/13b80qd/index.ht>

6) e.g. *SWR-Staatsvertrag* (*SWR Inter-State Agreement*), *MDR-Staatsvertrag* (*MDR Inter-State Agreement*), *RBB-Staatsvertrag* (*RBB Inter-State Agreement*).

7) Statutes of the *Arbeitsgemeinschaft der öffentlich-rechtlichen Rundfunkanstalten der Bundesrepublik Deutschland* (Association of Public Broadcasting Corporations in Germany - *ARD*), 9/10 June 1950 in the version of 20 June 2006, available at <http://www.br-online.de/br-intern/organisation/pdf/ard-satzung.pdf#search=%22ard-Satzung%22>

8) *ARD-Staatsvertrag* (*ARD Inter-State Agreement*) of 31 August 1991, in the version of the Eighth Inter-State Agreement Amending Inter-State Broadcasting Agreements, available at <http://www.br-online.de/br-intern/organisation/pdf/ard-staatsvertrag.pdf>

9) *ZDF-Staatsvertrag* (*ZDF Inter-State Agreement*) of 31 August 1991, in the version of the Eighth Inter-State Agreement Amending Inter-State Broadcasting Agreements, available at <http://www.zdf.de/zdfde/download/0,1896,2000713,00.pdf>

10) Art. 11 para. 2 *RStV*.

11) Art. 11 para. 3 *RStV*.

12) Art. 11 para. 4 *RStV*.

13) Art. 3 *RStV*, General programming principles.

14) Further details in Art. 10 *RStV*.

15) Articles 3 ff. *WDR-Gesetz* (*WDR Act*), Articles 3 ff. *MDR-StV* (*MDR Inter-State Agreement*).

16) For a detailed description of the procedure and the parties involved, see *Funkkorrespondenz 10/05* of 11 March 2005, with documentation and contribution by Kleist/Scheuer, available at <http://www.emr-sb.de/news/FK10-05.pdf>

17) According to the arguments of one complainant, for example: http://www.vpr.t.de/dateien/09_03_Beschwerde_EU.pdf

18) European Commission press release of 7 July 2006, available at <http://europa.eu/rapid/pressReleasesAction.do?reference=MEM0/06/273&format=PDF&aged=0&language=DE&guiLanguage=en>; for further details, see *epd medien* no. 78/79/2006.

Since 2004, *ARD* and *ZDF* have been obliged to submit a comprehensive report on their activities and the fulfilment of their public service remit every two years.¹⁹ The programme-related rules and guidelines of *ARD* and *ZDF* must be published in the official gazettes.²⁰

2. Structure

Following the Second World War, public service broadcasting in Germany was deliberately organised so that it did not come under State or private ownership. For this reason, a number of non-profit-making public-law institutions were created; they are not owned by anybody, but are independent corporations established by a guarantor, which is responsible for providing the technical, organisational, staff-related and financial conditions necessary for the broadcasters to fulfil their public service remit. However, it cannot interfere in the activities of the relevant corporation. The broadcasting corporations are independent of their guarantors as far as the fulfilment of their remit is concerned.

The guarantors of the *Land* broadcasting corporations are the *Länder* for which they broadcast; these may be a single *Land* or several *Länder*. The guarantors of *ZDF* are the 16 German *Bundesländer*. The *ARD* is an association of independent public-law institutions and has no legal capacity. Its members are the German international broadcasting corporation and the nine *Land* broadcasting corporations which each cover one or more *Bundesländer*.²¹

The basic structure of each public broadcasting corporation comprises three bodies: *Rundfunkrat* (Broadcasting Board, also known as the *Fernsehrat* – Television Board - or *Medienrat* – Media Board), *Verwaltungsrat* (Board of Administration) and *Intendant* (Director-General).²² The Director-General manages the corporation's activities, with responsibility for all its operations and programming. The Broadcasting Board and Board of Administration are pluralistic bodies, composed of representatives of different groups in order to guarantee the corporations' independence from the State (see Chapter I, B.3. below). While the Broadcasting Board is the corporation's most senior body, with responsibility for elections, decision-making and supervision, the role of the Board of Administration is essentially to monitor the management activities of the Director-General. The supreme body of the *ARD* is the General Assembly, which elects one of its members as the managing corporation each year. The Director-General of the corporation concerned chairs the *ARD* and signs official documents on its behalf. Further co-operation within the *ARD* is carried out by bodies such as the Conference of Committee Chairpersons, commissions and other internal institutions.

The public broadcasting corporations have legal capacity under the Basic Law (i.e. they can possess rights enshrined in the Basic Law); their broadcasting freedom is protected under Art. 5 para. 1 sentence 2 of the Basic Law.²³ There are also various ordinary law provisions which are designed to enable or help the public broadcasting corporations to fulfil their particular public service remit. As well as broadcasting rules giving them the right to preferential treatment, e.g. in relation to their inclusion in cable packages (must-carry rules)²⁴ or the allocation of satellite channels,²⁵ there are other special provisions in areas such as tax law.²⁶

19) Art. 11 para. 4 *RStV*. The programming plans of *ZDF* for 2004–2006 are available at <http://www.zdf-jahrbuch.de/2004/dokumentation/selbstverpflichtung.htm>, the programming guidelines of *ARD* for 2005/2006 are available at

<http://www.ard.de/intern/organisation/-/id=8036/nid=8036/did=197252/j92len/index.html>. The *ARD* report 05/06, *ARD* guidelines 07/08 and programming prospects of *ZDF* for 2007–2008 were published in *epd medien* no. 86/2006.

20) They are also available on their respective websites, see www.ard.de, www.zdf.de

21) e.g. *Saarländischer Rundfunk SR* (Saarland), *Mitteldeutscher Rundfunk MDR* (Saxony, Saxony-Anhalt and Thuringia).

22) In some cases, there are also additional, subordinate bodies: for example, the Director-General of *Radio Bremen* is supported by a *Direktorium* (board of directors), see Art. 16 of the *Radio Bremen-Gesetz* (*Radio Bremen Act*).

23) It is a matter of debate whether the public broadcasting corporations also possess other basic rights such as occupational freedom (Art. 12 para. 1 *GG*), freedom of ownership (Art. 14 para. 1 *GG*) and economic freedom to act (Art. 2 para. 1 *GG*); the Federal Constitutional Court has said that they do not, e.g. *BVerfG*, 1 BvR 341/93 of 28 October 1998, para. 33, available at http://www.bundesverfassungsgericht.de/entscheidungen/rk19981028_1bvr034193.html

24) As far as digital cable services are concerned, Art. 53 *RStV* states that cable network operators should take public service channels into account. Must-carry rules for analogue cable services are set out in the *Land* media laws, e.g. Art. 37 *NMedienG*. The European Commission has launched proceedings against Germany for an infringement of the EC Treaty, since some of the must-carry rules of the *Länder* are said to be incompatible with the Universal Service Directive. See Commission press release of 12 October 2006, available at <http://europa.eu.int/rapid/pressReleasesAction.do?reference=IP/06/1358&format=HTML&aged=0&language=DE&guiLanguage=en>

25) See Art. 51 *RStV*.

26) Art. 8 para. 1 sentence 2 *KStG*; for previous discussion of this subject, see Wolfgang Closs, DE – Debate on tax liability and licence fee financing for public-sector broadcasting, in *IRIS* 1997-7: 14, available at <http://merlin.obs.coe.int/iris/1997/7/article27.en.html>

3. Financing

The financing of public service broadcasting in Germany is based on licence fees rather than taxes - a consequence of the principle of independence from the State. According to Art. 13 *RStV*, public service broadcasting is financed through television and radio licence fees, income from television and radio advertising and other income. The main source of income is the licence fee. This financing should enable public service broadcasting to fulfil its responsibilities; it should safeguard the existence and development of public service broadcasting.²⁷

In principle, the *Bundesländer* are responsible for determining the licence fee. The details of the system for setting the licence fee are rather subtle: the broadcasting corporations notify their expected budgetary requirements to the *Kommission zur Ermittlung des Finanzbedarfs* (Committee for the Establishment of Financial Needs - *KEF*), an independent committee of experts that was created in 1975 by a decision of the *Ministerpräsidenten* (the Presidents of the *Länder*).²⁸ While respecting the broadcasters' programming independence, the *KEF* verifies the financial needs of the broadcasting corporations and makes a recommendation on the licence fee to the heads of government of the *Länder*. In particular, it checks whether the broadcasters' programming decisions fall within their legally-defined public service remit and whether the resulting financial needs conform with the principles of economic efficiency.²⁹ Once the verification process is complete, it determines the financial needs of the public broadcasting corporations. The fee proposed by the *KEF* forms the basis for the decision of the *Land* governments and parliaments, although this proposal does not necessarily have to be accepted.³⁰ The *KEF* publishes annual reports in which it describes in detail the broadcasting corporations' financial situation, their estimated financial needs and its own verification activities.³¹

A second important source of income for public broadcasting is advertising. Each member corporation of the *ARD* has set up a private law subsidiary company to sell airtime to commercial partners and deal with related programming tasks. *ZDF*, however, organises its own advertising. Sponsorship of public broadcasting has been authorised since 1991; however, operating pay-TV is not permitted under the public service remit.³² Public broadcasting corporations may also offer commercial services such as online services and other commercial products such as printed publications, as long as they are linked to their programmes and primarily contain programme-related material.³³ Thanks to a judgment handed down by the Federal Constitutional Court (*BVerfG*), public service broadcasters are now allowed to publish TV listings magazines. Along with the notion that the content of printed publications must be primarily programme-related, it must be possible to categorise such publications as secondary activities which support the fulfilment of the broadcaster's remit.³⁴

Another so-called secondary activity that public broadcasters are allowed to engage in is the sale of television programmes and films made for their own needs.³⁵ For this purpose, they can also co-operate with or acquire shares in other companies (so-called production subsidiaries). However, in its judgment of 28 October 1998, the *BVerfG* laid down the following restriction concerning the commercial exploitation rights of public broadcasting corporations: the commercial exploitation of television titles, known as title merchandising, is not covered by the freedom of broadcasting. The pursuit of economic objectives, which is not part of the remit of public service broadcasting, is no longer protected by Art. 5 of the Basic Law.³⁶

Under the current law, the system for determining the licence fee only enjoys limited protection from State influence, since the final decision concerning the level of the fee remains the responsibility of the *Land* parliaments, which can deviate from the decision of the independent committee of experts

27) Art. 12 para. 1 *RStV*.

28) The *KEF* comprises 16 independent experts from various fields such as broadcasting law, broadcasting technology and business management. Each *Bundesland* appoints one member.

29) For details, see Art. 14 *RStV*.

30) Art. 7 para. 2 *RFinStV*. The Broadcasting Commission of the *Länder* should discuss any deviations from the proposal with the broadcasting corporations, including the *KEF*. Reasons must be given for such deviations.

31) The latest report is available at <http://www.kef-online.de/inhalte/bericht15/index.html>

32) Art. 13 para. 1 *RStV*; generating income from telephone services is also prohibited.

33) Art. 11 *RStV*; the pending procedure concerning the admissibility of online activities is discussed under Chapter I, A.1.

34) 1 BvF 1/85 of 5 February 1991, *BVerfGE* 83, pp. 238, 312 ff.

35) 1 BvF 1/85 of 5 February 1991, *BVerfGE* 83, pp. 238, 303 ff.

36) 1 BvR 341/93 of 28 October 1998, available at http://www.bundesverfassungsgericht.de/entscheidungen/rk19981028_1bvr034193.html; see also Alexander Scheuer, DE - Federal Constitutional Court decides on title merchandising on public television, in *IRIS* 1999-1: 5, available at <http://merlin.obs.coe.int/iris/1999/1/article7.en.html>

(KEF).³⁷ However, the *Land* parliaments must respect the principles laid down by the *BVerfG* in its judgment of 22 February 1994³⁸ on the determination of the licence fee. According to this judgment, a lower figure than that recommended by the *KEF* may only be adopted on grounds deemed more important than the freedom of broadcasting. These particularly include the interests of licence fee payers. According to the *BVerfG*, the only reasons to deviate from the *KEF*'s proposal concern access to information and the reasonable burden on broadcasting participants. In the aforementioned judgment, the *BVerfG* had demanded in principle that the process for determining the licence fee should be organised in such a way as to prevent State and political interference in programming activities through the determination of the licence fee. As a result, the *KEF* was given a greater role in determining the licence fee. However, the final decision remained the responsibility of the *Land* parliaments.

Nevertheless, in view of the aforementioned judgment, the *Länder* have regularly followed the *KEF*'s proposals. They deviated from the *KEF*'s recommendation for the first time in 2005, when by a decision of the *Ministerpräsidenten* they increased the licence fee by an amount smaller than that proposed by the *KEF*. This led to heated discussions about the role of the *Land* governments and parliaments in the process of setting the licence fee and about public service broadcasting in general. *ARD* and *ZDF* lodged a complaint with the Constitutional Court against this fixing of the fee, claiming that the interference of the *Länder* breached their freedom to broadcast as guaranteed under the Basic Law.³⁹

In 2006, the association of licence fee payers lodged a further complaint with the Constitutional Court against the financing of public service broadcasting through the licence fee. The complaint was triggered by the decision to make Internet-compatible PCs subject to the broadcasting licence fee.⁴⁰

The actual structure of the financing system could also be amended as a result of the European Commission's investigation into the financing of public service broadcasting. The Commission is demanding, *inter alia*, separate book-keeping for activities funded by the licence fee as part of the public service remit on the one hand and additional commercial activities on the other.⁴¹

B. Decision Making: Structures and Procedures

1. Decision Making-process

Each public broadcasting corporation is managed by its Director-General, who is appointed by the Broadcasting Board. Directors-General are employees of their corporation and their employment contracts are concluded by the Board of Administration. Rules on the length of terms of office and personal requirements vary.⁴² For example, the *ZDF* Director-General is elected for a renewable five-year term. Some broadcasting laws give the electing bodies scope to determine the length of the Director-General's term. The Director-General of *Hessischer Rundfunk* is elected for between five and nine years. Directors-General must co-operate with their respective Board of Administration and Broadcasting Board in many different ways. For example, they need the Board of Administration's consent to carry out certain legal transactions and the agreement of the Broadcasting Board before appointing directors.⁴³

There are incompatibility rules between all the supervisory bodies: no individual may be a member of more than one body.⁴⁴ Above and beyond these basic rules, the duties of the Director-General and the incompatibility rules concerning him differ from one corporation to the next.⁴⁵

37) Art. 7 para. 2 *RfinStV*. The Broadcasting Commission of the *Länder* should discuss any deviations from the proposal with the broadcasting corporations, including the *KEF*. Reasons must be given for such deviations.

38) 1 BvL 30/88 of 22 February 1994, *BVerfGE* 90, pp. 60ff.

39) For further information, see Sonnia Wüst, DE – *ARD* appeals against broadcasting licence fee, in IRIS 2005-10: 10, available at <http://merlin.obs.coe.int/iris/2005/10/article16.en.html>, and Thorsten Ader, DE – *ZDF* joins *ARD*'s Constitutional Court appeal, in IRIS 2006-4: 11, available at <http://merlin.obs.coe.int/iris/2006/4/article18.en.html>

40) For further information, see <http://www.vrgz.org/html/info/beschwerde.html>

41) For further details, see footnotes 16 ff.

42) These are mainly general requirements, such as absolute legal competence, see Art. 24 para. 3 *WDR-Gesetz* (*WDR* Act), Art. 26 para. 2 *ZDF-StV* (*ZDF* Inter-State Agreement).

43) E.g. programme directors (radio and television), administrative director, technical director, legal director, for *ZDF*: programme director, chief editor and administrative director (Art. 27 *ZDF-StV*).

44) E.g. Art. 18 para. *MDR-StV*; Art. 13 para. 2 *SWR-StV*.

45) For example, the eight members of the *ZDF* Board of Administration, who are elected by the Television Board, may not be members of a government or a legislative body.

The internal supervisory bodies of public broadcasting corporations are the Broadcasting Board and the Board of Administration; the Director-General reports to both. The corporations' financial needs are monitored externally by the *KEF* (see above). Furthermore, the corporations are subject to State legal supervision, which is exercised by the *Länder*.⁴⁶ However, legal measures may only be taken if the corporation's own bodies fail to fulfil their own monitoring responsibilities.

The Broadcasting Board is the highest body of the corporation. It appoints the Director-General and elects the members of the Board of Administration. It is responsible for drafting the basic rules of the corporation (such as statutes and programme guidelines) as well as its budget. It also advises the Director-General about programme organisation and monitors some programmes. However, the supervisory bodies do not monitor programmes in advance in a way that would extend beyond their advisory function and role in drafting general programme guidelines and rules.⁴⁷ The Broadcasting Board members represent "socially relevant" groups and thus guarantee the pluralistic structure of the corporation. The actual size and composition of the supervisory bodies vary hugely. For each broadcasting corporation, the relevant Broadcasting Act regulates the size of each body and lists the institutions, groups and associations that are entitled to elect or appoint its members. The rules on the length of terms of office and on personal requirements incumbent on members also vary; these rules sometimes take regional factors into account.

The main task of the Board of Administration is to monitor the activities of the Director-General. In order to carry out certain important transactions, the Director-General needs the agreement of the Board of Administration.⁴⁸ Sometimes the Board of Administration is involved in electing the Director-General.⁴⁹ It represents the corporation in concluding the Director-General's employment contract and participates in budgetary planning and the adoption of corporation rules. The Broadcasting Board elects either all or the vast majority of the members of the Board of Administration.

The members of the Broadcasting Board and Board of Administration are unpaid; they are not bound to follow any instructions from external bodies. As well as the general rule of incompatibility, under which no individual may be a member of more than one body, there are further provisions, which vary from one corporation to the next, on the incompatibility of various interests. In principle, members of a Broadcasting Board should not be in the paid employment of a broadcasting corporation, a *Land* media authority or a private broadcaster, and they should not have any interests, economic or otherwise, that would be likely to jeopardise their ability to fulfil their responsibilities.

As already mentioned, the tasks of the Television Board, Board of Administration and Director-General are interlinked in numerous respects and the way they function together depends on each broadcasting corporation's own particular rules. In principle, however, the drafting or amendment of statutes, programme guidelines and other fundamental corporation rules is carried out by the Board of Administration, which submits them to the Broadcasting Board for discussion and adoption.⁵⁰ The Director-General needs the approval of the Board of Administration or Broadcasting Board in order to carry out various legal transactions; the budget and annual accounts that he prepares must usually be submitted to the Board of Administration, which in turn sends them to the Broadcasting Board for approval.

Public service broadcasting employees are not civil servants; their working status is established under private law and is subject to the general rules of civil law and the relevant pay agreements. They are entitled to strike in accordance with general legislation and their interests are represented by staff councils. They are also subject to the anti-discrimination rules enshrined in the *Allgemeines Gleichbehandlungsgesetz* (General Act on Equal Treatment).⁵¹

The structure and procedures of the *ARD* are particularly worth mentioning, since there are several unusual features that result from the chosen form of co-operation (as an association of independent public-law corporations without legal capacity).

46) For corporations covering a single *Land*, this is the *Bundesland*, which is the guarantor of the corporation; for those covering more than one *Land*, the responsibility is taken in turn by one *Land* at a time, see, for example, Art. 37 *MDR-StV*, Art. 31 *ZDF-StV*.

47) Art. 11 *RStV*.

48) E.g. Art. 28 *ZDF-StV*.

49) Art. 21 para. 2 no. 1 *SWR-Gesetz*.

50) E.g. Art. 20 para. 2, Art. 23 para. 3 *ZDF-StV*.

51) *Allgemeines Gleichbehandlungsgesetz* (General Act on Equal Treatment - *AGG*), which entered into force on 18 August 2006.

The *ARD* General Assembly decides which corporation should manage its affairs and the Director-General of that corporation chairs the *ARD* and acts as its external representative. The *ARD* Chairman co-operates with the General Assembly with regard to the *ARD*'s day-to-day affairs. The General Assembly takes decisions on these matters at working meetings attended by the Directors-General of the member corporations. At the end of his one-year term, the *ARD* Chairman reports to the Annual General Meeting, which is attended by the Directors-General and the Chairpersons of the supervisory bodies of the regional broadcasting corporations. For certain tasks, the *ARD* Chairman can seek the help of leading members, who with the authorisation of the General Assembly are also empowered to represent the *ARD* in its relations with third parties. The *ARD* directors (programme director, general secretary) are appointed in conjunction with the *Gremienvorsitzenden-Konferenz* (Conference of Supervisory Body Chairpersons).

There is no actual supervisory body for the *ARD* itself; under the *ARD* structure, the Broadcasting Board and Board of Administration of each *Land* broadcasting corporation monitor the situation for their respective corporations. Where *ARD* matters are concerned, the Conference of Supervisory Body Chairpersons coordinates the supervisory activities of the individual corporations (Art. 5a *ARD* Statutes). This rule will also appear as Art. 7 para. 2 in the *ARD-Staatsvertrag* (*ARD* Inter-State Agreement).⁵² Following various recent incidents, discussions are under way concerning the creation of effective supervision at *ARD* level.⁵³

2. Impact of Politics

As mentioned earlier, in the years following the Second World War, public service broadcasting was organised in such a way as to minimise State influence on broadcasting. For this reason, independent broadcasting corporations were established with the right to be self-governing and with particular autonomy in terms of their structure, function and management. The broadcasting corporations are not supervised by their guarantors and do not have to follow their instructions. They are self-governing not only with regard to their organisational structure (within the framework of the relevant legal provisions) but also with regard to their financial management: budgets are adopted by their own internal bodies and they decide themselves how to use their resources. The broadcasters also determine their own programming, as well as appointing and dismissing their own staff. The pluralistic structure of their supervisory bodies in particular is meant to counter the risk of excessive influence by any single party and unbalanced programming, as well as to ensure that the full diversity of opinions and activities in all areas of life are expressed in their programmes. This high degree of autonomy, which is guaranteed as part of the freedom of broadcasting enshrined in the Basic Law, means that the State has no direct influence on the management, programming and activities of broadcasters, or on their staffing or financial management.

Nevertheless, there are two "gateways" through which a certain amount of State influence is possible: the supervisory bodies, some of whose members are representatives of governments or political parties, and the fixing of the licence fees, which is the responsibility of the *Länder*. It is true that, on the one hand, many broadcasting corporations endeavour to minimise the influence of politics by adopting incompatibility rules preventing, for example, members of the federal or *Land* government from becoming members of their Broadcasting Board or Board of Administration or at least limiting the number of government people who may hold such positions.⁵⁴ On the other hand, individual State office holders are, as such, designated by law to become committee members. Examples include government members or *Landtag* (*Land* parliament) presidents.⁵⁵

The influence of politics within the supervisory bodies is particularly strong in the elections of Directors-General. Representatives of political parties and often also of governments are members of Broadcasting Boards, while other Broadcasting Board members are often sympathetic to a political party even though they do not represent it. Two different camps therefore tend to emerge ("red" and "black") and these fight over the votes in the "grey" camp, i.e. those who are not affiliated to any party. Of course, this particularly applies to bodies with a strong political make-up, such as the *ZDF* Board of Administration.⁵⁶ As a result, nomination procedures are sometimes dominated by political

52) *Neunter Rundfunkänderungsstaatsvertrag* (Ninth Amendment to the Inter-State Broadcasting Agreement), Art. 4 no. 2. Scheduled to enter into force on 1 March 2007.

53) See, for example, *epd medien* no. 81/2006, pp. 10 f, http://www.epd.de/medien/medien_index_45582.html

54) Art. 13 para. 3 *WDR-Gesetz*, Art. 26 para. 2 *SaarLMG*, Art. 12 para. 4 *RBB-StV*.

55) Art. 6 para. 3 and Art. 8 para. 1 *BR-G*, Art. 27 para. 1 no. 1, Art. 31 para. 1, 2nd sentence *SaarLMG*, Art. 15 para. 2, 6th sentence, Art. 20 para. 1, 4th sentence *WDR-Gesetz*.

56) Five of the 14 members are *Ministerpräsidenten* of *Länder*.

and tactical considerations, which do not necessarily guarantee an objective decision and thus can harm the reputation of public service broadcasting.⁵⁷

As mentioned above, another area in which political influence may be exercised is in the decisions made by the *Länder* concerning the financial needs of the broadcasting corporations. Although these needs are verified and established by an independent committee, the *Land* parliaments are not obliged to follow the committee's recommendations. In other words, although the licence fee proposed by the *KEF* forms the basis of the decision of the *Land* governments and parliaments, the latter can ultimately decide to set a different fee.⁵⁸ This situation has already been the subject of a Federal Constitutional Court judgment; a further complaint is pending before the Constitutional Court (see above).

Of course, politics can also influence public service broadcasting through the adoption of basic legal principles. In 2005, for example, a rule was added to the Inter-State Broadcasting Agreement, limiting the number of television and radio channels that broadcasting corporations affiliated to the *ARD* are allowed to operate: new channels can only be launched in exchange for the closure of existing channels according to the rule adopted on 1 April 2005.⁵⁹

3. Impact of Civil Society

The biggest influence that the general public can exercise is via the supervisory bodies of the public broadcasting corporations, which are pluralistic in their composition. The structure of the *Rundfunkräte* (the broadcasting boards) can be seen as an attempt to establish a relationship with the viewers by asking for their input, since it enables the public to inform the broadcasters about their needs and opinions. However, the people who represent the interests of the public are not directly elected by the viewers; rather, they are representatives of "socially relevant" groups.

The main function of the Broadcasting Board, the highest body of a broadcasting corporation, is to represent the general public within the corporation. Broadcasting Board members are therefore nominated by "socially relevant" groups. They reflect the pluralistic structure of the corporations (so-called internal pluralism). The members of the supervisory bodies are unpaid and do not follow any external instructions, not even those of the organisation which nominated them. Their role is not to represent the interests of their particular organisation, nor even to announce their organisation's views on programming issues. Rather, they act as representatives of the general public. They are not representing the organisations that nominated them, but society itself.

For example, the 77-member *ZDF* Television Board, the largest body in any of the broadcasting corporations, is worthy of mention. Its members include one representative of each of the 16 *Bundesländer*, three representatives of the Federal Government and 12 representatives of political parties. The other members are nominated by the churches and social groups in Germany. The latter include trade unions, employers' associations, journalists' unions and representatives from the fields of education and training.⁶⁰ The government, party and church representatives are nominated by their respective institutions, while the other members are proposed by the organisations they represent and either appointed by the *Ministerpräsidenten* of the *Länder* or chosen by the *Ministerpräsidenten* from the members of their respective professions (Art. 21 paras. 1, 3 *ZDF-StV*).

Regarding the basic tasks of the Broadcasting Board within a broadcasting corporation,⁶¹ the Board – and therefore the general public that it represents – has significant tools through which it can determine the organisation and activities of the corporation. However, from the public's point of view, it is ultimately a form of indirect or delegated influence.

At certain intervals, *ARD* and *ZDF* are obliged to publish reports on the fulfilment of their remit, the quality and quantity of their services and programmes, as well as their future programming priorities (so-called declaration of self-obligation⁶²). This also facilitates a certain amount of control over the activities of public service broadcasting. The *Land* broadcasting corporations also publish regular reports.

57) One example is the election of the *ZDF* Director-General in 2002: the process lasted almost a year, since there were several unsuccessful rounds of voting and more than a dozen candidates were considered.

58) Art. 7 para. 2 *RFinStV*. The Broadcasting Commission of the *Länder* should discuss any planned deviations from the proposal with the broadcasting corporations, including the *KEF*. Reasons must be given for such deviations.

59) Art. 19 paras. 1, 7 *RStV*.

60) The exact composition is described in Art. 21 *ZDF-StV*.

61) See Chapter I, B.1.

62) Art. 11 para. 4 *RStV*. Programming plans and guidelines are mentioned in footnote 19.

Any viewer can file a complaint about a programme with a public service broadcaster, thus triggering an internal programme evaluation process. The relevant rules are found in the legal instrument establishing each individual corporation.⁶³ Complaints are dealt with by either the Director-General or the Broadcasting Board. *WDR* has set up a special body to deal with complaints, petitions and suggestions and to submit draft decisions to the Director-General.⁶⁴ As part of the current debate on strengthening supervision within the *ARD*, the creation of an independent verification and complaints body both for the individual *ARD* corporations and for the association itself has been suggested.

Chapter II: Cultural Diversity

A. Influence of Relevant National or Cultural Aspects

This section examines whether a relationship is established between the public and public service broadcasting through the content (programmes) that is broadcast. Since the programming autonomy of broadcasters is particularly important in Germany, there are no detailed legal provisions on programming. The programming remit of public service broadcasting, as defined in the Inter-State Broadcasting Agreement, is therefore rather general and its practical implementation is left to the broadcasters themselves. For that reason, the Agreement does not contain any provisions aimed at fulfilling the needs of a particular audience, for example. Rather, the remit of public service broadcasting as defined in the Agreement is based on higher political objectives; for example, broadcasting is meant to act as a medium and factor in the formation of individual and public opinion. The programmes are also meant to promote international understanding and European integration. This corresponds with the task of “establishing a united Europe”, mentioned in the German Constitution (Art. 23). The programmes of public service broadcasters must also provide comprehensive, impartial and objective information whilst respecting the principles of plurality of opinion and balance. Public service broadcasters should also provide entertainment.⁶⁵

Public service broadcasters must offer cultural programmes in particular.⁶⁶ This obligation, just like the aforementioned programming provisions, applies regardless of the public’s tastes and may be seen as giving public service broadcasting a certain educational function. There is no cultural quota as such; the idea of introducing such a quota (which has been discussed recently in relation to radio programmes) has attracted criticism, partly with respect to the programming autonomy of the broadcasting corporations. There is, however, a quota rule designed to safeguard German and European film and television production as a cultural asset (Art. 6 *RStV*).⁶⁷ It states that the greater part of the total airtime devoted to feature films, television dramas, series, documentaries and similar productions should be allocated to European works. The purpose of this rule, as well as the objectives set out in the Act of “presenting the diversity of the German-speaking regions and of Europe” and “promoting European film and television productions”, is to protect the national cultural identity.⁶⁸

The public service broadcasters consider culture to be one of the fundamental elements of their programming. According to Art. 19 *RStV*, *ARD* and *ZDF* can jointly operate a television channel with its main focus on cultural content, as well as two special interest channels. Cultural content is therefore found particularly on *Arte*, a bilingual (German/French) cultural channel run jointly by *ARD*, *ZDF* and *Arte France*, and on *3sat*, a cultural channel run in international co-operation between German-speaking broadcasters *ARD*, *ZDF*, *ORF* and *SRG*. *Phoenix*, meanwhile, is a news, documentary and current affairs channel jointly run by *ARD* and *ZDF*. Finally, *ARD* and *ZDF* also offer a children’s channel, *Ki.KA*.

Regional issues are covered particularly on the so-called “third” channels, which are produced by the respective *Land* broadcasting corporations. These were originally launched as regional channels focusing on culture and education, but are now full programmes broadcast nationwide via satellite and sometimes by cable. However, it is not just *ARD* and the third channels that are obliged to cover regional affairs: according to Art. 5 para. 2 *ZDF-StV*, *ZDF* should also give appropriate coverage to events in the individual *Länder* and to Germany’s cultural diversity.

63) E.g. Art. 19 *BR-G*, Art. 16 *MDR-StV*, Art. 8 *SaarIMG*, Art. 15 *ZDF-StV*.

64) Art. 10 *WDR-Gesetz*.

65) See p.2 for further details.

66) Art. 11 para. 2 sentence 4 *RStV*. For details of the cultural remit of public service broadcasters, see Weber/Roßnagel/Osterwalder/Scheuer/Wüst, “Kulturquoten im Rundfunk”, pp. 256 ff.

67) For details, see Weber/Roßnagel/Osterwalder/Scheuer/Wüst, “Kulturquoten im Rundfunk”, p. 279.

68) According to Weber/Roßnagel/Osterwalder/Scheuer/Wüst, “Kulturquoten im Rundfunk”, p. 279.

As well as regional channels, the public service broadcasters offer special channels for minorities, such as autochthonous minorities. For example, the channel “Łužyka” - “Lausitz” in German – is broadcast by the broadcasting corporation *RBB* in the Lower Sorbian language. There are provisions in broadcasting law concerning channels for such minorities⁶⁹ in Saxony and Brandenburg: under Art. 12 *SWG*,⁷⁰ the public service media should give appropriate coverage to the Sorbian (Wendish) culture and language. According to Art. 14 *SächsSorbg*,⁷¹ this should be achieved in particular through media programmes and articles in the Sorbian language.⁷² *ARD* and *ZDF* broadcast programmes with subtitles for the hard of hearing. As well as dramas and films, documentaries and advice programmes are subtitled.⁷³ In 2005/06, 15-20% of all the programmes broadcast by *ARD* were subtitled. Some programmes are offered with sign language. For example, *Phoenix* has introduced sign language into its news bulletins and coverage of special events. Audio description is available for the visually impaired.

B. Reflections of Diversity in Organisational Structure

A characteristic feature of public service broadcasting in Germany is the fact that management responsibility within the broadcasting corporations is held by pluralistic bodies, which are composed – in the broadest sense – of representatives of society. This structure is a direct consequence of Germany’s history before and during the Second World War. The independence of broadcasting from the State, achieved through the creation of autonomous public broadcasting corporations and the pluralistic nature of their supervisory bodies in particular, was designed to prevent State or private interference in broadcasting, which is especially important for democracy. By involving as many social groups as possible, the aim is to ensure that individual sections of the population are not excluded and that no single group exerts excessive influence.⁷⁴ With regard to the selection of social groups that are entitled to nominate members of these bodies, the legislator has considerable freedom and the selection tends to mirror the social situation at the time. Therefore, the differences in the composition of the supervisory bodies are not only due to regional factors, but can also reflect a variety of aspects of society. For example, there are currently calls for Muslims living in Germany to be represented.⁷⁵

Another unusual feature is the strongly federal nature of the political system in Germany, which is reflected in public service broadcasting in many different ways. This begins with the responsibility of the *Länder* for the regulation of broadcasting issues, which has been repeatedly emphasised and protected by the Federal Constitutional Court. The origins of public service broadcasting are therefore regional rather than national: regional broadcasting corporations were created first, before they combined to form the *ARD*. The *ARD*’s structures continue to reflect the fact that it is a federal association of broadcasters, although there have been certain attempts to strengthen these structures. In this connection, the chairing of the *ARD* in rotation by its members and its lack of legal autonomy should be mentioned. The *ARD* considers its role as reflecting the diversity and identity of all regions of Germany.

The fact that the *Länder* are responsible for regulating broadcasting also means that regional differences can be seen in the detailed organisational structure of the individual broadcasting corporations, particularly the composition of their supervisory bodies. For example, Art. 14 no. 20 *RBB-StV* stipulates that one member of the Broadcasting Board should be nominated by the associations of Sorbians (Wends) in Brandenburg. Another region-specific provision is contained in Art. 18 para. 2 *MDR-StV*, under which no body or member of a body should have a past record which would prevent them from working as civil servants in the *Länder* concerned. This might include people who previously worked for the Ministry of State Security in the former East Germany, for example.

All in all, it is clear that public service broadcasting in Germany is strongly defined by regional factors and the needs of the general public. This is the result firstly of the influence that society can exert on programming through the pluralistic structure of the supervisory bodies and, secondly, of the federal structure that is particularly reflected in the organisation of the *ARD*.

69) There are three recognised autochthonous minorities in Germany: Danes, Sorbians and Frisians.

70) Act on the rights of the Sorbians (Wends) in the Land of Brandenburg, 7 July 1994.

71) Act on the rights of Sorbians in the Free State of Saxony, 31 March 1999

72) For details, see “Kulturquoten im Rundfunk”, Weber/Roßnagel/Osterwalder/Scheuer/Wüst, pp. 237 ff.

73) A current overview of subtitled programmes provided by *Bayerischer Rundfunk*, for example, can be seen at http://www.br-online.de/br-intern/integration/index_gehoerlose.shtml.

74) For further information about the pluralistic composition of these bodies, see Chapter I, B.3., above.

75) According to *SWR* Director-General Peter Voß in *epd medien* no. 85/2006, pp. 16 f.

DK DENMARK

*Søren Sandfeld Jakobsen**

Chapter I: Regulatory Framework

A. Mission, Economic and Financing Model

1. Mission

According to the Danish Broadcasting Act, the consolidated Act No. 410 of 2 May 2006 on Broadcasting as amended ("the Act"), the public service broadcasters (PSB) in Denmark are Danmarks Radio (DR), TV2/Danmark and the regional TV2 companies.

The oldest, largest and most significant Danish PSB is DR. It was established pursuant to the first Broadcasting Act of 1926¹ and held a national monopoly on broadcasting transmissions until 1988. DR's activities cover two public service television channels, six public service radio channels and interactive public service activities on the Internet and other new media. The overall public service (PS) goals are laid down in § 10 of the Act, according to which PSB content shall aim at "quality, diversity and plurality". These overall goals are detailed in a "public service contract" between DR and the Minister for Culture. According to the contract DR shall, *inter alia*, contribute to the preservation and development of the Danish language, promote Danish culture and arts, promote integration, ensure that the content is not harmful to minors and create a dialogue with the Danish population regarding PS activities.

DR is obliged to submit an annual report to the Minister for Culture regarding its fulfilment of the public service contract. Pursuant to § 14 of the Act, DR is entitled to engage in activities other than PS broadcasting, provided the other activities relate to programme activities, e.g. the lease of technical facilities or spare network capacity, the sale of products related to content activities, etc.

TV2/Danmark (TV2) was established by statute in 1986² in order to break DR's national monopoly on nationwide television transmission and thus create competition on the Danish broadcasting market. The station's purpose is to conduct media activities, including PS activities - provided permission to do so has been issued by the Minister for Culture. TV2 runs four television channels, one radio channel and online services. TV2 carries out both PS activities and commercial broadcasting and other media activities. The PS activities shall comply with the overall PS goals in § 10 of the Act (mentioned above). These goals are detailed in TV2's programme licence, which is issued by the Minister for Culture. The detailed goals correspond largely to the detailed goals set forth in DR's public service contract. TV2 is free to engage in activities other than broadcasting (it is not a requirement that the other activities relate to programme activities, cf. the requirement for DR).

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1) Act No. 45 of 12 March 1926.

2) Act No. 438 of 10 June 1986.

The regional TV2 companies (RTV2s) consist of eight broadcasters who have as their main goal to conduct public service activities in each of their regional areas. The public service activities are, however, confined to regional news programmes and current affairs programmes focusing on the region. The RTV2s were formed in 1986 in connection with the formation of TV2. The programmes are transmitted in “windows” (1/2 to 1 hour, three times a day) on TV2’s nationwide PS channel. The RTV2s’ public service goals are grounded in § 10 of the Act, and detailed goals – very similar to the detailed goals regarding DR and TV2 – are determined in a public service contract with the Minister for Culture. As with DR, the RTV2s are obliged to prepare an annual report for the Minister regarding the companies’ fulfilment of their public service contract. Pursuant to a recently adopted amendment act to the Broadcasting Act (hereinafter the “Amendment Act”), the RTV2s’ previously modest right to engage in other activities has been repealed entirely.³

Even though the Danes have access to a very large number of commercial broadcasters, the PSB enjoy significant support among the Danish population. Together they have a market share of more than two-thirds of all time spent watching television in Denmark. In addition, the online services provided by the PSB are among the most popular. In order to create more competition regarding the provision of PS content, the Amendment Act establishes – as an experiment – an arrangement whereby approx. EUR 10 million is reserved for the production of PS content by *others* than the PSB.

2. Corporate Structure

Pursuant to § 15 of the Act, DR is an “independent public institution”. This means that it is an institution owned by the State, but is at the same time independent in the sense that it is not subject to the Minister for Culture’s general authority under public law to issue instructions and otherwise intervene in the institution’s affairs. Accordingly, the Minister (and the Government as a whole) cannot interfere with DR’s programme planning or financial or managerial decisions. It follows from DR’s statutory right under the Act to conduct broadcasting activities that DR is entitled to the necessary radio frequencies pursuant to the Radio Frequency Act.⁴ DR is managed by a board of directors consisting of ten⁵ members appointed by the Minister for Culture. In order to ensure independence from the State, Members of Parliament cannot be members of the board.⁶ The board appoints the management, including the director-general who runs the day-to-day operations.

TV2 was formerly also organised as an independent public institution. However, due to a political agreement to privatise TV2,⁷ the station was converted into a private limited liability company in 2003.⁸ At present, the company’s share capital is fully owned by the State, but it is the political intention to sell the shares subject to a public tender, and the Minister for Culture has been authorised by Parliament to conduct the sale of the shares. Several cases pending before the European Court of Justice regarding alleged state aid are, however, stalling the process at the moment.⁹ According to the political agreement behind the sale of TV2, the buyer shall be contractually obliged to observe and respect the station’s public service obligations.

As a normal private limited company, TV2’s organisational structure is no longer regulated by the Broadcasting Act but entirely by the Public Companies Act¹⁰ - like any other private company. Due to its (present) full ownership, the State can appoint the 12 members of the board, but apart from this, TV2 is independent of the State. The board appoints the day-to-day management. TV2’s right to conduct broadcasting activities derives from a licence issued by the Minister for Culture pursuant to § 38a of the Act. The statutory right to conduct broadcasting activities ensures that TV2 has the necessary radio frequencies under the Radio Frequency Act.

3) Amendment Act No. 1569 of 20 December 2006.

4) Consolidated Act No. 680 of 23 June 2004.

5) According to the Amendment Act this number will be extended to 11.

6) Pursuant to the Amendment Act, the set of politicians is expanded to include regional and local politicians as well as Members of the European Parliament.

7) See further: Elisabeth Thuesen, DK – New Agreement on Media Policy, IRIS 2002-7: 9, available at <http://merlin.obs.coe.int/iris/2002/7/article18.en.html>

8) Re Act No. 438 of 10 June 2003. See further: Søren Sandfeld Jakobsen, DK – Privatisation of the Danish National Broadcaster TV2, IRIS 2003-7: 8, available at <http://merlin.obs.coe.int/iris/2003/7/article14.en.html>

9) See: Søren Sandfeld Jakobsen, European Commission: State Aid Probe Concerning Danish Public Service Broadcaster TV2, IRIS 2003-2: 3, available at: <http://merlin.obs.coe.int/iris/2003/2/article3.en.html>

10) Consolidated Act No. 649 of 15 June 2006.

Each of the eight RTV2s is organised as an independent public institution. They enjoy the same independence from the political system as DR and TV2. In connection with the conversion of TV2 into a private limited company, the eight RTV2s were separated from TV2, both organisationally and financially. As with the other PSBs, they are managed by a board of directors and a day-to-day management. However, as opposed to the other PSBs, the board of directors is appointed by a board council consisting of a diverse representation of the region's cultural and social life. Their right to radio frequencies is ensured in the same way as for DR and TV2.

3. Financing

According to Chapter 10 of the Act, PSB activities are financed by annual licence fees payable for radio receivers and television sets.¹¹ The amount of the licence fee is determined annually by the Minister for Culture subject to approval by the Parliament's Financial Committee. The reason for a licence-based financing model – instead of a state budget model – is that this model is considered better at preventing the Parliament from using fiscal arguments to influence the programme planning and editorial decisions of the PSB.

DR and the RTV2s are not allowed to sell advertising in connection with programme activities. Consequently, these PSB activities are financed primarily by licence fees. The remaining income is generated by other activities such as the sale of programmes and videos and other “merchandising” relating to the PS activities, the lease of production facilities, etc., and sponsorship. Due to the privatisation plans, since 1 January 2005, TV2 no longer receives a share of the licence fees. Thus, today, all of TV2's activities, both PS and commercial, are solely financed by commercial means, primarily through the sale of advertisements and sponsorship and subscriptions from the channels which are not PS channels (three out of four channels).

B. Decision Making: Structures and Procedures

1. Decision-Making Process

As already mentioned, pursuant to § 16 of the Act, DR is managed by a board of directors consisting of 10 members appointed by the Minister for Culture. The Parliament nominates six of the 10 members, ensuring that the majority of the board reflects the composition of the Parliament in terms of political views. Members of Parliament cannot themselves be appointed as members of the board. The employees nominate one member and the Minister for Culture nominates the remaining three, including the chairman. In order to ensure that the board also possesses the necessary skills and professionalism (given the fact that nine out of 10 members are recommended by Government and Parliament), the appointments to the board shall reflect expertise regarding media relations, culture, business and management.

The appointments are for a duration of four years. The board appoints the management, including the director-general, who is responsible for the day-to-day operations, including the programme schedules. In the event of a conflict of interests between a board member's duties as a board member and other functions/positions which the member exercises, the general rules in the Administrative Procedures Act¹² regarding incapacity/bias apply. The Broadcasting Act contains no provisions regarding the accountability of the board of management. Thus, the general liability rules under Danish law apply. Likewise, the Act contains no provisions regarding the employees of DR. They are covered by the general rules of Danish labour law.

The Press Council acts as a supervisory body in relation to DR's programme activities (matters concerning press ethics, etc., pursuant to the Media Liability Act¹³). The Press Council is a politically independent body consisting of eight members appointed by the Minister of Justice and representing legal expertise, editors, journalists and media user organisations. Complaints must be brought before and decided by DR before they can be handled by the Press Council. Decisions of the Press Council

11) Due to increasing uncertainty as to whether PCs, mobile handsets and other receivers which to a certain extent can be used for receiving television programmes, are covered by the licence payment, the Amendment Act specifies that this shall be the case (a person is only required, however, to pay the licence once. Thus, if a person already pays the licence fee for possession of a “normal” TV set, the purchase of e.g., a PC which can be used for broadcast reception, does not result in the person being obliged to pay the licence fee twice).

12) Act No. 571 of 19 December 1985 as amended.

13) Consolidated Act No. 85 of 9 February 1998 as amended.

cannot be brought before another administrative body, but can be brought before the courts. Complaints about issues not relating to programming activities are decided by DR itself and cannot be appealed to another administrative body.¹⁴ According to the Amendment Act, another supervisory body, the Radio and Television Board,¹⁵ shall in future issue a (non-binding) statement regarding a so-called "value test" which DR shall be obliged to conduct on new interactive services before they can be introduced, in order to ensure that these services comply with the requirements set forth in the European Commission's communication on broadcasting and state aid.¹⁶ Pursuant to the communication, PS activities shall, *inter alia*, fulfil the cultural, democratic and social needs of society.

As a consequence of TV2's conversion from a public company into a private limited company (presently with the State as the sole shareholder), the procedures for the management of the company are no longer regulated in the Act, but in the Public Companies Act - like other private companies. TV2 is managed by a board of directors consisting of 12 members, eight of whom are appointed by the shareholder (the Minister for Culture as representative of the State owner), and four are appointed by the employees, in accordance with the Companies Act. The members appointed by the Minister represent business, media and culture expertise (and thus do not represent the political system). The board appoints the management of the day-to-day operations, including the chief executive officer. Issues regarding the duration of the term of office of the board and management, conflict of interests and accountability/liability are regulated in the Companies Act and general liability principles under Danish law. Likewise, issues regarding employees, such as the right to strike, etc., are regulated by the general labour law rules.

The Radio and Television Board acts as a supervisory body in relation to TV2's compliance with the PS obligations and other obligations set forth in the programming licence issued by the Minister for Culture. The Radio and Television Board also acts as a supervisory body regarding TV2's compliance with the advertising and sponsorship rules laid down in the Act. The Radio and Television Board's decisions cannot be appealed to another administrative body, but can be brought before the courts. As with DR, the Press Council acts as a supervisory body in relation to issues regarding press ethics.

Pursuant to Chapter 6 of the Act, each of the RTV2s is managed by a board of directors of five to seven members appointed by a board of representatives. One of the board members is appointed by the employees. The duration of the appointments is four years. The board members shall possess competences within media relations, culture, management and business administration. The board of directors holds the overall responsibility for the RTV2s activities. Members of Parliament cannot be board members.¹⁷ The board of directors appoints the management, including the director-general, who is responsible for the day-to-day operations, including the programme schedules. As regards conflicts of interests, accountability/liability and rights of the employees, the same rules apply as described above regarding DR.

The board of representatives (which, as mentioned above, appoints the board of directors) consists of a diverse representation of each region's cultural and social life. The size of the board of representatives varies from 35 to more than 100 members. The members of the board of representatives are appointed in accordance with by-laws for each of the RTV2s. The duration of membership of the board councils is usually four years.

The Press Council acts as a supervisory body in relation to press ethics complaints regarding RTV2s' programme activities.

2. Impact of Politics

Over time, Denmark has, like other countries, struggled to find the right balance between institutional and editorial autonomy for the PSBs on the one hand, and intervention by the State - that finances the PSB activities - on the other hand. In the early days of broadcasting - when DR

14) Certain public administrative law issues (right of access to documents, etc.) can also be brought before the Ombudsman.

15) The Radio and Television Board is the independent regulatory authority in charge of supervising the implementation of the Danish broadcasting legislation. The Board issues licences to private national and local broadcasters, monitors whether private and public broadcasters are fulfilling their legal obligations, and administers the grants for non-commercial local radio and television. The Board consists of seven members that together represent expertise in legal, financial/administrative, business and media/cultural affairs. The Minister for Culture appoints the members for four years. Reappointments are possible. The decisions of the Board cannot be appealed to the Ministry.

16) Communication from the Commission on the application of State aid rules to public service broadcasting C 320/04 of 15 November 2001.

17) As with DR, the Amendment Act determines that the set of politicians (who cannot be board members) is expanded to include regional and local politicians as well as Members of the European Parliament.

exercised its monopoly on the Danish territory and thus no competition existed – PSB was seen as an important way to educate the “uncultured” population. Accordingly, it was regarded as natural that the State (Government and Parliament) heavily influenced PS content, not only through determining the legislative framework but also through direct intervention in the programme schedules. Nowadays, there is a common political acceptance that the PSBs shall enjoy institutional and editorial autonomy and that political interference shall basically be limited to determining the overall PS obligations and ensuring that the taxpayers’ money is spent in a responsible way. Thus, the relationship between the State and the PSBs is based on an “arm’s length” principle. As regards TV2, which is well on its way to privatisation and no longer receives a share of licence fees, the political influence is now limited to determining the overall PS obligations as set forth in the Broadcasting Act.

As described above, the Broadcasting Act provides the PSB with institutional autonomy in the sense that the PSBs are not part of the normal hierarchical structure of the State institutions. The Act leaves the overall management of the PSB, including financial decisions and the overall programme responsibility, to a board of directors, the membership of which may not include politicians. The Minister for Culture appoints the board members (upon recommendation from interested parties) but cannot instruct the members to act in a certain way or to opt for certain decisions. In addition, the (politically appointed) board only has the *overall* programme responsibility, i.e., it is responsible for ensuring that the overall PS requirements of the Act are met. The *daily* programme responsibility (day-to-day programme schedules, editorial decisions, etc.) lies with the director-general (as do other day-to-day operations).

In accordance with the “arm’s length” principle, the Broadcasting Act does not contain provisions regarding e.g., the definition of programme schedules, how programmes should be edited, presented and produced, recruitment of personnel, preparation and execution of the budget, etc. All of these matters are left to the PSB to decide. Furthermore, the political system cannot influence the PSBs through supervisory functions, because such functions are left to independent supervisory bodies such as the Radio and Television Board and the Press Council. The PSBs also have legal autonomy, i.e., they can be subject to legal proceedings and make their own decisions in legal affairs.

By way of exceptions to PSB autonomy, under the Broadcasting Act the Minister for Culture has direct influence over a few issues in relation to DR and the RTV2s, e.g. issuance of executive orders regarding activities other than PS activities, approval of the annual report, approval of loans exceeding 4% of the revenue and participation in determining the conditions in cases where Parliament decides to transfer money from the state budget to DR for specific financing purposes.

3. Impact of Civil Society

As described above, the political system exercises very little influence over PSB activities and decisions. The same goes for the general public. The Broadcasting Act contains no provisions regarding the general public’s influence on PSB activities. However, the public service contracts that DR and the RTV2s have with the Minister for Culture, as well as the Minister’s programme licence granted to TV2, contain a provision that the PSB shall “ensure dialogue with the general public, including in particular listeners’ and viewers’ organisations, regarding programme activities”. It is up to the PSB to decide how the dialogue shall be established in detail. DR, for example, has set up a number of “contact points” where the public can enter into dialogue with the PSB regarding programming activities. In addition, the widespread use of the Internet by PSBs has resulted in a huge increase in a more informal web-based contact between the PSBs and the users regarding all aspects of PS activities.

The general public is entitled to complain to the PSB. Complaints regarding the programming activities can subsequently be brought before the Press Council provided the complaint concerns press ethical issues and the person complaining can be said to have a “legal interest” in the case. If these conditions are not fulfilled the decisions of the PSB cannot be brought before another administrative body. A couple of years ago, due to the lack of possibilities for appeal, DR established a so-called “listeners’/viewers’ editor” on a voluntary basis. The listeners’/viewers’ editor acts as an appeal instance in cases which cannot be brought before the Press Council. If the listeners’/viewers’ editor disagrees with the decision made in the first instance, he can recommend to the director-general to change the decision. The director-general is not obliged to follow the recommendation. The establishment of the listeners’/viewers’ editor function has been a success, which is why the Amendment Act has made the function statutory under the Broadcasting Act.

Chapter II: Cultural Diversity

A. Influence of Relevant National or Cultural Aspects

As mentioned in Chapter I, *supra*, the public service obligations are laid down in the Broadcasting Act § 10. The provision reads, in full:

§ 10. The overall public service activities shall provide, via television, radio and Internet or similar, the Danish population with a wide selection of programmes and services comprising news coverage, general information, education, art and entertainment. Quality, versatility and diversity must be aimed at in the range of programmes provided. In the planning of programmes freedom of information and of expression shall be a primary concern. Objectivity and impartiality must be sought in the information coverage. The programming shall ensure that the general public has access to important information on society and debate. Furthermore, particular emphasis shall be placed on Danish language and culture. The programming shall cover all genres in the production of art and culture and provide programmes which reflect the diversity of cultural interests in Danish society.

The PS requirements are detailed in the preparatory draft of § 10 and in the various PS contracts and TV2's programme licence. The sum of these legal sources illustrates in various ways how the PSB remit reflects Danish culture and society, particularly Danish democracy and the Danish welfare system (where the State assumes a special social responsibility towards minorities, less educated and economically weak groups in society):

Language:

The PSB shall focus on the Danish language. They shall, via an active language policy, contribute to the preservation and development of the Danish language, so that viewers are presented with correct and understandable Danish. There shall be a special focus on programmes with Danish or other Nordic languages as the original language.

Diversification:

The overall requirements regarding versatility and diversity, re § 10 (as detailed in the PS contracts, etc.), ensure diversification in the sense that all genres of programmes (news and current affairs, sports, information, education, entertainment, etc.) shall be represented, and that the programmes shall reflect the many different opinions, cultures and lifestyles of the various groups in Danish society.

Targeted Audience:

The PSB shall strengthen access to PS activities for deaf, visually-impaired or otherwise disabled persons. They shall make children's programmes of high quality and have special consideration for the physical, psychological and moral development of minors, especially in relation to programmes containing gratuitous violence or pornography. Furthermore, DR has a special obligation to strengthen the integration of people of ethnic origins other than Danish.

Discussed Subjects:

The PSB programme activities shall ensure the public's access to important information about society as well as debate. These requirements are fulfilled through a substantial amount of news programmes, current affairs programmes, discussion programmes, etc.

Educational Programmes:

DR has an obligation to provide educational programmes and services. Particular emphasis shall be placed on motivating people to wider education than basic school-centered education and to focus on themes of broad interest. DR shall aim to use new information technology, including the Internet, when providing educational programmes and services, and shall in general aim to provide programmes and services that make people familiar with new information technology.

Quota:

In accordance with the “Television without Frontiers” Directive,¹⁸ the PSB shall aim to reserve 10% of the total programme schedule time for European programmes produced by enterprises which are independent of the PSB. Besides this, the Broadcasting Act does not set out specific quotas, including quotas for content of national or cultural aspects. DR’s and TV2’s present public service contracts specify, though, that the amount of news programmes in prime time and “Danish drama programmes” shall correspond to the average amount over the past four years.

Culture and Art:

The PSB shall place particular emphasis on art and present Danish art and culture, including the Danish cultural inheritance, to viewers. As part of its obligation to promote music, DR shall maintain its present four orchestras.

Democratic Goals:

The requirements regarding diversification in their programme schedules (see above) and to enter into dialogue with the public regarding programme activities, shall ensure fundamental democratic goals such as the right of all groups of society to express their opinions, culture and way of life. In addition, the aforementioned requirement for DR to promote the integration of immigrants also reflects an important democratic goal of Danish society.

Dialogue with the Public

The PSB shall ensure dialogue with the public regarding programme activities (see Chapter I, B.3. above).

B. Reflections of Diversity in Organisational Structure

The PSB organisational autonomy and its independence from the political system reflect the Danish perception of the role of the media in a democracy. A free press is fundamental for freedom of speech and information and thus democracy. It is also vital that the PSBs, although they are funded by public means (licence fees) and serve public purposes, enjoy the highest degree of autonomy and independence vis-à-vis the State. The organisational structure set forth in the Broadcasting Act reflects these fundamental democratic values, while at the same time providing the political system with the necessary control in relation to the PSB spending of the public service funding and their compliance with public service obligations. The supervisory system, where complaints regarding the PSB are to a large extent handled by independent supervisory bodies over which the Government and Parliament exercise no control, strengthens the picture of the PSB as free, independent media acting as protectors of democracy.

The RTV2s also reflect a Danish trait, namely the intention of ensuring that access to important information and debate is not only limited to national affairs, but also extends to regional affairs. Similarly, the PS media play an important role in strengthening the local democracy as well as national democracy. The special organisational structure of the RTV2s, with board councils consisting of a large number (35 to 100) of representatives from the region’s cultural and social life, also reflects the strong democratic values and traditions of Danish society.

Conclusion

The PSBs enjoy overwhelming support among the Danish population – despite the vast number of commercial broadcasters accessible to Danish viewers. So what links the PSBs to their audience? No doubt, the Danes generally support the fundamental public service requirements regarding quality, diversity and plurality in programme content. Furthermore, the PSBs reflect Danish culture and democratic values in many ways, e.g. in terms of language, diversification, subjects discussed, culture and art, etc. There is also reason to believe that the fact that the PS programme schedules and editorial decisions are independent of political and commercial influence, strengthens the PSBs’ credibility in the eyes of the public.

¹⁸) Directive 89/552/EC.

DR's special role in the Danish media landscape is also due to historical reasons. Many Danes were brought up under the broadcasting monopoly and thus with DR as the primary provider of news, sport, entertainment and information and tendencies regarding Danish culture, art and lifestyle. Since breaking DR's monopoly, TV2 has, in a relatively short time, gained as much public support and audience share as DR. This is possibly due to the fact that TV2 is subject to the same overall public service obligations as DR. According to the political agreement regarding the privatisation of TV2, the PS obligations shall continue to exist by way of contract, despite a sale of the shares of TV2. The RTV2s' role as local providers of public service obligations and values is very much appreciated by the public which – despite globalisation and internationalisation – is very interested and engaged in local affairs.



*Alberto Pérez Gómez**

Chapter I: Regulatory Framework

A. Mission, Economic and Financing Model

1. Mission

Public Service Broadcasting and Its Legal Basis

In Spain, cable and satellite television have been fully liberalised, but terrestrial television, which is by far the most widespread means of reception of television, is considered to be a public service, which can be managed either by the Administration (be it national, regional or local) or by private companies to which a concession has been granted, following a call for tenders. So, from a legal point of view, private terrestrial broadcasters also provide a public service, but as they do not have specific content obligations, in Spain public service broadcasting is usually understood to refer only to the terrestrial television services directly managed by the Administration, which include the national television broadcaster RTVE, twelve regional public service broadcasters (from a total of 17 regions, which are known as Autonomous Communities), and several dozen local public service broadcasters.

The legal basis for public service broadcasting can be found in Article 128 of the Spanish Constitution, which establishes that the entire wealth of the country is subordinate to the general interest and that essential resources or services may be reserved by law for the public sector, and State intervention in companies may be imposed when the public interest so demands.¹

The legislator and the Constitutional Court have found that this Article allows the State to declare that terrestrial broadcasting is an “essential public service”, as was done in the Statute of Radio and Television of 1980 (Act 4/1980).² In a judgment in 1982 (12/1982),³ the Constitutional Court considered that this declaration that terrestrial television was a public service was justified on three grounds: the use of public resources, the need to ensure compliance with international rules, and scarcity of spectrum. The advent of digital terrestrial television could be used to challenge the validity of those arguments. Regardless of whether terrestrial television is liberalised or not, it is generally accepted that the State can support and fund a public service broadcaster, provided those funds are granted for the fulfillment of a clearly defined public service remit, and that it does not hamper competition.

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1) For an English translation of Article 128 of the 1978 Spanish Constitution, see: <http://www.constitucion.es/constitucion/lenguas/ingles.html#7>

2) *Ley 4/1980, de 10 de enero, de Estatuto de la Radio y la Televisión* (Act 4/1980 of 10 January 1980 on the Statute of Radio and Television), BOE n. 11 of 12 January 1980, available at: http://www.boe.es/g/es/bases_datos/doc.php?coleccion=iberlex&id=1980/00724

3) *Sentencia del Tribunal Constitucional 12/1982 de 31 de marzo de 1982* (Judgment 12/1982 of the Constitutional Court of 21 March 1982), available at: http://www.boe.es/g/es/bases_datos_tc/doc.php?coleccion=tc&id=SENTENCIA-1982-0012

Public Service Remit – Main Goals

Private terrestrial broadcasters have not challenged the existence of a public service broadcaster as such, but in the 1990s they raised the problem of the excessive State funding of a public service broadcaster whose remit had not been clearly defined before the European Commission and the European Court of First Instance (CFI). In its judgment T-95/96,⁴ the CFI obliged the European Commission to examine this claim, and Spain was later compelled to define the remit of the public service broadcaster and to ensure that public funding would only be used to fund activities relating to this public service remit.

In order to comply with this requirement, in December 2001 the Spanish Parliament amended, by means of Act 24/2001,⁵ the Radio and TV Statute of 1980, providing a new and more detailed definition of public service broadcasting.⁶ That definition is very similar to the one that can currently be found in the new Act on National Public Radio and TV (Act 17/2006),⁷ which was approved in June 2006 and has abrogated the 1980 Statute on Radio and Television. This definition of public service broadcasting is in principle also valid for regional and local public service broadcasters, where applicable.

Article 2 of Act 17/2006 establishes that public service broadcasters shall produce and broadcast several radio and television programmes and channels, both thematic and general, which include diverse programmes of all sorts of genres with the aim of meeting the democratic, social and cultural needs of all citizens and guaranteeing their access to quality information, culture, education and entertainment.

The national public service broadcaster shall balance social profitability and economic efficiency. It shall also strive to ensure the widest possible reception of its programmes throughout the country, and to ensure access to public service programming by relevant social and political groups (Article 2.3).

Article 3 entrusts the management of the national public service defined in this Act to *Corporación RTVE*. For this purpose, RTVE shall:

- encourage knowledge of constitutional values (such as liberty, justice and pluralism) and of civic values, such as peace;
- provide objective and truthful information, based on social and political pluralism, on the principle of professional independence and on the differentiation between information and opinion;
- actively promote democratic debate, freedom of speech and the right of relevant social and political groups to have access to public service programming (a right expressly recognised by Article 20.3 of the Spanish Constitution);
- promote territorial cohesion and the pluralism of society and of the various languages and cultures of Spain;

4) *Gestevisión Telecinco SA v. Commission of the European Communities*, Case T-95/96, Judgment of the European Court of First Instance (Third Chamber, extended composition) of 15 September 1998. See further: Roberto Mastroianni, “European Court of First Instance: First Decision on Public Television Subsidies”, IRIS 1998-9: 5, available at: <http://merlin.obs.coe.int/iris/1998/9/article6.en.html>

5) *Disposición Adicional Decimosexta de la Ley 24/2001, de 27 de diciembre, de Medidas Fiscales, Administrativas y del Orden Social*, *Boletín Oficial del Estado n. 313, de 31 de Diciembre de 2001*, pp. 50611-50612 (Sixteenth Additional Provision of Act 24/2001 of 27 December 2001 on Taxation, Administrative Provisions and Social Affairs, *Boletín Oficial del Estado n. 313*, of 31 December 2001, pp. 50611-50612). These new provisions amending the Statute of Radio and Television were included in the Special Measures Act, which is approved each year, together with the Budget Act. The aim of the Special Measures Act is to introduce amendments into existing provisions, thus acting as a “container” of amendments. This kind of Act has been severely criticised because of its heterogeneity and because of the insufficient debate that precedes its approval.

6) On the amendment of the public service broadcasting mission of RTVE that took place in 2001, see Juan Buhigas, *RTVE: its remit*, on Diffusion on-line (EBU), 2003/5, available at: http://www.ebu.ch/CMSImages/en/online_5_e_buhigas_tcm6-4111.pdf
See further: Alberto Pérez Gómez, “ES – New Legal Definition of Role of Public Service Broadcaster RTVE”, IRIS 2002-3: 8, available at: <http://merlin.obs.coe.int/iris/2002/3/article14.en.html>

7) *Ley 17/2006, de 5 de junio, de la radio y la televisión de titularidad estatal* (Act 17/2006 on the National Public Radio and Television), available at: <http://www.boe.es/boe/dias/2006/06/06/pdfs/A21207-21218.pdf>
See further: Alberto Pérez Gómez, “ES – New Act on National Public Radio and Television”, IRIS 2006-6: 11, available at: <http://merlin.obs.coe.int/iris/2006/6/article19.en.html>

- foster the exchange of information among citizens of the European Union;
- broadcast international television channels in order to promote Spanish languages and cultures abroad and to cater for the needs of Spanish citizens abroad;
- guarantee access to different programming genres as well as to institutional, social, cultural and sports events, targeting all audience groups and specifically focusing on public interest issues;
- promote knowledge of Spanish cultural productions (in particular, audiovisual ones) and of arts, science, history and culture;
- promote the production of European audiovisual content and of content in Spanish official languages, as well as the preservation of Spanish audiovisual cultural heritage;
- encourage the social integration of minorities and social groups with special needs, preserve gender equality, protect the rights of children and promote the protection of the environment;
- disseminate information relating to the rights of users and consumers;
- try to reach the widest audience, ensuring continuity of service and the broadest geographical and social coverage of programmes characterised by their quality, diversity, innovation and ethical commitment;
- contribute to the development of the Information Society, by using new technologies and developing new interactive services which improve its offer and bring the Administration closer to the citizens.

The structure of RTVE shall include regional centres that allow it to fulfil its public service remit and to provide regionalised content and to contribute to the development of inter-territorial cohesion (Article 7.4).

The Parliament shall approve framework programmes, valid for nine years, in which they shall specify the public service remit of RTVE. These framework programmes shall be implemented by means of contracts signed by the Government and RTVE every three years (Article 4).

Regional legislation can impose further public service obligations on regional and local public service broadcasters.

Key Content Requirements

Like all other broadcasters, public service broadcasters shall comply with the obligations imposed by Act 25/1994 (as modified by Act 2/1999),⁸ which incorporates the EC's "Television without Frontiers" Directive into Spanish law. Other general Acts also affect the activities of all broadcasters, such as the Advertising Act (Act 34/1988), the Act on the Broadcasting of Sports Events (Act 21/1997),⁹ the Criminal Code (*Ley Orgánica* 10/1995), etc.

As regards specific content requirements for public service broadcasting, Chapter III of Act 17/2006 (Articles 25 to 28) regulates the "provision of public service broadcasting and programming". Article 25 establishes that the programming of RTVE shall comply with its public service obligations, as established by this Act and by contracts between the Government and RTVE. The programming shall

8) *Ley 25/1994, de 12 de julio, por la que se incorpora al Ordenamiento Jurídico Español la Directiva 89/552/CEE, sobre la coordinación de Disposiciones Legales, Reglamentarias y Administrativas de los Estados Miembros relativas al ejercicio de actividades de Radiodifusión Televisiva (modificada por Ley 22/1999, de 7 de junio)* (Act 25/1994 of 12 July 1994 as amended by Act 22/1999 of 7 June 1999). Both acts are available at: http://217.116.15.226/xml/disposiciones/min/navegar-categorias.xml?id_categoria=1519&desde=min

The Act 25/1994 has also been modified by the Act 15/2001 and by the Act 39/2002. An unofficial consolidated version of Act 25/1994 is available at: http://noticias.juridicas.com/base_datos/Admin/l25-1994.html

9) *Ley 21/1997, de 3 de julio, reguladora de las emisiones y retransmisiones de competiciones y acontecimientos deportivos* (Act 21/1997 of 3 July 1997 on the retransmission of sporting events), available at:

http://217.116.15.226/xml/disposiciones/min/disposicion.xml?id_disposicion=31717&desde=min

See further: Alberto Pérez Gómez, "ES - Adoption of law on the broadcasting of major events", IRIS 1997-8: 12, available at: <http://merlin.obs.coe.int/iris/1997/8/article19.en.html>

deal with matters which are relevant for the majority of the population, and it shall also cater specifically for social groups with special needs, such as children or disabled people.

This Chapter also includes provisions on programming during elections (Article 26), on the broadcasting of official messages of public interest (Article 27), and pluralism and the right of access to the programming of RTVE by relevant social and political groups (Article 28).

Act 17/2006 also establishes that RTVE cannot outsource the production of its news programmes (Article 7.5) and that it shall approve guidelines for its commercial activity, which shall be public and monitored by the national audiovisual authority, yet to be created (Fifth Additional Provision).

Regional and local broadcasters have additional content requirements, in particular as regards regional and local elections and the protection of co-official languages.

Other Non-broadcasting Activities (e.g., Engagement in New Services)

Act 17/2006 establishes that the national public service broadcaster shall actively promote the development of the Information Society. For this purpose, it shall use new production and broadcasting technologies and it shall offer digital and on-line services (Article 3.3).

2. Corporate Structure

Legal Form and Ownership Rights

RTVE is a corporation whose shares are owned by the Spanish State (Article 5). The *Corporación RTVE* acts by means of two companies, which it fully owns: *Sociedad Mercantil Estatal Televisión Española* (TVE) and *Sociedad Mercantil Estatal Radio Nacional de España* (RNE) (Article 7.1).

The *Corporación RTVE* may also create new companies or participate in them, insofar as their activity is linked to its activities and functions, including its public service remit. If the *Corporación RTVE* is to acquire or lose a controlling stake in any of those companies, authorisation from the Council of Ministers will be required (Article 7.2).

The regional and local public service broadcasters are also companies fully owned by the regional or local governments, respectively.

Governing Bodies

The *Corporación RTVE* is directed by a Management Board (which has twelve members, elected by the Parliament), and by a President, chosen by Congress (lower house of the Parliament) from the elected members of the Management Board (Articles 10 and 11).

There is also an Advisory Committee, formed by fifteen members appointed by several public organisations and associations, and a News Council, formed by RTVE journalists (Articles 23 and 24).

Special Privileges

Public service broadcasters have specific frequency assignments. RTVE is the only national broadcaster which manages two national analogue terrestrial television programmes: La 1 (audience share of approx 18 per cent) and La 2 (which has a more cultural focus, and has an audience share of approx. 6 per cent). RTVE is also the only one to manage a full national digital terrestrial television multiplex (which broadcasts five DTT programmes).

Regional and local public service broadcasters also have frequencies reserved specifically for them. The situation varies in each region (i.e., each Autonomous Community). Five out of the 17 of the Autonomous Communities have not created a regional public service broadcaster, and among the others there are some regional public service broadcasters with two analogue terrestrial television channels (like Catalonia, Basque Country, Andalusia and Valencia), while others have only one channel. The Autonomous Community of Madrid has two regional analogue terrestrial television channels, but the Government considers the second one to be illegal, as it has no frequency reserved for it. The regional Government of Madrid, which is controlled by the main national opposition party, refuses to comply and continues to broadcast as it considers this to be political discrimination by the national Government, as other Autonomous Communities did not have frequencies reserved for them when they created their second regional channels.

The frequency assignment for public service broadcasting is quite problematic at local level too, as local terrestrial television was regulated in 1995 by an Act (41/1995)¹⁰ which gave preference to local public broadcasters, but this Act could not be implemented because the local television frequency plan was not approved. Many television stations (public and private) were created outside the law. In these latter years, the Act 41/1995 has undergone several amendments, the aim of which is to legalise the situation by leapfrogging analogue terrestrial local television and moving directly to digital terrestrial television – but the transition creates many problems for existing local terrestrial broadcasters, including public ones.

All these frequency assignment problems could be solved when the transition to DTTV is completed. The switch-off is scheduled for 2010.

Public Service Broadcaster's Independence from State

Act 17/2006 on the National Public Radio and Television purports to reinforce the public service broadcaster's independence from the State. The previous Act which regulated public service broadcasting (the 1980 Statute on Radio and TV) established that the Director General of RTVE, who plays a key role in the management of the company, was appointed and dismissed by the Government. Most of the Directors General of RTVE have been active members of the political party in Government. Now, according to Act 17/2006, the President of the *Corporación RTVE* will be appointed by Congress. However, s/he, like the rest of the members, can be dismissed by a two-thirds' majority decision of Congress.

Another measure intended to increase RTVE's independence is the idea of establishing framework programmes, approved by Congress and valid for nine years, which shall be implemented by means of contracts between the Government and RTVE every three years. These instruments should allow for long-term planning, and should guarantee a stable source of funding which would allow RTVE to fulfil its remit. However, some critics argue that, for example, framework programmes passed for nine years might well be amended by a new Parliament and that would limit the long-term impact of this kind of agreement.

3. Financing

Financing is one of the major problems of RTVE. Its accumulated debts amount to EUR 7,500 million and its expected annual loss for 2006 will be EUR 800 million more. Some regional public service broadcasters also have relevant accumulated debts, e.g., the regional public television of Valencia has debts of EUR 900 million, and the one from Catalonia, more than EUR 800 million. Public funding of regional public broadcasters is estimated to cost EUR 1,000 million a year.¹¹

Funding Model

There is no licence fee in Spain, and up to now, there has been almost no direct subsidy to RTVE included in the State budget. This has also been the case with some regional public service broadcasters, while others, such as the Basque public service broadcaster, have little or no debt because they receive aid from their respective regional governments.

One of the main sources of revenue for RTVE is advertising. The limits to advertising that apply to RTVE are the same as those which apply to private broadcasters, i.e., those set out in the Act which implements the "Television without Frontiers" Directive. RTVE competes with private broadcasters to try to broadcast as much advertising as possible, and it has sometimes been sanctioned for breaches of the advertising limits. Similar rules apply to regional and local public service broadcasters.

Advertising revenue and some additional revenue obtained by selling its programmes is insufficient to fund all the activities of RTVE. The rest of the financing is provided by public debt issued by RTVE

10) *Ley 41/1995, de 22 de Diciembre, de Televisión Local por Ondas Terrestres* (Act 41/1995 of 22 December 1995 on local terrestrial TV), available at:

http://217.116.15.226/xml/disposiciones/min/disposicion.xml?id_disposicion=41782&desde=min

This Act has been amended several times. See an unofficial consolidated version at

http://noticias.juridicas.com/base_datos/Admin/l41-1995.html

11) See: <http://periodistas21.blogspot.com/2005/11/ms-agujeros-televisivos-pblicos.html>

with the guarantee of the State and whose total amount is approved by the State each year by means of the Budget Act.¹²

The regional and local public service broadcasters are also financed mainly by means of advertising and a mixture of public subsidies and public debt.

Continuity and Transparency of Funding

This system did not ensure continuity of funding, nor was it transparent enough. Act 17/2006 seeks to improve this situation:

- The three-year contracts to be entered into by the Government and RTVE shall specify the funding from the State budget that RTVE shall receive for each of those three years and the goals to be achieved, as well as the consequences in case of breach of those conditions (Article 32).
- The *Corporación RTVE* is only allowed to incur debt insofar as it is necessary to finance investment in fixed assets or to cover temporary cash needs, and even then only within the limits established for each year by means of the three-year contracts to be signed by the Government and RTVE (Article 31). If RTVE incurs excessive debts (e.g., more than 10% above the budgeted limit), all the members of its Management Board shall be dismissed (Article 13.2).
- The funding coming from the State budget shall be only used to finance the public service activities and therefore not the commercial activities of RTVE (Article 33). RTVE shall have an analytical accounting system which allows it to have separate accounts for public service activities and for the remainder of its activities (Article 37.5).
- The accounts of RTVE shall be audited, and subsequently controlled by the Spanish Court of Auditors and by the Inspectors of the Ministry of Economy (Article 37).

Safeguards Against Using Financing to Influence Public Service Broadcasting

The new model established by Act 17/2006 tries to ensure a certain stability in the financing system of the public service broadcaster, as the Government and RTVE shall sign contracts which establish a financing model valid for three years. The Act also tries to force the Management Board to act in a regular way, within the limits of the approved budget.

B. Decision Making: Structures and Procedures

1. Decision-Making Process

System of Management and Control

Formally, the main body of RTVE is its Management Board.

The twelve members of the Management Board must be chosen from duly qualified and experienced candidates, endeavouring to keep a balance between men and women (Article 10). In order to be eligible for membership, the candidates must have been working for more than five years as managers or advisors or exercising functions of similar responsibility in public or private entities, or as researchers or professors (Article 14). Eight of these members are appointed by Congress and four by the Senate (upper house of the Parliament), by a two-thirds' majority, for a non-renewable mandate of six years. Two of the members appointed by the Congress will be elected from candidates proposed by the two main national trade unions represented at RTVE (Article 11).

Being a member of the Board shall be a full-time job. Members of the Board shall not be members of Parliament, and shall have no interest in any company related to this sector. They shall exercise

12) "Public Debt" (in Spanish *deuda pública*) can be a source of financing: the State does not include in the budget additional money to directly fund national public service broadcasting – instead, it merely authorises RTVE to issue a certain amount of Public Debt. It takes the shape of, e.g., 5-years bonds, with the unlimited guarantee of the Spanish State (which ensures an AAA rating). These bonds are bought by investors, but they have to be repaid by RTVE, which must also pay a bonus (interest) to those investors, thus raising the total cost (e.g., the annual interest of the total RTVE debt of EUR 7,700 million amounts to approx. EUR 300 million per year).

their functions in an independent way, without receiving orders from the Government, the Administration or any other institution (Article 15).

The members of the Management Board can be dismissed for several reasons, including a decision of the Congress adopted by two-thirds of its members. All of them would be dismissed if the *Corporación RTVE* were to incur excessive debt (Article 13).

The main competences of the Management Board are the definition of the strategy of RTVE; the appointment of the main executive officers of RTVE and its companies; the approval of the organisational chart; the approval of basic guidelines regarding production, advertising, programming and access to its television programming by relevant social and political groups, as well as the approval of the most important contracts, of the annual report, of the yearly balance and of the budget to be proposed to Parliament (Article 16).

The Bill that preceded Act 17/2006 proposed that the President of the *Corporación RTVE* would be appointed by the Management Board, but the final version of the Act has established that she will be elected by Congress (Article 11.4), which can also dismiss him/her by a two-thirds' majority decision (Article 13).

The President has responsibility for the day-to-day operations, and his/her main competences shall be to execute the resolutions of the Management Board and to manage the corporation in accordance with the guidelines provided by this Board, as well as to prepare the documents (annual report, proposed budget, etc.) which will later be approved by the Board (Article 20). Before the new Act was passed in 2006, the Director General (equivalent to the President of the Management Board) played *de facto* a decisive role in the management of RTVE.

Supervisory Bodies

A new internal supervisory body has been created by Act 17/2006: the News Council. Its members will be RTVE journalists and its goal will be to safeguard the independence of RTVE and of its journalists.¹³ The Management Board shall approve the provisions regulating the organisation and procedures of this News Council. In 2006, RTVE also approved the creation of an Ombudsman.

There are several external bodies that supervise in some way the activities of RTVE. Congress has an internal Committee which follows the activities of RTVE. The economic performance and procedures of RTVE are assessed by the Court of Auditors and by the members of the General Inspection Service from the Ministry of Economy.

Act 17/2006 entrusts several supervisory functions to an audiovisual authority which was expected to be created by now, but has not yet come into being. Several of those specific functions are currently being exercised by the Secretary of State for Telecommunications and the Information Society of the Ministry for Industry, Trade and Science, who is also in charge of applying, at national level, Act 25/1994, which incorporates the EC's "Television without Frontiers" Directive into Spanish law, and which applies to public service broadcasters.

Staff

Most RTVE staff members are civil servants and this status should ensure their stability and independence, as civil servants are rarely fired from the public entities for which they work. However,

- This stability has not always been compatible with economic efficiency, as in 2005 RTVE had 9,000 workers, much more than their private competitors, and several of those workers were being paid even though they were not performing any relevant task (e.g., see the case, *Fuentes Bobo v. Spain*).¹⁴ This was definitively a factor behind the ever-growing debt of RTVE. In October 2006, the Director General of RTVE announced that she had reached an agreement with the trade unions,

13) Art. 24.3 of the Act 17/2006 establishes that the internal rules of the News Council shall be approved by the Management Board of RTVE, which must reach an agreement on this issue with the RTVE journalists. The internal rules of the News Council have not been approved yet, so there is no information available about how its members will be appointed.

14) Judgment of the European Court of Human Rights (Fourth Section) of 29 February 2000, Appn. No. 39293/98, available at: <http://www.echr.coe.int/>
See further: Dirk Voorhoof, "European Court of Human Rights: Recent Judgments on the Freedom of Expression and Information", IRIS 2000-4: 2, available at: <http://merlin.obs.coe.int/iris/2000/4/article1.en.html>

the aim of which is to reduce the number of RTVE employees to 5,000 by 2009, mainly by means of an early retirement scheme.

- This stability has not necessarily ensured independence, as shown by the judgment of the European Court of Human Rights in the case, *Fuentes Bobo v. Spain*, in which the Spanish State was condemned for failing to adequately protect the freedom of speech of a TVE journalist who had first been sanctioned and then fired by the TVE managers for criticising the partisan use of RTVE by politicians in power.¹⁵

Then, in 2003, TVE was found by the National Court (*Audiencia Nacional*) to have breached the fundamental right to strike, and was obliged by a judgment to acknowledge this fact by reading a news release on this issue.¹⁶ That judgment was then read outside the time frame established by the Court (during the section "National Affairs" of the daily News). This case was quoted in one of the recitals of a Recommendation of the Parliamentary Assembly of the Council of Europe on public service broadcasting (Recommendation 1641 (2004)) as an example of governmental interference in public service broadcasting.¹⁷

In 2004, TVE was condemned by a Judge for refusing to broadcast an advertisement from the Government of Aragon (a Spanish region) against a Hydrological Plan that was being proposed by the national government.¹⁸

These examples showcase the clearest examples of problems relating to the independence of TVE staff, but for decades the trade unions and many journalists have repeatedly denounced the parties in power for trying to control the editorial policy of RTVE. It remains to be seen whether the recent (and as yet unimplemented) changes introduced by Act 17/2006 may reverse this trend.

2. Impact of Politics

In theory, the legislation regulating public service broadcasting establishes the institutional autonomy of the Management Board and the President of RTVE and of the RTVE staff as regards the drawing up of programme schedules, the production of programmes, the editing and presentation of news (which cannot be outsourced), the organisation of the activities of the service, recruitment, purchase of goods and services and management of financial resources, the negotiation of legal acts and the representation of the service.

In practice, up to now all the Directors General of RTVE have enjoyed nearly total control of the corporation, and they have been appointed by the respective Governments mainly because of their political profile. Even if the legal provisions regulating the removal of Directors General imposed certain limitations on the powers of the Government in this respect, in practice the Directors General have been forced to resign when the Government has considered it appropriate.

As regards the preparation and execution of the budget, RTVE prepares an annual budget that must be approved by the Parliament (which may amend it), and it is then executed by RTVE.

In 2000 the Government, taking into account the debt accumulated by RTVE, decided to place it under the control of the State holding company, *Sociedad Estatal de Participaciones Industriales* (SEPI), which had the mandate of striving to reduce that debt. The SEPI has been controlling RTVE finances, and indicating to RTVE that it should not compete with other television operators for the acquisition of some broadcasting rights that the SEPI judged unreasonably expensive and unprofitable, such as some television rights to matches of the national soccer team, which used to be broadcast by RTVE.

15) See the Press Release of the ECHR on this case at:

<http://www.echr.coe.int/eng/press/2000/feb/fuentes%20bobo%20jud%20epress.htm> (the full judgment is only available in French).

16) *Audiencia Nacional* (National Court), Judgment 75/03 of 23 July 2003, available at:

<http://www.aideka.tv/Serviciosinformativos/COMITE/sentenciaRTVE.pdf>

17) PACE Recommendation 1641 (2004), adopted on 27 January 2004, available at:

<http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta04/EREC1641.htm> See further: Tarlach McGonagle, "Parliamentary Assembly: New Recommendation on Public Service Broadcasting", IRIS 2004-3: 3, available at: <http://merlin.obs.coe.int/iris/2004/3/article3.en.html>

18) See a press release of the Government of Aragon on this issue at <http://www.aragob.es/pre/cido/r0303071.htm>

As indicated above, Act 17/2006 introduces a new system. RTVE and the Government will sign contracts, valid for three years, which will establish a funding scheme to be included in the budget as a multi-annual programme, and the Management Board is obliged to keep expenses within the budget, as failure to comply with this obligation in the terms specified by the Act will lead to the dismissal of the members of the Management Board.

It remains to be seen how the Spanish Government will be able to provide the funds required each year by the national public service broadcaster, which until now have been treated as public debt. This change is likely to put a considerable strain on the State budget.

3. Impact of Civil Society

Up to now there has been little room for the general public to influence the decisions of RTVE.

- The 1978 Spanish Constitution recognises in its Article 20.3 the right of relevant social and political groups to be represented in public media such as RTVE. Some consider that this constitutional provision implies that these relevant groups should be represented within the public service broadcaster structure. This was not the view of the 1980 Statute of Radio and TV, which, unlike some regional public broadcasters, did not grant those groups any right of that kind. The 1980 Statute did recognise the right of these relevant groups to airtime, to be allocated according to the criteria established by the Management Board, but these criteria were never approved, so even if this right has been recognised by the Constitution itself, in practice it has had no specific application.
- The activity of RTVE is politically controlled by Congress, mainly through a specific Parliamentary Committee. As regards compliance with media law, at national level there is no independent audiovisual authority, and the relevant authority is the Secretary of State for Telecommunications and Information Society of the Ministry of Industry, Trade and Tourism.
- Consumer groups, which often complain about the repeated breaches by public and private broadcasters of the rules governing the media sector, were especially dissatisfied with the lack of compliance with the rules concerning the protection of minors, which they felt were not being sanctioned by the Government (which is the competent administrative authority at national level in this field). In December 2004, the Government and the broadcasters finally agreed on a co-regulatory code on the protection of minors.¹⁹
- In 2006, the Director General of RTVE appointed an Ombudsman, to whom viewers can submit complaints.
- The general public can access RTVE annual reports, which are made public,²⁰ as well as other specific reports, such as the one on gender representation in the news programmes of RTVE, made by RTVE and the official Women's Institute (*Instituto de la Mujer*²¹).

The situation has changed recently, as the new Act 17/2006, approved in June 2006, provides for the creation of an Advisory Board. This Board shall have 15 members, who shall have no right to remuneration. The Act establishes the groups that should be represented on the Advisory Board, which include associations representing consumers, disabled people, immigrants, universities, television professionals, advertisers and journalists. The Advisory Board shall advise the Board in relation to programming guidelines and it shall give its opinion on the rules which shall implement the right of access to RTVE, on the contracts to be entered into by the Government and RTVE as well as on RTVE's rules on advertising. The Advisory Board shall be convened by the Management Board at least every three months, and whenever its opinion is required by law before a decision is taken (Article 23).

19) See: http://www.rtve.es/balcon/archives/acuerdo_tv_infancia_firma.pdf

See further: Alberto Pérez Gómez, "ES - Government and TV Channels Agree to Set up Co-regulatory Code for the Protection of Minors", IRIS 2005-2: 11, available at: <http://merlin.obs.coe.int/iris/2005/2/article20.en.html>

20) See the 2005 Report at: http://www.rtve.es/informe_2005/inicio.htm

21) See the Second Report on Gender Equality on RTVE radio and TV News Programmes at: <http://www.rtve.es/balcon/images/segundoinforme.pdf>

Chapter II: Cultural Diversity

A. Influence of Relevant National or Cultural Aspects

As indicated above, the definition of the public service remit (Articles 2 and 3) includes several references to the promotion of Spanish cultural and linguistic heritage. However, it is often not so clear whether this is reflected in the actual programming.

1. Language Requirements²²

In Spain, Spanish (Castilian) is recognised by the Spanish Constitution as the official language of the State, but provision is also made for the use of other (co-official) languages by the country's Autonomous Communities, where applicable. Basque, Catalan and Galician are the best-known of these other languages, which are also frequently used in regional and local broadcasting. To date, six of the 17 Autonomous Communities have their own co-official languages and two more have committed themselves to the protection of their dialects. The Autonomous Communities have responsibility for the implementation of the national media law, in particular as regards regional and local issues such as the promotion of their respective co-official languages.

These Autonomous Communities have imposed language requirements which affect all broadcasters within their jurisdictions (i.e., public and private regional and local broadcasters which only broadcast within their territories). For example, television broadcasters under Catalan jurisdiction must comply with quotas for audiovisual works in Catalan, and the regional Acts on the use of the co-official languages and dialects require public authorities to fund the production and distribution of audiovisual works in those regional languages.

Public regional and local broadcasters usually do not have stricter language requirements than private broadcasters, but in practice they tend to broadcast most (or all) their programming in their respective co-official languages.

As regards RTVE, it has regional centres that also broadcast part of their programming in co-official languages. In some cases, some citizens have complained that both the national and regional public broadcasters in their territories were broadcasting in co-official languages, which would deprive them of the possibility of receiving public service television in Spanish, the country's official language.

2. Contents and Mission

The definition of the public service broadcasting mission contains several policy goals relating to content provision and the protection of certain cultural and social aspects.

- There are several policy goals which foster diversification in respect of programmes. For example, RTVE is asked to promote "pluralism and the linguistic and cultural diversity of Spain" (Article 3.2.e of Act 17/2006), or to "guarantee access to different programming genres as well as to institutional, social, cultural and sport events, targeted at all audience groups" (Article 3.2.h), or to "try to reach the widest audience, ensuring continuity of service and the broadest geographical and social coverage of programmes characterised by their quality, diversity, innovation and ethical commitment" (Article 3.2.p).
- The public service broadcaster is asked to cater for the specific needs of targeted groups of the audience, such as regional audiences. For example, RTVE is required to broadcast its regional programming using the co-official language of the territory in question, and it is also asked to take into account, in relation to the Balearic Islands and Canary Islands, their insularity and the position of the Canary Islands as an outermost region (Article 25.3).
- Public service broadcasting includes the provision of programmes which cater for the "informational, cultural and educational needs" of the audience (Article 2.1), and its programming shall "facilitate democratic debate and freedom of speech" (Art. 3.2.c) and "promote democratic participation through the right of access" of relevant political and social groups to the programming of public media (Articles 3.2.d and 28).

²² See Alberto Pérez, "Spain" in T. McGonagle, B. Davis Noll and M. Price (eds.), *Minority-language related broadcasting and its legislation in the OSCE*, April 2003, pp. 418-427.

- The public service broadcasting mission also takes into account responsiveness to discrete audience categories, as it requires RTVE to “support social integration of minorities and to cater for the needs of social groups with specific needs” (Article 3.2.j), and the applicable legislation also requires the public service broadcaster to “take especially into account social groups which require specific attention, such as children” and to “avoid any kind of discrimination in relation to disabled people” (Article 25.3).

However, up to now there have been no specific measures to assess the suitability of relevant programming for relevant audiences, and several viewers’ associations have often complained that in general it was not possible to distinguish public service programming from the programming of private broadcasters, bar a few programmes not aired at prime time.

Act 17/2006 now introduces three-year contracts between the Government and RTVE, which should include more detailed obligations concerning public service programming, so that the principles enshrined in Articles 2 and 3 of Act 17/2006 are actually applied.

3. Quota Requirements Relating to National and Cultural Aspects

Up to now the quota requirements imposed upon public service broadcasters are the same as those that apply to private broadcasters (e.g., those imposed on European productions by Act 25/1994 on the incorporation into Spanish law of the EC’s “Television without Frontiers” Directive, or those established by regional Acts protecting co-official languages).

Private broadcasters and viewers groups have often complained about the fact that RTVE is benefiting from public funding and actively competing for advertising revenue, but that it does not have any specific legal obligations in relation to its programming that go beyond a generic mission statement. As stated earlier, it is expected that the new contracts to be entered into by the Government and RTVE should improve the situation.

4. Public Service Broadcasting and Democratic Goals

The public service broadcasting mission includes several specific provisions relating to democratic goals such as fostering tolerance or multicultural understanding. For example, RTVE shall “promote the knowledge and dissemination of constitutional principles and civic values” (Article 3.2.a), the “promotion of peace” (Article 3.2.q), the promotion of the “protection and safeguarding of gender equality” (Article 3.2.k) or the “promotion of knowledge, safeguarding and respect of ecological values and the protection of the environment” (Article 3.2.r). Again, the problem remains how to ensure that those values are actually promoted by public service programming.

B. Reflections of Diversity in Organisational Structure

1. Federal versus Centralised System

Spain is not a federal system, but the Autonomous Communities have as many responsibilities as Federal States, including that of legislating in many fields through their own Parliaments and that of implementing and executing many Acts.

This structure is reflected in the public service broadcasting system in Spain.

On the one hand, RTVE has regional centres, which provide content to the national programming services and also prepare specific regional content to be broadcast only in specific parts of the country, using the regional language where there is one (Article 7.4 of Act 17/2006).

On the other hand, the regional Parliaments have created regional public service broadcasters, and regional legislation which protects regional culture (and language where applicable), and which apply to all regional and local broadcasters within their jurisdiction.

Act 17/2006 on National Public Radio and TV establishes some common principles regarding public service broadcasting, but regional Governments may then impose additional obligations. In some cases, there are conflicts regarding the margin of appreciation left to regional Parliaments. For example, the national Government recently challenged the new 2005 Catalan Act on the audio-visual sector before the Constitutional Court as it considers that several of the Act’s articles do not comply with the basic principles established by national law.

Regional public broadcasters cooperate among themselves through an association called FORTA, which, among other things, collectively acquires broadcasting rights for their use by regional public service televisions. There are no specific arrangements for collaboration between RTVE and the regional public service broadcasters.

2. Public Service Broadcasting Mission Conferred Upon Commercial Broadcasters

As explained above, in Spain, the provision of terrestrial television services is considered to be an essential public service, and private terrestrial broadcasters are concessionaires in charge of the indirect provision of that public service. However, they are not subject to any specific obligations: they just have to comply with the content provisions which apply to any other broadcaster in Spain (in particular, those set out in Act 25/1994 on the incorporation into Spanish law of the EC's "Television without Frontiers" Directive). Private terrestrial broadcasters retort that until now, Spanish public service broadcasters have not had any specific content requirements, or – unlike other European public service broadcasters – any specific limit to their participation in the advertising market.

3. Participation of Social Groups on Broadcasting Councils and Similar Bodies

Up to now, at national level there has not been any participation of social groups on Broadcasting Councils or similar bodies. Act 17/2006 has now created an Advisory Board (still to be formalised) on which several associations acting on behalf of different viewers' groups will be represented.

At regional level, however, some regional public broadcasters have Management Boards on which some relevant social groups are represented (e.g., see Article 7.2. of the Basque Act 5/1982).²³

4. Level of Transparency

Public service broadcasting has a very important role to play in Spain, but up to now it has lacked transparency. Public service broadcasters have been controlled by national and regional Governments and their funding has been unclear. Spanish citizens, who are among the few in Europe not paying a fee to fund public service broadcasting, consider it to be "free", when in fact it has generated a lot of debt. The yearly losses of all public service broadcasters in Spain would, e.g, exceed the budget of the Ministry of Justice. Moreover this money is being "spent" on a public television service that competes to get as much advertising as possible and that, according to many critics, often lacks relevant public service content.

Act 17/2006 could be an opportunity to put an end to the practice of Directors General being appointed and removed at will by governments, to excessive debt, or to a lack of specific relevant public service obligations. However, it must be noted that, for example, the new Act relies on a national audiovisual authority to exercise some controls over the activities of RTVE, and that authority has not yet been created – and the draft Bill on its creation has as yet not even been presented before Parliament.

23) *Ley 5/1982, de 20 de Mayo, de creación del Ente Público Radio Televisión Vasca* (Basque Act 15/1982 on the creation of the Basque public broadcaster), available at: http://noticias.juridicas.com/base_datos/CCAA/pv-15-1982.html



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Chapter I: Regulatory Framework

A. Mission, Economic and Financing Model

1. Mission

The Public Service Remit

In Finland¹ the operations of the public service broadcasting company YLE (the Finnish Broadcasting Company, Yleisradio Oy), are defined in the Act on Yleisradio Oy (1380/1993).² The latest amendments were introduced by the Act on the Amendment of the Act on Yleisradio Oy, Act No. 635/2005 of 19 August 2005, which entered into force on 1 January 2006. They included some specifications for the public service remit, which today is defined in Section 7 of the Act as follows:

“The company shall be responsible for the provision of comprehensive television and radio programming with the related additional and extra services for all citizens on equal conditions. These and other content services relating to public service broadcasting may be provided on all telecommunications networks.”

The public service programming shall in particular:

- 1) support democracy and everyone’s opportunity to participate by providing a wide variety of information, opinions and debates as well as opportunities to interact;
- 2) produce, create and develop Finnish culture, art and inspiration for entertainment;
- 3) take educational and equality aspects into consideration in programming, provide an opportunity to learn and study, give focus on programming for children, and offer religious programmes;
- 4) treat in its broadcasting Finnish-speaking and Swedish-speaking citizens on equal grounds and produce services in the Sámi, Romany, and sign languages as well as, where applicable, in the languages of other language groups in the country;
- 5) support tolerance and multiculturalism and provide programming for minority and special groups;
- 6) promote cultural interaction and provide programming directed abroad; and
- 7) broadcast official announcements, for which further provision shall be issued by decree, and make provision for television and radio broadcasting in exceptional circumstances”.³

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1) This article does not take into account the broadcasting regulation in the Åland Islands, the population of which is mainly Swedish-speaking and amounts to 0.5% of the whole population. The Autonomy Act of Åland (as of 1 January 1993) gave the islands the right to grant operating licences for broadcasting on Åland. The Islands have their own broadcasting legislation.

2) Act on Yleisradio Oy (The Finnish Broadcasting Company Ltd) Act No. 1380/1993 adopted on 22 December 1993 (as amended).

3) See further: Marina Österlund-Karinkanta, FI – New Administrative Model for YLE in Finland and Specifications in the PSB, IRIS 2006-1: 12, available at: <http://merlin.obs.coe.int/iris/2006/1/article21.en.html>

Details of the grounds for the definition of the public service broadcasting remit are to be found in Government proposal 43/2005.⁴ These were preceded by working groups set up by the Ministry of Communications. The working groups represented the main political parties (seen as parliamentary working groups) and there has been political consensus regarding their suggestions.

Every other year YLE's Administrative Council must submit a report on YLE's operations to Parliament. The YLE Board must submit an annual report to the Finnish Communications Regulatory Authority on the public service provided. Accounts of the reports are given later in this article.

Apart from the content requirements mentioned above, YLE is subject to the same quota requirements concerning the amount of European and European independent production content as the other national television companies in Finland. And, when it comes to the amount of European independent productions, the quota is 15% and not 10% as required by the European Union quotas.

Programming Demands Made on the Main National Commercial Channels

The other broadcasters in Finland operate on the basis of operating licences granted by the Government. The basis for this is laid down in the Act on Television and Radio Operations (744/1998).⁵ The content requirements of the main national general commercial channels (MTV3 and Channel Four Finland) as included in their operating licences are identical. Their operating licences for digital television operations⁶ state that

- The needs of different population groups shall be taken into account in the programming. In the structure of programming, media and cultural policy aspects must be taken into consideration, and the programming shall, for its part, promote Finnish audiovisual culture. The programming shall be qualitative and comprehensive and include news, current affairs and entertainment programmes.
- Good journalistic practice shall be observed.

The Public Services Provided by YLE

YLE's radio programming comprises three national Finnish-language radio channels (one with windows for 20 regional services), two Swedish-language channels, a regional network in Northern Finland for programming in Sámi, a local service over the Helsinki region and five digital radio services in YLE's digital terrestrial television multiplex (of which two are available only on this DTT multiplex, two are also available as analogue services regionally and one locally (over the Helsinki region).

YLE's television operations consist of programming in one digital television multiplex covering the entire population (99.9%). The small gaps in the terrestrial network are covered by satellite transmissions. The coverage of YLE's transmissions is thus 100%. The services include five television channels: the general TV1 and TV2 (also transmitted in the analogue network until 31 August 2007), YLE Extra (live events, popular culture and sports events),⁷ YLE Teema (culture, education, science) and the digital Swedish-language channel, FST5. Swedish-language programmes are also shown on TV1 and TV2, although the FST⁸ programme slots on TV1 and TV2 will be discontinued at the end of August 2007.

One of YLE's radio channels, Radio Peili, is simultaneously available over the Internet. It consists of talk programmes. In 2006, YLE opened an archive service by which a whole range of radio programmes and an increasing amount of television programmes can be accessed over the Internet. The most recent news programmes are available immediately after the transmission. YLE also offers an SMS service through which a daily average of two news messages and/or two sports news messages are sent to the subscribers' mobile phones. WAP services are available as well as some mobile services that can be accessed from the Internet.

4) This proposal was presented to Parliament on 21 April 2005. It consisted of the proposal for the Amendment of the Act on Yleisradio Oy (and the proposal for the Amendment of the Act on the State Television and Radio Fund; the change being to abolish the operating licence fee altogether, i.e., not use it for digital television operations after 31 August 2010 as originally intended).

5) See further: Annemique de Kroon, FI – New Acts on Radio and Television Come into Force, IRIS 1999-2: 9, available at: <http://merlin.obs.coe.int/iris/1999/2/article13.en.html>

6) The analogue switch-off date is 31 August 2007.

7) YLE Extra will replace YLE 24 (news) as of 24 April 2007.

8) FST stands for Swedish-language Television – the YLE division responsible for the programming of FST5 and the FST slots on TV1 and TV2.

2. Corporate Structure

YLE is a limited company operating in the administrative sector of the Ministry of Transport and Communications (legislation concerning broadcasting is prepared by this Ministry). The State owns 99.98% of the shares. There are around 60 other shareholders (media companies, banks, journalists' trade unions, a variety of associations, etc.). The background is that originally, in 1926, YLE was established as a private limited company. In 1934, it was reorganised and the State was to own at least 90% of the shares. According to Section 2 of the Act on Yleisradio Oy, 1993, the State minimum share of ownership was determined at 70%. In practice, the State has owned about 99.9% for decades.⁹ YLE's administrative organs are the Administrative Council, the Board and the Director General acting as a Managing Director.

YLE's highest decision-making body is the Administrative Council (21 members) and it is elected by Parliament in its first session of the parliamentary term (normally every fourth year). The representation of the political parties in the Administrative Council is, in practice, determined in proportion to the parliamentary election results. The members of the Administrative Council shall include representatives from the fields of science, art, education, business and economics, as well as representatives of different social and language groups (i.e., Finnish and Swedish).

Since 1 January 2006, the company has had an external Board, whereas previously the Board consisted of members of YLE management. The Administrative Council annually elects YLE's Board, which consists of five to eight members, none of whom can be members of the Administrative Council or executive directors of the company. As a consequence of this reform, the Board's powers were extended to correspond, with certain exceptions, to the tasks of the Board as defined by the Companies Act (734/1978). The Board shall represent sufficient expertise and both language groups.

In comparison to other limited companies, some of the tasks that would normally be handled by the Board, have, in the Act on Yleisradio Oy, been assigned to the Administrative Council. YLE's Administrative Council decides on issues concerning considerable restriction or expansion of the activities or significant changes in the organisation of the company and on the economic and operational guidelines. Also, the Administrative Council shall submit to Parliament, every second year, and after having heard the Sámi Parliament¹⁰ (concerning Sámi issues) a report on the implementation of public service broadcasting in the previous two years.

The Board shall represent sufficient expertise and both language groups (e.g. Finnish and Swedish). The duties of the Board shall include:¹¹

- electing and dismissing the company's Director General who must not be a member of the Administrative Council or of the Board
- electing the company's other executive directors
- deciding the budget for the following year
- summoning the Ordinary General Meeting and preparing the items of the agenda
- submitting an annual report of the company's operations to the Finnish Communications Regulatory Authority.

At the Ordinary General Meeting, the State is represented by a representative of the Ministry of Transport and Communications. The Ordinary General Meeting decides, for example, the company's articles of association. According to the Act on Yleisradio Oy, the company may also engage in other activities (i.e., other than public service) in accordance with its articles of association. The present articles of association state, for example, that YLE can engage in other activities that support the public service broadcasting operations. The company is obliged to differentiate (to keep separate accounts) between such other activities and public service broadcasting operations.

In March 2006, the Administrative Council defined the strategic goals for YLE 2010. The realisation of the goals is monitored by the Board using concrete measurable indicators.

9) In 1934, the State owned 91.2%. See also: Rauno Endén, Ed., *Yleisradio 1926-1996. A History of Broadcasting in Finland*. (Finnish Historical Society) (Finland, WSOY Painolaitokset, 1996), p. 44.

10) The Sámi Parliament was established by law in 1996 as a organ for cultural autonomy for the Sámi people. Its task is to plan and implement the cultural autonomy that is guaranteed to the Sámi people as an indigenous people under the Constitution. It has 21 members and four deputy members; they are elected every four years. See also: <http://www.samediggi.fi>

11) Section 6a, Act on Yleisradio Oy (as amended).

In Finland the PSB's independence from the Government has been guaranteed, first of all, by making it the duty of Parliament to elect YLE's highest decision-making body – the Administrative Council (law passed in 1948).¹² This model has worked well in practice and has not been questioned. Also, discussions in Parliament concerning the operations of YLE have regularly demonstrated very consistent support for YLE and its performance as the guarantor of Finnish society's democratic, social and cultural needs as far as broadcasting is concerned.

3. Frequency Allocation

Frequencies are allocated to YLE by the Government in accordance with the needs defined. This is done through a frequency allocation plan issued as a decree. The legal basis is the following:

- Telecommunications radio networks and digital television and (sound) radio distribution networks are both regulated by the Communications Market Act (393/2003).¹³
- As far as digital broadcasting is concerned, there are separate network operating licences and programme operating licences (the network operating licences are regulated by this Act and the programme operating licences by the Act on Television and Radio Operations (744/1998)).
- The holders of network operating licences are obliged to provide the distribution capacity needed by the Finnish Broadcasting Company (YLE) and the holders of programme operating licences.
- The Act on Radio Frequencies and Telecommunications Equipment (1015/2001) is intended to promote efficient, interference-free and non-discriminatory use of the spectrum.¹⁴ Based on this Act the Government issues decrees whereby specific frequencies are allocated to analogue and digital television and radio networks and mobile telecommunications networks (GSM, UMTS, DVB-H).

4. Financing

YLE is financed by the State Television and Radio Fund, into which television license fees paid by households and operating licence fees paid by the commercial television companies are collected. As of 1 July 2002, the operating licence fee was cut by 50% and digital television operations were exempt from payment (originally until 31 August 2010, but later altogether). The operating licence fee will thus cease to exist after the switchover to digital transmissions on 31 August 2007.

The background to this change was a political consensus (on the basis of suggestions from the aforementioned working groups) with the aim of promoting Digital Terrestrial Television. The idea was that the commercial companies, through the drop in the operating licence fees, would be able to invest more in digital services. However, YLE needed compensation for the drop in the operating licence fees. This was provided by an increase in the television license fee amounting to 13% in 2004 (this also compensated for the increase in costs since the previous increase in the television license fee had taken place several years earlier) and annual television license fee increases as of 2005. Still, as a result of the above changes and because of YLE's costs related to the digitalisation and the simulcast costs of two television channels, YLE's total expenditure has been substantially greater than the total income for a number of years. This deficit is a planned deficit and it is covered largely by the income from the sale of YLE's shares in Digita, the transmission network owner and a company originally wholly owned by YLE. The plan is that the income and expenditures will be in balance in 2008.

The funding system is nowadays based on the Act on the State Television and Radio Fund, which came into effect on 1 January 1999. Financing through a state fund outside the state budget has been the arrangement ever since 1927.¹⁵ The Act on the State Television and Radio Fund (Act 745/1998) regulates the collection of the television license fees.¹⁶ The fees are collected by the Television Fee Administration, a department of the Finnish Communications Regulatory Authority (FICORA), into the State Television and Radio Fund. In addition to the television license fees, the assets of the fund consist of the operating licence fees paid by the commercial television companies. The assets of the fund shall be used to finance the activities of the public service broadcasting company YLE. The

12) The Act on the Amendment of the Act on the right of the Council of State to transfer property acquired by the state for the purpose of public service radio broadcasting to a limited share company. See also: Rauno Endén (ed.) *Yleisradio 1926-1996. A History of Broadcasting in Finland*. Finnish Historical Society. p. 44.

13) See further: Marina Österlund-Karinkanta, FI – New Legislation on the Communications Market, IRIS 2003-7: 14, available at: <http://merlin.obs.coe.int/iris/2003/7/article30.en.html>

14) See further: Marina Österlund-Karinkanta, FI – New (Technical) Radio Act in Finland, IRIS 2002-2: 7, available at: <http://merlin.obs.coe.int/iris/2002/2/article13.en.html>

15) The Radio Equipment Act, No. 8/1927.

16) See further: Annemique de Kroon, Finland: New Acts on Radio and Television Come into Force, IRIS 1999-2: 9, available at: <http://merlin.obs.coe.int/iris/1999/2/article13.en.html>

resources are allocated to YLE on the basis of separate decisions taken each year by the Government. Since the assets shall be used to finance YLE, this guarantees long-term security of funding.

The television license fee does not include value added tax (VAT). However, there is a VAT of 8% that applies to the television fee revenue transferred to YLE (by FICORA) after the deduction of the costs of supervision, collecting the fees and other, minor items. Thus YLE receives approximately 89% of the television fee.

Television license fee increases are proposed by the YLE Administrative Council and decided by the Government. According to a political consensus with the suggestions of the special working groups, the Government will, annually and according to an agreed model, until 2010, decide the amount of the television license fee taking into account the rate of cost increases.

The challenge for the financing of public service broadcasting lies in the willingness of households (and businesses with television sets) to pay their television license fee and the effectiveness of activities to catch evaders. Also, the outcome of deliberations concerning financing after 2010 will have effects on the future security of continuity in financing YLE.

Thus the funding system can be seen as providing an important basis for the editorial independence of YLE.

In connection with public discussion in the media about the future funding base for YLE, arguments have been presented by some parties (e.g. media corporations owning competing commercial television channels) that the television licence fee should be replaced by funding through taxes. One of the arguments used against this model has been that binding the funding to the annual manoeuvres in producing the state budget would endanger both the predictability of funding and the independence of the PSB. Also, in the long run, there might be the danger of an insufficient level of funding.

Under Section 12 of the Act on Yleisradio Oy (as amended), YLE is prohibited from broadcasting advertising in its television or radio programmes or other content services that are provided within the framework of public service in various telecommunications networks; nor can the company produce sponsored programmes.

B. Decision Making: Structures and Procedures

1. Decision-Making Process

Overall Regulation on Editorial Independence

The Constitution (731/1999) states that everyone has freedom of expression. Freedom of expression entails the right to express, disseminate and receive information, opinions and other communications without prior censorship by anyone.

The Act on the Exercise of Freedom of Expression in Mass Media (460/2003) entered into force on 1 January 2004.¹⁷ It brought the press, broadcasting and on-line media within the same framework with respect to responsibility and the use of freedom of expression thus implementing technology neutrality. The main principle in the application of the Act is that interference with the activities of the media shall be legitimate only insofar as it is unavoidable, taking due note of the importance of freedom of expression in a democracy, subject to the rule of law.

For the public service company, this means that a responsible editor shall be designated for each programme. A new addition was that the right of reply now also applies to broadcast programmes that are broadcast on a repeated basis, e.g. daily or once a week. A private individual, who has a justified reason to consider a message offensive, has the right to have a reply published in the same programme. Also, the procedure for handling demands for reply or correction became more detailed. In order to be fined for editorial misconduct, the responsible editor must intentionally or negligently fail in an essential manner in his or her duty to manage and supervise editorial work.

¹⁷ See further: Marina Österlund-Karinkanta, FI – Act on the Exercise of Freedom of Expression in Mass Media, IRIS 2004-1: 11, available at: <http://merlin.obs.coe.int/iris/2004/1/article22.en.html>

There is also a self-regulatory body - the Council for Mass Media in Finland - to which both press and broadcast media are affiliated. Its task is to "cultivate responsible freedom in regard to the mass media as well as provide support for good journalistic practice". Those who have signed the agreement in question commit themselves "to exert influence to the effect that their members and those in their service shall function in a manner befitting this contract".¹⁸

YLE's Programme Decision-Making Structures

During 2006, decisions were taken by YLE's Administrative Council concerning a reorganisation of the company as of 1 January 2007, founded on a client- and content-based operating model. The programme operations were organised into four programming areas: Fact and Culture YLE, YLE24 (news and sport), YLE Vision (entertainment, popular music, children's and youth programmes) and Swedish-language YLE. The radio and television channels and YLE New Services commission programmes from competence centres situated organisationally in one of the four programming areas. Together with YLE's Director General, the Directors in charge of the four programming areas, the Director of Corporate Affairs, the Director of Corporate Finance and the Director of Strategy and Development, form the YLE Executive Group.

The company's programme and service output is planned in an extensive and detailed planning process on the basis of the YLE Strategy 2010 (adopted by the Administrative Council in March 2006) involving first the Heads of channels and the Heads of the competence centres. The respective plans are then brought to the Executive Group to be analysed as a whole and, where necessary, revised to form the service proposition. This service proposition is then brought to the Board by the Director General to be approved on an overall strategic level as the basis for the planning of operations.

The Board appoints the responsible editors of YLE's programmes and YLE's New Services. The Director General appoints the Heads of the programme channels on the proposal of the Director to whose area of responsibility the channel belongs. The Heads of the channels are commissioning editors who decide upon the contents of their channels within the given financial and channel profile frameworks. In practice, they are also the ones to be appointed responsible editors for their channels within the meaning of the Act on the Exercise of Freedom of Expression in Mass Media. In addition, responsible editors are appointed for the regional television news (transmitted in regional windows), the regional radio programmes (also transmitted in regional windows), religious programmes, Sámi language programmes, and Internet and other services.

The Directors of programme areas lead and supervise the activities of the respective Heads of channels and are responsible for organising supervision and responsibilities within their own area.

As a means of self-regulation, Programme Regulations have been defined and approved by YLE's Administrative Council. The latest edition was approved on 26 April 2005. These guidelines are followed in YLE's editorial work which in itself protects against undue efforts of influencing and against undue reprimands by politicians and other decision-makers. Anyone who considers that good journalistic behaviour has not been followed or that the regulations have been contravened can bring their case to the Council of Mass Media. The regulations set out guidelines regarding, for example, the main programme principles, the rights of the individual, and principles concerning the right of reply and correction. It is stated that the Administrative Council should decide upon the principles to be followed in connection with election programmes. Otherwise the Administrative Council does not involve itself in issues concerning individual programmes, although one of its tasks is to oversee and supervise the carrying out of tasks involving public service programme activities.

The main programme principles as set out in the Programme Regulations state, e.g.:

- as far as information is concerned, YLE's programmes aim to provide material for constructing a view of the world based on correct information and facts and observations that are as accurate as possible.
- in its operations, YLE shall be independent of influences from external quarters.
- in its journalism, YLE does not take sides in issues debated by society but, rather, its programmes should in a broad way reflect different points of view and promote discussion within society.
- in its operations, YLE shall promote basic social and human values, such as democracy, freedom of speech, human rights, peace and understanding between nations, equality of opportunity, responsibility for the environment and nature.

18) See further: http://www.jsn.fi/eng_default.asp

- YLE shall avoid providing models of violent behaviour and unnecessary portrayal of violence.
- correctness of information: YLE's programmes shall be based on truthful, important and varied information. Facts shall be checked thoroughly.
- impartiality: YLE shall present and analyse various opinions, criticisms and social phenomena in its programmes in as comprehensive a way as possible. In the programming as a whole, impartiality shall be realised within programmes of the same kind and within a reasonable time span. The goal shall be that impartiality is also realised in each individual programme.
- acquisition of information: information shall be acquired openly. Exceptional methods can be used only if information that is of significant importance for society cannot be obtained by ordinary means. The source of information must be protected if it has been agreed with the source that the identity of the source is to be kept confidential. Sources must be critically scrutinised.
- the rights of the individual: the human dignity of everyone shall be honoured. Matters of a private nature shall not be released without consent unless it is necessary because of some reason with significance for society. Individuals and organisations that are criticised exceptionally severely must be offered the possibility of presenting their own views in the same programme, if possible.
- subliminal advertising in all its forms must be rejected and product placement is prohibited.
- if a company advertises and urges the audience to watch a programme in which its products are presented, the programme can be removed in its entirety or changed.
- participation by YLE's personnel in advertisements is restricted.
- election programmes: prior to parliamentary, European parliamentary, Finnish presidential and local elections, special programmes are organised, the principles of which are decided by YLE's Administrative Council under Section 10 of the Parties Act. The Parties Act states that all political parties shall be treated impartially and on uniform grounds and that YLE can also take into consideration appropriate programming aspects (the number of political parties varies at around 10).
- prior to elections, YLE shall ensure that no candidate is given a special favourable advantage compared to others by their appearance in YLE's programmes. Candidates belonging to YLE's personnel shall be transferred to tasks where they do not compromise the journalistic credibility of YLE.

To conclude, *ex ante* inspection of broadcast content by an external body is not allowed under the provisions on freedom of expression in the Constitution. The Administrative Council shall oversee and supervise the carrying out of tasks involving public service programme activities, and submit a report to Parliament every other year. The financial frames are decided in the budget by the Board and the Board shall submit an annual report to the Finnish Communications Regulatory Authority. The Board approves the overall strategy in the service proposition put forward by the Director General. The Executive Group prepares the budget proposal. The Directors of the programme areas are responsible for the programme operations within their area. Heads of channels are commissioning editors. Responsible editors are named for all programmes and services. The Programme Regulations set out the basic guidelines for YLE.

Personnel Issues

YLE personnel have the right to name two representatives to the meetings of the Administrative Council and one to the meetings of the Board who have the right to be present and speak. Personnel are organised in several labour unions. The right to strike follows normal legislation. Since 1996, the company has had a gender equality programme, the aim of which is to achieve gender balance at all levels in the YLE organisational structure and in all work communities and jobs, to implement equality of pay, and to offer all employees equal opportunities for development, irrespective of gender. In addition, in 2004, YLE approved a special diversity programme in order to take into consideration the ethnic, cultural and social background, the religion and the age of the audiences in the development of programme operations and services. At the end of 2005, a strategy until 2010 was adopted concerning services to special and minority groups (immigrants, various disabled groups and national minorities). It includes taking multicultural aspects into account also in the company's personnel strategy.

2. Impact of Politics

Independence through the Structure

Since YLE's highest decision-making body, the Administrative Council, is elected by Parliament and reflects the proportions of the political parties in Parliament, it is a political organ. The Board is elected by the Administrative Council. In that respect, it could be claimed that a certain political relevance can be found in the set-up. It is, however, clear that the Board is not a political organ. Within the framework set out in the Companies Act, the Board shall enjoy the confidence of the Administrative

Council. When the directors were elected for the new organisation to start on 1 January 2007, the present non-political Board re-elected three existing directors (who previously had been elected by the Administrative Council) and a new director for YLE Vision. The Director General was elected by the Administrative Council in November 2004 for a five-year period from 1 May 2005. Apart from what has been mentioned above, there is no political interference in the recruitment, employment or staff management.

Institutional Autonomy

For a long time the media policy objective in Finland has been to safeguard the independence of the public service broadcaster, YLE. The provisions of the Companies Act shall be applied to YLE with exceptions provided for in the Act on Yleisradio. Independence from the Government is realised by giving Parliament the task of electing the highest decision-making body of YLE. And, last but not least, the Act on the Exercise of Freedom of Expression in Mass Media gives the decision-making powers and the responsibility for the programmes to the responsible editors. All this ensures institutional autonomy.

In the management of the financial resources certain limits have been defined by the Administrative Council as to the holder of the decision-making power. The Administrative Council approves projects of considerable importance, in principle, regardless of the financial value. Otherwise, minimum limits are set for when a project must be brought to the Board and when it must be brought to the Director General. The Executive Directors and the Directors of the central management can, within their powers, delegate the power of decision-making within their organisations.

Two authorised persons shall sign for the company. Authorised persons are the Chairman of the Board, the Director General and other Board members. The Board can also authorise other members of the personnel.

Overall Supervision

The supervision of compliance with the Act on Television and Radio Operations has, with certain exceptions, been entrusted to the Finnish Communications Regulatory Authority (FICORA). FICORA is a general administrative authority for issues concerning electronic communications and information society services and works in the same administrative sector as the Ministry of Transport and Communications. FICORA is an independent regulatory authority subordinate to the Ministry of Transport and Communications. The Ministry prepares the legislation concerning FICORA's tasks, assigns FICORA tasks and prepares the legislation for the whole telecommunications and broadcasting sector in which FICORA's duties lie.¹⁹

The supervision of the ethical principles of advertising and teleshopping spots, and the protection of minors with respect to advertising and teleshopping have been entrusted to the Consumer Ombudsman, subordinate to the Ministry of Trade and Industry. Since the public service broadcaster YLE is prohibited from broadcasting advertisements and producing sponsored programmes, this means, that in respect to public service broadcasting the Consumer Ombudsman does not have any supervisory duties.

In 2005, three complaints concerning YLE's programmes were filed by the public and examined by FICORA. One alleged that one of YLE's factual programmes had included subliminal advertising, which FICORA concluded was not the case. The second claimed that an episode of a programme series had been shown at a time that did not take into account that the programme was not suitable for young children (under seven). FICORA urged YLE to pay special attention to each episode in a series to avoid unsuitable material being shown in a context when young children would be likely to watch television. The third complaint claimed that an episode of a children's programme series shown at 9:10 am was not suitable for children (under 11). Here, FICORA urged YLE to pay special attention to the scheduling of programmes with violent content, and to each episode of a series separately, in order to ensure that the provisions in Section 19 of the Act on Television and Radio Operations are adhered to.

According to the Act on Television and Radio Operations, a television broadcaster shall ensure that programmes which are likely to cause detriment to the development of children due to their violent

¹⁹ See the Act on Communications Administration, 625/2001; see further: Marina Österlund-Karinkanta, FI – New Name and Duties for Communications Regulatory Authority, IRIS 2001-8: 14, available at: <http://merlin.obs.coe.int/iris/2001/8/article32.en.html>

nature or sexual content or by causing horror or in another comparable way are transmitted at times when children do not usually watch television programmes. In 1998, the television companies agreed upon a joint national framework for self-regulation where programmes were divided into suitable or unsuitable for children under 16. The programmes which are unsuitable for children must be broadcast after 9.00 pm and be marked with the symbol K in the television schedules in newspapers and on teletext. The television continuity announcer also points out if a programme is not suitable for children. In 2003, the age limit was changed to 15. A more detailed framework came into effect on 1 March 2004 taking into account that programmes not suitable for children under 11 should not be shown before 5.00 pm. Extra care should be taken with regard to children under seven and the programmes that are shown for them during the morning children's programme slots.

Research concerning the Diversity of the Main TV Channels

The Act on Television and Radio Operations states that "when declaring licences open for application and granting them, the licensing authority, taking into consideration the television broadcasting and radio broadcasting of the area in question as a whole, shall aim at promoting freedom of speech as well as safeguarding the diversity of the provision of programmes as well as the needs of special groups of the public." (§10).

In order to monitor the television sector, the Ministry of Transport and Communications commissions an annual study on the programme diversity of the main Finnish television channels. The most recent study depicts the programme structure profiles as well as programme diversity, during the year 2005, of the four main Finnish nationwide analogue channels (YLE TV1, YLE TV2, MTV3 and Channel Four Finland) and five digital terrestrial channels (YLE24, YLE Teema, YLE FST5, Urheilukanava (sports channel) and Subtv (entertainment and fiction-oriented channel)).²⁰ The results showed, for example, that the four main channels showed very high diversity. The two public service channels were significantly more diverse than their commercial counterparts. The Swedish-language public service channel YLE FST5 proved to be the most diverse of all channels, followed by YLE TV2.

Report to Parliament

According to Section 6 of the Act on Yleisradio Oy, one of the duties of YLE's Administrative Council is to submit to Parliament, every other year, and after having heard the Sámi Parliament, a report on the implementation of public service broadcasting in the previous two years.

This report can be seen as a qualitative evaluation of public service broadcasting. On the basis of this report there is a discussion in Parliament. The content of the report concerning the year 2004 includes, for example, descriptions of YLE programming (programming within different genres, origin of programmes, programming per channel, diversity of programme operations and services for special groups, broadcasting of official announcements and provision for emergency situations, external services, YLE in the diversity comparison of Finnish television programming), YLE's programming expenditures, YLE's audiences (trends in audience relations, development of viewing and listening, satisfaction with YLE programming, importance of public service duties) and a report on the activities of the Administrative Council.

Report to the Finnish Communications Regulatory Authority

Section 12a of the Act on Yleisradio states: "By the end of April every year, Yleisradio Oy shall submit a report to the Finnish Communications Regulatory Authority on the public service broadcasting provided during the previous calendar year. The report shall include the information needed for the supervision of television and radio broadcasting by the Communications Regulatory Authority. The Communications Regulatory Authority shall issue a statement to Government about the report by the end of September."

These reports do not aim to measure the qualitative performance but rather the legality of YLE's PSB operations. The content of the report concerning the year 2005 includes: YLE's public service objectives, organisation of supervision and responsibility for public service broadcasting operations at YLE, future prospects, output of programme operations, use of public service funding and development trends, proportion of European programmes and programmes by independent producers, prohibition of

²⁰ Minna Aslama, Fredrik Sonck, Jaana Wallenius: *Suomalainen televisiotarjonta 2005* (Finnish Television Programming 2005). Publications of the Ministry of Transport and Communications 40/2006 (available only in Finnish with a short English résumé).

advertising and sponsoring, programmes detrimental to children's development, the self-regulation of YLE's programme operations, audience information and differentiated operations.

3. Influence of the General Public

Viewers and listeners can contact YLE either by telephone, e-mail or via the Internet. YLE's Audience Service answers the questions and files the opinions and wishes expressed concerning the programmes. The notes are at the disposal of the editorial staff via YLE's Intranet. In addition to this feedback, plenty of feedback is given directly to the Heads of channels and to the editorial staff. There are no complete statistics on this feedback.

In 2005, YLE TV's Audience Service was contacted by members of the audience on average 2,350 times a month. Often people requested repeat transmissions of certain programmes and expressed ideas or suggestions and initiatives. Almost as often people gave positive feedback concerning the content of programmes and equally often people reacted on what they perceived as faults or lack of impartiality in the programmes.

Chapter II: Cultural Diversity

A. Influence of Relevant National or Cultural Aspects

1. Background Information

Finland has two official languages, Finnish and Swedish. This means that Swedish is not a minority language, though only a minority (5.5%) speak Swedish as their mother tongue. The Sámi are an indigenous people.

The total population amounted to 5,255,580 people at the end of 2005. Of these 97.8% were Finnish citizens. The most notable language groups in Finland are the following (data concerning the end of 2005):

- Finnish	4 819 819	(91.7%)
- Swedish	289 675	(5.5%)
- Sámi	1 752	(0.03%)
- Russian	39 653	
- Estonian	15 336	
- English	8 928	
- Somali	8 593	
- Arabic	7 117	

The number of foreign nationals amounted to 113 852 (2.2%). The biggest groups according to country of citizenship were:

- Russia	24 621
- Estonia	15 459
- Somalia	4 704

2. Services to Different Language Groups and Other Special Programmes

YLE's public service duties include, for example, that YLE shall in particular:

"treat in its broadcasting Finnish-speaking and Swedish-speaking citizens on equal grounds and produce services in the Sámi, Romany and sign languages as well as, where applicable, in the languages of other language groups in the country".²¹

In 2005, YLE's television services to different groups included the following:²²

YLE has two analogue TV channels. These include programming by YLE's Swedish-language TV section: YLE FST. These channels are also transmitted in digital form (coverage area 99.9%). In addition

²¹ Section 7 of the Act on Yleisradio Oy.

²² Report by Yleisradio Oy to the Finnish Communications Regulatory Authority on the public service programming during the year 2005 (YLE, 18 April 2006).

there are three digital channels, one of which is a Swedish-language channel (FST5). In 2005, the programme hours excluding simulcast hours were:

- TV1	5,321 hours
- TV2	4,748
- FST	946
Analogue total	11,015 hours
- YLE Teema	3,176 hours
- YLE24	2,879
- YLE FST5	1,259
Digital only total	7,314 hours

Out of YLE's total of 18,329 hours of television programmes, 12% is programming by YLE FST. This means programmes either in the Swedish language or with subtitles in Swedish.

60% of YLE's TV output is domestic. About 60% is subtitled. 20% of the Finnish-language programmes on TV1 and TV2 are subtitled for deaf people (excl. news, sport and music). DVB-subtitling has been in permanent use since April 2006 on the digital channels. YLE24 subtitles the news at 5.00 pm and 8.30 pm.

All FST's own productions are subtitled in Finnish (except news, live transmissions and children's programmes). This amounts to 400 hours a year. FST's foreign programmes are subtitled in Swedish and a large part also in Finnish. Two hours a week of FST's programming is subtitled in Swedish for deaf people.

At the beginning of autumn 2005, voice subtitling (dubbing) started on the digital TV1. The text can be heard as synthetic sound (492 hours).

YLE broadcasts TV news in Sámi (TV1: 49 hours, YLE24: 70 hours) and five minutes news in sign language daily (TV1: 30 hours, YLE24: 29 hours). In addition, there is a weekly 10 minutes in sign language on YLE 24 about important issues.

There is also news in English, both a bulletin produced in-house (TV1: 21 hours, YLE24: 20 hours) and the Euronews (TV1: 63 hours, YLE24: 242 hours).

TV1 programming includes a programme series about immigrant issues. Most of the programme-makers of these programmes are immigrants themselves.

In addition, it must be noted that YLE fulfils the particular duties to serve the special groups also via radio. YLE has two Swedish-language channels, of which one does not cover the whole country, but covers most of the areas where the Swedish-speaking language group lives. In 2005, 16.7% of YLE's radio programme hours were Swedish-language programmes. YLE's total radio programme hours amounted to 142,030 and the Swedish-language programmes to 23,749 hours.

YLE broadcasts Sámi radio programming over a regional network in Northern Lapland (1,961 hours in 2005). Programmes in Romany (incl. news) are broadcast every week (13 hours). News in Russian is broadcast every evening on YLE Radio 1 (18 hours). Programmes in several foreign languages are broadcast on the YLE Mondo (in the capital area and on DVB-T network). This includes daily broadcasts in "Special Finnish" (easy to understand) covering items of current interest.

Based on special agreements between Finland and Sweden concerning cooperation in providing television programme services in the neighbouring countries, the channel SVT Europa²³ is retransmitted terrestrially in southern Finland. Also, Sweden's two main public service channels are retransmitted in Finland over two transmitters on the west coast where many Swedish-speaking Finns live.

In 2005, YLE's educational television programmes amounted to 1,787 hours in Finnish and 140 hours in Swedish.

A look at the countries of origin of YLE's television programmes shows that all parts of the world are well represented. In 2005, foreign programmes amounted to 40.3% of the programme hours on YLE

23) This is an edited channel consisting mainly of domestic programmes shown on the main channels of Sweden's public service broadcaster, SVT.

TV1 and TV2. More specifically, 11.9% came from UK, 8.7% from the USA, 4.9% from the other Nordic countries, 8.8% from other European countries and 4.9% from other parts of the world.

The Nordic public service broadcasters, including YLE, cooperate in many ways and especially in the successful regional alliance, Nordvision. It is an arena for a non-profit cross-border exchange of news, programmes and co-productions. In 2005, more than 2,700 hours of programmes were exchanged, of which more than 40% were free of charge. On-going co-production projects amounted to 340. Through this co-operation good Nordic programmes find their way onto the basic television channels in these neighbouring countries.

3. Programming Directed Abroad

Radio Finland provides a range of radio programmes using satellites over Europe, the Middle East, Asia, Australia and, during part of the day, to North America.

YLE has one encrypted satellite channel which is distributed across Europe for expatriate Finns. The channel is called TV Finland and it is an edited channel consisting of programmes selected from YLE TV1, YLE TV2 and the commercial channel MTV3. The programmes are retransmitted simultaneously and unchanged. It is a subscription service but it is not a commercial service. There is a charge which is used only to cover the costs (of transmission and copyright).

Increasingly, the Internet will be a means of providing services for people abroad.

4. Audiences²⁴

Among the key figures that YLE monitors and measures against its operational targets are, for example, the combined weekly reach of YLE's radio and television channels and the weekly reach for radio as well as for television.²⁵ The results for 2005 showed that 98% of the Finnish people watch or listen to YLE channels at least two hours a week and 73% both watch YLE TV channels and listen to YLE radio channels at least two hours a week.

In 2005, YLE's share of time spent viewing was 44.3%. The average time spent viewing in Finland as a whole was two hours 41 minutes a day. The daily reach²⁶ of YLE's television channels was 63% while it was 74% for all television channels as a whole. These results are based on a TV peplemeter study on a continuous basis.

Research data on the viewing of the Swedish-speaking population is based on data concerning one week (44/2005) of viewing. In this group YLE's share of viewing is 32% of which 10 percentage points is viewing on YLE's Swedish-language programmes (on TV1, TV2 and the whole FST5). The programmes of Sweden's public service broadcaster SVT can be seen in part of the country and its share of viewing in this group is 15%. The commercial TV4 Nordic (also from Sweden) has a 10% share.

Satisfaction with YLE's radio and television channels as a whole is measured annually. The results for 2006 show²⁷ that 83% of the respondents are very satisfied, satisfied or rather satisfied with YLE's programming as a whole (both radio and television). The satisfaction with YLE's television channels is also generally quite high. More than 80% (2005) are at least rather satisfied.

YLE also measures how well people think that they get value for money for the television license fee. In 2006, the proportion of respondents who answered that they received very good or fairly good value for money increased to 62%.

The brand image of YLE shows how Finnishness, reliability, professionalism, independence and attractiveness are the most appreciated characteristics compared to the other media in Finland. More than 80% of Finns regard YLE as Finnish, about three out of four think that reliability and professionalism apply at least fairly well to YLE. About half of all Finns also associate YLE with independence, diversity and attractiveness. However, only one in five regards YLE as humorous.

Studies concerning the perceived reliability of news services of different media show that YLE's news get the highest scores irrespective of medium.

24) 2005 results published in YLE Yleisökertomus 2005 (Audience Report).

25) Age group 15+, reach defined here as at least two hours watched or listened during a week.

26) Defined as the percentage of the population (age 4+) that has watched television for at least a minute on an average day.

27) Erja Ruohomaa: *YLE-mielikuvatutkimus* (YLE brand image), YLE Corporate Strategy, 2006.

5. Research on YLE's Perceived Societal Importance

YLE's societal importance is measured on company level, for example, by means of questionnaires as follows. The results are published in annual Audience Reports.

The 14 most important public service functions are listed below, showing the share of respondents that find each function very important or important and, in brackets, including rather important (results for 2006):²⁸

- Broadcasting official information and preparing for emergencies: 88% (96%)
- Programmes to all people in Finland regardless of place of residence 86% (97%)
- Reliable and independent news 84% (96%)
- Daily domestic children's programmes 77% (94%)
- YLE's public service duties as a whole 76% (97%)
- Programmes in sign language, subtitling and other services for special-needs groups 76% (94%)
- Description of everyday life, the natural environment and the surrounding world 74% (95%)
- Regional television news 70% (92%)
- Live international sports events 65% (84%)
- Programmes inspiring debate on current social issues 64% (93%)
- Educational programmes for schoolchildren and adults 64% (89%)
- Domestic serials, plays, films and radio plays 60% (87%)
- Maintenance of national sound and moving picture archives, their use in programming and opening up for use over the Internet 60% (85%)
- Regional radio programmes 59% (85%)

The results for some other functions of interest in this context are:

- Broadcasting Finnish programmes and news to expatriates 54% (83%)
- Programmes for immigrants 40% (73%)
- Programmes concerning Finnish culture and arts 38% (73%)
- Programmes in the Swedish and the Sámi languages 38% (68%)
- Religious services and programmes 31% (58%)

Views on how well YLE is thought to have fulfilled the above tasks are also measured.²⁹ The following list shows the six performances perceived as best, giving the percentage of respondents who say that, in 2005, YLE's performance was excellent or satisfactory and, in brackets, including passable/tolerable:

- Live international sports events 96% (99%)
- Reliable and independent news 91% (96%)
- Regional television news 89% (96%)
- Description of everyday life, the natural environment and the surrounding world 90% (97%)
- Programmes inspiring debate on current social issues 88% (94%)
- Programmes to all people in Finland regardless of place of residence 84% (90%)

Concluding Remarks

Since 1993, the media policy decisions concerning the Finnish television system have been based on the aim of developing a balanced system, where care is taken both of the success of the public service broadcasting and of the interests of the commercial television sector. This has been done by ensuring that YLE can fulfil its public service duties as defined in its remit and by granting new operating licences to commercial companies. With the start of digital television operations, new possibilities have emerged to grant new licences for commercial companies.

The public service remit has been defined in several stages. The tasks have been specified more clearly than before. A number of tasks relating to the diversity of programming have been explicitly mentioned in the remit as defined in the Act on Yleisradio. Decisions concerning financing have become more detailed and far-sighted. This has given continuity in planning.

The sector has developed favourably. In media policy decisions, an important goal of the decision-makers has been to maintain a strong public service but not at the expense of the commercial sector.

²⁸) *Ibid.*

²⁹) 2005 results published in YLE Yleisökertomus 2005 (Audience Report).



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Chapter I: Regulatory Framework

A. Mission, Economic and Financing Model

1. Mission

The definition of the missions and content obligations of public-sector television is based on a set of texts that includes Acts, Decrees, terms of reference, the regulatory authority's decisions and recommendations, and the arrangements devised by the channels themselves.

The Act of 30 September 1986¹ no longer refers to the notion of public service – this has been replaced by the notion of the public sector, reflecting the idea that the audiovisual sector covers two competitive areas, one private and one public. In its Article 1, the Act refers to “the demands of public service”, but gives no details of their content and does not provide a full list of them, but includes them within the limits of the freedom of communication applicable to all players in the audiovisual sector. No definition of the function of the of the public sector bodies is laid down in the Act. Until it was reformed in 2000, contrary to earlier legislation, the Act provided no definition of the missions devolved to the bodies in the public sector and the terms of reference – despite being called terms of reference for missions – did not include more than a list of obligations, which were sometimes inappropriate or even obsolete, and mostly applicable to broadcasters in the private sector, throwing little light on the priority objectives assigned to the development of the various bodies and on the specific vocation of each company. The audiovisual sector was reformed by the Act of 1 August 2000,² not merely to take technological developments into account, but also because of the need to reorganise the legitimacy of the public-sector audiovisual scene, and to define its missions and its purposes. One of the aims of the text was to answer the question of the added value of the public sector, and to define the resources and objectives to be assigned to it. Article 43-11 of the Act of 30 September 1986 (as amended) now gives details of the public-service missions that the national programme companies (*sociétés nationales de programme* – SNPs) are to pursue in the general interest. This Article goes on to clarify the general missions of the public sector, which are now specifically stated in the Act, and which are based mainly on the notions of pluralism, programme quality and innovation. The principle of pluralism seen as a public-service mission has a very important role to play in the material identity of the public sector. This is a broad definition, including not only cultural and linguistic pluralism and the pluralism of information, currents of thinking and opinion but also the pluralism of genres. It is for the SNPs, under the retrospective supervision of the regulatory authority, to interpret this requirement of quality and pluralism. The public sector should, firstly, draw the quality of programmes

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1) Act No. 86-1067 of 30 September 1986 on freedom of communication, as amended and supplemented. Available in French at: http://www.csa.fr/upload/dossier/loi86-1067_janvier2007.pdf

2) Act No. 2000-719 of 1 August 2000 amending Act No. 86-1067 of 30 September 1986 on freedom of communication, gazetted on 2 August 2000.

upwards, promote the various cultures, provide educational programmes and promote access for the greatest possible number of people, and fulfil the role that is unanimously expected of it in the development and defence of the programme industries and, secondly, promote democratic life by providing political groups with access to air time and encouraging debate and the expression of the various currents of thinking. These arrangements are suitably supplemented by the channels' terms of reference. These are laid down by decree, after seeking the opinion of the national audiovisual regulatory body (*Conseil Supérieur de l'Audiovisuel* – CSA); they define the obligations incumbent on each company, particularly the obligations connected with their educational, cultural and social mission (Article 48).

The Act of 1 August 2000 is based on the conviction that the diversification of content calls for a public sector that is strong and active and serves as the driving force for the development of new technologies. The missions of the public-service sector that are therefore defined and listed in the Act apply to "both analog and digital modes". The Act reaffirms and reinforces the identification of the public sector for terrestrially-broadcast digital broadcasting by demonstrating the legitimacy of the public offer within the profusion of private offers and by setting out in detail the specific missions of the public sector in terms of thematic offers. Article 44 of the 1986 Act as amended refers to the possibility open to the company France Télévisions to create "subsidiaries for the purpose of editing television services broadcast in digital mode for which no remuneration is paid by users and which do not fall within the missions of the public-service sector as defined in Article 43-11 and in their terms of reference. The capital of these companies is held directly or indirectly by public entities". The Act nevertheless reserves the possibility for the company France Télévisions to "create subsidiaries to carry out activities that comply with its company objective but which differ from those provided for in Article 43-11". These are commercial subsidiaries whose vocation is not to benefit from the audiovisual licence fee; they include France Télévisions Distribution, France Télévisions Publicité and thematic channels (*Histoire*, *Mezzo*, *Festival*). Apart from their activities as editors of television services (public-service channels and thematic channels), the activities of the France Télévisions group are focused on a number of areas, including cinematographic production (France 2 Cinéma and France 3 Cinéma, Multimédia France Productions), publishing and distribution (France Télévisions Distribution), advertising (through an advertising agency called France Télévisions Publicité) and multimedia (France Télévisions Interactive). France Télévisions also has holdings in international and European channels (CFI, TV5, Arte) and in the company Médiamétrie. The legislator is encouraging the public sector to develop new services that could enrich or supplement the programmes already on offer, and new techniques for producing and broadcasting audiovisual programmes.

2. Corporate Structure

By amending the 1986 Act, the Act of 1 August 2000 also set up structural resources appropriate for these various missions. Thus a holding company called France Télévisions was created, with the stated objective of "defining strategic guidelines, coordinating and promoting policies on programmes and the offer of services, guiding development action, ensuring the integration of new broadcasting and production techniques, and managing the common business" of the companies that constitute the group (France 2, France 3, France 5 and the French overseas network (*Réseau France Outre-mer* – RFO)). This arrangement supplements the orientation defined by the legislator in 1989, when the intention was, by providing that the chairman of France 2 should also be the chairman of France 3, to encourage coordination of the activities in the public sector. It nevertheless has to be said that the change in the composition of the boards of directors of the SNPs constitutes a traditional structural measure that is hardly likely to make any real change to the functioning of the bodies in the public sector. Under Articles 47 to 47-6 of the Act of 30 September 1986 (as amended), the France Télévisions holding company has a board of directors comprised of fourteen members, appointed for a (renewable) term of office of five years (two parliamentarians designated by the National Assembly and the Senate, five representatives of the State, five qualified persons designated by the CSA, of whom at least one is a member of a civil society association, at least one is from the audiovisual sector or from cinematographic creation or production circles, at least one is from French overseas territories, and two are employee representatives). The CSA appoints the chairman of the board of directors of France Télévisions for a five-year term of office; this person is also chairman of the board of directors of each of the national programme companies. The directors general of the companies France 2, France 3, France 5 and RFO are designated by the board of directors of the company France Télévisions on a proposal from their chairman. Each channel has its own board of directors comprised of seven members (two parliamentarians designated by the National Assembly and the Senate, two representatives of the State appointed by decree, one qualified person appointed by the CSA, and two elected employee representatives), in addition to the chairman (eleven members in the case of the board of directors of RFO). The chairmen of the boards of directors may be removed from office in the same way as they are appointed. To improve the stability of the system, this term of office has been extended from three years to five years. The role of the CSA in the appointment of the managers of public-sector bodies has been reinforced,

despite the protests that are a regular feature of the various reports on the subject, noting both the dual role played by the regulatory authority as both judge and judged, and constant government interference.

The board of directors defines the company's global strategy orientations and ensures both the smooth functioning of its departments and observance of the provisions of legislation and regulations. It also approves the draft contract of objectives and resources negotiated with the State, deliberates on its annual performance, distributes the public financial resources among the group's subsidiaries, and ensures its financial balance. After consulting the board of directors of the companies concerned, it also approves amendments made in the course of the financial year to the distribution of the amount of public resources allocated from the national budget to the company France Télévisions. Lastly, it approves the management agreements in existence between the company and its subsidiaries in order to define the conditions for France Télévisions managing certain services and missions and deliberates on the taking up, extending and disposing of financial holdings. At his own responsibility, the chairman assumes the general management of the company and represents it in its relations with third parties. He organises the management of the company and appoints its directors. The company France Télévisions manages the conducting of development and diversification activities, and programming policy – policies on production, co-productions, acquisitions, the harmonisation of programme schedules, and adaptation to the new technologies.

It is the State, as sole shareholder, that exercises the powers devolved by law at general meetings of shareholders. Meetings, convened by the board of directors, deliberate on the accounts for the financial year and, subject to observance of the provisions of law and regulations, modify the company's memorandum and articles of association. They may allocate to members of the board of directors a fixed annual sum of money in remuneration for their activity, in the form of a director's fee. Members of the board, and any person called on to attend meetings of the board of directors, have an obligation to observe discretion in respect of any information of a confidential nature. The company's accounts are audited by two external auditors.

The State holds the entire capital of France Télévisions which in turn holds the entire capital of the national programme companies France 2, France 3, France 5 and RFO. Except where the Act provides otherwise, these companies are subject to the legislation on public limited companies.

The memoranda and articles of association of France 2, France 3 and France 5 are also approved by decree. Under the terms of these regulatory provisions, it is for the boards of directors to define the general lines of action, within both their terms of reference and their contract of objectives and resources concluded between the State and France Télévisions, and taking into account the powers assigned to France Télévisions. They ensure the smooth functioning of the companies' departments and observance of the provisions of legislation and regulations and the recommendations and decisions of the CSA, and the quality of the programmes, the objectivity and accuracy of the information broadcast and the pluralist expression of currents of thinking and opinion. Within this framework they approve the general orientations of the programmes, the main financial decisions, the general conditions concerning contracts and agreements concluded by the company, and legal action. They are also consulted on the terms of reference, the draft contract of objectives and resources, forecast operation and investment income and expenditure, amendments envisaged in the course of the financial year concerning the amount of public resources allocated to the company by France Télévisions, agreements and collective labour agreements for the company's employees, programming policy, and substantial changes to the programme schedule. The new versions of the terms of reference have reinforced the powers of the boards of directors, which now have a say in programmes and their content.

3. Financing

However, the difficulties encountered by the public sector do not appear to lie in matters of organisation, but mainly rather in the system of financing, and more particularly in the relative weakness of the public resources allocated to it compared with its missions, and in the substantial proportion that income from advertising occupies in the structure of its resources.

The confirmation of earlier missions, the affirmation of new missions, and the prospect of an increase in the number of channels with the arrival of digital broadcasting raise the crucial issue of the financial resources made available for this reaffirmation of the specific nature of the public sector. The 2000 Act both maintains financing through the licence fee and assures the full repayment of waived fees,³ and provides for a decrease in the amount of advertising, which is another source of

3) Audiovisual licence fees waived on social grounds are repaid in full by credits included in the State's general budget.

finance for the public sector. An allocation of capital should respond to requirements connected with the development of terrestrially-broadcast digital radio and television. This mixed financing is therefore confirmed, but to the advantage of public aid, with a view to removing public-sector programmes from meeting the criteria concerning viewing figures and the concomitant commercial considerations. While the licence fee based on ownership of television sets remains the main source of income for the public sector of the audiovisual scene, the method for collecting this specific tax was reformed in 2005, when it was combined with the local services residence tax (in the initial national budget for 2005, out of EUR 3.46 billion in total income, excluding taxes, for the public sector, public resources constituted EUR 2.66 billion, and within this sum income from the licence fee represented EUR 2.16 billion). Reform of the legal status of the licence fee (transition from the status of para-fiscal tax to direct tax) enables the Parliament to exercise its constitutional function of determining the rate and basis for the tax and the method of collecting it.

The purpose of the contracts of objectives and resources concluded between the State and the company France Télévisions for a five-year period is to determine, for each national programme company and for each subsidiary, "the priority access for its development, including the undertakings entered into in terms of diversity and innovation", the forecast cost of its activities, the amount of public resources that should be allocated to it, the amount of income it is expected to generate itself, particularly from advertising, and the economic prospects for those services for which a charge is made (Article 53-I of the amended 1986 Act). The principle behind these contracts of objectives was already included in the Act before it was reformed in 2000, but their sporadic use has not enabled them to impose themselves as essential tools in laying down the principles for the specific and complementary nature of programmes, audience targets and viewer satisfaction. The board of directors of the company France Télévisions approves the draft contract of objectives and resources and deliberates on its annual performance. Similarly, the boards of directors of the companies France 2, France 3, France 5 and RFO and of each of their subsidiaries are consulted on this draft and its annual performance. The chairman of France Télévisions submits a report to Parliament each year on performance of the contract, and this constitutes nothing short of an assessment of the group's activities.

These tools reflect a trend towards a contractualisation of relations between the players in audiovisual communications that began in the private sector. By grouping the specific missions conferred on the various channels and by combining them with specific indicators, the contracts of objectives concluded by the State as shareholder and the programme companies should make it possible to position the channels precisely within the programming offer and their development strategies, and to remedy the unsuitability of the sometimes muddled and incoherent obligations incumbent on them as set out in their terms of reference. These documents are part of a process that favours making the managers of the channels more responsible and would appear to be essential in clarifying and developing criteria for assessment and requirement. They are part of the modernisation of relations between the State and the public-sector companies in the audiovisual sector, particularly as regards budget matters. The contracts of objectives and resources set out the undertakings concerning programming and relations with the public in the context of the missions that are assigned to audiovisual companies in the public sector by the Act and by their terms of reference. The annual monitoring of these undertakings by means of quantitative and qualitative indicators of performance and results allows the supervisory authorities and Parliament to assess in retrospect whether an appropriate use has been made of public resources. In return for their undertakings on programming and management objectives, the public-sector bodies enjoy greater autonomy in their management and greater transparency concerning the amount of the public resources allocated to the development of the group and to the evolution of these resources over a number of years. Thus, under the terms of the contract of objectives and resources with France Télévisions, the State guarantees the group that public resources will increase by 3.1% each year plus a variable amount of between 0.4 and 0.6% if the group achieves the objectives set out in the contract.

Under the terms of the Act, the company France Télévisions receives each year a proportion of the yield of the licence fee, subject to the conditions defined in the national budget, and allocates it exclusively to the companies France 2, France 3, France 5, RFO and its subsidiaries, subject to the conditions defined in the contract of objectives and resources. It checks that these companies observe the provisions of the contract of objectives and resources. To do so, the board of directors of France Télévisions approves a forecast statement of its own income and expenditure and of that of its subsidiaries for each financial year and, as appropriate, after consulting the boards of directors of the companies concerned, the changes made in the course of the financial year to the distribution of the amount of the public resources. The 1986 Act (Article 53-III) organises Parliament's supervision, when it votes on adopting the national budget, of the distribution of the licence fee among the SNPs. A government report presenting a detailed assessment of the performance of each of the contracts of objectives and resources of public-sector bodies is also appended to the draft national budget.

With EUR 780.5 million in 2005, i.e. almost one-quarter of the public sector's total resources, income from advertising constitutes a not inconsiderable proportion of its financing. Provisions in legislation and regulations, supplemented by the companies' terms of reference, set out in detail, for those public-sector companies using this type of financing, the methods for programming advertisement broadcasts and the maximum proportion of advertising that any single advertiser may occupy. Such companies may sponsor only those of the companies' broadcasts that correspond to their mission in education, cultural and social terms. Specifically, the SNPs may not broadcast programmes or advertising slots produced by or for political parties, trade unions or professional organisations, or specific groups of political, philosophical or religious thinking, whether or not any money changes hands. In view of its missions, France Télévisions has no vocation to give priority to commercial targets. France Télévisions' advertising agency cannot affect programmes in any way, and the company reserves the right to refuse to broadcast any advertisement it considers to be contrary to the editorial line of the channels. Surreptitious advertising is prohibited. Similarly, presenters may not in any circumstances refer in the broadcasts they present to their own shows, books or recordings.

B. Decision Making: Structures and Procedures

1. Employees

Under Article 57-I of the 1986 Act, the rights of employees and journalists in public bodies "may not depend on their opinions, beliefs or membership of trade unions or political bodies". In consequence, "employees are recruited, appointed, promoted and transferred solely on the basis of the professional skills required and of observance of a public service open to all".

The Act (Article 57-II) organises the right of these employees to take strike action, which has to be reconciled with the requirements of the continuity of the public service (period of notice, services and categories of employee that are absolutely vital to performance of the public-service mission, etc). Although the 1986 Act, unlike the Act of 29 July 1982, makes no mention that permanent and temporary employees in the public sector are covered by the Employment Code and are subject to the law of collective labour agreements, there appears to be no doubt as to their being subject to general law, in view of the status of France Télévisions as a public limited company. In addition, two Articles of the Act of 29 July 1982 remain applicable – Article 73 on the mobility of employees within the SNPs, and Article 93, according to which journalists must be recruited in compliance with the national collective labour agreement for the press sector.

Editorial staff include office employees for the activities included in editing, post-production and broadcasting (production department) and itinerant employees for the manufacturing activities (reporting). France Télévisions' "Broadcasting Charter" recalls that journalists may not be obliged to perform a professional act or to broadcast information that would be contrary to reality. They are entitled to refuse to put their name to a broadcast or to a part of a broadcast if the form or the content have been altered against their will and they may not be obliged to accept an act that is contrary to their innermost professional convictions. The company provides training schemes for its employees and includes knowledge of professional ethics in the arrangements it has put in place for the selection and continuous assessment of employees at the time of recruitment, postings and promotions. The principle of exclusivity is required of all journalists under full-time contract. Outside collaboration must remain the exception. Journalists may not accept any advantages or gifts likely to affect their independence or cast doubt on the impartiality of the undertaking or on their independence in relation to pressure groups or ideological, political, economic, social or cultural groups.

Those of France Télévisions' employees who wish to stand as candidates in an election are bound by specific obligations. Until the date of the commencement of the official election campaign, they must ensure that their interventions on the air could not have any electoral consequences likely to affect the equality of the candidates and must abstain from appearing on the air in the exercise of their functions once the official election campaign has commenced.

The various categories of employees (journalists, moderators, presenters) "must ensure that the combination of interests does not jeopardise their independence or their credibility". The outside activities of journalists (training, membership of associations, moderating debates, etc) are regulated by the collective labour agreement for journalists of 1 November 1976 (re-worked on 27 October 1987) and agreements on professional ethics. They must be declared to the employer in writing in advance, and the employer may refuse to accept them, as long as appropriate reasons are given.

France Télévisions has developed a number of initiatives in favour of gender equality, disabled people, and employment for the over-50s. More recently, in January 2004, the company set up a "Positive Action Plan for Integration" aimed at improving the presence, the expression, the representation and the promotion of the diverse component parts and origins of the national community on its television screens, in its programmes, and among its employees.

2. Impact of Politics

The Government is entitled to air time. It may, at any time, have the SNPs programme "any declarations or communications that it deems necessary" (Article 54). This provision has the merit of permitting transparency (the broadcasts are announced as coming from the Government). Moreover, these communications may give entitlement to a right of reply for the parliamentary opposition; the method of exercising this right is laid down by the CSA. The right of reply should be seen in tandem with Article 55 of the Act, which provides that "the SNPs shall broadcast the debates of the parliamentary assemblies under the supervision of the assembly's bureau", the intention being to give the legislator a means of expression. Lastly, air time is granted to the political groups represented by a parliamentary group and to the main trade unions; the method for this is also laid down by the CSA, in the context of "direct expression" broadcasts.⁴ The organisation of this entitlement to air time is part of the mission of providing information that is incumbent on the public-sector channels and is intended to promote democratic debate.

The CSA appears as the guarantor of the independence of the public sector in relation to the political authorities. It is for the regulatory authority to "ensure equality of treatment, to guarantee the independence and the impartiality of public-sector radio and television" (Article 3-1). The public-sector channels ensure, "observing the principle of equality of treatment and of the recommendations made by the CSA, the honesty, independence and pluralism of information and the pluralist expression of currents of thinking and opinion" (Article 43-11). In the absence of a body equivalent to a press council made up of professionals and capable of ensuring the observance of ethical principles and opening discussion with viewers, the effectiveness of these principles rests largely on the CSA. There are limits to this action, however, in terms of the regulatory authority's powers and the characteristics of its supervision, which remains retrospective. Although the CSA may lay down principles as guidelines for the organisers of television debates, it may not interfere in the channels' policy on invitations or guide the choices made by the editorial staff.

The CSA is particularly attentive to political pluralism, and it assesses this at regular intervals on the basis of specific indicators that it has defined in cooperation with the broadcasters. The principle of honesty of information is based on the fundamental requirement of the truthfulness of the facts, which implies checking and using reliable sources of information as well as a meticulous and impartial presentation of the facts. While the journalist must be neutral, the diversity of points of view must be reflected by the interventions of outside people. The appreciation of the hierarchy of the information imparted lies with the editors in chief, under the authority of the managements concerned. The public-sector channels exercise their editorial responsibility in respect of all their broadcasts and are answerable for the content of all the programmes they broadcast.

The appearance of a regulatory authority that is a totally new guarantor of the autonomy of the audiovisual sector in relation to the political authorities, and that is specifically responsible for ensuring observance of public-service missions and appointing a certain number of directors to the boards of the SNPs, does not totally erode the margin of intervention open to the Government in the management of the public sector of the audiovisual scene. Although it is mainly in respect of the public sector that the CSA is authorised to lay down certain rules intended to govern access to the air for currents of opinion, its competence is in fact limited. Apart from its power of nomination, which has been criticised in several quarters, the CSA has few means of taking action in respect of public-sector television services. It does not, for example, have any financial power and merely has a consultative power in respect of drawing up the terms of reference for the channels. On the other hand, it has to be said that the State's action remains substantial. This influence takes the form firstly of the right of ownership exercised by the State as the shareholder of the SNPs, whose memoranda and articles of association are, moreover, approved by the regulatory authority. As a result it is only logical that the

4) The CSA has the task of distributing broadcasting time among the political groups on the basis of the number of representatives each has in the two parliamentary assemblies, and balancing the majority and non-majority groups. It designates the beneficiaries and determines the annual amount of time granted to them and the number of broadcasts they may make. Each beneficiary is responsible for planning and producing its own broadcasts. No advertising of any kind is allowed.

Government and the Parliament have the power to nominate certain members of the boards of directors of the public-sector audiovisual companies. The preponderance of the State is also perceptible in the obligations regarding content incumbent on the companies on the basis of their terms of reference – unilateral administrative documents decreed by the Prime Minister, after asking the opinion of the CSA. Lastly, the State has the possibility of exercising its political influence through its contract of objectives and resources with the company France Télévisions, the main purpose of which is the management of the public resources granted by the State.

3. Impact of Civil Society

The public sector should serve as a standard of reference in terms of reporting practices and professional ethics. That is the thinking behind the introduction of mediators and should lead to the setting up of structures for critical thinking about news and the compilation of an ethical charter for public-sector broadcasting. In June 1998, at the request of Catherine Trautmann, Minister for Culture and Communication at the time, public-sector television acquired mediators, more particularly with a view to using their work as the foundation for drawing up an editorial charter. France 2 and France 3 appointed their own information mediators, and France Télévisions created a mediator function for programmes (i.e. for everything not directly connected with news programmes and magazines). The existence of an internal ombudsman responsible for dealing with and answering viewers' complaints constitutes another possible solution, in the absence of a press council or its equivalent for the audiovisual media, or an ethical committee made up of journalists and outside persons, to which viewers could submit issues. It appears, however, that its powers are limited, its role being less to check observance of ethical rules than to respond to the discontents of viewers.

Mediators in the audiovisual sector have the mission of including the people to whom information is addressed in a process of discussion with the editorial teams. These third parties must be neutral and independent, i.e. they must not come from one of the parties involved in the mediation. News mediators are experienced journalists and, although they are not hierarchically subject to the editorial team and may not be dismissed during their term of office, they are attached to the editorial team, which makes it difficult to consider them to be third parties. On the other hand, this position implies the respect of their peers and points to making it easier for the latter to contribute.

France 2's news mediator is seen as "the person viewers contact to pass on their observations, questions and criticisms on the way news is treated in the editorial team's news programmes and magazines". His role is to make journalists and the channel's directors aware of viewers' feelings and to open up the debate in the event of dispute by weighing up the points of view of both sides and by making the necessary corrections if mistakes have been made on the air. In regard to the practice of this function, it is nevertheless open to discussion whether in certain cases it is possible for the mediator to be in the position of a third party. France 2's news mediator has the benefit of a forum for debate, with the programming of a weekly twenty-minute broadcast. The programme mediator only intervenes on the air as an exception on France 2 and France 3, by agreement with the channels' directors general. Designated for a term of office of three years by the chairman of France Télévisions from a list of three names drawn up by the employee delegates and representatives of the society of journalists, from among the journalists on the editorial staff or journalists belonging to other press editorial teams, the news mediator is not hierarchically subject to the editorial staff of France 2, although it provides him with the resources for carrying out his mission. He alone is responsible for the topics and guests that are chosen, which necessarily leads him to assess the matter of the representativeness of those who contact him and to respond by a pluralist treatment of the issues raised. Reactions are mainly connected with current affairs and the way in which news is handled by the editorial staff. Some viewers, however, also feel the need to give their opinion on major political or society issues, without criticising the journalists in any way. The main items that come up regularly in the mailbag from viewers refer to the role incumbent on the public sector, which must set an example, deploring the violence of images, inaccuracies and a lack of neutrality, impartiality or objectivity on the part of journalists, i.e. failings that mainly concern the principle of honesty of information. By bringing journalists and viewers together, the broadcast enables viewers to express themselves and to be listened to in their diversity on their criticisms concerning the behaviour of the media.

France Télévisions' programme mediator is also appointed by the company's chairman. Intervention is not the same in respect of news as in respect of programmes. The programme mediator only intervenes at a secondary stage if the reply given by the people responsible for the programmes concerned does not satisfy the viewers who wrote in. If necessary, he may intervene retrospectively, weigh up the points of view, investigate the matter and draw his conclusions, while remaining free in respect of the follow-up to be given to the complaint.

In January 2002, France Télévisions adopted a "Broadcasting Charter" although, according to its management, this is not the result of the thinking carried out by the mediators. The Charter sets out the group's duties and responsibilities in all the areas it covers, and is described as "the system of values that governs the company, the legislation on which public-sector television is founded, the complex set of rules and principles that must be observed in programmes and in the coverage of news. It is based on European texts, French legislation and application decrees, the decisions and recommendations of the CSA, agreements reached with the institutions, internal rules of procedure supplemented by texts drawn up in open cooperation within the channels". Although it is not the result of thinking carried out within the companies in the group, this document appears to be a mere compilation of the rules of positive law and therefore not suitable for constituting a mechanism of self-regulation, but it confirms the difficulty audiovisual communication has in generating genuine consideration of ethical issues.

The creation of a Consultative Council on Programmes within the company France Télévisions, responsible for giving its opinions and recommendations on programmes, makes it possible to involve viewers in decisions on programme policy. Under the terms of Article 46 of the Act of 30 September 1986 (as amended), this Council is made up of "twenty members appointed for three years, after drawing lots among those persons paying the licence fee giving entitlement to use a television receiver, and after they have expressed their consent in accordance with a procedure defined by a decree issued by the Conseil d'Etat". We may wonder whether this Council responds to a real desire to involve viewers in the choice of programmes or, as may be presumed from the qualification for membership of the body, is an attempt to seek an additional source of legitimacy for financing out of the licence fee. Whatever the reason, the effect of the text is to deny any representativeness to associations of viewers. Moreover, the lack of precision concerning its attributions, which remain consultative, gives the impression that this body is just one more name on the long list of bodies whose role has never appeared to be decisive in respect of the channels' internal decision-making processes. The decree defining its composition, its missions and its operating methods has still not been produced, more than six years after the Act came into force.

The representative professional and trade union organisations in the audiovisual communication sector, and the national council of regional languages and cultures and family associations recognised by their national union, may apply to the CSA with requests for it to engage in sanction procedures in the event of failure on the part of the public-sector broadcasting companies to fulfil their obligations (Article 48-1). These companies send an annual report to the Minister with responsibility for communication and to the CSA on the performance of the obligations incumbent on them under their terms of reference. An annual report is also sent to Parliament on the application of the missions incumbent on them under the terms of Article 43-11 of the Act.

Chapter II: Cultural Diversity

A. Influence of Relevant National or Cultural Aspects

1. Culture

The public authorities, aware that television produces and broadcasts culture in a broad sense, and has a major role to play in the transmission of social and cultural values, and substantial influence on the cultural environment of the individual, have developed audiovisual cultural policies. This cultural and social dimension of television is at the origin of the fixing of obligations concerning the broadcasting and production of audiovisual and cinematographic works made originally in the French language incumbent on broadcasters in both the public and private sectors. Concerning these obligations, which are mainly quantitative, the public sector has difficulty in differentiating itself, and wavers between a logic of counter-programming and a logic of competition. Moreover, the creation of the channels Arte, a cultural European channel, and France 5, an educational channel, has reinforced the fear that culture is disappearing from generalist public-sector television channels and that the latter are continuing the trend of entrenching culture in a niche. As a result, the 1986 Act (as amended), while stressing the need for a diverse offer, reaffirms the generalist vocation of the public sector and its role in the enhancement and transmission of cultural heritage. Its mission should therefore not be limited to broadcasting educational and cultural programmes, but should enhance a generalist dimension that generates an offer that is balanced and diverse, capable of bringing together the various component parts of the public and enabling them to meet. For public-sector channels, in accordance with the missions assigned to them by the legislator and their terms of reference, this means developing programming of substantial and diverse cultural broadcasts and making "a significant effort in terms of creation for television by seeking to innovate (...) and by encouraging

the creation of original productions designed more particularly to highlight France's cultural and linguistic heritage".

Broadcasting and production quotas are instruments designed to protect cultural identity in that they affect national production, but not necessarily the protection of culture, as it is not the purpose of the criteria applied in defining works to ensure quality and cultural pluralism. The legislator's intention was to favour a qualitative approach by making the public sector a benchmark that could offer every component part of the public programmes featuring diversity, pluralism and demand for quality. It should however be noted that the channels' terms of reference reflect this preoccupation with culture in terms of obligations that are mainly quantitative, consisting of imposing the broadcasting of a certain number of programmes (opera, dance, drama, etc) or devoting a certain amount of time to literary, musical, scientific or documentary genres, or more simply by demanding their presence without stating any programming imperatives in terms of quality. These obligations, which are not linked to programming times, do not prevent the tendency on the part of the channels to schedule cultural broadcasts late at night.

Although the assessment of the effectiveness of the French system for supporting the programme industry appears to be positive, the public authorities will not be able to avoid considering what resources the public-sector channels need to fulfil their objectives in terms of the production of content.

2. Language

It is incumbent on the public sector to promote the French language, an integral part of French culture, firstly at the national level by highlighting the linguistic heritage in its regional and local diversity, and secondly at the international level by contributing to the spread of the influence of the French language and to the diffusion of French culture and language around the world. It is for the regulatory authority to "ensure the defence and the illustration of the French language and culture" (Article 3-1). Concern for the French language leads France Télévisions to pay particular attention to writing, to the quality of the language used in its programmes, and to the use of French by public-sector employees on the air, particularly by banning the use of foreign terms wherever a French equivalent exists. For its advertising programmes, France Télévisions ensures that the advertising is translated intelligibly if it is in a foreign language. In order to represent French cultural diversity, the public sector contributes to the expression of the main regional languages spoken in mainland France and in each of the French territories overseas. The spread of the influence of French culture and language in other countries takes the form mainly of France Télévisions' participation in channels with a European and international vocation – Arte, the European channel, TV5, the French-language channel, and the company Canal France International (CFI), the programme bank.⁵

3. Diversity of the Component Parts of the French Nation

French society is made up of various cultures, and bears the marks of a number of waves of immigration. The public sector must reflect this diversity of the origins of the French population, particularly by showing it through its programmes and the people and professionals depicted on the air.

Public-sector television is directed at the whole of French society in all its various component parts, with neither exclusion nor discrimination. The public-sector television companies encourage democratic debate, discussion among the various parts of the population, social inclusion and citizenship, with a view to promoting the values of integration, solidarity and civic responsibility. They implement action in favour of social cohesion and cultural diversity and against all forms of discrimination, and offer programming that reflects the diversity of French society.

The company France 5 is more particularly responsible for proposing civic broadcasts intended to provide answers to the public's questions about living in society (the inclusion of foreigners, knowledge of the country's institutions, information about social activities, etc). It also offers broadcasts devoted to professional life and the economy that are intended to promote a better understanding of the employment environment by permitting the expression and discussion of the points of view of the various parties concerned (employers, employees, and jobseekers).

5) To promote the spread of the influence of the French audiovisual sector throughout the world, CFI provides its partner channels in developing countries with programmes (films, television films, series, documentaries, sport, information programmes, entertainment, programmes for young people, etc) free of charge.

In compliance with the principle of equality, the purpose of France Télévisions' implementation of a "Plan of positive action in favour of integration" is to improve the presence, expression, representation and promotion of the various component parts and origins of the national community on the air (in terms of members of the public taking part in broadcasts, presenters, commentators, etc), in the programmes (particularly in the works produced and broadcast) and among their employees. The contract of objectives and resources provides that the France Télévisions group is to make every effort to "bring the structure of its audience closer to that of the socio-demographic and geographical composition of television viewers as a whole". Discussions should commence with trade union representatives with a view to reaching a "recruitment charter" formalising the requirements of diversity in terms of access to employment.

As a result of the observance of the principle of equality attached to the French concept of public service, France Télévisions also promotes access to its programmes by people who are deaf or hard of hearing by making suitable arrangements, and makes viewers aware of the difficulties facing disabled people.

By reaffirming more strongly the cultural missions of the public sector and the role of regulation played by the public-sector channels, the 2000 Act attempts to graft a social role onto the quantitative obligations incumbent on the television channels, favouring an institutional approach based on the desire to maintain social cohesion, more particularly by the integration of the various component parts of society.

The public sector must provide air time for political groups in order to fulfil its mission of providing information and to promote democratic debate. Recognition of the right to air time is based on the principle of the neutrality of the public service. This right to air time takes the form of programming communications by the Government and by implementing a right of reply in favour of the parliamentary opposition, as well as by programming election broadcasts during official campaigning on radio and television, and broadcasting major parliamentary debates and "direct expression" programmes allowing access to air time for political groups represented in Parliament and national trade unions and representative professional organisations.

Apart from broadcasts for exercising the right to air time, the channels are free to adopt their own policy of invitation and the subjects they handle within their news programmes, subject to observance of the principle of pluralism of currents of thinking and opinion, and under the supervision of the CSA.

The parliamentary nature of the French political regime leads to favouring the political groups represented in Parliament, to the detriment of small, minority groups.⁶ There is nevertheless another way open to the citizen-viewer to join in the political debate, thanks to the Chaîne Parlementaire which has a "mission of public service, information and training in public life for citizens, by means of parliamentary, educational and civic programmes" (Article 45-2 of the 1986 Act (as amended)). This channel can be accessed by users of satellite, cable and terrestrially-broadcast digital television packages. Two programme companies share the same channel (LCP - *Assemblée Nationale* and *Public-Sénat*), under the management of chairmen and managing directors appointed for three years by the bureaux of the assemblies, on a proposal from their chairmen. The Chaîne Parlementaire is subject not to CSA supervision but to the vigilance of the two chambers. The capital of each of these companies is held in full by the assembly to which it is attached.

4. Religion

France is a secular republic. The French system of secularity is based on the postulate of the equal value of religions and their equal treatment. Making provision for religious freedom implies an obligation on the part of the State to create conditions that permit the free expression of religious convictions. The State's representatives have the task of approving certain religions according to their representativeness (number of active members) and their integrity (the criterion of public order), i.e.

6) In cooperation with the broadcasters, the CSA has compiled a reference system intended to ensure political pluralism on the air. All the radio and television services are required to "maintain a balance between the speaking time allowed to members of the Government, politicians in the parliamentary majority and politicians in the parliamentary opposition, and to ensure that they have comparable programming conditions. Broadcasters must also ensure speaking time for members of political groups that are not represented in Parliament. Unless it is justified by current affairs, the speaking time for politicians in the parliamentary opposition may not be less than half the aggregate time for members of the Government and politicians in the parliamentary majority". The difficulties connected with the appearance of various political movements that are not represented in Parliament compound longer-standing difficulties concerning the definition of the notions of majority and opposition (for example, the classification of Mr François Bayrou in the opposition), the classification of political parties in these two categories, and the distribution of broadcasting time among the groups within these categories.

on the basis of criteria extrinsic to actual belief. The decision to grant air time lies with the Minister with responsibility for religious observance, with the approval of the CSA. The company France 2 is required to reserve air time for the main religions practised in France as part of its public-service mission (Article 56 of the amended 1986 Act). These broadcasts are produced under the responsibility of the representatives designated by the respective hierarchies of these religions, after obtaining the opinion of the Ministry with responsibility for religious observance. However, when these are not retransmissions, the company may view the broadcasts first and refuse to show them. RFO's terms of reference merely provide for the possibility of the company programming "broadcasts devoted to the various families of beliefs and ways of thinking and to the expression of the main religions practised locally".

B. Reflections of Diversity in Organisational Structure

In order to ensure the diversity and the pluralism of programmes, the 1986 Act emphasises the editorial autonomy of the various national companies, which are assigned specific missions (Article 44). Thus France 2, a "generalist" channel, is required to offer "diversified benchmark" programming "for the broadest possible audience", to promote "the creation of original productions", and to cover "national and international news", whereas France 3, while it has the mission of proposing "generalist, diversified programming", claims to be a television channel "of a national, regional and local nature" and as such provides "local information". France 5 schedules broadcasts "of an educational nature and promotes access to knowledge, training and employment" and "visual and media literacy". France 4 contributes to "strengthening the public-sector group's offer of cultural and artistic programmes and live shows and provides a showcase for French and European audiovisual creation", meeting the expectations of the broadest possible audience, and in particular young adults. Lastly, RFO is defined as the television network directed at France's overseas territories. This scene is supplemented by provisions concerning the European cultural channel Arte (Article 44-1).

The French Constitution recognises real legal autonomy for the local authorities, but this remains limited, mainly because of their financial dependence on the State. A parallel may be drawn between the structure of the State and the structure of public-sector television based on the concept of decentralisation. France Télévisions defines the strategic orientations of the companies France 2, France 3, France 4 and France 5. In this context, while affirming their own editorial identity, France 2, France 3, France 4 and France 5 complement each other through the coordination of both their programming and their production, with a view to providing the greatest possible diversity in the programmes offered.

France 3 and RFO would appear to be more particularly intended to reflect the decentralised nature of the State.

The national programme and the network of regional stations of the France 3 channel are designed as tools in the service of a policy for the country's audiovisual development. France 3, which is intended as a local medium, gives priority to decentralised news and regional events, and favours the display of local diversity through regional editions and local editions in average-sized towns in collaboration with local authorities or the local press. This mission given to it by the Act extends to the digital medium, and as a result the channel is setting up a network of regional digital television services with their own editorial identity, for which users will not be charged. The purpose of these services is to represent the local authorities by angling their programming to highlight knowledge of the regions and by encouraging local information, closer to the everyday and regional concerns of viewers, transfrontier cooperation in audiovisual matters, and the expression of the main regional languages spoken in mainland France.

RFO broadcasts television programmes (news, audiovisual creations, entertainment) in French territories overseas, on the national channels, in order to contribute to knowledge of economic, political and social realities, to the cultural wealth of the *départements*, territories, countries and local authorities overseas and to the expression of specific regional characteristics. RFO has ten regional stations that offer two television channels (Télé Pays and Tempo) and a satellite network that broadcasts the new digital channel, France Ô. The company participates in the democratic life of the nation by broadcasting the main parliamentary debates of interest to the overseas territories, as well as the main debates of the assemblies of the *départements*, regions and territories, observing the general obligation of pluralism and balance.

This attention to the overseas territories is also apparent at the structural level in the composition of the board of directors of France Télévisions, with one of the members designated by the CSA being

from overseas. The Regional Councils of each of the regions of Guadeloupe, Guyana, Martinique and Reunion are kept informed of the conditions for the organisation and functioning of public-sector television in the region. The chairman of the board of directors of the company RFO sends an annual report on its activities to the Regional Council (Articles L. 4433-28 et seq. of the General Local Authorities Code (CGCT)).

In addition, subject to the conditions laid down in the 1986 Act, the local authorities or their groupings may edit a television service providing local news. The local authority concludes a contract of objectives and resources with the body to which the service is entrusted, defining its public-service missions and the conditions for their implementation, for a period of between three and five years. This contract is appended to the agreement concluded with the CSA (Article L. 1426-1 of the CGCT).

Conclusion

It appears to be very difficult to define public-sector television undertakings and to determine what makes them different in essence, particularly as obligations of general interest are imposed on private-sector undertakings, editorial objectives are extended from public-sector channels to the private operators, either by means of legislation and regulations or by means of their agreement with the regulatory authority. The confirmation of the essential role of the regulatory authority and, more particularly, its power of recommendation has helped to blur the elements that characterise the public sector. The private sector, like the public sector, is also subject to a series of obligations concerning ethics and public order, and as a result the public sector is defined mainly by a criterion more readily thought of in regard to the private sector – capital. The three-fold injunction to “inform, educate, and entertain” is adopted by all the audiovisual operators and has ceased to be a mission in itself, and as a result public service can perhaps no longer be defined on the basis of broad general missions.

The indecisive attitude of the public-sector bodies, wavering between a process affirming their difference and alignment with the programming of the private-sector channels, between a strategy of counter-programming and competition, and the lack of editorial orientation have sown the seeds of doubt in the minds of viewers about the sector’s legitimacy. The chase after higher viewing figures, increased income from advertising, and the stagnation of the licence fee have implied a calibration of programmes according to commercial targets and a reduction in the quantitative contribution public-sector companies make. The instruments being used to measure the quality objective were designed for the advertising market, whereas instruments suited to the requirements of the public-sector channels, designed mainly in terms of viewer satisfaction, are sadly lacking.

The answer to the question about the positioning of public-sector operators in the programmes on offer must necessarily lie in the satisfaction of qualitative requirements. The role of the public sector cannot be limited to the achievement of missions of general interest that the private sector cannot or will not carry out, i.e. it cannot be a residual public sector. The functions of social and cultural integration and the cohesion of social diversity assigned to it, should take the form of specific obligations that combine the desire to avoid the commercialisation of programmes and their over-elitist nature.

This identity crisis on the part of the public-sector channels that are subject to increased competition and financing difficulties has led the public authorities to redefine the vocation of the public sector, particularly in respect of its development in new networks and in the light of this confrontation with expensive and fast-moving technological changes. The Act of 1 August 2000 attempts to address these various preoccupations by instigating a set of provisions concerning the missions, structures and resources of bodies in the public sector, intended more particularly to affirm the identity of the public sector and to ensure its development.

The future and the legitimacy of public-sector radio and television can only be ensured at the cost of a precise definition of its missions and the ensuing obligations, by defining the major principles explicitly in the various categories of programmes and news broadcasts. To achieve this it would appear to be necessary to reconsider what the public sector is offering, more particularly by developing the offer of themes and trying out new services, and by modernising its operation. The digital mode provides the means of affirming specific functions and enables the public sector to act as a driving force in the development of new broadcasting techniques, on condition that the public sector is granted extra financial resources. The digital mode makes it possible to reach specific audiences without losing previous audiences, and allows a different breakdown, capable of being grafted onto the original breakdown in order to win over new audiences, and it also allows the broadcasting of local programmes and the creation of community television.

The application of obligations of content, the effectiveness of the pluralism of information and programmes, and the introduction of criteria based on quality still depend to a large extent on the personality of the public sector's managers and on their political desiderata as much as on the powers of the regulatory authority, whose power of sanction seems to be insufficient and inappropriate.

Even so, public-sector broadcasting appears to be the only means of ensuring diversified programming which, unlike in the private sector, is not solely subject to the imperatives of commercial profitability and viewing figures and hence the only means of affecting the programme policy of private operators and preserving the balance of programmes. The public service has many roles to play in terrestrially-broadcast digital broadcasting, more particularly that of allowing access by the greatest possible number through coverage of the territory and new free-to-air thematic channels, ensuring the creation of local television channels, and ensuring compliance with obligations concerning audiovisual production.

Draft legislation on the modernisation of audiovisual broadcasting and the television of the future is intended to create the legal framework to ensure the complete changeover from analog to digital mode by no later than 30 November 2011. The transition to the digital era should uphold both the position and the identity of public-sector television, which has passed from three channels in analog mode to six, then seven including France Ô, channels in terrestrially-broadcast digital mode (France 2, France 3, France 4, France 5, the Chaîne Parlementaire, France Ô, and Arte). France Ô should make it possible to inform all French people about the wealth of cultures and life overseas. The identity of the digital channel France 4, the aim of which is to contribute to reinforcing the public sector's offer of cultural and artistic programmes and live shows and to serve as a showcase for French and European audiovisual creation, paying particular attention to young adults, should be upheld by France Télévisions' contract of objectives and resources, which is currently under negotiation.

UNITED KINGDOM

*Tony Prosser**

Chapter I: Regulatory Framework

The UK has a unique system of public service broadcasting (PSB). Not only does it have in the BBC the world's most celebrated PSB institution, it also requires the major commercial broadcasters to commit themselves to PSB norms. Thus the model is basically one of plurality of PSB provision, mainly for reasons of competitive quality; high quality programming is likely to emerge where there is no single monopoly provider. This model is currently subject both to substantial threat due to the proliferation of digital channels, and major reform with both the development of a new Charter for the BBC and a recent major review of PSB by the regulator of the commercial sector, the Office of Communications (Ofcom). This chapter will concentrate on these most recent developments.

A. Mission, Economic and Financing Model

1. Mission

The BBC

To commence with the BBC, unusually, it derives its legal power from a Royal Charter rather than statute. During the Charter renewal process there were calls for the Corporation to be given a statutory basis on the grounds that this would permit greater Parliamentary scrutiny; these calls were rejected as the Government claimed that a Charter would better protect the Corporation's independence.¹ The new Charter will come into effect on 1 January 2007. Crucially, it is accompanied by an Agreement between the minister and the BBC which contains the major regulatory provisions.² Both are lengthy and detailed documents which can only be summarised briefly here. An important point is that the provisions of the Charter and Agreement will be enforceable in the courts through judicial review, and indeed this remedy is referred to explicitly in the former.³

The Charter states that the BBC exists to serve the public interest, and that its main object is the promotion of its Public Purposes. These are defined as:

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1) For such a call see the House of Lords Select Committee on the BBC Charter Review, "The Review of the BBC's Royal Charter", HL 50, 2005-6.

2) "Broadcasting: Copy of Royal Charter for the Continuance of the British Broadcasting Corporation", Cm 6925 (2006) available at: http://www.bbccharterreview.org.uk/pdf_documents/Cm6925_BBC%20RoyalCharterFinal.pdf

"Broadcasting: An Agreement Between her Majesty's Secretary of State for Culture, Media and Sport and the British Broadcasting Corporation", Cm 6872 (2006) available at: http://www.bbccharterreview.org.uk/pdf_documents/BBCAgreement_Cm6872_july06.pdf

3) Art. 52(5).

- a) sustaining citizenship and civil society;
- b) promoting education and learning;
- c) stimulating creativity and cultural excellence;
- d) representing the UK, its nations, regions and communities;
- e) bringing the UK to the world and the world to the UK;
- f) in promoting its other purposes, helping to deliver to the public the benefit of emerging communications technologies and services and, in addition, taking a leading role in the switchover to digital television.

These Purposes should be promoted through output which consists of “information, education and entertainment”, supplied by means of television, radio and online services, similar or related services using new technology, and other activities which must, however, be only peripheral, subordinate or ancillary to its main activities.⁴ In addition, the Charter states that “The BBC shall be independent in all matters concerning the content of its output, the times and manner in which this is supplied, and in the management of its affairs.” This is, however, stated to be subject to any other provision made by or under the Charter or Agreement or otherwise by law.⁵

The Agreement sets out in detail how the Public Purposes are to be achieved and describes the UK public services; it also sets out detailed regulatory obligations on them including content standards, accuracy and impartiality, etc. Special provision is made for changes to the public services, including introducing new ones, which must be based on a “public value test”; new services require approval by the Secretary of State. As the BBC also engages extensively in commercial services, these are covered by the Agreement which, *inter alia*, requires there to be fair trading statements of policy, and fair trading and competitive impact guidelines, relating to these services. Crucially, commercial services must be kept separate from the “core” BBC and provided through commercial subsidiaries of the Corporation; such services must however be appropriate to be carried out in association with the promotion of the Public Purpose activities and connected with them in ways other than the merely financial.⁶ This avoids the BBC adopting a purely commercial approach.

Commercial Public Service Broadcasters

Commercial public service broadcasters are now regulated under the Communications Act 2003, which established the new unified communications regulator, Ofcom.⁷ The Act specifies that Ofcom must report periodically on the extent to which these broadcasters (and the BBC) have met the public service remit. The purposes of public service broadcasting in the UK are defined as:

- a) providing television services which secure that programmes deal with a wide range of subject-matters;
- b) the provision of services in a manner which is likely to meet the needs and satisfy the interests of as many different audiences as practicable;
- c) the provision of services which are properly balanced, so far as their nature and subject matters are concerned, for meeting the needs and satisfying the interests of the available audiences; and
- d) maintaining high general standards with respect to the content of programmes, quality of programme-making, and professional skill and editorial integrity in programme making.

Further detailed requirements are then set out for meeting the public service remit.⁸ Ofcom issued its first report on the meeting of the remit in three parts during 2004-2005. The most important matters discussed were the potential difficulties for commercial operators in meeting public service requirements in a highly-competitive digital environment, the loosening of requirements for regional programming by Channel 3, and the proposed creation of a new Public Service Publisher to compete with the BBC as the commercial broadcasters lose their public service obligations in the new digital era.⁹

To which commercial broadcasters will the public service remit apply? The Act specifies them as Channel 3, Channel 5 and Channel 4.¹⁰ Channel 3 (better known as ITV) is the successor to the old

4) Arts. 3-5.

5) Art. 6.

6) Clauses 65-9.

7) The text of the Act can be found at: http://www.opsi.gov.uk/acts/acts2003/ukpga_20030021_en.pdf with explanatory notes at http://www.opsi.gov.uk/acts/en2003/ukpgaen_20030021_en.pdf The Ofcom website is <http://www.ofcom.org.uk>

8) S. 264.

9) The reports and background can be found at: http://www.ofcom.org.uk/tv/psb_review/

10) S. 265.

regional holders of broadcasting franchises; they have now merged in England and Wales to create a single company. It takes the form of an ordinary commercial company owned by shareholders and is funded by advertising. Channel 5 is similarly a single commercial national company. The status of Channel 4 is somewhat different; it is a publisher-broadcaster and commissions programmes from independent production companies, but does not make them itself. It is wholly funded by advertising revenue, but has the status of a statutory corporation with no shareholders; profits are ploughed back into programme commissioning. The Act specifies as the remit of ITV and Channel 5 “the provision of a range of high quality and diverse programming”; for Channel 4 it is “a broad range of high quality and diverse programming” which

- a) demonstrates innovation, experiment and creativity;
- b) appeals to the tastes and interests of a culturally diverse society;
- c) makes a significant contribution to educational programming; and
- d) exhibits a distinctive character.¹¹

For the sake of completeness I should also mention S4C (*Sianel Pedwar Cymru*), which broadcasts in Wales, and has the remit of providing a substantial proportion of programmes in the Welsh language.¹² It is important to note that the Communications Act, in addition to setting out the public service remits, contains a large number of regulatory provisions relating to such matters as programme standards and fairness.

2. Corporate Structure

The BBC

The corporate structure of the BBC has been highly controversial and is reformed under the new Charter. It takes the form of a public corporation, the model adopted for most public enterprises in the UK operating at “arm’s length” from government; it is not a government department and does not have Crown status. BBC employees are not civil servants. Previously, the BBC was headed by a board of governors appointed by the Crown on the advice of the Government. They had responsibility both for regulating the BBC and for promoting it; this was criticised as creating a major conflict of interest, particularly by commercial rivals concerned about what they saw as unfair competition by the Corporation in its more commercial activities. There was strong pressure for all of the BBC’s activities to be brought under the supervision of the independent regulator, Ofcom. As a result of the criticism, the BBC made a number of internal reforms, but the role of the Governors was heavily criticised in the Hutton Report relating to the death of the government scientist Dr. David Kelly on the grounds that they had not properly considered Government complaints about the Corporation’s reporting.¹³ Management of the BBC was undertaken by a management board, headed by the Director-General.

Under the new Charter, a compromise solution has been reached. Governance of the BBC will pass to a new BBC Trust, appointed as before by the Crown on the advice of Government. Management will be carried out by an Executive Board, whose chairman is appointed by the Trust. A stronger separation will be created between them to avoid micro-management of the Corporation by the Trust.¹⁴ More will be said about the division of responsibilities below in describing decision-making structures and procedures.

Commercial Broadcasters

As regards the commercial broadcasters, as mentioned above ITV and Channel 5 are ordinary companies owned by shareholders, whilst Channel 4 is a statutory corporation. In these cases, regulation is carried out through Ofcom. Ofcom is an independent body corporate with ten members appointed by the Secretary of State; it also has an executive board responsible for its day-to-day

11) S. 265.

12) Sch. 12.

13) Lord Hutton, “Report into the Circumstances Surrounding the Death of Dr David Kelly, CMG”, HC 247, 2003-4, esp. para. 291(5). See further: David Goldberg, GB – Hutton Inquiry Judge Rules against Televising Witnesses Giving Evidence, in IRIS 2003-9: 8, available at <http://merlin.obs.coe.int/iris/2003/9/article15.en.html> and Tony Prosser, GB – Official Inquiry Leads to Resignation of Chairman and Director-General of the BBC, 2004-4: 10, available at <http://merlin.obs.coe.int/iris/2004/4/article21.en.html> ; Tarlach McGonagle, “Workshop Report: The Changing Hues of Political Expression in the Media”, in Susanne Nikoltchev, Ed., IRIS Special: *Political Debate and the Role of the Media – The Fragility of Free Speech* (Strasbourg, European Audiovisual Observatory, 2004), pp. 1-30, at 20.

14) For a summary of the arrangements see the Government White Paper, “A Public Service for All: The BBC in the Digital Age”, Cm 6763 (2006), ch. 9. See further: Tony Prosser, GB – Government Confirms Plans for the Future Role of the BBC, in IRIS 2006-5: 13, available at <http://merlin.obs.coe.int/iris/2006/5/article22.en.html>

management. Ofcom has two primary duties under the Communications Act; “to further the interests of citizens in relation to communications matters” and “to further the interests of consumers in relevant markets, where appropriate by promoting competition.”¹⁵ These cover its role in telecommunications as well as in broadcasting. There are also a number of subsidiary duties, including securing “the availability throughout the United Kingdom of a wide range of television and radio services which (taken as a whole) are both of high quality and calculated to appeal to a variety of tastes and interests.”¹⁶ Ofcom is also responsible for spectrum management, and indeed has recently taken a controversial decision to charge public service broadcasters for their use of spectrum from 2014.¹⁷

3. Independence from Government

In both the case of the BBC and of Ofcom, the arrangements guarantee substantial freedom from direct state influence. As I have mentioned, appointments are made either by the Crown on government advice or by the Secretary of State. However, there have not been serious attempts to appoint members who will act directly as the mouthpiece of government to these institutions. Indeed, in the case of the BBC, there have been on occasion substantial disputes between the broadcaster and the Government, most recently in relation to the Dr. David Kelly issues discussed above. As a result of that case both the Chairman of the Board of Governors and the Director-General of the BBC resigned. However, the dispute was conducted very much in the public eye rather than behind the scenes, and there is agreement that the new Chairman and Director-General, although appointed by the Government, were highly committed to the ideals of public service broadcasting and were highly experienced in it.

4. Financing

In the case of the BBC, all its funding for PSB services is through the licence fee, payable by all owners of television sets and radios; it carries no advertising. The future of the licence fee was also a matter of some controversy, especially whether it should fund new services which may not be available to all viewers, and there were suggestions that these could be funded by subscription. The Charter review decided firmly that the licence fee should continue for the next ten years (the period of the new Charter). For the period after 2016, its role will be reviewed.

The setting of the figure for the licence fee (currently GBP 131.50 – or EUR 194.921 – per annum for each household) is for the Government after negotiations with the BBC and public consultation, and such a process is currently taking place. The fee is set for a period of several years on a formula related to the rate of inflation (RPI); the current formula is $RPI + 1.5$. For the next period of seven years the BBC has proposed a figure of $RPI + 2.3$; this includes the additional costs of digital switchover. The bid is highly controversial, and it is likely that the Government will only agree to a smaller increase, however one still above the current inflation rate. Once the figure is agreed, the Government does not intervene to change it during the period covered by the settlement. Other BBC funding is through the sale of rights (of which it has an enormous and valuable library), and through income from its commercial services, notably promotional merchandise and income from publishing.

ITV and Channels 4 and 5 are supported wholly by advertising, apart from a small proportion of funding by subscription for special services such as specialist digital movie and sports channels (although the major Channel 4 film channel, Film4, has recently become free-to-air and available on Freeview digital terrestrial television). There is currently some doubt as to the sustainability of public service commitments financed by advertising, however. As Ofcom documented in its first review of PSB, advertising revenues are being spread over a large number of competing services and this is already causing ITV major financial problems. The weight of the public service requirements will become more onerous, and, according to Ofcom, in future PSB will need more direct and explicit support through the licence fee and direct funding of a new public service publisher to compete with the BBC.¹⁸

15) S. 3(1).

16) S. 3(2)(c).

17) *Future Pricing of Spectrum Used for Terrestrial Broadcasting* (2006).

18) Ofcom, *Review of Public Service Television Broadcasting, Phase 1 – Is Television Special?*, ch. 3 and *Phase 3 – Competition for Quality*, ch. 2. This is updated in Ofcom, *Digital PSB – Public Service Broadcasting post Digital Switchover* (2006).

B. Decision Making: Structures and Procedures

1. Decision-Making Process

The BBC

In this section I shall cover the arrangements under the new Charter and Agreement taking effect from 1 January 2007. As mentioned above, the new structure involves an Executive Board and the BBC Trust. The Executive Board has a chairman appointed by the Trust and includes both Executive and non-Executive members; the total number of members is ten. The Chairman, who is the Director-General of the BBC (the equivalent of Chief Executive), is appointed by the Trust; the other members are appointed by the Board itself, but it may only make an appointment proposed by its nomination committee, whilst non-executive members also need the agreement of the Trust. The Board is responsible for the management of the BBC; day-to-day operations are carried out by the Corporation's 14 divisions. The Executive Board is accountable to the BBC Trust.

According to the White Paper on Charter Review, "[t]he Trust will be the sovereign body within the BBC. What this means in practice is that the Trust's word is final. However ... the Trust and the Executive have clearly defined, and different, roles and responsibilities."¹⁹ The Trust has twelve members, appointed by the Crown on the advice of ministers; the posts are first advertised and the standard procedures for filling public appointments (the Nolan principles) are followed. Appointment is for five years, and may be renewed once. The members are drawn from a range of backgrounds and professional experience; the only constraint is that the Trust must include individual members representing the interests of the four constituent parts of the UK: England, Scotland, Wales and Northern Ireland.²⁰ Otherwise, none of them is appointed to represent a particular interest; most importantly, there is no member with the role of expressing the views of government, and indeed a major stress in their appointment and in their role is on their independence. Thus the Charter gives as one of the Trust's general duties "securing that the independence of the BBC is maintained".²¹ The Trust has adopted a procedure for dealing with conflicts of interest, reflecting that currently in place for the Governors.²²

A key theme of the reforms is to create a greater degree of separation between Trust and Executive Board than existed between its predecessors. Thus the White Paper emphasised that "[t]he new system is designed to strengthen the BBC's independence from Government. It will create a new line of accountability – from the new Trust directly to the licence fee payer. This new accountability will be reinforced by very clear separation between the Trust and the Executive Board, coupled with an unprecedented obligation to openness and transparency."²³ Under the Charter, the general functions of the Trust are:

- a) setting the overall strategic direction for the BBC within the framework set by the Charter and Agreement
- b) approving high-level strategy and budgets
- c) assessing the performance of the Executive Board in delivering the BBC's services and activities and holding the Executive Board to account for its performance.

More specific responsibilities include:

- drafting performance criteria and issuing service licences for particular BBC services;
- approving guidelines on standards;
- holding the BBC to account for compliance with regulatory requirements
- setting the framework for the handling of complaints, and acting as final arbiter in appropriate cases;
- commissioning value for money investigations,
- adopting a statement of policy on fair trading and holding the Executive to account for compliance with it; and
- setting an approvals framework for new services (although final consent for the latter rests with the Secretary of State).²⁴

19) Op. cit., para 9.5.2.

20) Details of the background of each member can be found at http://www.bbc.co.uk/pressoffice/pressreleases/stories/2006/10_october/12/trustees.shtml

21) Art. 23(b).

22) See the Conflicts of Interest Regulations at http://www.bbcgovernors.co.uk/about/conflict_regulations.pdf

23) Op. cit. para. 9.2.1.

24) Charter, op. cit., Art. 25.

The Trust is also responsible for issuing more specific rules in the form of Protocols setting out a more detailed framework for the discharge of its functions and its relationship with the Executive Board, and dealing explicitly with how it will seek the views of, and engage with, licence fee payers. A Protocol will also set out how the Trust will ensure that the BBC observes high standards of openness and transparency. As regards the latter there is a major stress in the reforms on the importance of such openness, and one of the general duties in the Charter applying to the Trust is to ensure that the BBC observes such high standards.²⁵ The BBC is covered by the Freedom of Information Act 2000, which provides a (qualified) right of access to official information; this right of access however only applies to "information held for purposes other than those of journalism, art or literature."²⁶

Commercial Broadcasters

This can be dealt with more briefly because, as we saw above, PSB requirements are implemented for the commercial broadcasters through external regulation by Ofcom rather than through their internal structures. ITV is an ordinary commercial company, with the conventional structure of a Board of ten members: a chairman, two executive members and seven non-executive members. Management is undertaken by a team headed by a Chief Executive. Channel 5 is now solely owned by the RTL Group but has its own executive board. Channel 4, as mentioned above, has a different status, that of a public corporation with no shareholders. The corporation acts under the terms of the Broadcasting Act 1990 and of the Communications Act 2003; the latter sets out its primary functions as securing the continued provision of Channel 4, and the fulfilment of the public service remit for the Channel.²⁷ The Corporation has a board of 13 members, the majority of which are non-executive. The chairman is appointed by Ofcom, and members are appointed by Ofcom after consultation with the chairman and with the approval of the Secretary of State. Management is undertaken by a Senior Executive Management Committee.²⁸

As described earlier, Ofcom is the external regulator and is an independent body corporate with ten members appointed by the Secretary of State. It has a wide range of regulatory functions in broadcasting and telecommunications. The structure adopted is that of a board and a separate executive responsible for management; the Chief Executive Officer sits on the board. Thus, as with other regulatory bodies, Ofcom has moved towards the model preferred in UK private sector corporate governance of a separate board and chief executive. It has practical independence from government, and there are no general powers of governmental direction over it. The key functions in broadcasting include licensing all broadcasters (apart from the BBC) and enforcing licence conditions. Ofcom has power to impose substantial sanctions for breach, including ultimately withdrawal of the licence and imposing financial penalties of up to seven per cent of the broadcaster's revenue; it has not hesitated to use these penalties.²⁹ It drafts and enforces the code relating to programme standards, including issues of privacy and fairness; this can also be enforced as part of the licence conditions. Ofcom also has concurrent powers to implement general UK competition law, notably the prohibitions on anti-competitive agreements and abuse of a dominant position in the Competition Act 1998. The competition powers, and also those relating to basic programme standards, are applicable to the BBC as well as to the commercial broadcasters, and it has power to fine the BBC.

2. The Impact of Politics

In the UK, there is of course no constitutional guarantee of the independence of broadcasters as there is no written constitution. The Human Rights Act 1998 makes the rights contained in the European Convention on Human Rights directly enforceable in UK courts against public authorities, and it is conceivable that the (qualified) right to freedom of expression in Art. 10 of the Convention could be used by a broadcaster against government. Attempts by journalists to use this right before incorporation of the Convention to challenge a Government ban on broadcasting the words of terrorist organisations failed both in the domestic courts and in the European Court of Human Rights. However, since the 1998 Act came into effect in 2000 a much more searching degree of scrutiny has been adopted by the courts and the result could well now be different.³⁰

25) *Op. cit.*, Art. 23(f).

26) Freedom of Information Act 2000, Sch. 1 Part VI, available at http://www.opsi.gov.uk/acts/acts2000/ukpga_20000036_en.pdf

27) S. 199(2).

28) For details of the Channel 4 arrangements see *Channel 4 Television Corporation – Arrangements Under Schedule 9 of the Communications Act 2003* (2006) at http://www.channel4.com/about_c4/documents/C4_arrangements.pdf

29) Communications Act 2003, Sch. 13.

30) *R v Secretary of State for the Home Department, ex parte Brind* [1991] 1 AC 696; *Purcell v. Ireland*, Application No. 15404/89, Decision of 16 April 1991.

Government possesses, in theory, extensive powers to intervene in broadcasting. Thus the Communications Act repeats earlier provisions permitting any minister to require Ofcom to direct any licensed broadcaster “to refrain from including in their licensed services any matter, or description of matter, specified in the notice”.³¹ The minister may also require a broadcaster to include an announcement in its services.³² The broadcaster must be allowed to announce that the omission of the broadcast or the announcement is as a result of a ministerial direction. Similar provisions exist in the BBC Agreement. A minister may request the BBC to broadcast an announcement, but only where it appears to him or her that an emergency has arisen may the minister go further and require that an announcement or programme be broadcast. The minister may also give the BBC a direction not to broadcast any matter, or class of matter, specified in the direction; the BBC has the right to announce that this has been done. This latter power is not explicitly restricted to emergencies, but falls within the clause of the Agreement relating to “Defence and Emergency Arrangements”, so it is possible that the courts might imply such a restriction.³³ The power has never been used to ban an individual programme, but was used in the example referred to above to ban the broadcasting of the words of the terrorists themselves; broadcasters resorted to dubbing instead, and the ban was eventually lifted.

These powers permit intervention by ministers on specific issues in exceptional situations. As regards the more general running of broadcasters and such matters as programme schedules and content, there are no direct powers of ministerial intervention, although of course the broadcasters are subject to the general law, including the Official Secrets Act 1989 which makes the unauthorised disclosure of some types of official information a criminal offence. The BBC Charter, as already mentioned, explicitly provides that ‘The BBC shall be independent in all matters concerning the content of its output, the times and manner in which this is supplied, and in the management of its affairs’, although this is explicitly made subject to the other provisions in the Charter and Agreement.³⁴ Nor does the government have powers of direction over Ofcom, except in order to secure compliance with international obligations, notably the Television Without Frontiers Directive.³⁵

Quite clearly, the limited nature of its formal powers does not mean that there might not be other forms of government or political influence. One obvious example is through the appointments process where ministers retain the major responsibility for the BBC and for Ofcom. These processes are, however, subject to the Nolan principles, which include the requirement that the choice of candidates is made on merit, and the Code of Practice of the Office of the Commissioner for Public Appointments which sets out detailed rules on advertising and selection for posts.³⁶ In the end, the protections for independence both in the appointments process and more generally are essentially cultural rather than legal, and will be considered in the following chapter.

3. Impact of Civil Society

The BBC goes to considerable lengths to seek the views of the public. This is required by the Charter; thus the general duties of the Trust include representing the interests of licence fee payers, and “carefully and appropriately” assessing their views.³⁷ It also requires that the Trust issue protocols on engaging with licence fee payers, and requires the creation of Audience Councils whose purpose is “to bring the diverse perspectives of licence fee payers to bear on the work of the Trust, through the Councils’ links with diverse communities, including geographically-based communities and other communities of interest, within the UK.”³⁸ Members of the Councils must be recruited to ensure that they reflect the diversity of the UK and have connections with communities; the Councils have the right to be consulted on a range of major decisions. These new arrangements will be a development of the existing system of advisory committees, one for each of the constituent nations in the UK (that for England itself comprising a network of different committees), and other committees covering religion and the World Service. As mentioned above, the Trust is also responsible for ensuring that proper complaints procedures are in place.

In the commercial sector, the broadcasters have their own arrangements for liaison with viewers. Ofcom is required to appoint a Content Board under the Communications Act 2003, to ensure that the public interest is properly represented as regards broadcast content.³⁹ Ofcom is also obliged to

31) S. 336(5).

32) S. 336(2).

33) Clause 81.

34) Clause 6.

35) Communications Act 2003, s. 23.

36) See http://www.ocpa.gov.uk/the_code_of_practice.aspx

37) Art. 23.

38) Arts. 26, 39.

39) Ss. 12-13.

undertake, publish and take into account consumer research, to undertake consumer consultation and to set up a consumer panel (although this will not be concerned with subjects falling under the aegis of the Content Board, and so is more likely to be concerned with telecommunications matters).⁴⁰ Finally, Ofcom also has advisory committees for each of the UK nations, and an advisory committee on older and disabled persons.⁴¹

Chapter II: Cultural Diversity

A. Influence of Relevant National or Cultural Aspects

PSB, and in particular the role of the BBC, has played an essential cultural role in British life. Its origins can be found in the highly educative and somewhat paternalistic vision of Lord Reith, the BBC's first Director-General, who saw the Corporation's role as introducing the public to new and uplifting ideas rather than providing entertainment. A further element in this vision was that the BBC was expected to represent the nation as a whole, for example through coverage of major national events, and so to represent a unifying force. When the BBC first faced competition, in 1954, there were strongly-expressed fears that the new commercial broadcasters would undermine these roles, and so they were also heavily regulated by PSB norms. This vision is now under threat. The first reason for this has been mentioned already; the proliferation of digital channels may reduce the advertising revenue of the main commercial broadcasters and make it difficult for them to meet PSB obligations. There is also a dilemma for the BBC; should it "chase ratings" by offering more popular programmes in competition with commercial broadcasters, and so risk losing its distinctive mission, or should it concentrate on quality and distinctiveness, thus making it harder to justify a universal licence fee? These are the dilemmas which were addressed in the Charter Review White Paper and in the Ofcom review of public service broadcasting, both discussed in the previous chapter. Finally, with the growth of both devolution and multi-culturalism, it is more difficult to present a unified version of a single British culture.

In the case of the BBC, the response has been to determine the six new public purposes referred to in the previous chapter, and to require a "public value test" for new services and significant changes to existing services. The purposes, set out in the Charter, include sustaining citizenship and civil society, promoting education and learning, stimulating creativity and cultural excellence and representing the UK, its nations, regions and communities. Its mission in achieving the purposes is to inform, educate and entertain. The White Paper emphasises that entertainment is a vital part of the BBC's mission; however, "the BBC should not chase ratings through derivative or copy-cat programming". Moreover, "the BBC's content should offer something distinct from other broadcasters ... its content should stand out clearly as the BBC's."⁴² This includes the development of new services. The BBC has been at the forefront of developing new digital services, and has been the major force behind the hugely successful "Freeview" system of free-to-air digital terrestrial television. It has justified this role as effectively maintaining the PSB presence in the new digital environment, and as offering provision distinct from that of commercial broadcasters. One example of this is through the development of new children's channels, CBeebies and CBBC, which are distinctive in that they do not carry advertising and have a high proportion of original productions. Such developments have been criticised as anti-competitive by commercial operators, and the White Paper and Agreement with the Secretary of State require that a public value test is met before new services are introduced.⁴³ The test ascertains the value of the proposed new service in contributing to the public purposes, and its likely market impact.

As regards commercial broadcasting, the future is currently rather uncertain. Ofcom has as one of its two primary duties to "further the interests of citizens in relation to communications matters", and has another duty to promote media literacy.⁴⁴ The overall public service remit (to be met by all broadcasters including the BBC) on which it must report includes the reflection of cultural activity in the UK and its diversity, as well as education and entertainment.⁴⁵ The public service remits of the individual broadcasters are for ITV and Channel 5 "the provision of a range of high quality and diverse programming"; for Channel 4 there is, *inter alia*, the requirement of programming which appeals to

40) Ss. 15-19.

41) Ss. 20-21. For details of the various Ofcom committees and links to them, see <http://www.ofcom.org.uk/about/csg/>

42) *Op. cit.*, paras. 3.1.7-8.

43) White Paper, Ch. 5; Agreement, *op. cit.*, clauses 23-33.

44) Ss. 3(1)(a), 11.

45) S. 264(6).

the tastes and interests of a culturally diverse society, and exhibits a distinctive character.⁴⁶ However, the difficulty of sustaining PSB across a range of commercial broadcasters in the future has led Ofcom, as we have seen in the previous chapter, to recommend the creation of a Public Service Publisher with a commissioning role in competition with the BBC. It is likely that Channel 4 will retain a public service role, but that of the other commercial broadcaster looks highly uncertain.

A few specific issues need to be dealt with in a little more detail. That of language is reflected in the BBC Agreement through the requirement that the Trust must have regard to “the importance of appropriate provision in minority languages.” Thus it has a Welsh language online service, and contributes programmes to S4C, the comprehensive Welsh language television channel. The latter has been a considerable success, contributing to the revival of the Welsh language and also engaging in successful film production. The BBC also has a Gaelic Language Service for Scotland, covering both television and radio. It also offers an Asian network in English and minority languages on radio. Except in Wales, minority languages do not play a major part in the culture of the UK; however, there is substantial support for them through the PSB system.

The mission of the BBC and the commercial broadcasters’ public service remits have been dealt with above and these clearly reflect a commitment to both an increasingly diverse national culture and set of cultures, and to the BBC acting as a unifying force through enabling communication between them.⁴⁷ Key indicators of this are the BBC’s Public Purposes of sustaining citizenship and civil society and representing the UK, its nations, regions and communities. A further related concern is for democracy: one way in which this is reflected in the detailed regulatory provisions is that for the BBC and the commercial broadcasters there are strict requirements of accuracy and impartiality. Thus the BBC “must do all it can to ensure that controversial subjects are treated with due accuracy and impartiality” and its services must not contain any output which expresses the opinion of the BBC or its Trust or Executive Board on current matters of public policy (with the exception of broadcasting and online policy).⁴⁸ Under the Communications Act, an objective of the standards code must be due impartiality in news services, and there is a general requirement of due impartiality and that the views of the programme provider are excluded from the service on matters of political or industrial controversy, or relating to current public policy; this applies to all television broadcasters, not just public service broadcasters.⁴⁹

So far I have referred only to principles at a high level of generality, but they are implemented in practice through more detailed rules, some complex in nature. Thus a number of quotas and targets apply, especially in the case of the BBC; these have the aim both of supporting production of original programming as opposed to cheap imports, and of encouraging a flourishing British independent production sector. The BBC must agree with Ofcom on a quota for original productions; the current target for BBC1 is 70 per cent (and 90 per cent at peak viewing times).⁵⁰ Under the Communications Act and the BBC Agreement, at least 25 per cent of broadcasting time must be allocated to independently-made productions.⁵¹ Conversely, the BBC must also “use its best endeavours” to ensure that 50 per cent of airtime is allocated to programmes made by the BBC’s own in-house production facilities.⁵²

The BBC Trust must also secure appropriate provision of regional programmes; currently 6580 hours per year, and for the making of programmes outside the London area; currently the target is one third of programmes.⁵³ For the commercial sector, the Communications Act imposes a quota of 25 per cent independent productions on all commercial public service broadcasters, and Ofcom may impose quotas for original productions.⁵⁴ Thus the licences of individual commercial broadcasters require them to meet the quotas set out in the “Television without Frontiers” Directive and set further specific quotas for original productions, for example for Channel 3 of 65 per cent (85 per cent in peak viewing time). In the Act’s overall public service remit, Ofcom is required to report that there is an appropriate proportion of programmes made outside the London area.⁵⁵ However, Ofcom has recently agreed to a

46) S. 265.

47) For a detailed statement of this role of PSB see G. Born and T. Prosser, “Culture and Consumerism: Citizenship, Public Service Broadcasting and the BBC’s Fair Trading Obligations” (2001) 64 *Modern Law Review* 657-687.

48) Agreement, clause 44.

49) Ss. 319-20

50) Agreement, clause 49.

51) Sch. 12 para. 1; clause 52.

52) Agreement, clause 56.

53) Agreement, clauses 50-51

54) Ss. 277-8.

55) S. 264(6)(f).

reduction in the provision of non-news regional programming by Channel 3, to 0.5 hours per week for the English regions and 3 hours per week in the UK's constituent nations. The quotas for independent productions have been particularly valuable in encouraging the growth of a strong independent sector in the UK, as has the role of Channel 4 as a commissioner rather than producer of programmes.

B. Reflections of Diversity in Organisational Structure

The influence of a particular political and legal culture has also been strong in the organisation of the system of public service broadcasting in the UK. Thus the absence of a written constitution has meant that there has been no formal constitutional guarantee of independence for public service broadcasters or regulatory bodies; nor has there been any such guarantee of freedom of speech. Independence has been seen as best protected through a system of mutual expectations and cultural norms and this has meant that, formidable as government powers appear in principle, there has been a reluctance to use them to the full for political advantage. Thus the appointment power has not been used to fill the boards of public bodies with political representatives of the ruling party, though there have been important concerns about the lack of diversity in those appointed and the appointment of a limited number of "the great and the good" who are perceived as being unthreatening to received ideas. The Nolan principles and procedures, referred to above, are an attempt to correct these problems.

There are important signs, however, that this culture is changing. Firstly, the effect of the Human Rights Act 1998 has been to convert controversies which were previously dealt with by political means into issues which can be brought before the courts; this may lead to a greater reliance on formal guarantees in the future. Secondly, the controversy referred to above relating to the Hutton report and the death of Dr David Kelly involved an unusually fierce and public dispute between the BBC and the Government, and one which resulted in the resignation of both the Chairman and the Director-General of the BBC after criticism in the report. It might be that this presages more open conflict in the future, although it has to be said that the Government response was in the end supportive of PSB through replacement appointments of candidates whose independence, and whose commitment to public service broadcasting, cannot be doubted. The final vehicle of change is of course the evolution of broadcasting itself, also discussed above, which will make it more difficult for us to expect commercial companies to bear public service obligations in the face of increasing competition. This may be exacerbated by other changes in the Communications Act 2003 permitting ownership of UK broadcasters (including the commercial public service broadcasters) by persons from outside the EEA, and lifting other restrictions on ownership of ITV and Channel 5.

Most of the questions relating to this have been covered in the previous chapter, but a couple of more specific issues are worth mentioning. The UK has been a highly centralised State until recently; however, now substantial power has been delegated to its constituent nations of Scotland, Wales and Northern Ireland.⁵⁶ This has been reflected in the PSB system, notably in relation to Scotland where BBC Scotland has very considerable autonomy within the BBC and makes distinctive programmes with Scottish links, many of which are also shown on the general UK service.⁵⁷ BBC Wales and Northern Ireland also have a distinctive presence, though less so than in Scotland. In the commercial sector, ITV in Scotland and Northern Ireland are the only parts of the network which remain separately owned after the merger of the regional licensees in England and Wales. As mentioned above, S4C is the keystone of broadcasting in the Welsh language. What we see here thus reflects the general political process of devolution; the State remains a unitary non-federal one, but with a considerable degree of devolution in practice.

On the issue of transparency, we have also seen major changes recently. The UK was traditionally a very closed society, with the major form of accountability being seen as being through the role of Parliament in questioning the minister. This was assumed to mean that there was no need for other types of mechanism such as legislation for open government. We have witnessed major changes in recent years, notably through the passing of the Freedom of Information Act 2000, which finally came into effect at the beginning of 2005. The Act is highly qualified, but has played an important role in breaking down traditional cultures of secrecy. The same can be seen in relation to PSB. The Charter Review process for the BBC was a far more open one than previous reviews, involving extensive public consultation.⁵⁸ The White Paper and the new Charter also place great emphasis on the need for

56) Scotland Act 1998, Government of Wales Act 1998, Northern Ireland Act 1998. Devolution to the English regions has now stalled.

57) See <http://www.bbc.co.uk/scotland/> for details.

58) For details see the Charter Review website at <http://www.bbcharterreview.org.uk/index.html>

engagement with the licence fee payer and openness and transparency by the Trust and the BBC as a whole. Similarly, Ofcom has adopted a highly transparent approach with extensive consultation with the public and interest groups in forming its proposals, including those on PSB. The UK is moving toward much greater openness, and this is strongly reflected in the governance arrangements for PSB.

Thus in a number of important respects the current period is one of transition for PSB in the UK. It does seem clear that its continuing existence will be assured in some way for the future, though with a lesser role for the commercial broadcasters. The distinctive role of the BBC is clearly crucial to this, and will become even more so in the future, and this has been a major theme in the review of the BBC charter.



HUNGARY

*Márk Lengyel**

The development of Hungarian public service broadcasting has been merely a 16-year-old process. Until 1989-1990 the word “public service” stood exclusively for State broadcasting.

The notion of “public service” earned its extended meaning with the democratic transition. By an amendment of 1989 a paragraph explicitly referring to public service broadcasters was introduced into the Constitution. According to the relevant provision “a majority of two-thirds of the votes of the Members of Parliament present is required to pass a law on the supervision of public radio, television and the public news agency, as well as the appointment of the directors thereof (...)”.¹

For a period of 6 years following the introduction of this provision the political consensus did not reach the level necessary to adopt an act that would have regulated *inter alia* the system of Hungarian public service broadcasting. Several decisions² on questions relating to public service broadcasting that the Constitutional Court passed during this period are worth noting. In these decisions the Court urged the Parliament to adopt the necessary legislation and gave guidance especially on the questions of institutional and financial independence. The period between 1990 and 1996 was characterised not just by the absence of proper legislation but also by fierce political struggles focusing on the governance of public service broadcasters.

Act I of 1996 on radio and television broadcasting (the Broadcasting Act)³ was expected to end this so called “media war”.⁴ It defined the legal framework for the operation of public service broadcasters and, at the same time, opened up the possibility of launching commercial broadcasting. In 1997 two national commercial television channels⁵ began their broadcasts, which have become the most important commercial operators in the country.

The Broadcasting Act, which adopted the dual broadcasting system, was a landmark in the development of the Hungarian broadcasting sector. But it also proved to be an inadequate tool to eliminate the political tensions around public service media. Today it is widely acknowledged among analysts and decision makers that the Broadcasting Act became outdated because of the rapid development of the media sector. The Broadcasting Act needs to be revised with special regard to its rules relating to public service broadcasting. However, finding legal solutions that meet the requirement of approval by a qualified majority in Parliament is a task still ahead.

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1) Act XX of 1949 on the Constitution of the Republic of Hungary, §61 (4).

2) Decisions 32/1992. (VI. 10.) AB; 47/1994. (X. 21.) AB; 31/1995. (V. 25.) AB.

3) Available in English at <http://net.jogtar.hu/jr/gen/getdoc.cgi?docid=99600001.tv&dbnum=62>

4) The term “media war” is commonly used by Hungarian political analysts to characterise this period.

5) TV2 operated by MTM-SBS Zrt. (<http://www.tv2.hu/>), and RTL-Klub operated by M-RTL Zrt. (<http://www.online.rtlklub.hu/>).

The current structure of Hungarian public service television comprises two broadcasting companies:

- *Magyar Televízió Zrt.* (Hungarian Television; MTV)⁶ is the successor of the former state television.
- *Duna Televízió Zrt.* (Duna Television; Duna TV)⁷ was founded in 1992 with the principal purpose of serving the needs of Hungarian nationals living in considerable numbers outside the borders of Hungary.

Fulfilling the public service objectives is a task not just for public service broadcasters. According to the rules of the Broadcasting Act the national commercial television channels also have an obligation to include a significant proportion of public service content in their programming.⁸

Chapter I: Regulatory Framework

A. Mission, Economic and Financing Model

1. Mission

The source of the public service broadcasting mission is the Broadcasting Act. The basic criteria laid down by the Act are further detailed in the codes of public service broadcasting⁹ of the individual public service broadcasters. These are drawn up by the supervising bodies of the broadcasters and are subject to acceptance by the *Országos Rádió és Televízió Testület*¹⁰ (National Radio and Television Commission - ORTT), the national regulatory authority for the media.

The public service mission can be examined from two aspects:

- a) from the aspect of content and programming;
- b) from the aspect of the various channels broadcast.

Content and Programming

As regards content, the task of the public service broadcasters is defined essentially by the category of “public service programme item”. According to the Broadcasting Act the general aim of such programme items is to “serve the informational, cultural, civic and everyday needs of the (national, regional, local) audience in the area of reception of the broadcaster”.¹¹

This refers in particular to:

- „a) artistic works or communication presenting the universal and Hungarian culture and the cultures of the national and ethnic minorities living in Hungary, the life of the national and ethnic minorities living in Hungary, and the viewpoints of minorities,
- b) dissemination of information serving educational and training purposes,
- c) providing information on scientific activities and results,
- d) broadcasts promoting the freedom of religion, and presenting church and religious activities,
- e) children’s and youth programs, educational and general information programs on child protection,
- f) dissemination of information making every-day life easier, serving to provide legal and public life information for citizens, and promoting healthy lifestyles, the protection of the environment, the protection of nature, public security and the safety of traffic,
- g) programmes created for groups at a serious disadvantage due to their age, physical, mental or psychological state or social circumstances,
- h) dissemination of news.”¹²

6) <http://www.mtv.hu/>

7) <http://www.dunatv.hu/>

8) Broadcasting Act §129 (4) – (5).

9) Broadcasting Act §29.

10) <http://www.ortt.hu/english.php>

11) Broadcasting Act §2, §19.

12) Broadcasting Act §2, §19.

From the legal point of view the main task of public service television is to provide a “public service programme” (or programmes) that constitutes “a programme in which public service programme items play a decisive role, and which regularly informs the listeners and viewers living in the area of reception of the broadcaster about issues deserving the attention of the public.”¹³

Beyond this basic obligation the Broadcasting Act also formulates several additional programming requirements, such as:

- the obligation to provide regular, comprehensive, unbiased and accurate news;
- fostering the values of universal and national cultural heritage, promoting cultural diversity;
- providing programmes for minors, serving their physical, psychological and moral development;
- providing assistance to people with disabilities;
- etc...¹⁴

In the evaluation of these programme requirements the following may be observed:

- The system of public service content requirements which the law has established is very static. The Act defines no mechanisms for supervising these requirements. As a consequence, changes in the public service mission would require an amendment to the Act or the voluntary commitment of broadcasters.
- The definition of public service mission in the Broadcasting Act is essentially reduced to a declaration. As is typical for declarations, the definition provides neither any concrete measurements for the quality of programmes that would count towards fulfilling the public service mission nor any consequences that would result from the failure to meet qualitative programme requirements.

Programme Services Offered

As regards the number of programme services offered by the two public service television companies the Broadcasting Act refers to the following channels:

- MTV is present in the audiovisual landscape with two national channels: “m1” is a national programme service produced for reception by the general audience via terrestrial network. “m2” is a satellite channel with a more-or-less clear cultural profile.
- Duna Televízió provides a satellite channel under the name “Duna TV”.

The public service television companies undertook efforts to launch their own thematic channels:

- In 2005 MTV announced the launch of its third channel “m3”.¹⁵ According to the registration with the ORTT this channel is intended to be a thematic satellite news channel covering the work of the Parliament.

Shortly after MTV’s announcement, Duna Televízió also applied to the regulatory authority for the registration of an additional public service satellite channel called “Autonómia”. This channel is devoted to “the presentation of national identity and cultural diversity”.¹⁶

Since PSB channels benefit from “must carry” obligations the launch of these new programme services triggered legal debates with cable operators, which are obliged to distribute all the channels of the public service broadcasters free of charge and therefore challenged the decisions of the ORTT to register “m3” and “Autonómia”.¹⁷ The dispute concerns the interpretation of the Broadcasting Act, and in particular the question of whether the Act allows public service broadcasters to launch new satellite services without an explicit mandate. The cable operators argue that this is not the case and furthermore that the lack of a specific public service mandate for launching the new service also raises concerns under the state aid rules of EC competition law.

13) Broadcasting Act §2, §18.

14) Broadcasting Act §23 (4).

15) The programme service “m3” has not been launched yet, nor has any date has been fixed for its launch.

16) Source: the official registry of the ORTT.

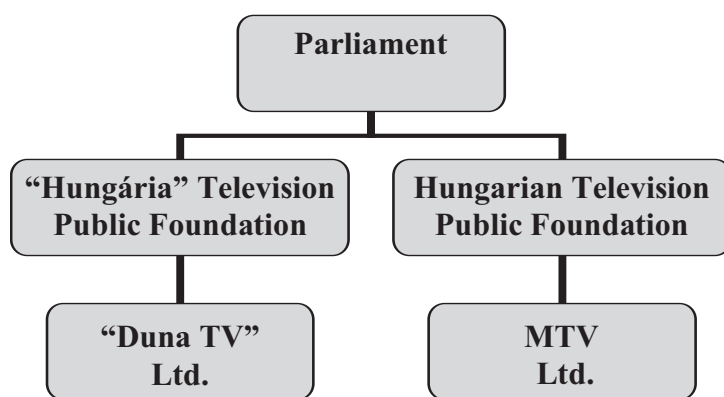
17) See Márk Lengyel: HU - Legal Action against new Channel of the Public Service Television, IRIS 2005-9: 13, <http://merlin.obs.coe.int/iris/2005/9/article23.en.html>

One important factor in measuring public service broadcasters' impact on society is the ratings which their programmes achieve. According to the relevant surveys the joint audience share of the public service channels is approximately 21%.¹⁸

2. Corporate Structure

The rules in the Broadcasting Act governing the institutional aspects of public service broadcasting build to a large extent on various decisions that the Constitutional Court had issued during the years 1992 to 1995¹⁹ and in which the independence of the public service broadcasters as well as their institutional and financial guarantees played a central role. In these standard-setting decisions the Constitutional Court established that the need for the uncompromised independence of public service broadcasters derives from the basic right to freedom of expression. The court emphasised several times that the independence requirement applies not only with regard to the government but also in the broadcasters' relations with parliament, the political parties and with the State as such.

On these grounds, the Broadcasting Act provides in essence the following institutional structure for the public service broadcasters:



Both Hungarian public service television companies operate within an institutional structure with the following most important characteristics:

- The legal form of the broadcasting companies is the company limited by shares.²⁰ The public service televisions have only one share, which according to an explicit provision of law is held by the respective public foundation.²¹ Therefore the public foundations own the public service television companies.
- In Hungarian law a "public foundation" is a foundation established by public institutions.²² The basic reason for inserting public foundations between the Parliament and the PSBs was to secure the independence of the latter. The general rules on foundations²³ provide that their founders lack direct control over them. Therefore foundations are relatively independent pools of resources dedicated to special purposes. As a result, the form of a foundation may, in principle, grant a significantly higher degree of autonomy for the organisation than other legal forms.
- The tasks of the public foundations include the enactment of the Code of Public Service Broadcasting²⁴ for the respective broadcasting company. The purpose of a Code of Public Service Broadcasting is to define the public service tasks in more detail. The broadcasting companies submit annual reports to the public foundations concerned on their compliance with their respective Code of Public Service Broadcasting. The boards of trustees of the public foundations deliver a merely declaratory decision on these reports since they are not empowered to impose any financial or other legal sanctions in case of non-compliance.
- Because of this structure the public service broadcasters do not have any formal relationship with the government.

18) Average in 2004, source: AGB Nielsen Media Research, available at http://cs.agbnmr.com/Uploads/Hungary/stat_shr_negyedevves.pdf

19) Decisions 32/1992. (VI. 10.) AB; 47/1994. (X. 21.) AB; 31/1995. (V. 25.) AB.

20) Broadcasting Act §64 (3).

21) Broadcasting Act §64 (4); §65

22) It should be noted that Hungarian law no longer provides for the possibility of establishing public foundations. However, this does not prevent already-existing public foundations from continuing their activities.

23) Act IV of 1959 (Civil Code) §§74/A-74/G

24) Broadcasting Act §29.

- Similarly, there is no direct relationship between the Parliament and the public service broadcasters. The Parliament provides the financing of public service broadcasting activities via the public foundations. In addition, the Parliament also elects a proportion of the members of the governing bodies of the public foundations.

In assessment of this organisational structure it can be concluded that the legislator had followed the reasoning of the Constitutional Court and adopted a series of legal measures in order to secure the institutional independence of public service broadcasters.

3. Financing

The Hungarian public service broadcasters are financed both by State resources and by income from their own commercial activities.

As to public financing the following sources can be defined as regular:

- The most important income for PSBs is the licence fee.²⁵ According to the provisions of the Broadcasting Act the licence fee shall be paid to the Broadcasting Fund.²⁶ This fund is managed independently from the central State budget by the ORTT, the independent regulatory authority for the media sector.

Originally, households equipped with one or more television sets had to pay a licence fee. This was changed in 2002, when the government decided to assume this obligation, and to pay the amount of the total licence fee from the central State budget. Since 2002 this has remained the way of paying the licence fee to the Broadcasting Fund.

The public service broadcasters are entitled to different proportions of the total licence fee income as defined by the Broadcasting Act.²⁷ In this respect 40% of the licence fee income is due to MTV and 24% is to be paid to Duna TV.²⁸

For the year 2006 the actual amounts have been determined as follows:

- The total licence fee income (paid by the state budget) is HUF 24,061 million (approximately EUR 92 million);
- The licence fee income due to MTV is HUF 10,239 million (approximately EUR 39 million);
- The licence fee income due to Duna TV is HUF 6,143 million (approximately EUR 23.5 million).²⁹

These amounts shall be paid by the Broadcasting Fund to the public service broadcasting companies via their respective public foundations.

- In addition to the licence fee financing, Public Service Broadcasters also receive State-paid subsidies in order to cover the costs of their programme transmission.³⁰

For the year 2006 this means

- in the case of MTV a subsidy of HUF 6,929.2 million (approximately EUR 26,5 million);
- in the case of Duna TV a subsidy of HUF 1,341.6 million (approximately EUR 5 million).³¹

Payments are made directly to the telecommunication company responsible for the distribution of the public service broadcasts.

- Another source of public financing for the public service televisions is the broadcasting fee the State collects from MTM-SBS Zrt., the operator of the largest Hungarian commercial television channel.³² For 2006 this fee amounts to HUF 1,638 million (approximately EUR 6.25 million)³³. This sum shall be divided between MTV and Duna TV in a ratio of 70%:30%.

25) Broadcasting Act §§79-84.

26) Broadcasting Act §§77-78.

27) Broadcasting Act §84 (2).

28) Of the remaining licence fee income 28% serves as basis for the work of the *Magyar Rádió Zrt.* (the public service radio). A further 6% is used for tenders aimed at sponsoring public service programmes. The rest covers the operational expenses of the ORTT and of the public foundations of the public service broadcasters.

29) Act CLII of 2005 on the Budget of the National Radio and Television Commission for 2006.

30) Broadcasting Act §75 (1).

31) Act CLIII of 2005 on the Budget of the Republic of Hungary for 2006.

32) Broadcasting Act §131 (2).

33) Act CLII of 2005 on the Budget of the National Radio and Television Commission for 2006.

This source of income exists because prior to the launch of MTM-SBS' commercial television programme in 1997, MTV had used the terrestrial network currently used by the MTM-SBS programme for the transmission of MTV's second public service television channel.

In addition to these regular sources, the system of financing public service broadcasters also allows for *ad hoc* subsidising. For example, such *ad hoc* allocation of resources to the benefit of MTV took place in 2006 in order to promote the reorganisation of the broadcaster.³⁴

Besides public financing, public service broadcasters are also allowed to compete for commercial revenues. However, their presence on the advertising market is limited by stricter advertising and sponsorship rules. For example: public service broadcasters are allowed to broadcast six minutes of advertising per hour³⁵ while their commercial counterparts have the possibility of inserting twice as much commercial content into their programmes.

B. Decision Making: Structures and Procedures

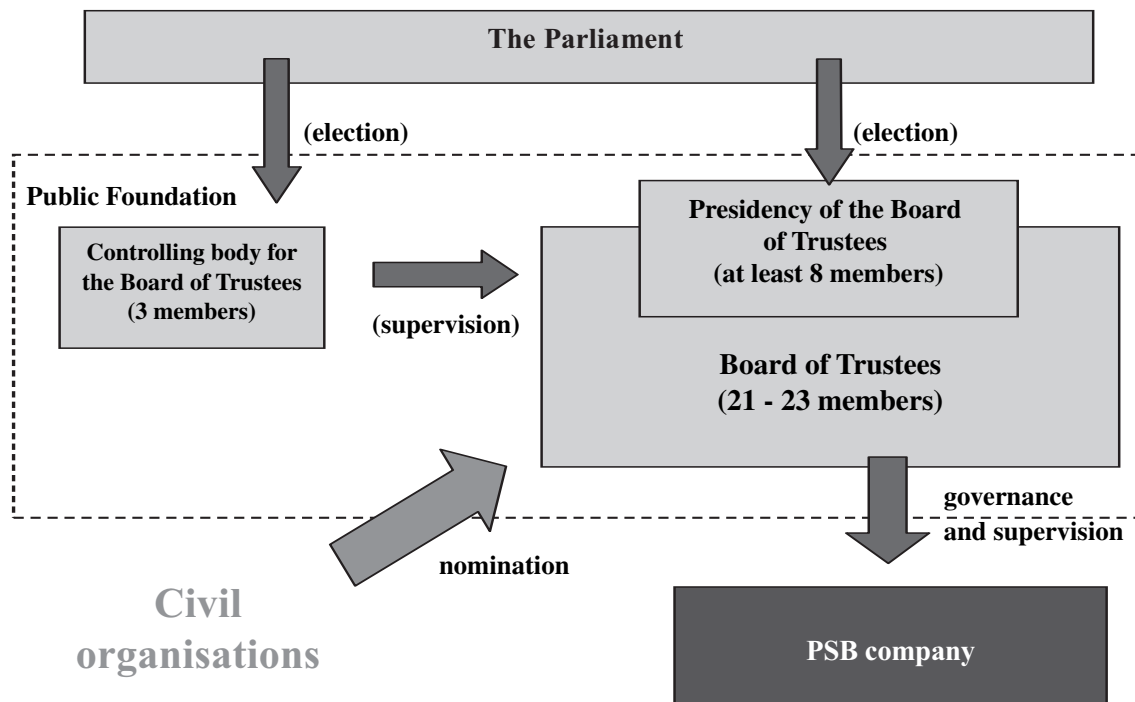
1. Decision-Making Process

The relevant decision-making structures concern two different levels, namely:

- a) the level of the public foundations;
- b) the level of the broadcasting companies.

Decision Making at the Level of the Public Foundations

The decision-making bodies of the public foundations are the boards of trustees. The composition of the boards of trustees can be presented this way:



The boards of trustees is composed of two different elements:

- The presidency has the role of representing the State in the governance of the public service broadcaster. Therefore, this body mirrors the composition of the parliament to a certain extent. The members of the presidency are elected for a four year-term of office that overlaps with the term of the government and of the Parliament. The members of the presidency are expected to perform their duties on a professional basis. They have to comply with strict rules of incompatibility.

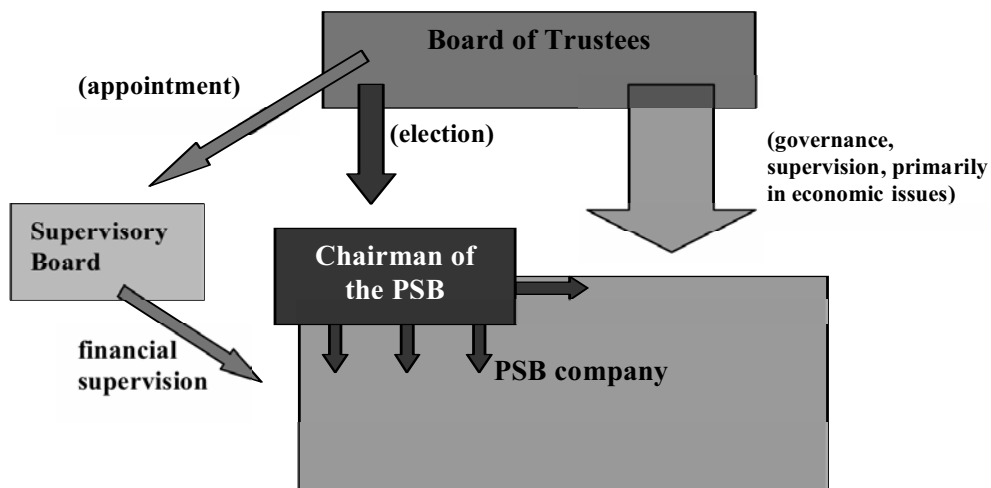
34) Act CLIII of 2005 on the Budget of the Republic of Hungary for 2006 §106 (4).

35) Broadcasting Act §24 (1).

- Apart from the presidency, the body of the board of trustees is expected to represent society. The "ordinary" members of the board are nominated by civil associations. The Broadcasting Act defines the categories of organisations entitled to nominate members (i.e. national self-governments of the national and ethnic minorities living in Hungary, churches, human rights organisations, trade unions, professional organisations representing journalists, women, children and the youth, people with disabilities, etc...). The civil members of the board are appointed for a period of one year. They are not entitled to receive a salary for carrying out their functions; only compensation for expenses incurred in connection with their membership is paid.

Decision Making at the Level of the Broadcasting Companies

The decision-making procedure at the level of the public service television companies is similar to the decision making mechanisms of other companies:



The boards of trustees are entitled to elect the chairman of the company, but this shall be done in a competitive procedure.³⁶ Within the board of trustees the presidency has the right to nominate one or more candidates for this position. The election takes place by a vote at the plenary session.

The chairman of the public service broadcaster is elected for a four-year term. He is also subject to strict incompatibility rules designed to keep him separate from the political sphere and from other economic entities active on the media market.

The chairman of the public service company is entitled to define the programming of the public service broadcaster, and to make all the operative decisions at the level of the broadcasting company. In practical terms this means the leadership of the company and the arranging of the actual performance of the public service tasks.

2. Impact of Politics

The general political climate is reflected in the most evident manner in the board of trustees of the public foundations supervising the PSB companies.

As already noted, Parliament elects the members of the presidency, which are nominated by the parliamentary factions. The rules of the elections are designed with the purpose of securing a balanced representation of the governing parties and the opposition parties within this body.³⁷

It should also be noted that this legislative objective has not been fully met: in previous years there were cases when the political debates led to the formation of presidencies representing unilaterally the parties actually governing. As a consequence the formation of the presidencies of the boards of trustees became the subject of political and legal debates several times during the past ten years.

A small number of the legal questions that arose in these debates on the membership of the presidencies was solved in 1999 by the interpretative decision of the Constitutional Court,³⁸ but the

³⁶) Broadcasting Act §69 (2).

³⁷) Broadcasting Act §55.

³⁸) Decision 22/1999. (VI. 30.) AB.

composition of the bodies representing the State in the work of the public foundations controlling the PSB companies still continues to trigger controversies from time to time.

3. Impact of Civil Society

As the overview of the institutional background shows, the main organisational features designed for involving the general public in making the decisions relating to the performance of the public service tasks are the board of trustees of the public foundations governing the public service broadcasters. Its civil members are supposed to exercise genuine social control over the public service television companies.

In order to get a clear view of the actual degree of social participation, the balance between the presidency (representing the State) and the civil members shall be examined.

The balance between the State and the social elements in the boards of trustees cannot be described merely by the number of members (8-12 members in the presidency and 21-23 additional civil members in the board). In this respect attention should also be paid to the following factors:

- The presidency and the plenary session of the board operate with different intensity. While the work of the presidency is continual, the board has usually only 4 plenary sessions per year.
- In practice the one-year term of office proved insufficient for civil members to become familiar with the operation of the public service broadcasters.
- In addition, civil members taking part in the work only on a part-time basis have significantly slighter chances of influencing the decisions of the board than the professional members of the presidency.

As a consequence, the representatives of civil society, despite their higher number, are less well positioned to bring their particular interests to bear in the decision-making process than members of the presidency appointed by the Parliament.

Chapter II: Cultural Diversity

A. Influence of Relevant National or Cultural Aspects

The social factors that are most pronounced within the remit of public service broadcasters are the issues relating to national and ethnic minorities.

- For historical reasons there is a large population of ethnic Hungarians living in the neighbouring countries. The public service television company Duna TV is especially dedicated to serving their cultural and informational needs.³⁹

Based on this mission the programmes of the company (*Duna TV* and *Autonómia*) are broadcast via satellite free-to-air.

It is important to note that the programmes of Duna TV (especially its main programme) also form an integral part of the Hungarian national media landscape. Therefore the broadcaster cannot be regarded as a provider of programme services targeting exclusively a population living in foreign countries.

- There are also foreign ethnic minorities (such as Slovaks, Serbians, Germans, Rumanians, etc... and also a relatively large Roma population) living within the borders of Hungary.

Serving their needs is a task defined with particular detail even by the Broadcasting Act.

Besides the aspects of PSB mission relating to ethnic minorities, special emphasis is placed on providing news services.⁴⁰ In this respect the Broadcasting Act provides predominantly qualitative obligations. In general this corresponds with the expectations of society.

³⁹) Broadcasting Act §30 (1).

⁴⁰) Broadcasting Act §23 (2).

As far as the delineation of the core public service mission is concerned, the most interesting interaction between the public service broadcasters and their professional environment takes place in connection with the commercial broadcasters.

It has already been mentioned that the two national commercial television channels have an obligation to broadcast a significant portion of public service content. Their corresponding duties are defined in detail in their broadcasting contracts concluded with the ORTT, the national regulatory authority. These duties are subject to periodic reviews carried out by the ORTT on the basis of reports submitted by the commercial channels. The ORTT can impose sanctions in case of failure to meet the content requirements imposed on the commercial broadcasters.

This mechanism leads to a situation in which the core questions of public service broadcasting are discussed in two very different *fora*:

- The evaluation of the public service tasks takes place within the institutions of the public service broadcasters and their public foundations. There are essentially no legal consequences attached to this review process, it is carried out without any substantial input from sources outside these institutions.
- In contrast, the public service tasks of the commercial broadcasters are subject to external review with the possibility of legal consequences.

This situation leads to the particular outcome that the commercial broadcasters play a substantial role in interpreting what the category of public service in the Hungarian broadcasting system entails. There are opinions that this necessarily leads to the devaluation of public service to a certain extent.

B. Reflections of Diversity in Organisational Structure

The following evaluation of the organisational aspects has to consider, once more, two different levels:

- the allocation of public service tasks to the entire media system;
- the organisational structure of the public service broadcasters.

Regarding the allocation of the public service tasks, the corresponding obligations of the national commercial channels and the implications of this system have already been referred to.

It is also necessary to note the kind of “public broadcasters” that actually carry out the tasks. Contrary to what the name of this category suggests, these broadcasters are private entities, which provide public service programming. They themselves define the details and the guarantees of how to fulfil their commitment in their respective codes of public broadcasting.⁴¹ The status of “public broadcaster” can be awarded upon application submitted to the ORTT.

In exchange for carrying out public service tasks, these broadcasters are exempt from the general obligation to pay a broadcasting fee to the ORTT. They are also entitled to apply for financial support from the Broadcasting Fund. At the same time they are subject to the same advertising and sponsorship restrictions as the public service broadcasters.

In practice, mainly local and regional commercial broadcasters have accepted this possibility of providing public service. For the purposes of the public service mission their importance is secondary.

As regards the organisational aspects of the public service broadcasters, the most obvious feature is that the Broadcasting Act defines almost the same institutional structure in the case of MTV and Duna TV, even despite the clear and substantial differences in terms of their role. The only difference between the composition of their governing bodies is that their members are recruited from slightly different categories of civil organisations and that on the Board of Trustees of the Hungária Television Public foundation (which governs Duna TV) Hungarians living outside the borders of Hungary are also represented.

In summary it can be concluded that the Hungarian regulation focuses mainly on the institutional and financial aspects of public service broadcasting. The Broadcasting Act spells out the public service mission only to a limited extent.

⁴¹ Broadcasting Act §29.



*Maja Cappello and Roberto Mastroianni**

Chapter I: Regulatory Framework

A. Mission, Economic and Financing Model

1. Mission

Italian public service broadcasting is carried out by *RAI-Radiotelevisione Italiana S.p.A.* (hereafter: *RAI*), according to the Broadcasting Code of 2005,¹ which effects the reform of public service broadcasting adopted in 2004 by the so-called Gasparri Law,² which is the current legal basis for public service broadcasting. A specific chapter of the Broadcasting Code is devoted to public service broadcasting and to the governance of the public service broadcaster.

Italian legislation distinguishes between information activity, considered as a service of general interest to be carried out by any broadcaster and financed by advertising or subscriptions (licence fees), and public service broadcasting which goes beyond information activities and is reserved to *RAI*, until 6 May 2016, according to the law and to a specific contract of service.

The difference between these two activities of information and public service is essential in drawing the line between the duties of ordinary commercial broadcasters and the broadcaster chosen by law to carry out the public service activity.

Information activity has to ensure the following, according to Article 7 of the Broadcasting Code: (i) truthful presentation of facts and events, so as to ensure the free development of opinions, without any sponsoring of news programmes; (ii) daily transmission of news programmes; (iii) access for all political subjects to information programmes and party political or electoral broadcasts in conditions of impartiality and non discrimination; (iv) broadcasting of official releases or declarations of public institutions; (v) ban on any methodology or technique capable of manipulating the content of information.

The law defines public service broadcasting along broad lines and includes the following, according to Articles 45 and 46 of the Broadcasting Code: (i) broadcasting on the whole national territory of

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1) Articles 7 and 45-49 of the Broadcasting Code, approved by legislative decree of 31 July 2005 no. 177, *Testo unico della radiotelevisione*, [2005] *Official Journal of the Italian Republic (GURI)* 208, available at <http://www.parlamento.it/leggi/deleghe/05177dl.htm>

2) Law of 3 May 2004, no. 112/2004, *Norme di principio in materia di assetto del sistema radiotelevisivo e della RAI - Radiotelevisione Italiana Spa, nonché delega al Governo per l'emanazione del testo unico della radiotelevisione*, [2004] *GURI* 104, available at <http://www.senato.it/loc/link.asp?tipodoc=leggigu&doclocatorserver=doclocator&id=112&anno=04>

programmes of public interest; (ii) an appropriate number of hours, including during prime time, devoted to education, information, cultural promotion through cinema, theatre and musical works; (iii) access to programming for political parties, trade unions, religious groups and other associations of social interest; (iv) programming destined to be broadcast abroad to promote the knowledge of the Italian language and culture; (v) protection of historical archives of radio and television programmes; (vi) broadcasting in minority languages; (vii) measures to protect disabled people; long-distance teaching; (viii) realisation of interactive digital services.

The principle whereby public service broadcasting should reflect the changing values of Italian society is thus not only a general trend in the operation of *RAI*, but also a binding legal provision enshrined in the broadcasting regulations in force.

The details of the public service remit are set out in the above-mentioned contract of service approved every three years by the public service broadcaster and the Ministry of Communications (Mincom), according to the guidelines adopted by Mincom and the Communications Authority (*Autorità per le Garanzie nelle Comunicazioni* – Agcom) to be defined “in relation to market developments, technological progress and to changing cultural, national and local requirements. The first guidelines after the entry into force of the Broadcasting Code were adopted jointly by Mincom and Agcom on 21 September 2006,³ in which more specific obligations are detailed with reference to content and quality of programming and investments in digital technology. The current contract of service expired in December 2005⁴ and the new contract which has been subject to a public consultation is now being drafted.

The National Contract of Service sets out the general obligation for *RAI* to provide broadcasting output of a certain quality. Namely, *RAI* undertakes to consider viewers’ preferences, to respect media pluralism, to promote cultural development, to draw inspiration from the values of society, to ensure correct use of the Italian language, to update its programming and to promote regional information, which is carried out by the third public service channel *Rai Tre*.

The definition of the regional remit is left to regional contracts of service to be signed between the Regions and the public service broadcaster according to regional laws that each of the 20 Italian Regions are entitled to adopt. Article 45(1) Broadcasting Code provides that the rights and obligations of the public service broadcaster are set out not only in the National Contract of Service, but also in regional and, for the Autonomous Provinces of Trento and Bolzano, provincial contracts of services; the purpose of such regional and provincial contracts is, according to Article 46(2) Broadcasting Code, to further specify the public service obligations laid down in the regional laws.

The public service broadcaster is also allowed to carry out commercial and editorial activities other than public service ones, both directly as well as indirectly through associated companies, provided that these additional activities do not interfere with public service duties, and that they improve the balanced management of the company.

Article 48 of the Broadcasting Code charges Agcom with verifying that public service broadcasting is carried out effectively within the parameters defined by the law and the contract of service as well as according to the Commission communication on the application of state aid rules to public service broadcasting.⁵ In cases of non compliance, Agcom opens a formal proceeding in order to verify the circumstances together with the public service broadcaster. Should the inspections confirm that there has been an infringement, Agcom notifies a deadline for removing the violations; in case of particularly serious or repeated infringements or in cases of no behavioural change after the notification of the deadline, Agcom can impose a fine of up to 3% of the turnover and, in cases of new violations, suspend the activities of the company for up to 30 days.

3) Agcom Deliberation of 21 September 2006, no. 546/06/CONS, *Emanazione delle linee-guida di cui alla delibera n. 481/06/CONS sul contenuto degli ulteriori obblighi del servizio pubblico generale radiotelevisivo ai sensi dell'articolo 17, comma 4, della legge 3 maggio 2004, n. 112 e dell'articolo 45, comma 4, del testo unico della radiotelevisione*, [2006] GURI 240, available at: http://www.agcom.it/provv/d_540_06_CONS.htm

4) Decree of the President of the Republic, 14 February 2003 “*Approvazione del contratto di servizio tra il Ministero delle comunicazioni e la RAI - Radiotelevisione Italiana S.p.a. per il triennio 2003-2005.*” [2003] GURI 59. Although this contract expired on 31 December 2005, according to Article 35(1) thereof it will remain in force until the subsequent contract becomes enforceable. The full text of the contract is available at: http://www.comunicazioni.it/it/DocSupp/627/contratto%20rai%202003_bis.pdf

5) *Official Journal* C 320 of 15 November 2001.

2. Corporate Structure

RAI is currently a company owned by the State, with a holding called RAI-Holding S.p.A. which is the result of a merger with the formerly existing RAI-Radiotelevisione Italiana. The fusion and the statute of the new company were adopted on 8 October 2004.⁶ As a result of this, the Executive Board of the latter is the Board of the merged company.

After the merger, the law envisages the sale of the State's shares through a public sales offer, in order to create a public company. A certain quota of the shares is reserved to citizens that have regularly paid the subscription fee to the State. The law envisages a maximum limit of 1% of the shares for each subject and prohibits agreements between subjects owning together 2% of the shares from having voting rights. This limitation has been criticised as a ban on financial investors from entering the company with a more significant share.

The governing body is an Executive Board composed of nine members charged with ensuring that the duties of public service broadcasting are carried out effectively. According to Article 49 of the Broadcasting Code, the Board is in charge for three years, a term that is renewable once; the current Board was appointed on 31 July 2005.

The Government appointed after the elections of April 2006 has made the reform of public service broadcasting a central project and before the end of 2006 a Bill will probably be presented to Parliament in order to change the governance structure.

3. Financing

Italian law establishes for public service broadcasting a mixed type of financing, with revenues from the State and from advertising.

The contribution of the State for the pursuit of the public service remit is determined every year in the budget law and derives from a subscription fee (license fee) paid by anyone who is an owner of one or more television sets according to Law no. 880/1938, which is still in force.

Subscription fees are ownership taxes, paid to the Ministry of Finance, which are due regardless of the question of whether the TV set is actually used and of the actual choice of television channels, i.e. even if the viewer watches only commercial channels or pay-tv.

There are two different types of fees: ordinary subscriptions due by the owners of a home TV set and special subscriptions due by the owners of one or more radio or TV sets open to the public, as in restaurants or bars. The regular fee for 2006 is EUR 99.60. In cases where a non-payment of subscription fees is detected by the controlling authorities, the user will have to pay an extra charge of up to EUR 619 in addition to the amount of the subscription fees.

The definition of the amount of the public contribution has to be determined by the Ministry of Communication before 1 November of each year according to the most recent budget of the company and calculated for the following year as expected costs of public service activities.

For this purpose the public service company has to adopt separate accounts for public service activities and other services according to an analytical accounting system. The latter has to be adopted according to a scheme approved by Agcom⁷ which distinguishes between three virtual companies: a public service aggregation referring to costs and revenues deriving from public service activities; a commercial aggregation referring to costs and revenues deriving from production, programming and sales activity with commercial purposes, and a technical aggregation referring to costs and revenues deriving from support activities in relation to the first two aggregations. This new accounting system, which applies since 2006, has to be checked every year by an independent auditor.

6) Ministerial decree of 8 October 2004, *Approvazione dello statuto della società incorporante all'esito di fusione di RAI - Radiotelevisione Italiana S.p.a. e RAI Holding S.p.A.*, available at: http://www.camera.it/_bicamerale/leg15/rai/norme/dm8ottobre-04.htm

7) Agcom deliberations of 10 February 2005, no. 102/05/CONS, *Modalità di attuazione dell'articolo 18, commi 1 e 2, della legge 3 maggio 2004, n. 112*, available at http://www.agcom.it/provv/d_102_05_CONS.htm and of 9 June 2005, no. 186/05/CONS, *Approvazione dello schema di contabilità separata della rai ai sensi dell'articolo 18, comma 1, della legge 3 maggio 2004, n. 112*, available at http://www.agcom.it/provv/d_186_05_CONS.htm

While public contributions are destined only for public service activities, according to the above-mentioned Communication on State aid to public service broadcasting, advertising revenues might be gained by both public service activities and commercial services. Due to the presence of public financing, the public service broadcaster has reduced its advertising limits compared to commercial broadcasters: 4% per week vs. 20% per day, and 12% per hour vs. 18% per hour.

A specific provision in terms of control and transparency was already laid down - before the above-mentioned intervention of Agcom in 2005 - in the Contract of Service of 2003 which obliges *RAI* to mention in separate accountings the resources of revenues deriving from the State and those resulting from commercial activities.

In order to control the effectiveness and the accuracy of the accounting system, the Contract of Service has set up a Commission composed of representatives of the Ministry of Finance, Ministry of Communications and of *RAI* in equal numbers. Additionally, each June *RAI* must send a complete report to the two Ministries on the economic and financial results of the management.

B. Decision Making: Structures and Procedures

1. Decision-Making Process

The members of the Board are elected by the shareholders of the company from among persons with publicly recognised competencies and who have distinguished themselves in the juridical, economical, scientific, cultural or communications sectors.

The Chairman of the Board is appointed by the Board from among its members and is subject to the approval, adopted by a two-thirds majority, of a specific Parliamentary Commission charged with adopting guidelines and monitoring the accomplishment of the public service mission.

The procedure for the appointment of Board members is directly linked to the privatisation plan of *RAI*.

Once the privatisation will have been completed, the election of the members will be made by the Assembly of shareholders on the basis of lists of candidates that every shareholder owning at least 0.5% of the capital is entitled to present. Until all the State's shares have been sold, the representative of the Ministry of Economy and Finance, who formally holds the State's shares, presents a separate list of candidates whose number is proportional to the shares that are still held by the State.

In the meantime, as long as the shares owned by the State still exceed 10% of the capital, due to "reasons of general interest", seven of the members of the Executive Board will be appointed by the above-mentioned Parliamentary Commission, while the remaining two members, among whom is the Chairman, are appointed by the major shareholder, i.e. the Government.

The Board appoints the Director General of the company. He is responsible for the management of the company, participates at the meetings of the Board without a vote, proposes to the Board the nominations of the managers and the Vice-Director General, signs all contracts and acts of the company, and provides the Board with all useful information on the results achieved.

Supervision of the programming of the public service broadcaster falls within the competence of the above-mentioned Parliamentary Commission which, at the same time, appoints the majority of the members of the Board and controls their activities.

2. Impact of Politics

According to the current provisions, the appointment procedures are completely under the control of the Government and of the Parliament and consequently reflect the Italian political structure.

This can easily be seen reflected also in the choice of the journalists acting as directors of the news sections of the various channels: as their appointments are made by the Director General who is nominated by the Board, which is itself almost totally appointed by the Government, the link with politics is very strong.

This is the reason why a change in the Government often leads to a quick change of the journalists responsible for the news sections (so-called *lottizzazione*) or to a shadowing strategy where journalists

apparently belonging to a certain political affiliation have been confined to time slots with very low audience shares or removed from the screen while the company still continued to pay them until the date of expiration of their contracts.

Politics is often reflected also in the editing of news and current affairs programmes, where the reports are presented in a sandwich-like structure: the presentation of the position of the Government is followed by a sort of round table of the minority parties, which is in turn followed by the position of the majority parties, applying the rule of thumb of three thirds. The practical result is that the majority parties have a strong influence on the way information is perceived by the public.

Also, own-produced fiction can show a strong presence of politics in the choice of themes, e.g. religious icons to call upon Catholics, police heroes in times of war or terrorism.

3. Impact of Civil Society

At the moment the general public is not represented in the structure of the company, and decides only by influencing the audience shares.

Nonetheless, apart from the relevant provision of the National Contract of Service on the assessment of the quality of programming (see below Chapter II, A.2., at the end), guidelines adopted jointly by Agcom and Mincom introduce a Committee of seven experts charged with quality evaluation according to quality standards defined in the contract of service. The experts will be chosen by Agcom and Mincom jointly among particularly qualified experts in communications issues.

Chapter II: Cultural Diversity

A. Influence of Relevant National or Cultural Aspects

The principles underlying the definition of the remit and tasks of public service broadcasting in Italy have, by and large, reflected the changing *ethos* of the general public in respect of television broadcasting. As far as Italian public broadcasting service is concerned, it is contended that its tasks and remits are, and have consistently been, strongly influenced by changing national and cultural specificities. While the political changes that led, in the 80s, to the transition from a regime of state monopoly to one of public service broadcasting, it is the relationship between public service broadcasting currently entrusted to *RAI* and its audience that is dealt with in the second chapter of this report.

1. Language Requirements Imposed on Public Service Broadcasting

Perhaps the most tangible aspect of the interaction between public service broadcasting and its audience is the language in which the television programmes are broadcast. In this respect, it must first be recalled that although Italian is the language spoken by the majority of Italian citizens, several other languages are spoken and officially acknowledged, namely German and Ladin in the Autonomous Province of Bolzano; Ladin for the Autonomous Province of Trento; French in the Valle d'Aosta Region and Slovenian in the Friuli Venezia Giulia Region.

This language diversity is reflected in a number of provisions of the Italian broadcasting legislation. First of all, the protection of broadcasting intended for legally recognised linguistic minorities is one of the "General principles governing the broadcasting system for the safeguard of pluralism and competition" under Article 5 of the Broadcasting Code, which are binding both for the public service broadcaster and the private commercial broadcasters. Furthermore, Article 45 of the Broadcasting Code, more precisely the provision defining the public service broadcaster's remit, at Subparagraph 2(d) provides that ethnic and linguistic minorities may apply for access to programming, at Subparagraph 2(f) expressly requires the public service broadcaster to broadcast "radio and television transmissions in German and Ladin for the Autonomous Province of Bolzano, in Ladin for the Autonomous Province of Trento, in French for the Region of Valle d'Aosta and in Slovenian for the Region of Friuli Venezia Giulia".⁸ The safeguard of linguistic minorities is also referred to in other provisions of the Broadcasting Code, such as Article 8 in respect of the principles governing local broadcasting, Article 30 on booster stations and Article 42 as regards the allocation of broadcasting frequencies. Finally, it is worth recalling that the provisions of the Broadcasting Code concerning linguistic minorities have been duly

⁸ Broadcasting Code (fn. 2 above), Article 45(2)(f).

implemented by the National Contract of Service⁹ (and, as to the future National Contract of Service, by the Guidelines)¹⁰ and that the provision of broadcasts in the German, Ladin, French and Slovenian languages has been the subject of specific conventions between the Italian Presidency of the Council of Ministers and RAI.¹¹

2. Content Offered by the Public Service Broadcaster in View of Its Mission

Diversification in regard to Programmes: How Special Policy Goals Are Reflected in the PSB Mission

On a more theoretical level, it cannot be overstated how the policy goals enshrined in the Italian Constitution and in the general broadcasting legislation are reflected in the public service broadcaster's remit, as defined in Article 45 of the Broadcasting Code, in the National Contract of Service and, *de lege ferenda*, in the Guidelines.

For instance, the freedom of expression – and thus the protection of media pluralism – enshrined in Article 21 of the Italian Constitution,¹² as well as in Articles 3, 4 and 5 of the Broadcasting Code, is mirrored by the public service broadcaster's obligation under Article 45(2)(d) of the Broadcasting Code to grant access to its programming (i.e. to reserve broadcasting time) to political parties, labour unions, religious associations, NGOs etc.¹³ Equally, the safeguard of linguistic minorities under Article 6 of the Constitution is the basis for the language requirement provisos dealt with in Paragraph 1) of the present chapter.

Examples of general public policy goals in the public service broadcaster's remit abound. Indeed, the cultural and educational obligations on the public service broadcaster under Article 45(2)(b) Broadcasting Code as described under Kapitel I, A.1. are clearly the corollary of the Republic's duty to promote cultural development under Article 9 of the Constitution. Likewise, as will be illustrated below in further detail, the promotion of local autonomy under Article 5 of the Constitution is the policy goal underlying both the requirement for the public service broadcaster to have an office in each Region and in each of the Autonomous Provinces of Trento and Bolzano (Article 45(2)(p) of the Broadcasting Code), and the obligation to promote and improve decentralised production centres (Article 45(2)(r) of the Broadcasting Code).

Targeted Audience: How regional, Ethnic, and Personal Desires Are Reflected in the PSB Mission

Just as policy goals affect the public service broadcaster's general mission, regional, ethnic and personal viewers' requirements have a direct bearing on its actual programming. Indeed, as a rule, Article 2, first alinea, of the National Contract of Service in force stipulates that RAI undertakes to "respect and satisfy the requirements of users, taking into account their different preferences, opinions and taste"; Article 2, fourth alinea, further requires RAI to draw inspiration, as to its programming, from the values of democratic society.

In practice, the importance of viewers is most evident in Article 3(1) of the National Contract of Service, whereby RAI undertakes to broadcast programmes belonging to the *genres* described in letters

9) See in particular Article 1(4) and Article 12 of the National Service Contract.

10) Compare Article 7 of the Guidelines (fn. 4 above).

11) Decreto del Presidente della Repubblica 31 July 1997 "Approvazione della convenzione stipulata in data 11 giugno 1997 fra la Presidenza del Consiglio dei Ministri - Dipartimento per l'informazione e l'editoria e la RAI - Radiotelevisione Italiana S.p.a., per la trasmissione di programmi radiofonici e televisivi in lingua francese per la regione autonoma Valle d'Aosta", [1997] GURI 249; Decreto del Presidente della Repubblica 31 July 1997 "Approvazione della convenzione stipulata in data 11 giugno 1997 fra la Presidenza del Consiglio dei Ministri - Dipartimento per l'informazione e l'editoria e la RAI - Radiotelevisione Italiana S.p.a., per la trasmissione di programmi radiofonici e televisivi in lingua tedesca e ladina nella provincia autonoma di Bolzano", [1997] GURI 249; Decreto del Presidente della Repubblica 31 July 1997 "Approvazione della convenzione stipulata in data 11 giugno 1997 fra la Presidenza del Consiglio dei Ministri - Dipartimento per l'informazione e l'editoria e la RAI - Radiotelevisione Italiana S.p.a., per la trasmissione di programmi radiofonici e televisivi in lingua slovena nonch  radiofonici in lingua italiana per la regione autonoma Friuli Venezia Giulia", [1997] GURI 249 as amended by Decreto del Presidente della Repubblica 24 April 2000 "Approvazione dell'atto aggiuntivo alla Convenzione stipulata in data 11 giugno 1997 fra la Presidenza del Consiglio dei Ministri - Dipartimento per l'informazione e l'editoria e la RAI - Radiotelevisione Italiana S.p.a., per la trasmissione di programmi radiofonici e televisivi in lingua slovena, nonch  radiofonici in lingua italiana per la regione a statuto speciale Friuli-Venezia Giulia" [2000] GURI 268.

12) Deliberazione Assemblea Costituente 22 December 1947 'Costituzione della Repubblica Italiana', [1947] GURI 298. An up-to-date American-English translation of the Italian constitution may be found on: <http://www.legislationline.org/upload/legislations/4e/84/8d54de31535e08c956669691792d.htm>

13) Access to the public service broadcaster's programming is granted by the *Commissione parlamentare per l'indirizzo generale e la vigilanza dei servizi radiotelevisivi* according to the criteria set out in the following regulation: *Parlamento Nazionale Camera dei Deputati e Senato della Repubblica "Regolamento per l'accesso al Servizio radiotelevisivo pubblico"*, [2001] GURI 67.

a) to j) of the paragraph. For instance, according to lit. h) sports broadcasts should concern not only mainstream, but also “niche” sports. Likewise, while lit. j) generally deals with European and Italian films and fiction, lit. i) specifically refers to films “of outstanding artistic significance, including experimental pictures and one-reelers”. Moreover, the influence of strong minority groups is a clear respect for the public service announcements and broadcasts enumerated under lit. d), which range from liturgical ceremonies to consumers’ information campaigns, from the broadcasting time devoted to NGOs to traffic information and regional bulletins.

Discussed Subjects; Programmes Contributing to Informed Debate and Critical Thought; Educational Programmes

Viewers’ habits and preferences have an influence not only on the programme *genres* broadcast by RAI, but also on the specific subjects and topics discussed in such broadcasts. This is almost self-evident in respect of two types of programmes: special interest information programmes (Article 3(1)(b) of the National Contract of Service) and educational programmes (Article 3(1)(f) of the National Contract of Service).

An interesting example of the first type of programme is *Report*, a weekly special interest information broadcast which mainly resorts to freelance television reporters. According to the international accolades awarded to *Report* by independent bodies, the particular worth of such a broadcast lies in its ability to contribute to the development of informed debate and critical thought of the viewers. Indeed, *Report* has been one of the few programmes world-wide to broadcast the controversial footage “Confronting the Evidence” (produced by Jimmy Walter) concerning the unexplained circumstances of September 11; moreover, it is widely recognised that *Report’s* features on safety at airports and railways, on the public financing of newspapers etc. have significantly contributed to an increased transparency as to public expenditure and the operation of public services in Italy.

As regards educational programmes under Article 3(1)(f) of the National Contract of Service, *RAI Educational* is undoubtedly worth mentioning. Actually, *RAI Educational* is not just a television broadcast, it is a RAI directorship involved in the production of educational programmes concerning history, science, arts and culture which are broadcast both on the three RAI analogue free-to-air channels, as well as on the satellite channels *RAI Edu 1* (which is aimed at the education of the young and which is also broadcast on DTT) and *RAI Edu 2* (mainly devoted to history and culture documentaries). By and large, *RAI Educational* programming is extremely diverse, thus reflecting the variety and diversity of the Italian political and cultural landscape.

Responsiveness to Discrete Audience Categories (Children, Users Who Are Sensory-impaired)

Article 3 of the Italian Constitution, besides stipulating that all citizens are equal, further provides that the Republic has the duty “to remove all economic and social obstacles that, by limiting the freedom and equality of citizens, prevent full individual development and the participation of all workers in the political, economic, and social organisation of the country”. It follows that public service broadcasting must be accessible to and promote the participation of all citizens, including discrete audience categories such as children and people with disabilities.

The Broadcasting Code devotes two important bodies of rules to viewers under the age of eighteen (generally referred to in the Italian legal texts as “minors”). Article 34 of the Broadcasting Code sets out a number of provisions – mainly negative obligations – which apply both to private and public service broadcasters and which deal with, for instance, the proscription on broadcasting certain content during specified viewing times, the participation of under-fourteens in advertising and television programmes etc.. Article 45(2)(h) of the Broadcasting Code instead imposes only on the public service broadcaster the positive obligation to broadcast, at appropriate times, programmes intended specifically for minors, which take into account the requirements and sensitivity of early infancy and of the age of development. Such provision has been duly implemented in the National Contract of Service in force: Article 3(1)(e) of the National Contract of Service generally describes this *genre* as “programmes intended for children and young people”; according to Article 6 RAI undertakes to devote a quota equal to ten per cent of its annual broadcasting time to programmes for the young aimed at promoting tolerance, inter-cultural understanding, sex education, civics etc. *De iure condendo*, while Article 4 of the Guidelines substantially confirms the content of the current National Contract of service, Article 6 thereof requires RAI to devote fifteen per cent of its annual turnover to the production or the purchase of European works, including a cartoon aimed specifically at the education of children.

As to people with disabilities, while Article 45(2)(h) Broadcasting Code in general requires the public service broadcaster to take appropriate measures for the protection of users who are sensory-impaired, according to Article 7 of the National Contract of Service *RAI* undertakes on the one hand to broadcast programmes aimed at increasing public awareness of disabilities and other social issues, and on the other hand to broadcast specific programmes with subtitles for viewers who are hearing-impaired, as well as broadcasts with audio commentaries for users who are visually-impaired. In this respect, Article 5 of the Guidelines stipulates that the next National Contract of Service shall provide for an increase in the broadcasting time devoted to people with disabilities as well as the enhancement and improvement of specific communication techniques (subtitles, audio commentaries and Sign Language), taking advantage of the possibilities afforded by new technologies.

The Qualitative Criteria Governing the PSB Output and the Assessment of the Quality of Its Programming

At first, according to Article 2(3) of the National Contract of Service *RAI* is under an obligation to set up an internal checking system to assess the compliance of its programming with the criteria set out above; *RAI* is also bound to conduct surveys of a representative sample of viewers to ascertain their perception of the quality of *RAI*'s programming; Article 2(4) of the National Contract of Service further requires *RAI* to establish a "Listening Centre" to gather the views of the users; finally, Article 2(5) of the National Contract of Service stipulates that the compliance of *RAI*'s programming with the above criteria shall be assessed by a four-person Committee (whose members are appointed in equal parts by *RAI* and by the National Users Council), which must take into account the data collected by *RAI* pursuant to Articles 2(3) and 2(4) of the National Contract of Service above.

On a more general level, Article 48(1) of the Broadcasting Code entrusts Agcom with the task of monitoring the public service broadcaster's compliance with its remit, and thus with the quality requirements set out in the National Contract of service.

3. Quota or Similar Requirements for Content relating to National or Cultural Aspects (e.g. National Works Requirements)

As far as quotas are concerned, the Broadcasting Code deals with the issue both in Article 6 and in Article 44. The former sets out the principle whereby content providers must devote the majority of their broadcasting time (excluding the time allocated to the types of programmes listed therein) to European works. The provision is further clarified in Article 44 of the Broadcasting Code: in particular, Paragraph 3 thereof stipulates that while commercial broadcasters must reserve ten per cent of their broadcasting time to European works by independent producers, the public service broadcaster must devote to such works twenty per cent of its broadcasting time. Equally, according to Paragraph 5 thereof, while commercial broadcasters must invest at least ten per cent of their annual turnover in the production or purchase of European works, the public service broadcaster will devote, as soon as the next National Contract of Service enters into force, fifteen per cent of its yearly turnover to such works. Furthermore, Paragraph 8 requires the public service broadcaster to reserve for European films and audiovisual works an unspecified amount of broadcasting time on its satellite channels.

The Broadcasting Code's provisions governing the regime for quotas must be read in conjunction with those set out in the National Contract of Service currently in force. Namely, Article 11(2) thereof requires *RAI* to devote twenty per cent of the revenues arising from the annual TV licensing fees; such amount is divided among films (forty per cent), cartoons (eight per cent) and other programmes.

4. The Influence of History and Religion on the PSB Programming

Historical events as well as the political and religious landscape have had an indisputable bearing on public service broadcasting. For instance, the very idea of a public service broadcaster which is open to all, respectful of pluralism and whose remit is defined by law in the public interest, dates back to the early post war years. Indeed, the Republican lawmaker was well aware of the role that mass communication (namely radio) had played as a means of propaganda during the fascist period.¹⁴ Such awareness may also explain the initial reluctance to loosen State control over nation-wide television broadcasting, which was operated under a regime of statutory monopoly until the eighties.

14) P. Humphreys, *Mass Media and Media Policy in Western Europe* (Manchester University, Manchester 1996).

The influence of the Catholic Church over all aspects of Italian politics and legislation cannot be overstated.¹⁵ Public service broadcasting is no exception to such a trend: for instance, it has been observed that *RAI* programming in the 50s-70s had a strong Catholic influence, and actually contributed to the promotion of such values.¹⁶ One possible explanation is that, prior to the reform undertaken by Law 103/75, *RAI* was under the control of the Government, thus the party in power at the time – the Christian Democrats – could effectively determine *RAI*'s programming. Subsequently, Law 103/75 withdrew such control from the Government and entrusted it to a specific parliamentary committee. While this reform granted access to *RAI*'s programming to different values and opinions, the Catholic influence was still strong as the Christian Democrats long remained the party in power.

Regardless of the political changes which took place in Parliament over the last decades, religion and the Catholic creed in particular still have a significant influence over *RAI*'s choice of programming, both in law and in fact. Indeed, as far as the legislation is concerned, both the Broadcasting Code and the National Contract of Service contain references to religion-related programming: Article 3(1) of the Broadcasting Code stipulates that respect for different faiths is a general principle of the broadcasting system¹⁷ (which applies both to private and to public service broadcasters); Article 45(2)(d) of the Broadcasting Code requires the public service broadcaster to grant access to its programming to, *inter alia*, religious creeds; as to the National Contract of Service, *RAI* undertakes to broadcast both religious features and ceremonies (Article 3(1)(b) and (d)). In practice, *RAI* broadcasts a number of programmes related to religion, such as “*A Sua immagine*”, which is not only a weekly talk show on religious themes, but is also entrusted with the broadcasting of Sunday Mass and the Pope's *Angelus*.

B. Reflections of Diversity in Organisational Structure

1. Federalism and Local Autonomies

An interesting constitutional issue of the last decade is the Italian federalist debate.¹⁸ By and large, although the Italian republic is, according to Article 5 of the Constitution “one and indivisible”, it nonetheless “recognises and promotes local autonomy”; moreover, ever since the 2001 reform of Section V (i.e. the part of the Constitution concerning Regions, Provinces, Municipalities),¹⁹ it has been maintained that the Italian polity is gradually edging towards federalism. This polity, which is unitary but at the same time sensitive to the requirements of local autonomies, is – at least to some extent – reflected in the organisational structure and regulation of the public service broadcaster.

From the point of view of the legislation, according to Article 117(3) of the Constitution competence in respect of the “regulation of media” is shared between the State and the Regions; as far as public service broadcasting is concerned, it is subject to the Broadcasting Code and other State legislation as well as to regional laws which, according to Article 46(1) of the Broadcasting Code, shall define the specific public service obligations that the public service broadcaster is bound to discharge during the broadcasting time and by means of the television channel devoted to regional programming.

The organisational structure of the public service broadcaster envisaged by the Broadcasting Code is also influenced by the requirements of local autonomy. Indeed, Article 45(2)(p) of the Broadcasting Code expressly requires the public service broadcaster to have one or more national offices as well as offices in each region and in the Autonomous Provinces of Trento and Bolzano; such regional and provincial offices shall discharge their public service obligations under a regime of financial and accounting autonomy (Article 45(3) of the Broadcasting Code). Finally, Article 45(2)(p) of the Broadcasting Code requires the public service broadcaster to promote and enhance decentralised production centres, with a view to promoting local culture and languages.

2. PSB Mission Conferred Upon Commercial Broadcasters

Recalling the views expressed above, the history of television broadcasting in Italy has, in the first place, been a history of public service broadcasting. Indeed, the Italian Constitutional Court, ever since its seminal judgement no. 59/1960, has consistently held that nation-wide television broadcasting is

15) See notably B. Croce, *Perchè non possiamo non dirci cristiani* (1st edn Laterza, Bari 1943).

16) G. Gardini, *Le regole dell'informazione: principi giuridici, strumenti e casi* (Bruno Mondadori, Milano 2005) 123.

17) As such, this principle applies both to private and to public service broadcasters and is the basis for a number of more specific horizontal provisions of the Broadcasting Code: 4(1)(b), 4(1)(c); 36(3)(c); 37(6); 37(8); 40(1).

18) See notably T. Martines, A. Ruggeri and C. Salazar, *Lineamenti di Diritto Regionale* (Giuffrè, Milano 2002)

19) See Legge costituzionale 18 October 2001, no. 3 ‘Modifiche al titolo V della parte seconda della Costituzione’, [2001] *GURI* 248.

a “public utility in the general interest”. While this argument was mainly used to justify the maintenance of the statutory monopoly on television broadcasting, this “general interest” language is, at least to some extent, used nowadays, even in respect of private broadcasters.

Article 7 of the Broadcasting Code, referred to in Chapter I, A.1., and other acts and regulations in the broadcasting sector, entrust private broadcasters with several obligations defined as services of general interest, such as equal access to political parties,²⁰ fairness in the presentation of the news, quotas for European works or protection of sensory-impaired people.

20) Legge 22 February 2000, no. 28 “*Disposizioni per la parità di accesso ai mezzi di informazione durante le campagne elettorali e referendarie e per la comunicazione politica*”, [2000] GURI 43, as amended by Legge 6 November 2003, no. 313 “*Disposizioni per l’attuazione del principio del pluralismo nella programmazione delle emittenti radiofoniche e televisive locali*”, [2003] GURI 268.



*Jurgita Iešmantaitė**

Chapter I: Regulatory Framework

A. Mission, Economic and Financing Model

1. Mission

The PSB of Lithuania cannot boast of a long history or experience, as it has only reached its 10th year of activity. On 8 October 1996 the Parliament of the Republic of Lithuania adopted the Law on the National Radio and Television of Lithuania¹ (Law on the NRTL), whereby the Lithuanian broadcaster, the National Radio and Television of Lithuania (LRT), was granted the status of a public service broadcaster (PSB).

The Lithuanian PSB is a single legal person, which operates both Lithuanian Television and Lithuanian Radio.²

The Lithuanian PSB broadcasts two TV channels:³ LTV1 and LTV2.

LTV1 is the main public service broadcast channel, which is offered 18 hours per day on average. LTV1's broadcasts cover the entire territory of the Republic of Lithuania.

The second channel LTV2 has been broadcasting since 2003. The mission of LTV2⁴ is: "to broadcast cultural, educational, informational and regional programmes, which also attract many TV viewers in the regions". LTV2 focuses on the viewer who has a need for more information in one of the fields covered by LTV2's mission or is not always satisfied with the programmes offered by other broadcasters in the country. This approach is even reflected in its slogan which is: "Your cultural channel". At present LTV2 is available only in the main cities of Lithuania. However, it is planned that it will become available throughout almost the entire territory of Lithuania in the near future. At the moment LTV2 can also be viewed via Satellite Sirius 3 in digital mode.

To date, there have been continuous discussions regarding the PSB's activities and its programmes in Lithuania. The PSB has often been reproached for producing only entertainment programmes, in pursuit of the highest programme ratings, hoping in this way to attract more advertising, and that therefore it would not fulfil its statutory mission. Yet, what is the mission of the PSB?

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1) Law on the National Radio and Television of Lithuania, Official Gazette, 2005, No. 153-5639,

http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=268458&p_query=&p_tr2=

2) Hereinafter the notion "The PSB of Lithuania" or "Lithuanian PSB" will only refer to the Lithuanian Television.

3) Law on the NRTL, Art. 5.

4) Annual report of the Council on the LTV's activities in 2005, available at:

<http://www.lrt.lt/new/downloads/structure//2005%20LRT%20ATASKAITA%20SEIMUI.doc>

According to the provisions laid down in the Law on NRTL the mission of the PSB is to: (i) inform society about essential events; (ii) acquaint the public with the variety of European and world culture as well as principles of modern civilisation; (iii) reinforce the independence and democracy of the Republic of Lithuania; (iv) create, nurture and protect the values of national culture; (v) foster tolerance and humanism, thought and language; (vi) strengthen public morality and civic awareness; (vii) develop the country's ecological culture. The broadcasts of the PSB of Lithuania must be attractive and interesting for people of different ages, various nationalities and faiths. LTV programmes should give priority to national culture as well as informational, world culture, journalistic, analytical, educational and art broadcasts. Additionally, LTV must make efforts to nurture national language and history, and to reflect daily social, cultural and political life.

The Law sets out the main principles of the mission of the Lithuanian PSB, however, it contains neither specific directions for implementing the mission, nor principles on the formation of the programme grid. Nor does it regulate the proportions of different types of broadcasts in the overall programme.

It is natural that the best way for the PSB to fulfil its mission is to produce programmes that target the general public and aim at justifying its expectations. It is therefore vital for the PSB to understand its mission and to follow it in practice.

At present LTV's market share is only 14 per cent, while two private television companies have a market share of 25 per cent each.⁵

In order to stay competitive and take part in the advertising market as well to implement its statutory mission, the PSB of Lithuania took a fairly interesting strategy: it made its first channel more commercial, while dedicating the second channel entirely to the realisation of the public service mission.

It should be noted that commercial advertising is not allowed on the second television channel (LTV2) of the Lithuanian PSB. However, advertising on LTV1 can be broadcast in accordance with the procedure established by law.⁶ Therefore, the programming of LTV1 is more oriented towards the general audience, and it offers more entertainment, since this is a content that is commercially more attractive for advertisers. The PSB notes⁷ that LTV1 programming comprises: 26 per cent informational broadcasts, 11 per cent social and journalistic broadcasts, 10 per cent educational, seven per cent cultural, 11 per cent entertainment, 3 per cent sport broadcasts, nearly three per cent religious broadcasts and broadcasts dedicated to national minorities, the rest of the programming (29 per cent) consists of movies, documentary films and serials.

Recognising that the public service broadcaster has to serve the general public and reflect its expectations, the Lithuanian PSB is constantly carrying out public opinion surveys in order to check if the mission with which it is entrusted is being achieved. The surveys shall also help to determine what programmes the public wishes to watch on public service broadcasting. Public opinion polls are one way to involve the public in the formation of the PSB's programme grids. The Lithuanian PSB summarises the results of the public opinion surveys and forms its programming according to the results.

The public service mission might also be understood in a broader sense, namely that in order to accomplish this mission other activities that would establish and ensure contact between the potential viewer and the public service broadcaster might be undertaken as well.

In accordance with the law, LTV has the right of publishing and also the right of free recording and transmission of the Seimas (parliament) and Government sessions and may use the recordings at its own discretion. Besides that, LTV has the right to provide teletext services, to hold tenders for producing broadcasts (educational, cultural, entertainment, etc.), arrange festivals, establish artistic companies (e.g. orchestras, choirs, dance and music companies, etc.), to organise radio and television broadcasts to other countries, re-transmit foreign television programmes, and to publish informative publications regarding its activities.

5) Annual report of the Council on the LTV's activities in 2005, available at:

<http://www.lrt.lt/new/downloads/structure//2005%20LRT%20ATASKAITA%20SEIMUI.doc>

6) Law on the NRTL, Art. 6; Law on Provision of Information to the Public, Official Gazette, No. 82-3254, available at:

http://www3.lrs.lt/pls/inter2/dokpaieska.showdoc_l?p_id=280580&p_query=&p_tr2=

7) Information available at: <http://www.lrt.lt/tv/static.php?strid=5161&>

Furthermore, the PSB of Lithuania plays an important role in bringing to the public the benefits of the new audiovisual and information services as well as the new technologies.

One of the main strategic aims of the Lithuanian PSB is to introduce new technologies. The website (www.lrt.lt) of the Lithuanian PSB allows viewers not only to watch the PSB's programmes directly, but also to find the desired broadcast in the archives at any time.

The PSB of Lithuania has created a special website for disabled viewers. It provides a more convenient navigation system, where one can take advantage of subsidiary technologies, e. g. screen magnifier, special keyboards.

It is also possible to view the content of the Lithuanian PSB's website on a mobile device via WAP (Wireless Application Protocol). Thereby, even in the most remote places one can watch news, LTV programme announcements, a whole programme or separate parts of current affairs programmes.

In 2004, the Government of Lithuania adopted a Resolution,⁸ which guarantees the exclusive right for the Lithuanian PSB to broadcast two programmes on the digital terrestrial television (DTT) networks. The Resolution justifies this guarantee by the importance of the role that the public service broadcaster plays in cultural, social and democratic life, the significance of its mission and its influence on the public, taking into account that the potential to produce high quality programmes has to be maintained and expanded, including the development and diversification of its activities in the digital age. The digital data streams for broadcasting two of the LTV programmes (LTV1 and LTV2) as DTT are allocated to the PSB without the need to participate in a tender. The situation is different for private broadcasters which have to win tenders in order to acquire the right to use the DTT networks.

2. Corporate Structure

The management of the Lithuanian PSB is composed of the Council, the Administrative Commission and the Director General.

The Council is the highest governing body of the Lithuanian PSB, representing the public interest. It is comprised of twelve members who are prominent individuals in social, scientific and cultural spheres. For the first term of the Council Article 9 of the Law on the NRTL stipulates that the President of the Republic appoints four council members for a term of six years; the Seimas appoints another four members for a four-year term, two of whom are proposed by the parliamentary opposition. If the proposed candidates are not approved by the Seimas, the procedure has to be repeated with a new proposal. Additionally, the following organisations each appoint one member as their own representatives (four in total) for a term of two years: the Lithuanian Science Council, the Lithuanian Education Council, the Lithuanian Artists Association and the Lithuanian Bishops' Conference. When the term of a Council Member expires, the assigning institution (organisation) has to appoint a new member for a six-year term. Thus, the system provides for the gradual rotation of the members of the Council.

In accordance with Article 9 of the Law on NRTL a Council member cannot be dismissed from his duties until his term of office has expired, unless one of the following situations applies: (i) a Council member resigns of his own accord; (ii) a Council member fails to participate in the Council's work for more than four months, without reasonable cause; (iii) a court conviction comes into force against the Council member; (iv) a Council member loses citizenship of the Republic of Lithuania. This conclusive list of cases in which a Council member can be dismissed before his term of office has expired ensures the stability of the Council's activities.

The Law on NRTL stipulates that members of the Seimas, the Government, the Radio and Television Commission, civil servants in positions of political (personal) trust (this includes positions fixed in a list which is approved by the Seimas, e. g. advisers to the President, the Prime Minister and other Ministers) and also persons employed by radio and television stations including LTV, as well as the owners and co-owners of radio and television stations, cannot become members of the Council. Furthermore, in order to keep the different levels of decision making separate, a member of the Council can not become Director General or Deputy Director General, nor can a member work in the PSB's administration.

8) The Resolution of the Lithuanian Government on the Approval of the Model of the Implementation of Digital Television, available at: http://www3.lrs.lt/pls/inter2/dokpaieska.showdoc_l?p_id=245942&p_query=&p_tr2=

The activities of the Council are financed by the PSB's funds, which are obtained from the state budget. The precise amount of the remuneration that a Council member receives for working for the Council is laid down in the Council's labour regulations that are confirmed by the Council itself.

It is interesting to note that the Law on NRTL does not envisage any qualification requirements for prospective Council members. The only requirement fixed in Article 9 of the Law on NRTL is that the person has to be a prominent individual in the social, scientific or cultural spheres of society. However, having in mind the competence and the functions delegated to the Council, it is evident that only a person with special knowledge could fulfil the functions efficiently.

Article 10 of the Law on NRTL sets out the functions, rights and accountability of the Council. According to its functions the Council is in charge of the general policy of the PSB concerning programming. This means it determines the scope and structure of LTV programmes, and decides what percentage of the various programmes, such as information, current affairs, cultural, educational and other programmes the LTV programme as a whole shall comprise. It decides on the budget expenditure, guarantees that the budget expenditure is transparent and exercises internal control over the activities of the PSB.

Furthermore, the Council of LRT must (i) determine the duration of LTV programme broadcasting per day (e. g. 18 hours a day); (ii) annually approve the composition of LTV programmes and changes thereto; (iii) establish the number of channels and their use in programme transmission; (iv) supervise how LTV tasks are implemented and how legal requirements that broadcasters have to obey are being adhered to; (v) deliberate and approve long-term and annual plans of for the PSB's activities; (vi) approve annual receipt and expense estimates of the PSB's administration and report on the implementation thereof; (vii) discuss and approve the annual reports on Lithuanian PSB activities; (viii) approve the results of tenders concerning the preparation of LTV broadcasts (selection of submitted broadcasting material).

In addition to these functions, the Council is entrusted with establishing an Administrative Commission to discuss issues of the PSB's economic and financial activities. It should be noted that the duty to establish this Administrative Commission was introduced by the new version of the Law on NRTL, which came into force on 31 December 2005. The amended version of the Law on NRTL envisages that the Administrative Commission should be established no later than 3 months after the law comes into effect. Nevertheless it has not been established so far.

The Administrative Commission shall comprise five members appointed by the Council for a term of four years. It shall account for its activities to the Council at least once a year.

Members of the Administrative Commission must be management and (or) finance specialists. Seimas and Government members, state employees in positions of political (personal) confidence, persons employed by radio and (or) television stations, including LTV, can not be members of the Administrative Commission. A person may be re-appointed to the Administrative Commission for no more than two consecutive terms of office.

In accordance with Art. 11 of the Law on NRTL the Administrative Commission shall act as an adviser to the Council on financial issues and it shall function as an internal control and supervising body for the broadcaster's activities. The Administrative Commission submits to the Council its findings on: (i) the PSB's activities, in particular the economic and financial substantiation of the PSB's long-term and annual plans; (ii) the PSB's annual income and expenditure estimate and the account of implementation thereof; (iii) the granting of bank credits to the PSB, guarantees and fulfilment of the PSB's financial obligations; (iv) the financial substantiation of the LTV draft broadcasts submitted for the tender (a pre-shooting is submitted together with the broadcast expenditure estimate). The Administrative Commission has the right to advise both the Council and the Director General on financial issues. In addition, the Administrative Commission may propose that the Council should initiate an audit of the economic and financial activities of the PSB or separate branches thereof.

The Director General of the PSB is responsible for the day-to-day operations of the public service broadcaster. The position of the Director General is advertised by public tender. The Council appoints the winner of the tender as Director General for a term of five years provided that the person can obtain the support of at least one-half of the Council's members.⁹ The Director General is in charge of the PSB's management. He represents the PSB within the country, abroad and before international organisations, as well as in court. He approves the structure and the regulations of the PSB and its system of labour

⁹ Law on the NRTL, Art. 12

compensation. He has the power to hire and dismiss employees, to conclude contracts, and to prepare and submit the annual reports on the PSB's activities to the Council for approval.

In order to avoid conflicts of interests and to safeguard against any potential political interference, the Law on the NRTL requires the Director General to suspend his membership of any political party for the duration of his appointment. Nevertheless, it is evident that this formal requirement of the law does not suffice to preserve the independence of the PSB from the influence of political parties. Furthermore, the effectiveness of the requirement might be questioned because the law does not provide for any consequences should the requirement not be fulfilled. Nor does it regulate cases where the Director General promotes the ideas of his former political party in the PSB's programmes. The law, though, envisages the possibility that two-thirds of the members of the Council may vote to remove the Director General from his position on the basis of mistrust (i.e., a vote of "no confidence"). Under the current situation, the Director General and the majority of the members of the Council might continue to favour the same political powers, in particular if they had belonged to the same party before they were appointed, despite their respective statutory obligations to suspend any party membership for their terms of office.

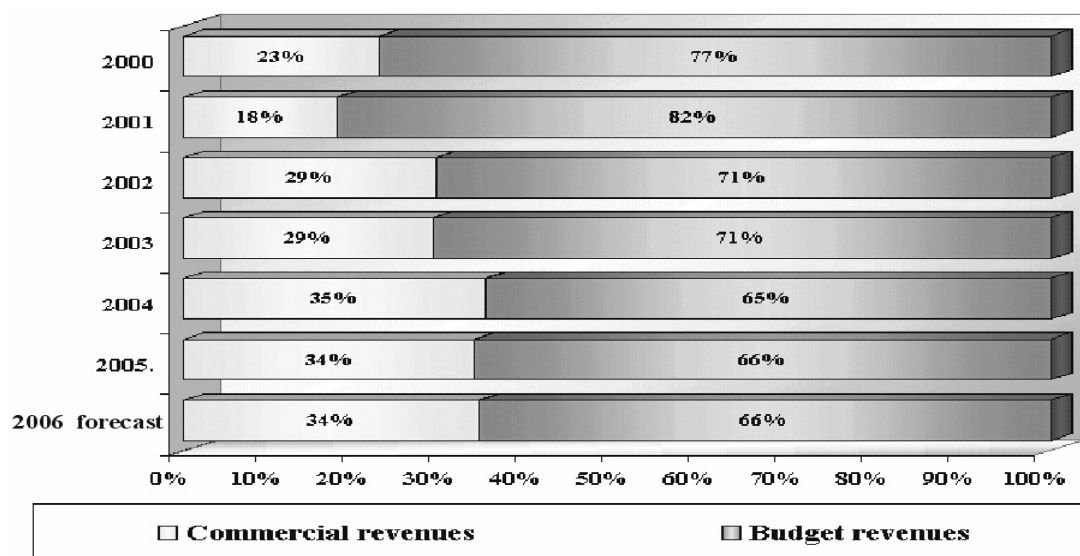
Besides the internal supervisory bodies – the Council and the Administrative Commission¹⁰ – part of the supervision of the PSB's activities is carried out by an external supervisory body, the Radio and Television Commission of Lithuania (RTCL). According to the Law on Provision of Information to the Public¹¹ the RTCL regulates and controls the activities of radio and television broadcasters that come under the jurisdiction of the Republic of Lithuania. Therefore, in accordance with the procedure established by law, the RTCL has the right to control how the PSB adheres to the requirements laid down in the provisions of the laws concerning television advertising and sponsorship of programmes as well as provisions regarding the protection of minors against detrimental effects of public information. The RTCL has the right to impose penalties on the PSB for infringements of the laws. Thus the external supervision on the PSB's activities is warranted.

3. Financing

The Law on the NRTL states that the PSB of Lithuania is financed through allocations from the state budget, by income obtained from selling radio and televisions broadcasts, advertisements, publishing activities and commercial as well as economic activities.

At present the main sources of finance of the public service broadcaster are budgetary funds and commercial revenues. The latter constitute only a third of the whole budget of the public service broadcaster as the following diagram shows:

Proportion of the budget and commercial revenues of the PSB of Lithuania¹²



10) This Administrative Commission has not yet been formed: it exists only in the Law on the NRTL.

11) Law on Provision of Information to the Public, Official Gazette, No. 82-3254, available at: http://www3.lrs.lt/pls/inter2/dokpaieska.showdoc_l?p_id=280580&p_query=&p_tr2=

12) Annual report of the Council on the LTV's activities in 2005.

The amount of the allocations for the activities of the public service broadcaster from the state budget is decided by the parliament (Seimas) year by year as part of the adoption of the Law on State Budget.

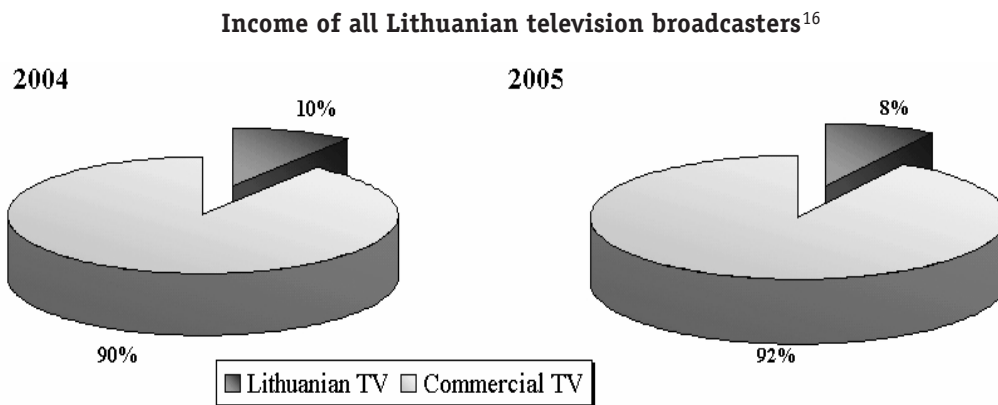
This procedure is surely one of the critical points in regard to the PSB's independence as it implies that the PSB's budget depends on a political decision. However, it also illustrates another consequence the PSB is faced with: the broadcaster has no guarantee of long-term financing and can, therefore, neither develop long-term strategies for the fulfilment of its mission nor participate in any long-term project.

There has always been the controversial proposal to exclude the PSB from the advertising market since it is funded by the national budget. On the one hand it is argued that a ban on advertisements in public service broadcasting could help to guarantee the fulfilment of the PSB's mission regarding programme content; on the other hand it is counter-argued that a prohibition might carry the risk that the public service broadcaster could lack sufficient financial basis for its activities. A solution to the controversy has not yet been found.

Advertising on LTV1 is allowed according to the general legal requirements, with certain exceptions. These are, for example, that advertising is prohibited on LTV1 during informational, educational and cultural programmes, broadcasts intended for children, on days of national mourning or broadcasts of national importance. As already mentioned commercial advertising is banned on the second television programme (LTV2) of the Lithuanian PSB.¹³

The Law on NRTL stipulates that¹⁴ "with the increase of state budget allocations, advertising time could be gradually and proportionately reduced to ten per cent of a day's broadcast time, by decision of the Council" (currently it amounts to fifteen per cent of a day's broadcast time). But this provision resembles a non-binding declaration because it lacks a mechanism for implementation in practice.

An analysis of the market clearly indicates that the Lithuanian PSB has only a small share of the commercial advertising market while the private broadcasters control more than ninety per cent of the radio and television advertising market.¹⁵ This shows that neither commercial profit nor financial short-term benefits are the major emphases of the public service broadcaster but that it tends rather to fulfil its statutory mission.



According to LTV sources,¹⁷ as of 1 January 2006 five hundred employees were working for LTV. It is interesting to note that in 2001 there were around one thousand. The reorganisation of the activities of the PSB and the lack of financial means mainly accounted for this strong decrease.

In order to protect LTV's journalists from external influences, the LTV Code of Ethics was adopted in 2002.¹⁸ It transposes some key provisions from (i) the Ethics Code of Journalists and Publishers of Lithuania and (ii) the Resolution on Journalists Ethics of the Parliamentary Assembly of the Council

13) Law on the NRTL, Art. 6

14) Law on the NRTL, Art. 6

15) Annual report of the Council on the LTV's activities in 2005.

16) Annual report of the Council on the LTV's activities in 2005.

17) Annual report of the Council on the LTV's activities in 2005.

18) Annual report of the Council on the LTV's activities in 2002.

of Europe. In practice, the LTV Code of Ethics applies to the News Department of the Lithuanian PSB, for which it lays down the main guidelines. The principles set down include, for example, that news programmes should avoid the interpretation of events; that news must be accurate, and journalists must verify facts. Language has to be accurate and must not distort facts in any way. Also, journalists should refrain from exaggerations and evaluations. It is prohibited to pay politicians for interviews and to express personal opinions in the news.

The LTV Code of Ethics is an internal document of the public service broadcaster and is not available to the public.

The annual report on the PSB's activities reflects the accountability of the public service broadcaster to the public.

The activities of the Council are public and everyone is entitled to obtain information on them. The Law envisages that the Council's decisions are to be made public on Lithuanian television programmes.

Each year, before 1 July, the Council has to account for its activities to the public. The Law on NRTL determines the data and information that the Council has to provide.¹⁹ According to the Law the Council must include data on the annual estimates of revenue and expenditure. Also, it must document the actual financial sources of the PSB, such as allocations from the state budget, revenues from advertising and from publishing, sponsorship means, total income received from non-public services, as well as providing information about the expenditures relating to the provision of non-public services.

The Law on NRTL envisages parliamentary control over the public service broadcaster. The chairman of the Council has to report annually on the PSB's activities at a plenary session of the Seimas.

B. Decision Making: Structures and Procedures

In order to ensure successful public broadcast services, it is essential that the PSB's governing bodies function well and collaborate with each other. It is equally important that the process for deciding on the PSB's day-to-day activities, its programme grids and long-term plans is effective.

The Director General is responsible for the activities of Lithuanian Television, for the broadcast of the programmes and the implementation of the Council's decisions. Regarding the latter, Article 10 of the Law on NRTL states that the decisions of the Council are mandatory for the PSB. However, the Law on NRTL confers upon the Director General the right to oppose the Council's decisions. According to the Law the Director General can address a reasoned request to the Council which then has to reconsider its decision on the basis of the Director's statement. If more than one-half of all Council members confirm their previous vote the original decision becomes ultimately binding on the Director General.²⁰

In general, according to the Law on NRTL the Council adopts the decisions by a simple majority of all its members. The Council of LRT meets periodically, i.e. it has to convene at least once a month.

This system gives rise to two problems in practice.

The sporadic presence of the Council and the fact that there is no operating personnel assigned to it can overstrain the capacity of the Council, and therefore, cause difficulties in regard to proper analyses of current problems and the taking of the most appropriate decisions concerning the public service broadcaster.

Further, when analysing the management structure and the competence of the governing bodies of the public service broadcaster it can be concluded that the decisions are actually taken by the Director General. If a decision is not within his competencies, the Director General has to ask the Council for approval. However, the Director General may, assisted by the personnel of the public service broadcaster, prepare the documents supporting his decisions and thus provide the Council with relevant information. Furthermore, the Director General has the right to participate, without a right to vote,

19) Law on the NRTL, Art. 10.

20) Law on the NRTL, Art. 10.

at the Council's meetings and the possibility of presenting his draft decisions. Consequently, he can exercise influence on the members of the Council before a vote takes place, especially in light of the fact that the members of the Council are not specialised in management and financial issues.

Once the above-mentioned Administrative Commission has been established the Council will be in a position to form an opinion more independently of the Director General.

It is essential to safeguard the public service broadcaster against any political interference. Therefore, the legislator formally enshrined the PSB's independence in the Law on NRTL. However, in practice the goal has still not been achieved. An example of that might be the way financing is organised.

Chapter II: Cultural Diversity

A. Influence of Relevant National or Cultural Aspects

As already stated, there are certain requirements that apply specifically to the public service broadcaster. These concern the programme grid, which should transpose the statutory mission, as well as the information contained in each individual programme, which should be objective, exhaustive and fully accessible to the public. These standards reflect the main difference between the public service broadcaster and private broadcasters: in contrast to the commercial broadcasters, the public service broadcaster is not free in operating its broadcasts but has to run its activities according to specific requirements laid down by law.

The law obliges the PSB of Lithuania to broadcast certain programmes for special sectors of the audience, which often neither reach high ratings nor attract much advertising. Among them are religious services for Lithuania's traditional and state-recognised religious communities and programmes for national minorities as well as disabled persons. The public service broadcaster itself decides how much of these programmes will be broadcast and at what time. As a consequence, these programmes tend to account for a small percentage of the overall broadcasting or to occur during the less attractive viewing hours. According to the LTV,²¹ they comprise up to three per cent of the total LTV1 broadcasts.

The Law on Provision of Information contains requirements that the LTV programmes have to satisfy for European works and audio-visual works of independent producers. They implement the respective provisions of the "Television without Frontiers" Directive as follows:

- "Television broadcasters shall reserve, where practicable, at least 50 per cent of their programme time, excluding the time appointed to news, sports events, games, advertising, teletext services and teleshopping, for European works."
- "Television broadcasters shall reserve, where practicable, at least 10 per cent of their programme time, excluding the time appointed to news, sports events, games, advertising, teletext services and teleshopping, for European works made by independent producers within the past five years."

Concerning the fulfilment of these requirements, the LTV gives the follows information:²²

European works			Audio-visual works of independent producers		
2003	2004	2005	2003	2004	2005
64%	81,8%	71,23%	43%	63,2%	43,68%

In order to cherish and protect the Lithuanian language, the law stipulates that the public service broadcaster has to translate into Lithuanian or present with Lithuanian subtitles all television broadcasts which are in a language other than Lithuanian. Whether dubbing or subtitles are used, is decided by the Council of LTV.

21) Information available at: <http://www.lrt.lt/tv/static.php?strid=5161&>

22) Information given to the RTCL by the LTV. According to the Law on Provision of Information to the Public the broadcasters are obliged annually to provide information to the RTCL on the percentage of European works and works of the independent producers shown on their programmes.

Some programme obligations of the public service broadcaster are due to national interests. In particular, the Law on NRTL and the Law on the Office of the President obliges the public service broadcaster to provide time for the President of the Republic to speak on national and foreign policy issues. Additionally, the Seimas or the Government may request LTV to broadcast, with the shortest possible delay considering its resources, official announcements of the Seimas and the Government.

The Lithuanian PSB also plays a major role in implementing the provisions of the Laws on the Elections to the Seimas and Municipal Councils concerning conditions and procedures. During election periods the LTV has to provide broadcasting time for (i) candidates for the presidency, (ii) political parties and their candidates for the Parliament or Municipal Councils. The Central Electoral Committee sets up rules for election campaign programmes and determines the actual duration and time of the LTV programmes in agreement with the Director General. Before elections in Lithuania all political parties draw up their lists of candidates. Each list is allocated not less than one hour of television time per election period for a debate with a list from another party.

B. Reflections of Diversity in Organisational Structure

The main condition for the Lithuanian PSB to ensure the proper implementation of its mission is independence. The legal framework should secure financial, administrative, and editorial independence in order to ensure the objectivity and reliability of the public service broadcaster.

The Lithuanian legislator recognised these major principles and, therefore, stipulated formally the independence of LRT in the Law on NRTL. However, practice shows that not all measures are taken to avoid external influences. Maybe due to the short history of the PSB in Lithuania the legislator still has its difficulties in finding the appropriate means.

As already mentioned, some dependence of the PSB on the government results from the fact that the PSB's activities are financed from the state budget.

Originally, a licence fee-based financing model had been envisaged. In 1996 the Law on the Provision of Information to the Public was adopted for the first time and its provisions envisaged that the public service broadcaster would be financed by allocations from the state budget, licence fees and commercial revenues. This Law stipulated that "with the increase of the revenues from the licence fee the allocations from the state budget would be gradually and proportionately reduced". Thus, the legislative intention had been to diminish the part of the financing from the state budget. However, the entry into force of this provision has been postponed each year due to the poor economic situation in Lithuania. The PSB made efforts to safeguard the envisaged development towards a licence fee-based model of financing in order to increase its independence from the government. It carried out various social actions such as public inquiries and meetings with viewers and also prepared a draft law on licence fees which was never implemented. Eventually, in 2006, the idea of the licence fee was abandoned by the new version of the Law of NRTL.

Administrative independence is also essential for the activities of the public service broadcaster.

The Lithuanian PSB has the status of a public, non-profit institution. The law stipulates that "there may not be any other shareholders of the LTV."²³ This implies that the State will remain the sole owner of the broadcaster.

The composition of the Council, however, protects only partly the administrative independence of LRT. No clearly-defined system for appointing members to the Council is set out. Even persons who are lacking experience or are related to certain political parties can be appointed. As an example of the latter, the Law on the NRTL obliges the Director General not to be a member of any political party for the duration of his appointment. Nevertheless, it is only a formal requirement; the law does not provide any consequences in case of its violation. Further, the law does not regulate the case where the Director General promotes the ideas of his former political party in the PSB's programmes.

Although the law envisages the possibility that two-thirds of the members of the Council can dismiss the Director General on the basis of mistrust, this instrument becomes meaningless if – as in the current situation – the Director General and the majority of the members of the Council favour the same political powers.

23) Law on the NRTL, Art. 5

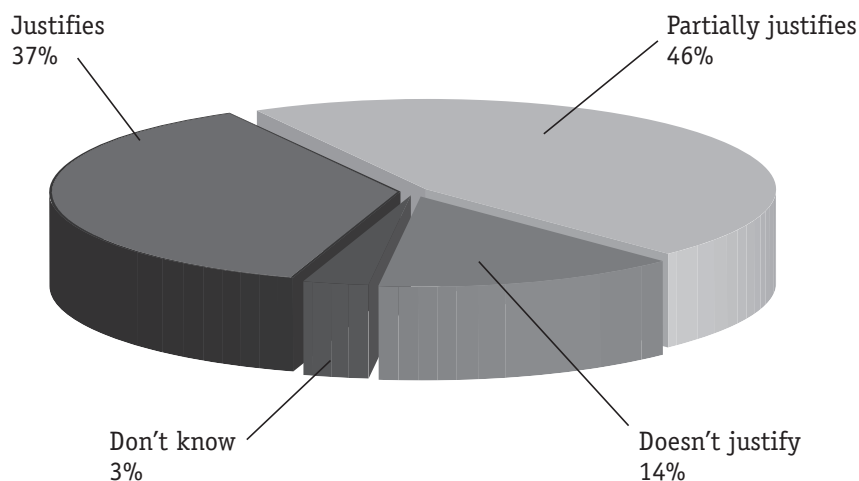
It becomes evident that the regulations do not suffice to preserve the independence of the PSB's administration from the influence of political parties and that, therefore the editorial decisions of the public service broadcaster are also affected.

Final Observations

Public opinion is an indicator of the fulfilment of the public service mission by LTV. At the end of 2005 the PSB carried out a public survey. Its aim was to find out which programmes – the PSB's or the private broadcasters' – the viewers give their priority to when watching news or cultural, journalistic and musical broadcasts. The survey shows²⁴ that twenty-four per cent give priority to the news on LTV programmes, forty-two per cent priority to the cultural broadcasts on LTV, seventeen per cent give priority to the musical broadcasts of LTV and 39 per cent to its programmes intended for children.

The survey in relation to audience satisfaction carried out in December 2005 also showed the following results:

Does public television justify the expectations of Lithuanian citizens?²⁵



The results indicated in the diagram reflect the opinion of the general public in Lithuania in 2005. While the results of a similar survey in 2003²⁶ showed that only 63 per cent of the inhabitants thought that the LTV programmes justified or partially justified the expectations of the public, it was 83 per cent in 2005.

On the basis of these data it can be stated that at present more and more Lithuanians watch the public service broadcast programmes. Furthermore, the conclusion can be drawn that LTV's strategy for implementing its public service mission is increasingly meeting the interests of the public. Among others, the adoption of a legal basis for the PSB's activities and the establishment of the second channel LTV2 – which is entirely dedicated to culture and art broadcasts – brought about the positive changes in LTV's activities noticed and appreciated by the public.

24) Annual report of the Council on the LTV's activities in 2005.

25) Annual report of the Council on the LTV's activities in 2005.

26) Annual report of the Council on the LTV's activities in 2004.

THE NETHERLANDS

*Nico van Eijk**

Chapter I: Regulatory Framework

The first part of this contribution gives an overall description of the public service broadcasting system in the Netherlands, including the world service and regional and local broadcasting. For practical purposes, the second part on decision-making and the analysis focuses only on the core of the national public broadcasting system.

A. Mission, Economic and Financing Model

1. Mission

General

The mission of the public broadcasting system as a whole is clearly defined in the Media Act (*Mediawet*).¹ According to Section 13c1 of the Act, the tasks of the public broadcasting system are:

- a) to provide a varied and high-quality range of programme services for general broadcasting purposes at national, regional and local level in the fields of information, culture, education and entertainment and to transmit them, or cause them to be transmitted, on open networks;
- b) to perform all the activities relating to programme service provision and transmission required for that purpose;
- c) to provide and transmit programme services intended for countries and regions outside the Netherlands and for Dutch people residing outside the territory of the Netherlands.

Section 13c2 then stipulates the following:

Public broadcasting programme services shall provide a balanced picture of society and of people's current interests and views pertaining to society, culture, religion and belief, and:

- a) shall be accessible to the entire population in the area for which the programmes are intended;
- b) shall contribute to the development and dissemination of the socio-cultural diversity of the Netherlands;
- c) shall be independent of commercial influences and, subject to the provisions laid down by or pursuant to the law, of government influence; and
- d) shall be aimed at a broad audience and at population and age groups of varying size and composition.

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1) *Mediawet*, Stb. 1987, 249, latest modification Stb. 2005, 532 (no up-to-date translation in English is currently available).

Furthermore, the regulation allows the public broadcasters to perform these tasks – *inter alia* – by providing and disseminating programme material in ways other than those referred to (Section 13c3).

Besides this general framework, specific additions exist for the various players in the public broadcasting field on the international, national, regional and local levels.

National

The Dutch national public broadcasting system is based on an exclusive concession granted to the *Nederlandse Omroep Stichting* (Broadcasting Foundation of the Netherlands – NOS), which uses “*Publieke Omroep*” (Public Broadcasting – PO) as its main brand name. Individual (private but non-profit) membership organisations (called “*omroepverenigingen*”, hereinafter: “membership organisations” or “membership broadcasting organisations”), representing specific groups in society have been granted broadcasting time within this concession. Their contribution accounts for most of the available broadcasting time for national public radio and television. The NOS itself also has a specific broadcasting task (primarily offering general programming such as news and sports. These activities are grouped under the name “*NOS radio & televisie*”). Two other large organisations responsible for national public broadcasting are the *Nederlandse Programma Stichting* (Programme Service Foundation of the Netherlands – NPS) (primarily cultural and minority programming) and Educom (education, training and personal development). Furthermore some smaller organisations, including religious and other spiritual organisations and political parties can claim access to the national public broadcasting channels. Their broadcasting time is however (very) limited and their role will not be discussed in great detail.

Contained within this global mission are the separate missions of the individual membership broadcasting organisations (described in more detail under Chapter I, A. 2., *National*). Because each of these organisations broadcasts programmes that are relevant to their own mission and their own audience, this model provides for a certain level of pluralism and variety. The Media Act obliges the various national broadcasting organisations to jointly provide a complete programme service, which must at least include programmes of cultural, informative, educational and entertaining nature. In contrast to the membership broadcasting organisations, Educom has to use all of its time to provide educational programming. The NPS is obliged to use its broadcasting time to provide a programme service consisting of programmes that meet the social, cultural, religious or spiritual needs of the public in such a way that this programme service, together with the programme services of the other establishments that have obtained national broadcasting time, provide a balanced reflection of the social, cultural, religious and spiritual diversity in the Netherlands. *NOS radio & televisie* must use all its broadcasting time to provide programming that is ideally suited for collective provision (such as the daily news, national events and sports)

The *Stichting Etherreclame* (Radio and Television Advertising Foundation – STER) merits separate mention. This organisation is responsible for the provision of advertising on the national public broadcasting channels (see further, below).

International

The *Wereldomroep* (the Dutch world radio service, officially called the “*Radio Nederland Wereldomroep*”) broadcasts Dutch-language radio programmes and has the task of providing and transmitting radio programme services intended for countries and regions outside the Netherlands and for Dutch people residing outside the territory of the Netherlands. Among its activities is also the recording or having recorded of programmes on video and sound carriers and making these recordings available to foreign broadcasting organisations for inclusion in their own programme services.

Regional and Local

The Netherlands has a well-established system of regional and local public broadcasting organisations (regional broadcasting operates at provincial level, while local broadcasting is conducted at the level of municipalities). Their principal objective is to provide a programme service for general broadcasting purposes at regional or local level. The programme service must aim to satisfy the social, cultural, religious or spiritual needs of the general public in the given area.

Other Activities

The mission of the national public broadcasting system is not restricted to traditional broadcasting only. It includes providing and disseminating programme material in other ways. For example, offering

Internet services is also seen as one of the tasks of the public broadcasters. Internet activities include an Internet portal (www.uitzendinggemist.nl) operated by the NOS that allows people to watch TV programmes online, free of charge. Some providers of digital television (such as cable operators) have added this portal to their standard selection of television channels, making it available through regular television and thus to a larger audience. Other recent additions to the public broadcasting system are digital thematic channels. Each of these channels is (or will be) broadcast digitally on the Internet, by cable operators and on specific IPTV-platforms and provides content about a single subject. The other players in the public broadcasting sector can offer similar services.

2. Corporate Structure

This paragraph will discuss the corporate structure of the public broadcasting system, while using the same categorisation as in the previous paragraph.

National

With the introduction of the concession model for the national public broadcasting system in 2000,² the administrative structure of the public broadcasting system changed to what it currently is. The national concession was granted for a 10-year period to the NOS in order to accomplish the tasks specified in the Media Act.

On obtaining the licence, the NOS is obliged to submit a policy plan (the concession plan), drawn up by the board of directors, to the Media Authority. The policy plan must specify how the NOS will meet the requirements of the Media Act, with the main requirement being to provide high-quality and varied programming that reaches large parts of the Dutch audience. The NOS is subject to regular evaluation. It has to publish its budgets annually and is evaluated every five years to determine whether it is adhering to the Media Act and adequately fulfilling its tasks.

The NOS has three boards: *raad van bestuur* (the board of directors), the *raad van toezicht* (supervisory board) and the *college van omroepen* (board of public broadcasters). The board of directors, appointed by the Minister of Education, Culture and Science, has three members and is in charge of the daily management. It is responsible for the coordination of, and cooperation concerning, national broadcasting activities. It is, among other things, responsible for the adoption of the concession plan and the coordination of the programmes. The supervisory board, also appointed by the Minister but composed of seven members who are selected on the basis of their personal expertise, supervises the policy of the board of directors. Specific high-impact decisions require the consent of the supervisory board. Among these are the adoption of the concession plan and network profiles and the dismissal of a large number of employees. The board of public broadcasters is charged with advising the board of directors and the supervisory board on programme policies concerning national public broadcasting. Its members are primarily representatives of the national membership organisations.

The membership broadcasting organisations representing specific groups in society have the legal status of an association (*vereniging*). As an association, each of these organisations has a board and a membership controlling the board. In order to be granted broadcasting time, a membership broadcasting association must reflect in its programme service, and in its constitution, a particular social, cultural, religious or spiritual movement within society. Through its programming, it must carry out the task of satisfying the social, cultural, religious or spiritual needs existing amongst the public. Accreditations (which are more or less comparable with licenses) shall be granted only to associations with at least 150,000 members. With a membership of at least 50,000, a provisional accreditation can be granted, resulting in a smaller amount of broadcasting time. Currently, the public broadcasting system features eight such broadcasting associations – representing groups within society – with an accreditation; NCRV (Protestant), KRO (Catholic), VARA (social-democratic), AVRO (general), TROS (general), VPRO (social criticism), EO (evangelical) and BNN (general, aimed at youth). These are independent associations with paying members. A provisional accreditation has been granted to Link (“people, animals and environment”) and MAX (elderly). The Minister is responsible for issuing the accreditations.

The national educational broadcasting organisation, Educom, is a foundation, accredited by the Minister. Its board consists of experts from the sphere of representative national organisations in the

² See further, Inger Weidema, “NL – Concession Granted to the Netherlands Broadcasting Corporation”, *IRIS* 2000-8: 8, available at <http://merlin.obs.coe.int/iris/2000/8/article15.en.html>

field of education, training and personal development. A special programming council determines the programme service policy. The membership of the programme council must be representative of social, religious and other spiritual organisations in the field of education, personal development and training. Changes in the constitution of the organisation require the consent of the Minister.

The other smaller organisations (religious and other spiritual organisations and political parties), organised as foundations or associations³ obtain the authorisation for their broadcasting time from the *Commissariaat voor de Media* (Media Authority). These organisations are subsequently entitled to place the provision of their programme services in the hands of the *Publieke Omroep*. Examples of religious and other spiritual movements which are allowed to broadcast on this basis are: Islam, Roman Catholicism, Hinduism, Judaism, Buddhism and Humanism.

The STER, which sells airtime on public radio and television to advertisers, and broadcasts these commercials, is a foundation with a board appointed by the Minister and mainly working under his control. The board sets the rates for the advertisements. These decisions can be overturned by the Minister. In the case of the STER, changes in the constitution of the organisation also require the consent of the Minister.

International

The *Wereldomroep* is a foundation of which the board members are appointed by the Minister. The board reports directly to the Minister. A programme service council, appointed by the Minister, advises about the programme service content. The *Wereldomroep* has to coordinate its activities and to cooperate with the NOS. The Media Act requires the establishment of a consultative committee to deal with issues of common interest (exchange of services, foreign issues of common interest and the modalities of cooperation). Like Educom and the STER, changes in the constitution of the organisation require the consent of the Minister.

Regional and Local

At the request of such an establishment, the Media Authority can allocate regional or local broadcasting time for a period of five years to a regional or local broadcaster (in most cases foundations (regional and local)) and sometimes an association (local). Only one local broadcasting organisation in each municipality may be allocated broadcasting time. Specific circumstances may allow for the creation of a local broadcasting organisation serving more than one municipality. Likewise, the number of regional broadcasting organisations is in principle limited to the number of provinces. 296 local broadcasting organisations serve 409 municipalities (covering more than 90 per cent of the population). The 13 regional broadcasting organisations cover the whole of the country. In general, regional and local broadcasting organisations are foundations (some local broadcasting organisations are associations). The Media Authority grants the licences after consulting the regional or local authorities. Each regional and local broadcasting organisation must also have a representative body which determines the programme service policy. The members of such a body should represent the main social, cultural, religious and other movements within the municipality or province. They are appointed by the provincial or the municipal executive upon the recommendation of the regional or local broadcasting organisation.

Special Privileges

For the public broadcasting system, three types of privileges exist. First of all, at the national, global, regional and local levels, all broadcasting organisations have their own transmission facilities. The Media Act and the Telecommunications Act⁴ in conjunction with each other grant preferential rights to the public broadcasting sector for the use of terrestrial frequencies. On the national level this results in the availability of multiplexes for both terrestrial digital radio and television (T-DAB and DVB-T). Furthermore, four FM networks and one AM network are operated for national public broadcasting. The *Wereldomroep* uses shortwave frequencies (radio). It also uses a satellite frequency, but this is based on a commercial agreement with the satellite provider. The regional public broadcasters broadcast their television programmes in DVB-T and have access to FM-frequencies to distribute one programme service covering their service area. Local public broadcasters are also entitled

3) Foundations and associations are often used to represent non-profit interests; foundations have a board, associations have members.

4) *Telecommunicatiewet*, Stb. 1998, 610 (as amended) (no up-to-date English-language translation of the Act is currently available).

to use FM frequencies covering their service area. Both the regional and local public broadcasters will start using frequencies for digital terrestrial distribution of their radio programmes in the near future. It should be noted that analogue terrestrial television services have been phased out since 11 December 2006.

Distribution rights are the second form of privileges. Cable operators (cable television networks are the main distribution platform for broadcasting: more than 90 per cent of Dutch households have a cable subscription) are under an obligation to include the programmes of the public broadcaster in their basic service. Therefore, the public national, regional and local programmes are available on every cable network.

The third privilege concerns financing arrangements. This issue will be dealt with in the next paragraph.

Independence from the State

The independence of the public broadcasters is first of all guaranteed by the Dutch Constitution. Article 7(2) prohibits the prior supervision of the content of a radio or a television broadcast. Rules concerning radio and television need to be laid down by Act of Parliament, hence the adoption of the Media Act. This Act stipulates that public broadcasting programme services shall be independent of commercial influences and, subject to the provisions laid down by or pursuant to the law, government influence. Also – without prejudice to the provisions laid down by or pursuant to the law – each establishment that has obtained broadcasting time shall determine the form and content of its programme service and be responsible for everything broadcast during its broadcasting time. Furthermore, the Act contains the following provision: “the establishments that have obtained broadcasting time shall provide public broadcasting independently by providing public broadcasting programme services” (Section 110). As such, the Media Act contains no provisions that would allow governmental interference with programming. Nevertheless, as described above, there is significant governmental interference with both the organisation of the public broadcasting sector and on a more general policy-making level (such as the aforementioned concession plan).

3. Funding

Public Funding

The funding of the Dutch public broadcasting sector depends on three types of financing. First of all, general funds are made available. However, in 2000 the old licence fee system was incorporated into the general tax system, mainly for cost-efficiency reasons (taxation no longer requires administrative procedures for the collection of the licence fee).

The national public broadcasting system is more or less fully financed by the national government, first of all, through an index-linked national broadcasting subsidy, which is funded from the general budget. The NOS sends an annual budget request to the Minister and the Media Authority. The Media Authority advises the Minister, who determines the budget for the following year. The budget should cover all the regular costs but can include additional funds for strengthening the programming. The NOS board of directors reallocates the agreed budget amongst the various players. The budget is made available through a system of advance payments by the Media Authority.

The *Wereldomroep* receives its annual budget through a similar procedure to that governing the NOS.

As far as public regional broadcasting is concerned, the relevant province has to fund at least one regional broadcaster by underwriting the costs that are directly connected to its tasks.

The minimum funding for local broadcasting is based on yearly contributions to the general budget of the individual municipalities, which in turn is based on the number of households in the individual municipalities. Independently of this contribution, municipalities can decide how to spend this contribution (implying that not all the money is indeed transferred to the local broadcasting organisation). A draft law has been presented to the parliament by one of its members to remedy this situation and to guarantee more stable financing.

Advertising

The second main source of income consists of advertising income. On the national level, the STER is responsible for generating advertising. Every year, the STER submits a statement to the Minister of

Education, Culture and Science with predicted earnings from its advertising. The revenue earned by STER shall, after the deduction of its expenses as approved by the Minister, be at the disposal of the Minister. The Media Act also states precisely for which expenses the income should be used. Most of the money is added to the budget for the financing of the national public broadcasting system.

On the regional and local levels, broadcasting organisations are allowed to do advertising by themselves (although strict rules on advertising apply to the whole public broadcasting sector). All the income from advertising on the local and regional level must be used for the funding of the programmes.

Other Sources of Income

A third form of income allowed under the Media Act is self-generated financing. Such means of financing include membership income, permitted forms of sponsorship, the publication of a programme guide, intellectual property rights, and more general, so-called "sideline activities". Sideline activities, which cannot be funded by the other sources of income, are subject to three restrictions: a) they do not or cannot have a detrimental effect on the performance of the core activity/mission; b) they must be connected with or support the main tasks of the broadcasters, and c) they must not or cannot lead to unfair competition in relation to other parties offering the same or comparable goods or services. All of the public broadcasters' income, including the income from sideline activities and from its capital, must be used for the provision of the programme service. Only a limited percentage of the income generated by the programme guide may be used for the activities as associations (in order to cover losses incurred by the associations).

Transparency

The Media Authority is responsible for controlling the accounts of the national broadcasters and the *Wereldomroep*. The establishments which have obtained national broadcasting time have to submit their annual accounts for the preceding financial year to the Media Authority and to the board of directors of the NOS. The NOS comments on the accounts and sends these comments to the Media Authority. The Media Authority includes its findings in its annual report. It checks whether the funds have been used for the purposes for which they were given and whether the annual accounts comply with the regulations laid out in the *Handboek financiële verantwoording media* (Manual for media financial accountability). Non-compliance with the accounting rules can result in the reduction of advance payments.

Regional and local broadcasters are also under an obligation to submit their annual accounts to the Media Authority. However, less strict rules apply.

Independently of the rules on the annual accounts, the Media Authority supervises the way in which broadcasting organisations apply the rules on other revenue-generating activities, such as sponsorship and sideline activities.

Safeguards

As far as financing is concerned and apart from the guarantees mentioned in the section "Independence from the State", *supra*, the Media Act provides for some safeguards to prevent governmental influence by using the financing system. A kind of minimum guarantee on the level of financing has been inserted into the Media Act, which stipulates: "...To that end, the establishments which have obtained broadcasting time shall be eligible to receive government funds in the manner regulated by this Act to enable them to provide high-quality programming and to ensure financial continuity" (Section 110). The final decision on what can be considered to be an appropriate budget lies primarily in the hands of the government, which is controlled by the Parliament.

Some additional guarantee is provided to the national public broadcasters in another provision of the Act (Section 111), which originally stipulated that the level of financing should at least be maintained at the level of the original licence fee and that this amount should be index-linked on a yearly basis. Nevertheless, the parliament voted to amend the law and to reduce this minimum amount indicated in this provision of the law.

A similar kind of guarantee is provided to the regional public broadcasters. The funds they receive from the province need to be high enough to guarantee the quality and continuity of the programming as it was available in 2004. Local broadcasters are entitled to a budget which should be at the level of the budget available at the time of the licence fee. However, as already mentioned, the local municipalities decide whether or not to actually transfer the available funds to the broadcasters.

B. Decision Making: Structures and Procedures

1. Decision Making-process

On 1 January 2006 an amendment to the Media Act came into force that changed the balance of decision-making power. The amendment restricts the membership of the supervisory board by excluding the broadcasting organisations, which were members of the supervisory board in the previous structure. However, the broadcasting organisations are members of the newly-created board of public broadcasters. This board has primarily an advisory function, but can ask the supervisory board to overturn certain decisions made by the board of directors.

Concerning the actual broadcasts, the board of directors has two important tasks. First of all, the board of directors adopts the profiles of the three national television and five radio networks/channels. The profiles contain the principles of recognisable programming on the various television and radio networks, taking into account the relevant general principles (mission and other principles on the public tasks laid down in the law or stated in by-laws). The second aspect involves the adoption (and execution) of a regulation for coordinating the television and radio programmes on and between the different networks. The regulation – among other things – includes rules on the scheduling of programmes; creating a balanced range of programme services for sections of the public of varying size and composition, spread over the different networks; preventing similar types of programmes being broadcast on different networks; promoting the introduction of new programmes, etc.

The Media Act grants the board of directors a limited budget of 25 per cent of the total amount available for the provision of the programme services of the establishments which have obtained national broadcasting time. The board can use this budget for the purposes of strengthening programming. This means strengthening the distinctive nature of public broadcasting programming or promoting programming aimed at a specific audience or of a specific nature. With this budget, the board can supplement the regular output of broadcasting organisations (by (co-)financing specific programmes or other activities).

Within the criteria of the Media Act (such as specific regulation on quota), public broadcasting organisations have full control over the form and content of their own programmes. As such, this control cannot be superseded by the board of directors.

Nevertheless, the structure described above is complicated. The tasks of the board of directors – primarily focused on the interests of national public broadcasting as a whole – interact with the position of the individual broadcasting organisations (which have to take into account the interests of the groups they represent). Certain differences exist between the board of directors and the broadcasting organisations about the interpretation of the new regulatory framework. The broadcasting organisations are therefore challenging several decisions of the board of directors. In general, the organisations argue that the board of directors is seeking too much influence on the programming for which they consider themselves responsible. It is expected that most of the underlying issues will finally be dealt with by the courts.

Within the Dutch national public broadcasting system, there is no direct relationship between the board of directors and the employees who are responsible for creating the programming (with the exception of the programming tasks which are executed by the *NOS radio en televisie*). Most of the public service programming is made by the individual broadcasting organisations which employ their own personnel. All staff are subject to ordinary labour laws.

2. Impact of Politics

When creating the Media Act, one of the goals was to ensure independence from political influence. The Media Authority was created for that purpose.

The Media Authority has different tasks, the first being the allocation of national broadcasting time to educational broadcasting organisations, religious and spiritual organisations, political parties and for government information. The Media Authority also allocates broadcasting time to regional and local public broadcasters. Furthermore, the Media Authority is responsible for the actual payment of the public service broadcasting organisations. However, as already mentioned, the Minister is responsible for licensing the concession and allocating broadcasting time to the national membership broadcasting organisations.

Another important task of the Media Authority is to uphold the rules in the Act as well as in the regulations based on this Act. It has to ensure compliance with the Act by both public and commercial broadcasters. According to the Media Act, the Media Authority is charged with the enforcement pursuant

to administrative law of most parts of the law, save for a few exceptions. One of those exceptions is that the Authority has no supervisory powers with regard to the concession, as such, as those powers rest with the Minister. Fairness and consistency are the Authority's basic principles with regard to the enforcement of the Act. Supervision by the Media Authority or the Minister is always retrospective as the Constitution explicitly forbids monitoring in advance. Monitoring by the Media Authority is done mainly in order to control whether public service and private broadcasters are complying with the regulations for advertising and sponsorship. The Authority also checks whether the broadcasters are adhering to the programme regulations of the Media Act, for example with regard to the percentage of airtime devoted to European works. Sanctions based on the Media Act are the withdrawal or reduction of broadcasting time, termination or reduction of advance payments or administrative fines. Only the Minister can withdraw the concession or the accreditation of the national public broadcasters.

The Media Authority is independent of the government. This is reflected in multiple ways in the organisation of the Authority. Membership of the Media Authority is incompatible with a position within a Ministry, Membership of Parliament or local government, or a position in a public or private broadcasting organisation or publisher of a newspaper. The members of the Media Authority are appointed by Royal Decree, upon the recommendation of the Minister of Education, Culture and Science. The appointment is made for a period of five years with a possible extension of five more.

As indicated before, the Minister does play a central role when it comes to granting the concession and accreditation of the membership broadcasting organisations. These powers are exercised under the control of parliament. Although Members of Parliament regularly make statements about the fact that they prefer to stay at a distance, questions in Parliament on decisions made within the national broadcasting system are frequent. Several of these questions also refer to individual programmes. The Media Act is one of the laws that are regularly amended, often reflecting ideas of Parliament about the structure of, and responsibilities within, the national public broadcasting system.

3. Impact of Civil Society

Within the public broadcasting system, several checks and balances exist which create and/or reflect direct or indirect influence by the general audience. As far as the organisational structure is concerned, the membership organisations have a direct relationship with their members who can express their views and who appoint the management of the association/broadcasting organisation. Secondly, the broadcasting organisations without a membership in general have a representative body that plays a (deciding) role in the programming policy.

There is no specific regulation on audience participation or, for example, the submission of complaints. Some of the broadcasters have programmes that discuss the activities of the media, including the public broadcasters, but this is all on a voluntary basis. Institutions such as an ombudsman are not present. Instead of and/or in addition to having specific provisions, more general provisions, such as those of civil or criminal law, do apply to public broadcasting. Under this regulation remedies such as a correction are possible.

A so-called visitation committee has to assess the fulfilment of the concession obligations on a regular basis. This committee consists of at least five independent experts. These experts represent different television and radio audiences as closely as possible. They are nominated by the board of directors and, having consulted the Minister, are appointed by the supervisory board. The committee reports on how the public broadcasting system operates and whether the programme services offered correspond to the interests and views of the general public and of specific population and age groups. The first report of the visitation committee has *inter alia* resulted in the changed structure of the supervisory board.

Chapter II: Cultural Diversity

The diversity aspects of the public broadcasting system are reflected both in its programming obligations and its organisational structure.

A. Influence of Relevant National and Cultural Aspects

The Media Act has a long list of requirements on national and cultural aspects. There is a regulatory requirement that obliges establishments which have obtained broadcasting time to devote at least 50 per cent of their television broadcasting time to programmes originally produced in one of the two

official languages of the Netherlands, Dutch and Frisian. It should be noted that there are no specific percentages for each of the two languages. Frisian language programmes are primarily (if not solely) offered by the regional and local public broadcasters in Friesland.

The general criteria on the national and cultural aspects of the content are first of all part of the mission statement that has been put into the law (see above), but is also part of the concession plan and of the accreditation process for the national membership broadcasters.

The concession plan has to reflect the criteria mentioned in the mission statement. Therefore, the concession plan deals with issues such as children's programming or minority programming, or the taking into account of the diversity of Dutch society.

The policy plan which is a part of the accreditation process for the national membership broadcasters has to comply with similar criteria. Furthermore, new membership broadcasters must represent added value over and above the already-existing organisations.

Altogether the broadcasters have to provide a complete programming service, which includes programmes of a cultural, informative, educational and entertaining nature. For these categories, specific quota apply and can be summarised as obligations to provide: 25 per cent cultural programming (including 15 per cent arts programming), 35 per cent education or information programming, and entertainment may not exceed 25 per cent of the total broadcasting time. In addition to these specific criteria, there is an obligation to devote at least 50 per cent of the programming to European productions and at least 25 per cent of the total must be independent productions.

From the further detailed programming rules, at least the obligation of the NPS should be mentioned to use all of its time to provide a service consisting of programmes which meet the social, cultural, religious or spiritual needs of the public in such a way that the service – together with the services provided by the other national broadcasters – provides a balanced reflection of the social, cultural, religious and spiritual diversity in the Netherlands.

B. Reflections of Diversity in Organisational Structure

The structure of the national public broadcasting system, in particular the phenomenon of the membership-based organisations demonstrates the diversity element in the public broadcasting sector. The membership organisations are supposed to represent large socio-cultural groups within society. This is one of the reasons why they, in principle, control most of the broadcasting time available on the national level. The NPS has to complement deficiencies in the representation or programming of the membership organisations and was created for this purpose. In order to underline the common elements, the NOS has a specific broadcasting task in this respect.

The possibility of the Media Authority to grant broadcasting time to religious and other spiritual organisations or to political parties has already been mentioned.

Finally, the contribution of the regional and local broadcasters to the diversity of public broadcasting should not be neglected.

Final Remarks

The Dutch public broadcasting system has an extremely complex structure with very detailed regulation. Public broadcasting exists on every level (international, national, regional, local) and has a strong tradition, the roots of which go back to the start of the last century. On the national level there has been a historical dilemma between the interest of public broadcasting as a more general concept and the role of the membership organisations which originally represented large groups of the then (socio-politically) polarised Dutch society (although today this polarisation no longer exists (or has diminished substantially) and therefore the role of the membership organisations is often questioned). The dilemma still drives most of the discussions and lies at the core of the complex regulatory model. Recent changes seem to have shifted the emphasis more towards a coordinated public broadcasting model. However, political support for the membership organisations is still strong. The debate about the tasks and institutional structure of the national public broadcasting system is not expected to end soon.



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Chapter I: Regulatory Framework

A. Mission, Economic and Financing Model

1. Mission

The Broadcasting Act of 1992 provides for the transformation of government-controlled Polish Radio and Television into 19 public service broadcasting organisations as of 1 January 1994. In the process, public radio was split into 18 companies – one comprising the national channels and 17 independent regional companies, serving particular regions. Polish Television (TVP) remained as an integrated company, but it has 16 regional stations. These stations are a joint network (TVP 3 Regionalna), with stations opting out of the network for several hours to broadcast their own regional service.

Article 21 of the Broadcasting Act defines their public service remit as follows:

“Public radio and television shall carry out their public mission by providing, on terms laid down in this Act, the entire society and its individual groups with diverse programme services and other services in the area of information, journalism, culture, entertainment, education and sports which shall be pluralistic, impartial, well balanced, independent and innovative, marked by high quality and integrity of broadcast.”

Elsewhere in the Act, this is developed in the following way: “production and transmission of national and regional programme services, programme services for reception abroad in the Polish language and in other languages as well as other programme services meeting the democratic, social and cultural needs of local societies”; “production and transmission of thematic programme services, if a broadcasting licence has been granted for transmission of the said programme service”.

Other elements of the remit, as described by the Act, can be summed up as follows. First, they are to assist the operation of democracy, by (i) providing “reliable information about the vast diversity of events and processes taking place in Poland and abroad”, (ii) “encouraging an unconstrained development of citizens’ views and formation of public opinion” and “enabling citizens and their organisations to take part in public life by expressing diverse views and approaches as well as exercising the right to social supervision and criticism”; (iii) by creating opportunities for State authorities and political parties to address the general public, and (iv) by covering elections, including those to the European Parliament, and providing free (and, additionally, paid-for) air time for candidates.

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Second, they are to promote Polish culture and national identity, by “assisting the development of culture, science and education, with special emphasis on Polish intellectual and artistic achievements”, “encouraging artistic, literary, scientific and educational activities”, “disseminating knowledge of the Polish language”, etc.

Third, they are to pursue a variety of other objectives, including (in the language of the Broadcasting Act): production and transmission of programme services in the Polish language and other languages for listeners and viewers abroad; production and broadcasting of educational programmes for schools and other educational institutions; production of educational programmes and ensuring access by people of Polish descent and Poles living abroad to such programmes; respecting the Christian system of values, while being guided by the universal principles of ethics; strengthening family ties; propagation of pro-health attitudes; contribution to combating social problems; having regard to the needs of ethnic groups and minorities and communities speaking regional languages, including the broadcasting of news in minority and regional languages.

Other specific content requirements are that PSB organisations are to “enable political parties – as well as national trade unions and employers’ organisations – to present their position with regard to major public issues”. They are also to “enable public and voluntary service organisations to provide, without any fee, information about the services provided free of charge by these organisations”.

Other tasks involve the construction and operation of radio and television transmitters and relay stations; transmission of teletext services; work on new technologies of production and transmission of radio and television programme services; production, provision of services and carrying out of commercial activities relating to audiovisual production, including exports and imports; encouraging artistic, literary, scientific and educational activities. Articles defining the remit contain no specific reference to the Internet or other new technologies.

2. Corporate Structure

Legal Status and Institutional Arrangements

The Broadcasting Act states that public service broadcasters can have only one legal form: “sole proprietor joint stock companies of the State Treasury”. The State owns all the shares in these companies and is represented in their general meetings of shareholders by the Minister of the State Treasury. PSB organisations are thus regulated by both the Broadcasting Act and by company law.

PSB organisations are run by Boards of Management (five members in the case of the national companies and three persons in the case of regional radio stations), appointed by Supervisory Councils (nine members in the case of national companies and five members in the case of regional radio stations) which are themselves appointed jointly by the regulatory authority, the National Broadcasting Council and the Minister of State Treasury (see Table 6 on the manner of appointment of all these bodies).

Each PSB organisation has a 15-strong Programme Council, an advisory body, also appointed by the National Broadcasting Council. According to the Broadcasting Act, ten members are to represent parliamentary groups, and are therefore designated by parliamentary parties. The remaining five members are to be appointed from among persons with a record of experience and achievement in culture and mass media.

Since PSB organisations are, legally speaking, joint stock companies governed *inter alia* by company law, they are subject to all the regulations relating to commercial market players, as concerns tax and VAT, public procurement, etc. As regards frequency allocation, however, the Broadcasting Act obliges the Office of Electronic Communications, the telecoms regulator, to reserve the frequencies required by the PSB companies to perform their statutory tasks, i.e. broadcast a specified number of terrestrial programme services at the national and regional levels. This also applies to frequencies designated for transmission and retransmission of digital programme services.

The status of PSB organisations as joint-stock companies has one major drawback, namely that there is no legal way for them to be held accountable for their programming. The Minister of the State Treasury, in his/her capacity of representing the State at the general meeting of shareholders, reviews the performance of Boards of Management and Supervisory Boards solely on the basis of financial reports and accounts. He/she is not legally bound to take into account any views on the programme performance of PSB organisations, whether coming from the relevant Programme Council or from the National Broadcasting Council.

Thus, there is no effective way of holding PSB organisations to account in terms of programme quality and performance, since the only legally-binding procedure for assessing the work of the governing bodies – i.e. the annual meeting of shareholders and its acceptance or rejection of the annual report and financial accounts – does not take these criteria into consideration.

Independence

In Poland, the Broadcasting Act adequately safeguards the formal external independence of public service broadcasters (see below for a discussion of the various dimensions of independence). Despite their formal status as state companies, public service broadcasters are not really controlled by either the parliament or the government. Under the Broadcasting Act, “State authorities may take decisions concerning the functioning of public radio and television broadcasting organisations only in circumstances specified in the existing legislation”. This removes the danger of any arbitrary action. The State’s representative at the general meeting of shareholders (i.e. the Minister of the State Treasury) is legally prohibited from affecting the contents of programming. The Minister may not unilaterally change the statute of any PSB organisation, but must obtain the consent of the National Broadcasting Council in order to do so. Also, the State Treasury is not entitled to any dividend from PSB organisations. Licence fee revenue is deposited with the National Broadcasting Council which is legally bound to transfer this money immediately to PSB organisations.

Different terms of office for the National Broadcasting Council (6 years), supervisory councils (3 years) and boards of management (4 years) were designed to dissociate those terms from that of Parliament. Staggered terms for NBC members (before they were abolished in 2005) were also designed to prevent “political parallelism”, i.e. reproduction within the NBC and the governing bodies of PSB organisations of the political composition of the Parliament of the day.

In addition, supervisory council members may not be dismissed. Appointment and possible dismissal of the whole Board of Management, or of one or more of its members, requires a qualified majority of two-thirds, with at least three-quarters of supervisory council members present and voting. The supervisory council may, however, suspend a Board member by simple majority. Still, refusal by the State’s representative at the general meeting of shareholders (the Minister of State Treasury) to accept the annual report and accounts of each PSB company, need not legally be followed by the dismissal of the Board of Management.

In short, the Broadcasting Act and verdicts of the Constitutional Tribunal (rulings that NBC members and members of supervisory councils may not be dismissed, and that the chairperson of the NBC should be elected by the members themselves, rather than appointed by the President) contain an extensive array of safeguards to protect the external independence of PSB organisations.

Staggered terms of office for NBC members meant that before 2006 there was no automatic “political parallelism” between Parliament and the NBC and consequently PSB organisations. There have been periods of “cohabitation” between governments of one political persuasion and e.g. the top management of public television of a different political orientation.

In the period between the creation of the NBC in 1993 and the general election of September 2005, left-wing parties or candidates won two parliamentary elections (1993 and 2001) and two presidential elections (1995 and 2000). Centre-right parties were returned to power only once during that period, in 1997. Those lopsided election results prevented the realisation of the concept of a politically pluralistic and balanced composition of the NBC and the governing bodies of PSB organisations. “Politics-in-broadcasting” arrangements rely on pluralistic compositions of such bodies to arrive at decisions that are acceptable to all. In Poland, however, the evolution of the composition of the NBC – resulting from the election results described above – led over time to the domination of one political orientation, as shown in table 1.

Table 1. Political affiliations of NBC members

Year	Right	Centre	Left
1993	4	4	1 ¹
2005 (December)	1	3	5

1) When the first NBC was appointed in the first half of 1993, left-wing parties did not have enough MPs or senators in Parliament to elect anyone to the NBC. In the interest of pluralism, parliamentary parties agreed, however, to back the election of one person representing the left.

Accordingly, by the time of the change of government after the parliamentary and presidential elections in autumn 2005 (both won by the centre-right), the left had a comfortable majority in the NBC, capable of adopting any decision. That meant that another period of “cohabitation” was about to begin. Moreover, the terms of office of supervisory councils and boards of management of PSB organisations were scheduled to end in the first half of 2006. That meant that the left-dominated NBC would have the power to appoint the governing bodies of PSB organisations.

To prevent this, the new parliamentary majority amended the Broadcasting Act in December 2005. As noted above, that led to the appointment of new NBC members (3 representing the senior coalition partner, the Law and Justice Party, and 1 each representing the junior coalition partners – Self-Defence and the League of Polish Families). The new NBC appointed supervisory councils where seats were apportioned to coalition partners on the same principle. The same principle applied to the distribution of seats on boards of management. The break-down of the coalition in September 2006 (when Self-Defence left) initiated a process whereby Self-Defence-designated members of both bodies were dismissed in some cases. This posed a problem when the coalition was reassembled a few weeks later, with Self-Defence back in.

3. Financing

Under the Broadcasting Fee Act of 2005 (which incorporated the basic provisions previously laid down in the Broadcasting Act of 1992),² PSB organisations may be financed from licence fees (separate for radio, if someone does not have a television set, and for television, or both radio and television), trade in programme rights, advertising and sponsorship and other sources, including grants from the State budget (these are negligible). PSB organisations may earmark as much air time for advertising as commercial broadcasters, but may broadcast commercials only between programme items.

Licence fee money is collected by the Post Office and transferred to the National Broadcasting Council which every year decides how to split the money between PSB organisations (usually it is 60 per cent for television and 40 per cent for radio) and how monies due to public television should be split between the TVP headquarters in Warsaw and the regional stations of TVP. Funds received from the Post Office are transferred without delay to PSB organisations.

As far as public television is concerned, the breakdown of sources of funding in 2001-2005 was as follows:

Table 2. Breakdown of TVP revenue (%)

	2001	2002	2003	2004	2005
Advertising	58,7	56,3	54,7	56,3	55,4
Sponsorship	3,2	2,7	3,6	4,5	5,5
Licence fee	30,6	31,3	33,6	31,9	28,4
Interest	1,2	1,4	1,0	1,5	2,8
Other	6,3	8,3	7,2	5,8	7,9

Source: National Broadcasting Council

As can be seen, the share of licence fee revenue in the overall funding of public television is very low. In the case of public radio, the situation is different.

Table 3. Breakdown of public radio revenue (%)

	Polish Radio (national channels)			Regional public stations (average)		
	2003	2004	2005	2003	2004	2005
Licence fees	72,9	70,9	70,2	83,3	82,8	81,7
Advertising	14,2	17,1	18,4	7,5	7,8	8,5
Interest	0,4	0,2	0,3	1,3	1,3	1,4
Other	12,5	11,8	11,0	7,9	8,1	8,4

Source: National Broadcasting Council

2) The Act was adopted because the Constitutional Court had ruled that the competence of the National Broadcasting Council to set the level of the licence fee was unconstitutional. As a quasi-tax, the licence fee should be set by Parliament. Therefore, the Broadcasting Fee Act sets the level of the monthly licence fee as a percentage of the minimum wage – 0,7% for radio and 2,2% for television.

Thus, it is questionable whether the level of the licence fee is adequate as far as public television is concerned. In this context, it must be remembered that the Polish Broadcasting Act imposed excessive obligations on PSB organisations. A desire to decentralise public service broadcasting resulted in a decision that TVP should broadcast 16 full regional services and public radio – i.e., 17 full regional services, in both cases in addition to national channels. Licence fee revenue was never going to be sufficient to cover the enormous costs of such a system. In order to cut costs, TVP has formed the regional stations into a joint network, reducing the amount of original regional programming they broadcast, but the disparity between costs and available licence fee revenue remains.

With a high level of licence fee evasion (over 20 per cent, with an additional 30 per cent exempt from licence fee payment) and the high dependence of – in particular – public TV on advertising, funding cannot be described as secure. As can be seen from Tables 3 and 4 (see below), licence fee revenue accounts for a falling proportion of total revenue.

Both public radio and television engage in activities such as publishing and sale of cassettes etc. and the revenue from these activities (incorporated in “Other revenue”) adds to their funds.

There is considerable transparency as far as licence fee revenue is concerned. The annual reports of the National Broadcasting Council contain a lot of detailed information on how these funds are distributed among public service broadcasters. Under the Broadcasting Act (Arts. 31a-31c), these broadcasters are also obliged to publish annual reports on the use of public funding, in addition to quarterly reports filed with the National Broadcasting Council. These reports comply with EC regulations on dual accounting for purposes of financial transparency and observance of State Aid rules. Thereby, the use of revenue other than that from licence fees is also made transparent.

There is little prospect of licence fee funding being used to influence editorial decisions. The National Broadcasting Council remits the money regularly as it comes in to public service broadcasters and it is wholly at the disposal of the boards of management. Government is absent from this process.

It is a different story with advertising revenue. Especially as Polish Television is so heavily dependent on advertising that considerations of profitability are always incorporated into decision-making and editorial decisions must be made with a view to maintaining the level of this revenue. As a result, the Advertising Department is often directly involved in such decision-making and often has the final say both as regards particular programme items (especially expensive ones) and in the case of big projects, e.g. launching a new channel.

This has had a considerable impact on the content of PSB programming in Poland. A comparison of preferred programme types on public and commercial television in 2005 has produced the following results:

Table 4. Preferred programme types on PSB and commercial television in 2005

National terrestrial channels of PSB television		National or sub-national commercial TV channels		
TVP 1	TVP 2	POLSAT	TVN	TV4
Drama (films and series) 40.3%	Drama (films and series) 42.3%	Drama (films and series) 44.3%	Drama (films and series) 27.4%	Drama (films and series) 34.6%
News and current affairs 21.7%	News and current affairs 11.8%	Entertainment (including music) 18.6%	Entertainment (including music) 35.5%	Entertainment (including music) 21.6%
Documentary films 6.3%	Entertainment (including music) 11.3%	News and current affairs 8.0%	News and current affairs 7.9%	News and current affairs 14.2%

Source: National Broadcasting Council

There is thus considerable programme convergence between public and commercial television.

In addition, public service radio is showing signs of convergence, despite much lower dependence on advertising revenue, as can be seen in table 5.

Table 5. Polish Radio programming: break-down by programme types

Programme types	% of air time				
	2001	2002	2003	2004	2005
News	7,8	9,2	9,4	8,6	8,5
Current affairs	20,4	18,7	14,3	11,2	12,5
Educational, practical advice	8,3	9,4	7,5	5,1	5,1
Religious	1,4	1,5	1,2	1,0	1,1
Literary and radio theatre	3,3	3,4	2,9	2,4	2,7
Entertainment (including music)	2,3	2,7	1,2	1,6	1,3
Sports	1,6	1,7	1,4	1,5	1,1
For children and youth	5,2	4,0	2,7	3,1	0,3
Music	46,4	43,7	50,7	62,7	58,0

Source: National Broadcasting Council

As can be seen, except for news and music, all other programme types are showing a decline in terms of their proportion of air time.

B. Decision Making: Structures and Procedures

The system of PSB governance can be presented in summary as in table 6:

Table 6. System of PSB company's governance

PSB governing body	Appointed by:
Supervisory Council (an internal body) - 9 members in national companies; 5 members in regional companies	1. National Broadcasting Council (5 members: 2 appointed by the Diet, ³ 1 by the Senate, 2 by the President ⁴) appoints: 8 members in case of national companies; 4 members in regional companies 2. Minister of State Treasury appoints 1 person in each case
Board of Management - 5 members in national companies; 3 members in regional companies	Supervisory Board
Programme Council (purely consultative functions) - 15 members	National Broadcasting Council: 10 members in each case are designated by parliamentary parties; the remaining 5 are appointed by the Council from among "individuals with a record of achievement and experience in the field of culture and the media".

With the exception of members of the National Broadcasting Council (who should be individuals with "exceptional knowledge and experience in the field of the mass media") and five members of Programme Councils, there are no requirements and no legally defined procedures for the process of their appointment. Members of Programme Councils should "represent public interests and expectations related to the programming activities of the company".

Supervisory Council members are appointed for three years and cannot be dismissed. They receive a relatively small remuneration for their involvement.

Board of Management members are appointed for four years and can be dismissed by a qualified majority of two-thirds of the members of the Supervisory Council, with at least three-quarters of the members present and voting. Their remuneration is set by the Supervisory Council, usually in the form

3) The "Diet" (*Sejm*) is the Polish parliament.

4) Until December 2005, the NBC consisted of 9 persons, of whom 4 were appointed by the Diet, 2 by the Senate and 3 by the President. An amendment to the Broadcasting Law adopted in December 2005 reduced the number to 5 and eliminated staggered terms for NBC members (previously, one-third of the membership was replaced every 2 years). The amendment cut short the terms of office of NBC members then serving on the Council and provided for the election of 5 new members.

of a management contract – within limits established by legislation for state-owned companies. Such management contracts may contain provisions concerning conflicts of interest – primarily to do with any relations with other broadcasters or competing entities, both during employment with a PSB organisation, or for a specified time afterwards.

Programme Council members are appointed for four years. The law is silent on the possibility of their dismissal and there have been no cases of such actions, unless members resigned. Members receive a per-diem allowance for presence at meetings. Its level is set by the National Broadcasting Council.

In addition to PSB companies as such, Programme Councils have also been created at the level of the regional stations of Polish Television, and TV Polonia, the satellite channel of TVP, addressed to the Polish diaspora.

The law established rules of incompatibility for National Broadcasting Council members (their membership in governing bodies of associations, trade unions, employers' associations, as well as church or religious organisations must be suspended, and they may not hold an interest or shares, or have any other involvement in an entity which is a radio or television broadcaster or producer, or hold any other gainful employment, save for educational or academic positions of an academic tutor or lecturer or performing creative work), but no rules for any members of the governing bodies of PSB organisations.

1. Decision-Making Process

The general scope of activities of any PSB organisation is laid down in the Broadcasting Act, with the National Broadcasting Council empowered to grant them licences for additional channels. The scope of activities is described in more detail in the statutes of any PSB company, adopted together by the Minister of the State Treasury and the National Broadcasting Council. On a day-to-day basis, companies are run by Boards of Management, except for any decisions reserved for the Supervisory Councils. Content of programming is the sole preserve of the Board of Management and its staff within a framework established by legislation.

Under Art. 28 of the Broadcasting Act, the Supervisory Board's approval is required in order to:

- 1) employ or dismiss persons holding executive positions specified in the company's statutes (in practice this means members of the Board of Management and the Chief Financial Officer),
- 2) conclude or accede to a collective employment agreement with representatives of the employees,
- 3) establish or accede to a company other than the company referred to in Art. 26 para. 1, and to purchase or transfer shares or any interest in such a company,
- 4) transfer or encumber real estate.

Statutes of PSB companies may specify the powers of a supervisory council in more detail. And so, for example, the Statutes of Polish Television give the Supervisory Council the following additional areas of competence:

- 1) to appoint an auditor to audit annual accounts,
- 2) to set the dates for the Board of Management to submit annual plans and strategic plans, and the scope of such plans,
- 3) to approve the strategic multi-annual plans of the company, as well as the annual financial plans,
- 4) to adopt an opinion on the motions submitted by the Board of Management to the Annual Meeting of Shareholders and the National Broadcasting Council,
- 5) to approve the plan of work of the internal unit for auditing and supervision,
- 6) to approve promissory notes issued by the Board of Management in excess of the equivalent of EUR 50 000,
- 7) to approve the fact that members of the Board of Management hold positions in the governing bodies of other companies,
- 8) to appoint directors of regional stations following a motion from the Board of Management,
- 9) to approve conclusion by the Board of Management of a collective agreement with staff representatives.

The Supervisory Council may dismiss or suspend members of the Board of Management. Any conflict may be resolved in court.

Staff are hired and fired by the Board of Management. Staff members enjoy all employee rights, including the right to strike.

The Code of Journalistic Ethics of Polish Television, developed and policed by a body representing the staff, bans promotion of the interests of any political party or organisation, including involvement in their election campaigns, engaging in political propaganda or public expression of political views, or any action that might undermine the credibility, independence and impartiality of public service television.

The Code also includes a conscience clause, according to which a journalist may decline to follow instructions from his/her superiors if those run against the law, journalistic ethics, professional standards or his/her convictions. If this leads to dismissal, it may not be of a disciplinary nature.

Similar principles apply in other PSB organisations.

2. Impact of Politics

There is usually no direct, formal or institutional impact of political bodies or the authorities on any PSB organisation's activities, except of course for the appointment of Supervisory Councils and, by extension, of Boards of Management.

However, there have been cases – e.g. during one of the “cohabitation” periods in the late 1990s – of the government seeking to “punish” TVP, for example, for its lack of support. The Minister of the State Treasury sought to constrain Polish Television from entering into the field of digital television. The general meeting of shareholders, for example, passed a resolution instructing the Board of Management not to establish thematic digital channels.

The same Minister of the Treasury decided – in his capacity of representing the State at the general meeting of shareholders – to use a part of Polish Television's profits for extraneous purposes. That was against the law and the company took the minister to court and won an annulment of this decision.

The Minister of Finance (who originally represented the State treasury in the general meetings of shareholders of public service broadcasters) and later the Minister of State Treasury have occasionally dismissed members of Supervisory Boards, or entire boards, though such actions have been without a legal basis (the Broadcasting Act describes the manner of their appointment, but says nothing about the possibility of their dismissal). Since public service broadcasters are also governed by company law, they have invoked its provisions in order to do so. That led to a Constitutional Tribunal ruling in 1995 that members of these Supervisory Boards should not be removed during their 3-year term of office.

Once the governing bodies of PSB organisations have been appointed, political influence is either a matter of internal decision-making, or – in case of external influences – usually of an informal nature.

3. Impact of Civil Society

In the Broadcasting Act of 1992, Programme Councils were meant to serve as a mechanism for the general public to influence the activities of PSB organisations. However, their membership was from the start highly politicised. Moreover, given the formal status of PSB organisations as commercial companies, operating *inter alia* under company law, Programme Councils could not be recognised as part of the actual system of company governance and given any decision-making powers. Only later did one of the amendments to the Broadcasting Act introduce para. 3 of Article 28a, “The programme councils shall adopt resolutions evaluating the level and quality of current programming as well as of the programme schedule. The Supervisory Board shall be obliged to consider and act upon resolutions concerning programme matters which are adopted by a majority of votes cast in the presence of at least half of the members of the programme council”.

This was to be an instrument whereby concerns voiced by the Programme Council could be turned into a decision binding upon the Board of Management. However, cases where this has actually happened have been very few.

There are practically no effective accountability systems for PSB organisations in Poland. Financial reports by particular companies and annual reports by the National Broadcasting Council, together with other initiatives (in 2005, Polish Television for the first time published a report on how it was spending licence fee money to serve the public) do provide a lot of information, but there is no systematic analysis or action based on the conclusions drawn from this information.

There is no consumer association representing the audience. No PSB organisation has appointed an Ombudsman to represent the public vis-à-vis the management and staff. There is no public involvement in any decision-making.

PSB companies respond to letters and other communications from the audience, but not in any systematic way.

A Press Freedom Monitoring Centre is maintained by the Polish Journalists Association. It sometimes publishes statements concerning public service broadcasting organisations.

A Media Ethics Council, a body created by the Conference of Polish Media, adopts opinions on matters of journalistic ethics, sometimes relating to the programming of PSB organisations.

There are occasional attempts, either by the press, or by political parties, or by other bodies, to take stock of the way public service media, and especially Polish Television, perform their obligations. "Rzeczpospolita", a daily newspaper, has on several occasions published reports, written by its journalists, on this subject, provoking public debate.

In October 2006, the Civic Platform, the main opposition party, published a report "The Public Service Media According to the Governing Coalition", alleging far-reaching political control of the public service media by the governing coalition, as well as journalistic partiality in favour of the government and ruling coalition in news and current affairs.

Chapter II: Cultural Diversity

As can be seen from table 7, Polish PSB media should go a long way towards allowing a full reflection of the range of views in the public debate in their programming.

Table 7. Broadcasting Act provisions concerning public access to air time

Art. 21	2. Programme services of public radio and television should: 1) provide reliable information about the whole diversity of developments and processes in Poland and abroad, 2) promote the unconstrained development of citizens' views and of public opinion, 3) enable citizens and their organizations to take part in public life by expressing diversified views and orientations and exercising the right to supervision and social criticism,
Art. 22	2. Public broadcasting organizations shall enable supreme authorities of the State directly to present and explain the policy of the State.
Art. 23	1. Public broadcasting organizations shall enable political parties to present their policies with regard to major public issues. 2. The provision of para. 1 shall apply accordingly to national trade union and employers' organisations.
Art. 24	1. Political parties and other organisations contesting elections to the Diet, the Senate and local government shall be entitled to transmit election broadcasts in the programme services of public broadcasting organisations, according to the provisions of separate regulations. 2. Provisions of para. 1 shall apply accordingly to the election of the President of the Republic of Poland.

However, Polish PSB organisations are focussed primarily on political, rather than public opinion. According to Art. 23 of the Broadcasting Act, PSB organisations are to "enable political parties, national trade unions, and employers' organisations to present their position with regard to major public issues." However, when the NBC came to issuing a regulation on how this should be implemented, it guaranteed exercise of this provision by the main political parties, but not by trade unions or employers' organisations. This is one more confirmation of the fact that the system is skewed in favour of politicians, at the expense of civil society.

Under Art. 21, public service broadcasters monitor the appearances of representatives of various political parties in their programming and seek to preserve a rough balance, corresponding to the particular parties' performance in the last elections. Under Art. 22, the President, Prime Minister and Speakers of the Diet and the Senate may request air time for an occasional address to the general public. Under Art. 23, the National Broadcasting Council has to issue a regulation instructing public broadcasters to air programmes devoted to discussion of current issues with the participation of main governing and opposition parties. Pursuant to Art. 24, public service broadcasters allot free air time

to candidates in presidential, general or local government elections, under rules laid down in acts of parliament. Their performance in this respect is supervised by the State Electoral Commission.

In addition, both public service and private broadcasters devoted a considerable amount of time in current affairs programming to interviews and debates with the participation of politicians representing both the ruling and opposition parties. Given the multiplicity of stations, the main parties at least have ample opportunity for presenting their views to the public.

A. Influence of Relevant National or Cultural Aspects

Polish Radio operates 4 national channels. PR 1 is general in nature, with a high share of information; PR 2 is devoted to culture, classical music and the arts, jazz, folk etc.; PR 3 is a music and news channel, and Radio Bis is devoted to young people. This makes for a variety of content and the ability to meet the needs of different sectors of the audience.

Polish Television operates two national channels of a general nature, and TVP Kultura, a cultural satellite channel which should fully reflect culture and cultural events, including as these concern minorities.

As stated above, the PSB remit, as laid down in the Broadcasting Act, is very strong on the question of culture, also to the extent of placing broadcasters under an obligation to respect Christian values.

As a member of the European Union, Poland has had to incorporate EU requirements – including European quotas – into the Broadcasting Act. However, a special attempt has been made to preserve the national character of programming. Under Art. 15 television broadcasters are to “reserve at least 33 per cent of their quarterly transmission time for programmes originally produced in the Polish language, excluding news, advertising, teleshopping, sports events, teletext services and games”. Also, radio and television broadcasters are to “reserve at least 33 per cent of their quarterly transmission time devoted to vocal-musical compositions for compositions performed in the Polish language”. The National Council determines a lower share of such programming for broadcasters during the first year of transmission of their programme service, thematic programme services for which the amount of available programming of this nature is insufficient, and pay-TV programme services transmitted solely via satellite or cable.

Under Art. 15a, Television broadcasters are to “reserve at least 10 per cent of their quarterly transmission time for European works produced by independent producers, excluding news, advertising, teleshopping, sports events, teletext services, and games”. Programs produced not later than 5 years before their transmission in the programme service are to constitute at least 50 per cent of the time reserved for European works produced by independent producers.

Cultural objectives have also been pursued by independent production quotas, as well as by promoting broadcasters’ investment in Polish film production. Originally, NBC wrote requirements of this nature into licences to broadcast. That, however, was found to be without a legal basis. In 2005, a new law on cinematography was adopted, imposing on broadcasters and cable operators an obligation to contribute 1.5 per cent of their turnover to a fund designated to finance film production.

Nevertheless, as noted above, the desire to pursue cultural objectives and to protect the national audiovisual market manifested itself also in amendments to the Broadcasting Act designed to harmonise it with EC regulations. Though the aim of EU policy is to promote primarily production and distribution of European, rather than domestic audiovisual works, the amendments:

- 1) raised the quota of television works originally produced in the Polish language to 33 per cent of air time on Polish television stations,
- 2) raised the quota of musical works performed in the Polish language to 33 per cent of air time on radio and television stations,
- 3) raised the share of new works to at least 50 per cent of the independent production quota,
- 4) introduced a definition of works originally produced in the Polish language as one produced on the basis of a script originally written in the Polish language and which was originally recorded in Polish (this was in order to prevent shows based on foreign formats from being included in the calculation of the quota of works originally produced in the Polish language).

As noted above, part of the PSB remit is to have regard to the needs of ethnic groups and minorities and communities speaking regional languages, including the broadcasting of news in minority and regional languages.

Polish Television performs this obligation in its 16 regional channels, where it accounted in 2005 for 267,9 hours, i.e. an average of 0.2 per cent of air time. This includes primarily regional programming in areas where minorities appear and comprises, as the case may be, programming in Belarussian, Ukrainian, Lithuanian, Roma, Russian, Tartar, German, as well as in the regional language Kashubian.

As for public radio, here, too, programming of this nature was present in the programme services of 14 of the 17 regional public radio stations (of which 11 broadcast in minority or regional languages), accounting for a total of 985 hours in 2005, i.e. 0.7 per cent of air time.

B. Reflections of Diversity in Organisational Structure

There is no provision for any sort of representation on the governing bodies of PSB organisations, except for the formal requirement that 2/3 of the members of Programme Councils should be designated by parliamentary parties. Members of the National Broadcasting Council have always had to reach an agreement on appointing Supervisory Councils, meaning that some sort of arrangement was arrived at as to the proportion of individuals representing in particular the political forces represented on the NBC Council itself. As long as NBC members had staggered terms, there was no full and direct parallelism with the parliament and government of the day. Now that staggered terms have been eliminated, this is much more likely.

As noted above, a special feature of the PSB system in Poland is thus its far-reaching decentralisation and regionalisation, offering a chance for “geographical diversity” of programming and reflecting the life of regional communities in its content. This is no doubt happening. However, because the system as a whole is overstretched and incapable of devoting as much money as would be needed to create fully-fledged regional channels, this opportunity is not used fully.

As far as the regional stations of public radio is concerned, the average share in their air time of locally-originated programming, or of content relating directly to the life of the regional community, is shown in table 8.

Table 8. Share of regional content in the programming of regional stations of public radio in 2005

17 regional PSB radio stations	Share of regional content in:									Total
	News	Current affairs	Education and practical advice	Religious programming	Literature and drama	Features	Entertainment	Sports	Music	
AVERAGE	8,4%	6,4%	4,3%	0,4%	0,4%	0,8%	0,5%	2,2%	3,5%	26,8%

Source: National Broadcasting Council

As can be seen, the 17 regional PSB radio stations devote only a little over one-quarter of their air time to regional content. Given additionally that music accounts for nearly 60 per cent of air time, on average, and only 3.5 per cent of that air time is given over to regional music, it is a moot question whether these stations are really regional in their programming.

This tendency is even more pronounced in the case of the regional channels of Polish Television. In their opt-out time, devoted to regional programming, they concentrate on news and current affairs, meaning that particular attention is given to public life and political issues, with little reflection of other aspects of the region’s life.

Table 9 shows the proportion of regionally-originated programming in the air time of TVP3 Regionalna, a network of regional stations.

Table 9. Regionally-originated content in the air time of TVP3 Regionalna

Year	2000	2001	2002	2003	2004	2005
Regionally-originated content in the air time of TVP3	23,4%	23,4%	19,3%	16,2%	13,1%	18,3%

Source: National Broadcasting Council

Thus, the proportion of content capable of reflecting the life of regional communities is not high.

In short, the system and the style of journalism practised in the Polish PSB media – deriving from the highly tumultuous political life and conflict-ridden process of transformation as a whole – guarantee an extensive reflection of views and forces involved in public and political life. TVP Regionalna contributes to a fuller reflection of life outside big cities in a national television channel than is the case either in the two national channels of TVP or in the four national channels of Polish Radio. The fact that programming for national and ethnic minorities is carried only by regional stations means that the general public is not exposed to content reflecting their concerns, way of life, culture and traditions.

ROMANIA

Mariana Stoican*

Chapter I: Regulatory Framework

A. Mission, Economic and Financial Structure

Public service television in Romania, *Societatea Română de Televiziune*, is the successor of Romanian State Television, which first began broadcasting in 1956. The programme offering at that time was 21 hours per month.

As a unified broadcasting institution, which also included Romanian state radio, the television broadcaster acted, during the last few decades of communism until the revolution of December 1989, under the name *Radioteleviziunea Română* ("Romanian Broadcasting Corporation"). Under the *ad hoc* adopted name *Televiziunea Română Liberă* ("Romanian Free Television") during the days of the revolution, Romanian Television attracted the attention of the whole world through its "live broadcasting" of the momentous events of Christmas 1989 in Romania. After the revolution however, the programmes of state television were again soon criticised for being under political influence.

With the very dynamic development of the audiovisual landscape and the drafting of a new legal framework for electronic media during the initial years of transition in Romania, the oldest Romanian television company evolved into its present form as a public service broadcasting institution with several channels and regional offerings.

The first significant law for regulating the electronic media market in post-totalitarian Romania, the "audiovisual law" (*Legea Audiovizualului Nr. 48 din 21 mai 1992*), was passed in May 1992. It provided amongst other things for the setting up of a *Consiliul Național al Audiovizualului* (national supervisory body for broadcasting). On 17th June 1994 Law N° 41 on the organisation and the operation of Romanian Radio and Romanian Television was passed, which was amended by Law N° 124 of 22nd June 1998 with several improvements and is currently still valid (*Legea nr. 41/1994 privind organizarea și funcționarea Societății Române de Radiodifuziune și Societății Române de Televiziune, republicată în Monitorul Oficial al României, Partea I, nr. 636 din 27 decembrie 1999*).¹ The splitting up of the original broadcasting institution into a radio company and television company, which on a *de facto* base since 1990 had increasingly strongly asserted itself, was then *de jure* enshrined in the Law of 1994; indeed Art. 1 of Law N° 41/1994 specifies that the Romanian Radio Company and the Romanian Television company, as a result of the reorganisation of Romanian Broadcasting, have been founded as editorially independent, autonomous public service broadcasters of national interest".² In the following Articles it is furthermore explained that the activities of both public service broadcasters

*) Marian Stoican is Editor in Chief for the Foreign Languages Channel of Radio Romania.

1) See Mariana Stoican, RO - Law on the organisation of public-service Radio and Television, in IRIS 1998-8: 9, this may be downloaded at <http://merlin.obs.coe.int/iris/1998/8/article16.de.html>

2) *Se înființează Societatea Română de Radiodifuziune și Societatea Română de Televiziune, ca servicii publice autonome de interes național, independente editorial, prin reorganizarea Radioteleviziunii Române.*

come under parliamentary control and are required to guarantee pluralism, free expression of opinions and thoughts, freedom of information and keeping the public at large fully informed whilst respecting stringent professional criteria.

Included in the national offering of public service television (*Televiziunea Română – TVR*)³ at the present time are “Channel One” (*TVR 1*), “Channel Two” (*TVR2*), the “Culture Channel” (*TVR Cultural*) as well as the headquarters of the regional broadcasters in the most important geographical zones of Romania: Craiova (in the south-east), Cluj-Napoca (north-west), Iași (east) and Timișoara (south-west). An additional regional studio is currently being set up in Târgu Mureș (central Romania).

1. Mission

The programme mandate encompasses all general informational and educational responsibilities, but also the supply of entertainment programmes. It includes both “the objective, balanced presentation of national and international political and economic issues and also the responsibility for providing accurate information to citizens on public issues; the appropriate promotion and cultivation of the Romanian language, authentic national and international performance in the field of culture and science, the cultivation of the culture of national minorities, the promotion of democratic, civic, moral and sporting values, the emphasis on national unity and the independence of the country as well as the preservation of human dignity, truth and justice” (Chapter I, Art. 4 Law No. 41/1994).

Public service television programmes may not contain any defamatory material (*defăimare*) concerning the country or the nation nor may they stir up national, racial, class or religious hatred or incitement to war. They may not promote discrimination, territorial separatism or public violence. For the protection of minors, personal privacy or the right to self-image, Law No 41 provides that the regulations laid down by the decisions of the *Consiliul Național al Audiovizualului* (National Audiovisual Council – CNA) are to be complied with. It might be mentioned that the CNA, as the national supervisory authority for the electronic media in Romania, has recently consolidated and approved all the decisions (*deciziile CNA*) arrived at from its inception up to the beginning of 2000 in the form of an audiovisual regulatory codex with force of law on electronic media matters.⁴

Both Audiovisual Law No. 504/2002⁵ and the new CNA regulatory codex provide that public service television and the other major television broadcasters under Romanian jurisdiction (*jurisdicție*) should earmark a minimum of 50% of airtime for European productions with effect from 1st January 2007. In calculating airtime, news, sports reports, television games and advertising as well as teletext and teleshopping are not to be taken into account. 10% of the airtime earmarked by public service television for European productions is available – under current legislation – for domestic and foreign independent producers.

2. Corporate Structure

As a public service institution under parliamentary control the *Societatea Română de Televiziune* is run by a thirteen-man board of administration (*Consiliu de Administrație*) whose chairman also holds the office of *președinte director general* (Director-General). The members of the board are appointed for a four-year term of office under the following procedure: The parliamentary groups represented in the Houses of Parliament submit, proportionately to their current number of seats, a total of eight proposals; the President of Romania and the government each put forward a candidate and the public service television technical staff (see Chapter I, B.1.) elect two candidates by secret ballot. A further candidate is proposed by the parliamentary group of national minorities. For each “full membership” seat a proposal for a possible deputy is also submitted. A hearing of all persons thus designated is organised by the parliamentary technical committee. Members of Parliament then hold a joint meeting on future membership of the board, voting on each individual proposal. Those who receive a majority vote are accepted. The board chairman is appointed from the ranks of the board’s membership by a joint session of Parliament following a proposal by the standing parliamentary technical committee.

The chairman of the board is entitled by law to a monthly salary equivalent to that of a state secretary; the other board members are paid 25% of the gross salary of the Director-General per month.

3) Home page of public-service television in Romania: <http://www.tvr.ro>

4) CNA-decision on the regulatory codex for audiovisual media, *Decizia CNA Nr. 187 din 3 aprilie 2006 privind Codul de reglementare a conținutului audiovizual*, <http://www.cna.ro/reglementari/decizii/d18706.html>

5) Audiovisual Law in Romania, *Legea audiovizualului Nr. 504 din 11 iulie 2002*, *Monitorul Oficial al României Partea I, Nr. 534 din 22 iulie 2002*.

The board meets as often as necessary, but at least once a month. Meetings are called either by the chairman or at the request of at least one third of the membership.

The transmission facilities and entire communication technology providing the technical basis for broadcasting the national public service television programmes are fully available to the public service television company throughout transmission times. (Art. 8 para. 3 Law No. 41/1994).

3. Financing

The public service television's independent sources of income consist mainly of radio and television licence fees (*taxe de abonament de radio și de televizor*) plus revenue stemming from other broadcasting-style activities, donations, advertising and sponsorship (Art. 40, para. 1, Law No. 41/1994).

All owners of radio and television sets are required to pay the public service broadcasting organisation a monthly fee. The amount payable is determined by government decision (*Hotărâre de guvern, H.G.*) in accordance with the category of use and the method used for paying the fee as well as the sanctions for non-payment (Art. 40 para. 4, Law No. 41/1994). The provisions of government decisions 977/2003 and 978/2003 on fees payable for public service radio and television⁶, that came into force in August 2003, currently apply both to natural persons with residence in Romania and legal persons with their registered offices in Romania, including affiliates.

The cost of the monthly television licence fee for natural persons is currently RON 4 per family (EUR 1 equals roughly RON 3.5) and for legal entities without staff the same. Small enterprises pay RON 15 per month for businesses including any sub-units; legal entities in the hotel business pay RON 7.7 per month per room (if the activity is seasonal the fee is due only during the holiday season); legal entities not coming within the above-mentioned categories and their branches in Romania are required to pay a fee of RON 50 per month. A number of groups disadvantaged through disabilities, or socially and economically (impaired hearing and vision, unemployed and pensioners on low incomes, war veterans, former political prisoners, etc.) are able to claim exemption from payment of the licence by applying in writing. A number of institutions like hospitals, churches, monasteries, state educational establishments, children's homes, old persons' homes, military units, diplomatic missions and other categories of legal persons are also exempt. Branches of the electricity distribution company, "ELECTRICA S.A.", collect the monthly payments from natural persons together with the electricity bill payments and pass them on to the public service TV company, for which ELECTRICA receives an agreed commission.

At the time of the yearly budget law, a sum is set aside in the state budget for the benefit of the public service television company. This funding is to be applied mainly to technical development, the procurement of specific technical equipment and spare parts and to cover the costs of using transmission facilities (transmission masts, radio relay, audio and video circuits). All other outgoings are to be funded, under Art. 41 Law No. 41/1994, from the company's own resources, which consist of licence fees and revenues from other specific activities, like the commercialisation of recordings of its own programmes, organising events including entertainment broadcasts, advertising revenue, the sale of own publications or the export of its own productions.

Under government emergency order No.34/2006,⁷ every public institution in Romania is required to issue calls for tender for procurement items above EUR 40,000 per year. The EUR 40,000 threshold applies both to delivery items and service contracts.

The way public sector broadcasters spend their money is monitored by legally established bodies whose responsibility depends upon the specific source of funding. Accordingly the public service TV company is required to issue a call for tender to select the accountancy firm that will carry out the annual external audit (*audit extern*) in accordance with the provisions of the accountancy law.⁸ This applies, for example, to income from licence fees, advertising and concerts. However it is the court of

56) H.G. 977 și 978/2003, referitoare la taxa pentru serviciile publice de radiodifuziune și televiziune, <http://www.tvr.ro/org/taxatv/index.php>

7) Government emergency order No. 34 dated 19 April 2006 on public procurement, *Ordonanța de Urgență a Guvernului României Nr. 34 din 19 aprilie 2006 privind atribuirea contractelor de achiziție publică, a contractelor de concesiune de lucrări publice și a contractelor de concesiune de servicii, Monitorul Oficial al României Nr. 418 din 15 mai 2006.*

8) Law N° 82/1991 on Accounting (*Legea Contabilității Nr. 82/1991 republicată, Monitorul Oficial al României Nr. 629/26 august 2002*).

auditors (*Curtea de Conturi*) that verifies annually, in accordance with Law No. 94/1992 on the organisation and operation of the court of audit,⁹ how the funds made available from the State budget (e.g. the transmission costs covered by the State budget under Law 41/1994) have been disbursed.

B. Decision Making: Structures and Procedures

1. Decision-Making Process

The Board of Administration has decision-making responsibilities for the fields of business strategy and control, human resources and the budget. It approves the development plan, the programme strategy and the structure of TVR and ensures the programme plans decided upon are observed and the duties flowing from the broadcasting licence (awarded by the CNA) are carried out. It confirms the organisational and personnel structure and the employment conditions for advertised positions of members of the executive committee. Moreover it approves the budget, the distribution of available funding to the autonomous sub-units as well as the investment plan. The Board of Directors authorises the specific assignments of public-service television, which are governed and defined in accordance with the relevant national or international legislation. It adopts measures for extending or limiting the activity of the TVR, presents proposals to the Ministry of Finance (which subsequently have to be approved by the Parliament), reviews current reports on the way the company operates (as drawn up by the individual departments). The Board also sanctions measures affecting company strategy and proposals from the management committee on cooperation with other companies (based on domestic or foreign capital) and the conclusion of international contracts with other broadcasting organisations.

Lastly, the Board presents an annual report to Parliament on the company's activities and is responsible for any further reports that may be called for by the standing parliamentary technical committee.

The Director General is in charge of day-to-day management along with members of the executive committee. One of his most important tasks is to monitor the way decisions of the Board are being implemented and compliance with contracts entered into by the company. He authorises – as indicated by the executive committee – the operational and maintenance standards for the technical facilities, corresponding commercial and financial measures, staff appointments and ongoing training. The positions of chief executive officer and board members of the regional sub-units of the public service broadcasting organisation are publicly advertised. The winners of the competitive procedure are then appointed by the Director-General. He is also responsible for any dismissals (as a result of disciplinary measures, for example).

The Director-General represents public-service television in its links with other institutions, both at home and abroad. His participation in international conferences must be authorised by the Board.

The executive committee of public service television is made up of a Director-General and a maximum of seven further members. Its tasks include developing programme strategy, all documents that have to be presented to the Board of Administration for approval, as well as all draft standards and regulations. Moreover, the executive committee takes decisions on tasks of every kind it is required to perform and, as part of the responsibilities conferred upon it by the Board, on commercial or financial transactions.

The regional studios of public service television work autonomously, without actually enjoying the status of a legal entity. According to the Law they are recognised as having “technical, economic, business, administrative and financial responsibilities as well as powers of representation in legal affairs” (Art. 32 Law Nr. 41/1994). The regional units of public service television are run by their own executive committee appointed by the Board of Administration. The Board of the parent company transfers to the regional executive committee some of its own powers within certain limitations (Art. 35 para. 1 Law N. 41/1994).

The professional staff of public service television includes, in accordance with Art. 11 para. 1 Law N° 41/1994 all “those who produce, draft, draw up or coordinate broadcasting contributions i.e. provide creative input for what is broadcast”. Individual authorised positions are publicly advertised and are filled by competition procedures which take place at the earliest two weeks after the first

⁹ *Legea Nr. 94/1992 privind organizarea și funcționarea Curții de Conturi, republicată, modificată, completată prin Legea Nr. 77/2002, Monitorul Oficial al României Nr. 116/16 martie 2000.*

public announcement; Participation conditions should not discriminate in any way; the *Consiliul Național pentru Combaterea Discriminării* (“National Council for Combating Discrimination”) is responsible for supervising this. Law N° 41/1994 provides that the professional staff of public-service television may only exercise parallel activities throughout the duration of their respective employment contracts (these are currently of an unlimited duration) with the special authorisation of the executive committee, with the exception of teaching activities.

The basic salary and rights of staff are agreed on the basis of individual and collective labour contracts. Several trade unions set up in the last few years, which the majority of the professional staff of public service television have joined, represent the interests of employees within a so-called *Comisie paritară* (“Parity Committee”) during the yearly negotiation or updating and recording of the collective labour agreement. The “Parity Committee” is made up of an equal number of board directors and representatives of the “main trade union organisations”.¹⁰

Strike actions of trade union members are possible – whilst respecting the relevant legislation – and during the first few years after the 1989 Revolution in Romania occurred also in the form of protest actions. These, for example, involved the appointment or, more specifically, the refusal to recognise certain personalities backed by the trade-unions for the board of directors of public-service television.

2. Impact of Politics

The Constitution of Romania¹¹ establishes freedom of “thought, opinion and belief” and the “inalienable right to every form of creativity, whether through word, spoken or written, images or sound or other form of public information” (Art. 30 para. 1). “Any form of censorship is forbidden” (Art. 30 para. 2). The Constitution moreover grants “to the individual unlimited access to information of public interest (Art. 31 para. 1). It is also enshrined in constitutional law that the “the public service radio and television companies are autonomous. It is their duty to ensure that the important socio-political groups enjoy the right to airtime”. (Art. 31 para. 5).

Law N° 41/1994 provides that Members of Parliament or of the Government may not be part of the Board of public-service television.

The chairman of the board and the members of the board of directors undertake, on oath before the Parliament, “to respect the Constitution and Laws of the country, to protect the interests of Romania and the fundamental rights and freedoms of citizens and to carry out the duties flowing from this office in an honest, conscientious and non-partisan manner” (Art. 22 Law No. 41/1994). The expert committees of the Parliament have the possibility of dismissing every member of the board of administration, should the majority of committee members be in favour of this. The board of administration is considered as being dissolved in its entirety, if the Parliament rejects the annual public-service television report. This has been the case on two occasions already, namely in 2001 and 2005, immediately following the general elections and the consequent power change. As a result, some leading politicians and representatives of civil society see in the current procedural arrangements the danger of politicisation of the boards of directors and are insisting on a revision of Law No. 41/1994.

A proposal for re-enactment was read in spring 2006 in the house of representatives and is now up for debate in the senate. The proposal outlines *inter alia* a less politically orientated board membership. The audiovisual supervisory authority, CNA, and civil society representatives insist that the possibility in law of dissolving the entire board of administration should be done away with by parliament. The president of Romania and the Democratic party (currently part of the governing coalition) refused, when in early 2006 a new board was appointed, to designate their appointees both for public sector television and radio, until such time as the corresponding amendments were passed by parliament. Both boards are thus operating short-handedly with an eleven-man membership. Should the proposed re-enactment come to pass, the term of office of the present boards will terminate 30 days after the official announcement is published.

As to the independence of the contents of public service TV programmes in Romania, this is also guaranteed under the present Law No 41. It provides that “programmes are legally protected from any influence on the part of authorities, parties or socio-political groups, trade-unions, commercial or corporate bodies or from elsewhere” (Art. 8 para. 1).

10) To ensure it is “representative” it is a requirement that at least one third of staff members should belong to the relevant trade union organisation.

11) *Constituția României din 31 octombrie 2003, Monitorul Oficial al României Partea I Nr. 767 din 31 octombrie 2003.*

Parties represented in Parliament must have airtime made available by public sector TV even outside election campaigns, but this may not exceed one-hundredth of total programming per week. Transmission times are allocated on a share-out basis according to the number of seats held by the parties; this is true also for the representatives of national minorities who legally hold at least one seat in Parliament (Art. 5 para. 4 Law No. 41/1994).

It is also laid down in law that the staff of public service television may not belong to any party or political group. Furthermore, in going about their business they are required to keep their distance from politics and observe the diversity of views to be found in society. (Art. 13 para. 1 Law No. 41/1994). Cooperation with other broadcasting organisations may only take place with the agreement of their management committee.

News and reportages must be presented in accordance with the truth; reporting must be objective and may not be influenced in any way by public authorities or other natural, public or private persons (Art. 14 para. 1 Law No. 41/1994). News and reports must be checked to ensure that their formulation, titling and commentary do not deviate from the facts (Art. 14 para. 2 Law No. 41/1994.) Responsibility for output lies either with the programme producer, the author of the broadcast contribution or the public service television institution. The dissemination of information impairing the protected rights of a natural or legal person entitles them to apply for rectification.

The public service television organisation is a member of the *Clubul Român de Presă*¹² (Romanian Press Club), a non-government organisation that makes it its duty to contribute to quality improvement of the Romanian press. A professional code of ethics for journalists (*Codul deontologic al ziaristului*) has been approved by it in the form of ten commandments setting out the journalist's duty to present information correctly and free from influence.

In both the Press Club and the public sector broadcasting organisation there are honorary committees arbitrating on an advisory basis (*Comisia de etică și arbitraj*) that can be called upon in cases of dispute or doubt on journalistic matters. The honorary committee in the public service television organisation has a membership similar to that of editorial committees in the public broadcasting organisations in the traditional European democracies. It operates on the basis of terms of reference it has outlined itself, approved by the board.

3. Impact of Civil Society

The way the public service television programme offering is perceived by the public, and what conceptions and expectations licence fee payers have, can at present only be determined by measuring viewer ratings, surveys, meetings with various viewer groups or feedback in writing (traditional post, emails, internet forums) or via telephone communications with television viewers. Permanent representatives of civil society or individual viewership groups with supervisory or advisory functions are not to be found either on the board or in other television bodies. This situation is to be amended, however, as proposed by a re-enactment of Law No. 41/1994, currently up for debate in the Senate, bringing representation of civil society on to the board. The bill provides that the thirteen-member board should in future be made up of seven seats from the parliamentary groups, one from the presidency, one from the government, one from the national minorities in Parliament, one from the public service television staff membership and two from civil society.

Chapter II: Cultural Diversity

A. Influence of Relevant National and Cultural Aspects

Function and Organisation Law No. 41/1994 provides that the programming of public service television should consist of at least 50% European productions, of which 30% should be of Romanian origin. Included in the 30% there are to be specific television contributions for national minorities; furthermore, 35% of Romanian production must consist of cultural productions.

Romania is a country with 22 million inhabitants. The officially registered ethnic minorities (Hungarians, Germans, Roma, Ukrainians, Turks, Tartars, Albanians, Armenians, Bulgarians, Croats, Greeks, Jews, Italians, Poles, Lipovan Russians, Serbs, Slovaks, Czechs, Macedonians and Ruthenians)

12) Homepage of the Romanian Press Club, <http://www.presseclub.ro>

represent around 11% of the population. The Hungarians (with roughly one and a half million) represent the quantitatively most important ethnic minority; the Roma group – by official estimate – accounts for some 550,000 inhabitants. Some 55,000 members of the German minority are still living in Romania.

The law on the use of the Romanian language in public and throughout public institutions¹³ states the requirement to provide sub-titles in Romanian or simultaneous translation whenever foreign productions are broadcast (Art 3). Exceptions to this rule are made when live broadcasts (Art. 5f) in the language of ethnic minorities or items of a religious, ethnographic or entertainment nature in the languages of the national minorities are put out in the programmes of the local and regional television channels (Art. 5g).

The public service television company makes it its business, according to its own account (TVR annual report for 2005), “to become part of the life of citizens in the various strata of the population – irrespective of gender, age, race, religion or language – as well as giving heed to people with special requirements such as those with disabilities.” The objective is to “maintain and enhance programmes intended for minorities”, on the one hand. On the other, “their specific problems should find their way into the basic programming in order to appropriately acknowledge all our differences and common features”.¹⁴

As far as the offering by the central programme in the ethnic minority languages is concerned, there are three departments in the Bucharest television studio that deal mainly with these broadcasts. The **Hungarian TV production department** in Bucharest consists of 15 journalists with a small team of translators, technical and artistic staff and administrators. The team produces a magazine-type programme under the title “Chronicle” that goes out between 3.30 p.m. and 5 p.m. on Mondays and between 4 to 5 p.m. on Tuesdays offering news, a political review, literary discussions, artistic and scientific portraits, a Hungarian-Romanian economic forum plus reports and current announcements on traditional folklore or religious topics. A new feature produced every two weeks by this team is a live broadcast with two journalists interviewing a celebrity guest.

TVR2 carries a one-hour programme on Thursdays at 3 p.m. entitled “Siesta” consisting of easy-going discussions with various people from the Hungarian minority group. “Culture” is the title of a selection of items in Hungarian from the TV archives going out on Thursday from 4 p.m. to 4.30 p.m.

With the “Hungarian language TV Magazine”, extracts from the output produced by the Hungarian department for TVR1 and TVR2 are also broadcast twice a month in TV Cultural. The main task of the journalists in the Bucharest public service television production department is to ensure that its programmes inform, instruct and entertain. The programmes for the Hungarian minority in Romania are aimed at maintaining their cultural identity. 95% of the output is broadcast in Hungarian with Romanian sub-titles, the exception being the features that go out live with a guest in the studio.

The **German TV production department** produces 140 minutes of own material per week. On Thursdays, a magazine-style broadcast entitled “Accents” goes out (news, press review, “This Week’s Topic”, “Books and Pictures”, “Fortresses of Faith”, current events,) with on Tuesdays from TVR2 a programme titled “Together in Europe”. Every two weeks TVR Cultural broadcasts a half-hour programme in German and there is a further weekly selection of German language material produced for TVR1 and TVR2.

A **third department** dealing mainly with the specific problems of the ethnic minorities in Romania living together with the majority population is the department for *Redacția Emisiuni pentru Străinătate și Minorități* (“Foreign and Minority Programmes”). Every week, it produces one-hour programmes like *Atlas etnic* (“Ethnic Atlas”) or *Conviețuiri* (“Co-habitation”), devoted to historical and cultural identity, everyday life and the prospects of all the ethnic minorities in Romania. TVR Cultural also puts out three TV documentaries titled *Identitate* (“Identity”) (three times 30 minutes per week) on personalities from the ethnic minorities in Romania. Since August 2003, the output from this department has focused more sharply on aspects of the lives of the Roma living in Romania. On Mondays, TVR2 puts out a programme entitled *Primul pas* (“The First Step”) devoted to the musical tradition, approach to living and lifestyle of this group of the population.

13) *Lege privind folosirea limbii române în locuri, relații și instituții publice Nr. 500 din 12 noiembrie 2004*, <http://www.cdep.ro/proiecte/2001/500/80/5/leg-pl585-01.pdf>

14) TVR annual report for 2005, <http://www.tvr.ro/org/raport/raport2005/Raport%202005%20complet.pdf>

There are also programmes in minority languages from the regional studios in Cluj and Târgu Mureş.

Wherever the programming of the individual regional transmitters includes broadcasts in national minority languages, members of the executive committee of the regional broadcaster concerned must include representatives of the programme producers. (Law No. 41/1994, Art. 35 para. 2).

B. Reflections of Diversity in Organisational Structure

In a country with a very diverse electronic media landscape (situation as of 1 August 2006: 628 radio licences, 263 valid terrestrial TV licences issued by the CNA, 286 for cable TV, 32 satellite radio licences 92 licences for satellite TV plus 4841 cable authorisations) the whole public sector offering is pitched, by its own account¹⁵, at providing topical and objective information for the general public, "high-grade cultural features and sophisticated entertainment programmes" plus the promotion of the values of local communities via four regional studios.

TVR1 perceives itself as a "mirror of your time" (*Imaginea timpului tău*); its output ranges from political, cultural and religious topics to sport and entertainment. The "authentic artistic and cultural values, folklore and social-human values" of the Romanian people are represented, alongside those that have been taken into the cultural system. TVR1 has a generalist format that applies equally to all parts of the viewership. Complementary to that, under the motto "Reshape your world anew" (*Recrează lumea ta*) TVR2 contributes a fresh perspective on history, science, culture and cultural life alongside sporting events and entertainment. Over the last couple of years more airtime has been made available for informative contributions on national events and what is going on in the world. Twice a day (for fifteen minutes) TVR2 takes the Euronews news bulletins in a Romanian language version. The output TVR2 devotes to European affairs (information, education of citizens on Europe, integration, Romania's upcoming membership) to about four hours per week.

Under the motto "Choose the right values" (*Alege valoarea*) the programme strategy of TVR Cultural addresses a more specific audience. Since 2002 it has taken the form of a non-stop themed channel. Literary discussions, theatrical performances, opera and ballet, cinematographic works from the film archives and concert works make up the bulk of the offering.

The public service TV regional broadcaster make it their main business to broadcast news and information and significant current events in their catchment areas together with central TV programmes (TVR1, TVR2, TVR Cultural) with corresponding announcements, reports, reportage and major contributions. Altogether last year the regional studios devoted 540 hours, as TVR announced in the annual report for 2005, to local and regional topics in their own "geographic" target area.

TVR Cluj is the public service TV company's oldest regional studio in Romania. The first programme was broadcast on 23 December 1989 immediately after the revolution. As of 3 January 1990 the Cluj studio began broadcasting regular programmes to the Cluj, Maramureş, Bistriţa, Satu Mare, Harghita, Salaj, Sibiu, Alba, Mureş and Bihor counties (a large part of the historic region of Transylvania).

TVR Iaşi was established in 1991. The programmes target the counties of Iaşi, Neamţ, Vaslui, Suceava, Bacău, Botoşani and Galaţi (the historical region of Moldova). In 1993 this local studio hosted the first Circom-regional conference¹⁶ to take place in an Eastern European country.

TVR Timișoara started life in 1994 with a 35-minute weekly programme. At present it is producing 1200 programme-minutes that are received in the Timiș, Arad, Hunedoara and Caraș Severin districts (the historical region of Banat).

TVR Craiova has been putting out its programmes since May 1996 for the historical region of Oltenien which covers the counties of Dolj, Olt, Vâlcea, Mehedinți and Gorj and the Argeș and Teleorman areas.

15) Cf. <http://www.tvr.ro/org/desprenoi/index.php>

16) Circom (*Coopérative Internationale de Recherche en Matière de Communication*) régional is an international association specifically promoting the regional channels of Europe's public-service television stations.

Appendix: Council of Europe Documents

The following list, puts the various documents to which the article on “European Backing for Public Service Broadcasting” refers in a chronological order. All texts were adopted by either the Committee of Ministers or the Parliamentary Assembly of the Council of Europe. Many standards set by the Council of Europe result from interaction between those two statutory organs.

The list of Council of Europe Documents gives full appreciation of the multiple aspects of public service broadcasting, which the Council of Europe covered over the years. Of the following texts, those which put public service broadcasting at its very center are bolded.

- ⇒ **Parliamentary Assembly: Recommendation 748 (1975) on the role and management of national broadcasting, adopted on 23 January 1975.**
- ⇒ **Parliamentary Assembly: Recommendation 1067 (1987) on the cultural dimension of broadcasting in Europe, adopted on 8 October January 1987.**
- ⇒ European Convention on Transfrontier Television (ETS No. 132) of 5 May 1989, in force since 1 May 1993 (text amended by the 1998 Protocol ETS No. 171).
- ⇒ **Parliamentary Assembly: Recommendation 1147 (1991) on parliamentary responsibility for the democratic reform of broadcasting, adopted on 22 April 1991.**
- ⇒ Parliamentary Assembly: Recommendation 1228 (1994) on cable networks and local television stations and their importance for Greater Europe, adopted on 24 January 1994.
- ⇒ Committee of Ministers: Recommendation No. R (94) 13 on measures to promote media transparency, adopted on 22 November 1994.
- ⇒ **4th European Ministerial Conference on Mass Media Policy: Resolution No. 1 on the future of public service broadcasting, adopted on 7/8 December 1994 (Prague Resolution)**
- ⇒ **Committee of Ministers: Recommendation No. R (96) 10 on the guarantee of the independence of public service broadcasting, adopted on 11 September 1996.**
- ⇒ Committee of Ministers: Recommendation No. R (97) 21 on the media and the promotion of a culture of tolerance, adopted on 30 October 1997.
- ⇒ Protocol amending the European Convention on Transfrontier Television (ETS No. 171) of 1 October 1998, in force since 1 March 2002.
- ⇒ **Committee of Ministers: Recommendation No. R (99) 1 on measures to promote media pluralism, adopted on 19 January 1999.**
- ⇒ Committee of Ministers: Recommendation No. R (99) 15 on measures concerning media coverage of election campaigns, adopted on 9 September 1999.
- ⇒ Parliamentary Assembly: Recommendation 1407 (1999) on media and democratic culture, adopted on 29 April 1999.
- ⇒ Committee of Ministers: Recommendation Rec (2000) 23 on the independence and functions of regulatory authorities for the broadcasting sector, adopted on 20 December 2000.
- ⇒ Committee of Ministers: Declaration on cultural diversity, adopted on 7 December 2000.
- ⇒ Parliamentary Assembly: Recommendation 1506 (2001) on freedom of expression and information in the media in Europe, adopted on 24 April 2001.
- ⇒ Parliamentary Assembly: Recommendation 1589 (2003) on freedom of expression in the media in Europe, adopted on 28 January 2003.

- ⇒ **Recommendation Rec (2003) 9 on measures to promote democratic and social contribution of digital broadcasting, adopted on 28 May 2003.**
- ⇒ **Parliamentary Assembly: Recommendation 1641 (2004) on public service broadcasting, adopted on 30 September 2004.**
- ⇒ **7th Ministerial Conference on Mass Media: Resolution No. 2 on Cultural diversity and media pluralism in times of globalization, adopted 10/11 March 2005 (Kyiv Resolution).**
- ⇒ **Committee of Ministers: Declaration on the guarantee of the independence of public service broadcasting in the member States, adopted on 27 September 2006.**
- ⇒ **Committee of Ministers: Recommendation Rec (2007) 3 on the remit of public service media in the information society, adopted on 31 January 2007.**

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