



Governance and independence of public service media

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Foreword

Since the dawn of time, human beings have tended to see and reproduce dualities everywhere they go. Body and soul. Yin and yang. Yes and no. For and against. Even computers function entirely on the basis of ones and zeros. When talking about public service media (PSM) in Europe, there is another duality that matters a lot: theory and practice. The theory comprises the legal norms aimed at protecting the independence of PSM – let's say *de jure* independence. The practice, or *de facto* independence, would be PSM actually carrying out their activities independently from the powers that be.

At European level, the Council of Europe has established standards through different legal instruments of the Committee of Ministers and the Parliamentary Assembly, and through judgements of the European Court of Human Rights. The EU has launched a public consultation with the aim of adopting a European Media Freedom Act, the scope of which would also embrace safeguards to foster independence of PSM.

Nevertheless, the regulation of PSM is basically a state affair, that is, it is mainly addressed at national level. This leads, as a consequence, to a great diversity of national models in terms of how the PSM are built, how they are funded, what their remit is, and how their governance works. There are rich and poor PSM, and while some have a long tradition of independence from the state, others have less. And real independence of PSM depends as much on the existence of an appropriate legal framework as on its effective implementation, something that is in turn linked to a number of factors that go beyond the law. This is why, in the case of the independence of PSM, theory and practice are not the same in real life.

This publication focuses on the *de jure* independence of PSM by analysing their governance in a selection of countries covering all four cardinal directions in Europe, which display different regulatory traditions. It explains, for each country, the structure of the national public service broadcaster and its legal form, its managerial and supervisory structure, the way key appointments are made, the safeguards concerning dismissals, and the ways in which the independence of the PSM is protected from political interference. It also presents the European legal framework, describes self-regulatory initiatives, and highlights relevant European and national case-law.

The publication is accompanied by a comprehensive overview table on existing safeguards for the independence of PSM with regard to their governance, available on our website (www.obs.coe.int). The table covers, for the time being, EU and EFTA countries, and the UK.

This extensive kind of analysis would not have been possible without the precious collaboration of national members of the European Broadcasting Union (EBU), who were

available for valuable peer reading of the national case studies and the overview tables. A special thanks to Richard Burnley, Director of Legal and Policy at EBU, for the kind assistance and advice in reaching out to EBU members.

Strasbourg, February 2022

Maja Cappello

IRIS Coordinator

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1. Setting the scene

1.1. Public service media background and context

1.1.1. A short history of public service broadcasting

The history of broadcasting has been heavily influenced by spectrum scarcity. The limited range of frequencies within the electromagnetic spectrum suitable for the broadcast of radio services justified, in most countries, state intervention in spectrum management. This in itself does not necessarily constitute a need for state-owned or state-financed broadcasters, as is evident from the fact that in countries such as the United States, non-commercial stations did not appear until the 1940s, and the first public service broadcaster (PSB) as such was not established until 1967.

However, most of the first PSBs, particularly in Europe, appeared during the late 1920s and early 1930s, a period during which governments wanted to promote social cohesion and gain back the trust of a public profoundly disenchanted with politics following World War I. This political will, along with high production costs (not easily coverable with private capital, in some countries) and infrastructure deployment costs, paved the way for PSBs throughout most of Europe, in some cases to inform and educate the broader population, in others for internal propaganda and agitation purposes.

There is a widespread assumption that the origin of broadcasting in Europe is linked to national public initiative, but the foundation of two of the first, most representative broadcasters at that time – the BBC in the UK and the RRG in Germany, contradict this idea. The British Broadcasting Company, as it was first named, was launched in 1922 by a group of radio manufacturers offering a daily radio service in London;¹ it was not until 1926 that Parliament discussed the appropriateness of turning it into a public entity, which led to the establishment of the British Broadcasting Corporation (BBC) in 1927. In the case of Germany, the RRG (*Reichs-Rundfunk-Gesellschaft*) was a conglomerate of public regional broadcasters until its nationalisation in 1934, when it became a nationwide broadcaster.²

¹ <https://www.bbc.com/historyofthebbc/timelines/1920s/>.

² Ulrich, H. W., *Im Dienst der "Volksgemeinschaft"*, NDR, 2011, https://www.ndr.de/der_ndr/unternehmen/chronik/Der-Rundfunk-in-Norddeutschland-1932-Mai-1945.norag111.html (only in German).

1.1.2. The dual system and the role of public service broadcasting amidst the liberalisation of broadcasting in Europe

Many technological and stylistic changes have taken place since the launching of the first broadcasters; what was first a service based on radio programmes available in big urban areas, soon included television services available to more and more people; then colour TV became a reality and VCR equipment allowed the broadcast of taped content. Technical developments ushered in lighter equipment, allowing the production of more and more content outside studios at affordable prices, which had an impact on the way news stories were told and entertainment was produced. But one of the groundbreaking points for public service broadcasting in Europe was linked to the emergence of private broadcasters and the shift towards a dual model of coexistence.

The economic and technological developments of the 1970s favoured EU member states' willingness to introduce competition in the broadcasting sector.³ Although a few countries (with channels such as that which would later become Mediaset in Italy in the 1970s, or the commercial, public service, private broadcaster ITV operating in the UK since 1955), had already had some limited experience with commercial broadcasting, most Western European countries liberalised their broadcasting sector between the late 1980s and early 1990s, with most of the first private channels in each European country being launched during this period. This shift eventually spread to Eastern Europe with the launching of the first private broadcaster in the region in 1994.⁴ These changes came along with new technological developments in transmission systems, ushering in the expansion of cable and satellite, which changed the overall broadcasting landscape in Europe. From that moment on, public monopolies would have to compete with the new private broadcasters and oftentimes the latter questioned the role and independence of the former.⁵ It is from this point that justification of the PSBs' public service role appears to be more relevant than ever.

The competition between private and public broadcasters, along with the fact that the latter are totally or partially funded by the state has led to concerns about a level playing field in the sector, including allegations of infringements of Articles 86 and 87 of the EC Treaty in relation to public funding of public service media, addressed in the Communication on the application of State aid rules to public service broadcasting.⁶

³ Communication from the Commission on the application of State aid rules to public service broadcasting (Text with EEA relevance) (OJ C 257, 27.10.2009), [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52009XC1027\(01\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52009XC1027(01)).

⁴ Hejma, O., "East Europe's First Nationwide Private TV to Go On Air", Associated Press, 1994, <https://apnews.com/article/199f3193be1dc92464ae6de39e028921>.

⁵ Franquet, R., Richeri, G., Hibberd, M., Chapter 14: "The Introduction of Commercial Broadcasting to Europe" in Arnold, K. et al. *The Handbook of European Communication History*, John Wiley & Sons, Inc., <https://onlinelibrary.wiley.com/doi/abs/10.1002/9781119161783.ch14>.

⁶ Communication from the Commission on the application of State aid rules to public service broadcasting (Text with EEA relevance) (OJ C 257, 27.10.2009), [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52009XC1027\(01\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52009XC1027(01)).

1.1.3. The shift from public service broadcasting to public service media

Although the two terms – public service broadcasting (PSB) and public service media (PSM) – are still often used interchangeably, the change of denomination highlights the fact that PSBs have moved from pure television and radio broadcasting to a wider output in which online media also play a fundamental role. Rather than a shift from producing television and radio programmes, PSM now have a wider variety of content (such as online journalism, blogs, vlogs or audiovisual content exclusively for the Internet) as well as new forms of distribution (such as catch-up TV). According to some studies, this change of paradigm is not just a shift towards a multimedia environment, but also requires a move from supply-oriented approaches towards demand-oriented approaches in which audiences are considered partners rather than targets. Moreover, the new environment lends itself to the production of cross-media and cross-genre content.⁷

1.1.4. Public service role

Each country defines the public service role of its PSM in a different way, but according to the European Broadcasting Union (EBU), the alliance of 115 public service media in 56 European countries (and an additional 31 associates around the world), there are some common values at the core of PSM; namely, universality, independence, excellence, diversity, accountability and innovation. In order to achieve and maintain those values, PSM require robust legislation, and adequate and sustainable funding, as well as professional governance.⁸

While universality refers to the goal to reach all societal segments, independence is expressed in the form of the ability to make autonomous decisions (programming, staffing, editorial choices, etc.) and therefore become trustworthy for audiences. According to this pledge, excellence relates to high integrity and professional standards, while diversity consists in giving voice to, and reflecting the reality of, an audience made up of a diverse range of interest groups, including different generations, cultures, religions, and majorities, as well as minorities. When it comes to accountability, it is all about clear editorial guidelines and transparency about policies, budgets and editorial choices so as to allow public scrutiny. Last, innovation refers both to fostering creativity and new formats, as well as aiming at new technologies and new ways to connect with the audience.

In more concrete terms, if we look at the public service definition, goals and guiding principles, these are usually briefly defined in the applicable legislation

⁷ Bardoel, J. and Ferrell Lowe, G., “From Public Service Broadcasting to Public Service Media”, RIPE, , *Nordicom*, 2007, <https://www.diva-portal.org/smash/get/diva2:1534710/FULLTEXT01.pdf>.

⁸ EBU, “Empowering Society: A Declaration on the Core Values of Public Service Media”, 2021, https://www.ebu.ch/files/live/sites/ebu/files/Publications/EBU-Empowering-Society_EN.pdf.

regulating the functioning of the PSM and further developed in regular declarations or statements.

1.1.5. The shift from state-owned to independent public service media

The shift from traditional state broadcasters to fully independent PSM has been ongoing for around two decades in Europe. It is a response to the widespread perception that political and economical influence from governments in PSM diminished the independence of PSM both in editorial and governance terms.

In the last CoE Recommendation on PSM governance in 2012,⁹ the abovementioned shift is defined as one “from being the State broadcaster – with strong links to the government, and weaker accountability to the wider audience or civil society – to becoming genuine public service media, with editorial and operational independence from the State”. The Recommendation sets some standards as to governance; namely, on structures (accountability and independence), management (effective management) and culture (transparency and openness as well as responsiveness and responsibility).¹⁰

According to the EBU,¹¹ governance is “the framework of rules and practices which determine how an organisation is directed: who takes decisions, how stakeholders can make their voice heard and how the organisation is held accountable”.¹² This includes both external (usually in the law on PSM) and internal arrangements (made by the PSM governing bodies), and can be either supervisory or executive. Governance also comprises the relationships with external stakeholders such as audiences, civil society or economic players. Independence, understood as “[n]o undue interference by political or economic powers”,¹³ is one of the key governance principles for PSM – along with accountability, transparency and sustainability. Moreover, independence has also been identified by the EBU as one of PSM’s core values, along with universality, excellence, diversity, accountability and innovation.¹⁴

The EBU further elaborated on the CoE recommendation and is well aware that PSM systems present a wide variety of models throughout Europe, in many cases still

⁹ Recommendation CM/Rec(2012)1 of the Committee of Ministers to member States on public service media governance (Adopted by the Committee of Ministers on 15 February 2012 at the 1134th meeting of the Ministers’ Deputies), https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805cb4b4.

¹⁰ See section 2.1. for further details.

¹¹ <https://www.ebu.ch/about>.

¹² EBU, *Legal Focus. Governance Principles for Public Service Media*, 2015, https://www.ebu.ch/files/live/sites/ebu/files/Publications/EBU-Legal-Focus-Gov-Prin_EN.pdf.

¹³ *Idem*.

¹⁴ “Empowering Society: A Declaration on the Core Values of Public Service Media”, EBU, 2012, https://www.ebu.ch/files/live/sites/ebu/files/Publications/EBU-Empowering-Society_EN.pdf.

transitioning from a state broadcaster to the preferred model of an independent PSM organisation.¹⁵

1.1.6. Independence

In the view of the EBU, independence should be addressed at different levels – structural, supervisory, managerial, and editorial. Editorial and institutional independence from political and economic powers is crucial in maintaining the audience trust and can be achieved first and foremost through structural independence.¹⁶ Undue interference is usually avoided via legal safeguards and supervisory systems to “distance PSM from political institutions, in particular from the executive and legislative branches, but also from political parties”;¹⁷ the fact that they are usually state-owned and state-funded should not imply that they are controlled by the state. Moreover, decentralisation can be a positive factor with regard to achieving independence.

As for independence of supervisory bodies, a good starting point according to the EBU is preventing state representatives and politicians from becoming members or influencing them, as well as maintaining a strict separation between managerial and supervisory bodies. The independence of their members should be guaranteed via appointment for a reasonable duration (four to six years) with the option to renew – ideally on staggered terms, as well as by protecting them against dismissal or revocation during their term. Moreover, appointments to these boards should be open and transparent, with the report recommending a qualified (3/5, 2/3 or 3/4)¹⁸ majority in parliament for the election of the members of a supervisory body.

Equally, PSM management should not be appointed by the executive or legislative powers but by independent supervisory bodies in what is referred to as a decentralised model.¹⁹ Regardless of this, all nomination and appointment procedures should be open and transparent, and the selection criteria based on professional qualifications and previous experience. Gender balance within these bodies should be observed and safeguards against politically motivated dismissals implemented.

In terms of editorial independence and ethics, the EBU recommends that PSM organisations create editorial guidelines and codes of ethics.²⁰ Safeguards play a fundamental role in preventing the use of political decisions on remit or funding to exert editorial pressure. In addition, a high level of protection of PSM employees can contribute to their editorial independence.

¹⁵ EBU., *Legal Focus. Governance Principles for Public Service Media*, 2015, https://www.ebu.ch/files/live/sites/ebu/files/Publications/EBU-Legal-Focus-Gov-Prin_EN.pdf.

¹⁶ Idem.

¹⁷ Idem.

¹⁸ Idem.

¹⁹ Idem.

²⁰ Idem.

1.1.7. Accountability and transparency

As for accountability and transparency, PSM should put in place governance frameworks to determine to whom and on what the organisations are accountable, and how this accountability is effectively achieved. PSM should not only inform the public about their activities and organisations, but also actively seek their feedback. Moreover, they should retain a permanent link with communities, organisations, and civil society in order to integrate the users of the services as co-creators as much as possible.

The supervisory bodies, whether internal or external, should represent the interests of the general public, and need their own resources in terms of staff and budget. The EBU has identified two types of supervisory bodies in Europe:²¹ on the one hand, smaller bodies whose members are selected based on their skills; on the other hand, larger bodies whose members reflect the diversity of society in their country. In either case, the supervisory body needs to be in touch with the public (public hearings and consultations) and be transparent as to its functioning (publishing decisions and minutes, as well as making meetings public). In the case of the ombudsman (or equivalent structure), the idea is that of an audience advocate, dealing with their complaints and suggestions. Equally, systems for internal control, such as an internal audit system, are also a good practice according to the EBU.²²

Transparency can be achieved via the publication of annual reports, the publishing of all relevant information on the web, and the adoption of transparency standards, which include identification of documents and information that the PSM should regularly make available. According to EBU,²³ these would include the legal framework and governance structure, members of management boards and supervisory bodies, financial and operating results, including the costs and funding arrangements for the fulfilment of the public service remit, audit report, sources of funding and allocation of funds for different activities, compensation for key executives, the management board and members of the supervisory body, the public service remit with which the PSM organisation has been entrusted, objectives/goals set by the management, editorial guidelines (ethics codes and programme standards), procurement rules, processes and opportunities, and other policies (e.g. on recruitment, gender equality, diversity), as well as contact points and channels for interaction.

²¹ Idem.

²² Idem.

²³ As per EBU, “Legal Focus. Governance Principles for Public Service Media”, 2015, https://www.ebu.ch/files/live/sites/ebu/files/Publications/EBU-Legal-Focus-Gov-Prin_EN.pdf; This list is based on Council of Europe Recommendations, OECD Principles of Corporate Governance (2004), the Swiss Code of best practice for corporate governance (2014), the EBU project “Assessing Transparency” (2015), conducted by the Media Intelligence Service.

1.2. Types of public service media and financing

1.2.1. Types of public service media

PSM can be categorised based on a series of elements, notably, the geographical level of the provider and the geographical reach of the target audience, but also the funding model.

As already mentioned, most of the initial PSBs in Europe were established as national state-owned monopolies; in many cases they evolved towards PSM offering services in different media (mainly radio and television); this includes institutions such as RTVE (Radio Televisión Española) in Spain or RAI (*Radiotelevisione Italiana*) in Italy. In some cases, radio and television services are operated and provided by different entities within the same country; such is the case in: Poland, with *Polskie Radio* (Polish Radio) and *Telewizja Polska* (Polish Public Television, TVP); Sweden, with *Sveriges Radio* (Swedish Radio, SR) and *Sveriges Television* (Swedish Television, SVT); or Romania, with the *Societatea Româna de Radiodifuziune* (Romanian Radio Broadcasting Company) and the *Societatea Româna de Televiziune* (Romanian Television Society, SRTV). There are also other models, such as the Dutch one, in which different groups and associations – broadcasting associations, PSBs, political parties, religious associations, the government – have access to shared facilities and to broadcasting time across the channels. Netherlands Public Broadcasting (*Nederlandse Publieke Omroep*, NPO) is the organisation in charge of coordinating the system and the programming.²⁴

Moreover, many PSM have emerged at the sub-national level (notably at the regional level) over the years. In most cases, these broadcasters appeared after the setting up of national PSM in their country and their establishment was usually linked to the administrative sub-divisions and linguistic areas of the territory. However, there are cases where regional broadcasters were established first or where these are the only form of PSM; for instance, in the case of Belgium, there is no national PSM and since the three PSM in the country were launched, they have covered their respective linguistic communities: *Radio-Télévision Belge de la Communauté Française* (Belgian Radio-Television of the French Community, RTBF), *Vlaamse Radio en Televisieomroep* (Flemish Radio and Television Organisation, VRT), and *Belgischer Rundfunk* (Belgian Broadcasting, BRF). In addition, the first German PSB after World War II was the ARD (*Arbeitsgemeinschaft der öffentlich-rechtlichen Rundfunkanstalten der Bundesrepublik Deutschland* [Working Group of Public Broadcasters of the Federal Republic of Germany]), a joint network of regional PSBs which include, among other broadcasters, the largest regional public broadcasters in Germany: *Südwestrundfunk* (Southwest Broadcasting, SWR), *Bayerischer Rundfunk* (Bavarian Broadcasting, BR), *Norddeutscher Rundfunk* (North German Broadcasting, NDR) and *Westdeutscher Rundfunk* (West German Broadcasting, WDR).

²⁴ Government of the Netherlands, The role of public broadcasters; <https://www.government.nl/topics/the-media-and-broadcasting/the-role-of-public-broadcasters>.

Although less frequent, different types of geographical and linguistic links as well as cultural or political ties between countries or regions have translated into the establishment of multinational public broadcasters, such as the French-German cultural channel ARTE (*Association relative à la télévision européenne* [Association for European Television]), or the setting up of regional partnerships such as Nordvision, comprising several PSM in the Nordic countries (DR in Denmark; NRK in Norway; SVT in Sweden, Yle in Finland, and RUV in Iceland), as well as four associated partners (KNR in Greenland, KVF in the Faroe Islands, UR in Sweden and SR, also in Sweden).

Last, the so-called international broadcasters – those established in a country aiming also or exclusively at foreign audiences – are also a part of the PSM environment. International broadcasters are not necessarily PSM, as can be seen in the fact that one of the largest in the world, CNN, is privately owned. However, in Europe and much of the rest of the world, international broadcasters have historically been financed by national governments and had public diplomacy or even foreign propaganda goals. Nowadays, most of these services are also offered in languages other than that of the providing country, in an attempt to reach audiences abroad for a wide variety of purposes, from putting forward the culture and language of the providing country, to offering unbiased, independent information to territories with democratic deficits and a lack of free press and free speech. In some cases, such as that of Germany's *Deutsche Welle* (DW), the broadcaster is completely independent from the other PSM in the country, broadcasting in German, English, Spanish, and Arabic. In other cases, it is an arm of the main national PSM providing these services, such as in the case of Italy and Rai Italia,²⁵ and the UK and BBC International. In either case, the financing usually comes from the state budget and not from the users themselves through a licence fee.²⁶

1.2.2. The financing of public service media

As for the financing of PSM, there are several sources of income; notably, a contribution from the audience in the form of a licence fee, an endowment from the state or regional budget (public funds), advertising revenues, and revenues from the licensing of products and other commercial services. According to the EBU, most PSM in Europe are mainly financed through one of the first two sources of income – public funds and license fees.²⁷ Advertising revenues have been in decline across Europe since the so-called advertising crisis started – 10.1% down from 2015 to 2019, accounting for 9.4% of overall PSM revenues.²⁸ Licence fees, in turn, have traditionally been the most frequent form of financing for PSM, usually through the annual collection of a fee from all households with an income above a certain threshold depending on the number of television sets

²⁵ <https://www.raitalia.it>.

²⁶ <https://www.bbc.com/mediacentre/2021/world-service-funding>.

²⁷ EBU, "Funding of Public Service Media in 2020", public version. Media Intelligence Service, EBU, 2020, https://www.ebu.ch/files/live/sites/ebu/files/Publications/MIS/login_only/funding/EBU-MIS-Funding_of_PSM_2020_Public.pdf.

²⁸ Idem.

connected. Another source of income is a direct endowment from the state budget (public funds), historically a less frequent form of financing in most countries, which may though become more common in the future in an attempt to ensure PSM sustainability.²⁹ Nevertheless, according to the EBU, public funds have become the most widespread source of funding for PSM and overall income from this source has steadily grown in recent years. The fact, though, that most of the big European markets (France, Germany, Italy and the UK) still rely mostly on revenues from a license fee means this source of income remains the main one in Europe.³⁰

In conclusion, it can be said that there are three main financing models for PSM: licence fees; state or regional budgets; and hybrid models –with or without additional financing from advertising and sponsoring, and with relatively limited income from the PSM’s own services and licensing of programmes.

²⁹ PMA, “Changing times for public media funding”, 2019, <https://www.publicmediaalliance.org/changing-times-for-public-media-funding/>.

³⁰ EBU, “Funding of Public Service Media in 2020”, public version, Media Intelligence Service, EBU, 2020, https://www.ebu.ch/files/live/sites/ebu/files/Publications/MIS/login_only/funding/EBU-MIS-Funding_of_PSM_2020_Public.pdf; For further details on the financial independence of PSM see 2.2.

2. European regulatory framework

2.1. Council of Europe

The main standards for PSM governance in Europe have traditionally been set by the Council of Europe's Committee of Ministers via successive recommendations. In the last such recommendation, in 2012,³¹ “the challenge of securing the right level of independence from the State” was acknowledged as one of the key challenges for PSM. Furthermore, even in countries with a deeply rooted PSM system, “[r]ecent changes in certain member States to the funding arrangements or decisions to use the licence fee to fund services delivered by commercial media have once more focused attention on the relationship between public service media and the State”.

The Recommendation also addresses the role of governance in meeting these challenges and calls for a new framework for governance beyond the focus on legal and administrative steps “to ensure the appropriate composition of boards and managing structures” which tend to concentrate on “appointment procedures, the terms of tenure and permissible grounds for dismissal, conflicts of interest and methods by which the organisation will be held accountable” (article 14 of the Appendix on Guiding principles for public service media governance). Instead, in article 15, the Committee of Ministers recommends that the governance system also focus on, among other things, securing and protecting the appropriate level of independence. This should be reflected in the structures, the management and the operational culture.

When it comes to structure, independence guarantees the credibility of, and popular support for, the PSM “as a forum for carrying forward the national debate and holding power to account” (article 21). Article 23 insists on the importance of the editorial “structures necessary to ensure independence of editorial action”. Furthermore, funding should not be used to “exert editorial influence or threaten institutional autonomy” (article 26) and the involvement of the state in appointments should not go beyond the highest ranks at either supervisory or executive levels. Moreover, these appointments should only be shortened under very limited, defined circumstances and should never be “used to exert political or other influence over the operation of the public service media” (article 27).

³¹ Recommendation CM/Rec(2012)1 of the Committee of Ministers to member States on public service media governance (Adopted by the Committee of Ministers on 15 February 2012 at the 1134th meeting of the Ministers' Deputies), https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805cb4b4.

As for operating culture, the Recommendation links independence to responsibility; since PSM occupy a capital place in public debate and democratic processes, “[t]heir independence is prized precisely because of the expectation that public service media organisations will reflect and promote open and public debate, to underpin wider democratic goals. Public service media organisations need to be confident that they can hold power to account on behalf of the public whose interests they serve without political interference” (article 47).

Previously, the Council of Europe had already issued several recommendations and declarations relating to PSBs or PSM. As early as 1996, the CoE established that “[t]he legal framework governing public service broadcasting organisations should clearly stipulate their editorial independence and institutional autonomy”, notably when it comes to aspects such as recruitment, employment and staff management, the management of financial resources or the execution of the budget.³² Equally, it emphasised the need for independent management boards and supervisory boards: “The legal framework governing public service broadcasting organisations should stipulate that their boards of management are solely responsible for the day-to-day operation of their organisation” and “[t]he supervisory bodies of public service broadcasting organisations should not exercise any a priori control over programming”.³³ This was reinforced in 2006 by the Declaration of the Committee of Ministers on the guarantee of the independence of public service broadcasting in the member states.³⁴ Moreover, the CoE issued a Recommendation on the funding of public service broadcasting (2009),³⁵ in which it highlighted the need for “independence from party political or economic interference” (article 5) and noted that PSB quality standards require “that legislators and regulatory bodies define the public service mission as well as general policy guidelines for such quality standards, but leave daily editorial and managerial independence to public service broadcasters. Therefore, public accountability mechanisms for quality control should be established, including evaluations by users” (article 15).

The Council of Europe also issued a Recommendation on the remit of public service media in the information society³⁶ in which it again highlighted the importance of “editorial independence and institutional autonomy of public service media”. There are

³² Recommendation No. R (96) 10 of the Committee of Ministers to member states on the guarantee of the independence of public service broadcasting, https://www.coe.int/en/web/freedom-expression/committee-of-ministers-adopted-texts/-/asset_publisher/aDXmrol0vvsU/content/recommendation-no-r-96-10-of-the-committee-of-ministers-to-member-states-on-the-guarantee-of-the-independence-of-public-service-broadcasting?inheritRedirect=false.

³³ Idem.

³⁴ Declaration of the Committee of Ministers on the guarantee of the independence of public service broadcasting in the member states (Adopted by the Committee of Ministers on 27 September 2006 at the 974th meeting of the Ministers’ Deputies), <https://rm.coe.int/16805d7431>.

³⁵ Recommendation 1878 (2009) on the funding of public service broadcasting, <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17763&lang=en>.

³⁶ Recommendation CM/Rec(2007)3 of the Committee of Ministers to member states on the remit of public service media in the information society, https://www.coe.int/en/web/freedom-expression/committee-of-ministers-adopted-texts/-/asset_publisher/aDXmrol0vvsU/content/recommendation-cm-rec-2007-3-of-the-committee-of-ministers-to-member-states-on-the-remit-of-public-service-media-in-the-information-society?inheritRedirect=false&desktop=true.

other CoE recommendations, resolutions and declarations which, although not specifically devoted to PSM, are relevant insofar as PSM relate to article 10 of the European Convention on Human Rights (freedom of expression).³⁷ The CoE acknowledges the relevance of PSM as “an important public source of unbiased information and diverse political opinions. They are particularly suited to foster pluralism and awareness of diverse opinions, notably by providing different groups in society with an opportunity to receive and impart information, to express themselves and to exchange ideas. They can contribute greatly to the promotion of social cohesion, cultural diversity and pluralist communication accessible to everyone”.³⁸ These recommendations include, among others, the Recommendation on media and the promotion of a culture of tolerance,³⁹ the Recommendation on hate speech,⁴⁰ the Recommendation on media pluralism and diversity of media content,⁴¹ and the Resolution on indicators for media in a democracy,⁴² as well as support for the Brussels Declaration on the protection and safety of journalists.⁴³

2.2. European Union

The EU has not only produced legislation directly or indirectly related to PSM, but also expressed its views on the evolution of the sector through reports and statements, as well as by commissioning studies and by tackling the issue in different action plans.

When it comes to the financial independence of PSM, the Protocol annexed to the Treaty of Amsterdam⁴⁴ states that “[t]he provisions of the Treaty establishing the

³⁷ European Convention on Human Rights, https://www.echr.coe.int/documents/convention_eng.pdf.

³⁸ Public Service Media, Council of Europe, <https://www.coe.int/en/web/freedom-expression/public-service-media>.

³⁹ Recommendation No. R (97) 21 of the Committee of Ministers to member states on the media and the promotion of a culture of tolerance adopted on 30 October 1997, https://www.coe.int/en/web/freedom-expression/committee-of-ministers-adopted-texts/-/asset_publisher/aDXmrol0vvsU/content/recommendation-no-r-97-21-of-the-committee-of-ministers-to-member-states-on-the-media-and-the-promotion-of-a-culture-of-tolerance?inheritRedirect=false.

⁴⁰ Recommendation No. R (97) 20 of the Committee of Ministers to member states on “hate speech” adopted on 30 October 1997, https://www.coe.int/en/web/freedom-expression/committee-of-ministers-adopted-texts/-/asset_publisher/aDXmrol0vvsU/content/recommendation-no-r-97-20-of-the-committee-of-ministers-to-member-states-on-hate-speech-_101_INSTANCE_aDXmrol0vvsU_viewMode=view.

⁴¹ Recommendation CM/Rec(2007)2 of the Committee of Ministers to member states on media pluralism and diversity of media content adopted on 31 January 2007, https://www.coe.int/en/web/freedom-expression/committee-of-ministers-adopted-texts/-/asset_publisher/aDXmrol0vvsU/content/recommendation-cm-rec-2007-2-of-the-committee-of-ministers-to-member-states-on-media-pluralism-and-diversity-of-media-content?_101_INSTANCE_aDXmrol0vvsU_viewMode=view/.

⁴² Resolution 1636 (2008) on indicators for media in a democracy, <http://assembly.coe.int/nw/xml/xref/xref-xml2html-en.asp?fileid=17684&lang=en>.

⁴³ <https://www.coe.int/en/web/freedom-expression/-/public-broadcasting-a-choice-for-democracy>.

⁴⁴ Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts – Protocol annexed to the Treaty of the European Community – Protocol on the system of public broadcasting in the Member States (11997D/PRO/09), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A11997D%2FPRO%2F09>.

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”. Later in 2009, the European Commission released a Communication⁴⁵ on the application of state aid rules to public service broadcasting in which it took into consideration the resolution by the European Parliament⁴⁶ recommending “that regulations governing state aid are devised and implemented in a way which allow the public service and community media to fulfil their function in a dynamic environment, [...] avoiding the abuse of public funding for reasons of political or economic expediency”. Therefore, while recognising the need for a level playing field vis-à-vis commercial media, it acknowledges that PSM are “not comparable to a public service in any other economic sector”; this, along with the challenges posed by the still-ongoing technological developments that began around 2010, is why special attention should indeed be paid to the adequate public financing of PSM in order to guarantee their independence and their capacity to continue fulfilling their remit.

In 2018, the European Parliament expressed its deep concern “about the legislative and administrative measures taken by certain Member States to restrain and control their media, directly or indirectly, especially in the public media sector, or to not support media pluralism”, insisting on the need to protect public media from government interests,⁴⁷ pointing out that the latter’s influence “can be counterbalanced with adequately equipped, financed and independent public service media able to resist governmental interference and to present a variety of political positions”, and encouraging “the adoption of sound legal provisions and good administrative practice in the domain of public service media, including with respect to State aid and to any public funding, with a view to strengthening their independence and their ability to fulfil their mission in the general public interest”.⁴⁸ Moreover, it urged EU member states to adhere to the recommendations in regards to public service media by the Council of Europe.

Moreover, although PSM are not directly addressed by the European Democracy Action Plan (EDAP),⁴⁹ many of the items tackled affect PSM and journalism more broadly.

⁴⁵ Communication from the Commission on the application of State aid rules to public service broadcasting (Text with EEA relevance) OJ C 257, 27.10.2009, [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52009XC1027\(01\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52009XC1027(01)) .

⁴⁶ Concentration and pluralism in the media in the European Union European Parliament resolution of 25 September 2008 on concentration and pluralism in the media in the European Union (2007/2253(INI)), <https://eur-lex.europa.eu/legal-content/HR/TXT/?uri=CELEX:52008IP0459>.

⁴⁷ Report on media pluralism and media freedom in the European Union (2017/2209(INI)), https://www.europarl.europa.eu/doceo/document/A-8-2018-0144_EN.html.

⁴⁸ Idem.

⁴⁹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the European Democracy Action Plan, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2020%3A790%3AFIN&qid=1607079662423>.

The European Media and Audiovisual Action Plan (MAAP)⁵⁰ does address some of the burning issues for the news media and audiovisual entertainment sectors. The MAAP revolves around three themes: recovering from an already difficult financial situation worsened by the COVID pandemic, through guidance on EU support sources and boosting investment in the sector; fostering the green and digital transition; and enabling and empowering the sector in areas such as the circulation of European content, improving media literacy, and promoting European talent and cooperation between national regulators. Most of the actions foreseen, even if not exclusively intended for PSM, are of relevance to them. As part of the Action Plan, the European Parliament delivered a Report on Europe's Media in the Digital Decade: an Action Plan to Support Recovery and Transformation,⁵¹ in which it highlighted the importance of the hybrid system (of public and private media) in Europe, stressing that PSM must receive appropriate financing (on a multi-annual basis) and should remain free (as should private media) from political and economic interference. It also praised the role of PSM in carrying out innovative projects.

A planned European Media Freedom Act (MFA) was presented by Commissioner Breton in April 2021,⁵² when he expressed concern about worrying developments in some countries which he said are jeopardizing media freedom and pluralism. He urged reflection “on how best to strengthen the governance of public media, around a common framework to better prevent the risks of politicisation and to better ensure diversity and pluralism”. President von der Leyen stressed that the MFA will be ready in 2022 in her State of the Union speech in September 2021: “Information is a public good. We must protect those who create transparency – the journalists. That is why today we have put forward a recommendation to give journalists better protection. And we need to stop those who threaten media freedom. Media companies cannot be treated as just another business. Their independence is essential. Europe needs a law that safeguards this independence – and the Commission will deliver a Media Freedom Act in the next year. Defending media freedom means defending our democracy.”⁵³

The European Commission considers it necessary to go beyond the MAAP and the EDAP in view of the concerns about the politicisation of the media in Europe, the deteriorating situation regarding the protection of the right to information and of journalists, and the perceived lack of transparency of media ownership and independency of media regulators in some EU member states,⁵⁴ and taking also into account the difficult financial situation of the media as a result of the COVID pandemic.

⁵⁰ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, “Europe's Media in the Digital Decade: An Action Plan to Support Recovery and Transformation”, Com/2020/784 Final, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020DC0784>.

⁵¹ https://www.europarl.europa.eu/doceo/document/A-9-2021-0278_EN.html.

⁵² For a “European Media Freedom Act”, https://ec.europa.eu/commission/commissioners/2019-2024/breton/announcements/european-media-freedom-act_en.

⁵³ 2021 State of the Union Address by President von der Leyen, European Commission, https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_21_4701.

⁵⁴ Media Pluralism Monitor (MPM2020), EUI Center for Media Pluralism and Media Freedom, 2020, <https://cmpf.eui.eu/mpm2020-results/>.

Building upon the Audiovisual Media Services Directive, the MFA may “seek to increase transparency, independence and accountability around actions affecting control and freedom of the press” and “may strengthen the governance of public media, including measures to prevent politicisation and include measures relating to the funding of media to support pluralism and diversity”.⁵⁵

⁵⁵ Legislative train schedule; A new push for European democracy, European Media Freedom Act, <https://www.europarl.europa.eu/legislative-train/theme-a-new-push-for-european-democracy/file-european-media-freedom-act>.

3. National measures in selected countries

This chapter provides an analysis of a selection of countries⁵⁶ covering all four cardinal directions in the EU which also display different regulatory traditions (e.g. countries with clear supervisory structures as compared to others with less formalised ones). It explains for each country the structure of the national public service broadcaster and its legal form, its managerial and supervisory structure, the way key appointments are made, the safeguards concerning dismissals and ways in which the independence of the PSM is protected from political interference.

This chapter, however, does not provide a description of how independent those PSM *de facto* are. As explained by EBU in its report, “PSM independence may be influenced by a variety of other factors, such as political and social structures, political and corporate culture, and the interaction among stakeholders at a particular time [...] Even an optimum legal framework and organisational structure may fail to produce the desired outcome if the corporate climate, the political culture or the behaviour of the main actors does not support the independence of PSM.”⁵⁷ This issue is further developed in Chapter 6 of this publication.

3.1. AT - Austria⁵⁸

Österreichischer Rundfunk (the Austrian Broadcasting Corporation - ORF)⁵⁹ is Austria’s national public service broadcaster.⁶⁰ It operates four national television and 12 radio channels, as well as Austria’s largest media website. The ORF’s regional studios in the nine Austrian federal provinces produce their own radio programmes around the clock, as well as half an hour of regional TV news every day, all of which is broadcast in the local windows of ORF 2. The ORF’s websites provide online news and a comprehensive set of

⁵⁶ Austria, Bulgaria, Czech Republic, Finland, France, Germany, Greece, Hungary, Italy, Latvia, Poland, and Slovenia.

⁵⁷ European Broadcasting Union, *op.cit.*, p. 8-9.

⁵⁸ The case study on Austria incorporates the kind feedback received from Barbara Ebinger and Josef Lusser (Österreichischer Rundfunk, ORF) during the checking round with the competent public service media in the EBU network.

⁵⁹ <https://der.orf.at/index.html>.

⁶⁰ <https://der.orf.at/unternehmen/austrian-broadcasting-corporation/index.html>.

services. Moreover, the ORF-TVthek features a seven-day catchup service.⁶¹ With regard to the availability of ORF programmes abroad, most of the television programmes of ORF 2 are also available throughout the continent via the Astra digital satellite at ORF 2 EUROPE.⁶² Moreover, ORF contributes to the special-interest channel 3Sat⁶³ in cooperation with the public service broadcasters of Germany and Switzerland (ARD, ZDF, SRG SSR), is a partner of the German-French ARTE⁶⁴ culture channel, and contributes Austrian programmes to the Bavarian education channel Bayern Alpha.⁶⁵

3.1.1. Legal form

The ORF was created in its current form through the ORF Act⁶⁶ (*Bundesgesetz über den Österreichischen Rundfunk*) as a foundation under Austrian public law (*Stiftung des öffentlichen Rechts*) with a legal personality (Article 1(1) ORF Act).⁶⁷ The ORF's purpose is to fulfil the public service remit within the scope of its corporate purpose (*Unternehmensgegenstand*, Article 2 ORF Act). The public service remit includes the remits of Articles 3 to 5, ORF Act. In fulfilling its remit, the ORF must take into account the principles of the Austrian constitutional order, in particular the federal structure according to the principle of equal treatment of the federal provinces (*Bundesländer*) as well as the principle of freedom of art, and must ensure the objectivity and impartiality of reporting, the consideration of diversity of opinion and the balance of programmes as well as the independence of persons and organs of the Austrian Broadcasting Corporation entrusted with the performance of the tasks of the Austrian Broadcasting Corporation in accordance with the provisions of the federal act. ORF activities carried out within the framework of the public service mandate must not be for profit-making.

The corporate purpose of the ORF includes:

- the provision of broadcasting services
- the provision of teletext and online services
- the operation of technical facilities necessary for these activities
- all transactions and measures necessary for these activities or the marketing of these activities

The public service remit of the ORF is divided into a supply remit (*Versorgungsauftrag*, Article 3 ORF Act) and a core public service remit (*öffentlich-rechtlicher Kernauftrag*, Article

⁶¹ <https://der.orf.at/unternehmen/programmangebote/index.html>.

⁶² <https://der.orf.at/kundendienst/tv-radio-empfang/orf2europe100.html>.

⁶³ <https://www.3sat.de>.

⁶⁴ <https://www.arte.tv/>.

⁶⁵ <https://www.br.de/fernsehen/ard-alpha/index.html>.

⁶⁶ *Bundesgesetz über den Österreichischen Rundfunk (ORF-Gesetz, ORF-G)*, consolidated version, <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10000785>.

⁶⁷ For more information about the legal personality of foundations under Austrian public law see e.g. Clenci E., *Vertretung von juristischen Personen des öffentlichen Rechts vor den Höchstgerichten*, <https://epub.jku.at/obvulihs/download/pdf/5325685?originalFilename=true>.

4 ORF Act). The supply remit determines the number of television and radio programmes to be broadcast by the ORF, and it also includes the provision of teletext, the provision of online services and the provision of services to autochthonous ethnic groups. In addition, the supply remit also includes the organisation of a special-interest sports programme, a special-interest information and culture programme and the broadcasting of a television programme for the European audience.

3.1.2. Management and oversight boards

The ORF has three organs:

- Foundation Council (*Stiftungsrat*);
- Director-General (*Generaldirektor*);
- Audience Council (*Publikumsrat*);

The Foundation Council appoints and dismisses the Director-General and, at his or her suggestion, directors and provincial directors, and approves budgets and financial statements. Numerous legal transactions require its approval (Article 21 ORF Act). A central task of the Foundation Council is monitoring the business management. Furthermore, it sets the licence fee and approves the tariffs for commercial communication, and must approve important corporate decisions.

The Director-General (sole person in charge of ORF management, comparable to the CEO of a corporation) conducts the business of the ORF and represents it externally. The Director-General determines – with the approval of the Foundation Council – general programme guidelines, submits proposals to the Foundation Council for certain personnel decisions on director level and controls or coordinates the activities of the other management personnel. In addition, he or she draws up long-term plans for programming, technology, finances, and personnel, as well as a quality assurance system which must define criteria and procedures for the fulfilment of the core public service mission.

The Audience Council has the task of safeguarding the interests of the listeners and viewers of ORF programmes. It is composed of representatives of important social groups. The Audience Council fulfils its task primarily by making recommendations on programme design. It also appoints six members of the Foundation Council.

3.1.2.1. Appointment of top managerial board members

The Director-General is appointed by the Foundation Council for a period of five years (Article 21 (1) 2 in connection with 22 (1) ORF Act) by a simple majority.

The members of the Foundation Council are appointed for a period of four years subject to the following provisions (Article 20 (1) ORF Act):

- six members shall be appointed by the Federal Government in proportion to the number of seats of the political parties in the National Council (lower house of the

Austrian Parliament), due regard being paid to the proposals of these parties; each of the parties represented on the Main Committee of the National Council shall be represented in the Foundation Council by at least one member;

- nine members shall be appointed by the Federal Provinces (*Bundesländer*); each of the *Bundesländer* shall be entitled to appoint one member;
- nine members shall be appointed by the Federal Government;
- six members shall be appointed by the Audience Council;
- five members shall be appointed by the Central Staff Council (*Zentralbetriebsrat*) in accordance with Austrian Labour Act.

The members of the Audience Council are appointed for a period of four years as follows (Article 28(3)-(4) ORF-Act):

- the Austrian Federal Economic Chamber, the Conference of the Presidents of the Austrian Chambers of Agriculture, the Federal Chamber of Labour, and the Federation of Austrian Trade Unions shall each appoint one member;
- the Chambers of the Liberal Professions shall together appoint one member;
- the Roman Catholic Church shall appoint one member;
- the Lutheran Church shall appoint one member;
- those entities who are responsible for civic political education within the political parties shall each appoint one member;⁶⁸
- the Academy of Sciences shall appoint one member;
- For the appointment of 17 further members, the Federal Chancellor shall solicit proposals from institutions or organisations which are representative of the following sectors or groups: academia, education, arts, sports, youth, students, the elderly, handicapped persons, parents and the family, ethnic groups, tourism, motorists, consumers, and environmental protection.

3.1.2.2. Qualification requirements

According to Article 20(1) ORF Act, Foundation Council members must:

- possess the personal and technical qualifications as a result of appropriate previous training or pertinent vocational experience in the matters to be carried out by the Foundation Council, and
- be knowledgeable of the Austrian and international media markets or have acquired high esteem in the fields of economics, science, arts or education because of their professional performance.

Any person holding the position of Director-General, Director or Regional Director or executive employee in the Austrian Broadcasting Corporation, must meet the following requirements (Article 26(1) ORF-Act):

- he/she must be fully capable of entering into legal transactions;

⁶⁸ Federal Law Gazette No. 369/1984.

- he/she must show that he/she has an adequate previous training or five years of experience in the same or a related profession.

For the appointment of members of the Audience Council, the Federal Chancellor must solicit proposals from institutions or organisations which are representative of the following sectors or groups: academia, education, arts, sports, youth, students, the elderly, handicapped persons, parents and the family, ethnic groups, tourism, motorists, consumers, and environmental protection (Article 28(4) ORF Act). The person representing the group of handicapped persons must be a handicapped person him/herself (Article 28(6) ORF Act).

3.1.2.3. Political incompatibilities

According to Article 26(2) ORF Act, among the persons not eligible for the position of Director-General, Director or Regional Director are employees of a political party or persons who have a leading position in a federal or regional organisation of a political party, and persons who have held one of the above-mentioned positions within the last four years. Moreover, the following persons are also not eligible for the position of Director-General, Director or Regional Director:

- persons who are employees of a party faction of a general representative body as well as parliamentary staff members within the meaning of the Parliamentary Staff Act
- persons who have been allocated to work for a party faction of a general representative body
- employees of legal entities working in the field of civic education within the framework of political parties (...)

Regarding the Foundation Council, the following persons may not be appointed members (Article 20(3) ORF Act):

- persons who are employees of a political party or have a leading position in a federal or regional organisation of a political party (...), and persons who exercised one of the mentioned offices during the last four years
- persons who are employees of a party faction in a general representative body (...)
- persons who have been seconded to a party faction in a general representative body
- employees of legal entities working in the field of civic education within the framework of political parties

Membership in the Audience Council is not open to (Article 28(2) ORF Act):

- persons who are employees, or who hold an executive function in the federal or regional organisation, of a political party, (...) and persons having held one of the above positions within the previous four years
- persons who are employed by a group in a general representative body
- persons who are assigned to a group in a general representative body

- persons employed by those entities who are responsible for civic political education within the political parties

3.1.2.4. Requirements concerning political independence

The political independence of the persons and organs tasked with broadcasting is safeguarded by a Constitutional Act⁶⁹ (BVG-Rundfunk) and by simple law (ORF Act for the ORF and other Acts for private broadcasters). According to Article 19(2) ORF Act, in the exercise of their functions in the Austrian Broadcasting Corporation, the ORF bodies are not bound by instructions and orders and must exclusively fulfil the obligations arising from the laws and the rules of procedure. For his/her part, the Director-General shall not be bound by any directives or orders, apart from the responsibilities emanating from legal provisions or the resolutions of the Foundation Council (Article 22(3) ORF-Act).

According to Article 4a(1) ORF Act, the Director General must set up a quality assurance system which defines criteria and procedures to ensure that the core public mandate pursuant to Article 4 is fulfilled, particularly taking into account the independence and self-responsibility of all programming staff, the free exercise of the journalistic profession and the autonomy and self-responsibility of the Directors and Regional Directors.

3.1.2.5. Role of parliament, the government and/or other state bodies

The ORF has to submit an annual report according to Article 7 ORF Act on the fulfilment on its public service mandate to the Federal Chancellor and the regulatory authority. The Federal Chancellor submits the report to both chambers of Parliament and the report has to be published on the ORF website. There is no further involvement of Parliament, government or other state bodies.

3.1.2.6. Safeguards against arbitrary dismissals

According to Article 22 (5) ORF Act, the Director-General may only be dismissed, with a two-thirds majority, by the Foundation Council.

The term of office of the Foundation Council is four years. During a term of office, the members appointed by the Federal Government may be relieved of their duties prematurely only if the Federal President has appointed a new Federal Government, a member appointed by a province only if the provincial parliament has elected a new provincial government, and the members appointed by the Audience Council and the Central Staff Council only if these bodies constitute themselves anew (Article 20 (4) ORF Act).

⁶⁹ Bundesverfassungsgesetz vom 10. Juli 1974 über die Sicherung der Unabhängigkeit des Rundfunks, <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10000555>.

The term of office of the Audience Council is four years (Article 29 (1) ORF Act). According to Article 29 (5) ORF Act, if a member of the Audience Council has failed to comply with three subsequent invitations to a meeting without reasonable grounds or if a ground for exclusion pursuant to Article 28 paragraph 2 arises subsequently in respect of a member, a finding to that effect shall be made by a decision after the member's hearing by the Audience Council. Such a finding shall entail the loss of membership rights, and a new member shall be appointed for the remainder of the term without delay.

3.1.2.7. Safeguards for chief editors and newsrooms

According to Article 4 (6) ORF Act, independence is not only the right of journalistic and programming staff, but they also have a duty to operate independently. Independence means independence from state and party influence as well as from other – electronic or print – media or political and business lobbies. The ORF Act states in its Article 32 (1) that the ORF and its subsidiaries must pay due regard to the independence and self-responsibility of all programming staff⁷⁰ as well as to the right of all journalistic staff⁷¹ to freely exercise the journalistic profession in discharging the functions assigned to them. In exercising their activities, journalistic staff must not in particular be required to prepare or accept responsibility for anything which contradicts the freedom of the journalistic profession. Justified refusal to do so shall not result in detrimental consequences for them.

For the purpose of safeguarding the principles for the journalistic staff, an Editorial Agreement must be concluded by the ORF (or a subsidiary) on the one hand, and a representative body of the journalistic staff elected in accordance with the principles of equal, direct and secret proportional representation on the other. Two representatives of the trade union for the journalistic staff and two representatives of the Central Staff Council (in the case of a subsidiary, two representatives of the staff council of the subsidiary), must also participate in the negotiations conducted for concluding an Editorial Agreement (Article 33 (1) ORF Act).

3.1.3. Supervision

Legal supervision of the ORF is the responsibility of the regulatory authority KommAustria⁷² – without prejudice to reviewing control by the Court of Audit (Article 35(1) ORF Act). KommAustria makes decisions regarding violations of the provisions of the ORF Act (Article 36 (1) ORF-Act):

⁷⁰ "Programming staff" is understood as "all persons who contribute to the design of online services and radio and television programmes" (Article 32(2) ORF-Act).

⁷¹ "Journalistic staff" is understood as "all persons who contribute to the journalistic design of online services and radio and television channels, in particular editors, reporters, correspondents and programmers" (Article 32(3) ORF-Act).

⁷² https://www.rtr.at/medien/wer_wir_sind/KommAustria/KommAustria.de.html.

- upon complaints of individuals
- upon a request by the federal state or a province or the Audience Council or one third of the members of the Foundation Council and of others
- *ex officio* in certain other cases

Article 7 ORF Act: The ORF must submit a report on the fulfilment of its remit under Articles 3 to 5 ORF Act and on the implementation of Articles 11 and 12 ORF Act in the previous calendar year to the Federal Chancellor and the regulatory authority by 31 March of each year.

With regard to the quality assurance system (Article 4a ORF Act), the regulatory authority must – following a complaint – verify compliance with the procedure of drawing up and examining the quality assurance system and must establish whether and according to which facts the above legal provisions were violated, and, in the event of a violation, may give instructions for compliance with the procedure. Such verification by the regulatory authority must in any event take place at least every two years.

The Audit Commission (*Prüfungskommission*) is responsible for auditing the annual financial statements and management report as well as the consolidated financial statements and the group management report of the ORF. In addition, KommAustria can give it assignments at any time and also outside of this responsibility (Article 40(1) ORF Act). The members of the Audit Commission are appointed by the regulatory authority for a term of five business years. Only certified public accountants or accounting firms are eligible to be appointed as members. During the selection procedure, care must be taken to ensure that the certified public accountant or the accounting firm is structured in a manner that is required for efficiently auditing undertakings and groups of undertakings with similar sales volumes and have experience in auditing such undertakings and groups of undertakings (Article 40 (2) ORF Act). Moreover, any organ of the Foundation may request of the courts a special audit in order to review management procedures and the compliance with the purpose of the Foundation. For such a request by the Foundation Council or the Audience Council, a decision by a two-thirds majority is required. A court must order such a special audit if reliable evidence is presented indicating that dishonest actions or gross violations of the law have occurred. As per Article 41(1)-(2) ORF Act).

The Advisory Council (*Beirat*) is established within KommAustria for the purpose of submitting an opinion on whether the new offer appears expedient from a journalistic point of view for the effective provision of the core public service mandate as well as the special mandates regulated in the Act, taking into account the special requirements for public service broadcasting regulated in § 4 paras. 2 to 6 as well as § 10, and on the question of the probable effects on the diversity of offerings for viewers, listeners and users (Article 6a(4)(1) ORF Act). The Advisory Council has five members appointed by the Federal Government for a period of five years (Article 6c (1) ORF Act). They must have the right to teach at a university in Austria or abroad or have another outstanding professional qualification, and must have special knowledge of media law, media sciences or economic sciences due to their previous academic activities.

Moreover, according to Article 31a(1) ORF Act, the financial activities of the Austrian Broadcasting Corporation are subject to reviewing control by the Court of Audit (*Rechnungshof*).

3.2. BG - Bulgaria⁷³

The country has two public service media – *Българско национално радио* (Bulgarian National Radio, BNR)⁷⁴ and *Българска национална телевизия* (Bulgarian National Television, BNT)⁷⁵

BNR was founded in 1935 and BNT in 1959. Between 1971 and 1990 the two organizations were part of the Committee for Television and Radio. The Committee was closed down in 1990 and the two PSM carry their current names since 1992.⁷⁶ They operate since 1998 under the basis of the Radio and Television Act (BRT-Act).⁷⁷

BNT creates and distributes the following programmes:⁷⁸

- BNT 1 is the first national public television programme in Bulgaria with a multi-thematic profile aimed at a wide audience.
- BNT 2 is a national public channel with a cultural and educational focus. It unites the four regional centres of Plovdiv, Varna, Rousse and Blagoevgrad into a single national network.
- BNT 3 is a national public sports channel.
- BNT 4 is a national public service television programme intended mainly for Bulgarians living abroad.

BNR creates 2 national programmes – “Horizont” focused on news and current affairs and “Hristo Botev” focused on culture and education, as well as 9 polythematic regional programmes named after the cities they are based in – Sofia, Vidin, Shumen, Varna, Burgas, Stara Zagora, Plovdiv, Kardzhali and Blagoevgrad.

3.2.1. Legal form

According to Article 42 BRT Act, BNT is a legal person with a head office in Sofia, and exercises day-to-day management of the state-owned property allocated thereto prior to entry into force of the BRT Act.

⁷³ The case study on Bulgaria incorporates the kind feedback received from Milen Mitev (Bulgarian National Radio, BNR) during the checking round with the competent public service media in the EBU network.

⁷⁴ <https://bnr.bg>.

⁷⁵ <https://bnt.bg/>.

⁷⁶ On 06 March 1990 the Ninth Ordinary National Assembly adopted a decision on the temporary status of the Bulgarian Television and the Bulgarian Radio, according to which the two public media were separated as independent institutions, see <https://bnt.bg/istoriya-na-bnt-77pages.html>. This subchapter describes only the rules applicable to BNT.

⁷⁷ Закон за радиото и телевизията, <https://www.lex.bg/laws/ldoc/2134447616>.

⁷⁸ <https://bnt.bg/za-bnt-76pages.html>.

3.2.2. Management and oversight boards

The management bodies of the Bulgarian National Television are:

- Management Board (управителен съвет)
- Director-General (генерален директор)

The Management Board performs the following functions (Article 62 BRT-Act):

- Determine the basic guidelines for the development, volume and structure of the programming.
- Adopt regulations on the structure and organisation of activities, on salaries, on remuneration of non-staff assistants, on editorial activities, on advertising activities, on the preservation and use of funds, and on independent and joint productions.
- Determine the main guidelines for the development, volume and structure of programming and approve the creation of programmes jointly with other natural and legal persons or broadcasters upon the proposal of the Director-General of BNT.
- Approve staffing and its structure, and the conditions and procedure for concluding contracts with non-staff collaborators and journalists.
- Adopt the draft budget and subsidy as included in the State budget; after coordination with the Council for Electronic Media (*Съвета за електронни медии* - CEM),⁷⁹ send the draft subsidy to the Ministry of Finance for inclusion in the draft Law on the State Budget.
- Adopt the budget and its distribution, the number of staff, average salary, and salary allocation.
- Adopt the budget implementation report.
- Upon the proposal of the Director-General, decide on the opening and closing of regional centres and determine their status, structure and management in consultation with the CEM.
- Adopt amendments to the budget of the primary authorising officer, including the budgets of the secondary authorising officers.
- Designate the sub-budget holders under the respective budgets.
- Determine the professional requirements for categories of employees in the broadcasting sector.
- Approve the job descriptions of employees.
- Approve all advertising and sponsorship contracts, as well as all other contracts with a value exceeding that specified in the rules of organisation and activity.
- Approve the conclusion and termination of the employment contracts of senior officials at BNR and BNT, respectively, and their subdivisions in accordance with the list of positions specified in the regulations for their organisation and activity.
- Decide on other matters within its competence.

⁷⁹ <https://www.cem.bg/>.

The Director-General performs the following functions (Article 68 BRT-Act):

- Conducts the programme policy.
- Exercises operational management of BNT, and of its property.
- Proposes to the CEM for approval the members of the Board of Directors and makes a proposal to the CEM on the early termination of their mandate.
- Convenes and chairs the meetings of the Management Board.
- Concludes and terminates the employment contracts of the employees.
- Exercises the rights of an employer under the Labour Code.
- Represents BNT before all natural and legal persons in the country and abroad.
- Organises the preparation of the draft budget and submits it to the Management Board for approval.
- Organises the implementation, closure and reporting of the budget and submits it to the Management Board for adoption.
- Selects natural and legal persons or broadcasters with whom to jointly produce radio and television programmes.

3.2.2.1. Appointment of top managerial board members

The Management Board consists of five members, approved by the CEM upon the proposal of the Director-General (Article 58(1) BRT Act). The Director-General is elected by the CEM (Article 32(1) BRT Act). Elections are conducted via an open procedure, based on rules adopted by CEM in 2016.⁸⁰

3.2.2.2. Qualification requirements

According to Article 59 BRT Act, members of the Management Board may be persons with Bulgarian citizenship who have a residence on the territory of the country, higher education, and professional experience in the field of radio and television, culture, journalism, the audiovisual sector, electronic communications, law, or economics. The following may not be members of the Management Board:

- Persons sentenced to imprisonment for intentional crimes of a general nature.
- Sole proprietors, owners, partners, managers, procurators or members of management and control bodies of commercial companies and cooperatives.

Candidates for Director-General must meet the requirements for membership of the CEM mentioned above and have at least five years' experience in television under a labour contract (Article 66(1) BRT Act).

⁸⁰ https://www.cem.bg/files/1628775518_re6enie_159_2016_protседura_bnr_bnt.pdf

3.2.2.3. Political incompatibilities

There is no mention of a prohibition on the appointment of political party representatives to top managerial boards.

According to Art 27, para 1, point 2 BRT-Act, members of CEM cannot hold positions in management bodies of parties and trade unions. Restrictions for members of CEM apply to DGs. There is no such restriction for Board Members, however, Art. 5 BRT-Act states that the law guarantees independence of media from political influence. Therefore, although there is no explicit prohibition, in practice appointing a party official would not comply with the law.

3.2.2.4. Requirements concerning political independence

Article 5 BRT Act guarantees the independence of media service providers and their activities from political and economic interference and prohibits any form of censorship.

3.2.2.5. Role of parliament, the government and/or other state bodies

There is no mention of parliament, the government, or any other state body playing a role in the management of the PSM.

3.2.2.6. Safeguards against arbitrary dismissals

According to Article 61(1) BRT Act, the term of office of a member of the Management Board may be terminated ahead of time by the CEM on the proposal of the respective Director-General, on the grounds of early termination of the term of office of a member of the CEM (Article 30(2) BRT-Act), that is:

- Resignation in written form of the member in question.
- In case of permanent factual inability to perform his / her duties for more than six months.
- Upon establishment of incompatibility with the requirements of the BRT Act.
- Upon entry into force of a sentence imposing imprisonment for an intentional crime.
- Upon entry into force of an act establishing a conflict of interest under the Anti-Corruption and Confiscation of Illegally Acquired Property Act.⁸¹

The CEM may dismiss the Director-General ahead of time (Article 67(1) BRT Act):

- On the grounds of early termination of the mandate of a member of the CEM mentioned above.

⁸¹ Закон за противодействие на корупцията и за отнемане на незаконно придобитото имущество, <https://www.mi.government.bg/files/useruploads/files/antikorupzia/zpkonpi.pdf>.

- If it is established that he or she has committed or allowed the commission by other persons of gross or systematic violations of the provisions regarding the principles for carrying out the activity of the radio and television operators.

Upon early termination of the term of office of the Director-General and until a new election is held within three months, the management of the respective organization must be assigned to a person, determined by the CEM and meeting the requirements mentioned above (Article 67(2) BRT Act).

3.2.2.7. Safeguards for chief editors and newsrooms

There are no regulatory safeguards for editorial independence, especially when it comes to the appointment and dismissal of editors-in-chief. The self-regulatory Code of Ethics of Bulgarian Media,⁸² on the other hand, reaffirms that the right of the media to operate without censorship of any kind must be guaranteed and specifies in its Article 3 a declaration of intentions to ensure editorial independence from political or any other kind of interference:

- “We shall not be susceptible to political or commercial pressure or influence.
- We shall maintain a clear distinction between editorial decision-making and commercial policy of the media.
- We shall maintain a clear distinction between editorial content and marketing, advertisements or sponsored materials.
- We shall not accept any personal, political or financial inducements that may impact upon our ability to provide the public with accurate information.”

Article 11, paragraph 5 of the BRT-Act allows for editorial statutes to be negotiated between owners or managing bodies of media, on one side, and journalists working for the media on contractual basis, on the other. Such statutes would cover guarantees for the independence of journalists. They are, however, not obligatory.

3.2.3. Supervision

The BRT Act does not provide any rules concerning the supervision of BNT or any reporting mechanisms to the parliament or any other institution. According to Article 32 BRT Act, the CEM a.o. exercises supervision over the broadcasting activities of media service providers as to compliance with the BRT Act, and, as mentioned above, elects and removes the Director-General and endorses, upon nomination by the Director-General, the members of the Management Board. The CEM also gives an opinion on the draft State budget regarding the subsidy for BNR and BNT.

⁸² Етичен кодекс на българските медии, <https://mediaethics-bg.org/етичен-кодекс-2/>.

The Director-General is obliged by the management contracts with CEM to report their activities to the CEM every six months.

BNT is obliged to file their financial reports every three months before the Ministry of Finance and is subject to audits for the compliance with the law and for effectiveness of management by the National Audit Office.

3.3. CZ - Czech Republic⁸³

Česká televize (ČT) was established on 1 January 1992 by the Act on Czech Television (ČT Act)⁸⁴ as a public service television service. It runs seven TV channels:⁸⁵

- ČT 1 (HD) is a family-oriented channel showing original Czech movies and series, as well as entertainment and lifestyle programmes.
- ČT 2 (HD) broadcasts documentaries, nature-oriented shows and foreign films and series.
- ČT 24 is a 24-hour news channel offering breaking news and in-depth economic, regional and cultural news.
- ČT sport (HD) broadcasts world, European and Czech sports events.
- ČT :D is a children's educational channel without advertising.
- ČT art is a channel focusing on culture, theatre, operas, music, and art films.
- ČT 3 is a channel for the elderly launched on 23 March 2020. (The channel is not operational anymore).

ČT's website offers video content with over 87 000 hours of recordings and includes the possibility of time-shifted viewing and applications for smart-phones and hybrid TV sets (HbbTV). It also provides five teletext services, and has a new homepage and a ČT24 web portal connected to the current news service. It also offers an educational portal for children, an educational website, and special websites to support particularly important projects (e.g the Olympic Games).

3.3.1. Legal form

ČT is a legal entity which manages its own property, the basis of which is the property transferred from Czechoslovak Television. The Czech state is not liable for ČT obligations

⁸³ The case study on Czech Republic incorporates the kind feedback received from Jan Fučík (Česká Televize) during the checking round with the competent public service media in the EBU network.

⁸⁴ *Zákon č. 483/1991 Sb., Zákon České národní rady o České televizi*, <https://www.zakonyprolidi.cz/cs/1991-483/zneni-20170902>.

⁸⁵ <https://www.ceskatelevize.cz/english/programming/>.

and ČT is not liable for the obligations of the state (Article 1 ČT Act). ČT is financed via television licence fees and statutory business activities (advertising, sponsorship, etc.).

3.3.2. Management and oversight boards

ČT has three main organs:

- Director-General (*Generální ředitel*)
- Council (Rada České televise)
- Supervisory Commission (*Dozorčí komise*)

The Director-General is appointed by the Council and is accountable to the Council for the discharge of his/her office and has the right to attend Council meetings (Article 9 ČT-Act).

The Council for Radio and Television Broadcasting is the administrative body responsible for supervising the operation of television broadcasting and the provision of on-demand audiovisual media services (Article 4 ČT Act).

The Supervisory Commission is an advisory body to the Council in matters of control of the management of Czech Television (Article 8a ČT Act).

3.3.2.1. Appointment of top managerial board members

The Council has 15 members elected and removed by the Chamber of Deputies of the Parliament of the Czech Republic so that important regional, political, societal and cultural currents of opinion are represented in it. Proposals for candidates for members of the Council are submitted to the Chamber of Deputies by organizations and associations representing cultural, regional, societal, trade union, employer, religious, educational, scientific, ecological and national interests. Proposals may be submitted within 15 days from the date of publication of the invitation of the Speaker of the Chamber of Deputies to submit proposals in the manner specified by the resolution of the Chamber of Deputies (Article 4 (1) and (2) ČT Act). The members of the Council are elected from among the candidates for a term of six years, with one third of the members being elected every two years; they may be re-elected. New members are elected to fill vacancies occurring for reasons other than the expiry of the term of office for the remainder of the term of office of the member whose seat has become vacant; if the term is less than one year, the restriction on re-election shall not apply. In the event of the removal of the Council pursuant to Article 6(3) ČT Act and the subsequent election of all members of the Council, the Council determines by lot at its first meeting five members of the Council with a term of office of two years, five members of the Council with a term of office of four years and five members of the Council with a term of office of six years (Article 4(4) ČT Act).

The Council appoints and dismisses the Director-General (Article 8(1)(a) ČT-Act).

The Supervisory Commission has five members who are elected and dismissed by the Council from among the citizens of the Czech Republic with professional

qualifications for the performance of the function of a member of the Supervisory Board (Article 8a (2) ČT Act).

3.3.2.2. Qualification requirements

A candidate for membership of the Council must meet the preconditions pursuant to Article 4(3) ČT Act, that is, being a citizen of the Czech Republic who:

- is competent to perform legal acts
- has a permanent residence in the territory of the Czech Republic
- is in good standing; a person who has been convicted of a criminal offense committed intentionally shall not be considered innocent unless his or her conviction for that crime has been eradicated or he or she is otherwise regarded as not having been convicted and a person who does not meet the requirements of a special law

The Director-General is appointed by the Council on the basis of the results of a selection procedure for a term of office of six years (Article 9 (4) ČT Act). The candidates must also meet the preconditions pursuant to Article 4(3) ČT Act applying to Council members.

The Supervisory Commission has five members who are elected and removed by the Council from among the citizens of the Czech Republic with professional qualifications for the performance of the function of a member of the Supervisory Board (Article 8a (2) ČT Act).

3.3.2.3. Political incompatibilities

Membership in the Council is incompatible with a.o. the function of the President of the Republic, Member of Parliament or Senator, or member of the Government. Moreover, a member of the Council may not hold any position in political parties, political movements or civic associations, nor may he or she act on their behalf or act in their favour or for the benefit of other group interests in the performance of his or her duties in the Council (Article 5 (1) and (2) ČT Act).

3.3.2.4. Requirements concerning political independence

There is no mention of a requirement concerning their political independence.

3.3.2.5. Role of parliament, government and/or other state bodies

As mentioned above, the members of the Council are elected and removed by the Chamber of Deputies of the Parliament of the Czech Republic so that important regional, political, social and cultural currents of opinion are represented in it (Article 4(1) ČT Act).

3.3.2.6. Safeguards against arbitrary dismissals

The Council is qualified to pass a resolution in the presence of an absolute majority of all its members, if the Chairperson of the Council or one of the Vice-Chairpersons of the Council is present. The decision of the Council is taken by an absolute majority of votes of the members present, with the exception of (...) the decision on the appointment or dismissal of the Director-General) of Czech Television, which requires at least 10 votes from the members of the Council (Article 7(2) ČT Act). The decision to dismiss the Director-General must state the reasons on which it is based and must be published by the Council in a manner allowing remote access within seven days of its receipt by the Director-General in office (Article 8(1)(a) ČT Act).

The term of office of the Director-General ceases (Article 9(6) ČT-Act):

- at the end of the term of office
- on the day immediately following the date of receipt of the resignation of the Director-General in writing by the Council
- on the day immediately following the date of receipt by the Director-General of the Council's decision to dismiss
- on the date of entry into force of a judgment depriving the Director-General of legal capacity or restricting his or her legal capacity
- on the date of entry into force of the judgment by which the Director-General was convicted of a criminal offense committed intentionally or of a criminal offense committed in connection with the operation of television broadcasting
- in the event of the death of the Director-General.

The Council may remove the Director-General from office (Article 9(7) ČT Act):

- a) if ČT does not fulfil the public service tasks in the field of television broadcasting pursuant to the Act (§ 2 and 3) or the obligations arising from special legal regulations or does not comply with the principles of the ČT Code with its programs, if the Director General was notified by the Council in writing within the last 12 months
- b) if the Director-General violates his or her obligations stipulated by law or the Statute of ČT, if the Director-General has been notified in writing of the violation of his or her obligations by the Council within the last 12 months
- c) if the Director-General ceases to meet the conditions for the performance of the function (§ 5 par. 1 and 2)
- (d) if the Director-General does not hold office for a period of six months

Membership in the Council terminates (Article 6(1) ČT Act):

- at the end of the term of office
- on the day immediately following the day of delivery of the resignation made in writing to the Speaker of the Chamber of Deputies
- in the event of removal from office
- on the day on which the member of the Council ceased to meet the preconditions for election to the position of a member of the Council set out in Article 4 (3) ČT Act
- in the event of the death of the member of the Council

The Chamber of Deputies must remove a member of the Council from office (Article 6(2) ČT-Act):

- if he or she no longer fulfils the preconditions for the performance of the function of a member of the Council set out in Article 5 ČT Act
- if he or she has seriously violated the dignity of the office of a member of the Council or if he or she has committed such an act which calls into question his or her independence or impartiality in the performance of the function of a member of the Council
- does not attend meetings of the Council for more than three months

The Chamber of Deputies may dismiss the Council if the Council repeatedly fails to fulfil its obligations stipulated by the Act, or if the Chamber of Deputies fails to approve the Annual Report on the Activities of ČT or the Annual Report on the Management of ČT (Article 6(3) ČT Act) twice in a row.

The Supervisory Board elects and removes its Chairperson and Vice-Chairpersons from among its members, who represent the Chairperson, including through the conduct of meetings of the Supervisory Board. The Supervisory Board also adopts its rules of procedure (Article 8a (4) ČT Act).

3.3.2.7. Safeguards for chief editors and newsrooms

According to Article 31(1) of the Radio and Television Broadcasting Act, broadcasters and retransmission operators have the right to broadcast programmes freely and independently. Their content can be interfered with only on the basis of the law and within its limits.⁸⁶

⁸⁶ *Zákon č. 231/2001 Sb., Zákon o provozování rozhlasového a televizního vysílání a o změně dalších zákonů*, <https://www.zakonyprolidi.cz/cs/2001-231>.

3.3.3. Supervision

The Supervisory Board is an advisory body of the Council in matters of control of ČT's finances. Its task is to monitor whether the financial resources and assets of ČT are efficiently and economically used in accordance with the approved budget of ČT in accordance with legal regulations and the requirements of European Community law. The Supervisory Board is obliged to draw the Council's attention to the identified shortcomings and submit proposals for their elimination (Article 8a(1) ČT Act).

The competence of the Council includes:

- control of the efficient and economical use of ČT's financial resources and assets according to the approved budget, fulfilment of ČT's obligations to transfer and use revenues from advertising in accordance with the Act and special legal regulation and notification of the Director-General in writing of any shortcomings
- monitoring the fulfilment of EU law requirements on the transparency of financial relations with regard to ČT
- supervision of the fulfilment of the tasks of the public service in the field of television broadcasting (§ 2 and 3) and of the fulfilment of the principles arising from the ČT Code and for this purpose issuing opinions and recommendations concerning the program offer
- establishment of a supervisory commission (Article 8a ČT Act), to approve its control rules (Article 8a(7) ČT Act) and to determine the amount of remuneration of the members of the Supervisory Board (Article 8b(4) ČT Act)

The Supervisory Board must submit a written report on its activities to the Council for each calendar quarter by the 10th day of the second month following the end of the previous quarter. As a basis for the Annual Report on the management of ČT, the Supervisory Board is obliged to submit to the Council its analysis of the management of ČT by 30 June of the immediately following calendar year (Article 8a (9) ČT Act).

The Council must simultaneously submit to the Chamber of Deputies the Annual Report on the Activities of ČT by 31 March of the immediately following calendar year and the Annual Report on the Management of ČT by 31 August of the immediately following calendar year. The annual report on the management of ČT must contain in a separate section information on the fulfilment of EU law requirements. The President of the Council must publish both annual reports no later than three days from the date of their submission to the Chamber of Deputies in a manner enabling remote access (Article 8 (2) ČT-Act).

The Chamber of Deputies may dismiss the Council if the Council repeatedly fails to fulfil its obligations under the Act, or if the Chamber of Deputies fails to approve the Annual Report on the Activities of Czech Television or the Annual Report on the Management of ČT twice in a row (Article 6(3) ČT Act).

3.4. DE - Germany⁸⁷

The contours of public service broadcasting in Germany are shaped by the federal structure of the German state. There are two main organisations at the national level to be considered in this regard:

- ARD⁸⁸
- ZDF

Established in 1950, the *Arbeitsgemeinschaft der öffentlich-rechtlichen Rundfunkanstalten der Bundesrepublik Deutschland* (ARD)⁸⁹ is a consortium of nine self-governing regional broadcasters serving Germany's 16 federal states (*Länder*) and providing TV and radio programmes, online services and teletext. The nine regional broadcasters and the regions covered by them are:

- Bayerischer Rundfunk (BR)⁹⁰ – Bavaria
- Hessischer Rundfunk (hr)⁹¹ – Hessen
- *Mitteldeutscher Rundfunk* (MDR)⁹² – Saxony, Saxony-Anhalt, Thuringia
- *Norddeutscher Rundfunk* (NDR)⁹³ – Hamburg, Lower Saxony, Schleswig-Holstein, Mecklenburg-Western Pomerania
- Radio Bremen⁹⁴ – Bremen
- *Rundfunk Berlin-Brandenburg* (rbb)⁹⁵ – Berlin-Brandenburg
- Saarländischer Rundfunk (SR)⁹⁶ – Saarland
- *Südwestrundfunk* (SWR)⁹⁷ – Baden-Wuerttemberg, Rhineland-Palatinate
- *Westdeutscher Rundfunk* (WDR)⁹⁸ – North Rhine-Westphalia

Deutsche Welle,⁹⁹ Germany's state-funded international broadcaster, is also a member of ARD.

ARD's national programme, *Das Erste*,¹⁰⁰ is jointly operated by all nine ARD members, which also produce the teletext service ARDText,¹⁰¹ the drama and

⁸⁷ The case study on Germany incorporates the kind feedback received from Peter Weber, Renate Dörr and Richard Deicke (Zweites Deutsches Fernsehen, ZDF) during the checking round with the competent public service media in the EBU network.

⁸⁸ Given that the ARD and its members pursue their activities according to the broadcasting legislation of each federal state, it would go beyond the scope and size of this publication to describe all these rules in detail. Accordingly, this section discusses only the case of ZDF as an example.

⁸⁹ <https://www.ard.de/>.

⁹⁰ <https://www.br.de/>.

⁹¹ <https://www.hr.de/>.

⁹² <https://www.mdr.de/>.

⁹³ <https://www.ndr.de/>.

⁹⁴ <https://www.radiobremen.de/>.

⁹⁵ <https://www.rbb-online.de/>.

⁹⁶ <https://www.sr.de/>.

⁹⁷ <https://www.swr.de/>.

⁹⁸ <https://www1.wdr.de/>.

⁹⁹ <https://www.dw.com/>.

entertainment channel ONE,¹⁰² the educational channel ARD-Alpha,¹⁰³ and the news channel Tagesschau24.¹⁰⁴ ARD also has an online offering with several websites and including access to ARD's central catch-up services, ARD Mediathek and Audiothek.¹⁰⁵

Zweites Deutsches Fernsehen (ZDF)¹⁰⁶ is Germany's nationwide public television broadcaster. It is run as an independent non-profit corporation under the authority of the federal states. ZDF has been broadcasting since 1 April, 1963, and now also operates the two thematic channels ZDFneo¹⁰⁷ and ZDFinfo.¹⁰⁸ In partnership with other public broadcasters, ZDF jointly operates Internet-only funk,¹⁰⁹ the German channels PHOENIX¹¹⁰ and KiKA,¹¹¹ and the European channels 3sat¹¹² and ARTE.¹¹³

3.4.1. Legal form

ARD and its members are corporations under public law. The ARD statutes¹¹⁴ are the founding document of the ARD, set the framework for internal cooperation, and regulate the external representation of ARD.

The ZDF is a non-profit federal public-law institution.¹¹⁵ Its main regulatory instruments are the ZDF Interstate Treaty (ZDF Treaty)¹¹⁶ and the ZDF Statutes.¹¹⁷

The mandate of the ARD and ZDF, as well as of the individual regional broadcasting corporations, is formulated in Article 26 of the State Media Treaty (MStV),¹¹⁸

¹⁰⁰ <https://www.daserste.de/>.

¹⁰¹ <https://www.ard-text.de/>.

¹⁰² <https://www.ardmediathek.de/one/>.

¹⁰³ <https://www.ardalpha.de/index.html>.

¹⁰⁴ <https://programm.ard.de/TV/tagesschau24/Startseite>.

¹⁰⁵ For more information see <https://www.daserste.de/ard/die-ard/was-wir-leisten/ARD-Broschuere-englisch-100.pdf>.

¹⁰⁶ <https://www.zdf.de/>.

¹⁰⁷ <https://www.zdf.de/sender/zdfneo/>.

¹⁰⁸ <https://www.zdf.de/dokumentation/zdfinfo-doku/>.

¹⁰⁹ <https://www.funk.net/>.

¹¹⁰ <https://www.zdf.de/sender/phoenix/phoenix-live-beitrag-100.html>.

¹¹¹ <https://www.kika.de/>.

¹¹² <https://www.3sat.de/>.

¹¹³ <https://www.arte.tv/>.

¹¹⁴ *Satzung der Arbeitsgemeinschaft der öffentlich-rechtlichen Rundfunkanstalten der Bundesrepublik Deutschland (ARD)*, <https://www.daserste.de/ard/die-ard/ARD-Satzung-104.pdf>.

¹¹⁵ For more information on public-law institutions under German law see e.g. <https://www.bwl-lexikon.de/wiki/anstalt-des-oeffentlichen-rechts/>.

¹¹⁶ *ZDF-Staatsvertrag vom 31. August 1991, in der Fassung des Staatsvertrags zur Modernisierung der Medienordnung in Deutschland (Medienstaatsvertrag)*, <https://www.zdf.de/assets/grundlagen-zdf-staatsvertrag-102~original>.

¹¹⁷ *Satzung der gemeinnützigen Anstalt des öffentlichen Rechts „ZWEITES DEUTSCHES FERNSEHEN“ vom 02. April 1962 in der Fassung des Änderungsbeschlusses des Fernseh Rates vom 11. Dezember 2015*, <https://www.zdf.de/assets/zdf-satzung-100~original>.

¹¹⁸ *Staatsvertrag zur Modernisierung der Medienordnung in Deutschland*, <https://www.rlp.de/fileadmin/rlp-stk/pdf-Dateien/Medienpolitik/Medienstaatsvertrag.pdf>.

in the ZDF Interstate Treaty and in the broadcasting laws of the federal states. Articles 27-33 MStV also determine the type of services and the programmes for each broadcaster.

3.4.2. Management and oversight boards

According to Article 31 MStV, the ZDF must enact statutes or directives detailing the execution of their respective remit as well as specifying the procedures governing the development of offering concepts and the procedure governing new or modified telemedia.¹¹⁹ The statutes or directives must also include rules on ensuring the independence of the supervisory councils in their decision-taking. The statutes or directives must be published on the websites of the regional public service broadcasters which are members of the ARD, of the ZDF or of Deutschlandradio.

The ZDF's main bodies are:

- Administrative Board (*Verwaltungsrat*)
- Television Board (*Fernsehrat*)
- Director-General (*Intendant*)

The Director-General (Article 27 ZDF Treaty) represents the ZDF in and out of court, and is responsible for the entire business of the ZDF, including the organisation of the programmes. The Director-General appoints, in consultation with the Administrative Board: the programme director, the Editor-in-Chief, the Administrative Director and a deputy from among them in the event of his or her absence.

The Administrative Board (Article 23 ZDF Treaty) decides on the Director-General's employment contract and supervises his or her activities. The Chairperson of the Administrative Board represents the ZDF in concluding the employment contract and in concluding other legal transactions with the Director-General as well as in legal disputes between the ZDF and the Director-General. Moreover, the Administrative Board decides on the budget drafted by the Director-General and the annual accounts, which must be submitted to the Television Council for approval in accordance with Article 20. The Administrative Board also has the right to propose amendments to the ZDF statutes. It also approves the participation in certain non-programme projects pursuant to Article 28 ZDF Treaty.

The Television Board (Article 20 ZDF Treaty) draws up guidelines for ZDF programmes and advises the Director-General on programme matters. It monitors compliance with the guidelines and the principles laid down in §§ 5, 6, 8 to 11 and 15 of the ZDF Treaty. It also decides on draft statutes or amendments submitted by the

¹¹⁹ Telemedia are all electronic information and communication services, unless they are telecommunications services under section 3 number 61 of the Telecommunications Act, telecommunications-based services under section 3 number 63 of the Telecommunications Act or broadcasting under section 2 of the Interstate Broadcasting Treaty. See Article 1 of the *Telemediengesetz*, http://www.gesetze-im-internet.de/tmg/_1.html.

Administrative Board, and approves the budget, annual accounts and the discharge of the Director-General on the proposal of the Administrative Board.

3.4.2.1. Appointment of top managerial board members

The Director-General is elected by the Television Council by secret ballot for a term of office of five years. For the election, at least three-fifths of the votes of statutory members are required. Re-election is permissible (Article 26(1) ZDF Treaty).

The Administrative Board (Article 24 ZDF Treaty) consists of 12 members appointed for a term of office of five years:¹²⁰

- four representatives of the federal states, appointed by the Minister Presidents jointly; the Minister Presidents must endeavour to make the appointments unanimously
- eight further members to be elected by the Television Council by a majority of three-fifths of its legal members; the members of the Television Council pursuant to Article 21 (1) sentence 1 letters a) to c) ZDF Treaty are not eligible for election

The Television Board (article 21 ZDF Treaty) must consist of 60 members with a term of office of four years:

- one representative of each of the contracting federal states, delegated by the competent state government
- two representatives of the Federal Government, delegated by the Federal Government
- one representative of the German County Association and, alternately after each term of office, one representative of the German Association of Cities or the German Association of Towns and Municipalities
- two representatives of the Evangelical Church in Germany
- two representatives of the Catholic Church in Germany
- one representative of the Central Council of Jews in Germany
- one representative of each of the German Trade Union Confederation, of ver.di – *Vereinte Dienstleistungsgewerkschaft* (United Services Union), and of the dbb *Beamtenbund und Tarifunion*
- one representative each of the Confederation of German German Employers' Associations, the *German Industrie- und Handelskammertag e.V.* (Association of German Chambers of Industry and Commerce), the Central Committee of German Agriculture and the *Zentralverband des Deutschen Handwerks e.V.*
- one representative of the Federal Association of German Newspaper Publishers e.V.
- one representative of the German Journalists Association e.V.
- four representatives of the non-statutory welfare organizations, one from each of the Diakonie Deutschland, Federal Association of the Protestant Association for

¹²⁰ Article 21(6) sentences 2 to 7 ZDF-Treaty apply *mutatis mutandis*.

Diakonie and Development e.V., German Caritas Association e.V., German Red Cross e.V. and the main committee of the German Workers' Welfare Association e.V.

- one representative of the German Olympic Sports Federation
- one representative of *Europaunion Deutschland e.V.*
- one representative each of the *Bund für Umwelt und Naturschutz Deutschland e.V.* and the *Naturschutzbund Germany e.V.*
- one representative from the Federation of Expellees – United *Landmannschaften and Landesverbände e.V.*
- one representative of the Association of Victims of Stalinism e.V.
- 16 representatives from the following areas assigned to the state areas:
- one representative from the area of consumer protection from the state of Baden-Wuerttemberg
- one representative from the digital affairs area from the state of Bavaria
- one representative from the Internet area from the state of Berlin
- one representative from the area of seniors, family, women and youth from the state of Brandenburg
- one representative from the area of science and research from the Free Hanseatic City of Bremen
- one representative from the area of music from the Free Hanseatic City of Hamburg
- one representative from the area of migrants from the state of Hesse
- one representative from the area of civic commitment from the state of Mecklenburg-Western Pomerania
- one representative from the area of Muslims from the state of Lower Saxony
- one representative from the area of media industry and film from the state of North Rhine- Westphalia
- one representative from the field of inclusive society from the state of Rhineland-Palatinate
- one representative from the area of arts and culture from the state of Saarland
- one representative from the area of voluntary civil protection, civil protection and disaster control” from the Free State of Saxony
- one representative from the area of traditions and customs (*Heimat und Brauchtum*) from the state of Saxony-Anhalt
- one representative from the area of regional and minority languages from the state of Schleswig-Holstein
- one representative from the area of LSBTTIQ (Lesbian, Gay, Bisexual, Transsexual, Transgender, Intersexual and Queer people) from the Free State of Thuringia

3.4.2.2. Qualification requirements

The Director-General must fulfil the following requirements (Article 26 (2) ZDF Treaty):

- having a permanent place of residence or habitual residence in the Federal Republic of Germany
- having unrestricted legal capacity
- having unlimited criminal liability

- having the capacity to hold public office and to exercise the rights conferred by elections
- not having forfeited fundamental rights

There is no indication in the ZDF Treaty as to the qualifications of members of the Administrative Board, which appear to be left at the discretion of the delegating institutions. However, people holding certain positions are prevented from becoming members of either the Administrative or the Television Boards. The Television Board and the Administrative Board must not include (Article 19a (3) ZDF-Treaty):

- members of the European Parliament, the German Bundestag or a state parliament
- members of the European Commission, the Federal Government or the government of a German federal state
- full-time municipal election officials
- civil servants who may be temporarily retired at any time
- representatives of the central municipal associations at the management level
- members of the executive committee of a party pursuant to Article 2(1)(1) of the Political Parties Act¹²¹ at the federal or state level; the sole membership in a party arbitration tribunal pursuant to Article 14 of the Political Parties Act does not preclude membership of the Television and Administrative Board; excluded from sentence 1 are the members of the Television Council pursuant to Article 21(1)(1)(a), (b) and (c) ZDF Treaty as well as the members of the Administrative Board pursuant to Article 24(1)(a) ZDF Treaty mentioned above

Moreover, the following may not be members of the Television Board and the Administrative Board (Article 19a(4) ZDF Treaty):

- employees or persons similar to employees of ZDF
- persons who are in an employment or service relationship with a company pursuant to Article 3, sentence 2, of the ZDF Treaty or with an affiliated company (Article 15 of the Stock Corporation Act)¹²²
- persons who are members of the supervisory bodies or committees of another public service broadcaster or who have an employment or service relationship or a relationship similar to that of an employee with the latter or with an enterprise affiliated with the latter (Article 15 of the Stock Corporation Act)
- persons who belong to private broadcasters or to the supervisory bodies or committees of a private broadcaster or to an enterprise affiliated with such a broadcaster (Article 15 of the Stock Corporation Act) or who are in an employment or service relationship with such a broadcaster

¹²¹ *Parteiengesetz in der Fassung der Bekanntmachung vom 31. Januar 1994 (BGBl. I S. 149), das zuletzt durch Artikel 4 des Gesetzes vom 10. August 2021 (BGBl. I S. 3436) geändert worden ist,* <https://www.gesetze-im-internet.de/partg/BJNR007730967.html>.

¹²² *Aktiengesetz vom 6. September 1965 (BGBl. I S. 1089), das zuletzt durch Artikel 61 des Gesetzes vom 10. August 2021 (BGBl. I S. 3436) geändert worden ist,* <https://www.gesetze-im-internet.de/aktg/BJNR010890965.html>.

- persons who are members of the supervisory bodies or committees of a state media authority (*Landesmedienanstalt*)¹²³ or organisations used by a state media authority to fulfil its tasks, or who are in an employment or service relationship with these bodies or a state media authority

3.4.2.3. Political incompatibilities

As mentioned before (Article 19a(3)(6) ZDF-Treaty), members of the executive committee of a party at the federal or state level cannot be Television Board or Administrative Board members, with the exceptions explained above.

3.4.2.4. Requirements concerning political independence

According to Article 19a ZDF Treaty, the members of the Television Board and of the Administrative Board must be trustees of the interests of the public. They must not be bound by instructions. They may not have any economic or other interests which might interfere with the performance of their duties as members of the Television Board or the Administrative Board.

3.4.2.5. Role of parliament, government and/or other state bodies

The Government and the regional governments appoint some of the members of the Television and Administrative Boards (for the Administrative Boards there is no appointment by the Federal Government), as mentioned above. Moreover, the annual financial statements, management report, consolidated financial statements, group management report and audit report must be submitted by the Director-General to the federal states governments and to the Court of Auditors (*Rechnungshof*) of the State in which the ZDF is headquartered¹²⁴ (Article 30a(3) ZDF Treaty).

3.4.2.6. Safeguards against arbitrary dismissals

The rules on the dismissal and the end of membership of the Television and Administrative Boards were revised in 2016 due to a ruling of the Constitutional Court.¹²⁵ The aim was to further increase the independence of the work of the councils from political influence, and ensure full transparency. Dismissal is limited to very specific cases

¹²³ <https://www.die-medienanstalten.de/>.

¹²⁴ ZDF has its seat in Mainz (Rheinland-Palatinate).

¹²⁵ *BVerfG, Urteil des Ersten Senats vom 25. März 2014*, https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/2014/03/fs20140325_1bvf000111.html.

laid down by law (Article 21(6) ZDF Treaty). Other than resignation from office, membership of the Television and Administrative Boards expire¹²⁶ by

- loss of the ability to obtain rights from public elections or to hold public office
- the occurrence of legal incapacity or the preconditions for legal conditions for legal guardianship in accordance with Article 1896 of the German Civil Code¹²⁷
- occurrence of death
- occurrence of one of the reasons for exclusion mentioned in Article 19a (3) and (4)
- occurrence of a conflict of interests in accordance with § 19a(1) third sentence
- dismissal for good cause by the body entitled to appoint; an important reason exists in particular if a member has left the body entitled to appoint

The chairperson must inform the Television Board of the existence of the reasons for expiry, except in the case of conflict of interests and dismissal for good cause, where the Television Board must decide on the termination of membership. Until a decision is taken in accordance with the reasons included in Article 19a (1) third sentence ZDF Treaty and dismissal for good cause (see above), the member concerned retains his or her rights and obligations unless the Television Council decides by a majority of seven twelfths of its legal members that the member concerned may not participate in the work of the Television Council until a decision is taken. The member concerned is excluded from deliberation and decision-making in this case.

With regard to the Director-General, the Administrative Board may dismiss the Director-General with the consent of the Television Board; the resolution of the Television Board requires a majority of three-fifths of the votes of the statutory members (Article 26(3) ZDF Treaty).

3.4.2.7. Safeguards for chief editors and newsrooms

In accordance with Article 5 of the German Constitution,¹²⁸ governmental influence is restricted. Independence and freedom of reporting are effectively guaranteed.

3.4.3. Supervision

According to Article 31 ZDF Treaty, the governments of the federal states watch over the proper execution of the provisions of the ZDF Treaty, of the State Media Treaty and over

¹²⁶ According to Article 24(3) ZDF-Treaty, the expiry reasons mentioned above apply also to the members of the Administrative Board.

¹²⁷ *Bürgerliches Gesetzbuch in der Fassung der Bekanntmachung vom 2. Januar 2002 (BGBl. I S. 42, 2909; 2003 I S. 738), das zuletzt durch Artikel 2 des Gesetzes vom 21. Dezember 2021 (BGBl. I S. 5252) geändert worden ist, <https://www.gesetze-im-internet.de/bgb/BJNR001950896.html>.*

¹²⁸ *Grundgesetz für die Bundesrepublik Deutschland in der im Bundesgesetzblatt Teil III, Gliederungsnummer 100-1, veröffentlichten bereinigten Fassung, das zuletzt durch Artikel 1 u. 2 Satz 2 des Gesetzes vom 29. September 2020 (BGBl. I S. 2048) geändert worden ist, <https://www.gesetze-im-internet.de/gg/BJNR000010949.html>.*

compliance with general legal provisions. They exercise this power through one state government on a two-year basis; the change of responsible state is carried out according to the alphabetical order of the federal states. The legal supervisory state government is in each case at the same time competent authority according to Article 16(1)(1) of the State Media Treaty. Supervisory measures are permissible only if the competent bodies of the ZDF fail to fulfil their incumbent obligations within a reasonable period of time or in an adequate manner. The state government exercising legal supervision is in individual cases entitled to grant ZDF a reasonable period of time to fulfil its obligations.

As mentioned above, the annual financial statements, management report, consolidated financial statements, group management report and audit report must be submitted by the Director-General to the governments of the federal states and to the Court of Auditors (*Rechnungshof*) of the State in which the ZDF is headquartered (Article 30a(3) ZDF Treaty). Reports do not have to be approved by the federal states due to constitutional law.¹²⁹

With regard to auditing (Article 37 MStV), the Audit Court must notify the Director General, the respective competent supervisory bodies of the broadcasting corporation and the management of the associated company, as well as the Commission for Reviewing and Ascertaining the Funding Requirements of Public Broadcasters (*Kommission zur Ermittlung des Finanzbedarfs der Rundfunkanstalten – KEF*),¹³⁰ of the result of the audit of the ZDF and the associated company. It must provide to the Director-General and the management of the respected associated company an opportunity to comment on the findings of the audit and must take the comments into consideration. The Audit Court must notify the parliaments and the governments of the federal states responsible for the broadcasting corporation as well as the KEF of the final report to be drafted on the basis of the result of the audit, and must publish it. In so doing, the audit court must ensure that the competitiveness of the ZDF-associated company audited is not impacted and in particular that operating and business secrets are kept confidential.

The German Constitutional Court emphasized in another recent judgement¹³¹ that the concrete financing of public service media in Germany must comply with the principle of programme neutrality and programming needs. These principles are decisive for determining the public broadcasting fee. Therefore, deviations of the fee on grounds of programming or media policy considerations are not permissible. However, this does not mean that the legislator cannot limit the funding needs of public service media in Germany. But in doing so the legislator must act within the framework of the media policy to change the remit. The legislator cannot limit the budget or the household fee to change the remit. The principle of keeping general broadcasting legislation separate from the process of determining the public broadcasting fee is designed to prevent any risk of

¹²⁹ According to Article 1(3) ZDF Treaty, the ZDF has the right of autonomy within the framework of the provisions of the ZDF Treaty.

¹³⁰ <https://kef-online.de/>.

¹³¹ *BVerfG, Beschluss des Ersten Senats vom 20. Juli 2021*, https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/2021/07/rs20210720_1bvr275620.html.

influence being exerted on how the programming mandate is carried out, thereby protecting the public broadcasters in their programming freedom.

3.5. FI - Finland¹³²

*Yleisradio Oy*¹³³ (the Finnish Broadcasting Company, Yle) is Finland's national public service media company. It runs four television channels (Yle TV1, Yle TV2, Yle Fem and Yle Teema) and three channel slots (Yle TV1, Yle TV2 and Yle Teema & Fem), nine radio channels (Yle Radio 1, Yle Radio Suomi, Yle Puhe, YleX, Yle Vega, Yle X3M, Yle Mondo, Yle Klassinen, Yle Sámi Radio). It also has several online websites (Yle Arena – Yle Arenan, yle.fi, svenska.yle.fi, Yle ID, Uutisvahti – Nyhetskollen).¹³⁴

3.5.1. Legal form

Founded in 1926, Yle operates under the *Laki Yleisradio Oy:stä* (Act on Yleisradio Oy - Yle-Act)¹³⁵ and from January 2013 it has been funded by a special Yle tax (*yleisradiovero*),¹³⁶ replacing the license fee.

According to Article 1 Yle Act, Yle is a public limited company operating as a public service within the administrative sphere of the Ministry of Transport and Communications. The company may also carry out other activities in accordance with its articles of association. The provisions of the Limited Liability Companies Act¹³⁷ (624/2006) apply to the company, with the exceptions provided for in the Yle Act. The State must own and control an amount of the share capital of the company equal to at least 70% of the total number of shares in the company and of the total number of votes attached to all shares (Article 2 Yle Act).¹³⁸

According to Article 7 Yle Act, the company is responsible for the provision of versatile and comprehensive television and radio programming with the related additional and extra services for all citizens under equal conditions. These and other content services related to public service may be provided in public communications networks nationally and regionally.

¹³² The case study on Finland incorporates the kind feedback received from Janne Holopainen (Yleisradio Oy) during the checking round with the competent public service media in the EBU network.

¹³³ <https://yle.fi/>.

¹³⁴ <https://yle.fi/aihe/artikkeli/about-yle/this-is-yle>.

¹³⁵ *Laki Yleisradio Oy:stä*, 22.12.1993/1380 (consolidated version), <https://finlex.fi/fi/laki/ajantasa/1993/19931380>.

¹³⁶ *Laki yleisradioverosta*, 31.8.2012/484, <https://www.finlex.fi/fi/laki/ajantasa/2012/20120484>.

¹³⁷ *Osakeyhtiölaki*, 21.7.2006/624, <https://finlex.fi/fi/laki/ajantasa/2006/20060624>.

¹³⁸ According to the Yle website, the company is 99.9% state-owned, see <https://yle.fi/aihe/artikkeli/about-yle/this-is-yle>.

The public service programming must in particular:

- support democracy and everyone's opportunity to participate by providing a wide variety of information, opinions and debates as well as opportunities to interact
- produce, create, develop and maintain Finnish culture, art and inspiring entertainment
- take educational and equality aspects into consideration in the programmes, provide an opportunity to learn and study, deliver a focus on programming for children and young people, and offer devotional programmes
- treat in its broadcasting Finnish-speaking and Swedish-speaking citizens on equal grounds and produce services in the Sami and Romany languages, in sign language and, where applicable, also in the languages of other language groups in the country
- support the preservation of Finnish cultural heritage, support tolerance, equal treatment, equality, and cultural diversity, and provide programming for minority and special groups
- promote cultural interaction and maintain production intended for international distribution
- broadcast official announcements that are further specified by decree, and prepare for broadcasting in exceptional circumstances

Yle's operations are further based on ethical guidelines and instructions:¹³⁹

- Yle's strategy¹⁴⁰ directs future goals and operational principles.
- Yle's Code of Conduct¹⁴¹ binds all Yle's operations, and every employee, freelancer and partner working for Yle.
- In programme operations, content production and publishing operations, Yle abides by best journalistic practices as defined in the Guidelines for Journalists¹⁴² approved by the Union of Journalists¹⁴³ and interpreted by the Council of Mass Media¹⁴⁴ in Finland, and the Ethical Guidelines for the Production of Programmes and Content.¹⁴⁵

3.5.2. Management and oversight boards

According to Article 4 Yle Act, the governing bodies of the company are:

- the Supervisory Board (*hallintoneuvosto*)
- the Board of Directors (*hallitus*)

¹³⁹ <https://yle.fi/aihe/about-yle/operating-principles>.

¹⁴⁰ <https://yle.fi/aihe/strategy>.

¹⁴¹ <https://yle.fi/aihe/s/yles-code-conduct>.

¹⁴² https://www.jsn.fi/en/guidelines_for_journalists/.

¹⁴³ <https://journalistiliitto.fi/en/about/about-ujf/>.

¹⁴⁴ <https://www.jsn.fi/en/>.

¹⁴⁵ <https://yle.fi/aihe/s/ethical-guidelines-production-programmes-and-content>.

- the Managing Director acting as CEO (*toimitusjohtajana toimiva pääjohtaja*)

3.5.2.1. Appointment of top managerial board members

The Supervisory Board has 21 members elected by Parliament in the first session of the parliamentary term.¹⁴⁶ Their term of office begins as soon as the election has been held and lasts until the next election of the members of the Supervisory Board. The Supervisory Board must elect a chairperson and a vice-chairperson from among its members (Article 5 Yle Act).

The Supervisory Board elects and dismisses the Board of Directors (between five and eight members) and the Chairperson of the Board of Directors (*yhtiön hallitus ja hallituksen puheenjohtaja*) and determines the remuneration of the members of the Board of Directors (Article 6 Yle Act), whereas the Board of Directors elects and dismisses the Managing Director (Article 6c Yle-Act).

3.5.2.2. Qualification requirements

The members of the Supervisory Board must be chosen from among persons with a knowledge of science, the arts, culture, business and the economy, and from different social and linguistic backgrounds (Article 5 Yle Act).

The Board of Directors must represent a sufficient diversity of expertise and both language groups (Finnish and Swedish). Its members may not be members of the Supervisory Board or other senior management members of the company (Article 6c Yle-Act).

The Managing Director (acting as CEO) may not be a member of the Supervisory Board or the Board of Directors (Article 6c Yle-Act).

3.5.2.3. Political incompatibilities

There is no mention of political incompatibilities under the Yle Act. In practice, all members of the Supervisory Board are members of Parliament i.e. representatives of political parties.

3.5.2.4. Requirements concerning political independence

There is no mention of any requirements concerning political independence under the Yle Act. Yle's Ethical Guidelines state that operations "are based on the principles of independence, impartiality and reliability." Further: "We resist any attempts to influence our journalism. Political, commercial or similar interests have no influence on our

¹⁴⁶ In practice, election of the Supervisory Board takes place within one to six weeks from the start of the term.

editorial content.” Independence is further developed among the General Principles included in the Ethical Guidelines: “4. Yle’s programme production and content publishing must be independent of all external sources of influence, and all pressure, persuasion or bribery must be rejected.”

3.5.2.5. Role of Parliament, the government and/or other state bodies

As mentioned before, the Supervisory Board has 21 members elected by Parliament in the first session of the parliamentary term (Article 5 Yle-Act).

3.5.2.6. Safeguards against arbitrary dismissals

There is no mention of safeguards against arbitrary dismissals under the Yle Act. Yle’s Code of Conduct recognises its responsibility as an employer: “We recruit, provide development opportunities and reward all our employees on the basis of their performance and competence, regardless of age, gender, sexual orientation, race, religion, nationality, ethnic background, political views or similar. We appreciate our staff and promote a good working culture. We do not tolerate discrimination, harassment or bullying. We make sure that our staff have healthy and safe working conditions. We abide by collective bargaining agreements and work legislation.”

3.5.2.7. Safeguards for chief editors and newsrooms

There is no mention of safeguards for chief editors and newsrooms under the Yle Act. Freedom of expression is regulated by the Act on the Exercise of Freedom of Expression in Mass Media,¹⁴⁷ and, as mentioned above, Yle’s journalists are committed to following best journalistic practices as defined in the Guidelines for Journalists, and the Ethical Guidelines for the Production of Programmes and Content.

3.5.3. Supervision

Regarding reporting mechanisms, Article 6 Yle Act provides that the Supervisory Board must, by the end of April each year, submit to Parliament a report on the implementation of the public service under Article 7 Yle Act and on the performance of its management and supervisory functions during the previous calendar year. Before submitting the report, the Sámi Parliament must be consulted.

Moreover, by the end of April each year, the company must submit a report to the media national regulatory authority *Liikenne- ja viestintävirasto* (Finnish Transport and

¹⁴⁷ *Laki sananvapauden käyttämisestä joukkoviestinnässä*, 13.6.2003/460, <https://www.finlex.fi/fi/laki/ajantasa/2003/20030460>.

Communications Agency - Traficom)¹⁴⁸ on the service provided during the previous calendar year. The report must contain the information necessary for the media national regulatory authority's task of supervising television and radio broadcasting. Traficom must issue a statement to the Government about the report on the basis of the financial statements referred to in section 12 a(2) by the end of September. The statement must also be reported as information to the parliamentary committee that handles issues concerning Yle (Article 12b Yle-Act).

3.6. FR -France¹⁴⁹

France Télévisions (France TV)¹⁵⁰ is France's national public service TV broadcaster. It offers national and regional channels (France 2, France 3 and its 24 regional branches, France 4, France 5, and France Info), and digital platforms (france.tv, francetv.sport, francetv.Slash, Okoo, Lumni and Outre-mer La 1ère).¹⁵¹

3.6.1. Legal form

France TV exists as such since the adoption of the Act of 1 August 2000 on audiovisual media¹⁵² and the integration of France 5 – formerly *La Cinquième* – into the same entity as France 2 and France 3. The reunion of the latter two channels behind a single management dates back to 1992. After expanding to include France Ô, France 4 and the Réseau Outre-mer 1ère, the holding company became a single company in 2010, based on the merger of the channels.¹⁵³

France TV is regulated by the Act on the freedom of communication (*Loi Léotard – LL*).¹⁵⁴ According to its Article 47, the French state holds the entire capital of France TV, which is subject to the legislation on public limited companies, unless otherwise provided by law. France TV's articles of association were approved by decree in 2009.¹⁵⁵

¹⁴⁸ <https://www.traficom.fi/fi/>.

¹⁴⁹ The case study on France incorporates the kind feedback received from Sylvie Courbarien Le Gall and Nathalie Léger (France Télévisions) during the checking round with the competent public service media in the EBU network.

¹⁵⁰ <https://www.francetelevisions.fr/>.

¹⁵¹ This subchapter deals only with France Televisions and does not include the European culture channel ARTE, <https://www.arte.tv/>.

¹⁵² *Loi n° 2000-719 du 1 août 2000 modifiant la loi n° 86-1067 du 30 septembre 1986 relative à la liberté de communication*, <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000000402408/>.

¹⁵³ <https://www.francetelevisions.fr/groupe/qui-sommes-nous/lhistoire-127>.

¹⁵⁴ *Loi n° 86-1067 du 30 septembre 1986 relative à la liberté de communication (Loi Léotard)*, <https://www.legifrance.gouv.fr/loda/id/LEGITEXT000006068930/>.

¹⁵⁵ *Décret n° 2009-1263 du 19 octobre 2009 portant approbation des statuts de la société nationale de programme France Télévisions*, <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000021180238/>.

3.6.2. Management and oversight boards

The main organs of France TV are:

- Board of Directors (*conseil d'administration*) and its committees
- President (*président*)
- Programme Advisory Board (*conseil consultatif des programmes*)

The Board of Directors has internal regulations governing the functioning and powers of the body and establishes three specialised committees, as well as a sub-committee on commitments.¹⁵⁶

The Programme Advisory Board is composed of viewers, responsible for issuing opinions and recommendations on programmes. Each year, the President reports on the activity and work of this council when the report on the execution of the company's contract of objectives and means is presented to the committees responsible for cultural affairs and finance of the National Assembly and the Senate (Article 46 LL).

3.6.2.1. Appointment of top managerial board members

The Board of Directors comprises, in addition to the President, 14 members whose term of office is five years (Article 47-1 LL):

- One deputy and one senator appointed by the standing committee responsible for cultural affairs of their respective assemblies.
- Five representatives of the state.
- Five independent persons appointed by the Audiovisual and Digital Communication Regulatory Authority (*Autorité de régulation de la communication audiovisuelle et numérique* - Arcom)¹⁵⁷ for their competence, one of whom represents the consumer protection associations approved at national level in accordance with Article L. 411-1 of the Consumer Code.¹⁵⁸
- Two staff representatives elected in accordance with Title II of the Act on the democratisation of the public sector.¹⁵⁹

The President is appointed for five years by Arcom, by a majority of its members. This appointment is subject to a reasoned decision based on criteria of competence and experience. Applications are submitted to and assessed by Arcom on the basis of a strategic plan (Article 47-4 (1) and (2) LL).

Within two months of the start of his or her term of office, the President must send the chairperson of each parliamentary assembly and the competent standing

¹⁵⁶ <https://www.francetelevisions.fr/groupe/notre-organisation/le-conseil-dadministration-139>.

¹⁵⁷ <https://www.arcom.fr/>.

¹⁵⁸ *Code de la consommation*, <https://www.legifrance.gouv.fr/codes/id/LEGITEXT000006069565/>.

¹⁵⁹ *Loi n° 83-675 du 26 juillet 1983 relative à la démocratisation du secteur public*, <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000000320196/>.

committees of these assemblies a policy report. The standing committees responsible for cultural affairs of the parliamentary assemblies may hold hearings on the basis of this report (Article 47-4 (5) LL).

3.6.2.2. Qualification requirements

As mentioned above, five members of the Board of Directors are independent persons appointed by Arcom for their competence, one of whom represents the consumer protection associations approved at national level in accordance with Article L. 411-1 of the Consumer Code,¹⁶⁰ and the difference between the number of members of each sex must not exceed one (the same goes for the five representatives of the state). Also, the two staff representatives must be elected in accordance with Title II of the Act on the democratisation of the public sector.¹⁶¹

The appointment of the President is subject to a reasoned decision based on criteria of competence and experience. Applications are submitted to and assessed by Arcom on the basis of a strategic plan. The standing committees responsible for cultural affairs of the parliamentary assemblies may also hold hearings of the on the basis of the President's policy report (see above).

According to Article 7 LL, Arcom staff cannot be members of the boards of directors of France TV.

3.6.2.3. Political incompatibilities

There are no rules concerning incompatibilities in the Loi L  otard.

3.6.2.4. Requirements concerning political independence

According to Article 43-11 LL, France TV must ensure honesty, independence, and pluralism of information as well as the pluralist expression of currents of thought and opinion in compliance with the principle of equal treatment and the recommendations of Arcom. Moreover, when broadcasting news, France TV services have an independent editorial line (Article 44(l)(7) LL).

3.6.2.5. Role of parliament, the government and/or other state bodies

The state concludes a contract of objectives and means with France TV for a duration of three to five calendar years. Before they are signed, the contracts of objectives and means as well as any amendments to these contracts are sent to the committees responsible for

¹⁶⁰ *Code de la consommation*, <https://www.legifrance.gouv.fr/codes/id/LEGITEXT000006069565/>.

¹⁶¹ *Loi n   83-675 du 26 juillet 1983 relative    la d  mocratisation du secteur public*, <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000000320196/>.

cultural affairs and finance of the National Assembly and the Senate and to Arcom. They may be debated in Parliament. The committees may formulate an opinion on these contracts of objectives and means as well as on their possible amendments within six weeks. If the Parliament is not in session, this period shall start from the opening of the next ordinary or extraordinary session. Arcom must formulate an opinion on the contracts of objectives and means as well as on their possible amendments within four weeks (Article 53(I) LL).

Each year, the presidents of France TV and Radio France present a report on the execution of the contract of objectives and means of the company they preside over to the committees responsible for cultural affairs and finance of the National Assembly and the Senate. Each year, the reports on the execution of the contracts of objectives and means of the companies France TV, Radio France and the company in charge of France's external audiovisual media are transmitted for an opinion to Arcom. This opinion must be made public. The competent standing committees of each parliamentary assembly may hear the chairperson of Arcom on the basis of this opinion (Article 53(II) LL).

Each year, when the Finance Act is voted on, Parliament, upon the reporting of a member of each of the National Assembly and Senate Finance Committees with the powers of special rapporteur, approves the distribution of public funds between the bodies mentioned in Article 46 of Act No. 2005-1719 of 30 December 2005 on the finances for 2006¹⁶² (Article 53(III) LL).

3.6.2.6. Safeguards against arbitrary dismissals

The mandate of the President of France TV may be withdrawn from him or her, by reasoned decision, under the conditions set out in the first paragraph of Article 47-4 LL (see above). In the event of a tie vote in a governing body of one of these companies, the chairperson has the casting vote. In the event of a vacancy, for whatever reason, of one or more members of the Board of Directors of the companies referred to in Articles 47-1 to 47-3, the Board of Directors must deliberate validly until the appointment of a new member or members, subject to compliance with the quorum rules (Article 47-5 LL).

3.6.2.7. Safeguards for chief editors and newsrooms

Pursuant to Article 57(I) LL, the rights of the staff and journalists of France TV must not depend on their opinions, beliefs or on their trade union or political affiliations. Recruitment, appointment, promotion, and transfer are to be carried out without any conditions other than the required professional abilities and respect for the public service open to all.

¹⁶² *Loi n° 2005-1719 du 30 décembre 2005 de finances pour 2006 (1)*, https://www.legifrance.gouv.fr/loda/article_lc/LEGIARTI000044991288/.

3.6.3. Supervision

Beyond the supervisory activities of the French Parliament described above, the regulatory authority Arcom guarantees the independence and impartiality of the public service media (Article 3-1(2) LL). In its annual activity report, Arcom must present a report on France TV's compliance with its obligations (Article 18(1)(3) LL). Within one month of its publication, Arcom's annual activity report must be presented each year by the chairperson of Arcom at a public hearing before the standing committees responsible for cultural affairs of each parliamentary assembly. Each committee may adopt an opinion on the application of the law, which must be sent to Arcom and made public. This opinion may include suggestions to Arcom regarding proper application of the law or the evaluation of its effects.

Four years after the beginning of the President's mandate, Arcom must issue a reasoned opinion on France TV with regard to the results of its strategic project. This opinion is transmitted to the competent standing committees of the National Assembly and the Senate (Article 47-4 (4) LL).

3.7. GR – Greece¹⁶³

Ελληνική Ραδιοφωνία Τηλεόραση AE (ERT)¹⁶⁴ is the Greek public service broadcaster. After being shut down in 2013 and replaced by a new broadcaster (NERIT), it was relaunched in 2015 under the previous name ERT.

ERT SA broadcasts its television programme through three (3) stations nationwide (ERT1, ERT2 and ERT3), and a satellite channel for the Greeks abroad (ERT World) and online all the above channels and what is created (ad- hoc) via the ERTFLIX digital platform.

- ERT1 is ERT's "flagship" generalist channel.
- ERT2 is a cultural/educational channel.
- ERT3 is the broadcaster of and for the Greek region, and it also broadcasts the main bulk of sports programmes.
- ERT World broadcasts TV programme for Greeks abroad (Greek diaspora).
- ERT Sports is a series of ad-hoc channels that broadcast sports programmes via ERTFLIX platform.

ERT has a total of 5 national terrestrial radio stations (First Programme, Second Programme, Third Programme, Kosmos FM, ERAspor), some of them available nationwide, 21 local or regional terrestrial services (2 Thessaloniki Radio Stations and 19 Regional

¹⁶³ The case study on Greece incorporates the kind feedback received from Fotis Karayannopoulos (Special Counsel for the Greek National Broadcaster, ERT) during the checking round with the competent public service media in the EBU network.

¹⁶⁴ <https://www.ert.gr/>.

Stations) and a SW radio station for the Greeks abroad (Voice of Greece). SW transmission is planned to stop in 2022 and will be replaced by internet streaming. All stations are available online. ERT also airs internet-based radio stations (Zeppelin radio).

ERT's digital offering includes the ERTFLIX FVOD streaming platform, websites (ertflix.gr, ertnews.gr), and the distribution of content via YouTube and Glomex.

3.7.1. Legal form

Pursuant to Article 1 of the Act on the Hellenic Radio and Television SA (ERT-Act),¹⁶⁵ ERT is a legal entity under private law in the form of a limited liability company. It is a public enterprise which belongs to the public sector and is supervised by the State.¹⁶⁶ It has administrative and financial autonomy and is governed by the provisions of the ERT-Act.

The Articles of Association of the Company were approved by joint decision of the Minister of Finance and the Minister of State responsible for Public Broadcasting, published in the Government Gazette, the provisions of which, subject to the different provisions of the ERT-Act, include the elements provided for in Article 2 of the Act on Public Limited Companies¹⁶⁷ and in the Act on Public Enterprises and Organisations.¹⁶⁸ The Articles of Association are registered in the General Commercial Registry and may be amended and codified by decision of the General Assembly of the Company.

3.7.2. Management and oversight boards

The main bodies of ERT are:

- General Assembly (*Γενική Συνέλευση*);
- Board of Directors (*Διοικητικό Συμβούλιο*);
- Chief Executive Officer (*Διευθύνων Σύμβουλος*);
- Social Audit Councils (*Συμβούλια Κοινωνικού Ελέγχου*).

The General Assembly (Article 7(4) ERT-Act) has the powers of a General Assembly of a Public Limited Company, except for those assigned to other bodies of E.R.T. S.A. by the Company's Statute and the applicable legislation. The Greek State is represented by the Minister of Finance, the Minister to whom the responsibilities of the General Secretariat

¹⁶⁵ ΝΟΜΟΣ ΥΠ' ΑΡΙΘ. 4173 ΦΕΚ Α' 169/26.7.2013 - Ελληνική Ραδιοφωνία Τηλεόραση Ανώνυμη Εταιρεία (Ε.Ρ.Τ. Α.Ε.), <https://www.kodiko.gr/nomothesia/document/74666/nomos-4173-2013>.

¹⁶⁶ See also Article 6(1) ERT-Act: "The share capital of E.R.T. S.A. belongs exclusively to the Greek State, in whose name a registered and inalienable title has been issued."

¹⁶⁷ ΝΟΜΟΣ ΥΠ' ΑΡΙΘΜ. 2190 ΦΕΚ Α' 216/19.09.1920 - Περί Ανώνυμων Εταιρειών, <https://www.kodiko.gr/nomothesia/document/346155/nomos-2190-1920>.

¹⁶⁸ ΝΟΜΟΣ ΥΠ' ΑΡΙΘ. 3429 ΦΕΚ Α' 314/27.12.2005 - Δημόσιες Επιχειρήσεις και Οργανισμοί (Δ.Ε.Κ.Ο.), <https://www.kodiko.gr/nomothesia/document/158697/nomos-3429-2005>.

for Communication and Information have been delegated, and the Minister of Culture and Sports. The Minister of State responsible for Public Broadcasting acts as President.

The Board of Directors is responsible for ERT's administration, decides and implements the Company's strategy and direction, selects the persons who cover positions of responsibility in accordance with the Statute and the relevant ERT regulations (Article 9(7) ERT-Act).

The CEO manages ERT and heads all its services, draws up the ERT regulations, draws up ERT's budget and ensures that its objectives are achieved, draws up and recommends the radio and television programme and the content of ERT websites, and represents ERT in legal proceedings and in legal actions (Article 9a(1) ERT-Act).

Social audit councils are set up by the Board of Directors in each administrative region of Greece. The councils are composed of voluntary participation of listeners, viewers, institutions, and social collectives that constitute the representative audience of ERT. The mission of the councils is to convey to the Board of Directors of the company the opinions on the content of the programme, proposals for the proper functioning of the company, as well as complaints regarding the compliance of ERT with its programming obligations, with a view to evaluating the services and improving the quality of its operation (Article 11 ERT-Act).

3.7.2.1. Appointment of top managerial board members

E.R.T. SA is governed by a seven-member Board of Directors, which consists of (Article 9(1) ERT-Act):

- (a) the President,
- (b) the Chief Executive Officer,
- (c) three members, who due to their special knowledge and experience can contribute to the fulfillment of the purpose of E.R.T. SA.
- (d) two members, who represent the employees of E.R.T. SA, one of which has journalistic status.

The members referred to in (a), (b) and (c) are selected as follows (Article 9(2) ERT-Act): the Minister of State in charge of Public Broadcasting issues a public call for expression of interest, which is made public by all appropriate means, after the submission of the statements submits a proposal to the Parliamentary Institutions and Transparency Committee, which expresses its opinion by analogous application of the procedure of paragraphs 3 to 5 of article 49A of the Rules of Procedure of the Greek Parliament.

The members referred to in paragraph (d) are elected by direct, secret and universal suffrage by the employees of the Company (Article 9(3) ERT-Act).

The members of the Board of Directors are appointed by a decision of the Minister of State who is responsible for matters of Public Broadcasting after the observance of the procedures described above.

Until the election of the members of the Board of Directors from among the employees or the replacement of any resigned or absent of the same category, the Board of Directors is formed and operates legally without these members.

The term of office of the members of the Board of Directors is five years and can be renewed once and is extended until the new Board of Directors takes office.

3.7.2.2. Qualification requirements

The President and the CEO of the Board of Directors must be holders of a university or technological education degree in the national or equivalent foreign language or persons of recognised standing with proven international recognition of their work. Three other members must have special knowledge and experience can contribute to the fulfilment of ERT's purpose. One of the two representatives of ERT's employees must be a journalist (Article 9(1) ERT-Act).

3.7.2.3. Political incompatibilities

The capacity of the member of the Board of Directors of ERT. SA is incompatible:

- (a) In the capacity of the supplier or the general counterparty of E.R.T. SA with a project or service contract.
- (b) By participating in any way in another company related to the Media.
- (c) As a member of the Board of Directors in trade unions and associations of ERT employees and
- (d) as a member of the Council of Ministers, the Deputy Minister, the General or Special Secretary of the Ministry or an independent General Secretariat, the Member of Parliament, the Mayor, the Regional Governor, the Vice-Regional Governor, the regional and municipal councilor, the civil servant or the civil servant legal persons under public law with an employment relationship under public law and private law of indefinite or definite duration and the person holding a position in a body of a political party.

3.7.2.4. Requirements concerning political independence

ERT S.A. is independent of the State, of all public or private authorities and political parties. It prepares and transmits its radio, television and internet content, and is governed only by the relevant provisions of the Constitution and existing legislation. To this end, ERT S.A. signs a Principles Agreement with the Greek State, represented by the Minister of Finance, the Minister of State, in charge of Public Broadcasting, and the Deputy Minister of Culture, Education and Religion, in charge of Culture, to guarantee its independence. The Principles Agreement sets out the conditions for ensuring polyphony and pluralism in information, for fostering the quality upgrading of public service broadcasting, as well as the standards of transparency in conducting its financial affairs for the benefit of society (Article 2(4) ERT-Act).

3.7.2.5. Role of Parliament, government and/or other state body

The members of the Board of Directors are appointed by decision of the Minister of State responsible for Public Broadcasting after the Committee on Institutions and Transparency of the Parliament has given its opinion on the Minister's recommendation (Article 9(2) and (4) ERT-Act).

3.7.2.6. Safeguards against arbitrary dismissals

Under Article 24 of the ERT's Personnel Internal Regulation permanent dismissal is imposed only:

- In case of conviction by a final court decision of a criminal court for any felony or for one or more of the misdemeanors referred to in paragraphs 6.1.4 and 23.2 of the Regulation and in any case of imposition of permanent or temporary deprivation of civil rights as a consequence of a conviction for a criminal offense.
- In case of systematic and extremely serious disobedience to the orders of his/her superiors and the Management bodies of the Company.
- In case of extremely serious breach of the obligation of confidentiality.
- In case of unjustified abstention from the performance of his/her duties for more than ten (10) working days in a period of twelve (12) month

3.7.2.7. Safeguards for chief editors and newsrooms

ERT is an institution of democracy and culture and contributes to ensuring pluralism, the independent transmission of information and news and the promotion of works of art and literature (Article 2(3) ERT-Act). ERT is independent of the State, all public or private authorities and political parties and produces and broadcasts its broadcasting and internet content, subject only to the relevant provisions of the Constitution and the applicable legislation. To this end, E.R.T. S.A. signs an Agreement of Principles with the Greek State, represented by the Minister of Finance, the Minister of State, responsible for Public Broadcasting, and the Deputy Minister of Culture, Education and Religious Affairs, responsible for Culture, for the consolidation of the independence of public service broadcasting. The Agreement of Principles provides for the conditions to ensure pluralism and pluralism in information, the qualitative upgrading of public broadcasting, as well as the rules of transparency in the management of its financial resources for the benefit of society as a whole (Article 2(4) ERT-Act).

3.7.3. Supervision

ERT's control as regards the programmes broadcast and the compliance with the general principles of the content provided is carried out by the ESR (NCRTV - ESR), which publishes an annual report.

The National Council for Radio and Television (NCRTV)¹⁶⁹ is a Greek independent administrative authority that supervises and regulates the radio/television market, founded in 1989. NCRTV is entrusted with the control of E.R.T. S.A. with regard to the fulfilment of public service obligations and compliance with the rules of European Union law on state aid to public broadcasting (Article 10(1) and (2) ERT-Act).

NCRTV is regularly invited by the Parliamentary Commission on Institutions and Transparency to hearings at the Parliament.

ERT must submit to the Parliament's Committee on Institutions and Transparency and to the ESR during the first quarter of each calendar year a report on the transparency of the use of the license fee (Article 10(3) ERT-Act).¹⁷⁰

The Minister of State responsible for Public Broadcasting supervises compliance with the provisions of the ERT-Act, without prejudice to the provisions relating to the relevant powers of the ESR. If the Minister finds that these provisions have been infringed, he or she shall convene a General Meeting of Shareholders, which shall decide on the matter, and its decision shall be implemented by the Board of Directors and the Managing Director of the company.

3.8. HU - Hungary¹⁷¹

*Duna Médiaszolgáltató Részvénytársaság (Duna)*¹⁷² is, since 1 January 2015, the provider of all public television, radio and online content services, as well as public news agency activities. Regarding television, it broadcasts seven channels:¹⁷³

- M1 delivers news and information to viewers 24 hours a day;
- M2 is for children from early morning to evening, and after 8 p.m. it broadcasts youth programmes under the name Petőfi TV;
- M3 is an online service that presents content from the public television archive;
- M4 broadcasts mainly domestic sporting events and international competitions involving Hungarian athletes;
- M5 is a public media channel for information, education and culture;
- The Duna channel is a generalist channel;
- Duna World is primarily a channel for Hungarians living abroad.

It also provides seven radio channels,¹⁷⁴ a national news agency (The Hungarian Telegraphic Service - MTI),¹⁷⁵ and a fully integrated online portal group with different thematic sites.¹⁷⁶

¹⁶⁹ <https://www.esr.gr/>.

¹⁷⁰ ERT 2020 Public Value and Transparency report is available (in Greek) at <https://www.ert.gr/dimosia-axia/>.

¹⁷¹ The case study on Hungary incorporates the kind feedback received from Balázs Stella (Médiaszolgáltatás-támogató és Vagyonkezelő Alap, MTVA) during the checking round with the competent public service media in the EBU network.

¹⁷² <https://dunamsz.hu/>.

¹⁷³ https://dunamsz.hu/televizio/?lang=hu_hu.

3.8.1. Legal form

On 15 December 2014, the Hungarian National Assembly adopted an amendment¹⁷⁷ to the Act CLXXXV of 2010 on Media Services and Mass Media (MSMM-Act),¹⁷⁸ which amended the institutional framework of the public media services. The MSMM-Act established *Duna* as the legal successor of *Magyar Televízió* (Hungarian Television), *Duna Televízió* (Duna TV), *Magyar Rádió* (Hungarian Radio) and *Magyar Távirati Iroda* (Hungarian News Agency), which all operated previously as independent shareholding companies. *Médiaszolgáltatás-támogató és Vagyonkezelő Alap* (Media Service Support and Asset Management Fund - MTVA) is a separate asset management fund that is responsible for supporting and promoting the public service media provider, the production of public service programmes, and the careful management and expansion of state and own assets over which it exercises ownership rights.

3.8.2. Management and oversight boards

The organs of *Duna* are:

- Director General (*vezérigazgató*);
- Board of Trustees of the Public Service Foundation (*Kuratórium*);
- Supervisory Board (*felügyelő bizottsága*);
- Permanent auditor (*Közszolgálati médiaszolgáltató könyvvizsgálója*).

The Director General manages the public service media service provider with no board of directors. The Director General exercises, within the limits of the MSMM-Act, all the powers which the relevant provision of the Civil Code on companies is attributed to the Board of Directors of a public limited company (Article 102(1) MSMM-Act).

The Board of Trustees (Article 85 MSMM-Act) is the governing body of the Public Service Media Foundation, that is the owner of *Duna*. Among other tasks, the Board of Trustees monitors the achievement of the objectives of the public service media service, safeguards the independence of the public service media service provider, elects and removes from office the Director General, elects the chairperson and members of the Supervisory Board and the Auditor, and adopts the annual management plan (Article 90(1) MSMM-Act).

The Supervisory Board supervises the management of the public service media service provider. It has the right to request reports or explanations from the Director

¹⁷⁴ https://dunamsz.hu/radio/?lang=hu_hu.

¹⁷⁵ https://dunamsz.hu/mti/?lang=hu_hu.

¹⁷⁶ https://dunamsz.hu/online-2/?lang=hu_hu.

¹⁷⁷ 2014. évi CVII. törvény - A közszolgálati médiaszolgáltatásra és a médiapiacra vonatkozó egyes törvények módosításáról, <http://kozlonyok.hu/nkonline/MKPDF/hiteles/MK14186.pdf>.

¹⁷⁸ 2010. évi CLXXXV. törvény a médiaszolgáltatásokról és a tömegkommunikációról (consolidated version), <https://njt.hu/jogszabaly/2010-185-00-00->

General, the employees of the public service media service provider, to examine the books, cash accounts, documents and cash of the public service media service provider at any time or to have them examined by an expert at the expense of the public service media service provider (Article 106(1) MSMM-Act).

3.8.2.1. Appointment of top managerial board members

The Parliament elects six members of the Board of Trustees by single vote. Half of the members eligible for election to the Board of Trustees by the Parliament are nominated by the governing party and the other half by the opposition political groups. The members of the Board of Trustees shall be elected by the Parliament for a term of nine years. The terms of office of elected and delegated members shall expire on the same date, nine years after the date of their election by the Parliament. The President and one other member of the Board of Trustees are appointed by the Media Council for a term of nine years (Article 86 MSMM-Act).

The Board of Trustees exercises the employer's authority over the Director General of the public service media service provider, including the appointment and termination of the employment of the Director General. The Director General is nominated and appointed in the following order (Article 102(2) MSMM-Act):

- the President of the Media Council of the National Media and Communications Authority (the Media Council - *Médiatanács*)¹⁷⁹ shall propose to the Media Council two candidates for Director General,
- if the Media Council approves the candidates, it submits them to the Board of Trustees to choose one of the candidates,
- if the Media Council does not accept one of the candidates proposed by the President of the Media Council, the latter shall propose a new candidate; the Media Council may make a proposal to the Board of Trustees only if it has accepted two candidates,
- the Media Council may also propose certain content elements of the Director General's employment contract,
- in the first round of voting, the appointment of the Director General shall be decided by a two-thirds majority of all the members of the Board of Trustees, including the Chairperson,
- if the Board of Trustees is unable to choose by a two-thirds majority from the two candidates within 30 days of the Media Council's nomination, a new nomination procedure shall be carried out,
- two new candidates shall be proposed again during the new nomination,
- decide on the appointment of the Director General by a simple majority of all members of the Board of Trustees, including the Chairperson, during the vote following the new nomination.

¹⁷⁹ <https://nmhh.hu/mediatanacs>.

The Board of Trustees decides on the appointment of the Director General and the content of his or her employment contract, considering the proposal of the Media Council (Article 102 (3) MSMM-Act).

The Supervisory Board consists of a chairperson and four members which are elected by the Board of Trustees for the term and under the conditions laid down in the statutes of the Public Service Media Foundation, with the exception of the member elected by the employees (Article 106(2) and (3) MSMM-Act).

The members of the Public Service Board shall be delegated by the nominating organizations specified in Annex 1 to the MSMM-Act for a term of three years (Article 97(2) MSMM-Act). The Nominating Organizations are the following (Article 231 MSMM-Act – Annex 1):

- Hungarian Academy of Sciences,
- Hungarian Catholic Church,
- Reformed Church of Hungary,
- The Lutheran Church of Hungary,
- Association of Jewish Communities in Hungary,
- Hungarian Olympic Committee,
- Hungarian Rectors' Conference,
- Hungarian Chamber of Commerce and Industry,
- Associations and organizations of the local governments of Hungary,
- national self-governments of Hungarian nationalities,
- Hungarian cultural organizations with more than 100 members registered in the states neighbouring Hungary,
- advocacy organizations protecting and representing the interests of families, registered in Hungary and subject to the Act CLXXV of 2011 on the Freedom of Association, Non-profit Status and the Operation and Support of Civil Organizations¹⁸⁰ from the statutes of which the national nature of the scope of operation can be established,
- organizations for the protection of the interests of persons with disabilities registered in Hungary and falling within the scope of the Merger Act, from the statutes of which the national nature of the scope of operation can be established,
- professional organizations operating in the field of literature, theatre, film, performing arts, music, dance, fine arts and applied arts, registered in Hungary and subject to the Act CLXXV of 2011, the articles of association of which national membership and whose membership consists mainly of persons or organizations active in the listed fields,
- Hungarian Academy of Arts.

The Auditor of the public service media service provider shall be elected by the Board of Trustees for two years. The termination of his or her term of office also falls within the competence of the Board of Trustees (Article 107(1) MSMM-Act).

¹⁸⁰ 2011. évi CLXXV. törvény az egyesülési jogról, a közhasznú jogállásról, valamint a civil szervezetek működéséről és támogatásáról, <https://www.njt.hu/jogszabaly/2011-175-00-00>.

3.8.2.2. Qualification requirements

Any Hungarian citizen with no criminal record and with a higher education degree, who has at least five years of professional experience, may be appointed as the Director General of a public service media service provider. Professional experience includes activities in the fields of programme production, broadcasting, information and related technical, legal, managerial, administrative, economic, cultural, scientific and public opinion research activities (Article 103 (1) and (2) MSMM-Act).

3.8.2.3. Political incompatibilities

The Director General cannot be a person who has been President of the Republic, Prime Minister, member of the Government, State Secretary for Public Administration, Deputy State Secretary, Member of Parliament, nationality advocate, Mayor of Budapest, Deputy Mayor of Budapest, Mayor, Deputy Mayor, or an official of a national or regional organisation of a political party in the two years preceding the election (Article 103(3) MSMM-Act).

The rules on conflicts of interest set out in Article 118 (1) to (3) MSMM-Act apply *mutatis mutandis* to the Chairperson and members of the Board of Trustees (Article 88(1) MSMM-Act). They must not engage in party political activities or make statements on behalf of a party. Moreover, they cannot be:

- President of the Republic, Prime Minister, Member of the Government, State Secretary, State Secretary for Public Administration, Deputy State Secretary, Lord Mayor, Deputy Lord Mayor, Mayor, Deputy Mayor, President and Vice President of the County Assembly, Member of Parliament, Nationality Speaker, Member of the European Parliament,
- the chairperson and member of the Board of Trustees of the Public Service Media Foundation and the Public Service Board, the Director General and deputy Director General of the Fund, the President and member of the Supervisory Board of a public service media provider, a member of the Media Council, the chairperson of the Media Council, with the exception of the President of the Authority, and any person having an employment relationship with either of these bodies,
- a member of a local or county government, a government official, an official of a national or regional organisation of a political party or a person having an employment relationship with a political party,
- a senior executive, member of the management board or supervisory board of a communications or media service provider, broadcaster, advertising agency, publisher of press products or newspaper distributor,
- a person who is employed or otherwise engaged in an employment relationship with a communications or media service provider, broadcaster, advertising agency, publisher of a press product or newspaper or magazine distributor,
- a person who holds a direct or indirect holding in an undertaking providing communications or media services, broadcasting, distribution of programmes, publication of press products, advertising agency services or distribution of newspapers,

- a direct or indirect owner of, or a person having an employment relationship with, a company which has a relationship of agency or a contract of employment with the entities referred to in point 4, in the case of a public limited liability company, in excess of five per cent,
- a close relative of a person falling under points 1, 2 and 4.

3.8.2.4. Requirements concerning political independence

Public service media services operate independently of the State and economic operators, and the managers and participants in the public service media service enjoy professional autonomy within the framework provided by law (Article 82(a) MSMM-Act). As mentioned above, the Board of Trustees has as one of its duties to safeguard the independence of the public service media service providers (Article 90(1) MSMM-Act).

The Public Service Code (the Code)¹⁸¹ contains the basic principles of public service media services and the specification of the public service objectives specified in the MSMM-Act (Article 95 MSMM-Act). Among other issues, the Code regulates the basic principles of independence from parties and political organizations (Article 96(b) MSMM-Act). It provides that in the programmes provided by *Duna*, the parties, political movements, social organisations and their representatives, must be included, and their position must be presented in a balanced manner in order to provide citizens with a wide range of information. Accordingly, public service media services shall endeavour to present divergent views in such a way that listeners and viewers have the opportunity to compare them. Political parties, governmental or municipal bodies, political and ideological movements, civil society organisations and economic operators have no influence on the programming policy and structure of public service media services, nor on the order, regularity, form and proportion of their appearances in the programmes of individual public service media services. Citizens' right to freedom of information requires that representatives of political parties, organisations and the business community, as well as other public figures and their opinions, be given due weight in the programmes, having regard to their public interest nature.

3.8.2.5. Role of Parliament, government and/or other state body

Pursuant to Article 84 MSMM-Act, the Parliament established the Public Service Media Foundation as owner of *Duna* to ensure the provision of public service media and news services and to protect their independence.

As mentioned above, the Parliament elects six members of the Board of Trustees of the Public Media Service Foundation (Article 86 MSMM-Act).

¹⁸¹ *Közszolgálati Kódex*, <http://www.kszka.hu/dokumentumok/alapdokumentumok/2084-kozszolgالاتi-kodex>.

3.8.2.6. Safeguards against arbitrary dismissals

The employment of the Director General of Duna may be terminated by dismissal by the Board of Trustees in the following cases (Article 102(5) and (6) MSMM-Act):

- if he or she has been placed under guardianship affecting his or her capacity to act,
- if, as a result of criminal proceedings against him or her, the court has found him or her guilty of the offence, including the imposition of a custodial sentence in a final judgment,
- if he or she is unable to fulfil his or her obligations for a period of three months for reasons beyond his or her control,
- if he or she is in breach of the rules governing conflicts of interest and fails to put an end to that conflict within 30 days of the conflict arising,
- if he or she has been disqualified by a court from engaging in his or her profession or from public affairs.

Moreover, in the case of the Public Service Board not accepting the Director General's annual report (see below), after having heard the Director General in person before the Board, it may consider submitting a proposal to the Board of Trustees to terminate the employment of the Director General. The adoption of such a proposal shall require a two-thirds majority of the members of the Public Service Board. The Board of Trustees must put on its agenda and discuss within eight days a proposal to terminate the employment of the Director General. The Director General and the Chairperson of the Public Service Board shall be invited to the meeting of the Board of Trustees. The Board of Trustees may provide a reasoned decision to terminate employment by a simple majority of the members present. If the Board of Trustees decides not to terminate the employment of the Director General, the Public Service Board must set a new hearing of the Director General on its agenda within three months. If the employment of the Director General has been terminated because he or she has not ensured the fulfilment of the public service objectives and principles, he or she may not be reappointed as Director General of the public service media service provider for a period of ten years (Article 97(8) to (14) MSMM-Act).

Regarding members of the Board of Trustees, if the full meeting of the Board decides on a conflict of interest, dismissal or exclusion, the chairperson or member concerned may not take part in the vote; in such cases a unanimous decision of those entitled to vote shall be required. If no unanimous decision is reached on the above-mentioned vote on the above-mentioned issues, the Chairperson of the Board of Trustees shall initiate the decision of the Parliament on this matter. In this case, the Parliament decides on the conflict of interest, dismissal or exclusion (Article 89(2) MSMM-Act).

3.8.2.7. Safeguards for chief editors and newsrooms

There seem to be no safeguards for chief editors and newsrooms of the public service media under the MSMM-Act on the news agency tasks of a public service media provider.

According to Article 9 of the Fundamental Law of Hungary,¹⁸² everyone has the right to freedom of expression. Hungary recognises and protects the freedom and diversity of the press, and ensures the conditions for the freedom to receive and impart information as is necessary in a democratic society. Moreover, Act CIV of 2010 on the freedom of the press and the fundamental rules on media content¹⁸³ protects freedom of the press in particular in Articles 4, 6 and 7.

Further safeguards are specified in the Public Service Code:

- To protect the independence of persons involved in programme production for the purposes of public service media provision, they cannot receive and must not accept instructions from persons, especially not from persons outside of the public media system, other than their supervisors at the workplace.
- If a person involved in programme production in the public media system is approached by another person with the intention to influence them, while making, ordering, or editing a programme, and that other person is not their supervisor at the workplace, they shall report it to their supervisor without any delay. The supervisor shall immediately start an investigation into the incident.
- The employees of the public service media provider cannot make public statements on behalf of a political party or organisation, or be involved in political affairs in any way, or express their opinion publicly. Presenters, newscasters, correspondents regularly participating in political information or other information programmes - irrespective of their employment relationship - shall not add their opinion or evaluative comment to political news save news explanations. If employees or regularly hired outside persons involved in programme production or working for clients who order programmes become a member of the National Assembly, the European Parliament, a local government or run for mayor, from the start of the nomination procedure until the public announcement of the election results, they cannot participate in activities related to producing or ordering programmes. A political office is incompatible with activities related to programme production and ordering; therefore, with the obvious exception of political programmes, no political party activity, or political party event or meeting may be organized in its headquarters or premises. The opinion of the programme makers may be expressed in programmes other than political information or other information programmes without making the impression of the programme makers being biased and partial about the topic at hand. In cases where presenters or hosts take a stand or express their opinion, it is especially required of the programme to present the diversity of opinions in an unbiased manner before such opinion is expressed. Such programmes must reflect the professionalism and the care of the persons involved their production. The employees of or persons involved with a public service media provider shall carry out their jobs to the best of their knowledge and in good conscience within the bounds of law. Programme producers shall produce programmes at the highest

¹⁸² Magyarország Alaptörvénye (2011. április 25.), <https://net.jogtar.hu/jogszabaly?docid=a1100425.atv>.

¹⁸³ 2010. évi CIV. törvény a sajtószabadságról és a médiatartalmak alapvető szabályairól, <https://njt.hu/jogszabaly/2010-104-00-00>.

professional and technical level, and the editors of news and information programmes shall impart information with extreme care.

3.8.3. Supervision

As mentioned above, the Public Service Board ensures public oversight of *Duna*. The Public Service Board monitors the implementation of the public service obligation and exercises control over the public service media service provider in accordance with Article 97(8) to (13) MSMM-Act regarding the implementation of the provisions of this Act (Article 97(6) and (7) MSMM-Act). For this, the Director General must prepare a report once a year, by 28 February of the following year, after the end of each calendar year, on whether, in his or her assessment, the media service provider has fulfilled the requirements of this Act concerning the objectives and fundamental principles of public service media provision. The Public Service Board shall discuss the report and decide on its adoption by a simple majority (see above the rules in case of non-adoption of the report).

The Director General shall report to the Board of Trustees on *Duna's* activities, and the balance sheet and profit and loss account shall be approved. The Director General's report, together with the opinion of *Duna's* Supervisory Board, must be submitted to the Board of Trustees (Article 108(8) MSMM-Act).

Furthermore, the *MTVA* proposes the amount to be spent on the production and acquisition of media content (Article 108(1) to (6) MSMM-Act), on the basis of the resources specified in Article 136(3) MSMM-Act, broken down by the type of service of the public service media provider referred to in Article 203(31) MSMM-Act. The Public Service Budget Board must deliver an opinion on this proposal. The Public Service Budget Board consists of three members, as follows:

- Director General,
- the *MTVA's* Director General,
- a member delegated by the President of the State Audit Office of Hungary on a case-by-case basis.

If the Public Service Budget Board's opinion rejects *MTVA's* proposal, the *MTVA* shall submit a new proposal to the Council by 15 August each year. In that proposal, it shall either accept the Public Service Budget Board's opinion or reject it, giving its reasons.

3.9. IT – Italy¹⁸⁴

Radiotelevisione italiana (RAI)¹⁸⁵ is Italy's national public service broadcaster. Rai offers a vast array of TV channels: generalist (Rai 1, Rai 2, Rai 3, Rai 1 HD, Rai 2 HD, Rai 3 HD), semi-generalist (Rai 4, Rai 5, Rai Movie, Rai Premium, Rai 4 HD, Rai 5 HD, Rai Movie HD, Rai Premium HD, Rai 4K), special interest (Rai News 24, Rai News 24 HD, Rai Storia, Rai Storia HD, Rai Scuola, Rai Scuola HD, Rai Sport, Rai Sport+ HD, Rai Gulp, Rai Gulp HD, Rai Yoyo, Rai Yoyo HD), for linguistic minorities (Rai Ladinia, Rai Südtirol, Rai 3 BIS FJK), and international (RAI Italia, RAI World Premium). RaiPlay is RAI's digital platform for replaying its programmes also on smartphones, tablets and PCs. It also provides several radio channels and websites. Rai has also set up several companies with the aim of operating in specific market sectors (Rai Pubblicità, Rai Com, Rai Way, Rai Cinema) and it is member of Tivù-TivùSat.¹⁸⁶

3.9.1. Legal form

RAI is a joint-stock company owned by the Ministry of Economy. According to Article 59 of the Legislative Decree n. 208 of 8 November 2021 (DL),¹⁸⁷ incorporating and amending the Consolidated Law on Audiovisual and Radio Media Services (*Testo Unico dei servizi media audiovisivi e radiofonici* - TUSMAR),¹⁸⁸ the public radio, television and multimedia service is entrusted in the form of a concession to RAI, which delivers it on the basis of a national service contract entered into with the Ministry of Economic Development, after deliberation by the Council of Ministers, as well as on the basis of regional and, in the case of the autonomous provinces of Trento and Bolzano, provincial service contracts, which identify the rights and obligations of the concessionaire company. These contracts are renewed every five years (Article 59 TUSMAR). The Decree of the President of the Council of Ministers of 28 April 2017¹⁸⁹ renewed the exclusive concession to RAI for the exercise of the public radio, television and multimedia services over the entire national territory, at the same time approving the annexed outline of the convention stipulated

¹⁸⁴ The case study on Italy incorporates the kind feedback received from Barozzi Elisabetta, Martorelli Simona and Villanti Eleonora (Radiotelevisione Italiana, Rai) during the checking round with the competent public service media in the EBU network.

¹⁸⁵ <https://www.rai.it/>.

¹⁸⁶ https://www.rai.it/dl/rai/text/ContentItem-9e40fc26-6bca-4fc7-a682-50d48a0f19e0.html?refresh_ce.

¹⁸⁷ *Decreto Legislativo 8 novembre 2021, n. 208 - Attuazione della direttiva (UE) 2018/1808 del Parlamento europeo e del Consiglio, del 14 novembre 2018, recante modifica della direttiva 2010/13/UE, relativa al coordinamento di determinate disposizioni legislative, regolamentari e amministrative degli Stati membri, concernente il testo unico per la fornitura di servizi di media audiovisivi in considerazione dell'evoluzione delle realtà del mercato,*

<https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:DECRETO.LEGISLATIVO:2021-11-08:208:vig=>

¹⁸⁸ *Decreto Legislativo 31 luglio 2005, n. 177, (Testo unico dei servizi di media audiovisivi e radiofonici),*

<https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2005:177>.

¹⁸⁹ *Decreto del Presidente del Consiglio dei Ministri 28 aprile 2017 - Affidamento in concessione del servizio pubblico radiofonico, televisivo e multimediale ed approvazione dell'annesso schema di convenzione,* <https://www.gazzettaufficiale.it/eli/id/2017/05/23/17A03581/sg>.

between the Ministry and the concessionaire company, containing the conditions and methods of exercise. The concession has a 10-year term starting on 30 April 2017. This means that RAI must guarantee, as a service of general interest, the achievement of objectives of public utility:¹⁹⁰

- Complete and impartial information.
- The proper conduct of democratic life, including by being open to different political, social, cultural and religious opinions and generational trends.
- Access for all political subjects to electoral and political information and campaigning broadcasts under conditions of equal treatment and impartiality.
- Promoting the Italian language, culture, creativity and the environment.
- Safeguarding national identity and ensuring social benefits.
- Fostering education, civil growth, the faculty of judgement and criticism, progress and social cohesion.
- Disseminating direct audiovisual and multimedia content on all distribution platforms, including through the use of new technologies, and guaranteeing the broadcasting of information programmes in the English language.
- Guaranteeing the quality of information, also with reference to the relative sources, in all programming genres, in accordance with the principles of pluralism, objectivity, completeness, impartiality and independence.
- Promoting equal opportunities between men and women and ensuring respect for the dignity of the individual and for the professional ethics of journalists.
- Ensuring the objectivity and impartiality of the data provided, so as to offer citizens information that favours the free formation of opinions.

RAI's mission, within the framework of the concessionary relationship, is governed by national legislative and regulatory legislation, notably the TUSMAR, as recently amended, in accordance with the aforementioned principles through the Statute (*Statuto Sociale*),¹⁹¹ the Service Agreement (*Contratto di Servizio*),¹⁹² the Code of Ethics (*Codice Etico*),¹⁹³ and the Organisation, Management and Control Model (*Modello di Organizzazione Gestione e Controllo*).¹⁹⁴

3.9.2. Management and oversight boards

The main organs of RAI are:

- Chairperson of the Board of Directors (Presidente del Consiglio di Amministrazione)

¹⁹⁰ <https://www.mise.gov.it/index.php/it/comunicazioni/televisione/rai>.

¹⁹¹ *Statuto RAI*, https://www.rai.it/dl/doc/1533290900193_Statuto.pdf.

¹⁹² *Contratto di servizio 2018-2022*,

https://www.rai.it/dl/doc/1607970429668_Contratto%20di%20servizio%202018-2022.pdf.

¹⁹³ *Codice Etico del Gruppo RAI*,

https://www.rai.it/dl/doc/1591374218798_codice%20etico%20da%20sito%20trasparenza.pdf.

¹⁹⁴ <https://www.rai.it/trasparenza/La-governance-di-Rai-3c2bc9d8-6b88-43d5-ba24-a49ed6b6fa7e.html>.

- Board of Directors (Consiglio di Amministrazione)
- Chief Executive Officer (CEO) (*Amministratore Delegato*)

The Board of Directors (Article 63(9) TUSMAR) is composed of seven members. In addition to being the company's administrative body, the board also performs control and guarantee functions regarding the correct fulfilment of the purposes and obligations of general public service broadcasting. It also approves the business plan and the editorial plan, the annual budget forecast, as well as investments which, also due to their multi-year duration, exceed EUR 10 million (Article 63(20) TUSMAR).

The CEO (Article 63(21) TUSMAR) performs the following functions:

- Is accountable to the Board of Directors for the management of the company and supervises the organisation and operation of the company within the framework of the plans and directives defined by the Board of Directors.
- Ensures that radio and television programming is consistent with the editorial lines and directives formulated and adopted by the Board of Directors.
- Manages the company's staff.
- Signs corporate deeds and contracts.
- Ensures the implementation of the business plan, the annual expenditure budget, personnel policies and restructuring plans, as well as specific projects.
- Defines the criteria and procedures for recruiting personnel and those for appointing external collaborators.
- Proposes for the approval of the Board of Directors the plan for transparency and corporate communication.

3.9.2.1. Appointment of top managerial board members

The Board of Directors is composed of seven members elected for a three-year term (Article 63(10) TUSMAR) in the following way (Article 63(15) TUSMAR):

- Two are elected by the Chamber of Deputies and two are elected by the Senate of the Republic, with a vote limited to a single candidate.
- Two are designated by the Council of Ministers, on the proposal of the Minister of Economy and Finance, in accordance with the criteria and modalities for the nomination of the members of the administrative bodies of the companies directly or indirectly controlled by the Ministry of Economy and Finance.
- One is designated by the Assembly of the employees of RAI among the employees of the company who have been employed for at least three consecutive years, in a way that guarantees the transparency and representativeness of the nomination.

The members of the Board of Directors appointed by the Chamber of Deputies and the Senate of the Republic must be elected from among those who present their candidature in the context of a selection procedure, notice of which must be published on the websites of the Chamber, the Senate and RAI at least 60 days before the appointment. Applications must be received at least 30 days before the appointment and curricula must be published on the same websites (Article 63(16) TUSMAR).

For the election of the member expressed by the Assembly of employees of RAI, the voting procedure must be organised by the outgoing Board of Directors, with notice published at least 60 days before the appointment, according to the following criteria (Article 63(17)TUSMAR):

- Participation in the vote, guaranteeing secrecy, also via Internet or through the company Intranet, of all employees with a subordinate employment relationship.
- Access to the candidature only of those persons who have the requisites established by Article 63 (4) to (15) TUSMAR. The single candidacies can be presented by one of the trade unions that are signatories of the collective or integrative contract of RAI-Radiotelevisione Italiana S.p.a. or by at least 150 employees and must be received at least 30 days before the appointment.

The appointment of the chairperson of the Board of Directors (Article 63(14) TUSMAR) is made by the board itself from among its members and becomes effective after the favourable opinion is obtained, expressed by a majority of two thirds of its members, of the Parliamentary Commission for the General Direction and Supervision of Radio and Television Broadcasting Services referred to in Article 4 of Law No 103 of 14 April 1975, as subsequently amended.¹⁹⁵ The President may be entrusted by the Board of Directors with delegated powers in the areas of external and institutional relations and supervision of internal control activities, subject to a resolution of the General Assembly authorising the delegation.

In the event of resignation or permanent impediment or revocation of the chairperson or one or more members of the Board of Directors (Article 63(19) TUSMAR), the new members must be appointed by the same procedure under Article 63(15) TUSMAR within 90 days from the date of formal communication of the resignation or formal communication of the existence of the cause of permanent impediment. In case of revocation of the chairperson or of one or more members of the Board of Directors, the abovementioned term starts from the date of the formal communication of the favourable evaluation of the revocation resolution referred to in Article 63(18) TUSMAR (see below).

The Board of Directors appoints the CEO on the proposal of the General Assembly (Article 63(21) TUSMAR).

3.9.2.2. Qualification requirements

Members of the Board of Directors must be individuals who qualify for appointment as constitutional judges pursuant to Article 135, second paragraph, of the Constitution¹⁹⁶ or, in any case, persons of recognised honour, prestige and professional competence and well-known independence of conduct, who have distinguished themselves in economic, scientific, legal, humanistic or social communication activities, gaining significant

¹⁹⁵ *Legge 14 aprile 1975, n. 103 - Nuove norme in materia di diffusione radiofonica e televisiva*, <https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:1975-04-14:103>.

¹⁹⁶ *Costituzione della Repubblica italiana*, https://www.senato.it/sites/default/files/media-documents/Costituzione_novembre_2021.pdf.

managerial experience. If they are employees, they are, upon request, placed on unpaid leave for the duration of their mandate (Article 63(10) TUSMAR). The composition of the Board of Directors must be defined in a way favouring the presence of both sexes and an adequate balance between members characterised by high professionalism and proven experience in the legal, financial, industrial, and cultural fields, as well as, taking into account the authority required by the office, the absence of conflicts of interest or of holding positions in competing companies (Article 63(11) TUSMAR).

The CEO must be appointed from among those who have no conflicts of interest or hold positions in companies competing with RAI and who have previous experience for an appropriate period in positions of similar responsibility or in senior management roles in the public or private sector (Article 63(22) TUSMAR).

3.9.2.3. Political incompatibilities

The office of member of the Board of Directors may not be held, under penalty of ineligibility or disqualification, even during the term of office, by persons holding the office of Minister, Deputy Minister or State Undersecretary or who have held such office in the 12 months preceding the date of appointment or who hold the office of mayor of municipalities with a population of over 20,000 inhabitants, or the office of president of a province, or the office of regional councillor (Article 63(12) TUSMAR). Further reasons for ineligibility are (Article 63(13) TUSMAR):

- A state of perpetual or temporary disqualification from public office.
- A state of legal or temporary disqualification from the executive offices of legal persons and companies, or in any case any of the situations indicated in Article 2382 of the Civil Code.
- Subjection to preventive measures ordered by the judicial authority pursuant to the code of anti-mafia laws and preventive measures, as per Legislative Decree no. 159 of 6 September 2011, except for the effects of rehabilitation.
- Conviction by final judgment of imprisonment for one of the offences referred to in Title XI of Book Five of the Civil Code, without prejudice to the effects of rehabilitation.
- Conviction with a final sentence of imprisonment for an offence against the public administration, against public faith, against property, against public order, against the public economy or for a tax offence.
- Conviction by a final judgment of imprisonment for any non-culpable offence for a term of two years or more.

3.9.2.4. Requirements concerning political independence

There is no mention of any requirement concerning political independence.

3.9.2.5. Role of parliament, the government and/or other state bodies

As mentioned above, the appointment of the chairperson of the Board of Directors requires the favourable opinion, expressed by a majority of two thirds of its members, of the Parliamentary Commission for the General Direction and Supervision of Radio and Television Broadcasting Services. The same goes for the revocation of the members of the Board of Directors (see below).

3.9.2.6. Safeguards against arbitrary dismissals

The revocation of the members of the Board of Directors is deliberated on by the General Assembly and becomes effective after a favourable opinion of the Parliamentary Commission for the general guidance and supervision of radio and television services (Article 63(18)TUSMAR).

The CEO remains in office for three years from the date of appointment and in any case not beyond the expiry date of the Board of Directors, without prejudice to the right of revocation by the board of directors, after hearing the opinion of the General Assembly. If the CEO is already an employee of RAI, he or she must resign from the company at the moment of the appointment or be placed on unpaid leave by the company for the duration of the assignment as CEO. In the year following the end of his or her term of office as CEO, he or she may not take on assignments or provide consultancy services for companies competing with RAI (Article 63(23) TUSMAR).

The rules on the appointment of the chairperson and of the members of the Board of Directors and the relevant rules on revocation apply until the number of shares alienated under article 21 of law no. 112 of 3 May 2004¹⁹⁷ does not exceed 10% of the capital of RAI, in view of the important and unavoidable reasons of general interest connected with the performance of the service.

3.9.2.7. Safeguards for chief editors and newsrooms

According to Article 4TUSMAR, the general principles of audiovisual media services include the guarantee of freedom and pluralism of the broadcast media, the protection of the freedom of expression of every individual, including freedom of opinion and the right to receive or communicate information, and the protection of users, including freedom of opinion and the freedom to receive or impart information or ideas without limitation as to frontiers, with due regard for human dignity, the principle of non-discrimination and combating hate speech, objectivity, completeness, loyalty and impartiality of information, and combating disinformation strategies, the protection of copyright and intellectual property rights, openness to different political, societal, cultural and religious opinions and tendencies and the safeguarding of ethnic diversity and cultural, artistic and

¹⁹⁷ Legge 3 maggio 2004, n. 112 - Norme di principio in materia di assetto del sistema radiotelevisivo e della RAI-Radiotelevisione italiana S.p.a., nonche' delega al Governo per l'emanazione del testo unico della radiotelevisione, <https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:2004-05-03:112~art7!vig=>.

environmental heritage, both nationally and locally, while respecting freedoms and rights, in particular the dignity of the person and the protection of personal data, and the promotion and protection of the well-being, health and harmonious physical, mental and moral development of minors, guaranteed by the Constitution, by the law of the European Union, by the international standards in force in the Italian legal system and by state and regional laws.

Rai's Code of Ethics regulates the set of rights, duties, and responsibilities that the Company expressly assumes towards the stakeholders with whom it interacts in carrying out its activities. The Code of Ethics recognises as priority objectives a.o. the freedom, completeness, transparency, objectivity, impartiality, pluralism, and fairness of information. Regarding staff, searches and selection must be carried out on the basis of objective, competent and professional criteria, respecting equal opportunities for all stakeholders. RAI guarantees equal opportunities and carries out any action aimed at preventing any form of harassment – psychological, physical, and sexual – against employees. Any act of retaliation against an employee who complains about or reports such unfortunate facts is prohibited.

3.9.3. Supervision

Pursuant to Article 12 of the Agreement between the Ministry of Economic Development and RAI,¹⁹⁸ the supervision of the obligations incumbent on RAI is entrusted to the *Autorità per le garanzie nelle comunicazioni* (Agcom)¹⁹⁹ and the Ministry for Economic Development, in accordance with their respective powers. RAI must draw up an annual social report within four months of the end of the previous financial year, which must also give an account of the activities carried out in the socio-cultural sphere, with particular regard to respect for informative and political pluralism, the protection of minors and minority rights, the representation of the female image and the promotion of national culture. The social report also gives an account of the results of demoscopic surveys on the quality of the offering as perceived by users and of the corporate reputation of the concessionaire company.

Moreover, Article 27 of Rai's Contract of Service 2018-2022²⁰⁰ requires the following reporting measures:

- Within three months following the end of each semester, RAI shall provide the Ministry of Economic Development, Agcom and the Joint Commission²⁰¹ with

¹⁹⁸ *Convenzione fra il Ministero dello sviluppo economico e la RAI per la concessione per il servizio pubblico radiofonico, televisivo e multimediale (approvata con decreto del Presidente del Consiglio dei ministri su proposta del Ministro dello sviluppo economico di concerto con il Ministro dell'economia e delle finanze del 28 aprile 2017)*, https://www.mise.gov.it/images/stories/documenti/convenzione_mise_rai_27_luglio_2017.pdf.

¹⁹⁹ <https://www.agcom.it/>.

²⁰⁰ *Contratto nazionale di servizio tra il Ministero dello sviluppo economico e la RAI 2018-2022*, https://www.rai.it/dl/doc/1607970429668_Contrattodi%20servizio%202018-2022.pdf.

²⁰¹ The Joint Commission (*Commissione paritetica*) is composed of four members designated by the Ministry of Economic Development and four members designated by RAI, with the aim to define a) the most effective

detailed information on the compliance with the obligations concerning its TV and radio programmes.

- RAI shall annually inform the Joint Commission on the achievement of the efficiency and rationalisation objectives set forth in the Contract of Service, on the implementation of the editorial plan and on the other matters related to the financing of RAI.
- In order to provide full information on management activities, by the month of June of each year, RAI shall send to the Ministry of Economic Development and to the Ministry of Economy and Finance, to Agcom and to the Joint Commission a report on the economic and financial results of the previous year, also using non-company sources, concerning:
 - the breakdown of the advertising market, with evidence of the reference source, for each means of communication (newspapers, periodicals, television, radio, Internet, etc.)
 - Rai's advertising revenues by medium and type;
 - quantitative advertising limits, both hourly and at the overall level.
- RAI shall also forward to the Ministry of Economic Development and to the Ministry of Economy and Finance, within 15 days from their approval:
 - the industrial plans (economic, financial, investment and strategic)
 - the economic forecasts and the final balance sheets for the financial year and the separate accounts
 - the interim financial statements as at 30 June.
- RAI shall transmit to the Ministry of Economic Development, to Agcom and to the Joint Commission, for each financial year, within the following three months after the end of each financial year, detailed information about the offering of published content and average daily traffic generated by users, with particular reference to unique users, the average time of use, the technologies used to access and the origin of the users.
- RAI shall provide the Ministry of Economic Development:
 - on a yearly basis, the necessary documentation with reference to the monitoring of the technical quality of the broadcasting service and to the statistical elaborations, with indications of the degree of extension of the services, of the reception quality referred to as levels on the UIT- R quality scale, and of the trend of interference situations and disturbances of the services, as well as the values of the availability of the service measured using the quality indicators agreed upon with the Ministry; for the purpose of verifying the fulfilments related to coverage, Rai shall provide the Ministry on a yearly basis with the cartographic representation on magnetic media of the coverage areas of the services;
 - on a quarterly basis, and for statistical-informative purposes and without additional charges, with reference to mobile connections provided for by

operating procedures for the application and development of the activities and obligations provided for in this Contract in line with the evolution of the reference scenario; and b) the appropriate interventions aimed at resolving any difficulties of application and interpretation that may arise. See Article 22 of the Contract of Service.



Article 16, RAI shall inform the Ministry of the frequency of the service, the distance of the stretches where non-moving vehicles are used, the average distance of the stretches where moving vehicles are used, and the duration of the service provided.

3.10.LV – Latvia²⁰²

Latvijas Televīzija (LTV)²⁰³ is Latvia's public service TV broadcaster and is part of the state-owned Latvian public media entity *Latvijas Sabiedriskie Mediji* (LSM),²⁰⁴ which also includes Latvian Radio and the Latvian public media portal LSM.lv.²⁰⁵ LTV operates two channels, LTV1 in Latvian, and LTV7 (previously called LTV2) in Latvian, including some programming in Russian.

3.10.1. Legal form

LTV is a limited liability company where all capital shares are owned by the state. It is established and operates in accordance with the Act on Public Electronic Mass Media (LSM Act),²⁰⁶ the Law on Governance of Capital Shares of a Public Person and Capital Companies,²⁰⁷ the Commercial Law²⁰⁸ and other laws and regulations, and also the statutes thereof, which must be approved by the Public Electronic Mass Media Council²⁰⁹ insofar as it is determined otherwise by the LSM Act. The Public Electronic Mass Media Council (see below) is the holder of the state capital shares in LTV and performs the functions related to the meeting of shareholders thereof (Article 4 LSM Act).

3.10.2. Management and oversight boards

The main organs of LTV are:

- Public Electronic Media Council (*Padome*)
- Ombudsperson (*Ombuds*)

²⁰² The case study on Latvia incorporates the kind feedback received from Dace Spunde, Janis Jeronovics and Edmunds Lukaševičs (*Latvijas Televīzija*) during the checking round with the competent public service media in the EBU network.

²⁰³ <https://ltv.lsm.lv/>.

²⁰⁴ <https://www.lsm.lv/>.

²⁰⁵ This subchapter deals with LTV.

²⁰⁶ *Sabiedrisko elektronisko plašsaziņas līdzekļu un to pārvaldības likums*, <https://likumi.lv/ta/id/319096-sabiedrisko-elektronisko-plasazinas-lidzeklu-un-to-parvaldibas-likums>.

²⁰⁷ *Publiskas personas kapitāla daļu un kapitālsabiedrību pārvaldības likums*, <https://likumi.lv/ta/id/269907-publiskas-personas-kapitala-dalu-un-kapitalsabiedribu-parvaldibas-likums>.

²⁰⁸ *Komerclikums*, <https://likumi.lv/ta/id/5490-komerclikums>.

²⁰⁹ <https://www.neplpadome.lv/>.

- Management Board (*Valde*)

The Public Electronic Media Council (Article 12 LSM Act) is an independent, lawful, autonomous authority which in conformity with its competence represents the public interests in the field of public electronic mass media. The Public Electronic Media Council, among other functions, guarantees the editorial independence of LTV, develops and approves the public service remit for LTV, prepares proposals for the draft annual state budget law, approves the statutes and codes of ethics of LTV; elects to and releases from office the members of the Management Board, editors-in-chief and the Ombudsperson, and monitors the activity of LTV (Article 17 LSM Act).

The Ombudsperson (Article 18 LSM-Act) monitors the conformity of the services provided by LTV with the objective laid down in Section 1 LSM Act and the basic principles for the operation of public electronic mass media laid down in Section 3 LSM Act, the code of ethics and editorial guidelines of public electronic mass media and, upon its own initiative or on the basis of the submissions of persons, provides an opinion on the conformity of the programmes and services of public electronic mass media with the abovementioned documents, and also performs other functions laid down in this Law.

The Management Board (Article 5 LSM-Act) implements the administrative management of the public electronic mass medium.

3.10.2.1. Appointment of top managerial board members

Pursuant to Article 13 (1) LSM Act, the Public Electronic Media Council must consist of three members approved by the *Saeima* (the Latvian Parliament).²¹⁰ Candidates are nominated for approval by:

- the President (1 candidate)
- the Council for Implementation of the Cooperation Memorandum between Non-governmental Organisations and the Cabinet (1 candidate)
- the *Saeima* in accordance with the procedures laid down in the Rules of Procedure of the *Saeima* (1 candidate)

The Ombudsperson is elected for a term of five years by the Public Electronic Media Council, subject to prior coordination with the public electronic media ethics councils (Article 20 (1) LSM Act).

The Public Electronic Mass Media Council must establish a nomination commission, the task of which is to define the procedures and criteria for the selection and assessment of the candidates for members of the Management Board based on the description of the requirements for the competences and professional experience necessary for a member of the Management Board. Representatives of the Public Electronic Mass Media Council and independent experts with the right to vote must be included in the nomination commission by ensuring representation of the field of

²¹⁰ <https://www.saeima.lv/>.

journalism, media, human resources, corporate management and business management, and, where necessary, observers in an advisory capacity. The majority of the members, with the right to vote, of the nomination commission must be comprised of independent experts. The nomination commission may nominate several candidates for each vacant position of a member of the Management Board. The Public Electronic Mass Media Council must nominate not more than one candidate from among the candidates nominated by the nomination commission for each vacant position of a member of the Management Board. The Public Electronic Mass Media Council must publish the given name and surname of the nominated candidate one week prior to his or her election to the position of a member of the Management Board. The Public Electronic Mass Media Council has the right to reject the candidatures nominated by the nomination commission by supporting its opinion with arguments. In such a case the competition must be organised repeatedly. The members of the Public Electronic Mass Media Council must have the right, by signing a non-disclosure undertaking, to consult the documents submitted by the candidates to be evaluated. (Article 5(5) LSM Act).

3.10.2.2. Qualification requirements

A person may be nominated for the position of member of the Public Electronic Mass Media Council and he or she may hold the relevant position if he or she meets the following requirements (Article 13 LSM Act):

- He or she is a citizen of Latvia.
- He or she has a higher education degree.
- He or she has knowledge of the official language and of at least one other European Union official language.
- He or she has at least five years professional or academic experience in the field of the administration of mass media, education, culture, science, human rights or capital companies.
- He or she has an impeccable reputation.
- In conformity with the requirements of the law, he or she is entitled to obtain the personnel security clearance for access to official secrets.
- He or she is not a member of the decision-making body nor the executive body of a political party nor of an alliance of political parties;
- He or she is not a member of a political party. If on the day of approval in the position of a member of the Public Electronic Mass Media Council the person is a member of a political party, he or she shall immediately terminate their membership in the political party or alliance of political parties after approval in the position.
- He or she is not an owner of capital shares (stocks) of any electronic mass medium or other mass medium.
- He or she has not been convicted of an intentional crime, unless he or she has been exonerated, or unless his or her criminal record has been expunged or set aside.
- He or she is not a person who on the basis of a ruling made within the scope of administrative offence proceedings or criminal proceedings has been deprived of

the right to conduct a specific or any commercial activity or any other professional activity.

- He or she is not a person who is an insolvent debtor.

Furthermore, the following requirements (Article 13 (3) LSM Act) must be set with regard to each candidate for the position of a member of the Public Electronic Mass Media Council:

- A candidate nominated by the President of the Republic must have at least five years' professional or academic experience in the field of the administration of mass media, education, culture, science or human rights.
- A candidate nominated by the Council for Implementation of the Cooperation Memorandum between Non-governmental Organisations and the Cabinet of Ministers must have at least five years' professional or academic experience in the field of the administration of mass media, education, culture, science or human rights.
- A candidate nominated by the *Saeima* must have at least five years' professional experience in the field of the administration of capital companies.

The Ombudsperson must be elected in an open competition by the Public Electronic Mass Media Council for a period of five years by prior coordination of candidacies with the Ethics Body of public electronic mass media. Candidates must be persons of impeccable reputation, with higher education and at least five years' professional experience in the field of mass media or at least five years' academic experience in the relevant field (Article 20 (2) LSM Act).

The members of the Management Board are persons who have (Article 5 (3) LSM Act):

- proficiency in the official language and at least one other official language of the European Union at the level necessary for the professional performance of the duties of a member of the Management Board
- an impeccable reputation
- at least a master's level of higher education
- knowledge of the media sector, in particular the role of public electronic media in a democratic society
- knowledge of the management of capital companies
- at least five years of experience in a senior position in the field of media or at least three years of experience on a board or council of a medium or large company; at least five years in a senior position in a company, organisation or institution in the field of media is considered an advantage
- other significant professional skills and competencies in accordance with the specific position of the member of the board.

3.10.2.3. Political incompatibilities

As mentioned above, members of the Public Electronic Mass Media Council cannot be members of a decision-making body or an executive body of a political party or an

association of political parties, nor be members of a political party. If a person is a member of a political party on the date of his or her confirmation as a member of the Public Electronic Mass Media Council, he or she must immediately cease his or her membership of the political party or association of political parties after his or her confirmation (Article 13 (2) LSM Act).

Members of the Management Board have the following incompatibilities (Article 5(6) LSM Act):

- Being active in a political party or alliance of political parties – in the event that he or she is active, such activity must be terminated.
- Being a person who is or, within the previous 24 months until the last day of the time period for the submission of applications laid down within the scope of the public application procedure for candidates, was an official of a political party or alliance of political parties who performs managerial functions of the political party or alliance of political parties, including taking decisions on its behalf or performance of representational activities (for example, a member of the board, manager, president, chairperson, secretary-general).
- Being an owner of capital shares (stocks) of any electronic mass medium or other mass medium.
- Having been convicted of an intentional crime unless he or she has been exonerated or has had his or her criminal record expunged or set aside.
- Being a person for whom on the basis of a ruling made within the scope of criminal proceedings the right to conduct a specific or any commercial activity or any other professional activity has been removed.
- Being a person who is an insolvent debtor.

Restrictions and prohibitions provided for public officials in the law On Prevention of Conflict of Interest in Activities of Public Officials²¹¹ apply to a member of the Management Board (Article 5(7) LSM Act).

The Ombudsperson is subject to the restrictions imposed by Article 5(6) LSM Act on members of the Management Board (Article 20(4) LSM Act).

3.10.2.4. Requirements concerning political independence

According to Article 3(1) LSM Act, public electronic media must be free from political, economic, or other interference with their activities.

3.10.2.5. Role of parliament, the government and/or other state bodies

The *Saeima* has authority to remove the members of the Council of the Public Electronic Media (see below).

²¹¹ *Par interešu konflikta novēršanu valsts amatpersonu darbībā*, <https://likumi.lv/ta/id/61913-par-interesu-konflikta-noversanu-valsts-amatpersonu-darbiba>.

3.10.2.6. Safeguards against arbitrary dismissals

Members of the Public Electronic Mass Media Council are elected to office for the term of four years, and their mandate terminates (Article 14(2) LSM-Act):

- in connection with removal from office
- due to the expiry of the term of office
- if he or she has been convicted of committing an intentional criminal offence and the judgement has come into legal effect
- due to his or her death

The *Saeima* must release a member of the Public Electronic Mass Media Council from office if (Article 14(3) LSM Act):

- he or she resigns of his or her own free will; in such cases he or she must notify the Public Electronic Mass Media Council thereof in writing and the latter must inform the *Saeima* thereof not later than 14 days after the day of receipt of the submission
- the circumstances provided for in the LSM-Act or other laws and regulations prohibiting the relevant person from being a member of the Public Electronic Mass Media Council have been established
- he or she, without justification for a month, has not participated in the work of the Public Electronic Mass Media Council, has not attended more than half of its meetings or cannot fulfil his or her duties due to illness or other reasons for more than six months in succession
- he or she exceeds his or her authority and therefore directly or indirectly influences editorial decisions of the public electronic mass medium or jeopardises editorial independence of the public electronic mass medium

The *Saeima* must decide on release of a member of the Public Electronic Mass Media Council from office also upon receipt of a submission from the Public Electronic Mass Media Ombudsperson or the Commission of Human Rights and Public Affairs of the *Saeima* with a justification regarding the manner in which editorial independence of the public electronic mass medium is jeopardised by action or inaction by the relevant member of the Council (Article 14(4) LSM Act).

The Public Electronic Mass Media Council may revoke the Ombudsperson from the position before expiry of his or her term of office only if at least two thirds of the members of the Public Electronic Mass Media Council vote for this and consent of the Ethics Councils of public electronic mass media is received (Article 20(5) LSM Act).

With regard to the members of the Management Board, the Public Electronic Mass Media Council may withdraw them before the time period laid down in the Law on Governance of Capital Shares of a Public Person and Capital Companies only if (Article 5(9) LSM-Act):

- the circumstances provided for in the LSM-Act and other laws and regulations prohibiting the relevant person from being a member of the Management Board have been established

- the member of the Management Board has committed harm to the interests of a public electronic mass medium or also fails to comply with or unduly complies with his or her duties
- the member of the Management Board has not participated in the work of the Board without justification for a month or cannot fulfil his or her duties due to illness or other reasons for more than three months in succession
- the member of the Management board of a public electronic mass medium exceeds his or her authority and therefore directly or indirectly influences editorial decisions of the public electronic mass medium.

Furthermore, the Public Electronic Mass Media Council must withdraw a member of the Management Board if at least two thirds of all members of the Council vote for this. The Public Electronic Mass Media Council must publish the grounds for withdrawal of the member of the board (Article 5(10) LSM-Act).

3.10.2.7. Safeguards for chief editors and newsrooms

According to Article 6 LSM Act, the editor-in-chief of the public electronic mass medium must be independent from the Management Board of the public electronic mass medium in taking editorial decisions. He or she may be revoked from the position before expiry of the term of office by the Management Board of the public mass medium only if at least two thirds of all members of the Public Electronic Mass Media Council vote for this. Furthermore, a member of the Management Board is not entitled to use his or her authority in order to directly or indirectly influence editorial decisions and can even be removed from office in such a case (Article 5(8) and (9) LSM Act).

As mentioned above, the *Saeima* must release a member of the Public Electronic Mass Media Council from office if he or she exceeds his or her authority and therefore directly or indirectly influences editorial decisions of the public electronic mass medium or jeopardises editorial independence of the public electronic mass medium (Article 14(3)(4) LSM Act).

3.10.3. Supervision

Pursuant to Article 11 LSM Act, the Public Electronic Mass Media Council must, each year by 31 December, approve the annual plan for the public service remit for the next year. The annual plan for the public service remit must cover the general programme of LSM and description of the content of services, and also the tasks assigned to the public electronic mass medium by the Public Electronic Mass Media Council which must be carried out to the satisfaction of a certain extent and quality. The following must be included in the annual plan for the public service remit:

- A summary of the tasks of the public electronic mass medium and changes in the operation thereof in the current year on the basis of the development goals laid down in the medium-term operational strategy.

- Information on the main types of distribution of programmes and services of the public electronic mass medium.
- Audience trust forecasts and plans for achieving the relevant indicators.
- Characterisation of the specific (social, cultural and historical, ethnic, vulnerable and other) groups comprised in the audience to be reached and characterisation of their behaviour pattern, the related risk assessment, and also a proposal on the strategic development of relationships.
- Challenges related to attracting new audiences.
- Tasks reflecting events of national and international importance.
- Financial calculations on implementation of the annual plan for the public service remit,
- Planned tasks and financing necessary for the period of the next three years.

The Public Electronic Mass Media Council may also determine other information to be indicated in the annual plan for the public service remit, insofar as editorial independence of the public electronic mass medium is not influenced.

The Management Board must, each year by 30 April, submit a report on the implementation of the annual plan for the public service remit in the previous year for approval to the Public Electronic Mass Media Council. The Public Electronic Mass Media Council must assess the report submitted by the Management Board and must publish it, together with its assessment, on the Public Electronic Mass Media Council website. The Public Electronic Mass Media Council must also publish on its website the tasks set forth to the Management Board (Article 10(5) LSM Act). Implementation of the annual plan for the public service remit must be assessed by the public electronic mass media Ombudsperson within its competence. The report of the public electronic mass media Ombudsperson must be attached to the report on implementation of the annual plan for the public service remit (Article 10(6) LSM-Act).

The Management Board must submit to the Public Electronic Mass Media Council the report on the intermediate results of implementation of the annual plan for the public service remit, including the changes which have taken place in the course of the implementation thereof (Article 10(7) LSM Act).

According to Article 10(8) LSM Act, in order to prevent overcompensation of the public service remit, the Public Electronic Mass Media Council must, not less than every three years and at the end of each financing period, carry out a detailed evaluation of the implementation of the medium-term operational strategy and the financial standing and, where necessary, examine the authorisation to ensure the public service remit, and must reassess the procedures referred to in Article 10(4) LSM Act.

3.11. PL - Poland²¹²

Telewizja Polska SA (TVP)²¹³ is the only public service television broadcaster in the territory of the Republic of Poland. Public service radio is structurally split into national Polish Radio SA and 17 regional public radio companies. All these public service broadcasting organisations (PSBOs) operate on the basis of the Act on radio broadcasting and television (PRTV-Act).²¹⁴

TVP broadcasts two general channels (TVP1 and TVP2), the regionally-focused TVP3 Regionalna, which airs local programmes and acts as an umbrella channel for 16 local branches of TVP, several specialised (thematic) channels, and four international channels (TVP Polonia, Belsat TV, TVP Wilno and TVP World) for the Polish diaspora and other public abroad.²¹⁵

3.11.1. Legal form

According to Article 26 PRTV-Act, TVP is a joint stock company wholly owned by the State Treasury established for the purpose of creation and broadcasting as well as offering other programme related (online) services. Polish Radio and regional public radio companies are organised in the same legal form.

3.11.2. Management and oversight boards

There are two categories of organs relevant for TVP, Polish Radio and regional public radio companies:

- 1) external:
 - National Media Council (*Rada Mediów Narodowych - RMN*);
 - National Broadcasting Council (*Krajowa Rada Radiofonii i Telewizji - KRRiT*)

- 2) internal:
 - Management Board (*Zarząd*).
 - Supervisory Board (*Rada nadzorcza*);
 - Public Radio and Television Programme Councils (*Rady programowe publicznej radiofonii i telewizji*).

²¹² The case study on Poland incorporates the kind feedback received from Krzysztof Wojciechowski (Telewizja Polska, TVP) during the checking round with the competent public service media in the EBU network.

²¹³ <https://www.tvp.pl/>.

²¹⁴ *Ustawa z dnia 29 grudnia 1992 r. o radiofonii i telewizji*,
<https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=wdu19930070034>.

²¹⁵ <https://www.tvp.pl/program-tv>.

The National Media Council (RMN) was established in 2016 and is regulated separately by the Act on the National Media Council²¹⁶ and is notably responsible for matters concerning the appointment and dismissal of the persons composing the internal bodies of PSBOs. Its tasks must be performed guided by the need to ensure that the companies reliably fulfil their statutory tasks and protect their editorial independence.

The National Broadcasting Council (KRRiT) is the general broadcasting regulatory body, competent also for on-demand audiovisual media services and video sharing platforms. Its specific functions vis-à-vis PSBOs include competences regarding charters of duties of each PSBO for 5 years (Article 21a PRTV Act) and their yearly programming and financial plans (Article 21c PRTV Act), as well as assessment of yearly reports of PSBOs regarding performance of their public service remit (Article 31b PRTV Act). KRRiT also decides on splitting the licence fees revenues (and compensation for exemptions) among PSBOs and checks the proportionality of their public funding (Article 31.8-11 PRTV Act; Article 8.2 of the Licence Fees Act).

The Supervisory Board (Article 28 PRTV-Act) consists of three members which are appointed and dismissed by the National Media Council (RMN). The approval of the Supervisory Board is required for:

- entering into and termination of employment relationships with persons holding managerial positions as defined in the company's statutes;
- the company concluding or acceding to a collective agreement with employee representatives;
- establishment or accession to a company other than the one referred to in Article 26(1) PRTV-Act, as well as acquisition or disposal of shares or stocks in such a company;
- disposal or encumbrance of real property.

The Public Radio and Television Programme Council (Article 28a PRTV-Act) comprises 15 members, appointed by the National Media Council. The term of office of the Public Radio and Television Programme Council is 4 years, and its members represent the public interests and expectations regarding the company's programme activities. It adopts resolutions containing assessments of the level and quality of the current and framework programmes.

3.11.2.1. Appointment of top managerial board members

Members of the Management Board of each PSBO, including the president of the Management Board, are appointed and dismissed by the National Media Council - RMN (Article 27(3) PRTV-Act).

Members of the Supervisory Board are also appointed and dismissed by the National Media Council (Article 28(1e) PRTV-Act).

²¹⁶ *Ustawa z dnia 22 czerwca 2016 r. o Radzie Mediów Narodowych*, <http://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=wdu20160000929>.

The Public Radio and Television Programme Council has 15 members appointed by the National Media Council: 10 members of the programme council shall represent parliamentary groupings, whereas the remaining 5 shall be appointed from among individuals with a record of experience and achievement in culture and the mass media. (Article 28a(1) PRTV-Act).

As regards, external bodies competent for PSM - the National Media Council is composed of five members, of which three are elected by the *Sejm* (Lower Chamber of the Parliament), and two are appointed by the President of the Republic of Poland (Article 3 of the Act on the National Media Council); the National Broadcasting Council (KRRiT) consists of five members, of which two are appointed by the *Sejm*, one by the Senate and two by the President (Article 7.1 PRTV Act).

3.11.2.2. Qualification requirements

The members of the Management Board are appointed from among persons with radio and television competences and not convicted by a final judgment for an intentional offense prosecuted by public indictment or a fiscal offense (Article 27(4) PRTV-Act).

Supervisory Board members are appointed from among persons who meet the conditions set out in the provisions on privatization and commercialization for candidates for supervisory boards of companies in which the State Treasury is the sole shareholder (Article 28(1f) PRTV-Act).

As mentioned above, the Public Radio and Television Programme Council has 15 members of which 10 represent parliamentary groupings and the remaining 5 are appointed from a group of people with achievements and experience in the sphere of culture and media (Article 28a (1) PRTV-Act).

With regard to the National Media Council (Article 5 of the Act on the National Media Council, any person may become member if he or she:

- has Polish citizenship;
- is distinguished by knowledge and experience in matters related to the tasks and activities of the media;
- has not been convicted by a valid court judgment for an intentional crime or an intentional fiscal crime.

The National Broadcasting Council (KRRiT) is appointed from among individuals with a distinguished record of knowledge and experience in mass media (Art. 7.1 PRTV Act).

3.11.2.3. Political incompatibilities

There is no mention in the PRTV-Act of a prohibition on the appointment of political party representatives to the Managerial or Supervisory boards.

According to Article 5(2) of the Act on the National Media Council, membership in the National Media Council may not be combined with:



- performing functions in an organ of executive power;
- membership in the body of a local government unit;
- employment in government or local government administration;
- employment in the Chancellery of the President of the Republic of Poland;
- membership in the National Broadcasting Council (*Krajowa Rada Radiofonii i Telewizji - KRRiT*)²¹⁷ or employment in its office.

Members of the National Broadcasting Council (KRRiT) may not belong to a political party, trade union or conduct public activity incompatible with the function (Article 214.2 of the Constitution). Their membership in governing bodies of associations, trade unions, employers' associations, as well as church or religious organisations, is suspended. They cannot hold shares or have any other involvement in an entity that is a media service provider or a radio or television producer, or have any other gainful employment, save for educational or academic positions as an academic tutor or lecturer, or performing creative work (Article 8.3-4 PRTV Act).

3.11.2.4. Requirements concerning political independence

According to Article 13(1) PRTV-Act, broadcasters shape their programmes independently within the scope of the tasks of broadcasting set out in Article 1(1) PRTV-Act and shall be responsible for its content. Article 21(1) PRTV-Act states that TVP must accomplish its public mission by offering, under the terms of the PRTV-Act, to the entire society and to specific parts thereof, diverse programmes and other services in the field of information, journalism, culture, entertainment, education and sport, characterized by pluralism, impartiality, balance and independence, as well as innovation, high quality and integrity of coverage. Moreover, Article 21a PRTV-Act expressly mentions the institutional autonomy, freedom of programming and editorial independence of PSBOs. Article 22a PRTV-Act provides for that State authorities may take decisions concerning the functioning of PSBOs only in circumstances specified in the law.

According to Article 27(7) PRTV-Act, members of the Management Board and individuals who serve managerial functions will, in their work and assessment of journalists and other creators subordinate to them, be guided by the principles of professionalism, honesty and reliability.

Regarding National Media Council members, they should be independent and should be guided by the public good. They are further obliged to submit a financial declaration to the Speaker (*Marszałek*) of the *Sejm* (Article 9 of the Act on the National Media Council). The law provides for certain safeguards in the interest of independence of the National Broadcasting Council (KRRiT), including mentioned rules on appointment and incompatibility restrictions, as well as fixed term of office (6 years), ineligibility for the next full term, restricted possibilities of dismissal and election of the chairperson by the KRRiT from among its members (Article 7 and 12.4-5 PRTV Act). According to Article 6.1 PRTV Act KRRiT shall i.a. protect the independence of media service providers.

²¹⁷ <https://www.gov.pl/web/krrit/>.

3.11.2.5. Role of Parliament, government and/or other state body

As mentioned above, three of the National Media Council (RMN) members are elected by the *Sejm*, and two are appointed by the President of the Republic of Poland (Article 3 of the Act on the National Media Council). These two members are elected from among candidates submitted by parliamentary clubs formed by groupings whose representatives are not members of the Council of Ministers (opposition clubs), taking into account the principles laid down in the PRTV-Act (Article 6 (1) of the Act on the National Media Council). Also, among 5 members of National Broadcasting Council (KRRiT) – 3 are appointed by the *Sejm*, one by the Senate and two by the President.

3.11.2.6. Safeguards against arbitrary dismissals

Members of the Managerial and Supervisory boards are appointed and dismissed by the National Media Council (Articles 27(3) and 28(1e) PRTV-Act).

Members of the National Media Council, however, can be dismissed only in circumstances provided for in Article 7(3) of the Act on the National Media Council:

- The body which elected or appointed the member of the National Media Council dismisses him or her before the expiry of the term of office in the event of:
 - breach of the prohibition referred to in Article 5(2) or (3) of the same Act;
 - illness permanently preventing the member from performing his or her function.

With regard to members of National Broadcasting Council (KRRiT) dismissal is possible only in specified circumstances, such as resignation, inability to perform function due to health reasons, conviction of a deliberate criminal offence, false screening statement confirmed by the court, breach of the act declared by the State Tribunal (Article 7.6 of the PRTV Act). Also the term of office of all KRRiT's members expires in case of rejection of KRRiT's yearly report by the *Sejm* and the Senate, unless such an expiration is not approved by the President (Article 12.4-5 PRTV Act).

3.11.2.7. Safeguards for chief editors and newsrooms

According to Article 21a(1) PRTV-Act, without prejudice to institutional autonomy, freedom of programming and editorial independence of TVP, the manner of fulfilment of the public service mission referred to in Article 21(1) PRTV-Act and the detailed scope of obligations stemming therefrom, together with an indication of the financing method, shall be specified in a charter of duties for the following five calendar years.²¹⁸ The charter of duties shall be determined by an agreement concluded between the PSBO and the Chairperson of the National Broadcasting Council (KRRiT) acting on the basis of a

²¹⁸ *Zmieniona Karta Powinności TVP S.A. na lata 2020-2024*, <https://www.gov.pl/attachment/0e5f3fc6-10ae-491a-99c7-1a59938a5db4>.

resolution of the National Council. As mentioned pursuant to Article 27(7) PRTV-Act management of a PSBO should in assessment of journalists and other creators subordinate to them, be guided by the principles of professionalism, honesty, and reliability, as well as the guidelines emanating from the tasks and duties of PSM.

3.11.3. Supervision

The Management Board of each PSBO must submit a yearly report to the National Broadcasting Council (KRRiT) by 30 April of a given calendar year (Article 31b(1) PRTV-Act), containing:

- information on the implementation of the tasks specified in the law and the duty charter resulting from the public mission;
- information on the amount and use of funds from individual sources;
- information on how to implement accounting principles;
- information on the total cost of the public mission, with an indication of the costs of the implementation of individual tasks and information about the income from other activities;
- calculation of the net cost of implementing the public mission and the surpluses, if they arose;
- a proposal to allocate the surplus, if it arose.

On the basis of the assessment of the report, the KRRiT must adopt a resolution on its acceptance or refusal by 30 June of each calendar year. The KRRiT may specify recommendations concerning the manner of the realization of the undertakings specified in the charter of duties as well as in the programming and financial plan in the following calendar year and may order to take specified corrective measures, indicating the time limit for the realization of the recommendations or corrective measures. The PSBO in question must include in the report for the following calendar year information on the manner of their implementation.

By the end of May of each calendar year, the National Broadcasting Council (KRRiT) presents to the *Sejm*, the Senate and the President an annual report on its activities during the preceding calendar year, along with information concerning key issues in radio and television broadcasting (Article 12(1) PRTV-Act). The *Sejm* and the Senate consider the information provided by the KRRiT and adopt resolutions accepting or rejecting both reports. The resolution on accepting the report may contain comments and reservations, and the resolution rejecting the report must contain a justification. As mentioned, if the *Sejm* and the Senate reject the report, the term of office of all members of the KRRiT shall expire within 14 days from the date of the last resolution. The expiry of the term of office of the National Council shall not take place unless it is confirmed by the President of the Republic of Poland (Article 12 (3) to (5) PRTV-Act).

Also the National Media Council (RMN) is obliged to submit to the *Sejm*, the Senate, the President, the Prime Minister and the KRRiT written information on its activities in the past year by the end of March. The *Sejm* and the Senate examine this

information together with yearly report of the KRRiT. Each body that has received the information from RMN may submit its remarks, to which the Council is obliged to respond (Art. 13 Act on the National Media Council).

3.12.SI – Slovenia²¹⁹

RTV Slovenija (RTVS)²²⁰ is a non-profit organisation of special cultural and national importance, performing its activities in the field of radio and television in accordance with the RTV Slovenija Act (RTVS Act).²²¹ It produces programmes for two national TV channels, two regional TV channels, two TV channels for the Italian and Hungarian national communities, and three national radio channels, as well as two regional radio programmes, and radio programmes for foreign citizens. Radio Capodistria and Pomurski madžarski radio/Muravidéki Magyar Rádió are equally part of RTV Slovenija, producing programmes for the Italian and Hungarian national communities in Slovenia. The production of RTV Slovenija is successfully complemented by the Multimedia Centre and information on websites and theme portals, mobile apps, and teletext.²²²

3.12.1. Legal form

According to Article 1 RTVS Act, RTVS is a public institution of special cultural and national importance, which performs a public service in the field of radio and television activities with the aim of meeting the democratic, social and cultural needs of the citizens of the Republic of Slovenia, Slovenes around the world, members of Slovenian national minorities in Italy, Austria and Hungary, and the Italian and Hungarian national communities in the Republic of Slovenia, and which carries out other activities in accordance with the RTVS Act, the Statute of RTVS Slovenia²²³ and the Media Act.²²⁴

3.12.2. Management and oversight boards

The main organs of RTVS are:

- Programme Council (*Programski svet*)
- Supervisory Board (*Nadzorni svet*)

²¹⁹ The case study on Slovenia incorporates the kind feedback received from Suzana Vidas Karoli (RTV Slovenija) during the checking round with the competent public service media in the EBU network.

²²⁰ <https://www.rtvlo.si/>.

²²¹ *Zakon o Radioteleviziji Slovenija (ZRTVS-1)*, <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4461>.

²²² <https://www.rtvlo.si/rtv/english>.

²²³ *Statut javnega zavoda Radiotelevizija Slovenija*, <https://www.rtvlo.si/files/szj/2017-01-0105-2006-01-4559-npb4.pdf>.

²²⁴ *Zakon o medijih (ZMed)*, <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO1608>.

- Director-General (*Generalni direktor*)

The Programme Council of RTV Slovenia carries out the following functions (Article 16 RTVS-Act):

- On the proposal of the Director-General, adopts programme standards and programme concepts.
- On the proposal of the Director-General, adopts a programme production plan which is in line with the financial possibilities of RTV Slovenia.
- Adopts programme schedules on a proposal from the Director-General.
- Regularly examines the implementation of the adopted programme concept and production plan and gives instructions to the Director-General on the correction of shortcomings in these areas.
- Discusses the implementation of the adopted programme plan.
- Considers and acts on comments and suggestions made by viewers and listeners of RTV Slovenia programmes. In determining programme policy and in justified cases, it instructs the Director-General on changes to be made to programmes.
- On a proposal from the Director-General, gives its consent to the Statutes of the public institution RTV Slovenia.
- On a proposal from the Director-General, gives an opinion on the draft financial plan.
- Appoints and dismisses the Director-General of RTV Slovenia and gives its prior consent to the appointment and dismissal of the Director of Radio and the Director of Television.
- Decides on other matters of a programmatic nature where provided for in the Statutes.
- Adopts its Rules of procedure and organises its work and appoints its committees in accordance with the Rules of procedure.
- Decides on other matters where the law or the Statutes so provide.

The Supervisory Board (Article 27 RTVS Act):

- Adopts the Statutes with the prior approval of the Programme Council.
- Adopts the financial plan and the annual report of the Public Institute and decides on the use to be made of any surplus of revenue over expenditure.
- Determines the price of services which do not form part of the public service.
- Determines the method of registration and temporary or permanent de-registration of receivers.
- Determines in detail the method of payment of receiver contributions and the criteria for cancellation, partial cancellation, deferral and instalment payment in accordance with the RTVS Act.
- Decides on tariffs and other conditions for the broadcasting of programmes of other broadcasters.
- Supervises the operations of RTVS.
- Supervises the keeping of accounts and the legality of business operations and reviews periodical accounts.

- Has the right to inspect all documentation of the public service, including documentation relating to the operation of transmitters and links.
- Adopts its Rules of procedure and organises its work and appoints its committees in accordance with the Rules of procedure.
- Decides on other matters provided for by law or by the Statutes.

The Director-General of RTVS carries out the following functions (Article 21 RTVS):

- Appoints the Director of Radio and the Director of Television on the basis of a public call for tenders, after obtaining the prior consent of the Programme Council.
- Appoints the programme editors in charge on the proposal of the Director of Radio and Television, respectively, who must put the posts to public tender.
- The Director-General also appoints and dismisses such other managers as may be provided for in the Statutes.²²⁵

Furthermore, the Director-General (Article 22 RTVS-Act):

- manages the professional programme work of RTVS
- organises and manages the work and business of RTVS
- represents RTVS
- is responsible for the legality of the work of RTVS
- coordinates the work of the directors of radio and television and other managers in accordance with the Statutes and decides on any disputes between them
- performs any other tasks provided for by law or the Statutes
- conducts social dialogue with the representatives of the trade unions in the public institution and concludes the special collective agreement of the public institution RTV Slovenia and is one of the signatories to the Collective Agreement for Professional Journalists on the employers' side.

3.12.2.1. Appointment of top managerial board members

The Programme Council is composed of 29 members (Article 17 (6), (7), (8) and (9) RTVSAct):

- One member is appointed by the Hungarian national community.
- One member appointed by the Italian national community.
- One member is appointed by the Slovenian Academy of Sciences and Arts.
- Two members are appointed by the President of the Republic on the proposal of the registered religious communities.
- Three members are elected from among the employees of RTV Slovenia by direct election, in such a way that the information, cultural and artistic activities and technical sectors are represented.

²²⁵ See Article 43 of the RTVS Statutes.

- Five members are appointed by the National Assembly (*Državni zbor*)²²⁶ on the proposal of the political parties, taking into account as far as possible the representation of the parties in the National Assembly.
- 16 members are appointed by the National Assembly on the proposal of viewers and listeners of: RTV Slovenia programmes; universities and faculties; associations, federations of associations or their organisations, in particular in the fields of art, culture, science and journalism; and other civil society organisations, with the exception of political parties and their forms of organisation. The eligibility of candidates and their fulfilment of the conditions must be demonstrated by the supporting documents set out in the text of the call for applications. Half of these 16 members must be appointed at the same time as the appointment or election of the other members referred to in the previous bullet points, and the other half two years later. In appointing these 16 members, the National Assembly must take into account, as one of the criteria, the regional representation of the different parts of Slovenia. The National Assembly must adopt a decision on the appointment of these 16 members by a majority vote of all its members.

The Director General is appointed for a term of four years by the Programme Council on the basis of a public call for tenders (Article 21(1) RTVS Act).

The Supervisory Board has 11 members. Five members must be appointed by the National Assembly, taking into account the representation of political parties in the National Assembly, four members must be appointed by the Government, and two members must be elected from among themselves by the employees of the public institution RTV Slovenia in direct elections (Article 26(1) RTVS Act).

3.12.2.2. Qualification requirements

According to Article 17(1) RTVS Act, the members of the Programme Council must be persons whose knowledge, reputation or achievements in the cultural, educational or any other field of social life may contribute to the good functioning and strengthening of the reputation of public service broadcasting, both in the Republic of Slovenia and abroad. Excluded are persons (Article 17(3) RTVS Act) who were, at the time of appointment or within the five years preceding the appointment:

- members of political party organs
- members of the European Parliament, or officials of bodies of the European Union
- the President of the Republic, the Prime Minister, Members of the Parliament, Members of the Council of State, Mayors, Constitutional Court Judges, Ministers, State Secretaries and other officials in State bodies
- directors-general, secretaries-general, heads of constituent bodies and government departments, directors of directorates and constituent bodies, heads of administrative units and directors, or secretaries of municipal administrations

²²⁶ <https://www.dz-rs.si/>.

The following persons are also not eligible (Article 17(4) RTVS-Act):

- members of the management or supervisory bodies or employees of competing media, and persons who hold ownership interests in these media; persons employed by RTVS, with the exception of three representatives of RTVS employees elected by them from among themselves
- members of the Broadcasting Council and employees of the Agency for Post and Electronic Communications, and members or employees of other bodies which, in the course of an administrative procedure, decide on the awarding of frequencies or other rights of the media or media employees, and persons participating in the procedures for taking such decisions
- members of the management or supervisory bodies of legal entities which have a business relationship with RTVS
- immediate family members of RTVS's managers and employees (hereinafter referred to as "employees"), such as the Director-General of RTVS, the Director of Radio and the Director of Television, and those employees of RTVS defined as managers in the Statutes.

With regard to the Supervisory Board (Article 26 RTVS-Act), its members must have at least a university degree and at least five years of professional experience. The excluded persons mentioned in Article 17(3) RTVS Act (persons with political or administrative ties, see above) cannot be appointed or elected as members of the Supervisory Board, except for two members directly elected by the employees of RTVS, but a person who performs managerial duties and tasks at RTVS may not be directly elected as a member of the Supervisory Board.

Further, no one may be a member of the Programme Board and the Supervisory Board at the same time (Article 20 (4) RTVS Act).

There is no mention of the Director-General's required qualifications under the RTVS Act.

3.12.2.3. Political incompatibilities

As mentioned above, according to Article 17(3) RTVS Act, no person can be elected or appointed to the Programme Council who was, at the time of appointment or within the five years preceding the appointment:

- a member of political party organs
- a member of the European Parliament, or an official of bodies of the European Union
- the President of the Republic, the Prime Minister, a Member of the Parliament, a Member of the Council of State, Mayor, a Constitutional Court Judge, a Minister, a State Secretary or any other official in State bodies
- a director-general, secretary-general, head of constituent bodies and government departments, director of directorates and constituent bodies, head of administrative units and directors, or secretary of municipal administrations.

This rule also applies to members of the Supervision Board with the exceptions explained above.

3.12.2.4. Requirements concerning political independence

The members of the Programme Council must carry out their work independently and impartially and pursue only the interests of RTVS as a public service broadcaster. In the performance of their duties, they must comply with the Constitution of the Republic of Slovenia and the provisions of the RTVS Act and ensure that the principles set out in Article 4 RTVS Act and the Statutes are implemented in so far as they relate to programmes and their production (Article 17(2) RTVS Act).

3.12.2.5. Role of parliament, the government and/or other state bodies

As mentioned above, the National Assembly appoints five members of the Programme Council on the proposal of the political parties, taking into account as far as possible the representation of the parties in the National Assembly. It also appoints 16 members on the proposal of: viewers and listeners of RTVS Slovenia programmes; universities and faculties; associations, federations of associations or their organisations, in particular in the fields of art, culture, science and journalism; and other civil society organisations, with the exception of political parties and their forms of organisation (Article 17(6) RTVS Act).

3.12.2.6. Safeguards against arbitrary dismissals

The Programme Council appoints and dismisses the Director-General (Article 16(1) RTVS Act).

Unless they themselves resign, the term of office of a Programme Council member expires if he or she no longer fulfils the conditions for appointment or election laid down in the RTVS Act (Article 18 (3) RTVS Act). This rule applies *mutatis mutandis* to the replacement of a member of the Supervisory Board whose term of office was terminated prematurely because he or she did not fulfil the conditions for appointment or election anymore, or who resigned on his/her own initiative (Article 26 (7) RTVS Act).

3.12.2.7. Safeguards for chief editors and newsrooms

Journalists, editors of RTVS and others who are directly involved in the creation or production of RTVS programmes must (Article 5 RTVS Act):

- respect the principle of political balance and world-view pluralism
- respect the principle of political independence and the autonomy of journalists

According to Article 39 of the RTVS Statute, it is not possible to terminate the employment, reduce the salaries or change the status of a journalist or editor in a

programme unit, or to degrade their position in any other way solely for the reason of their having expressed views that are consistent with the programme profile and the code of journalism ethics, or their having refused to publish information or opinions whose broadcast would represent a breach of the programme profile and the code of journalism ethics. Editors, journalists, and other programme creators are independent in the performance of their tasks as long as they remain within the frames of the programme profile and their respective professional codes of ethics.

Moreover, employees in programme departments must appoint their representative bodies. The candidates for members of a representative body are proposed by programme units. One representative must be appointed for every 10 members of a programme unit. Employees in the editorial productions units of regional centers must appoint one representative for every three employees.

The representative body has the following rights:

- to give its opinion on a candidate for managing editor
- to give its opinion on proposed changes in the programme profile
- to give its opinion on the organization of work, working conditions, and on the criteria for the evaluation of work performance and the promotion of journalists

A candidate for managing editor must receive a positive opinion if the majority of representatives in programme departments vote in favour of the candidate.

3.12.3. Supervision

RTVS must prepare an annual report and interim monthly statements (Article 90 of the RTVS Statute), as well as a business plan (Article 92 of the RTVS Statute). The Director-General must report to the Supervisory Board in writing, on a quarterly basis, on the rational use of funds allocated for the implementation of the business plan.

Administrative and inspection supervision of the implementation of the Media Act must be conducted by the ministry responsible for culture (Article 108 of the Media Act), whereas the *Agencija za komunikacijska omrežja in storitve Republike Slovenije* (the Slovenian regulator – AKOS) is responsible for carrying out inspection and enforcement supervision of the following (Article 109(1) of the Media Act):

- the statutory provisions on radio and television programmes of special interest such as RTVS (Section 3 of Chapter 2 of the Media Act);
- the programme requirements and restrictions applicable to radio and television programmes under the Act (Section 5 of Chapter 2 of the Media Act)
- the statutory provisions on the pursuit of radio and television broadcasting activities (Chapter 2, Section 7 of the Media Act)

4. Self-regulation, co-regulation and best practices with regard to the independent governance of public service media

Broadcasting regulation is mainly exercised by governmental administrative authorities, especially since the liberalisation of the broadcasting sector, which brought about a dual system in Europe (see 1.1.2.). It usually has taken the form of an independent regulatory authority “characterised by the fact that it is not part of the actual structure of governmental administration, and that it has an apparatus which does not serve any other body at its disposal”.²²⁷ However, in many countries, public service media may also be subject to some form of self- and co-regulation.

Self-regulation is a form of regulation outside traditional statutory regulation.²²⁸ It is a more flexible form of regulation that comes directly from the industry and, by and large, it is easier to amend in order to adapt to changes in the sector than legislation. In many cases, self-regulation is produced within a legal framework in what is referred to as co-regulation (also known as regulated self-regulation or statutory self-regulation). In this variant, regulation comes from the industry, but media regulators check the correct functioning and effectiveness of the implemented rules and usually retain the right to intervene in case the system fails or does not work properly. According to recital 14 of the Audiovisual Media Services Directive (AVMSD), self-regulation “constitutes a type of voluntary initiative which enables economic operators, social partners, non-governmental organisations and associations to adopt common guidelines amongst themselves and for themselves. They are responsible for developing, monitoring and enforcing compliance with those guidelines. [...] Co-regulation provides, in its minimal form, a legal link between self-regulation and the national legislator in accordance with the legal traditions of the Member States. In co-regulation, the regulatory role is shared between stakeholders and the government or the national regulatory authorities or bodies. The role of the relevant public authorities includes recognition of the co-regulatory scheme,

²²⁷ EPRA, “About Regulatory Authorities”, 2021, <https://www.epra.org/articles/about-regulatory-authorities>

²²⁸ For an in-depth definition of self- and co-regulation see chapter 3 of Furnémont, J.F., and Kerševan Smokvina, T., 2017, “European co-regulation practices in the media. Comparative analysis and recommendations with a focus on the situation in Serbia”, Council of Europe, <https://rm.coe.int/european-co-regulation-practices-in-the-media/16808c9c74>.

auditing of its processes and funding of the scheme. Co-regulation should allow for the possibility of state intervention in the event of its objectives not being met”.²²⁹

The sharing of best practices is one of the usual ways to improve these mechanisms. Best practice is defined as “a procedure that has been shown by research and experience to produce optimal results and that is established or proposed as a standard suitable for widespread adoption”.²³⁰ In Article 6a(4) of the AVMSD, the European Commission encourages audiovisual media service providers “to exchange best practices on co-regulatory codes of conduct. Member States and the Commission may foster self-regulation, for the purposes of this Article, through Union codes of conduct as referred to in Article 4a(2)”. However, beyond this explicit mention, this is just one of the many fields where public service media (PSM) share their best practices on governance.

4.1. EBU reports and recommendations

The European Broadcasting Union (EBU), the alliance of public service media in Europe, is the key forum for the exchange of best practices, as well as the central point for the gathering of information, and the coordination of strategies on shared interests and common goals by its members at pan-European level. As part of its remit, the EBU regularly monitors a series of trends and indicators and issues a series of reports and recommendations which can help their members to identify best practices in a wide variety of fields.

When it comes to governance, the EBU produced a legal report on the topic in 2015 as part of its strategic plan VISION 2020:²³¹ “Legal Focus. Governance Principles for Public Service Media”.²³²²³³ Amidst the challenging context for the entire media sector derived from the technological revolution, digitisation, globalisation, changes in consumption patterns, as well as budgetary constraints or growing threats to editorial independence, the EBU put the spotlight on governance, as many PSM throughout Europe were undergoing associated reforms. The report builds upon the EBU’s core values of public service media, as adopted by the General Assembly in Strasbourg in 2012²³⁴ (universality, independence, excellence, diversity, accountability, and innovation). It offers different options to animate national debates and provides guidance as to how to articulate PSM governance based on four pillars:

²²⁹ Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) in view of changing market realities, OJ L 303, 28.11.2018, p. 69–92, <https://eur-lex.europa.eu/eli/dir/2018/1808/oj>

²³⁰ <https://www.merriam-webster.com/dictionary/best%20practice>

²³¹ <https://www.ebu.ch/vision2020-report-now-available>

²³² EBU, “Legal Focus. Governance Principles for Public Service Media”, 2015, https://www.ebu.ch/files/live/sites/ebu/files/Publications/EBU-Legal-Focus-Gov-Prin_EN.pdf

²³³ For further details on the recommendations suggested, see section 1.1.5.

²³⁴ <https://www.ebu.ch/news/2012/10/hrt-writes-ebu-values>

- Independence: No undue interference by political or economic powers.
- Accountability: Answerable to supervisory bodies and to the public at large.
- Transparency: Open and responsive.
- Sustainability: Capable of serving the evolving needs of society.

In the EBU's view, "[a]dherence to these principles can help to build public trust in PSM, increase their legitimacy and ensure that they remain indispensable in the future".²³⁵

4.2. National examples of independent governance through self-regulation

Many countries have implemented self-regulatory, co-regulatory as well as best practice codes related to independent governance throughout the European Union. Some of them are specific for the PSM in the country, such as Yle's Code of Conduct in Finland,²³⁶ RAI's Code of Ethics (*Codice Etico del Gruppo RAI*),²³⁷ or Hungary's Public Service Code (*Közszolgálati Kódex*).²³⁸ In other cases, the code is not specific for the PSM and applies to several media in the country, such as the Code of Ethics of Bulgarian Media (*Етичен кодекс на българските медии*),²³⁹ or the Code of the Council for Journalistic Ethics in French-speaking Belgium (*Conseil de déontologie journalistique*, CDJ), explained below. The following sub-sections roll out some additional examples of this type of regulation in several countries.

4.2.1. RTVE self-regulation code and information statutes

The Spanish PSM *Radio Televisión Española* (Spanish Radio and Television, RTVE) have two self-regulatory codes. The Spanish *Código de autorregulación para la defensa de los derechos del menor en los contenidos audiovisuales, conexos, interactivos y de información en línea de la Corporación RTVE* (Self-regulation code for the defense of the rights of minors in the audiovisual, related, interactive and online information content of RTVE)²⁴⁰ was approved in 2010. It builds upon the *Ley 17/2006, de la Radio y la Televisión de Titularidad*

²³⁵ EBU, "Legal Focus. Governance Principles for Public Service Media", 2015,

https://www.ebu.ch/files/live/sites/ebu/files/Publications/EBU-Legal-Focus-Gov-Prin_EN.pdf

²³⁶ Yle's Code of Conduct, <https://yle.fi/aihe/s/yles-code-conduct>; For further information, see 3.5. 1 and 3.5.2.

²³⁷ RAI's Ethics Code,

https://www.rai.it/dl/doc/1591374218798_codice%20etico%20da%20sito%20trasparenza.pdf. For further information, see section 3.9.

²³⁸ Public Service Code, <http://www.kszka.hu/dokumentumok/alapdokumentumok/2084-kozszoalati-kodex>. For further information, see section 3.8.2.

²³⁹ Code of Ethics of Bulgarian Media, <https://mediaethics-bg.org/етичен-кодекс-2/>. For further information, see section 3.2.2.7.

²⁴⁰ https://teledetodos.es/index.php/documentacion/documentacion-rtve/item/download/44_9f3448770e0caa593241acdde7c70174

Estatal (Law 17/2006, on state-owned radio and television)²⁴¹ and the *Ley 7/2010, de 31 de marzo, General de la Comunicación Audiovisual* (Law 7/2010, of March 31, General Audiovisual Communication),²⁴² paying special attention to certain groups, such as children and youth, which deserve special protection.

Among its many dispositions related to minors, it includes a relevant element related to the governance and oversight of the institution, establishing that the RTVE's Ombudsman for viewers, listeners and users of interactive media, is responsible for monitoring compliance with the self-regulatory code, and must perform the following tasks, among others:

- Handle claims, complaints and suggestions, forwarding them to the appropriate department within RTVE and answering the viewers, listeners and Internauts within 30 days.
- Inform the Board of Administration about the most serious issues and submit a report on their evolution every three months.
- Propose measures to avoid these problems happening again in the future.
- Propose topics on childhood and youth for *RTVE Responde*, the TV programme of the Ombudsman.
- Support and participate in the committees devoted to assessing content for watershed periods.

In addition, RTVE has its Information Statutes (*Estatutos de Información de la Corporación RTVE*),²⁴³ a self-regulatory code which also builds upon the abovementioned Law 17/2006,²⁴⁴ on state-owned radio and television. The Statutes' aim is to guarantee internal control, editorial independence, and the independence of information services' staff.

Among its many dispositions, it develops the functions and composition of the *Consejos de Informativos* (News Councils) established by article 24.2 of the Law as "internal bodies for the participation of the information professionals of the RTVE Corporation, to ensure their independence and objectivity, and the veracity of news content broadcast",²⁴⁵ to promote editorial independence, and to enable the provision of advice on news programming and style guidelines, and information-sharing, on a non-binding basis, with regard to the appointment of news directors within the corporation. Two separate councils have been established, both at the national level, for the television (TVE) and radio (RNE) branches of the corporation, respectively: The *Consejo de Informativos de TVE* (TVE News Council), with 13 members, and the *Consejo de Informativos de RNE* (RNE News Council), with nine members.

The Statutes establish that councils are elected for two years through the system of uninominal candidacies. Council members have a maximum of 38 hours per month to fulfil their functions. The following staff are not eligible as a council member: directors,

²⁴¹ <https://www.boe.es/buscar/act.php?id=BOE-A-2006-9958>.

²⁴² <https://www.boe.es/buscar/act.php?id=BOE-A-2010-5292>.

²⁴³ https://www.rtve.es/contenidos/documentos/ESTATUTO_DE_INFORMATIVOS_v1.pdf

²⁴⁴ <https://www.boe.es/eli/es/l/2006/06/05/17/con>.

²⁴⁵ Idem.

editors of daily newscasts, directors of news programs, directors of territorial centres, staff representatives, and members of works councils. Decisions are made by simple majority and members must exclude themselves from voting on decisions that may affect them directly. Council members have priority over other staff members, with regard to the retention of their positions in the corporation, in case of suspensions or terminations due to technological or economic reasons. Their contract cannot be terminated, nor can they be sanctioned during the exercise of their functions or within the year following the expiration of their mandate (except in the case of revocation or resignation, or due to disciplinary dismissal).

The Council's duties and powers include:

- Mediating vis-à-vis management.
- Convening assemblies on professional matters.
- Participation in the preparation of style books and good practice guidelines.
- Submitting to the Board of Directors, at least once a year, a report on news programming.
- Informing the Board of Directors about possible manipulation and bad information practices.
- Proposing improvements in the organisation and recommending to directors the adoption of measures on respect for, and fulfilment of, the ethical principles contained in the Statute.
- Submitting a report to the Board of Administration on protection and deontological responsibility procedures considered serious.

4.2.2. ZDF's declaration of commitment

Through the *Selbstverpflichtungserklärung des ZDF* (Declaration of Commitment of the ZDF),²⁴⁶ German public service media service ZDF commits to a series of goals of perceived interest to society and its viewers, listeners and readers. These goals are subsequently assessed, situated, and reported on in the *Bilanz der Selbstverpflichtungserklärung des ZDF* (Assessment of Delivery on the Declaration of Commitment of the ZDF).²⁴⁷ These commitments are divided into a series of core objectives, whose fulfilment is assessed using a set-of-lights system (green: objective achieved; yellow: objective partially achieved; red: objective not achieved), and a series of broader goals evaluated in more detail, providing concrete examples of how ZDF's programmes have achieved goals and indicating when these have been achieved only partially and in which cases work is still in progress.

In 2019-2020, the core objectives were the following:

- Enhancing program quality, strengthening the programme family, appealing to young audiences, maintaining reach.

²⁴⁶ <https://www.zdf.de/assets/grundlagen-124~original>

²⁴⁷ <https://www.zdf.de/assets/gremien-fernsehrat-1192~original>

- Strengthening ZDF news online.
- Strengthening the ZDFmediathek, further developing platform strategy.
- Making discussions in society more objective.
- Expanding cultural reports online, strengthening cultural partnerships.
- Reporting closer to life, engaging audiences.
- Focusing on documentaries and science.
- Expanding entertainment for younger viewers.
- Broadening regional distribution of program productions, strengthening European and sustainable production.
- Further strengthening barrier-free access to programs.

The assessment also evaluates the measures taken by ZDF within the context of the COVID-19 crisis, as well as issues such as audience reach. Other commitments include: attaining proximity to the reality of people's lives, and depicting changes in society, the economy and the labour sector. Other items include: offering stimulating entertainment, expanding online cultural offerings, and promoting the creative ecosystem. The objective of attaining a 75% share of German or European productions was achieved in 2019, with 90%. The production budget for commissions and co-productions was set at a minimum of EUR 600 million, and the planned expenditure for 2020 was EUR 694 million. Action was also taken in regard to female directors in fiction and the label *Grüner Drehpass* (Green Shooting Passport).

4.2.3. ERR: Good practices of the Estonian public broadcaster

The national public broadcaster in Estonia *Eesti Rahvusringhääling* (Estonian Public Broadcasting, ERR) agreed a Code of Good Practices²⁴⁸ which includes areas such as trustworthiness, independence, responsibility, good taste and openness. This code is in line with the journalistic and ethics guidelines recommended by the EBU, adhering to internationally recognised principles of democratic journalism. The code is aimed both at permanent and temporary employees of ERR.

When it comes to independence, the code foresees that employees, especially journalists, must avoid publicly displaying their allegiance to political parties, associates or societies, and other interest groups, while conducting professional activities. In addition, they must keep a professional distance from representatives of power while also treating them equally (section 2.1). In case of conflicts of interest (section 2.5), the code states that ERR employees can be members of political parties, unions, professional associations and other social movements, as long as they respect the values and goals of ERR in their work and activities that may be associated with ERR. Nevertheless, employees cannot work for organisations that ERR considers to be its competitors nor can they use their professional skills to train employees of competitors. When a conflict of interest arises, the employee must inform their line manager or collegiate Decision-

²⁴⁸ Code of Good Practices, ERR, http://err.ee/files/ERR_good_practice_ERRpdf.pdf.

Making Council, which coordinates actions that guarantee the procedure in line with the goals and interests of ERR. A conflict of interest happens when the interests of ERR are in conflict with those of an employee due to their personal relations (family members, friends) or interest groups (companies, social organisations, civil movements).

As to openness, the Code highlights that according to the Estonian Public Broadcasting Act, all economic and creative decisions must be public. The Code goes on to establish two considerations related to governance: on the one hand, the requirement that any programme be assessed by the different creative councils as well as by the public advisory board; on the other, the requirement that equality, integrity and transparency in procurement be observed. Any contract signed by ERR must be in the interest of the general public and must therefore, in principle, be made public.

4.2.4. Code of ethics of the CDJ in French-speaking Belgium

The *Conseil de déontologie journalistique* (Council for Journalistic Ethics, CDJ), created in 2009, is a self-regulatory ethics body for the French-speaking and German-speaking media in Belgium, including different types of broadcasters (radio, television), both public and private. The Council comprises representatives of publishers, journalists, editors and civil society. It has three missions: codification, the provision of information, and the processing of complaints and mediation. Among its 45 members it includes the main German-speaking PSM in Belgium, *Belgischer Rundfunk* (Belgian Broadcasting [BRF]) and the main French-speaking PSM in Belgium, *Radio-télévision belge de la Communauté française* (Belgian Radio-television of the French Community, RTBF).

Its Code of Journalistic Ethics²⁴⁹ includes sections on respect for the truth, independence, loyalty, the rights of persons, and definitions. When it comes to independence, it establishes that journalists “shall defend in their work full freedom of investigation, information, comment, opinion, criticism, humour, satire and editorial choices (in particular the choice of their interlocutors)” (article 9). It also establishes that journalists must reject all pressure, accepting only instructions from their editorial staff and are “not obliged to accept any injunction that is contrary to the editorial line of the media outlet with which they work” (article 11). It goes on to highlight that journalists must avoid any conflict of interest, therefore not engage in any activity which may affect their independence (article 12), as well as not engage in non-journalistic advertising or communication activities – “The quoting of brands, companies, personalities, events, institutions, etc. shall meet journalistic criteria only” (article 13). Article 14 establishes that journalists are not auxiliaries to the police or other security services and, therefore, that they will only pass on to them information that has already been made public in their media. In addition, it is stated that the publication of reactions from the public in any form, as well as the moderation thereof, are the sole responsibility of the editorial staff, and must respect the meaning and spirit of the comments and reactions (article 16).

²⁴⁹ Deontological Code of Journalism (*Code de déontologie journalistique*), CDJ, <https://www.lecdj.be/fr/deontologie/code/>.

5. Case law

This chapter presents the approaches taken by judges at the international and national levels in relation to the independence of public service media (PSM), illustrated by specific examples of case law from the European Court of Human Rights (ECtHR), European courts and national jurisprudence.

5.1. The approach of the European Court of Human Rights

The ECtHR recognises the possibility for the legislator to take implementing measures that restrict the freedom of broadcasting, but only to the extent that they can be justified by a “legitimate aim”. In defining such legitimate aims, the Court has drawn the contours of the role of independent PSM. This section reviews the main principles established in this respect by the Court through selected examples from the Court’s case law.²⁵⁰

5.1.1. The state as “ultimate guarantor” of pluralism and independence of public service media

5.1.1.1. Freedom of expression, pluralism and audiovisual media

The right to freedom of expression enshrined in Article 10 (1) of the European Convention on Human Rights (ECHR) is a multi-faceted right that unfolds into freedom to hold opinions, to receive and impart information and ideas, without interference by public authority and regardless of frontiers. This right comprises, as an integral part, media freedom, including independence, pluralism and diversity of media, and the safety of journalists and other media actors.²⁵¹

²⁵⁰ Institut für Europäisches Medienrecht (EMR), “Public Service Media according to Constitutional Jurisprudence. The Human Rights and Constitutional Law Dimension of the Role, Remit and Independence”, Saarbrücken, 2 July 2009, 2nd edition 2012, Study on behalf of the European Broadcasting Union (EBU), https://www.ebu.ch/files/live/sites/ebu/files/Publications/EMR_Study_-_2nd_version.pdf/.

²⁵¹ See speech by Robert Spano, President of the European Court of Human Rights at Annual ERA conference of European media law, 18 June 2021, https://www.echr.coe.int/Documents/Speech_20210618_Spano_ERA_conference_European_media_law_ENG.pdf; See also, Guide on Article 10 – Freedom of expression, pp. 107-111,



This interpretation was confirmed by the Court as early as 1976 and has been constantly reiterated in its jurisprudence since then,²⁵² to the point of establishing that there can be no democracy without pluralism.²⁵³ Freedom of the press and other news media afford the public one of the best means of discovering and forming an opinion on the ideas and attitudes of political leaders. In this regard, the Court has ruled on several occasions that not only does the press have the task of imparting information and ideas, but that the public also has a right to receive them.²⁵⁴ In addition, the Court has held that audiovisual media such as radio and television have a particularly important role, due to their power to convey messages through sound and image, which have a more immediate and powerful effect than print.²⁵⁵ The function of television and radio as familiar sources of entertainment in the intimacy of the listener's or viewer's home further reinforces their impact.²⁵⁶ Moreover, the Court stressed the particular impact of television and radio in remote regions, where they may be more easily accessible than other media.²⁵⁷

5.1.1.2. The state's duty to guarantee pluralism and independence of the media

Pluralism is not only linked to the accessibility of a plurality of varied information of public interest, but also to editorial independence and to the guarantee by the state of the safety of journalists. In this respect, the Court established that genuine, effective exercise of freedom of expression depends not merely on the state's duty not to interfere but may require it to take positive measures of protection, through its law or practice,²⁵⁸ as the ultimate guarantor of pluralism.²⁵⁹

https://www.echr.coe.int/Documents/Guide_Art_10_ENG.pdf.

²⁵² In *Handyside v. the United Kingdom*, the ECtHR held that freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress. See ECtHR, *Handyside v. the United Kingdom*, § 49, <https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=001-57499>; See also, ECtHR, *Lingens v. Austria*, § 41, <https://hudoc.echr.coe.int/eng#%7B%22dmocnumber%22%3A%22695400%22%22%22itemid%22%3A%22001-57523%22%22%7D>].

²⁵³ ECtHR, *Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], § 129, <https://hudoc.echr.coe.int/eng#%7B%22itemid%22%3A%22001-111399%22%22%7D>]; ECtHR, *Manole and Others v. Moldova*, § 95, <https://hudoc.echr.coe.int/eng#%7B%22itemid%22%3A%22001-94075%22%22%7D>]; ECtHR, *Socialist Party and Others v. Turkey*, §§ 41, 45 and 47, <https://hudoc.echr.coe.int/eng#%7B%22itemid%22%3A%22001-58172%22%22%7D>].

²⁵⁴ See, for example, ECtHR, *Handyside v. the United Kingdom*, § 49; ECtHR, *Lingens v. Austria*, §§ 41-42, <https://hudoc.echr.coe.int/eng#%7B%22fulltext%22%3A%22Lingens%20v.%20Austria%22%22%22documentcollectionid%22%3A%22GRANDCHAMBER%22%22CHAMBER%22%22%22itemid%22%3A%22001-57523%22%22%7D>].

²⁵⁵ ECtHR, *Animal Defenders International v. the United Kingdom*, § 119, <https://hudoc.echr.coe.int/eng#%7B%22itemid%22%3A%22001-119244%22%22%7D>]; ECtHR, *Pedersen and Baadsgaard v. Denmark*, § 79, <https://hudoc.echr.coe.int/eng#%7B%22itemid%22%3A%22001-67818%22%22%7D>]; ECtHR, *Jersild v. Denmark*, § 31, <https://hudoc.echr.coe.int/eng#%7B%22itemid%22%3A%22001-57891%22%22%7D>].

²⁵⁶ ECtHR, *Manole and Others v. Moldova*, § 97; ECtHR, *Murphy v. Ireland*, § 74, <https://hudoc.echr.coe.int/eng#%7B%22fulltext%22%3A%22Murphy%20v.%20Ireland%22%22%22documentcollectionid%22%3A%22GRANDCHAMBER%22%22CHAMBER%22%22%22itemid%22%3A%22001-61207%22%22%7D>].

²⁵⁷ ECtHR, *Manole and Others v. Moldova*, § 97.

²⁵⁸ See for example, ECtHR, *Özgür Gündem v. Turkey*, §§ 42-46, <https://hudoc.echr.coe.int/eng#%7B%22fulltext%22%3A%22%C3%96zg%C3%BCr%20G%C3%BCndem%20v.%20Turkey%22%22%22documentcollectionid%22%3A%22GRANDCHAMBER%22%22CHAMBER%22%22%22itemid%22%3A%22001-58508%22%22%7D>]; ECtHR, *Fuentes Bobo v. Spain*, § 38,

5.1.1.3. The standards of public service media in a pluralistic society

The Court has clarified in its case law that the choice of means to achieve the objectives of pluralism and independence must vary according to local conditions and is a matter for the state to decide.²⁶⁴ Where a state does decide to create a public broadcasting system, domestic law and practice must guarantee that the system provides a pluralistic service.²⁶⁵

In this connection, the Court referred, in the *Manole and Others v. Moldova* case, to the standards developed by the Council of Europe in several Recommendations on public service broadcasting,²⁶⁶ to provide guidance as to the approach which should be taken to interpreting Article 10 in this field. In particular, the Court highlighted the need for states to guarantee the independence of PSM organisations from political and economic interference, as well as practical recommendations to this end.

These include, *inter alia*: the need for a legal framework guaranteeing the editorial independence and institutional autonomy of PSM organisations; the absence of political interference in the status and appointment of members of boards of directors and supervisory bodies; and the neutrality of information programs in order to encourage the free formation of opinions. In addition, the Court recalled that the cases in which PSM organisations may be compelled to broadcast official messages, or to report on acts of public authorities should be limited to exceptional circumstances expressly provided for by law. Finally, the Court stressed the importance of states adopting detailed rules concerning the composition and functioning of national regulatory authorities, in order to protect them from political interference and influence, in line with the recommendations of the Council of Europe’s Committee of Ministers.²⁶⁷

5.1.2. State interference with broadcasting freedom

5.1.2.1. Broadcasting freedom and licensing systems

The third sentence of Article 10 (1) ECHR entitles states to regulate by means of a licensing system the way in which broadcasting is organised in their territories. The Court has established in its case law that this permitted “interference” by the state with the right to freedom of expression goes beyond mere technical aspects and may also be

²⁶⁴ ECtHR, *Nenkova-Lalova v. Bulgaria*, §§ 59-60.

²⁶⁵ ECtHR, *Manole and Others v. Moldova*, § 101.

²⁶⁶ See, for example, Recommendation no. R(96)10 of the Committee of Ministers to member states on the guarantee of the independence of public service broadcasting, 11 September 1996, <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168050c770>, and Recommendation Rec(2000)23 of the Committee of Ministers to member states on the independence and functions of regulatory authorities for the broadcasting sector, 20 December 2000, <https://rm.coe.int/16804e0322>.

²⁶⁷ Appendix to Recommendation Rec(2000) on “The Independence and Functions of Regulatory Authorities for the Broadcasting Sector” referred to in ECtHR, *Manole and Others v. Moldova*, §§ 101-102.

actual interference by a state with PSM's freedom will be measured against the contribution of the latter to media pluralism in the media landscape of a given country. If this contribution is significantly reduced by state measures regarding funding, programming offers, diversity of opinions, etc., the level of pluralism may fall below the acceptable level in a democratic society, which could constitute a violation of Article 10 ECHR.²⁷³

5.2. The approach of the Courts of the European Union

The Treaty of Rome did not provide for any direct competences in the field of audiovisual and media policy, and neither does the Treaty on European Union. Jurisdiction over media policy is instead drawn from various articles of the Treaty on the Functioning of the European Union (TFEU) in order to construct policies in this sector. This is a necessity arising from the complex nature of media goods and services, which can be defined neither solely as cultural goods nor simply as economic goods. The most relevant provisions of the TFEU for PSM are Article 56 which guarantees the free movement of services and Articles 106 and 107-109 on aid granted by states aimed at preventing distortions of competitions.

5.2.1. Restrictions to the freedom to provide services on overriding grounds of pluralism

The Court of Justice of the European Union (CJEU) guarantees the protection of freedom of expression within the fundamental freedoms of the TFEU. It derives from freedom of expression as guaranteed *inter alia* by Article 10 ECHR the possibility to justify a restriction on these fundamental freedoms with the legitimate objective of maintaining pluralism and preserving the diversity of opinions. The Courts of the EU have consistently confirmed this approach in numerous judgments over the years, for example by derogating from the freedom to provide services on the grounds of maintaining press diversity, ensuring pluralism, the diversity of opinions, etc.²⁷⁴

²⁷³ Berka, W., Tretter, H., "Public Service Media under Article 10 of the European Convention on Human Rights", op. cit.

²⁷⁴ See for example, CJEU, Case C-368/95, *Vereinigte Familienpress Zeitungsverlags- und vertriebs GmbH v Heinrich Bauer Verlag*, <https://curia.europa.eu/juris/liste.jsf?language=en&jur=C.T.F&num=368/95&td=ALL>; See also CJEU, Case C-288/89, *Gouda v. Commissariaat voor de Media*, <http://curia.europa.eu/juris/showPdf.jsf?docid=96790&doclang=EN>; CJEU, Case C-23/93, *TV10 SA v Commissariaat voor de Media*, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:61993CJ0023_SUM&from=ET; CJEU, Case C-245/01, *RTL v. the Niedersächsische Landesmedienanstalt für privaten Rundfunk*, <https://curia.europa.eu/juris/liste.jsf?language=en&num=C-245/01>.

In the case of *United Pan-Europe Communications Belgium SA and Others v Belgian State*,²⁷⁵ for example, the CJEU again confirmed that “a cultural policy may constitute an overriding requirement relating to the general interest which justifies a restriction on the freedom to provide services”. The Court held on this occasion that “the maintenance of the pluralism which that policy seeks to safeguard is connected with freedom of expression, as protected by Article 10 of the European Convention on Human Rights and Fundamental Freedoms.”

5.2.2. Public service media as “services of general economic interest” and state aid

Broadcasting is qualified as a service protected by Article 56 TFEU but which can be restricted according to Article 62 in conjunction with Article 52 TFEU on justified grounds of public policy, public security or public health or with compelling reasons of public interest. In their case law and decision-making practice, the EU Courts and the Commission emphasise the specificity of PSM, in particular in view of the need to ensure editorial independence. Therefore, although public funding – through licence fees or direct subsidies – would generally be considered as state aid under Article 107(1) TFEU, PSM benefit from the derogation provided for services of general economic interest (SGEI) on the basis of Article 106(2) TFEU, insofar as the absence of aid would prevent them from fulfilling their public service mission. However, the courts specify that the public funding must remain proportionate to the cost of performing such a mission.²⁷⁶

For example, the Court of First Instance (CFI) acknowledged, in its judgement in the case of *TV2 Danmark*,²⁷⁷ the member states’ wide margin of appreciation in the definition of SGEI and their freedom to decide how to finance these services:

[...] the power of the Member States to define broadcasting SGEIs in broad and qualitative terms, so as to cover the broadcasting of a wide range of programmes, cannot be disputed; nor can the Member States’ freedom to use advertising revenue to finance such SGEIs.

And:

in accordance with its remit as defined by the Member States in order to address society as a whole; in this context it is legitimate for public service broadcasting to seek to reach wide audiences.

²⁷⁵ CJEU, Case C-250/06, *United Pan-Europe Communications Belgium SA and Others v Belgian State*, <https://curia.europa.eu/juris/liste.jsf?language=en&num=C-250/06>; See also CJEU, Case C-336/07, *Kabel Deutschland Vertrieb und Service GmbH & Co. KG v Niedersächsische Landesmedienanstalt für privaten Rundfunk*, <https://curia.europa.eu/juris/liste.jsf?language=en&num=C-336/07>.

²⁷⁶ See EMR, “Public Service Media according to Constitutional Jurisprudence. The Human Rights and Constitutional Law Dimension of the Role, Remit and Independence”, op. cit.

²⁷⁷ CFI, Joined Cases T-309/04, T-317/04, T-329/04 and T-336/04, *TV 2/Danmark A/S and Others v Commission of the European Communities*, CFI, § 113. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62004TJ0309>.



The CFI reached the same conclusion in the case of *SIC - Sociedade Independente de Comunicação, SA v Commission of the European Communities*, regarding measures by the Portuguese Republic for the public service broadcaster RTP in order to finance its public service remit, by referring to the Amsterdam Protocol²⁷⁸ and to the Resolution of the Council and of the Member States of 25 January 1999 concerning public service broadcasting.²⁷⁹ The CFI further confirmed that state aid is compatible with the EC Treaty (now TFEU) provided that the qualitative requirements set out in the public service remit are complied with. The Court emphasised that only the member state has the power to assess the public service broadcaster's fulfilment of the remit, and confined itself to finding in the case in question that there was a mechanism for monitoring by an independent body.²⁸⁰

5.3. Selected examples in national case law

Freedom of broadcasting is protected by the constitution in most countries, usually as a corollary of freedom of expression. The ordinary national laws all define the remit of PSM, their structure and organisation, as well as their funding and supervision. The courts have traditionally attached to PSM an essential role for pluralism and democracy through their offering of a balanced diversity and representing opinions. Furthermore, the contribution of PSM to cultural and linguistic diversity is often emphasised by (constitutional) courts.²⁸¹

²⁷⁸ See also Chapter 2, Section 2.2. of this publication.

²⁷⁹ "Community law in no way precludes a Member State from defining broadcasting SGEIs widely to include the broadcasting of full-spectrum programming. That possibility cannot be called into question by the fact that the public service broadcaster carries on, in addition, commercial activities, in particular the sale of advertising space." : CFI, Case T-442/03, *SIC - Sociedade Independente de Comunicação, SA v Commission of the European Communities*, <https://eur-lex.europa.eu/legal-content/HR/TXT/?uri=CELEX:62003TJ0442>.

²⁸⁰ See also in relation to the funding of public service broadcasting, General Court of the EU, Joined Cases T-568/08 and T-573/08, *Métropole télévision (M6) and Télévision française 1 SA (TF1) v Commission*, <https://eur-lex.europa.eu/legal-content/fr/TXT/?uri=CELEX:62008TJ0568>; General Court of the EU, T – 533/10, *DTS Distribuidora de Televisión Digital v Commission*, <https://curia.europa.eu/juris/liste.jsf?num=T-533/10&language=FN> (see also, O Fathaigh, R., "CJEU: *DTS v. European Commission*", IRIS 2017-1:1/2, European Audiovisual Observatory, Strasbourg, <http://merlin.obs.coe.int/article/7742>); CJEU, C-492/17 - *Rittinger and Others*, <https://curia.europa.eu/juris/liste.jsf?language=en&td=ALL&num=C-492/17> (see also Henrich, J., "CJEU: German broadcasting contribution confirmed", IRIS 2019-2:1/2, European Audiovisual Observatory, Strasbourg, <http://merlin.obs.coe.int/article/8468>); General Court, Case T-275/11, *Télévision française 1 (TF1) v European Commission*, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62011TJ0275> (see also, Blocman, A., "General Court: Funding for France Television validated", IRIS 2013-10:1/5, European Audiovisual Observatory, Strasbourg, <http://merlin.obs.coe.int/article/6676>).

²⁸¹ EMR, "Public Service Media according to Constitutional Jurisprudence. The Human Rights and Constitutional Law Dimension of the Role, Remit and Independence", op. cit.

5.3.1. The independence of public service media

National courts generally recognise the principle of independence as a central subject matter of the protection afforded by this fundamental freedom. Based on the principle of independence, a number of courts explicitly confirm the necessity to ensure absence of governmental or one-sided private influence, and guarantee freedom of programming.

For example, in a decision of July 1989, the French Constitutional Court confirmed that the power granted to the audiovisual regulator (CSA) to nominate the presidents of the national programme corporations was instituted in order to guarantee the independence of these companies, and that this mechanism contributes to implementation of the principle of freedom of communication/expression included in Article 11 of the Declaration of Rights of 1789.²⁸² This idea was further reaffirmed by the Constitutional Court in 2000, which added that “the guarantee resulting from the mode of nomination established would not be effective if the entirety of the record of the auditions and debates of the CSA were made public”.²⁸³

In another example, by decision of 15 September 2009, the Constitutional Court of Ukraine found unconstitutional the procedure for appointment and dismissal of the heads of the National Television Company of Ukraine (NTCU) and the National Radio Company of Ukraine (NRCU), which stipulated that the appointment and dismissal of national broadcasters’ heads was exercised by the President of Ukraine from among the candidates nominated by the Parliament of Ukraine.²⁸⁴

5.3.2. The principle of adequate funding for public service media

Independence and freedom of programming of PSM is also closely linked to the requirement that public service broadcasters can rely on an adequate funding system. This aspect is also highlighted by national (constitutional) courts. For example, in a decision of 15 December 2020, the Czech Supreme Court ruled that the broadcasting fee for Czech Television (ČT) is not a private law relationship, but a mandatory payment by law. This legal relationship cannot be established or terminated by its participants by agreement, and a natural or legal person is obliged to pay a fee regardless of whether they receive a public service of Czech Television in the field of television broadcasting.²⁸⁵

²⁸² Decision of the Constitutional Court (Conseil constitutionnel) n° 89-259 DC of 26 July 1989, Recital No. 6, <https://www.conseil-constitutionnel.fr/decision/1989/89259DC.htm>.

²⁸³ Decision of the Constitutional Court n° 2000-433 DC of 27 July 2000, <https://www.conseil-constitutionnel.fr/decision/2000/2000433DC.htm>.

²⁸⁴ “Constitutional Court strikes down appointment procedure of national broadcasters’ head”, IRIS 2009-10:1/28, European Audiovisual Observatory, Strasbourg, <http://merlin.obs.coe.int/article/5091>.

²⁸⁵ Jan Fučík, J., Czech Republic, “Decision of the Supreme Court on television and radio fees”, IRIS 2021-6/1:36, European Audiovisual Observatory, Strasbourg, <http://merlin.obs.coe.int/article/9189>.

By the same token, in Lithuania, the Constitutional Court confirmed, in a ruling of 3 November 2021, that funding of the national public service broadcaster through a fixed percentage from the state budget was in line with the Constitution. In its judgment, the Court recalled its previous constitutional doctrine, where the Court stated that the national radio and television service, LRT, was entrusted with the national PSB mission to serve the public interest. This mission presupposes the independence of LRT, as the national public service broadcaster, from state institutions, officials and other persons. The Court recalled that editorial and institutional independence are inextricably linked and concluded that PSB must be financed properly to ensure its independence, so it may carry out its constitutional mission.²⁸⁶

5.4. Conclusion

In conclusion, it can be said that at the level of the ECtHR, the EU courts and national courts, the protection of the independence of PSM is linked to the specific role entrusted to PSM organisations to ensure and preserve pluralism and diversity of opinion and cultural expression. The fulfilment of this mission is essential and a fundamental factor of freedom of expression, which is itself a constituent element of democracy. To enable PSM organisations to fulfil their mission, states must ensure adequate funding, which – according to the ECtHR – is a legitimate aim that may justify interference with the subjective rights protected by the ECtHR. Examples from national and European case law also show that the privileged status of PSM coincides with a mission it must fulfil, given its strong impact on a pluralistic and democratic society and the importance of the independence of PSM.

²⁸⁶ Barauskiene, I., Lithuania, “Constitutional Court confirms that funding the national broadcaster through a fixed percentage from the state budget is in line with the Constitution”, IRIS 2021-1:1/4, European Audiovisual Observatory, Strasbourg, <http://merlin.obs.coe.int/article/9032>.

6. State of play

Independent public service media (PSM) are the cornerstone of a healthy democratic system, providing citizens with a reliable and trustworthy source of information and a public forum where different opinions can be expressed. However, only if PSM are truly independent from the government and from other political and economic powers can they fulfil their function as a watchdog, monitoring the conduct of those in power. Guaranteeing the institutional and editorial independence of PSM organisations implies an appropriate system of both external governance rules – usually in the law on PSM – and internal rules set by the PSM governing bodies, both executive and supervisory. Governance also covers the way the legal framework is implemented in practice and the impact that relations with external stakeholders, such as public authorities, economic players or civil society may have.²⁸⁷

6.1. Key challenges to governance and independence of public service media

PSM organisations face a number of critical political, economic and technological challenges: How should they defend their independence against political pressure in a context of eroding democratic foundations? How can they remain relevant and financially viable in a market dominated by digital platforms? What does editorial independence mean in the face of algorithms and recommendation systems? While all these issues go beyond the questions of governance of PSM organisations, they pose challenges to the independence of PSM and raise the need to reflect on the implementation of the principles of good governance of these organisations in the light of these new circumstances. This chapter examines some of the aspects related to these key challenges.

6.1.1. Political challenges: the threats to democracy

On the political level, democratic principles such as the separation of powers, constitutional rights, and democracy itself are under pressure in many EU member states

²⁸⁷ Wagner, M. and Berg, A-C., *Legal Focus, Governance Principles for Public Service Media*, EBU, 2015, https://www.ebu.ch/files/live/sites/ebu/files/Publications/EBU-Legal-Focus-Gov-Prin_EN.pdf.

and candidate countries. This progressive erosion of democratic foundations has an impact on PSM governance and raises risks and challenges with regard to their institutional and editorial independence.

6.1.1.1. Threats to institutional independence

As seen in the previous chapters of this publication, measuring the institutional independence of PSM from the state includes considering a series of factors related to their governance, such as: the existence of open and transparent appointment procedures based on objective criteria; the existence and pluralistic composition of supervisory bodies, distinct from political powers; accountability to the public; the appointment of top managers based on merit and the assessment of their performance based on clear objectives; the protection of the integrity of decision-making processes via conflict-of-interest rules; the existence of internal codes of conduct ensuring high professional standards, etc.²⁸⁸

The Media Pluralism Monitor includes an indicator on independence of PSM governance and funding.²⁸⁹ This indicator is designed to measure the risks which stem from appointment procedures for top management positions in PSM, and the risks arising from PSM funding mechanisms and procedures. As far as funding is concerned, the indicator examines the level of budgetary independence of PSM and if there are regulatory safeguards for PSM funding that allow them to carry out their functions fully and independently. According to the latest report of the Media Pluralism Monitor 2021 (MPM2021),²⁹⁰ this indicator was at medium or high risk in 21 countries in 2020. In general, risks are more related to appointment procedures than to PSM financing. In particular, appointment procedures for the management of PSM lack proper safeguards and largely remain vulnerable to political influence. Furthermore, in the year 2020, some governments attempted to actively interfere in PSM management and funding.²⁹¹

In addition, the indicator related to the “availability and effective implementation of regulatory safeguards against conflicts of interest and control (both direct and indirect) over different types of media by governments and politicians”²⁹² lay at high risk in 11

²⁸⁸ Wagner, M., “EBU, PSM Governance : Protecting the institutional and editorial independence of PSM”, 2016, https://www.ebu.ch/files/live/sites/ebu/files/Publications/Reports/PSM_Gov_12th_Nov_2016.pdf.

²⁸⁹ This indicator is a sub-indicator to measure the level of political independence of the media in general (covering audiovisual media, radio, newspaper and digital native media).

²⁹⁰ Centre for Media Pluralism and Media Freedom, Media Pluralism Monitor 2021, <https://cmpf.eui.eu/mpm2021-executive-summary/>.

²⁹¹ Ibid, p. 154.

²⁹² The MPM2021 includes an indicator on the protection of freedom of expression aimed at assessing the existence and effective implementation of the regulatory safeguards for freedom of expression in a given country. A country may have a set of laws protecting freedom of expression, but their implementation and enforcement may be lacking. Constitutional guarantees and international treaty obligations may be eroded by exemptions and derogations, or by other laws that may limit freedom of expression in an arbitrary way. Under this indicator, the MPM considers: (i) general rules on conflict of interest; (ii) political control over audiovisual media, radio, newspaper and digital native media; (iii) political control over news agencies.

countries, including four of the EU candidate countries.²⁹³ This may concern countries where there is no legislation preventing conflict of interest, or where a law exists but is inadequate for a media-specific field, or where it is not effectively implemented.

With respect to the digital environment, the MPM indicator of PSM governance and funding includes a variable that examines whether a law provides for funding that adequately covers the online public service mission of PSM, without distorting competition in relation to the private media sector. Indeed, as highlighted by the MPM2021, PSM need some sort of mechanism to launch timely and innovative new media services outside the scope of their formal remit in order to remain relevant in the online context and contribute to the democratic sphere. According to the MPM2021, in 16 countries, including four of the candidate countries, there is no law that provides for funding that adequately covers the online public service mission of the PSM, or it does not consider the potential implications for commercial media actors.²⁹⁴

6.1.1.2. Threats to editorial independence

According to the Council of Europe Recommendation on public service media governance,²⁹⁵ independence should be reflected in the structures, the management and the operational culture of PSM. It also stresses the importance of the editorial “structures necessary to ensure independence of editorial action” (Article 23). In this regard, some instruments and tools have proven their value in strengthening the editorial or institutional independence of PSM, such as editorial standards or guidelines and ethics codes. Published editorial guidelines are in fact considered important in the guiding and protection of journalists and media workers, and in ensuring that they are given full protection and support by the management and the supervisory body against attacks from inside and outside the organisation.²⁹⁶

However, an increasing number of threats to the physical and online safety of journalists in recent years have undermined these very structures and the editorial independence of PSM. Several alerts have been posted on the Platform of the Council of Europe to Promote the Protection of Journalism and the Safety of Journalists,²⁹⁷ concerning journalists intimidated, assaulted and/or arrested in the course of their duties, and a number of killings were reported.²⁹⁸ Attempts to interfere with the independence of PSM have also been described, as well as intimidation by public figures. Furthermore,

²⁹³ Cyprus, Greece, Hungary, Malta, Poland, Romania, Slovenia, Albania, Montenegro, Serbia, Turkey, MPM2021, op. cit., p. 70.

²⁹⁴ Austria, Belgium, Bulgaria, Czech Republic, Denmark, Estonia, Hungary, Luxembourg, Malta, Romania, Slovenia, Spain, Albania, Montenegro, North Macedonia, Turkey, MPM2021, op. cit., p. 125.

²⁹⁵ Recommendation CM/Rec(2012)1 of the Committee of Ministers to member States on public service media governance, op.cit.

²⁹⁶ See Wagner, M. and Berg, A-C., *Legal Focus, Governance Principles for Public Service Media*, op. cit., &2.5.1.

²⁹⁷ Platform to promote the protection of journalism and safety of journalists, <https://fom.coe.int/accueil>.

²⁹⁸ EC Recommendation on the Safety of Journalists, <https://ec.europa.eu/newsroom/dae/redirection/document/79308>. For more information, see also UNESCO, “Intensified Attacks, New Defences: Developments in the Fight to Protect Journalists and End Impunity”, <https://unesdoc.unesco.org/ark:/48223/pf0000371343>.

attacks on journalists that arise from political actors have become common in many EU and candidate countries.²⁹⁹ Threats to journalists have come from the online environment too, including: online harassment and threats, especially against female journalists, hateful comments or even illegal hate speech, and legal provisions allowing national security to collect Internet and private data for the purpose of investigation and surveillance have been reported in some countries.

Further to the 2016 Council of Europe's Recommendation on the protection of journalism and safety of journalists and other media actors,³⁰⁰ the European Commission adopted, in September 2021, a Recommendation on the Protection, Safety and Empowerment of Journalists³⁰¹ with a view to reversing this trend. The Recommendation lays down actions for member states to improve the safety of journalists – offline and online. At worldwide level, PSM organisations signed in September 2021 under the auspices of the Council of Europe and the European Commission the Brussels Declaration, a common statement calling for journalist safety and media freedom.³⁰² On the policy and regulatory front, the proposed Digital Single Act (DSA) package, in imposing more obligations on large platforms (such as fighting illegal content online and reporting criminal offenses) should also help address this phenomenon.³⁰³

In addition, it is worth mentioning that governments' responses to the COVID-19 pandemic (cuts in budget, economic conditions, suspensions of contracts, etc.) have also had an impact on the journalistic profession, standards and protection, as indicated in the MPM2021. Some governments have adopted legal and regulatory measures to prevent the spreading of false or distorted pandemic-related information in the traditional and/or digital media, which, however, may be disproportionate and have long-term implications for the editorial independence of PSM.³⁰⁴

²⁹⁹ The attacks from political actors include anti-press rhetoric but also lawsuits, in particular so-called strategic lawsuits against public participation (SLAPPs) which are set out with little or no chance for success and which usually ask for a disproportionate amount of damages. For further details, see MPM2021, p. 3, op. cit.

³⁰⁰ See further details in Chapter 2 of this publication.

³⁰¹ EC Recommendation on the Safety of Journalists, op. cit. and https://ec.europa.eu/commission/presscorner/detail/en/IP_21_4632.

³⁰² <https://www.coe.int/en/web/freedom-expression/-/public-broadcasting-a-choice-for-democracy>.

³⁰³ Proposal for a Regulation of the European Parliament and of the Council on a Single Market For Digital Services (Digital Services Act) and amending Directive 2000/31/EC, <https://digital-strategy.ec.europa.eu/en/library/proposal-regulation-european-parliament-and-council-single-market-digital-services-digital-services>.

³⁰⁴ MPM2021, op. cit., p. 13.

6.1.2. Economic and technological challenges

6.1.2.1. Threats from market pressure

The independence of PSM governance is also measured against economic and market factors, taking into account the context in which market players operate, including the legal framework and the situation on the ground with regard to the interplay between content providers (including PSM and commercial media), and digital intermediaries, in other words, the degree of plurality on the market.³⁰⁵ Digital intermediaries (social media, search engines, algorithm aggregators) are having an increasing impact on the audiovisual market, competing for consumers' attention and advertising resources. As far as PSM are concerned, the decline in advertising revenues makes them more dependent on political and funding decisions and can increase their vulnerability to outside political pressure.

The COVID-19 pandemic has accelerated the declining trend in news media revenues and the shifting of resources towards digital intermediaries.³⁰⁶ Along with increased demand for, and a growing supply of, information, and the tremendous growth of digitisation, the health crisis and subsequent economic crisis, have, according to the MPM2021, reduced market resources for news media and challenged the very sustainability of the news media industry, adding to a pre-existing declining trend in the traditional news media economy in the digital environment.

6.1.2.2. Threats from social media and algorithms

The emergence of global online platforms hasn't just transformed the media market from a competitive perspective, it has also generalised new ways of consuming information and content and introduced new business models, based on ranking the supply of information and content according to algorithms and "community standards".³⁰⁷ Today, PSM organisations are increasingly involved in algorithms. On the one hand, the distribution of and exposure to media content increasingly relies on social network intermediaries that use recommendation algorithms, and PSM content is subject to the same recommendation system dynamics as any other type of content that can be searched for online. On the other hand, a growing number of PSM organisations are developing their own algorithmic recommendation system in order to improve the accessibility and exposure of their content, as well as interactive services and personalisation.

³⁰⁵ According to the MPM2021, threats to market plurality may derive from a lack of transparency and a high concentration of ownership, economic conditions of the news media industry, and pressure, in the form of commercial interests, on journalistic activity.

³⁰⁶ MPM2021, op. cit.

³⁰⁷ Kirk Sørensen, J. & Hutchinson, J., (2018), *Algorithms and Public Service*, <https://www.diva-portal.org/smash/get/diva2:1535645/FULLTEXT01.pdf>.

While this is logical given the importance of algorithms in the broader media environment, in doing so, PSM face several challenges. In addition to the problem of the lack of transparency in algorithmic decision-making and the inherent complexity of the system which may threaten the legitimacy of PSM, algorithms raise questions about one of the core values of PSM, that is, editorial independence. In particular, it may be asked whether the implementation of recommendation systems that automate the content selection option presented to each user based on presumed or actual interest as indicated by previous online activity on a platform, implies a loss of control, independence or integrity for these organisations, particularly in relation to commercial software providers with proprietary interests, third-party providers that are not mandated to provide public service per se, and social networks outside their control. Dependency is not necessarily a problem in itself, but PSM organisations will need to ensure that their algorithmic systems demonstrate public value, are properly distanced from commercial and personal or political interests and maintain editorial independence, and that this does not impact negatively on their independent governance.³⁰⁸

6.2. Concluding remarks

As mentioned before in this publication, *de iure* and *de facto* independence do not necessarily go hand in hand, but why?

As explained by the EBU in its report on Governance Principles for Public Service Media,³⁰⁹ “PSM independence may be influenced by a variety of other factors, such as political and social structures, political and corporate culture, and the interaction among stakeholders at a particular time [...] Even an optimum legal framework and organisational structure may fail to produce the desired outcome if the corporate climate, the political culture or the behaviour of the main actors does not support the independence of PSM.”

This publication does not provide a description of how independent those PSM are *de facto*. Performing this type of analysis would require that we evaluate the activities of each PSM, which would go beyond what the statute of the Observatory allows. For those readers interested in such an evaluation, it can be found, for example, in the European Commission’s Rule of Law reports³¹⁰ and the Media Pluralism Monitor of the Centre for Media Pluralism and Media Freedom.³¹¹ The OSCE Representative on Freedom of the Media³¹² and the Council of Europe’s Commissioner on Human Rights³¹³ are also important figures in analysing and (when required) adopting critical statements with regard to media legislation or the activities of public service media around Europe.

³⁰⁸ Ibid.

³⁰⁹ European Broadcasting Union, *op.cit.*, p. 8-9.

³¹⁰ https://ec.europa.eu/info/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/rule-law-mechanism/2021-rule-law-report_en.

³¹¹ <https://cmpf.eui.eu/media-pluralism-monitor/>.

³¹² <https://www.osce.org/representative-on-freedom-of-media>.

³¹³ <https://www.coe.int/en/web/commissioner/home>.

One important issue to consider regarding the regulation of public service media lies in the fact that, in most cases, it is done at national level, despite the standards set notably by the Council of Europe mentioned in Chapter 2 of this publication. That is why the proposed Media Freedom Act looks like quite a revolutionary move. In the words of Commissioner Thierry Breton, The Media Freedom Act could “strengthen the governance of public media, around a common framework to better prevent the risks of politicisation and to better ensure diversity and pluralism.” At the time of writing these lines (February 2022), the contours of such legislative proposal have not yet been defined, but the European Commission is considering three scenarios:³¹⁴

- To propose no changes to the current legislative framework and to continue to monitor developments in the EU27, including through the annual Rule of law reports;
- To publish a Recommendation to the EU member states;
- To adopt a European legislative instrument.

One of the questions that the Media Freedom Act initiative raises is its legal basis.

Regarding public service media, the questionnaire attached to the public consultation³¹⁵ on the Media Freedom Act focuses on the risks of political interference, which could put in question the rationale for their special treatment under the internal market and state aid rules. As recognised in the Amsterdam Protocol on the system of public broadcasting in the Member States,³¹⁶ public service media, both at national and sub-national level, are directly related to the democratic, social and cultural needs of society and the need to preserve media pluralism. If public funding is not used for the fulfilment of a public service remit benefitting all viewers but to serve partisan views, this could lead, in the Commission’s view, to a distortion of competition among market players and ultimately affect trading conditions in the EU internal market.

Indeed, state aid “diverted” to partisan purposes would go against the letter and the spirit of the Amsterdam protocol. However, the question remains as to how to regulate at EU level (if ever) while respecting the principle of subsidiarity in cultural matters, given the level of subjectivity attached to all matters related to freedom of expression and cultural diversity.

To be continued.

³¹⁴ <https://www.europarl.europa.eu/legislative-train/theme-a-new-push-for-european-democracy/file-european-media-freedom-act>.

³¹⁵ On 10 January 2022, the Commission published an open public consultation (ongoing until 21 March 2022) on the Media Freedom Act, following a call for evidence published on 21 December 2021 outlining the main aims of the initiative, possible options and impacts.

See https://ec.europa.eu/commission/presscorner/detail/en/ip_22_85.

³¹⁶ See Chapter 2 of this publication.

7. Annex

For an overview of the main governance safeguards for public service media in Europe, see the tables available at <https://rm.coe.int/psm-tables/1680a59a2d>.

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