



OPEN SOCIETY INSTITUTE  
EU MONITORING AND ADVOCACY PROGRAM

NETWORK MEDIA PROGRAM

ALBANIA  
BOSNIA AND  
HERZEGOVINA  
BULGARIA  
CROATIA  
CZECH REPUBLIC  
ESTONIA  
FRANCE  
GERMANY  
HUNGARY  
ITALY  
LATVIA  
LITHUANIA  
POLAND  
REPUBLIC OF  
MACEDONIA  
ROMANIA  
SERBIA  
SLOVAKIA  
SLOVENIA  
TURKEY  
UNITED KINGDOM

## Television across Europe:

regulation, policy  
and independence

*Summary*

Monitoring Reports

2005

*Published by*

OPEN SOCIETY INSTITUTE

Október 6. u. 12.  
H-1051 Budapest  
Hungary

400 West 59th Street  
New York, NY 10019  
USA

© OSI/EU Monitoring and Advocacy Program, 2005  
All rights reserved.



TM and Copyright © 2005 Open Society Institute

EU MONITORING AND ADVOCACY PROGRAM

Október 6. u. 12.  
H-1051 Budapest  
Hungary

*Website*  
<[www.eumap.org](http://www.eumap.org)>

ISBN: 1-891385-35-6

Library of Congress Cataloging-in-Publication Data.  
A CIP catalog record for this book is available upon request.

Copies of the book can be ordered from the EU Monitoring and Advocacy Program  
<[eumap@osi.hu](mailto:eumap@osi.hu)>

*Printed in Gyoma, Hungary, 2005*  
*Design & Layout by Q.E.D. Publishing*

## Table of Contents

Acknowledgements .....	5
Preface .....	9
Foreword .....	11
Overview .....	13
Albania .....	185
Bosnia and Herzegovina .....	193
Bulgaria .....	201
Croatia .....	209
Czech Republic .....	217
Estonia .....	223
France .....	229
Germany .....	237
Hungary .....	247
Italy .....	255
Latvia .....	265
Lithuania .....	271
Poland .....	275
Republic of Macedonia .....	281
Romania .....	289
Serbia .....	297
Slovakia .....	307
Slovenia .....	315
Turkey .....	325
United Kingdom .....	331



## Acknowledgements

The EU Monitoring and Advocacy Program of the Open Society Institute would like to acknowledge the primary role of the following individuals in researching and drafting these monitoring reports. Final responsibility for the content of the reports rests with the Program.

<b>Overview</b>	Marius Dragomir	<i>(main writer)</i> <i>Independent Consultant</i>
	Dušan Reljić	<i>Senior Researcher, German Institute for International and Security Affairs, Berlin</i> <i>Editorial Consultant</i>
	Mark Thompson	<i>Independent Consultant</i>
	Andreas Grünwald	<i>(for the legal section)</i> <i>Media Law Expert, Attorney at Law at Hogan &amp; Hartson, L.L.P., Berlin office</i>
<b>Albania</b>	Ilda Londo	<i>Research Coordinator,</i> <i>Albanian Media Institute</i>
	Mirela Shuteriqi	<i>Lawyer</i>
<b>Bosnia and Herzegovina</b>	Tarik Jusić	<i>Program Director,</i> <i>Mediacentar Sarajevo</i>
<b>Bulgaria</b>	Assya Kavrakova	<i>Program Director,</i> <i>European Integration and Regional Stability Program, Civil Society Program, Open Society Institute - Sofia</i>
<b>Croatia</b>	Zrinjka Peruško	<i>Senior Research Fellow, Department for Culture and Communication, Institute for International Relations, Zagreb</i>
<b>Czech Republic</b>	Eva Rybkova	<i>Journalist,</i> <i>Project Manager, TOL</i>
<b>Estonia</b>	Urmas Loit	<i>Managing Director,</i> <i>Association of Estonian Broadcasters</i>
<b>France</b>	Thierry Vedel	<i>CNRS Senior Research Fellow,</i> <i>Center for Political Research at Sciences-Po, Paris</i>
<b>Germany</b>	Runar Woldt	<i>Media Expert, Frankfurt, Germany</i>
<b>Hungary</b>	Péter Bajomi-Lázár	<i>Researcher,</i> <i>Hungarian Press Freedom Center</i>

<b>Italy</b>	Gianpietro Mazzoleni	<i>Professor, Faculty of Political Science University of Milano</i>
	Giulio Enea Vigevani	<i>Professor, Faculty of Law University of Milano-Bicocca.</i>
<b>Latvia</b>	Sergei Kruk	<i>Lecturer, University of Latvia</i>
<b>Lithuania</b>	Marius Lukosiunas	<i>Associate Professor, Vilnius University Institute of Journalism</i>
<b>Poland</b>	Andrzej Krajewski	<i>Independent Consultant</i>
<b>Republic of Macedonia</b>	Vesna Šopar	<i>Head of Centre for Communications, Media and Culture, Institute for Sociological, Political and Juridical Research, Ss. Cyril and Methodius University, Skopje</i>
	Veton Latifi	<i>Lecturer, SEE University Freelance political analyst</i>
<b>Romania</b>	Manuela Preoteasa	<i>Managing Director, EurActiv Romania</i>
<b>Serbia</b>	Snježana Milivojević	<i>Associate Professor , Faculty of Political Science University of Beograd</i>
<b>Slovakia</b>	Rasto Kuzel	<i>MEMO 98</i>
	Ivan Godarsky	<i>MEMO 98</i>
<b>Slovenia</b>	Marko Milosavljević	<i>Faculty of Social Sciences, University of Ljubljana</i>
<b>Turkey</b>	Bulent Capli	<i>Professor, Faculty of Communication, Ankara University</i>
<b>United Kingdom</b>	David Ward	<i>Centre for Media Policy and Development, London</i>

We would like to also thank the following organisations for their invaluable contribution to the reports through their partnership throughout the process of developing the reports:

Albanian Media Institute (Albania); Mediacentar Sarajevo (Bosnia and Herzegovina); Open Society Institute – Sofia (Bulgaria); Institute for International Relations (Croatia); CEES Center for Media Studies at Charles University (Czech Republic); Meediaseire, University of Tartu (Estonia); CEVIPOF, the Center for Political Research at the National Foundation for Political Sciences (France); Center for Independent Journalism (Hungary); Providus (Latvia); Lithuanian Journalism Centre (Lithuania); Macedonian Institute for Media (Macedonia); Center for Independent

Journalism (Romania), Concept Foundation (Romania); Belgrade Media Center (Serbia); Memo 98 (Slovakia); Mirovni institut/Peace institute (Slovenia); Istanbul Policy Center at Sabanci University, Open Society Institute Assistance Foundation – Turkey (Turkey).

We would also like to particularly acknowledge the following people for their contribution to the reports: Prof. Karol Jakubowicz, Dr. Alina Mungiu-Pippidi, Guillaume Chenevière, Peter Noorlander.

In addition, we would also like to acknowledge the following people and institutions for their contribution to the reports: IP International Marketing Committee, for permission to publish their data; Mirjana Milošević, the Communications Regulatory Agency (Bosnia and Herzegovina); Goethe-Institute Prague (Czech Republic); TNS Latvia (Latvia).

## EUMAP

Penelope Farrar	<i>Program Director</i>
Miriam Anati	<i>Deputy Program Director</i>
Katy Negrin	<i>Project Manager</i>
Alphia Abdikeeva	<i>Website Manager</i>
Joost Van Beek	<i>Website Manager</i>
Andrea Gurubi Watterson	<i>Program Coordinator</i>
Csilla Tóth	<i>Program Assistant</i>
Marius Dragomir	<i>Independent Consultant</i>
Dušan Reljić	<i>Senior Researcher, German Institute for International and Security Affairs, Berlin Editorial Consultant</i>
Mark Thompson	<i>Independent Consultant</i>
Quentin Reed	<i>Independent Consultant</i>
Danail Danov	<i>Independent Consultant</i>

**NETWORK MEDIA PROGRAM – OPEN SOCIETY FOUNDATION**

Gordana Jankovic	<i>Program Director</i>
Stewart Chisholm	<i>Senior Program Manager</i>
Morris Lipson	<i>Legal Advisor</i>
Miguel Castro	<i>Program Coordinator</i>
Gernot Eberle	<i>Former Program Manager-Media Law</i>



## Preface

The **EU Monitoring and Advocacy Program (EUMAP)** of the Open Society Institute monitors human rights and rule of law issues throughout Europe, jointly with local NGOs and civil society organisations. EUMAP reports emphasise the importance of civil society monitoring and encourage a direct dialogue between governmental and nongovernmental actors on issues related to human rights and the rule of law. In addition to its reports on “Television across Europe: regulation, policy and independence”, EUMAP has released monitoring reports focusing on Minority Protection, Judicial Independence and Capacity, Corruption and Anti-corruption Policy, Rights of People with Intellectual Disabilities, and Equal Opportunities for Women and Men. EUMAP is currently preparing reports on Equal Access to Quality Education for Roma; publication is expected in 2006.

EUMAP reports are elaborated by independent experts from the countries being monitored. They are intended to highlight the significance of human rights issues and the key role of civil society in promoting governmental compliance with human rights and rule of law standards throughout an expanding Europe. All EUMAP reports include detailed recommendations targeted at the national and international levels. Directed at Governments, international organisations and other stakeholders, the recommendations aim to ensure that the report findings impact directly on policy in the areas being monitored.

The present reports have been prepared in collaboration with the **Network Media Program (NMP)** of the Open Society Institute. The Media Program promotes independent, professional and viable media, and quality journalism. More concretely, it supports initiatives aimed at helping media-related legislation conform to internationally – recognised democratic standards, increasing professionalism of journalists and media managers, strengthening associations of media professionals, and establishing mechanisms of media self-regulation. The Media Program also supports media outlets that stand for the values of open society, as well as efforts aimed at monitoring and countering infringements on press freedom, and promoting changes in media policy that ensure pluralism in media ownership and diversity of opinion in media. The program works globally, primarily in countries undergoing a process of democratisation and building functioning media markets.

The decision to monitor television across Europe was inspired by the observation that television – a basic component and gauge of democracy – is undergoing rapid changes throughout Europe. Public service broadcasters face unprecedented challenges across the continent. The ever-increasing commercial competition and the emergence of new technologies are major challenges, while the transformation of former State-controlled broadcasters has proved controversial in many transition countries. Private television broadcasting, on the other hand, is also put into question with respect to its programming and to broadcasters’ ownership patterns.

The monitoring of “Television across Europe: regulation, policy and independence”, was based on a detailed methodology – available at [www.eumap.org](http://www.eumap.org) – intended to ensure a comparative approach across the countries monitored. The reports cover the eight Central and Eastern European (CEE) countries that joined the EU in May 2004 (the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia, and Slovenia); Bulgaria and Romania, expected to join in 2007; two candidate countries (Croatia and Turkey); four older EU member States (France, Germany, Italy, and the United Kingdom) and the potential EU candidate countries in South-Eastern Europe (Albania, Bosnia and Herzegovina and the Republic of Macedonia, plus a special report on Serbia). The preparation of reports on both member and non-member States highlights that international standards must be applied and monitored equally in all countries. It also provides an opportunity to comment on general trends in the development and the policy application, of these standards.

These volumes include individual reports on each of the countries monitored, plus an overview report resuming the main findings across all the countries. First drafts of the country reports were reviewed at national roundtable meetings. These were organised in order to invite comments on the draft from Government officials, civil society organisations and international organisations. The final reports reproduced in this volume underwent significant revision based on the comments and critique received during this process. EUMAP assumes full responsibility for their final content.

## Foreword

This report, prepared by the EU Monitoring and Advocacy Program of the Open Society Institute (OSI), in cooperation with OSI's Network Media Program, is an extremely timely and important contribution to the ongoing and increasingly urgent debate on the future of television in Europe.

The report includes a regional overview and 20 individual reports focusing on the state of television – both public service and commercial broadcasting. The countries monitored include the whole of Central and Eastern Europe, South-eastern Europe, selected Western European countries and Turkey.

It is of particular interest to me, in my role as OSCE Special Representative for Freedom of the Media, for a number of reasons.

First, because all of the 20 countries surveyed here are OSCE participating States, representing nearly half of our full OSCE membership.

Second, because the range of countries represented here is very broad, both politically and economically, with the result that the report has particular salience for the breadth of the OSCE itself.

Third, and in particular, because many of the countries here are emerging from a totalitarian past and are headed, hopefully, into a democratic future.

Good television coverage – objective and impartial news coverage, diversity of good quality content, coverage of issues for all segments, including minorities, in each country – is absolutely essential, in my view, for democracy. Sadly, excellence in television is under increasing pressure, from the combined effects of increasing commercialization, hand in hand with technological advances.

The report provides a rich picture of current and potentially troubling developments in three main areas: broadcasting regulators, public service broadcasting, and commercial broadcasting. Let me briefly comment on each.

Broadcasting regulators are the bodies that make the entire broadcasting system work. They grant and oversee broadcast licenses and counter the development of monopolies. It is vital, given these pivotal roles, that regulators be fully independent of Government, both in their operations and in their funding. Yet, we learn from the country reports that such independence is in jeopardy. Appointment processes are often flawed, resulting in Government officials' "favourites" being appointed to high roles in regulatory bodies. Regulators are insufficiently funded, and thus unable to carry out monitoring and other tasks essential for the oversight of broadcasters. In some cases, they are also not given sufficient sanctioning power to have a real impact on the national broadcasting set up.

Perhaps one of the most significant findings of the reports, however, is that there is no single “model” that fits the needs of all regulators, in so far as their independence goes. An appointment procedure that produces a highly independent regulator in one country, will not necessarily do so in a different country. A procedure that empowers civil society to make appointments can be effective in countries with active and independent civil society players, and not effective in those with weak civil society. Context, we learn, is ignored at considerable peril here.

Public service broadcasting, the country reports plainly show, is facing an identity crisis. The advent of commercial broadcasting – often by deluge – has put enormous pressures on public service broadcasters to enter into “ratings wars” with commercial broadcasters. The inevitable result has been the “dumbing down” of public service content in many countries. At the same time, with the predictable advent of niche and other new broadcasting players, of digital “boutiques” and other pay services, arguments are being made that public service content will automatically appear, and there is no need for States to be in the business of providing it. These arguments, typically made by commercial players, are taking root: the licence fee, which is the traditional means of support for public service broadcasters, is being viewed with increasing suspicion by viewers, and even by the European Commission. Such arguments, I believe, need to be rebutted both in principle and in practice, through careful analysis and advocacy: otherwise, we will continue witnessing the erosion of public service principles and services, with, as I have already suggested, a concomitant threat to the democratic process itself.

Finally, and intimately related to the previous point, is the fact that diversity of content and impartiality of news content is becoming increasingly at risk in the commercial broadcasting sector, where cross-ownership is on the rise, ownership structures are becoming increasingly opaque, and the number of broadcast media players is radically shrinking. The lack, or retreat, of pluralism in television is spreading across the regions covered in this report, and is threatening even further the information and cultural needs of citizens in these regions.

This report is vital, in my view, as a snapshot of how television is currently serving – and often, dis-serving, if truth be told – the development of democracy in a significant part of the OSCE region, and as a source of a blueprint for how the broadcast media can be reshaped to assist in that development.

The pressures are great, and so are the challenges. The report’s recommendations point a way forward, with an aim to securing a central role for broadcasters in the process of democratisation, and in the service of the right to information held by all. I heartily endorse the recommendations, and pledge my support in working towards their implementation.

*Miklós Haraszti*

OSCE Representative on Freedom of the Media

Television across Europe:  
regulation, policy and independence

Overview

## Table of Contents

I. Main Findings .....	21
1. Executive Summary and Conclusions .....	21
2. Recommendations .....	25
2.1 International level recommendations .....	25
2.1.1 Policy .....	25
2.1.2 Broadcasting regulation .....	27
2.1.3 Public and commercial broadcasting .....	27
2.1.4 Public service broadcasting .....	28
2.1.5 Commercial television broadcasting .....	28
2.2 National level recommendations .....	28
2.2.1 Policy .....	28
2.2.2 Broadcasting regulators .....	30
2.2.3 Public service broadcasting .....	31
2.2.4 Commercial television broadcasting .....	32
2.2.5 Other .....	32
II. The Current State of Television Broadcasting in Europe .....	33
1. Context .....	33
1.1 Western models .....	33
1.2 Eastern patterns .....	34
1.2.1 The post-socialist bloc .....	34
1.2.2 Turkey .....	37
1.3 Western models and money .....	38
2. An Overview of European Broadcasting .....	39
2.1 Television audiences .....	39
2.2 Television business .....	40
2.3 What's on TV? .....	42
3. Broadcasting Regulation across Europe .....	43
3.1 Tasks .....	44
3.2 Patterns of regulation .....	46
3.3 The main broadcasting regulatory body – structure ...	47

3.4	The main broadcasting regulatory body – funding ....	48
3.5	The main broadcasting regulatory body – independence .....	49
3.5.1	Independence from political pressures .....	49
3.5.2	Independence from commercial pressures .....	52
3.5.3	Lack of powers .....	53
4.	Public Service Television: In Search of Identity .....	54
4.1	Status .....	54
4.2	Governance .....	55
4.2.1	Governance structure .....	55
4.2.2	Appointments .....	56
4.3	Public service mission and obligations .....	57
4.4	Funding .....	59
4.5	Public service broadcasting at a crossroads .....	60
4.6	Independence .....	61
4.6.1	Financial independence .....	61
4.6.2	Management independence .....	63
4.6.3	Editorial independence .....	64
5.	Private Television: Concentration of Ownership .....	66
5.1	Obligations .....	66
5.2	Concentration of ownership .....	67
5.3	Cross-ownership .....	68
5.4	Transparency of ownership .....	69
5.5	The marketplace .....	70
5.6	The independence of commercial television .....	70
6.	Television Programming .....	72
6.1	Changing formats .....	72
6.2	Public service television .....	73
6.3	Commercial television .....	74
6.4	Quotas .....	75
6.4.1	European quotas .....	75
6.4.2	Minority quotas .....	76
6.5	Independent news and investigative reporting .....	76
6.6	Niches and alternatives .....	77

6.7	Local television .....	77
6.8	Community media .....	78
7.	Multi-media and New Technologies .....	78
7.1	Market review .....	79
7.2	The digital revolution .....	80
7.3	The status of digitalisation .....	82
III.	European and International Broadcasting Regulation .....	87
1.	Introduction .....	87
1.1	Overview of binding treaties and other international and European regulation .....	88
1.1.1	General competition law .....	88
1.1.2	Sector-specific media legislation .....	89
1.2	Co-regulation and self-regulation .....	91
2.	Sources of Law .....	93
2.1	The World Trade Organization (WTO) .....	93
2.2	United Nations .....	94
2.3	European Union (EU) .....	97
2.3.1	Primary level legislation .....	99
2.3.2	Secondary level legislation .....	100
2.4	Council of Europe (CoE) .....	103
2.4.1	The right to freedom of expression .....	104
2.4.2	Sector-specific media regulation .....	105
3.	Technical Regulation .....	106
3.1	Radio spectrum management .....	107
3.2	Digital television gatekeepers .....	108
4.	Content Regulation .....	112
4.1	Programming and editorial standards .....	112
4.2	Right to short reporting and listed events .....	113
4.3	Quota regulations .....	114
4.4	Advertising and sponsorship .....	114
4.5	Protection of minors .....	116
5.	Public Service Television .....	117
5.1	European policy approach .....	117
5.2	State aid .....	118



6. Media Ownership Control .....	120
6.1 Market situation .....	120
6.2 Policy debate .....	121
6.3 Existing legal framework .....	123
Annex 1. Legislation and recommendations cited in the report .....	124
Annex 2. Bibliography .....	132
Annex 3. Tables .....	133

## Index of Tables

Table 1.	Individual television viewing time (2003) .....	133
Table 2.	TV overview (2003) .....	134
Table 3.	The EU broadcasting market – breakdown by type of broadcaster (1998–2002) .....	135
Table 4.	Top 10 European television companies (2003) .....	136
Table 5.	Concentration of national audiences (2003) .....	137
Table 6.	Audience share of the leading channels (2003) .....	138
Table 7.	Overview of broadcasting regulators .....	139
Table 8.	Broadcasting regulators – scope of regulation .....	146
Table 9.	Overview of public service television broadcasters .....	152
Table 10.	Governance structure of public service television broadcasters .....	156
Table 11.	The main public service obligations imposed on public service broadcasters .....	164
Table 12.	Funding of public service television broadcasters .....	169
Table 13.	Daily audience market share of public service television (1995–2003) ..	171
Table 14.	The 10 leading European private television companies (2003) .....	172
Table 15.	Main western investors in television in Central and South Eastern Europe .....	173
Table 16.	Gross advertising expenditure (2003) .....	174
Table 17.	Main public service obligations imposed by law on commercial television .....	175
Table 18.	Legal quotas for programming for languages and minority group representation in broadcasting .....	177
Table 19.	Cable and satellite penetration (2003) .....	178
Table 20.	Communication technology and audiovisual equipment (2003) .....	179
Table 21.	Digital terrestrial television — DVB-T implementation progress overview (2004) .....	180

## List of Abbreviations

API	Application programming interfaces
CAS	Conditional access systems
CEE	Central and Eastern Europe
ECTT	Council of Europe Convention on Transfrontier Television
EPG	Electronic programme guide
EU	European Union

EU15	European Union member States prior to the 2004 enlargement
DVB-T	Digital Video Broadcasting – Terrestrial
ECJ	European Court of Justice
GATS	General Agreement on Trade in Services
OSCE	Organization for Security and Co-operation in Europe
SEE	South Eastern Europe
TWFD	EU “Television without Frontiers” Directive
UN	United Nations
UNESCO	United Nations Educational, Scientific and Cultural Organisation
WTO	World Trade Organization

# I. Main Findings

## 1. EXECUTIVE SUMMARY AND CONCLUSIONS

Close to 4,000 television channels are now available in the 25 European Union (EU) member States and in the other ten countries and territories of the continent aspiring to join the Union.<sup>1</sup> Television is the primary source of information for most people, and is widely considered to be the most influential medium in forming public opinion. Television viewing time has increased steadily over recent years. Television has maintained its dominant position in spite of the rise of new communication technologies such as the Internet.

In Western Europe, the liberalisation of most television markets during the 1980s ended the commanding advantage that public service broadcasters or State television had enjoyed, by opening the frequencies to private players. During the 1990s, State television in Europe's new democracies began a gradual and still incomplete process of transformation into public service television. At the same time, there was an immense proliferation of commercial broadcasting channels, often unlicensed and illegal, in those countries.

Adapting to the Western European model of organising the broadcasting sector was, for many countries in transition, not only a precondition for their eventual membership of the EU, but also part of the general "Europeanisation" of their political, social and economic life. Although broadcasting regulation has been brought broadly into line with Western European standards, the implementation of legislation is often deficient and the operational and financial independence of broadcasting regulators is in many cases flawed. Nonetheless, in most European countries broadcasting now functions – to a greater or lesser degree – as a "dual" system of public service and commercial television.

Across Europe, television remains heavily regulated because it uses a limited natural resource, the spectrum of frequencies, which is controlled by the State. Among the other reasons why television is heavily regulated is its perceived immediacy and power. Legislation ensuring various degrees of independence of broadcasting regulators has been adopted in most countries. However, political and commercial pressures on the national regulatory authorities that are in charge of licensing broadcasters, remain a fact of life.

Public service television enjoys special esteem at the European policy-making level, being considered a vital element of democracy and part of European culture. It is seen as serving the mission to offer an alternative to, and even to raise the standards of,

---

<sup>1</sup> EUMAP research and European Audiovisual Observatory, *Transfrontier Television in the European Union: Market Impact and Selected Legal Aspects*, Strasbourg, 2004, p. 6.

commercial television. Yet, the digitalisation and convergence of communication and information technologies, as well as the competition from commercial broadcasters, have created pressure on public service broadcasting across Europe to re-define its specific remit – to operate independently of political and economic interests – under new circumstances.

In addition, the European Commission has demanded more transparency and accountability in the finances of public service broadcasting, and intergovernmental organisations such as World Trade Organisation (WTO) have criticised the privileged position of public service broadcasting in terms of its funding. In Western and Eastern Europe alike, public service television broadcasters are frequently reprimanded for their ties to Government and to political parties, and for a growing commercialisation, with the resulting “dumbing down” of general quality, as they try to keep up with the competition from private television broadcasters.

The arrival of commercial broadcasting shook the monopoly of emergent public service broadcasting in the transition countries, and resulted in sharp drops in viewership. Moreover, in this part of Europe, public service television broadcasters often lack funding, and face political interference and pressures, as well as low professional and public awareness of the role that public service television should play. Many reporters for this research wrote that in their countries the distinction between public service broadcasters and their commercial competition, in terms of programme content and quality, has become increasingly blurred. Investigative journalism and minority programming are scarce commodities in both public and commercial television. Newscasts have often become markedly tabloid, particularly on commercial television channels.

Across Europe, television markets are highly concentrated both in terms of ownership and viewership. In most countries, the three largest television channels grab the bulk of the viewership. At the same time, the ownership of private broadcasters tends to be highly concentrated, despite political declarations against the monopolisation of media markets and legislation to limit such concentration. In Western Europe, there is higher concentration of ownership than in transition countries. However, in the past decade the transition countries have seen massive mergers and acquisitions, and the establishment of large media groups controlling much of the broadcasting market. When financially backed by politicians or part of larger enterprises operating in other sectors than the media, commercial television can, and often has, become an instrument for pursuing political or business interests. More often than not there is a low level of transparency of media ownership and interests.

The European Commission has found it difficult to propose any kind of harmonisation of media ownership rules between EU member States, and has indicated that the issue should be left to the member States. The implementation of already existing pan-European standards, such as the Council of Europe’s Convention on Transfrontier Television (ECTT) or the EU’s “Television without Frontiers” (TWF)

Directive, is often hesitant or even deficient, particularly in new EU members and in the candidate States.

In spite of the increased presence of transnational investors in the broadcasting sector, industrial relations in this segment of the media market are mostly played out at the national level, with few examples of cooperation among journalists and other media professionals across Europe. There are only initial attempts to establish minimal labour protection standards and other common rules in spite of massive foreign investments particularly in the broadcasting industry of Central and Eastern Europe. Especially in transition countries, journalists have little labour protection. Foreign investors habitually offer inferior work conditions in comparison to what they provide in their own countries of origin.

Digitalisation has advanced quickly in Western Europe in the past two years after a hesitant launch around 2000. Traditionally, media industry products were sold as concrete material goods, such as books and CDs, or were distributed by analogue terrestrial television broadcasting. Converted into digital signals, media content is now divorced from a concrete form and can be distributed by the Internet, mobile telephony, satellite broadcasting and similar advanced platforms. Although across Europe many questions about digital roll-out have still to be answered, especially those related to its financing and its implications for regulation, digitalisation is likely to sharpen competition and boost diversity and pluralism. At the same time, it is expected to pose new challenges to public service broadcasting and the existing regulatory frameworks. However, in transition countries, digitalisation is a slow process due to lack of funding, policy and legal frameworks.

This overview report brings together the main findings of a monitoring carried out in 20 European countries, which included both transition States and established democracies, and EU member States, candidate countries and potential future candidates. Overall, if one consistent message emerges from across these reports – and it is one that bears out the warnings of many industry insiders and commentators – it is that public service broadcasting stands on the brink of far-reaching change. The momentum of technological change, the ripples of which are reaching even the least developed broadcast sectors examined in this report, is unstoppable.

At present, the powerful commercial broadcasters seem poised to become the clear beneficiaries of this change, while the public service broadcasters appear to risk losing much, if not most, of the traditional justification for their privileges. Nonetheless, as this report shows, the argument for public service broadcasting remains compelling. Public service broadcasting is not only a bulwark against commercial trends that, left unchecked, would be likely to drive standards further down, reducing the less lucrative strands towards invisibility. It also provides essential leverage for raising standards in all programme genres.

It follows that the goal for broadcasting policy-makers, regulators, concerned media professionals and citizens should be to reap the benefits of this change – in terms of a

wider choice of programming, accessible on more, and more convenient, platforms – without in the process losing the achievements of traditional public service broadcasting, in terms of the quality, range and genuine plurality of universally available content, that is responsive to segments of a society as well as to society as a whole. However, there is no certain way to reach this goal. No single approach can guarantee the achievement of a balanced and durable “dual system” of broadcasting or of independent regulation, and nor is there any single model of successful public service broadcasting. Broadcasting is so deeply rooted in, and dependent on, a society’s political experience, institutions and assumptions – not to mention its journalistic traditions and resources – that each society must evolve its own models.

Against this background, the condition of public service broadcasting in Europe’s new democracies gives special cause for concern, and its future is far from secure. These transition States have committed themselves to uphold public service broadcasting, even though it is still an unknown quantity in their societies. In fact, the widespread professional and public indifference to the role of public service broadcasting in these States should come as no surprise. It reflects both the sheer novelty of the concept of public service broadcasting, and the widespread failure of the emergent, or nominal, public service broadcasters to broadcast programming that impresses the public as sufficiently distinct from commercial television to be worth supporting. As a rule, politicians have shown little inclination to respect the autonomy of the public service broadcasters. Even in those States which now see themselves as post-transitional, the public service broadcasters are, for the most part, firmly stuck in mid-transition.

The 41 recommendations put forward in the following section focus on four main areas – media legislation and policy, broadcasting regulators, public service broadcasting and commercial broadcasting – and are intended to contribute to the European policy debate. All the recommendations are based on the findings of the monitoring, as detailed in this overview section and further developed in the country reports – each of which, in turn, contains more specific recommendations for the particular national context.

## 2. RECOMMENDATIONS

The recommendations in this section are based on the findings of the monitoring of 20 European countries – in Western Europe, Central and Eastern Europe, South-eastern Europe and Turkey. However, these recommendations should also be considered by the EU, the CoE and the OSCE, as well as by the relevant national Governments and Parliaments, in respect to other countries not covered by this monitoring, in particular the countries of the EU's European Neighbourhood Policy<sup>2</sup>, as these actors engage and assist in the process of the transformation of the broadcasting sector in this wider region.

### 2.1 International level recommendations

#### 2.1.1 Policy

##### *Media policy*

1. The European Union (EU), the Council of Europe (CoE) and the Organization for Cooperation and Security in Europe (OSCE) should continue to uphold the principle that independent radio and television broadcasting in the dual system of public and private broadcasters is an essential element of democracy and part of European political and cultural identity. This principle should be sustained as the basis for media policy and legislation.
2. The EU, the CoE and the OSCE should ensure that, while European media industries are encouraged to remain competitive, their development does not involve trade-offs that could harm quality and pluralism in European broadcasting.
3. The EU, the CoE and the OSCE should increase their endeavours to overcome the developmental gap in broadcasting that separates Europe's transitional States from the others.
4. The EU should pay closer attention to the democratic functioning of the media, as well as the stability and transparency of the regulatory environment in the audiovisual sector, when assessing candidate countries' readiness for accession, under the so-called "Copenhagen criteria".

---

<sup>2</sup> Countries linked to the EU's European Neighbourhood Policy include the following: Algeria, Armenia, Azerbaijan, Belarus, Egypt, Georgia, Israel, Jordan, Lebanon, Libya, Moldova, Morocco, Syria, Tunisia and Ukraine; and also the Palestinian Authority.



*Legislation*

5. The EU should, in view of the prospective further expansion of the EU, and the need to develop communications with all countries in the Western Balkans and those covered by the EU's European Neighbourhood Policy, revise the TWF Directive so as to appropriately redefine the category of "European audiovisual works".

*Assistance and monitoring*

6. The OSCE, the CoE, the EU and other international governmental and non-governmental institutions should, each according to its own remit, prioritise the following:
  - the monitoring of media legislation and policy, and of their implementation in practice;
  - the provision of consultancy, research and funding in support of media reforms.
7. The EU should lead efforts to enhance coordination between EU member Governments, the OSCE, the CoE and international and national media organisations, in order to avoid redundant projects and to increase the effectiveness and impact of implemented media projects and programmes.
8. The EU should coordinate, and eventually integrate, existing measures in support of media development within the EU, with programmes to support media in the countries covered by the EU's European Neighbourhood Policy and Stabilisation and Association Process, in order to develop synergies and improve efficiency and quality.

*Digitalisation*

9. The EU, the CoE and OSCE should foster scientific research and public debate on the social, political and cultural effects of digitalisation in the broadcasting sector, as well as on the creation of national policies in this area.

*Involvement of civil society*

10. The EU, the CoE and the OSCE should, taking into account the importance of civil society for the democratic changes in Europe and the need to continue with reforms, include representatives from civil society – in particular consumers' associations, media organisations and other NGOs, professional organisations, academics, and other civic partners – in all aspects of their efforts to develop and shape media policy. These civil society representatives should be consulted on basic media issues, including, but not limited to:

- independence of broadcast regulators;
- digitalisation and other technological developments relating to broadcasting;
- measures to ensure that the public interest is served by broadcasters;
- monitoring for compliance with international broadcasting obligations.

### 2.1.2 Broadcasting regulation

#### *Independence*

11. The EU, the CoE and the OSCE should support the further transformation of broadcasting regulators into independent bodies that will be ensured sufficient resources and extensive powers to enable them to effectively monitor the performance of broadcasters, and broadcasters' compliance with legislation and licence conditions. At the same time, they should condemn any undue political interference and pressures on broadcasting regulators.
12. The CoE, in particular, and also the OSCE, should tighten their monitoring of member States' compliance with commitments to the independence of broadcasting regulatory bodies.

### 2.1.3 Public and commercial broadcasting

#### *Training*

13. The EU, the CoE and the OSCE should increase their efforts to promote and support the training and professional development of media staff, both through the support of on-site training and through the further development of specialised training institutions.
14. International and national associations of journalists, together with media owners and other media professionals, should initiate and support programmes of training for journalists in all media outlets.

#### *Professional ethics*

15. International and national associations of journalists, together with media owners and other media professionals, should support the introduction of codes of ethics, codes of practice, complaints procedures and other instruments of self-regulation, in all media outlets.

#### *Employment rights*

16. International and national associations of journalists and other media professionals, trade unions, and media owners should cooperate in the field of industrial relations in the media industry. In particular they should all

advocate in favour of the adoption of national legislation that would require trans-national and national investors to respect such basic labour principles as the right to collective bargaining, the right to non-discriminatory and adequate wages, and the need for minimal standards of social protection.

#### 2.1.4 Public service broadcasting

17. The EU, the CoE and the OSCE should continue to uphold and protect public service broadcasting as a major European cultural achievement, an institution of vital importance to democracy and social coherence, and a stimulus to higher standards of programming in general. Policy and legislation should respect the principle that market forces alone cannot, and should not, determine broadcasting policy.

#### 2.1.5 Commercial television broadcasting

##### *Transparency*

18. The European Commission, and the OSCE, should initiate legislation to ensure transparency of ownership in the broadcasting sector.
19. The EU should establish an independent agency with the mandate of monitoring media markets and media concentration in the EU and on global markets.

##### *Media pluralism*

20. The European Commission, the OSCE, and the CoE should stimulate and support a continuing public debate on adequate measures to protect media pluralism in Europe, as well as on the right to information and freedom of expression.

### 2.2 National level recommendations

#### 2.2.1 Policy

##### *Public consultation*

21. Governments and Parliaments should provide for broad public consultations about media policy and media legislation. Public authorities, particularly in transition countries, should pay particular attention to involve civil society representatives – including from consumers' groups, media rights organisations and NGOs, professional organisations, academia, and other civic partners – in media policy and legislation. In particular, such civil society representatives should be consulted on:

- measures to ensure that broadcast regulators, and the broadcasters themselves, are fully independent;
- digitalisation and other technological developments relating to broadcasting;
- measures to ensure that the public interest is served by broadcasters;
- monitoring for compliance of broadcasters with their legislative and licence obligations.

### *Public education and awareness-building*

22. Governments, Parliaments and broadcasters should engage in, and support, serious and extended education efforts to inform the public on all aspects of media policy and media developments that are of public interest.

### *Training*

23. Governments, together with media owners, the universities and civil society organisations, should increase their efforts to ensure training and professional development of media staff, both through support of on-site training and further development of specialised training institutions.

### *Programming*

24. Governments and regulators should either *impose* basic public service obligations for commercial broadcasters, as a necessary and desirable instrument of broadcasting regulation, or should *encourage* commercial broadcasters to broadcast public interest content, through appropriate incentives.
25. Governments or regulators, as applicable, should provide financial and other support to producers who create programming for ethnic, linguistic and other minorities, and for broadcasters which broadcast such content. At the same time, regulators should recognise the fundamental importance of such content in the licence granting process, where appropriate for the context.
26. Parliaments should, where necessary, amend legislation to empower broadcasting regulators to monitor closely the programming of television broadcasters, to ensure their compliance with legal and licence obligations.

### *Digitalisation*

27. Governments should adopt national policies on digitalisation, and action plans for the transition to digitalisation.
28. Governments should initiate legislation that provides for the automatic granting of licences for digital broadcasting to public service broadcasters, with the aim of ensuring that public service broadcasting is preserved in the digital environment.

29. Parliaments should initiate legislation to forbid the formation of conglomerates grouping operators involved in the digital chain – such as digital multiplex operators, television stations, programmes packagers and software providers – in order to prevent the development of dominant positions in the digital television market.
30. Parliaments and Governments should, in view of the likely transformative effects that digitalisation will have on broadcasting, encourage public education campaigns and debate on the introduction of digitalisation.

#### *Local television and community media*

31. Governments should include in their national media policies strategies for the development of local television stations and community media. Such stations and media should have fair access to the frequency spectrum, and should, where a reasonable showing of need has been made, benefit from support to start-up their operations.

### 2.2.2 Broadcasting regulators

#### *Independence and transparency*

32. Governments should ensure, both in legislation and in practice, the political and operational independence of broadcasting regulators, in line with the CoE's recommendations.<sup>3</sup>
33. Governments should ensure that broadcasting regulatory bodies are provided with sufficient funding to carry out all aspects of their remits. This should, in particular, include the duties of the regulators with respect to monitoring broadcasters' compliance with legislative and contractual licence conditions, their inquiring into non-compliance, and, where appropriate, the handing down of appropriate sanctions.
34. Governments should move to enact, where these are not already present in legislation, and should ensure the proper implementation of, detailed conflict of interest rules for appointment to, and continued membership of, broadcasting regulatory bodies.

---

<sup>3</sup> The key recommendation in this regard is the Council of Europe's recommendation on the independence and functions of regulatory authorities for the broadcasting sector of 2000, and its guidelines concerning the independence and functions of regulatory authorities for the broadcasting sector. (Council of Europe, Committee of Ministers, Recommendation (2000) 23 of the Committee of Ministers to the member states on the independence and functions of regulatory authorities for the broadcasting sector, adopted by the Committee of Ministers on 20 December 2000, at the 735<sup>th</sup> meeting of the Ministers' Deputies).

*Frequency allocation*

35. Broadcasting regulators should ensure transparent, non-discriminatory and proportional procedures for the allocation of radio-electrical frequencies. EU member States should ensure, in particular, that the provisions of EU Directives 2002/21/CE (the Framework Directive)<sup>4</sup> and 2002/22/CE (the Universal Service Directive)<sup>5</sup> are fully transposed into national legislation.

*Licensing for digital broadcasting*

36. Broadcasting regulators should ensure that digital licences are distributed to a diverse range of operators, in order to ensure that the current dominant positions in the analogue broadcasting are not perpetuated.

## 2.2.3 Public service broadcasting

37. Governments should continue to support public service broadcasting as a vital element of democracy. Policy and legislation should respect the principle that market forces alone cannot, and should not, determine public service broadcasting policy.

*Independence and funding*

38. Governments should initiate legislation where needed, and implement existing legislation as required, to ensure that for public service broadcasters, the appointments procedures for the Directors General and for members of the Boards are independent, transparent and fair.
39. Governments should initiate legislation to oblige the public service broadcasters to put in place mechanisms to ensure the transparency of their expenditures, and in particular of their utilisation of public funds.
40. The Boards of public service broadcasting should be obligated – and where they are so obligated, these obligations should be enforced – to ensure that the programming of the broadcasters is in compliance with their public service remit. This is particularly important in view of the fact that public service broadcasters have tended to yield to commercial pressures, adjusting their programming with a view merely to merely increasing audience share.

---

<sup>4</sup> Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services, L108/33, Brussels, 24 April 2002. (*Framework Directive*)

<sup>5</sup> Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services, L108/51, Brussels, 24 April 2002. (*Universal Service Directive*)

## 2.2.4 Commercial television broadcasting

### *Transparency*

41. Governments should adopt and implement legislation ensuring transparency of ownership of all media outlets, including external investors.

## 2.2.5 Other

### *General employment protections*

42. Governments should, where such legislation is not in place, adopt legislation to ensure social and labour protection for media professionals employed both in commercial broadcasters and in public service broadcasters.

## II. The Current State of Television Broadcasting in Europe

### 1. CONTEXT

Television has experienced a noticeably similar – although not simultaneous – evolution in both Western and Eastern Europe. In the past five decades, television has gone through a process of continual commercialisation.<sup>6</sup> An enterprise largely controlled in Europe for more than half a century by the State, television evolved only in the last two to three decades into a dual system, composed of a public sector increasingly competing, often becoming the weaker side, with commercial broadcasters in private ownership. In Central and Eastern European nations, the end of the stranglehold of the State over broadcasting came only in the early 1990s, and was triggered by the collapse of communist regimes throughout the region. Once it began, the whole process was much faster than in Western Europe. The much-heralded “Europeanisation” of the organisation of the social, political and economic systems meant for the broadcasting sector the attempt to conform to Western models of regulations and all other ways and means to operate television. What came as a surprise to many was the massive influx of Western capital into the television industry, often relegating domestic players to the margins of the markets.

#### 1.1 Western models

In the first phase of television in Western Europe, a philosophy based on a combination of cultural paternalism, public service values and administrative logic prevailed over broadcasting, which was envisaged as a national enterprise in charge of promoting culture and education and the dissemination of controlled political information.

In the UK, television has always had a central position in policy-making, due to a general consensus on the role of television in society and a general acceptance of broadcasting independence as a key principle in moulding the television system. The Reithian motto “to inform, to educate and to entertain” became the cornerstone of broadcasting “philosophy” in the UK and remains a touchstone for public service

---

<sup>6</sup> Note: the countries covered by the EUMAP report have been divided in this Overview into three main regions. South-eastern Europe (SEE) encompasses: Albania, Bosnia and Herzegovina, Croatia, the Republic of Macedonia, and Serbia and Montenegro (n.b. the EUMAP report only covers Serbia). Central and Eastern Europe (CEE) includes: Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia and Slovenia. Western Europe refers to the four countries covered by the report: France, Germany, Italy and the UK. Turkey is treated separately.



values up to the present day.<sup>7</sup> The only two broadcasters on the UK market until 1982 were the BBC and the ITV network, which commenced broadcasting in 1936 and 1955 respectively. Both are subject to public service obligations. The system was radically reformed in 1990, when new legislation intensified competition.

The BBC was the model for the recreation of Western German broadcasting after 1945 under the observance of the Allied occupying forces. The German public service broadcaster deviates from the BBC model in that the governing bodies of German broadcasters comprise not a small group of “the great and the good” chosen by Government (as in the British tradition), but of representatives of important interest groups from within society (*gesellschaftlich relevante Gruppen*). For the post-authoritarian countries in Central and Eastern Europe, this model of including civil society – including political groupings – in broadcasting governance was highly relevant. The monopoly of public service broadcasting ended in 1982 when, after much lobbying from the industry, the conservative Government liberalised the broadcasting market and permitted private broadcasters to operate, allowing the establishment of the dual broadcasting system.

The concept based on cohabitation of political control and cultural ambition survived in France until 1968, when television started to cater to viewing tastes and opened up to advertising. The State monopoly on French broadcasting ended in 1982, when private players were allowed on the market. However, the State continues to play an important role in the regulation of broadcasting.

Italy presents a special case of controversial involvement of politicians in the regulation of broadcasting and especially in the State-owned broadcaster RAI. Commercial television emerged in the 1970s in a totally unregulated marketplace. In the mid-1990s, commercial television helped propel to political power the northern Italian entrepreneur Silvio Berlusconi, who, as Italy’s Prime Minister, has enjoyed a degree of power over both commercial and public service television in recent years that has no precedent in any developed European democracy.

## 1.2 Eastern patterns

### 1.2.1 The post-socialist bloc

#### *Central and Eastern Europe*

During communism, in all Central and Eastern European countries television was used as the mouthpiece of the single ruling party, and usually served to glorify the countries’ authoritarian leaders. With the collapse of communism in 1989-1990, broadcasting in the region entered a new era. Its restructuring followed the development of television

---

<sup>7</sup> John Charles Walsham Reith, 1st Baron Reith (1889–1971), established the British tradition of independent public service broadcasting. To this day, the BBC’s Charter invokes the definition of its first director (1927–1938) that the BBC’s mission is “to inform, educate and entertain”.

in Western Europe. In the early 1990s, post-communist governments started to change their national broadcasting systems by opening the market up to private players, while at the same time taking steps to transform the state broadcaster into something more independent. Freedom of the media soon came to mean first of all the freedom to run the media as a private business. Private broadcasters pursuing above all commercial gains rapidly outperformed the State broadcasters, which were mostly reluctant or unable to keep up. Altogether, the degree of success of reforms in the broadcasting sector obviously mirrored the overall pace of transformation in each of the countries.

In the early 1990s, many post-communist countries were ravaged by “media wars” between political elites and journalistic communities over who controls the media. In Hungary, for example, ever since the political change of 1989-1990, the country’s media landscape has been the front of such a conflict between political elites and journalists over what the proper function of the media in a pluralistic and open society should be.

In many post-communist countries, the changes in the television sector were carried out chaotically, without any clear policy or legal frameworks in place, which led to an explosion of unlicensed broadcasting outlets. In Poland, for example, by early 1993 there were 57 illegal television broadcasters. Between 1993 and 1997, the major national (i.e. nationwide) television broadcasters were licensed. Despite a late start in liberalising its broadcasting market, Albania enjoyed speedy growth in the sector. However, this process took place in a chaotic and lawless context, with no regulation in place. The Radio Television of Albania was monopolistic until 1995, when the private station TV Shijak started operating.

Slovakia was quick in formally converting its State broadcasters into public service operators. By 1991, both Slovak Television (STV) and Slovak Radio (SR) formally became public service broadcasters, and in the early 1990s six private television operators were licensed. In the Czech Republic, the first commercial television station that broke the monopoly of the State broadcaster Czech Television (ČT) was TV Nova, a television venture as part of Central European Media Enterprises (CME), set up in a Caribbean island by a former US ambassador to Hungary. Unlike its Central European peers, such as former Czechoslovakia and Poland, Hungary was slow in passing broadcasting legislation, which was first enforced only in 1996. Liberalisation of the market was also belated in Hungary, with the first private television operators being licensed only in 1997.

In Bulgaria, with the entrance on the market in the mid-1990s of two national television stations, bTV and Nova TV, television became a competitive industry, and Bulgarian National Television (BNT) lost its dominance. bTV is owned by Balkan News corporation, a company belonging to the transnational media mogul Robert Murdoch. In Romania, foreign and local private investors opened stations in the country between 1993 and 1998, turning broadcasting into a vibrant industry and obliging the State broadcaster (SRTV) to revamp its operations several times to catch up with the competition.

In the Baltic countries, Lithuania already allowed private broadcasters to operate in 1992. By 1996 the restructuring of the former State broadcaster into a public service station had been completed. In Estonia, during communism, State television obviously also had the ideological mission of propping up Soviet propaganda. However – often inspired by Finnish television broadcasts, which could be watched and understood by much of the population in Estonia – to some extent, it did manage to provide some diverse and high-quality programming. Estonia also championed the liberalisation of the television sector in the 1990s, and managed to formally finish the transformation of State television broadcaster into a public service broadcaster by 1994. The liberalisation process was somewhat slower in Latvia, where the first private broadcaster, LNT, started to operate only in 1996, challenging the dominance of the public LTV.

### *Former Yugoslavia*

Due to its multicultural character, federal constitution and permissive ideological system, former Yugoslavia enjoyed a relatively diverse and liberal media system with a huge number of regional and local outlets. Television stations carried a lot of Western programming in the original language with subtitles. For instance, ever since its launch in the 1950s, in Slovenia, the most northerly of the six former Yugoslav federal republics, television boasted a Western look, with the State television airing both highbrow and popular programming, including programmes produced in Western Europe and the US. Furthermore, due to its geographical position, the public could watch Italian and Austrian channels. This openness of Slovenia to the West, together with the rapid liberalisation of the country's broadcasting market – the first private television station was licensed already in 1990, with two more being launched in 1995 – made the change of the political and economic system in Slovenia at the end of the 1980s less abrupt than in other transition states.

The most southerly of the republics, Macedonia, embarked on reforms in the broadcasting sector soon after gaining independence. Already in 1991 and 1992, the first private television stations started operating in Macedonia. In 1991, Parliament officially transformed the Macedonian State broadcaster into public service television. Substantial reform took much longer to achieve, and is still ongoing, assisted by intergovernmental missions, which have tried to help the country to resolve the ethnic tensions that led to a violent insurgency of local Albanians in 2001.

The other three successor States of former Yugoslavia still have to cope to different degrees with the legacy of ethnic conflicts and wars during the 1990s. The media, and especially television, were among the most important instruments of the war effort, and controlled by the nationalistic and populist rulers, inciting ethnic hatred and denigrating the democratic opposition.

Under the terms of the agreement that ended the 1992–1995 war in Bosnia and Herzegovina, that country has been saddled with a hugely complex governance structure, reflecting – but also perpetuating – the abiding lack of political consensus among the three national leaderships. The intergovernmental organisations that have

overseen the country's post-war reconstruction were slow to face the challenge of reforming the broadcasting sector. It is still unclear whether these organisations – and, behind them, essentially the European Union, which is taking more and more control of the reconstruction and development process – possess the means and the resolve to prevent nationalist elites from blocking the emergence of autonomous public service broadcasting.

Serbia and Montenegro is a State union that still has not resolved its future. While the Government of Montenegro has opted for independence, Serbia's southern province, Kosovo and Metohija, has been a UN protectorate since 1999 following a NATO military intervention to end the bloodshed caused by the conflict between ethnic Albanian insurgents and the Serbian Government. The electronic media in Serbia have changed dramatically over the past 15 years. During the 1990s, most of the media were under Government control, and nothing more than the mouthpiece of Slobodan Milošević's authoritarian and belligerent regime. However, some media outlets persisted in their opposition to the Government, depending greatly on Western political protection and financial aid. Ironically, the regime did not bother itself about the proliferation of commercial radio and television stations, numbering hundreds, as long as they stuck to low-quality entertainment and other escapist programming for the politically disoriented population. Real changes in media policy, ending the dominance of State television, came only after the fall of this regime in October 2000, and they still remain hesitant and incomplete.

In Croatia, under Franjo Tudjman, the first democratically elected President after the end of single-party rule, the Government's authoritarian attitude towards the media was evident even before the start of war in summer 1991. In the later 1990s, this attitude generated resistance from democratic political parties and civil society in the country and friction with the international community, which insisted on ending hate speech and other inciting propaganda against ethnic minorities and the democratic opposition. The dominance of Government-influenced State broadcasters continued until the end of 1999, when Tudjman died and his party then lost both the presidential and the parliamentary elections. The broadcasting system then underwent reforms broadening the independence of television. According to the EU, the changes will have to continue in order to reach the required standards for the EU accession.

### 1.2.2 Turkey

Turkish television was dominated for more than two decades by the State broadcaster, which was awarded the country's sole licence in 1964 and enjoyed a monopoly until 1990, when the first privately owned television station started to air to Turkey from the Federal Republic of Germany. Other stations followed suit. The official lifting of the State monopoly in broadcasting took place in 1993.

### 1.3 Western models and money

The development of post-communist broadcasting in Central and Eastern Europe has been characterised by the introduction of Western European models of public service broadcasting and the influx of foreign investors. In building their public service television systems, the countries in this region have mainly drawn inspiration and concrete example from British, French and German models.

The generic “European” model used for restructuring the media sectors in post-communist countries has two main components: a private media sector capable of sustaining outlets that comply with the local laws, codes of ethics and other rules set up by the national regulators, and a public service broadcasting sector, operationally independent from the State although ultimately accountable to the elected representatives of the people. These two sectors should coexist in a stable but competitive equilibrium, within a matrix of appropriate legislation that is duly implemented and enforced.

Another significant influence on television in the transition countries has been the inward rush of foreign investment, totally reshaping the markets. In some cases, investment in the transition countries was also stimulated by limits on media ownership in some Western countries – surplus income generated in the West was invested in media in the East, where there were chances for extra profits.

Today, the countries monitored in this report are no longer separated by major ideological or philosophical differences, which naturally also affect broadcasting. The degree of “Europeanisation” in the CEE and SEE regions, in terms of both political liberties and media structures, varies widely from country to country. However, the “European framework” has become a widely accepted concept, as each country has developed specific forms of broadcasting legislation and policy ensuring a degree of media independence.

The essential difference now lies in the greater vulnerability of public service broadcasting within transition (and post-transition) countries to political and economic pressures alike. Even here, however, there are significant exceptions: the situation of public service broadcasting in Italy, where the Prime Minister controls dominant parts of the commercial television, has prompted the Representative for the Freedom of the Media of the Organisation for Cooperation and Security in Europe (OSCE) to voice his concerns. Usually, such reprimands are addressed to countries with unconsolidated democratic political systems.

Public service broadcasters across Europe face common challenges to their traditional mission. These stem from powerful deregulatory trends, a certain loss of belief in the importance of non-commercial public communication, and technological innovations that, by vastly multiplying channels and thus fragmenting the audience, alter the nature of broadcasting and hence weaken the usual justifications both for generalist institutions that deliver public service content, and for the mandatory licence fee. This

situation favours commercial broadcasters, who have denounced the protection and special financing that public service broadcasting enjoys in Europe as unfair. There have also been external pressures from the US, and from international institutions such as the World Trade Organization, which seem to want to treat television, and indeed, culture, as just another commodity.

## 2. AN OVERVIEW OF EUROPEAN BROADCASTING

Although the Internet and other new media platforms were seen as a threat to the popularity of television, it has managed to defend its leading position in terms of media consumption. However, in 2002, in the aftermath of the global economic slow-down after the terrorist attacks on New York on 11 September 2001, national television networks started also to experience an economic downturn, while niche players, such as thematic channels, pay-TV or teleshopping channels, are enjoying economic growth, albeit from a much smaller base. Despite fragmentation of viewership after the liberalisation of television markets, the bulk of audience at the national level is still attracted by up to three national players.

### 2.1 Television audiences

(See Table 1)

Some media pundits saw the end of television coming with the Internet boom a few years ago. They argued that viewers would be more attracted by the interactivity offered by the Internet than by television's traditionally passive mode of consumption. However, despite the rapid expansion of the Internet, television has maintained its massive appeal to viewers worldwide. Over the past ten years, television-watching has been on the rise, and in 2003 the average viewing time in Europe was more than three hours per day (see Table 1). In Western Europe, the average viewing time for adults increased from 195 minutes in 1995 to 217 in 2003, and in CEE from 208 minutes in 2000 to 228 minutes in 2003.<sup>8</sup> Among Central and Eastern Europeans, Serbians and Hungarians are the most avid viewers. In Western Europe, the south (Italy) has always been riding high in television watching, while the Nordic countries (Denmark, Sweden and Finland) have always had the lowest viewing rates, averaging only 162 minutes in 2003.

---

<sup>8</sup> IP International Marketing Committee, *Television 2004. International Key Facts*, October 2004, p. 25, (hereafter, IP International Marketing Committee, *Television 2004*). The CEE region in the study of the IP International Marketing Committee includes 17 countries: Belarus, Bulgaria, the Czech Republic, the Baltic States, Hungary, the States of the former Yugoslavia except for Bosnia and Herzegovina, Poland, Russia, Turkey and Ukraine.

Besides a general increase in viewing time, each country presents specific viewing habits depending on local culture, the offer of programmes and the political, social and cultural events in the country. In Germany, for example, well over a decade after unification, there are still differences in watching time, with former East Germans, who are more affected by unemployment, tending to watch more television than former West Germans – 249 minutes compared to 217 minutes per day, according to 2004 data. Usually, large sporting events such as the Olympic Games or world championships tend to beef up the viewing time. Political events, especially major crises, but also less dramatic, although still important events, such as elections similarly draw big audiences. In the Republic of Macedonia, for example, television viewing rocketed from around 259 minutes to 325 minutes per day during the armed insurgency by Albanian rebel groups during spring and summer 2001.

In general, although in some countries overall trust in the media has declined in recent years, all country reports in this research confirm that television is still the main source of information for the population. Indeed, the presence of television in everyday life is pervasive. In Bulgaria, television-watching is the most important leisure activity. According to recent data, in Romania and Slovakia, television is the main source of general information for 73 per cent and 76.9 per cent of the population, respectively, while in Estonia, television is the primary source of both international and national news for the majority of the audience.

Another fact confirmed far and wide is that public service television remains the main source of news for the largest part of the population in most of the countries covered by this report. Only in a few countries, such as the Czech Republic, Slovakia and Hungary, do private channels attract more viewers for newscasts.

## 2.2 Television business

*(See Tables 2, 3 and 4)*

With the liberalisation of television markets – in the 1980s in Western Europe and after 1990 in post-communist Europe – television became a competitive and, for most of this time, thriving industry. Investments have poured across Europe over the past two decades, boosted by the medium's increasing popularity as a mainstream provider of both information and entertainment. By 2003, throughout Europe, the number of television households almost matched the total number of households. The share of households owning at least one television set in 2003 was over 90 per cent in all the countries covered by this report, with the exception of the Republic of Macedonia and Albania, where, respectively, 83 per cent and 68.8 per cent of total households had a television set. (See Table 2.)

Despite the hefty capital that the broadcasting industry has attracted, its growth has, nonetheless, significantly slowed in the past years. In 2002, broadcasters in the EU

pulled in revenues of €65.4 billion, a drop of 1.3 per cent over the previous year.<sup>9</sup> This decrease was mainly triggered by a slump in the revenues of both public and private television companies. At the same time, relatively newer, developing segments such as pay-TV stations, thematic channels, TV packagers<sup>10</sup> and teleshopping channels experienced growth, albeit from a much smaller base. The industry's downturn in 2002 came after five years of steep economic growth. The broadcasting industry in the EU saw its revenues growing by €15.1 billion from 1998 to 2002. In 2002, the public service broadcasters (radio and television) took a 42.5 per cent share of the total EU revenue, while commercial broadcasters (radio and television) took 32.5 per cent. The remaining share was divided between home-shopping companies, pay-TV companies, TV packagers and thematic channels (see Table 3).

In terms of profit margins, the fastest-growing audiovisual industry in the EU in 2001 was the television satellite industry, which, between 1998 and 2002, saw annual profit margins of between 24 per cent (2002) and a stunning 44 per cent (2000).<sup>11</sup>

In 2002, the total loss suffered by the 391 public and private broadcasting operators surveyed by the European Audiovisual Observatory was roughly €3 billion.<sup>12</sup> By contrast, broadcasters operating in the new markets of Central and Eastern Europe posted profits, with some of these stations ranking among the 50 largest private television companies in Europe in 2003. They included the Polish Telewizja Polsat, TVN and Wizja TV, the Czech CET 21, operator of TV Nova, and the Hungarian Magyar RTL Televisio and MTM-SBS Televisio. Even in an impoverished economic environment, such as in Serbia, TV Pink, a commercial television broadcaster, accumulated enough profits to launch cross-border investments in the region. However, the situation of private stations operating in the transition countries is not rosy everywhere. Many private television operators have struggled to survive over the past decade. In Romania, for example, the largest national private stations, including Pro TV and Antena1, have gone through dire financial crises in the past years, failing to pay tax arrears and getting indebted to the State budget.

France, Germany, Italy and the UK remain the most important countries in the television industry at the pan-European level. The top ten broadcasting companies in 2003 originated from these countries and commanded combined revenues of €22.7 billion.

<sup>9</sup> European Audiovisual Observatory, *The Yearbook 2004*, Strasbourg, 2004, Vol. 1, p. 30, errata slip, (hereafter, European Audiovisual Observatory, *The Yearbook 2004*).

<sup>10</sup> A television packager is a company putting together various television channels and marketing them as a package of programmes, transmitted via satellite, cable or terrestrial digital transmission multiplex operators. See: André Lange (ed.), *Developments in Digital Television in the European Union*, European Audiovisual Observatory, France, 4 December 1999.

<sup>11</sup> European Audiovisual Observatory, *The Yearbook 2004*, Vol. 1, p. 32.

<sup>12</sup> This figure does not include small regional and local players. European Audiovisual Observatory, *The Yearbook 2004*, Vol. 1, p. 35.



### 2.3 What's on TV?

(See Tables 5 and 6)

Despite the steady increase in average viewing time, the liberalisation of television markets has accentuated the fragmentation of national viewerships, with the former State television players losing considerable market shares. However, in most of the countries covered by this report, private television is in the hands of a few large players, and the bulk of national viewerships – in Bulgaria, Croatia and the Czech Republic, over 80 per cent – is concentrated on a limited number of channels, usually no more than three. The exceptions are Germany and Turkey, where the largest three channels attract a combined audience of less than 50 per cent. (See Table 5.)

Overall, private television stations have the largest audiences. In 2003, only in Bosnia and Herzegovina, Croatia, Italy, Poland, Romania and the UK did public service television channels manage to attract higher overall national ratings.<sup>13</sup> (See Table 6).

Television programming has seen an extremely dynamic evolution in recent years, with programme formats continually mixed and frequently rejuvenated. The main trend is commercialisation, with entertainment pervading all formats to create hybrid offerings. The most flourishing rise in prime-time output has been reality TV formats, which have started to devise fresh formats such as “docu-soaps” (*The Osbournes*), reality game shows (*Big Brother*), quiz shows (*Who wants to be a millionaire?*), Latin American *Telenovelas* with worldwide replicas of this type of drama, and hybrid reality shows (*Hell's Kitchen* on the UK's ITV 1, 2004). Of course, sports are a highly valued ingredient of programming, with a tremendous increase in rights costs. In addition to that, quality documentaries are gaining higher audiences. Researcher Carine Dubois wrote: “The quality of these documentaries has improved with expensive special effects and technological advances. As a consequence, co-productions are becoming the only way to finance these very expensive projects.”<sup>14</sup>

<sup>13</sup> In most of these countries, the audience share of the public service broadcasters has been declining since then. In Croatia, for example, with the entrance of RTL in the market, Croatian public service television saw its audience shrinking dramatically.

<sup>14</sup> Such quality documentaries include “Pompeii: The Last Day”, scoring high ratings on France 2, and “D-Day”, which attracted high viewing figures on Discovery and German ProSieben. IP International Marketing Committee, *Television 2004*, p. 43.

### 3. BROADCASTING REGULATION ACROSS EUROPE

(Tables 7 and 8)

Broadcasting regulation in all countries covered by this report is part of the political process. The *influence* of political institutions and their representatives on broadcasting is legitimate, as elected legislators and governments are the legitimate representatives of the public. However, broadcasting regulation is also commonly subject to political *pressures and interference* by party politicians, and industrial and other lobbies, which encroach upon their independence by attempting to compel them to serve specific economic and political interests.

An obvious conclusion of the reports in this study is that there is no single model of broadcasting regulation. The performance of broadcasting regulatory authorities reflects national specificities, including cultural codes, the history of broadcasting, and the peculiarities of local political culture. In the UK, it might be sufficient to expect the Government, when appointing the board of the national regulatory authority, to adhere to the so-called “Nolan principles”.<sup>15</sup> According to these rules, public life should be governed by seven values: selflessness, integrity, objectivity, accountability, openness, honesty and leadership. In other European countries, the mere idea that the Government should appoint the governors of the autonomous broadcasting regulator is seen as incompatible with the regulator’s independence. In many post-authoritarian contexts, clearly as an expression of distrust in the State and the political parties, the public shows a preference for a situation whereby representatives of civil society and academia play an important role in the national regulatory authorities. However, there is a generally accepted normative credo across Europe favouring autonomous broadcasting regulators, which should be legally and operationally shielded from political and business influences.

In many transition countries, the structures of broadcasting regulation are in place, but the implementation of legislation ensuring their independence is flawed. The EU accession process has helped both the new EU members and the present and future candidate countries to speed up the reform of their broadcasting legislation. Nonetheless, in many countries there is an ongoing debate about the discrepancy between the legal norms and their implementation. In the Czech Republic, for example, the appointment of the members of the Radio and Television Broadcasting Council by only one chamber of Parliament is considered unhealthy for the independence of the regulator. Dilution of appointing power among more State authorities – the Chamber of Deputies and Senate, for example – would increase the degree of the Czech regulator’s independence, in the opinion of local media observers.

---

<sup>15</sup> Further information on the “Nolan principles” is available at [http://www.bbc.co.uk/foi/docs/governance\\_of\\_the\\_bbc/board\\_of\\_governors/Standing\\_Orders.htm](http://www.bbc.co.uk/foi/docs/governance_of_the_bbc/board_of_governors/Standing_Orders.htm) and [http://www.public-standards.gov.uk/about\\_us/seven\\_principles.htm](http://www.public-standards.gov.uk/about_us/seven_principles.htm) (both accessed 24 August 2005).

In Serbia, the Government and Parliament decided to ignore the legal procedure for the nomination of the members of the first post-authoritarian broadcasting council, thus undermining its legitimacy.

In established democracies, such as the UK, concerned voices point to the dichotomy of the “citizen or consumer” terminology that Ofcom, the broadcasting regulator established in 2003, prevalently employs. Ofcom’s terminology does suggest that two concepts of society and the individual, which are sometimes diametrically opposed, enjoy equal status in its policy approach – an outlook that ominously promotes consumption over citizenship. In other words, there is a worry that business interests will receive more attention than the public interest.

In Italy, although there have been efforts to neutralise media regulation by setting up independent regulators, politicians still exercise a great deal of control over regulation, due to a confusing and complicated regulatory system. Overlaps and conflicts between several bodies involved in the regulation of broadcasting make regulation particularly difficult.

In France, although the High Council for Broadcasting (CSA) is now a well-established regulator, it has periodically come under criticism from broadcasting professionals, journalists and experts, and also from the public and even its own commissioners. This criticism targeted the CSA’s lack of political independence, its inadequate powers, its slowness in reacting to problems in the market, and the low level of public participation in the CSA’s decision-making.

### 3.1 Tasks

The main tasks of the various types of broadcasting regulatory bodies can be summarised as follows:

- regulatory tasks:
  - licensing of broadcasting activities – including, in some countries, the setting of programming criteria and public service broadcasting obligations in the licence contracts;
  - monitoring – based on legislation and/or the licence contract;
- enforcement and sanctioning powers;
- specific tasks – such as appointing management bodies of the public service broadcasters;
- development of media policy and legislative proposals;
- assigning frequencies.

The regulatory bodies’ tasks can also be divided in terms of *whom* they regulate:

- terrestrial (national/regional/local), cable and/or satellite broadcasters;
- public/private broadcasters:
  - common tasks for all broadcasters – for example, monitoring broadcasters’ compliance with legislation, and developing media policy;
  - specific tasks for private broadcasters – for example, licensing and controlling ownership limits;
  - specific tasks for public broadcasters – for example, appointing management bodies.

Unlike the print media, broadcasting is heavily regulated. For several decades, in its early stages, broadcasting was directly influenced and regulated by the State. However, with the opening up of television markets to private players in the last two to three decades, a more complex system of regulation – actually often called deregulation – was put in place. It took essentially two forms: one was a loosening of political control, and the other one was the opening up of the frequency spectrum to commercial broadcasters, without imposing a public service remit on them (with few exceptions), as is imposed on the public service broadcasters.

Besides licensing, the tasks of the broadcasting regulators include the monitoring of broadcasters’ compliance with existing legislation and contractual conditions, and a set of sanctioning powers. In cases of legal violations or breaches of contracts and licence conditions, most regulators are entitled to impose penalties. The main sanctions that they can enforce are warnings and requests to remedy the breach, fines, suspension of the broadcast licence and, in the most serious cases, revocation of the broadcast licence.

Monitoring media ownership and promoting competition appear in some cases among the top priorities of the broadcasting regulators, which thus take upon themselves some prerogatives of the national anti-monopoly authorities in the field of broadcasting. Broadcasting regulators have been slowly raising their profile in the media policy-making process, proactively contributing to the initiation of legislation in this field. However, in most countries, especially transition states, they are not yet a decisive or influential factor in media policy.

With the exception of Germany and Lithuania – where there are separate regulatory authorities for public service broadcasters and private broadcasters – regulatory authorities are commonly in charge of licensing and monitoring both public and private stations. In Bulgaria, Latvia, Poland, Serbia, Estonia and France, the broadcasting councils also appoint some of the managing bodies of the public service broadcasters.

### 3.2 Patterns of regulation

In most of the countries monitored, the main national broadcasting regulator has a formally independent status. In countries such as Croatia, Lithuania, the Republic of Macedonia and Romania, they are independent regulatory authorities.<sup>16</sup> In the Federal Republic of Germany, regulation is carried out by 15 authorities in the federal units with the status of public service organisations, and in the UK, Ofcom is an independent statutory corporation accountable to Parliament through parliamentary committees and the National Audit Office.

Besides the main regulator, which is usually in charge of licensing and monitoring broadcasting activities, broadcasting regulation is complemented by other institutions, which fall into two main categories.

First, there are countries where State authorities or State bodies are directly involved in regulation. Such is the case of Estonia, where the Ministry of Culture has an important say in broadcasting – licensing private broadcasters, monitoring their activities and imposing sanctions. In Poland, the State is also directly involved in broadcasting regulation. The main regulator, the Polish National Broadcasting Council (KKRiT), is, according to its statute, a State institution in charge of the regulation of broadcasting. In the Republic of Macedonia, the Government is the body in charge of broadcast licensing (in cooperation with the national Broadcasting Council) and has relevant sanctioning powers in this field, such as revocation of a broadcaster's licence. However, new legislation is in the pipeline, strengthening the autonomy of the regulatory authority.

Second, in most of the countries monitored, the work of the main regulatory bodies is supplemented by so-called technical regulators, in charge of managing the frequency spectrum. The activities of these regulators are primarily related to telecommunications; however, because they manage the frequency spectrum, their remit also covers radio and television broadcasting. The extent of involvement of the technical agencies in broadcasting regulation, and their influence over television and radio markets, differs from country to country. Sometimes, the technical regulators are legally entitled to impose sanctions on broadcasters, but usually their role is limited to coordinating the allocation and use of frequencies with the broadcasting regulators.

In Estonia, the Ministry of Culture has the right to impose fines, in Croatia, the Croatian Telecommunications Agency has the right to revoke licences, and in Bulgaria, the Communications Regulation Commission can revoke licences at the request of the broadcasting regulator. In Romania, the role of the Inspectorate General for Communications and Information Technology (IGCTI) in broadcasting is formal – the legal obligation of applicants for broadcast licences to register with the Inspectorate is a mere formality. Nonetheless, there are still concerns about the independence of the technical regulators, which are normally directly controlled by governments. The

---

<sup>16</sup> In Bosnia and Herzegovina, they have the status of an independent State agency.

Romanian IGCTI, for example, can exert substantial influence in the licensing process, because, as an administrator of the frequency spectrum, it can block the release of frequencies to new entrants.

Another model of regulation, gaining ground especially in Western Europe, is that of an integrated broadcasting and telecommunications regulator, whereby the main national broadcasting regulator also combines the “technical” tasks usually carried out by a separate regulator. This model is present in France (the High Council for Broadcasting, CSA) dealing with broadcasting content issues and frequency management, Italy (the Communications Guarantee Authority, AGCOM) and now also in the UK (Ofcom).

### 3.3 The main broadcasting regulatory body – structure

In most countries monitored, the main broadcasting regulator numbers between seven and nine members. Exceptions are as follows: the Czech Republic and Lithuania, where the regulator has 13 members; Romania, with 11 members; Hungary, with at least five members. Germany has a complex system with 15 regional authorities for the private broadcasters, each serving a state (*Land*) and having a variable number of members, between 11 and 50.<sup>17</sup> The public service broadcasters in Germany are supervised by their own regulatory bodies.

Usually, the members of the broadcasting regulators’ councils are appointed by Parliament upon nomination by various bodies, which could be the President of the Republic, a specialised parliamentary media commission, the Government, one of the chambers of Parliament, Members of Parliament, the political parties or civil society organisations.

A second model is the mixed appointment system, with the President of the Republic and the two chambers of Parliament sharing this responsibility. One of the most innovative modes of appointment is that found in Lithuania, where nine out of the 13 members of the broadcasting council are appointed by professional organisations representing guilds such as painters, cinematographers, writers and journalists. Germany has a complex system for appointing the members of the broadcasting regulators, who are delegated by socially relevant groups, whose seats in the council are established by law. The UK’s Ofcom is also built on a complex structure, resembling a commercial corporation. Ofcom’s board has a composition of executives and non-executives, with the non-executives making up the majority and appointed by the Government according to a set of principles established by an independent committee on standards in public life – the “Nolan’s principles” (mentioned above).

With a few exceptions – such as France, Hungary, Lithuania and the Republic of Macedonia, where the broadcasting council members cannot be removed – the body

<sup>17</sup> The states of Berlin and Brandenburg have a joint regulatory body for private broadcasters.

that appoints members also has the legal right to sack them. However, in most cases, the conditions under which members may be sacked are rather narrow and are clearly set out in law. In most of the countries monitored, the broadcasting legislation contains provisions on the conflict of interest for members of the broadcasting councils. They are forbidden to be members of a political party or of Government structures, or to work or to have interests in broadcasting businesses. However, in a large number of countries, despite such provisions, the members of the council are affiliated to political circles whose interests they serve. In Germany, members of regulatory authorities represent socially relevant groups such as the trade unions or churches – but they are also often members of political parties. In Poland, for example, despite provisions on conflict of interest for the National Broadcasting Council (KKRiT), in practice the members of the regulator have been appointed rather on the basis of affiliations with the political parties controlling Parliament, the Senate and the Presidency. In Italy too there were introduced in 1997 stricter provisions on conflict of interest for the members of the Communications Guarantee Authority (AGCOM), such as prohibiting members to work for companies involved in the communications sector for four years after their mandate. However, media observers expressed doubts whether these provisions can guarantee the independence of the regulator, as the decisive power in the Authority is concentrated in the hands of its President, whose appointment is largely controlled by the Prime Minister.

In many countries, members of the broadcasting councils are not appointed based on professional qualifications. However, lawmakers in Croatia and several countries have introduced over the past few years provisions requiring candidates for a seat in the broadcasting council to possess media expertise. Members of the broadcasting councils have tenures of four to six years. Only in Italy are they appointed for seven years, while in Germany their term can last several mandates. In most countries, the terms of members are staggered, to avoid tying them to the parliamentary cycle. This is an implicit admission of the permanent and pervasive influence of political parties on nominally autonomous regulatory authorities, in spite of all attempts to erect legal barriers against it.

### **3.4 The main broadcasting regulatory body – funding**

There are two important angles in looking at the funding of the regulators. First, its source – if funding comes from the State budget, it can affect the independence of the regulators. Second, the amount of funding – without sufficient financing, they cannot carry out their activities, particularly monitoring.

The most common model of funding the broadcasting councils in the monitored countries is one where the funding comes from the State budgets. In some cases, the budgets of the broadcasting councils are supplemented by other resources, such as the licence fee, the regulator's own revenues from technical fees or application fees, taxes on private broadcasters' income, donations and grants. Croatia, Lithuania and Germany are countries where regulators are funded by a sole source of financing other

than the State budget. In Croatia and Lithuania, the regulators' activities are financed from a tax imposed on broadcasters, and in Germany they receive a part of the revenue from the licence fee. In Albania, by contrast, the broadcast regulator uses a multitude of sources to finance its operations. These include funds from licence fees, revenues from broadcast licence applications, tax on private broadcasters' income, State budget and donations.

### 3.5 The main broadcasting regulatory body – independence

The precondition for the regulatory authorities to fulfil their tasks is that they must operate independently from pressures. The main legal mechanisms that are believed to ensure broadcasting councils' independence are linked with the appointment and termination conditions of the council membership, their conditions for their terms in office, conflict of interest provisions in the membership conditions, and the criteria for appointing the members. Yet, again, at the end of the day it is the political culture and tradition in a particular country that breeds the prevailing attitude towards non-governmental regulators. Especially in young democracies, the political and business elite still often does not exercise self-restraint towards autonomous bodies such as the broadcasting regulators. Sometimes, the lack of independence results from deficient legislation.

In Bulgaria, for example, media experts have called for the adoption of clearer rules on conflict of interest. More often, however, the lack of independence is due to a culture of collusion between individual regulators and the bodies appointing them, particularly State institutions, a situation that is brought about or at least tolerated by flawed implementation of the legislation. While almost everywhere there is legislation containing clear conflict of interest clauses in the election of the broadcasting regulators' members, its implementation is lax.

#### 3.5.1 Independence from political pressures

Governments across Europe have shown, at least formally, a willingness to loosen their grip on broadcasting regulators. The outcome of this process has been the adoption of legislation guaranteeing broadcasting regulators a degree of independence.

However, improved legislation has not necessarily changed the actual state of affairs. In Bulgaria, it was hoped that media legislation forbidding the Government from firing members of the main national regulator, the Council for Electronic Media, would give them more autonomy – and, at the end of the day, courage – in making decisions based on their own judgements and in the public interest. However, successive Governments have blatantly interfered in the Council's activities by taking steps to terminate the mandates of the Council's members illegally. Also in Romania, although the degree of autonomy enjoyed by the main national broadcasting regulator, the National Audiovisual Council (CNA), has increased, there are still serious suspicions



about the fairness of the licensing process. In Serbia, the ruling coalition in the parliament chose in August 2003 to confirm the obviously flawed election of the first broadcasting council instead of adhering to the law and repeating the procedure.

The appointment procedures leave room for political interference in many cases, harming the operational independence of the regulators. Such is the case of the Czech Council for Radio and Television Broadcasting (RRTV), the members of which are officially appointed by the Prime Minister. However, in reality, the Chamber of Deputies in Parliament, which proposes the members, has total control over the appointment and dismissal process. Appointment of the regulators' decision-making members by a single institution makes the Council a heavily politicised institution, mirroring the distribution of power in the Chamber of Deputies. Czech media observers believe that distributing the task of appointing the members of the Broadcasting Council to more authorities – such as the Senate or the Presidency – would dilute the power that the Chamber of Deputies alone has in the appointment process.

The Slovakian Council for Broadcasting and Retransmission has managed in the past five years to adequately enforce media legislation and ensure a certain degree of transparency over its operations. Back in 1998, the Council's name had become tarnished because of its overt bias in favour of the Government at the time. The introduction of staggered terms for the Council's members in 2000 was also seen as a positive step for the regulator's neutrality. However, there are serious suspicions that the candidates for membership of the Council are closely linked with political parties. Furthermore, their appointment exclusively by Parliament – albeit upon nomination by both MPs and civil society – has been questioned by broadcasters and media observers, as it leaves room for serious political interference. In Albania, the political establishment meddles overtly in the affairs of the National Council for Radio and Television by interfering in the election of its members or contesting its decisions.

In Estonia, the Government regulates the broadcasting sector directly. There, the Ministry of Culture performs the most important regulatory and sanctioning functions, such as licensing and monitoring content, imposing fines, and suspending and revoking broadcasting licences. However, due to strong resistance by broadcasters to political interference, the Ministry has confined itself to ensuring the adherence of broadcasters to legal provisions without pressuring the broadcasters to follow political agendas. It also proposed the establishment of a new regulator, but no agreement has been reached on the new institution's remit.

However, in some countries the State is trying to re-impose its grip on regulation. In Latvia, according to two new draft laws prepared in 2003 and 2004 by the specialised media commission in Parliament, the Latvian Broadcasting Council, responsible for regulating both commercial and public service television, would be dissolved, and the Ministry of Culture would take over most of the regulatory tasks for commercial broadcasting, including licensing and the prevention of monopolies, while regulatory powers over public service broadcasting would pass to a new authority. In Serbia, Parliament has bestowed a six-year tenure at the Broadcasting Council to those

members who were nominated by the political parties, whereas nominees of civil society and professional associations serve only four years.

Civil society organisations have put pressure on the State authorities in the process of reforming broadcasting regulators and strengthening their autonomy. However, some of these organisations are also under the influence of political agents, or their representatives are recruited by political parties to advocate their interests in the regulator's decisions. In Slovakia, for example, although nominations for members in the national Council for Broadcasting and Retransmission are submitted to Parliament by both MPs and NGOs, in reality members of the council have often been political nominees.

Bosnia and Herzegovina, a country that is still, ten years after the end of the war, an international protectorate, presents a special case. The Communications Regulatory Authority (RAK) was launched as an international agency shielded from political pressure by the Office of the High Representative. Today, the Authority is considered to be an efficient and independent regulator. However, it has at times been exposed to political and economic pressures exerted by various interest groups. It is hoped that civil society will become the driving force that dissipates these pressures, but the development of a strong civil society still has a long way to go.

The establishment of an appointments system for the broadcasting regulator in Lithuania, whereby a majority of members come from professional associations, has nurtured the independence of the Radio and Television Commission, which is only in charge of regulating commercial broadcasters. There have been no attempts by the Government or Parliament to interfere in the Commission's internal affairs. In addition to the Commission, Lithuania has a recognised system of self-regulation, comprising the Lithuanian Commission of Journalists' and Publishers' Ethics and the Journalists' Ethics Inspector.

In Western European countries, the work of broadcasting regulators has also come under critical scrutiny. In France, the High Council for Broadcasting (CSA) has been criticised for its political dependence. The CSA's commissioners have been repeatedly suspected of lacking neutrality, as they are appointed by political authorities. In Italy too, despite legal provisions barring the members of the AGCOM from conflicts of interest, there are well-founded doubts as to whether these provisions guarantee the independence of the regulator, because the voting system of AGCOM members in the end gives the highest power to a single person, the President of the AGCOM. Usually the AGCOM membership equally replicates the division of political power in Parliament (four against four) and therefore the decisive power rests in the hands of the AGCOM President, who is Government-nominated.

To ensure a high degree of independence from the State, the UK's Ofcom was built on a complex governing structure, which retained the "arm's length" approach specific to the British system – meaning a proper cooperative relationship between Government, industry and regulators, a situation not found anywhere else in Europe. Although this

appointment system technically leaves room for State interference, Ofcom works in a political culture that accepts the independence of broadcasters as a fundamental value. While this situation does not guarantee regulatory independence, it may be an essential condition for consistently achieving such independence. While the closeness of some senior Ofcom officials to the Government has been the subject of press comment, the regulator seems to enjoy a high level of trust. However these are still early days for Ofcom, which is a new institution.

After 1945, the Germans followed the British example and opted for an “internal” control-based system of regulation for the public service broadcaster, and an “external” control system for private broadcasters. To ensure the independence of both types of regulators, they are constituted by representatives of socially relevant groups. A less positive aspect of the broadcasting regulation in Germany is the fact that its regulatory structures have, since the start, incorporated the authority of political parties, and so are vulnerable to political horse-trading (see section 4.6.2).

### 3.5.2 Independence from commercial pressures

Lobbying by commercial television stations and/or corruption scandals have tainted the reputation of regulators in countries such as Latvia and Poland.

The Latvian Broadcasting Council has often been considered to be non-transparent and prone to succumb to lobbying by commercial television. Under a proposed new Law on Public Broadcasting, the regulatory framework might change. A new body would take over the regulation of public service broadcasting, while the Ministry of Culture would carry out all regulatory tasks on private broadcasting. The rationale for this proposal is the fact that the current Latvian Broadcasting Council (NRTP) is marred by conflict of interests, as it formulates the public service broadcaster’s budget and regulates the commercial television at the same time, both players fighting for a slice of the same advertising pie.

In Poland, the National Broadcasting Council has been accused of licensing broadcasters arbitrarily. The Council was enmeshed in a corruption scandal that devastated the political scene in 2003. The scandal broke when it was revealed that the renowned filmmaker Lew Rywin had proposed a deal to the Polish publisher Agora, a deal according to which the Government would have dropped an article forbidding cross-ownership between publishers and television in a proposed draft amendment to the Broadcasting Act. Rywin asked Agora for €13 million for his services. He said that he was acting as intermediary for a group of “power-holders”. Subsequently it became public knowledge that the group of “power-holders” Rywin referred to allegedly included the President of the public broadcaster, the Secretary of the Broadcasting Council, and Prime Minister Leszek Miller himself. All of them denied any involvement in the affair. A final report carried out by a parliamentary commission found that “unauthorised officials had made illegal changes in the official text of the law.”

In Western Europe, regulators have been criticised for their soft approach towards commercial broadcasters. Under French law, for example, the CSA possesses a wide range of enforcement measures, but has been reluctant to use them. There is a widespread belief that this reluctance is shown mainly because of the considerable economic power of private broadcasters, which discourages the regulator from considering radical steps such as revoking broadcast licences. Italy's regulatory regime is also characterised by weak legal provisions on dominant positions and unclear enforcement measures, which make the AGCOM averse to harsh decisions against powerful broadcasters.

### 3.5.3 Lack of powers

Besides political and economic pressures, another problem that broadcasting regulators have faced is the lack of sufficient powers to enforce regulations or proactively regulate the market. In many countries, the broadcasting regulators do not have enough capacity and lack power to monitor the activities of broadcasters for violations. The lack of such abilities has an adverse effect on the sanctioning power of regulators. The Macedonian Broadcasting Council, under the present Broadcasting Law, which is likely to be changed soon, is an example of extremely limited competencies. It can only formulate opinions and proposals on issues such as licensing and sanctioning of broadcasters, while the Government retains the power to make decisions in these areas.

In order to better regulate the market, broadcasting regulators have been entitled in an increasing number of countries to propose media policy. In Poland, the National Broadcasting Council (KKRiT) has the right to formulate State policy on broadcasting in agreement with the Prime Minister. However, as a rule, although entitled to participate in media policy-making, the actual influence of broadcasting regulators in adopting legislation is minor.

Public participation in media policy is very low in most of the countries monitored. A first timid step in this regard was the creation in Italy of a Users' National Council, composed of experts delegated by consumers' associations. They make proposals on draft media legislation to the Communications Guarantee Authority (AGCOM), Parliament, the Government and other bodies. In France, the low public participation in the debate over the adoption of decisions by the country's broadcasting regulator, the High Council for Broadcasting (CSA), has been criticised numerous times. Although the CSA is making its decisions public, it rarely asks citizens to contribute to this process, turning broadcasting regulation into a closed-door debate of experts, broadcasting executives, businesses and Government officials.

## 4. PUBLIC SERVICE TELEVISION: IN SEARCH OF IDENTITY

Public service broadcasting has been praised by the Council of Europe and other international organisations and bodies as a vital element of democracy in Europe and part of its cultural heritage. Yet there is a broad agreement that it is currently challenged by political and economic interests, by the impact of new media platforms, by increasing competition from commercial broadcasters and by other factors. Indeed, there is a deep crisis of identity of public service broadcasting.

On one hand, public service broadcasting is still considered by European policy-makers to be a cultural good, one that must be preserved. However, international and intergovernmental organisations such as the WTO and potentially the European Commission (see section III.5.2) have criticised the privileged position of the public service broadcasters, which receive public funding while (in most cases) at the same time competing with commercial broadcasters for advertising revenue.

In Western Europe, public service television has stabilised its position on the market for a longer time and enjoys a healthy viewership. Nonetheless, across Europe, media observers and civil society organisations criticise public service broadcasters for their affinities with political parties and for the “dumbing down” of their programming, prompted by competition with commercial broadcasters. In transition countries, public service broadcasting often suffers in particular from a lack of professionalism, an enfeebled sense of mission, a lack of viable funding, political interference with its governing bodies, and low public awareness of public service television’s distinctive role. Consequently, in these countries, little is expected from public service broadcasting. In the mid-1990s, with the advent of private broadcasters, the monopoly of the former State broadcasters was dismantled. Since 1995, the audience shares of public service broadcasters saw a steep decline, which has continued until today. In Hungary, the public service broadcaster saw a dramatic drop in viewership between 1995 and 2001 from almost 80 per cent to 13.2 per cent. In 2004, after the entrance of the private station RTL Televizija on the Croatian broadcasting market, the public service television company HTV saw its audience halved. However, in several countries, such as Poland, the Czech Republic, Slovakia, Serbia or Hungary, public service television has recently been picking up. (See Table 13)

### 4.1 Status

*(See Table 9)*

Public service broadcasters in Europe are heavily politicised, although they are officially public organisations independent from the State. There is interference in a great many cases.

Public service broadcasters are struggling to legitimise their existence in our multichannel environment and to communicate this mission to the public that they notionally serve. This impasse is the result of three main factors: acute deficiencies in the governance structures of the public service broadcasters, inadequate and/or easily manipulable sources of funding, and the slow reform of their programming to distinguish it from commercial programming. These factors are, of course, interrelated.

The governing bodies of public service broadcasters commonly include people connected to the local political elite. As councillors in the public service broadcasters governance structures, these people often represent the interests of the political parties and politicians who propelled them into office. That is why the governance and management of public service broadcasters has become, particularly in the transition countries, but not only there, a political game, with the public service broadcasting governance structures changing according to changes in governments.

In CEE and SEE, the formal transformation of the State broadcasters into public service entities – which took place after 1990 – has been, with few exceptions, completed. However, the transformation into public service entities is, in almost most cases, more formal than substantial. In reality, the State still plays the role of an “occult manager”, closely controlling the public service broadcasters.<sup>18</sup> Most of these broadcasters have the status of public organisations or corporations. The only exceptions are the Latvian LTV, which is a limited liability company owned by the State, and the Polish TVP, which is fully owned by a joint-stock company of the State Treasury. Hungary also presents an exception: the public service broadcasters MTV and Duna TV are joint-stock companies run by a foundation expressly set up in the 1990s for this purpose. In Serbia, in March-April 2004, the Government bypassed the Broadcasting Act’s provision and instead directly appointed a new Director General and Governing Board of the public service broadcaster RTS, citing as the source of its competency to do so the Law on Public Enterprises and Related Areas of Public Interest. In Western Europe, the only exception is the Italian RAI, which is majority-owned by the Ministry of the Economy and Finance.

## 4.2 Governance

(See Table 10)

### 4.2.1 Governance structure

The governance structure of the public service broadcasters in the countries monitored in this report consists, as a rule, of three main layers: a council of governors, a management board and the director general. The council is responsible mainly for general policy and overseeing the station’s budget and activities. The management

<sup>18</sup> The term “occult manager” was used by the media expert Alina Mungiu-Pippidi in *State into Public: The Failed Reform of State TV in East Central Europe*, 1999, The Joan Shorenstein Center on the Press, Politics and Public Policy.

board carries out the daily management of the broadcaster. Besides these two structures, some public service broadcasters, such as Czech Television (ČT), have in place a supervisory commission, in charge of supervising the activity of the councils and the financial audit.

A technically different model of regulating the public service broadcaster is one that operates through an “external” governing structure, which appoints the station’s management and monitors their activities. In Estonia, the public service station ETV is regulated by the Broadcasting Council, an independent body responsible for ETV’s supervision. The same situation exists in Lithuania, where LRT is supervised by the Council for Lithuanian Radio and Television. Another governance pattern is one that operates through a more simplified structure, consisting only of a management team. This is the case in countries such as Bulgaria, where the five-member Management Board of the public service station BNT is appointed by the main broadcasting regulator, the Council for Electronic Media, and in Latvia, where LTV is managed by an eight-member Board, the General Director of which is named by the national broadcasting regulator, the NRTP, and charged with appointing his or her own team of managers. In this system, there is no specific council for public service broadcasters sitting above the administration.

#### 4.2.2 Appointments

Generally the public service broadcasters’ *councils* have between nine and 15 members. A notable example is Germany, where the broadcasting councils of the ARD’s ten regional member organisations and ZDF’s Television Council have a variable number of members, which can each reach 77. With 25 members, the Councils of RTV Slovenia (both radio and television) also have a large governing structure. The tenures of the public service television councils last between three and six years. The members of the public service television councils are usually appointed by Parliament. In some countries, such as Poland and Serbia, they are appointed by the general broadcasting councils. In Latvia, only the General Director of the public broadcaster is appointed by the general broadcasting regulator, and then he or she appoints his or her councillors. However, there is now a proposal of legislation to set up a new broadcasting council that would regulate only public service television, while the Ministry of Culture would take over regulation of commercial broadcasters. The members of these councils are usually dismissed by the body that appointed them.

The *management boards* of the public service broadcasters are composed of television professionals, usually directors of the main internal departments of the stations or candidates proposed by the station’s General Director. They are normally appointed by the Councils of the public service broadcasters.

The *General Director* of the broadcaster plays a central role in the governing equation. With only a few exceptions – such as Romania and the Republic of Macedonia, where the General Director of the local broadcasters is appointed by Parliament, and Turkey,

where the General Director is named by the Government – the General Directors of the public service broadcasters are appointed by the stations' regulatory council.

In Western Europe, the mechanisms of appointing the governing structures of public service television are more complex. In France, for example, the Government, Parliament, the broadcasting regulator and the staff of the public service enterprise France Télévisions appoint their people to the station's Council of Administration. In Germany, the councils of public service television stations ARD and ZDF are composed of important social groups whose seats in these councils are guaranteed by the law. However, at the end of the day, in most cases, the public realises which party is behind each of the candidates.

The councils of public service television have the greatest power among the governing bodies of the broadcasters. In most of the countries, they appoint the General Director of the station, who then selects his or her management. However, in some transition countries, the position of General Director has gained in importance. In the Czech Republic, for example, observers stress the point that Czech Television (ČT) needs a strong personality to lead the station and resist political interference with the station's affairs directly or via the station's council, which is appointed by the Chamber of Deputies. In other countries, such as Romania, increasing power vested in the hands of a single person – by combining the positions of General Director and President of the Council of Administration into a single post – has had negative effects on the independence of the station, as the General Director-President is appointed by Parliament.

### 4.3 Public service mission and obligations

*(See Table 11)*

Public service broadcasters everywhere have a number of obligations based on three main principles: programming tailored to public service broadcasting, impartial and accurate information, and universal access. Public service broadcasters are required in most of the countries to do the following (see Table 11):

- to air independent, accurate, impartial, balanced, objective news and information;
- to ensure diversity of programming and viewpoints;
- to broadcast a certain proportion of news, cultural, artistic, educational, minority, religious, children's and entertainment programming;
- to promote local culture and values;
- to produce and broadcast programmes relevant for all the regions in the country;



- to provide free-of-charge airtime for public interest announcements, such as healthcare, road safety and urgent messages of State authorities.

Commercial television stations are usually bound by a set of general broadcasting obligations, such as avoiding incitement to ethnic hatred and violence, or airing erotic programmes only at late hours. Beyond these, public service television broadcasters must follow more guidelines and operate within a legally established remit. In most of the countries monitored, there are some common obligations for both public and commercial television stations, but these vary significantly (see section 6).

Public service broadcasters are commonly obliged also to air programme strands that do not necessarily appear on commercial television, especially cultural and educational programming, programmes for minorities and regional news. The obligations imposed on public service television broadcasters show a common understanding that public service television is more than a medium of communication and should fulfil a much wider societal role. Its mission includes the promotion of local culture, traditions and values. In some countries, legislation emphasises this role. In Turkey, the public service broadcaster TRT is obliged to pursue the national goals of the country, based on the reforms and principles of Atatürk, the founder of the modern secular Turkish State. In Poland, the public broadcaster is required to respect the Christian system of values and strengthen family ties.

However, the obligations imposed on public service broadcasters are for the most part broadly or vaguely worded, leaving wide room for interpretation. In the UK, the BBC only has to show “a reasonable proportion and range” of output for Scotland, Wales, Northern Ireland and the English regions. In Croatia and in Bosnia and Herzegovina, public service broadcasters are required to air “adequate” shares of information, cultural, educational and entertainment programming. In the Republic of Macedonia and in Serbia, there are obligations for the public service broadcasters to provide programming for national minorities in their languages. In general, public service broadcasters devote insufficient time to cultural or minority programming or air these programmes at unattractive hours.

Some Western European countries present more complex models of public service obligations. In France, each of France Télévisions’ three channels bears specific public service obligations. France 2 and France 3, for example, are required to provide free airtime to political parties represented in Parliament and unions and professional associations considered to be nationally representative, based on rules established by the country’s general broadcasting regulator, the High Council for Broadcasting (CSA). France 2 must air religious programmes, and all three public channels must regularly broadcast programmes on science and technology. Although many of these programmes are run at late hours, the imposition of a more detailed set of public service obligations has helped France Télévisions to gain a more distinctive voice in the French broadcasting scene.

All terrestrial broadcasters in the UK have public service obligations. This is the uniqueness of the British model of broadcasting, with the BBC having the most responsibility as the main public broadcaster, followed by Channel 4. ITV and Channel 5 have fewer obligations, covering regional productions and minimum programme requirements, which include current affairs and news. Both the BBC and Channel 4 receive frequencies at no cost in return for their public service obligations.

#### 4.4 Funding

*(See Table 12)*

Public service television broadcasters are huge enterprises by local standards in all European countries. On a pan-European level, five out of the ten largest broadcasting companies ranked by operating revenues are public enterprises (Italy, the UK, France and Germany). (See Table 4).

In the smaller European markets, public service broadcasters employ a couple of hundred employees. On average, public service broadcasters in Central and Eastern Europe each employ between 1,500 and 3,000 staff, but the payroll increases with the size of the country. The Polish TVP has a workforce of 4,600, while the Turkish TRT employs some 8,000 people. In Western Europe, German public broadcasters ARD and ZDF have a combined staff of nearly 25,000. Public service broadcasters typically employ far more people than private television stations in the same market conveying similar volumes of programming. In Hungary, for example, public service television employed some 1,600 people in 2004. Commercial television stations RTL Klub and TV 2 produce the same amount of programming with only up to 400 employees.

In most countries, the funding of the public service broadcaster is a hybrid model, combining revenue from two of the following three sources: the licence fees paid by taxpayers, allocations from the State budget, and commercial revenue from advertising, broadcasting rights, donations, and renting technical equipment and other assets that the stations own. Among the few countries where the principal public service broadcaster is funded through a single source are the UK<sup>19</sup> – where the BBC finances its operations from licence fee revenues alone (its commercial revenues being, relatively, marginal) – and Estonia, where ETV covers its expenses mainly through State subsidies. Estonia is, in fact, the country that tested a new model of financing its public service broadcaster from fees imposed on private broadcasters. Launched in 1998, this model functioned until mid-1999. It was widely praised in the country, as it allowed ETV to shift its focus away from programmes with high commercial potential to more cultural programming. Through this model, a significant amount of advertising money was diverted to the private television stations. However, the model was scrapped when a private television station, TV1, failed to pay its annual contribution to ETV on time.

---

<sup>19</sup> BBC World, the television channel, is commercially funded and BBC's World Service, the radio service, enjoys State funding.

In many of the countries monitored, including Croatia, the Czech Republic, Germany, Italy, the UK, the Republic of Macedonia, Romania, Slovakia, Slovenia and Turkey, more than 50 per cent of the public service broadcasters' total funding comes from licence fees. In other countries, such as Albania, Lithuania, Estonia, Latvia, Serbia (where a mandatory licence fee will be reintroduced starting 1 October 2005) and Hungary, the main funding of public service television is represented by State finances.

#### 4.5 Public service broadcasting at a crossroads

Over the past decade, public service broadcasting has been praised and criticised in roughly equal measure. Considered by the European political elite to be an essential part of European cultural identity, public service broadcasting has been supported by European political bodies. In the Protocol on the system of public broadcasting attached to the 1997 Treaty of Amsterdam, public service broadcasting is considered to be "directly related to the democratic, social and cultural needs of each society and to the need to preserve media pluralism". The Protocol contains the provision that if it will be left to the competency of member States to provide for the funding of public service broadcasting "for the fulfillment of the public service remit".<sup>20</sup> In 2005, at its Seventh Ministerial Conference on Mass Media Policy (Kiev), the Council of Europe reaffirmed the importance of public service broadcasting "as an element of social cohesion, a reflection of cultural diversity and essential factor for pluralistic communication accessible to all."<sup>21</sup> At the same time, the European Commission stressed the point that the State aid to public service television must pass the proportionality test, which means that this aid must not exceed the net costs of the public service mission.<sup>22</sup>

On the other hand, public service broadcasting has come under pressure from the WTO, which has called for total liberalisation of the audiovisual market, which would mean the elimination of preferential treatment for the public service broadcasters.<sup>23</sup> At

<sup>20</sup> Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts, signed on 2 October, C 340, 10 November 1997, Protocol No. 9 on the system of public broadcasting in the member States, C340/109, available at <http://europa.eu.int/eur-lex/en/treaties/selected/livre545.html> (accessed 30 July 2005) (hereafter, EU Protocol on Public Broadcasting (1997)).

<sup>21</sup> Council of Europe, "Integration and diversity: the new frontiers of European media and communications policy. Adopted texts", Seventh European Ministerial Conference on Mass Media Policy, Kiev (Ukraine), 10-11 March 2005, Resolution No. 2, Cultural diversity and media pluralism in times of globalisation, p. 7, available at [http://www.coe.int/T/E/Human\\_Rights/media/MCM%282005%29005\\_en.pdf](http://www.coe.int/T/E/Human_Rights/media/MCM%282005%29005_en.pdf) (accessed 30 July 2005).

<sup>22</sup> For more on the Commission's position on State aid for public service broadcasting, see: section III.5.2 of this Overview report.

<sup>23</sup> See: Pauwels, Caroline – Jan Loisen, *The WTO and the Audiovisual Sector. Economic Free Trade vs. Cultural Horse Trading*, in *European Journal of Communication*, 18, 3/2003, pp. 291–313; see also section III.2 of this Overview report.

the same time, the World Bank argued in a 2002 study that public service obligations can be fulfilled more efficiently by private broadcasters.<sup>24</sup>

Private broadcasters also impugn the model of financing the public service broadcasters, which, they claim, is unfair to private competitors. They have repeatedly accused the public service broadcasters of “buying” audience shares with State or taxpayers’ money. However, a recent review of public service broadcasting around the world, carried out by the international consulting company McKinsey, for the British body Ofcom, concludes that there is no evidence that commercial funding is commonly “crowded out” by high levels of public funding.<sup>25</sup> The authors of this study write that statistically, the most significant effect came from the gross domestic product, which has a particularly strong effect on the level of advertising funding.

Finally, in transition countries, public service television is still associated by the general public with State television, due to the long history of communist State monopoly on television, and because of the numerous disclosures of State interference in the public broadcasters’ activities and programmes. Some governments still seem reluctant to cede control over the public service broadcaster. In Serbia, the present director of RTS, appointed by the Government, prefers to call the former State broadcaster “national television”. This fascination with the alleged importance of a “national institution”, in this case RTS, keeps the fantasies of “national grandeur”, with all its dangers, high on the State broadcaster’s agenda.

## 4.6 Independence

The most important condition for public service broadcasters to fulfil their role is that they are able to operate independently from the State. There are three areas in which independence is vital for the overall functioning of public service broadcasting as an objective and trustworthy mass medium: financial independence, management independence and editorial independence. All three are interconnected and have a direct influence on the overall performance of public service television.

### 4.6.1 Financial independence

The subsidising of public service broadcasters from the State budget is generally seen as the most hazardous model of financing, as it automatically creates dependence of the broadcaster on the State structures.

<sup>24</sup> For more, see: World Bank Institute Development Studies, *The Right to Tell. The Role of Mass Media in Economic Development*, The World Bank, Washington, D.C., 2002.

<sup>25</sup> McKinsey & Company, *Review of Public Service Broadcasting around the World*, London, September 2004, p. 2, available at <http://www.ofcom.org.uk/consult/condocs/psb2/psb2/psbwp/wp3mck.pdf> (accessed 1 September 2005).

State subsidies seriously jeopardise the independent position of public service broadcasting. This is the case in Albania, where the bulk of the funds used by the public broadcaster, RTSH, comes directly from the State coffers (see Table 12). Lack of transparency in the management of these funds increases concerns about the station's independence. At the same time, this form of financing does not encourage RTSH to complete its reform and look for more flexible methods of management. The reliance of the Bulgarian public broadcasters BNT and BNR on funding from State subsidies has also thrown serious doubts on their political independence. In Serbia, there was a public outcry when, in August 2005, Parliament re-introduced mandatory licence fees, to be paid together with the electricity bill. Many media experts argued that mandatory fees are not justified until there is public service television.

The licence fee is a fee paid by the owners of television sets and is independent of the State budget. In some countries it is called a tax on television and is levied with the electricity bill. Revenue from a licence fee is considered to be the most appropriate model of financing public service broadcasting, as long as there is transparency and accountability over the spending of public money. However, funding from licence fees has also been seriously questioned in countries where this form of universal taxation is not justified by quality, diverse programming, which would sufficiently distinguish the public broadcaster from the programmes of commercial television. (See section II.6.) A fairly common phenomenon – particularly in those transition countries employing the licence fee system for public broadcasting – is a decline in paying the licence fee, due to deficient systems of collecting the fees and to widespread economic hardship, and also to the refusal of householders to pay the fee, as they perceive that they do not receive any value for it.

In many of the countries monitored, licence fee revenues represent the largest part of the public service broadcasters' budgets (see Table 12). Although the licence fee is basically a disguised form of taxation, the fact that it does not come directly from the State budget makes it a legitimate way of financing the public service broadcasters, because it ensures more financial independence. In Hungary, the elimination of the licence fee in 2002 was seen as a negative symbolic message, showing that the incumbent Government was overtly challenging the independence of the public service broadcaster.

Nonetheless, simply introducing a public television licence fee is not sufficient to ensure the financial independence of the public service broadcaster. As long as the level of licence fee is decided by Parliament or the Government, and increasing it requires a change in legislation, the fee can become another tool for States to control broadcasters. In Germany, there is an independent Commission for the Evaluation and Assessment of the Financial Requirements of Public Service Broadcasters (*Kommission zur Ermittlung des Finanzbedarfs der Rundfunkanstalten*). The financing of the Hungarian public service television broadcasters before the scrapping of the licence fee was not satisfactory, as previous Governments repeatedly exerted political pressures on the station, by keeping the licence fee at a low level to hinder the station from

becoming truly independent. The financial independence of public service broadcasting is ensured through establishing a stable and sufficient source of independent funding, linked to economic indicators such as the rate of inflation, and with adequate public representation.

#### 4.6.2 Management independence

Recent years have seen an increasing diversification of the bodies appointing governance structures of the public service broadcasters in transition countries. This is a positive development, as it diluted political control over the broadcasters. (See section II.4.2.) However, the appointment process is still vitiated by political bickering and, as a result, suspicions of political interference with the governors of the public service broadcasters still run high.

In Albania, the union of employees working with RTSH has repeatedly claimed that the election of the General Director is a purely political affair, citing facts that confirm this allegation. In the Republic of Macedonia, despite legal changes in 1997 and 1998 aimed at increasing the level of independence of the public broadcaster's governance structures, the tradition of political partisanship in the public radio and television broadcaster, MRT, has survived, and the managers of the broadcaster are usually close to the ruling parties. Also in Macedonia, as a rule, political parties ensure that top managerial positions are divided among candidates of different ethnic background, who, in turn, owe their nomination to the political parties.

An epitome of the politicised management of a public service broadcaster was the crisis of Czech Television in 2000-2001, which erupted when Jiří Hodač, a journalist allegedly linked with the Civic Democratic Party (ODS), was appointed to head the station. Furious protests by many staff were supported by large street demonstrations. In the end, Hodač resigned and Parliament came under public pressure to change the way of appointing the governing bodies of Czech Television, namely the Czech TV Council, which in turn appoints the station's General Director. The change was that Parliament must appoint the members of the Czech TV Council not directly, as was the case before, but from a pool of delegates nominated by civil society organisations. However, the new system did not bring major changes, as political parties are usually looking for their own candidates from civil society organisations, and in the end push them onto the governing boards. Involvement of civil society in the appointing of the governance structures is, therefore, a step towards greater independence for the governing bodies, but does not guarantee the management's independence.

Another example of the low impact that civil society has made on the structures of the public service broadcasters is Hungary, where the public service television stations MTV and Duna TV are governed by large boards of trustees that also include NGO representatives. In general, the governance structure of these stations is criticised because of its high number of members (a combined membership of 60 for both stations), which blurs responsibility for the decisions made. Besides that, the representatives of NGOs are

selected without any formal delegation mechanism – they lack representativeness, have no media expertise and are often associated with political parties.

Even in a long-established and sophisticated public service regulatory system, such as Germany's, political influence on the governing structures is significant. First of all, political parties are directly represented in the Broadcasting Councils of ARD and ZDF via the State parliaments. Members propelled to the Council by social groups and NGOs also often align themselves with a political party. In Italy, the public service broadcaster RAI has remained, after numerous legal reforms, under the direct and overt control of Parliament, and thus under the influence of the political parties. The situation worsened with the rise to political power of Silvio Berlusconi, the media magnate who controls the largest television operator in the country, Mediaset.

The absence of clear rules on conflict of interest in many countries has a negative influence on the independence of the governing bodies of the public service broadcasters. This is the case in Poland, where the members of the TVP's Supervisory Council are not prohibited from holding other paid positions in TVP itself. This situation allowed members of the Board to often take on other jobs in TVP or TVP-affiliated companies.

#### 4.6.3 Editorial independence

Editorial independence is closely related to the financial and management independence of the public service broadcasters. Without sound financing allowing the public service broadcaster to carry out investigative and solid news reporting and produce high-quality programmes, or management structures guaranteed immunity against external pressures, editorial independence cannot be achieved.

All public service broadcasters operate according to a set of editorial standards and production guidelines aimed at ensuring high-quality programmes, and accurate and unbiased news. These standards are complemented by self-regulatory mechanisms such as journalistic codes of ethics. However, the broadcasters' internal standards tend to be worded very vaguely and serve a merely formal purpose. The editorial independence of public service broadcasters depends on their general level of operational independence and partly also on the journalists' professionalism and determination to serve their public with true and objective reports.

The BBC's programme guidelines have been imported or adapted in many transition countries. These guidelines are governed by the principles of impartiality, accuracy and fair representation of all social groups and individuals. Central to the BBC's editorial policy is the concept of "due impartiality" underpinning a programming culture governed by accuracy, fairness and a respect for the truth. Despite its huge programming output, the BBC has breached these principles only rarely.

The situation of news reporting and editorial independence varies widely. There are countries where the news coverage of public service television has somewhat improved,

but in other countries, the public service broadcasters offer politically slanted, inaccurate, partisan reports. Journalists in the public service broadcasters experience direct or indirect political interference and pressures in their work.

### Survey of editorial independence in public service broadcasters

Bulgaria	Journalistic practices in general have begun to be professional, and reporting is usually fair and well sourced. However, the lack of a firewall between management and editorial desk, and pressures from the ruling party have hindered BNT from achieving true independence.
Croatia	Performance of the public service broadcaster has significantly improved, with news programmes on domestic television showing no marked bias towards the governing parties.
Czech Republic	Czech Television's journalists do not experience direct, serious interventions of politicians or management into their work, but accuse MPs of indirect pressures when they openly condemn investigative reports.
Hungary	Political bias is more significant in public service television than in the commercial media. However, the pro-Governmental slant of Hungarian public service television has not had a big impact on the political affinities of the general public.
Albania	Editorial independence in Albania is extremely poor in both the public and the private media, partly due to a lack of self-regulatory mechanisms, which were not adopted because of resistance to them on the part of all post-communist governments.
Latvia	Public television does not provide objective reporting. Its news broadcasts include also comments and opinions. This habit stems from the vague wording of the journalistic standards in the station's Code of Ethics, allowing for opinionated reports to go on air.
Poland	TVP's journalists were subject to direct manipulation by the station's management, who refused to pay journalists or removed their programmes from the schedules if they did not conform to various political demands of the station's management.
Romania	SRTV has been known as the mouthpiece of the Government, which directly controlled and censored the station's news programming. After the general elections in 2004, SRTV has embarked on a major process of restructuring the station, which, it is hoped, will put an end to the Government's intervention into the station's affairs.
Estonia, Lithuania	No examples of political interference in PSB editorial independence.
Italy	Due to RAI's weak management, the station's journalists are vulnerable to attacks from the ruling coalition. Two notorious cases involved the firing of RAI's well-known journalists, Enzo Biagi and Michele Santoro, after the media tycoon and Prime Minister Silvio Berlusconi publicly attacked them.
France	Editorial independence is a matter of practice. When facing pressures, French journalists receive support from unions or professional organisations. A more dangerous development is the relationship between journalists and political sources based on which journalists trade fresh information for news coverage.



## 5. PRIVATE TELEVISION: CONCENTRATION OF OWNERSHIP

Concentration of media ownership and lack of transparency with respect to who owns what in large media companies are the main impediments to building independent and trustworthy commercial television broadcasters. In some small countries, however, media concentration is held to be the only solution for building sustainable media businesses. The level of concentration is higher in Western Europe than in transition countries, but the consolidation of media outlets is taking place in the transition countries at a faster pace. In other countries, commercial television is financially backed by politicians or is part of larger enterprises, and therefore functions as a tool of pursuing political or business interests. Commercial television across Europe is often criticised for “dumbing down”, sacrificing general quality to the achievement of the largest possible audiences and thus increasing chances to attract advertising money. Journalists working within commercial television in the transition countries are underpaid – although in some cases they earn more than those working for public service broadcasters – and have limited or no labour protection. These factors all compromise the independence of the newsrooms in commercial television stations.

### 5.1 Obligations

Commercial television operates on the basis of licences issued by domestic broadcasting regulators, which also monitor their output to ensure that private operators comply with the existing legal provisions governing television in each country. (See section III.) Although free to build their own programming schedules and decide their content, commercial stations in Western Europe are usually under some general obligations to serve the public interest. In post-authoritarian countries, the notion of imposing public service obligations on commercial broadcasters is not widespread. These obligations are specified in broadcasting legislation and/or the broadcast licence.

Among the four Western European countries monitored in this report, there were broad public service requirements for commercial channels in the UK and Germany. In France, regulation obliges commercial broadcasters to show particular types of programming, often linked to preserving the national cultural heritage. In Italy there are only minimal obligations of quality for commercial channels.

Both public service and commercial broadcasters are subject to a legal set of general broadcasting content obligations, such as the protection of minors by avoiding showing excessive violence and explicit erotic content before a certain watershed, for instance 21.00 (9 pm). There is also a ban on incitement to ethnic or religious hatred. For EU member States, some of these obligations derive from the EU “Television without

Frontiers” (hereafter, TWF Directive)<sup>26</sup> while for non-EU countries, there are relevant provisions in the Council of Europe’s European Convention on Transfrontier Television (ECTT).<sup>27</sup> The provisions of the TWF Directive and the ECTT substantially overlap. (See section III.4.)

In some countries, commercial broadcasters are subject to a set of additional programming obligations stipulated in the licence agreement signed when broadcasting regulators grant private broadcasters a licence to broadcast television. (See section II.6)

## 5.2 Concentration of ownership

*(See Tables 14 and 15)*

As in any other business, the key driver of private broadcasting is the bottom line. To make money, commercial stations have to attract large audiences, which generate advertising revenues. However, television is not a business like any other: it produces a special type of commodity – news and information – and then distributes it using part of a limited spectrum of frequencies, which form a public resource administered by the State. Furthermore, television is the most influential medium in today’s developed societies and therefore has a crucial role at the societal level, which creates the basis for justifying regulation.

The most negative development in the commercial television sector since the liberalisation of television has been the steady concentration of ownership, which jeopardises television’s diversity and pluralism as well as editorial independence. The concentration of television ownership in a few hands is potentially dangerous, in that it means a concentration of influence that can be used for political, personal, ideological or commercial gains.

Over the past decade, the media industry has seen a series of massive mergers and acquisitions, which led to the consolidation of several large media empires across the continent and threw local markets into the hands of a few media groups. Even where anti-monopoly legislation is in place and ceilings on ownership are enforced, television

<sup>26</sup> EU “Television without Frontiers” Directive (TWF Directive): Council Directive of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in member States concerning the pursuit of television broadcasting activities, 89/552/EEC, OJ L 298 of 17 October 1989, as amended by European Parliament Directive of June 1997, 97/36/EC, OJ L 202 60 of 30 July 1997, consolidated text available on the European Commission website at [http://europa.eu.int/eur-lex/en/consleg/pdf/1989/en\\_1989L0552\\_do\\_001.pdf](http://europa.eu.int/eur-lex/en/consleg/pdf/1989/en_1989L0552_do_001.pdf) (accessed 15 March 2005), (hereafter TWFD).

<sup>27</sup> Council of Europe, European Convention on Transfrontier Television (ECTT), 5 May 1989 amended according to the provisions of the Protocol (E.T.S. no. 141) of the Council of Europe of 9 September 1998, entered into force on 1 March 2002, available at <http://conventions.coe.int/treaty/en/Treaties/Html/132.htm> (accessed 30 June 2005), (hereafter, ECTT).

corporations have taken advantage of permissive laws, legislative loopholes or weak regulatory mechanisms to maintain and even increase their ownership share. They either hide the traces of their ownership in foreign jurisdiction that protects their secrecy, or employ multi-layered, sophisticated ownership structures to evade any investigations launched by the regulatory bodies.

The level of concentration of media ownership is higher in Western Europe than in the transition countries. Italian commercial broadcasting is the most notorious example, with the company Mediaset, owned by the Milan entrepreneur and current Prime Minister Silvio Berlusconi, owning all three national commercial television channels in the country, Canale 5, Italia Uno and Rete4. In Germany, the 30 per cent concentration threshold for private broadcasters effectively means that legislators accepted a duopoly in private television, which has been developing since the mid-1980s. France faces a constant dilemma on how to reconcile pluralism and diversity in the media with the creation of large French media conglomerates able to compete internationally.

In the past decade, with the opening up of Eastern and Central European markets to private investors, several Western groups rushed into the region and built large television networks. In countries from the former communist bloc, national legislation in the early 1990s forbade foreign ownership, but now conditions for media ownership are much more relaxed, with foreign entities allowed to invest directly in the media. Only in Serbia are there still legal limits on foreign media ownership, which is allowed only 49 per cent in the overall founding capital.

The largest pan-regional television operators in Central and Eastern Europe include the US company Central European Media Enterprises (CME), which in the past 15 years has built a network of nine stations in six countries, the German RTL Group, part of the Bertelsmann media conglomerate, which owns stations in Hungary and Croatia, and plans more acquisitions, the Swedish Modern Times Group (MTG), which operates national stations in all three Baltic states, Rupert Murdoch's News Corporation, owner of the largest Bulgarian television station, and SBS Broadcasting, which operates in Hungary. (See Table 15)

### 5.3 Cross-ownership

Cross-ownership regulations vary widely. In most of the countries monitored, legislation forbids cross-ownership deals. Usually, a company is not allowed to operate two broadcasters with similar footprints, or broadcasting to households in the same geographical area. For example, legislation commonly forbids operation of two national television stations or two national radio networks. Furthermore, most of the countries have legal provisions against joint ownership of print media and electronic media. In Bulgaria, Lithuania or Poland there are no limits on cross-ownership, however.

In recent years, the Western European trend of building multi-media ventures is reaching the transition countries where there are now more multi-media mergers. Even in countries with legal provisions against cross-ownership, vertical concentration has been augmented as owners use sophisticated ownership structures to hide their ownership. In Slovakia, despite strict legal limitations on cross-ownership, the local media mogul Ivan Kmotrík is said to own shares in three television stations, and also in the Mediaprint & Kapa Pressegrasso company, which is the largest newspaper distribution network in the country.

In small countries, concentration of media ownership is often not considered to be a threat. Media policy-makers in Estonia, for example, argue that in such small markets, media companies would not be able to survive if they did not consolidate their various businesses. Yet Estonia presents a considerable vertical and horizontal concentration in the media, with the Norwegian group Schibsted operating the largest media enterprises in the country. Another argument supporting the need for cross-ownership consolidation came from the Polish company Agora – the publisher of Poland’s leading daily newspaper, *Gazeta Wyborcza*, and operator of a network of local radio stations – which said that the real threat to media pluralism is represented by cross-ownership ventures owned by multinational media giants, and not by domestic firms.

#### 5.4 Transparency of ownership

Another inadequacy of the commercial television markets is the lack of transparency of media ownership, which can hide from the public eye potential conflicts of interests and owners’ interference with the stations’ programming. One of the frequent methods of hiding ownership is registration of the media company in offshore countries such as Cyprus, or countries such as Switzerland, where confidentiality of ownership is guaranteed. In Bulgaria, the real owners of many media outlets are unknown, as they register the outlets under the names of offshore companies. In Romania too, many television stations hide their ownership in foreign countries. In the past two years, under pressure from civil society, the Romanian broadcasting regulator forced several television companies to disclose their ownership, but media ownership is still far from clear. In Serbia, one of the new “oligarchs”, Bogoljub Karić, together with his brothers, owns BK Telecom, a national television channel, known for its conservative stance and formerly for its support for the former Milošević regime, but again and again there are rumours that their company has undisclosed shares in weeklies and other print media.

Introduction of legal provisions empowering broadcasting regulators to examine all the ownership layers of broadcasting players could be one solution for shedding more light on the sector. At the same time, such steps as establishing central publicly available databases of media owners, and enacting more drastic sanctions for broadcasting companies hiding ownership data or providing false ownership data, could help to make the sector more transparent.

Hiding under foreign jurisdictions should not mean that broadcasters can breach national requirements to be fully transparent. Even if a company owning a television station is formally registered in Switzerland, where confidentiality of ownership is ensured, there is nothing preventing the regulator in the country where this station operates from obliging the broadcaster in question to disclose its ownership.

## 5.5 The marketplace

(See Tables 15, 16)

Commercial television is funded from advertising and other commercial revenues, such as sponsorship and teleshopping. In the media market, television was the sector that has acquired the largest part of the advertising revenues over the past decade, and its share continues to increase, to the detriment of other media, such as print media, radio and outdoor.<sup>28</sup>

Italy is the largest advertising market in terms of advertising spending per capita. Although the discrepancy between Western markets and transition markets remains high, the advertising markets in the transition countries have been growing fast. In advertising expenditure per capita, Hungary comes second after Italy among the countries studied in this report (see Table 15). Albania and Bosnia and Herzegovina still lag behind their peers in the region. In most of the countries, television pulls in more than half of the national total advertising spending. Only in the four Western European countries analysed in this study (France, Italy, the UK and Germany), the Czech Republic, and two Baltic countries (Latvia and Estonia), does television attract less than half of this total. Except for Bosnia and Herzegovina, and Poland, commercial television attracts the largest share of total television advertising in the other countries.

It is important to note, however, that the data on advertising expenditure (for 2003) in Table 15 is based on gross figures. In many transition countries, these figures are not reliable, as they are based on the official tariffs that television stations provide to advertisers and do not include the (extremely widespread) discounts, barter deals or commissions offered or charged by advertising agencies and media-buying companies. In these countries, the real, net figures are much lower. Marked differences between net and gross figures appear in countries such as Turkey, Romania and Hungary. Although not that marked, differences between gross and net figures of advertising revenues exist also in Western European markets.

## 5.6 The independence of commercial television

The launch of private television has fundamentally changed the television landscape in the transition countries, and forced the former State broadcasters to rejuvenate their programming in order to survive the competition. In the early days of their operations

---

<sup>28</sup> IP International Marketing Committee, *Television 2004*, p. 46.

in these countries, some commercial broadcasters pioneered dynamic news and political programmes and brought investigative reporting to these nations. Today, however, commercial television is usually not a reference for solid investigative journalism and quality news programmes, as these stations, in their efforts to attract ever-larger audiences, have resorted increasingly to low-quality entertainment and sensationalist newscasts.

Self-regulatory mechanisms in commercial television in transition countries are few in number, and journalists staffing these stations are often targets of direct or indirect pressures. ANEM, the Association of Independent Electronic Media in Serbia, is one of the few examples of private broadcasters formulating a code of ethics. Clear labour regulations are lacking in many countries, and journalists are underpaid and have to accept that tacitly, because the working offers in their countries are limited. As a rule, foreign broadcasting media companies offer working conditions to their staff in transition countries that would be considered sub-standard in their countries of origin. Associations of Journalists and trade organisations in Croatia, Serbia and other countries have often complained because of that. Journalists often fear for their jobs, as collective bargaining, trade union protection and similar forms of Western industrial relations have not yet taken hold in many transitional countries. In such a precarious environment, and against the background of widespread political interference in programming and economic pressures, self-censorship thrives.

In Romania, in-depth political and current affairs programmes and talk shows have been removed from the schedules of commercial television stations, replaced by low-quality “political cabarets” mixing political debate with variety shows. Commercial stations justify this programming, saying that their sole indicator of success is the audience share, and that viewers want such programming. On the other hand, broadcasters air more light entertainment and “goof” (poor-quality) television, because this avoids covering controversial political and economic issues that could draw the ire of influential politicians and businesses, which back them through favourable regulation or advertising contracts.

Media owners’ links with other businesses also have a negative impact on editorial independence, because the owners use their outlets to advance their other business interests rather than to serve their viewers. That is the case in some transition countries, including Romania, Albania, Serbia and the Republic of Macedonia, and also in Turkey, where, because television is not usually a sustainable business, media outlets are either backed by political circles or are part of larger companies, the owners of which have invested in other sectors and use the media only as a tool with which to pursue their business interests.

## 6. TELEVISION PROGRAMMING

Television programming is changing fast to keep up with public tastes and to reflect industry innovation and competitiveness. Under the pressure of commercial television competition, public service broadcasters are producing and airing increasingly commercial programmes and therefore they increasingly resemble their commercial rivals. Commercial television produces tabloid newscasts as a way of both attracting audiences and avoiding coverage of sensitive issues, which would jeopardise their business. Investigative journalism is marginal in both public and commercial television. Minority programming is allocated small and unattractive timeslots on public service television and is non-existent on almost all commercial television.

### 6.1 Changing formats

The main trend in television programming is the incessant search for new programme formats coupled with a reckless commercialisation of content. In an increasingly competitive mass media market, with innumerable outlets fighting for audiences, television strives to attract viewers through innovative, dynamic, frequently sensationalist programming. Channels are continuously reinventing themselves. They hybridise television formats, mixing highbrow programming, such as news or political debates, with light entertainment, such as variety shows. They build newscasts on a markedly tabloid structure, highlighting sensational and freakish items while removing from the schedules in-depth, hard investigative reports, which are time-consuming and expensive to produce. The typical programming of generalist commercial television consists of reality shows, commercial films, soap operas, quiz shows, local entertainment and advertising.

In an environment dominated by increasing media concentration and competition from the commercial media, the role of public service television, as repeatedly declared by the Parliamentary Assembly of the Council of Europe, is to boost diversity and pluralism and deliver programmes for the entire public, including minority and cultural programming, in-depth investigative reports, news and information, children's programming, regional news and drama.<sup>29</sup> By doing so, public service television enhances social, political and cultural citizenship and promotes social cohesion.

However, in reality, a number of public service televisions have engaged in competition with commercial television, and, instead of forging new identities that would distinguish them from commercial broadcasters, public service broadcasters copy the programming pioneered by commercial television.

---

<sup>29</sup> Council of Europe, Parliamentary Assembly Recommendation 1641 (2004) on Public Service Broadcasting, adopted on 27 January 2004.

## 6.2 Public service television

Although a specific remit and obligations are imposed by law on public service broadcasters, their programming increasingly resembles commercial television content, particularly in the transition countries. In the past decade, public service television broadcasters have made some improvements in their programming, airing more news and current affairs programmes, documentaries and religious and minority programming than commercial stations do. However, with competition from commercial television becoming fiercer, public service television broadcasters have progressively increased the ratio of low-quality entertainment, while moving cultural and minority programming to unattractive timeslots. Nonetheless, it has to be said that some of the leading Western European public service broadcasters, including the BBC, ARD and ZDF, have managed to sustain clear programming profiles and ratings success, without succumbing, notably, to down-market demands.

In Slovenia, for example, the public service broadcaster used to offer a mixture of highbrow and popular content, but after the launch of commercial television, it started to air more commercial formats such as game shows and European soap operas.

TVR 1, the first channel of the Romanian public service broadcaster SRTV, airs low-grade comedy shows and local reality shows, which score large national ratings. Besides TVR 1, SRTV runs two more terrestrial channels, TVR 2 and TVR Cultural, the latter airing exclusively programmes on cultural issues.

This formula, with one channel airing more commercial content complemented by other channels airing more public service programming, is employed by public service television networks in several European countries. The first channel of Czech TV, ČT1, is a generalist channel, cramming all kinds of programmes in its schedules, including news, drama, commercial series and films, entertainment shows and children's programmes, while the station's second channel, ČT2, focuses on programmes for minorities, sports, music, documentaries and independent films. A similar formula is employed in Slovakia, where the second channel of the public service television station STV, Dvojka, focuses on smaller target groups, airing music and sports, programmes for national minorities, religious programmes and documentaries, while the station's first channel, Jednotka, resembles a commercial television station, airing entertainment shows, blockbuster cinema films, family shows, gossip magazines and reality shows.

On the first channel of Serbia's public broadcaster, RTS, news programmes occupied a large part of the schedules, but their amount has decreased steadily in reaction to competition from commercial stations, chiefly TV Pink, which, since its launch in 1994 has set the trend for commercial television in the entire region. Its unsophisticated philosophy, "no news, no sports, just entertainment", has proved to be a sweet success. After 2000, Pink began to produce news programming, trying to distance itself from a schedule overloaded with advertising and banking on cheap entertainment. However, it maintains a predominantly entertainment-oriented profile.



It launched stations in Bosnia and Herzegovina and Montenegro, becoming the only pan-regional station originating in the region.

Programming is directly influenced by the financing of public service television. Ensuring a stable, long-term source of funding is a major incentive for the public service stations to fulfil their role. In Estonia, the complete removal of advertising from the schedules of the public service station ETV in 1998 helped the station to change its identity and become a more public service-oriented station, airing more reports on local issues and children's programmes, to the detriment of low-quality entertainment. ETV's representatives claim that ETV redefined its role so as to attract the country's intelligentsia, and that the audience has increased in this segment.

In Western Europe, public service broadcasters have a more distinct voice than commercial stations. In Germany, for example, public service broadcasters ARD and ZDF are by far the leaders in providing information programmes, while commercial channels lead in non-functional entertainment and fill up to one fifth of their airtime with advertising. German public service channels have in general a more balanced mix of programme genres. However, they are regarded as being slightly duller than commercial stations, which boast a more youthful image. In France too, public channels have managed to build a somewhat distinct image in the broadcasting scene. They regularly air political debates and programmes that are non-existent on commercial television, have an extensive coverage of sports and, thus far, have refrained from airing reality TV. The Italian public service network RAI also produces and airs a large amount of drama and entertainment, and a remarkable amount of news and information programmes, including education and sports, plus programmes for minorities. However, in the past three years, RAI aired an increasing number of purely commercial programmes, such as reality shows.

### 6.3 Commercial television

*(See Table 17)*

Commercial television everywhere uses a similar formula, based on tabloid news, reality shows, commercial films, soap operas, cheap South American "telenovela" soaps, quiz shows and low-quality comedy shows. Geared towards mass audiences, many commercial stations are removing from their schedules investigative reporting and programming for minorities and niche segments. The educational and cultural element has almost disappeared from commercial television.

The decline in quality of commercial programming is due to a certain degree to inefficient regulation. In some countries, such as the UK and Germany, broadcasting licences come with obligations regarding content. All the terrestrial commercial broadcasters in the UK have public service broadcasting obligations, and are regulated within a framework that obliges them to supply a service that is governed by a set of programme principles and guidelines that are required by law. As part of their contractual conditions, therefore, the free-to-air broadcasters are all regulated according

to principles that aim to ensure a high-quality mix of programming that reflects the needs and tastes of a diverse audience. In recent years these requirements have been somewhat diluted. In Germany, regulatory authorities can and do oblige commercial channels to air high-quality programmes by independent producers, often in the best evening slots. In France, commercial television and radio stations are bound to a set of obligations stated in their licensing contract. For example, the largest television channel in the country, TF1, is obliged by the licensing contract to air at least 800 hours of news and current affairs programming per year.

However, in many other countries similar obligations are often vaguely worded, allowing private broadcasters to evade them. In the Czech Republic, for example, the law does not invest the broadcasting regulator, the Council for Radio and Television Broadcasting (RRTV), with the power to compel commercial stations to respect their licence conditions. As a result, the largest commercial station in the country, TV Nova, despite pledging to air “intellectual content”, instead airs typical commercial programmes, and has become the common denominator for the lowest quality of programming.

Commercial broadcasters are subject to few legally imposed public service obligations. In Bosnia and Herzegovina, Bulgaria, Latvia, Lithuania, the Republic of Macedonia, Poland and Slovakia, private broadcasters have no legal public service obligations. In other countries, such as Romania, public service obligations are very general (airing objective information and upholding political and social pluralism) or formal (broadcasting, free of charge, State announcements serving the public interest), and therefore have no impact on the general programming of the stations. Quite detailed public service obligations on commercial television exist in Hungary, where the law obliges commercial stations to air “public programmes” on at least 10 per cent of daily airtime, and at least a 20-minute newscast and 25 minutes of public programmes in prime time. The law clearly defines “public programming” as news or programmes for children and teenagers, information helping citizens in everyday life, works of art, programmes serving freedom of religion, etc. However, even with such detailed public service obligations, the content of Hungarian commercial television has remained focused on lowbrow genres.

## 6.4 Quotas

### 6.4.1 European quotas

The main EU regulatory framework in television programming consists of the TWF Directive and the European Convention on Transfrontier Television (ECTT). (See section III.4.3.) The TWF Directive has been incorporated into national legislation, and domestic broadcasters comply with its requirements. However, in some transition countries there has been inadequate monitoring of the TWF Directive implementation. In Slovenia, RTV Slovenia fulfils these quotas, but because of lack of monitoring, it is not clear whether commercial television channels comply. Although it helped to promote European content, the Directive’s influence on programme quality was not marked.

Broadcasters in many countries have chosen to fulfil the European quota requirements by airing a great deal of local production, which is mostly cheap to produce.

#### 6.4.2 Minority quotas

Minority programming is little-promoted on mainstream television. Nowhere are quotas imposed on commercial broadcasters for any programming directed at linguistic and ethnic minorities. Furthermore, although minority programming should be a priority on public service television (because of its universal obligation to cater for all sections of society), only in Macedonia has legislation imposed quotas for minority programming on the public service broadcaster. Similarly in Serbia, although no quotas are assigned for programming in minority languages, public service broadcasters are obliged to “adhere to linguistic and speech standards not only of the majority population but also, proportionately, of national minorities and ethnic groups in the area where the programme is being broadcast”. In all the other countries, the public service broadcasters only have broad requirements to include minority programming in their schedules (see Table 18). Such is Hungary, where minority programming is considered to be a “public programme”, and Romania, where the public service broadcasters have a general obligation to dedicate programmes to national minorities. In Slovakia, the public service television broadcasters are obliged by law to cover minorities, and in Slovenia, the public service broadcaster is only required to ensure that its minority programming reaches 90 per cent of the areas inhabited by Hungarian and Italian minorities. There is also the case of Italy, where quotas and obligations on minority programming are imposed on RAI in bylaws and service contracts.

#### 6.5 Independent news and investigative reporting

Although there have been improvements in the degree of independence of newsrooms both in public service television and commercial broadcasting, news production is still under pressure from the market and from political agents and owners, and investigative reporting is marginal in most television stations.

For many stations in the transition counties, public service and commercial alike, the tabloidisation of newscasts has become a way of avoiding reporting on sensitive issues. In Hungary for example, commercial television stations chose to be *apolitical* – meaning that they do not discuss parliamentary politics – instead of being *politically neutral*. The same situation exists in Romania, where for years commercial television stations, indebted to the State budget for failing to pay their tax arrears on time, chose to cover peripheral topics or “soft” news, such as accidents and cases of theft, rather than sensitive political issues, which would upset influential political and business elites. Furthermore, reporting by many commercial stations is slanted in favour of the station’s owners or their allies. Such is coverage in Turkey, where private broadcasters often take an editorial line that favours their owners’ interests.

However, there are also some cases of solid reporting and high-quality news production in the transition countries. The Slovakian public service station STV, after the change of its management in 2003, introduced qualitative investigative reporting programmes such as *Reportéri* (“Reporters”), which soon gained a solid reputation. Another example is the Serbian broadcaster, B92, which has consistently focused on information and investigative journalism.

In Western Europe, public service broadcasters are better at fulfilling their programming obligations, and in some countries, they have built up a distinctive programming in comparison with commercial stations. However, solid investigative reporting is still rarely seen.

## 6.6 Niches and alternatives

Another trend in television is the emergence of niche channels, which are gaining rapidly in popularity. All-news channels, for example, have opened at a rapid pace in the transition countries, such as Romania (Realitatea TV and N24), Slovakia (TA 3), and the Czech Republic (ČT 24). Although their audiences are low compared to mainstream outlets, they boost diverse news and information programming. Some of these stations have been praised locally for providing relatively reliable and impartial news, such as Realitatea TV in Romania and B92 in Serbia.

## 6.7 Local television

In transition countries, local television is in dire financial straits. As the bulk of the advertising budgets goes to the national television stations, which control the largest part of the national audience, local stations have come under the control of municipalities or have become tools to promote the interests of their owners.

In Serbia, the local media have been repeatedly exposed to the influence of the local authorities, and continue to operate under extreme uncertainty, a situation that has only been exacerbated by the postponement of the legal deadline for their privatisation. In August 2005, Parliament approved changes in the Broadcasting Law extending the privatisation deadline for local media until the end of 2007.

Broadcasting regulators lack resources to monitor the programming of local and regional television stations. Journalists working with local stations lack contractual protection and are paid low salaries. To survive, local television stations are affiliated to national commercial television stations and provide them with local news feeds, but are unable to air their own programming.

## 6.8 Community media

A new reality in broadcasting is the emergence of community media, consisting of local media outlets run by NGOs, non-profit organisations or minority communities. However, they usually lack resources and are hardly ever awarded broadcasting licences and authorisations to broadcast. Efforts to galvanise the organisation of community media at a pan-European level have intensified. They included the campaign for the establishing of a transnational network of minority community media, officially launched on 18 December 2003, which then culminated in releasing a European Manifesto of community media during the European elections of 2004.

In the Manifesto, the minority community media called on the European Commission, the European Parliament and the Governments of the member States to recognise the minority media as a public community service, and that the “must carry” status should be granted on all relevant broadcast platforms. They also called upon policy-makers to ensure that minorities receive media in their own language.<sup>30</sup> The campaign is supported by the European Commission’s Community Action Programme to Combat Discrimination (2001-2006). Although there are no exact figures available on the community media, it is estimated that there are thousands of such outlets in the EU, reaching millions of viewers, readers and listeners.<sup>31</sup>

## 7. MULTI-MEDIA AND NEW TECHNOLOGIES

Rapid technological progress in the communications sphere presents many challenges to traditional broadcasting. The rapid advances in mobile telephone use and computer software have boosted new platforms such as Internet and mobile communication, which in the near future will be able to carry television content. This will necessitate a new concept of regulation. The most significant development in the terrestrial television industry is digitalisation, which has developed rapidly in Western Europe in the past two years. The new broadcasting technology replaces analogue with digital signals, that can be easily used by various media platforms, such as the Internet or mobile telephone devices. In transition countries, digitalisation is a slow process, however. Although there are some incipient State strategies for digitalisation, and limited testing has been carried out, in most cases there is no clear policy, and the debate on the introduction of digital broadcasting occurs among a limited number of specialists and researchers.

---

<sup>30</sup> The Manifesto is available online at <http://www.multicultural.net/manifesto/index.htm> (accessed 30 August 2005).

<sup>31</sup> For more information on community media initiatives, see [http://www.multicultural.net/minoritymedia\\_project\\_info.htm](http://www.multicultural.net/minoritymedia_project_info.htm) (accessed 30 August 2005).

Altogether, digitalisation is expected to spark new competition in broadcasting across Europe. It is not clear yet how digital television will be funded and what exactly its implications for broadcasting regulation will be. However, it is clear that an early switch-off of analogue signals in some European countries is not a realistic scenario, because of the slower rate of shift to digital.

## 7.1 Market review

*(See Tables 19 and 20)*

Besides terrestrial television, the most-used platforms for delivering television are cable and satellite. The expansion of these platforms has been significantly different in different countries, depending both on State policy in the communications field and on local geography.

In Western Europe, there have been several patterns of development of cable and satellite, which took off mainly in the 1980s. First, there are countries, such as Germany, that have invested massively in both cable and satellite distribution to expand their television offering. Another pattern of the development of cable and satellite penetration is found in the southern countries, such as Italy where there is almost no cable connected or small satellite penetration.

In post-communist countries, cable and satellite penetration is still low and a large part of the population takes its television from terrestrial channels. Countries with low penetration of cable and satellite include Croatia, the Czech Republic, Lithuania, the Republic of Macedonia, Serbia and Montenegro, Slovakia and Turkey (see Table 18). However, cable television has been steadily growing in a few countries in this region, such as Romania, Bulgaria, Hungary, Poland and Slovenia. Satellite television penetration is low, in both CEE and SEE, with only Croatia enjoying satellite coverage of over 25 per cent.

Regarding all means of communications, the telecommunications industry has seen a bold growth over the past five years. More than half of these countries' households had a telephone line in 2003, except for Albania and Lithuania (where mobile telephone use is high). More than half of their populations owned a mobile telephone that year, except for Bulgaria, Albania, Macedonia, Romania and Serbia and Montenegro. However the mobile telephone industry is one of the fastest-growing in the region.

The most promising growth is expected from the Internet, which has enjoyed great expansion in recent years. The average Internet usage in Western Europe was 46 per cent in 2003, as compared to 13 per cent in CEE. However, Internet penetration has increased extremely rapidly in the past two years, and its enhanced capability to carry all kinds of communications, including radio, television and voice services, makes it the medium with one of the highest potentials for growth in the future communication industry.

With the online market burgeoning in 2003, the industry has seen more intense efforts on the convergence front. Cable operators were the first in Europe to connect households to cable modem services, putting Internet and cable television in a single package. They were followed by the telephone companies that launched DSL services in 2002. By the end of 2002, the DSL households exceeded the number of cable modem households.<sup>32</sup>

The marriage of the Internet and television, which suffered a blow when the dot.com bubble burst in spring 2000, is re-emerging as a real opportunity for the future transmission of television. Companies such as Microsoft launched software and set-top boxes able to capture Internet protocol TV, which would air programming assembled by broadcasters for this specific platform. As of 2005, telephone companies have been working on offering television content on mobile telephone screens.

Although all these new platforms are in their infancy, technological advancement is posing great challenges to traditional television, as television content will be made available on almost any communication gadget. It also raises questions related to the following:

- regulation of television (as much of this new environment is not regulated and may prove to be practically impossible to regulate);
- the future role and influence of television in society (as the number of content producers and providers will be virtually unlimited);
- the impact of advertising and content in general (as new technologies will allow the rewinding or skipping of programmes);
- the stability and feasibility of the industry (as an indefinite number of players will have access to the communication channels).

However, before these convergent technologies fully get off the ground, traditional television – terrestrially transmitted, free-to-air – is preparing for digitalisation, a major technological change in the radio spectrum that is expected to vastly increase the number of television channels that households receive on traditional sets.

## 7.2 The digital revolution

In a speech on Europe's new broadcasting landscape held at the European Media Leaders' Summit last year, Viviane Reding, European Commissioner responsible for the Information Society and Media, expressed optimism regarding digital television in Europe,

It seems that every generation has a media revolution. To the pre-Second World War generation it was radio. For the post-war generation it was

---

<sup>32</sup> European Audiovisual Observatory, *The Yearbook 2004*, p. 43.

television. For the young people of today it is digital. Now, ten years into the digital revolution, it is clear that its impact will be at least as profound as the radio and television revolutions that preceded it.<sup>33</sup>

After a slow start in 2000, with several digital television packagers going bust, digital television has picked up and already secured a total market share of 14 per cent in Europe.

Digital broadcasting will improve picture and sound quality and mobile reception. It uses the spectrum more efficiently and will therefore be able to offer more television and radio channels on the same frequency, along with enhanced information services, including interactive television services, such as online shopping, multiple viewing angles and live betting. There are digital transmission standards for satellite, cable and terrestrial television.

In order to use the frequency spectrum more efficiently, for example by releasing some frequencies for telephone use, the European Broadcasting Agreement, Stockholm, 1961, needs revising. This is planned to happen at the ITU Planning Conference scheduled for 2006. The new frequency distribution plan will deal with digitalisation without the constraints imposed by analogue transmission (such as limited content on a single frequency), and will have to ensure that digital services are protected from interference.

In general, the business model for digital television that is gaining ground is free-to-air television, which has so far been beating the pay-TV model. The popularity of this model prompted manufacturers of technical devices to produce cheaper set-top boxes that households need to buy in order to receive digital signals. But such low-cost digital devices will not allow viewers to use the advanced interactive services that digitalisation is promising. To be able to receive the digital signal, viewers need to buy either a set-top box converting the signal or a more expensive integrated digital television set.

Although digital television has lately made significant progress, media experts do not expect the huge increase in the number of channels that was predicted in the early days of digitalization, because Europe is culturally diverse, and also divided into small population groups, to allow such expansion at an affordable cost.<sup>34</sup>

The European Commission is striving to accelerate digitalisation, and has proposed 2012 as the deadline for member States to phase out traditional analogue terrestrial broadcasting.<sup>35</sup> The switch will mean also changes in regulation of television. In 2003,

<sup>33</sup> Speech at “Business without frontiers: Europe’s new broadcasting landscape”, European Media Leaders’ Summit 2004, London, 7 December 2004.

<sup>34</sup> Didier Lefèvre in: IP International Marketing Committee, *Television 2004*, p. 54.

<sup>35</sup> European Commission, Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on accelerating the transition from analogue to digital broadcasting (from digital “switchover” to analogue “switch-off”), COM(2003) 541 final, 17 September 2004.



the Commission launched a far-reaching consultation on the revision of the TWF Directive, the main document regulating television content in the EU. The conclusion of this consultation was that the principles underlying the Directive – safeguarding cultural diversity, protection of certain categories of viewers, and free movement of services – will be still valid in the digital market.<sup>36</sup>

### 7.3 The status of digitalisation

*(Table 21)*

The development of digital television varies dramatically across the continent, with Western Europe leading this revolution. Some market players, policy-makers and media observers were sceptical about the success of digitalisation, predicting that households would be slow in purchasing new devices to watch television, and that such a broadened television offer would not be sustainable, as the viewing time cannot increase exponentially to match the expansion of television programmes promised by digitalisation.

However, digitalisation seems to be a one-way ticket, due to the ceaseless rise of new technologies and pan-regional plans of redistribution of frequencies. The positive side is that digitalisation should sharpen competition in Europe's concentrated television markets, where a limited number of players control the bulk of viewers and advertising revenues. Yet digitalisation also poses numerous challenges to regulators, as there is a danger that the current dominant positions in the television markets will be further entrenched if today's leading stations are granted enough licences to maintain their dominance also in the future digital markets.

#### *Fast West*

In Italy, the two dominant players, the public service station RAI and Berlusconi's media giant Mediaset, are trying to snatch up digital licences, with the aim of consolidating their market position. Their efforts are supported by the Government, which has opted to subsidise digital set-top boxes, apparently with the aim of speeding up digitalisation. Such measures are likely to consolidate the dominance of the two broadcasters well before 2010, the earliest date for switchover to digital.

In France, the broadcasting regulator, the High Council for Broadcasting (CSA), has already granted digital licences to eight different private operators. The public broadcasters have received digital licences as well. Terrestrial digitalisation was launched in France in March 2005, when in addition to the existing terrestrial channels, seven free-to-air channels started digital broadcasting. Analogue broadcasting will be switched off when digital television has reached at least 80 per cent of the total population. It is, however, still unclear how digital channels will recoup their

<sup>36</sup> Commissioner Reding, speech at "Business without frontiers: Europe's new broadcasting landscape", European Media Leaders' Summit 2004, London, 7 December 2004.

investment. Furthermore, among the current players, the dominant TF1 in particular is challenging digitalisation on technical grounds, as it fears the competition that it is likely to bring.

The UK is in the vanguard of digital developments and has one of the most ambitious plans to scrap analogue transmission. In the third quarter of 2004, digital penetration in the UK reached 56 per cent. The digital pay-TV market is sluggish compared to free-to-air platforms. Taking over the digital licence of ITV Digital, which folded in 2002, Freeview offers a free-to-air model, with the opportunity to subscribe also to premium channels such as film and sports channels. Freeview is a consortium of the BBC, Crown Castle and BSkyB. Besides Freeview, the BBC has introduced over the past years several new digital channels such as BBC3, BBC4, CBeebies, CBBC, BBC Parliament and BBC News 24. All these are pegged as auxiliary services to the BBC's mainstream channels and are still being assessed.

In Germany, digital television has made a slow start despite general support by broadcasters, infrastructure operators and the makers of technical devices, which want to stick to the official deadline for analogue switch-off set by the Federal Government for 2010. The region of Berlin/Brandenburg has been the first worldwide to complete the switch-off of analogue transmission in 2003. Public broadcasters have been involved in digital developments since the very beginning, but private players such as RTL or ProSiebenSat.1 have shown no special interest, as they realise that digitalisation will reduce their advertising revenues. At the end of 2004, Germany had just over five million digital households, or 15 per cent of total television households, which was double the number in 2002, but still not a breakthrough.

### *Slow East*

In the post-communist states, digitalisation lags behind. In many countries, there is no articulated policy for digitalisation, and public debate is non-existent.

In Croatia, Bosnia and Herzegovina and the Republic of Macedonia, there is still no public policy or action plan for digital broadcasting switchover. In Albania, despite the lack of guidelines and legal framework for the launch of digitalisation, a television station, Digitalb, started to air digitally after the domestic broadcasting regulator prepared a draft strategy to develop digital television, which proposed switching off the analogue signal between 2016 and 2020.

The broadcasting regulator in Bulgaria, the Council for Electronic Communications, adopted a Statement on digital terrestrial broadcasting, which mapped out the future map of digital channels, and a digital pilot project to test the digital signal is under preparation.

Besides a strategy document for RTV Slovenia in 2004-2010, which mentions the public broadcaster's obligation to provide digital radio and television channels, there are few plans for switching from analogue to digital signal.

In the Czech Republic, digital broadcasting was tested in 2000, and a year later the Government put together a policy paper detailing the plan of transition to digitalisation. The advertising industry, which has craved greater competition on the Czech market, expects digitalisation to dismantle the concentration of the television market. However, there are serious concerns that the current large players, particularly TV Nova, will use their influence to seize much of the digital spectrum in the future. The first digital licences were to be awarded in the Czech Republic during 2005.

Some peripheral tests of digital terrestrial broadcasting were first carried out in Hungary in 1999, and switchover is slated for 2012. In 2004, the State-owned transmission company Antenna Hungária was given a green light to start experimental terrestrial digital broadcasting of the programmes of the three public service television channels.

The Lithuanian broadcasting regulator, the Radio and Television Commission, started to issue digital licences in 2004. However, Lithuania still lacks a policy for digitalisation. Digital broadcasting was tested in Latvia in 2002, but the whole process finished in a stalemate after the eruption of a dispute between local government and the British company Kempmayer Media Ltd., which was chosen to install the terrestrial digital broadcasting network. In September 2004, the Broadcasting Council released a new strategy for digitalisation, which is, however, vague and does not mention any timeframe for the roll-out of digitalisation. In Estonia, digital television was tested as of May 2004, but the experiment was terminated in early 2005 for financial reasons. According to a policy document on digital television, fully digital television broadcasting is to be in place by 2015.

Romania started experimental digital television in 2002, but local experts say that digitalisation is a “non-starter” in the country, as it lacks substantial investment and a serious debate involving all parties – including television broadcasters, the regulators, civil society organisations and the Government. Besides the experimental digital television, there is no Government plan or strategy for digitalisation. Poland started to look into digital television in the late 1990s, identifying a strategy on digitalisation as early as 1997. In 2001 and 2003, the domestic Broadcasting Council prepared two official plans for the development of digital television. In May 2005, the Government approved a national strategy for the transition to digital, under which analogue broadcasting is scheduled to cease by 2015. The first project for a digital multiplex was launched by Polsat in cooperation with TVN. In Slovakia, the Government set up in June 2001 an interdepartmental Working Group for Digital Broadcasting (SKDV) and at the same time released a strategy document for the implementation of digitalisation. The document foresees a total analogue television switch-off by 2015 at the latest. Four pilot projects to test digitalisation were launched in 2004. The launch of regular digital broadcasting is set for 2006. In late 2002, the Turkish broadcasting regulator released an action plan and a road map on digitalisation of broadcasting, foreseeing switchover by 2018.

### *Scarce debate*

In transition countries, debate on digitalisation is scarce, and, when it occurs at all, it is usually restricted to media researchers and specialists, the advertising industry and policy-makers. Civil society groups in some countries have made efforts to raise public interest in the issue, but with little apparent success to date.

This lack of debate reflects the low visibility of digitalisation in the relatively under-developed broadcasting landscapes of the transition countries, as well as the high levels of public and professional indifference towards public service broadcasting as such. Nonetheless, it is regrettable, given the inevitable impact that digitalisation will have on public service broadcasting. The multiplication of communications platforms and content providers, hugely increasing television consumer choice, will erode the profit margins of commercial broadcasters, undermining the rationale for imposing public service obligations on them. As for the mainstream public service broadcasters, funded by licence fees or the State budget, they will face other kinds of unavoidable pressure from the proliferation of choice, the devaluation of the analogue spectrum and the continuing growth of satellite and cable subscriptions.

So far, the clearest forward thinking on these matters has occurred in the UK, where the national regulator, Ofcom, has issued several reports on the prospects for public service broadcasting in the imminent digital era. Although it addresses the UK context – where all national terrestrial television broadcasters have public service obligations and where public service broadcasting is incomparably better placed than in the transition countries – Ofcom’s analysis is relevant wherever commercial broadcasters are bound by public service obligations. After observing that public service broadcasting has been sustained by a “delicate balance” of institutions, funding and regulation that “will not survive the move to the digital age”,<sup>37</sup> Ofcom proposed that “a new model of provision will be needed in the digital age if public service broadcasting is to maintain its unique ability to reach millions of people with a plurality of suppliers providing distinctive content.” Boldly, Ofcom stated that “PSB should in future be defined in terms of purposes and characteristics, rather than in terms of specific types of programmes or the output of certain institutions”. Concretely, this new model might take the form of “a new publicly funded service”, called a Public Service Publisher (PSP). The PSP would have “a remit to pursue public purposes with innovative ideas”, in order to “enhance public service broadcasting in the post-switchover world”. It would “explore new ways of contributing to public service purposes, unencumbered by the need to protect existing television channels”, for example by commissioning material for digital distribution on different platforms

---

<sup>37</sup> The quotations in this paragraph are from: Ofcom, *Review of public service broadcasting, Phase 2 – Meeting the digital challenge*, executive summary and recommendations, 28 September 2004, available at <http://www.ofcom.org.uk/consult/condocs/psb2/psb2/execsum> (accessed 12 August 2005.)

(competing with the BBC's digital services).<sup>38</sup> This is an issue that will certainly provoke more research and debate across Europe, in particular about the possible impact that this step would have on the quality and broad appeal of the content of public service broadcasting and on public support for public service broadcasting as such, including support for the licence fee.

---

<sup>38</sup> An independent assessment of this proposal commissioned by the BBC argued that the PSP concept would have more obvious benefits if it had an explicitly regionalist remit, to offset the likely cuts in regional and local public service programming by commercial broadcasters under the pressures of digitalisation. See: *Independent assessment of Ofcom's PSP proposal*, commissioned by the BBC, November 2004, available at [http://www.bbc.co.uk/thefuture/text/spectrum\\_psp.htm](http://www.bbc.co.uk/thefuture/text/spectrum_psp.htm) (accessed 12 August 2005).

### III. European and International Broadcasting Regulation

#### 1. INTRODUCTION

Television broadcasting is subject to regulation by various international and European bodies. At the international level, the legal frameworks of the World Trade Organization (WTO) and the United Nations (UN) need to be considered. At the European level, regulatory competence lies with the European Union (EU) as well as with the Council of Europe (CoE). All these bodies have adopted legally binding conventions, as well as non-binding declarations and recommendations that are relevant to broadcast regulation.<sup>39</sup> In addition, numerous additional recommendations and declarations have been issued through such intergovernmental fora and international bodies as the Organisation for Security and Cooperation in Europe (OSCE), the United Nations (UN) Human Rights Committee, the UN Commission on Human Rights and the special rapporteurs on freedom of expression and the media appointed by the OSCE and the UN.<sup>40</sup>

The result is a profusion of international instruments, the binding legal force of which varies. All international treaties and some instruments adopted by the EU<sup>41</sup> are strictly binding in international law. Of the other instruments mentioned, although none have the strict binding legal force that international treaties do, some are considered to reflect international custom, and their provisions are binding for that reason, while yet others may be used to interpret the precise nature of a legally binding treaty provision and attain some binding force through association with that treaty. Even measures that

<sup>39</sup> For example, Recommendation Rec (2004) 16 of the Committee of Ministers of the Council of Europe to member states on the right of reply in the new media environment is advisory in nature, while the Convention on Transfrontier Television (ECTT), adopted under the auspices of that same body in 1989, is binding in law on those States that have ratified or acceded to it. Recommendation Rec (2004) 16 of the Committee of Ministers of the Council of Europe to member States, on the right of reply in the new media environment, adopted on 15 December 2004.

<sup>40</sup> See, for example: Istanbul Summit Declaration and Charter for European Security, adopted by the OSCE Heads of State in 1999, para. 26, 27; General Comment 10 of the UN Human Rights Committee on the Right to Freedom of Expression, UN Doc. HRI/GEN/1/Rev.1 at 11 (1994); UN Commission on Human Rights, Resolution 2004/42 on the right to freedom of expression and opinion, 19 April 2004; Joint declaration by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the Organisation of American States (OAS) Special Rapporteur on Access to Information, 6 December 2004.

<sup>41</sup> Only some parts of EU law are directly binding (see section 2.3).

cannot be argued to have any binding legal force may be politically important and have an impact on legislative proceedings, and for that reason cannot be ignored.<sup>42</sup>

Depending on their provisions and scope, international and European regulations are implemented and/or supervised either by international and supranational bodies, such as the WTO or the European Commission, or by national media and competition authorities – for example, OFCOM in the UK, or the Federal Cartel Office and the State Media Authorities in Germany.

The following paragraphs provide a brief overview of the various areas of law pertinent to broadcasting, where international agreements exist. Chapter 2 provides a more detailed discussion of the content of the international law most relevant to broadcast regulation.

## 1.1 Overview of binding treaties and other international and European regulation

Legally binding international treaties pertinent to broadcasting policy are generally concerned with two different areas of regulation. On the one hand, the broadcasting industry is subject to general competition law, while on the other it is regulated by sector-specific media legislation.

Historically, the aim of international broadcasting regulation has been threefold: safeguarding media pluralism and freedom of expression, safeguarding the regulation of international trade (and, by implication, of national media markets), and ensuring that the international highways of communication (including satellite, Internet, cable and free-to-air traffic) do not become congested. These different regulatory aims – often carried out under the auspices of different international organisations – have resulted in different regulatory approaches.

### 1.1.1 General competition law

Like any other industry, the broadcasting sector is governed by international, EU and national general competition law, which aims to safeguard and foster competition in a free market economy, and intervene only to prevent behaviour that is not based on the rules of a free market. For example, as the broadcasting sector consolidates, mergers between different companies have led to the rise of large (and sometimes huge) media corporations. Competition law acts to intervene at the point where the size of these companies becomes such as to have a detrimental effect on free and open competition. Competition law has also become highly relevant in the bidding wars that often rage around major sporting events, such as the Olympic Games or major football tournaments: here, such law prevents the formation of bidding cartels. Finally, within

---

<sup>42</sup> This is the case, for example, for many of the recommendations and declarations issued by the special mandates on freedom of expression established by the OAS, OSCE and the UN.

Europe, anti-competition law is highly relevant to State subsidies in the media sector insofar as these may distort the free market. From time to time, this point is debated in the context of public service broadcasting and the State subsidies received in that sector (see section 5.2).

Indirectly, competition law also has an impact on media plurality. The general assumption is that more broadcasters can operate in a market of undistorted competition, and hence that the range of opinions is likely to increase. General competition law becomes relevant as a means of media ownership control to the extent that certain media mergers must be notified to, and approved by, the competition authorities, and that the law is duly implemented in practice (see section 6).

### 1.1.2 Sector-specific media legislation

Competition law does not regulate content, and it cannot subject operators to rules that aim to promote culturally and linguistically diversified programmes. For these reasons, competition law alone is not considered sufficient to safeguard media pluralism, and has therefore been supplemented by sector-specific media provisions. If competition law alone were to be relied on, the broadcasting sector would be fully open to the free play of market powers. This would incur the risk that only a few strong market players would emerge to dominate the sector and that, therefore, the number and range of broadcast “voices” would be far from optimal, from the point of view of a real pluralism.

It is now widely recognised that the provision of television services does not just have economic implications, but also plays a highly significant social, cultural and political role. Various international agencies are therefore concerned with the regulation of broadcast content, such as the United Nations Educational, Scientific and Cultural Organization (UNESCO), and, in Europe, the EU. In addition, technical aspects of broadcasting need to be regulated in order to ensure that different broadcast signals do not clash.

#### *Content regulation*

Within the EU, the first serious attempts at content regulation of broadcasting came in the early 1980s, as awareness grew of the implications of the serious and increasing audiovisual trade deficit with the United States. In 1984, the European Commission published its Green Paper on the establishment of a common market in broadcasting,<sup>43</sup> in which it outlined its vision for European broadcasting policy. Initially focusing on cable and satellite television, EU actions have now been adopted in three main areas:

---

<sup>43</sup> A “Green paper” is EU jargon for a policy proposal designed to stimulate debate. European Commission, *Television without Frontiers. Green Paper on the Establishment of the Common Market for Broadcasting, especially by Satellite and Cable*, COM (84) 300, Brussels 14 June 1984.



43. the establishment of European support mechanisms for the broadcast media;
44. the defence of European cultural interests in the context of wider international debate, for example at the World Trade Organization (WTO);
45. the establishment of a regulatory framework allowing the realisation of a single internal European market.

Measures in areas (1) and (2) have had only a limited direct impact on the content of European broadcasting, focusing instead on its defence against content brought in from abroad (mainly the United States). In area (3), regulation has focused on such matters as the protection of minors from what has been termed “harmful content”, ensuring a “right of reply” and the regulation of advertising. The “Television without Frontiers” (TWF) Directive<sup>44</sup> has been vital to achieving an internal European broadcasting market, by providing that EU member States cannot restrict reception or retransmission of broadcast from other member States for reasons of content falling within the scope of the directive.

In contrast to the binding legal framework developed within the EU, UNESCO’s regulations have been of a more advisory and/or declaratory nature. Its 1997 “Declaration of Sofia” is a good example. This Declaration – which, among other things, calls for pluralism in the media, access to information and respect for editorial independence – was originally adopted by the participants of a seminar organised by UNESCO, and finally endorsed by UNESCO’s General Conference.<sup>45</sup> Although, in and of itself, the Declaration has no binding legal force, it lays down a set of important principles and, having been endorsed by UNESCO’s General Assembly, it is an important political document.

### *Technical aspects*

The international regulation of the technical aspects of broadcasting has largely been coordinated under the auspices of the International Telecommunications Union (ITU). Founded as the International Telegraph Union in Paris in May 1865, the ITU is the oldest international organisation in the world. It now operates as a UN Agency,

---

<sup>44</sup> EU “Television without Frontiers” Directive (hereafter, TWFD): Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities (Television without Frontiers Directive), OJ L 298, 17 October 1989, as amended by European Parliament Directive 97/36/EC of June 1997, OJ L 202 60, 30 July 1997.

<sup>45</sup> UNESCO, Declaration of Sofia, Resolution 35, adopted by the General Conference at its twenty-ninth session, 1997, (hereafter, UNESCO, Declaration of Sofia).

with a broad membership drawn from all sectors of society.<sup>46</sup> It is concerned mainly with the technical aspects of telecommunications regulation, including broadcasting regulation, and while its functioning is crucial to the existence of the broadcasting industry, its rules do not impact on content. For this reason it will not be considered further here – other than to note that with increasing convergence between different forms of communication, its role may well become more important.<sup>47</sup>

## 1.2 Co-regulation and self-regulation

The binding provisions of competition and sector-specific media law are supplemented by self-regulatory and co-regulatory instruments. Self-regulation concerns measures taken by broadcasters themselves, drawing on their own expertise to develop their own regulation in areas such as journalistic ethics. Co-regulation is a mixture of self-regulation and regulation by an independent overseeing body.

Self-regulation is considered to be more effective than binding obligations, as statutory legal frameworks may lack flexibility and adaptability. For instance, through self-regulation, it may become easier to take regional or local conditions into account. However, self-regulation also carries risks. For example, it may allow strong market players to set up rules that favour their interests to the detriment of competitors and users. The functioning of the internal market could be endangered if the quantity of self-regulatory codes leads to a fragmentation of markets.

For EU member States, the European Commission has set out its general approach to co- and self-regulatory instruments in its White Paper on *European Governance*<sup>48</sup> (2001) and “Better Legislation Action Plan” (2002).<sup>49</sup> The Commission explicitly recognises and encourages self-regulation in the audiovisual sector. In its Communication on the Future of European Regulatory Audiovisual Policy (1999) the Commission stressed its view on the interplay of legally binding and self-regulatory measures,

Co-regulation allows for the implementation of the objective defined by the Community by means of measures taken by the recognised stakeholder in a

<sup>46</sup> Membership of the ITU consists of States and also, unusually for an international organisation, of companies and other such organisations, which can hold classes of membership referred to as Sector Member or Associate status. This allows, for example, direct participation by a company in the development of technical standards, something not allowed in some other standards bodies such as ISO (International Organization for Standardization), where companies participate only indirectly, through State delegations.

<sup>47</sup> “Traditional” broadcast content can now be distributed through mobile telephones or the Internet, to name but a few examples. This poses difficult regulatory challenges.

<sup>48</sup> European Commission, *European Governance. A White Paper*, COM (2001) 428 final, Brussels, 25 July 2001.

<sup>49</sup> European Commission, Communication from the Commission. Action Plan “simplifying and improving the regulatory environment”, COM (2002) 278 final, Brussels, 5 June 2002.

given area. The legislature decides to what extent the design and application of implementing measures may be entrusted to stakeholders on account of their recognised experience on the issue. Where this mechanism fails to produce the expected results, the legislature reserves the right to directly employ statutory measures.<sup>50</sup>

In the broadcasting sector, self-regulation is already used to a considerable extent. Its main field of application lies in advertising and the protection of minors. Under the Council Recommendation on the Protection of Minors and Human Dignity, concerned industries and parties are prompted to cooperate in drafting codes of conduct in the broadcasting and Internet sectors.<sup>51</sup> In April 2004, the Commission launched a proposal to update the Recommendation, which centred on the development of self- and co-regulatory models.<sup>52</sup> Although advertising is already subject to detailed regulation under the TWF Directive and national laws, broadcasters have set up additional codes of conduct that deal, for instance, with the advertising of alcoholic beverages. Self-regulation also exists with respect to technical standards. For instance, within Europe, agreement has been reached on the use of the digital terrestrial broadcasting standard (Digital Video Broadcasting Terrestrial, DVB-T) in digital terrestrial television.

Finally, self-regulatory mechanisms play an important role in safeguarding editorial independence and in securing editorial standards (see also section 4.1). For example, the International Federation of Journalists (IFJ) regularly adopts resolutions on a broad variety of topics, such as authors' rights, employment policies in the media, and other freedom of speech issues,<sup>53</sup> which form the basis for self-regulatory mechanisms. With respect to advertising, the principle of self-regulation is also endorsed by global industry groups such as the International Advertising Association (IAA). The IAA, on the basis of

---

<sup>50</sup> European Commission, Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions, on the future of European regulatory audiovisual policy, COM (2003) 784 final, 15 December 2003, Brussels, p. 23, (hereafter, European Commission Communication on the future of European regulatory audiovisual policy); See also: European Commission, Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions, on principles and guidelines for the Community's audiovisual policy in the digital age, COM (1999) 657 final, Brussels, 14 December 1999.

<sup>51</sup> Council Recommendation of 24 September 1998 on the development of the competitiveness of the European audiovisual and information services industry by promoting national frameworks aimed at achieving a comparable and effective level of protection of minors and human dignity, 98/560/EC, L270/48, 1998.

<sup>52</sup> European Commission, Proposal for a Recommendation of the European Parliament and of the Council on the protection of minors and human dignity and the right of reply in relation to the competitiveness of the European audiovisual and information services industry, COM (2004) 341 final, Brussels, 30 April 2004.

<sup>53</sup> See, for example: IFJ, Resolutions adopted by IFJ World Congress 2004, 21 June 2004, available on the IFJ website at <http://www.ifj.org/> (accessed 30 June 2005).

its own “Declaration on Self-Regulation & Privacy” (2000), assists its national member organisations in implementing self-regulatory mechanisms in this field.<sup>54</sup>

## 2. SOURCES OF LAW

This section provides a more detailed overview of international legal standards in the area of broadcasting regulation, broken down by international organisation: the competition rules agreed in the framework of the WTO, the various treaties, agreements and recommendations issued by, and through, the UN, and the bodies and agencies established under it, the EU, and the CoE.<sup>55</sup>

### 2.1 The World Trade Organization (WTO)

The WTO is concerned mainly with the regulation of international trade. Given that broadcasting is a business with international aspects, it is potentially subject to WTO regulation. Among the WTO rules, the General Agreement on Trade in Services (GATS)<sup>56</sup> impacts on broadcasting. It covers all forms of international trade in services. In order to establish a free flow of services, GATS sets out three main principles:

- Most-favoured-nation treatment (MFN clause) – each member shall immediately and unconditionally provide services and service suppliers of another member with treatment that is no less favourable than the treatment it accords to similar services and service suppliers of any other country.<sup>57</sup>

<sup>54</sup> International Advertising Association (IAA), Declaration on Self-Regulation & Privacy, 2000, available on the IAA website at <http://www.iaaglobal.org/> (accessed 30 June 2005).

<sup>55</sup> The European Union (EU) is not to be confused with the Council of Europe (CoE). The CoE is a large grouping of European States established in the early 1950s, with headquarters in Strasbourg, the primary achievement of which has been the development of a binding human rights framework through the European Convention on Human Rights (ECHR). Its member States have concluded several hundred treaties between them, including some on broadcasting regulation. However, as compared to the EU, the CoE remains a relatively loose affiliation of States. The EU is a much smaller grouping of European States, which, between them, have set up a single economic market as well as a common legal framework encompassing areas of law ranging from immigration to rules on education, broadcasting, and agriculture and fishery. It has its headquarters in Brussels, and has grown from 6 member States to 25. Confusingly, one of its pivotal bodies is called the “Council” of the European Union. Typically, the treaties agreed under the auspices of the CoE leave its member States much more room for discretion in the implementation of policies than the much more detailed and prescriptive rules and regulations emanating from “Brussels” do.

<sup>56</sup> General Agreement on Trade in Services (GATS), (Annex 1B of the General Agreement establishing the World Trade Organization).

<sup>57</sup> GATS, art. II.

- Equal treatment – foreigners, including their companies and products, shall not be discriminated against.
- Market access – market access shall not be restricted.

Despite the argument, often repeated, that audiovisual media should be fully exempted from GATS, no such general exemption has been established. However, WTO members can derogate from the most-favoured-nation principle, provided that they note such exemptions in a special register. With respect to audiovisual services, the EU and its member States have noted some exemptions to the MFN clause. One exemption, for example, is the national quota regulations, as set forth in the EU's TWF Directive (see section 4.3).

The EU and its member States have therefore, to a significant extent, preserved national sovereignty and Community provisions in the broadcasting sector. However, this situation may change after the current round of trade negotiations, known as the "Doha Round", which has brought calls, particularly from the US representatives, for full market access and equal treatment in all service sectors. Whether the EU and its member States will be able to keep broadcasting out of the GATS regime remains to be seen.<sup>58</sup> The implications for broadcasting are considerable. A decision in favour of the commercial lobby's claims would accelerate the erosion of public service broadcasting, by intensifying the commercial pressure on less profitable programme strands and on domestic production quotas.

## 2.2 United Nations

### *The right to freedom of expression*

Article 19 of the Universal Declaration of Human Rights (UDHR) states that,

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.<sup>59</sup>

Although not directly applicable in member States, this provision serves as an important global policy appeal. It is also considered by many to form part of the body of law referred to as "international custom" that applies to all States.

It has been further substantiated in the legally binding International Covenant on Civil and Political Rights (ICCPR).<sup>60</sup> This treaty, ratified by more than 150 States around

<sup>58</sup> Further details on the most recent developments are available on the WTO website at [http://www.wto.org/english/tratop\\_e/serv\\_e/serv\\_e.htm](http://www.wto.org/english/tratop_e/serv_e/serv_e.htm) (accessed 4 August 2005).

<sup>59</sup> Universal Declaration of Human Rights (UDHR), adopted and proclaimed by General Assembly resolution 217 A (III) of 10 December 1948.

<sup>60</sup> International Covenant on Civil and Political Rights (ICCPR), entered into force 23 March 1976, 999 U.N.T.S. 171.

the world,<sup>61</sup> elaborates the substance of the right to freedom of expression (also at Article 19) in terms that are very similar to those of Article 19 of the UDHR. However, it adds the crucial clause that freedom of expression may be restricted *only* if such restriction is provided by law, pursues a legitimate aim, and is truly *necessary* to achieve that aim. Given that broadcasting is a central exercise of the right to freedom of expression, any broadcasting laws or regulations that affect either the ability of broadcasters to exercise their freedom of expression, or the equally important right of the public to receive information from broadcasters, must be justifiable under this formula. This does not imply that there is an unlimited right to broadcast, but it does mean that disproportionately intrusive rules or vague requirements, such as requirements for all broadcasters to respect “the national honour and dignity of the State”, cannot be considered legitimate. It also (probably) means that broadcast regulation has to be carried out by bodies that are independent of the State and that serve the public interest.

Various UN bodies and agencies have issued declarations and recommendations that elaborate on the meaning of the right to freedom of expression in broadcast regulation. While in themselves not binding, these recommendations and declarations elaborate the binding treaty provision of Article 19 of the ICCPR, ratified by most European States, and cannot for that reason be ignored. Two bodies are of particular importance: the UN Special Rapporteur on Freedom of Expression, and the UN Human Rights Committee. The first is a special body set up by the UN Commission on Human Rights, the primary human rights body in the UN political hierarchy, to report on violations of freedom of expression but also to consider its scope and content. The Human Rights Committee is a body of experts set up under the ICCPR to supervise the implementation of that treaty in national States and to receive complaints from individuals.<sup>62</sup>

In 2003, the UN Special Rapporteur on freedom of expression issued a Joint Declaration, together with his counterparts at the OSCE and the OAS, laying down certain principles in the area of broadcast regulation. Namely, the following:

- All public authorities that exercise formal regulatory powers over the media should be protected against interference, particularly of a political or economic nature, including a “by appointment” process for members that is transparent, allows for public input and is not controlled by any particular political party.
- Regulatory systems should take into account the fundamental differences between the print and broadcast sectors, as well as the Internet. Broadcasters should not be required to register in addition to obtaining a broadcast licence. The allocation of broadcast frequencies should be based on democratic criteria

<sup>61</sup> As of 27 April 2005, the ICCPR had been ratified by 154 States.

<sup>62</sup> This last competence requires that States sign up to a specific treaty, the Optional Protocol to the ICCPR.

and should ensure equitable opportunity of access. Any regulation of the Internet should take into account the very special features of this communications medium.<sup>63</sup>

This declaration echoes several of the those adopted by the CoE, as well as UNESCO's Declaration of Sofia.

The UN Human Rights Committee, in its consideration of States' implementation of Article 19 of the ICCPR, has made several similar recommendations concerning media regulation.<sup>64</sup> These recommendations are all highly authoritative and indicate the scope and content of the binding international law on the right to freedom of expression in relation to broadcast regulation. Although directed at individual States, general rules can be extrapolated from them.

### *UNESCO*

As the specialised UN agency in the fields of culture, social policy and education, the role of UNESCO cannot be overlooked. In light of the potential perils to national cultural sovereignty coming from the implementation of GATS, UNESCO has taken measures that concern the cultural dimension of broadcasting. In 2001, it adopted its Universal Declaration on Cultural Diversity.<sup>65</sup> However, since the declaration is not legally binding, some member States regarded it as inadequate in the age of globalisation. For this reason, a new standard-setting instrument – a binding convention on the protection of the diversity of cultural contents and artistic expressions – is currently being considered. In July 2004, UNESCO published a preliminary draft of the convention, which stipulates the following: “The States Parties [...] affirm their sovereign right to adopt measures to protect and promote the diversity of cultural expressions within their territory, and recognise their obligations to protect and promote it both within their territory and at the global level.”<sup>66</sup> A consolidated

<sup>63</sup> Joint Declaration by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression, 18 December 2003.

<sup>64</sup> For example, in 2002, in relation to the implementation of the ICCPR in Moldova, the UN Human Rights Committee expressed its concern that the State broadcaster in that country did not give airtime to opposition parties (UN Doc. CCPR/CO/75/MDA – 26 July 2002). In relation to Kyrgyzstan, it has expressed its concern regarding governmental interference in licensing, and arbitrary licensing policies generally (Kyrgyzstan – CCPR/CO/69/KGZ – 24 July 2000). In relation to Armenia, it has expressed the concern that governmental control over the electronic media was in violation of the right to freedom of expression (CCPR/C/79/Add.100 – 19 November 1998).

<sup>65</sup> UNESCO, Universal Declaration on Cultural Diversity, adopted by the 31st Session of the General Conference of UNESCO, Paris, 2 November 2001.

<sup>66</sup> Article 5(1) of the preliminary draft of a convention on the protection of the diversity of cultural contents and artistic expressions. The draft, and further information on recent developments, is available on the UNESCO website at [http://portal.unesco.org/culture/en/ev.php-URL\\_ID=11281&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/culture/en/ev.php-URL_ID=11281&URL_DO=DO_TOPIC&URL_SECTION=201.html) (accessed 30 June 2005).

draft incorporating responses to the preliminary draft will be submitted to UNESCO's next General Conference in October 2005.

In addition, several other non-binding declarations relevant to the media have been adopted under the auspices of UNESCO. In Europe, the Declaration of Sofia is the most relevant. It lays down a number of declaratory principles on media regulation, including the following,

All States should provide, or reinforce where they exist, constitutional and legal guarantees of freedom of expression and of press freedom and should review, revise and/or repeal those laws, regulations and measures that limit the exercise of this fundamental right. They should pay special attention to ensuring the respect of these guarantees. Tendencies to draw limits or taboos outside the purview of the law restrict these freedoms and are unacceptable. [...]

Free access to information from public authorities must be granted. No journalist should be forced to reveal sources of information. Adequate guarantees must be established. [...]

State-owned broadcasting and news agencies should be, as a matter of priority, reformed and granted statutes of journalistic and editorial independence as open public service institutions. [...]

If supervisory regulatory broadcasting authorities are established, they must be fully independent of government.<sup>67</sup>

While not possessing legal binding force, this declaration sets out important principles and has been endorsed by UNESCO's General Conference, lending it considerable political weight.

### 2.3 European Union (EU)

As set out above, at the EU level, broadcasting is subject to fairly extensive regulation with respect to both content and its economic and technical aspects. To the extent that it is directly binding, all EU member States are strictly bound to implement this body of regulation.

Under EU law, only certain legal rules are of a direct binding nature. In addition to those rules imposed directly by one of the founding treaties, which are strictly binding in law and which are known as "primary legislation", the member States have agreed amongst themselves that the legislative institutions in Brussels<sup>68</sup> will have the power to

<sup>67</sup> UNESCO, Declaration of Sofia, note 11.

<sup>68</sup> The EU's legislative bodies are the European Commission, a civil service body that prepares legislation, the European Parliament, a directly elected body that enacts legislation, and the Council of the European Union, a ministerial-level body in which all EU Member States are represented.



pass a number of other, legally binding, instruments known as “secondary legislation”. These include the following:<sup>69</sup>

- regulations – binding legal instruments that are directly applicable, without the need for them to be “transposed” or separately “enforced” by national legislative measures in the EU member States;<sup>70</sup>
- directives – legal instruments that are binding as to the result that must be achieved, but leave discretion to member States as to the form and method in which this is achieved within the domestic legal system;
- decisions – legal measures that are binding in their entirety, but only on the member State or other entity to which they are addressed.

Of these three, the first two are the most common legislative instruments. There is no difference in hierarchy between the two: they are merely different forms of regulation. A directive may be used where a policy needs to be introduced but its precise formulation is not important, while a regulation is used where detail is important both in the form of the legislative measure and in the desired policy outcome. Decisions, the third available direct binding instrument, are often found in areas such as competition law and State aid, and may be addressed to a single member State to notify them of a breach of competition rules. They are immediately legally binding.

In addition to these three instruments, “Recommendations” and “Opinions” may also be adopted.<sup>71</sup> The European Commission, which functions as the EU’s civil service, has the power to formulate recommendations or deliver opinions on matters of EU law, either where this power has been specifically allotted to it or where the Commission deems it important to deliver its opinion or recommendation.<sup>72</sup>

Finally, the power of the European Court of Justice to deliver binding judgements on matters of EU law must also be mentioned. Cases may be brought before it by member States, by an EU institution such as the European Commission, or by a national court – in the case of the latter, this is known as a “reference” and must concern the interpretation of an EU legislative measure.

---

<sup>69</sup> Article 249, Treaty establishing the European Community (EC Treaty).

<sup>70</sup> However, member States may need to change some of their existing laws that may not be compatible with the Regulation.

<sup>71</sup> EC Treaty, art. 249.

<sup>72</sup> EC Treaty, art. 211.

### 2.3.1 Primary level legislation

Rules found in the Treaty establishing the European Community<sup>73</sup> are known as “primary level” legislation. The EU has considerable ability to direct its member States’ legislation and policy with respect to the economic aspects of broadcasting. In this regard, the EU can take action to foster freedom in the provision of services<sup>74</sup> and to uphold the “right of establishment”.<sup>75</sup> Furthermore, the EC Treaty’s competition rules enable the European Commission to regulate concentration processes<sup>76</sup> (see section 6), and State aids<sup>77</sup> (see section 5.2), including those in the broadcasting industry. For EU members, if the question arises whether a broadcaster is applying restrictive practices or is abusing a dominant position, the EC Treaty will be relevant.<sup>78</sup> It also provides the legal basis to examine whether the funding of public service broadcasters through licence fees distorts competition to the disadvantage of private broadcasters, which generate their income by advertising and subscription services.<sup>79</sup>

Concerning the cultural dimension of broadcasting, especially content issues, the regulatory competency of the EU is limited. The EC Treaty states that “The Community shall contribute to the flowering of the cultures of the member States [...]. [It] shall take cultural aspects into account in its actions under other provisions of this Treaty, in particular in order to respect and to promote the diversity of its cultures.”<sup>80</sup> However, this same article also explicitly excludes harmonisation measures in cultural

<sup>73</sup> The EC Treaty is the oldest of the treaties that make up what is known as the “European Union”, and concerns what some would refer to as the EU’s “core business”, namely regulation on all those matters necessary to establish a single, internal European economic market. Over the years, other treaties were adopted that extended the competence of the “Union”. The most important of these was the “Treaty on European Union”, which began to give the Union competences in policing, judicial affairs, immigration, foreign affairs and defence. It also established the “European Union”, consisting of three “pillars”: economic cooperation, through the “old” European Community, judicial and home affairs cooperation, and foreign affairs and defence cooperation. Rules and legislation relevant to broadcasting have all been adopted in the context of the “old” first pillar, the European Community. Although it is technically correct to refer to these as Community legislation, in common parlance they are often referred to as “EU” legislation.

<sup>74</sup> EC Treaty, art. 49. According to the case law of the European Court of Justice (ECJ), broadcasters provide services within the meaning of Article 49 of the EC Treaty. See: C-155/73 *Sacchi* [1974] 409; C-52/79 *Debauve* [1980] 833; C-352/85 *Bond van Adverteerders* [1988] 2085; C-260/89 *ERT* [1991] I-2925; C-148/91 *Veronica* [1993] I-487.

<sup>75</sup> EC Treaty, art. 43. The Treaty defines this right as “the right to take up and pursue activities as self-employed persons and to set up and manage undertakings, in particular companies or firms”. See: the decisions of the European Court of Justice in case C-155/73 *Sacchi* [1974] 409, and case C-52/79 *Debauve* [1980] 833.

<sup>76</sup> EC Treaty, art. 81.

<sup>77</sup> EC Treaty, art. 87.

<sup>78</sup> EC Treaty, arts. 81, 82.

<sup>79</sup> EC Treaty, art. 87.

<sup>80</sup> EC Treaty, art. 151

policy at the EU level.<sup>81</sup> In practice, therefore, the EU does not have the competency to interfere directly with broadcasting regulation in member States insofar as such interference would affect the content of broadcasts. However, the EU has used nonetheless its powers to prescribe content regulation in some areas, particularly concerning such matters as the protection of minors, in the name of achieving a “single market”.<sup>82</sup>

### 2.3.2 Secondary level legislation

At the level of secondary legislation – the directives, regulations and decisions referred to above – the main legal instruments are as follows:

- the “Television without Frontiers” Directive (TWF Directive);
- the Cable and Satellite Directive;<sup>83</sup>
- the Regulatory Framework for Electronic Communication Networks and Services (2002);
- the EC Merger Regulation.<sup>84</sup>

#### *General competition law*

The EC Merger Regulation is one of the main tools of European anti-monopoly law. In today’s consolidating market, its provisions are of some significance to the broadcasting sector (see section 6.3).

#### *Sector-specific media regulation*

##### *Technical aspects*

Competition law is also relevant when considering the infrastructure that is used for the transmission of broadcasts, whether via satellite, cable or terrestrial networks or other forms of electronic communication. In addition, the new EU regulatory framework for electronic communications – the Regulatory Framework for Electronic Communication Networks and Services – was adopted in 2002, to be applied by

---

<sup>81</sup> EC Treaty, art. 151(5).

<sup>82</sup> The justification given for this content regulation is that if every country had its own, specific, rules on content regulation, it would be very difficult for broadcasters to operate across borders – they would have to know and take into account the law of every single EU country in which they operated. Therefore, the EU has sought to create a level playing field by providing the same basic rules on certain content-related matters in all EU Member States.

<sup>83</sup> Council Directive 93/83/EEC of 27 September 1993 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission, O.J. L248/15, 6 October 1993, (hereafter, Cable and Satellite Directive).

<sup>84</sup> Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings, L24/1, 29 January 2004, (hereafter, EC Merger Regulation).

member States as of July 2003.<sup>85</sup> The framework includes the following four directives, and a decision on spectrum policy:

- the Framework Directive;<sup>86</sup>
- the Access Directive;<sup>87</sup>
- the Universal Service Directive;<sup>88</sup>
- the Authorisation Directive;<sup>89</sup>
- the Radio Spectrum Decision (see section 3.1).<sup>90</sup>

Although regulation of content remains outside its scope, this framework is nonetheless vital for broadcasters.<sup>91</sup> This is because it applies to all transmission infrastructures,<sup>92</sup> and therefore regulates the conditions under which their signals are transmitted and received. With respect to broadcasters, the framework includes provisions on “must carry obligations”,<sup>93</sup> as well as rules on conditional access systems and “associated facilities” for digital television (see section 3.2.3).

---

<sup>85</sup> Further details on the Framework can be found at [http://europa.eu.int/information\\_society/topics/telecoms/regulatory/new\\_rf/index\\_en.htm](http://europa.eu.int/information_society/topics/telecoms/regulatory/new_rf/index_en.htm) (accessed 30 June 2005).

<sup>86</sup> Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services, L108/33, 24 April 2002, Brussels, (hereafter, Framework Directive).

<sup>87</sup> Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities, L108/7, Brussels, 24 April 2002, (hereafter, Access Directive).

<sup>88</sup> Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services, L108/51, Brussels, 24 April 2002, (hereafter, Universal Service Directive).

<sup>89</sup> Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services, L108/21, Brussels, 24 April 2002, (hereafter, Authorisation Directive).

<sup>90</sup> Decision No 676/2002/EC of the European Parliament and of the Council of 7 March 2002 on a regulatory framework for radio spectrum policy in the European Community, L108/1, Brussels, 24 April 2002, (hereafter, Radio Spectrum Decision).

<sup>91</sup> See: recital 5 of the Framework Directive: “This framework does not [...] cover the content of services delivered over electronic communications networks using electronic communications services, such as broadcasting content [...]”

<sup>92</sup> See: the legal definition of “electronic communications networks” in Article 2(a) of the Framework Directive.

<sup>93</sup> Universal Service Directive, art. 31.

### *Content regulation*

At the EU level, sector-specific media regulation can be found primarily in the TWF Directive. The directive lays down the minimum standards that the content regulation of television broadcasts by the member States must guarantee. It was introduced in order to ensure what in EU parlance is referred to as a “free market” in broadcasting services: a single European market with common legal rules facilitating the cross-border provision of services without any legal obstacles (broadcasting is referred to as a “service” within the EU).

Prior to the introduction of the TWF Directive, it was very difficult for broadcasters in Europe to broadcast across borders, because of the different legal content rules that applied in the various European States. The directive thus seeks to facilitate broadcasting across European frontiers (hence its name) by prescribing similar content rules in a number of areas, and providing that no European country may restrict retransmission or reception of broadcasts emanating from another EU country for reasons falling within the scope of the directive. The main goal of the directive was to facilitate the growth of a strong European broadcasting industry that could provide a counterweight to US programming, which was perceived as a threat to European culture. Its main provisions concern the following (see section 4):

- “listed” events of major importance for society;
- quota regulations;
- advertising and sponsoring;
- the protection of minors;
- the right to reply.

The TWF Directive is based on the country-of-origin principle – broadcasters only have to comply with the national law of the member State in which they are located.<sup>94</sup> Once this compliance is verified, a broadcast that is transmitted to another member State shall not be subject to secondary control under the national law of the receiving State. The retransmission of the broadcast can only be suspended by this State in exceptional circumstances.<sup>95</sup>

Adopted in 1989, the directive was first reviewed in 1997 to take account of technological and market developments. Its implementation by member States must be frequently monitored, by means of a report by the Commission to the European Parliament, the Council and the Economic and Social Committee.<sup>96</sup> In January 2003, the Commission delivered the fourth such report, which contains details on the

---

<sup>94</sup> TWFD, art. 2(1).

<sup>95</sup> TWFD, art. 2a(2).

<sup>96</sup> TWFD, art. 26,

implementation status in all member States.<sup>97</sup> Since 2003 a second revision of the directive has been undertaken, focusing on the following aspects:

- the regulation of audiovisual content;
- the level of detail in the regulation of advertising;
- the right to information and right to short reports;
- the promotion of the distribution and production of television programmes;
- co-regulatory measures in the media sector;
- the regulatory treatment of interactive television.<sup>98</sup>

The European Commission plans to present a new TWF Directive before the end of 2005.

## 2.4 Council of Europe (CoE)

The CoE is an affiliation of European States that have, among themselves, each adopted various binding legal treaties. Although it also has a ministerial meeting as well as a Parliament, neither has the power to adopt binding legal rules. Both the Committee of Ministers and the Parliamentary Assembly do, however, frequently adopt detailed recommendations and other instruments that are of significant political importance – because of their usually detailed nature, and, in the case of the Committee of Ministers, because of the high level of Government at which they are adopted. These recommendations are frequently also used to interpret the necessarily brief provisions found in legally binding treaties, and acquire some legal force by association with such treaties.

Relevant to broadcast regulation, the main treaties and recommendations are as follows:

- the European Convention on Human Rights (ECHR)<sup>99</sup> – a flagship human rights treaty, and the oldest general human rights instrument in the modern era;

---

<sup>97</sup> European Commission, Fourth Report from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions, on the application of Directive 89/552/EEC “Television without Frontiers, COM (2002) 778 final, 6 January 2003, available at [http://europa.eu.int/comm/avpolicy/regul/twf/applica/comm2002\\_778final\\_en.pdf](http://europa.eu.int/comm/avpolicy/regul/twf/applica/comm2002_778final_en.pdf) (accessed 30 June 2005).

<sup>98</sup> European Commission Communication on the future of European regulatory audiovisual policy, p. 24.

<sup>99</sup> European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), adopted 4 November 1950, entered into force 3 September 1953, E.T.S. 005.

- the Convention on Transfrontier Television (ECTT)<sup>100</sup> – containing rules similar to the EU’s Directive of the same name;
- two ministerial recommendations – one on the independence and functions of regulatory authorities for the broadcasting sector (2000) and another on the guarantee of the independence of public service broadcasting (1996).<sup>101</sup>

#### 2.4.1 The right to freedom of expression

The ECHR is a binding legal treaty that has near-constitutional status in most European States. Membership of the CoE is linked to acceptance of the ECHR: it is not possible to be a member State without also ratifying and implementing the ECHR. Its provisions are further elaborated in an extensive body of law developed by the European Court of Human Rights, a human rights court that has the power to make binding judgements. Article 10 of the ECHR protects the right to freedom of expression in terms similar to those found in Article 19 of the UDHR. However, it adds two important elements to the language of the UDHR. First, it states explicitly that the right to freedom of expression does not prohibit States from establishing licensing mechanisms in the broadcast sector; second, it provides a detailed clause on restrictions on the right to freedom of expression. This restrictions clause, which also applies to broadcasting regulation, provides that,

The exercise of [the right to freedom of expression], since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence or for maintaining the authority and impartiality of the judiciary.<sup>102</sup>

This has been interpreted as establishing a three-part test, requiring that any restrictions (1) be prescribed by law, (2) pursue a legitimate aim, and (3) be necessary in a democratic society. The European Court of Human Rights has stated that the first requirement will be fulfilled only where the law is accessible and “formulated with

<sup>100</sup> Council of Europe, European Convention on Transfrontier Television (ECTT), 5 May 1989, amended according to the provisions of the Protocol (E.T.S. no. 141) of the Council of Europe of 9 September 1998, entered into force on 1 March 2002.

<sup>101</sup> Council of Europe, Recommendation Rec (2000) 23 of the Committee of Ministers to member States on the independence and functions of regulatory authorities for the broadcasting sector, adopted by the Committee of Ministers on 20 December 2000 at the 735th meeting of the Ministers’ Deputies (hereafter, Council of Europe, Recommendation Rec (2000) 23); and Recommendation Rec (96) 10 of the Committee of Ministers to member States on the Guarantee of the Independence of Public Service Broadcasting, adopted on 11 September 1996 (hereafter, Council of Europe, Recommendation Rec (96) 10).

<sup>102</sup> ECHR, art. 10.

sufficient precision to enable the citizen to regulate his conduct.”<sup>103</sup> Second, the interference must pursue one of the aims listed in Article 10(2) – the list of aims is an exhaustive one, and thus any interference that does not pursue one of those aims violates Article 10. Third, the interference must be necessary to secure one of those aims. The word “necessary” means that there must be a “pressing social need” for the interference.<sup>104</sup> The reasons given by the State to justify the interference must be “relevant and sufficient” and the State must further show that the interference is proportionate to the aim pursued.<sup>105</sup>

Any broadcasting regulation must pass this test in order to be legitimate.

## 2.4.2 Sector-specific media regulation

### *Content regulation*

The ECTT is a binding legal treaty, the provisions of which are to a significant extent similar to those of the EU’s TWF Directive and rely on many of the same principles (see section 4). It was adopted in order to ensure the policy objective of a large and strong European broadcasting market, beyond the strict borders of the EU. In order to coordinate between the two instruments, the ECTT only applies to members of the EU insofar as there is no pre-eminent EU rule (i.e. no provision in the TWF Directive governing the particular subject concerned).<sup>106</sup>

### *Regulatory bodies in the broadcast sector*

The Committee of Ministers of the Council of Europe has adopted two important recommendations on broadcasting regulation: one on the independence and functions of regulatory authorities for the broadcasting sector (2000), and another on the guarantee of the independence of public service broadcasting (1996).<sup>107</sup> Although these have no binding legal force, they cannot be ignored, because they elaborate on the meaning of Article 10 ECHR, which is binding, in the area of broadcast regulation, because of the high ministerial level at which they have been adopted, and, unlike UN recommendations, because they are tailored specifically to European circumstances.

Central to both recommendations is the idea that broadcasting regulatory bodies and supervisory bodies of public service broadcasters should be established in a manner that minimises the risk of interference in their operations – for example, through an open appointments process designed to promote pluralism, and which includes guarantees

<sup>103</sup> European Court of Human Rights, *Sunday Times v. the United Kingdom*, 26 April 1979, Application No. 6538/74, para. 49.

<sup>104</sup> See, for example, *Hrico v. Slovakia*, 27 July 2004, Application No. 41498/99, para. 40.

<sup>105</sup> *Lingens v. Austria*, 8 July 1986, 8 EHRR 407, paras. 39-40.

<sup>106</sup> ECTT, art. 27.

<sup>107</sup> Council of Europe, Recommendation Rec (2000) 23; and Recommendation Rec (96) 10.



against dismissal and rules on conflict of interest. For example the recommendation on the independence and functions of regulatory authorities for the broadcasting sector (Rec (2000) 23) specifically states that the following rules should be observed:<sup>108</sup>

3. The rules governing regulatory authorities for the broadcasting sector, especially their membership, are a key element of their independence. Therefore, they should be defined so as to protect them against any interference, in particular by political forces or economic interests.
4. For this purpose, specific rules should be defined as regards incompatibilities in order to avoid that:
  - regulatory authorities are under the influence of political power;
  - members of regulatory authorities exercise functions or hold interests in enterprises or other organisations in the media or related sectors, which might lead to a conflict of interest in connection with membership of the regulatory authority.
5. Furthermore, rules should guarantee that the members of these authorities:
  - are appointed in a democratic and transparent manner;
  - may not receive any mandate or take any instructions from any person or body;
  - do not make any statement or undertake any action which may prejudice the independence of their functions and do not take any advantage of them.
6. Finally, precise rules should be defined as regards the possibility to dismiss members of regulatory authorities so as to avoid that dismissal be used as a means of political pressure.
7. In particular, dismissal should only be possible in case of non-respect of the rules of incompatibility with which they must comply or incapacity to exercise their functions duly noted, without prejudice to the possibility for the person concerned to appeal to the courts against the dismissal. Furthermore, dismissal on the grounds of an offence connected or not with their functions should only be possible in serious instances clearly defined by law, subject to a final sentence by a court.

### 3. TECHNICAL REGULATION

Broadcasting regulation is not only about regulating content, but also about regulating the technical networks, devices and services that are necessary for its transmission. Two aspects of technical regulation are of particular importance. First, every terrestrial broadcast transmission occupies parts of the radio spectrum and therefore requires due

---

<sup>108</sup> Council of Europe, Recommendation Rec (2000) 23, Appendix, Chapter II.

allocation of capacities. Second, although digitalisation has to some extent reduced the problem of spectrum or bandwidth scarcity, it has not put an end to the problem. New bottlenecks have arisen in the environment of digital television, which call for regulatory action.

### 3.1 Radio spectrum management

Every terrestrial broadcast transmission uses airwaves and therefore requires regulation of the restricted capacities available. At the international level, the radio spectrum is coordinated under the Stockholm Plan, which was adopted in 1961 by the International Telecommunication Union (ITU). Naturally enough, the Stockholm Plan could not foresee recent technical developments such as digital terrestrial broadcasting. A general amendment of the Stockholm Plan is therefore being discussed, but is not expected to enter into force before 2005 or 2006. At this point, the principles that it will follow are not yet known sufficiently as the entire revision is still under discussion.

At the EU level, the European Commission published a Green Paper on spectrum policy in 1998.<sup>109</sup> The first draft of a proposal for a Radio Spectrum Decision followed in 2000.<sup>110</sup> Since member States reacted hesitantly to these measures, the Commission subsequently followed a policy of merely supporting and accompanying the spectrum arrangements at the international level. Nonetheless, with the adoption of the Radio Spectrum Decision in 2002, the Commission has more recently returned to its former initiatives on the creation of a regulatory framework for spectrum policy in the European Community.<sup>111</sup> In the interest of Community policies, the decision encourages coordinated action of the Commission and the member States in the international negotiations on spectrum management.

As a worldwide pioneer, in Germany, the Berlin/Brandenburg region launched digital terrestrial broadcasting (Digital Video Broadcasting Terrestrial, DVB-T) with a full analogue switch-off in August 2003. Other regions in Germany, and in the UK, Spain, Sweden, Finland and Austria followed this model (see section II.7.3).

In comparison to analogue transmission, digital technology allows up to ten times more channels to be broadcast on the same bandwidth. Although digitalisation thereby reduces the dilemma of limited transmission capacities, it raises new challenges for the allocation of airwaves to broadcasting. Before the advent of digital technologies, the frequencies assigned to terrestrial television broadcasting in Europe were already

<sup>109</sup> European Commission, *Green Paper on Radio Spectrum Policy in the Context of European Community Policies such as Telecommunications, Broadcasting, Transport, and R&D*, COM (1998) 596 final, 9 December 1998.

<sup>110</sup> European Commission, Proposal of the European Parliament and of the Council on a regulatory framework for radio spectrum policy in the European Community, COM (2000) 407.

<sup>111</sup> Radio Spectrum Decision.

occupied by analogue channels. Therefore digital terrestrial transmission can only be implemented to the detriment of the analogue technology upon which the broadcasters and viewers have so far relied. The question arises of how to regulate the transition to digital transmission and the ultimate switch-off of analogue broadcasts in a manner that takes into account the interests of all parties involved. For instance, it should be ensured that consumers have enough information to become acquainted with all the possibilities of new digital terrestrial services and to adjust to the new transmission technology by purchasing digital set-top boxes.

The European Commission has provided guidance for member States in a Communication on digital switchover in 2004.<sup>112</sup> However, specific EU measures on switchover scenarios are not envisaged. In particular, the Commission has neither determined an EU-wide timing for analogue switch-off, nor stipulated a prohibition on the sale of analogue receivers.<sup>113</sup> On 24 May 2005, the Commission adopted a Communication on Accelerating the Transition from Analogue to Digital Broadcasting, in which it concludes that it expects most broadcasting in the EU to be digital by 2010, and proposes a deadline of early 2012 for phasing out traditional analogue terrestrial broadcasting.<sup>114</sup>

### 3.2 Digital television gatekeepers

While digitalisation produces a more effective way of using transmission capacities, it also introduces new risks to the pluralism of media contents. In addition to the existing players, such as cable, satellite or terrestrial network operators, digital broadcasting creates opportunities for new entrants to the market, who may in turn become digital gatekeepers. These are as follows:

- operators of multiplexing services;
- manufacturers of digital equipment (including set-top boxes);
- providers of application programming interfaces (API);

<sup>112</sup> European Commission, Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on the transition from analogue to digital broadcasting (from digital “switchover” to analogue “switch-off”), COM (2003) 541 final, 17 September 2004, (hereafter, European Commission, Communication – from digital “switchover” to analogue “switch-off”).

<sup>113</sup> European Commission Communication – from digital “switchover” to analogue “switch-off”, pp. 5, 16.

<sup>114</sup> European Commission, Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on accelerating the transition from analogue to digital broadcasting, COM (2005) 204 final, 24 May 2005, p. 9. In the Communication, EU member States are listed in two groups: group A, with a switch-off date of the end of 2010 or earlier (Austria, Germany, Spain, Finland, Italy, Malta and Sweden) and group B, with a switch-off date of the end of 2012 or earlier (Belgium, Hungary, the Slovak Republic, Slovenia and the UK).

- providers of conditional access systems (CAS);
- and providers of electronic programme guides (EPG).

What all these services have in common is that a dominant position in the relevant market could be abused to discriminate against third parties with respect to access to the particular technical service and in terms of conditions of payment. The problems are exacerbated if the service providers are vertically integrated undertakings that are also interested in disseminating their own content.

Multiplexing services ensure that digital broadcasting signals are packed into transmittable data containers. This packaging is carried out in digital play-out centres. In this regard, broadcasters could, for example, suffer discrimination in such a way that their programmes are bundled in a certain digital bouquet against their will or that additional service information to their programmes is not included in the multiplex signal.

Multiplexing services are not subject to specific legal regulation on the European level. If the national States have not enacted rules on multiplexing, these services only have to meet the requirements of general competition law. In EU member States, to the extent that a multiplexer is a dominant market player, it is thereby bound by the principles of Article 82 of the EC Treaty and its relevant counterparts in national laws (i.e. it may not use its dominant position to discriminate against any third parties).

Either viewers must have a digital television, or the digital multiplex signal must be converted back into analogue signals by the recipient, in order to view it with an analogue television set. This can be done either through an analogue/digital converter that is built into the television set or by an external decoder (set-top box). EU law does not impose rules on the decoders themselves. Instead, provisions are made for the hardware and software that are used in the set-top boxes. For EU member States, the Regulatory Framework for Electronic Communication Networks and Services is relevant (see section 2.3.2).

Digital television signals can be encoded in such a way that only viewers who possess the relevant decoding device, such as a smart card, can watch a given programme. The technology to allow such encryption/decryption processes is generally referred to as a conditional access system (CAS).<sup>115</sup> According to this definition, a CAS does not presuppose payments in return for the decryption. As such, a CAS can be applied not only in a pay-TV environment but also in a free-TV environment. The Regulatory Framework for Electronic Communication Networks and Services treats CASs in the

---

<sup>115</sup> Article 2(f) of the Framework Directive defines a CAS as “any technical measure and/or arrangement whereby access to a protected radio or television broadcasting service in intelligible form is made conditional upon subscription or other form of prior individual authorisation”.

framework of “associated facilities”.<sup>116</sup> In EU member States, the Access Directive, *inter alia*, obliges CAS operators to offer their services to all broadcasters on a “fair, reasonable and non-discriminatory basis”, compatible with EU competition law.<sup>117</sup>

Application programming interfaces (APIs) are the software that controls the hardware components of the set-top box. Digital services that can be received with the same set-top box generally include not only the digital television broadcasts, but also electronic programme guides (EPGs) as well as a variety of multi-media applications. If these digital services are offered by different providers, however, the technologies used can vary, and it is up to the APIs to make sure that services can all be processed and mirrored in the set-top box.

For EU member States, in accordance with the Access Directive, the national regulatory authorities are able to impose obligations on operators to provide access to APIs on fair, reasonable and non-discriminatory terms.<sup>118</sup> The Framework Directive requires EU member States to encourage providers of interactive television services and interactive receiver equipment to offer an open API, and to encourage transparent provision by API providers of all information necessary to other applications.<sup>119</sup> It also empowers the Commission to draw up a list of standards and/or specifications (hereafter, List of Standards 2002) to serve as a basis for encouraging the harmonised provision of associated facilities.<sup>120</sup> This list was issued in December 2002, and also concerns APIs.<sup>121</sup> The common open-source interface mentioned in the list is the multi-media home platform (MHP) on which the digital video broadcast group

<sup>116</sup> Article 2(f) of the Framework Directive defines “associated facilities” as “facilities associated with an electronic communications network and/or an electronic communications service which enable and/or support the provision of services via that network and/or service. It includes conditional access systems and electronic programme guides.” Framework Directive, art. 2(e).

<sup>117</sup> Provisions for conditional access systems (CAS) can be found in Article 6, in conjunction with Annex I Part I of the Access Directive. Although neither Article 6 nor Annex I Part I of the directive gives guidance as to what is to be understood by “fair, reasonable and non-discriminatory terms”, further provisions of the Directive shed light on the requirement of non-discrimination. Article 9(2) stipulates that where an operator is bound by non-discrimination obligations, national regulatory authorities may require it to publish a standard offer to potential customers. Such a standard offer shall provide for an “unbundled” provision of services, i.e. no customer shall be required to pay for facilities or services that are not necessary for the service requested. The standard offer must therefore be broken down into different components according to market needs, with each such component being offered at a specific price. In addition, Article 10(2) states that the operator is bound under non-discrimination obligations to apply equivalent conditions in equivalent circumstances to other undertakings providing the same services, and to provide services and information to others under the same conditions and of the same quality as it provides for its own services, or for those of its subsidiaries or partners.

<sup>118</sup> Access Directive. art. 5(1)(b), in conjunction with Annex I, Pt II.

<sup>119</sup> Framework Directive, art. 18.

<sup>120</sup> Framework Directive. art. 17.

<sup>121</sup> List of standards and/or specifications for electronic communications networks, services and associated facilities and services, 2002, C331/47.

(DVB), as well as various European broadcasters, regulators and manufactures have agreed. It has long been debated whether this standard of an open interface should be made compulsory. However, as it stands, MHP is not mandatory under EU regulation. In accordance with the Framework Directive, the use of the standards set out in the list is encouraged,<sup>122</sup> but there is no legally binding obligation for the member States to implement them. In a communication delivered in July 2004, the Commission confirmed that there was no current intention to mandate EU-wide standards.<sup>123</sup> Therefore, no specific API system, whether it be MHP or any other programming interface, is stipulated at present.

In the digital age, electronic programme guides (EPGs) are taking over the role of traditional (i.e. printed) television guides. Quite similar to web browsers, which navigate through the Internet, EPGs help viewers to find their way through the multitude of different channels offered on digital television and to access the selected programme. In this respect, EPGs can take two forms. First, a broadcaster can run its own EPG to guide recipients through the digital bouquet of its own programmes. Second, a platform provider, such as a satellite or cable network operator, can offer an EPG that not only provides information on the channels or the bouquet of a particular broadcaster, but also informs customers of all the contents available on the platform. Naturally, broadcasters will want access to the superordinate EPG of the relevant platform operator. Apart from the pricing, another concern that broadcasters might have is the ranking of the listed programmes. There is a strong feeling, especially among commercial broadcasters, that in a multi-channel television environment their listing position on an EPG will influence their viewing figures. When negotiating carriage contracts with a cable network operator that offers its own EPG, for example, broadcasters therefore often make a specific listing position subject to those contracts.

Under the Regulatory Framework for Electronic Communication Networks and Services, EPGs are also dealt with as “associated facilities”. Of most relevance to EPGs is the Access Directive, which, as for APIs, states that member States can oblige EPG operators to provide access to their facilities on “fair, reasonable and non-discriminatory” terms.<sup>124</sup> EPGs also belong to the “associated facilities” referred to in the standardisation provision of the Framework Directive.<sup>125</sup> However, unlike APIs, they are not mentioned in the List of Standards 2002. It should also be noted that content and display issues related to EPGs are not covered by the Regulatory Framework for Transmission Networks and Services.<sup>126</sup> In particular, it is left to the

<sup>122</sup> Pursuant to the provisions of Article 17(2) of the Framework Directive.

<sup>123</sup> Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions, on interoperability of digital interactive television services, COM (2004)541 final, 30 July 2004, Brussels, p. 7.

<sup>124</sup> Access Directive, art. 5(1)(b), in conjunction with Annex I(Pt II).

<sup>125</sup> Framework Directive, art. 17.

<sup>126</sup> Access Directive, art. 6(4).

discretion of member States whether, and how, they want to make sure that there are safeguards for certain broadcast contents, such as public service television channels, so that they be appropriately accessible via EPGs. This means, *inter alia*, that the EU framework does not prejudice the ability of member States to make special provision for listing the contents of public service broadcasters.

## 4. CONTENT REGULATION

Broadcasting should serve to enhance the freedom of expression, opinion and information.<sup>127</sup> However, these fundamental rights – the bearers of which encompass many different parties, including broadcasters, journalists and recipients – cannot be upheld without considering the conflicts that may arise between these freedoms, and without balancing them against other legitimate rights or interests, such as the promotion of cultural and linguistic diversity or the protection of minors. Content regulation makes a necessary contribution to resolving these conflicts.

### 4.1 Programming and editorial standards

European-level instruments seek to preserve editorial standards through both legally binding provisions and self-regulation. General programming standards are set out in the TWF Directive and the ECTT.<sup>128</sup> While the TWF Directive is confined to stipulating that broadcasts must not contain any incitement to hatred on grounds of race, sex, religion or nationality, the ECTT contains more detailed regulation. It explicitly prohibits pornography and any undue prominence given to violence, and additionally contains requirements for news programmes, which are required to present facts and events fairly, and encourage the free formation of opinions.

Self-regulation as regards editorial standards is mainly achieved by codes of practice for journalism and editorial statutes. The journalism unions of the national States, as well as their European and international associations and federations, all have codes of ethics, which are usually overseen by an independent complaints body. The standards demand, *inter alia*, accuracy, fairness and respect for privacy.

Beyond an investigation by the competent bodies, a violation of editorial standards may lead to a right to reply. Both the TWF Directive and the ECTT provide for a

<sup>127</sup> As set out in, for example, the following: Article 10 of the ECHR, which is the highest legal document of the Council of Europe; Article 11 of the EU Charter of Fundamental Rights; Article 19 of the UNDHR. For an overview of the case law developed over the last 40 years by the European Court of Human Rights, see: Council of Europe, *Freedom of Expression in Europe – Case law concerning Article 10 of the European Convention on Human Rights*, Human Rights File No. 18, revised, Council of Europe Publishing, Strasbourg, 2002.

<sup>128</sup> TWF Directive, art. 22(a); ECTT, art. 7.

natural/legal person's right to reply in the event of false or misleading reporting.<sup>129</sup> According to this right, a broadcaster must televise a reply to an assertion of incorrect facts whenever the person's legitimate interests, such as reputation and good name, have been damaged. The ECTT guidance on this is rather vague and only requires that arrangements be in place for an effective exercise of the right to reply as regards timing and modalities.<sup>130</sup> The TWF Directive contains more specific provisions: the reply must be transmitted within a reasonable time subsequent to the request being substantiated, and at a time and in a manner appropriate to the broadcast to which the request refers.<sup>131</sup>

## 4.2 Right to short reporting and listed events

While the ECTT establishes a right to "short reporting",<sup>132</sup> there is no equivalent provision in the TWF Directive. The right applies to events of great public interest. In practice, the right to short reporting has to date mostly been exercised in relation to sports events such as the matches of national football leagues. It ensures that every broadcaster licensed in Europe is entitled to access those events for news reporting purposes. The event's organiser may charge news reporters a regular admission fee to the event, but may not hinder them from reporting on the event even if the transmission rights have been exclusively licensed to another channel. The ECTT does not specify the events concerned, but it is to be read in a broad sense.

Under the TWFD and the ECTT, the exploitation of certain sports events by pay-TV is only permissible if the same or another broadcaster provides simultaneous free coverage of the same event.<sup>133</sup> Similar to the right to short reporting, these provisions aim to ensure public access to broadcasts of major importance to society. The member States can agree on designated ("listed") events, which are then examined by the European Commission or the Convention's Standing Committee. The lists that exist so far mainly identify sports events, such as the Olympic Games, but also cultural happenings, such as the Sanremo Italian Music Festival or the Vienna Opera Ball. They are, however, generally restricted to the most prestigious and popular events. With respect to football coverage, for example, the lists typically only cover the national team matches, but they do not apply to national league football. The latter may therefore still be shown exclusively on pay-TV, as is the case in Italy (Sky Italia), the UK (BSkyB) and Germany (Premiere).

---

<sup>129</sup> TWFD art. 23; ECTT, art. 8.

<sup>130</sup> TWFD art. 8(1).

<sup>131</sup> TWFD art. 23(1).

<sup>132</sup> ECTT, art. 9.

<sup>133</sup> TWFD, art. 3(a); ECTT, art. 9.



### 4.3 Quota regulations

Both the TWF Directive and the ECTT provide a quota in favour of European works.<sup>134</sup> The TWFD also introduces a quota in favour of independent producers.<sup>135</sup> These rules aim to ensure diversity of programming and to promote television production in Europe.

The quota for *European works* provides that broadcasters shall dedicate the “majority proportion” – without this term being further specified in the law – of the airtime reserved for drama and documentary programming to European works. A work is considered to be of European origin where its producer is based in an EU member State or in another European country that has ratified the ECTT.<sup>136</sup> However, this definition also extends to affiliates of non-European production companies, as long as their Europe-based entities operate with permanent staff of whom at least 50 per cent are European citizens. Upon implementation of the TWF Directive by an EU member State, the fulfilment of these quotas should be monitored by national media authorities (see section II.6.5).

The quota for *independent producers* establishes a requirement of 10 per cent in terms of airtime or programming budget for European works created by producers who are not associated with any broadcaster. The TWF Directive additionally provides that the proportion of 10 per cent should be achieved progressively, taking into account the broadcasters’ informational, educational, cultural and entertainment responsibilities to its viewing public, and that it must be achieved by earmarking an undefined “adequate” proportion for recent works (i.e. works transmitted within five years of their production).

### 4.4 Advertising and sponsorship

The TWF Directive and the ECTT both set out a series of rules for advertising, teleshopping and sponsorship, including provisions concerning advertising targeted at minors.<sup>137</sup> These formal requirements include the basic rule that advertising content and editorial content of a television programme must be clearly separated by visual means,<sup>138</sup> and detailed provisions on the duration and insertion of advertising and

---

<sup>134</sup> TWFD, Chapter III (Promotion of distribution and production of television programmes), arts 4-6; ECTT, art. 10.

<sup>135</sup> TWFD, art. 5.

<sup>136</sup> “European works” are defined in Article 6 of the TWFD; The definition of “European audiovisual works” is found in Article 2(e) of the ECTT.

<sup>137</sup> TWFD, Chapter IV; ECTT, Chapters III and IV.

<sup>138</sup> TWFD, art. 10.

teleshopping spots.<sup>139</sup> The TWF Directive and the ECTT also address the content regulation of advertising and sponsoring.<sup>140</sup>

With respect to *advertising*, both the TWF Directive and the ECTT have developed general standards. It is postulated that advertising shall not prejudice respect for human dignity.<sup>141</sup> Advertising shall not be misleading and shall not prejudice the interests of consumers. Furthermore, advertisers shall not exercise any editorial influence over the content of programmes.<sup>142</sup> Additionally, both ban or restrict advertising for certain products such as tobacco products, medicinal products and treatment or alcoholic beverages.<sup>143</sup> Neither explicitly prohibits political or religious advertising. However, the TWF Directive stipulates that television advertising and teleshopping shall not be offensive to religious or political beliefs.<sup>144</sup>

With respect to *sponsoring*, according to specific rules, while sponsoring is generally admissible, it is also subject to the following restrictions:

- A sponsor may not be granted any influence on the editorial content and/or the scheduling of a television programme, and the responsibility and the editorial independence of the broadcaster may not be affected.
- Unlike commercials, sponsoring is restricted to merely profiling the sponsor by means of promoting a particular television programme without giving any relevant incentives for consumption.
- The tobacco industry may not sponsor any television programme.
- Pharmaceutical and medical supply companies may act as a sponsor provided that their sponsorship only promotes the name or image of the company but no prescription drugs or medical treatments.<sup>145</sup>

In order to ensure legal security and equal treatment in the different member States for new advertising and sponsoring techniques – such as split screen, interactive advertising and virtual advertising – the European Commission specified in an interpretative communication how the rules of the TWF Directive apply to these new techniques.<sup>146</sup> For example, it is here specified that the TWF Directive provisions on hourly and daily

---

<sup>139</sup> TWFD, arts. 11, 18.

<sup>140</sup> TWFD, arts. 12-17; ECTT, arts. 11, 15, 17-18.

<sup>141</sup> TWFD, art. 12(a).

<sup>142</sup> ECTT, art. 11.

<sup>143</sup> TWFD, arts. 13-15; ECTT, art. 15.

<sup>144</sup> TWFD, art. 12(c).

<sup>145</sup> TWFD, art. 17; ECTT, arts 17, 18.

<sup>146</sup> European Commission, Commission interpretative communication on certain aspects of the provisions on televised advertising in the “Television without Frontiers” Directive, C102/2, Brussels, 2004.

duration of advertising shall apply in full to split screen advertising, or that virtual advertising and sponsoring techniques, such as the display of three-dimensional images on football grounds, shall comply with the directive.

#### 4.5 Protection of minors

The regulatory regime for the protection of minors is twofold, consisting of *general* protection measures on the one hand, and *special* protection in the field of advertising on the other.

With respect to the general protection of minors, both the TWF Directive and the ECTT call for measures to prevent minors' physical, mental or moral development from being impaired.<sup>147</sup> The TWF Directive clearly distinguishes between programmes that might seriously impair the development of minors and programmes that are likely to impair their development. Under the TWF Directive, programmes that *might seriously impair* the development of minors are completely banned<sup>148</sup> – this concerns in particular broadcasts that involve pornography or gratuitous violence. By contrast, programmes that are only *likely to impair* the development of minors are not totally banned from television; they may be televised, subject to scheduling restrictions.<sup>149</sup> Furthermore, when such programmes are broadcast in unencrypted form, they must be preceded by an acoustic warning, or identified by the presence of a visual symbol throughout their duration.<sup>150</sup> Appropriate technical means such as decoding technologies can also be used.<sup>151</sup>

Minor-specific advertising rules can be found in both the TWF Directive and ECTT. The ECTT is confined to prohibiting advertising that is likely to harm children's interests, and teleshopping that exhorts minors to contract for the sale or rental of goods and services.<sup>152</sup> The TWF Directive provides more detailed regulation, for instance by specifically forbidding advertisements depicting minors consuming alcoholic beverages or exploiting the special trust that they place in parents, teachers or other persons.<sup>153</sup>

---

<sup>147</sup> TWFD, art. 22; ECTT, art.7(2).

<sup>148</sup> TWFD, art. 22(1).

<sup>149</sup> TWFD, art. 22(2); ECTT, art. 7(2).

<sup>150</sup> TWFD, art. 22(3).

<sup>151</sup> TWFD, art. 22(2). As for the technical facilities to control the programmes that minors may watch, see also: TWFD, art. 22b(2).

<sup>152</sup> ECTT, art. 11(3),(4).

<sup>153</sup> TWFD, art. 15(a), 16.

## 5. PUBLIC SERVICE TELEVISION

### 5.1 European policy approach

Across Europe, public service broadcasting is an inherent component of the media landscape. Public service television programmes account for significant audience shares in member States – over 40 per cent in France, Germany, Italy, Poland and the UK, in 2003 (see Table 12).

Unlike commercial broadcasters, many public service broadcasters are partly or entirely funded by way of a licence fee, which must be paid on a monthly or annual basis by every television household. In the UK, BBC programmes must be completely free of advertising. In other countries, in consideration of this privileged funding, special restrictions apply as to the amount of advertising and sponsoring in public broadcast television programmes. For example, in Germany, ARD and ZDF may not feature any advertising after 20.00 on weekdays and all day on Sundays. Public service broadcasters are also subject to specific requirements to offer a broad diversity of programming, including educational, cultural and news elements, pursuant to national law (see section II.4.3).

Public service broadcasting is explicitly acknowledged under both Council of Europe recommendations and EU law. In a separate protocol, “considering that the system of public broadcasting in the member States is directly related to the democratic, social and cultural needs of each society and to the need to preserve media pluralism”, the contracting parties to the EU’s Amsterdam Treaty agreed that each member State shall generally have the sole competence to provide for the funding of its public broadcasting system, subject to certain conditions.<sup>154</sup> This reflects the European understanding of public broadcasting as an important element of the culture and the political system of democracy of each member State. The independence of public service broadcasting from Government influence is furthermore addressed in a specific Recommendation by the Council of Europe’s Committee of Ministers, which provides that “the [national] legal framework governing public service broadcasting organisations should clearly stipulate their editorial independence and institutional autonomy”.<sup>155</sup>

By contrast, the US broadcasting model is a fully commercial, market-dominated operation, with only a small element covering public services. The latter accounts for a share in the overall television audience market of well below five per cent. Pursuant to the Public Broadcasting Act of 1967, the Corporation for Public Broadcasting (CPB) was established as an umbrella organisation for the nation’s 350 public television stations that form the Public Broadcasting System (PBS).<sup>156</sup> The CPB was created to

<sup>154</sup> EU Protocol on public broadcasting (1997).

<sup>155</sup> Council of Europe, Recommendation No. R (96) 10.

<sup>156</sup> 47 U.S.C. 396, as amended.

“encourage the growth and development of public radio and television broadcasting, including the use of such media for instructional, educational, and cultural purposes”. A non-profit organisation, it is funded by the Federal government as well as by State and local governments, but it also receives grants from private and corporate donors and from colleges, universities and foundations. In contrast to most European public service broadcasters, however, public broadcasting stations are not entitled to a mandatory licence fee to be paid by each television household. In June 2005, a US Congress subcommittee voted to first sharply reduce, and then, within two years, to eliminate, all federal money for the CPB. Expressing alarm, public broadcasters and their supporters in Congress interpreted the move as an escalation of a Republican-led campaign against a perceived liberal bias in their programming. The Congress will take a final decision on public service funding later in 2005.

## 5.2 State aid

In recent years, public broadcasters throughout Europe have found themselves increasingly challenged by their commercial competitors with recourse to the EC Treaty State aid regime.<sup>157</sup> Private broadcasters in various member States have filed complaints with the European Commission, seeking clarification on whether the licence fee schemes constitute State aids, which are incompatible with the provisions of the EC Treaty.<sup>158</sup>

The dispute starts with the question of whether the licence fee can be qualified at all as State aid within the meaning of Article. 87(1) of the EC Treaty. According to this provision, any aid shall be incompatible with the common market if it is “granted by a member State or through State resources in any form whatsoever and distorts or threatens to distort competition by favouring certain undertakings insofar as it affects trade between member States”. In response, the public service broadcasters and member State governments argue that licence fees do not provide an economic advantage to the public broadcasters, because they merely compensate the broadcasters for the additional costs that result from the public broadcasters’ fulfilment of their special obligations, under the Protocol on the system of public broadcasting in the member States appended to the Amsterdam Treaty.<sup>159</sup>

In addition to this debate, there is also controversy as to whether the granting of State aid could be justified under the EC Treaty. Under the EC Treaty, certain State aids are considered to be compatible with the common market for promoting culture (Article

---

<sup>157</sup> EC Treaty, art. 87 *et seq.*

<sup>158</sup> A list of the most recent State aid cases in the broadcasting sector can be found at [http://europa.eu.int/comm/competition/state\\_aid/decisions/additional\\_docs.html](http://europa.eu.int/comm/competition/state_aid/decisions/additional_docs.html) (accessed 4 August 2005).

<sup>159</sup> EU Protocol on public broadcasting (1997).

87(3)d), and State aids can be justified when granted to undertakings that are entrusted with services of general economic interest (Article 86(2)).<sup>160</sup>

The European Commission has made clear that it regards licence fees as constituting State aid within the meaning of Article 87(1) EC.<sup>161</sup> In its view, the only option to declare them as compatible with the EC Treaty's State aid regime lies in a justification under Article 86(2). However, the requirements that the Commission refers to, in order to approve licence fee schemes as justified under Article 86(2), are high. The Commission expects public broadcasters to fulfil the following three conditions:

- The broadcaster's activities must be clearly and precisely defined by the national authorities as a service of general economic interest (*definition*).
- The broadcaster must be officially entrusted with the provision of that service (*entrustment*).
- The State funding must not exceed the net cost of that service, taking into account other direct or indirect revenues derived from the service (*proportionality*).<sup>162</sup>

The first requirement constitutes the most crucial point in order to ascertain whether the authorities provide more compensation than is strictly necessary for the net costs of public service broadcasting.<sup>163</sup> Here, the Commission is pressing to apply the Transparency Directive<sup>164</sup> to public service broadcasters, on the grounds that member States are only likely to achieve compliance with the State aid regime if the public service remit is defined more precisely, and if the financing of public service broadcasters is regulated more transparently. This poses a challenge to the public service broadcasting systems of various member States, because it is in particular the

<sup>160</sup> In this regard, the European Court of Justice has held that State funding of public service broadcasters is allowed only if a number of conditions are cumulatively met: clear public service obligations exist, parameters for determining the compensation have been pre-established, there is no overcompensation, and either the operator is selected through tender procedure or compensation is determined with reference to the costs of a typical, well-run undertaking. European Court of Justice, *Altmark Trans GmbH, Regierungspräsidium Magdeburg v. Nahverkehrsgesellschaft Altmark GmbH*, Case C-280/00, 24 July 2003.

<sup>161</sup> See, for example, the following: European Commission, Communication from the Commission on the application of State aid rules to public service broadcasting, C320/5, Brussels, 15 November 2001, para. 16 *et seq.*, (hereafter, European Commission Communication on State aid); European Commission, Decision of 19 May 2004 on measures No. C 2/2003 (ex NN 22/02) implemented by Denmark for TV2/Danmark, C(2004) 1814 final, para. 56 *et seq.*, (hereafter, TV2/Danmark Decision).

<sup>162</sup> TV2/Danmark Decision, para. 82.

<sup>163</sup> European Commission Communication on State aid.

<sup>164</sup> European Commission, Directive 80/723/EEC of 25 June 1980 on the transparency of financial relations between Member States and public undertakings, L195/35, 1980, last amended by Commission Directive 2000/52/EC of 26 July 2000, L193/75, 2000, (hereafter, Transparency Directive).

precise determination and definition of the public service task that is often (still) lacking (see section II.4.3).

Only very recently, the Commission has taken specific action in this regard. On 3 March 2005, the European Commission announced that it was requesting the Netherlands, Ireland and Germany to clarify their policies on the funding of public service broadcasters.<sup>165</sup> In the case of Germany, the Commission has launched an investigation with respect to ARD and ZDF.<sup>166</sup> Following complaints from German private broadcasters, the Commission approached the German Government with a detailed questionnaire concerning the funding of online services and the acquisition of sports rights by the public broadcasters. The German Government submitted its reply to this questionnaire in May 2005, again stressing its view that the German licence fee does not fulfil the relevant criteria to qualify as a subsidy under EU law. Based on this response, it is now up to the Commission to decide whether it will further pursue the case by opening formal unlawful State aid proceedings. If it does so – which, at the time of writing, seems rather likely – the outcome of such proceedings might indeed have a significant impact on the fundamentals of public broadcasting, not only in Germany but also in other EU member States. For a decision against ARD and ZDF would undermine the justification for the licence fee and boost the commercial broadcasting lobby's argument that public service broadcasting should be broadly confined to unprofitable niches, excluding it from the most popular and lucrative segments of broadcasting.

## 6. MEDIA OWNERSHIP CONTROL

Globally, as well as in a pan-European context, the past decade has seen increasing concentration of media ownership, on a scale that threatens to endanger the existence of a wide spectrum of views and opinions in the broadcast sector. In the EU, this development is still being addressed through general competition law, despite constant calls to implement sector-specific media ownership regulation.

### 6.1 Market situation

Television markets throughout Europe show structural similarities – there is strong public service broadcasting in many States, and the private sector is dominated by a few companies. In smaller countries, such as the Baltic States, the number of television

---

<sup>165</sup> See: European Commission, press release IP/05/250 of 3 March 2005, available at <http://merlin.obs.coe.int/redirect.php?id=9587>, and also the Commission's helpful FAQ on the subject, MEMO/05/73 of 3 March 2005, available at <http://merlin.obs.coe.int/redirect.php?id=9588> (both accessed 28 August 2005).

<sup>166</sup> Case E 3/2005; See also: the Chapter on Germany in the EUMAP reports.

stations is significantly limited because there is often not enough market potential for more than one or two operators, due to the lack of advertising resources. Since the introduction of commercial television from the mid-1980s onwards, Vivendi and the Bertelsmann/RTL Group have grown to become Europe's two largest commercial broadcasting groups. The few channels that dominate the private sector are often owned by international media companies, which, in addition, are integrated multimedia players, active not only in the television sector but also, *inter alia*, in radio and the press. For example, the major companies Mediaset, NewsCorp, Bonnier, Bertelsmann/RTL and Axel Springer are all engaged in both broadcasting and publishing. (See section II.5.)

## 6.2 Policy debate

In most European countries, media ownership is already subject to sector-specific national legislation. However, there have also been some initiatives by the European Commission, the European Parliament, the European Economic and Social Committee and the Council of Europe to establish a pan-European regime of media ownership control.

In the 1990s, the European Commission launched two initiatives that were both rejected by the EU Council. In 1992, it published a Green Paper on pluralism and media concentration in the internal market<sup>167</sup>, and in 1996–1997 it submitted a draft directive on media concentration. The proposal suggested restrictions on television, radio and cross-media ownership, but it was not adopted, mainly for reasons of lack of competency. In 2003, more than a decade after the first Green Paper, the Commission again called for comments on European media ownership control.<sup>168</sup> The 2004 report on public consultation on the 2003 Green Paper revealed that interested parties had broadly rejected the Commission's proposal. In January 2004, the Commission presented a proposal for a directive on services, that could provide a background for an EU regulation on media concentration, going beyond the measures already available under general competition law.<sup>169</sup> However, this draft directive is also still under discussion.<sup>170</sup> Among the contentious issues is the absence of an exception or cultural specificity clause that would prevent the directive from undermining member States' ability to maintain or introduce regulations or sector-specific policies in order to promote cultural and linguistic diversity and media pluralism. Furthermore, the

<sup>167</sup> European Commission, *Pluralism and Media Concentration in the Internal Market. An Assessment of the Need for Community Action*, COM (92) 480 final, December 1992.

<sup>168</sup> European Commission, *Green Paper on Services of General Interest*, COM (2003) 270 final, Brussels, 21 May 2003.

<sup>169</sup> European Commission, Proposal for a Directive of the European Parliament and of the Council on Services in the Internal Market, COM (2004) 2 final, Brussels, 5 March 2004.

<sup>170</sup> For the most recent developments, see: [http://europa.eu.int/comm/internal\\_market/en/services/services/](http://europa.eu.int/comm/internal_market/en/services/services/) (accessed 4 August 2005).



Commission itself has lately stated that it sees no legal basis at the EU level for legislating against concentration for the sake of media pluralism.

The European Parliament has supported and partly initiated the Commission's initiatives on EU rules on media concentration.<sup>171</sup> Only recently, some members of the European Parliament have again called for the Commission to take action in the field of media concentration. So far, however, the Commission has not formally reacted to such demands.

In March 2000, the European Economic and Social Committee put forward an initiative on media pluralism and concentration in the age of globalisation and digital convergence, and recommended the coordination of national regulatory bodies through the Commission.

Through recommendations and reports, the Council of Europe has also been active in tackling media concentration. For example, it published a report on media concentration in the digital environment in October 2000, and media concentration issues are continually discussed in the Council of Europe's Steering Committee on the Mass Media – now renamed the Steering Committee on the Media and New Communications Services. In November 2004, the CoE presented a study on transnational media concentrations in Europe, which suggested ongoing monitoring, possibly a convention at the level of the CoE, and further measures at the level of its member States.<sup>172</sup>

However, despite all the debate and concern about increasing concentration in the media industry, no harmonisation of media pluralism rules has yet taken place at the EU or CoE level. This is mainly due to member States' remaining competencies in this area and also to the realisation that national market sizes and regulatory models are too different to be harmonised.<sup>173</sup> Also, national governments, as well as the media industry itself, have clearly indicated that they would prefer that the media ownership issue be dealt with at the national level.

---

<sup>171</sup> See, for example: European Parliament, Resolution of 22 April 2004 on the risks of violation, in the EU and especially in Italy, of freedom of expression and information (Article 11(2) of the Charter of Fundamental Rights), 2003/2237 (INI), A5-0230/2004; see also: the Italy Chapter of the EUMAP reports.

<sup>172</sup> Council of Europe, *Transnational Media Concentrations in Europe*, report prepared by the AP-MD, (Advisory Panel to the CDMM on media concentrations, pluralism and diversity questions), Media Division, Directorate General of Human Rights, Strasbourg, November 2004.

<sup>173</sup> See, for example: European Broadcasting Union, *Position Paper on the Commission Proposal for a Directive on Services in the Internal Market*, 8 December 2004, p. 10, available at [http://www.ebu.ch/CMSimages/en/leg\\_pp\\_directive\\_services\\_081204\\_tcm6-23334.pdf](http://www.ebu.ch/CMSimages/en/leg_pp_directive_services_081204_tcm6-23334.pdf) (accessed 4 August 2005).

### 6.3 Existing legal framework

Due to the lack of jurisdictional competency of the EU bodies, protection of media pluralism is therefore primarily a task for the member States. No EU criteria exist concerning *media* concentration. Instead, at the EU level, only Community competition law can be relied upon in order to attempt to prevent a degree of cumulative control or participation in media companies that might endanger pluralism in broadcasting.

As far as existing legislation measures are concerned, neither the EC Treaty nor the TWF Directive (for EU member States), or the ECTT (for CoE member States), contains sector-specific provisions on media concentration.

For EU member States, instead of being subject to broadcasting-specific legislation, mergers in the television sector are only supervised under the Merger Regulation, which, as a general competition law instrument, is applicable to all mergers. The Regulation does not provide for special turnover thresholds for media mergers. Furthermore, it is exclusively in the European Commission's competency to decide whether a merger falls within the scope of the regulation. Finally, the regulation contains an exemption for member States to protect legitimate interests and explicitly lists the protection of media pluralism as one of those interests.<sup>174</sup> For example, this clause has been invoked in the "Newspaper Publishing" case in 1994, which was first cleared by the Commission but then did not receive approval by the UK competition authorities due to media pluralism concerns.<sup>175</sup>

---

<sup>174</sup> EC Merger Regulation, art. 21(4).

<sup>175</sup> Case No IV/M.423 – Newspaper Publishing.

## ANNEX 1. Legislation and recommendations cited in the report

### European Union

#### Treaties

Treaty establishing the European Community (EC Treaty).

Consolidated version available at

[http://europa.eu.int/eur-lex/lex/en/treaties/dat/12002E/pdf/12002E\\_EN.pdf](http://europa.eu.int/eur-lex/lex/en/treaties/dat/12002E/pdf/12002E_EN.pdf) (accessed 30 June 2005).

Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts, signed on 2 October, C 340, 10 November 1997, Protocol no. 9 on the system of public broadcasting in the member States, O.J. C340/109. (*EU Protocol on public broadcasting (1997)*)

Available at <http://europa.eu.int/eur-lex/en/treaties/selected/livre545.html> (accessed 30 July 2005).

#### Directives

Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services, L108/51, Brussels, 24 April 2002. (*Universal Service Directive*)

Available at

[http://europa.eu.int/information\\_society/topics/telecoms/regulatory/new\\_rf/documents/l\\_10820020424en00510077.pdf](http://europa.eu.int/information_society/topics/telecoms/regulatory/new_rf/documents/l_10820020424en00510077.pdf) (accessed 30 June 2005).

Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services, L108/33, Brussels, 24 April 2002. (*Framework Directive*)

Available at

[http://europa.eu.int/information\\_society/topics/telecoms/regulatory/new\\_rf/documents/l\\_10820020424en00330050.pdf](http://europa.eu.int/information_society/topics/telecoms/regulatory/new_rf/documents/l_10820020424en00330050.pdf) (accessed 30 June 2005).

Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities, L108/7, Brussels, 24 April 2002. (*Access Directive*)

Available at

[http://europa.eu.int/information\\_society/topics/telecoms/regulatory/new\\_rf/documents/l\\_10820020424en00070020.pdf](http://europa.eu.int/information_society/topics/telecoms/regulatory/new_rf/documents/l_10820020424en00070020.pdf) (accessed 30 June 2005).

Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services, L108/21, Brussels, 24 April 2002. (*Authorisation Directive*)

Available at

[http://europa.eu.int/information\\_society/topics/telecoms/regulatory/new\\_rf/documents/l\\_10820020424en00210032.pdf](http://europa.eu.int/information_society/topics/telecoms/regulatory/new_rf/documents/l_10820020424en00210032.pdf) (accessed 30 June 2005).

Council Directive 93/83/EEC of 27 September 1993 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission, L248/15, 6 October 1993. (*Cable and Satellite Directive*)

Available at [http://europa.eu.int/comm/avpolicy/legis/legis\\_en.htm#Directives](http://europa.eu.int/comm/avpolicy/legis/legis_en.htm#Directives) (accessed 30 June 2005).

Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in member States concerning the pursuit of television broadcasting activities (Television without Frontiers Directive), OJ L 298, 17 October 1989, as amended by European Parliament Directive 97/36/EC of June 1997, OJ L 202 60, 30 July 1997. (*TWF Directive*)

Consolidated text available at [http://europa.eu.int/eur-lex/en/consleg/pdf/1989/en\\_1989L0552\\_do\\_001.pdf](http://europa.eu.int/eur-lex/en/consleg/pdf/1989/en_1989L0552_do_001.pdf) (accessed 30 June).

European Commission, Directive 80/723/EEC of 25 June 1980 on the transparency of financial relations between member States and public undertakings, L195/35, 1980, last amended by Commission Directive 2000/52/EC of 26 July 2000, L193/75, 2000. (*Transparency Directive*).

## Regulations

Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings, L24/1, 29 January 2004. (*EC Merger Regulation*)

Available at [http://europa.eu.int/eur-ex/pri/en/oj/dat/2004/l\\_024/l\\_02420040129en00010022.pdf](http://europa.eu.int/eur-ex/pri/en/oj/dat/2004/l_024/l_02420040129en00010022.pdf) (accessed 30 June 2005).

## Decisions

Decision No 676/2002/EC of the European Parliament and of the Council of 7 March 2002 on a regulatory framework for radio spectrum policy in the European Community, L108/1, 24 April 2002. (*Radio Spectrum Decision*)

Available at

[http://europa.eu.int/information\\_society/policy/radio\\_spectrum/docs/policy\\_outline/decision\\_6762002/en.pdf](http://europa.eu.int/information_society/policy/radio_spectrum/docs/policy_outline/decision_6762002/en.pdf) (accessed 30 June 2005).

European Commission, Decision of 19 May 2004 on measures No. C 2/2003 (ex NN 22/02) implemented by Denmark for TV2/Danmark, C(2004) 1814 final.

Available at [http://europa.eu.int/comm/competition/state\\_aid/decisions/c2\\_2003/en.pdf](http://europa.eu.int/comm/competition/state_aid/decisions/c2_2003/en.pdf) (accessed 30 June 2005).

## Recommendations

Council Recommendation of 24 September 1998 on the development of the competitiveness on the European audiovisual and information services industry by promoting national frameworks aimed at achieving a comparable and effective level of protection of minors and human dignity, 98/560/EC, L270/48, 1998.

Recommendation Rec (2004) 16 of the Committee of Ministers of the Council of Europe to member States on the right of reply in the new media environment, adopted on 15 December 2004.

Available at [http://www.coe.int/T/E/Human\\_Rights/media](http://www.coe.int/T/E/Human_Rights/media) (accessed 30 June 2005).

## Resolutions

European Parliament, Resolution of 22 April 2004 on the risks of violation, in the EU and especially in Italy, of freedom of expression and information (Article 11(2) of the Charter of Fundamental Rights), 2003/2237 (INI), A5-0230/2004.

## Communications

European Commission, Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on accelerating the transition from analogue to digital broadcasting (from digital “switchover” to analogue “switch-off”), COM (2003) 541 final, 17 September 2004.

Available at

[http://europa.eu.int/information\\_society/policy/ecomms/doc/info\\_centre/documentation/communic\\_reports/switchover/com\\_2005\\_0204\\_f\\_en\\_acte.pdf](http://europa.eu.int/information_society/policy/ecomms/doc/info_centre/documentation/communic_reports/switchover/com_2005_0204_f_en_acte.pdf) (accessed 24 August 2005).

European Commission, Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions, On the transition from analogue to digital broadcasting (from digital “switchover” to analogue “switch-off”), COM (2003) 541 final, 17 September 2004.

Available at [http://europa.eu.int/eur-lex/lex/LexUriServ/site/en/com/2003/com2003\\_0541en01.pdf](http://europa.eu.int/eur-lex/lex/LexUriServ/site/en/com/2003/com2003_0541en01.pdf) (accessed 30 June 2005).

European Commission, Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions, on interoperability of digital interactive television services, COM (2004)541 final, Brussels, 30 July 2004.

Available at

[http://europa.eu.int/information\\_society/policy/ecommerce/doc/info\\_centre/documentation/communic\\_reports/interoperability\\_idtv/com\\_2004\\_541\\_en.pdf](http://europa.eu.int/information_society/policy/ecommerce/doc/info_centre/documentation/communic_reports/interoperability_idtv/com_2004_541_en.pdf) (accessed 4 August 2005).

European Commission, *Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions, The Future of European Regulatory Audiovisual Policy*, COM (2003) 784 final, Brussels, 15 December 2003.

Available at [http://europa.eu.int/eur-lex/en/com/cnc/2003/com2003\\_0784en01.pdf](http://europa.eu.int/eur-lex/en/com/cnc/2003/com2003_0784en01.pdf) (accessed 30 June 2005).

European Commission, *Communication from the Commission, Action plan "Simplifying and improving the regulatory environment"*, COM (2002) 278 final, Brussels, 5 June 2002.

Available at [http://europa.eu.int/eur-lex/en/com/cnc/2002/com2002\\_0278en01.pdf](http://europa.eu.int/eur-lex/en/com/cnc/2002/com2002_0278en01.pdf) (accessed 30 June 2005).

European Commission, *Communication from the Commission on the application of State aid rules to public service broadcasting*, C320/5, Brussels, 15 November 2001.

Available at

[http://www.ebu.ch/CMSimages/en/leg\\_ref\\_ec\\_communic\\_state\\_aid\\_151101\\_tcm6-5013.pdf](http://www.ebu.ch/CMSimages/en/leg_ref_ec_communic_state_aid_151101_tcm6-5013.pdf) (accessed 30 June 2005).

European Commission, *Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions, Principles and Guidelines for the Community's Audiovisual Policy in the Digital Age*, COM (1999) 657 final, Brussels, 14 December 1999.

Available at [http://europa.eu.int/comm/avpolicy/legis/key\\_doc/legispdffiles/av\\_en.pdf](http://europa.eu.int/comm/avpolicy/legis/key_doc/legispdffiles/av_en.pdf) (accessed 30 June 2005).

## White Paper

European Commission, *European Governance. A White Paper*, COM (2001) 428 final, Brussels, 25 July 2001.

Available at [http://europa.eu.int/eur-lex/en/com/cnc/2001/com2001\\_0428en01.pdf](http://europa.eu.int/eur-lex/en/com/cnc/2001/com2001_0428en01.pdf) (accessed 30 June 2005).

## Green Papers

European Commission, *Green Paper on Services of General Interest*, COM (2003) 270 final, Brussels, 21 May 2003.

Available at [http://europa.eu.int/eur-lex/en/com/gpr/2003/com2003\\_0270en01.pdf](http://europa.eu.int/eur-lex/en/com/gpr/2003/com2003_0270en01.pdf) (accessed 30 June 2005).

European Commission, *Green Paper on Radio Spectrum Policy in the Context of European Community Policies such as Telecommunications, Broadcasting, Transport, and R&D*, COM (1998) 596 final, Brussels, 9 December 1998.

Available at <http://europa.eu.int/ISPO/infosoc/telecompolicy/en/sgp.doc> (accessed 30 June 2005).

European Commission, *Television without Frontiers. Green Paper on the Establishment of the Common Market for Broadcasting, especially by Satellite and Cable*, COM (84) 300, Brussels, 14 June 1984.

## Other

European Commission, Proposal for a Recommendation of the European Parliament and of the Council on the protection of minors and human dignity and the right of reply in relation to the competitiveness of the European audiovisual and information services industry, COM (2004) 341 final, Brussels, 30 April 2004.

Available at [http://europa.eu.int/comm/avpolicy/legis/key\\_doc/legispdffiles/com04-341-en.pdf](http://europa.eu.int/comm/avpolicy/legis/key_doc/legispdffiles/com04-341-en.pdf) (accessed 30 June 2005).

European Commission, Commission interpretative communication on certain aspects of the provisions on televised advertising in the “Television without frontiers” Directive, C102/2, Brussels, 2004.

European Commission, Proposal for a Directive of the European Parliament and of the Council on Services in the Internal Market, COM (2004) 2 final, Brussels, 5 March 2004.

Available at [http://europa.eu.int/eur-lex/en/com/pdf/2004/com2004\\_0002en03.pdf](http://europa.eu.int/eur-lex/en/com/pdf/2004/com2004_0002en03.pdf) (accessed 4 August 2005).

European Commission, Fourth Report from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions, on the application of Directive 89/552/EEC “Television without Frontiers” 78 final, Brussels, 6 January 2003.

Available at

[http://europa.eu.int/comm/avpolicy/regul/twf/applica/comm2002\\_778final\\_en.pdf](http://europa.eu.int/comm/avpolicy/regul/twf/applica/comm2002_778final_en.pdf) (accessed 30 June 2005).

List of standards and/or specifications for electronic communications networks, services and associated facilities and services, C331/47, Brussels, 31 December 2002.

Available at

[http://europa.eu.int/information\\_society/topics/telecoms/regulatory/maindocs/document/s/c\\_33120021231en00320049.pdf](http://europa.eu.int/information_society/topics/telecoms/regulatory/maindocs/document/s/c_33120021231en00320049.pdf) (accessed 4 August 2005).

European Commission, Proposal for a decision of the European Parliament and of the Council on a regulatory framework for radio spectrum policy in the European Community, COM (2000) 407, Brussels, 21 July 2000.

Available at  
[http://europa.eu.int/comm/information\\_society/policy/framework/pdf/com2000407\\_en.pdf](http://europa.eu.int/comm/information_society/policy/framework/pdf/com2000407_en.pdf) (accessed 30 June 2005).

European Commission, Pluralism and Media Concentration in the Internal Market. An Assessment of the Need for Community Action, COM (92) 480 final, Brussels, December 1992.

## Council of Europe

### Treaties

International Covenant on Civil and Political Rights (ICCPR), entered into force 23 March 1976, 999 U.N.T.S. 171.

Available at [http://www.unhchr.ch/html/menu3/b/a\\_ccpr.htm](http://www.unhchr.ch/html/menu3/b/a_ccpr.htm) (accessed 30 June 2005).

### Conventions

European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), 3 September 1953, E.T.S. 005.

Available at <http://conventions.coe.int/Treaty/en/Treaties/Html/005.htm> (accessed 22 October 2004).

Council of Europe, European Convention on Transfrontier Television, 5 May 1989, amended according to the provisions of the Protocol (E.T.S. no. 141) of the Council of Europe of 9 September 1998, entered into force on 1 March 2002. (*ECTT*)

Available at <http://conventions.coe.int/treaty/en/Treaties/Html/132.htm> (accessed 30 June 2005).

### Recommendations

Council of Europe Parliamentary Assembly Recommendation 1641 (2004) on Public Service Broadcasting, adopted on 27 January 2004.

Recommendation Rec (2004) 16 of the Committee of Ministers to member States on the right of reply in the new media environment, adopted on 15 December 2004.

Available at [http://www.coe.int/T/E/Human\\_Rights/media](http://www.coe.int/T/E/Human_Rights/media) (accessed 30 June 2005).

Recommendation Rec (2000) 23 of the Committee of Ministers to member States on the independence and functions of regulatory authorities for the broadcasting sector, adopted by the Committee of Ministers on 20 December 2000 at the 735th meeting of the Ministers' Deputies.

Available at <http://cm.coe.int/ta/rec/2000/2000r23.htm> (accessed 30 June 2005).



Recommendation Rec (96) 10 of the Committee of Ministers to member States on the Guarantee of the Independence of Public Service Broadcasting, adopted on 11 September 1996.

Available at [http://www.ebu.ch/CMSimages/en/leg\\_ref\\_coe\\_r96\\_10\\_psb\\_110996\\_tcm6-4322.pdf](http://www.ebu.ch/CMSimages/en/leg_ref_coe_r96_10_psb_110996_tcm6-4322.pdf) (accessed 4 August 2005)

## Other

Council of Europe, Integration and diversity: the new frontiers of European media and communications policy. Adopted texts, 7th European Ministerial Conference on Mass Media Policy Kyiv (Ukraine), 10-11 March 2005, Resolution No. 2, Cultural diversity and media pluralism in times of globalisation.

Available at

[http://www.coe.int/T/E/Human\\_Rights/media/MCM%282005%29005\\_en.pdf](http://www.coe.int/T/E/Human_Rights/media/MCM%282005%29005_en.pdf)  
(accessed 30 July 2005).

## United Nations

### Treaties

United Nations Declaration on Human Rights (UNDHR), adopted and proclaimed by General Assembly resolution 217 A (III) of 10 December 1948.

Available at <http://www.un.org/Overview/rights.html> (accessed 30 June 2005).

International Covenant on Civil and Political Rights (ICCPR), entered into force 23 March 1976, 999 U.N.T.S. 171.

Available at [http://www.unhchr.ch/html/menu3/b/a\\_ccpr.htm](http://www.unhchr.ch/html/menu3/b/a_ccpr.htm) (accessed 30 June 2005).

International Covenant on Economic, Social and Cultural Rights (CESCR), entered into force 3 January 1976, 993 U.N.T.S. 3.

Available at [http://www.unhchr.ch/html/menu3/b/a\\_ceschr.htm](http://www.unhchr.ch/html/menu3/b/a_ceschr.htm) (accessed 30 June 2005).

### Declarations

Universal Declaration on Cultural Diversity, adopted by the 31st Session of the General Conference of UNESCO, Paris, 2 November 2001.

Available at <http://unesdoc.unesco.org/images/0012/001271/127160m.pdf> (accessed 30 June 2005).

## Other

UNESCO, Preliminary draft of a convention on the protection of the diversity of cultural contents and artistic expressions.

Available at [http://portal.unesco.org/culture/en/ev.php-URL\\_ID=11281&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/culture/en/ev.php-URL_ID=11281&URL_DO=DO_TOPIC&URL_SECTION=201.html) (accessed 30 June 2005).

## World Trade Organization

General Agreement on Trade in Services (GATS), Annex 1B of the General Agreement establishing the World Trade Organization.

Available on the WTO website at [http://www.wto.org/english/docs\\_e/legal\\_e/26-gats.pdf](http://www.wto.org/english/docs_e/legal_e/26-gats.pdf) (accessed 30 June 2005).

## Joint Declarations

Joint Declaration by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Access to Information, 6 December 2004.

Available at [http://www.osce.org/documents/rfm/2004/12/3945\\_en.pdf](http://www.osce.org/documents/rfm/2004/12/3945_en.pdf) (accessed 30 June 2005).

Joint Declaration by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression, 18 December 2003.

Joint Recommendations by the OSCE Representative on Freedom of the Media and Reporters without Borders from the Paris Conference on Libel and Insult Laws, 24 and 25 November 2003.

Available at [http://www.osce.org/documents/rfm/2003/11/3346\\_en.pdf](http://www.osce.org/documents/rfm/2003/11/3346_en.pdf) (accessed 30 June 2005).

## ANNEX 2. Bibliography

- Council of Europe, *Transnational Media Concentrations in Europe*, report prepared by the AP-MD, (Advisory Panel to the CDMM on media concentrations, pluralism and diversity questions), Media Division, Directorate General of Human Rights (Strasbourg: CoE, November 2004).
- European Audiovisual Observatory, *The Yearbook 2004* (Strasbourg: CoE, 2004)
- European Broadcasting Union (EBU), *Position Paper on the Commission Proposal for a Directive on services in the Internal Market* (Geneva: EBU, 8 December 2004).
- IP International Marketing Committee, *Television 2004. International Key Facts*, October 2004, IP International Marketing Committee.
- Lange, André (ed.), *Developments in digital television in the European Union*, European Audiovisual Observatory, (Strasbourg: CoE, 4 December 1999)
- McKinsey&Company, *Review of Public Service Broadcasting around the world* (London: McKinsey&Company, September 2004)
- Mungiu-Pippidi, Alina, *State into Public: The Failed Reform of State TV in East Central Europe*, The Joan Shorenstein Center on the Press, Politics and Public Policy (Harvard University, 1999)
- Ofcom, *Review of public service broadcasting, Phase 2 – Meeting the digital challenge* (London: Ofcom, 28 September 2004)
- World Bank Institute Development Studies, *The Right to Tell. The Role of Mass Media in Economic Development* (Washington, D.C.: The World Bank, 2002)

## ANNEX 3. Tables

**Table 1. Individual television viewing time (2003)**

Ranked by viewing time

	Average viewing time for adults, Monday-Sunday (minutes per day)
Serbia and Montenegro	278
Hungary	274
Macedonia	259
Croatia	254
Poland	250
Italy	245
Estonia	239
UK	239
Slovakia	235
Romania	235
Turkey	224
Germany	217
Czech Republic	214
France	213
Lithuania	210
Latvia	207
Bulgaria	185
Slovenia	178
Albania	NA
Bosnia and Herzegovina	NA
<b>Average (18 countries)</b>	<b>219</b>

Source: IP International Marketing Committee<sup>176</sup>

**Table 2. TV overview (2003)**

Ranked by population

	Population (thousands)	Households (thousands)	Television households (TVHH) (with at least 1 TV set)		Number of terrestrial channels received by 70 per cent of the population
			Total (thousands)	Share of all households (per cent)	
Germany	82,537	38,720	34,370 <sup>177</sup>	91.1	25
Turkey	71,271	16,460	10,789	97.9	15
France	61,684	24,870	23,750	95.0 <sup>178</sup>	7
U.K.	59,232	25,043	24,482	97.8	5
Italy	55,696	21,645	21,320	98.5	9
Poland	38,195	13,337	12,982	97.3	6
Romania <sup>179</sup>	21,698	7,392	6,763	91.5	3
Czech Republic	10,230	3,738	3,735	97.6	4
Hungary	10,117	3,863	3,785	98.0	3
Serbia and Montenegro <sup>180</sup>	8,120	2,700	2,300 <sup>181</sup>	98.0	6
Bulgaria	7,845	2,905	2,754	94.8	2
Slovakia	5,379	1,645	1,628	99.0	4
Croatia	4,438	1,477	1,448	97.5	4
Bosnia and Herzegovina <sup>182</sup>	3,832	NA	NA	97.0	6
Lithuania	3,463	1,357	1,331	98.1	4
Albania <sup>183</sup>	3,144	726	500	68.8	1
Latvia	2,331	803	780	97.2	4
Macedonia	2,023	564	467	83.0	7
Slovenia	1,964	685	673	98.0	5
Estonia	1,356	582	565	97.1	3

Source: IP International Marketing Committee,<sup>184</sup> EUMAP national reports; EUMAP research

**Table 3. The EU broadcasting market – breakdown by type of broadcaster (1998–2002)**

	Total net revenues (€ million)					Change in net revenues 2002/2001	Share of total net revenue 2002
	1998	1999	2000	2001	2002	(per cent)	(per cent)
Total	50,213	56,961	63,269	66,259	65,387	-1.3	100
Public broadcasters (radio and television)	23,353	25,689	26,896	28,549	27,769	-2.7	42.5
Commercial broadcasters (television)	14,548	16,640	18,713	18,187	17,349	-4.6	26.5
Commercial broadcasters (radio)	3,302	3,302	3,893	3,898	3,935	1.0	6.0
Home shopping companies	727	1,034	1,297	1,518	1,730	13.9	2.1
Pay-TV companies	2,989	3,320	3,569	3,784	3,915	3.5	6.0
TV packagers	3,671	4,956	6,485	7,410	7,722	4.2	11.8
Thematic channels	1,623	2,019	2,416	2,912	2,967	1.9	4.5

Source: European Audiovisual Observatory<sup>185</sup>

**Table 4. Top 10 European television companies (2003)**

Ranked by unconsolidated operating revenues

Rank	Company	Country	Main activities	Type (public/private)	Unconsolidated operating revenues (€ million)
1	British Sky Broadcasting	UK	TV	private	4,242.1
2	BBC Home Service	UK	TV+Radio	public	4,214.1
3	RAI	Italy	TV+Radio	public	2,736.7
4	RTI	Italy	TV	private	2,008.2 <sup>186</sup>
5	ZDF	Germany	TV	public	1,778.4 <sup>187</sup>
6	TF1	France	TV	private	1,596.2
7	RTL Television	Germany	TV	private	1,589.0
8	Canal+	France	TV	private	1,585.0
9	France 2	France	TV	public	1,573.5
10	France 3	France	TV	public	1,416.0
	Total	–	–	–	22,739.2

Source: European Audiovisual Observatory<sup>188</sup>

**Table 5. Concentration of national audiences (2003)**

Ranked by aggregate audience share

	Top 3 channels (in terms of audience share)	Aggregate audience share of the top 3 channels (per cent)
Czech Republic	TV Nova, ČT 1, Prima TV	86.1
Bulgaria	bTV, Kanal 1, Nova TV	84.2
Croatia <sup>189</sup>	RTL Televizija, HTV 1, Nova TV	83.8
Hungary	RTL Klub, TV2, MTV 1	75.7
Slovakia	Markíza TV, STV 1, Joj	72.9
France	TF 1, France 2, France 3	66.9
Slovenia	Pop TV, SLO 1, SLO 2	64.2
Lithuania	LNK, TV 3, LRT	63.4
Poland	TVP 1, TVP 2, Polsat	62.6
UK	BBC 1, ITV 1, BBC 2	61.7
Macedonia	A1 TV, MTV 1, Sitel	60.0
Estonia	TV3, Kanal 2, ETV	59.9
Italy	RAI 1, Canale 5, RAI 2	59.4
Romania	Romania 1, Pro TV, Antena 1	57.5
Latvia	LNT, TV 3, LTV 1	52.2
Serbia and Montenegro	Pink, RTS 1, BK	51.8
Germany	RTL, ARD, ARD 3	43.4
Turkey	Kanal D, Show TV, ATV	43.0

Source: EUMAP calculation, based on data from IP International Marketing Committee<sup>190</sup>



**Table 6. Audience share of the leading channels (2003)**

Country	Channel	Audience share (adults) (per cent)	Type of station
Albania <sup>191</sup>	Klan TV	21.5	Private
	TVSH	17.1	Public
Bosnia and Herzegovina <sup>192</sup>	FTV	23.8	Public
	HRT Zagreb	10.5	Public (Croatia)
Croatia <sup>193</sup>	RTL Televizija	39.5	Private
	HTV1	31.8	Public
Czech Republic	TV Nova	43.4	Private
	ČT 1	22.1	Public
Estonia	TV3	22.1	Private
	Kanal 2	19.8	Private
France <sup>194</sup>	TF1	31.8	Private
	France 2	20.5	Public
Germany	RTL	15.0	Private
	ARD	14.5	Public
Hungary	RTL Klub	29.5	Private
	TV2	29.4	Private
Italy	RAI 1	24.2	Public
	Canale 5	23.2	Private

  

Country	Channel	Audience share (adults) (per cent)	Type of station
Latvia	LNT	22.2	Private
	TV3	15.1	Private
Lithuania	LNK	27.0	Private
	TV3	23.9	Private
Macedonia	A1	28.9	Private
	MTV1	16.9	Public
Romania	Romania 1	28.4	Public
	Pro TV	15.6	Private
Serbia and Montenegro	Pink TV	21.2	Private
	RTS 1	20.4	Public
Slovakia	Markiza	45.9	Private
	STV 1	15.7	Public
Slovenia	Pop TV	29.0	Private
	SLO 1	24.9	Public
Turkey	Kanal D	15.0	Private
	Show	14.4	Private
UK	BBC 1	26.3	Public
	ITV 1	24.3	Private

Source: EUMAP research, based on data from IP International Marketing Committee and European Audiovisual Observatory<sup>195</sup>

**Table 7. Overview of broadcasting regulators**

Source: EUMAP reports

Country	Name	Official Status	No. of members on the board	Who appoints them	Who can dismiss them	Tenure (years)	No. of terms	Funding
Albania	National Council of Radio and Television ( <i>Këshilli Kombëtar i Radios dhe Televizionit</i> , – KKRT)	Independent regulatory body	7	Parliament – at the proposal of: <ul style="list-style-type: none"> <li>• the President of the Republic (1)</li> <li>• the Parliamentary Media Committee (6)</li> </ul>	Parliament	5	Max. 2 consecutive (staggered)	<ul style="list-style-type: none"> <li>• proportion of the licence fee</li> <li>• revenues from broadcast licence applications</li> <li>• 5 per cent of the annual income tax paid by broadcasters</li> <li>• State budget</li> <li>• donations</li> </ul>
	Regulatory Entity for Telecommunications ( <i>Enti Rregullator i Telekomunikacioneve</i> – ERT)	Independent regulatory body	5	<ul style="list-style-type: none"> <li>• President of the Republic (1)</li> <li>• Council of Ministers (2)</li> <li>• Parliament (2)</li> </ul>	Institution appointing them	5	Max. 2	<ul style="list-style-type: none"> <li>• State budget</li> <li>• own revenues</li> </ul>
Bosnia and Herzegovina	Communications Regulatory Authority ( <i>Regulatorna agencija za komunikacije</i> – RAK)	Independent State agency, non-profit institution	7 (+ Director General)	<ul style="list-style-type: none"> <li>• Parliament – upon nomination by the Council of Ministers (Council members)</li> <li>• Council of Ministers approves the Director General, upon nomination by the RAK Council</li> </ul>	Institution appointing them	4	Max. 2	<ul style="list-style-type: none"> <li>• technical fees paid by telecomms. operators and broadcasters</li> <li>• grants and donations</li> </ul>

Country	Name	Official Status	No. of members on the board	Who appoints them	Who can dismiss them	Tenure (years)	No. of terms	Funding
Bulgaria	Council for Electronic Media ( <i>Svet za elektroni medii</i> – CEM)	Independent specialised body	9	<ul style="list-style-type: none"> <li>National Assembly (5)</li> <li>President of the Republic (4)</li> </ul>	Council for Electronic Media	6	Max. 2 consecutive (staggered)	State budget
	Communications Regulation Commission ( <i>Komisija za reguliranje na sobsceniata</i> – KRS)	Legal entity	5	<ul style="list-style-type: none"> <li>Parliament (3) – elected</li> <li>President (1)</li> <li>Council of Ministers (Chair)</li> </ul>	The authority that appointed them	5	Max. 2 consecutive	State budget
Croatia	Council for Electronic Media ( <i>Vijeće za elektroničke medije</i> – CEM)	Independent regulatory body	7	Parliament – at the proposal of the Government	Parliament – at the proposal of the Government	5	Max. 2 (staggered)	Tax on broadcasters
	Croatian Telecommunications Agency ( <i>Hrvatska agencija za telekomunikacije</i> – CTA)	Independent regulatory authority	5	Parliament – at the proposal of the Government	Parliament – at the proposal of the Government	5	Not specified	<ul style="list-style-type: none"> <li>5 per cent of broadcast licence fee</li> <li>A tax on the use of postal addresses and numbers in telecomms.</li> <li>0.2 per cent of the gross annual income of telecomms. service providers</li> </ul>
Czech Republic	Council for Radio and Television Broadcasting, ( <i>Rada pro rozhlasové a televizní vysílání</i> – RRTV)	Independent administrative authority ?	13	Nominated by the Chamber of Deputies and appointed by the Prime Minister	Prime Minister, based on a proposal of the Chamber.	6 (not staggered)	Max. 2	State budget
	Czech Telecommunication Office ( <i>Český Telekomunikační Úřad</i> – ČTÚ)	Independent administrative authority	5	Government (at the proposal of the Minister of Informatics)	Government (at the proposal of the Minister of Informatics)	5 years (staggered)	Not specified	State budget

Country	Name	Official Status	No. of members on the board	Who appoints them	Who can dismiss them	Tenure (years)	No. of terms	Funding
Estonia	Ministry of Culture ( <i>Kultuuri Ministeerium</i> ) Media Division	Government Ministry	–	–	–	–	–	State budget
	Broadcasting Council ( <i>Ringhäälingunõukogu</i> )	Regulatory authority accountable to Parliament	9	Parliament – on the proposal of Parliamentary Cultural Affairs Committee	Parliament	5	Not restricted	State budget
	State Communications Board ( <i>Sideamet</i> )	State institution subordinate to Ministry of Economic Affairs and Communications)	–	–	–	–	–	State budget
France	High Council for Broadcasting ( <i>Conseil supérieur de l'audiovisuel – CSA</i> )	Independent administrative authority	9 commissioners	<ul style="list-style-type: none"> <li>• President of the Republic (3)</li> <li>• President of the Senate (3)</li> <li>• President of the National Assembly (3)</li> </ul>	Cannot be removed	6 years (staggered)	Max. 1	State budget
Germany	15 regional authorities ( <i>Landesmedienanstalt</i> ) for each <i>Land</i> , except for Berlin and Brandenburg which have a common regulator	Public service organisation	Chairman or Director + Assembly (the no. of its members varies between 11 and 50)	<ul style="list-style-type: none"> <li>• By the Assembly (Chairman)</li> <li>• By representatives of socially relevant groups (the Assembly)</li> <li>• the distribution of groups' seats is laid down in Länder laws</li> </ul>	<ul style="list-style-type: none"> <li>• Assembly (Chairman)</li> <li>• Socially relevant groups (the Assembly members)</li> </ul>	4-8	<ul style="list-style-type: none"> <li>• Usually renewable (Chairman)</li> <li>• Renewable (Members of the Assembly)</li> </ul>	Percentage of the licence fee
Hungary	National Radio and Television Commission ( <i>Országos Rádió és Televízió Testület – ORTT</i> )	Independent entity under the supervision of Parliament	At least 5 members	<ul style="list-style-type: none"> <li>• President of the Republic and Prime Minister jointly (chair)</li> <li>• elected by Parliament, at the proposal of parliamentary fractions of political parties (the rest of members)</li> </ul>	They cannot be recalled	4	No limit (Staggered)	State budget

Country	Name	Official Status	No. of members on the board	Who appoints them	Who can dismiss them	Tenure (years)	No. of terms	Funding
Italy	The Communications Guarantee Authority ( <i>Autorità per le Garanzie nelle Comunicazioni</i> – AGCOM)	Independent authority with competencies in telecomms, audiovisual and publishing	9	<ul style="list-style-type: none"> <li>• President of the Republic (Chair) – upon advice from the Prime Minister and in agreement with the Minister of Telecommunications</li> <li>• Chamber of Representatives (4)</li> <li>• Senate (4)</li> </ul>	The body that appointed them upon the proposal of the AGCOM	7	Max. 1	<ul style="list-style-type: none"> <li>• State budget</li> <li>• taxes paid by telecomms. operators</li> </ul>
Latvia	National Radio and Television Council ( <i>Nacionālā radio un televīzijas padome</i> – NRTP)	Independent administrative authority	9	Parliament, upon nomination by at least 5 MPs	Parliament	4	Max. 2 consecutive (staggered)	State budget
Lithuania	Radio and Television Commission of Lithuania ( <i>Lietuvos Radijo ir Televizijos Komisija</i> – LRTK)	Independent institution	13	<ul style="list-style-type: none"> <li>• Parliament (3)</li> <li>• President of the Republic (1)</li> <li>• the rest (9) are appointed by professional associations (i.e. painters, cinematographers, writers, actors, journalists, churches, publishers)</li> </ul>	Cannot be recalled (except for cases of health problems, resignation, conviction)	Duration of the term of Parliament, Presidential term and governing bodies of associations that appointed them	Max. 2 consecutive (staggered)	Percentage of the income of commercial broadcasters
Macedonia	Broadcasting Council ( <i>Sovet za radiodifuzija</i> – SRD)	Independent regulatory authority	9	Parliament	Cannot be recalled, unless they resign, abstain from participation for longer than 6 months or because of a conviction	6	Max. 2 (staggered)	<ul style="list-style-type: none"> <li>• Part of the licence fee</li> <li>• Part of the administrative fee private broadcasters pay for using broadcast licence</li> </ul>

Country	Name	Official Status	No. of members on the board	Who appoints them	Who can dismiss them	Tenure (years)	No. of terms	Funding
Poland	National Broadcasting Council ( <i>Krajowa Rada Radiofonii i Telewizji – KRRiT</i> )	State institution	9	<ul style="list-style-type: none"> <li>• Chamber of Deputies (4)</li> <li>• Senate (2)</li> <li>• President of the Republic (3)</li> </ul>	By the institution that appointed them	6 (staggered)	Only one	State budget
	Office of Telecommunications and Post Regulation ( <i>Urząd Regulacji Telekomunikacji i Poczty – URTiP</i> )	Government administration office	President of URTiP	Prime Minister	Prime Minister	5	Not specified	State budget
Romania	The National Audiovisual Council ( <i>Consiliul Național al Audiovizualului – CNA</i> )	Autonomous public authority	11	Parliament – upon nomination by: <ul style="list-style-type: none"> <li>• President (2)</li> <li>• Government (3)</li> <li>• Chamber of Deputies (3)</li> <li>• Senate (3)</li> </ul>	Parliament at the proposal of specialised parliamentary commissions	6 (staggered)	Not specified by law	State budget
	Inspectorate General for Communications and Information Technology ( <i>Inspectoratul General pentru Comunicații și Tehnologia Informației – IGCTI</i> )	Autonomous public institution	IGCTI's board (Vice-President and President)	Prime Minister	Not specified by law	Not specified by law	Not specified by law	Own revenues (technical services)
Serbia	Republican Broadcasting Agency ( <i>Republička radiodifuzna agencija – RBA</i> )	Independent regulator	9	Parliament – upon nomination by politicians, academia, NGOs, media and professional organisations	Parliament	4-6 years <sup>196</sup>	Staggered	Broadcast licence fees

Country	Name	Official Status	No. of members on the board	Who appoints them	Who can dismiss them	Tenure (years)	No. of terms	Funding
Slovakia <sup>197</sup>	Council for Broadcasting and Retransmission ( <i>Rada pre vysielanie a retransmisiu</i> – RVR)	Independent body	9	Parliament – upon nomination by MPs and civil society organisations	Parliament (in cases of breach of rules of compatibility, sentence etc.)	6	Max. 2 (staggered)	State budget
Slovenia	Agency for Post and Electronic Communication ( <i>Agencija za pošto in elektronske komunikacije Republike Slovenije</i> – APEK)	Independent body	Director	Government	Government	5	Max. 1	State budget
	Broadcasting Council of the Republic of Slovenia ( <i>Svet za radiodifuzijo Republike Slovenije</i> – SRDF)	Independent body	7	Parliament – upon nomination by University of Slovenia, Chambers of Culture and Commerce, Journalist Association	Parliament	5	Max. 2	State budget
	Ministry of Culture	State authority	–	–	–	–	–	State budget

Country	Name	Official Status	No. of members on the board	Who appoints them	Who can dismiss them	Tenure (years)	No. of terms	Funding
Turkey	Radio and Television Supreme Council ( <i>Radio ve Televizyon Üst Kurulunun – RTÜK</i> )	Regulatory authority	9	Parliament – upon nomination by: <ul style="list-style-type: none"> <li>political parties in Government (5)</li> <li>political parties in opposition (4)</li> </ul>	Cannot be dismissed	4	Not specified	<ul style="list-style-type: none"> <li>Annual fees from commercial broadcasters</li> <li>Tax on advertising income of private broadcasters</li> <li>Fines on commercial broadcasters</li> <li>Allocations from the Assembly budget</li> </ul>
	Telecommunications Authority (TK)	Independent authority	5	Council of Ministers	Not specified	5	Not specified	Own sources (plus State subsidies when needed)
	Communication High Council (HYK)	Body of approval for comms. policies	5	Members are Government representatives		–	–	–
UK	Office of Communications (OFCOM)	Statutory corporation, independent of the Government, accountable to Parliament	Board <sup>198</sup> (9 members – 6 non-executive members including the Chair + 3 executive members, including Chief Executive of Ofcom and 2 members from the Ofcom Executive)	<ul style="list-style-type: none"> <li>Ministers, based on Nolan principles<sup>199</sup> (non-executive members)</li> <li>Secretary of State for Culture, Media and Sport and the Secretary of State for Trade and Industry (Chairman)</li> <li>Ofcom Board (CEO)</li> </ul>	Secretary of State for Culture, Media and Sport and the Secretary of State for Trade and Industry	5 (Chair)	Not specified	<p>From a number of sources, such as:</p> <ul style="list-style-type: none"> <li>Television broadcast licence fees.</li> <li>Radio broadcast licence fees.</li> <li>Administrative charges for electronic networks and services and associated facilities.</li> <li>Funding to cover Ofcom's operating costs for spectrum management (grant-in-aid from the Government)</li> </ul>



**Table 8. Broadcasting regulators – scope of regulation**

Source: EUMAP reports

Country	Name	Scope of regulation	Main regulatory powers	Main sanction powers
Albania	National Council of Radio and Television (KKRT)	Private and State broadcasters	<ul style="list-style-type: none"> <li>• licensing</li> <li>• determining production and broadcasting standards</li> <li>• monitoring information programmes of national, and sometimes local, broadcasters</li> </ul>	<ul style="list-style-type: none"> <li>• warnings</li> <li>• fines</li> <li>• suspension or shortening of broadcast licence</li> <li>• revocation of broadcast licence</li> </ul>
	Regulatory Entity for Telecommunications (ERT)	Cable broadcasters	<ul style="list-style-type: none"> <li>• technical inspection of the broadcaster</li> </ul>	<ul style="list-style-type: none"> <li>• orders aimed at remedying the situation</li> <li>• revocation of licence</li> </ul>
Bosnia and Herzegovina	Communications Regulatory Authority (RAK)	Private and public broadcasters	<ul style="list-style-type: none"> <li>• licensing of private broadcasters</li> <li>• monitoring licensees' compliance with the licence conditions and the regulations of the RAK</li> </ul>	<ul style="list-style-type: none"> <li>• warnings</li> <li>• fines</li> <li>• suspension of broadcasting</li> <li>• revocation of broadcast licence</li> </ul>
Bulgaria	Council for Electronic Media (CEM)	Public and private broadcasters	<ul style="list-style-type: none"> <li>• licensing</li> <li>• monitoring programming</li> <li>• election and dismissal of General Directors of public service broadcasters</li> <li>• approval of the managing boards of public service broadcasters</li> <li>• organising and conducting research on broadcasting</li> </ul>	<ul style="list-style-type: none"> <li>• fines</li> <li>• dismissal of General Directors of public service broadcasters</li> <li>• revocation of licences</li> </ul>
	Communications Regulation Commission (KRS)	Technical regulator	<ul style="list-style-type: none"> <li>• management of the frequency spectrum</li> <li>• issuing telecommunication licences</li> </ul>	<ul style="list-style-type: none"> <li>• revocation of telecommunication licences at the request of the CEM</li> </ul>

Country	Name	Scope of regulation	Main regulatory powers	Main sanction powers
Croatia	Council for Electronic Media (CEM)	Public and private broadcasters	<ul style="list-style-type: none"> <li>licensing</li> <li>monitoring broadcasters' compliance with legal provisions and licence conditions</li> </ul>	<ul style="list-style-type: none"> <li>warnings</li> <li>revocation of licence</li> </ul>
	Croatian Telecommunications Agency (CTA)	Technical regulator	<ul style="list-style-type: none"> <li>management of frequency spectrum</li> </ul>	<ul style="list-style-type: none"> <li>revocation of broadcast licence</li> </ul>
	Ministry of Culture	All broadcasters	<ul style="list-style-type: none"> <li>supervising broadcasters' compliance with the law</li> </ul>	<ul style="list-style-type: none"> <li>warnings</li> </ul>
Czech Republic	Broadcasting Council (RRTV)	Public and private broadcasters	<ul style="list-style-type: none"> <li>licensing</li> <li>monitoring of broadcasters' compliance with legal provisions</li> <li>monitoring of broadcasting programming</li> <li>participation in media policy-making</li> </ul>	<ul style="list-style-type: none"> <li>warnings</li> <li>fines</li> <li>withholding the broadcast licence</li> </ul>
	Czech Telecommunication Office (ČTÚ)	Technical regulator	<ul style="list-style-type: none"> <li>managing the frequency spectrum</li> </ul>	<ul style="list-style-type: none"> <li>none</li> </ul>
Estonia	Ministry of Culture	Public and private broadcasters	<ul style="list-style-type: none"> <li>licensing private broadcasters</li> <li>monitoring broadcasters' compliance with licence conditions and the Broadcasting Act (Media Division in the Ministry of Culture)</li> </ul>	<ul style="list-style-type: none"> <li>fines</li> <li>suspension of licence (for 14 days)</li> <li>revocation of licence</li> </ul>
	Broadcasting Council	Public broadcasters	<ul style="list-style-type: none"> <li>main body responsible for the supervision of public service broadcasters</li> </ul>	<ul style="list-style-type: none"> <li>can dismiss the management of the public service broadcaster</li> </ul>
	State Communications Board	Technical regulator	<ul style="list-style-type: none"> <li>management of frequency spectrum</li> <li>technical supervision</li> </ul>	<ul style="list-style-type: none"> <li>fines</li> </ul>
France	High Council for Broadcasting (CSA)	Public and private broadcasters	<ul style="list-style-type: none"> <li>licensing</li> <li>monitoring broadcasters' compliance with programming obligations</li> <li>appointing heads of the public service broadcasters</li> <li>issuing opinions on the Government's bills on broadcasting</li> <li>frequency management</li> </ul>	<ul style="list-style-type: none"> <li>warnings</li> <li>fines</li> <li>licence reduction and withdrawal</li> </ul>

Country	Name	Scope of regulation	Main regulatory powers	Main sanction powers
Germany	Federal regulatory authorities (15)	Private broadcasters	<ul style="list-style-type: none"> <li>• licensing</li> <li>• control of media concentration</li> <li>• supervision of programme content</li> <li>• conducting media research</li> </ul>	<ul style="list-style-type: none"> <li>• fines</li> <li>• revocation of licences</li> </ul>
Hungary	National Radio and Television Board (ORTT)	Public and private broadcasters	<ul style="list-style-type: none"> <li>• licensing</li> <li>• monitoring supervising and monitoring</li> <li>• commenting on draft legislation on frequency management</li> </ul>	<ul style="list-style-type: none"> <li>• warnings</li> <li>• suspension of broadcasting</li> <li>• fines and penalties</li> <li>• termination of broadcasting</li> </ul>
Italy	The Communications Guarantee Authority (AGCOM)	Public and private broadcasters (integrated communications regulator)	<ul style="list-style-type: none"> <li>• establishing standards for the industry</li> <li>• supervising the market and verifying the existence of dominant positions</li> <li>• licensing (in cooperation with the Ministry of Telecommunications)</li> <li>• proposing legislation and policies</li> <li>• management of the frequency spectrum</li> <li>• enforcing broadcasters' compliance with the law</li> </ul>	<ul style="list-style-type: none"> <li>• fines</li> </ul>
Latvia	Broadcasting Council (NRTP)	Public and private broadcasters	<ul style="list-style-type: none"> <li>• licensing</li> <li>• formulation of national strategy for broadcasting</li> <li>• conducting research</li> <li>• monitoring of broadcasting</li> <li>• appointing the General Director of the public television and approving the station's board</li> <li>• determining the basic parameters of the public broadcasters</li> <li>• preparing the public service television budget</li> </ul>	<ul style="list-style-type: none"> <li>• warnings</li> <li>• filing reports with a court on administrative violation</li> <li>• suspension of licence (up to seven days)</li> <li>• revocation of licence</li> </ul>
Lithuania	Radio and Television Commission of Lithuania (LRTK)	Public and private broadcasters	<ul style="list-style-type: none"> <li>• licensing</li> <li>• supervising broadcasters' compliance with the law and licence conditions</li> </ul>	<ul style="list-style-type: none"> <li>• warnings</li> <li>• fines on senior managers of commercial and public service broadcasters</li> <li>• suspension of broadcast licence</li> <li>• revocation of broadcast licence</li> </ul>

Country	Name	Scope of regulation	Main regulatory powers	Main sanction powers
Macedonia	Broadcasting Council (SRD)	Public and private broadcasters	<ul style="list-style-type: none"> <li>• assisting Government in licensing</li> <li>• monitoring the content of broadcasting to ensure it is in line with the licence conditions</li> </ul>	<ul style="list-style-type: none"> <li>• warnings</li> <li>• filing proposals to the relevant Inspectorate to impose fines on broadcasters, or to the Government to revoke licences</li> </ul>
	The Government	Private broadcasters	<ul style="list-style-type: none"> <li>• licensing (after consultation with the Broadcasting Council)</li> </ul>	<ul style="list-style-type: none"> <li>• fines</li> <li>• revocation of licence</li> <li>• revocation of frequency</li> <li>• (relevant Inspectorates within the Ministry of Culture, Ministry of Economy and Ministry of Transport and Communications)</li> </ul>
Poland	National Broadcasting Council (KRRiT)	Public and private broadcasters	<ul style="list-style-type: none"> <li>• licensing</li> <li>• appointing the Supervisory Council of the public broadcaster</li> <li>• monitoring broadcasters' compliance with the law</li> <li>• monitoring private broadcasters' compliance with the licence conditions</li> </ul>	<ul style="list-style-type: none"> <li>• financial penalties</li> <li>• revocation of the broadcast licence</li> </ul>
	Office of Telecommunications and Post Regulation (URTIP)	Technical regulator	<ul style="list-style-type: none"> <li>• management of frequency spectrum</li> </ul>	<ul style="list-style-type: none"> <li>• None</li> </ul>
Romania	The National Audiovisual Council (CNA)	Public and private broadcasters	<ul style="list-style-type: none"> <li>• licensing private broadcasters</li> <li>• monitoring broadcasters' compliance with the law</li> <li>• issuing recommendations on broadcasting policy</li> </ul>	<ul style="list-style-type: none"> <li>• summons to remedy breaches of law</li> <li>• fines</li> <li>• revocation of broadcast licence</li> </ul>
	Inspectorate General for Communications and Information Technology (IGCTI)	Technical regulator	<ul style="list-style-type: none"> <li>• management of frequency spectrum</li> <li>• monitoring the compliance by broadcasters with the conditions of using frequencies</li> </ul>	<ul style="list-style-type: none"> <li>• None</li> </ul>
Serbia and Montenegro	Republican Broadcasting Agency (RRA)	Public and private broadcasters	<ul style="list-style-type: none"> <li>• licensing (in cooperation with the Telecommunications Agency, not yet established)</li> <li>• monitoring the broadcasters' compliance with programme requirements</li> <li>• appointing the managing board of public broadcaster</li> </ul>	<ul style="list-style-type: none"> <li>• warnings</li> <li>• revocation of broadcast licence</li> </ul>

Country	Name	Scope of regulation	Main regulatory powers	Main sanction powers
Slovakia	Council for Broadcasting and Retransmission (RVR)	Public and private broadcasters	<ul style="list-style-type: none"> <li>licensing</li> <li>monitoring broadcasters' compliance with legislation</li> </ul>	<ul style="list-style-type: none"> <li>notifications</li> <li>demand for remedy</li> <li>fines</li> <li>revocation of the broadcast licence</li> </ul>
Slovenia	Agency for Post and Electronic Communication (APEK)	Public and private broadcasters	<ul style="list-style-type: none"> <li>supervision of broadcasters' compliance with programming obligations</li> <li>supervision of ownership restrictions</li> <li>licensing (based on binding recommendations by the Broadcasting Council)</li> <li>technical, financial and administrative assistance to the Broadcasting Council</li> </ul>	<ul style="list-style-type: none"> <li>warnings</li> <li>fines</li> <li>forbidding advertising</li> <li>temporary or permanent withdrawal of the licence</li> </ul>
	Broadcasting Council (SRDF)	Public and private broadcasters	<ul style="list-style-type: none"> <li>supervision implementation by broadcasters of programming obligations</li> <li>gives instruction to the Agency about granting licences</li> </ul>	
	Ministry of Culture	Public and private broadcasters	<ul style="list-style-type: none"> <li>preparing legislation in the field of broadcasting</li> <li>supervising the implementation of media legislation</li> <li>receiving complaints from the public on breach of media legislation (the Media Inspector at the Ministry)</li> </ul>	<ul style="list-style-type: none"> <li>warnings</li> <li>fines</li> <li>forbidding advertising</li> <li>temporary or permanent withdrawal of the licence</li> </ul>
Turkey	Radio and Television Supreme Council (RTÜK)	Private broadcasters and, partly, public broadcasters	<ul style="list-style-type: none"> <li>licensing</li> <li>monitoring content</li> <li>nominating candidates for the General Directorate and the Executive Board of public service television TRT</li> </ul>	<ul style="list-style-type: none"> <li>warnings</li> <li>suspension of broadcasting</li> <li>revocation of the licence</li> </ul>
	Telecommunication Authority (TK)	Technical regulator	<ul style="list-style-type: none"> <li>management of the frequency spectrum</li> </ul>	<ul style="list-style-type: none"> <li>None</li> </ul>
	Communication High Council (HYK)	Supervisory board convening twice a year	<ul style="list-style-type: none"> <li>approval of the frequency plan submitted by TK</li> </ul>	<ul style="list-style-type: none"> <li>None</li> </ul>

Country	Name	Scope of regulation	Main regulatory powers	Main sanction powers
UK	Office of Communications (OFCOM)	Integrated communications regulator (broadcasting, telecoms. and wireless comms.)	<ul style="list-style-type: none"> <li>• Licensing</li> <li>• Three-tiered system of content regulation: (1) monitoring of programming and advertising standards and impartiality; (2) monitoring of quantitative obligations (quotas); (3) monitoring of fulfilment of programme promises made by broadcasters (self-regulation)</li> <li>• Spectrum management</li> <li>• Monitoring media ownership (promoting competition)</li> </ul>	<ul style="list-style-type: none"> <li>• fines</li> <li>• revocation of broadcast licence</li> </ul>

**Table 9. Overview of public service television broadcasters**

Country	Name		Details	No. of nationwide analogue terrestrial television channels	Status/Ownership	Number of employees
Albania	RTSH	Radio-Television of Albania, <i>Radio, Televizioni Shqiptar</i>	Albanian Television ( <i>Televizioni Shqiptar</i> – TVSH) and Tirana Radio (TR) are regulated together as RTSH.	1	Public legal entity	210 (TVSH Tirana unit only, the entire number is NA)
Bosnia and Herzegovina	BHRT BiH	The Public Broadcasting Service of B&H, <i>Javni radiotelevizijski servis BiH</i>	The Public Broadcasting System of B&H ( <i>Javni radiotelevizijski sistem Bosne i Hercegovine</i> – JRTS BiH) consists of: <ul style="list-style-type: none"> <li>• BHRT BiH (n.b. previously the acronym PBS B&amp;H was used)</li> <li>• The Radio-Television of the Federation of Bosnia and Herzegovina (<i>Radio-Televizija Federacije BiH</i> – RTF BiH),</li> <li>• The Radio-Television of Republika Srpska (<i>Radio-televizija Republike Srpske</i> – RTRS)</li> </ul>	3 (1 nationwide+2 entity-wide)	Public corporations	145 (radio and television, in 2004)
Bulgaria	BNT	Bulgarian National Television, <i>Blgarska Nacionalna Televizija</i>	BNT is governed separately from Bulgarian National Radio (BNR)	1	Public institution	1,965 (2002)
Croatia	HTV	Croatian Television, <i>Hrvatska televizija</i>	Croatian Radio ( <i>Hrvatski radio</i> ) and HTV are governed together as HRT (Croatian Radio-Television, <i>Hrvatska radiotelevizija</i> )	2	Public institution with founder's rights retained by the Government	1,735 (2002)
Czech Republic	ČT	Czech TV, <i>Česká televize</i>	ČT is governed separately from Czech Radio ( <i>Český rozhlas</i> )	2	Independent public service corporation	2,500 (2004)
Estonia	ETV	Estonian Television, <i>Eesti Televisioon</i>	ETV is governed separately from Estonian Radio ( <i>Eesti Raadio</i> )	1	Public institution	497 (2003)

Country	Name		Details	No. of nationwide analogue terrestrial television channels	Status/Ownership	Number of employees
France	–	France Télévisions	The public broadcasting sector is composed of five different entities: France Télévisions, Radio France, Radio France International (RFI), ARTE and the National Audiovisual Institute (INA)	3	Public broadcasting corporation	6,900 (2003)
Germany	ARD	Association of Public Service Broadcasters in Germany, <i>Arbeitsgemeinschaft der öffentlich-rechtlichen Rundfunkanstalten Deutschlands</i>	Each public service broadcaster has three authorities responsible for the management and supervision of the organisation.	A network of 9 regional broadcasters + Deutsche Welle	Public service broadcasting organisations	21,000 (2003)
	ZDF	Second German Television, <i>Zweites Deutsches Fernsehen</i>		1		3,600 (2004)
Hungary	MTV	Hungarian Radio and Television, <i>Magyar Televízió</i>	Hungarian public radio and television are regulated together as MTV, while Duna TV is regulated as a separate entity	2	MTV and Duna TV are both one-man joint stock companies run by Hungarian Television Public Foundation	1,600 (2004)
	Duna TV	<i>Duna Televízió</i> , Duna Television		1		NA
Italy	RAI	<i>Radiotelevisione Italiana</i>	Italian public radio and television are regulated together as RAI	3	Corporation majority-owned by the Ministry of Economy and Finance	13,000 (2003)
Latvia	LTV	Latvian Television, <i>Latvijas Televīzija</i>	LTV is governed separately from Latvian Radio ( <i>Latvijas Radio – LR</i> )	2	State-owned limited liability company	NA



Country	Name		Details	No. of nationwide analogue terrestrial television channels	Status/Ownership	Number of employees
Lithuania	LRT	Lithuanian National Radio and Television, <i>Lietuvos nacionalinis radijas ir televizija</i>	Lithuanian Television ( <i>Lietuvos televizija</i> ) and Lithuanian Radio ( <i>Lietuvos radijas</i> ) are regulated together as LRT	2	Public company	650 (2005)
Macedonia	MRT	Macedonian Radio & Television, <i>Makedonska radio-televizija</i>	Macedonian Television ( <i>Makedonska televizija – MTV</i> ) and Macedonian Radio ( <i>Makedonsko radio</i> ) are governed as part of the radio and television public corporation MRT.	3	Publicly owned broadcasting enterprise founded by Parliament	NA
Poland	TVP	Polish television, <i>Telewizja Polska</i>	–	3	State owned (sole-proprietor joint stock company of the State Treasury)	4,600 (2003)
Romania	TVR	Romanian Television Broadcasting Corporation, <i>Societatea Română de Televiziune (SRTV)</i>	TVR is governed separately from the Romanian Radio Broadcasting Corporation ( <i>Societatea Română de Radiodifuziune – SRR</i> )	3 (the third channel, TVP3 is broadcast via through 12 regional broadcasters)	Public corporation	Approx. 3,000 (2004)
Serbia	RTS	Radio Television Serbia, <i>Radio-televizija Srbije</i>	There are separate broadcasting systems in Serbia and Montenegro	3	Operates in a legal limbo	6,126 (2004)
Slovakia	STV	Slovak Television, <i>Slovenská Televízia</i>	STV is governed separately from Slovak Radio ( <i>Slovenský rozhlas – SRO</i> )	2	Public service institution	900 (2004)
Slovenia	RTV Slovenia	<i>RTV Slovenija</i> , Radio-television Slovenia	Television Slovenia ( <i>Televizija Slovenija – TVS</i> ) and Radio Slovenia ( <i>Radio Slovenija</i> ) are governed jointly as RTV Slovenia	2	Public institution	2,150 (2004) (including radio)
Turkey	TRT	Turkish Radio and Television Corporation, <i>Türkiye Radyo Televizyon</i>	TRT governance structure comprises both television and radio activities	4	Impartial public corporation	8,000 (2004, including radio)

Country	Name		Details	No. of nationwide analogue terrestrial television channels	Status/Ownership	Number of employees
UK	BBC	British Broadcasting Corporation	BBC governance structure comprises both television and radio activities	2	Public corporation	19,579 (2004)
	Channel 4	–	–	1	Public corporation	884 (2004)

**Table 10. Governance structure of public service television broadcasters**

Country	Name	Governing bodies	No. of members	Appointment procedure	Length of term(s) (years)	Termination conditions
Albania	RTSH	Steering Committee	15	Proposed by: <ul style="list-style-type: none"> <li>• ruling majority (5)</li> <li>• opposition (5)</li> <li>• NGOs (5)</li> <li>• Elected by Parliament</li> </ul>	5 (re-election only after 3-year-break)	By Parliament in the event of a conflict of interest, mental or legal incapacity, non-attendance of meetings, resignation.
		General Director	–	Nominated and released by the Steering Committee	5	Steering Council in cases of: <ul style="list-style-type: none"> <li>• violation of law</li> <li>• conviction for criminal offence</li> <li>• resignation</li> </ul>
		Management Council	5	Proposed by General Director and elected by the Steering Committee	4 (if not passed retirement age)	By decision of at least 8 members of the Steering Committee in cases of: <ul style="list-style-type: none"> <li>• Violation of law and regulations</li> <li>• Conviction of a criminal offence</li> <li>• Unjustified absence from four consecutive meetings</li> </ul>
Bosnia and Herzegovina	BHRT BiH	Board of Governors <sup>200</sup>	9	Appointed by: <ul style="list-style-type: none"> <li>• Parliament (4)</li> <li>• outgoing Board of Governors (3) – upon nominations by civil society + chairmen of the governing bodies of public broadcasters RTV FBiH</li> <li>• RTRS (2)</li> </ul>	3 (renewable only once)	By the body that appointed them only upon proposal by the Board of Governors
		Director General	–	Appointed and dismissed by the Board of Governors	4 (renewable once)	By the Board of Governors in cases of: <ul style="list-style-type: none"> <li>• resignation</li> <li>• failure to perform legal or contractual duties</li> </ul>

Country	Name	Governing bodies	No. of members	Appointment procedure	Length of term(s) (years)	Termination conditions
Bulgaria	BNT	Management Board	5	Council for Electronic Media (CEM), at the proposal of BNT Director General	3 (max. 2 consecutive)	By decision of the CEM, at the proposal of the BNT Director General – in cases of: resignation, actual inability to fulfil tasks for six months, condemnation or incompatibility with membership criteria
		Director General	–	CEM	3 (max. 2 consecutive)	By decision of the CEM, in the same cases as for BNT Management Board
Croatia	HRT	Programming Council	11	Parliament at the proposal of NGOs after a public contest	4 (staggered, max. 2 terms)	By Parliament in cases of: <ul style="list-style-type: none"> <li>violation of the law</li> <li>lack of attendance of the council meetings for six months</li> <li>inappropriate intervention in programming</li> </ul>
		Management Board	5	Appointed by: <ul style="list-style-type: none"> <li>HRT Programming Council (4)</li> <li>Workers Unions (1)</li> </ul>	4 (can be re-elected)	By HRT Programming Council (at least two thirds of the members), in cases of refusal to execute decisions of the Programming Council
		General Director	–	HRT Programming Council (in a public contest)	4	By HRT Programming Council in cases of: <ul style="list-style-type: none"> <li>refusal to execute decisions of the Programming Council</li> <li>unethical or improper work damaging the stations</li> </ul>
Czech Republic	ČT	Czech TV Council	15	Appointed by the Chamber of Deputies at the proposal of civil society organisations	6 (staggered terms)	By Parliament if it rejects the Council's annual report
		General Director		Appointed by the Czech TV Council	6	By the Czech TV Council
		Board of Directors		Senior managers at the first managerial level		

Country	Name	Governing bodies	No. of members	Appointment procedure	Length of term(s) (years)	Termination conditions
Estonia	ETV	Management board	Up to 5	Broadcasting Council, in a public contest	Up to 5 years	By no-confidence vote of two thirds of the Broadcasting Council: <ul style="list-style-type: none"> <li>• if a judgement of conviction enters into force</li> <li>• on the grounds provided in the management contract</li> </ul>
France	France Télévisions	Council of Administration	14	<ul style="list-style-type: none"> <li>• 2 MPs appointed by the National Assembly (1) and the Senate (1)</li> <li>• 5 high civil servants appointed by the Government</li> <li>• 5 personalities appointed by the CSA</li> <li>• 2 elected by the France Télévisions' staff</li> </ul>	5 years	Not specified in legislation
Germany	ARD and ZDF <sup>201</sup>	Director General	–	By the Broadcasting Council	Usually 4 years (possibility of renewing the contract)	By the Broadcasting Council in case of serious neglect of duty
		Broadcasting Council (ARD) and Television Council (ZDF)	Varies (it can reach 77 at the ZDF)	Composed by important social groups (parliaments, big churches, employers, unions, universities, cultural and sports associations, organisations for women, older people and foreigners). The distribution of seats set by Länder broadcasting laws.	Varies (usually 4 to 6 years, renewable)	By socially relevant organisations that appointed them
		Administrative Council	Varies (up to 15 members)	By the Broadcasting Council (and in some cases others such as Parliament, broadcasters' employees etc.)	Varies (usually 4 to 6 years renewable)	By the Broadcasting Council when, for example, a member is found to have acted against the broadcasters.

Country	Name	Governing bodies	No. of members	Appointment procedure	Length of term(s) (years)	Termination conditions
Hungary	MTV	Boards of trustees (Executive Committee and ordinary members)	29	<ul style="list-style-type: none"> <li>Executive Committee (at least 8 members): delegated by the Government coalition (half) and opposition (half); chair elected by Parliament;</li> <li>Ordinary members delegated by civil society</li> </ul>	4 (Executive Committee) 1 (Ordinary members)	<ul style="list-style-type: none"> <li>The mandate of the Board of trustees may be withdrawn prior to its expiry by Parliament, on the recommendation of the competent parliamentary committee, on the basis of provisions in the Hungarian Civil Code. The mandate of individual members of the Executive Board (or the Chairman) can be terminated for reasons of conflicts of interests, for failure to fulfil the responsibilities arising from the mandate for a continuous period of more than three months; or if the member's guilt is established by a non-appealable sentence imposing imprisonment. Parliament decides on these issues with a two-third voting ratio of the attending MPs.</li> <li>For the ordinary members, the decision to terminate the member's mandate is taken by the delegating organisation.</li> </ul>
	Duna TV		31			
Italy	RAI	Board of Directors	9	<ul style="list-style-type: none"> <li>Ministry of Economy and Finance (2)</li> <li>Parliamentary Commission for Broadcasting (7)</li> </ul>	3	By the Ministry of Economy and Finance in accordance with a Parliamentary Broadcasting Commission's resolution on the firing (the law does not specify in what cases).
		General Director	–	RAI Board of Directors (in agreement with the Ministry of Economy and Finance)	Same as members of the Board	By the Board of Directors (in agreement with the Ministry of Economy and Finance)

Country	Name	Governing bodies	No. of members	Appointment procedure	Length of term(s) (years)	Termination conditions
Latvia	LTV	Board	8	<ul style="list-style-type: none"> <li>Broadcasting Council (General Director of the Board)</li> <li>General Director (other 7 members of the Board)</li> </ul>	5 (General Director, max. 2 consecutive)	By two-thirds majority vote of the Broadcasting Council (General Director)
Lithuania	LRT	Council of Lithuanian Radio and Television (LRT)	12	<ul style="list-style-type: none"> <li>The President of the Republic (4)</li> <li>Parliament (4)</li> <li>Lithuanian Science Council, Lithuanian Board of Education, Lithuanian Association of Art Creators and Congregation of Bishops (1 by each)</li> </ul>	<ul style="list-style-type: none"> <li>6 (President's appointees)</li> <li>4 (Parliament)</li> <li>2 (civil society)</li> <li>max. 2 terms</li> </ul>	May not be recalled (except in cases such as resignation, conviction or forfeit of Lithuanian citizenship)
Macedonia	MRT	Board	11	Parliament (4 are MRT employees proposed by the Council of MRT Employees)	4	Absence, resignation etc.
		Financial Supervisory Board	5	Parliament	4	Parliament
		General Director	–	Parliament	4	Parliament
Poland	TVP	Supervisory Council	9	<ul style="list-style-type: none"> <li>National Broadcasting Council (KRRiT) (8)</li> <li>Minister of Treasury (1)</li> </ul>	3	By the institution that appointed them in cases of breaching the law
		Management Board	1 to 5	Supervisory Board of TVP	4	By two-thirds of votes of the Supervisory Council in cases when members fail to fulfil TVP's programming strategy or act against TVP's interests
		Programming Council	15	National Broadcasting Council (KRRiT)	4	Not specified

Country	Name	Governing bodies	No. of members	Appointment procedure	Length of term(s) (years)	Termination conditions
Romania	TVR	Council of Administration	13	<ul style="list-style-type: none"> <li>• Joint parliamentary groups (8)</li> <li>• President of Romania (1)</li> <li>• Government (1)</li> <li>• station's personnel (2)</li> <li>• national minorities parliamentary groups (1)</li> </ul>	4	By Parliament (if it rejects the council's annual report or budget proposal)
		Managing Committee	8 (including Director General)	The Council of Administration	Not specified by law	By the Council of Administration
		Director General-President of the Council of Administration	–	Elected by Parliament	Not specified by law	By Parliament
Serbia	RTS	Governing Board	9	Republican Broadcasting Agency (RBA) Council	5	No accountability requirements
		Director General	–	Governing Board in a public contest	4	No accountability requirements
Slovakia	STV	STV Council	15	Elected by Parliament upon nomination by: <ul style="list-style-type: none"> <li>• the Committee for Education, Science, Sport and Youth, Culture and Media in Parliament,</li> <li>• MPs</li> <li>• or civil society organisations</li> </ul>	6	By Parliament (in cases of criminal offence, conflict of interest etc.)
		Supervisory Commission	3	<ul style="list-style-type: none"> <li>• Parliament (1)</li> <li>• Government (1)</li> <li>• President of the Republic (1)</li> </ul>	3	–
		General Director	–	Appointed by the STV Council	5 (max. 2 consecutive)	By the STV Council (in cases of criminal offence, conflict of interest etc.)



Country	Name	Governing bodies	No. of members	Appointment procedure	Length of term(s) (years)	Termination conditions
Slovenia	RTV Slovenia	Council of RTV Slovenia	25	<ul style="list-style-type: none"> <li>• Civil society and academia (17)</li> <li>• Parliament (5)</li> <li>• RTV Slovenia staff (3)</li> </ul>	4 (may be renewed)	By the institution that appointed them (the reasons for dismissal should be stated in the statute of each of these institutions)
		Supervisory Board	7	Parliament (5) RTV Slovenia staff (2)	4	By the institution that appointed them
Turkey	TRT	Executive Board	6	Council of Ministers – upon nomination by the RTÜK	4	Their tenure cannot be terminated
		General Director	–	Council of Ministers – upon nomination by the RTÜK	4	By the Council of Ministers upon proposal by the RTÜK in cases of: breach of impartiality; very serious duty offence; loss of civil servant qualifications
		Coordination Board	6 (TRT managers)	–	–	–

Country	Name	Governing bodies	No. of members	Appointment procedure	Length of term(s) (years)	Termination conditions
UK	BBC	Board of Governors	12	Secretary of State for Culture, Media and Sport	5 max.	<ul style="list-style-type: none"> <li>• if the Queen terminates a Governor's mandate;</li> <li>• holding of any office which creates a conflict of interest</li> <li>• bankruptcy</li> <li>• if a Governor suffers from a mental disorder such that he or she is hospitalised, has been detained, or has had a guardian appointed</li> <li>• absence from meetings for at least 3 months without consent.</li> </ul>
		Executive Board	10	The main BBC Executive Board is made up of 9 directors and is chaired by the Director-General who also appoints them	not specified	For the directors – as per their employment contracts
	Channel 4	Board	13 to 15 executive and non-executive members	<ul style="list-style-type: none"> <li>• Ofcom, in agreement with the Secretary of State for Culture, Media and Sport (non-executive members)</li> <li>• the Board (Chief Executive)</li> <li>• Chief Executive nominates executive members</li> </ul>	Fixed terms (non-executives)	–

**Table 11. The main public service obligations imposed on public service broadcasters**

Country	Main public service obligations
Albania	<ul style="list-style-type: none"> <li>• to broadcast a wide range of programming in terms of quantity and quality</li> <li>• to transmit programmes that serve all the public, including the unpaid production and broadcasting of certain programmes, notices and advertising spots</li> </ul>
Bosnia and Herzegovina	<ul style="list-style-type: none"> <li>• to accurately inform the public</li> <li>• to support democratic processes</li> <li>• to ensure an adequate proportion of news, cultural, artistic, educational, sports, entertainment and children’s programming</li> <li>• to ensure that the highest quality programming is available to the public by presenting diverse and factual information</li> </ul>
Bulgaria	<ul style="list-style-type: none"> <li>• to broadcast political, economical, cultural, scientific, educational and other socially important information</li> <li>• to broadcast Bulgarian and foreign educational and cultural programmes, for all age groups</li> <li>• to encourage the creation of works of Bulgarian authors</li> <li>• to promote Bulgarian culture</li> </ul>
Croatia	<ul style="list-style-type: none"> <li>• to provide different programmes for specific regions of the country</li> <li>• to broadcast “adequate” shares of information, cultural, educational and entertainment programming</li> <li>• to produce programmes for Croatians abroad, and for national minorities in Croatia, with direct funding from the government for this purpose</li> </ul>
Czech Republic	<ul style="list-style-type: none"> <li>• to produce and broadcast programmes serving as a reference for the whole of society</li> <li>• to enhance social cohesion and the integration of all individuals, groups and communities</li> <li>• to act as a forum for public debate open to the broadest possible range of opinions and viewpoints, and to provide independent and impartial news, information and commentary</li> <li>• to create plural, inventive and diverse programmes that meets high ethical and quality standards, and to not respond to the market pressures by lowering the standards of its programming</li> <li>• to create programmes able to attract a large proportion of the public while remaining sensitive to the needs of minority groups</li> <li>• to reflecting the present–day diversity of philosophical concepts and religious denominations</li> <li>• to ensure that its programme schedules contain a significant proportion of original programming, especially feature films, drama and other creative exploits, and to cooperate with independent producers and the film sector</li> </ul>
Estonia	<ul style="list-style-type: none"> <li>• to preserve and develop the Estonian nation, language and culture, strengthen Estonian statehood and advance Estonia’s international reputation</li> <li>• to advance and promote Estonian national culture and record, preserve and introduce its greatest achievements</li> <li>• to present the greatest achievements of world culture to the public</li> <li>• to create and transmit multifaceted and balanced programme services at high journalistic, artistic and technical standards</li> <li>• to satisfy the informational needs of all sections of the population, including minorities</li> <li>• to create primarily informational, cultural, educational and entertainment programmes</li> </ul>

Country	Main public service obligations
France	<ul style="list-style-type: none"> <li>• to air general interest messages, such as health and road safety information, programmes to inform consumers about their rights and programmes aimed at integrating foreign residents</li> <li>• to provide free airtime to organisations designated by the Government to be in charge of defending an issue of national interest</li> <li>• to broadcast at any time any official declarations or messages of the Government to the French people</li> <li>• to ensure continuity of service in case of strikes</li> <li>• France 2, France 3 and Radio France must provide free airtime to political parties represented in Parliament and to those unions and professional associations considered to be representative at national level, based on rules determined by the CSA</li> <li>• France 3 is obliged to cover the activity of Parliament through a weekly live broadcast of Parliamentary sessions devoted to MPs' questions to the Government.</li> <li>• France 2 has to broadcast religious programmes</li> <li>• to air, during electoral campaigns, the candidates' broadcasts</li> <li>• France 2 and France 3 must each broadcast a minimum of 15 public musical, dance or drama performances per year, and must also broadcast music programmes</li> <li>• France 2, France 3 and France 5 must regularly broadcast programmes on science and technology, and the social sciences</li> </ul>
Germany	<ul style="list-style-type: none"> <li>• to produce and distribute programmes that contribute to the public discourse</li> <li>• provide a comprehensive overview of regional, national, European and international developments</li> <li>• to contribute to the process of international understanding, European integration and social coherence at the federal and regional level</li> </ul>
Hungary	<ul style="list-style-type: none"> <li>• to regularly, comprehensively, impartially, faithfully and exactly inform of domestic and international events of public interest</li> <li>• to ensure the diversity of programme items and viewpoints, and the presentation of minority opinions, and the satisfaction of the interests of a wide range of audiences</li> <li>• to take special care to cherish pieces of universal and national cultural heritage, and to ensure cultural diversity</li> <li>• to show programmes which serve the physical, intellectual and mental development of minors</li> <li>• to present the values of churches and religions, national, ethnic and other minority cultures</li> <li>• to give access to important information to groups or individuals who are in a disadvantageous position on account of their age, physical, mental and psychic condition</li> <li>• to present programmes which show the social economic and cultural life of the various regions of the country.</li> </ul>
Italy	<ul style="list-style-type: none"> <li>• to broadcast an adequate number of radio and television programmes devoted to education, information, training, promotion of culture, theatrical, cinematographic, television and musical works, including works in the original language that are recognised as being of great artistic value or highly innovative</li> <li>• to allot broadcasting time, in accordance with the legislation, to: all parties and groups represented in Parliament; regional assemblies and councils; local autonomy associations; national trade unions; religious denominations; political movements; public bodies; political and cultural associations; legally recognised national cooperative associations; and ethnic and linguistic groups</li> <li>• to broadcast in German and Ladino for the autonomous provinces of Bolzano and Trento, in French for the autonomous region of Valle d'Aosta, and in Slovenian for the autonomous region of Friuli Venezia Giulia</li> <li>• to broadcast free-of-charge announcements of public and social interest as requested by the Prime Minister, and broadcasting information on road and motorway traffic</li> <li>• to broadcast children's programmes at appropriate hours</li> <li>• to provide for distance learning</li> </ul>

Country	Main public service obligations
Latvia	<ul style="list-style-type: none"> <li>• to ensure diverse and balanced programmes, consisting of informative, educational and entertaining broadcasts for all groups of society</li> <li>• to ensure freedom of information and expression and objectiveness of broadcasts</li> <li>• to distribute comprehensive information about events in Latvia and abroad</li> <li>• to report on the activities of the Parliament, President, Government and local Governments</li> <li>• to provide educational, cultural, scientific, light entertainment, children's and sports broadcasts</li> <li>• to promote the production of broadcasts concerning the life and culture of ethnic minorities</li> <li>• to ensure pre-election campaigning opportunities</li> </ul>
Lithuania	<ul style="list-style-type: none"> <li>• to provide accurate, objective and balanced information, good quality educational, cultural and entertainment programmes</li> <li>• to collect and disseminate information about Lithuania and the world</li> <li>• to strengthen independence and democracy in Lithuania</li> <li>• to create, cherish and protect national cultural values</li> <li>• to foster tolerance, humanism and a culture of cooperation, thinking and language</li> <li>• to strengthen public morale and citizenship</li> </ul>
Macedonia	<ul style="list-style-type: none"> <li>• to ensure that programmes are protected from the influence of political organisations or economic interests</li> <li>• to produce and broadcast programmes intended for all segments of society, without discrimination, taking care to cater for specific social groups, such as children and youth, minority and ethnic groups, people with disabilities and sick people, and people who are socially deprived</li> <li>• to preserve and foster the cultural identity of the ethnic communities</li> <li>• to promote public dialogue, tolerance and the advancement of the multicultural character of the country</li> <li>• to promote the respect of basic human freedoms and rights, democratic values, privacy and dignity</li> <li>• to respect speech and language standards of both majority and non-majority communities</li> <li>• to foster domestic audiovisual creativity which contributes to the development of culture in Macedonia</li> <li>• to provide adequate and impartial treatment of all political subjects during election campaigns</li> </ul>
Poland	<ul style="list-style-type: none"> <li>• to encourage artistic, literary, scientific and educational activities, and the dissemination of knowledge of Polish language</li> <li>• to produce educational programmes and ensure the access to such programmes of people of Polish descent and Poles living abroad</li> <li>• to provide reliable information about the vast diversity of events and processes taking place in Poland and abroad</li> <li>• to respect the Christian system of values</li> <li>• to serve to strengthen the family ties, and advance the propagation of pro-health attitude</li> <li>• to provide, free-of-charge, the airtime necessary for direct presentation and explanation of State policy by the supreme State authorities; for political parties, national trade unions and employers' organisations to present their position in regard to major public issues; for public service organisations to provide information about the free of charge services they provide; for entities and individuals participating in elections of the President, the Parliament, the Senate, the local self-governments, the European Parliament and in referendums to present their election programmes</li> </ul>
Romania	<ul style="list-style-type: none"> <li>• to ensure the pluralism and freedom of information, ideas and opinion, and inform the audience in a correct and accurate manner</li> <li>• to air programming that meets certain professional standards such as balanced and objective information, promotion of Romanian cultural, scientific and artistic values, preservation of minority rights and democratic, civic, moral and sporting values</li> </ul>

Country	Main public service obligations
Serbia	<ul style="list-style-type: none"> <li>• to broadcast news programmes and other programmes that “meet the public interest”</li> <li>• to show “special respect for national heritage” and to “respect the traditional spiritual, historical, cultural, humanitarian and educational importance and role of the churches and religious communities in society”</li> <li>• to produce and broadcast programmes with informative, cultural, art, educational, religious, scientific, children's, entertaining, sports and other content, meeting the needs of all citizens, which must ensure diversity and balance of content, and uphold the democratic values of a modern society, particularly the respect for human rights and cultural, national, ethnic and political pluralism of views and opinions</li> <li>• to broadcast news programmes adhering to principles of impartiality and fairness</li> <li>• to uphold freedom of speech and pluralism of opinion, and prevent any form of racial, religious, national, ethnic, gender-based or other intolerance or hatred</li> <li>• to “adhere to linguistic and speech standards not only of the majority population but also, proportionately, of national minorities and ethnic groups in the area where the programme is being broadcast”</li> </ul>
Slovakia	<ul style="list-style-type: none"> <li>• to broadcast programmes that contribute to the development of a democratic society</li> <li>• to create space for pluralism of opinions without favouring the interest of any political party, political movement, group or part of society or religious confession or faith</li> <li>• to support the development of artistic works, culture and education</li> <li>• to produce programmes for a broad viewership, complying with the principles of editorial independence, produced by professionals who assume their responsibility to society</li> <li>• to offer impartial, verified, unbiased, actual, understandable, balanced and plurally-sourced information about what is going on in Slovakia and abroad</li> </ul>
Slovenia	<ul style="list-style-type: none"> <li>• to respect human integrity and dignity in its programmes</li> <li>• to observe the principle of impartiality, and to ensure the verity of information, the pluralism of opinions and religious beliefs</li> <li>• to broadcast radio and television</li> <li>• programmes for the Italian and Hungarian minorities in Slovenia</li> <li>• to ensure almost universal access to its channels</li> </ul>
Turkey	<ul style="list-style-type: none"> <li>• to establish the principle and reforms of Atatürk and realisation of the national goals of Turkish Republic</li> <li>• to protect and reinforce the existence and independence of the State, the indivisible integrity of the nation and public, and public well-being</li> <li>• to foster national education and national culture</li> <li>• to safeguard the national security policy and the national and economic interests of the state</li> <li>• to form public opinion freely and soundly in line with constitutional guidelines</li> </ul>

Country	Main public service obligations
UK <sup>202</sup>	<p>BBC:</p> <ul style="list-style-type: none"> <li>• to maintain high general standards in all respects</li> <li>• to offer a wide range of subject matter, meeting the needs and interests of audiences</li> <li>• to transmit an impartial and professional daily account of proceedings in both Houses of Parliament.</li> </ul> <p>BBC services are defined as public services that should:</p> <ul style="list-style-type: none"> <li>• provide information, education and entertainment.</li> <li>• stimulate, support and reflect, in drama, comedy, music and the visual and performing arts, the diversity of cultural activity in the UK contain comprehensive, authoritative and impartial coverage of news and current affairs in the UK and throughout the world to support fair and informed debate at local, regional and national levels</li> <li>• provide wide-ranging coverage of sporting and other leisure interests</li> <li>• contain programmes of an educational nature [...]</li> <li>• to include a high standard of original programmes for children and young people</li> <li>• contain programmes which reflect the lives and concerns of both local and national audiences</li> <li>• contain a reasonable proportion and range of programmes for national audiences made in Northern Ireland, Scotland, Wales and in the English regions outside London and the South East.</li> </ul> <p>Channel 4:</p> <ul style="list-style-type: none"> <li>• to demonstrate innovation, experimentation and creativity</li> <li>• to appeal to the tastes and interests of a culturally diverse society</li> <li>• to include programmes of an educational nature</li> <li>• to exhibit a distinctive character</li> </ul>

**Table 12. Funding of public service television broadcasters**

Country	Name	Share of total budget (per cent)				Annual budget (€ million) (year)
		Licence fee	State budget	Commercial income (advertising and sponsorship)	Other	
Albania	TVSH	NA	58	8.6	33.4	7.8 (2004)
Bosnia and Herzegovina	BHRT B&H	NA	NA	NA	NA	NA
Bulgaria	BNT					25.05 (2004)
Croatia	HTV	57.4	0	36.0	6.6	171 (2002) (including radio)
Czech Republic	ČT	66.7	0	29.1	4.2	140.39 (2003)
Estonia	ETV	0	93.0	0	7.0	13.5 (2004)
France	France Télévisions	64.8	0	30.3	4.9	2,308.9 (2003)
Germany	ARD	94.0	0	6.0 (only advertising)	NA	5,371.0 (2003) (advertising and licence fee only)
	ZDF	93.3	0	6.7 (only advertising)	NA	1,677.0 (2003) (advertising and licence fee only)
Hungary	MTV					122.5 (2004)
	Duna TV	0	82.0	12.0	6.0	30.6 (2003)
Italy	RAI	55.2	0	38.8	6.0	2,593 (2003)
Latvia	LTV	0	57.0	43.0		12.35 (2004)
Lithuania	LTV	0	76.0	23.0	1.0	14.5 (2003)
Macedonia	MTV	80.2	0	12.1	7.7	15.7 (2004) (including radio)



Country	Name	Share of total budget (per cent)				Annual budget (€ million) (year)
		Licence fee	State budget	Commercial income (advertising and sponsorship)	Other	
Poland	TVP	31.9	0	56.3	11.8	416.5 (2004)
Romania	SRTV	75.5	14.3	8.38	0	96.0 (2003)
Serbia	RTS	0 <sup>203</sup>	75.2	24.8		60.7 (budget envisaged for 2004, including radio)
Slovakia	STV	60.2	16.8	18.8	4.2	59.76 (2004)
Slovenia	TVS	72.8	0	16.5	10.7	111.1 (2003) (including radio)
Turkey	TRT	53.7	21.8 (mainly)	10.4	14	254.7 (2003)
UK	BBC	94.0	0	0	6.0	4,211 (2002/3)
	Channel 4	0	0	100	0	1,262 (turnover for 2004)

**Table 13. Daily audience market share of public service television (1995–2003)**

Ranked by 2003 audience market share

	Daily audience market share of public television (per cent)								
	1995	1996	1997	1998	1999	2000	2001	2002	2003
Croatia <sup>204</sup>	NA	NA	NA	NA	94.5	94.3	88.0	90.0	72.9
Poland	80.0	70.0	57.5	52.6	51.1	46.2	45.4	45.9	51.2
Italy	48.2	47.9	48.1	48.0	47.6	47.3	46.9	46.5	48.6
France	43.9	44.9	44.1	43.0	42.2	42.3	45.3	45.3	46.4
UK	54.3	54.9	53.0	51.1	49.5	48.5	48.0	47.6	46.2
Germany	40.1	40.6	40.5	42.5	42.8	43.1	43.3	44.4	44.4
Serbia and Montenegro <sup>205</sup>	NA	NA	NA	NA	NA	26.4	NA	35.7	35.5
Romania	NA	NA	NA	46.4	39.2	40.4	35.9	33.3	35.0
Slovenia	61.5	41.0	33.0	32.4	32.1	32.9	34.4	35.1	34.7
Bosnia and Herzegovina <sup>206</sup>	NA	NA	NA	NA	NA	NA	NA	NA	31.8
Czech Republic	NA	27.35	NA	33.29	32.1	31.22	29.2	29.4	30.2
Bulgaria	NA	89.8	75.1	76.0	69.6	66.5	31.8	30.0	24.8
Slovakia	73.7	63.2	27.5	24.3	18.1	18.4	20.2	21.0	21.8
Macedonia <sup>207</sup>	NA	NA	NA	NA	NA	37.6	NA	32.0	21.2
Latvia	NA	NA	NA	24.9	18.3	18.2	18.1	17.4	18.4
Hungary	79.0	72.7	NA	25.5	15.6	13.6	13.2	15.3	17.5
Albania <sup>208</sup>	NA	NA	NA	NA	NA	NA	NA	17.1	NA
Estonia	28.0	26.0	NA	22.4	18.3	16.6	17.1	18.0	16.7
Lithuania	NA	NA	NA	16.3	10.3	10.2	9.1	12.2	11.8
Turkey	NA	4.1	NA	2.2	5.3	5.9	6.9	8.3	9.9

Source: European Audiovisual Observatory; IP International Marketing Committee; EUMAP research<sup>209</sup>

**Table 14. The 10 leading European private television companies (2003)**  
 Ranked according to unconsolidated operating revenues (EUR million)

Rank	Company	Country	Unconsolidated operating revenues (€ million)
			2003
1	RTI <sup>210</sup>	Italy	2,008.2
2	TF1	France	1,596.2
3	RTL Television	Germany	1,589.0
4	ITV Network <sup>211</sup>	UK	1,375.3
5	SAT1	Germany	776.0
6	ProSieben Media	Germany	687.0
7	Metropole Television (M6)	France	659.0
8	Central Independent Television <sup>212</sup>	UK	639.6
9	Gestevisión Telecinco	Spain	564.4
10	Antena 3 de Televisión	Spain	538.9
	<b>Total</b>		<b>10,433.6</b>

Source: European Audiovisual Observatory<sup>213</sup>

**Table 15. Main western investors in television in Central and South Eastern Europe<sup>214</sup>**

Group	Station	Country	Launch	Technical coverage (per cent of country's territory)	Diffusion	Audience share		Share of television advertising spending in the country (per cent)
						Share (per cent)	Position on the national market	
Central European Media Enterprises (CME)	Nova TV	Croatia	2000	87	Terrestrial	14.3	4	NA
	TV Nova	Czech Republic	1994	100	Terrestrial, cable, Satellite	43.4	1	66.5
	PRO TV	Romania	1995	77.0	Terrestrial, cable	15.6	2	25.1
	Acasă	Romania	1998	53.7	Cable	6.7	4	5.9
	Markíza TV	Slovakia	1996	96.8	Terrestrial, cable	45.9	1	76.2
	Pop TV	Slovenia	1995	80.0	Terrestrial, cable	29.0	1	57.6
	Kanal A	Slovenia	1991	80.0	Terrestrial, cable	9.1	4	18.4
RTL Group	RTL Klub	Hungary	1997	96.2	Terrestrial, cable	29.5	1	31.1
	RTL Televizija	Croatia	2004	NA	Terrestrial, cable	39.5	1	NA
Modern Times Group (MTG)	TV3	Lithuania	1992	98	Terrestrial	23.9	2	48.4
	TV3	Latvia	1998	85.8	Terrestrial	15.1	2	32.1
	TV3	Estonia	1993	97.0	Terrestrial, cable	22.1	1	53.7
News Corporation	bTV	Bulgaria	2000	86.4	Terrestrial, cable	37.9	1	45.1
SBS Broadcasting	TV2	Hungary	1997	96.8	Terrestrial, cable	29.4	2	58.0

Sources: EUMAP research;<sup>215</sup> based on IP International Marketing Committee<sup>216</sup>

**Table 16. Gross advertising expenditure (2003)**

Ranked by per capita total gross advertising spending.

Country	Gross television advertising expenditure – per capita (€) <sup>217</sup>	Gross television advertising spending (€ million)	Total gross advertising spending (€ million)	Share of television advertising (per cent)	Channel with the largest advertising market share (share in per cent)	Type of channel
Italy	164.17	9,143	25,624	35.7	Canale 5 (33.1)	Private
Hungary	91.34	924	1,412	65.4	TV 2 (58.0)	Private
Germany	90.00	7,428	17,407	42.7	RTL (30.7)	Private
U.K.	88.42	5,237	11,986	43.7	ITV1 (51.4)	Private
France	87.10	5,373	16,366	32.8	TF1 (54.4)	Private
Turkey	82.31	5,866	7,855	74.7	Samanyolu TV (20.5)	Private
Slovenia	82.17	161	276	58.3	Pop TV (57.6)	Private
Slovakia	53.65	288	411	70.1	Markíza (76.2)	Private
Croatia	53.15	235	394	59.8	Nova TV (55.1)	Private
Romania	51.50	1,117	1,294	86.3	Prima TV (26.6)	Private
Latvia <sup>218</sup>	49.45	115	NA	33.5	LNT (37)	Private
Czech Republic	48.89	500	1,034	48.3	TV Nova (66.5)	Private
Lithuania	48.35	167	231	72.3	TV3 (48.4)	Private
Estonia	44.59	60	101	25.6	TV3 (53.7)	Private
Poland	36.82	1,406	2,410	58.3	TVP1 (25.5)	Public
Serbia and Montenegro	25.94	210	261	80.6	Pink TV (46.2)	Private
Bulgaria	17.28	135	193	70.0	bTV (45.1)	Private
Macedonia	16.63	33	44	75.8	A1 (38.3)	Private
Bosnia and Herzegovina <sup>219</sup>	4.69	11	18	63.8	FTV (50)	Public
Albania <sup>220</sup>	4.42	7	14	54.0	NA	NA

Source: IP International Marketing Committee<sup>221</sup>

**Table 17. Main public service obligations imposed by law on commercial television**

Source: EUMAP reports

Country	Obligations
Albania	Broadcasting, free of charge, messages of and information of great interest to the public (in emergency situations)
Bosnia and Herzegovina	None
Bulgaria	None
Croatia	Broadcasting: <ul style="list-style-type: none"> <li>• news and information</li> <li>• contents important for the exercise of human rights, political rights, the rule of law, and the development of civil society</li> </ul>
Czech Republic	Broadcasting: <ul style="list-style-type: none"> <li>• State announcements serving the public interest</li> <li>• open captions for people with hearing difficulties</li> </ul>
Estonia	Broadcasting news on at least 5 per cent of the airtime
France	<ul style="list-style-type: none"> <li>• Ensuring internal political pluralism</li> <li>• Regulations on covering electoral campaigns</li> <li>• Ensuring cultural diversity</li> <li>• protection of minors</li> </ul>
Germany	<ul style="list-style-type: none"> <li>• Broadcasting a “reasonable” amount of cultural, informational and educational programmes</li> <li>• Requirements on editorial standards</li> </ul>
Hungary	<ul style="list-style-type: none"> <li>• Broadcasting “public programmes” in at least 10 per cent of the daily programme (except for specialised channels)</li> <li>• Public programmes of at least 25 minutes must be aired in primetime</li> <li>• Airing at least a 20-minute-long daily newscast</li> </ul>
Italy	<ul style="list-style-type: none"> <li>• Complying with editorial guidelines ensuring truthful presentation of facts and events</li> <li>• Equal access for politicians to news programmes</li> <li>• Broadcasting official communiqués and declarations by constitutional organs</li> </ul>
Latvia	None
Lithuania	None
Macedonia	None
Poland	None (imposed by licence conditions)

Country	Obligations
Romania	<ul style="list-style-type: none"> <li>• Airing objective information by presenting facts and events</li> <li>• Upholding political and social pluralism, cultural, religious and linguistic diversity, information, education and public entertainment</li> </ul>
Serbia	<ul style="list-style-type: none"> <li>• Production of free, comprehensive and timely information</li> <li>• Broadcasting urgent announcements regarding threat to human life, health, security and property</li> </ul>
Slovakia	None
Slovenia	<ul style="list-style-type: none"> <li>• Broadcasting 20 per cent of their own production</li> <li>• Broadcasting Slovenian works on science, art and literature and Slovenian movies on at least two per cent of their annual airtime</li> </ul>
Turkey	<ul style="list-style-type: none"> <li>• Broadcasting quotas of programming on education, culture, Turkish folk and Turkish classical music programmes</li> <li>• Airing public advertisements on issues such as road safety, cigarette smoking, etc.</li> </ul>
UK	All commercial broadcasters have public service obligations and are obliged to supply a certain programming with the aim of ensuring a high quality mix of programming for a diverse audience. The public service remit for every Channel 3 service and for Channel 5 is the provision of a range of high quality and diverse programming.

**Table 18. Legal quotas for programming for languages and minority group representation in broadcasting**

	Public service television	Commercial television
Albania	None	None
Bosnia and Herzegovina	None	None
Bulgaria	None	None
Croatia	None	None
Czech Republic	None	None
Estonia	None	None
France	None	None
Germany	None	None
Hungary	None (minority programming is considered a “public programme”)	None
Italy	Requirements (in bylaws and service contract) for programmes aimed at linguistic minorities	None
Latvia	None	None
Lithuania	None	None
Macedonia	Yes	None
Poland	None	None
Romania	None (general obligation to host programmes dedicated to national minorities)	None
Serbia	None	None
Slovakia	Not specific (general obligations to cover minorities)	None
Slovenia	None (public broadcaster is only required to reach with its minority programming 90 per cent of the areas inhabited by Hungarian and Italian minorities)	None
Turkey	None	None
UK	[?]	[?]



**Table 19. Cable and satellite penetration (2003)**

	Penetration (percentage of households)		
	Cable	Satellite <sup>222</sup>	Only terrestrial
Albania	NA	NA	NA
Bosnia and Herzegovina <sup>223</sup>	NA	19.0	NA
Bulgaria	52.1	9.8	36.5
Croatia	12.2	26.3	61.9
Czech Republic	19.3	8.9	71.8
Estonia	48.0	3.0	49.0
France <sup>224</sup>	14.0	14.4	65.6 <sup>225</sup>
Germany	55.8	37.1	7.1
Hungary	57.8 <sup>226</sup>	5.2	37.0
Italy	0.3	17.0	NA
Latvia	NA	4.7	48.3
Lithuania	38.3	NA	61.7
Macedonia	16.0	23.0 <sup>227</sup>	70.0 <sup>228</sup>
Poland	44.0	16.9	40.8
Romania	58.0	3.8	42.0
Serbia and Montenegro	25.0	6.0	70.0
Slovakia	39.2	25.2	51.7
Slovenia	55.9	9.7	35.0
Turkey	10.2	11.6	83.0
UK	13.3	27.7	49.4 <sup>229</sup>

Source: IP International Marketing Committee,<sup>230</sup> data extracted from EUMAP country reports

**Table 20. Communication technology and audiovisual equipment (2003)**

	Share of households (per cent)				Share of population (per cent)	
	Phone	PC	VCR	DVD	Mobile	Internet users
Albania	31.6	NA	NA	NA	38.1 <sup>231</sup>	0.5
Bosnia and Herzegovina <sup>232</sup>	99.0	10.0	NA	NA	NA	11.0
Bulgaria	76.4	14.2	40.5	7.9	27.9	21.8
Croatia	96.3	42.2	53.9	8.3	80.0 (households)	31.4 (households)
Czech Republic	72.7	37.0	48.9	6.0	71.7	30.0
Estonia	64.3 (population)	38.3 (population)	36.8	7.5	70.8	46.6
France	96.0	42.7	80.4	31.8	69.1	42.9
Germany	98.7	58.2	67.8	27.1	72.5 (households)	55.0
Hungary	68.4	24.4	53.2	6.2	74.8	10.5
Italy	83.0 (population)	39.6	66.7	11.4	87.8	30.2
Latvia	62.0 (population)	20.6 (population)	42.7	NA	51.3	22.8
Lithuania	23.0 (population)	19.9 (population)	29.6	4.5	62.0	26.5
Macedonia	93.0	17.0 <sup>233</sup>	52.0 <sup>234</sup>	2.0 <sup>235</sup>	37.0	12.0
Poland	77.8	23.0	49.6	4.7	50.9	13.6
Romania	67.7	17.5 (population)	11.8	NA	27.7	14.7
Serbia and Montenegro	75.0	17.0	35.0	4.0	35.0	13.0 (households)
Slovakia	57.5	31.8	59.6	4.7	78.7 (households)	9.2 (households)
Slovenia	88.7	49.8	54.2	32.2	91.5	49.7
Turkey	86.6	15.4	8.8	4.3	74.1	12.3
UK	93.4	57.0	84.7	38.5	75.8	57.1

Source: IP International Marketing Committee<sup>236</sup>

**Table 21. Digital terrestrial television – DVB-T implementation progress overview (2004)**

	Share of households that can already (or are expected in the near future to) receive at least one multiplex (per cent)
Bulgaria	26
Czech Republic	More than 10
Estonia	40
U.K.	81
Croatia	40
Italy	60
Lithuania	25
Macedonia	10
Poland	Around 14
Slovenia	15
Slovakia	17

Source: European Audiovisual Observatory<sup>237</sup>

- 
- <sup>176</sup> IP International Marketing Committee, *Television 2004. International Key Facts*, October 2004, p. 29, (hereafter, IP International Marketing Committee, *Television 2004*)
- <sup>177</sup> This figure does not include television households with non-EU citizens.
- <sup>178</sup> Data from EUMAP national report
- <sup>179</sup> Data for population and households for Romania are for 2002.
- <sup>180</sup> Data for households for Serbia are for 2002.
- <sup>181</sup> Data for Serbia without Montenegro
- <sup>182</sup> The figures for Bosnia and Herzegovina include data provided by the Agency for Statistics for Bosnia-Herzegovina and data from the chapter on Bosnia-Herzegovina in this EUMAP report. The percentage of television households only refers to urban population. See: eSEEurope Regional Information and Communications Technologies Sector, *Status and Usage Report: Building an Information Society for all*, 2004, p. 85, (hereafter eSEEurope, *Status and Usage Report*).
- <sup>183</sup> Data for Albania includes data provided by: Instat (“Albania population in 2001”) and the EBU, and data from the Albania chapter in this EUMAP report.
- <sup>184</sup> IP International Marketing Committee, *Television 2004*, p. 14.
- <sup>185</sup> European Audiovisual Observatory, *The Yearbook 2004*, Volume 1, pp. 30–31, errata slip.
- <sup>186</sup> Data for 2002
- <sup>187</sup> Data for 2002
- <sup>188</sup> European Audiovisual Observatory, *The Yearbook 2004*, Volume 1, p. 34.
- <sup>189</sup> Data from 2004.
- <sup>190</sup> IP International Marketing Committee, *Television 2004*, country reports.
- <sup>191</sup> Data is from the Albania chapter in this EUMAP report (for the year 2002)
- <sup>192</sup> Data is from the Bosnia and Herzegovina chapter in this EUMAP report (for the year 2004)
- <sup>193</sup> Data was provided via e-mail by AGB Puls Agency (for the year 2004)
- <sup>194</sup> Data for France is from the national chapter on France in this EUMAP report (for the year 2004)

- 
- <sup>195</sup> IP International Marketing Committee, *Television 2004*, country reports; European Audiovisual Observatory, *The Yearbook 2004*; EUMAP country reports
- <sup>196</sup> Following amendments to the Broadcasting Act in August 2005, members of the Council of the Republican Broadcasting Agency (RBA) will serve terms of between four and six years. Those members elected upon the proposal of the Parliamentary Committee for Culture and Information will have a six-year mandate; those proposed by the Parliament of the autonomous province of Vojvodina, the universities and the religious communities will have a five-year mandate, while those proposed by NGOs and professional associations will have a four-year mandate.
- <sup>197</sup> Other institutions, such as the Competition Authority, Ministry of Culture and the Telecommunications Office are marginally involved in the regulation of broadcasting in Slovakia.
- <sup>198</sup> Ofcom has a number of other boards and committees whose work feeds into the main Board. The most significant such bodies are the Ofcom Content Board (an independent Ofcom subcommittee of 11 non-executives and 2 executives whose members are appointed by the Ofcom Board from the regions); and the Consumer Panel (operating independently of Ofcom, it has 11 members from the regions and the civil society appointed by Ofcom, and an independent Secretariat)
- <sup>199</sup> The “Nolan principles” are established by a Committee on Standards in Public Life and laid down in a code set out by the Office of the Commissioner for Public Appointments. According to the Nolan rules, public life should be governed by seven principles: selflessness, integrity, objectivity, accountability, openness, honesty and leadership. The rules state that a process of openness and transparency should govern public appointments.
- <sup>200</sup> As the BHRT BiH is comprised of three public broadcasting television stations, their activities are coordinated by an Executive Committee grouping the three chairmen of the Boards of Directors (BHRT BiH, RTF FBiH and RT RS). The governing structure of the BHRT BiH also exists at the RTF FBiH and RT RS.
- <sup>201</sup> Each public service broadcaster has the three authorities responsible for the management and supervision of the organisation.
- <sup>202</sup> For the BBC: the BBC's public obligations are stated in its Royal Charter (1996), and its services and standards are specified in the accompanying Agreement between the Government and the BBC; For Channel 4: information from the Channel 4 website, based on obligations under Section 265 of the Communications Act 2003.
- <sup>203</sup> Amendments to the Broadcasting Act in August 2005 re-introduce a mandatory licence fee that viewers and listeners will have to pay together with their electricity bill, from 1 October 2005.
- <sup>204</sup> Data for Croatia are from IP International Marketing Committee, *Television 2004*, p. 316; and from IP International Marketing Committee, *Television 2003. International Key Facts*, November 2003, p. 18.
- <sup>205</sup> Data for Serbia-Montenegro are from IP International Marketing Committee, *Television 2004*, country report.
- <sup>206</sup> Data for Bosnia-Herzegovina are estimates from the EUMAP national reports.
- <sup>207</sup> Data for Macedonia are from IP International Marketing Committee, *Television 2004*, country report.

- 
- <sup>208</sup> Data for Albania are estimates from the EUMAP national reports.
- <sup>209</sup> European Audiovisual Observatory, *The Yearbook 2004*, Vol. 2, p. 65.
- <sup>210</sup> Data for 2002.
- <sup>211</sup> Data for 2002.
- <sup>212</sup> Data for 2003 on 15 months.
- <sup>213</sup> European Audiovisual Observatory, *The Yearbook 2004*, Vol. 1, p. 40.
- <sup>214</sup> Data is for 2003, except for Croatia which is for the year 2004.
- <sup>215</sup> EUMAP research based on data from: AGB Puls, TNS A-Connect, IP/RTL Group: Television 2004, Visio Slovakia, AGB TNS International Romania, Radio and TV Programs in Slovenia by SRDF, Media Services AGB Slovenia, GfK-USM: Monitoring SMI Ukraine, AGB Ukraine, Ukrainian expert estimations; AGB Puls Croatia, AGB Hungary, Noema Bulgaria, TNS-Emor Estonia, TNS BMF Latvia, TNS Gallup Lithuania (Data for Croatia in this table was provided via e-mail by AGB Puls Agency (for the year 2004).
- <sup>216</sup> IP International Marketing Committee, *Television 2004*, country reports.
- <sup>217</sup> In some countries, there is a big gap between gross and net figures due to large discounts and commissions employed. Such countries include Romania, Turkey, Hungary.
- <sup>218</sup> The share of television spending listed for Latvia is from the net figure.
- <sup>219</sup> Data for Bosnia & Herzegovina is net figures for the year 2002. All data for Bosnia & Herzegovina are highly approximate (see EUMAP country report).
- <sup>220</sup> Estimates by Albanian Centre for Media Monitoring (see EUMAP country report).
- <sup>221</sup> IP International Marketing Committee, *Television 2004*, country reports.
- <sup>222</sup> Private and collective dishes.
- <sup>223</sup> The figures for Bosnia-Herzegovina are only for urban population. See: eSEEurope, *Status and Usage Report*, p. 85.
- <sup>224</sup> Figures for France are from the chapter on France in the EUMAP report.
- <sup>225</sup> IP network estimate.
- <sup>226</sup> Figure also includes terrestrial, MMDS and UPC Direct.
- <sup>227</sup> Data from 2002.
- <sup>228</sup> Estimate by the Broadcasting Council of the Republic of Macedonia.
- <sup>229</sup> Without digital terrestrial households

- 
- <sup>230</sup> IP International Marketing Committee, *Television 2004*.
- <sup>231</sup> Data from the local mobile phone companies AMC and Vodafone and Albtelecom.
- <sup>232</sup> The figures for Bosnia-Herzegovina are only for urban population. See: eSEEurope, *Status and Usage Report*, p. 85.
- <sup>233</sup> Estimate by the Statistical Office of the Republic of Macedonia.
- <sup>234</sup> Estimate by the Statistical Office of the Republic of Macedonia.
- <sup>235</sup> Estimate by the Broadcasting Council of the Republic of Macedonia.
- <sup>236</sup> IP International Marketing Committee, *Television 2004*, country reports.
- <sup>237</sup> European Audiovisual Observatory, *The Yearbook 2004*, Vol. 2, pp. 56–57.

# Albania

## 1. EXECUTIVE SUMMARY

The electronic media sector in Albania is now substantial, with many radio and television stations covering most of the country. These outlets have, for the most part, moved beyond the stage of struggling against Government attempts to control information. Even when it is politically motivated, interference with the media is exerted through economic means, such as the allocation of State advertising and Government support or obstruction of the proprietors' other business activities. However, most of the present conflicts between the Government and the media are caused by economic, rather than political, interests. Although economic conditions in Albania do not allow many of these outlets to become self-sustainable, very few of them have shut down.

While, in overall terms, the country's media legislation is adequate, revisions are still needed to accommodate new or imminent developments in the media sector. In addition, the law has not yet ensured the transparency of media ownership and financing. Moreover, it should provide better guarantees to Albanian and foreign broadcasters regarding the functioning of the media sector according to free market rules.

Apart from the letter of the law, its proper implementation has been a constant problem in the past. Improved implementation will be crucial to the healthy development of Albanian media. The regulator has not experienced a smooth progress in fulfilling its mission: its decisions have often been contested and have sometimes provoked protests. Effective self-regulation is virtually unknown. Given the lack of employment contracts for journalists and the extremely unstable labour market, self-censorship rather than self-regulation is the norm among journalists.

Overall, due both to the positive attitude of the media outlets themselves and also to the supervision of the main broadcasting regulator, the National Council of Radio Television (KKRT), most broadcasters now operate in strict compliance with broadcasting laws. However, the advent of digital broadcasting provoked some outlets to revert to bad habits until the KKRT imposed some exemplary fines.

Proper implementation of the law is especially desirable for strengthening the role of the public service broadcaster, Radio-Television of Albania (RTSH), and enabling it to fulfill its mission. The public broadcaster's role has faded steadily with the emergence of private electronic media, which are continuously investing and attempting professional improvement. While private media grow, the public broadcaster has stagnated, finding it difficult to reform the huge structure that was inherited from the communist era. The legacy of full State control has been difficult to cast off. Even



though the legal framework for the transformation of State television into a public broadcaster has been in force for six years now, accusations of pro-Government bias continue. Over the last years, none of the governing or advisory bodies at RTSH has attempted to draft the required strategy to transform the institution into an efficient public broadcaster. In addition, no solution has been found to RTSH's funding problems: its reliance on short-term State funding renders it highly vulnerable to political pressure and is ultimately incompatible with a public service mission.

More positively, the public broadcaster has been a pioneer in some new media technologies, though it remains to be seen whether these will succeed in Albanian conditions. These technologies are latecomers to the media scene and it is too early to say very much about their impact. As a matter of fact, the lack of reliable research, monitoring, surveys and other kinds of data make it difficult to reach general conclusions about developments in any area of Albanian media.

## 2. CONCLUSIONS

Television is the most influential part of the media sector in Albania. It follows that the healthy and balanced development of television is crucial to the development of Albanian society in general.

Albanian television stations have developed remarkably, considering that, except for RTSH, the oldest among them has no more than nine years' experience. Most of these stations started in a very primitive way, some even broadcasting from private homes, operated by completely inexperienced people using outdated equipment. Nowadays, most stations have good equipment and some – mostly stations in Tirana – have switched entirely to digital equipment. The quality of reporting has also increased over the years, though there is still ample room for improvement.

Unfortunately, the journalism training which has been provided in considerable quantities by various organisations, has not had any impact on the ability of journalists to organise themselves and protect their interests and their profession. Quality journalism is difficult to achieve when the journalists themselves are very often deprived of their rights. The overwhelming majority of journalists work without contracts, and there is no such a thing as collective bargaining. The country does have a Labour Code, which regulates employment relations and also applies to media outlets, but it is not respected in practice.

At the same time, media legislation has failed to satisfactorily define the rights of journalists, *vis-à-vis* owners – and even editors. The law provides no clear method of defining or proving violations of editorial independence. Because the legislation is incomplete or unimplemented, and because journalists tend to have an extremely insecure employment status, there is ample room for media owners to interfere with editorial policy in any manner, at any moment.

As a matter of fact, media owners are the driving force in the Albanian media landscape, including in television. At a time when media self-regulation is non-existent, and journalists have no effective rights, the proprietors are completely free to shape editorial policy according to their whims and interests. The proprietors often have a background in other businesses, such as construction and trade, and there are also cases when the owners have political affiliations, or even government posts, before or after holding a media business. Media ownership became a controversial issue in 2003, due to the persistent allegations that owners have traded favourable coverage of politicians for patronage of their other businesses.

The latest report of the KKRT revealed that not even one television station made a profit in 2003. They are all supported by outside sources and, on average, advertising revenue covers less than half of their expenses. In fact, the media market is so glutted it is almost deformed, with 21 daily newspapers, 45 radio stations and 73 television stations in a developing country of some 3.5 million people. Even though most of these outlets are unsustainable, the number that have stopped operating is far exceeded by the new outlets starting up. This paradox is usually explained by widespread allegations – so far unproven – that some proprietors use their media outlets as fronts for enhancing their other businesses. At the same time, although transparency has become a much-used word, it seems there are no actors with the will to push for more transparency, and the legislation does not offer much help in this area.

Encouraging transparency is only one respect in which media legislation could be improved. Since the 1990s, legislation has followed on the heels of actual developments, from the emergence of private print outlets and broadcasters, to the problem of piracy, and the appearance of digital media.

There has been no concerted attempt to address and regulate the media sector. In this context, the law needs constant revision, in order to keep abreast of developments. However, the letter of the Law on Radio and Television is less of a problem than its implementation. There are parts of the law that are rarely implemented, due to their weak definition, insufficient political will, ineffective institutions and the lack of a tradition of law enforcement. Lawlessness, inadequate regulation and individual adventurism have been the norm for private television from the beginning.

To make matters worse, the weak authority of the regulatory body has encouraged fierce controversy over its decisions. Some television stations see the KKRT as a Government-controlled body. For different reasons, many of KKRT's decisions have been ignored. The latest episode concerning digital broadcasting, and other television stations' protests against the digital broadcaster, confirmed that the KKRT still has not managed to fully stamp its authority on its field.

On a more positive note, the KKRT has managed, with considerable effort, to implement the anti-piracy law. This has increased the creativity in programmes made by television stations, and has also boosted the authority of the KKRT itself. Although this authority continues to be shaken from time to time, it can be said that the anti-piracy

measures have opened new possibilities for the development of television stations, including their professionalism.

Like the KKRT, the public broadcaster, Albanian Television (TVSH), is still struggling to break with its old image as a state-owned, unconditionally pro-Government organ. Its popularity has decreased steadily, and there is much to be done before TVSH truly deserves the title of “public service” broadcaster.

The media in Albania are generally seen as an extension of politics. This applies especially to the public broadcaster. Developments at RTSH have been characterised by unstable leadership, continuous accusations of political bias and poor quality, a bloated payroll, lack of financial transparency, corruption, and bad management.

On the whole, there is a lack of vision in media policy, especially for television and the new technologies. Policies, like laws, always trail behind the emergence of new media. More often than not, the policies accommodate the media’s needs, rather than shaping the media to improve their development. To some degree, the deficiencies of policy-making have been reinforced by the lack of research on the media, which makes it almost impossible to make reliable assessments of the impact of media on society.

### 3. RECOMMENDATIONS

#### 3.1 Policy

##### *Legislation*

1. The Government should take steps to fill the gaps in media legislation, especially those relating to new broadcasting technologies and services, with reference to international instruments on digital broadcasting and competition.
2. International and intergovernmental organisations should continue assistance to the Government and Parliament, and to the regulator – the National Council of Radio and Television (KKRT) – for the drafting of media legislation. They should urge consultation with Albanian media freedom NGOs, and associations of media professionals, as part of the drafting process.
3. International and intergovernmental organisations should continue their assistance to law enforcement agencies on improving the implementation of media legislation.

##### *Public debate*

4. Local NGOs working on freedom of expression and access to information, as well as organisations dealing with civil rights more widely, should generate a public debate on important issues related to media development in an

informed and impartial spirit, raising awareness of how the media affect citizens. Such an initiative should be strongly supported by international and European institutions, such as the European Union, the OSCE and the Council of Europe.

### *Research*

5. The Government should encourage the in-depth analysis of the media sector, with particular attention to audience research. To guarantee the independence of such research, the Government might function solely as (co)financer of work conducted by academic institutions, local or foreign NGOs or other non-State establishments.
6. Civil society organisations should urge the Government to support such independent research in the media sector.

### *Consultation*

7. The Government should consult the media owners, media freedom NGOs, associations of media professionals, and the international community – especially the Council of Europe – when taking steps that affect the media, and take their responses into account.

### *New technologies*

8. The Government should prepare a long-term strategy for media development that would anticipate the evolution of new technologies, including digital broadcasting and the Internet.
9. The Government should, as a priority, propose to Parliament amendments to the Law on Radio and Television aimed at regulating digital broadcasting, in conformity with international and European standards.

## **3.2 The Regulatory authorities (KKRT)**

### *Independence*

10. The Government and Parliament should ensure the full implementation of existing legislation, in order to respect and reinforce the independence of the regulatory authority, the National Council of Radio and Television (KKRT), in particular with respect to the nomination of KKRT members and the preparation of the KKRT's annual report.

### 3.3 Public and private broadcasters

#### *Media diversity*

11. The Government and Parliament should enforce media transparency through the full implementation of media legislation, and by regular reviews of media ownership and funding.

#### *Journalists' rights*

12. The Government should take specific steps to enforce the Labour Code in media organisations and regularly monitor its implementation.
13. Journalists' associations, with the assistance of other civil society actors, should demand enforcement of the Labour Code in media companies, and eventually collective bargaining.
14. Civil society organisations should support individual journalists whose rights are violated by media owners, State authorities or other parties.

#### *Funding*

15. The Government should establish an independent body to be responsible for the allocation of all Government subsidies to media outlets, in accordance with the principles and procedures set forth in the relevant recommendations of the Council of Europe. This allocation process should be clear and transparent.

#### *State advertising*

16. The Government should take immediate steps to ensure the unbiased and apolitical allocation of State advertising and to increase the transparency of the allocation of such advertising.

#### *Independence*

17. The Government should regularly investigate allegations of violations of media freedom and independence.

#### *Research and monitoring*

18. International and intergovernmental organisations should monitor and report publicly on violations of media independence.
19. International and intergovernmental organisations should assist with research and monitoring of particular areas of media activity, such as its independence, law enforcement, and media ethics.

### 3.4 The public broadcaster (RTSH)

#### *Reform of RTSH*

20. The Government should support the transformation of Radio-Television of Albania (RTSH) into a genuine public service broadcaster, by clarifying roles and responsibilities and guaranteeing the transparency of management.
21. Journalists' associations and intergovernmental organisations should take appropriate steps of their own to support the transformation of RTSH.
22. The Government and relevant NGOs should seek to engage all involved actors in a public debate on the future of RTSH. This should include RTSH journalists, past and present directors, the regulatory authority (KKRT), NGOs and the journalism community in general.
23. Civil society organisations should bring concerns over RTSH to public attention and request solutions from the competent authorities. Regarding TVSH, these concerns include, but are not limited to, programme quality, transparency of administration, effectiveness of management, and independence from government and political factions.

#### *Funding*

24. The Government should ascertain and publish the revenue levied through the licence fee. When this has been done, thought should be given to ways of improving the rate of payment of this fee.

#### *Programming*

25. The management and staff of Radio-Television of Albania (TVSH) should improve the quality of programming output and define a programme framework that would increase the public interest and appeal of the station.

### 3.5 Civil society

#### *Codes of ethics*

26. Journalists' associations should draft codes of ethics or amend the existing one, raise awareness of these codes, and promote compliance with them.

#### *Media associations*

27. Journalists' associations should significantly strengthen the capacities for public debate and awareness of media organisations and associations, particularly through improved cooperation and by promoting journalists' rights *vis-à-vis* media owners and the Government.
28. International and intergovernmental organisations should provide experience and assistance for strengthening media associations.



# Bosnia and Herzegovina

## 1. EXECUTIVE SUMMARY

The broadcasting sector in Bosnia and Herzegovina (BiH) is oversaturated, dauntingly complex, and financially poor. None of the broadcasters covers the entire country's territory or population. Six television channels – BHT, FTV, RTRS, OBN, TV Pink BiH, and Mreza Plus – each manage to reach some 70 to 80 per cent of the population.

After years of domination, the public broadcasters are losing their leading positions in the market. The market share of the State's three public channels fell to 32 per cent in 2004 from around 38 per cent in 2002, and has continued to decline since, while commercial networks, such as TV Pink BiH, are rapidly expanding.

The key process in the sector is the establishment of a public service broadcasting system comprising three broadcasters – BHRT, RTFBiH and RTRS – and in particular the creation of a State-wide public service television channel, BHT (part of BHRT). The main problem today lies with the political elite, which still seeks opportunities to regain control of formerly State-owned broadcasters. The elected authorities have not adopted a single piece of legislation on public broadcasting at either the entity or the State level. At the same time, other stakeholders – including the journalists themselves – have been largely indifferent to the establishment of public service broadcasting. Consequently, progress has been limited in comparison to the international effort and money invested.

New legislation is needed to create preconditions for sustainable public service broadcasting. A new draft Law on the Public Broadcasting System (hereafter, draft System Law 2004) has been in public discussion for the past year, and is currently under debate in the House of Peoples of the Parliament of BiH. The main flaw of the draft law is that it proposes a public service broadcasting structure that, with four legal entities – three broadcasters and one joint corporation – would be too complex, expensive, and prone to inefficiency to be viable in the longer term.

The development of public service broadcasting has also been hindered by funding shortfalls, due to the inefficient collection of licence fees. After a new system of licence fee collection via fixed telephone bills was introduced at the beginning of 2004, the collection rate rose rapidly to some 50 to 60 per cent. Bearing in mind some 95 per cent of BiH households have fixed phone lines, this means the collection rate has practically doubled compared to the same period in the previous year. However, the licence fee collection system remains vulnerable to misuse and political pressures.



Political self-interest also accounts for the fact that a significant number of municipal and cantonal broadcasters are still owned by local and regional governments. Privatisation has not even started, although all preconditions are in place. Local authorities are not ready to give up control of these outlets, and are blocking the process.

While the major commercial networks appear to be thriving, smaller commercial and independent broadcasters face very tough conditions. It is a puzzle how such a large number of broadcasters are able to survive in such a limited and underdeveloped market. Too many broadcasters exist without any commercial justification and even without any need for their programming on the part of audiences. The market is still distorted by donors' money and political funding of outlets throughout the country. Nevertheless, the television advertising market has seen significant growth – from some KM 40 to 50 million (€20-25 million) gross in 2002 to over KM 100 million (€50 million) in 2004, although these are rough estimates, to be treated with caution.

BiH's progress towards European Union candidacy decisively affects the television industry and the regulatory regime by ensuring that most of the relevant legislation complies with EU broadcasting standards and conditions. The legal framework is based on the Law on Communications (2002) and the key regulatory body is the Communications Regulatory Agency (RAK). To date, the RAK has acted with an impressive degree of independence from local political pressure. The RAK's operations are transparent, including the introduction of new rules and regulations, as well as in respect of licensing procedures. Broadcast licences for terrestrial radio and television broadcasting are awarded on a competitive basis. There are still, however, no convincing reasons to believe that the RAK's independence and transparency would survive the withdrawal of international protection.

Only the biggest broadcasters use media market data on a day-to-day basis. Unless this changes, it will be impossible for most outlets to plan program schedules based on real market results. An important move towards this goal was the establishment of a Joint Industry Committee for the broadcasting industry. Even in its initial phase – and it has yet to be registered as a legal entity – this Committee has managed to bring together key television stations and advertising agencies, enabling them to set higher quality standards for media market research.

In early 2004, BiH gained regulation on concentration of media ownership, finally establishing the framework for promoting competition, diversity and pluralism of ownership. The RAK's Rule on Media Concentration and Cross Ownership – which became an integral part of the Law on Communications – regulates multiple ownership, cross-media ownership and radio and television broadcast licence transferability. At present, there are still no major concentrations of the media in BiH.

The Broadcasting Code of Practices and the licence for terrestrial broadcasting (as issued by the RAK) set out principles for broadcasting programmes in BiH. The RAK is the ultimate authority on programming regulation. The core guidelines for the

regulation of programme production in respect of the obligations on public service broadcasters are contained in the Broadcasting Code of Practices; the Law on Communications, as well as in the Law on the Basis of the Public Broadcasting System and on the Public Broadcasting Service of Bosnia and Herzegovina, of 2002 (hereafter, PBS Law 2002). Public broadcasters are required to meet quotas in accordance with the EU “Television without Frontiers” (TWF) Directive: most programming must be of European origin and independent local productions must account for at least 10 per cent of broadcasting time (not counting news, sports and marketing programmes). In addition, at least 40 per cent of broadcasting time must be reserved for domestic programming across all genres, not including news and sports.

BiH scores well with regard to journalists’ freedoms compared to the rest of the region. Yet media outlets and journalists are still exposed and vulnerable to pressures exerted by owners, the State and political and religious power holders.

The involvement of civil society in media affairs is rather weak. The country urgently needs an effective watchdog that focuses on media issues, safeguarding the independence of the RAK and the public broadcasters, monitoring ethical and professional matters, and standing up for the rights of journalists.

BiH lags behind western European countries in introducing new media and information technologies. No digital satellite or terrestrial platform is in operation, and cable television has proliferated only in the past few years. There is no national plan to switch from an analogue to a digital signal, and there has been no public debate whatsoever on the introduction of new media technologies. The key domestic players – the State, the RAK and the public service broadcasters themselves – have not yet shaken off their passivity on this issue.

## 2. CONCLUSIONS

The BiH broadcasting sector is ethnically segregated, oversaturated, complex, and financially poor. It is a puzzle how such a large number of outlets survive in such a limited and underdeveloped market. Market dynamics are not the only forces driving the broadcasting sector; donor funding and political subventions still do much to distort it. The multiplicity of outlets does not therefore reflect a vibrant market, with potential for development and capable of offering a diversity of voices and opinions. It is only a matter of time before the sector undergoes significant consolidation. When this happens, only few key players are likely to survive and develop.

The creation of the broadcasting regulatory framework has been a success story. Experience has shown that a robust but independent regulatory agency with extensive powers is the right way to regulate such a chaotic broadcasting sector as in postwar BiH.

Now that the RAK has been successfully transformed from an internationally sponsored agency into a fully local State one, it has entered a more stable period – its independence is no longer a burning issue. Relations with the Council of Ministers, as well as with other State institutions, have improved. Independence from political and other pressures is also safeguarded by the strong involvement of the European Commission and the Council of Europe in the daily affairs of BiH. However, civil society is still too weak to assume the role of watchdog.

The key process in the broadcasting sector is clearly the reform of the Public Broadcasters and the creation of a single Public Broadcasting System (JRTS<sub>BiH</sub>) consisting of a State-wide public service broadcaster, BHRT, and two entity broadcasters, RTF<sub>BiH</sub> and RTRS. The process of creating public service broadcasting is slow and painful, faced with constant obstacles and resistance from power centres whose interest is not to have one State-wide public service broadcasting system. The experience of recent years has confirmed that political elites still seek opportunities to regain control of formerly State-owned broadcasters. Consequently, progress has been very limited in comparison with the time and money invested. The BiH authorities are not up to the task of establishing public service broadcasting; they have not adopted a single piece of legislation on public broadcasting on entity and State level since 1995.

Media professionals and experts generally regard the solution put forward to establish a public broadcasting system out of four legal entities – three broadcasters and one “Joint Corporation” – as too complex, inefficient, and expensive. Moreover, the proposed formula for allocating licence fees and advertising income has the potential to further undermine the plan’s long-term sustainability.

In early 2004, regulation on concentration of media ownership was introduced, finally establishing a framework for promoting competition, diversity and pluralism of ownership in BiH. The Rule on Media Concentration and Cross Ownership regulates multiple ownership, cross-media ownership and radio and television licence transferability. However, since general issues of market concentration and competition are regulated by the Law on Competition in BiH – which has never actually been implemented – the effects of the RAK’s Rule on Media Concentration and Cross Ownership are limited, since the successful implementation of this rule hinges on the implementation of the Law on Competition. Enforcement of this piece of regulation is particularly difficult, due to the lack of a central State register of companies. Formally speaking, ownership transparency is covered by various laws, but the actual search for data is difficult, and the State has no appropriate or efficient mechanisms to control the nature of company ownership, including broadcasters.

EU accession is the agreed goal of BiH internal development as well as its foreign policy. This goal also sets the parameters for media development. The preparation for future EU candidacy affects the television industry and the regulatory treatment of television by ensuring that most of the relevant legislation complies with the key EU documents relating to the broadcasting sector. In essence, BiH adheres to the

provisions of the Council of Europe's Convention on Trans-frontier Television. Moreover, BiH also recognises the need to comply with the EU's TWF Directive.

There is no serious national action plan for switching from analogue to digital signal, and there has been no public debate whatsoever on the digitalisation of broadcasting and overall introduction of new media technologies. The key players – the State, the RAK and the public service broadcasters themselves – are still too passive when it comes to introducing new media technologies in BiH.

### 3. RECOMMENDATIONS

#### 3.1 Policy

##### *Broadcasting policy*

1. All relevant players in the communications field – the RAK and individual broadcasters and their associations – should develop a strategy for Bosnia and Herzegovina (BiH) to ensure that its communications industries, including broadcasting, reach sustainability. In particular:
  - The strategy should focus on reducing the number of broadcasters, while stimulating the market environment.
  - Special attention should be given to balancing the market position of public broadcasters, on one side, and the commercial sector on the other, especially by gradually limiting the advertising revenues of the public broadcasters, as the licence fee collection system becomes more efficient.
2. The Council of Ministers and other relevant domestic and international players should lead the effort to develop sound public policy for the media and communications industry, with the ultimate goal of developing a strong and economically viable media sector. In particular, this would mean facilitating the work of Competition Councils at entity and State levels, in close cooperation with the RAK and broadcast associations, in order to eliminate the potential for monopolies and unfair competition.

##### *Legislation*

3. The Council of Ministers, and especially the Ministry of Communication, the State Parliament, RAK, OHR and EC, need to work more thoroughly on the new legislation for public broadcasters, creating a framework for truly sustainable public service broadcasting. In particular:
  - A consensus needs to be reached around a solution that would be both economically and organisationally viable and reasonable, but would also guarantee the equality of all three constituent peoples.

- In the draft System Law 2004, special attention needs to be given to the formula for re-distributing licence fee and advertising revenue among the three broadcasters, given that these are three separate legal entities. The burden of funding BHRT should fall proportionally on both entities in accordance with their population size. Arguably, advertising revenues should not be re-distributed at all but remain where they are generated, (i.e. be allocated to the broadcaster that has earned them), or at least should be re-distributed in a way that reflects the business success of each broadcaster.

### *Monitoring*

4. The European Commission and the Office of the High Representative (OHR) should, until the final hand-over of sovereign power to the elected authorities in BiH, maintain pressure on, and closely monitor, the BiH authorities – especially the Council of Ministers of BiH, and the State and entity governments and parliaments – regarding legislative reforms, the creation of sustainable public service broadcasting, and defending the independence of the RAK.

### *Policy*

5. International donors should consider supporting a BiH think-tank capable of delivering state-of-the-art policy research, in order to develop a media policy research and advocacy capacity within the media sector. The country urgently needs well-informed analysis and policy papers that could point a possible way out of the current crisis and set a course for the sound development of the media sector as a whole. Additionally, the advocacy capacity of associations of broadcasters and journalists should be improved by the transfer of know-how, training, and by funding policy-oriented initiatives of those associations.

## **3.2 Regulatory authorities**

### *New media technologies*

6. The Communications Regulatory Agency (RAK) should engage more intensively with the issue of new media technologies, as it is the only State agency and regulatory body with the capacity to push forward the debate on introducing new media technologies in BiH. In particular:
  - The first priority is to conduct a comprehensive survey of the current situation with regard to new media technologies in BiH, comparing it with other countries, and setting the agenda for policy development.
  - This should be followed by intensive advocacy, pushing for the more rapid introduction of policies to develop the information society in BiH, through publications, public debate, and contacts with relevant State institutions

(ministries and parliaments) and international agencies and organisations (OHR, EC, UNDP).

- Pressure also needs to be placed on the public broadcasters, BHRT, RTRS and RTFBiH, so that they take a more pro-active role in the introduction of new media technologies.

### 3.3 Public and private broadcasters

#### *Legislation*

7. Private and public broadcasters should engage more pro-actively in the debate over the new draft Law on the Public Broadcasting Service (draft System Law 2004), by establishing a working group, facilitating public debate and offering their own proposals for a reasonable solution that would contribute to the development of a viable and sustainable media sector.

#### *Privatisation*

8. Private and public broadcasters should engage more intensively with the debate on privatising the remaining State-owned broadcasters at the local, regional and cantonal levels.

### 3.4 Public service television (BHT, FTV, RTRS)

#### *Reforms*

9. The public broadcasters should work to ensure that the process of creating a sustainable public broadcasting system is completed as soon as possible, through the adoption of sound legislation and the complete organisational reform of the existing public broadcasting networks into editorially independent broadcasters. In particular, the public broadcasters should be more involved in the introduction of new legislation, and the management should take the initiative and drive forward the process of internal reform and streamlining of the public broadcasters.

#### *Privatisation*

10. The local, cantonal and entity authorities, along with the agencies which manage the privatisation of State-owned companies, should start the process of privatising the State-owned broadcasters at the municipal and cantonal levels. The full transparency of this process must be guaranteed, for it will radically alter the media landscape of BiH.

### 3.5 Civil Society and the non-governmental sector

#### *Journalists' Union*

11. Journalists and their associations should work together towards establishing a State-wide journalists' union.

#### *Public Debate*

12. Civil society organisations, and especially NGOs active in the field of media and human rights, should encourage public debate on the development of the broadcasting sector, as well as on general issues of independence and professionalism of media across the country.
13. Civil society organisations – including, in particular Media Plan Institute, Media Centar Sarajevo and the Helsinki Committee for Human Rights in BiH – should undertake more coordinated initiatives in this area, for example through joint initiatives. There is also a need for a specialised media watch-dog organisation to be established, that would focus on issues of media independence, media professionalism and ethics, and also be active in safeguarding the basic preconditions of the independence of the RAK and the PSB System

# Bulgaria

## 1. EXECUTIVE SUMMARY

Over the past 15 years, during its transition from an authoritarian Communist State to a pluralist society with a market economy, Bulgaria has made significant progress in creating a new media environment with independent press and broadcasting. The print sector has passed from total State control to full deregulation. Although it is in some cases influenced by corporate and economic interests, the press is currently driven mainly by market mechanisms. In the electronic media sector, the appearance of commercial media has led to an astonishing number of outlets, thus stimulating market competition and pluralism of ideas.

From this perspective, it can be claimed that the media are increasingly able to play the role of an important pillar of democracy. Nonetheless, the broadcasting industry still faces a number of problems, in particular due to a regulatory framework that is flawed both in principle and, especially, in implementation. This has been reflected in the continuous attempts at political and, more recently, corporate economic interference with the independence of both public service and commercial outlets. The 2003 IREX Media Sustainability Index (MSI) showed beyond doubt that media freedom is being undermined by ongoing political and economic interference.

An overarching problem for the broadcasting sector as a whole is weaknesses in the main broadcasting law, the Law on Radio and Television, and the lack of its correct implementation in practice. Designed to guarantee pluralism, as well as to prevent external intervention (political or economic) in the electronic media, the Law on Radio and Television – adopted in 1998 and amended several times – forms the basis of a legislative framework that has facilitated the liberalisation of the media market in Bulgaria and the adoption of the European Union (EU) *Acquis communautaire*. However, it has been clear for some years that the regulatory system, of which this law is the keystone, cannot tackle the political and economic challenges to media independence.

The lack of proper implementation of the Law on Radio and Television – even with its flaws – casts doubt on the Government's will to grant real independence to both public service and commercial broadcasters. In particular, both Bulgarian National Television (BNT) and Bulgarian National Radio (BNR) are still financed directly from the State budget, rather than from an independent public Radio and Television Fund, as envisaged in the Law on Radio and Television. The Fund should have been partly financed from a licence fee collected as part of the household electricity bill, but no mechanism has been put forward for its collection. There is a lack of political will to implement the (potentially unpopular) new licence fee. The Government has also



stated that certain governmental commitments to the IMF – agreements related to the functioning of a Currency Board as an IMF-prescribed tool to stabilise the economy – would in any case prevent its implementation. However, this situation is widely regarded as being intended to keep the public broadcasters dependent on political will.

The lack of independence of the regulatory authority and the poor implementation of the regulatory framework gives rise to a second main area of concern. Directly financed by the State budget, and composed only of members nominated by State authorities (Parliament and the President), the main regulatory authority, the Council for Electronic Media (CEM), has not provided broadcasters with the necessary guarantees for ensuring their independence from external interference. Instead, the CEM has often been used as a tool for bringing political, corporate or personal interests to bear on the electronic media.

Due to continuous political and corporate economic infighting for control of the regulatory system, the broadcast licensing process with respect to terrestrial broadcasters has been virtually paralysed. Although drafted two years ago, the “Strategy for the Development of the Broadcasting Sector” has not yet been discussed by Parliament – although it was specified in the Law on Radio and Television as an important prerequisite for improving licensing procedures. This delay has served to allow some 150 broadcasters to continue using temporary licences, without their being able to obtain a valid permanent licence, in accordance with the Radio and Television Law. This has a negative effect on overall media development, as all those who do broadcast on the basis of permanent licences regard the former as illegitimate.

With respect to public broadcasting, the management crisis at BNT from January to October 2004 revealed not only the management weaknesses, but also the lack of independence of the public broadcaster from economic and political interests. Imitating the entertainment formats of its commercial rivals, BNT has failed to establish a clear programming identity. Debates within the media community on the independence and identity of the public service broadcasters have shown that there is a consensus on the principles that should guide public service broadcasting, but not yet on how these principles should be made operational.

There is a lack of transparency of media ownership and capital in the commercial broadcasting sector, with no public register of ownership. The provisions on media ownership in the Law on Radio and Television – and also the Telecommunications Law and the Law for the Protection of Competition – aim to prevent broadcasters from monopolising or even dominating the market. In practice, however, there are no effective anti-monopoly regulatory mechanisms. Media ownership is often concealed in various ways behind ordinary shares in the company, which do not identify their owners, or offshore companies, in this way creating a non-transparent environment and enabling money with unclear origin to enter the broadcasting industry.

Bulgaria is set to join the EU in 2007, but as yet there has been incomplete compliance with European Standards in the audiovisual sector. Bulgarian media legislation has to a

large extent been harmonised with European standards and obligations, although concrete steps are needed in order to harmonise the Telecommunications Law with the EU's Regulatory Framework for Electronic Communications Networks and Services (2002). The Law on Radio and Television has been fully harmonised with the EU "Television without Frontiers" (TWF) Directive, but a lot remains to be done with respect to its implementation in practice, particularly with respect to the licensing process.

Finally, the lack of clear official policies on modern technologies and digitalisation needs to be tackled as soon as possible. The lack of officially accepted strategies on new technologies and digitalisation seriously impedes the technical modernisation of BNT and BNR. Although planned to start in 2004, a pilot project to launch the first digital television broadcasts in Sofia has been delayed due to gaps in the Law on Radio and Television, which has not been harmonised with the Telecommunications Law, and also by the blockage of the licensing process.

## 2. CONCLUSIONS

As a country in transition, Bulgaria has experienced highly dynamic development in the political, economic, social and cultural spheres. Over the last 15 years, the changes in the media sector have been remarkable. From being under total State control, the Bulgarian press has been completely privatised and deregulated. There are hundreds of newspapers, offering a variety of points of views and reflecting the entire political spectrum. Moreover, the party-affiliated press is gradually disappearing from the market, giving way to independent newspapers. There is also extensive pluralism in the electronic media, where radio and television stations are now numbered in the hundreds. All these developments have unleashed severe competition, with which the small media outlets find it difficult to cope. It is undeniable that the media industry is slowly, but clearly, becoming dominated by market mechanisms that are gradually overtaking all other factors.

Bulgaria aspires towards full EU membership in 2007. It must not only harmonise its media regulation framework completely with the *Acquis communautaire*, but also take all necessary steps to ensure its full implementation. A key challenge for the Government and Parliament is to find the most effective legal solutions to guarantee the fulfilment of European standards and requirements in the national context. The main problems of the media industry are directly related to the legislative framework for the media and its implementation in practice. Nonetheless, it should not be overlooked that in June 2004 Bulgaria closed all the accession chapters in its negotiations with the EU, which is an indicator of appropriate development. The EU regulatory framework for the media industry is, however, itself changing rapidly, due to the dynamic development of the audiovisual industry and new technologies. Hence, Bulgaria and its media community must not only address those developments, but also seek to participate proactively and competently in the decision-making process with

respect to updating the regulatory framework, and not only adapt the country's media regulation accordingly.

The main problem facing the media industry is the inability of its regulatory system to tackle effectively all the issues related to the political and economic independence of the media – and to allow the public service broadcasters to perform their function as a pillar of democratic society. The IREX 2003 Media Sustainability Index shows unambiguously that in Bulgaria media freedom is undermined by ongoing political and economic interference. In this context, the improvement and efficient implementation of media legislation remains an important factor for the political, economic and financial independence of the main regulatory authority, the Council on Electronic Media (CEM). Over recent years, Bulgarian society has witnessed a number of cases in which the CEM took strange and contradictory decisions, which were subsequently annulled by the Supreme Administrative Court. This has had negative implications for the development of the entire media environment, which still lacks stability and predictability. The CEM still does not have its own Code of Ethics, and nor are there any mechanisms to ensure that its activity is accountable to society at large.

In addition, media legislation currently allows for political and economic interference in the electronic media, which is often also reproduced by the radio and television operators themselves. The possibilities for political interference are, to a large extent, due to the way in which the CEM members are elected and the regulatory authority is composed. At present, five of the nine CEM members are elected by the ruling political party or parties represented in Parliament, which is a prerequisite for direct political influence over the electronic media. The mechanisms for economic interference are usually exercised through financial means, as the CEM relies (as do also BNT and BNR) on funding from a State subsidy, voted by Parliament, thus making it directly dependent on the will of the ruling majority. This financial dependence poses questions not only with respect to its independence, but also with respect to its administrative capacity. For example, the CEM is not capable of effectively monitoring the local and regional radio and television stations, which breaches the principles of equal treatment of the media outlets.

Economic interference in the media sector has become operational through various mechanisms and at various levels. In general, media ownership in Bulgaria remains unclear. Although the Law on Radio and Television contains provisions on licensing procedures, which require clarity about the ownership of the capital of broadcasters, ownership can be easily hidden behind bearers' shares or through offshore companies. There is no public register of media ownership and no effective anti-monopoly regulatory mechanisms. All this creates possibilities for the establishment of media monopolies or the entrance of money with unclear origin into the media industry.

There is no clarity in Bulgaria about the distribution of advertising revenue, which in turn affects media ownership and the editorial independence of broadcasters. The fact that both BNR and BNT generate advertising revenue creates additional tensions between the public and commercial broadcasters, which in turn sometimes raises

barriers to possible united efforts on behalf of the media industry in cases when important questions related to the media regulation issues are at stake.

Self-regulatory mechanisms are still not well known or well developed in the media sector. In spite of numerous attempts over the last ten years to draft and accept a unified code of ethics with defined professional standards, it is only recently that a positive basis to enforce such a code has emerged, mainly due to the assistance of foreign experts through the EU Phare Programme. The Law on Radio and Television envisages some instruments (such as editorial statutes) and requirements to guarantee the audience's right to impartial, accurate and pluralist information, but as a whole the editorial independence of the broadcasters remains problematic.

The public service mission of BNR and BNT is another crucial issue, which relates to both governance structure and programme policies (thematic quotas and quality). Public debate on public service broadcasting in 2004 showed a consensus in the media community with respect to the principles with which public operators should have to comply, but not on how these principles should be made operational. The Bulgarian model of public service broadcasting, as implemented by BNT, is not as a niche broadcaster offering content that commercial operators would not offer, but rather a mass audience broadcaster with a full range of content. The licences of the three national television broadcasters show overwhelming similarities, as far as their thematic quotas are concerned, and entertainment dominates over other programme strands in BNT output. However, a comparison of the number of staff shows that the commercial operators carry out the same tasks with five times fewer employees than BNT.

With respect to the management of public broadcasting, the recent crisis at BNT revealed various deficits that require an urgent revision of the regulatory framework. Practical experience leads to the conclusion that concentrating power in the hands of the Director General leads to "one-man management" and creates the risks of management mistakes (if not of abuse of power) with strongly negative consequences for the media and the person that bears the entire responsibility. To make matters worse, the regulatory authority does not currently have disposal over effective control mechanisms and adequate supervision and checks and balances of the Director General.

The Law on Radio and Television allows commercial operators to define themselves as "public service" outlets, provided that they carry out programme activity and broadcast production aimed at public interest. Regrettably, the number of operators that have taken this opportunity is too limited, due to the small chances that they have of competing in the media market. The non-existence of the Radio and Television Fund means that they cannot get subsidies for programmes that serve the public interest. This is directly reflected in the negligible number of programmes aimed at citizens for whom Bulgarian is not their mother tongue, as well as in the insufficiency of broadcasts for people with disabilities and underprivileged groups.

Bulgaria lags considerably behind European standards in developing the information society and spreading new technologies and services. A strategy for introducing digital

radio and television has been drafted, but has not been accepted as an official document. Although it was planned to introduce digital broadcasting with a pilot project in Sofia, broadcasts are yet to commence. There is no clear vision for funding digital broadcasting, as the transition from analogue to digital television is connected to considerable expenditure.

### 3. RECOMMENDATIONS

#### 3.1 Media policy

##### *Legislation*

1. The Government should ensure that the Law on Radio and Television is completely harmonised with the EU *Acquis communautaire* to ensure predictability, transparency and effective implementation of audiovisual policy.
2. Parliament should, as a priority, accept an updated “Strategy for the Development of Radio and Television in Bulgaria” as is stipulated in the Law on Radio and Television, in order to de-block broadcasting licensing procedures as soon as possible.

##### *Digitalisation*

3. The Government should accept a concrete strategy on digitalisation. The draft “Strategy for the Planning of Digital Terrestrial Broadcasting in the 174-230 MHz and 470-862 MHz Frequency Bands” needs to be updated, and, moreover, has never been officially approved.

#### 3.2 Regulatory authorities

##### *Independence*

4. Parliament should, following a process of wide consultation with media experts and NGOs, introduce amendments to the Law on Radio and Television to better ensure the independence of the main regulatory body, the Council for Electronic Media (CEM). These amendments should, in particular, do the following:
  - introduce a civic quota in the CEM’s composition, capable of providing adequate checks and balances;
  - introduce mandatory qualified majority voting for the election of the members from the parliamentary quota, in order to guarantee the *economic* and *political* independence of the regulatory authority (even if this might require a change in the Constitution);

- envisage a mechanism to hold CEM members responsible (as individuals or collegially) for those of their decisions that have proven to be in breach of the law as decided by the Supreme Administrative Court;
- create new mechanisms to guarantee the *financial* independence of the regulatory authority as an alternative source of funding to the State subsidy.

#### *Copyrighting*

5. The Government should amend the Law on Radio and Television to increase the remit and the responsibilities of the CEM with respect to the observation of the copyright and related rights.

#### *Monitoring*

6. The Government should increase the administrative capacity of the CEM, with respect to the monitoring of local and regional broadcasters, in order to ensure equal treatment of broadcasters at the national and local levels. This should include the provision of higher levels of funding.

#### *Professional ethics*

7. The regulatory authorities – the CEM and the CRC – should develop a Code of Ethics with detailed clauses on preventing conflict of interests.

### **3.3 Public broadcasters**

#### *Funding*

8. The Law on Radio and Television should be changed to envisage new mechanisms that can guarantee the financial independence of public service radio and television, as an alternative to the Radio and Television Fund.
9. The Government and Parliament should amend the Law on Radio and Television to define concrete principles for targeted funding of the public broadcasters, and for the production and broadcast of public service programmes, along with the relevant mechanisms for civic control over their expenditures.

#### *Management*

10. The Government and Parliament should amend the Law on Radio and Television to define new mechanisms of election and appointment for the management of BNR and BNT, as well as a new division of rights and responsibilities between the Management Board and the Director General, in order to optimise the effectiveness of their performance and administrative structure.

*Programming*

11. BNR and BNT should develop new programme schemes that better respond to concrete social needs and public expectations of the public service broadcasters.

**3.4 Commercial broadcasters***Transparency and media diversity*

12. A public register for media ownership in Bulgaria should be implemented as a self-regulatory mechanism within the media community.
13. The Government and Parliament should take steps to liberalise all procedures related to changes in the ownership of the broadcasting licences, and make them transparent to the public.
14. Journalists' associations and other media NGOs should debate media concentration in order to try and define thresholds needed to protect pluralism. The Government and Parliament should take account of these proposals when preparing new or amended legislation on this matter.

*Public service broadcasting*

15. The Government and Parliament should amend the Law on Radio and Television to offer chances for commercial operators to compete for public financing to produce programmes that meet the public interest. The provisions of the Law on Radio and Television on commercial operators defined as public service providers should be reviewed to allow additional stimuli.

*Professional ethics*

16. All parties signatory to the Ethical Code of the Bulgarian Media should ensure that the Code is respected in practice.
17. The Bulgarian media community should adopt new self-regulation mechanisms with respect to the fair implementation of the peoplemetry system, which is currently argued about and its results disputable in the community.

# Croatia

## 1. EXECUTIVE SUMMARY

The development of a democratic media system in Croatia was slow in the 1990s. The position of the public service broadcaster, Croatian Radio-Television (HRT) was among the main areas of contention between Croatia and the European institutions. Government pressures on HRT and the independent media, as well as the atmosphere of intolerance and arbitrariness in dealing with the media, were among the important reasons for the delay in the pace of Croatia's European integration.

As media freedom, pluralism and independence are considered among the political criteria for democratic development and eligibility for membership of the European Union (EU), this area has been closely supervised by different international organisations, including most notably the Council of Europe and the OSCE. The progress that has been achieved is a result of several combined forces. The international pressure that was put on the Government went hand in hand with the activities of NGOs and civil society and professional organisations in the country. The mounting public consensus regarding the freedom of the media and their independence from the Government was also a necessary ingredient. The year 2000 was a watershed for the new approach to media policy in Croatia, when public consensus on the need for fundamental reforms was coupled with the electoral victory of a coalition of democratic parties.

The body of media regulation was changed after 2000 to include in the media legislation more standards derived from the relevant documents of the EU and the Council of Europe. In spite of important progress in this regard, some adjustments are still needed in the area of broadcasting, in order to fully implement best practice, including the correct transposition into national law of the EU "Television without Frontiers" (TWF) Directive.

Mention also needs to be made of the 1991–1995 war as a factor in the development of media policy. Croatia restored control over most of its occupied territories by military action in 1995, and over the remainder by peaceful integration in 1998. Although the war context was not mentioned in any of the parliamentary debates relating to the adoption of media legislature during this period, it was clear that this context hampered the development of an independent media system. Progress after 1996 was rapid, with increased action by civil society, which, in cooperation with international organisations, succeeded in putting media democratisation high on the agenda of the then opposition parties, which went on to win the parliamentary election in 2000. In July 2005, the OSCE Mission in Croatia found that the development of democratic institutions and civil society, and the enhancement of media freedoms, had reached an advanced stage. However, it highlighted the need for further reform of



media legislation, including the need to shield the broadcasting regulators from political interference and involve a stronger role for civil society in media supervision.

Television is the most used medium in Croatia – 87 per cent of the population aged from 10 to 74 watch television every day. A dual broadcasting system was introduced in the 1990s, but the State-owned public service broadcaster, Croatian Television (HTV), then with three (now two) terrestrial television channels, has remained the dominant outlet during the past decade. The television sector developed during the 1990s to include 14 regional and local television stations, but became more competitive after 2000, with two new commercial television stations at the national level. The sector is now increasingly competitive, diverse and pluralistic at the national, regional and local levels. It will be important to monitor audience concentration in the future, and to undertake measures to promote pluralistic and diverse programme production on the part of HRT and local and regional television stations.

The Law on Electronic Media regulates commercial television and radio broadcasting, and its provisions regarding content also apply to the public service broadcaster, HRT. Since 2003, the Council for Electronic Media (CEM) has been the regulatory body in charge of giving and revoking broadcast licences. Its remit includes the monitoring of broadcasters' contract compliance and programme compliance. Broadcasting independence is ensured by law, but in practice depends on the independence and impartiality of the regulatory bodies, as well as the performance of journalists and editors. While there is room for improvement in this regard, the overall independence of broadcasting from the State has been greatly increased in the last five years.

The Law on Croatian Radio-Television (HRT) defines the legal status of the public service broadcaster as a public institution. HRT is composed of Croatian Television (HTV), with two terrestrial and one digital satellite television channels, Croatian Radio (HR), with three terrestrial radio channels at the national level and eight regional channels, and music production. HRT is funded by the licence fee, and is allowed nine minutes of advertising per hour. The HRT Programme Council protects the interest of the public, and appoints the HRT management. The Council is appointed by Parliament from a list of candidates proposed by civil society.

The public service remit of HRT includes the obligation to broadcast information, educational, cultural and entertainment programmes. Its information programme must be produced in accordance with professional standards of independent journalism. There is also an obligation of public service programming for commercial broadcasters, with quotas for information programmes, Croatian language, and Croatian and European audiovisual works.

The Law on Electronic Media restricts radio and television ownership as well as cross-media ownership, with a view to restricting concentration. A broadcaster (except HRT) can, as a rule, only broadcast radio *or* television programmes. The Law on the Protection of Market Competition applies to the media as well, and press concentration is regulated more specifically in the Law on the Media. The CEM and

the Agency for the Protection of Market Competition should cooperate in matters of concentration control. The media have recently been obliged to publish data on ownership structures, audiences and revenues, but ownership transparency is still poor.

The advertising market is growing quickly, and television still holds the biggest share. HTV is losing its position as market leader in advertising, as a significant share is taken by two commercial television stations at the national level. The local television sector is also the loser in the increasingly competitive media market. In 2004, two powerful foreign media companies – RTL and CME – own the two commercial television channels broadcasting at the national level. The daily press sector also has a significant share of foreign owners, with WAZ (Westdeutsche Allgemeine Zeitung) and Styria, from Germany and Austria, respectively, in the leading positions.

The sector of new media platforms – satellite, cable and broadband – is in the portfolio of the Ministry of the Sea, Tourism, Transport and Development, and is covered by the Law on Telecommunications and the Law on Electronic Media. The independent regulatory body for these media platforms is the Croatian Telecommunications Agency (CTA). The CTA deals with the technical aspects of broadcast licences, while the CEM is in charge of the content aspects. However, it is the CEM which issues the broadcast licence. Internet use is increasing, and is expected to reach 30 per cent of the population in 2004. Broadband access is low. Cable has a low penetration rate, of some 18 per cent of households, and satellite is present in 30 per cent of households. There is no public policy for digital switchover. There is a general lack of public policy and strategy in developing the new media sector.

Parliament ratified the Council of Europe's Convention on Transfrontier Television (ECTT) in 2001. Croatia became an EU candidate country in June 2004. However, as of mid-2005, the EU was still reluctant to start negotiations about Croatia's EU membership, because it considered the Government's cooperation with the International Court Tribunal for War Crimes in the former Yugoslavia in The Hague to be insufficient. Croatia's compliance with EU audiovisual and telecommunications policies was evaluated in 2004 by the European Commission, which confirmed that Croatia satisfies the Copenhagen political criteria, and is regarded as a stable democracy with a functioning market economy. Although further harmonisation will be needed, the Commission expects that Croatia will fully comply with EU broadcasting standards requirements in the medium term, provided that the country continues to implement the adopted legislation. However, it notes that a sustained effort is required in order to bring the telecommunications sector (including new media) up to standard.

## 2. CONCLUSIONS

In recent Croatian experience, civil society and professional organisations, as well as the international community, had the greatest impact on advancing media freedom.

Freedom of expression, transparency in frequency allocation, and the protection of journalists' freedom to investigate and report controversial Government activity were issues readily supported by all democratically minded political agents.

After basic democratic norms in the field of press freedom had been largely achieved, public debate shifted to more controversial and interest-based issues. There is now the appearance of lobbying by interest groups. Civil society can still be influential in issues related to diversity and pluralism. The impact of Croatia's EU candidacy will certainly show in terms of increased influence on the media system by the EU, in terms of both regulation and best practice.

Television in Croatia is rapidly becoming a competitive sector, with significant foreign ownership. This is a new development, as foreign capital entered the television market only in 2003–2004 – and then with a bang. Both commercial television broadcasters at the national level are fully or predominantly foreign-owned. The increased competitiveness of the sector became possible due to amendments to the relevant laws in 2003, which lifted the previous limitation of one third in the ownership (foreign and domestic) in one media company.

The role of the Government and the media regulatory bodies is of high importance in ensuring editorial diversity in information programmes, as well as cultural diversity in audiovisual production in general (including local creativity). Unless serious attention is paid to this immediately, the consequences could be grim – there is an evident tendency to lower standards of quality in exchange for greater audience shares. In the context of increased global media concentration, protecting editorial diversity is becoming a global issue. Croatia should take care to ensure the continuation and development of local production, as a way of ensuring local cultural diversity and media pluralism.

Editorial independence and political impartiality have increased over recent years, and it is vital that these gains should not be lost. Indications that old habits of Government intervention in HTV's editorial decisions may have been reacquired call for continued vigilance by the media community, professional organisations and the international community.

Further harmonisation with EU standards and continued attention to the full implementation of laws and procedures will be necessary in the coming years, if the expected standards of media independence and freedom are to be maintained and improved. Especially important is also the development of new media, which is not yet part of public policy. An increased effort on the part of the public authorities and regulatory bodies is necessary in this area, in order to ensure that the policies that are adopted can facilitate the development of digitalisation in television broadcasting, as well as the protection of the pluralism of channels and content in the future networked environment.

The advertising market in the media is growing rapidly. This is still a developing market, with a higher growth potential than in the saturated Western European markets. Growth is slowest in the television sector, which already has the greatest market share. This trend will probably continue, although fresh money and increased competition between the two commercial television stations are expected to increase overall spending in the audiovisual industry and create a more competitive media market.

The public service broadcaster, HRT, will also feel the pressure of competition, and its response will be crucial for the future shape of the audiovisual space. The present response, evident in 2003 as an answer to the challenge of Nova TV, is an increased commercialisation, mass-market programming, and a decrease in programming quality. HRT is increasingly producing franchised game shows (such as *Who Wants to be a Millionaire?* and *The Weakest Link*), and is investing less in educational, documentary and fiction programmes. HRT is trying to compete for advertisers by maximising audiences against commercial broadcasters. If HRT succeeds, it will have abrogated its public service duties. Hence, it is imperative for HRT to devise a smarter defence, which will always keep in mind the obligations that it has in providing information, culture, education and entertainment as a public service.

At present, the diversity of editorial units in the television sector is good, while the diversity of information programmes should be further improved, with topics outside mainstream politics and economics. Quality programming can still improve, but this is a truism that holds for most contemporary media. The concern is for the future, when the pressures of the market start bearing down on issues such as editorial diversity. For instance, will the new foreign owner of Nova TV keep an independent newsroom, or will Nova TV follow RTL Televizija down the road towards internationally produced, general-interest “infotainment”, with inadequate local news production?

### 3. RECOMMENDATIONS

#### 3.1 Policy

##### *Media diversity*

1. The Government and Parliament, civil society organisations, media professionals and other agents in the media field should continue and enhance their endeavours to expand media independence and freedom in Croatia, especially in the context of ensuring the full compliance of national media legislation with the *EU Acquis communautaire*.
2. The Ministry of Culture should ensure transparency in the working of the newly established Fund for the Promotion of Diversity and Pluralism of Electronic Media.

3. The European Commission and the Council of Europe (CoE) should continue monitoring the Government and other political and business agents in Croatia, with respect to their approach to media independence and diversity.
4. Parliament and the Government should ensure in future that media policy safeguards and enhances the independent position of the public service broadcaster, HRT, both with respect to the assurance of its continued independent financial position and multiple sources of financing (licence fee and advertising), as well as editorial freedom, especially in regard to its role of contributing to the cultural diversity and creativity in the Croatian media space.

#### *Coordination and cooperation*

5. The Government should take steps to ensure enhanced networking and cooperation among its ministries in the field of media policy. This should include establishing a Standing Inter-Ministry Media Committee, to include *inter alia*, the Ministries of Culture, Telecommunications and Foreign Affairs (in charge of European integration and multilateral cooperation).

#### *Professional expertise*

6. The Government should establish a special media department at the Ministry of Culture to ensure expertise when dealing with the media issues that are under the competence of this Ministry. This new department should, as part of its functions, ensure that the Government stays abreast of the rapid developments in the international media industry.

#### *New technologies*

7. The Government should develop policy in the field of new media platforms – such as satellite, cable and digital television – and new services, to ensure the development of the sector in the service of pluralism and diversity. The Government should fully involve non-governmental experts and academia in the development of this policy.

#### *Research*

8. The Government and Parliament, academia, NGOs and other interested parties should work together to encourage scientific research resulting in a body of publicly available knowledge about the media system – including media programmes, markets and audiences – as a precondition for informed policy-making in the public interest.

## 9.2 Regulatory authorities

### *Monitoring*

9. The Council for Electronic Media (CEM) should establish a unit to monitor the compliance of the broadcasters with their obligations as set out in the broadcasting licence.

### *Media diversity and transparency*

10. The Council for Electronic Media (CEM) should take steps to ensure broadcasters' compliance with legal requirements for transparency of ownership and provision of credible data on their audience share.

## 9.3 Industrial relations and ethical issues

11. Trade unions representing the interests of media professionals and associations of journalists should work closer together to protect the rights of employees in the media industry, including action to ensure the fair treatment of journalists and other employees in commercial media under foreign ownership. They should also work with media owners to increase professional journalistic standards and ethics.

### *Independence and unbiased reporting*

12. Associations of journalists, NGOs, political agents and other interested parties should continue to work to safeguard the independence of the editorial policy of broadcasters in Croatia, in particular the public service broadcaster. Attempts to influence the broadcasters for particular political or business interests should be exposed to the public.



# Czech Republic

## 1. EXECUTIVE SUMMARY

When communism fell in 1989, the Czech Republic's electronic media underwent rapid transformation. State-owned radio and television stations became public service entities, private radio stations proliferated and the first national commercial television station, TV Nova, started broadcasting in the early 1990s, swiftly gaining huge popularity.

However, the past decade also witnessed serious turbulence in the development of the broadcasting sector, stemming mainly from lengthy disputes over TV Nova's ownership and a crisis in public service television – which climaxed at the end of 2000 and fomented the largest public protests since communism's collapse.

Inefficient and highly politicised regulation was largely to blame. Parliament's Chamber of Deputies exerts a tight stranglehold over the country's electronic media regulator, the Council for Radio and Television Broadcasting (RRTV). Parties represented in the Chamber both nominate members and hold them accountable; the temptation to “cherry pick” members, and thereby exert control over the Council's decisions, is all too seductive. Moreover, it takes just two votes by deputies to dismiss the entire Council – many of whom are former politicians – by rejecting its annual report. This happened twice, in 1994 and 2003. All media experts and Council members interviewed for this report said that on both occasions the sackings were political rather than done for professional reasons.

Such excessive political control extends to the entire broadcast sector. As well as electing members to the supervisory bodies of public service broadcasters – Czech Television (hereafter, Czech TV) and Czech Radio – the Chamber also decides on how high to set the licence fee, which is both broadcasters' main source of income. The law does not oblige Parliament to take into account economic factors, such as the rate of inflation, when setting the licence fee. The Chamber is therefore free to use the fee as a bargaining chip to control the cash-strapped public broadcasters.

Journalists do not experience direct interference by politicians or private groups. However, broadcasters are aware of pressures on the management and supervisory level, from the Government, political parties and other interest groups.

The Czech media market attracted scores of foreign investors after communism's fall. Weak broadcasting regulation played a vital part in various ownership disputes that came to dominate the Czech Republic's commercial broadcasting scene since 1999. However, at the time this report was written, these wrangles had been resolved, albeit uneasily.



Persistent lobbying by commercial television stations strongly influences how media legislation is shaped. This, say media observers and local advertisers, mainly serves the interests of commercial broadcasters.

Most media observers and players agree that regulation of electronic media must be improved. The broadcasting regulator is not legally entitled to pursue investigations of important issues, such as ownership of commercial television or malpractice in the competition for advertising revenue. The need for a proactive broadcasting regulator is even greater in the Czech broadcasting market, which is characterised by a low level of competition. There are only three national broadcasters: Czech TV, with two channels, and two commercial television stations, TV Nova and Prima TV. In the past, there have been occasional reports in the media indicating that TV Nova and Prima TV have covertly cooperated in various fields, such as advertising sales. However, industry insiders and media observers say that the two stations have recently started to employ different business strategies, and now genuinely compete with one another. This could be attributed to the upcoming digitalisation of broadcasting, which, it is hoped, will boost competition on the market, since this will bring several more national channels.

European standards have been incorporated into Czech media legislation since 2001. Compliance with the EU “Television without Frontiers” (TWF) Directive is embedded in the Broadcasting Act 2001 and is observed by both public and private broadcasters. A new Electronic Communications Act, which entered into force in May 2005, distinguishes between the regulation of signals transmission and content. The Electronic Communications Act was expected to consolidate the entire legislation on communications, including telecommunications, broadcasting and digitalisation. However, the final version of the act did not incorporate existing broadcasting legislation, nor did it contain a clear legal framework for the introduction of digitalisation. Since the industry considers EU norms the highest benchmark, its main actors – who do not see any need to change the current model of regulation – regard formal adoption of EU media legislation as sufficient for regulating the electronic media.

Digitalisation, now a hot topic among experts and professionals, is still poorly understood on wider platforms. The debate among media professionals is currently dominated by the dispute over the regulation of digital licences and the chaos caused by the lack of clear legal guidelines for the launch of digital television. The RRTV launched the tender for granting digital television broadcast licences, even though Parliament had failed to approve new legislation regulating digital broadcasting. It accepted applications for digital licences until late December 2004, but then, under pressure from Members of Parliament, postponed the public hearings of bidders until summer 2005. Parliament is now expected to pass the new legislation in autumn 2005. Meanwhile, the digitalisation debate has yet to reach the general public.

## 2. CONCLUSIONS

Television in the Czech Republic confronts three main challenges: inadequate regulation resulting in ownership disputes, lack of competition, and the uncertainty hanging over the future of public service broadcasting.

Problems over regulating the broadcasting market stem mostly from the vagueness of broadcasting legislation and the power that the Chamber of Deputies holds over the national regulator of electronic media, the RRTV – in particular with respect to the nomination of its members. Political nomination by one institution has even been damaging for the reputation of the Czech Republic abroad. In the dispute over commercial TV Nova, the RRTV was viewed as protecting the interests of commercial broadcasters and of the minority cabinet at the time. Its faulty performance and behaviour were considered the main reason why the Czech Republic lost an international arbitration and paid hundreds of millions of dollars in damages.

However, not even this international scandal was a strong enough motivation to change the broadcasting legislation to create conditions for a strong, independent regulatory body that would be respected by broadcasters and work to build a transparent, competitive television market.

Although in line with European standards, Czech broadcasting legislation is not a strong tool for regulation. Candidacy for EU membership, followed in 2004 by accession, has not changed much in the field of broadcasting regulation. The EU legal framework had a significant influence on the provisions in the Act on Electronic Communications, which entered into force in May 2005.

The central challenges to the health of the broadcasting sector are the creation of a competitive television market and the reform of public service broadcasting to ensure its survival. The public service broadcaster remains the only serious rival of commercial broadcasters Prima TV and, especially, TV Nova. A healthy public broadcaster, capable of offering a qualitative alternative to commercial broadcasting, needs legislation that would ensure stable and adequate funding.

Another challenge concerns the lack of transparency of media ownership. Deficient regulation has resulted in non-transparent ownership structures of commercial broadcasters and costly international arbitration. Czech broadcasting law is tailored to the needs of the big commercial broadcasters. There is an absolute lack of control over the connections between the ownership of the different broadcasters, which makes media ownership non-transparent.

Television stations in the Czech Republic can be generally described as free and independent. There have been signs of negative influence of economic pressure jeopardising the independence of the television sector. Some experts also point to the phenomenon of “mediacracy”, signifying the politicians’ dependence on the media. Print media have been more efficient in revealing cases of political corruption. Most of

the recent domestic political scandals were exposed first by the print media. Television stations do not contribute to the refinement of the political environment by providing high-quality information.

### **3. RECOMMENDATIONS**

#### **3.1 Media policy**

##### *Digitalisation*

1. The Government should initiate a public debate on digitalisation policy.
2. In Government policy on digitalisation, public service broadcasting should be retained under certain circumstances.

##### *Public consultation*

3. The Government should develop and implement policy to set up new mechanisms of supervision of broadcasting by the public.

#### **3.2 Regulatory authorities**

##### *Independence*

4. The Government should put forward legislative changes to increase the independence, sanctioning power and effectiveness of the Council for Radio and Television Broadcasting (RRTV).
5. The Government should initiate a public debate, involving media experts and NGOs, on the issue of nomination of the members of the Council for Radio and Television Broadcasting (RRTV), and should initiate legislative changes to reform the RRTV so that its membership ceases to reflect the distribution of power in the Chamber of Deputies. This reform should ensure a broad social and professional representation.
6. The Government should propose legislative changes to ensure that the Council for Radio and Television Broadcasting (RRTV) has a stable and long-term source of financing. This funding should be sufficient to secure the Council's independence and should not be used by the Government as an instrument to exert influence over the activities of the Council.

##### *Media diversity*

7. The Government should propose legislative changes to entitle and oblige the Council for Radio and Television Broadcasting (RRTV) to ensure transparency of ownership structures of the holders of broadcast licences.

*Regional and local broadcasters*

8. The Council for Radio and Television Broadcasting (RRTV) should develop a strategy for encouraging the development of regional and local television stations.

*Media diversity*

9. The Government should initiate changes in legislation to entitle the Council for Radio and Television Broadcasting (RRTV) to monitor all tiers of ownership in companies owning broadcasters.

*Public consultation*

10. The Council for Radio and Television Broadcasting (RRTV) should support the formation of an association of viewers, and oblige television stations to allot them broadcasting time to express their views.

**3.3 Public television (Czech TV)***Independence*

11. The Government should initiate a public debate on the issue of nomination of the members of the Czech TV Council and Czech Radio Council.
12. The Government and Parliament should ensure the status of Czech TV as an independent public service corporation, by abolishing the Chamber of Deputies' control over the station's Council and management.

*Funding*

13. The Government should initiate legislation that would allow Czech TV to carry advertising until the switch over to digitalisation, in order to maintain a certain degree of competitiveness in the television market.
14. The Government should propose changes of legislation to regularly raise the TV and radio licence fee in line with the rate of inflation or the retail price index.

*Professional ethics*

15. The Government should ensure that the Czech TV Code, especially the part concerning editorial activity, is drafted and agreed upon by the editorial staff, rather than approved by Parliament. The Code should be publicly disseminated.

### 3.4 Commercial broadcasters

#### *Media diversity*

16. Parliament should take steps to amend legislation to impose limits on cross-ownership in the print and broadcasting sectors.

#### *Professional ethics*

17. The Council for Radio and Television Broadcasting (RRTV) should require applicants for broadcast licences to submit internal codes of conduct or ethics, as a precondition for receiving a licence to run a commercial television station.

#### *Enforcement*

18. Parliament should amend the Broadcasting Act to empower the RRTV to enforce the licensing conditions, based on which television stations have been granted their broadcast licences.

# Estonia

## 1. EXECUTIVE SUMMARY

The Estonian television sector has undergone fundamental changes since 1990. The former Soviet-controlled State television was transformed into a public service broadcaster, private broadcasters blossomed in 1993, and the Russian-speaking population were catered to primarily through Russian programmes rebroadcast through cable networks. However, liberalisation was followed by consolidation as private broadcasters made heavy losses, and private broadcasters came under the ownership of Scandinavian investors.

With 1.36 million inhabitants, Estonia is an extremely small market for television broadcasting. Revenues are further limited by the dominant position of the printed press in the advertising market. However, Estonians are keen watchers of television, while the two communities – the majority ethnic Estonians and the Russian-speaking minority – have radically different patterns of television consumption.

There are three national terrestrial broadcasters: the public service broadcaster Estonian Television (ETV), and two private broadcasters owned by Scandinavian investors. Although private broadcasters made heavy losses in the 1990s, they appear to have reached break-even point, especially since advertising on ETV ceased in 2002, in order to create more favourable conditions for private broadcasters. However, the State has failed to ensure stable and sufficient financing for the public broadcaster.

The Broadcasting Act defines three broadcasting regulators with different competencies: the Ministry of Culture, the Broadcasting Council and the State Communications Board. The Ministry of Culture has proposed the establishment of a single new, independent regulator for broadcasting, but there is no consensus among ministries over the wisdom of establishing the new regulator or its likely remit.

Broadcast licences are issued by the Ministry of Culture on the basis of open contests. A commission of representatives from a variety of institutions recommends a winner; the Minister makes the final decision, which has not always been the same. Television broadcasters must provide “universalist” coverage, satisfy quotas derived from EU requirements and fulfil the commitments they make in their licence application. The Media Division of the Ministry supervises fulfilment by private broadcasters of their obligations, and may impose penalties for violations, including revocation of the licence.

Estonian law both guarantees the independence of broadcasters from the State and prescribes political balance, and this does not appear to have been threatened in practice. The independence of ETV may be indirectly affected by restriction of its budget by politicians, the Estonian Journalists’ Union is weak as most active journalists

are not members, and the editorial independence of private broadcasting stations from their owners is unregulated. However, good practice appears to have prevented interference by owners, although more research is needed in this area.

The public service broadcasting sector consists of Estonian Television (ETV) and Estonian Radio (ER), which were separated in 1990. The Government is currently planning to merge the two companies again to yield savings. In the Broadcasting Act, the main law regulating the broadcasting sector, the remit of public broadcasting is stated in very broad terms, and ten years after its adoption the Act does not present an up-to-date concept of public broadcasting. This gap has to some extent been covered by the “Development Plan for ETV and ER for 2003–2005”. However, many of its provisions cannot be implemented due to insufficient financing. The State subsidy that funds ETV’s activities is supposed by law to be based on three-year plans, but Parliament provides substantially less money than the plan envisages (30 per cent less in 2004). The shortfall and unpredictability of ETV funding prevents the broadcaster from fulfilling its remit optimally.

ETV is accountable to the Broadcasting Council, which enforces the provisions of the Broadcasting Act and its own written guidelines for accurate and balanced coverage. Since 1999 the Council has removed two Director Generals of ETV. The Council has initiated cases concerning violation of programming obligations only exceptionally. There is no clear system known to the general public for receiving or dealing with complaints either against ETV or private broadcasters.

ETV has largely succeeded in fulfilling its role as a public broadcaster. It remains Estonia’s biggest producer of original programmes in Estonian and Russian language, and is the main producer of news and political, educational, cultural, sports and children’s programming. Since it ceased selling advertising in 2002 – in order to create more favourable conditions for private broadcasters – it has been enabled to refrain from commercial temptations and its output has become more public service-oriented. Official policy recognises the wisdom of opening a second ETV channel to better serve the interests of non-Estonian speaking audiences and other groups, but this is unlikely to happen given current trends in funding.

The commercial broadcasting sector exhibits considerable vertical and horizontal concentration, especially through the extensive holdings of Norwegian Schibsted. The law currently does not provide for any measures to be taken against concentration that occurs *after* a broadcast licence has been allocated. The Government and regulators have failed to state a clear position regarding concentration, although there appears to be an informal presumption that concentration is inevitable in such a small market. The impact of media concentration has not yet been studied thoroughly. Private broadcasters’ programming consists mainly of entertainment.

The editorial independence of commercial broadcasting companies depends largely on good practice. The Broadcasting Act prohibits sponsorship for news and current affairs programmes. Ongoing research indicates that news programmes are influenced very

little by private interests and news content maintains a high degree of independence from PR pressures and other external pressures. The Broadcasting Act also prohibits influence by sponsors on the content or scheduling of other programmes, but in practice such influence is common and visible. Both public and private television claim to follow the Code of Ethics of the Estonian Press, and the public broadcaster is also governed by formal guidelines set by the Broadcasting Council.

There are only five general programme obligations for television broadcasters, two of which are derived from the EU “Television without Frontiers” (TWF) Directive. The so-called “Euro quotas” have drawn criticism from Estonian industry representatives for not taking into account the specific nature of small markets. In addition, the quotas as translated into Estonian law are in places more restrictive than the Directive itself.

The introduction of new media technologies to the TV sector is at a very early stage. The Government adopted a “Concept of Digital Television” in June 2004, while a strategy for broadband services was approved in April 2005. A test multiplex was launched in Tallinn in May 2004, and is expected to operate until 1 January 2007. The Concept includes a rough timetable for the transition to digital broadcasting, with the final switch over envisaged in 2015. However, the Concept provides insufficient incentives to broadcasters, and the development of digital television therefore remains uncertain.

## 2. CONCLUSIONS

Television in Estonia has undergone fundamental transformation since 1990, through the creation of a public service broadcaster, a (now) profitable private broadcasting sector and a thriving cable sector. However, the sector still faces significant problems. Estonia still lacks a clear and comprehensive policy for the broadcasting sector, and specifically on the role of broadcasting in general and the rights and relations of citizens in relation to broadcasting. This is reflected in a number of specific unresolved issues in the sector.

First, the regulation and supervision of television broadcasters remains very light. In particular, the Ministry of Culture does not play a sufficiently active role in monitoring broadcasters and enforcing fulfilment of their legal and licence obligations. While the Ministry of Culture initiated proposals for the establishment of a new independent regulator to carry out all supervision and licensing, leaving the Broadcasting Council only to carry out regulatory activities specifically needed for ETV, the reform process has stalled as a result of lack of consensus between different ministries.

Second, the financial situation of ETV remains a source of concern. Funding is unstable, non-transparent and insufficient, preventing ETV from being a fully-fledged public service broadcaster. Constraints on funding – in breach of legal commitments made in 2001 – prevent the broadcaster from fulfilling its public service obligations to the highest quality and with a longer-term perspective. Both plans to remerge ETV and



ER and recommendations to open a second public channel lack clear rationale in the absence of a clear commitment to adequate funding.

Third, while ETV has retained a vital position in the sector, its strategy concerning minority programming – and especially programming for the Russian-speaking minority – remains unresolved. This is partly the result of financial constraints (preventing the establishment of a second channel), but also of the lack of a clear broadcasting policy *vis-à-vis* this minority.

Fourth, while the consolidation of private broadcasters into two companies fully controlled by Scandinavian media companies has enabled them to achieve profitability, consolidation has also exposed the lack of clear restrictions on media concentration and cross-ownership. The Estonian Government and broadcasting regulators have failed to issue a clear opinion on the limits of concentration.

Fifth, mechanisms for processing complaints are inadequate or missing at both the public and private broadcasters. In particular, since all broadcasters left the Estonian Press Council, this has left a situation where there is no clear process by which citizens may file complaints and have a clear right to their processing.

Finally, while EU directives have been fully implemented in Estonia, some provisions have been implemented more strictly than the EU TWF Directive requires. However, the size of the Estonian television market may create room for debate on the wisdom of applying some of the directive's provisions identically in different sized markets.

### 3. RECOMMENDATIONS

#### 3.1 Media policy

##### *Broadcasting policy*

1. The Government, the Broadcasting Council and media experts should organise a public debate on the role of broadcasting in general, focusing on the rights and relations of citizens in relation to broadcasting.
2. The Government should formulate and implement a clear broadcasting policy that outlines a vision for public and private broadcasting, includes participatory mechanisms for citizen inclusion, and *inter alia* defines clearly the role of public broadcasting *vis-à-vis* the Russian-speaking minority. This policy should define tasks and goals that are measurable and whose fulfilment is therefore assessable.
3. The Government should amend the “Concept of Digital Broadcasting”, in order to address the issue of how to finance the transition to digitalisation and motivate citizens and broadcasters to participate.

*Research*

4. Academic and other research institutions should examine the performance of the broadcasting sector. This should focus, in particular, on the issues of balance and objectivity; the distinction between public and commercial services; the fulfilment of the public service remit of Estonian Television (ETV); and the impact of State authorities and owners on programming output. The Government and media industry should fund independent research in this field.

**3.2 Regulatory authorities***Reform of regulatory structures*

5. The Government should initiate amendments to the Broadcasting Act to clarify regulatory structures. These should preferably establish an independent regulator to supervise compliance of broadcasters with the requirements of the Broadcasting Act and other requirements and standards applying to all broadcasters, while leaving the Broadcasting Council to supervise the daily management of public broadcasters. Such amendments, and the activities of the resulting regulatory structures, should be directed at establishing systematic and permanent monitoring of the broadcasting sector, including programme content, to ensure compliance by broadcasters with their legal and license obligations.

*Licensing*

6. In the absence of changes in regulatory structures, the Minister of Culture should be required to fully and transparently justify any licensing decision that conflicts with the recommendation of the Commission established to examine license bids.

*Complaints procedures*

7. The Broadcasting Council, broadcasters and media organisations should establish a transparent and publicly accessible procedure for dealing with viewers' complaints against both public and private broadcasters.

**3.3 Public and private broadcasters***Media diversity and transparency*

8. The Government should initiate amendments to the Broadcasting Act to establish more clearly the principle of independence of editorial staff *vis-à-vis* owners.

*Quotas*

9. The Government should initiate amendments to the Broadcasting Act to modify quotas derived from EU requirements in order that they are not stricter than the EU TWF Directive.

**3.4 Public broadcasters**

*Independence*

10. The Government and Parliament should adopt legislation or adopt clear rules to ensure financing for Estonian Television (ETV) that is stable, independent, transparent and sufficient for it to fulfil its tasks.

*Minority programming*

11. The Broadcasting Council should specify in detail ETV's remit with respect to programming for the Russian-speaking minority.

**3.5 Commercial broadcasters**

*Media diversity and transparency*

12. The Government should initiate amendments to the Broadcasting Act to clearly address the issue of ownership concentration.

# France

## 1. EXECUTIVE SUMMARY

The history of French broadcasting and the evolution of French politics have been intertwined for the past half-century, and can be divided into three main periods. In the 1960s, known as the decade of State television, the country's political machinery exerted tight control over broadcasting. However, as of 1968, when advertising was allowed on television, French broadcasting entered an era of commercialised State television. In 1982 the State monopoly on broadcasting was abolished and in 1986 private players were allowed to enter the broadcasting market. Today, broadcasting is apparently a dual public-private system, but in reality, it is dominated by one single private company.

The regulation of French broadcasting is carried out by three main actors. The Government is in charge of designing broadcasting policies, drafting broadcasting laws and issuing decrees to implement these laws. Parliament's main mission is to pass broadcasting laws and control the funding of public broadcasters. Finally, the High Council for Broadcasting (CSA) is responsible for granting licences to private broadcasters, appointing the heads of public broadcasters, and supervising the programming of all broadcasters.

With most of its finance coming from licence fees, the French public service broadcaster is defined as the television of all the country's citizens and is assigned specific roles such as ensuring free expression for all political and social representatives of French society. French public service broadcasting consists of the television corporation France Télévisions, with three channels; the French-German ARTE channel; Radio France, which operates several radio networks; and several other smaller entities with technical or regional functions. However, although seen as the point of reference for the nation's broadcasting industry, public broadcasters are increasingly outplayed in popularity by commercial concerns and are managed more or less as private corporations. With the exception of France 5/ARTE, public broadcasting content is not very distinct from that of commercial broadcasters, which has created an identity crisis for public service broadcasting.

On the commercial television front, three national terrestrial channels are in competition. Each has a specific format. TF1 is a general-interest and family-oriented channel, M6 caters to young audiences and Canal+ is a Pay-TV channel focused on movies and football matches. The undisputed leader remains TF1, which has almost one third of the audience and half of the total television advertising revenues.

Besides specific programming obligations imposed on public and private broadcasters, all the broadcasting operators in France are subject to a large set of common regulations aimed at ensuring pluralism and diversity of opinions, protecting young audiences and limiting advertising on screen. One of these obligations, which distinguishes France from other European States, is represented by the provisions on programming quotas and restrictions, and on supporting the production of films and other audiovisual works. The requirements in these provisions are intended to protect the French language and culture.

Commercial broadcasters are also subject to intricate cross-ownership rules. However, these do not prevent concentration of ownership and consolidation of large communication groups with numerous business lines, such as cable and satellite operations, television production or video publishing.

In terms of compliance with EU audiovisual regulation, some issues debated during the ongoing revision of the EU “Television without Frontiers” (TWF) Directive are sensitive for the French authorities. For example, French regulators fear that a loose definition of audiovisual works would make the system of quotas useless. They also want EU lawmakers to clearly determine the geographical scope of national broadcasting regulators, fearing that they will not be able to regulate some French broadcasts originating from abroad. The Government also advocates a clear recognition of public service broadcasting.

The implementation of new communication technologies is rather a difficult and slow process in France compared to some other European countries. An ambitious Government plan from 1982 to introduce new technologies has not been well implemented. Only 16 per cent of households currently subscribe to cable television, while satellite reception has developed only in recent years. Nonetheless, France has engaged in digital terrestrial television, starting in March 2005, and it is now available to 35 per cent of the population. Digitalisation is officially sponsored by the Government and the CSA, but its future remains unclear. The main reasons for this uncertainty are the lack of a comprehensive business plan for the introduction of digital broadcasting, the increasing competition from the Internet (ADSL) as a television medium, and the politics of French broadcasting.

## 2. CONCLUSIONS

### *External versus internal pluralism*

The French broadcasting system is unique because of TF1’s dominant position. Although the system formally looks like a dual system divided equally in terms of number of national television stations into a public and a private sector, at the operational level it is dominated by a single private company. The situation of low external pluralism – which was certainly not designed by law or even planned by

politicians when the Law on Freedom of Communication 1986 and subsequent laws were passed – can be explained by TF1’s ability to provide programmes that consistently score high in the ratings. Politicians get along quite well with this situation. They know they can easily reach most of the population through TF1, especially as TF1 has the obligation to give equal airtime to the parliamentary majority and the opposition. In some ways, they prefer TF1’s domination to a more competitive, and thus more unstable, market, which would require more costly and complex strategies for communication. However, advertisers are not fully satisfied with this situation, which gives TF1 a sort of monopoly position when selling time for commercials.

For some, TF1’s dominant position is prejudicial to the diversity and pluralism of programmes. This is why it is necessary to increase competition within the system. One solution already proposed is the privatisation of one public channel, which would create a more balanced private broadcasting market and let the public television stations focus on their core missions. This project has not been endorsed by successive governments. It is also not sure that further reducing the public broadcasting system would be well accepted by French viewers, not to mention the opposition from TF1 itself. Which French group would be strong enough to take over a major television channel is also unclear. Another smoother option, which is now being advocated by the CSA, would involve taking advantage of the development of digital terrestrial television to attract new private actors into the broadcasting system.

For other observers and players, the issue is not the degree of competition on the television market. Market forces can push even diverse owners toward providing similar content if a large part of the audience prefers the same type of programmes.<sup>238</sup> Diversity is often best ensured through an appropriate set of regulatory measures aiming at internal pluralism. This is the dominant approach in France.

### *The identity crisis of public service broadcasting*

Apart from recurrent financial difficulties and multiple organisational changes, French public service broadcasting has experienced a crisis of identity for many years now. Public television stations are caught in a double and contradictory bind – while being given public service missions and very exalted cultural aims, they are at the same time required to compete with private channels.

The public broadcasters are required to be profitable and are continuously compared to the private channels in terms of ratings, economic performance or professional

---

<sup>238</sup> For example, assume that two thirds of the audience like programming type A, 20 per cent like type B, and 14 per cent like type C. In such a situation, three competitors tend to offer the same type of programming A in the hope to get a 22 per cent share of the audience, which is more than they could get by offering either programming B or C. See: Owen Bruce M. and Wildman Steven, *Video Economic*. Cambridge, Harvard University Press, 1992, pp. 99–100. Baker C. Edwin, *Media, Markets, and Democracy*. Cambridge, Cambridge University Press, 2002.

management. However, their resources are limited. They cannot control the source of their income (which is set by Parliament) and part of the population is reluctant to pay a licence fee, and their costs are increased by specific regulations. When public television stations schedule programmes similar to those of private television stations in an attempt to win higher ratings, they are criticised for “going commercial” and not defending the highest standards of culture, or not offering diverse programming to viewers. When they schedule more demanding and highbrow programmes to highlight their educational spirit or to foster the quality of public debate, they are criticised for being elitist, boring and spending too much money on very few viewers.<sup>239</sup>

To resolve this double bind, it is necessary to clarify what public service means in broadcasting. Practically, there are two competing definitions. One is functional and relates to goals, needs and obligations. The other is organic and focused on means, equating public service with State-owned stations. The Minister of Communication, François Léotard, was referring to the former definition when he stated in 1986 that there was no real justification for State-owned stations and that private operators could very well meet public service obligation.<sup>240</sup> Nevertheless, State-owned stations have been maintained, with only a few additional missions or requirements. From a viewer’s perspective, there are only minor differences between public and private broadcasters. Indeed, it has even been said that public broadcasters can be recognised by three main features – no commercials during films, Catholic mass on Sundays, and boring candidates’ broadcasts during election periods.

To advance any further in the debate on public service broadcasting, it is necessary to know much better what people really expect from television, and also how they actually assess programmes and how their expectations and evaluations can be accurately measured. This means dealing with many contradictions and conceptual difficulties. What viewers say about television and how they behave in front of the television set are often two different things. Among those who say they dislike advertising, many prefer commercial television. Although many would admit that ratings do not reflect social demand, there are very few alternative indicators.

### *A contract-based regulation*

One interesting feature that emerged as the CSA became a full player in the field has been the development of a style of regulation that can be termed as contract-based. Within the general regulatory framework laid down by the law, pluri-annual contracts are signed by broadcast operators and the regulatory agency. Through these contracts,

---

<sup>239</sup> Examples of this double bind can be found in the recent book by Hervé Bourges, former head of TF1 (before its privatisation) and former chair of the CSA: Bourges Hervé, *Sur la télé: mes quatre vérités, (On TV: my four truths)*, Paris, Ramsay, 2005.

<sup>240</sup> Vedel Thierry and Bourdon Jérôme, “French Public Service Broadcasting: From Monopoly to Marginalization?”. in Avery Robert (ed.), *Public Service Broadcasting in a Multichannel Environment*. White Plains, NY, Longman Inc., 1993, pp. 29–51.

specific obligations can be assigned to operators and/or operators can commit themselves to achieve specific objectives.

This style of regulation allows legal obligations to be implemented flexibly, according to the capacities of each operator. Yet, this style of regulation is only efficient under conditions that are not perfectly met in France.

First, there is not a complete symmetry in the relationship between private broadcasters and the regulatory agency, on the one hand, and public broadcasters and the regulatory agency on the other. The regulator's control over public television stations is shared with the Government, which sets some of the obligations on public broadcasters. In addition, unlike private broadcasters, public broadcasters are not fully autonomous since they do not control their financing and spending. They are not solely accountable to the regulator, but also to political authorities.

Second, contract-based regulation requires some equality of forces between the regulator and the regulated parties. When the regulator in charge of an industry has not enough resources, there is a risk of capture by the industry. In France, it is clear enough that the regulatory agency is not adequately equipped, in terms of staff and technical expertise, to engage with broadcasters on an equal basis.<sup>241</sup> More importantly, for contract-based regulation to be socially satisfying it is necessary for all parties concerned to be involved, and especially the viewers. If not, the contract-based regulation quickly tends to focus on business concerns only. Again, this condition is not met in France.

### *Public participation in broadcasting regulation*

In France, citizens' participation in broadcasting regulation is very low. Citizens are rarely involved in the CSA's decision-making process. Hearings are often closed to the public and the CSA's action mainly involves experts and professionals. Viewers are not represented in the governance structures of the public broadcasters.<sup>242</sup> Private broadcasters have not done any better. If they occasionally hold screening committees with viewers, they tend to consider that the market is in itself a democratic medium and that viewers vote with their remote control. Programmes that cannot secure an audience are replaced.

While it is certainly desirable to establish by law new opportunities for citizen participation in broadcasting regulation, it is also necessary to enforce the existing

<sup>241</sup> This point is challenged by experts and industry insiders. Some participants at the OSI roundtable, including former members of the CSA, agreed with this opinion, but other participants considered that the CSA has enough powers to monitor broadcasters' activities. OSI roundtable comment.

<sup>242</sup> In addition, the Advisory Board for Programming (to be composed of 20 individuals chosen from among television viewers), which was laid down by the Law of 1 August 2000, is yet to be established (see section 4.3).



provisions allowing for such participation.<sup>243</sup> Unfortunately, at present there is only one active association of viewers, and even this has such a modest membership that it is not considered sufficiently representative to participate in regulation. To break this vicious circle (low membership = no influence = low incentive to join), a pro-active policy is needed. Viewers' associations could be either pushed, through free airtime on television or financial support from public authorities, or pulled, by being mandatory in the legal procedures for broadcasting.<sup>244</sup>

### 3. RECOMMENDATIONS

#### 3.1 Media policy<sup>245</sup>

##### *Legislation*

1. The Government should initiate a major editing and codification of the Law of 30 September 1986 on Freedom of Communication as modified by dozens of subsequent laws, in order to make the audiovisual legislation comprehensible by all citizens and businesses.<sup>246</sup>
2. The Government should use the framework of this editing and codification process as an opportunity for organising public debate on the goals and social role of broadcasting.

---

<sup>243</sup> Article 42 of the Law on Freedom of Communication 1986 states that trades' union branches in broadcasting, the National Council for regional cultures and languages, family associations, or viewers associations which consider that television stations do not comply with their obligations may ask the CSA to take action.

<sup>244</sup> OSI roundtable comment. A few participants in the roundtable strongly disagreed with this, arguing that only Parliament is fully representative of citizens (and hence of viewers). While Parliament's role in setting up the general goals and principles for broadcasting should be maintained, it has to be recognized that the everyday regulation of broadcasting involves in practice many interest groups and that a better representation of viewers would make this process more pluralistic.

<sup>245</sup> OSI Roundtable comments. Some participants at the roundtable suggested additional recommendations, often more structural and economic. These included mention of the existence of a public service for broadcasting in the French constitution; ban on television advertising during specific parts of the days; and the introduction of a tax on the use of frequencies. However, this section only proposes those recommendations that could be quickly implemented and do not require a radical reorganisation of the broadcasting system.

<sup>246</sup> OSI roundtable comment All participants in the roundtable agreed that, in its present form, this law is very difficult to understand. For example, even experts have difficulties mastering the complexities of the cross-ownership regulations (see section 5.2) in their current formulation. Moreover, some participants noted that the readability of laws has become a requirement in democratic societies that promote transparency.

3. The High Council for Broadcasting (CSA) should provide a user-friendly presentation of audiovisual legislation, including a clear distinction between the main and general provisions, and those with technical purposes.

### 3.2 Regulatory bodies

#### *Public consultation*

4. Parliament should modify the Law of 30 September 1986 on Freedom of Communication, in order to make citizens' participation mandatory when broadcasters' licences are to be renewed by the CSA.
5. The High Council for Broadcasting (CSA) should, instead of waiting for comments from the public, request such comments, and feedback on various matters that it is going to decide, especially during the annual review of broadcasters programming activities.
6. The State authorities should provide financial assistance for the expansion of viewers' associations, so that they can enlarge their membership.
7. The State authorities should also allocate free airtime to viewers' associations, to enable them to present their activities and recruit new members.
8. The Government should publish the decree needed to implement Article 46 of the Law of 30 September 1986 on Freedom of Communication, which sets up an advisory body on programming within France Télévisions, composed of 20 randomly chosen viewers.

#### *Monitoring*

9. The State authorities should promote the creation of an independent structure or office –for instance within universities – to monitor broadcasters, with the aim to encourage a civic culture for broadcasting. This independent office should complement the work of initiatives started recently by private groups.<sup>247</sup> It should develop monitoring methodologies and indicators, develop and maintain permanent databases on programmes and broadcasters, and undertake in-depth and cross-national studies. It could also host every two years a general conference on the state and future of French broadcasting, to which all interested parties would be invited to contribute.

---

<sup>247</sup> Such as the Observatoire français des médias (The French observatory of medias) – see section 5.3.



# Germany

## 1. EXECUTIVE SUMMARY

The principles of freedom of broadcasting and independence from the state, or any other dominant political or economic force, lie at the centre of German broadcasting philosophy. After the Second World War, allied powers in West Germany installed a system that was primarily designed to prevent the misuse of the media for any singular political power, as media abuse was identified as one of the pillars of the Nazi dictatorship. The public service broadcasters in West Germany were organised on the basis of the British Broadcasting Corporation (BBC) model, with two important differences: German broadcasters were set up in a federal structure, following the political structure of West Germany, and there was a representational system for the membership of the Board of Governors of each regional public service broadcaster. The Federal Constitutional Court was instrumental in strengthening and developing this system. In several important judgments, it underlined that legislators had to ensure not only that public service broadcasters were independent of governments, but that the whole broadcasting system fulfilled a function of democracy and freedom of opinion. In 1961, ARD, the association of regional public service broadcasters, was complemented by a second, national public broadcaster, ZDF.

In the second half of the 1980s, the so-called “dual system” that was gaining favour in many other European countries was introduced in West Germany. Private television channels quickly gained ground and became powerful competitors of public service broadcasting. Two groups emerged as the dominant forces in private television, Bertelsmann/RTL and Kirch. Between them they shared most of the audience’s viewing time and the majority of the advertising turnover in the private sector. The market was controlled by a complex regulatory structure, which reflected the federal system of West Germany. The 11 West German federal states, or *Länder*, competed for investment by the large media groups thereby developing a particular German version of media policy, known as “*Standortpolitik*”. Although elaborate rules for media ownership exist, television groups were allowed to expand horizontally and integrate vertically. From the beginning, cross-ownership with publishing companies played an important role.

In 1991, after German unification, the West German broadcasting system was extended to the former East Germany. Regional public service broadcasting organisations were established, and these became part of ARD. Television viewing behaviour in the Eastern parts of Germany still differs significantly from that in the West.

German television is now regarded as the most competitive in Europe, with a large number of general interest and special interest channels broadcasting in the German

language. After heavy losses in the early days of the dual system, public service broadcasters ARD and ZDF have been able to stabilize their positions and regularly achieve a combined audience share of 45 per cent or more. Contrary to criticism that the editorial standards of public service broadcasters have a tendency to “converge” with those of the leading private channels, research proves that ARD and ZDF still show a largely different profile in their schedules. Especially in the categories of news, current affairs and cultural programming, public service broadcasters offer a much larger and more diverse choice than their private counterparts. The programming policy of private channels has repeatedly been the subject of public debate because of provocative and controversial formats, such as “reality shows” like “Big Brother”. This kind of programming raises questions of ethics and human dignity, but regulatory authorities have found that these issues are hard to deal with on a legal basis and are, instead, a matter of taste and decency.

In agreement with the important players from the broadcasting sector, hardware manufacturing and platform operators, the Federal Government has announced that the year 2010 will be the deadline for switching over from analogue to digital broadcasting. Yet, compared with other European countries, digitalisation has been slow in Germany. Cable, which forms a key part of the broadcasting infrastructure, has fallen behind in this area because of lack of investment in the upgrading of the networks and because of structural problems. The introduction of digital terrestrial television, however, has been a success so far. The region of Berlin/Brandenburg has been the first worldwide to complete the switch-off of analogue transmission. Public service broadcasters ARD and ZDF offer their own digital bouquets, including interactive applications using MHP as the digital standard. Premiere, the main pay-TV platform in Germany, is only available digitally. The private free-to-air broadcasters, however, have so far been hesitant to invest in digital transmission, mainly because of controversies with cable operators over the conditions for digital transmission over their networks, and also because of a general scepticism as to the future of free-to-air channels in a digital environment.

Currently, more than half of the German population uses the Internet. All major German broadcasters have set up significant presences on the web, with public service broadcasters focussing on informational content, and private broadcasters developing their Internet activities as an additional source of income.

Most recently, the media policy debate in Germany has been dominated by the issue of the funding of public service broadcasting. Some of the *Länder* governments rejected an increase of the licence fee proposed by an independent commission, calling at the same time for a major reform of the structures and activities of ARD and ZDF. One of the features of the debate has been the issue of connections between broadcasting and the State. Political parties are traditionally strongly represented in the governing bodies of public broadcasters and regulatory authorities. Close connections between private broadcasters and politicians of ruling parties have also been brought to the public’s attention.

The future of public service broadcasting will remain one of the most important issues in German media policy in the coming years. The European Commission's ambition to declare the licence fee a state subsidy is likely to be a particularly controversial element in the debate. Public broadcasters will have to work hard to strengthen their case in the public and avoid a further erosion of the legitimacy of the licence fee. It seems clear, however, that a broadcasting sector devoted to the public interest instead of commercial imperatives will continue to be necessary in the future, digital-media landscape.

## 2. CONCLUSIONS

### *Broadcasting freedom and democracy*

When the legislators in the Western parts of Germany set to work on drafting a new framework for the future broadcasting system in the late 1940s, the experience of war, destruction and Nazi dictatorship was still looming over their shoulders. They believed that broadcasting should never again become a tool of tyranny, but should instead serve freedom. Assisted by the Western allied powers, especially the British, legislators designed a broadcasting system that would be as independent as possible from any particular interest, political or economic. The State was to be kept at arms' length, broadcasters were to be autonomous in their programming decisions – and only answerable to the law and the governing body. This body was set up to be pluralistic, with representation from the main pillars of society. An appreciation of this historical background is important if we are to understand why broadcasting freedom is so highly valued in Germany. The German Constitutional Court tried to uphold this principle when the broadcasting system came under direct pressure from the Federal Government, and later, when dramatic changes occurred with the introduction of private broadcasters and the “dual system”.

The system is not, of course, without flaws. As with most other public sectors, political parties have tried to gain an influence on public service broadcasting from the beginning. Demands by insiders and outsiders to keep party politics out of broadcasting are in vain in a society that has been labelled a “Parteiendemokratie” (“democracy of political parties”). Political parties, or their representatives, are present in every area of German social life, from the board of the local football club to talk shows on television. In a federal state such as Bavaria, where the ruling party has been in power almost without interruption since 1946, it is not realistic to hope that this party would not attempt to gain and hold influence over the most important instrument of political communication – broadcasting.

The parties' influence on public service broadcasting becomes most obvious when a new Director-General has to be chosen. On these occasions, the power struggle between parties can turn rather nasty. Frequently, members of state governments or parties also make themselves heard in public, with unasked-for advice on how the

licence fee should be spent, e.g. when broadcasting rights of important sports events are on the market. These incidents are taken as examples showing that “the parties have taken over”. Nobody would seriously argue, however, that governments or parties in Germany have direct and unfiltered power over the day-to-day running and programming of public service broadcasters. This would not only be against the law, but, until now, it would also be against political culture.

In the case of private broadcasting, the relatively low level of politically relevant content on private television channels nowadays does not leave room to suggest the interference of political powers. Nevertheless, strong ties existed in the past between certain media groups and politicians. These connections primarily served the economic interests of the companies. The oligopolistic structure of private television and the competition between federal states for investment by large media groups lend themselves to this type of networking. Still, the most important effect of these ties between politicians and the media is not an influence on any content of the channels, but rather an influence on the structure of private broadcasting, i.e. the high level of concentration and cross-media ownership.

### *Concentration, diversity and pluralism*

Two separate systems have been set up in Germany to guarantee diversity and pluralism in broadcasting: a system to safeguard “internal” pluralism in the public service sector, and a detailed regulatory structure securing “external” pluralism in the private sector. Both pillars of this dual system are interlocked in the sense that market-induced deficiencies of the private sector with regard to the range of programmes on offer can be accepted as long as the public service broadcasters provide comprehensive service covering the whole range of programme categories. Indeed, viewers in Germany probably have a larger variety of free-to-air programmes to choose from than those in any other country in Europe – thanks to the diversification of channels in the private sector and to the strong presence of public service broadcasting.

Nevertheless, media concentration has been an issue in German media policies almost from the start of private television in the 1980s. Several reasons have been given for this situation:

*A liberal attitude towards media ownership:* German politics was primarily concerned with regional investment by media groups. In the early phases of the dual system, cross-ownership between print media and broadcasting was encouraged. At a later stage, when criticism was expressed publicly against the growing level of media ownership concentration, regulation was put into place to set audience share limits. A number of other regulatory elements were designed to soften the effects of ownership concentration, but in reality, these did nothing to change the status quo of a narrow oligopolistic television market.

*A control structure without power to initiate deconcentration:* Although a large number of institutions are involved in the process of licensing and supervising broadcasters, the

system in its entirety lacks controls on concentration. The KEK commission is supposed to play a crucial role in the control of media ownership concentration, but it has repeatedly complained about a lack of support from the regional (*Länder*) broadcasting authorities. Effective opposition to further concentration only came from the Federal Cartel Office, which, however, is exclusively concerned with economic aspects of concentration. As far as diversity of content is concerned, measures taken by the legislators, such as obligations for the leading channels to give airtime to independent third-party content providers, can hardly compensate for a trend towards fewer programmes with information – especially political information – on private general interest channels.

*A high level of vertical integration:* Integration of the main players was, again, not contested by legislators or regulators. Bertelsmann/RTL and the Kirch Group (until its collapse in 2002) not only controlled television distribution through their “families” of channels, but, at the same time, topped the list of the largest production companies in the German market.<sup>248</sup> Although the inter-state treaty on broadcasting contains a provision that, in principle, would allow regulators to take into account “neighbouring markets” – including cross-ownership with the printed press, and vertical integration – when assessing the market position of a television company, this has never had any real effect in practice.

There are basically two factors that so far have ensured that the German television landscape maintains a relatively high level of pluralism: the size of the market and the strong position of public service broadcasters. No other European market has the potential to support the same number of domestic, free-to-air general interest channels and thematic channels. There are currently no less than three news and information channels broadcasting in German language –two private channels, n-tv and N24; and one public service channel, Phoenix. German channels, public and private, also broadcast more original, first-run fiction programmes than their counterparts in the other major markets in Europe.<sup>249</sup> The contribution of private channels to the public discourse, however, is declining as far as social and political issues are concerned. It is public broadcasters ARD and ZDF that continue to fulfil this function, in their main general interest channels, the thematic cultural and information channels, and the regional “third” channels. Although complaints about a decline of programme standards are also directed occasionally at the general interest channels of ARD and ZDF, there can hardly be any doubt that the strong position of the public service broadcasters has formed the most effective counterbalance to concentration and vertical integration in the private sector.

<sup>248</sup> U. Pätzold, H. Röper, “Fernsehproduktionsmarkt Deutschland 2001 bis 2002” (“Television Production Market in Germany 2001 to 2002”), in: *Media Perspektiven*, 12/2004, p. 578.

<sup>249</sup> See G. Hallenberger, “Eurofiction 2003”, p. 15.



### *Digitalisation*

Experiences with new technologies in the broadcasting sector have been mixed. The Internet can be regarded as a success, with well over half the population connected to it, either at home or at work, and major television broadcasters among the most popular content providers. Broadcasters are steadily gaining know-how in combining traditional television, Internet content, and, increasingly, mobile phones, to create a multi-platform product. Digital television, on the other hand, has been a slow starter thus far. The deadline for analogue switch-off, set by the Federal Government for 2010, has the support of all the main players – broadcasters, infrastructure operators and hardware manufacturers.

Whether or not this goal will be reached, however, is very much an open question. Progress has been particularly slow in one of the key fields, cable. Large cable operators have announced that more money will be invested in the upgrading of networks. So far, most broadband cable networks lack a return channel, which would be a unique selling point for digital cable in comparison to terrestrial or satellite. The problem with parts of the cable industry in Germany is that many of the current owners of the larger operators are international investment groups, which may be more interested in short term profitability than long term development. Changes in the ownership structure of cable are not unlikely in the near- to mid-term future, and this may reduce the uncertainty in this sector.

Access issues are another crucial area, in the sense of content providers' access to networks and also of consumers' access to content. Regulation obliges platform operators to offer fair conditions, for instance, in connection with electronic programme guides (EPGs) and digital decoders. MHP is the agreed-upon standard for interactive digital content. But open questions remain as to how bottlenecks may develop once digital has become the main or, indeed, the only means of distribution. Television broadcasters, both public and private, are conscious that the competitive landscape will change, especially for the free-to-air channels. Therefore, private broadcasters like RTL or ProSiebenSAT.1, which are funded by advertising, are in no hurry to switch to digital. They have started to look into new sources of additional funding, but this will take time. Public service broadcasters ARD and ZDF have been involved in digital programming from early on. Distribution of their digital bouquets has been slowed, however, because of technologies used by platform providers and an insufficient number of MHP set-top-boxes in the market. They, too, must prepare themselves for the digital age. For the foreseeable future, the licence fee will provide a stable financial basis, but to adjust the public service remit to the digital environment will be no easy task. For instance, ARD and ZDF may see a need to focus less on general interest programming and diversify their offers even more, in order to reach fragmented audiences. It is not clear whether they will choose to do this, or whether they will be allowed to do so.

Research from the US and the UK indicates that viewing habits do not change overnight in digital multi-channel television households. Traditional, "passive" viewing may well be

the main activity for the vast majority of the television audience in the mid-term future. Although electronic programme guides (EPG) have already proven their potential as a crucial bottleneck, other technologies that are expected to become important elements of the digital environment, such as the personal video recorder and interactive applications, are still in their infancy in Germany.<sup>250</sup> Projects such as Freeview in the UK also seem to indicate that free-to-air digital platforms do have a chance to compete. In Germany, digital terrestrial will, however, remain by far the smallest distribution platform. In spite of its recent, to some extent unexpected, success, it is probably realistic to see digital terrestrial mainly as an additional means of receiving television on second or third television sets, or on mobile sets outside of viewers' homes. The main question is how digital cable and satellite will change the balance inside the private sector – pay vs. free-to-air and general interest vs. special interest channels – and indeed between the two pillars of the dual system, public and private.

### *Public debate on the future of public service broadcasting*

The digital future is only one area where public service broadcasters in Germany need to think hard about their strategy and their place within the overall media landscape. There has been a negative climate for public service broadcasting over the last few years, in the political arena as well as in the press. Since private broadcasters started feeling the impact of the economic crisis, pressure is rising on public service broadcasters. ARD and ZDF are frequently accused of expansionism in traditional television, and in digital television and the Internet. Programmes are criticised for an alleged convergence with the lower standards that are common in the private sector. Public broadcasting organisations are blamed for rising prices in the field of programme rights of big sporting events. Their organisational structures are seen as bloated and inefficient. The 2004 conflict about the proposed rise in the licence fee brought all these arguments, and others, to the fore again. Politicians from several *Länder* governments and different parties who call for a structural reform of the whole public service sector received support from large parts of the print media. On top of this, the EU Commission is threatening to treat the licence fee as a state subsidy, and to put limits on the Internet activities of public service broadcasters.

ARD and ZDF indeed form the most expensive public service broadcasting system in the world, with an overall income of more than €7 billion in 2003. ARD argues that this is the price for a highly decentralized system. On the other hand, ARD employs fewer staff than the BBC, but produces more output in terms of hours broadcast on radio and television. ARD and ZDF argue that initiatives in digital television and the Internet are necessary, to keep pace with technical developments and changes in audience behaviour. For the same reason, these public broadcasters argue that a diversification of channels is needed now, in order to fulfil the broad public remit. Research provides proof that the diversity and pluralism of public service channels is

<sup>250</sup> R. Woldt, "Interaktives Fernsehen – großes Potenzial, unklare Perspektiven" ("Interactive Television – Big Potential, Unclear Prospects"), in *Media Perspektiven*, 7/2004, pp. 301–309.

still much higher than in the private sector. In the particularly important field of information on social and political matters, the gap between public service and private television is even widening.

One reason for the public debate on the current status and future of public service broadcasting seems to be a gradually disappearing consensus about the role of ARD and ZDF in the dual system. ARD and ZDF never had a standing in the public comparable to what the BBC enjoyed for many decades. ARD is respected as one of the most visible achievements of federalism in Germany. Yet, in a general climate dominated by free market liberalism, individualism, and globalisation, an organisation built on public interest principles and financed by a general fee instead of the market has more and more difficulties in justifying its existence and finding broad public support. Politicians and the print media find that voters and readers are open to criticism portraying ARD and ZDF as “dinosaurs” of a bygone age. Meanwhile, the public service broadcasters seem to find it difficult to convince their viewers that they are producing value for money. There is no immediate danger that ARD or ZDF will fall victim to these perpetual debates. The federal states and the political class have too strong an interest in maintaining this important part of the cultural sector and this platform for political communication. There is also still strong support for the idea of public service broadcasting among influential sections of society, such as churches, cultural institutions, unions, and so forth. However, the perception of the legitimacy of the licence fee is eroding under these unceasing attacks. The transition to the digital era will certainly not be an easy one, even for such large organisations as ARD and ZDF.

### 3. RECOMMENDATIONS

#### 3.1 *Länder* regulatory authorities

##### *Media diversity*

2. The Commission for the Assessment of the Financial Requirements of Public Service Broadcasters (KEK) should prevent further concentration in the television sector, in particular by making use of the anti-concentration rules contained in the Inter-state treaty on Broadcasting, which provide a potential for discretion in the application of audience share thresholds.

#### 3.2 Public broadcasters

##### *Funding*

3. German policy makers at the national and *Länder* level should make every effort in to resist attempts by the European Commission to interfere with the dual broadcasting system in Germany under the pretext of enforcing European

competition rules. The current dual broadcasting system has proven its functionality and value for the German society.

4. Policy makers should refrain from further attempts to use the licence fee as a trigger to enforce structural reform in public service broadcasting. The independence of the KEF and the procedure by which this Commission sets the level of the license fee should be secured. If lawmakers envisage a different system, this should equally guarantee the absence of political interference in this procedure.

#### *Public support*

5. Policy makers should actively and publicly provide support to the idea of public service broadcasting as a major factor in the German political and cultural landscape, and as the only effective counterbalance to concentration in the commercial media.
6. Public service broadcasters should increase their efforts to make their activities more transparent to the general public. Aims, strategies and achievements should be communicated more clearly and in more detail. New ways should be found to involve the general public and individual viewers in the formulation of these strategies.
7. Public service broadcasters should take steps to better communicate to the public the diversity, range and quality of their overall output and of individual programmes, in order to prove the public value of public service broadcasting and hence to raise the level of public support.

#### *New technologies*

8. Policy makers should acknowledge the role of public service broadcasters in a future multimedia landscape, in particular allowing public service broadcasters to develop their digital offers and online services. Although it will become increasingly difficult in the digital environment to differentiate between “traditional” broadcasting and “new” services, the public service remit of public service broadcasting will not lose its relevance in this environment.
9. Public service broadcasters should try to stimulate an extensive public debate on the future of broadcasting in the digital age and, in particular, the digital strategy of public service broadcasters in the mid-term perspective. Emphasis should be placed on the value of public service broadcasting in an increasingly commercialised environment.



# Hungary

## 1. EXECUTIVE SUMMARY

In the early 1990s, Hungary had only two national television channels. Today, most of the population can access over 40 different Hungarian-language channels. At the national level, there are two public service television broadcasters with a total of three channels, and two commercial television channels, both established in 1997 and broadcasting terrestrially. There are also 38 cable channels, most of them offering specialised programmes. In 2003, the main public service channel, Hungarian Television's MTV, had an average audience share of 15.3 per cent, while the two commercial national channels, RTL Klub and TV2, had 29.3 per cent and 29.8 per cent respectively.

Hungary was quite late in passing broadcasting regulation. The Radio and Television Act entered into force in early 1996, as compared with 1991 in Czechoslovakia and 1992 in Poland. This delay was due to the 1989 constitutional stipulation that a qualified, two-thirds majority, is needed to enact broadcasting laws. Hence, the 1996 Radio and Television Act was the outcome of prolonged political debates. This delay also held back the launch of private broadcasting. The first national private commercial radio stations went on air in early 1998, shortly after the two national commercial television channels.

The 1996 Radio and Television Act was intended to end the political disputes of the early and mid 1990s over who controlled the media, what societal values the media – especially public service television and radio – should cultivate, and how intense State interference into the media should be. These disputes and the subsequent media policy measures were often referred to as Hungary's "media war".

While some surveys do indicate a broad pattern of improvement in media freedom during the late 1990s and the early 2000s, the impact of the Radio and Television Act has been paradoxical. It succeeded in removing political disputes over influence on the media from Parliament for a certain period of time, but it did this by displacing these disputes directly into the governing bodies of the public service broadcasters. These bodies are not always robust enough to withstand such internal pressure. The outcome has been described as "the institutionalisation of political intervention in the public media."

The Radio and Television Act established the National Radio and Television Board (ORTT) as the major authority for the licensing, supervision and funding of broadcasting. The ORTT has various offices, including the Monitoring and Analysing Service, the Complaints Committee, and the Broadcasting Fund. By law, the ORTT is

required to function as the protector of media freedom. Hence it is independent, though accountable to the Parliament, which approves its budget and receives its annual report. It is audited by the National Audit Office.

In practice, however, the ORTT's independence is flawed. The discretion of the ORTT gives scope for political pressure, as demonstrated by the rejection of the highest bidder when allocating national commercial television licences under the left/liberal coalition Government of 1994–1998.

The same is true of the radio licensing process. For example, under the right/conservative coalition Government of 1998–2002, the ORTT licensed Pannon Radio, a Budapest-based local radio station associated with extreme-right factions. This station later caused controversy with the overt racism of some of its output. During the same period, the Board declined to renew the licence of Tilos Rádió (Forbidden Radio), Budapest's oldest multicultural community station, associated with liberal thinking.

The operation of the ORTT's Complaints Committee has been criticised for being overcomplicated and for not publicising all of its decisions. As for the Broadcasting Fund, its purpose is to "subsidise public service broadcasting, public programme broadcasters, non-profit broadcasters, to preserve and promote culture, to ensure the diversity of programmes." In addition to this, the State subsidises newspapers in less transparent ways. For example, Government organisations, State-owned banks and companies, and public foundations spend a huge amount on advertising. These sums, allocated at the Government's discretion, raise obvious questions about political influence over key outlets.

As the viewing figures indicate, public service broadcasting faces a crisis. The rapid changes in the leadership of Hungarian Television, the main public service broadcaster, and its besetting financial problems indicate that the whole system calls for reform. Analysts agree that every Government has made significant efforts to control Hungarian Television's political output. Analysis suggests that public service broadcaster's news and current affairs programmes have frequently been biased during the past 15 years. This is no surprise, given that whenever a new Government took office, the senior news staff of public service television was removed, and new editors were appointed.

Hungarian Television has made a loss every year since the appearance of the two national commercial channels – despite increasingly desperate attempts to imitate the formats pioneered by those channels, at the cost of reducing other strands such as education and documentaries. Hungarian Television has sold most of its real estate to the National Privatisation Agency, and currently rents the buildings it once owned. The abolition of the television licence fee in 2002, by a questionable procedure, showed that the Government challenges overtly the independence of public service television.

The nomination of the trustees to the boards of the public service media has also provoked controversy. The number of trustees should be drastically cut in order to clarify responsibility. In addition, the corporate nomination mechanism should be abolished, and replaced by a system of joint delegation by the Prime Minister and the President of the Republic.

Without exception, the new broadcasters target the mainstream and commercially viable audiences. The two major commercial television channels broadcast the same kind of programmes – such as feature films, quiz shows, soap operas and talk shows – during the same periods of the day. Even the commercial breaks during feature films are coordinated. These channels have respected the legal requirement of impartiality in their information output by depoliticising their news services. They focus on scandals and catastrophes, whereas the public service broadcasters cover foreign policy and culture more extensively. This is a particularly important issue because, since the rise of national commercial television in 1997, the evening news bulletins on commercial television have become the primary source of information for most people.

Even those national television channels offering mixed programming fail to broadcast programmes dedicated to minorities on a regular basis during prime time hours. Hungarian channels scarcely ever broadcast investigative reports and can hardly be labelled as watchdogs of democracy.

The current institutional framework requires fundamental reform, as it is unable to preserve media pluralism and independence, let alone to promote those values. The parliamentary parties should start by improving the funding of the public service media, in the first place by re-establishing the licence fee.

## 2. CONCLUSIONS

One of the most important changes in the Hungarian television landscape in the past 15 years was an impressive growth in the number of broadcasters. This, however, has not been coupled with an equally impressive enrichment of choice, as the major broadcasters target the mainstream and commercially viable audiences, and no television channel is specialised in the disadvantaged minorities. For example, Hungary's three million old-age pensioners (about 30 per cent of the entire population) do not have a television channel or radio station specialising in their problems and interest areas; the Roma minority (an estimated five to six per cent of the population) has no television channel of its own either;<sup>251</sup> nor have other minorities

<sup>251</sup> There is, however, a radio station called *Radio C* targeting Roma in Budapest. It needs to be noted that the proportion of Roma editors in the national and satellite media does not reach one percent. Information from Bálint Vadász, editor-in-chief of [www.romaweb.hu](http://www.romaweb.hu), at the conference "The Roma in the Broadcast Media", organised by the Budapest Media Institute, 20 January 2005.



such as people with disabilities. Even the national television channels offering mixed programming fail to broadcast programmes specifically dedicated to these minorities on a frequent basis and during prime time hours – which, of course, does not mean that the elderly, the Roma or people with disabilities would not watch the available programmes.

The Hungarian television market has stabilised by now. In the longer term, however, the current situation may change when the digitalisation of broadcasting truly begins. New broadcasters are waiting to enter the market. The launch of new television channels in recent years and the planned launch of further ones is a sign that investors are optimistic about the future of the television industry, and expect the expansion of the advertising market.

Since the political transformation, television broadcasting has mainly been a political issue. The political elites have tried to exert pressure on the broadcasters, and especially on the public service media, in an attempt to improve their own coverage. At the same time, however, with the rise of new channels, the political importance of public service television has declined, as audiences show little interest in substantial political programming. The audience share of public service Hungarian Television is well below the European average. While Hungarian Television's MTV has a little more than 15 per cent audience share, and those of m2 and Duna TV are insignificant, Danish public service television has 32 per cent, the BBC 39 per cent, and Finnish public service television 45 per cent audience share.<sup>252</sup> Hungarian channels scarcely ever broadcast investigative reports and can hardly be labelled as watchdogs of democracy. The overwhelming majority of television programmes are first and foremost commercial goods that viewers, it seems, are eager to consume.

ORTT, the major regulatory authority, is dominated by the logic of parliamentary politics. In real terms, the major function of the body and its various offices is to ensure the fair representation of the major political parties in the broadcast media (as opposed to the fair representation of the real world as it is). News and current affairs programmes are expected to be produced to the satisfaction of the various political parties while the editors of the news media are not encouraged to consider the newsworthiness of current issues and events. This is also demonstrated by the Broadcasting Act 1996 defining the controlling of "the equality of parties" as the major task of the Complaints Committee and the Monitoring and Analysing Service's focus on the quantitative analysis of news programmes. Thus the Board does not function, as the Broadcasting Act requires it to do, as the protector of media freedom but rather, quite frequently, as a means of political pressure.<sup>253</sup>

While the Broadcasting Act 1996 over-regulates some issues, it fails to tackle others. First, it is designed to regulate analogue broadcasting and is based on the now outdated

---

<sup>252</sup> Urbán, *Stabilisation of the television market*, p. 75.

<sup>253</sup> OSI roundtable comment.

principle of frequency scarcity. The fact that the law does not even mention digitalisation hinders technological development and hence the enrichment of the audience's choice. Second, those broadcasting via traditional cable are currently subject to the Broadcasting 1996 Act and supervised by ORTT, while those broadcasting through the Internet, which is, in the final analysis, just another cable system, are not. The law does not even mention the Internet and it is unclear how the Board relates to the new medium. Third, the Broadcasting Act 1996 does not define such concepts as "impartial information", whose understanding therefore remains arbitrary and can be used as an excuse for political intervention in the news media.<sup>254</sup> Finally, even though the Broadcasting Act prescribes access to, especially, the public service media for the various minorities, their representation is restricted to the less frequented periods of the day, such as the morning hours. At the same time, the Act does not set up a broadcasting fund specially designed to promote minority broadcasting (for example, by community radio stations), nor does it promote journalism education for the minorities.<sup>255</sup>

The above observations are a sign that the current institutional framework requires fundamental reform, as it is unable to preserve and to promote media pluralism and independence. The recommendations proposed in this report are based on the premise that radical deregulation may relax the political pressure to which the media are exposed. However, a precondition for the realisation of these recommendations, or any other media policy proposal to transform the media landscape, is that Hungary's political elites should be willing to consider them, even though they aim at improving the freedom of the media *vis-à-vis* the very same political elites. Given the long history of the "media war" of the 1990s and subsequent Governments' incessant efforts to control the media, this expectation may prove utopian. Nonetheless, the history of post-communist Hungary's media has also provided important examples of the political elites' willingness to self-impose restraints with regard to their media policies of political intervention. In particular, the frequency moratorium in 1989 and the Broadcasting Act of 1996 are examples that such self-restraint is possible. They may be a sign that similar efforts could also occur and succeed in the future.

---

<sup>254</sup> OSI roundtable comment.

<sup>255</sup> Sükösd, Miklós and Bajomi-Lázár, Péter, "The Second Wave of Media Reform in East Central Europe", in Miklós Sükösd and Péter Bajomi-Lázár (eds), *Reinventing Media. Media Policy Reform in East Central Europe*, Central European University Press, Budapest, 2003, pp. 13–21.

### 3. RECOMMENDATIONS

#### 3.1 General policy

##### *Digitalisation*

1. The parliamentary parties should consider modifying the Broadcasting Act 1996 without delay, in order to create the legal background for the digitalisation of broadcasting.

#### 3.2 Regulatory bodies (ORTT)

##### *Independence*

2. The parliamentary parties should consider modifying the Broadcasting Act in order to change the mechanism to nominate the members of the National Radio and Television Board (ORTT). Either Parliament should nominate them consensually, not the parliamentary parties separately, or they should not be re-electable so that they would not seek to meet the expectations of the political parties nominating them.

##### *Transparency*

3. The ORTT should take steps to make its operation, as well as that of the Broadcasting Fund and the Complaints Committee, more transparent. Public access to their decisions needs to be improved.
4. The parliamentary parties should consider modifying the Broadcasting Act in order to reform frequency licensing procedures, which are currently the major power of the ORTT. In particular:
  - to avoid political influence, frequency licensing should be decided by lot, rather than tenders and application procedures, provided that the applicants meet certain publicly stated base criteria, including the amount of the broadcasting fee.
  - a part of the frequency spectrum should be reserved for non-profit broadcasters.

#### 3.3 Public and private broadcasters

##### *Content Regulation*

5. The parliamentary parties should consider modifying the Broadcasting Act in order to remove, for the regional and local broadcasters, the requirement of impartial information, which currently serves as a major excuse for political interference with editorial freedom.
6. The parliamentary parties should consider modifying the Broadcasting Act in order to relax content regulation, and in particular the public service requirements

prescribed for the commercial media, as well as restrictions on programme content such as that on hate speech and “deviant” behaviour patterns.

### 3.4 Public broadcasters

#### *Mission*

7. The Government should initiate a public debate on the mission of public service broadcasters in the digital age. It should also examine the current status of the three public service television channels, and in particular the question whether one single public service television channel would be sufficient to meet public service obligations. The debate should focus on whether reducing the number of public broadcasters would imply better financial conditions and hence quality programming for the one remaining channel.<sup>256</sup>

#### *Funding*

8. The parliamentary parties should take steps jointly in order to improve the funding of the public service media, and to re-establish the abolished television licence fee. They should also consider abolishing commercial advertising in the public service media.

#### *Independence*

9. The parliamentary parties should consider modifying the Broadcasting Act in order to reform the current mechanism of nominating members to the boards of trustees of the public service broadcasters on a mixed (parliamentary and corporate) basis. Proposals which should be considered include, in particular:
  - reducing the number of the board members so that each member assumes real responsibility for his or her decisions;
  - abolishing the corporate nomination mechanism; and
  - having the other members delegated jointly, rather than separately, by the parliamentary parties, which would increase their independence from the political parties.

---

<sup>256</sup> It is to be noted that this proposal goes against the European trend which is the creation of new, specialised, public service television channels; however, the current budget of *Hungarian Television* is significantly lower than that of the *BBC* or any other major public broadcaster in Western Europe.



# Italy

## 1. EXECUTIVE SUMMARY

The Italian broadcasting system is distinguished by controversial involvement of politicians, especially in the State-owned broadcaster, RAI, which has always been strictly controlled by the Government and political parties. When commercial television began in the 1970s, in a totally unregulated marketplace, it changed the media scene and the advertising market, as well as the political stakes. In the mid-1990s, commercial television played a significant role in the rise to political stardom and power of Prime Minister Silvio Berlusconi, a northern entrepreneur with a formidable media arsenal.

The principal players in the present broadcasting market are RAI and Mediaset, which, thanks to the duopoly created by the alliance between politics and the media, divide up most of the audience and advertising resources. Other competitors have recently tried to enter the market, but they still lag far behind the two dominant players in terms of available infrastructure and ratings.

The super-concentration that characterises Italy's broadcast sector, the confusion created by the collusion between the media and the political establishment, and the excessive attention of the executive to the management of the public networks are not just "Italian anomalies". These problems represent imminent potential threats to any democratic system, and especially to the transitional democracies of Central and Eastern Europe. Italy is only the first front in the struggle to develop and implement common rules for the relationship between the media and the governing class. Italians are used to the "television issue" – it has been with them for decades and is not close to a solution.

While it is impossible to break up the duopoly and open up the market to other competitors without strong legislative action, the Government has been touting another strategy: promoting digital terrestrial broadcasting in order to increase the number of available networks. However, the two major players have already seized a large quantity of frequencies, thereby helping to perpetuate their dominance.

The rules governing Italy's media are still extremely haphazard, and often inconsistent with European Union (EU) policies. This poor regulation, and the fact that the Government is currently led by a media tycoon, have raised serious concerns about media freedom. The international community – including the European Parliament, the Council of Europe and other influential international institutions and advocacy groups – have responded by issuing formal warnings and recommendations for Italy to resolve the anomalies of its media system.

Berlusconi may have handed over the management of his empire to third parties, mostly members of his family, but as long as he remains the majority shareholder of Fininvest, and thus of Mediaset, the independence of the newsrooms in his television channels and news magazines will remain in question. Furthermore, if, as has happened on many occasions, Berlusconi is also outspoken on information-related issues and is not shy about influencing his networks, the absolute ineffectiveness of regulations guaranteeing honest, pluralist and balanced information stands exposed.

The 2004 *Gasparri Law* regulates many aspects of the evolution of the broadcasting market, and makes a timid attempt at privatisation of State-owned television, but it has not improved the *status quo*. The law is widely perceived as a product of the conflict of interest plaguing the political landscape.

The existence of an integrated Italian Authority for Communications as regulatory body for the communications sector might give the impression that the media system and the information marketplace are under good governance. Yet, in reality, the authority's competencies are scattered among several parliamentary organisms and governmental agencies, including the commission in charge of RAI; the Ministry of Telecommunications, which grants public broadcast licences and permits; the anti-monopoly Competition Authority; and, for the past few years, the regional administrations.

In such a chaotic legislative framework, the dominant players are virtually undisturbed in planning their industrial and business strategies. Unfortunately, this commercial free-market does not yield corresponding editorial freedom. Italian broadcast media appear to be structurally tied to the ruling political elite, and the journalism carried out by these media is still affected by a sort of subordination to political interests. Newspapers and magazines, on the other hand, maintain relative autonomy, thanks to the higher plurality of players in the print sector.

RAI appears particularly prone to political influence. The "service agreement" between RAI and the ruling administration requires certain procedures that should, at least theoretically, guarantee internal pluralism and balanced information in the public broadcaster. However, behaviour at RAI is, in fact, dictated by the logic of "*lottizzazione*" – originally an agricultural term for the 'parcelling out' of land, and now a shorthand for the way that hiring for executive posts, journalists and producers is determined by the political parties, especially the ruling coalition. Mediaset, as a private concern that has objectives other than serving the public interest, could pursue a policy more independent from politics. However, as its controlling shareholder is the present head of the Government, Mediaset now appears even more predisposed than RAI to satisfy the needs of its owner's political ambitions and goals. Despite this situation, not all information provided by RAI and Mediaset are non-critical representations of "the master's voice". Indeed, many reporters fight a tough battle to preserve their independence, on a daily basis. Many pay with their own jobs, which is what happened when Mediaset sacked the founder and editor of its most popular daily TV news bulletin, Tg5.

Berlusconi may have handed over the management of his empire to third parties, mostly members of his family, but as long as he remains the majority shareholder of Fininvest, and thus of Mediaset, the independence of the newsrooms in his television channels and news magazines will remain in question. Furthermore, if, as has happened on many occasions, Berlusconi is also outspoken on information-related issues and is not shy about influencing his networks, the absolute ineffectiveness of regulations guaranteeing honest, pluralist and balanced information stands exposed.

The new media – digital television, broadband connection, Internet and satellite broadcasting – are advancing rapidly in the information arena, and they have begun to change the habits of millions of Italians. New services are being put online by ambitious entrepreneurs and start-ups, and there appears to be a new synergy between telecommunications and mass communication. New technologies, and the global media market, may succeed in establishing the conditions for a free-market that lawmakers have failed to create. However, even here there are grey areas, because it is dangerous to entrust the fate of democracy to nothing more than the logic of the market.

It is therefore still unclear whether this new approach to the development of terrestrial digital by the current Government is dictated by the stated goal of promoting pluralism or by the efforts of certain policymakers to retain control of the media, especially in view of the failure of digital television in several advanced countries.

The Italian broadcasting system, both analogue and digital, appears to suffer from being overfed: the market pie has been split between the members of an elite club for too long. However, one can feel the pressure from other players, who want to get a chunk of the pie. If new competitors are not able to enter the club with the help of truly pluralistic, market-oriented legislation, they will certainly attempt to leverage the new technologies.

## 2. CONCLUSIONS

From a financial standpoint, the broadcasting system appears to be in good shape, generating considerable resources and turnover. Advertising remains the main driver of Italian broadcasting, abundantly feeding all media-related business sectors. RAI can count on a constant stream of income from advertising, despite the legal caps. Mediaset continues to show a significant year-on-year increase in income and revenues, thanks to the help of Prime Minister Berlusconi. Pay-TV, meaning satellite, cable and terrestrial digital television, is growing at such a rate that advertisers have begun looking into it with strong interest.

The Italian television output, as stressed by the main regulator, AGCOM, creates one of Europe's richest markets, with an abundance of generalist and niche networks that are poised for further growth thanks to new technologies. It is unlikely that any new market players would be able to compete successfully with the reigning, and apparently



untouchable, analogue television duopoly, RAI-Mediaset. Digital terrestrial television therefore represents the new frontier for entrepreneurs willing to invest in Italian television. The policies pursued by the current administration, which have raised concerns all over the world, continue to cast doubts about the real intentions of this Government on the development of terrestrial digital broadcasting. Yet, if terrestrial digitalisation takes off – should the two Government agencies fairly supervise its growth and should the conditions which led to its failure in the UK and Spain not be repeated – the next few years may bring a broadcasting revolution.

However, if the financial health of Italian television appears to be sound, given the abundance of resources for business and of choices for consumers, the same cannot be said about its “political” and cultural state of health.

Political influence over the media, and particularly over television, has harmed the development of a healthy media structure. Until the mid-1970s, television was monopolised by the governing coalition and kept under strict control by the ruling administration. This situation long impeded television’s modernisation and blocked any attempt at deregulation and any effort towards a true pluralist system. Between the mid 1970s and the *Mammì Law* of 1990, various Governments, happy with their control over public broadcaster RAI, left commercial television in complete legal chaos. This situation allowed a Darwinian selection process, which favoured the financial empire of the new media tycoon, Berlusconi. The 1990s and the past decade have seen Berlusconi’s entry into politics, followed by a political and institutional short-circuit, which turned the media subject into a hot debate. It also put often insurmountable obstacles on the path toward pluralism and a true competitive media market, creating a dangerous precedent in the media market, and a potential threat to the democratic system itself.

Even those who will not accept that Italy sits on the brink of a media dictatorship cannot deny that the perennial “media issue”, which has characterised the Republican period since its inception, is becoming more of a “Berlusconi issue”. Such a concentration of media power in the hands of a single individual is without precedent in Italian democratic history and in liberal democracies. The law on conflict of interest approved by the Parliament in July 2004 has not resolved the “issue”. On the contrary, it has made the situation even more complicated. If, in the past, one could say that Berlusconi’s policies were unlawful and inopportune, today Berlusconi is well shielded by a law that legitimises the ownership of his media empire.

The fact that the head of the Government has a substantial say in the management of State-owned RAI, heightens concerns that certain political decisions are dictated by a policy prone to favour Mediaset. At the same time, it seems clear that the head of the Government is taking political advantage of his control over both RAI and Mediaset in order to influence public opinion and the electorate. Such decisions include those on the inflation of the “integrated communication system” and the bet on terrestrial digital television in the *Gasparri Law*. Large industrial conglomerates have withdrawn from traditional generalist broadcasting, apparently preferring not to oppose the

present governing class. For example, the Italian telecommunication giant Telecom Italia, which owns a relatively small player, La 7, has given up its strategy of developing and improving its television network.

The unexpected sacking in November 2004 of Enrico Mentana, the founder and editor for more than a decade of Mediaset's most popular news bulletin, Tg5, on Canale 5, is a disquieting sign that the media are preparing for the 2006 elections. Considered by friends and foes alike as a guarantor of balanced information who brought authority and popularity to Mediaset's news outlet, Mentana commented that "after the passing of the Gasparri Law, there was no need for a news bulletin to guard Mediaset's borders."<sup>257</sup>

Thus, the dominant concerns about the state of Italian television are political. The overall performance of the present Italian broadcasting system does not appear to reflect the significant check-and-control role that is traditionally attributed to the media in an advanced democracy. There has been an almost complete control by the majority of the information flow over television channels. This situation contrasts sharply with the truly pluralistic Italian press, where stricter anti-monopoly rules have allowed the voices of the opposition and of large sectors of public opinion to be heard.

In this scenario, it is not difficult to formulate a long list of detailed recommendations to the Italian legislature on the reform of the broadcasting system. It would suffice to reiterate the suggestions and concerns raised by international institutions, NGOs and independent agencies. Particularly relevant was the advice directed to Italian lawmakers by the Council of Europe's Parliamentary Assembly, including that of ending their long-standing practice of political interference in the media.<sup>258</sup> Also significant are the deep concerns of the European Parliament,<sup>259</sup> and its recommendation to accelerate work on the reform of the broadcasting sector.<sup>260</sup> Other balanced and fair considerations are included in the Italian President's formal message of 23 July 2002, particularly those pointing out the conditions for any reform: pluralism and impartiality, aimed at shaping a critical and educated public opinion, able to exercise responsibly its fundamental democratic rights.<sup>261</sup>

Nevertheless, it is doubtful that this list of recommendations will bring positive results. The influential critics inside and outside the Italian system have not generated any real momentum for reforming the system. Paradoxically, although facing such a widespread concern, the current Parliament sponsored and approved in 2004 a law which puts

<sup>257</sup> Statement of Enrico Mentana in *Corriere della Sera*, 14 November 2004.

<sup>258</sup> CoE Report 10195, para. 79.

<sup>259</sup> European Parliament, Resolution 2003/2237, art. 66.

<sup>260</sup> European Parliament, Resolution 2003/2237, art. 87.

<sup>261</sup> See the formal message of the President of the Republic, Carlo Azeglio Ciampi, to the Italian Parliament, on pluralism and impartiality of information of 23 July 2002, available online (in Italian) at <http://www.quirinale.it/Discorsi/Discorso.asp?id=20101> (accessed 1 June 2005).

RAI under an even stricter control by the political establishment and allowed Mediaset to grow further in the advertising and other media sectors.

It would be useless to propose model media systems that take no account of Italy's actual political environment – namely that the parties, administrative institutions and information operators have been arguing over the independence of State-owned television and its pluralism for at least the past 30 years. In the past decade, they have been debating the issue of conflict of interest and the relationship between media and politics. Legal scholars, political scientists and communication experts are fully aware of the various alternative models, as well as of the different remedies that could promote the right of the public and Italian nationals to be informed and to participate in public life, and to debate in an efficient and knowledgeable fashion. Unfortunately, sectional interests have always prevailed over general principles and legality.

### 3. RECOMMENDATIONS

#### 3.1 Policy

##### *Digitalisation*

1. The Government should postpone the deadline for the switchover to digital television, allowing analogue television for at least five or six more years. The Government should enact “neutral” policies with respect to the different media, so that cable and satellite are not penalised by a preference for digital television.

#### 3.2 Regulatory authorities

##### *Enforcement powers*

2. Parliament should adopt changes to legislation to strengthen the powers of the regulatory authorities. In particular, the Communications Guarantee Authority (AGCOM) should be assigned more sanction powers to enforce its decisions.

##### *Independence*

3. Parliament should initiate changes in legislation to ensure the independence of the Communications Guarantee Authority (AGCOM), by changing the procedure of appointing its members so that the Prime Minister no longer appoints AGCOM's Chair and Parliament no longer appoints the other members based on political criteria (*lottizzazione*). One possible solution would be to entitle the President of the Republic with the power to elect AGCOM's members.

*Frequency allocation*

4. The Communications Guarantee Authority (AGCOM) should ensure compliance by the Italian State with European Council Directives 2002/21/CE and 2002/22/CE, which call for transparent, non-discriminatory and proportional procedures for the allocation of the radio-electrical frequencies.
5. Parliament should amend legislation in order to prevent the legalisation of broadcasters who illegally occupy frequencies.

**3.3 Public and private broadcasters***Local broadcasters*

6. Parliament should take steps to introduce legislation to give more financial and technological aid to the private local television broadcasters, to promote the establishment of alternative networks to the national ones.

**3.4 Public broadcaster***Restructuring*

7. Parliament should halt the ongoing process of privatisation of RAI which is unrealistic from an economic point of view (as the *Gasparri Law* stipulates that a shareholder cannot own more than 1 per cent of RAI's shares) and unconstitutional (as it sets up a complete privatisation of a public service).
8. Parliament should take steps to split RAI into two separate companies, one with public service obligations and the other with a commercial profile, in line with the recommendations of the Competition Authority in its report of 16 November 2004 (AGCM Ruling no. 13770).
9. Parliament should take steps to make the public service broadcasting offered by the new RAI an *independent public service* (non-governmental) with the legal structure of a foundation like the British Broadcasting Corporation (BBC). The commercial part of RAI should be privatised and sold on capital markets, with no restrictions.

*Independence*

10. Parliament should take steps to amend the *Gasparri Law* to ensure that RAI becomes a truly independent institution, like the Constitutional Court or the Bank of Italy.
11. Parliament should take steps to guarantee that the members of the RAI Board are politically independent from the influence and control of the Government and political parties. This can be achieved for example if Board members are

elected by a qualified majority vote, and serve staggered terms. Another way can be to entrust the appointment of a part of the Board to AGCOM or to the AGCM.

### *Professionalisation*

12. Parliament should adopt changes in legislation to ensure that members of the RAI Board are appointed according to their professional expertise and qualifications. To ensure this, candidates running for the RAI Board should be subjected to rigorous hearings in Parliament.
13. Parliament should make changes in legislation to introduce stricter incompatibility criteria for the members of the RAI Board. Individuals who have served in Parliament or been members of political parties, or had interests in communication businesses, should be forbidden from becoming members of the RAI Board.
14. Parliament should make changes in legislation so that the General Director of RAI is appointed solely by the RAI Board, without consultation with the Government.

## **3.5 Private broadcasters**

### *Diversity and pluralism*

15. Parliament should take steps aimed at solving the “Italian anomaly” by breaking Mediaset’s monopoly on commercial broadcasting before the changeover to digital television.
16. Parliament should amend the *Gasparri Law* to ensure the implementation of the Decision of the Constitutional Court – that demands a 20 per cent threshold for each analogue television broadcaster and guaranteeing an effective variety of sources of information to citizens – before the switchover to digital television.
17. The Government should promote diversity and pluralism in broadcasting by supporting financially new entrants on the broadcasting market.
18. The Government should follow European best practice in defining a monopoly in the broadcasting market, in terms of the audience share or the percentage of television advertising market.
19. Parliament should amend the articles of the *Gasparri Law* defining the integrated communication system (SIC), to establish clear definitions of the separate markets inside the SIC, and introduce new rules providing for clear thresholds to identify dominant positions, in order to protect pluralism and competition. Parliament should also adopt legislation imposing limits on the advertising revenues that a media company can control.

20. Parliament should introduce legal provisions to ensure that television audience measurement is carried out by an agency independent of any corporate interests. Television companies should be banned from holding stakes in any such agency.
21. The Law on Conflict of Interest should be amended to introduce explicit incompatibility between the holding of elected or governmental positions and the ownership of media outlets.



# Latvia

## 1. EXECUTIVE SUMMARY

Television is the dominant source of information for the Latvian population. Television penetration is almost 100 per cent, while radio has still not recovered from the phasing out of Soviet frequencies in the 1990s, and newspaper circulation has fallen due to the impact of economic reforms on purchasing power. Although broadcasting in Latvia has undergone fundamental changes since 1990, the development of public broadcasting and of broadcasting regulation in general has been hampered by the persistence of an outdated view of broadcasting as a means for the political elite to communicate to the public, rather than as an arena for democratic debate or the integration of different groups in society.

There are four national terrestrial television channels – two public channels (LTV1 and LTV7) and two private (LNT and TV3). Due to the late entrance to the national market of TV3, in 2001, market shares of broadcasters are changing considerably every year, as the public broadcaster loses its market share and TV3 strengthens its position with respect to LNT.

The Latvian television broadcasting market is fundamentally shaped by ethnic and linguistic factors. Almost one third of the country's 2.3 million inhabitants are Russian-speaking – a term covering the non-indigenous population of Russian, Ukrainian and Belarussian ethnic origin, whose first language is Russian. As in neighbouring Estonia, the ending of broadcasting of Russia's State channel ORT in Latvia led to a mass migration to cable television, which constitutes the main source of information for the Russian-speaking minority. Cable television therefore occupies a very important position in the broadcasting sector.

The whole broadcasting sector in Latvia is regulated by the National Radio and Television Council (NRTP), which regulates both private and public broadcasters and issues commercial broadcast licences. Operationally independent, but appointed by Parliament, the Council has been composed solely of nominees of the ruling political parties, and has notably lacked any representatives of the Russian-speaking minority. The regulatory activities of the Council have been troubled by several problems, in particular a lack of sufficient sanctioning powers and the existence of controversial (and unconstitutional) restrictions on foreign-language broadcasting.

In June 2005, two new draft laws on broadcasting were accepted by Parliament in their first reading: a new draft Law on Radio and Television and the draft Law on Public Broadcasting – which for the first time defines the public broadcaster's remit in the framework of a law. These draft laws propose substantial changes to the current system



of broadcasting regulation. Under the draft laws, the present regulator, the NRTP, would be abolished. A new regulatory body, the Public Broadcasting Council, would be created to take over the regulation of public broadcasting, while the Ministry of Culture would be charged with elaboration of general policy for the sector and regulation of commercial broadcasters. The draft new laws would also make numerous changes to other regulations relating to television broadcasting. While the creation of a second regulatory body is desirable, the drafts are seriously flawed, notably as they involve direct governmental regulation of the audiovisual sector.

Broadcast licences are awarded on the basis of open tenders. However, tender criteria are very vague. Moreover, the Broadcasting Council's capacity to enforce legal provisions and licence conditions has been weak, although in response to pressure from the European Union (EU) it has taken steps to increase sanctioning powers and improve its monitoring methodologies. The Council has also been subjected to considerable criticism for its allegedly arbitrary decisions and ties to particular commercial broadcasters.

Public television in Latvia consists of two channels – LTV1 and LTV7. The tasks and remit of the public broadcaster, Latvian Television (LTV), are defined in vague terms in the National Remit, which was agreed annually between the Broadcasting Council and Latvian Television. LTV is funded mostly by direct State subsidy, which is insufficient for the renovation and improvement of its equipment and is ultimately at odds with its public service mission. The draft Law on Public Broadcasting envisages an increase in the State subsidy. Both LTV and commercial broadcasters are subject to quotas for European and independent production, based on European requirements, and an unusually strict quota for production in the Latvian language. An important trend in recent years – anchored in official broadcasting policy – has been the increasing commercialisation of LTV.

Latvia's ethnic composition and recent history place a heavy burden of responsibility on broadcasting regulation, and especially on public service broadcasting – a burden that has apparently not yet been acknowledged, let alone accepted, by Latvian governments. Television is not subject to any formal requirements to provide minority-language programming – an issue that primarily concerns the Russian-speaking population. On the contrary, in public broadcasting, foreign-language programming is limited to the second channel, LTV7, and to a maximum of 20 per cent of total programming. Until 2003 commercial broadcasters were subject to strict limits on foreign-language programming. Although the Constitutional Court annulled these provisions in 2003, the law still contains other hindrances to foreign-language broadcasting, which prevent Russian-language broadcasting from playing a potential integrative role.

Regarding journalistic standards, the Law on Radio and Television contains very vague provisions requiring editorial staff to maintain political neutrality. Neither public nor commercial television broadcasters have any internal documents describing professional standards, with the exception of the LTV News Department Code of Ethics. However, the latter lacks a detailed description of standards. Journalists have been unable to agree

on a national code of ethics, and have no self-regulatory bodies that would act to defend journalists under pressure to violate standards of impartiality.

There are two terrestrial commercial broadcasters with significant market shares, LNT and TV3. Their main competitor is PBK, a cable television company that mainly redistributes the Russian Pervyi Kanal (formerly ORT) and is widely watched by the Russian-speaking population. Concentration and cross-media holdings by LNT and TV3 do not appear to threaten pluralism or competition in the media market. However, there is a serious lack of transparency in ownership, particularly in the case of LNT, and possible indications of affiliation between LNT and the regional TV5-Riga. Commercial broadcasters are not subject to any specific public service obligations, and programming is dominated by drama, soaps and light entertainment.

The lack of human resources is an important problem for both public and private broadcasters. Latvia does not have in place a system of special education for producers, cameramen, technicians and members of other television professions. At the same time, low salaries result in many journalists leaving to work for PR companies.

The Government has taken the first steps towards initiating the transition to digital television. In 2002, test broadcasting was launched, and an agreement reached with a foreign investor to install the network. However, the funding of digitalisation and the agreement with the investor were hit by scandal, and for the time being the digitalisation project is on hold.

## 2. CONCLUSIONS

The Latvian television broadcasting sector has undergone a fundamental transition since the country regained independence. The sector consists of a public broadcaster based on public service principles, and a competitive commercial broadcasting sector, including a flourishing cable TV industry. However, this report identifies several important problems facing the broadcasting sector.

The absence of a broad public discussion of broadcasting issues in Latvia has hindered wider understanding of the issues and the development of a broadcasting policy based on consensus. Financing of the public broadcaster, the appointment of the National Radio and Television Council (NRTP) – or new regulatory bodies envisaged in proposed new laws – and minority programming are the most pressing of such issues. It was symptomatic of this problem that not a single member of the Parliamentary Human Rights and Public Affairs Committee, responsible for broadcasting, attended the EUMAP roundtable discussion of this report, although all the members were invited.

The NRTP has not been an effective regulator for several reasons. Chief among these have been the following: it has represented a narrow range of political interests, lacked

adequate enforcement powers, and exhibited ties with private broadcasting interests. Although recent reforms have improved this situation, the draft new laws on Public Broadcasting and on Radio and Television do not appear to be well formulated. First, the procedure for appointing representatives of NGOs to the new Council is not sufficiently clarified. Second, audiovisual policy in general, and the commercial media specifically, would be regulated directly by the Ministry of Culture, with no provisions to ensure independence of the regulators from direct Government influence.

The functioning of the public service broadcasting has been affected by a regulatory model that is based on a conception of public media as a top-down “conveyor belt” of information from political and cultural elites. This is reflected in both the official remit of public broadcasting and the composition of the regulator, and has been underlined by recent statements and proposals by the Government and the above-mentioned draft laws.

In addition, the public broadcaster, LTV, has become increasingly commercialised, a development explicitly endorsed by the National Remit. Such commercialisation, unless its limits are clearly defined, threatens to undermine LTV’s performance of its public service role and thereby public support for its role as a public service broadcaster; at the same time, it also creates tension between the public and commercial broadcasters.

There are no effective mechanisms for protecting journalists against media owners or political pressure, either through the NRTP or professional organisations. Moreover, there are almost no written professional journalistic standards, and journalists appear unwilling to agree on such standards. Reflecting this, there are no mechanisms for self-regulation by journalists or broadcasting organisations.

Finally, a continuing one-sided policy of protecting the Latvian language through broadcasting legislation is discriminatory towards the Russian minority, which constitutes one third of the population. Although the Constitutional Court ruled that restrictions on foreign-language broadcasting are unconstitutional, several restrictions remain, and the Government has attempted to circumvent the Court ruling.

### **3. RECOMMENDATIONS**

#### **3.1 Media policy**

##### *Public discussion*

1. Parliament and the National Radio and Television Council (NRTP) should, before any new broadcasting laws are passed, organise and facilitate an open public discussion and transparent consultation with all sides involved, including public and commercial broadcasters, regulatory bodies, NGOs and experts. A vital outcome of such a discussion should be a clear statement of the

philosophy and role of public broadcasting, and the management and financing principles that follow from this.

### 3.2 Regulatory authorities

#### *Reforms*

2. The Government should re-examine the prepared reforms of broadcasting regulation established in the draft new Law on Radio and Television and the draft Law on Public Broadcasting, to ensure the following in particular:
  - The reforms should ensure the independence of the envisaged new regulators (the Public Broadcasting Council and the Ministry of Culture) and should define their powers in a way that does not threaten the independence of broadcasters.
  - The Public Broadcasting Council should be accorded wider rights and responsibilities with respect to the public broadcaster, and should secure the representation of public interests and maintenance of public service broadcasting in the elaboration of audiovisual policy in general.
  - Plans to entrust broadcasting regulation to the Ministry of Culture should be modified to create an independent regulator.
  - If the new Law on Radio and Television fails to create an independent regulator, the envisaged powers of the Ministry of Culture to control the public broadcaster should be reduced.
  - The planned role of civil society in both regulators should be increased, securing, in particular, representation of the Russian-speaking population.
3. The Government and Parliament should include a requirement for specific criteria for the issuing of broadcast licences in the draft new Law on Radio and Television, in order to make the evaluation of candidates on an equal basis compulsory.
4. The Government and Parliament should formulate and pass specific anti-monopoly legislation for broadcasting. In particular, it should be defined clearly what it means for a broadcaster to hold a “dominant position” in the market, define restrictions on cross-media ownership, and provide clear rules, powers and sanctions to prevent or deal with such situations.

### 3.3 Public and commercial broadcasters

#### *European works*

5. The Government should initiate further amendments to the Law on Radio and Television, to change the required 40 per cent quota of “European works”

to be produced in the Latvian language to a 40 per cent quota for “works produced in Latvia”. The category of “European audiovisual production” should be redefined, to include non-EU European countries.

### **3.4 Public broadcasters**

#### *Independence*

6. The Government and Parliament should clarify the system of funding for LTV, consider the introduction of licence fees as a means of strengthening the independence of the public broadcaster, and introduce clear restrictions on the amount of advertising that it may broadcast.

#### *Minority languages*

7. The Government should introduce amendments to the Broadcasting Law, or the Broadcasting Council should introduce relevant documents for the public broadcaster, which contain provisions for broadcasting in minority languages as a tool for ethnic integration and removing restrictions on minority-language and bilingual broadcasting.

### **3.5 Commercial broadcasters**

#### *Ownership*

8. Commercial broadcasters should be legally required to inform the Broadcasting Council (or relevant regulator) of their exact ownership structure. Any changes in ownership structure over a certain proportion of shares – for example, if more than five per cent of shares in the broadcasters changes hands – should be notified to the regulator and subject to the latter’s approval.

#### *Professional ethics*

9. Commercial broadcasters should develop internal guidelines to ensure impartiality and balance, including editorial standards and provisions to guarantee the independence of journalists from media owners.
10. Public and private broadcasting journalists should elaborate a set of agreed journalistic standards, particularly to clarify what is meant by non-biased news.

# Lithuania

## 1. EXECUTIVE SUMMARY

Television broadcasting in Lithuania has undergone fundamental changes and development since 1990. The former State television company has been transformed into a public broadcasting system that largely fulfils its democratic role. The commercial broadcasting sector has grown rapidly – three national terrestrial commercial companies compete among themselves and with the public broadcaster, and cable television is highly developed.

State regulation is carried out by two institutions – the Lithuanian Radio and Television Commission (LRTK), which regulates the activities of all radio and television broadcasters and rebroadcasters, and the Council of Lithuanian Radio and Television (LRTT), which only regulates public radio and television. Licensing procedures are governed by clear criteria and procedures. In addition, there is a strong emphasis on self-regulation through non-State bodies – the Lithuanian Ethics Commission of Journalists and Publishers, and the Code of Ethics for Journalists and Publishers. However, State regulation up to the end of 2004 suffered from a lack of overall monitoring activities, and self-regulation is still undermined by weak enforcement powers. Since 2004 things have started to improve, with the LRTK playing a pivotal role in the process. Regulators have shown strong resistance to attempts at direct interference in broadcasting by politicians.

Lithuanian National Radio and Television (LRT) has been fundamentally transformed since 1990, and to a large extent fulfils the role of a public broadcaster. Its management is independent, despite the fact that the domination of appointments to the LRTT by Parliament and the President creates potential for its politicisation. Programme guidelines and editorial standards provide a clear framework for LRT journalists, although their enforcement is questionable. LRT is funded mostly by State subsidies and advertising revenue. The main issue facing the broadcaster and the Government is if, and how, to change the system for funding LRT, given the Government's failure to introduce licence fees over the past decade. Currently, uncertainty over its funding appears to have led to a situation where it is, to some extent, sacrificing public service programming in order to boost ratings and advertising revenue.

Commercial broadcasting has grown rapidly during, and since, the 1990s, leading to a situation where three national terrestrial broadcasters compete on five channels – perhaps too many for a market the size of Lithuania. Regulation of the commercial broadcasting sector is highly liberal. Ownership of commercial channels has changed markedly in the last two years, with Lithuanian business groups acquiring two of the major commercial broadcasters from foreign investors. This development has for the

first time raised cross-ownership as an issue that may require regulation. Commercial broadcasters are subject to the same provisions of the Law on Provision of Information to the Public (the main media law) and the Code of Ethics for Journalists and Publishers as the public broadcaster, but there are no internal guidelines, and commercial companies rely on good practice. Adherence to quota and other legal requirements is adequate – with the exception of some advertising restrictions and the quota on European works – while supervision and enforcement by the LRTK has improved dramatically since 1994.

Lithuania has transposed into its legislation all the requirements of European standards, including the EU “Television without Frontiers” Directive (TWF Directive). Fulfilment of these standards is largely satisfactory, with the exception of some advertising restrictions – but these infringements can be expected to have decreased, following the strengthening of the legal enforcement framework and of the LRTK’s monitoring capacity in 2003.

Lithuania has not developed any Government or regulatory strategy for the development of new media. The cable industry is highly developed, while, by contrast, Internet penetration is quite low. Although six licences have been issued for digital broadcasting in Vilnius, digital broadcasting itself is at a very early stage, and there has been no study or analysis of the financial impact of transition or what State involvement might be needed.

## 2. CONCLUSIONS

Lithuania has taken great strides towards the establishment and consolidation of a stable broadcasting sector, including a genuine public service broadcaster and a strongly competitive commercial sector. In short, broadcasting fulfils its role as a pillar of democracy in Lithuania. Nonetheless, significant problems remain.

As it relies on discretionary State subsidies, the public service broadcaster, Lithuanian Radio and Television (LRT), still lacks a clear system of financing that would guarantee its independence and the distinctive public service nature of its programming. This appears to have led to a situation where the public broadcaster has balanced fulfilment of its public service mission against attempts to maximise ratings in prime time, to the likely detriment of the former.

The Lithuanian approach to regulation is highly liberal on the one hand, yet strongly reliant on ethical standards on the other. To date, the result of this has been still inadequate monitoring and enforcement on the part of various institutions in charge. However, significant improvements in the monitoring and enforcement capacity of the LRTK took place in 2004, which appear to be leading to more effective monitoring and enforcement.

The economic strength of the commercial broadcasting sector is questionable, given the existence of three national terrestrial broadcasters and the fact that the public broadcaster is allowed to sell advertising. This appears to have led to dumping practices and violation of some advertising restrictions in the past by both public and commercial broadcasters. Again, improvements in the legal framework for enforcement and the LRTK's monitoring capacity may have led to improvements in this area.

Lithuania lacks any specific legal provisions to prevent or limit concentration or cross-ownership in the broadcasting sector. This may become a problem if domestic business groups continue a strategy of acquisitions to build media empires.

There is no clear strategy for digitalisation. The Government has produced a rough schedule for the introduction of digital broadcasting, but this is not accompanied by any financial commitment or clear idea of how the transition will be carried out.

### **3. RECOMMENDATIONS**

#### **3.1 Media policy**

##### *Digitalisation*

1. Parliament and the Government should develop and formulate a legislative framework and strategy for digital television.

#### **3.2 Regulatory authorities**

##### *Monitoring*

2. The Lithuanian Radio and Television Commission (LRTK) should continue more detailed monitoring of the broadcasting sector, and make its monitoring data available to the public.

##### *Media Diversity*

3. Parliament, in consultation with the Lithuanian Radio and Television Commission (LRTK), should introduce limitations on ownership concentration and media cross-ownership.

#### **3.3 Public broadcasting**

##### *Funding*

4. The Government should initiate reform of the system for financing Lithuanian Radio and Television (LRT) in order to ensure its stability and the independence of the public broadcaster. This could be achieved either by



introducing licence fees as the main source of financing, or by introducing a longer-term system of State subsidies – for example, on a three- to five-year basis.

5. Parliament and the Government should, after the introduction of an alternative model of financing for LRT, consider banning or restricting advertising on LRT in order to ensure that the public service broadcaster is de-commercialised and its mission can be pursued fully.

### **3.4 Commercial broadcasting**

#### *Professional Ethics*

6. Commercial broadcasters should consider the adoption of codes of ethics to put the independence of journalists from internal and external pressures on a stronger basis.

# Poland

## 1. EXECUTIVE SUMMARY

The Polish television market is one of the largest in Europe, and the sector has undergone radical transformation since the fall of the communist regime. All parts of the sector have grown rapidly, especially satellite and cable broadcasting. The public broadcaster, *Telewizja Polska* (TVP) dominates the market more than any other public broadcaster in Europe, although private terrestrial broadcasters have also managed to achieve large market shares. However, the transformation remains partial. The role of the public broadcaster remains unclear, and regulation of both public and private broadcasting is characterised by continuing turmoil and controversy – issues of serious concern in a country where television is still the most trusted source of information.

The main broadcasting regulator, the National Broadcasting Council (KRRiT), has been troubled by a persistent lack of independence from the Government and political parties. The legal process for appointing the Council has led in practice to its politicisation, preventing it from performing its role properly – although there are signs that the culture of appointments may be improving. The KRRiT's monitoring and enforcement capacity is relatively good, but sanctioning has been neither predictable nor consistent.

The KRRiT issues broadcast licences on the basis of open contests. The allocation of licences has been subject to frequent and often bitter controversies. Although most of these have related to radio licences, allegations of corruption have emerged in connection with the most important national private television licences, and the manner in which these licences were allocated has had a negative impact on competition in the television market.

Although the independence of broadcasters from the State is guaranteed by the Constitution and the Broadcasting Act, in practice, public broadcasting has been subject to systematic political influence and bias. Editorial independence in private broadcasters is not underpinned by any written standards and depends heavily on the personalities of individual journalists and editors. There is evidence that private television channels have tended to avoid highly sensitive political issues, and there has been significant participation by State companies in the establishment of some private television broadcasters.

The transformation of TVP from the former State television has gone as far as subordinating it, via the KRRiT, jointly to Parliament and the President. In practice, this has resulted in its subordination to political parties. Management positions have been occupied on the basis of political loyalty and patronage, and news and public

affairs coverage have suffered from serious and probably systematic bias – although there have been recent signs of positive change in these areas. More generally, the broadcaster negatively affects the television market as it plays a double role as public service broadcaster, with the advantages of State funding, and also a fully commercial television station, competing without restriction for advertising.

There are five main private broadcasters in Poland, of which two are key players in the national market. Private broadcasters provide a mixture of entertainment targeting the widest possible audience, but are increasingly also trying to compete with TVP in providing public service quality news and current affairs coverage. Concentration and cross-ownership of broadcasters and other media ventures is not yet clearly regulated. Private broadcasters lack internal editorial standards or codes of ethics that would guarantee their political independence and the independence of editorial staff.

The Broadcasting Act has been fully harmonised with European requirements since amendments passed in April 2004. Work to complete harmonisation had been delayed by the so-called “Rywingate” corruption scandal, which devastated Poland’s political landscape in 2003. In this affair, a well-known film producer requested a large bribe from a local media group in return for changes in proposed amendments to the act that would favour this group. Rywingate forced into the public spotlight the issue of broadcasting regulation, and the independence of the KRRiT in particular, and appears to have resulted in some positive developments in the regulation and management of public broadcasting.

In May 2005 the Government approved a national strategy for conversion from analogue to digital terrestrial broadcasting, envisaged to be completed by 2015. However, the strategy remains unclear concerning what incentives will be created for broadcasters and viewers to participate, and to what extent the Government will participate financially.

## 2. CONCLUSIONS

Poland has not yet managed to formulate and implement a clear audiovisual policy based on consensus across the political spectrum. This is due to a range of factors, the common denominator of which has been the systemic politicisation of broadcasting regulation.

Broadcasting policy was based on the creation of the KRRiT as a mechanism of democratic control over public broadcasting and an impartial regulator of private broadcasting has, paradoxically, led to a very different situation. The composition of the KRRiT has been systematically politicised, not only in the sense of who appoints its members, but, more importantly, in the fact that members have been more or less clearly affiliated to political parties. This practice is so established that attempts to tackle the problem appear so far to have consisted in fights to appoints KRRiT

members with different political affiliations, rather than promoting a composition that is politically independent and professionally qualified.

Public broadcasting has, in practice, been subject to systematic political interference in management and programme content. Although the Rywingate Affair appears to have resulted in important progress in this area, the changes to date have been limited and there is a need for a more fundamental re-think of the role of the KRRiT in practice and the appointment of politically neutral professionals to TVP management positions.

Apart from the damage inflicted on programming, this state of affairs has effectively prevented an effective discussion of what the role and vision of public service television should be and how that should be pursued. In this situation, TVP has become increasingly commercialised, undermining its public service rationale. Unfortunately, the reform debate appears to centre publicly on a struggle between those who fight to preserve the *status quo* at one extreme, and radical reformers who would prefer to effectively privatise public broadcasting at the other.

The unresolved situation of TVP results in an advertising market that is seriously distorted by the public broadcaster. Private broadcasters suffer openly from unfair competition for advertising, and this probably makes them more inclined to lobby for arbitrary favours from the KRRiT – such as lower quota requirements or other more favourable licence conditions – rather than focusing on competing in a market distorted by TVP. To date, neither the KRRiT nor Poland’s anti-monopoly authority have taken any action against such practices, which reflect the overall failure to define TVP’s role clearly.

The KRRiT’s own monitoring and enforcement activities appear to have begun in earnest very late – with supervision of quota requirements beginning only in 2003. In a market where, private broadcasters have strong incentives to circumvent programme and quota requirements, effective supervision is vital.

The storm caused by the “Rywingate Affair” effectively blocked the introduction of clear restrictions on media concentration or cross-ownership, which will become increasingly necessary as consolidation takes place in the domestic market and foreign investment in the audiovisual sector accelerates.

Finally, although an overall strategy for the transition to Digital Television is now in place, this strategy still does not contain a clear policy framework, including clear criteria for the allocation of digital licenses and measures to motivate viewers to make the necessary investment.

### 3. RECOMMENDATIONS

#### 3.1 Policy

##### *Digitalisation*

1. The Government should clarify plans for the transition to digital television, including, in particular, a clear strategy for how broadcasters and viewers should be motivated to participate, as well as a clear conception of State financial involvement.

#### 3.2 Regulatory authorities (KRRiT)

##### *Public debate*

2. The National Broadcasting Council (KRRiT), the parliamentary Culture and Mass Media Committee and media experts should organise a structured public debate on the future of broadcasting regulation in Poland and on the role and mission of TVP in particular. The debate should be defined as an attempt to achieve consensus on these issues and to yield specific policy recommendations that would then be pursued by the Government. It should involve former and current representatives of public and private television, politicians, media experts and civil society representatives, and allow input from the public.

##### *Independence*

3. The Government should initiate changes in the Broadcasting Act to alter the procedure for appointment (or nomination) of members of the National Broadcasting Council (KRRiT), in order to ensure its independence from both governing and opposition political parties. This could, for example, be done by ensuring that nominees of the Polish Parliament and President constitute a minority on the Council, *inter alia*, through the inclusion of nominees of civil society organisations and non-state media organisations. In addition, existing provisions requiring members to be experienced media professionals should be observed by Parliament and the President when making appointments.

#### 3.3 Public broadcaster (TVP)

##### *Professionalisation*

4. The KRRiT should adopt clear rules to make appointments to positions in the Supervisory Board and Management Board of TVP conditional on professional experience and subject to effective conflict of interest provisions.
5. TVP should undergo a fundamental structural audit and management review, in order to streamline its operations and increase its efficiency and

transparency. This review could include recommendations on the privatisation of parts of TVP's activities (for example, TVP2) as well the remedies necessary to stop its negative impact on the advertising market.

#### *Public service role*

6. The Government and Parliament should clarify, through amendments to the Broadcasting Act or other relevant binding rules, the public service obligations of the public broadcaster. Such clarification should also include both the rules governing its commercial operations and the extent to which its commercial activities should be allowed.

#### *Funding*

7. The Government and Parliament should reform the system for financing TVP in line with restrictions on its commercial activities in order to make funding transparent, predictable and sufficient for the public broadcaster to fulfil its remit. This might be done either by making the current licence fee into a tax, or by creating a special fund financed by payments from commercial broadcasters. However, consensus and consistency in reform are at least as important as the details of reform.
8. The KRRiT should commission an independent analysis of TVP's advertising practices, and provisions of the Competition and Consumer Protection Law should be applied strictly to prevent uncompetitive practices.
9. The KRRiT should implement measures to make licensing procedures more transparent; for example, through public hearings.

### **3.4 Private broadcasters**

#### *Professional ethics*

10. Private broadcasters should support the development of codes of ethics and professional standards for journalists and other media employees.



# Republic of Macedonia

## 1. EXECUTIVE SUMMARY

The reform of the media system in the Republic of Macedonia has been underway for more than a decade. At the outset, due to the absence of appropriate laws, changes were rather abrupt and somewhat improvised. The media landscape was flooded with more than 300 private radio and television stations. To suppress the chaos on the airwaves, the Government introduced a moratorium on issuing new licences for frequencies. Major laws – such as the Law on Broadcasting Activity, and the Law on the Establishment of the Public Enterprise Macedonian Radio & Television (MRT) – were passed six years after the country became independent and are still in force. In 2005, a new Law on Broadcasting Activity was drafted and should be adopted before the end of 2005. By contrast, changes in the print media were slower and the first privately owned dailies appeared much later. However, foreign capital is now present in the print media, which is not the case with broadcasting.

Today, there are three segments in the broadcasting sector – terrestrial public service broadcasting, with 47 radio and television stations; terrestrial commercial broadcasting, with 148 stations, including five national television channels and three national radio stations; and cable radio and television networks, with 66 registered operators, of which 54 distribute radio and television programmes. On the national level, two private television stations, A1 and Sitel, compete with the first and third channels of Macedonian Radio & Television (MRT). There is fierce competition among stations, yet the content of the programmes is rather poor, consisting of mainly news bulletins, soap opera serials, and other light entertainment programmes. The broadcasting industry has serious problems when it comes to protecting independent editorial policy. There is no collective bargaining and there are no collective agreements between media owners and journalists.

A major novelty in the broadcasting sector was the establishment, in 1997, of the Broadcasting Council, as the independent regulatory authority. Parliament elects all the members of the Broadcasting Council and its composition reflects the strength of the major political parties in Parliament and the Government. The Council is financially independent, with its expenditure paid from licence fees and revenues collected from private broadcasters for the licences they were granted. However, there is concern because of the Council's limited competencies. It chiefly offers proposals and opinions, and it is the Government that actually makes all major decisions such as granting and cancelling licences or sanctioning broadcasting companies. This deprives the Council of its autonomy and so of its responsibility for the performance of the audiovisual sector.



MRT presents the most difficult problems. Reforming this company is a difficult process, mostly because of the Government's unwillingness to give up control of the national broadcaster. The MRT management is appointed from the ruling political structures, which, in turn, influences how the company is run and also its programme profiling. At the same time, MRT has serious financial problems because many viewers refuse to pay the licence fee, while operating costs remain sky-high due to outdated equipment and technology, inefficient organisation, and a high number of superfluous employees, together with a lack of highly qualified professionals. All of this inevitably also has consequences for programme quality. The situation is even worse with local public broadcasting organizations, where reforms have not started yet. The biggest problem is the lack of financing and the undefined ownership status.

Commercial broadcasting is constrained by unduly restrictive regulation and economic and political pressures. Broadcast licences are granted to those applicants who fulfil prescribed conditions regarding the programme framework and technical equipment. The founder of a commercial broadcasting company can only be a single legal or natural person. The founder may be granted only one licence at the national level, and two at the local level. The licence cannot be transferred to a third party. Foreign legal entities are only allowed to act as co-founders and to own up to 49 per cent of the founding capital. Owners of print media, holders of public office and political party officials are not permitted to establish a broadcasting company. Owners of radio or television stations, especially the major ones, are often backed by influential business or political structures. Smaller stations barely manage to survive, and do so often thanks to external donors.

Broadcasters use outdated equipment and technology. Shifting from analogue to digital signal is not yet envisaged. Capacity and resources required for developing new media platforms are scarce. Owing to the poor overall economic situation and low standards of living, the number of Internet users in Macedonia is low.

Ethnic diversity is a determining feature of society in the Republic of Macedonia. Especially after the major ethnic clashes in 2001, the issue of representing ethnic diversity in the media was high on the political agenda. Several monitoring projects showed that especially in times of tensions and looming intra-State conflicts, media of different ethnic communities tend to report ongoing developments in different, often contradictory terms. Often it is said that viewers and listeners in the Republic of Macedonia receive a different image of reality, depending on the "ethnicity" of the newspapers and broadcasters they prefer, especially with respect to reporting on news and current affairs. Essentially, there are two parallel public spheres – one created by Macedonian-language media and another by the Albanian-language media.

## 2. CONCLUSIONS

Attempts to locate tendencies and challenges in the audiovisual field in the Republic of Macedonia always return to the key question – what is the development strategy for this sector? Future expansion is not possible without a prior consensus on the nature of the broadcasting system. If there could be agreement that the country wants a dual broadcasting system, it would be easier to define the scope of public service broadcasting, what the starting point of commercial broadcasting should be, and the best way to develop cable and satellite broadcasting. An overarching priority as to what are the plans and prospects of digitalisation?

The most urgently needed step is the formulation of a development strategy for public service broadcasting. This would also reflect the level of democracy in the country. No palliative, short-term solutions should be allowed. There should be firm and stable legal guarantees for the independence of public service broadcasting in Macedonia and, especially, a concrete action plan to implement these guarantees, complete with specified obligations fixed in annual plans containing strictly defined goals, target groups, and a financial framework. Bylaws and statutory provisions are needed to eliminate all possibilities for political influence over the appointment of the General Manager, following a public competition, and the members of the broadcasting boards, who should be distinguished representatives of the community accountable to the general public.

The second priority is commercial broadcasting. Ambiguity over essential standards should be eliminated from the regulation of private radio and television stations. Of all anomalies in this sector, the ownership structure of media outlets is the source of most of the problems, since it has a direct impact on editorial policies and the performance of journalists. The draft new Law on Broadcasting Activity has the potential to improve this situation. However, the final responsibility for the level of editorial autonomy depends on the relationship established between owners and employees in the broadcasting sector.

Cable radio and television networks play an important role. Important problems remain to be solved, such as the introduction of clear rules and standards to protect cable operators from Government influence, and individual consumers from the cable operators. Satellite broadcasting is an area, which will have to be looked into by public authorities and regulatory bodies.

Finally, there is the matter of new digital technology. The introduction of new media technologies in the Republic of Macedonia will be a litmus test of the Government's ability and willingness to get involved with contemporary global media trends. It requires that concrete steps be taken to ensure harmonisation with accepted international standards. First, a national strategy on new technologies should be drafted, with clearly defined plans and programmes. Second, the responsibility for regulating digital broadcasting should be clearly allocated to one regulatory body –

such as the Broadcasting Council, the Committee for the Development of Broadcasting (presently operating under the auspices of Macedonian Broadcasting) and/or the Agency for Telecommunications. This body should engage highly specialised experts who would make strategic decisions. Third, new provisions for an appropriate digital platform should be introduced, preparing Macedonia for imminent changes and avoiding the airwave chaos that prevailed before the Law on Telecommunications was adopted. Finally, a clear definition is needed, in accordance with international standards, of what constitutes new, online services.

The quest to sustain broadcasting pluralism in the Republic of Macedonia remains incomplete. However paradoxical it may sound, the unsustainable number of media outlets did enable the spread and competition of different ideas and prospects during the 1990s, although there were numerous attempts, especially during pre-election campaigns, to influence and even to silence certain outlets. There were anonymous threats, mysterious power failures, unannounced company audits, summary court decisions against journalists, and other forms of intimidation. This is not uncommon even today. However, despite such recent gains, some media outlets, perhaps exhausted by the unending economic crisis and political games, have succumbed to the logic of trying to win a public following by “dumbing-down” their content and relying on soap operas, cheap feature films, quiz-shows, bingo and such like.

Even though it is still not clear when Parliament will debate the draft new Law on Broadcasting Activity, the draft is already burdened with high expectations. The present law exhausted its purpose long ago and its continued existence can only be harmful. If the new bill does indeed provide for the implementation of European standards, it will seriously strengthen the freedom of media outlets, especially their freedom from the Government. Bearing in mind the experience to date with successive governments, a lot more effort will have to be invested if the bill is not to be watered down before its eventual adoption.

An important question is whether the State possesses sufficient democratic capacity to pursue these processes. Presently, there are signs that democratic reforms are stagnating, in politics and the media alike. The influence of political parties on major actors in the broadcasting sector is evident. This applies equally to the Broadcasting Council, the MRT Board, and the directors of public local broadcasters. Directly or indirectly, this has caused widespread politicisation of the sector. Divided along political, ethnic and economic lines, media outlets are under constant pressure from Government and State institutions. Nevertheless, Macedonia’s application for EU membership will certainly push forward the harmonisation processes of national laws with EU benchmarks in the broadcasting sector. This will contribute, in turn, to wider democratic progress in the country.

The Stabilisation and Association Agreement (SAA), ratified in 2004, committed Macedonia to reforming its laws and approximating them with EU standards. Together with other countries participating in the Stability Pact for South-eastern Europe, the Republic of Macedonia has also pledged itself politically to reforms in the

media sector. It is in the best interests of the Republic of Macedonia to accelerate the reform process, also in the media sector. While the most active promoters of the process have to be Parliament and the Government, responsibility also lies with civil society organisations, academia, journalists and the media industry itself.

### 3. RECOMMENDATIONS

#### 3.1 Policy

##### *Media legislation*

1. Parliament and the Government should pass the new Law on Broadcasting Activity as soon as possible. This obligation is noted in the Government's "Answers to the Additional Questions for the Economic Criteria" and the Chapters of the *Acquis* for European membership.<sup>262</sup>
2. Civil society, the media industry and academia should insist on the fulfilment of this obligation and intensively monitor and assist the parliamentary procedure.
3. Parliament and the Government should ensure the full implementation of the new Law on Broadcasting Activity after its passage, in particular with respect to the establishment of the institutions in Macedonian Radio and Television (MRT) foreseen by the law, and to securing legal and political guarantees for its independence.

##### *Broadcasting policy*

4. Parliament, as the founder of the Macedonian Radio and Television (MRT), should organise a parliamentary debate about the future of the public service broadcaster. The main purpose of this debate should be to establish a strategy for financial consolidation, modernisation of its technical equipment and the strengthening of its human resources.
5. The Broadcasting Council, together with the Committee to Develop the Broadcasting Network, should organise, as soon as possible, a broad public debate about the National Strategy for the Broadcasting Sector.
6. The Government should ensure that a national Strategy for the broadcasting sector is drafted, incorporating both national experiences and European standards and trends.

---

<sup>262</sup> Government of the Republic of Macedonia, "Answers to the Additional Questions for the Economic Criteria and the Chapters of the *Acquis* for European membership", available at <http://www.sei.gov.mk/prasalnik> (accessed 14 August 2005).

7. Parliament should, as a priority, ensure the passage of the Strategy and its full implementation in practice.
8. The Government should adopt a plan to introduce new legislation in the area of the information society, to introduce regulation for the Internet and other new technologies.
9. The Government should adopt a National Strategy for Electronic Communication and Information Technology. Particular attention should be given to fostering the introduction of new information technologies and services. Together with experts from universities and research institutes, public authorities should also involve private enterprises in this task.

#### *International support*

10. International organisations supporting media development, such as the OSCE Media Development Unit-MDU, should continue their financial, technical and professional support, particularly to those media who cover the interests of marginal target groups in society.
11. The Stability Pact for Southeast Europe, through its Media Task Force and together with the Media Working Group in the Republic of Macedonia, should initiate the monitoring of the implementation of the new Law on Broadcasting Activity, after this new law has been passed.

### **3.2 Regulatory bodies**

#### *Public service broadcasting*

12. The Broadcasting Council, together with Macedonian Radio and Television (MRT) and civil society organisations, including journalists associations, trade unions and the academia, should organise public debate about the future of the public service broadcasting in Macedonia, to support the process of further transformation in this sphere.

#### *Minority representation*

13. The Broadcasting Council, the broadcasters – Macedonian Radio and Television and commercial broadcasters – as well as media experts and other interested parties, should launch a debate about ethnicity and the public sphere, to determine how the media contribute to creating understanding or division among the various communities in the country. The debate should focus on how the media could enhance their professional performance in creating understanding among the communities.

### 3.3 Industrial relations and ethical issues

14. The Association of Journalists of Macedonia (AJM) and other professional associations of journalists should establish a system of regular debates about journalistic professional standards.
15. The Association of Journalists and other professional associations should start negotiations with media owners about media standards, codes of ethics and other self-regulatory instruments designed to protect the editorial integrity of journalists.
16. The Association of Journalists and other professional associations should immediately establish co-operation with Trade Unions and formulate a platform for the protection of employees' rights in the media industry.



# Romania

## 1. EXECUTIVE SUMMARY

The power of television in Romania is – like the medium itself – more glamorous than consistent. Although accused in some quarters of superficial coverage of political major events, television continues to be the primary source of political information for a large part of the population.

At first glance, Romania's media landscape is dominated by a high number of media outlets, a healthy level of foreign investment, strong legislation in line with EU provisions, and independence warranted by law. Judging by the number of outlets, pluralism is ensured. Freedom of expression, the right to be informed and to express opinion, is guaranteed by the Constitution and by specific legislation. The Law on Radio and Television Broadcasting, the main law on broadcasting, states that “censorship of any kind upon audiovisual communication is forbidden”, and that “editorial independence of broadcasters is acknowledged and warranted.”

A closer look at the broadcasting landscape reveals, however, weak independence and low credibility of broadcasters. In fact, speaking about the whole media landscape, it happens often that political and business interests are behind the media agenda rather than viewers' interest. Asked if television has become a tool to satisfy its owners' interests, a great majority of the respondents to an EUMAP questionnaire, including the head of the broadcasting regulator, replied that Romanian television is largely used nowadays as a tool to gain influence. Editors enjoy enough freedom as long as they safeguard the interests of their owners and their owners' partners who in many cases are politicians, according to many respondents.

Another peculiarity of Romanian television today seems to be the tabloidisation and trivialisation of the news programmes, which have become less orientated towards politics. This trend was further exacerbated by the new election legislation adopted prior to the 2004 elections, which forbade all television stations in the country to air news about candidates running for Parliament or Presidency other than electoral coverage. In their news programmes, stations were allowed to air only election-related reports, and, apart from that, only news that did not show candidates running for Parliament and Presidency. Political debates were allowed only if they were in line with a complicated calculus of distributing the broadcasting time to political parties. As a result, in trying to avoid pressures from a large number of political parties, many small regional stations simply chose not to cover election-related topics and politics at all. The same law obliged Romanian public television to allow all political parties to air electoral messages, according to a formula defined by a parliamentary commission. This law turned the public broadcasting media into a mouthpiece of politicians.



Neither the broadcasters nor the broadcasting regulator, the National Audiovisual Council, were consulted by Parliament when it adopted the election laws.

Primetime programming, chiefly news, bristles with what has become known in the industry as “non-events”, that is, events that are sometimes irrelevant to the wider community such as car accidents or cases of domestic violence. Profit-driven, the commercial television stations usually take the position that as this kind of programme attracts audiences, it must be what viewers want. Nonetheless, the public broadcaster, the Romanian Television Broadcasting Corporation (SRTV), whose mission is also educative and informative, does not make a difference in the whole media landscape. Moreover, from 2000–2004 there were strong allegations that it suffered from a lack of independence, which are even more worrying given that first channel of the public television, TVR1, has for some years been the only beneficiary of full nationwide technical coverage. Besides the two channels of SRTV, only three commercial television channels reach over 70 per cent of the country’s territory. For a long time in the 1990s, half of the country’s population, especially those living in rural areas, only had access to a single television station, the public broadcaster. Scarce technical coverage has seriously hampered the universal access to electronic information, having a negative impact on the pluralism and diversity of broadcasting media.

In the past two years, niche television stations have mushroomed. Some focus on news programming, other have a generalist format or specialise in music, sports, movies, documentaries and religious programmes. In terms of audience share, the three largest television channels in the country – TVR1, Pro TV and Antena 1 – together hold 50 per cent of the total nationwide audience. They also take the bulk of advertising revenue, although this was still modest, at around €90 million annually (net) in 2004.

From 2000–2004, both public and commercial stations deliberately avoided covering sensitive political topics, especially critical reports on the ruling parties and political leaders. Instead of news and investigative programmes, television stations filled their programming with entertainment such as variety shows and light talk-shows. Due to biased coverage of the ruling party and the trivialisation of political coverage in general, viewers’ interest in politics waned dramatically. Banking on cheap entertainment, television got what it wanted, namely higher ratings but a lower interest in good television.

Over this period, however, the media also experienced a process of what local experts call “berlusconisation”. Realising that the media help to build careers, more politicians became owners of television stations, especially local ones. However, the television proprietors have made a habit of concealing the ownership status of their stations by registering in a tax haven or in a Western European country such as Switzerland where legislation allows for the anonymity of offshore shareholding. Consequently, the Romanian media seem to have a significantly higher rate of foreign investment than any other sector of the economy. In fact, no authority knows or checks who is really is behind the capital coming from tax havens.

Ownership concentration has increased as a result and five main players now dominate the broadcasting market. Some of these are more or less involved in the print sector. However, unlike the print media industry, which is totally unregulated, broadcasters operate under strict regulation, in line with EU legislation. Nonetheless, despite its special status, SRTV was still considered, in early 2005, to be far from fulfilling the tasks and role of a public service television broadcaster. While it benefits significantly from television and radio licence fee revenues, the public broadcaster has been sharply criticised for its political bias. It is the only station which enjoys full territorial reach, and benefits from other sources of funding such as Government subsidies and advertising. However, there have been wide suspicions about the lack of a system of programme production based on cost efficiency, and a bloated payroll that seriously undermines the financial health of the station.<sup>263</sup> Following the parliamentary and presidential elections in 2004, a special parliamentary commission was established in March 2005 to investigate the performance of the public broadcaster, including the spending of its budget, the management of the station and the implementation of the rules applying to the public service broadcaster.

Television operators expect Romania's accession to the EU, scheduled for 2007, to increase competition in the media market. Because it is cheap even by Romanian standards, cable television has burgeoned. As digital television is concerned, in 2002, the first experimental digital television project was launched by the Ministry of Communications. The project consists of a communication centre digitally transmitting three television programmes. However, introduction of digitalisation lags behind other European markets. Besides the digital pilot project, there is no clear policy or feasibility study on digitalisation and public debate is non-existent.

## 2. CONCLUSIONS

In a society where the political system and business environment are plagued by pervasive corruption, independent media outlets can hardly survive and must make all kinds of compromises to stay afloat. None of the private television stations is a lucrative business in a market with scarce advertising revenues and not a very stable socio-economic environment. Investors fear abrupt changes in government policies. Legal and regulatory systems, for example, can always be subjected to political influences. All these factors increase the general level of business risk.

A major problem remains the lack of transparency regarding the capital behind television stations. None of the private broadcasters publishes a financial report. The only figures available are the fiscal balance sheets, which do not say much about the station's sources of income. Some two years ago, information about the debts to State budget of the

---

<sup>263</sup> Hearing of SRTV's employees by a parliamentary commission investigating SRR's and SRTV's activity, Bucharest, 29-30 March 2005.

television stations was considered taboo. Eventually, the Ministry of Finance made this information public. However, there is no system for checking the stations' sources of cash. Quite often the origin of the stations' money is to be found in the accounts of the stations' foreign investors. For example, the media discovered the dubious transfers of cash from the Romanian State budget to the coffers of the local media mogul Cristi Burci from the annual reports released by SBS, one of Prima TV's owners.

To conceal their ownership more effectively, an increasing number of media outlets have registered offshore jurisdictions where ownership is very difficult to uncover. There are serious suspicions that the true owners are hiding behind fictitious names that appear in the offshore ownership of some newly arrived broadcasters, such as Realitatea TV, Global Media or Radio Kiss FM. Lack of ownership transparency can become dangerous. First, because it may hide political connections or questionable businesses; and second, because without real information on ownership structures, concentration can no longer be controlled, despite the clear provisions of the law in this regard. Concentration in the broadcasting market is expected to increase even further over the coming years. It is likely that only two or three private companies will come to control the whole market during the next ten years, but who will be able to check on them?

Specialised television formats covering niche audiences have more chances of surviving, but their development will depend on whether their owners will really create conditions for their growth based on pragmatic long-term strategies. So far, niche channels have not enjoyed much success. For example, the all-news station Realitatea TV hardly reaches a three per cent audience share in urban areas and a two per cent nationwide share.

Another sure bet in the television market in the near future is the local television, which suffers now from scarce resources and lack of professionalism. However, in the coming years local television is expected to become a good investment option.

The pressure for advertising revenue has a negative impact on editorial freedom. Moreover, advertising of State-owned enterprises in the media is another tool for keeping media outlets dependent on political and economic interests.

The advertising market is among the fastest growing in Eastern Europe, with a television advertising growth of 25 per cent to 30 per cent in 2003. The market is expected to grow even faster when Romania joins the EU in 2007–2008, if all the accession criteria are met. With EU accession, the business and political environment is expected to stabilise thanks partly to the EU legislation. Also, the broadcasting players expect steady growth during the years before EU accession, on the pattern already set by the countries that acceded in 2004.

Growth of the advertising market and more investments in the media will strengthen the broadcasters' financial situation. The healthier and more stable the economy becomes, the more interested businesses operating in Romania will be in objective

news and investigative programmes. But a healthy economy is not possible without a strong, credible and sustained anti-corruption policy. Building a healthy democracy in Romania should begin with the media. Television outlets should intensify their efforts to become transparent and credible, but this will be the most difficult challenge: establishing objective, in-depth reporting on the screens. However, this is the only way to secure the watchdog role that media should play in a democratic society.

All these efforts will not be sufficient without maximum transparency of data on media ownership and revenues. Increasing the output of independent production could also significantly raise people's trust in the media. Supporting freelance journalism is an important issue. Now, underpaid employees would easily accept any compromise and therefore are censored through various confidentiality agreements.

### 3. RECOMMENDATIONS

#### 3.1 Policy

1. The National Audiovisual Council (CNA), should organise public debate involving all relevant actors, including civil society, before adopting any important decision affecting television broadcasters.
2. Parliament should consult with the National Audiovisual Council (CNA), and also with civil society actors, when adopting or amending media legislation,
3. Regulators and lawmakers should adopt a new strategy which would specify procedures for the introduction of digitalisation that would secure free dissemination of information.

#### 3.2 Regulatory authorities (CNA and IGCTI)

##### *Media diversity and transparency*

4. The National Audiovisual Council (CNA) should oblige applicants for broadcast licenses to disclose their ownership, especially the identity of their shareholders.
5. The National Audiovisual Council (CNA), in cooperation with the local Competition Council, should enforce restrictions on the concentration of media ownership and cross-ownership. The two institutions should be held accountable for not fulfilling this task.
6. The National Audiovisual Council (CNA) should monitor transfers of broadcast licences, and movements of shares of companies owning such licences, to prevent unlawful concentration of ownership.

7. The National Audiovisual Council (CNA) should publish the audiences shares of all television stations every month, to strengthen the transparency of the broadcasting market.

#### *Independence*

8. The Government should ensure the autonomy of the body administrating the frequency spectrum, the Inspectorate General for Communications and Information Technology (IGCTI), by changing the procedure of appointing its chair so that the Prime Minister no longer makes the appointment.

#### *Local television*

9. The National Audiovisual Council (CNA) should monitor the ownership structures and sources of financing of local television stations.
10. The National Audiovisual Council (CNA) should monitor the content of the local television market to ensure compliance with their remit.

### **3.3 Public and private broadcasters**

11. Broadcasters should support educational and cultural policy in broadcasting, by creating a fund for the support of quality television programming, which should be administered by an independent, private body.
12. Parliament should initiate amendments to Law 187/1999 to oblige public and private television stations to make public the names of their employees who were former collaborators with the communist secret police (the *Securitate*).<sup>264</sup>

### **3.4 Public service broadcasters (SRTV and SRR)**

#### *Independence*

13. Parliament should take steps to amend the Law on SRTV and SRR to ensure the independence and efficiency of public broadcasters.
14. Parliament should adopt changes in legislation to ensure the independent position of the public service broadcasting. All segments of the society should be represented in the SRTV's and SRR's Councils of Administration.

---

<sup>264</sup> Article 2 (n) of the Law on access to personal files, states that the public: "has the right to be informed, on request, in connection with the position of agent or collaborator of the *Securitate*, as a political police, of the persons who occupy or aspire to be elected or appointed" to dignities or offices including "member on the board of directors of the public radio and television corporations, employer, director, chief editor, editor in the public or private television, radio or written press services, political analysts and the comparable categories". However, the law does not oblige broadcasters to disclose the names of their employees who collaborated with the *Securitate*.

15. Parliament should adopt changes in legislation to introduce criteria of professional competence in appointing members of SRTV's and SRR's Councils of Administration, as well as at the executive level of the management of Romanian Public Radio (SRR) and Romanian Television Broadcasting Corporation (SRTV).
16. Parliament should put forward changes in legislation aimed at separating the positions of the SRTV's Council of Administration's President and Director General.
17. Parliament should initiate amendments to the Law on SRR and SRTV to forbid former collaborators with the communist secret police (the *Securitate*) to be employed in PSB.<sup>265</sup>

### *Auditing*

18. Parliament should adopt legislation to ensure an independent financial auditing of the management and editorial independence of the Romanian Public Radio (SRR) and the Romanian Television Broadcasting Corporation (SRTV).
19. Civil society should continue to organise regular debates on how the public broadcaster fulfils its mission, inviting all political parties, representatives of regulators, Parliament, other relevant institutions to participate.

## 3.5 Private broadcasters

### *Transparency*

20. The National Council of Audiovisual (CNA) should oblige private broadcasters to reveal their sources of financing.<sup>266</sup>

<sup>265</sup> According to the SRTV's Organisational and Functioning Regulations (ROF), former collaborators or employees of the *Securitate* are forbidden from working with the SRTV. However, this internal regulation has been employed arbitrarily so far.

<sup>266</sup> According to the Romanian Constitution: "the media may be obliged by law to disclose their sources of financing". Constitution of the Republic of Romania, article 30, para. 5.

*Local broadcasters*

21. Professional associations of journalists should support local television stations in denouncing pressures and censorship by public authorities and various business and political groups of interests.
22. Local broadcasters and advertising agencies should cooperate in setting up a unified system for measuring the audiences of the local broadcasters, and share the costs of its implementation. Introduction of such a system would help local television stations qualify for advertising orders.

# Serbia

## *Note on Serbia and Montenegro*

The State Union of Serbia and Montenegro, established on 4 February 2003, is at this moment the last country to emerge from the violent dissolution of the former Yugoslavia in the 1990s. Its Constitutional Charter is still not fully implemented, because of differences between the Governments of the union members regarding the future of the State. The present Government of Montenegro has declared its determination to transform the Republic into an independent State, while the Serbian authorities would prefer to preserve the union. The initial arrangement foresees the possibility of a referendum on independence in each of the republics in 2006.

The State is a loose union whose top administrative body, the Council of Ministers, is in charge of only five areas – defence, human and minority rights, foreign policy, internal economic affairs and international economic relations. The federal ministries that were previously concerned with media issues have shrunk into only one office, the Information Directorate, which mostly deals with Government-media relations and has no policy-making capacity.

Since the late 1990s, when the major political rupture occurred between the two republics, their developments have followed separate routes. Media policy is exclusively in the competence of the republics. The media industries in the two republics differ in many respects. Divergent, occasionally even incompatible, conditions, institutions or policy in Serbia and Montenegro have resulted in separated and to a great extent different media systems.

## **1. EXECUTIVE SUMMARY**

The present media landscape in Serbia is shaped by two major factors – a decade of devastation in the 1990s and slow and insufficient reforms after 2000.

The democratic transition in Serbia only started after the presidential elections of September 2000, in which the authoritarian ruler Slobodan Milošević was defeated. Initially, Milošević attempted to avoid accepting electoral defeat, but mass protests in Belgrade on 5 October 2000 brought about a change of power. Since then, media policy in Serbia has oscillated between two myths. The first Government, led by Prime Minister Zoran Đinđić (2001–2003), inspired many people to believe that Serbia would undergo a transition – including the transformation of the media sector – faster than any other country in the region. The second Government, established in early



2004, with Vojislav Koštunica at the helm, behaved as if transition had mostly been completed, often attempting to present the absence of media policy as a “free market approach”. In reality, though, Serbia lives with one of the most unsettled and unregulated media industries in Europe.

Commercial television and radio channels began to emerge in Serbia in the early 1990s, prior to the legalisation of the dual broadcasting system and the establishment of a coherent regulatory framework. Tenders for broadcast licences were called without proper public openings or transparent criteria. Licences were granted as political favours, or broadcasters simply operated with no licence at all. Until recently, even basic data on the media business were difficult to obtain.

It has been estimated that Serbia has, for some years, had up to 1,500 media outlets, of which the majority are broadcast media. In early July 2005, in addition to the State broadcaster, Radio-Television Serbia (RTS), there were 755 radio and television stations in Serbia – 543 radio stations, 73 television stations and 139 stations broadcasting radio and television programmes. However, such a high number reflects a regulatory chaos, rather than a prospering industry. Estimated at approximately €80 million, the advertising market lags far behind other countries in the region in relative terms, and is not strong enough to support such a large number of outlets. Due to legal deficiencies and political instability, foreign capital has not been ventured in significant figures into Serbia’s electronic media industry. Financial sources supporting the present excessive number of media are not transparent.

Television is the most important medium, in terms of both market and audience share. The leading commercial station, TV Pink, and the first channel (out of three) of the State broadcaster, RTS, compete for top audience ratings. Throughout 2005, they attracted similar average audiences – 22.5 per cent and 21.7 per cent, respectively – leaving far behind the two other commercial stations with national coverage, BK Telecom and TV B92. The six national channels have a combined daily audience of 70 per cent and attract most of the advertising income, while the local, regional and foreign channels share the remaining 30 per cent of the audience. The local media are still mostly owned by the municipalities and other local authorities, but should be privatised by 31 December 2007. With press circulation remaining among the lowest in Europe – estimated at less than 100 copies sold per 1,000 inhabitants – television continues to be the most important medium in terms of social influence.

The Broadcasting Act, adopted in 2002, was the first in a package of media laws adopted since 2000. The act applies to broadcasting in general and, for the first time, regulates both public service and commercial media. Other relevant laws are the Public Information Law (2003), which has general provisions on media freedom and journalistic independence, and the Telecommunications Law (2003), which regulates the technical aspects of broadcasting. Also important is the recently adopted Law on Free Access to Information of Public Importance (2004), which could significantly strengthen the role of media, by helping citizens to exercise their “right to know”.

The Broadcasting Act introduced a new licensing system, defined general programme standards, regulated advertising and sponsorship issues, and introduced anti-concentration instruments. The new regulatory authority, the Broadcasting Agency of the Republic of Serbia (RBA), was entrusted with the majority of the envisioned tasks, and its establishment became a symbol of the transfer of power over broadcasting from political bodies to an independent regulator. It should have become a cornerstone of broadcasting reform in Serbia.

However, the appointment of the members of the RBA Council turned into the biggest media crisis since 2000. Due to Parliament's violation of the electoral procedures in the case of two members, and the disputed appointment of one more member, two other members resigned immediately after their appointment, in June 2003. The Council was thereby left incomplete and, as Parliament never approved its Statute, it never functioned properly. In turn, this subsequently entirely blocked the implementation of the Broadcasting Act.

After the 2003 general elections, the new authorities amended the Broadcasting Act in 2004, in order to elect a new Council. The election of the new Council was finally completed in May 2005. Immediately upon its appointment, however, the Ministry of Culture and Media initiated further changes to the Broadcasting Act, thereby subjecting it to a second round of amendments even before it had been implemented. In August 2005, more than 20 months after the deadline for the reform of the state broadcaster, RTS, into a public service broadcaster had expired, Parliament passed amendments to the Broadcasting Act which again extended the deadline – until 30 March 2006. The amendments also include permission for RTS to start collecting licence fees – the mandatory licence fees will be paid together with the electricity bill, as of 1 October 2005 – before its transformation into a public service broadcaster. On 31 August 2005, the OSCE Mission to Serbia and Montenegro expressed its regret at Parliament's adoption of these amendments to the Broadcasting Act.<sup>267</sup>

The Broadcasting Act foresaw the transformation of RTS into a public service broadcaster by 30 January 2003 at the latest. However, as this proved impossible, RTS has been operating in a legal limbo since February 2003. It cannot be considered a public service institution, but is also no longer a State-owned and controlled broadcaster. It will remain impossible to proceed with the transformation without a fully effective and legally established broadcasting council – that is, the RBA Council – and properly appointed RTS management and governing bodies.

Commercial broadcasting is a recent, but prolific, industry in Serbia. For the past 15 years, new radio and television channels have boomed to the point of congesting the airwaves. This reflects the chaotic policy of the previous decade, when licences were granted arbitrarily and mainly for political purposes. Many media also just took

---

<sup>267</sup> OSCE Mission to Serbia and Montenegro, press release of 31 August 2005, available at <http://www.osce.org/item/16128.html> (accessed 31 August 2005).

advantage of the regulatory void to start operating without any licence. Beneath this chaotic surface, however, several dominant outlets firmly established themselves as market leaders. Advertising and ownership transparency issues are not fully regulated yet, while the anti-concentration measures recently introduced in media regulation are still not implemented.

In April 2005, Serbia and Montenegro received a positive report on their preparedness to start negotiating a Stabilisation and Association Agreement (SAA) with the European Union (EU). The report indicates that the country should take steps to promote the European audiovisual industry, encourage co-production in the fields of cinema and television, and gradually align its policies and legislation with those of the EU. This particularly applies to matters relating to cross-border broadcasting and the acquisition of intellectual property rights. According to the report, preparation for ratification of the Council of Europe's Convention on Transfrontier Television (ECTT) is already under way. However, the report also states that internal media legislation in Serbia remains problematic.

The outcome of the first wave of regulatory reform is far from satisfactory. The new normative framework is not consistent, the essential legal package has not been completed, there is no proactive media policy, and new institutions are not in place. Political control over broadcasting still exists, although no longer through direct programme interference, but mostly through indirect influences. The Government is reluctant to radically transform the media landscape by enforcing regulation and accountability, while the media empires that emerged during the authoritarian period are now securing their market positions.

## 2. CONCLUSIONS

Since democracy was established in Serbia in 2000–2001, the progress of reform in broadcasting, media policy and regulation has been far from satisfactory. Reforms are slow and piecemeal, rather than conceptually worked out and coherent. The essential legal framework is still incomplete, laws that have been adopted are not being implemented, and new institutions have not been established. Some political figures who played a role at the time of the Milošević regime have again attained prominent positions. The fundamental transformation of the broadcasting sector cannot be enforced without the establishment of new independent regulators for broadcasting and telecommunications. Until this has been provided, there can be no vision for the future.

Two subsequent rounds of amendments to the Broadcasting Act – in 2004 and 2005, even before the act had been implemented – indicate political reluctance to set up independent regulatory structures. The public authorities have so far avoided even initiating a process of revision of the questionable and irregular licensing decisions by

the Milošević regime. It has instead tried to preserve influence over the media by prolonging the dubious legal and market conditions that it inherited.

The Government also continues to block the transformation of major State-owned media. Rather than turning the State broadcaster, RTS, into a public service broadcaster, it envisages RTS as Serbia's "national television". In practice, this means State television by another name. This reveals a misunderstanding – if not a rejection – of the very idea of public service broadcasting. RTS regained large audiences after 2000 and, unlike many public service broadcasters in other transition countries, has a lead over commercial channels in terms of audience share. It also enjoys strong political and financial support. Its core funding depends upon the State budget, without any public instruments to ensure financial accountability.

The financial consolidation of RTS is one of the major issues that cannot be postponed indefinitely. Although the Broadcasting Act required the re-introduction of the licence fee, two years after its adoption this has not yet happened. In summer 2005, the public vehemently protested when the Government obtained Parliament's approval to reintroduce the licence fee for the unreformed State broadcaster, RTS. At the same time, the Government was entitled to set up a special fund to finance the reform of RTS into a public service broadcaster. After years of not paying for television, and with the strong presence of commercial channels, the public is not likely to accept the licence fee again without first seeing value for money, in the form of the establishment of a genuine public service broadcaster. The commercial stations are also lobbying against granting RTS the possibility of increasing its advertising revenues.

Another highly problematic issue is the delay in privatising the huge State-owned local and regional media sector. Many local and regional radio and television stations owned by municipalities are far from their expected transformation into commercial outlets, which should have been facilitated by the Ministry of Culture and Media and the Privatisation Agency. This delay is caused primarily by the Government's lack of interest in the process, and even its indifference to the future of the local media outlets. There is no coordination between the relevant ministries in charge of privatisation, finances and culture in this complicated process. The Ministry has only issued a decree that has been criticised for its unclear and insufficient content, and which is basically non-applicable. In response to public demands, it once again responded with a postponement, extending the deadline for another year for print media. However, amendments to the Broadcasting Act subsequently extended this deadline to the end of 2008 for broadcast media. Some critics consider that this postponement strategy is in fact a way of preserving State ownership over local media until the next round of local elections. There have been many indications in the past years that the local authorities still exert a strong influence upon the local media.

After initial insecurity following the 2000 change of power, the large private media companies that emerged during the 1990s are consolidating their political and market position. The sources of their huge wealth – which in turn generates influence – have never been disclosed. This also applies to media-related businesses, particularly mobile

telephone use. The new democratic governments did not meet public expectations, and opted for political arrangements with the major media outlets, rather than investigating or opening up a public debate about their obscure past and usefulness to the Milošević regime. Even their obligations to pay taxes for the exceptional wealth accumulated during the years of authoritarian rule in Serbia, as envisaged by the law on extra-profits (The Law on One-time Taxation on Extra-profits or Extra Property Acquired under Special Conditions), no longer appears to be an issue for the authorities. The major media companies that emerged throughout the 1990s are now using their market privileges to establish firm holds for the future.

The independent media – which developed as part of a civil society struggling against authoritarian rule and depended to a great extent on international support to oppose repression – are adjusting to the new conditions with much difficulty.

Commercial television channels have not yet been licensed, and the first fair allocation of licences and frequency regulation is not yet under way. Electronic media in Serbia have not yet been exposed to international competition or application of European standards. Foreign investments have not yet entered the broadcasting sector.

Public policy towards Internet-based technologies and other new media platforms is completely lacking. Even the prospering telecommunications sector is being held back by unresolved ownership issues. The State is involved in an international court case over ownership with a private company, BK. The Government has delayed the appointment of the Telecommunications Agency, which is essential for the implementation of Telecommunications Law (2003) and the licensing of broadcasters.

The Government has not yet publicly accepted responsibility for the absence of reforms and the flawed implementation of the laws. The habit of many public officials to repeat that “the laws are good but not implemented” does not strengthen the case for the rule of law, but rather weakens it, as officials seem to support the notion that law enforcement is a voluntary matter. Furthermore, by supporting dubious “quick fixes” to overcome legal lacunae, the authorities themselves become a major source of disrespect for the rule of law.

Paradoxically, the most visible media improvement so far is one made in terms of content quality. Public communication is slowly recovering from the years of hate speech and militant and aggressive media. In the print sector, the legacy of those years is still visible in the highly aggressive marketing and editorial strategies of newly emerging tabloids. The broadcast sector is normalising, and broadcasters are positioning themselves for the licensing process, which cannot be postponed forever. The 2003 election showed that broadcasters realise that their own commercial interest will be better served in the long run by favouring editorial neutrality over clear political bias. However, it also showed that without firm licensing requirements, they could always opt to serve the political agenda of their owners. Without a proper legal framework and new regulatory structures, the media can hardly be expected to transform themselves into socially responsible and commercially viable companies.

### 3. RECOMMENDATIONS

#### 3.1 Media policy

##### *Legislation*

1. Parliament and the Government should undertake a review and reform of national media legislation to ensure its full compliance with the EU *Acquis communautaire*, in line with the preparation of Serbia and Montenegro to become EU member States. They should refrain from legal or policy changes that undermine the already achieved democratic gains in the sphere of public communication.
2. Parliament and the Government should, as a priority, amend the Law on Public Information, the new draft Criminal Code and other relevant legislation, to delete all provisions contravening EU legal standards, in particular those provisions retaining libel as a criminal offence.
3. Parliament and the Government should, without further delay, ensure the full implementation of existing media laws and the establishment of the institutions foreseen by these laws. New institutions – such as the Telecommunications Agency, the Broadcasting Agency and the Ombudsman for Public Information – should receive all necessary support from the public authorities to enable them to fulfil their duties.
4. The Ministry of Culture and Media, in cooperation with other relevant institutions, should provide clear bylaws for the forthcoming privatisation process of municipal media. An office should be established within the Privatisation Agency to assist municipal media to prepare for the privatisation. This office should also facilitate the privatisation of large media owned by the federal State, such as Borba.
5. The Ministry of Culture and Media should also investigate if, and, if so, what, anti-concentration measures are necessary to stimulate media pluralism and introduce necessary transparency measures into ownership regulation.

##### *Broadcasting policy*

6. The Council of the Broadcasting Agency of the Republic of Serbia (RBA) should organise public hearings about the future of broadcasting in Serbia. Particular attention should be devoted to formulating obligations for private broadcasters, who, until now, have never been required to act in a socially responsible manner. The main purpose of the hearings would be to establish common ground for a consensual national media policy.
7. The Government should, in order to foster the development of new media platforms in Serbia, establish an inter-ministerial working group, also

involving non-governmental experts from academia, civil society and the media industry. An urgent task of this working group would be to formulate a plan for the digitalisation of broadcasting in the country.

#### *International support*

8. The Organisation for Security and Cooperation in Europe (OSCE), the Council of Europe (CoE), the European Union (EU) and other international governmental and non-governmental institutions should continue monitoring and assisting media reforms in Serbia, particularly with respect to public service broadcasting. They should condition the further integration of Serbia into Euro-Atlantic structures with the speeding up of the media reform process.
9. International organisations supporting media development should continue financial, technical and professional support, including financial assistance to news media in Serbia. Support should be focused towards those media outlets that endorse social responsibility, for instance by resisting cultural and political populism and offering high-quality programming, including investigative journalism and reporting on politically and socially contentious issues.

### **3.2 The regulatory bodies (the RBA and the Telecommunications Agency)**

#### *Cooperation*

10. The Council of the Broadcasting Agency of the Republic of Serbia (RBA) should promptly prepare a coherent strategy for the development of the broadcasting sector. This strategy should pay particular attention to the issue of the technological convergence of various media platforms, as well as the liberalisation of media industries.
11. The Council of the Broadcasting Agency of the Republic of Serbia (RBA) should initiate cooperation with the Telecommunications Agency without delay, and should immediately start preparing the first public contest for broadcast licences.

### **3.3 The public service broadcaster (RTS)**

12. The Council of the Broadcasting Agency of the Republic of Serbia (RBA) should, as a priority, launch the transformation of Radio Television Serbia (RTS), by appointing Governing Boards of future public service broadcasters of Serbia and Vojvodina. One of the most important parts of this transformation should be establishing the autonomous public service

broadcaster for Vojvodina, according to the law, and finding a solution for the future status of the third channel of RTS.

### *Funding*

13. Radio Television Serbia (RTS) should, as soon as it establishes itself as a public service broadcaster, reintroduce a licence fee, as the best way to ensure financial and editorial independence of the future public service broadcaster in Serbia. It should simultaneously introduce measures of public accountability for its financial conduct.

## **3.4 Industrial relations and ethical issues**

### *Employees' rights*

14. Trade unions representing the interests of media professionals should formulate a platform for the protection of employees' rights in the media industry. Based on this document, trade unions should start collective bargaining with media owners to ensure social standards and other employees' rights.

### *Professional ethics*

15. Journalists' associations should cooperate with trade unions on the issue of employees' rights. At the same time, they should enter into negotiations with media owners about acknowledged standards of internal press freedom, obligatory codes of ethics, and other self-regulatory instruments to protect the editorial integrity of journalists.
16. Associations of media professionals, trade unions, civil society organisations, academia and all other interested parties should establish a "media commission" and entrust it with the task of providing a report to Parliament about the role of particular media outlets and journalists during the time of authoritarian rule and warmongering in Serbia in the 1990s. The findings of this report should include recommendations on how to prevent the recurrence of such degradation in the future.
17. Media organisations, trade unions and civil society organisations should insist that the public authorities investigate, and bring to justice the perpetrators of, all cases of violence against media professionals since the 1990s. In the first place, the murderers of two journalists – Slavko Ćuruvija (1999) and Milan Pantić (2002) – and those who ordered these killings, should be uncovered and punished.





# Slovakia

## 1. EXECUTIVE SUMMARY

Since Slovakia achieved its independence in 1993, the media scene has continued to be strongly politicised, creating problems for the broadcasting sector that are only now beginning to be resolved. Political developments in the 1990s tied the media sector to the political class, while some key outlets were, and to a certain extent still are, directly or indirectly under the influence of politicians competing for power. Although the independence of the media has gradually become stronger, the vulnerability of the media becomes most apparent during election campaigning.

Politicians in Slovakia have been willing to tackle the problems affecting the media only when a solution was urgently needed. This is particularly the case for the public broadcasters, which lack a long-term systematic solution for their funding. Licence fees for public broadcasting are not yet based on widely used economic indicators, such as the inflation rate, and therefore any increase depends on Parliament's will. The private media also suffered from the politicians' approach to media policy in the past, when a flawed Law on Parliamentary Elections limited their participation in the campaigns prior to both the 1998 parliamentary and municipal elections. Nevertheless, over the past five years, a set of laws regulating the media environment in general was adopted. These are the Law on Broadcasting and Retransmission (2000), the Law on Slovak Public Television (2004), the Law on Slovak Public Radio (2003), the Law on Freedom of Information (2000) and the Law on Electronic Communications (2003).

Another characteristic of the Slovak media landscape was an insufficient public debate on the future of public service broadcasting, namely on its mission, quality, content, financing and relation to commercial broadcasting. Following managerial changes in 2003, the Slovak Public Television (STV) started to undergo substantial structural changes, primarily aimed at improving its financial situation and attracting audiences. However, over the past decade the station has been seriously marked by a series of political interventions, and weakened by its poor economic situation and by the indifference of the civil society. There is a prevailing public opinion that following the implementation of economic reforms after 2003, the economic situation of STV has been stabilised. However, there are fears that this has been achieved at the price of the commercialisation of Jednotka, the first of STV's two channels.

The national (i.e. nationwide) commercial broadcasters in Slovakia are well established and constitute a strong component of the broadcasting system. Competition among television channels has been mounting, thanks to improvements in the programming of TV Joj and the increase in the market share of STV's first channel, which reflects a number of changes in its programmes. However, commercial TV Markíza has

maintained its dominant position in the media market. The introduction of a more accurate audience measurement system in 2004 helped the media market to become more transparent.

The situation of local media is more complicated, as these outlets often operate with economic support from the local authorities, which sometimes seriously hampers their independence.

Although the Slovak advertising market is relatively small compared to other European countries, it has the potential to grow. The problem with the development of the media market could be the fact that the bulk of advertising revenue is concentrated in the national media, based in the capital, Bratislava. The capital captures the media's attention as it offers important topics related to the country's "high politics" which are concentrated there. Conversely, the media pays less attention to social issues and problems of the regions. This "Bratislava-centrism" has undermined the professionalism of the media.<sup>268</sup>

The journalistic community is not very strong and it suffers, in part, from a lack of respected journalist personalities. It comprises a significant proportion of young journalists and lacks experienced middle-aged journalists. Another factor affecting the development of an upstanding journalistic community is the low quality of journalism education at schools and universities. The result is a lack of investigative journalism and solid reporting.

Except for mobile telephony and, gradually, also the Internet, the development of new technologies has been slow and it is not possible to expect broader penetration for some years to come. From a long-term perspective, to promote the information society in Slovakia, it is essential that the Slovak Government provide more support.

## 2. CONCLUSIONS

Pursuing the aims set out in the 2002 *Governmental Programme Declaration*, the cabinet's official policy plan, the Government has gradually adopted new legislation in several sectors, including the media, which have led to standardisation in the industry. Since 2003, this process has achieved a fair momentum. In 2003 and 2004, new laws redefining the statute of both the public media networks, STV and SRO, were adopted. Although these were the result of a process that was more protracted than necessary, and at some points even went against the opinions of the two institutions' management, in their final version the laws met with relatively broad acceptance and approval. A word of public approval has finally also come from the General Directors of both public broadcasters. In reality, the Law on STV and the Law on SRO

---

<sup>268</sup> J. Jiráček and J. Potůček, *Position of the Slovak media and impact of the media legislation on the media during the pre-election campaign prior to the parliamentary elections in 2002*, MEMO 98, 2002.

supplemented the existing Law on Broadcasting and Retransmission, which became effective in autumn 2000, and regulates all private electronic media.

Apart from the legal changes that have helped the situation of STV, the key factor enabling reform of the public service broadcaster has been the new management, installed in early 2003. After winning broad support in Parliament, as well as from the general public, STV's General Director Richard Rybníček launched an unprecedented overhaul of the station's entire structure. In 2004, the new management implemented a completely new regime of organisation, management and programming. The reform included a series of cost-cutting measures. STV has renegotiated some parts of its collective agreement with the trade unions and slashed the station's staff by 1,015 employees (out of 2,000) in May 2004. Already in 2003, STV reduced its production by as much as 40 per cent and discontinued all its loss-incurring activities. The result was that, by August 2003, STV went into the black for the first time in many years.

Opinions on the STV reforms have been mixed. They have been highly praised for bringing financial and organisational health to STV, putting an end to the long-term losses of the 1990s. However, there is also growing fear that STV is turning into just another commercial television network, more interested in high ratings than in anything else.

TV Markíza has been extremely influential since its launch in 1996. The station acquired its dominance in a context where there was no competition from other commercial television stations and STV, due to the high degree of politicisation of its leadership, was losing credibility. By dwarfing the television market and entering other media, TV Markíza became one of the forces shaping the market. In such an environment, other commercial television stations, such as VTV and TV Luna, could not survive and had to cease broadcasting. Even the financial stability of the current commercial competitors, TV Joj and TA3, has to a certain extent been in doubt.

Therefore, a very significant event for the broadcasting market was represented by the introduction of peplemeters, which brings a number of incontestable advantages to the industry. First, it shows the real position on the market of respective broadcasters, and second, it provides advertisers with accurate information on the stations' viewership and a much more detailed portrayal of their watching habits. Above all, the system is expected to help stations with their programming and scheduling.

The interaction between politicians and journalists, although decreasing, is still evident in a number of media outlets. Some journalists seem to have come to believe that their mission lies in active cooperation with politicians and, in fact, in participating in political life.

In the course of the 1990s, Slovak media had a major impact on the development of society. As for the television stations, the years of Mečiar's rule (1994 to 1998) were marked by political interference with STV's programming, while the years between 1997 and 2002 saw some commercial stations, mainly TV Markíza, involved in

boosting several politicians. At the same time, it is characteristic for the Slovak media, even those outlets with links to politicians, to declare their determination to remain impartial, non-partisan and neutral.

In their efforts to make political, mostly negative, news and other topics more attractive to viewers, the media has trivialised their content. Although this phenomenon, known as tabloidisation of the media, is far more evident in the print sector, the television news is often highly tabloidised, especially on TV Joj. The coverage of political issues by electronic media is rather perfunctory. There is a general lack of enterprising investigative journalism. Instead of investigating the causes and roots of a problem, journalists prefer to hunt for scandals. In this respect, a certain deficit can be noticed in the approach of the public STV whose mission should be to promote the values offsetting the tendency towards tabloidisation.

One of the major merits of the adoption of the Law on Broadcasting and Retransmission in 2000 was that it brought full harmonisation with the *Acquis communautaire* and, thus, Slovakia's full recognition of the obligations imposed by EU legislation on the media and audiovisual sectors. Another major step was the adoption of relatively progressive laws governing the public broadcasters and of a new Law on Copyright that acknowledges all international agreements and treaties that bind Slovakia in the field of intellectual property rights.

Slovakia's accession to the EU in 2004 is expected to bring growing pressure to ensure media independence and compliance with the EU standards. More intensive assistance from media professionals and specialists from other EU countries could help raise the level of journalists' professionalism and the quality of media content.

Although Slovakia has made progress in enabling citizens' access to information, there is still a need to improve the conduct of the media and the quality of the information they provide. A first important step would be a change in the attitude of the political elites, which should respect the independence of the media, thereby putting an end to the public belief that the media are close to politicians.

There is also still a need to ensure transparency of the media and prevent concentration of ownership by adopting an amendment to the Law on Broadcasting and Retransmission, to strictly prevent media moguls from governing more media outlets through related companies.

Improving the quality of media discourse, now often characterised by an overwhelming tabloid slant, ultimately depends on the journalists. Apart from changing the system of educating journalists, it is equally important to create a suitable environment for their professional development and ensure their adequate remuneration. Such an environment could be both an independent and free public television as well as a financially stable private media.<sup>269</sup>

---

<sup>269</sup> IVO, *Media*, p. 297.

The television sector has undergone complex development since the early 1990s. The media experienced difficult times following the post-1989 reforms. As with STV, this turbulent period lasted until recently. The youngest generation of journalists is not immune, or fully prepared, to resist commercial or political pressures. Despite the existence for a long time of the Code of Journalist Ethics, approved in 1990 by the Slovak Syndicate of Journalists, journalists are insufficiently familiar with it because the Code is not regarded as having much authority. However, in spite of these threats to media credibility and independence, and a damaging shortage of media personalities, the situation of television has been gradually improving, with a number of programmes – predominantly current affairs programmes, such as *SITO* and *Na Telo* on TV Markíza, and *V Politike* on TA3 – achieving a high level of professional quality.

### 3. RECOMMENDATIONS

#### 3.1 Policy

1. The Ministry of Culture should, based on wider public discussion, draft and submit to the Government for adoption a new national media policy that will define fundamental guidelines for the media, including the role of the public service broadcasters.

#### 3.2 Regulatory authorities

##### *Transparency and media diversity*

2. The Council for Broadcasting and Retransmission should be granted a larger jurisdiction, to enable it to ensure transparency in the broadcasting market and prevent concentration of ownership.
3. Parliament should amend the Law on Broadcasting and Retransmission to sharpen Articles 42-44, in order to prevent unlawful bypassing of the law.
4. The Council for Broadcasting and Retransmission should utilise its competence and publish the names of all licence stakeholders, together with their shares.
5. Parliament should amend the Law on Broadcasting and Retransmission to require applicants for broadcast licences to adopt their own binding ethical code as part of the application procedure for broadcast licences.
6. Parliament should amend the Law on Broadcasting and Retransmission to enable the Council for Broadcasting and Retransmission to remove a licence when a broadcaster, despite imposed sanctions, continues to repeatedly violate the law.

### 3.3. Public service broadcasters (STV and SRO)

#### *Independence and professionalisation*

7. Parliament should amend the Law on Slovak Public Television (STV) and the Law on Slovak Public Radio (SRO), to introduce a new system of appointing the members of the Slovak Public Television (STV) Council and the Slovak Public Radio (SRO) Council that would minimise political influence on the public service broadcasters. Under these amendments, a certain number of members of both councils should be appointed from civil society and professional organisations' nominees.
8. Parliament should amend the Law on Slovak Public Television (STV) and the Law on Slovak Public Radio (SRO), to introduce media expertise and experience as a new criterion for the appointment of the members of the STV Council and the Radio Council.

#### *Public service mission*

9. The public service broadcasters (STV and SRO) should be ensured sufficient funding to fulfil their public service mission. To achieve this, Parliament should amend the Law on Licence Fees to change the procedure for establishing the level of licence fees, such that increases in the level of the licence fee are in future made directly proportional to the rate of inflation. Consideration should also be given to more effective enforcement measures as regards the collection of licence fees.
10. Civil society should continue to organise regular debates on how the public broadcaster fulfils its mission, inviting all political parties, representatives of regulators, Parliament, other relevant institutions to participate.

### 3.4 Public and private broadcasters

#### *Training*

11. Professional organisations such as the Slovak Syndicate of Journalists, and both public and private broadcasters, should encourage the training of their journalists and put in place a system to motivate and reward journalists open to training.
12. Broadcasters should support educational and cultural policy in broadcasting, by producing own programmes and formats, and by cooperating with independent producers.

#### *Local broadcasters*

13. The Government should initiate legislation to allow public financial aid to be given to local broadcasters that pursue public service values in their

broadcasting. Such funding could represent a portion of the licence fee or of local taxes.

### 3.5 New media

14. The Government should encourage and support the penetration of new information and communication technologies, such as the Internet and digital broadcasting, by subsidising part of the process. The Government should also motivate businesses to invest in these technologies.
15. The Government should finance programmes promoting new technologies to the public, predominantly to less developed regions and social groups, in order to help them understand and use the opportunities offered by these technologies. The Government should improve its support to the e-government policy by supporting online services for citizens as well as for business enterprises.
16. The Government should, in its capacity as a controlling shareholder, ask the dominant fixed-line operator, Slovak Telecom, to support the expansion of Internet access in the country by significantly decreasing the price of the service.





# Slovenia

## 1. EXECUTIVE SUMMARY

Public opinion polls usually show a high level of public trust and satisfaction with the television sector in Slovenia. In spite of many shortcomings, it can be said that television in Slovenia often fulfils the role generally ascribed to it as one of the elements of a democratic system.

In Slovenia, the broadcasting sector – and the television industry in particular – is saturated, with a vast number of outlets competing for limited advertising revenue. The public service broadcaster, RTV Slovenia, comprises Television Slovenia (hereafter, TV Slovenia) and Radio Slovenia. The Slovenian television market consists of TV Slovenia, with four channels – Slovenia 1 (SLO1), Slovenia 2 (SLO2), Television Koper/Capodistria and Television Maribor (Tele M) – and 35 commercial terrestrial television channels, operated by 31 stations. Five channels can be viewed by more than 75 per cent of the population: SLO1 and SLO2, Pop TV, Kanal A and Prva TV.

With SLO1 and SLO2, TV Slovenia is the largest television station and most important in terms of diversity and quantity of its production. In 2004, it had an audience share of 37.6 per cent. Two television channels and teletext services, as well as four radio channels, of RTV Slovenia are also available via satellite. The public service broadcaster is expanding its online service to include real time transmission of radio and television programmes and a range of additional services.

The first commercial channel, Kanal A, was licensed in 1990 and started to broadcast in 1991. Most commercial broadcasting is non-political, relying on soap operas and films, with little news and current affairs reporting. The main exception remains Pop TV, the most successful private channel, which broadcasts daily one-hour evening news, weekly current affairs magazines and talk shows. Initially, Pop TV's news programme had a number of characteristics of tabloid reporting, which, in turn, prompted TV Slovenia to also adopt a more commercial approach in its news reporting, and also in other programmes. More recently, however, both sides have abandoned some of their most blatant commercial attitudes. They attract an audience of similar size, with Pop TV reaching younger viewers. Pop TV's website is also very popular, with regular updates and video.

Commercial television aspired to achieve instant success, measured in rising profits, which has led to a reduction of choice. Entertainment programmes include few in-house or independent productions, but a lot of low-quality imports. Infotainment plays an important role. Little attention is devoted to domestic creativity and more demanding content, such as educational, documentary, arts, religious and similar

programmes. While no academic studies of editorial independence in commercial broadcasting are available, there are no solid grounds for arguing that the commercial broadcasters are overtly biased or connected to certain political parties or the Government.

Commercial television broadcasting is regulated by the Mass Media Act, adopted in 2001, and pursuant to the Law on Electronic Communication, adopted in 2004. The Mass Media Act abolished the former restriction on ownership to 33 per cent for any person, including foreigners, and assigned the task of restricting ownership concentration to the State. Public broadcasting is regulated by the Law on RTV Slovenia.

The main broadcasting regulatory bodies are the Ministry of Culture – including the Media Inspector, and the Ministry's special Directorate for Media (established in autumn 2004); the Agency for Post and Electronic Communication (APEK); and the Broadcasting Council (SRDF). The Agency's most important tasks are ensuring the implementation of the Law on Electronic Communication and monitoring the compliance of radio and television stations with the restrictions on their programming defined in the Mass Media Act. It issues broadcast licences on the basis of a binding instruction of the Broadcasting Council, which is an independent body that, among other things, supervises the adherence of broadcasters to the obligations contained in their licences. The Ministry of Culture supervises the implementation of the Mass Media Act, with the ministry's Media Inspector investigating breaches of the act on its own initiative or following complaints from the public.

RTV Slovenia is governed by its Council, while its financial operations are controlled by a Supervisory Board. The Law on RTV Slovenia obliges the public broadcaster to be independent and autonomous, to respect human integrity and dignity in its programmes, to observe the principle of impartiality, and to ensure the truthfulness of information and the pluralism of opinions and religious beliefs. It also obliges the public broadcaster to provide radio and television programmes for the Italian and Hungarian minorities in Slovenia.

There are frequent debates about the impartiality of the public service broadcaster. Most of the accusations of biased reporting come from political parties and politicians, usually from the right-wing parties that were in opposition during the last ten years. These parties also argue that most of the other media in Slovenia, particularly in the print sector, are biased in favour of liberal and left wing parties. Various media analysis projects have, however, found no such overt bias in broadcasting.

Political pressure on media in Slovenia is not felt as directly as it used to be before the end of socialism in 1990 and the achievement of independence in 1991. Nevertheless, political parties and the Government still try to influence the management, editors and journalists of the public service broadcaster in several ways. Parliament plays an important role in appointing key personnel, such as the Director General, and in the financial affairs of the public service broadcaster. Some claim that political influence

can also be felt in the Council of RTV Slovenia – for example, through the membership of former party officials and through the Government’s influence on funding, especially the licence fee.

The future of public service television is not clear. A new Law on RTV Slovenia has recently been adopted by Parliament. However, it has been vetoed by the National Council and its final shape and content are still open questions. The draft law proposes important changes regarding management, supervisory and other bodies, and the appointment of editors, but it also increases the role of the Government and Parliament in the appointment of key personnel and with respect to oversight of the public service broadcaster. This threatens to diminish the independence and credibility of RTV Slovenia as the largest and most important broadcaster in the country.

## 2. CONCLUSIONS

In Slovenia, the broadcasting sector is saturated, with a vast number of electronic media outlets competing for a limited amount of advertising revenue. Probably there are too many television and radio stations for such a small country, resulting in small advertising revenues for most of them. This situation causes both a lowering of the programme quality and frequent breaches of the Mass Media Act, particularly when it comes to covert advertising.

At the same time, the transparency of the media market is inadequate. Most problematic is the opaque ownership situation of many outlets and the non-transparent structure of the advertising market. This is the main reason why there is no official data on the advertising revenue of Slovenian media. Foreign investments started in the mid-1990s with investors coming from outside the EU. The three largest commercial Slovenian television stations are all foreign-owned. CME and SBS are US-controlled, and the third most important player, Ivan Čaleta, is Croatian. These stations have an important influence, both in terms of their share in the advertising market and, through their popular news and current affairs programmes, in terms of setting the political agenda. However, the situation is quite different with the print media: most of the foreign investments took place only recently, and most of the foreign investors come from the EU, from Austria, Sweden and Germany. Foreigners do not play a dominant role in the print media.

RTV Slovenia increased its income significantly since the revenue from the licence fee rose, following amendments to the Law on RTV Slovenia in 1999, which obliged all households connected to the public electric power grid to pay the licence fee (unless they are exempted). Its ratings have risen steadily since 1999, and RTV Slovenia has succeeded in improving its image, which was often damaged in the 1990s by scandals over the financing of certain shows and over contracts.

There was often not clear division of competence and assignments of the Council of RTV Slovenia and the Supervisory Board. It was also often not clear which documents and data should be available to Supervisory Board and members of Supervisory Board have in the past complained about lack of relevant data or difficulties with access to certain documents. It is essential to re-examine the competence and the assignments of the Council of RTV Slovenia, especially in relation to the Supervisory Board. The Council should deal primarily with issues regarding the development strategy of the public broadcaster, and less with particular financial questions, as this is the task of the Supervisory Board. The task of the Council is, in relation to business operations, merely to adopt the financial plan and the final financial report. However, it seems that it is often spending too much time on these discussions and too little on defining programme standards and the programme framework.

The relationships of the management to programme directors and individual editors need to be clarified. Some believe that the programme directors and editors need to be directly subordinated to the management, rather than being ostensibly on an equal footing with it, if greater efficiency is to be achieved. However the question remains whether such direct subordination would really be more effective and whether it would not bring even more political control over the public broadcaster, since the General Director is named by Parliament, meaning in reality the political parties.

Slovenian television stations, both public and commercial, will have a problem to adhere to the obligations determined in the EU TWF Directive. Already there is a problem meeting Slovenian quotas, especially when it comes to domestic audiovisual works, which is in relatively short supply. Slovenia is a small country and the Slovenian language is little used outside the country's borders, meaning that there can be few benefits from economy of scale. Slovenian production is much more expensive than programmes bought from the USA, Latin America or the rest of the EU. To adhere to EU quotas, most television stations rely on cheap formats, such as talk shows, studio interviews, and music videos.

There seems to be an over-supply of commercial broadcasting in Slovenia. This has lead to domestic production of low quality and plenty of licensed formats, particularly game-show formats. Limited advertising revenues make broadcasters more vulnerable and open to pressure from advertisers and politicians, who want favourable coverage in exchange for State subsidies, tax cuts and other possible benefits.

On the other hand, the influence of commercial broadcasters is clearly felt and much has changed at RTV Slovenia since commercial channels, particularly Pop TV, started to broadcast in 1990s. Unlike many other previous State television channels in former Yugoslavia, RTV Slovenia managed to avoid direct influence and control by politicians and, especially, by the Government. Unlike some other former State television channels in former communist countries, such as the Czech Republic, RTV Slovenia also managed to keep relatively high ratings and to hold its own against commercial broadcasters.

The influence of commercial broadcasters is most clearly seen in the news reporting, with more human-interest content and a tabloid approach, and programmes such as telenovelas from Latin America and soap operas. However, both public television channels and commercial channels, such as Pop TV, offer plenty of information and news reporting. They also investigate reporting, exposing numerous cases of corruption in State and private companies and institutions. They are frequently the first to discover such cases, and police and prosecutors often start their investigations only after the media, including television channels, report about them. Therefore, the main television stations often function as a watchdog, even though they are at the same time clearly connected with sources of power. Although many of them broadcast very narrow, mostly commercial programming, public-opinion polls usually show a high level of public trust from, and satisfaction with, the television sector overall. In spite of the shortcomings mentioned above, it can be said that the performance of the television sector is usually adequate to the role generally ascribed to it as one of the pillars of democracy.

The new Law on RTV Slovenia, which was adopted by the National Assembly (the lower chamber of the Parliament) in June 2005, but then vetoed by National Council, presents even more problems and questions regarding independence of journalists and editors. Under the new system set out in this draft law, the ruling political parties, which form the Government and represent the majority in Parliament, would have control over almost all managerial bodies at RTV Slovenia, and also over the appointment of all key editors. Parties forming the Government would have a majority in the newly created Programming Council – which would replace the existing Council of RTV Slovenia – and in the Supervisory Board. They would also have control over the Director General, who would in future be appointed by the Programming Council. The Director General would also have broader responsibilities than at present: he or she would lead the programme work, appoint and manage the directors of radio and television, as well as Editors-in-chief of programmes and all other senior management. This threatens to diminish the independence of RTV Slovenia and could endanger its credibility, level of trust and respect in public.

### **3. RECOMMENDATIONS**

#### **3.1 Policy**

##### *Diversity*

1. The Government should take steps to guarantee the pluralism and diversity of the television sector. In particular, it should ensure – through amendments to general and specific laws, such as the Law on RTV Slovenia and the Mass Media Act – that political pressures on the regulatory authorities and on the broadcasters are avoided.

*Consultation and cooperation*

2. The Government should ensure coherent media policy, by improving cooperation between the various Government agencies that deal with the media.
3. The Government and Parliament should consult civil society organisations, media professionals and other actors in the media field, when developing media policy and legislation.

*Research*

4. The Government should ensure the increased involvement of independent specialists in the competent ministries and other public authorities for scientific research for media policy.

**3.2 Regulatory authorities**

5. Parliament and the Government should establish a clear-cut division of powers between the various media regulatory authorities over clearly defined areas, such as control over ownership, programme quotas, advertising and broadcast licensing procedures.

*Independence and professionalisation*

6. Parliament and the Government should take steps to ensure the transparent selection of key personnel at the regulatory authorities, on the basis of professional credentials and not political preferences. They should also ensure that such personnel are not involved in any conflicts of interest and that there are clear rules over their appointment and removal. Parliament and the Government should also ensure that the personnel are selected by a two-thirds majority in Parliament, and with less than one third of the personnel nominated by the Government.
7. The Agency for Post and Electronic Communication (APEK), the Broadcasting Council, the Ministry of Culture and the Media Inspector at the Ministry of Culture, should establish better control over the compliance of television stations with the Mass Media Act, particularly over programming quotas and the elimination of covert advertising. To achieve this, the Government should provide them with better material and personnel conditions for their work.
8. The Broadcasting Council and the Ministry of Culture should ensure media outlets' compliance with legal requirements for transparency of ownership and audience figures. To ensure this, they should have wider powers, as provided for by the Mass Media Act.

### 3.3 Public and private broadcasters

#### *Transparency*

9. The Parliament and Government should improve the framework for media regulation by amending the Mass Media Act, to ensure increased transparency of political and economic interests influencing broadcasting. In particular, the transparency of media ownership should be ensured.

#### *Diversity*

10. The Government should provide funds for domestic television production that meets certain criteria of quality and diversity. These criteria should be set by group of experts and practitioners, with the aim of promoting diversity of media content. These funds should be available to both public and private media. The broadcasters should develop programming and employment policies which take into account cultural diversity of the society in Slovenia and contribute to the integration of minorities and to social cohesion.

#### *Third Sector*

11. The Parliament should introduce further policy mechanisms by regulators to further develop and improve the functioning of radio and television stations with the status of “special importance for the Republic of Slovenia”. These mechanisms should encourage the development of the so-called third sector and non-profit production of quality and diverse programming targeting local and minority audiences.

### 3.4 The public service broadcaster (RTV Slovenia)

#### *Transparency*

12. The Government should ensure that the Law on RTV Slovenia guarantees the transparent selection of key personnel at RTV Slovenia, based on professional credentials and not political preferences.
13. The Government should ensure that the Law on RTV Slovenia provides the conditions for transparent decision-making, regulation and management processes.
14. RTV Slovenia should take steps to increase transparency on how it is fulfilling its remit, including by:
  - Facilitating and encouraging public presentations and discussions on its annual reports, programme results, financial results, employment policy and social responsibility.
  - publishing relevant documents on the website of RTV Slovenia.



*Professionalisation*

15. The broadcasting companies should ensure conditions for professional work of journalists and editors, including training programmes, internal code of practice, regular contracts with staff members, respect for collective agreements, and internal complaint mechanisms including ombudsman where it is possible.

*Independence*

16. The Government should ensure that the Law on RTV Slovenia provides the conditions for political independence of management, editors and journalists. The Government should ensure the independence of RTV Slovenia through depoliticisation of key bodies and personnel, by giving more power to employees, journalists in particular, civil society and by accepting key decisions regarding RTV Slovenia by two thirds majority in Parliament.
17. The broadcasters should establish mechanisms to provide editorial independence, including clear separation of editorial and commercial content.

*Public accountability*

18. RTV Slovenia should establish a complaints mechanism by for members of the public to complain about RTV Slovenia broadcasts.

*The Council of RTV Slovenia*

19. The Parliament should ensure that The Council of RTV Slovenia represents the diversity of Slovenian society. To ensure this:
  - The Council should be comprised of representatives of different parts of society, civil society groups, associations, Universities, and other relevant groups. The representatives of these groups should form the majority of Council of RTV Slovenia and should be named by their groups.
  - Before the list of the groups that would be represented in the Council of RTV Slovenia is formed, there should be a public debate, giving time and space for different opinions.
  - Once the representatives of the society/the public are appointed, they should act in the interest of the public/society as a whole and not following particular interest of their groups, political or economic interests. They should act in favour of independence, quality and stability of the public service broadcasting.

*Minority representation*

20. The Government should propose, and the Parliament should introduce, regulation on RTV Slovenia to provide regular forms of access to

programming and employment for wide range of minorities in Slovenia. Beside the Italian and Hungarian national minorities, which already have their own programmes, this should also include the Roma, Albanians, Bosnians, Croats, Macedonians, Montenegrins, Serbs, Germans and other ethnic communities which traditionally, or in significant number, live in Slovenia.

21. RTV Slovenia should provide regular courses for minority representatives in its training centre, to increase their capacities for collaboration and employment at RTV Slovenia.

### 3.5 Private broadcasters

#### *Monopoly*

22. The Government should ensure that the broadcasting monopoly is more clearly defined in law, including parameters for decisions upon its applicability in given circumstances.

#### *Ownership*

23. Parliament should adopt legislation to prevent excessive cross-ownership and other forms of monopolisation, ensuring that precise and correct data on ownership of media and connections between different persons and companies is clearly established, monitored, regulated and sanctioned by regulatory bodies.



# Turkey

## 1. EXECUTIVE SUMMARY

In early 1990, the first privately owned television station started broadcasting to Turkey via satellite from the Federal Republic of Germany. This signalled the beginning of a new era for Turkish broadcasting, as, one by one, a whole host of new private radio and television channels originating from Europe followed suit.

Private entrepreneurs started investing in the electronic media sector, and began turning into media conglomerates. In the absence of a regulation on commercial broadcasting *per se*, the growth of the broadcasting market expanded out of control. In the first couple of years, no concrete step was taken to prepare a new law to regulate commercial broadcasting. The number of commercial television stations reached 100, and that of radio stations reached 500, all operating without any licences. The vicious competition in the Turkish broadcasting sector created a new buzzword – ratings. All parties in the media sector devoted their full attention to this word, which had hardly existed in Turkey before 1990. In the midst of the ratings war, the media paid little attention to ethics and quality.

On 13 April 1994, the long-awaited Law on the Establishment and Broadcasts of Radio and Television came into effect. The law established the Radio and Television Supreme Council (RTÜK), comprising nine members appointed by Parliament, as the regulator for commercial broadcasters. The RTÜK was made responsible for distributing frequencies and awarding licences to broadcasters, and also for monitoring the broadcasters' compliance with the law. However, it soon became evident that the enactment of the law did not solve as many problems as had been expected. The RTÜK was ineffective in facilitating the healthy growth of the industry. Currently, all terrestrial radio and television broadcasting is still carried out without any licences.

Turkey today has 14 national, 13 regional and 203 local television channels, and 33 national, 89 regional and 873 local radio stations. In addition, the public broadcaster, the Turkish Radio and Television Corporation (TRT), has four national, one regional and two international television channels. The vast majority of private television channels are considered as generalist in terms of their output. Eight cross-media groups dominate Turkey's media scene. Of these, the "big four" – Doğan, Merkez, Çukurova and Star – control approximately 80 per cent of the market, with Doğan and Merkez the two strongest players. The number of players now sharing the already small advertising expenditure has driven more outlets into dependency on non-media revenue sources. This increases the challenges to media independence.

The country's sole public broadcaster, TRT, has not been able to perform its public service role fully, as it has not been independent from the Government, either in financial or in editorial terms. In the period after its broadcasting monopoly was terminated, TRT underwent many losses. The first blow was to its budget – TRT's advertising revenue fell dramatically, by almost 50 per cent, making the public broadcaster more reliant on State funding. The second blow came on the personnel side, with most of TRT's experienced technical and creative personnel being offered better positions, with more attractive salaries, by the private rivals. Nonetheless, overstaffing remains a major problem for TRT.

In terms of broadcasting policy, as in other fields, the demands of the European Union (EU) and the expectations of Turkey as a candidate country have been the driving force behind significant initiatives in recent years. EU requirements on freedom of expression and minority rights have been the main policy imperatives in the media field.

There is significant popular demand for new technologies and services, as observed in the mobile telephone market, where there is a penetration of 40 per cent, with around 30 million users. Booming demand is not, however, matched on the policy side. The development and penetration of new media services are instead based on *ad hoc* decisions and market forces.

Television in Turkey has become an industry over the past decade, although the broadcasting market is not yet big enough to sustain the number of players.

## 2. CONCLUSIONS

Television in Turkey has become an industry over the past decade, although the market is too small to sustain the current number of players. Some major players, such as Kanal D, ATV and Show TV, have emerged alongside TRT. These stations have the ability to cope with the volatility of the advertising market through their cross-media assets and subsidies from their non-media parent companies. These main channels keep the television sector rolling, despite the many recent troubles afflicting the Turkish economy.

The stability of the market depends on the growth of television advertising expenditure. Even the main players have a difficult time making ends meet, let alone the smaller players, especially the local broadcasters. This fact presents one of the main concerns for Turkish broadcasting. The independence of the media is a remote ideal, as all broadcasters need a constant cash flow and thus have to operate under a cross-media group or be supported through non-media revenues. The sheer quantity of players in the market makes things even worse. The absence of frequency allocations and licensing also presents a major uncertainty for the sector.

Oddly, a consolidation of the market by some of the main players would work for the independence of the broadcasters both from the conglomerates and the State. Some of the main players are currently owned by the Government – through the Saving Deposit Insurance Fund (TMSF) – while others are open to pressure because of the holding group's debts to the Government. It is a very difficult market for new entrants unless they are supported by financial or political affiliations. Foreign investment in the market might increase, however, now that Turkey has got a firm date from the EU for accession talks.

On the other hand, some of the broadcasters and the independent production houses have very good resources and technical facilities. The television schedules are full of local productions. The audience's demand for local content provides a basis for growth. Independent production has developed to supply programming to both the public broadcaster and the commercial channels. New media technology (i.e. satellite and terrestrial digital television) will help the development of the sector, as it demands more of narrowcast channels, in terms of content creation.

The broadcasters' financial vulnerability has resulted in a demand-driven sector. This is a fact of commercial television everywhere, but in Turkey it makes creative programming or highbrow productions a challenge that many broadcasters avoid. Diversity is neglected by both the broadcasters and the RTÜK. The public broadcaster also has a long way to go in terms of representing diversity, instead of locating itself as the mouthpiece of the State (not necessarily the Government). The commercial broadcasters provide more diversity at times, as they are more relaxed about taking up issues, even taboo ones. TRT, on the other hand, has to stick closely to the official position of the Turkish Republic. Also, the broadcasting standards laid down in the law themselves make diversity difficult.

The demand-driven nature of the sector poses another problem. The broadcasters define the demand solely based on AGB's audience measurements. The perception of the audience as numbers creates a gap between the audience and the broadcasters, both commercial and public.

The RTÜK considers its regulatory position as more of an administration of broadcasters instead of policy-making to encourage the sector's healthy growth. The distribution of regulation between the RTÜK and the TK poses another problem, as new media technologies increase their presence, whereas the regulatory framework was drawn up only for analogue terrestrial transmission. A new communications law and a single regulator would benefit both the telecommunications and broadcasting sectors, as the two businesses increasingly converge.

### 3. RECOMMENDATIONS

#### 3.1 Media policy

##### *Minority broadcasting*

1. The Government and the Radio and Television Supreme Council (RTÜK), which together currently form the policy community on minority broadcasting, should also include commercial broadcasters, in order to address the current unrealistic solution to the minority broadcasting issue.

##### *Digitalisation*

2. Public and industry agents should establish a “Digital forum” to facilitate the transition to terrestrial digital and to decide on the technical standards. The forum would also promote the development of broadband media.

##### *Cable television*

3. The Government should liberalise the cable television market to create competition in the market. The transition of the cable services to digital transmission should be completed before losing out altogether to satellite digital television. Competing providers and transition to digital would achieve growth in the subscriber base and improve services.

#### 3.2 Regulatory authorities

##### *Reform of the regulatory system*

4. The media sector, the regulators and the Government should commence a debate on the need for a single regulatory framework, with one regulatory authority for the whole of the communications sector, in order to determine whether this would make it easier to cope with the convergence of the telecommunications, IT and media sectors.

##### *Communications High Council (HYK)*

5. The Government should more clearly define the tasks of the Communications High Council (HYK), either in the Broadcasting Law or by a directive, as the HYK presently has to approve major policy actions.

##### *Radio and Television Supreme Council (RTÜK)*

6. The RTÜK should meet with the broadcasters more often to discuss issues. It should also do better and more to inform the public on issues.

### 3.3 Public and commercial broadcasters

#### *Viewer representation*

7. The RTÜK and the broadcasters, including the Turkish Radio and Television Corporation (TRT), should take steps to encourage viewers – who are not represented at all in the regulation or policy circles – to organise to voice their concerns and interests. The present gap between the audience and the broadcasters should be bridged by transparency and accountability on the broadcasters' side.

### 3.4 Public broadcasters (TRT)

#### *Public service role*

8. The Turkish Radio and Television Corporation (TRT) should take steps to redefine its public service in the commercial broadcasting era. This should include the initiation of a forum with the participation of relevant agents to this end.

#### *Independence*

9. The Government should reinstate TRT's autonomy, to ensure independence from the Government in financial, administrative and editorial matters.

#### *Accountability*

10. TRT should be accountable to the people, and should do more to inform the public on its operations.

### 3.5 Commercial broadcasters

#### *Professional ethics*

11. The commercial broadcasters should fill in the vacuum, which they themselves have created, concerning ethical practices, by agreeing on at least some basic concepts of programming guidelines.

#### *Diversity and transparency*

12. The Radio and Television Supreme Council RTÜK should take initiatives to have the issues of diversity and transparency placed in the broadcasting legislation.
13. The Government and the RTÜK should, in the digital broadcasting era, consider the consolidation of the commercial broadcasting market to be a policy issue rather than a matter of the market. The RTÜK should take the initiative in the policy-making process on this issue.



*Self-regulation*

14. The Government and the RTÜK should take initiatives to form a sound and realistic self-regulatory system for commercial broadcasters, in order to develop and safeguard the independence of broadcasters. The regulatory framework should include the self-regulation of commercial broadcasters.

# United Kingdom

## 1. EXECUTIVE SUMMARY

Television broadcasting in the United Kingdom (UK) has been indelibly shaped by the principle of public service broadcasting. With the exception of satellite and cable television channels, all terrestrial broadcasters in the UK have public service obligations: this is the uniqueness of the British model of broadcasting, which has historically provided a stable and innovative television environment, with quality, universality and diversity enjoying prominence in public policy debate. The concept of public service in television has been supported by a political consensus on the positive contribution of television to society.

The British television industry is one of the largest and most dynamic in Europe and the UK is a leader in the rollout of digital television services. Digitalisation, however, is not an end in itself and there are some important trends in media policy that are fundamentally changing the television sector. Since the 1990s, there has been a progressive move away from a highly regulated commercial sector towards an increasingly competitive market as successive governments have sought to adjust the dynamics of the television sector to meet the perceived changes brought about by the growing penetration of multichannel services and the liberalisation of international markets.

Television regulation in the UK is conditioned by an increasingly complex range of issues which include shifting public policy objectives. The Government introduced a radical set of reforms in the Communications Act 2003, which seeks to liberalise while holding on to the public service principles that have been fundamental in shaping the television industry. The repercussions of such a liberalising instrument in the television industry are yet to be seen. However, it looks likely that the trends over the past decade will continue: competition between the main television broadcasters will increase while the public service remits of the commercial broadcasters are further relaxed. In sum, the UK appears to be aligning its system towards the continental model of television regulation by putting in place a dual system, characterised by a clear distinction between commercial and public broadcasters.

The electronic media in the UK enjoy a great deal of independence from the Government, but independence comes with responsibility and accountability. The main free-to-air broadcasters all have obligations and guidelines to ensure that they retain standards and remain impartial and objective. The BBC is also accountable to the public through Parliament, and annually submits its accounts and an assessment of its performance to parliamentary scrutiny. Although the Board of Governors and the BBC are independent from the State, they are accountable.

The Communications Act 2003 also abolished the separate regulatory authorities for radio, television and telecommunications, replacing the sector-specific regulators with a converged regulator, the UK Office for Communications (Ofcom). The new regulator has responsibility for the whole of the communications industries in the UK. It legally substituted the previous regulators at the end of 2003.

The spread of multichannel television has transformed the television sector. However, although the terrestrial broadcasters' market shares have reduced overall, they retain a significant share of the market and remain central to the television landscape. The main public broadcaster, the BBC, retains a strong position, as does the commercially funded public broadcaster, Channel 4. The BBC has successfully expanded into a range of new media activities and enjoys strong public support.

There is a currently a wide-ranging debate about the future of the broadcasting industry and especially the role of the BBC in the run up to the renewal of its Charter in 2006. This debate, and the liberalising nature of the Communications Act 2003, suggest that the television sector will become increasingly competitive over the next few years. This may well be at the expense of its unique model, whereby the terrestrial broadcasters as a whole are responsible, and legally required, to provide a television service that not only entertains, but also educates and informs the public across a wide range of subject areas with quality programming.

## 2. CONCLUSIONS

A survey conducted as part of Ofcom's review of public service television, and published in April 2004, indicated continued popular support for public service broadcasting.<sup>270</sup> It also showed that the public believes the generalist free-to-air channels should provide a range of programming governed by social values, quality, range and balance and diversity, and strongly supports programmes such as news and children's strands. Furthermore, when asked whether it was important for these broadcasters to provide popular American programming, a low of 27 per cent was recorded, suggesting a strong public preference for domestic British productions. The survey results also indicated that certain kinds of programme strands such as news and drama are seen to be of high value and great social importance.

The liberalising trend in the regulation of UK television is unlikely to be reversed in the coming years. Indeed, judging by the recent conclusions of Ofcom's review, further radical changes may well be introduced in the future to the detriment of the quality and range of public service television. The challenge facing British television is therefore to ensure that socially important genres of programming are not further marginalized in the schedules. Ofcom's conclusion to its 2004 review is to suggest that

---

<sup>270</sup> Ofcom, *Ofcom Review 2004*.

the broadcasters with public service obligations only partly fulfil the requirements in the Communications Act, hence: “The pressures of competition and of changing viewer behaviour are leading some of the more challenging or minority genres to be pushed outside of peak-time viewing; and overall, to ratings-driven schedules with less originality and innovation than audiences wish to see”.<sup>271</sup> The review states that the BBC should reaffirm its position as the standard setter for delivering the highest quality public service broadcasting. However, at the same time it recommends a reduction of the public service obligations on the ITV network and Channel Five – a somewhat peculiar conclusion given that a relaxation of public service obligations is likely to draw these broadcasters away from public service principles rather than strengthen them and thereby increase competition.

This conclusion reflects the contradiction that runs through the remit of Ofcom: on one hand, it takes a pro-competition approach to the television industry, while on the other, it is supposed to maintain the quality of public service television. Such multiple and arguably conflicting goals are inevitable, given that Ofcom has merged the regulatory functions of the legacy regulators with their very different remits and regulatory cultures. Coupled to this, the objective of promoting competition while protecting the interests of citizens and consumers has been a focus of debate for the past decade. Although it is perhaps premature to assess Ofcom’s position on this balance, it has stated that it does not see these premises at odds with one another – an indicator of its pro-market orientation and its sense of its role as a light touch regulator.

It seems likely that the public service obligations, which have traditionally been placed on commercial terrestrial broadcasters by the state will be traded off for improved economic and financial performance by these companies. In this case, the ITV network and Channel Five would increasingly pursue commercial strategies to maximise ratings without any positive content regulations except for national, independent and regional quotas. This would inevitably put more pressure on the remaining public broadcasters, especially Channel 4 as its revenues are derived from advertising. In the worst case, the BBC and Channel 4 (and SC4) would be left as the only public service broadcasters.

There is also a debate about the feasibility of introducing contestable funding, a system that was first discussed in the 1980s by the Peacock Committee.<sup>272</sup> This system would be based on a centralised body (a form of an “arts council of the airwaves”) distributing public funding to programme makers and broadcasters whose programme proposals qualified for funding due to their public service nature. In its most radical form this would involve dismantling the BBC and replacing it with an arts council of the

---

<sup>271</sup> Ofcom, *Ofcom Review 2004*.

<sup>272</sup> Report of the Committee on Financing the BBC, Cmnd. 9824, Her Majesty’s Stationery Office (HMSO), July 1986.

airwaves.<sup>273</sup> In its weaker version, mooted by Ofcom, it would involve providing a subsidy to the commercial broadcasters for producing programming that is defined as public services – something that was previously written into their licences.

The radical option will probably not be considered as a serious alternative by the Government in the current Charter renewal debate, and is highly unlikely to become a serious alternative to the current arrangement in the foreseeable future. The weaker option, however, might gain force in the run up to Charter renewal, though it is unlikely that the revenues will be “top sliced” from the Corporation’s existing revenue streams.

Part two of Ofcom’s review of public service television in the UK that complements the initial review suggests that a fund should be established to enable broadcasters to apply for funding from such a centralised body to produce what are perceived to be public service programmes on new media platforms such as the Internet. This recommendation marks a break with the past as public service principles have almost seamlessly developed institutionally across platforms and the separation of new media, and a specific fund for broadcasters to access revenues to develop public services on these platforms represents a shift in the concept.

UK television is witnessing a period of intense debate in the run up to the BBC’s Charter renewal in 2006. The outcome of this debate will determine the structures and quality of television, for the near future at least. The BBC retains a strong and central position in the sector and remains the most popular broadcaster; it provides a range of new services on the digital terrestrial television platform and the Internet; and it is still widely supported by the general public. Contrary to popular belief it is also heavily regulated, especially in terms of the separation of public and commercial services, and is accountable to Parliament annually. Its new services across platforms have also been, or are shortly to be, independently reviewed and assessed at the request of the DCMS.

The BBC has come under fire mainly from commercial operators or television executives that have an interest in criticising the Corporation. Yet the alternatives to the BBC model put forward by these critics, sometimes with eloquence, have been ill thought out and lack a basis in the reality of television production and the need to retain large vertically integrated operators that can not only provide a public service, but do so efficiently.

Another idea, that was also raised in Ofcom’s public service broadcasting review and would in many ways complement the contestable funding model, is to raise the independent production quota threshold to 50 per cent. This would inevitably reduce the in-house production capacity of the main television companies. Thus the policy debate is about introducing mechanisms that would reduce the efficiency and strength

---

<sup>273</sup> David Elstein et al, *Beyond The Charter: The BBC after 2006*, Broadcasting Policy Group, London, February 2004, available at [http://www.pact.co.uk/uploads/file\\_bank/1269.pdf](http://www.pact.co.uk/uploads/file_bank/1269.pdf) (accessed 14 August 2005).

of UK broadcasters, while at the same time there is a political desire to increase the size of UK television companies and relax ownership restrictions to enable companies to enjoy larger economies of scale and become more competitive in the global marketplace. This contradiction has not yet been satisfactorily aired.

It looks likely, however, that the increase in competition that has been evident over the past decade will further increase as the growth of multichannel television households continues to act as a powerful argument for the reform of the present system. The tension in the UK television system between consumer choice and citizenship rights has always promoted the latter, though not always in a democratic manner. Current trends suggest that the consumer choice arguments will become increasingly central to the television sector, due to a combination of three factors: a strong commercial television lobby group, a government policy of liberalisation, and a regulator that perceives multichannel television to be an all-purpose remedy against detailed State intervention.

This having been said, public service broadcasting and free-to-air generalist television will continue to dominate the television sector for the foreseeable future at least. It is likely that the BBC Charter renewal process will look to reform some of the regulatory instruments, such as the ten-year Royal Charter and the role of the Board of Governors as both strategic directors and regulators. There is certainly a need to ensure that the Board of Governors has independence from the BBC in order for it to regulate the Corporation in an adequate manner, and this may be undertaken in a number of different ways. A separate and independent Board with greater independent resources could be a solution to any accusations that the Board suffers from “regulatory capture”. Alternatively, an external independent regulator that assesses the BBC’s performance might provide a mechanism to ensure that regulation is fully independent from management.

In its submission to the Charter renewal debate, the BBC has responded to its critics and has laid out a plan of action for greater independence of the Board in its regulatory capacity.<sup>274</sup> If the Government and Parliament do not conclude from the Charter renewal debate that the regulatory functions of the Board should be transferred to an independent body, the BBC will certainly undertake to achieve greater independence and scrutiny from the Board internally. In many respects, the BBC’s response to the Charter debate suggests retaining the current structure of self-regulation, while committing itself to a greater degree of public accountability through its “public value” initiative, attempting to prevent closer regulation by the authorities by improving its links directly to the public as the primary source of accountability. By communicating its objectives and performance to the public more clearly, the BBC is also responding to criticisms of the latest review of its online services as well as wider criticism from the commercial broadcasters.

---

<sup>274</sup> BBC, *Building public value*.

Supported by the Government, the BBC has also expanded successfully into new media and both digital television and the Internet. No other European broadcaster can boast the range and depth of the BBC's online activities or range of niche channels. Furthermore, despite continued reservations from parts of industry that the BBC should be allowed to expand into new platforms, there now appears to be far more acceptance of the fact that the BBC, as a public service broadcaster, should have a legitimate claim to expand from radio and television into new areas of content provision. There will be limits to this expansion, and these should be more clearly articulated in the Charter renewal debate.

Unless there is a seismic shift in Government policy during the next year or two, the BBC can expect to retain the licence fee and some form of Board of Governors. The current UK television sector and public will therefore continue to benefit from a unique institution that not only entertains, but also informs and educates. Channel 4's position in the UK television sector would be weakened if the public service obligations on Channel Five and ITV are relaxed as it competes for advertising revenues with these two broadcasters, though it will retain its uniqueness in the television landscape.

The increasing concentration of ownership in the media sector generally is also a long-term concern. The liberalisation of the ownership rules by the Communications Act 2003 created the possibility that a US company may own either Channel Five or ITV; if this happens, it will further change the nature of the sector and the constellations of ownership. Such a move would have to undergo a public interest test; even if it was sanctioned by the authorities, the ITC/Ofcom guidelines would require the operator to meet certain standards and quality that would cover due impartiality, taste and decency and regional programming.

The BBC is essentially in good shape in the run up to the Charter renewal in 2006. Many of the ideas touted as alternatives to the status quo are in retreat. In a recent speech, Michael Grade's predecessor as Chairman of the BBC, Gavyn Davies, cited internal BBC research that suggested 75 per cent of the British public believed that the licence fee represented value for money, with 33 per cent of the sample saying they would pay double the present sum for the BBC's services.<sup>275</sup>

Moreover, Lord Burns, the Government's independent advisor on Charter renewal, has stated that from evidence drawn from the consultation process the public has demonstrated strong support for the BBC. In evidence to the Culture Media and Sport Select Committee, Burns suggested, "The evidence we have received from our consultative process and our research still points to the fact that a lot of people like the

---

<sup>275</sup> Gavyn Davies cited in: M. Brown, "What price the BBC?", in *The Guardian*, 28 June 2004, available at <http://media.guardian.co.uk/mediaguardian/story/0,7558,1248596,00.html> (accessed 11 July 2004), (hereafter, Brown, *What price the BBC?*).

BBC, and quite a lot like it a lot. They are not turning away from an important institution”.<sup>276</sup>

The new Director General of the BBC has also indicated that there will be changes at the BBC and has stated that he expects “the BBC to change more over the next two to three years than over the past 80 years”.<sup>277</sup> Given the changes in the past decade this might be overstating the case, but change is certainly a central force in UK broadcasting and sizeable cuts in staffing levels are currently being undertaken in an effort to demonstrate value for money and efficiency. In June 2005, ahead of charter renewal in 2006, the BBC announced that it would spend €90 million on a restructuring that would include cutting 3,780 jobs and lead to annual savings of €125 million until 2008.<sup>278</sup> Previously, thousands of BBC journalists and technicians had threatened a 48-hour strike because of plans to axe so many jobs. The key challenge is to ensure that broadcasting retains its important role in British society and serves its democracy. This will mean maintaining many features of the past in order to guarantee that television’s positive contribution continues to be enjoyed by the British public.

Perhaps the biggest threat to UK television and its core role for the principle of public service broadcasting is not the oft cited developments in technology and audience fragmentation, but the continued Government support for the liberalisation of the sector and the subsequent reduction of a full commitment to ensuring that the institutions that have been shaped by these principles retain their remits and direction. While it is too early to assess Ofcom’s performance, the citizen/consumer terminology it employs does suggest that two concepts of society and the individual which are sometimes diametrically opposed enjoy equal status in its policy approach – an outlook that clearly relegates the normative notion of citizenship and promotes the consumer.

### 3. RECOMMENDATIONS

#### 3.1 Media policy

##### *Media pluralism*

1. Parliament and the Government should ensure that in the new regulatory framework media pluralism is rigorously protected. As this is an issue concerning the whole of society, the discussion about the new regulatory framework should be as transparent and encompassing as possible, also involving professional, consumer, civil society and other organisations.

<sup>276</sup> Lord Burns cited in Brown, *What price the BBC?*

<sup>277</sup> BBC 2 “Newsnight”, 29 June 2004.

<sup>278</sup> BBC, “At-a-glance: BBC job cuts”, available at [http://news.bbc.co.uk/1/hi/entertainment/tv\\_and\\_radio/4369221.stm](http://news.bbc.co.uk/1/hi/entertainment/tv_and_radio/4369221.stm) (accessed 24 August 2005).



*Public service broadcasting*

2. Parliament and the Government should continue to support public service broadcasting. The status and public funding of the BBC should be proportional and adequate to enable the BBC to fulfil its public service remit across platforms.

**3.2 Regulatory authorities***Media plurality*

3. Ofcom should rigorously protect media pluralism in the new regulatory framework. It should ensure that the television market remains plural and open to new competitors. It should develop a transparent framework to ensure that the public interest test maintains acceptable standards of pluralism in the television sector.

*The BBC*

4. Parliament and Government should ensure that adequate regulatory structures are put in place to ensure a clear separation between the management and the Board of Governors of the BBC. The strategic and regulatory functions of the Board should also be assessed as to the effectiveness of such an arrangement.

*Public service broadcasting*

5. The BBC should resist pressures of competition and prevent some of the more challenging or minority genres from being pushed outside of peak-time viewing. It should not succumb to ratings-driven schedules with less originality and innovation than audiences wish to see.

*Commercial broadcasters*

6. Ofcom should ensure that where a greater degree of self-regulation is introduced for the commercial broadcasters, co-regulatory measures are in place to guarantee that these broadcasters continue to contribute to the quality and diversity of television services. Public service obligations, which have traditionally been placed on commercial terrestrial broadcasters by the State, should be maintained.

**3.3 New media platforms***Digital television*

7. The Government should continue to support the UK public service broadcasters to ensure that they have a central place in the digital television landscape and on the Internet. Digital rollout should enhance the quality of television in the UK and not threaten the quality and diversity of television.