

**WG I: The Role of Regulators in the Supervision
of Public Service Broadcasting Activities
Prepared by Deirdre Kevin for the EPRA secretariat**

The issue of regulation of public service broadcasting has frequently been discussed at EPRA meetings in 1998 in Aachen, in 1999 in Greece, in Ljubljana in 2002, in Naples in 2003. Most recently the Regulation of Public Service Broadcasting: Current Trends in Sarajevo in 2005; and State Aid for public service broadcasters: Transparent financing and regulation of PSB obligations and mission 2005 in Budapest; and assessing PSB Performance; Public Value & Market Impact Test in Prague 2007.

Regarding the financing of PSBs, in its 'Communication on state aid and public service broadcasting', (2001) the European Commission mentions three criteria for the justification of state aid, namely:

- Member States must set out in a formal act a clear remit for public service broadcasting.
- Member States must ensure national monitoring of the fulfilment of the public service broadcasting remit. This needs to be done by an independent body.
- Member States need to assure that the funding of the public service broadcasting is proportionate.

The European Commission is currently carrying out a consultation on a review of the 'Communication on state aid and public service broadcasting' concerning: definitions of remit in particular regarding the provision of new services; concerning special interest channels; responses to proposals for introducing ex-ante examinations of the introduction of new services; and responsibilities of various actors in carrying out such examinations; and the independence of supervisory bodies of the regulation of public service broadcasters. The consultation also addresses the issue of funding of PSBs in particular those with dual financing.

There have been several recent EU investigations of state aid to public service broadcasters.

In Belgium Flanders, the European Commission has examined the financing of the Public Service Broadcaster (VRT) and has concluded that state aid legislation has been respected. There is an EU investigation into financial support for Channel 4 digital switchover in the UK.

In Denmark, in its judgment of 22.10.2008 the Court of First Instance annulled the decision of the Commission from 2004 against TV 2 for overcompensation. In August the Commission approved a temporary loan from the government to TV 2 as part of a restructuring of the station's finances. The Court stated that "the decision is vitiated by an inadequate statement of reasons, the cause of that inadequacy being the Commission's breach of its own obligation to examine issues which nevertheless have a direct bearing on the question whether State aid was granted". The Court accepted the broad definition of public service (against the private stations), that it considers licence fee revenue to be State resources (against Denmark and TV 2), that the overcompensation was not proved to be too much, and that the Commission had failed to make a serious investigation of that issue (against the Commission).

There have also been many recent changes and proposed changes to the regulation, supervision and financing of Public Service Broadcasters, frequently as a result of EC investigations. In Germany, the discussions and the draft of the 12th Amendment of the

Interstate Broadcasting Treaty are a result of the EU-Investigations concerning state aid (see section 6). In addition a public value test has been introduced. The new Broadcasting Bill in Ireland also addresses commitments made by the Irish government to the EC following investigations of the financing of RTE. Changes and proposals for change are outlined in section 6 below.

This paper outlines the current status regarding the role of regulators in the supervision of PSBs, it outlines where ex-ante systems are in place to assess the introduction of new services and also provides an overview of recent changes and proposed changes to the regulation of PSBs. The Working Group will consist of two presentations: from the Ofcom in the UK and from the Norwegian Media Authority.

1. Remits of Public Service Broadcasters

The remit of PSBs are outlined in the legislation only in Germany, Ireland, the Isle of Man, Latvia, Romania, Montenegro, Macedonia, Czech Republic, Slovakia, Hungary, Slovenia and Greece. In many countries, a type of programme or service contract is made with the government: UK (for C4), the Netherlands, Belgium Flanders, Belgium Walloon, Estonia, Sweden, Finland, Denmark, Malta, Bulgaria, Catalunya, Spain, France, Luxembourg (see Table 1 for more detail). PSBs are obliged to have presence on new platforms in the Czech Republic, Slovakia, Slovenia, Denmark and in the future in Latvia (according to draft media law).

Table 1: Remit of Public Service Broadcasters (*Information may be incomplete as not based on questionnaire response)

	In legislation	In charter	Contract with ministry	Allowed new platforms	Obligation new platforms
Austria	X				X
Germany	X			X	
Ireland*	X		X in draft law		
Isle of Man	X				
Latvia	X			X	X draft law to make it obligation
Romania	X			X	
Montenegro	X				
Czech Republic	X				X
Slovakia	X		X in draft proposal	X	X DTT
Slovenia	X				X
Macedonia	X				
R. Serbia	X				
BiH	X			X	
Greece	X				
Hungary	X				
United Kingdom	X	X for BBC	X for Channel 4	X	
Netherlands	X		X		
Estonia	X		X		
Belgium Flanders	X		X	X	
Belgium Walloon	X		X		
Sweden	X		X		
Denmark	X		X		X
Malta	X		X		
Bulgaria	X	X			
Catalunya, Spain	X	X	X		
France*	X		X		X
Norway	X	X		X	
Lithuania	X	X			
Finland*				X	
Norway	X		X	X	

2. Role of the regulator

For many countries, the regulatory authority is responsible only for issues of content: compliance with broadcasting regulation and advertising rules: Montenegro, Slovenia, Slovakia, Czech Republic, Romania, Greece (see table 2 for more detail).

The German authorities have no competence over PSBs. In Ireland the RA has also traditionally played no role in the supervision of PSBs, although the various broadcasting codes and advertising codes developed by the authority also apply to the PSBs. The Broadcasting Bill proposes to change this and the Irish RA will become responsible for PSB.

In the majority of cases the compliance with the remit of the PSB is checked by internal governing boards or councils, or by foundations that run the PSBs usually requiring approval of the ministry or government.

Compliance with remit

Supervision of compliance with remit is now a standard role of the RA in Nordic countries, with changes implemented in several since the beginning of 2008. In Denmark, the PSBs have 4 year contracts with the Ministry of Culture. Each reports yearly to the Radio- and TV-board (the RA). The Board reads the report and comments on it in a public document: Is the report (formally) satisfying? Has the obligations been fulfilled (substance)? Since 2008 DR (the "BBC" of Denmark) must reply to the Boards document, and all the papers are sent to the spokesmen in Parliament representing the parties in the media-political agreement for the four years period. If they want, they can then alter the public service contract on a yearly basis.

In Finland, by the end of April every year YLE must submit a report to FICORA on the public service provided during the previous calendar year. The report must include the information needed in the supervision of TV and radio broadcasting. FICORA then must issue a statement to the government about the report by the end of September.

In Sweden, since 2008, the SBC will annually evaluate if the Swedish public service-broadcasters fulfil their public service obligations. This is a change of the SBC's role compared to earlier regulation. Until 2007 the SBCs task was to evaluate whether the PS broadcasters' yearly reports were a sufficient source of information to conclude whether their obligations were fulfilled.

The Estonian authority is responsible only for public service broadcasters. The PSB produces a long-term Development Plan (for 1+ for 3 years), accompanied by analysis of the influence on, and compliance with PSB remit. This is submitted to Broadcasting Council in advance. It needs endorsement of both the Broadcasting Council and the Ministry of Culture. Budgetary aspects also need to be cleared by Ministry of Finance. The plan forms the core of contract agreement with Government

In Catalunya, the contract is also multi-year in scope; it establishes, in accordance with this law, the public service objectives of the Catalan Broadcasting Corporation, and shall ensure a stable funding and financially healthy framework. Before approval, the Catalan Broadcasting Council shall provide an obligatory report on the content of the programme contract.

In the UK, the PSB develops a self assessment review and statement of forward policy according to Ofcom guidelines. Ofcom is then consulted on any significant changes proposed. In Belgium (Flanders), the Flemish Regulator for the Media assesses fulfilment at the end of the year and hence is involved ex-post if contract has not been respected.

The Norwegian Media Authority's (the NMA's) supervision of the public service remit consists of two parts: 1) An annual assessment of the public service broadcasters fulfilment of their obligations. The broadcasters are all obliged to report on their programming in accordance to their public service remit. In addition to the NMA's own investigations, the NMA often commissions an external research institution to conduct an analysis of a specific programme area within the public service remit. The NMA's assessments are published in a yearly report. In those cases where the conclusion is that a broadcaster has not fulfilled an obligation the NMA follows up with a decision on the matter. 2) There is also monitoring on a regular basis, on obligations suitable for measurement throughout the year, i.e. obligations that have sufficient criterions concerning regularity. The Broadcasting Act entitles the NMA to impose sanctions on broadcasters who do not comply with their public service obligations.

In Luxembourg, the RA supervises the compliance with the contract between CLT-UFA (RTL) and the government. In Macedonia, the Broadcasting Council is monitoring the fulfilment of the compliance with the Law and publishes the results in the reports submitted to the Parliament. In Bosnia and Herzegovina, the authority does not supervise remit per se. However, as PSBs are licensed, the remits are part of the license agreements.

Supervision of financing

Some RAs in response to the questionnaire have outlined consultative roles that they play in the approval of PSB budgets and financing.

In Latvia, the RA monitors the operations of public service media and the use of the funding allocated from the state budget to them in accordance with the tasks set for the public service media. The authority approves plans in advance and also assesses adherence afterwards re. remit. The authority examines and approves the PSB budgets prior to submitting the request to the cabinet of ministers. The authority also has a sub-committee responsible for auditing the PSB accounts.

In the Netherlands, the RA checks whether the reports of NPO on compliance to the performance agreement are valid and reliable, and whether public money is used for public activities. The RA sends comments on the yearly Budget Plan to Minister before 1 November each year. After that the Minister will approve the budget for the upcoming year and assess the specific amount available for PSB.

In Bulgaria, the management boards of the PSBs consult with the RA before adopting budgets.

Table 2: Role of the Regulatory Authority in the supervision and regulation of Public Service Broadcasters

	Advertising rules	Broadcasting legislation	Delivery of remit	Financing of PSBs	new services
Germany	No role: Interstate Broadcasting Treaty outlines regulation and remit of PSB				
Ireland*	No role : Broadcasting Bill foresees role for regulator in supervising PSB (see also section 6 re new services)				
Montenegro	X	X			
Romania	X	X			
Slovakia	X	X			
Slovenia	X	X			
Czech Republic	X	X			
Lithuania	X				
BiH	X	X			
Greece	X	X			
Hungary		X			
Estonia	X	X	X		
Isle of man	X	X	X		
Belgium Flanders	X	X	X		
Belgium Walloon	X	X	X		
Catalunya, Spain	X	X	X		
Isle of man	X	X	X		
Finland*	X	X	X		
Norway	X	X	X		
Macedonia	X	X	X		
Sweden	X	X	X		
R. Serbia	X	X	X		
Netherlands	X	X	X	X	
Latvia	X	X	X	X	
Luxembourg			X only		
Switzerland	X	X		x	
Bulgaria	X	X		X	
	Countries where RA has role regarding content and advertising issues, delivery of remit and new services				
United Kingdom		X	X		X
Denmark		X	X		X

4. Existence of a Public Value Test for the introduction of new services by the Public Service Broadcasters

There are only three clear examples where a public value test has been developed with regard to the introduction of new services by the Public Service Broadcasters: in the UK, in Germany and in Denmark.

In the UK, the PSB governing body is responsible for carrying out a public value test regarding new services. The Ofcom carries out a market impact assessment of the services, involving a consultation with interested parties. Services may also be referred to Competition Commission.

In Denmark, the DR's public service obligations are specified in a public service contract between the Minister for Culture and DR. The purpose of the contract is to specify the tasks DR is expected to perform, and to identify the scope within which the public service activities can be carried out. New public services, including on-demand-services, shall be subject to an internal evaluation in order to make sure that the cultural, democratic and social demands of society are satisfied. There is no Market Impact assessment and no consultation.

In Germany, a "Public interest test" has been introduced, as this was one of the conditions of the agreement with European Commission from April 2007. There was also pressure from commercial operators demanding that PSBs undergo test when introducing new services. The PSBs have developed and applied tests, overseen by Broadcasting Councils of the PSBs. This involves a three step test (similar to that in the UK):

- providing evidence that the added value of a proposed new service or project contributes to the public service;
- consultation of interested parties;
- approval by the governing body (Rundfunkrat).

The test is controversial as it is developed by, and applied by PSBs rather than an independent body.

5. Planned development of Public Value Test for the introduction of new services by the Public Service Broadcasters

In Ireland, a commitment to develop such a system has been made by the Irish government to the European Commission following its investigations of funding of RTE. A new Broadcasting Bill is currently under debate. According to the Bill, the PSB is expected to produce a Public Service Charter setting out the principles to be observed, and activities to be undertaken by the corporation in order to fulfil its public service objects.

A corporation may, with the consent of the Minister, under-take ancillary services.

Where the Minister proposes to give his or her consent the Minister shall

- (a) consult with the corporation concerned and such other persons as he or she considers appropriate,
- (b) consult with the Authority (BAI) as to the sectoral impact of a proposal
- (c) consider the public value of such proposal, and
- (d) publish a statement outlining the consultations that have been carried out.

The proposal is similar to the process carried out in the UK.

In Norway, there is no such process in place at the time. The Ministry has, however, suggested that a system like a Public Value Test will be introduced to assess the value of new services on NRK (not the commercial PSBs), and it is expected that the NMA will get a

central role in this process. The suggested process for the Public Value Test is described like this: An independent body (expected to be the NMA) will make an evaluation whether the new service represents a new value to the public in terms of social, cultural or democratic needs. The evaluation will also regard the impact of the new service on the other operators in the market. This process, as it's been outlined, will take place before (ex ante) the introduction of new services, and the interested parties will be heard before the final decision is made by the Government/The King.

6. Recent changes and proposed changes to remit/funding/regulation of public service broadcasting

In France, there is currently a focus on the reform of public service broadcasting, its funding, and the clarification of the remit and role for the future. The CSA has been developing principles on the content of public service programming (June 2008). In January 2008, the French president stated that he would prohibit advertising on public television channels and compensate for the loss of revenues by introducing a tax on the accrued advertising revenues of commercial television channels; and a small tax on the turnover of new means of communication such as mobile telephony and Internet access. The Copé Commission on a new model of public service broadcasting was set up in February 2008 to make recommendations on the future of public broadcasting. A draft media law that addresses these issues has just been published.

The Broadcasting Bill being debated in the Irish Dáil (Parliament) proposes that the Broadcasting Commission of Ireland becomes the Broadcasting Authority of Ireland with competence to supervise PSB. In particular they will be involved in the implementation of a public value test for new services (see section 6) although the details of how this will be implemented and by whom are not yet developed.

In Sweden, the Swedish Government has launched an investigation into PSB, with the aim of providing Public Service broadcasters with the best possible conditions for future broadcasting. The analysis includes questions regarding the Public Service mission, cost-effectiveness, and questions about governance and financing. The report was due 31st of May 2008. The investigation proposed changes re public service mission, cost-effectiveness, questions about governance and financing. One suggestion is to impose further restrictions upon the regulatory framework on sponsored events in Swedish national TV. The investigation suggests that a maximum of 20 sporting events per year may be sponsored. There are also discussions at the moment regarding the VAT that the PSBs pay. There is also an ongoing discussion on tax financing of PSBs, but no change in policy from License funds to is imminent. There is also an ongoing discussion on self regulation of broadcasters in general: whether the PSBs are included in these plans is not clear, but most likely not.

In Macedonia, the new adopted Law on Amending and Supplementing the Law on Broadcasting Activity is related directly to the possibility, which enables bankruptcy or liquidation of the Macedonian public broadcasting service, MRTV. The amendments include provision that enables programme and technological development of the public broadcaster MRTV to be supported by the Budget and the amount of the broadcasting tax is reduced in monthly instalments with the possibility to be corrected once a year. The Strategy for development of the broadcasting activity for the period 2007-2012 prepared and adopted by the Broadcasting Council of the Republic of Macedonia promotes the strategic tasks and directions regarding the PBS in the Republic of Macedonia.

In Slovakia, there has been a change recently in the financing of public service broadcasters. Previously citizens paid a "fee" for owning the radio receiver or TV receiver, whereas now everybody pays for the public service (with some exceptions, retired, disabled etc.) There is

also a proposal to develop contracts between the Slovak republic and public service broadcasters. The content of these contracts will be production of a new public service programs, improvement of public service etc.

The Latvian Broadcasting Council recently drafted a new Broadcasting law, part of the aim of which is to address the issue of public service broadcasting, including the legal status and financing of the public broadcasting organisations.

In Italy, in 2008 the Ministry of Communications published guidelines on the monitoring of the quality of public service broadcasting, on the "public value" of RAI's programmes for the viewers; and "corporate reputation" of RAI. A plan for the reform of RAI introduced by the Prodi government is now unlikely to be implemented with the Berlusconi government. Plan involved transfer of RAI ownership from the state to a "RAI Foundation". It also proposed that RAI would have to reduce its dependence on advertising and reclaim its distinction from commercial broadcasting.

In the Netherlands, in new Media Act the remit of PSB will be defined as being technology neutral. There will be no more distinction between programmes via TV and radio on one hand and delivered through new platforms like internet and mobile networks on the other hand. When the new media legislation is in place by the end of 2008, all forms of electronic media services will fall under the main task of public broadcasting. This applies to digital services as well as theme channels, websites and mobile services, which, under the present media legislation, (as 'side tasks') are of secondary importance.

In Malta, a Select Committee was set up by Parliament to look into broadcasting in Malta and it is expected that this Committee may propose legislation or policy changes on broadcasting which may have some effect on the Public Broadcaster.

In Germany, the Draft 12th Amendment to Interstate Broadcasting Treaty addresses some of these issues. It proposes that textual reports on the PSB's websites should be strictly linked to programmes broadcast, and should be removed after seven days. PSBs must increase and develop their online services for information, education and science, directed in particular towards young people.

The new Portuguese Television Act 2007 redefines public service financing.

In the UK, the current PSB Review will conclude in 2009. It is likely to change some PSB obligations or structures.

In the French speaking community of Belgium, the 2006 contract introduced new methods for internal assessment of PSB remit compliance.

In most countries, while there are plans to develop some process of assessing the introduction of new services, mainly to be carried out by internal governing bodies, there are no other examples of a public value test such as that in the UK, Denmark and Germany (or that proposed in Ireland and Norway).