[PL] New Draft of Amendments to Broadcasting Act

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On 14 January 2002 National Broadcasting Council (NBC) adopted a new broad draft of amendments to the Broadcasting Act of 29 December 1992 (with later amendments). The draft was subsequently forwarded to the Prime Minister on 23 January 2002 who decided to initiate a further legislative process. Nowadays, the draft is a subject of consultations between different governmental bodies. It comprises a number of sets of provisions.

The first set of proposed amending provisions concerns the issues aimed at achieving a better harmonisation with the EC Directive "Television Without Frontiers" and international agreements. The draft establishes new, normative criteria concerning the promotion of European works, including independent European works (so called "European quotas"), redefines the notion of "European work" in accordance with the guidelines of the aforementioned directive and includes new, very detailed criteria defining "jurisdiction". The draft introduces changes regarding the amount of share capital that can be held by foreign shareholders: as the date of accession will nullify any limits for natural and legal persons from the European Union, the draft increases the actual limit for other foreign subjects from 33% to 49%.

The second set of amendments proposed addresses the challenges of the changing, dynamic situation in the audiovisual market and comprises some issues - urgently needing to be resolved - connected with the introduction of digital broadcasting technology. The draft introduces a new legal framework for such activities. Among other core provisions, it defines muliplexing as a junction of signals coming from different broadcasters in one digital signal in order to transmit it. The Introduction of such signal into a multiplex is treated as a new, concessionable way of broadcasting. The multiplex operator, who realises the process of multiplexing is obliged to obtain a concession for multiplex signal transmission, with the exclusion of transmission in cable networks; the latter shall be subject to registration of transmitted programmes. The draft determines conditions for the introduction of conditional access systems, understood as conditional access of all technical measures, which permit access by an authorised person to programme services and other services. It also determines mutual relations between multiplex operators and disposers of conditional access systems - that is a person who administrates technical means of conditional access. The draft also embraces issues concerning electronic programme guides

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(EPGs).

The third set of amending provisions refers to public service radio and television. It provides for the creation of two entities; Telewizja Polska S.A., which would produce and broadcast national service programs, and Polska Telewizja Regionalna S.A. - a producer and broadcaster of a national service program with additional regional programming. These proposals are a consequence of the process of progressive changes in the public regional media market. Another important proposal is the introduction of a programme licence for broadcasting for each public programme service. It should be noted that it would be of a different nature to a concession for commercial broadcasters. The programme licence for a public programme service is issued for the period of 4 years and determines such issues as programming standards, which should be observed by the public service broadcaster; especially those connected to cultivating national heritage, and other issues like daily transmission time or technical conditions. It was also stated that except in the case of licensable public programme service, a public broadcaster would be able to produce and broadcast other programme services in accordance with the general rules for a programme service subject to a concession.

The draft contains also new proposals concerning effective collection of the licence fee and the legal status of the programming archives of public mediaincluding collection of phonograms, audiovisual works, libraries and other collections. The new provision states that the aforementioned public media archives shall become the property of public media entities without any remuneration. Access to such archives will be possible under the fee and on certain conditions, which will be determined by the NBC regulation.

Furthermore, a regulation for the procedure of renewal of concessions and new provisions concerning media concentration are envisaged. Moreover, the draft proposes new rules enabling effective enforcement of broadcasters obligations. The draft also defines conditions, which should be taken into account when determining the amount of payments - gathered by collecting societiesfrom broadcasters under the Act on Copyright and Related Rights of 4 February 1994 (with later amendments). When determining such payment the following conditions, such as amount of income gained from broadcasting of audiovisual works or artistic performances, character and scope of using such works or performances and amount of other payments borne by broadcasters due to audiovisual exploitation of such works and performances, should be taken into consideration. The draft limits the total annual amount of payments gathered from broadcasters by collecting societies to 3% of the last annual income obtained in connection with the exercised concession.

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