[PL] New Law on Public Duties in Audiovisual Media Services

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In September 2008 the Polish Ministry of Culture presented initial proposals for a new media law, concerning in particular public duties in audiovisual media services. On 18 March 2009 the project was introduced in the Parliament and in accordance with procedure the *Sejm* (lower chamber) passed the new Law on Public Duties in Media Services on 21 May 2009. On 25 May 2009 the Law was sent to the Senate (upper chamber).

The Law amends provisions of the Broadcasting Act, which currently governs the audiovisual sector in Poland. It determines public duties of media services, rules and conditions organising their budget (including a management of their State financing) and proper regulatory bodies (Article 1). There is a wide definition of public duties in the audiovisual media services sector, strictly connected with public remittance. It includes different goals which are generally focused on supporting the development of a democratic, civic society and all its values (Article 3). According to Article 4 the National Broadcasting Council (NBC), acting through its programme advisory council, may entrust the carrying out of public duties on the basis of a programme license to a public broadcaster in the case of a programme, or to a media service provider in the case of a programme service. This is a very important change due to the introduction of a new “double system” of criteria. For the first time in the Polish legal system not only a public but also a commercial broadcaster is authorised to receive State money for its service.

The public radio and television broadcasting organisations are granted licenses on the basis of application (Article 12). The license shall be awarded for up to 4 years (Article 14) and be free (Article 15). A media service provider may be granted a license on the basis of winning a competition (Article 13); the winner is called a beneficiary of a programme license. The license means an authorisation to receive State money (Article 2 para. 6). The programme’s license determines the particular public duties to be entrusted to the public broadcaster or the media service provider and the anticipated amount of money from the Public Duties Fund (Article 11.1), according to the conditions of the NBC’s resolution in the particular case and the particular agreement between the NBC and the media service provider (Article 18). The carrying out of the entrusted duties is controlled by the NBC; if those requirements are not fulfilled a beneficiary is obliged to repay the public money with appropriate interest (Article 27). The financing of public

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duties seems to be a crucial difference between the current and future systems. The Law abolishes the receivers' licence fee system from 2010 and replaces it with a State funding (Public Duties Fund), approved by the Parliament at a level approximately equal to the current amount.

But in order to give State aid to a public broadcaster/media service provider, the Law will be subject to a notification's procedure to the EC. It requires proper regulation of the NBC, and in particular it must include a programme licensing scheme (Article 11.11); these documents have not currently been prepared.

There are almost no doubts among experts in the audiovisual media sector in Poland, including the official opinion of the Office of the Committee for European Integration (OCEI) of 19 May 2009, that a new State aid system of financing public tasks in media services which replaces the current financing model, requires an authorisation for State aid pursuant to Articles 87 and 88 of the EC Treaty.

According to the above-mentioned opinion the new Law does not violate Articles 86 para. 2 and 87 paras. 1 and 3 of the Treaty. Nevertheless the EC is authorised to decide if the Law is consistent with the common rules on competition. For this reason it is doubtful if the procedure will be finished before the end of the year, when a new law replaces the current receivers' licence fee system. Therefore, as many experts underline, from the beginning of 2010 Polish public broadcasters may be deprived of any revenues.

The Law liquidates regional branches of the Telewizja Polska (TVP) company. The regional public TV shall be formed by 16 companies founded to produce and transmit regional programmes and other media services, as is the case for the Polish public radio. The PSB´s companies may transmit a programme on the basis of a programme license as well as thematic programmes if a broadcasting license has been awarded for the transmission of such.

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