

[NO] Public Value Test Required for New Services in NRK

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The Norwegian Broadcasting Act has been amended with a regulation requiring pre-consent for new services which Norsk rikskringkasting AS (the Norwegian public service broadcaster - NRK) wants to launch. The procedure requires an application of what is often called a public value test prior to a decision to add any significant new service to the NRK's public service remit. The amendment was enacted by Parliament on 19 June 2009 along with several other changes (see below), all with effect from 1 January of this year.

The EFTA Surveillance Authority has long expressed its dissatisfaction with how the Norwegian government has handled its ownership of NRK with respect to the EEA agreement's state aid regulation. The Government has responded to this by amending the NRK statutes with a clarification of the public service remit, among others by providing a more detailed list of the activities which are considered to be a part of the remit. The amendment to the Act requiring pre-consent for the new activities which NRK wants to take on must be understood in connection to this. Only services which fulfill the democratic, social and cultural needs of society will be accepted. It is presupposed in the preparatory works that only significant and principal issues should be subject to the procedure. So, for example, NRK should be able to make minor changes to its existing services or move a service to another platform without having to ask for consent. The new Section 6-1a in the Act gives the King in Counsel (the Government) the final say as to whether a service should be acknowledged, but commands Medietilsynet (the Norwegian Media Authority) to carry out the public value test and to give its advisory opinion. The provision explicitly states that more detailed rules on the assessment criteria and procedural arrangements will be included in the Broadcasting Regulation. The Government circulated for public consultation a proposal on a new regulation in July 2009, which is expected to be adopted very soon. In addition, the Media Authority is currently carrying out an examination of NRK's current activities to assess whether they qualify as a public service.

The Parliament also amended the Broadcasting Act with a provision granting the Media Authority full independence from the Government when carrying out its task of making an annual report on how public service broadcasters in Norway comply with their remits. Section 2-13 of the Act now states that neither the King nor the Ministry can instruct the Authority in its assessments. Although this must

be seen only as a codification of practice, since the Government has never used its right to instruct in these cases, the new provision is in principle very important, not least for the Norwegian Media Authority, which is not independent from the state. The same independence is granted in Section 6-1a to the Authority when carrying out the public value test.

A few other minor changes to the act were also made. These involve among other things a new prohibition against advertisements on NRK's teletext services (provision 6-4) and a new provision giving NRK a right to get information from distributors customer registries in order to make the collection of licence fees more efficient (provision 8-5).

The Broadcasting Act will be revised again this year as a result of the implementation of the AVMS Directive. The Government plans to send a proposal for the amendments to the Parliament before summer.

Lov 4. desember 1992 nr. 127 om kringkasting

<http://www.lovdata.no/all/nl-19921204-127.html>

Broadcasting Act

Ot. prp. nr. 81 (2008-2009)

<http://www.regjeringen.no/pages/2179791/PDFS/OTP200820090081000DDDPDFS.pdf>

Proposition Nr. 81 to the Odelsting

Innst. O. nr. 77 (2008-2009)

<http://www.stortinget.no/Global/pdf/Innstillinger/Odelstinget/2008-2009/inno-200809-077.pdf>

Recommendation O. Nr. 77

