

[PL] "Lex TVN" - is media independence in Poland under threat?

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On 11 August 2021, the Polish Parliament (lower chamber) adopted an amendment to the Law on Radio and Television, commonly referred to as "lex TVN". Why there is a controversy around this bill? The opposition points out that it targets TVN, a TV station allegedly unfavourable to the government, while the ruling party argues that the bill aims to prevent the Polish media from being bought by companies from non-democratic countries such as Russia, China or Arab states. The passing of the bill by the Parliament coincided with the TVN group applying for an extension of its licence.

A provision has been introduced to the draft law on radio and television broadcasting, according to which TV and radio stations in Poland may have owners only from the European Economic Area (EEA), which includes European Union countries as well as Norway, Iceland and Liechtenstein. According to the draft, a licence to distribute radio and television programs may be obtained by an entity based in an EEA member state, provided that it is not dependent on a foreign person outside the EEA. However, the coming into force of this law only hits the TVN station, which is owned by the US corporation Discovery, because the US is not part of the European Economic Area and, moreover, Americans are the only foreign owners of media in Poland out of the EEA. Therefore, the law is referred to as "lex TVN". The law, passed by the Parliament, has been met with a wave of criticism and protests in Poland, because it targets a TV station that is allegedly not favourable to the ruling party. Opposition politicians, experts, as well as citizens, went out onto the streets to protest against the passed amendment to the law. They claim that the law poses a real threat to the freedom and independence of the media in Poland. These actions are also criticized by representatives of non-governmental organisations, who emphasise that the media are a key element of a democratic state and a tool for controlling the authorities. The draft act may also cause concern among foreign investors. Concern about the regulation has been expressed by the US authorities and the European Commission. The Discovery Corporation itself has issued a statement that the media law is an attack on independent media and freedom of the press and is aimed directly at TVN. A day after the Parliament had passed the bill, Discovery informed the President of Poland that it was taking legal action for violation of the bilateral agreement between the United States and Poland. Discovery alleges that the Polish authorities violated bilateral obligations,

including fair and equitable treatment of reciprocal investments, non-infringement of reciprocal investments through arbitrary and discriminatory decisions, equal treatment in licensing and prohibition of expropriation without compensation.

On 9 September 2021, the Senate, the upper chamber of the Polish Parliament, rejected the bill in a vote. The justification was that the amended act should not become part of the legal system as it violates a number of provisions of the Polish Constitution, the Treaty on Business and Economic Relations between the Republic of Poland and the United States of America as well as the Treaty on the Functioning of the European Union. The amendments of the Senate must be adopted or rejected by the Parliament (lower chamber) with an absolute majority of votes in the presence of at least half the number of deputies. It is difficult to say at this point whether the ruling party will find such a majority. If it does, the bill will be sent to the president's desk. The president has recently indicated that he may block the TVN law. He may also refer the bill to the Constitutional Tribunal, which may decide whether or not the law will become binding.

Parliamentary draft amending the Law on Radio and Television

US-Poland Business and Economic Relations Treaty (Signed 21 March 1990; Entered into Force 6 August 1994; Amended 1 May 2004)

https://tcc.export.gov/Trade_Agreements/All_Trade_Agreements/exp_005367.asp

Uchwała Senatu RP w sprawie ustawy o zmianie ustawy o radiofonii i telewizji

<https://www.sejm.gov.pl/sejm9.nsf/druk.xsp?nr=1535>

Resolution of the Senate of the Republic of Poland on the bill amending the Law on Radio and Television

