

Poland

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1. LEGAL FRAMEWORK

1.1 DEFINITION OF THE MEDIA REGULATORY AUTHORITY

In December 1992 the Sejm passed the Broadcasting Act, which came into force on March 1, 1993¹. Under the law, the National Broadcasting Council was appointed as a state organ competent as regards matters connected with radio and television. Earlier, a draft had been prepared to amend the Constitution by incorporating the provisions regarding the National Broadcasting Council into this fundamental act of law².

The National Broadcasting Council has worked since April 28, 1993.

The National Broadcasting Council (hereinafter referred to as “the National Council”) shall hereby be established and shall constitute the state authority competent in matters of radio and television broadcasting (Article 5 Broadcasting Act 29 December, 1992).

1.2 LINKS WITH SELF-REGULATORY NAD CO-REGULATORY MEDIA STRUCTURES

According to the Broadcasting Act, the National Council is obliged to promote self-regulation or co-regulation in the area of provision of media services under this Act, including the submission, upon request of a media service provider, an opinion on the code referred to in Article 3a.

In practice, the National Council cooperates with the UKE (Office of Electronic Communications) when granting licenses for radio and television broadcasting. Also, both bodies cooperate in the process of implementation of digital terrestrial television (multiplex competitions)

In Regulatory Strategy 2011-2013 the National Council calls for a radical change in the law impeding the business of broadcasting, in terms of the introduction of self-and

¹ Broadcasting Act 29 December, 1992 (Official Journal 1993 no 7, pos. 34 with its later amendments).

² The Constitution of the Republic of Poland (Chapter IX art. 213) adopted by National Assembly on 2 April 1997, confirmed by referendum in October 1997.

co-regulation by broadcasters³. The mechanisms are to date non-existent in the Polish audio-visual market. The National Council wants to make it the model which means the introduction of deregulation legislation and an enforcement of rules for obtaining licenses. Licensing, as long as it is not associated with rationing scarce goods should be reduced to a minimum. There are good experiences and the specific proposals are set out in Strategy. Specially, National Council would like to put in place mechanisms to support local media, social and environmental and they also want to introduce appropriate anti competition provisions⁴.

There are two examples of self-regulation as a beginning of the process: advertising market and journalistic code of ethics.

There has been self-regulation of the advertising market in Poland for six years. The system, which includes major advertisers, media and advertising agencies, is based on the Code of Ethics in Advertising, a document defining the standards for commercial marketing communications.

The Journalistic Code of Ethics is based on the principles of the Charter of Media Ethics and the Declaration of the International Federation of Journalists⁵.

2. FUNCTIONS

The main function of the Council is to protect:

- freedom of speech and the independence of broadcasters,
- interests of viewers and listeners,
- open and pluralistic character of radio and television.

The National Council shall safeguard freedom of speech in radio and television broadcasting, protect the independence of media service providers and the interests of the public, as well as ensure an open and pluralistic nature of radio and television broadcasting.

According to the Broadcasting Act December 29, 1992 Article 6, the main functions of the National Council are, in particular:

1. to draw up, in agreement with the Prime Minister, the directions of the State policy in respect of radio and television broadcasting,
2. to determine, within the limits of powers granted to it under this Act, the terms of conducting activities by media service providers,
3. to make, within the scope set forth by the Act, decisions concerning broadcasting licences to transmit programme services, entry into the register of programme services, hereinafter the "register", and keeping the register,
4. to grant to a broadcaster the status of a social broadcaster or to revoke such status, on terms laid down in the Act,

³ NBC Regulatory Strategy 2011- 2013 http://www.krrit.gov.pl/Data/Files/_public/pliki/publikacje/strategie/strategia_110420.pdf

⁴ Chairman of NBC speech in Parliament 27 June 2012 <http://www.sejm.gov.pl/Sejm7.nsf/wypowiedz.xsp?posiedzenie=17&dzien=2&wyp=226>

⁵ Declaration of Principles for International Federation of Journalists IFJ - Federation Internationale des Journalistes IFJ (International Federation of Journalists) adopted by the Second World Congress of the International Federation of Journalists at Bordeaux in April 1954 and amended by the 18th IFJ World Congress in Helsingör in June 1986

5. to supervise the activity of media service providers within the limits of powers granted to it under the Act,
6. to organise research into the content and audience of radio and television programme services,
7. to determine fees for the award of broadcasting licences and registration,
8. to determine licence fees in accordance with the principles set forth in the Licence Fees Act of 22 April 2005⁶,
9. to act as a consultative body in drafting legislation and international agreements related to radio and television broadcasting,
10. to initiate research and technical development and training in the field of radio and television broadcasting,
11. to organise and initiate international co-operation in the field of radio and television broadcasting, including cooperation with regulatory bodies of Member States of the European Union competent for media services,
12. to co-operate with appropriate organisations and institutions in respect of protecting copyright as well as the rights of performers, producers and media service providers,
13. to hold public and open competitions to select members of Supervisory Boards of public radio and television broadcasting organizations,
14. to promote self-regulation or co-regulation in the area of provision of media services under this Act, including the submission, upon request of a media service provider, an opinion on the code referred to in Article 3a,
15. to promote media literacy (media education) and to cooperate with other state authorities, non-governmental organizations and other institutions in the area of media education.

Statutory mission of the National Broadcasting Council is to exercise control over the advertising broadcasters, including the control of issued advertisements, teleshopping and sponsored programs for compliance with the Broadcasting Act, the provisions of concessions and other legislation related to the sphere of advertising and sponsorship.

Control activities of television and radio broadcasters, as well as any interventions related to advertising and sponsorship activities, are carried out in accordance with the tasks and competences of the Chairman of the National Council, according to the Broadcasting Act of 29 December 1992 on radio and television.

Under Broadcasting Act December 29, 1992 Article 6 point 13, the National Council is committed to promote media literacy (media education) and to cooperate with other state authorities, non-governmental organizations and other institutions in the area of media education.

In fact, the National Council arranges conferences and seminars in that area, inviting government, and non-government organizations, universities, independent experts etc to take part in these.

The National Council arranges social consultations among other social actors.

⁶ Licence Fees Act of 22 April 2005 (Official Journal "Dz.U.", No. 85, item 728 and No. 157, item 1314, and of 2010, No. 13, item 70 and No. 152, item 1023)

3. LEGITIMIZING / UNDERLYING VALUES

According to the Constitution and the Broadcasting Act 29 December 1992, the main values of the National Council are to protect :

- fundamental human and civic rights
- right to information
- broadcasters and editors independence,
- open and pluralistic character of radio and television and programming offer quality

4. PERFORMANCE

In its activities the National Council is guided by the following principles:

- collegiate work based on professional distribution of responsibilities and authority among all its members,
- openness attained by means of regular public presentations of problems addressed by the Council and public hearings of individuals and entities applying for licenses,
- independent operations and adoption of the solutions in accordance with the law, devoid of any illegal and unprofessional pressure,
- cooperation with other state bodies and coming forth with the proposals of joint operations in broadcasting and planning of the state policy in that area, democracy and pluralism, as well as the development of protection of radio and television by ensuring broadcaster independence.

The Chairman of the National Council is authorized to:

- order (pursuant to the Council's resolution) that the broadcasting of programmes that violate the law be discontinued,
- require from a broadcaster all materials necessary to assess programmes as to their compatibility with the applicable law,
- fine a broadcaster or its owners in the event of any violations of the law or should it refuse to carry out the decisions taken by the Council's Chairman in the form of valid resolutions,
- allocate (in cooperation with the President of the Office of Electronic Communications) frequencies to public radio and television companies.

The cooperation with self-regulatory and co-regulatory organizations is very poor and rather unsystematic. Hence, it is difficult to say that the activities are complementary or overlapping.

5. ENFORCEMENT MECHANISM / ACCOUNTABILITY

Under the Broadcasting Act December 29, 1992 Article 9:

1. The National Council shall issue regulations and adopt resolutions on the basis of the existing legislation and for the purpose of its implementation.

2. The National Council shall adopt resolutions by a two-thirds majority of votes of the total number of its members specified in the Act.
3. The National Council shall adopt the internal rules of procedure binding upon the Council.

According to the Constitution of 1997, the National Broadcasting Council shall exercise its authority as the other bodies of executive power. The National Broadcasting Council is bound by a form of an implementing act referred to in the Act. If the authorization does not indicate the form of national legislation the Council acts in the form of a resolution. The concept of resolution in paragraph 1 Article 9 of the Act on radio and television is a form of legal act, and the same concept in the paragraph 2 - how to determine the will of the National Broadcasting Council

Measure the impact in the form of a call the sender to refrain from acts inconsistent with the Act, the resolutions of the National Council or the terms of the concession is similar in terms of the legal nature of the activities provided in the paragraph. The call is not a decision within the meaning of Code of Administrative Procedure, and is not subject to execution. The essence of this measure amounts to an infringement of law or the terms of the license to broadcast and call the sender to remove them

Decisions issued under the provisions of paragraph 4 subject to administrative enforcement of general rules, i.e. under the Act of June 17 for administrative enforcement proceedings (Acts, U 1991 No. 36 item 161)

The National Council Broadcasting is a state body, without specifying its state structure nature. The nature of the tasks of National Council indicates that this is the executive authority, in such a concept which gives it a Constitutional Act on Mutual Relations between the executive and legislative authority.

The National Broadcasting Council has the administrative functions, although not part of the government. It is undoubtedly part of the government. Ideally situated outside the national government administration, the Council problems of interpretation make the laws governing the powers supreme and central administrations. Generally, the National Council should be included in this category; therefore, its members must include the category of persons holding the highest positions in the state.

The Chairman of the National Council may require a media service provider to provide materials, documentation and information to the extent necessary for the purpose of supervising the provider's compliance with the provisions of the Act, the terms of the broadcasting licence or self-regulation acts binding upon it.

The Chairman of the National Council may call upon a media service provider to cease practices in respect of provision of media services if they infringe upon the provisions of the Act, resolution of the National Council or terms of the broadcasting licence.

Acting by virtue of the Council's resolution, the Chairman of the National Council may issue a decision ordering the media service provider to cease the practices referred to in paragraph 3.

Paragraphs 2-4 shall apply respectively to the retransmission of radio and television programme services.

By the end of March each year, the National Council shall submit to the Sejm, the Senate and the President an annual report on its activities during the preceding year, as well as information concerning key issues in radio and television broadcasting. In fact, National Council is accountable to both houses of the Parliament and the President of Poland

Each year, the National Council shall present to the Prime Minister an annual account of its activities as well as information on key issues in radio and television broadcasting.

By way of resolutions, the Sejm and the Senate shall accept or reject the report referred to in paragraph 1. A resolution concerning acceptance of the report may contain remarks and reservations.

In case of rejection of the report by both the Sejm and the Senate, the term of office of all the members of the National Council shall expire within 14 days from the date of the last resolution to this effect, subject to the reservation contained in paragraph 5.

The National Council's term of office shall not expire unless so approved by the President of the Republic of Poland.

6. INSTITUTIONAL ORGANIZATION / COMPOSITION

The term of office of the members of the National Council shall be six years from the day of appointment of the last member. Members of the National Council shall perform their functions until the appointment of successors.

Prior to December 2005, the National Council consisted of 9 members. Pursuant to the Act of 29 December 2005, on transformations and modifications to the division of tasks and powers of state bodies competent for communications and broadcasting, the term of office of the previous National Council has expired and a new board has been established⁷. The act has reduced the number of members of the Council to five. Two of them are appointed by the Sejm (lower house of the Parliament), two by the President of Poland, one by the Senate (upper house of the Parliament).

A member of the National Council may not be appointed for another full term of office.

The body which is empowered to appoint a member of the National Council shall dismiss such a member solely in cases when the said person:

1. has resigned,
2. has become permanently unable to discharge of duties for reasons of ill health,
3. has been convicted of a deliberate criminal offence by a valid judgement,
4. has submitted an untruthful screening statement, as confirmed by a final and valid decision of the court,
5. has committed a breach of the provisions of the Act and the said breach has been confirmed by the decision of the Tribunal of State.

According to the European Platform of Regulatory Authorities, Poland represents the French model of appointment where both the legislative and the executive branch have the power to appoint the members of the regulatory authority.⁸

⁷ Act of 29 December 2005, on transformations and modifications to the division of tasks and powers of state bodies competent for communications and broadcasting (Official Journal 2005 no. 267, pos. 2258)

⁸ According to M. Glowacki this system was first implemented in France in order to attain a certain balance of power between

National Council Office

The National Council Office employs 140 people. What is based on precarious and stable labour is Code of Labour and Code of Rules. The Office is an executive body of the National Council; it operates under the internal regulations adopted by the Council and is subordinate to its Chairman. The Office consists of the following departments:

- **Presidential Department:** in cooperation with appropriate departments of the Office, guarantees the servicing of the Chairman's and the National Council's work, it supervises the implementation of decisions, orders and tasks stemming from the Council's work. Moreover, it drafts plans of debates, prepares necessary materials and takes the minutes at the Council's sittings.
- **Economic and Financial Department** prepares analyses of the economic situation in public radio and television, and those economic entities to which the President of the Council is a founding body or over which he/she fulfils supervisory functions. Department runs financial management and accountancy of the National Council and the Office, it also analyzes and drafts reports on the utilization of central budget funding
- **Legal Department** represents the National Council in legal and administrative proceedings and before other judiciary bodies, gives opinions and legal advice, and provides legal interpretations, issues legal opinions on draft legislation and other acts of law.
- **Public Media Department** organizes and conducts studies on the contents and reception of radio and television programmes, supervises if broadcasters meet their programming obligations stemming from the law and the terms of their licences, monitors radio and television programmes.
- **Regulation Department** is charged with the organizational and professional aspects of the licence granting process. It also collects data about licensed broadcasters.
- **Monitoring Department** prepares analyses and assessments of the advertising activities pursued by radio and television broadcasters under the Broadcasting Act, cooperates with public opinion polling centres, advertising agencies and scientific centres dealing with marketing and advertising.
- **Strategy Department** prepares the regulatory strategy of National Council

7. FUNDING

According to the Broadcasting Act the operations of the National Broadcasting Council and its Office are fully financed by the state budget, ca. 4,7 M. Euro.

8. REGULATION IN CONTEXT

The Polish media landscape is an effect of the country's socio-political and economic transition subsequent to the fall of communism in 1989. Important post-communist media

political forces and adopted in other countries, such as Romania, Bulgaria and the Ukraine. See: 'Political pressure on Public Television in Poland. The Case of the National Broadcasting Council', in *Comparing Media Systems in Central Europe* (eds. B. Dobek-Ostrowska, M. Glowacki) Wroclaw 2008, University of Wroclaw Publisher

developments include: privatisation of the press sector, the transformation of state radio and television into public broadcasting organisations, licensing of private broadcasters, influx of foreign capital into the Polish media market and European integration of audio-visual media policies.

Following the fall of communism, the Polish audiovisual media sector grew rapidly. These developments led to the establishment of a public and private duopoly.

Radio

80 percent of all Poles listen to radio; more than half say they listen to radio for more than three hours per day (Radio Track)⁹. Apart from the public radio broadcaster, there are 255 licensed commercial or private radio broadcasters in Poland¹⁰.

The PSB radio – Polskie Radio (PR) S.A. – is owned by the State Treasury. It operates five national radio stations: Program 1 is of a general nature, Program 2 is devoted to high culture, Program 3 is known for its news services, Polskie Radio Four targets young listeners and Radio Parlament broadcasts parliamentary sessions. PR S.A. also runs 17 regional radio stations and Polskie Radio External Service, which targets Poles and other listeners abroad. A 2009 survey showed Program 1 and Program 3 to be the most popular public radio stations, with 12 percent and 8.0 percent of total radio audience share (Radio Track).

On the national level, the commercial radio stations, Radio RMF FM (owned by Bauer Media Invest) and Radio Zet (owned by Eurozet LTD) have the highest radio audience shares: 25.8 and 16.6 percent, respectively. The Catholic station Radio Maryja, with an audience share of 3.0 percent, is the third-most popular national private radio broadcaster in Poland (Radio Track). Other regional private radio stations include: Radio Wawa and Radio TOK FM. Regional and local commercial radio stations in Poland operate as networks, monopolised by the biggest media groups including Broker FM, Eurozet, ZPR and Agora. Independent broadcasters, such as universities and local governments, run some of the local radio stations.

In 2008, Polish radio advertising revenue came to approximately half a billion euros, which accounted for 10 percent of total media advertising revenue (Radio Track). In the first half of 2009, the Polish radio market noted a 7.5 percent decrease in its advertising revenues (CRMC).

Television

A 2009 survey revealed that the average Pole watches television for three hours and 42 minutes per day¹¹. Apart from the public TV broadcaster, there are 213 licensed commercial television broadcasters in Poland, including seven terrestrial, 56 satellite and 150 cable broadcasters.

The PSB TV – Telewizja Polska (TVP) S.A., owned by the State Treasury – continues to dominate the market more than any other European public broadcaster. The combined audience share of its channels accounts for more than half the total TV audience share.

⁹ Radio Track Radio Audience Research carry out by SMG/KRC Milword Brown since 2001

¹⁰ Based on National Broadcasting Report 2010

¹¹ Based on Establishment Survey TNS Poland 2009

TVP S.A. operates three terrestrial channels: TVP1 and TVP2 air nationwide and TVP Info broadcasts regionally. In 2009 the audience shares of TVP 1 and TVP 2 were 22.8 and 15.9 percent respectively. TVP Info, which shares its programmes with a network of 16 regional centres, reached 4.2 percent¹². The public broadcaster also runs four channels available via satellite, cable and digital platforms: TVP Polonia, designed to broadcast PBS to Poles abroad; TVP Kultura and TVP Historia, dedicated to cultural and historical programming; as well as the first commercially-based TVP channel, TVP Sport. In 2008, TVP HD, the first TVP high-definition television channel, was launched

The main players in the national commercial TV market are Polsat, with a 2009 audience share of 14.8 percent, and the multi-regional TVN, with 13.7 percent¹³. Telewizja Polsat S.A., controlled by the Polish businessman Zygmunt Solorz-Żak, owns Polsat. TVN is owned by ITI Holdings S.A., whose main shareholders are two Poles: Jan Wejchert and Mariusz Walter. Both Polsat and TVN run thematic channels in addition to their main channels. Other private terrestrial TV channels in Poland include two Roman Catholic channels, TV Trwam and TV Puls, as well as local channels. The audience share of each of these channels does not exceed 3 percent¹⁴.

Poland is the third-biggest cable television market in Europe, with approximately 4.5m subscribers in 2009. Big operators with significant foreign capital dominate the market: UPC, Vectra, Multimedia Polska, Aster City Cable, TOYA, INEA, etc. The combined market share of these players is more than 60 percent. Most of these operators offer radio and TV broadcasting, Internet and telephony services.

In the first half of 2009 the advertising revenue in the Polish TV market decreased 8.2 percent over the previous year. The total Polish media advertising revenue is expected to reach 1.58bn euro in 2009.

Telecommunications

In 2008 the number of households using broadband Internet services in Poland increased 12 percent over the previous year to 4.7m. Mobile Internet access services noted a 45 percent increase, to 1.06m subscribers. The number of dial-up Internet users decreased to 378,000. Thirteen telecommunications operators dominate the broadband Internet market in Poland, including fixed telephony, mobile telephony and cable television operators. The leader is Telekomunikacja Polska (TP) S.A., the national Polish telecommunications provider. It has a 44.6 percent market share of users.

In terms of fixed telephony, TP S.A. has the largest share of the market with 76.9 percent of subscribers in 2008 – despite an increase in use of alternative operators. Among the alternative operators, Netia S.A. had the highest share of 3.5 percent¹⁵

In 2008 mobile telephony in Poland had about 43 million users, which accounted for a penetration level of 97.5 percent. Fifteen providers operate in the domestic mobile market .

¹² Op.cit

¹³ Op. cit

¹⁴ Op.cit

¹⁵ Based on Office of Electronic Communications 2010

Online media

At the end of 2008 the number of Polish Internet users reached 15.8m, which accounts for 44 percent of the population over seven years old. The number of Internet users grew 74 percent during the eight-year period between 2004 and 2012.¹⁶

All the mainstream media outlets in Poland have developed their online portals. Approximately 75 percent of Polish Internet users say they watch TV online. About 67 percent listen to radio and 64 percent read the daily press. The most popular among the mainstream outlets are: TVN, Radio RMF FM and Gazeta Wyborcza. The popularity of news websites available exclusively on the Internet has been growing. The most visited of these are Onet, Wirtualna Polska and Interia¹⁷.

Digital media

At the end of 2008 there were 4.7m subscribers to the five digital satellite platform operators in Poland. Cyfrowy Polsat, with 2.7m subscribers, is the biggest digital satellite platform in central eastern Europe. It ranks as No.5 in all of Europe. It is owned by Cyfrowy Polsat S.A., whose main shareholder is Zygmunt Solorz-Żak. Cyfra+, with 1.38m subscribers, is owned by Canal+ Cyfrowy. Its shareholders are Canal+ Group (49 percent of shares), Polcom Invest S.A. and Chello Media Investment. N and TnK platforms, owned by ITI Holdings S.A., had half a million and 92 thousand subscribers respectively. Platforma Orange, with 112,000 subscribers in 2009, is owned by TP S.A. (Wirtualne Media).

In 2005 the Polish government adopted a strategy for the transition from analogue to digital broadcasting, via regional multiplexes. This will last until the complete analogue switch-off planned for July, 2013. Available frequencies will be allotted to applicant multiplex operators in a tender organised by the Office for Electronic Communication. The National Broadcasting Council will grant licences to TV channels to broadcast within the multiplexes.

9. IGNORED DIMENSIONS

I miss the phenomenon of politicization as a critical dimension to the examination of the media regulatory body. In Poland and many CEE countries there are dilemmas between political independence and dependence of that body.

In Poland broadcasting policy was based on the creation of the National Council as a mechanism of democratic control over public broadcasting and an impartial regulator of private broadcasting has paradoxically led to a very different situation. The National Council composition has been systematically politicized, not only in a sense of who appoints its members, but, more importantly, in the fact that members have been more or less clearly affiliated to political parties. The practice is so established that attempts to tackle the problem appear so far to have consisted in fights to appoint National Council members with different political affiliations, rather than promoting a composition that is politically independent and professionally qualified.

¹⁶ Gemius Research 2010

¹⁷ Polish Internet Research Consortium 2010

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