



Institute for Broadcasting Economics
at the University of Cologne

Protecting Public Service Broadcasting from State Intervention

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A German-Ukrainian Exchange of Opinions”

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Ганна Герман: „Громадське мовлення буде запроваджене тоді, коли до влади прийдуть люди, для яких демократія – не грим, а переконання“,

02. 08. 2008, <http://www.partyofregions.org.ua/pr-east-west/47ac67c064e7f/>

Hanna Herman: “Public Service Broadcasting will be introduced, when people will come into power, for whom democracy is not make-up, but beliefs.”

02. 08. 2008, <http://www.partyofregions.org.ua/pr-east-west/47ac67c064e7f/>,



Overview

1. **“Flooding Gates” of State Intervention in Public Service Broadcasting**
2. **The Situation of the German Public Service Broadcasting**
3. **Conclusions**



“Flooding Gates” of State Intervention

- Brants, Siune 1992: control of organization, finance, programming, access
- Blumler and Gurevitch 1995: Degree of state control
 - Control over appointments (right of political appointment, belief that political criteria are relevant to the selection of media personnel)
 - Control over finance (size of the funds, allocation procedure)
 - Control over media content (censorship etc.)
- Similar criteria in numerous international studies (Head 1985, Open Society Institute 2005, Independent Study on “Indicators for Media Pluralism in the Member States – towards a risk-based approach” 2009 etc.)
- Terms in the literature are overlapping
- Existence and character of state interventions are difficult to catch and classify



“Flooding Gates” – An Enhanced Criteria Set

- 1. Autonomy / degree of regulation**
- 2. Ownership / governance / external supervision**
- 3. Legal definition and factual implementation of the programme remit / content regulation**
- 4. Legal definition and factual implementation of funding / revenues**
- 5. Collection of revenues**
- 6. Appointments and management of personnel**
- 7. Content Outlets**

Following EPRA 2002, KOPS 2010



Operationalising the Criteria Set / 1

1. **Autonomy / degree of regulation**
Valuing the intensity of legal regulation
(by Act only, Act + order/statutes/permission,
Not in an act, Act + contract)
2. **Ownership / governance / external supervision**
 - **Ownership (public, private, state)**
 - **Governance (amount of state representatives, their power of decision)**
 - **External control (self regulation, regulating authority, ministry)**



Operationalising the Criteria Set / 2

3. **Legal definition and factual implementation of the programme remit / content regulation**
 - **Narrow vs. broad programme remit**
 - **Public appointments of content (e.g. election spots)**
 - **Control of remit's implementation (e.g. broadcaster's bodies, pre-control / censorship)**
4. **Legal definition and factual implementation of funding**
 - **Sufficient and in the midterm predictable funding**
 - **Who is paying?**
 - **Revenues' fixing and granting procedures**
5. **Collection of revenues: Collection through the state or a state founded organization vs. collection through a state independent organization (under PSB's control)**



Operationalising the Criteria Set / 3

6. **Appointments and personnel policy**
 - **Appointment procedures for Top-Management (who, under which conditions)**
 - **Appointment policies for the journalist's staff**
 - **Staff's organization and representation within the broadcaster's organisation**
 - **The rights of the journalists within the organization**
7. **Content Outlets**
 - **Procedure of granting of the broadcasting licence**
 - **Property of broadcasting technical facilities**
 - **Must carry rules in TV cable**



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1. Autonomy / degree of regulation

- PSB is regulated by state treaties (laws), federal state (“Länder”) laws and broadcaster’s statutes
- An important role play rulings of the Federal Constitution Court; 13 cases strongly influenced the legislation in favour of the independence of PSB.
- After the introduction of commercial broadcasting in 1984, PSB’s role was to guarantee an “indispensable fundamental provision for all” (4. Broadcasting ruling, 1986).
- The 6. Broadcasting ruling (1991) demanded for guarantee of existence and development for PSBs, thus PSB can not be abolished.
- → Commercial broadcasting is allowed as long PSB is able to provide a “fundamental provision”



2. Ownership / governance / external supervision /1

- As a reaction to an attempt of the German federal government to establish a second TV channel in form of a commercial company, the 1. Broadcasting ruling determined (1961):
 - The autonomous “corporation under public law” (supervisory bodies constituted not only of party representatives, but also of representatives of societal groups) remain the only acceptable organization form of PSB
 - Only federal states have the exclusive legislation power
 - Local/federal organization of broadcasting
→ less control through state bodies, competition



2. Ownership / governance / external supervision /2

- **Governance structure (here using the example of the WDR):**
 - **Broadcasting council:**
43 members (13 appointed from federal state parliament, 30 from the civil society); responsible for election and dismissal of the Director General, can declare in written form violations of program principles in programs, although pre-control of programs before transmission is not permitted
 - **Administrative council:**
9 members; monitors the Director General in all management activities, except programming decisions,



2. Ownership / governance / external supervision /3

- **Director General:**
 - governs the WDR independently
 - solely responsible for the programming organization and operations of the broadcaster, ensuring that all programs comply with legal requirements
 - has the sole right to propose candidates for election as directors through the broadcasting council
 - Decision-making in the board of directors does not underlie the principle of collective responsibility, but is subordinated to the Director General.
 - Relatively free to make programming decisions, more dependent with regard to economic and technical decisions
 - The power balance in the WDR is clearly distributed in favour of the Director General, such governance structure is called “Director General’s Corporate Governance”



2. Ownership / governance / external supervision /4

- **External control: Federal government exercises a narrow “legal supervision (“Rechtsaufsicht”) over the WDR, which, however, excludes programming issues.**
- **Strong similarities in the organizational structure and allocation of tasks of the supervisory bodies of PSB, but few subtle distinctions:**
 - **Number of broadcasting council members: from 17 (Deutsche Welle) to 77 (ZDF)**
 - **Proportion of the state representatives in the councils, highest in: Deutschlandradio (50 %), Deutsche Welle (47 %) and ZDF (44 %)**



3. Legal definition and factual implementation of the programme remit / content regulation /1

- A broad definition in § 11 of the Interstate Treaty on Broadcasting and Telemedia; the law on the WDR contains some further broad provisions
- The WDR issues on the proposal of the Director General program directives, especially on (§ 4, Law on the WDR)
 - details about implementation of the remit
 - Principles of journalistic and qualitative standards
- The WDR publishes every two years a report about the fulfilment of its remits, the quality and quantity of the existing offerings and the main points of the planned offerings. The Director General reports annually to the broadcasting council about the implementation of the remit.



3. Legal definition and factual implementation of the programme remit / content regulation /2

- Since June 1, 2009, for new or changed telemedia (= offerings on the internet) a three-step-test has to be conducted, whether they meet societal needs and are a contribution to the journalistic competition (“publicistic value”)
- Transmitting television and radio programs on the internet is restricted to seven days, sport events even to 24 hours.
- Prohibited are e.g. price or insurance calculators, dating sites.
- The procedure of the three-step-test can last up to one year, a decision by the broadcasting council and the approval by the “legal supervision” is required.



4. Legal definition and factual implementation of funding /1

- “Funding must enable PSB to meet its constitutional and statutory mandate. In particular it shall guarantee the existence and development of PSB” (§ 12 Interstate Broadcasting Treaty)
- Predominantly financed by license fee (17,98 €/ per month, 5,76 for radio only or PC with internet access!, 12,22 €for television set)
- Generating revenues from advertising and other sources is allowed, but less important (only about 14%)



4. Legal definition and factual implementation of funding /2

- Amount of the licence fee is determined by a Commission of experts (“KEF”), founded in 1975 as an assisting institution purely to make recommendations to the federal state premiers about the amount of the licence fee. Consists of 16 independent experts delegated by federal states for 5 years.
- Experts form the audit and consulting sector, business sector, broadcasting law, media economics, technology and federal state audit courts; considered to be independent, members are well-known; Members of parliaments are excluded
- Analyzes the requirements reported by the PSB every two years with regard to legitimacy of programming decisions, but must preserve programming authority of the broadcasters



4. Legal definition and factual implementation of funding /3

- Since the 8. Ruling of the Federal Constitutional Court (1994): more power and independence to guarantee the state-distant determination procedure of the licence fee.
- In 2005, federal state governments for the first time in the history deviated from the KEF recommendations, and approved an increase of 0,88 € instead of 1,09 €, Reason: untapped austerity potentials
- 12. ruling of the Federal Constitutional Court: deviation was legally not correct, deviation only possible for justified reasons regarding the prohibition of access to information and undue financial burden to licence fee payers.



5. Collection of revenues

- Before 1976 – by the post
- Since then by the GEZ, a joint organization of PSB, completely under the control of PSB
- 96 % of households, which possess a broadcasting device, are registered by the GEZ
- Number is decreasing because of demographic trends and increasing amount of unlicensed viewers
- The collection procedure is more efficient than that of the taxing authorities
- GEZ has the biggest data collection of data on citizens and enterprises in Germany!
- Up from 2013 a new device-independent fee will be established



6. Appointments and management of personnel

- **Appointment by Director General**
- **Journalists are considered to be independent, have strong rights, observe journalistic values**
- **TOP-Personnel appointments are sometimes taken according to the logic of proportional representation: if DG belongs or sympathizes with a certain party, his deputy should be someone supported by the rival party**
- **However, it is false to conclude that journalists, who are party members, are not independent enough to criticize their own party.**
- **The political impartiality of reporting in Germany is undoubtedly at a high level!**

Meyn 1999



7. Content Outlets

- **Transmitters belong to the PSB**
- **PSB has a priority within the procedure of licence granting**
- **Must carry rules demand from TV cable networks to give the PSB channels a top priority in channel slots**



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Conclusions

- There are certain mechanisms to hold off state interventions.
- It is much easier to establish a state intervened public service broadcaster than an independent one, because already one biased factor can negatively influence the whole “value chain”.
- The most important power behind the increase of independence of public service broadcasting are the staff / management of the PSB.
- Journalists / staff must have a chance to protect their values, their work and improve the independence.
- The “vicious circle” can be sustainably opened up by professional education.

