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# ***PUBLIC SERVICE BROADCASTING***

***- MODEL LAW -***

*with*

*AN INTRODUCTORY NOTE*

*and*

*EXPLANATORY COMMENTS*

*by*

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*This document has a twofold purpose:*

- *Firstly, it sets out to explain the nature of public service broadcasting, its leading role in a democratic society, public service broadcasting as a factor of social cohesion and of national identity, and as the country's prime promoter and reflector of culture. In the digital world, with virtually unlimited possibilities of distributing sound and audiovisual programmes via a multitude of channels, be it over the air (terrestrial transmitters, satellites) and/or through cable or the telephone line (the Internet), public service broadcasting is even more important and necessary, but it has to adapt to the changing environment, so as to continue to serve the interests of the public in the best manner possible.*
- *Once the concept of public service broadcasting is embraced, it needs to be implemented in practice, and in the first place through legislation. To this end, a concrete Model Law is proposed, together with explanatory comments.*

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*A Model Law is a model - no more, but also no less. This means that it cannot be used verbatim, without taking into account the country's legal system and traditions, its geographical size and possible division into (autonomous) regions, the ethnic and religious composition of its population, the state of development and education, the economic situation, the social realities, etc. On the other hand, the Model includes a number of fundamental principles which are universally valid and must be incorporated into any Law, anywhere in the world, that aims to set out the legal basis for a truly independent public service broadcasting system.*

*Compared to the initial (1998) edition which took a global approach, and the first revised edition (2003) which was more specifically geared towards European countries, this updated version takes into account the challenges of the information society, and the need to ensure that public funding is in conformity with EU competition rules. At the same time, it offers a new approach to public funding which has the double advantage of being based on more solid legal grounds and being easier to administer and enforce.*

*Dr W. Rumphorst  
February 2007*

## **INTRODUCTORY NOTE: THE NATURE AND ROLE OF PUBLIC SERVICE BROADCASTING**

Public service broadcasting is a unique concept. Although easy to understand, it is more often than not misunderstood, sometimes profoundly and sometimes even intentionally.

### **WHAT IT IS NOT**

Some languages do not even have a term fully corresponding to the English word "public", and the closest translation appears to confer the notion of state/government/official. Where this is the case in a country which has had a tradition of state broadcasting, this linguistic barrier constitutes the first obstacle to a clear understanding of the real nature of public service broadcasting (which is anything but "state", "government" or "official" broadcasting).

Especially in countries with a long tradition of commercial broadcasting, public broadcasting is often referred to as "state-funded" broadcasting, with the underlying implication that it must be close to, if not a mouthpiece of, the government.

In former Socialist countries, there is still a widespread underlying notion of public service broadcasting being a type of broadcasting which, while continuing to be a sort of official broadcasting, is controlled not by the government (or the Communist Party) but by the democratically-elected majority in Parliament. In other words, those who hold the political power also control "public service" broadcasting, the difference being that those in power today have democratic legitimacy.

Others consider naïvely (but sometimes also not so innocently) that public service broadcasting is, or ought to be, a minority service, to fill the gap which commercial broadcasting - for perfectly valid economic reasons - leaves open. Whether the motive is bad conscience or the desire to marginalize a potentially powerful competitor, the resulting concept of this type of "public service" broadcasting is the same: a marginal service, with emphasis on culture and religion and whatever else may be desirable for society but will not be touched upon, at least in the same serious manner, by commercial broadcasters.

### **BROADCASTING FOR THE PUBLIC**

What, then, stated positively, is public service broadcasting?

As the name itself intimates, public service broadcasting is broadcasting

- made for the public
- financed by the public
- controlled by the public.

The "public" is the entire population of the country (or region) which the public broadcaster is responsible for serving.

"Entire population" has a twin meaning:

- Firstly, in terms of *technical* coverage, it means that ideally every household in the service area should be in a position to receive the programme service. This is akin to the *universal service* concept which is familiar in other - result-oriented - public services such as water, gas, electricity, telephony and public transport.
- Secondly, it means all groups and sections of society: rich and poor, old and young (and in between), educated and less well educated, people with special interests (whether they be cultural, religious, scientific, sporting, social, economic or anything else), but also society as a whole. The entire population, in this sense, must be served by public service programming (even though it is impossible to please everybody all the time).

If, positively expressed, public service broadcasting is made for the public, for the entire population, it follows, negatively expressed, that it is *not* made for the government, parliament, or president, for a political party or a church or for any other (private) interest group or for shareholders. It must be *independent* of all of these, serving "only" the interests of the population, of people as citizens rather than as consumers.

### **PROGRAMMING MADE FOR THE PUBLIC**

Details of the public service programming remit vary from country to country, perhaps because of different legislative techniques and habits but also, in particular, owing to economic, social, cultural, historical and other realities prevailing in each individual country. Even so, there is a core of common features which are universally valid.

Generally speaking, public service broadcasting must provide programming in the fields of information, entertainment and education/advice for people of all ages and social groups and in any format (such as generalized channels, thematic channels, multimedia services, teletext or other content services, with or without interactivity). It plays an active role in presenting and promoting national culture, whilst also increasing the population's knowledge and understanding of foreign - and especially other European - cultures. Programming includes both mass appeal programmes, such as popular entertainment and coverage of events of major interest to large sections of the population, and a fair share of programmes catering for special/minority interests. It meets high professional standards in terms of content, quality of production and manner of presentation. It serves as a reference point for all members of the public and is a factor for social cohesion and integration of all individuals, groups and communities. Avoiding cultural, sexual, religious, social and racial discrimination and refraining from sensationalism, it applies high ethical standards and fosters civic values and a

sense of individual responsibility within society. Public service broadcasting is expected to put the ever-increasing number of individual items of information which are available to the public into a meaningful context, to concentrate on their relevance for the citizen and for society, to explain the world in all its variety, richness and diversity, and to assist the population in understanding the new environment. Representing an oasis of credibility, public service broadcasting makes a major contribution to ensuring a truly informed citizenship, which is a precondition for a healthy democracy. At the same time, it should provide a platform against a two-tier information society.

In Europe, already a dozen years ago both the Council of Europe (the Prague Resolution of 1994) and the European Parliament (1996 Resolution) have identified this nucleus of common features in important Resolutions, quotations from which speak for themselves:

### **The Prague Resolution**

*"Public service broadcasting, both radio and television, supports the values underlying the political, legal and social structures of democratic societies, and in particular respect for human rights, culture and political pluralism"*

*"Vital function of public service broadcasting as an essential factor of pluralistic communication accessible to everyone"*

*"Reference point for all members of the public and a factor for social cohesion and integration of all individuals, groups and communities"*

*"Reject any cultural, sexual, religious or social discrimination and any form of social segregation"*

*"Forum for public discussion in which as broad a spectrum as possible of views and opinions can be expressed"*

*"Impartial and independent news, information and comment"*

*"Pluralistic, innovatory and varied programming which meets high ethical and quality standards"*

*"Not to sacrifice the pursuit of quality to market forces"*

*"Programme schedules and services of interest to a wide public while being attentive to the needs of minority groups"*

*"Reflect the different philosophical ideas and religious beliefs in society, with the aim of strengthening mutual understanding and tolerance and promoting community relations in pluriethnic and multicultural societies"*

### **European Parliament Resolution**

*"Public sector broadcasting is an aid to informed citizenship, an agency of representative pluralism bringing together different groups in society in a common conversation that shapes public opinion"*

*"Offer a wide range of quality production in all genres to the whole population"*

*"Set quality standards in popular programmes followed by mass audiences"*

*"Serve minority interests and cater for all different sections of the population"*

*"Provide unbiased and fully independent information, both in mass coverage and in-depth factual programming, capable of earning the audience's trust and of representing a reference point in the rapidly expanding information market"*

*"Play a major role in encouraging the public debate that is vital for the proper functioning of democracy and provide a forum for debate for all groups and organizations in society"*

*"Ensure that the general population has access to events of general public interest, including sports events".*

Over the years, these principles were repeated and reinforced, on a number of occasions, not least also with a view to confirming and emphasizing the vital role which public service broadcasting is called upon to play in the information society.

Thus, in particular, the 1997 *Amsterdam Protocol*, which is an integral part of the European Union Treaty, recalls that "the system of public service broadcasting is directly related to the democratic, social and cultural needs of each society and to the need to preserve media pluralism", and the Council of Europe's Committee of Ministers adopted a special *Declaration on the guarantee of the independence of public service broadcasting* (2006), and another one on *the remit of public service media in the information society is about to be adopted* (2007).

## FUNDING OF PUBLIC SERVICE BROADCASTING

On the European political level, the notion has been fully embraced that States have a duty to ensure appropriate funding for public service broadcasting. In particular, the States which participated in the 1994 Prague Ministerial Conference (Council of Europe) *undertook* "to maintain and, where necessary, establish an appropriate and secure funding framework which guarantees public service broadcasters the means necessary to accomplish their missions". Similar language was used in a 1996 European Parliament Resolution on the role of public service television in a multi-media society, and the Council of Europe's Declaration on the guarantee of the independence of public service broadcasting (2006) specifically calls on member states "to provide the legal, political, *financial*, technical and other means necessary to ensure genuine editorial independence and institutional autonomy of public service broadcasting organizations, so as to remove any risk of political or economic interference".

The basic form of funding at least the major portion of a public broadcaster's financial needs is the receiving licence fee system, firmly established in Western Europe and with a growing tendency also towards the East of the continent. Under this system, a monthly fee must be paid for every radio and/or television set which is technically in a position to receive broadcast programmes.

In some countries in Central Europe, and still more so in Eastern Europe, but also in a few Western European countries, public funding comes in the form of an annual allocation from the state budget. However, a closer look will reveal that, especially when it comes to managerial and - above all - editorial independence, more often than not the broadcaster may more or less resemble a state broadcaster, rather than being a truly independent public service broadcaster.

Licence fee funding, as opposed to funding from the state budget, has several decisive advantages:

Firstly, it means that the broadcaster is independent of the political good-will of those who decide the amount of the state budget allocation. Programming, and particularly political coverage, does not have to please those in power as a (tacit) pre-condition for actually being granted the requested sum. However, since the amount of the licence fee, and in particular its periodic adjustment (increase), also needs to be decided upon by some official body (normally the Parliament or the Government), great care must be taken to ensure through appropriate legal means that as far as humanly possible the decision is taken in a neutral manner, solely on the basis of the objective needs of the public broadcasting organization to fulfil its public remit.

Secondly, licence fee funding, and the income to be expected therefrom over a given number of years, is considerably more predictable than an annual allocation from the state budget. This is vital for medium- and, even, long-term strategic planning and investment.

Thirdly, as long as there is funding from the state budget, the broadcasting organization is likely to be a state company, with all the constraints that that implies. In particular, the broadcasting organization is probably bound by a state salary structure, which is a critical handicap in a system where there is direct competition with commercial broadcasters. Where there is licence fee funding, it may be assumed that the broadcasting organization also has the right of self-administration (whilst naturally being subject to public control).

Another major advantage of licence fee funding is that an important psychological link is established between the licence fee payer, the citizen, and the public service broadcaster as the recipient of the payment. The citizen knows what he or she is paying for and appreciates its value. The broadcaster is continually aware of whom the programming is made for, and who ultimately has to be satisfied and pleased.

While these advantages of the traditional licence fee system clearly speak for themselves, it is submitted, nevertheless, that its legal basis needs to be reconsidered today.

In fact, it may appear doubtful whether *possession* of a radio or television set is still an appropriate criterion for justifying the obligatory payment of the receiving licence fee. Possession means that even if a citizen can prove that he or she never tunes in to the public service programming offer (and with the huge choice of radio and television programmes available today this may actually be more and more the case) the licence fee nevertheless has to be paid. This is not easy to explain, or indeed to justify, in today's multi-channel environment.

Furthermore, today people receive radio and television programmes not only on their radio and television sets but also, and more and more frequently, on computer screens, hand-helds (such as mobile phones), and car radios. Under most laws, still, these are not considered as receiving sets, and whereas the laws ought to be adapted in this regard, people (including politicians) may find it difficult to see a genuine justification for that. However, if computers, hand-helds, etc., are *not* equated with traditional radio and television sets, then clearly this would raise the question of discrimination under the law.

If a fresh look is taken at the very concept of the licence fee and, in particular, the real justification for this obligatory payment, it will be realized that in the long run mere *possession* of a receiving set may no longer be sufficient to serve as a valid criterion which triggers an obligation to finance public service broadcasting.

For economists, public service broadcasting falls into the category of *merit goods*, i.e. goods or services which are important if not, indeed, vital for society but which the market itself could never produce and sustain. Hospitals, schools, the police, etc. fall into the same category. All citizens have to contribute to the funding, even if individually they derive no benefit from them (e.g. because they have no children who go to school). The very *availability* of public service programming is in the interests of society as a whole, of all citizens, including those who choose not to make any use of it. Society as such benefits from its existence. In the words of the famous Amsterdam Protocol, which forms an integral part of the EC Treaty,

"the system of public broadcasting in the Member States is directly related to the democratic, social and cultural needs of each society and to the need to preserve media pluralism."

Accordingly, every citizen should be obliged to contribute to the funding of public service broadcasting, on the grounds that the very existence of public service broadcasting is a merit good which deserves this unique form of solidarity funding by all.

A corresponding model clause is presented under Article 14.

## **PUBLIC CONTROL OF PUBLIC SERVICE BROADCASTING**

The public is not only the beneficiary of public service broadcasting, and its paymaster, but also its controller. This is only consistent, and it could not really be any other way.

What, then, does control by the public mean?

It means that representatives of the public ensure that the public broadcasting organization actually fulfils its public service mission, in the best possible manner.

### **A. Broadcasting Council**

These representatives of the public, grouped together in what is normally called a Broadcasting Council (which may either be an organ of the broadcasting organization itself or a separate independent body), play a role comparable to that of shareholders in a company. They may be appointed in different ways, with two distinct models prevailing:

- Under the first, identified institutions and groups in the civil society are authorized to delegate a representative of their own choice to the Broadcasting Council, for a fixed period (e.g. four years). Examples of such institutions and groups are churches, universities, theatres, authors, journalists, musicians, farmers, women, young people, sports federations, environmentalists, employers, trade unions, etc.
- Under the second, a fixed number of members (e.g. nine or 12) is appointed by Parliament or by several public institutions (e.g. one-third by Parliament, one-third by the government, one-third by the President). Since the members of the Broadcasting Council are to represent the interests of the civil society, great pains must be taken here to ensure that they do not in reality represent the political views and interests of those who appointed them.

A Broadcasting Council has three major functions:

- Appointment of the Director General, who is the chief executive officer of the organization and bears ultimate responsibility for all programming

- *Ex post* monitoring of programming, with the possibility of suggesting, and even insisting on, modification of the scope, emphasis or overall quality of programming, to ensure that the public service programming remit as defined by the Law is actually fulfilled
- Appointment of a Board of Administration (e.g. five members), with control- and decision-making powers in the fields of administration and finance.

### **B. Board of Administration**

The Board of Administration (not to be confused with the Management Board, usually composed of the Director General and the Directors) is an indispensable supervisory body which assumes a vital role in ensuring that public money is spent efficiently, with full transparency. It needs to be composed of true experts in management supervision.

## **MANAGEMENT**

In virtually every country in Europe today, a public broadcasting organization finds itself in a double position:

- On the one hand, it must provide a *service to the public*. This implies numerous programming obligations, but also many restrictions with regard to programming.
- On the other hand, it finds itself in direct *competition* with commercial broadcasters, in addition to being exposed to foreign competition through satellite and cable service.

To be able to fulfil its public service remit in a highly competitive environment, a public service broadcasting organization needs modern, dynamic management structures, with one "captain" in command of the entire ship. He must have ultimate responsibility for both programming and management. He must be supported by a strong management team, with clearly-defined tasks and fields of competence, which he has chosen himself (subject to approval by the Broadcasting Council) and in whom he has full confidence. The power of quick decision-making, on all levels, but especially concerning the acquisition of exclusive rights to vital programming (such as sport and films), is a crucial element in this regard. Similarly, there must be broad discretion, in terms of salaries and fees, over the engagement of key professionals or "stars".

The ideal bottom line should be that the management structure of a public broadcasting organization is as similar as possible to that of a well-run commercial company.

## **THE FUTURE ROLE OF PUBLIC SERVICE BROADCASTING**

Finally, the *future* of public service broadcasting follows on from its mission, from its role within and for civil society. The more diversification and individualization of information sources there is, the more audiences become fragmented, the more important it will be to maintain at least one strong service which performs the function of a national point of reference and of national identification, and the role of the market place for public opinion. At the same time, as technology develops (digitization, compression, etc.), as additional forms of programme delivery develop (satellite, cable, the Internet), as programme offers (channels) multiply, especially through the addition of thematic channels and of new on-demand services, and as new methods of funding develop (pay-TV, pay-per-view), public service broadcasters too must be in a position to embrace all these developments so as to continue to serve the public in the most appropriate way, as demanded by the times. In concrete terms, this means that public service programming must be available on all distribution platforms where citizens look for content and, furthermore, that new types of programming are developed and offered which are specifically geared to the characteristics of new distribution platforms.

### **NO LEGAL OBSTACLES TO ITS INTRODUCTION**

Countries are entirely free to introduce or, where it already exists, to maintain a public broadcasting system. With particular regard to the Member States of the European Union, the Amsterdam Protocol on the system of public broadcasting in the Member States of 2 October 1997, expressly stipulates that

*"The provisions of the Treaty establishing the European Community shall be without prejudice to the competence of Member States to provide for the funding of public service broadcasting insofar as such funding is granted to broadcasting organisations for the fulfilment of the public service remit as conferred, defined and organised by each Member State, and insofar as such funding does not affect trading conditions and competition in the Community to an extent which would be contrary to the common interest, while the realisation of the remit of that public service shall be taken into account."*

A Communication from the EC Commission on the application of State aid rules to public service broadcasting (2001) specifies in more detail the conditions which must be fulfilled for public funding (including licence fee funding) to be in conformity with EU competition rules.

### **CHANCES FOR ITS INTRODUCTION**

In conclusion, is it realistic to assume that even if the nature of public service broadcasting has been fully understood, it will actually have a chance of being introduced where so far it does not exist? Rather than speculating on this, it may ultimately prove more promising to offer at least one major policy argument for each of the two typical situations where the

introduction of public service broadcasting would come into question: countries with state broadcasting and countries which so far have only commercial broadcasting.

### **A. Countries with State Broadcasting**

In countries which still - *de facto* - have a kind of state broadcasting system, it may not be easy to convince those in power to give up their control over it and to transform it into truly independent public service broadcasting.

However, in such countries too democratic ideas and principles have evolved and matured over recent years, thus putting the *citizen* increasingly at the centre of attention. Democracy starts with citizens, but without broadly- and objectively-informed citizens there can be no real democracy.

The real difficulty here may not so much be demonstrating the virtues of public broadcasting but showing that in today's circumstances state broadcasting cannot possibly make sense any more.

Compared with the time when state broadcasting was introduced, and when it flourished, many countries have a fundamentally different environment today:

- there is global deregulation in the telecommunications field
- commercial broadcasting has been introduced, or at least tolerated, virtually everywhere, often with little (if any) regulation
- satellite broadcasting, which knows no national borders, is omnipresent today and is rapidly developing further and spreading (with no restrictions on acquiring the necessary receiving dishes)
- cable distribution of foreign programmes (often including programmes in the country's own language, or at least reasonably understood by a sizeable portion of the population) exists everywhere and is rapidly spreading
- technical developments, especially digitization and compression, offer possibilities for many additional programme channels
- the Internet, which again knows no national borders, and access to which cannot really be controlled, carries unlimited numbers of audio and audiovisual programmes.

In this situation, it would be entirely Utopian to assume that the state, through state broadcasting, could still influence and control information, and thereby people's thinking. Only a relatively small part of the population will make up the audience of state broadcasting (with the majority of people receiving their information elsewhere). But even those who still receive their information from state broadcasting may well be expected to be rather critical

and sceptical, not only as a result of experience, but also because of possible comparisons with other sources of information.

Therefore, if it is clear that state broadcasting is no longer viable, the prospects for public service broadcasting as the democratic replacement of state broadcasting should not be too bad.

It certainly takes courage for those in power to install and to live with truly independent public service broadcasting. However, those elected by citizens should remember that they were elected for the sole purpose of serving the best interests of those citizens.

### **B. Countries with Commercial Broadcasting**

In countries which so far have only commercial broadcasting, it will also be difficult to obtain the necessary support for introducing public service broadcasting, and, in particular, for establishing a system of obligatory licence fee funding, one of the pillars of truly independent public service broadcasting.

However, in cases where for many years broadcasting has only functioned in conformity with the laws of the market, people may increasingly feel the need for something else, for something more. Assuming that to be so (as it was, for instance, in the United States when Public Broadcasting was introduced in the 1970s), the major obstacle may then be the receiving licence fee, since people are accustomed only to "free" radio and television.

Here, the reminder is necessary that *all* forms of broadcasting are ultimately financed by the consumer/citizen, whether it be as a tax payer (state funding), as a consumer of products and services (advertising and sponsorship), as subscriber to a given programme channel (pay-TV) or as holder of a receiving set (receiving licence fee). In each case, the consumer/citizen has no choice; he is obliged to pay.

- When he pays as a tax-payer, he finances the type of programming which the state has decided to be in the best interests of the state.
- When he pays via advertising and sponsorship (by buying products or services which are advertised on radio or television), he finances the type of programming which the commercial broadcaster has chosen to maximize its audience, so as to maximize its profits.
- When he pays as a subscriber to a given programme channel, he pays for a service which he has chosen as a *consumer*.
- When he pays for broadcasting via the receiving licence fee, he finances a public service provided to him as a *citizen*.

Once it is understood that in the end *all* forms of broadcasting are paid for by the consumer/citizen, why should the citizen be opposed to financing the type of broadcasting which is particularly conceived and made for *him*, rather than to serve the state (i.e. those in power) or private economic interests (shareholders)?

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## **MODEL PUBLIC SERVICE BROADCASTING LAW**

### **Article 1 - Name, Legal Personality, Seat**

- §1 The existing national broadcasting organization "....." is hereby transformed into an independent non-profit public service broadcasting organization with the right to self-administration. It shall adopt internal Statutes and Bye-laws in accordance with the provisions of this Law.
- §2 The name of the new organization shall be "....." (hereinafter referred to as "PSBO").
- §3 The seat of PSBO shall be at .....
- §4 PSBO shall establish and operate regional studios in (at least) the following cities: .....

### **Article 2 - Remit and Scope of Activity**

- §1 PSBO shall provide a radio/TV programme service which replies to the democratic, social and cultural needs of all sections of society.
- §2 PSBO shall provide:
- (a) ..... (number of) national radio channels
  - (b) the following local/regional radio channels: ..... (details)
  - (c) ..... (number of) national TV channels
  - (d) the following local/regional TV channels: ..... (details)
  - (e) the following thematic TV channels: ..... (details)
  - (f) an international/foreign language radio and/or TV service (details)
- §3 The necessary terrestrial transmitter networks are operated by the National Telecommunications Organization. Coverage of the entire population within the geographical area for which the programme service is intended shall be sought as far as possible. The costs for the broadcast transmission services provided by the National Telecommunications Organization are borne by the State, as part of the telecommunications budget.

*[Alternative:*

- §3 The Telecommunications Authority shall make available the necessary frequencies for terrestrial transmission of the above-mentioned programme services. PSBO may operate its own transmitter networks. It may also assign this function to a separate entity. Coverage of the entire population within the geographical area for which the programme services are intended shall be sought as far as possible.]
- §4 PSBO shall also be entitled, in addition, to transmit all or part of its programme services via satellite, cable, mobile telephony, broadband, the Internet or any other technical means.
- §5 PSBO may offer additional radio and/or TV channels to those listed in §2 above, provide teletext services and provide any other linear or non-linear programme services, subject to prior approval by the Broadcasting Council and a corresponding decision on the funding mechanism by the Board of Administration. Such services may also be provided in collaboration with third parties, as long as PSBO retains the overall editorial responsibility.
- §6 Cable distribution organizations and operators of other distribution platforms which perform a comparable function shall be obliged to distribute, free of any charge and with priority ranking vis-à-vis any other channels, all PSBO programme channels and services which are legally destined for reception in their area of operation and are receivable off air.
- §7 Providers of digital television bouquets shall be obliged, upon request, to include PSBO programme channels and services, also supplying, at cost, the necessary conditional access services.
- §8 PSBO shall be entitled to have its programme offer displayed prominently and readily accessible on electronic programme guides. Where PSBO chooses to provide an electronic programme guide of its own to present its programming, it shall be entitled to have the guide distributed, where technically feasible, on any platform or communications system where its channels are offered to the public.
- §9 PSBO may publish and distribute any printed matter related to its programming or to questions of broadcasting in general.
- §10 PSBO may exploit its archive material in any possible manner, within or outside the field of broadcasting.
- §11 Subject to prior approval of the Board of Administration, PSBO may establish subsidiaries and/or acquire interests in commercial or non-profit entities whose activities are related to its own functions, and particularly in the fields of programme production, exploitation and distribution.

### Article 3 - Programming

- §1 PSBO shall provide varied and balanced programming for all sections of the population, including a fair share of programmes catering for special/minority interests. Programming shall include information, entertainment and education/advice. It shall meet high professional quality standards.
- §2 Programming shall serve the public interest. It shall contribute actively to the public's free and informed opinion-forming and, as such, constitute an important element of the democratic process.
- §3 PSBO's overall programming shall reflect, as comprehensively as possible, the range of existing opinions and of political, philosophical, religious, scientific and artistic trends. It shall not unilaterally serve one party or group, association, vested interest, religion or ideology.
- §4 Programming shall have regard to the regional structure of the country. As far as possible, it shall reflect and promote the national culture in all its variety and richness, whilst also increasing the public's knowledge and understanding of foreign - and especially other European - cultures.
- §5 Programming shall respect human dignity and the fundamental rights of others.
- In particular, it shall not:
- (a) include programmes which might seriously impair the physical, mental or moral development of minors, especially programmes that involve pornography or gratuitous violence;
  - (b) include programmes which might *otherwise* impair the physical, mental or moral development of minors, except where it is ensured, by selecting the time of the broadcast or by any technical measure, that minors in the area of transmission will not normally hear or see such broadcasts, provided, furthermore, that where any such programmes are broadcast in unencoded form they shall be preceded by an acoustic warning or be identified by the presence of a visual symbol throughout their duration;
  - (c) contain any incitement to hatred on grounds of race, sex, religion or nationality.
- §6 Programming shall contribute to the respect of the opinions and beliefs of others.
- §7 Programming shall further international understanding and the public's sense of peace and social justice, defend democratic freedoms, serve the protection of the environment, contribute to the realization of equal treatment between men and women, and be committed to truth.

- §8 News shall be comprehensive, unbiased, independent and correct. Before dissemination, information material must be examined, with reasonable care according to circumstances, as to its content, origin and truth. Commentary shall be clearly distinguished from news.
- §9 It shall be forbidden to exert any kind of physical or mental pressure or intimidation vis-à-vis PSBO or its staff which might prevent them from carrying out their duties in an independent and objective manner.

#### **Article 4 - Access to information, confidentiality of journalistic sources**

- §1 PSBO shall be entitled to transmit parliamentary debates.
- §2 PSBO shall have access to archives, documents and information held by public authorities. Access to official information can be denied only on the grounds of overriding public or private interests, particularly as regards national security and protection of privacy.
- §3 PSBO shall have reasonable free access to cultural, sporting and other events which are accessible to the general public and of general informational interest, for the purpose of producing and transmitting brief television news reports. Such reports, which may be transmitted without any payment, shall not exceed the duration necessary to inform about the event in terms of news.
- §4 PSBO shall be entitled to quote in its regularly scheduled television news programmes from transmissions by other broadcasters of events mentioned in §3 above. Such quotations may be transmitted free of charge. Their duration shall not exceed 90 seconds. The source of the quotation shall be duly indicated.
- §5 To prevent more or less large sections of the national population being precluded from watching important major events on free television, broadcasters whose programmes are *de facto* not available to virtually every national TV household shall not be entitled to acquire exclusive TV rights to the following events:
- Olympic Games
  - World and continental/regional Football Championships
  - World and continental/regional Athletics Championships
  - Any other world and continental/regional Championships taking place in ... (the country of PSBO)
  - Matches of the national football team
  - Continental/regional football cup competition matches involving a team of... (the country of PSBO)
  - ... (any other events of particular interest to the national audience)

Transmission of these events shall be live, except where for particular reasons (such as where an event takes place in a different time zone) the interests of the audience are better served by a deferred transmission.

- §6 PSBO shall have free access to, and be entitled to make radio reports on, events of the type mentioned in §3 above, without payment of any remuneration.
- §7 The confidentiality of the sources of information (including material researched by journalists) is guaranteed by this Law. Disclosure can be required only in exceptional cases, on the basis of a court order, in the eventuality of an overriding public interest, e.g. the prevention of crimes against life.

### **Article 5 - Air-time for third parties**

- §1 PSBO shall grant free-air time to the Government, at the latter's request and as soon as feasible, for making official announcements. PSBO shall be free to offer a spokesman for the opposition the possibility of responding.
- §2 Political parties shall be granted an appropriate amount of air-time during campaigns for national elections in which they participate. The same shall apply to candidates for the Presidency of the Republic. The Director General may refuse to transmit party political broadcasts if they do not serve the purpose of campaigning.
- §3 Churches shall be granted appropriate air-time, at their request, for the transmission of masses and other religious services.
- §4 Anyone granted air-time in accordance with §2 and §3 above shall bear sole responsibility for the content of the broadcast. Notwithstanding the foregoing, the Director General shall refuse the broadcast of programmes whose content violates in an obvious and serious manner the applicable law.
- §5 PSBO shall be entitled to request the reimbursement of its costs in connection with air-time granted in accordance with §2 and §3 above.
- §6 Details shall be laid down in the PSBO's Bye-laws.

## **Article 6 - Right of Reply**

- §1 A natural or legal person who is affected by a statement of fact in a broadcast shall be entitled to a right of reply.
- §2 The right of reply is excluded with regard to accurate reports on public sessions of legislative bodies and the courts.
- §3 The reply must be restricted to the facts and may not have any criminal content. It must be presented in writing and signed by the party concerned or his legal representative.
- §4 PSBO must broadcast the reply free of charge in such a way as to reach as soon as possible the public which has taken note of the contested factual statement (for example, in the next edition of the same programme, or programme category).
- §5 PSBO may refuse to broadcast the reply if
- (a) the person concerned has no legitimate interest in its dissemination,
  - (b) the reply is unreasonably long (for example, considerably longer than the contested factual statement),
  - (c) the request for a reply has not been received by PSBO within two months of the broadcast of the contested factual statement.

## **Article 7 - Rectifications, complaints or suggestions**

- §1 PSBO shall rectify false statements of fact.
- §2 Everyone has the right to submit to PSBO objections and suggestions regarding programmes.

## **Article 8 - Advertising, sponsorship, teleshopping**

*As far as television is concerned, the definitions of "television advertising", "surreptitious advertising", "sponsorship", "product placement" and "teleshopping" from Article 1 of the Television without Frontiers Directive (to be revised and renamed as the Audiovisual Media Services Directive in 2007) and Article 2 of the Convention on Transfrontier Television (1998), should be introduced here, in addition to a transposition of the substantive clauses contained in Articles 10-20 of the Directive, and Articles 11-18(b) of the Convention. As regards possible variations and alternatives, as well as to the necessary adaptations for **radio**, see the Explanatory Comments on Article 8.*

## **Article 9 - European works, independent productions**

*As the case may be, the substantive provisions of Articles 4-6 of the Television without Frontiers Directive (to be revised and renamed as the Audiovisual Media Services Directive in 2007), and Article 10(1) of the Convention on Transfrontier Television (1998), will need to be transposed here. For possible variations and alternatives, see the Explanatory Comments on Article 9.*

## **Article 10 - The Organs of PSBO**

The organs of PSBO shall be:

- the Broadcasting Council
- the Board of Administration
- the Director General.

## **Article 11 - The Broadcasting Council**

- §1 The Broadcasting Council represents the interests of the general public with regard to programming.
- §2 The Broadcasting Council is composed of twelve members, coming as far as possible from different groups comprising the civil society.
- §3 The Council members are elected by (the Lower Chamber of) Parliament, with a three-quarters majority, following a public hearing with potential nominees.
- §4 Each member is appointed for a fixed period of six years. However, as regards the initial composition of the Council, four members shall be nominated for a period of two years, four members for a period of four years and four members for a period of six years.
- §5 The starting point for the initial periods shall be the date of the constituent meeting of the Council. Re-appointment of a member of the Council at the end of his or her term of office is possible.
- §6 Members of the Council may not belong to or work for the national government or the PSBO itself, or be members of parliament.
- §7 Members of the Council may not be revoked during their term of office. However, if for whatever reason a member is incapable of performing his or her duties, or if he or she has not attended Council meetings for a period exceeding six months, the member in question shall be revoked and be replaced by another person who shall finish the revoked member's remaining term of office. The provisions of §§3 and 6 above shall apply.

- §8 The Council shall elect its own Chairman.
- §9 The Council shall set up its own Rules of Procedure.
- §10 Except where otherwise provided herein, the Council shall take decisions on the basis of the majority of the votes of members present. Where voting is equal, the vote of the Chairman shall be decisive.
- §11 The Council shall meet at least once every two months. It shall also meet in extraordinary session whenever at least three of its members request a meeting.
- §12 The Director General and the Chairman of the Board of Administration are entitled to participate in Council meetings, except where the Council excludes them for particular reasons. Directors and other staff members or third parties may be invited to attend for particular reasons.
- §13 Members of the Council do not receive financial remuneration for their work. However, they are entitled to a free radio and TV set and yearly global compensation for their expenses amounting to one half-month's salary of the Director General.

In addition, if they reside outside the city where the Council meetings take place, they are entitled to reimbursement of their reasonable travel and accommodation expenses.

- §14 The Broadcasting Council shall
- (a) appoint the Director General, with the vote of at least eight of its members in favour
  - (b) approve the appointment of the Directors and the Editors-in-Chief for radio and for television proposed by the Director General. Unless at least six members of the Council vote against, or if no vote has been taken within three months of notification by the Director General, such appointments shall be taken as approved
  - (c) appoint the members of the Board of Administration, with the vote of at least seven of its members in favour
  - (d) adopt PSBO's Statutes, after consultation with the Director General and the Board of Administration. The Statutes shall, in particular, lay down the internal organization of PSBO in more detail. They should also define the responsibilities of the programming staff

- (e) adopt PSBO's Bye-laws, after consultation with the Director General and the Board of Administration. The Bye-laws shall, in particular, regulate the matters expressly identified in this Law, as well as any other matters requiring detailed internal regulation of a binding nature
- (f) advise the Director General on general programming matters and assist in carrying out programming responsibilities
- (g) monitor and ensure that the public service programming remit as defined in this Law is actually fulfilled. To this end, it may demand modifications of the scope, emphasis or overall quality of programming. It may declare, stating its reasons in writing, that certain broadcasts violate programming principles laid down in this Law, and may instruct the Director General, after hearing his or her position, to discontinue such violation or to ensure that no further violation occurs.

The Council may not review individual programmes prior to their broadcast.

#### **Article 12 - The Board of Administration**

- §1 The Board of Administration supervises the business affairs of PSBO, both internal and external, with the exception of matters relating to programming.
- §2 It is composed of seven members. They shall be experts in matters of administration and finance and may not in the exercise of their function represent their own interests or those of third parties.
- §3 The Board members shall not belong to or work for the government or the PSBO itself, or be members of parliament or members of the Broadcasting Council.
- §4 The Board members are appointed for a four-year period. Reappointment for a maximum of two further periods is possible.
- §5 If for whatever reason a member is incapable of performing his or her duties, or if he or she has not attended Board meetings for a period exceeding three months and if at least seven members of the Broadcasting Council are convinced that he or she will not resume his or her activity within a reasonable period of time, the Broadcasting Council shall revoke him or her and replace him or her by another person who shall finish the revoked member's remaining term of office. The provisions of §2 above and of Article 11§14(c) shall apply.
- §6 The Board elects its own Chairman and set up its own Rules of Procedure.

- §7 The Board lays down binding Rules on financial matters, in consultation with the Director General.
- §8 The Board takes decisions with the majority of the members present. Where voting is equal, the vote of the Chairman is decisive.
- §9 The Board shall meet in principle at least once per month. It shall also meet in extraordinary session whenever at least two of its members request a meeting.
- §10 Members of the Board receive yearly global compensation of their expenses amounting to one month's salary of the Director General. In addition, if they reside outside the city where the Board meetings take place, they are entitled to reimbursement of their reasonable travel and accommodation expenses.
- §11 The Board shall
- (a) represent PSBO in all dealings with the Director General
  - (b) conclude the service contract with the Director General
  - (c) advise the Director General on business matters not related to programming
  - (d) approve PSBO's budgets and yearly accounts
  - (e) verify, on the basis of transparent accounts, and ensure, that public funding does not exceed what is necessary for the fulfilment of the public service remit and is not used for other purposes such as subsidizing commercial activities which may be carried out outside that remit.
- §12 The Board's consent is necessary for
- (a) the conclusion of service contracts with the Directors and any other employees whose salary exceeds the highest class of the staff salary scale
  - (b) the conclusion of trade union agreements
  - (c) the acquisition and sale of companies or of shares therein
  - (d) the acquisition, sale and mortgaging of property
  - (e) the taking-up of bank credits and the granting of financial guarantees and securities
  - (f) the conclusion of contracts concerning investments, other than in programming, if the total amount to be paid by PSBO exceeds ...

- (g) the expenditure of any money not provided for in the approved budgets.

### **Article 13 - The Director General**

- §1 The Director General has final responsibility for programming and shall ensure that programmes are consistent with the programming principles laid down in this Law and do not violate any other laws.
- §2 The Director General manages PSBO independently and is responsible for all its operations and activities.
- §3 The Director General represents PSBO both in court and out of court.
- §4 The Director General is appointed for a five-year term. Re-appointment is possible. As long as no successor has been appointed after the expiration of his or her term, the Director General shall continue in office if he or she is prepared to do so; otherwise, his or her functions shall be taken over by the Deputy.
- §5 The Director General shall not be a member of parliament.
- §6 The Director General may not be dismissed unless at least eight members of the Broadcasting Council decide to replace him or her by another person on whom they have agreed. In such a case, that other person shall finish the dismissed Director General's remaining term of office.
- §7 The Director General shall appoint one of the Directors as his or her Deputy, for a period not exceeding his or her own mandate.

### **Article 14 - Public Funding**

- §1 PSBO's main source of funding is the public broadcasting fee, supplemented by any other revenue which PSBO is legally entitled to obtain.
- §2 The public broadcasting fee is payable by every citizen who has the right to vote, as well as by every foreign resident from the age of 18 years.
- §3 For individuals or married couples who receive social welfare the fee shall be paid direct by the relevant social welfare institution.
- §4 The fee shall be paid into PSBO's announced bank or postal account, monthly in advance. PSBO shall be entitled to grant rebates for advance lump sum payments of at least six times the monthly fee.

- §5 Any payments due for three or more months shall automatically be augmented by interest of 1% per month.
- §6 Any legal and administrative costs which PSBO may incur by seeking payment from anyone who is in arrear of at least three months shall be borne by the individual concerned.
- §7 It constitutes a misdemeanour, and is punishable as such by a fine amounting to the equivalent of between six times and twenty-four times the value of the monthly fee, if payment is not made for more than one year.
- §8 The amount of the monthly public broadcasting fee shall be fixed by Parliament, upon proposal by the Board of Administration, having due regard to the financial needs of PSBO for the complete fulfilment of its statutory remit, and taking into account any revenue from other sources (such as advertising/sponsorships which PSBO may reasonably be expected to obtain). It shall be valid for at least four years, subject to automatic inflation indexation at the end of each year.
- §9 As long as Parliament does not modify the fee, it shall automatically continue for one-year periods, including the automatic inflation indexation.

*Alternative A:*

- §1 PSBO's main source of funding is the broadcast receiving licence fee, supplemented, in particular, by revenue from advertising and sponsorship.
- §2 The broadcast receiving licence fee is due for any type of equipment which is in a technical state to receive radio or television programmes, be it off-air or on-line.
- §3 Per household, only one receiver of each kind (radio or television) shall be counted.
- §4 Households with radio receivers only (one or more) are liable for the radio receiving fee alone.
- §5 Households with television receivers only (one or more) are liable for the television receiving fee alone.
- §6 Households which have at least one radio receiver and one television receiver, or one combined receiver, are liable for both receiving fees.
- §7 Households whose combined total gross annual revenue does not exceed, per adult, the minimum of the yearly State pension, and 50% thereof per child, are entitled to request a 50% reduction, upon provision of the necessary evidence to PSBO. The resultant loss

in receiving licence fee revenue shall be compensated from the State budget on an annual basis.

- §8 Hotels are liable for one fee per ten rooms equipped with receivers.
- §9 Any other entity is liable for one fee per 20 employees or other persons who are normally in a position to receive radio and/or television programmes on its premises. However, enterprises engaged in the production, repair, installation, sale or hire of radio and/or television receivers are liable for only one fee per shop or outlet.
- §10 Each household, hotel or other entity which is connected to electricity is presumed to be equipped for receiving radio and television programmes. Where this is not the case, a written declaration to that effect shall be made to PSBO. Such declaration shall be corrected in writing whenever it no longer holds good.
- §11 Anyone making a false declaration under §10 above, or not making the necessary correction under the same paragraph within one month of the beginning of the liability, is liable for retroactive payment for the entire period in question. However, the minimum amount payable shall be the equivalent of one year's receiving fee.
- §12 The amount due shall be automatically added to the electricity bill, and be collected together with it.
- §13 The electricity company shall at once transfer the collected money to PSBO, after deduction of 1% thereof as global compensation for its own expenses.
- §14 The monthly fee for the radio and for the television receiving licence shall be fixed by Parliament, upon proposal by the Board of Administration, having due regard to the financial needs of PSBO for the complete fulfilment of its statutory remit, and taking into account any revenue from other sources (such as advertising/sponsorship) which PSBO may reasonably be expected to obtain. It shall be valid for at least four years, subject to automatic inflation indexation at the end of each year.
- §15 As long as Parliament does not modify the licence fee, it shall automatically continue for one-year periods, including the automatic inflation indexation.
- §16 PSBO is entitled to ask for relevant information if it suspects that §11 above may be applicable. Any decision taken by PSBO in the context of §11 above may be appealed against to the competent (administrative) court.
- §17 It constitutes a misdemeanour, and is punishable as such by a fine amounting to the equivalent of between six times and twenty-four times the value of the applicable monthly licence fee or fees
- (a) if a false declaration is made under §10 above, or if the correction under the same paragraph is not made within one month of the beginning of the liability

- (b) if payment is not made for more than three months whilst the receiver continues to be possessed for reception.

*Alternative B:*

- §1 Parliament fixes, upon proposal by the Board of Administration, the yearly attribution to PSBO from the State budget, having due regard to the financial needs of PSBO for the complete fulfilment of its statutory remit and taking into account any revenue from other sources (such as advertising/sponsorship) which PSBO may reasonably be expected to obtain.
- §2 Payment shall be made in two equal instalments, on 1 April and 1 October.
- §3 As long as there is no parliamentary decision, PSBO shall receive, on the dates indicated in §2 above, the same amount as under the previous budget, augmented by the percentage of inflation that has occurred in the preceding year.

**Article 15 - Securing of Evidence**

- §1 PSBO shall make complete sound and video recordings of all radio and television programmes transmitted by it. Such recordings shall be preserved for a minimum of three months. If a request for a right of reply, a demand for rectification or a request for review by the Broadcasting Council is received within this period, the recording shall be preserved until the matter is definitively resolved.
- §2 Any person who can plausibly demonstrate in writing that his or her rights may have been affected by a given broadcast may request a copy thereof from PSBO, at his or her own expense.

**Article 16 - Legal Supervision**

- §1 PSBO is subject to legal supervision by the Government.
- §2 The Government may request from any of the organs of PSBO written information on any activities or omissions which, in the Government's view, violate the present Law.
- §3 The Government may instruct PSBO to take the action necessary to stop the violation.
- §4 PSBO may directly institute proceedings with the administrative court against any such instructions.
- §5 Measures pursuant to §2 and §3 above are permissible only if the competent organs of PSBO fail to carry out their supervisory duties within a reasonable period or if more extensive supervisory measures are required by the Government. The Government has

the right to fix a reasonable time limit within which the organs concerned shall carry out their supervisory responsibilities.

§6 Any measures taken pursuant to these provisions shall not violate PSBO's freedom of information and expression.

**Article 17 - Transitional Provisions**

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**Article 18 - Entry into Force**

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## EXPLANATORY COMMENTS ON INDIVIDUAL ARTICLES IN THE MODEL LAW

As was stated in the Introductory Note, a Model Law must be taken at its proper value.

Ideally, it should cover the ground that needs to be regulated, and it should propose concrete wording which stands the best chance of being adopted. In any case, a Model Law should primarily serve as a source of inspiration and provide guidance to the legislator.

Where a Model Law is to serve a large number of countries, with greatly differing legal systems and legislative traditions, this ideal may not always be achieved.

To give just one specific example: under certain legal systems, Laws tend to be introduced by concrete *definitions* of the most important terms contained in the ensuing articles. Under other legal systems, there is no such legislative tradition, or it may exist only to a much lesser degree. For three major reasons, the present Model Law offers no definitions at the beginning (although it will be noted that many of the individual Articles do include a wording which comes close to a definition and, sometimes, actually defines a key term properly):

- Firstly, it may reasonably be expected that countries intending to adopt a Public Service Broadcasting Law already have a Broadcasting Law which, where applicable, includes many of the definitions which one would expect also to find in a Public Service Broadcasting Law, and which therefore could easily be transferred into the latter
- Secondly, the more precise and detailed the definition of a relevant term (such as "broadcasting", "advertising", "national coverage", "cable distribution system", "violence", "pornography" or "independent producer"), the more it will reflect national characteristics and sensitivities
- Thirdly, the more a Law restricts the given rights of the individual, or regulates conflicts of interests, the more, generally speaking, there may be a need for precise definitions. Conversely, it is arguable that where a Law sets out to establish a *non-profit* organization, with the general mission of serving the interests of the public in the field of radio and/or television, the need for definitions is much less pressing.

Another important factor to be noted from the very outset is that a Public Service Broadcasting Law will never stand in isolation but is part of a whole body of legislation which is partly overlapping. Thus, in addition to general broadcasting legislation, there may be legislation dealing with the press, with election campaigns, with the protection of personal honour and reputation, with refusal to give evidence, with access to public information, etc., etc. Any Public Service Broadcasting Law will have to take such legislation into account,

possibly by declaring it (wholly or partly) applicable or by modifying it and adapting it to the particular case of public service broadcasting. Again, all these are purely national matters which cannot be meaningfully addressed in a Model Law.

Finally, national legislative cultures differ, sometimes considerably, not only as regards the degree of detail of regulation but also with respect to the practice, or otherwise, of delegating the regulation of certain details to a lower level which tends to be more familiar with the subject matter than Parliament itself. The path chosen in the present Model Law is, on the one hand, not to delegate legislative/regulatory powers to another State organ (e.g. to the government), but, on the other hand, to empower the Broadcasting Council (which represents the public, the entire population) to regulate in the Bye-Laws certain specified matters in more detail.

There follows article-by-article annotations on the Model Law.

### **Article 1**

1. Where the task of the legislator is not to transform an existing state broadcasting organization into an independent public service broadcasting organization, but to create such an organization from scratch, the wording of §1 needs to be adapted accordingly.
2. The same applies where the legislative intent is to split the existing state broadcasting organization into two separate entities, one for radio and one for television (or yet another one, for the technical transmission of broadcasts).

There do not appear to be any universally valid criteria suggesting that one solution or the other is better. However, where state radio and state television have already existed as two more or less separate companies (each with its own building, its own staff, its own management), it would apparently make good sense to provide for the continuation of two distinct organizations. At the same time, digital technology makes numerous aspects and functions of radio and television more similar to each other, jobs become more easily interchangeable, "multimedia" is the common offspring of radio and television, and both are side by side on the Internet. These factors would normally plead against splitting up an existing Radio/TV organization into two separate entities. On the contrary, they may plead in favour of considering a merger where the two are separate today.

3. The precise legal form of the new organization(s) is a matter for national choice, in accordance with the possibilities offered under the national legal system with regard to legal persons.

Where it exists, the category of public law corporation is certainly the most appropriate. Otherwise, the most suitable of the available categories existing under civil law (such as an association with legal personality or a stock company) will need to be chosen. This may require certain adaptations to the internal structures of the organization which are proposed in the present Model Law.

4. As regards regional studios (§4), if any, this paragraph will require more detailed regulation to be added, unless it is preferred simply to mention the possibility of setting up regional studios, subject to the approval of the Broadcasting Council (and of the Board of Administration).

## **Article 2**

1. Under §2, the core services (i.e. the programme services which must be offered as a minimum, and which, together, must fulfil the entire public service programming remit) need to be specified, possibly including the minimum daily transmission time (duration) for each such service.
2. Instead of offering specific regional or even local programme services, the organization may be obliged to open up certain windows in its national programme services (e.g. two hours per day, between, perhaps, 17.00 and 19.00) devoted specifically to regional/local programming.
3. According to circumstances, the organization may furthermore be obliged to offer a foreign radio and/or television service. This would need to be regulated to some extent, preferably also in Article 2.

In this context, it would be important to separate such a service (and especially its funding) very clearly from the core activity of the broadcasting organization, which is to provide programming for the *national* audience, i.e. the receiving licence fee payers. Foreign programme services are provided for the government, as part of the latter's foreign policy, and should accordingly be provided only against payment by the government of all costs related thereto.

4. As far as technical transmission is concerned (§3), particularly where the organization receives its basic funding from the state budget it makes obvious sense that the state finance it direct, without the money appearing in the organization's own books.

Otherwise, and especially where the organization's basic funding is from the receiving licence fee, the organization must be free to set up and operate its own transmitter network if it so wishes.

5. Since public service broadcasting has to develop over time and must offer public service content wherever the citizens may be looking for it, it must be possible for the organization to introduce additional programme services (e.g. thematic channels, digital bouquets or on-demand offers), regardless of the method of technical delivery (e.g. on-line) or the mode of funding (e.g. pay-TV).

### Article 3

(No particular comments.)

### Article 4

1. There is a *right*, but not an obligation, to transmit parliamentary debates (§1). Otherwise, there would be parliamentary broadcasting (another form of state broadcasting), but certainly not public service broadcasting as is to be introduced here under the Model Law.
2. §5 protects the viewer, the citizen, who, ever since the beginning of television, has been accustomed to following live major events (sports or other) which are of great interest to the population at large, without having to make any special (additional) payment for it. Especially where a national team is involved, where the national anthem is played and where the national flag is shown, such an interest is automatically to be assumed.

### Article 5

1. Certain national laws give the government the right to make announcements on radio and television in relation to catastrophes or other circumstances involving acute danger to the population. For two reasons, there is no such stipulation in Article 5:
  - Firstly, it is normally the government that learns about such events from radio and television, and not vice versa.
  - Secondly, in such cases there is an obvious journalistic interest in obtaining as much information/comment/advice from the government as possible.

Hence, there is no need for the law to intervene here.

2. Nevertheless, if it is still felt desirable to give the government the possibility to make "official announcements", then the broadcaster must have the possibility to offer a spokesman for the opposition the possibility of responding (§1). This will ensure a certain amount of self-restraint on the part of the government and, in particular, will exclude the risk of one-sided indoctrination.

If important public officials (in particular the President or the Monarch) request the opportunity of making a public statement on radio or television (e.g. as a New Year's address), it will normally follow from the public service broadcasting mission that such a request will automatically be granted. Again, however, if such a statement has

obvious political connotations, the broadcaster would be not only entitled, but probably even obliged, to redress the balance by offering others the possibility of expressing diverging/opposing views.

3. There needs to be a separate law dealing with the involvement of radio and television in election campaigns. It needs to ensure overall fairness and equality of chances, as well as to regulate such details as
  - the first and last day of campaign programming
  - the number of party political broadcasts per party per day, separately for radio and for television
  - the duration of party political broadcasts
  - payment, or otherwise, in return for the broadcasting of party political broadcasts
  - the maximum amount/percentage which any party or candidate may be attributed within the overall amount of time devoted to party political broadcasts
  - the times of day when such output for individual parties or candidates have to be broadcast (to avoid any discrimination)
  - general programming (news, entertainment, current affairs, sport etc.) involving politicians campaigning for public office.

Regardless of the content and detail of regulation of such a law, the public service broadcasting organization will have to lay down further, still more detailed rules, as well as practical procedures, regarding its own involvement, in one way or another, in the campaign process. This will have to be done in the organization's Bye-Laws (§6). It should all be done sufficiently in advance. Furthermore, the organization would be well advised to announce as early as possible its own programming intentions (e.g. regarding debates involving the major candidates, the topics to be addressed, the time available for each participant, the time of recording and/or broadcasting, etc.).

## Article 6

1. The right of reply is a specific legal remedy against the media (the press and broadcasting). It concerns only statements of *fact*. The person affected by a "false" statement of fact is entitled to have the "correct" version disseminated as early as possible. Unlike the case of rectification (which is dealt with in Article 7), there is no need to prove that the statement was actually false, and still less that one's own counter-statement, the reply, is actually correct. This is for the reader/viewer/listener to appreciate. The advantage of the right of reply is thus that it allows a combat with equal arms, at virtually the same time. By contrast, to obtain a rectification (where the broadcaster must formally admit, or be obliged to do so by a court decision, that the statement of fact was wrong) may take months, if not years, and the affair may be virtually forgotten by the time the rectification is broadcast.

2. In conformity with the purpose of the right of reply, as described above, it may be considered appropriate to add a further paragraph, stipulating that the broadcaster may not comment on the reply (e.g. by stating that "under the law, we are obliged to broadcast this reply. However, we expressly uphold our own original statement of the facts"). On the other hand, the public may not understand the difference between a rectification and a reply, and may therefore erroneously conclude that the broadcaster's own statement of facts was actually false. A compromise would therefore be for the broadcaster to introduce the statement of reply by a brief reference to the legal obligation to broadcast it, "irrespective of whether the reply is actually correct or not". However, there would not appear to be any need to lay this down in the Law itself.

### **Article 7**

1. As regards the difference between the right of rectification and the right of reply, see comments under Article 6 above.
2. §2 is self-explanatory. However, since the public finances public broadcasting, and programming is made for the public, it seems appropriate to lay down an express right for the public to object to programming or to make suggestions for future programming. While it would obviously go too far to stipulate a formal obligation on the broadcaster to give a more or less detailed reply to any such objections or suggestions, it should go without saying that the broadcaster will study all such submissions and, where considered justified or helpful, take them into account or implement them.

### **Article 8**

1. Both the EU Directive and the Council of Europe Convention deal with television only. Nevertheless, a number of the issues addressed in the relevant Articles are either just as pertinent for radio, or may become so subject to some minor adjustments. The drafting of Article 8 will therefore need to ensure, clause by clause, that, where necessary, radio is appropriately covered.
2. As regards the amount of television advertising, the first deciding factor should be the number of programme services provided by the broadcaster.

Where there is only one national channel, there is not much choice. All the advertising needs to be concentrated on this channel. However, it is recommended that the *absolute maximum* should be 10% of the daily transmission time, with not more than nine minutes within any given (clock) hour. Furthermore, if at all possible, there should be some further limitation to distinguish public service programming from commercial programming. Thus, the list of programme categories given under Article 11(5) of the Directive, respectively Article 14(5) of the Convention, could be extended.

Another possibility could be to prohibit advertising after 20.30, except for sports programming, where advertising could be shown in blocks immediately preceding and immediately following the sports programme, as well as in natural breaks therein. This would be justified by the fact that, firstly, people are accustomed to advertising in connection with sport, so it is not felt to be particularly disturbing and, secondly, the ever-increasing rights fees demanded by the sports event organizers make this additional revenue indispensable; otherwise, the public service broadcaster could not really compete with its commercial competitors, with the result that it would fail in its duty to provide programming which is of major interest to the entire population.

Still another possibility would be to allow just one interruption of films (Article 11(3) of the Directive, Article 14(3) of the Convention).

However, the legislator must realize in this context that any limitation on the public broadcaster to receive commercial revenue will need to be compensated for by a correspondingly higher amount of public funding. The public's luxury of being imposed to less advertising, or to less intrusive advertising, naturally has a price which the public itself will ultimately have to bear.

3. As regards radio, the legislator may consider limiting advertising to one channel, with a maximum of, for example, 150 minutes per day (24 hours) and nine minutes per any given (clock) hour. Quite naturally, the broadcaster would then concentrate mass appeal programming on that channel, while offering cultural, educational and other programming predominantly on the other channel(s).
4. With respect to advertising for alcoholic beverages, the legislator would have the possibility of introducing further restrictions beyond those which are foreseen in Article 15 of the Directive (Article 15(2) of the Convention). For instance, it could ban advertising for "hard liquor", while permitting it for beer, wine and similar drinks below a given percentage of alcohol content, or it could restrict advertising also for certain other products or services.
5. The Bye-Laws should lay down detailed rules on so-called product placement. The borderline between products appearing as a natural part of the action (e.g. a car or a street advertising placard), without the camera unduly focusing on the brand name or trade mark, and products which are artificially/unnecessarily placed within the field of action, and are given excessive attention by the camera, is sometimes not easy to draw.

### **Article 9**

It is important to note that the quota for European works and for independent productions (the latter exist only under the Directive) are subject to the proviso "where practicable and by appropriate means". Furthermore, the quota need only to be achieved "progressively, on the basis of suitable criteria".

Compliance with the quota for European works is costly. The level and strictness of the quota, especially where the quota for PSBO is higher than that applying to commercial broadcasters, must be reflected in the amount of public funding accorded to PSBO.

### **Article 10**

On the one hand, the public service broadcasting organization is a non-profit organization, serving the public rather than shareholders, using money to make programmes rather than using programmes to make money.

On the other hand, the public service broadcasting organization lives in a highly competitive world (for exclusive sports rights or film packages, for popular stars or news presenters, for qualified staff in general), where the need to take very quick decisions may mean that considerable sums of money are indispensable.

Therefore, the organization needs internal structures which allow it to compete on a level playing-field with its commercial competitors. A precondition for this is, of course, the right to self-administration (Article 1§1).

With one Chief Executive Officer (Director General), who has far-reaching decision-making powers, together with the Board of Administration and the Broadcasting Council, the proposed internal structure of the organization should correspond to this need.

### **Article 11**

1. The Broadcasting Council, as proposed in this Model Law, is one of the organs of the broadcasting organization itself. In a way, it plays the role of a general assembly of shareholders in a stock company, and its competences are comparable.

Another, quite different, concept would place the Broadcasting Council *outside* the broadcasting organization, as a separate independent authority with supervisory and regulatory powers over all broadcasters (public and commercial ones).

Should that approach be preferred, then §§1 and 2 should be reworded as follows:

"§1 A Broadcasting Authority is hereby established as an independent legal entity, with the right to self-administration, to regulate and supervise broadcasting.

§2 The Broadcasting Authority shall be composed of twelve members, who should have experience in the field of the media or in other areas which are relevant to the Authority's scope of activity."

Furthermore, the competences specified under §14 would need to be reviewed. In particular, §14(c), (d) and (f) should be deleted. At the same time, another organ should be established to take over these functions and possibly a few other programme-related functions as well. This organ, a Programme Advisory Board, could still be composed and appointed in the same manner as the Broadcasting Council provided for in the Model Law. As regards the Bye-Laws (§14(e)), the fields to be regulated therein should then probably come within the competence of the Broadcasting Authority.

In addition, the Law would, of course, have to define the role and powers of the Authority with regard to commercial broadcasting (granting of licences, supervision, enforcement, regulation), and this would have to be done in considerable detail. In fact, the normal course of action would be either to have a separate Law dealing exclusively with the Broadcasting Authority, or to include the Broadcasting Authority in the Commercial Broadcasting Law, with a small sub-chapter referring to the Authority's role and power with regard to public service broadcasting.

For the reasons explained in the Introductory Note, however, it is suggested that the solution proposed in this Model Law, *viz.* that the Broadcasting Council, representing the interests of the general public with regard to programming, should be one of the organs of the public service broadcasting organization itself, is more consistent and should therefore be adopted.

2. Numerous provisions, taken together, guarantee the independence of the Broadcasting Council:
  - the Council represents the *interests of the general public* with regard to programming (§1)
  - the Council members should come from different groups comprising the *civil society* (§2)
  - the Council members may *not* belong to or work for the national government or the public service broadcasting organization itself, or be members of Parliament (§6)
  - the Council members are elected by Parliament with a *three-quarters* majority (§3)
  - every two years, *one-third* of the Council is *renewed* (§4)
  - Council members *cannot be revoked* during their term of office (§7).
  
3. The requirement of a three-quarters majority (§3) necessarily means that a broad consensus within Parliament, beyond political boundaries, needs to be brought about, with the likelihood that candidates with a pronounced political tendency will not stand a strong chance of being elected.

It should be remembered in this context that, when appointing the members of the Broadcasting Council, Parliament does not act in its constitutional role as a legislative body. Therefore, any rule to the effect that Parliament decides with a given majority does not apply here. The Public Service Broadcasting Law needs to be approved by the majority required under the Constitution. With this majority, Parliament is free to stipulate anything it considers appropriate, including a specific method to ensure the independence of a Broadcasting Council.

4. Since the Broadcasting Council represents the interests of the general public with regard to programming, and hence should be composed of individuals jointly reflecting the various components of civil society, an alternative to having the Council members elected by Parliament would be for the Law to stipulate that identified institutions and groups in civil society are authorized to delegate a representative of their own choice to the Broadcasting Council. This would certainly provide a greater guarantee for the public broadcasting organization's independence from the State. However, there may be various practical obstacles which ultimately argue against such an approach (especially the identification of truly representative institutions and groups and the possible absence within such institutions or groups of democratic procedures for appointing their representatives on the Council).
5. The fact that every two years four of the twelve members of the Council are renewed (with the possibility of reappointment), not only contributes to a balanced composition of the Council, and thus to its political independence but also ensures continuity, which is a vital pre-requisite for the successful functioning of any collective body.
6. An alternative to having the members of the Board of Administration appointed by the Broadcasting Council (§14(c)) could be to have them elected by Parliament, with a three-quarters majority, upon proposal by the Minister of Finance.

## **Article 12**

1. The function and powers of the Board of Administration correspond to what would normally be expected here, and therefore do not call for any particular comment, other than, perhaps, that where public money is spent strict supervision of the management is of the highest importance.
2. Nonetheless, the practical importance of §12(a) deserves to be stressed here.

On the one hand, it is absolutely vital for the Director General (§11(b)), the Directors and certain other key employees to be paid realistic, *market-oriented* salaries. Otherwise, it would be impossible for the organization to retain or to attract highly-

qualified staff, not only a pre-requisite for any organization to operate properly but also indispensable in an environment where the organization is exposed to fierce competition from powerful commercial broadcasters. Furthermore, market-oriented salaries for key executives constitute the best remedy against attempts at corruption.

On the other hand, the public must have strict control over this, to avoid excesses. Hence the express requirement for the Board's consent to the conclusion of such contracts.

### Article 13

1. The Director General is the key figure in the organization. He or she is the *chief executive officer*, with ultimate responsibility for everything and with sole decision-making power. While in practice much of the decision-making power will need to be delegated, and sub-delegated (matters which should be dealt with in the organization's Statutes), the Director General retains ultimate sole responsibility.

This function and role determines the profile to which candidates for this important post need to correspond.

2. Once appointed for a five-year term, the Director General must feel free to act in the best interests of the organization, without the fear that he or she might risk being dismissed. In particular, grounds for dismissal such as "violation of the law", "action against the interests of the organization" or "grave professional fault" lend themselves to abuse. Therefore, the principle should be that the Director General cannot be dismissed during his or her term of office (§6).

On the other hand, in exceptional cases there may be valid objective reasons for dismissing a Director General. Whatever such reasons may be, they need not be spelled out, and hence cannot be contested in court by the Director General. If two-thirds of the members of the Broadcasting Council find it desirable to dismiss the Director General, for whatever reason, they may therefore do so at any time, by simultaneously appointing a new Director General with the same qualified majority.

### Article 14

The recommended solution is the *public broadcasting fee* system. It is the easiest to justify, from both a legal and a political point of view, is the most equitable and also the easiest to implement. No particular explanatory comment would seem warranted.

However,

1. when it comes to details in connexion with Alternative A, the *receiving licence fee*, especially under the traditional concept, numerous options are available, and different choices can be made. Therefore, several paragraphs contained in Alternative A of

Article 14 will need to be modified so as to correspond to the economic reality of the country.

2. Thus, §3 could be widened into two directions:

Firstly, it could be stipulated that where two or more people with their own individual income live in one household, each such person with his/her own receiver has to pay a separate licence fee (with married couples nevertheless counting as only one person for this purpose).

Secondly, a separate licence fee (possibly at a reduced rate) could be introduced for second homes as well as for cars.

3. Formulas for reductions in, or even total dispensation from, the licence fee can be designed in numerous ways. §7 offers just one example. However, whatever formula may be chosen in the end, it is for the state to compensate the broadcasting organization for the resultant loss of revenue. If the state offers subsidies to poor people to pay their rent, health insurance, clothing or whatever else, or subsidizes them in a global way through a monthly welfare allowance (which also pays for the cost of a radio or TV set in the first place), then the same reasoning should apply to subsidizing them to pay for the enjoyment of radio and or television programmes.
4. The proposal that the licence fee should be collected together with the electricity bill (§12) would seem to be pragmatic, but there are also other solutions (including the broadcasting organization doing its own billing and collecting).
5. §13 assumes that the electricity company is a state company. Otherwise, it would appear difficult to justify imposing a fixed rate for the service of collecting and transferring the licence fee.
6. Automatic inflation indexation (§14, as well as §3 of the Alternative Article 14) is not sufficient of itself, at least not over a longer period, since costs in broadcasting increase faster than inflation. A more appropriate index could be the increase in labour costs in the private service sector, or the national retail price index plus, for example, 0.5% per year.

### **Article 15**

This Article is self-explanatory.

### **Article 16**

1. There are two internal control bodies (*viz.* the Broadcasting Council and the Board of Administration), each with specified powers of control and supervision. These two control bodies are organs of the broadcasting organization itself. As such, they are supposed to represent and defend the best interests of the organization. Theoretically, it cannot be excluded that in doing so either Council may violate other provisions of the Broadcasting Law. Therefore, a control mechanism is necessary to ensure that such violations of the Law can be stopped. This control over the controllers, strictly limited to *legal* supervision, is carried out by the government.
2. What is already clearly implied by the term "legal supervision" is spelled out specifically in §2, *viz.* that any supervisory measures taken by the government shall not violate the organization's freedom of information and expression. In other words, the government cannot intervene in programming matters, or intervene in such a manner that the effect would have a direct impact on programming.

### **Article 17**

Depending on circumstances, transitional provisions will have to deal with such questions as the transfer of rights and obligations, of property, of staff, of archives, of technical equipment and facilities, etc.

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