

DATE

09 January 2019

BY EMAIL

Mr Ramūnas Karbauskis
Chair, Committee on Culture
Seimas of the Republic of Lithuania

SUBJECT

Lithuanian Radio and Television (LRT)

Dear Mr Karbauskis,

Thank you for your letter of 14 December 2018 and for sharing with us the summary conclusions of the investigative committee of the Parliament on the management, financial and economic activities of LRT and the draft law on LRT.

We also understand that the judgment of the Constitutional Court on the establishment of the investigative committee, which would provide an important input in the debate, is still pending.

Having in mind the importance of Public Service Media for society and the impact of services on all citizens, we trust that the Parliament will ensure a broad public debate and allow representatives of different groups in society and international media law experts to share their comments and views on the draft law.

Good democratic practice ("Better Regulation") would normally require a broad, inclusive public consultation, involving all relevant stakeholders including civil society, before submitting any new draft law to Parliament. Any new draft legislation on Public Service Media should also be the object of a detailed impact assessment, examining financial impacts and impacts on fundamental rights, in particular, media freedom and pluralism.

The EBU's preliminary comments on the draft law are as follows:

On the content of the draft Law:

Abolishment of advertising and other commercial communications on the LRT web portal (Art. 6):

No examination of the financial impact for LRT has been carried out, and no financial compensation is foreseen. This reduced income needs to be seen against a backdrop of increasing costs related to the proposed new collegial governance body in the form of a Board and the new position of an ombudsman.

Appointment criteria for the DG and for members of the Board and the Council (Arts. 10(3)-(4), 13(4), 16(3):

We generally welcome the aim of depoliticization and of improving the professional qualification of candidates.

However, it seems that no *waiting period* has been foreseen (except for LRT's auditors) between the exercise of an incompatible position and the appointment to one of LRTs

governing bodies. This means that, for example, a politician becomes immediately eligible following his or her resignation from Government or Parliament. We would recommend a waiting period of two years, not only for the auditors but also for any holder of a political function.

As regards the composition of the *Council* as the main supervisory body, European best practice aims to ensure pluralistic and representative composition. It is unclear why membership of the Council would require high academic qualifications (e.g. a “Doctor’s degree in journalism and five-year professional teaching experience” in the case of candidates appointed by senates of universities). We believe that practical experience in relevant fields and an understanding of public institutions serving democratic, social and cultural needs of all parts of society would be of particular value and relevance.

As regards candidates for the post of *Director-General*, we question the exclusion of “persons working under contracts of employment at radio and television stations, web portals, including the LRT”, which would *de facto* exclude all persons with professional experience in the broadcasting sector. Managing a Public Service Media organization with its democratic, social and cultural responsibilities is not the same as running a commercial company. We are not aware of legal requirements in other countries that would reserve the post of DG to candidates from outside the company and from outside the broadcasting sector. On the contrary, experience within the sector is normally highly valued.

Creation of new Board (Arts. 10-12):

While we still have doubts about the need for introducing an additional governing body for a ‘small’ broadcaster (at least by international comparisons) we see a serious problem in the *ambiguous role* of the Board (which is described as a “collegial management body” but entrusted with certain tasks which are clearly of a supervisory character) and the *lack of a clear delimitation of powers* between the governing bodies (i.e. Council, Board, DG and – now in addition – an Ombudsman with far-reaching powers). We fear that this combination might create confusion and overlap, prompt internal conflicts, slow down decision-making and make the organization almost unmanageable.

Council of Europe standards on the governance of Public Service Media, in particular Recommendations (1996)¹⁰ and (2012)¹, require a clear separation between *managerial* (i.e. executive) and *supervisory* (including regulatory) functions. The draft Law in its current form seems to follow a different approach. The broad powers entrusted to the Board and the fact that it is mentioned in the draft Law *before* the Council give the impression that the Board is conceived as a central governing body, bringing together key executive and supervisory functions, thus weakening (and potentially marginalizing) the Council and the DG.

Introduction of an Ombudsman (Art. 18-19):

We recognize that an independent Ombudsman can play a very useful role for public service media, to strengthen the sense of responsibility within the organization, to serve as an interface with the audience and to help upholding high ethical standards.

On the other hand, his/her powers should essentially be of an advisory nature so as to avoid overlapping responsibilities and conflicts with managerial and supervisory bodies.

In contrast, the draft Law formulates as the first task of the Ombudsman that he/she shall “supervise the compliance of LRT with the requirements of Art. 3-4”. However, supervision as regards compliance with a law on PSM and the fulfilment of the public service remit should normally be the core task of the supervisory body.

The draft Law gives the ombudsman a very strong, autonomous status, making it practically impossible to remove him/her from office (Art. 18(6)). Although welcome, this independent status has as a corollary effect that the Ombudsman is not really accountable to any other body (apart from providing reports). This is an additional argument that his/her functions should be limited to an advisory, informing and mediating role, and not a role assuming executive or supervisory powers. The position of Ombudsman should certainly not be misunderstood as a kind of “internal police” that investigates infringements.

The EBU stands ready to provide legal expertise and participate in the public debates if requested.

Sincerely,

Noel Curran
Director General