

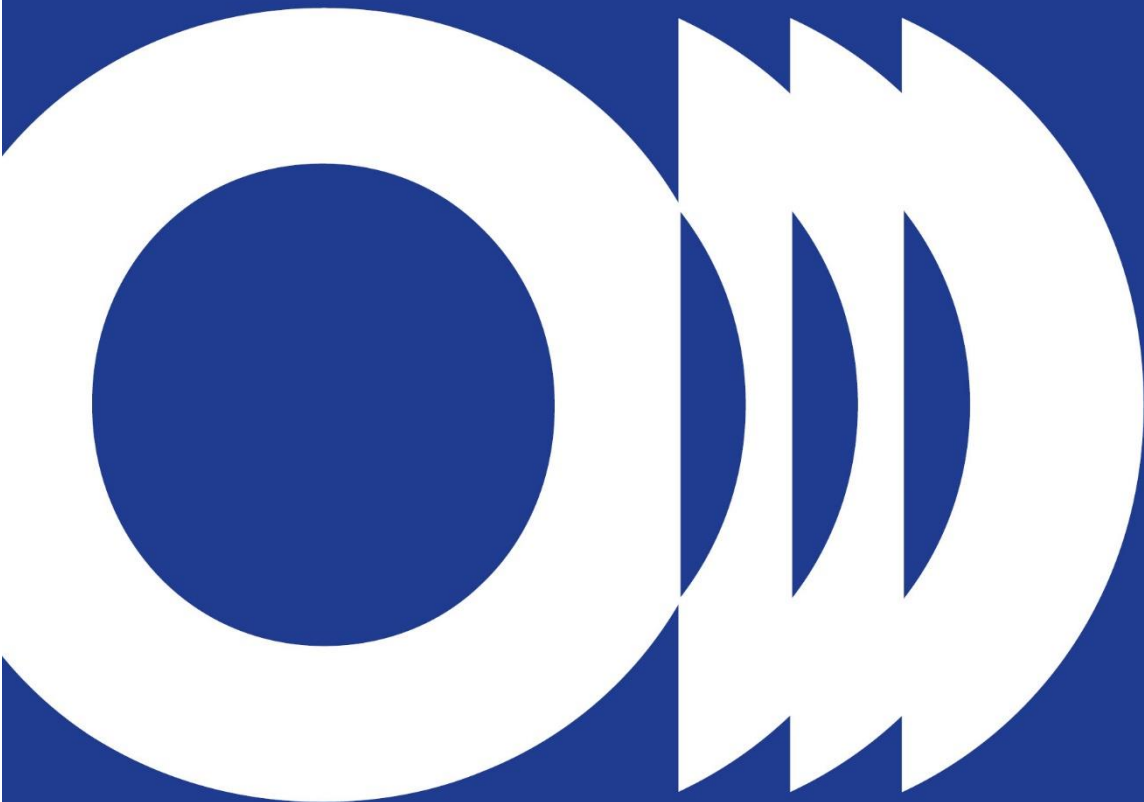
EBU

OPERATING EUROVISION AND EURORADIO

POSITION PAPER

EBU response to the public
consultation on the
implementation of the
European Media Freedom Act
in Poland

23 SEPTEMBER 2024



EBU RESPONSE TO THE PUBLIC CONSULTATION ON THE IMPLEMENTATION OF THE EUROPEAN MEDIA FREEDOM ACT IN POLAND

23 SEPTEMBER 2024

Deadline for submissions: 23 September 2024

ABOUT THE EBU

The European Broadcasting Union (EBU) is the world's leading alliance of public service media (PSM). The EBU has 115 member organizations in 56 countries which operate nearly 2,000 television, radio and online channels and services and reach an audience of more than one billion people in 160 languages. PSM organizations are entrusted with the performance of a service of general economic interest, which consists, *inter alia*, of the provision of high-quality content that fulfils the cultural and democratic needs of the society they serve.

On behalf of its members, the EBU welcomes the opportunity to provide feedback on the implementation of the European Media Freedom Act (EMFA) in Poland (the Consultation). We are particularly pleased to see the Polish authorities' commitment to a transparent and inclusive process for the implementation of the EMFA. We believe that open and transparent engagement with stakeholders, including journalists, media organizations, civil society, and the public at large, is essential to ensure that the EMFA is effectively implemented and achieves its intended objectives.

In this regard, we would like to emphasize the importance of a wide-ranging consultation process with ample time for public input. A sufficiently long consultation period allows for a thorough examination of the proposed implementation measures and ensures that the voices of all relevant stakeholders are heard. The consultation document is also very comprehensive and well structured, in that it usefully sets out the current provisions contained in Polish law, including references to case law and practice, and outlines the requirements contained in EU law, in particular the EMFA and the Council of Europe standards. In assessing the compatibility of the existing Polish legal framework, the reform proposals are presented and explained in a transparent manner. We encourage Poland to continue this open public process in refining its proposals in the coming months and we stand ready to contribute to this process.

WHY THIS CONSULTATION MATTERS TO THE EBU AND PSM?

The EMFA is the first ever EU piece of legislation setting directly applicable standards for all media, including safeguards of independence of PSM. While the EMFA, addresses key challenges faced by PSM in the digital age (e.g., lack of transparency in audience measurement¹, unjustified suspensions or restrictions of editorial content on large online platforms²), it also protects journalists (e.g., ensure that journalists can carry out their work without fear of censorship or intimidation)³ and more broadly, the editorial independence and freedom of media service providers⁴.

The EMFA also recognizes the importance of measures to ensure the appropriate prominence of audiovisual media services of general interest.⁵ It is particularly important for PSM organisations to be found by the citizens that fund it and to stay relevant to these. For instance,

¹ Article 24 EMFA and Recitals 69 and 70 EMFA.

² Article 18 EMFA and Recitals 50-53 EMFA.

³ Article 4(3)-(9) and Recitals 18-20 EMFA.

⁴ Article 4(1)-(2) and 6(3) applicable to media service providers providing news and current affairs content and Recitals 17, 18, 34 and 35.

⁵ Article 16(2)(a) and Recital 46.

France, Germany, Italy and the UK have adopted binding prominence rules that ensure the easy findability of general interest audio and audiovisual media services on relevant user interfaces and devices, such as Smart TVs.⁶

Importantly for PSM, the EMFA establishes safeguards for their independent functioning in its Article 5. The principles relate to PSM funding, governance, and editorial independence. Article 5 is intended to safeguard PSM from undue political interference and ensure their ability to fulfill their public service remit. Yet, given the delineation of competences set by the Amsterdam Protocol, and as pointed out by the concept paper accompanying this Consultation, Article 5 only sets high level principles. The effective implementation of such principles at the national level is crucial to ensure that they achieve their intended objectives, i.e. independent functioning of PSM with the capacity to develop within their public service remit. Otherwise, their "*effet utile*" (practical effect) can be diminished, undermining the EU's ability to harmonize laws and regulations across Member States. Accordingly, our comments will mainly focus on the implementation of Article 5 EMFA (safeguards for the independent functioning of PSM).

We fully support the democratic goals of this reform, including the objective of ensuring independent, strong and reliable PSM in Poland. Prior to 2016, and despite an enduring and systematic lack of public funding, the Polish PSM system had been considered among the most successful transformation models in Central and Eastern Europe. Indeed, Poland previously ranked in the top category of the Reporters without Borders World Press Freedom Index 2015 (and in the 2015 Freedom House report) with regard to political rights and civil liberties. We are therefore pleased to see that the Polish authorities are prepared to make the necessary changes to the Polish legal framework in order to return to this high level. Strong and well-funded PSM organisations are the bedrock of thriving democracies.

With regard to PSM specifically, the Consultation provides sound and comprehensive proposals to reinforce the safeguards for their independent functioning. In general, we believe that the proposals go in the right direction, and they address the issues where there are currently major weaknesses. Above all, the reform of the Polish regulatory authority, KRRiT, is absolutely crucial and a building block of the new regulatory framework. The EBU also welcomes the efforts to depoliticise the appointment process of the (internal) supervisory boards of PSM providers and of the PSM manager. We believe that the proposals aim to ensure transparent and open processes, which is essential when it comes to PSMs operating in the public interest. While we generally consider the proposals regarding the governance and supervision of PSMs to be compatible with EU law (i.e., the EMFA and the AVMSD) and in line with Council of Europe standards, we respectfully submit some suggestions below how to further strengthen the independence of PSMs.

With regards to the proposed funding level and mechanism, the EBU welcomes the objective to ensure adequate and sustainable funding for Polish PSMs, notably by reforming the current license fee model. The adoption of a sustainable funding model with sufficient safeguards to ensure the editorial independence of Polish PSMs, and the adequacy of their financing would not only respond to the new EU law on PSM funding but also allow PSM to fulfill their remit and thrive in an extremely competitive environment.

We submit below a set of recommendations based on best practices identified across the EU to implement the principles led down by EMFA regarding PSM governance and their funding.

⁶ See Article 20-7 of the French *Loi n° 86-1067 du 30 septembre 1986 relative à la liberté de Communication*; Article 84 of the German *Medienstaatsvertrag*, *Article 29(1) of the Italian Decreto Legislativo 8 novembre 2021*; *Article Sec. 362 et seq. of the UK's Communications Act*.

I. RULES ON THE APPOINTMENTS OF SUPERVISORY AND MANAGEMENT BODIES OF PSM

The EBU applauds the proclaimed objective of the reform process that intends to ensure the “full independence” of Polish PSMs and to shield them from any interference by third parties. We understand from the Consultation document that the Polish government proposes the following elements to reform PSM management and supervisory bodies to ensure their editorial and functional independence as required by Article 5(1) EMFA:

1. Supervision

The supervision of PSM organisations would be shared among three bodies: the Broadcasting Authority (KRRiT), the Supervisory Board, and the Programme Council. The main objective pursued by the reform is to depoliticise the appointment processes, thus distancing these bodies from the state thereby strengthening their independence.

- **National Broadcasting Council (KRRiT):** It is proposed to increase the size of the body from five to nine members, of whom four would be appointed by the Sejm, the lower house of parliament, two by the Senate, the upper house, and three by the President. These appointments would be staggered, so that one third of the members would be replaced every two years. The term of office of KRRiT members would be six years. In addition, the government proposes to introduce more detailed provisions on the competences and qualifications required for membership, which should be modelled upon those for the appointment of PSM bodies and to introduce a closed list of grounds for dismissal and, in particular, to remove the possibility of KRRiT’s dismissal if the annual report is rejected by the Polish Parliament.
- **Supervisory Board:** The Supervisory Board would primarily exercise supervision over the PSM organisations’ property and assets, which are state-owned. It would be composed of five members, three of whom would be appointed by KRRiT and two by the Ministry of Culture, the entity entrusted with the rights from the shares. It is furthermore proposed to specify and refine the criteria for eligibility that are contained in the Act on Principles of Management of the State Property in the Broadcasting Act. The Broadcasting Act would also detail the procedure for appointment as well as the term of office of five years.
- **Programme Council:** It is proposed to strengthen the role of the Programme Council by upgrading it from a purely advisory body to one with (co-)decision powers on programme matters. While it would continue to represent society at large, its size would be reduced. KRRiT would appoint seven of nine members from among the candidates put forward by Polish civil society or non-governmental organisations active in the field of media and culture. In addition, the staff of the respective PSM organisation would appoint two members.

Furthermore, it is proposed to specify in the law, the terms of office of members of the Supervisory Board and the Programme Council which is suggested to be five years and to limit the grounds for dismissal of these members.

2. Management

It is proposed that one person, the PSM manager, will lead the PSM organisation. The PSM manager would be appointed through a two-stage process including an internal assessment by the Supervisory Board and the Programme Council, respectively, before the Polish regulator KRRiT makes a decision from the short-listed candidates. It is proposed that KRRiT further specify the criteria for assessing the candidate. In addition, the Broadcasting Act would provide

for a catalogue of competences including incompatibility rules. The term of office of the PSM manager would be specified in the law and would be set at 5 years. The mandate would be linked to the Charter of Duties.

3. General remarks

In general, the EBU supports the direction of the proposed reform in Poland and considers the approach of the Polish authorities to implement this reform on the basis of existing structures to be appropriate. These structures are not only firmly rooted in Polish tradition and culture, but are also based on the Polish Constitution, on the freedom of the media, freedom of expression as well as on the jurisprudence of the Constitutional Tribunal. Any more radical overhaul of the Polish PSM system (such as a merger of TVP and Polish Radio) would need to be assessed in detail and could have significant unforeseen implications and costs.

We welcome the awareness of Polish policymakers of the shortcomings that have led to the misuse of current structures for political purposes, and the willingness of the government and the Polish people to address these shortcomings so that PSM organisations can operate autonomously and in “full independence” from third parties in order to fulfil their important democratic role as recognised by the Amsterdam Protocol and the EMFA.⁷ The reform package contains necessary proposals to this end and would also fill current legal gaps in order to increase legal certainty and contribute to the independent functioning of PSMs in Poland.

Specifically, the EBU submits the following comments:

1. Supervision

In general, we note that it is common among EBU members for the supervision of PSM providers to be divided between two (internal) bodies distinct from the regulatory authority, i.e. the KRRiT in the case of Poland. This reflects a division of tasks according to subject matter. Under the proposal, the Supervisory Board will be responsible for overseeing all matters relating to the management of State property, while the Programme Council will be responsible for supervising programme-related matters. In addition, KRRiT as the external regulator, will be ultimately responsible for assessing PSMs fulfilment of their public service remit, and for monitoring compliance with applicable advertising and programme standards.

We welcome the efforts of the Polish authorities to address a dysfunctional supervisory system that has led to a lack of independence of Polish PSMs and we agree that it is important to implement robust independence safeguards in line with Article 5 EMFA.

The EBU considers it legitimate for the State to be involved in the appointment of PSM supervisory boards, as PSMs operate in the public interest using State resources. Ultimately, the State is the main stakeholder/owner of PSM providers, acting as the custodian on behalf of the Polish people. However, such involvement should be at arm’s-length and protect the independence of PSM providers.

a. Supervision by KRRiT

The centrepiece of the Polish government's reform proposal is likely to be the media regulator KRRiT, which the European Commission considered to be lacking in independence.⁸ in its

⁷ See in particular Recital 29 EMFA.

⁸ 2024 Rule of Law [Report](#), Country Chapter on the rule of law situation in Poland 2024, p. 26.

2024 Rule of Law Report. The EBU therefore welcomes the efforts of the Polish authorities to restore the "regulatory impartiality" of the KRRiT thereby fostering confidence in the effectiveness and fairness of the regulator.

In general, the EBU considers that the proposed organisation and composition of KRRiT is in line with Council of Europe standards and meets the EMFA independence test in Article 5(4) EMFA. Several safeguards are built into the new oversight system to enhance the independence of the KRRiT. In particular, appointments are divided among several different actors/state institutions, i.e., both chambers of parliament and the President, thus effectively reducing the risk of any single institution controlling or "capturing" the authority. Indeed, in other European countries, such as in Spain, Austria, France, Italy and Norway, the right to nominate/appoint members of the supervisory board is distributed among a variety of political actors, thus serving the principle of diversity.

In addition, the staggering of appointments, as practised, for instance, in Czechia where one third of Council members are elected every two years⁹, helps to prevent or break up collusions between members and thus strengthens independence. It also contributes to the continuity of the authority's work by avoiding the need to completely reconstitute it after the expiry of the mandate.

The EBU furthermore welcomes the safeguards against unjustified and arbitrary dismissal of KRRiT members. It is proposed to include a closed list of grounds for dismissal in the Broadcasting Act and to remove the possibility of dismissing KRRiT if Parliament rejects its annual report. This is certainly a positive step and is in line with Article 30 of the Audiovisual Media Services Directive (AVMSD), which requires that dismissals be related to the failure to perform duties and must be based on criteria established in advance at the national level (e.g., in the Broadcasting Act). Similarly, Article 5(2) of the EMFA and the Council of Europe standards on PSM governance¹⁰ also stress the importance of limiting dismissals to exceptional circumstances which must be foreseeable by the persons concerned (i.e., they must be laid down in advance at national level) in order to avoid dismissals being politically motivated.

Overall, we believe that the proposed safeguards, taken together, are necessary and appropriate to establish and protect KRRiT's independence from third parties.

EBU recommendations:

We invite the Polish authorities to adequately protect KRRiT members against unjustified dismissals when laying down the grounds for such decisions in the law.

b. Supervisory Board:

In addition to KRRiT, the supervisory boards of PSMs (one for each organisation operating at the national level, i.e., TVP SA and Polish Radio SA) supervise the management of the assets and ongoing operations of the PSM providers and are involved in strategic and financial planning. Their role in programme matters is very narrow and limited, excluding any interference in programming activities.

⁹ European Audiovisual Observatory, Governance and independence of public service media, 2021, p.30.

¹⁰ See Recommendation CM/Rec(1996)10 of the Committee of Ministers to member States on the guarantee of the independence of public service broadcasting, para III, No. 2.

The enhanced role of the KRRiT in the appointment process of supervisory board members, giving it the right to appoint a majority of members (three out of five) grants it a decisive role, which the Constitutional Tribunal admonished in its 2016 ruling.¹¹

As regards the appointment procedure itself, we consider that it is designed in a transparent and open manner, in line with the standards of the Council of Europe.¹² In particular and as regards members appointed by the KRRiT, the publication of a call for tenders (on the KRRiT website), the involvement of non-governmental organisations from the media sector who can propose candidates, and the requirement for KRRiT to justify the selection of individual candidates are crucial to ensuring the principles of transparency and openness. Giving civil society groups a role in this process is particularly noteworthy as it will bring PSM closer to the citizens it serves and increase the legitimacy and accountability of PSM providers.

In a similar manner, it is also positive that the State will have to justify its choice of the two members it appoints, making it more accountable for its decisions. Moreover, the specification of clear criteria for the appointment of supervisory board members that are limited, and directly related to their role as board members corresponds to Council of Europe standards on PSM governance.¹³

While the proposed composition (i.e., three members appointed by KRRiT, two by the Ministry of Culture) is in line with the jurisprudence of the Constitutional Tribunal, we note that this does not completely prevent politicised decisions as there is a risk that the two appointees by the state build a coalition with one of the KRRiT appointees. We would therefore recommend that additional independence safeguards be put in place to make it more difficult for the state to control the whole body.

Such safeguards could aim at further diversifying its composition, for example by including an ombudsperson as a representative of audiences (ombudspersons exist in Latvia, Denmark, the Netherlands, Portugal, Slovenia, Spain and Switzerland), or a staff representative (as in Austria, France, Italy and Norway). This could be achieved by giving a non-political body the right to appoint a member (e.g., NGOs and other civil society organisations could not only have the right to propose, but also to appoint a member). Consideration could also be given to having a representative of the regions on the board.

Another way of depoliticising the body could be to strengthen conflict of interest and incompatibility rules, for example, by excluding members of government, parliament and political functionaries/office holders, or by limiting the number of “political/state appointees”. For example, the Austrian Constitutional Court recently held that the number of delegates appointed by the state to the ORF councils was too high,¹⁴ while in Germany, the Constitutional Court went even further, ruling that the number of “state appointees” be limited to one third of the total membership¹⁵.

We also invite the Polish authorities to consider the introduction of qualified majority voting as a safeguard for independence. Qualified majority voting (e.g., 3/5, 2/3, or 3/4), which could also be used only for certain types of decisions, can promote consensual decision-making and increase mutual understanding and accountability for decisions. However, in highly politicised contexts, it can also lead to deadlock. It could therefore be useful to reflect on

¹¹ Polish Constitutional Tribunal [ruling](#) dated 13 December 2016, K 13/16.

¹² See Recommendation CM/Rec(1996)10, para III, No. 2.

¹³ See Recommendation CM/Rec(2012), para. 27.

¹⁴ Austrian Constitutional Court [ruling](#) dated 5 October 2023 on ORF Governance (VfGH, G 215/2022).

¹⁵ German Constitutional Court ruling dated 25 March 2014 on ZDF supervisory boards (BVerfG, 1 BvF 1/11).

solutions/procedures for resolving such conflicts (for example, giving the chairperson the decisive vote).

In brief, the EBU believes that the proposed composition of the PSM supervisory boards as well as the appointment of their members demonstrate a willingness of the Polish authorities to guarantee transparent and open procedures in which civil society plays an important role.

EBU recommendations:

We invite the Polish authorities to consider whether additional safeguards should be introduced to guarantee the full independence of the supervisory boards, which could include one or more of the following measures:

- ***Diversifying the boards' composition,***
- ***Strengthening conflict of interest and incompatibility rules,***
- ***Requiring qualified majority voting (for certain decisions).***

c. Programme Council

The EBU welcomes the stated aim of reforming the Programme Council and depoliticising its role and composition by replacing representatives of political parties with seven experts proposed by civil society groups and non-governmental organisations, as well as two delegates from PSM providers' staff. Even if the size of the councils is reduced to 9 members (from 15), the councils will still be large enough to ensure a pluralistic and diverse composition that reflects the Polish people and will anchor the PSM firmly in Polish society.

In addition, the appointment of civil society members would be based on an open competition, thus reinforcing transparency and openness as fundamental principles. Similarly, it would serve these fundamental values if the criteria or qualifications (such as previous experience in the sector, a degree of higher education, etc.) for these roles were laid down in the law.

The EBU also notes the extension of the competences of the Programme Councils, which will ultimately be responsible for programme-related matters with decision-making powers. While we appreciate the intention to make the Programme Councils watchdogs in the public interest in programme matters, we wonder whether this shift in competences would not interfere with the management of PSM providers, in particular with their (i.e., newsrooms/journalists') editorial freedom and independence. It appears that in most of the countries where programme councils exist, their role is more advisory, leaving the final decisions to the PSM manager/the management board (e.g., in France, Croatia and Spain). This division of responsibilities seems to reflect well the Council of Europe's standards on PSM governance which clearly distinguish between PSM management and PSM supervisory bodies, both of which have different roles and responsibilities.¹⁶

Regarding the proposed 5-year term of office for members of supervisory boards and programme councils, this is in line with the term of office of PSM supervisory bodies in many other countries.¹⁷

We also welcome the Polish authorities' intention to include in the Broadcasting Act a closed list of grounds for dismissal of members of supervisory boards and programme councils that

¹⁶ See Recommendation CM/Rec(2012)1, para. 23.

¹⁷ In 2018, the EBU conducted a study about PSM management and supervision, examining PSM providers in 12 countries. We found that in most countries, the term of office of supervisory boards is on average just over 4 years, comparable to the parliamentary term in most European countries (4-5 years).

See Legal Case Study, [PSM management & supervision](#), 2018.

existed before 2015. We understand that some of these grounds (such as the concept of damage to a company) are established concepts in national law and are interpreted quite narrowly. We are somewhat concerned about the possibility of dismissing PSM bodies if the KRRiT rejects the PSMs' annual reports twice. Although the proposed reform of the KRRiT would guarantee its independence from the state and other political actors, and it would require two negative assessments, politically motivated decisions cannot be completely ruled out. We therefore respectfully ask the Polish authorities to consider removing this ground for dismissal or requiring qualified majority voting for KRRiT's decision that sets a high threshold.

EBU recommendations:

We call on the Polish authorities to consider strengthening the protection of Programme Council members against dismissal, thereby minimising the possibility of politically motivated decisions.

2. Management:

The EBU welcomes the commitment of the Polish authorities to ensure “full transparency” during the recruitment process of the PSM manager. Such transparency and openness are at the very heart of the Council of Europe's standards on PSM governance, on which the Article 5 EMFA is modelled.¹⁸ Transparency ‘reconnects’ PSM with society, strengthening their legitimacy and acceptance by the people they serve.

In most countries the PSM manager (there are different names across the EBU membership, such as Director General, General Administrator, Managing Director, President, Intendant, Chief Executive Officer, etc...) is assisted by a management or administrative board.

It is interesting to note that in Germany, the Council for the Future development of public service media (*Zukunftsrat*) recently recommended in its (non-binding) report that the model of a PSM manager (i.e., the *Intendant*) should be replaced by a collegial management model with a chairperson to reflect the complexity of business and decision-making. The collegiate body or board would include relevant areas, such as public service remit, audiences, technology, production, finance and management, and make decisions in a consensual/collegial manner, with the chairperson having the final say as *ultima ratio*.¹⁹

Ultimately, the decision whether to establish a management or an administrative board in addition to the top PSM manager remains the sole competence of the Member States, which are responsible for the organisation of PSM providers in accordance with the Amsterdam Protocol.

The EBU also supports the explicit delineation of competences/ qualifications in the Broadcasting Act, including incompatibilities with the role of PSM manager. The proposed eligibility criteria, such as requiring a certain amount of experience in the sector and in a managerial position, appear to be reasonable and appropriate. It is, of course, up to the Member State to set these criteria, taking into account the domestic labour market. In general, the criteria should be formulated in a manner that they attract the right kind of talent, while not setting too high a bar for application, which could lead to a lack of qualified candidates, especially in smaller countries.

¹⁸ See in particular Recommendation CM/Rec(1996)10 of the Committee of Ministers to member States on the guarantee of the independence of public service broadcasting; Recommendation CM/Rec(2012)1 of the Committee of Ministers to member States on public service media governance.

¹⁹Rat für die zukünftige Entwicklung des öffentlich-rechtlichen Rundfunks (Zukunftsrat), January 2024, Bericht , The report and an executive summary are available [here](#).

In addition, the proposed catalogue would contain incompatibility rules and would disqualify a candidate if he/she has links with another media service provider (broadly understood in the sense of Article 2(2) EMFA) or is affiliated with a political party. To further increase the independence of the PSM manager, consideration could be given to extending the incompatibility rules, notably by clarifying that candidates cannot hold any public office or function.

The EBU also believes that the proposed two-stage appointment of the PSM manager, involving several bodies in the process that are required to publish and justify their decisions, serves the underlying objectives of transparency and openness. It moreover seems appropriate to delegate certain issues (such as the definition of a detailed set of criteria for assessing candidates) to KRRiT rather than to stipulate them in the Broadcasting Act, in order to avoid overly detailed legislation and to ensure sufficient flexibility for revision.

The EBU furthermore considers that a five-year term of office is appropriate and would ensure the independence of PSMs in Poland as required by Article 5(2) EMFA. In practice, the term of office of PSM managers is often 5-6 years, according to an EBU [legal case study](#) that examined the management and supervision of PSMs in twelve European jurisdictions in 2018. We also note positively that the duration of the term of office of the PSM manager is linked to the term of the PSM provider's charter of duties, which would provide stability and predictability during the charter period. It could also help to increase the PSM manager's sense of ownership and responsibility for fulfilling and complying with the charter of duties.

Finally, the EMFA requires that decisions to dismiss PSM managers during their term of office are duly justified and can only be taken in exceptional circumstances, i.e., when the person can no longer fulfil their role. We note that the proposed list of grounds for dismissal is broader than incompetence. Importantly and as mentioned above, the dismissal of the PSM manager on the basis of the rejection of the annual report, even if this requires two rejections, could be instrumentalised and politically motivated. We urge the Polish authorities to close all loopholes for political interferences, and instead limit the grounds for dismissal in accordance with the EMFA.

EBU recommendations:

We encourage the Polish authorities to consider restricting the grounds for dismissal of the PSM manager in order to avoid that dismissal decisions are taken for political reasons. The rules on incompatibility and conflict of interest could be further strengthened to ensure that the PSM manager acts independently of third parties and, in particular, is not tied to the political sphere in any way.

II. RULES ON THE FUNDING OF THE REMIT FULFILLED BY POLISH PSM

The EBU welcomes the overall objective of Polish authorities to ensure stable, adequate and predictable financial resources to their PSMs. At this stage, we understand that the Polish authorities contemplate the following:

The current **scope of the remit** would remain largely unchanged save for the regional activities (for which TVP S.A. should be granted more flexibility in their programmes and organisation, as it is difficult to produce sufficient local content with limited public funding). We agree with the assessment in the consultation document that provisions on the remit of PSM, as well as their tasks and duties, as provided by the Broadcasting Act, as amended in 2018, are in line with European standards, and do not need to be revised to meet EMFA requirements. The Consultation also contemplates the possibility to increase PSMs duties

regarding the accessibility for people with impairments or disabilities and the promotion of European works.

It is proposed to change the main **source of funding** of TVP (*i.e.* to repeal the license fee and put in place a state budget model instead). A minimum level of funding would be set based on a macro-economic indicator (e.g., 0.09% of Polish GDP). Such grant would be complemented by commercial revenues. This threshold would be instrumental to ensure the adequacy, predictability and foremost independent functioning of Polish PSMs.

With respect to the **process for the allocation of PSM funding**, it is proposed that all funds granted for the purpose of the fulfillment of PSM remit would be earmarked in an account managed by KRRiT. The amount of funding each PSM receives would be determined in the charter of duties and any revision of the needs of the PSM during the charter period would only take place in case of modification of the index (*e.g.* the GDP threshold set). The Consultation assumes that the assessment of the financial needs of PSMs would be based on already existing regulatory instruments, *i.e.*, *ex ante* - their charters of duties as well as programming and financial plans, which are assessed and approved by KRRiT, and *ex post* - yearly reports of PSMs submitted to KRRiT.

In line with Polish constitutional law and the EMFA, the Polish authorities must put in place mechanisms to ensure that Polish PSMs have appropriate financial resources to fulfill their public service remit (**monitoring of funding adequacy**). The Consultation leaves open the question of the process for the revision of PSM financial needs during the charter period. However, they are already rules in place allowing amendments of the charter of duties, following public consultations and subject to agreement with KRRiT. Programming and financial plans adopted every year are also subject to this process. It is proposed to maintain the existing *ex post* assessment of the fulfillment of PSM remit.

To make PSM less dependent on commercial revenues, it is considered to limit **PSM advertising** and reduce hours by half. Such an amendment will cause significant reduction of the PSM providers' budget and would mechanically require an increase of the level of funding of PSM above 0.09% of GDP to ensure adequate and stable funding of Polish PSMs. Such funding increase is however not recommended by the Consultation (see below).

Overall, the EBU supports the direction of the proposed reform in Poland and agrees with the government to reform the funding procedures and model of PSM organisations to guarantee the independent functioning of Polish PSMs in line with EU law. Meanwhile, it is crucial to ensure that the implementation of the EMFA is anchored in Polish national constitutional law and cultural context to avoid unintended consequences and maintain the delicate balance between media freedom and other societal interests.

The EBU respectfully submits its comments in relation to the above:

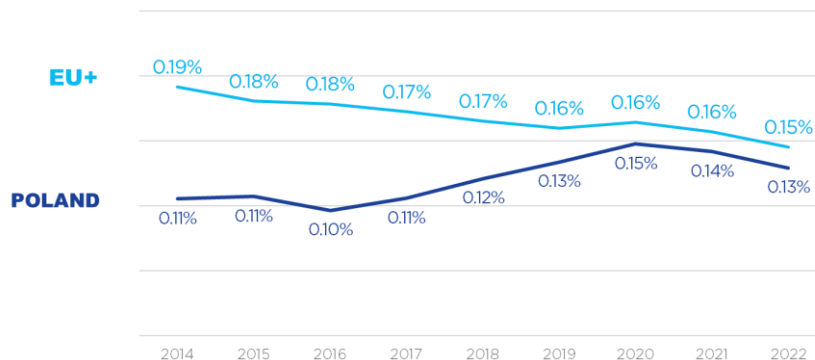
When it comes to the financing of PSM within the European Union, the EMFA primarily requests Member States to *ensure adequate, stable and predictable* funding. This provision is fundamental to allow PSM to fulfill their remit and thrive in an extremely competitive environment.

We welcome the introduction of a state budget funding mechanism for Polish PSM, recognizing its potential to provide a stable and predictable source of financing. State budget models are increasingly adopted in European countries. However, to ensure the long-term sustainability of this model, it is crucial to implement several safeguards to ensure that PSM funding and its allocation be immune to political or commercial interests and pressures. Acting

otherwise, such reforms can lead to structural underfunding. In the Netherlands for example, the abolition of the licence fee and a move to direct budget funding led to an immediate and substantial (over 20%) reduction in funding to NPO, decided by the incoming coalition government. We observed similar cases in Romania (drop by 26% between 2014 and 2020), Denmark (reduction by 45.4% between 2015 and 2020) and North Macedonia, where the switch to budget funding has arguably undermined the overall goals and purposes of PSM, with the broadcaster subject to direct political pressure.

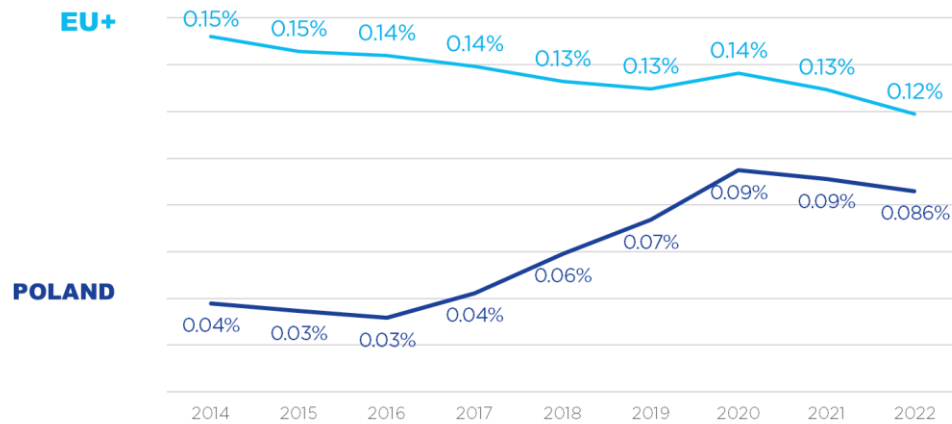
PSM shall be structurally and financially independent. Where the funding system (e.g., direct state grants) threaten the independence of PSM, adequate safeguards should be put in place. This can be done by (i) defining the PSM allowance on a pluri-annual basis (ideally for the same period as the instrument that defines the PSM remit to avoid budget cuts in case of government shift), and/or (ii) placing the funds in a specific fund outside of the state budget (which is the option retained in Finland for instance).

Beyond, the funding model adopted, we are concerned about the ongoing uncertainty surrounding the level of funding of Polish PSMs. Comparative PSM funding data across Europe show that Polish PSM funding could be improved. Our data for 2022 shows that Polish PSM's funding as a % of GDP was only 0.13, which ranks 18th of our 27 EU countries plus (EU+CH+NO+UK). According to the current Consultation, this could even go down to only 0.09 (excluding commercial revenues), which would in any event set Polish PSM total funding further below the European average of 0.15% (namely 0.1454%, rounded to 0.15% below).



PSM TOTAL OPERATING REVENUES AS A PROPORTION OF GDP
(%, 2014-2022)

Based on public income exclusively, Polish PSMs are also way below the EU plus average of 0.12%. Finally, considering PSM public funding per capita leads to similar conclusion, with Polish PSM at only 15 euros per year, ranking 24th out of the 28 countries.



PSM PUBLIC REVENUES AS A PROPORTION OF GDP
(%, 2014-2022)

We strongly urge the Polish authorities to reconsider the level of the proposed minimum threshold for public funding (0,09%), which is significantly below the EU+ average, and any possible cuts of advertising, given the already fragile financial situation many PSM organizations face. Adequate public funding is essential for PSM to effectively fulfil its democratic, social, and cultural mandate within the Polish society. Without this support, it is unrealistic to expect PSM to play its crucial role in countering the spread of disinformation online—a task for which well-resourced PSM are uniquely positioned. High-quality journalism and engaging content, necessary to inform and entertain Polish citizens, require significant investment. Sustainable and thriving PSM, accessible to the entire European population, cannot be achieved through inadequate funding.

PSM level of funding is all the more critical that it contributes to the Polish economy. According to EBU data, on average, each euro invested in funding PSM generated 2.5 to 3 euros in the economy.²⁰ Certain studies even look at the impact on job creation. A study showed in France that for every job at France TV, 5.1 additional roles are supported in the economy, a 6.1 job multiplier.²¹ With respect to PSM sports activities specifically; they contributed EUR 4.9 billion to European GDP (31 European countries), thanks to a significantly high GDP multiplier of 5.7: for every euro PSM directly contribute to sports, a further EUR 4.70 is created for the European economy across a range of sectors.²² In short, PSM contribute to adjacent sectors and to the GDP overall and any funding increase may have a positive impact on national economy.

Finally, we also would like to submit some more specific comments below:

1. Scope of Polish PSM remit: a prerogative of Member States

PSM remit should be as broad as possible to ensure that PSM can comprehensively serve the public interest and respond to the evolving needs of society. Article 5(3) of the EMFA recognises the need for PSMs to have some scope to "*develop within their public service remit*". A broad remit allows PSM to provide a wide range of content that fosters diversity, inclusivity, and innovation. PSM should for instance be able to (i) produce content in different languages, ensuring that all linguistic communities have access to relevant cultural programming, including regional news, documentaries, and entertainment that reflect their

²⁰ Source: EBU based on studies from VRT (Belgium Flemish), RTBF (Belgium French), France TV (France), ARD (Germany), TG4 (Ireland), RAI (Italy), RSI (SRG SSR, Switzerland), BBC (UK), S4C (UK). EBU Study on [The Economic Impact of Public Service Media](#), 2022.

²¹ France TV – Etude d'impact socio-economique, Utopies, 14 December 2021.

²² [Study](#) on *The Economic Impact of the Sports Activities of Public Service Media*, EBU and Oxford Economics, April 2024.

unique identities; but also (ii) embrace new technologies and digital formats to reach younger audiences.

Beyond the fact that Polish remit is technologically neutral, we welcome any reference to the need for PSM to adapt to technological change to stay relevant going forward and the need to distribute their content on all platforms. Also we agree that PSM should champion the promotion of European works, though given the diversity and dynamic nature of modern PSM offerings, this should not be fixed rigidly in the law, but may be regulated in the charter of duties. It goes without saying that any extension of the scope of the remit shall be reflected in the level of funding set for the given remit period (see below).

EBU recommendations:

We invite the Polish authorities to consider flexible and proportional measures for possible extension of the TVP tasks. Any extension of the remit should be reflected in the level of funding.

2. PSM Funding model: ensuring the adequacy and predictability

We welcome the change of funding model announced by the Consultation. This reform is a chance to remedy structural issues faced by the current license fee, namely high evasion rate [up to 65%, - one of the highest in Europe according to EBU data], broad social exemptions, erosion of funding and increased reliance on commercial revenues and state budget allowances leading to lack of stability and predictability.

The introduction of a state budget model suggested by the Consultation would not technically be new. TVP operating revenues a partly generated from state budget and there are mechanisms to compensate the high licence fee evasion rate Yet, it would certainly constitute a big shift. We understand that in 2022, 66% of TVP operating revenues stemmed from public funding (60% of which were generated by the license fee model, including compensations, in place).

State budget constitute the second source of PSM revenue in the EBU area. This funding model may reach the EMFA (Article 5) standards as long as it contains sufficient safeguards to ensure both the financial independence and sustainability of PSM.

Interestingly, in recent years, certain governments refused to move to a direct state grant precisely because no adequate safeguards were in place to prevent political interferences. This was notably the case of the Irish Government which did not follow the recommendation of its Media Commission to shift to a direct funding system. According to the official statement “[t]he government has decided that in order to maintain a direct link between media and the public they serve, and to minimise the risk of actual or perceived political interference in media independence, that the TV licence will be maintained but overhauled” (emphasis added).²³

Safeguards can take various forms, namely:

- (i) defining the PSM allowance on a pluri-annual basis, ideally for the same period as the instrument that defines the PSM remit to avoid budget cuts in case of government shift,

²³ [Press release](#), “Government welcomes report of the Future of Media Commission and announces strategic initiative to support public service content across media in Ireland”, 12 July 2022.

- (ii) relying on a macroeconomic indicator (that can be adjusted upwards if need be). In which case, the adequacy of funding and the independence of the funding procedure from the politics is guaranteed by the setting of a transparent and objective framework for budgetary negotiation, and/or
- (iii) placing the allowance in a specific fund outside of the state budget.

Such measures can prevent PSM from being subject to yearly state budget negotiations. This is an option which was for instance retained in France after the abolition of the license fee last year. France has opted for a replacement of the licence fee by revenues raised from VAT and allocated from the general state budget. Editorial independence has a constitutional value under French Law.²⁴ The French Constitutional Council²⁵, which reviewed the law has therefore added safeguards to ensure that the final text does prevent political interferences in allocation of the funds (French authorities must secure that the level of funding earmarked from the VAT each year is sufficient to enable the PSM to exercise its public service remit).²⁶

The above mentioned mechanisms can provide several key benefits: First, it improves funding stability: By tying the PSM budget to broader economic variables, such as GDP growth, inflation rates, or public expenditure benchmarks, the funding mechanism becomes less susceptible to political cycles and discretionary cuts. This linkage ensures that the budget reflects the overall health of the economy and grows in proportion to broader economic trends. Over time, this helps PSM maintain a stable funding stream, enabling long-term planning and investment in quality content, innovation, and public interest programming. Second, it may mitigate funding erosion: When funding is frozen, PSM can experience a gradual erosion of its financial resources due to inflation and rising operational costs. Linking the budget to macroeconomic indicators helps prevent this erosion, ensuring that funding levels adjust automatically in line with economic conditions. This approach ensures that PSM can maintain its service quality and adapt to evolving societal needs without facing a decline in real-term financial resources.

Based on the Consultation, we understand that the adequacy of Polish PSM needs would primarily rely on a fixed threshold for minimum funding from state budget based on macroeconomic indicators (at this stage 0.09% of Poland's GDP). Such state budget based on GDP provides predictability. However, it should be treated strictly as a guarantee of minimum funding, rather than a fixed threshold. Otherwise, it could prevent the setting of an "adequate funding" for various reasons. A fixed threshold fails to take into account various factors that impact PSM financial needs (factors include inflation, changes in the remit scope, technological advancements, and evolving societal demands).

- **Cost adjustments:** Over time, inflation erodes the real value of a fixed funding amount, which leads to a decline in the purchasing power of the allocated budget. As costs for personnel, technology, production, and distribution rise, PSM may struggle to maintain the same level of service with stagnant resources.²⁷ Year on year PSM funding evolution is thus often below inflation. In 83% of EBU markets, PSM funding evolution was below 2022

²⁴ It is protected by Article 11 of a French Statement which is part of the Constitution ("Déclaration de l'Homme et du Citoyen de 1789").

²⁵ French Constitutional Council, [decision n° 2022-842 DC](#), 12 August 2022.

²⁶ The safeguards by the French Constitutional Council seem broad enough for French PSMs to claim for a *status quo* in terms financing – albeit funds increases (e.g., based on inflation rate) might be more challenging.

²⁷ In 2022, EU inflation stood at 9.2%, its highest level ever measured (Eurostat data), largely above previous years (5.3% for 2021 and even 0.7% for 2020). At EBU level, inflation reached on average a peak of 12.0% in 2022. Consequently, at EBU level, the limited 12.3% increase in PSM funding registered between 2013 and 2022 turns into a significant contraction in financial resources when expressed in real terms: -5.8% for the whole EBU area. Source: EBU-MIS Public Service Media Funding report (2024).

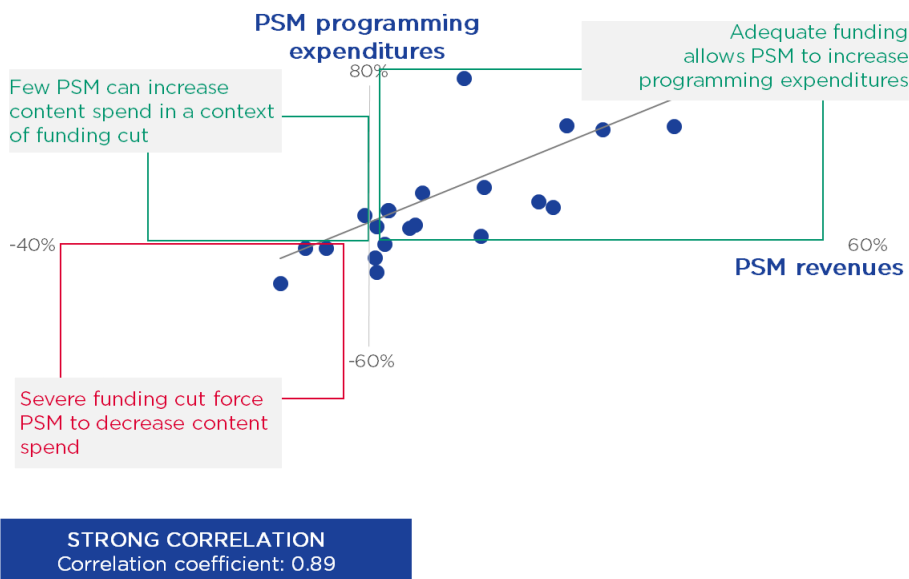
inflation. Accordingly, cost allocation in the charter of duties could be reviewed on a yearly basis upward only in case of operational cost increases due e.g. to inflation;

- *Technological development:* PSM must continuously invest in technological upgrades to remain relevant in a rapidly changing media environment. Transitioning from traditional broadcasting to digital platforms, on-demand services, and streaming requires significant financial resources: To remain competitive with commercial streaming services, this means investing in new infrastructure and content creation tailored to digital platforms. A fixed funding threshold would hinder the ability to make these necessary investments, resulting in outdated or less accessible service;
- *Adjustments of the remit:* The scope of PSM's public service remit is not static; it evolves with societal, cultural, and technological developments/changes. For example, PSM may be required to provide additional services, such as digital-first content, educational programming, or new platforms to meet the needs of diverse audiences. During the COVID-19 pandemic, many PSM organizations were tasked with expanding public health information services or to provide additional educational programmes. A fixed budget would limit their ability to respond to such an urgent and unexpected shift in the remit.

Generally, we observe across the EBU area a strong correlation between the level of PSM operating revenues and their ability to engage in programming expenditures – which can be used as a proxy for PSM capacity to fulfil, at least partly, their mission.

When facing funding restrictions, most PSM try to sustain programming expenditures, which represent over half of total expenditures. However, this is not always possible, and substantial and/or repeated funding cuts hurt PSM content spend. Significant, repeated cuts cannot be fully compensated by efficiency gains. The **relationship between changes in PSM revenues and programming expenditures is unambiguous**. There are almost no cases where PSM funding increases while the programming expenditures drop, illustrating the constant commitment of PSM organizations to content creation and support of creative industries in Europe.

PSM OPERATING REVENUES EVOLUTION (% , 2012-2021) VS
PSM PROGRAMMING EXPENDITURES EVOLUTION (% , 2012-2021)



EBU, 2024.

Last but not least, the procedure for the allocation of funding should provide for a precise assessment of the financial needs (see below).

EBU recommendations:

We invite the Polish authorities to adopt a funding model which ensures adequate and predictable funding for Polish PSMs. Importantly,

- **Funding should preferably be allocated on a pluri-annual basis to strengthen the editorial independence of PSMs and avoid revising PSM funding each year;**
- **Any model based on macroeconomic indicators should be adjusted to take into account various factors that impact PSM financial needs (e.g., inflation, changes in the scope of the remit, technological advancements);**
- **Any threshold set in legislation, e.g., based on Poland's GDP, should only guarantee a minimum level of public funding for the PSM remit.**

3. PSM Funding procedures: ensuring adequacy

The EBU has always advocated that PSM funding - to be adequate - should be determined based on the remit, meaning the financial resources should be assessed in direct relation to the scope and obligations that have been assigned to the PSM.²⁸ The EMFA also prescribes that “*funding should be preferably decided and appropriated on a multi-year basis, in line with the public service remit of public service media providers, in order to avoid the risk of undue influence from yearly budget negotiations*”.²⁹ Hence, only once the remit has been defined—encompassing democratic, social, and cultural functions—the cost of fulfilling that remit must be precisely assessed. This ensures that the funding is not arbitrary but aligned with the concrete tasks and public service goals expected of the PSM. This is also in line with the most important recommendations of the Council of Europe on the independence of public service media.³⁰

As rule of thumb, the above principles are best followed in jurisdictions where they are followed by (i) a structured, multi-step process involving independent bodies; (ii) there is a strict separation of the determination of the PSM's remit from the political process and (iii) such determination relies on objective cost evaluations.

The German model provides a strong example of how this process can be structured to guarantee both financial adequacy and independence from political influence. A key aspect of the German model is the involvement of an independent commission, the KEF (Commission for the Determination of the Financial Needs of Broadcasters). KEF is responsible for assessing the financial needs of public broadcasters, such as ARD, ZDF, and Deutschlandradio, based on their remit. This independent body analyzes detailed financial reports submitted by broadcasters, which outline the resources required to carry out their legal obligations. The use of an independent commission ensures that the financial assessment is carried out by experts who are free from political or government influence, making the funding process both objective and transparent. Following KEF's recommendation, the funding proposal is submitted to the states (*Bundesländer*) for approval. Importantly, while the parliaments retain final approval, they are expected to follow the KEF recommendation unless

²⁸ EBU, [Legal Focus](#), ‘Public funding Principles for Public Service Media’, R. Burnley, 2017.

²⁹ EMFA, recital 31.

³⁰ See Recommendation No. R (96) 10 of the Committee of Ministers to member states on the guarantee of the independence of public service broadcasting and Recommendation CM/Rec(2007)3 of the Committee of Ministers to member states on the remit of public service media in the information society.

there are justified grounds to deviate from such recommendations. This preserves the independence of the process and ensures that political bodies cannot unduly influence the financial needs of PSM.

We understand that the reform of the Polish PSM legal framework in 2018, which aimed to implement the European Commission's Broadcasting Communication of 2009, introduced the PSM charters of duties, which include estimates of financial needs of each PSM organisation for 5 years. Such estimates are assessed and agreed with KRRiT, following a public consultation. Besides, more specific yearly programming and financial plans for each of the PSM providers are approved by KRRiT. PSM submit and publish their yearly reports, including financial aspects, for KRRiT's assessment and approval and/or guidelines. KRRiT's role in this system is determined by its constitutional functions. Such a system may constitute the mechanism for proper assessment of the adequacy of PSM funding. Robust safeguards for KRRiT's independence and expertise (as discussed earlier), should also be warranted in this context, to shield the funding allocation process from political interferences. We urge the Polish authorities, in the context of the implementation of the EMFA, to ensure that the level of public funding of Polish PSMs is adjusted to the objective financial needs of PSM to fulfill their remit, as assessed by an independent body - KRRiT.) .

EBU recommendations:

We invite the Polish authorities to ensure the adequacy of PSM funding. The process should ideally:

- ***involve an independent body such as KRRiT;***
- ***ensure strict separation of the determination of the PSM's remit from the political process; and***
- ***rely on objective cost evaluations.***

4. Limitations on commercial revenues: bridging the funding gap

We understand the willingness of the Polish authorities to limit the exposure to commercial revenues. The reliance on advertising revenue can in certain instances influence content and lead to commercial bias.

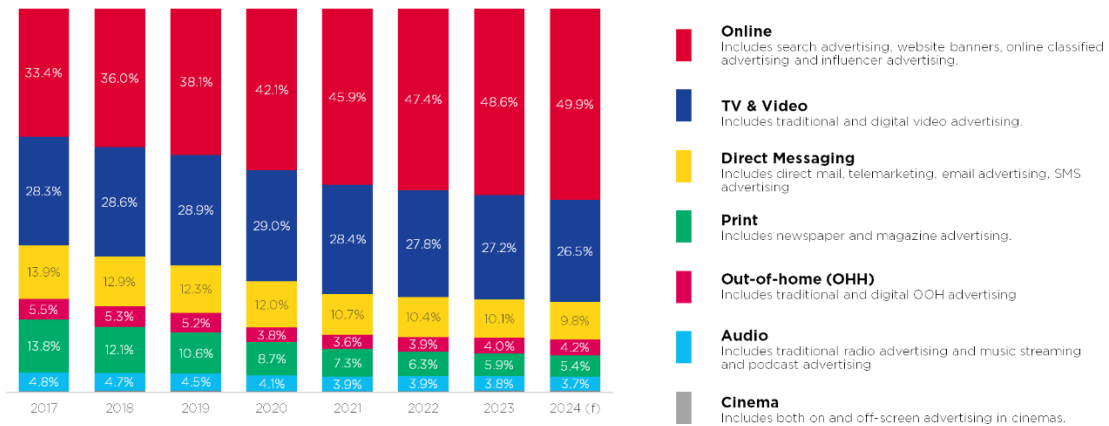
We understand that TVP has already limited advertising possibilities, as it is forbidden to interrupt its programmes (e.g., films, series, studio programmes etc.) with advertising and consequently is unable to fully use its advertising time. Such limitations are not common/obvious even in countries where PSM are subject to stricter advertising time limits. For instance, in Croatia, there is a limited number of advertising breaks allowed (only 1 advertising break within a movie, only 50 seconds advertising block before PT News report). In Iceland, breaks are only allowed in broadcasts of minimum 60 minutes length and sports programmes. Hence, even where restrictions exist, they allow generally more advertising slots than Polish PSMs are entitled to.

Moreover, TVP and PR's share of commercial funding have already sharply declined over the past five years. Advertising revenues specifically accounted in 2023 only for 16% of PSM combined revenues (18 points below the figure achieved in 2018).

Besides, we observe a well-established trend for online ad growth in Europe, taking shares from traditional advertising, including TV& video. From the forecast data we have, going beyond 2024, it is expected that this trend will continue, with online advertising reaching 56% of the European ad spend market in 2029, against TV&Video continuing to contract at 23%, and Audio just at 3%. Accordingly, TVP and PR advertising revenues keep diminishing in the

long term, even if unlimited. Any limits imposed on TVP advertising could thus be amplified (and the impact of any such limits would be challenging to quantify currently).

Advertising Spend by type - Europe
% in EUR, 2017-2023 actual / 2024 forecast



Source: EBU based on Statista Market Insights

A reduction of commercial communications by half would naturally heavily impact the Polish broadcaster. When commercial revenue is reduced, PSMs may struggle to maintain the quality and quantity of their programming without additional funding (in short to fulfil their remit) (see section 2 above).

Hence, any cuts would mechanically lead to a reduction in the scope of the remit (e.g., the closure of certain regional offices). This could hurt Polish PSMs' programming on many accounts (e.g., impact regional programming windows/channels (currently 16)). In short, a reduction in advertising airtime could only be contemplated in case of increase of Polish PSMs' public funding. Conversely, if public income cannot be increased above its current level (0.09% GDP), any commercial revenues limitations would impact TVP and PR's ability to fulfil their remit the near future.

EBU recommendations:

We invite the Polish authorities to the extent possible to reach the EU average level of funding. If public funding is increased, this could allow a reduction in supplementary commercial revenues (i.e., advertising) for instance. Conversely, if public income cannot be increased above its current level (0.09% GDP), any restrictions on commercial revenues would affect the ability of TVP and PR to fulfil their remit in the near future.

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