



National Broadcasting
Council

POSITION
of the National Broadcasting Council of
18 December 2024

In connection with the adoption on 18 December 2024 by the Council of Ministers of a regulation on the list of protected entities and their competent control bodies in force as of 1 January 2025 to 31 December 2027, extending the list of these entities to include companies holding licences to broadcast programmes within the meaning of the provisions of the Broadcasting Act of 29 December 1992, i.e. *Telewizja Polsat* and *TVN*, disregarding the constitutional and statutory role of the National Broadcasting Council as the only constitutional body of state control and protection of the law that stands for the protection of freedom of speech, the right to information and the public interest in radio and television —the National Broadcasting Council:

indicates that:

1. The National Broadcasting Council, pursuant to Articles 213-215 of the Polish Constitution and the Broadcasting Act of 29 December 1992, is a constitutional body independent of the Council of Ministers and government administration bodies, responsible for state control and protection of the law, exclusively competent for matters of radio and television, and upholding freedom of expression, the right to information and the public interest in radio and television;
2. The National Broadcasting Council was not consulted at any stage or even informed about the planned procedure for supervising private media by the Council of Ministers, or other than those resulting from the Broadcasting Act.

3. Based on Article 6(2)(1) of the Broadcasting Act of 29 December 1992, which reads: 'the tasks of the National Council include, in particular: 'to draw up, in agreement with the Prime Minister, the directions of the State policy in respect of radio and television broadcasting' , it can be concluded that such actions of the Prime Minister and members of the Council of Ministers in the field of media market control in the Republic of Poland constitute another attempt to usurp the competences of the National Broadcasting Council, independent of the government administration, as well as may constitute a prelude to the government administration exerting influence on the content of the programme of 'private' broadcasters dependent on it;
4. The above makes illegal, regardless of the requirements of such a regulation set out in Article 4(2) of the Act of 24 July 2024 on the control of certain investments, any changes to the regulation of the Council of Ministers on the list of entities subject to protection and their respective supervisory bodies in the scope relating to companies holding licences to broadcast programmes. It is incompatible with legal provisions of a higher rank than the regulation - both with constitutional and statutory provisions, and therefore these actions are unlawful, ineffective, and likely to cause harm to private and public interests. They may also result in criminal liability for some individuals for their implementation, or compensation for the State Treasury for damage caused by unlawful acts or omissions in the exercise of public authority.

JUSTIFICATION

In order to fulfil constitutional obligations, the Broadcasting Act (hereinafter referred to as the 'u.r.t.') granted the National Broadcasting Council a number of exclusive competences and legal instruments for their implementation and execution. At the same time, it comprehensively defined the legal rules and standards applicable in the field of radio and television, including, among others requirements to be met by entities broadcasting radio and television programmes in the Republic of Poland. Among these regulations, the following should be highlighted in particular:

- Article 33(1) of the u.r.t., according to which:

'The transmission of radio and television programme services other than those of public radio and television broadcasters shall require a licence';

- Article 35(2)(1) of the u.r.t., according to which:

'The equity stake held by foreign persons in the company, or the stake held by foreign persons in the founding capital of a limited liability company or share capital of a joint-stock company or, in the case of a simple joint-stock company, in the total number of shares in that company, shall not exceed 49%';

- Article 38(2)(1) of the u.r.t., according to which:

‘the transmission of the programme service poses a hazard to the interests of the national culture, state security and defence or if it transgresses the standards of public decency’;

- Article 40a of the u.r.t., according to which:

‘1. Purchase or acquisition by a foreign person of shares or interest, or acquisition of rights in shares or interest in a company holding a broadcasting licence to transmit a programme service shall require a consent of the Chairman of the National Council; the provisions of Article 33 paragraph 3, Article 35 paragraph 2, Article 36 paragraph 2 and Article 38, shall apply thereto as appropriate.

2. The actions referred to in paragraph 1, performed by an entity controlled by a foreign person shall be deemed performed by the controlling entity, as defined by the Code of Commercial Companies and Partnerships.

3. The Chairman of the National Council shall grant and withdraw the consent referred to in paragraph 1 on the basis of a resolution of the National Council.

4. The actions, referred to in paragraph 1, performed without the consent shall be null and void’;

The current legal regulations (of constitutional and statutory rank) have thus built a tight legal system in which only a media service provider that meets certain requirements, including those relating to ownership and management structure, and that holds a licence for broadcasting programmes, can broadcast radio and television programmes in Poland. If the broadcasting of these programmes poses a threat to the interests of national culture, security and defence of the state, the licence may be revoked and the broadcaster deprived of the possibility to broadcast. In this way, the Broadcasting Act safeguards Polish state interests in the field of radio and television telecommunications, making their sole guardian the body – the National Broadcasting Council—which, on the basis of the Constitution of the Republic of Poland, was appointed for this purpose.

For these reasons, the announcement of the inclusion of *‘TVN and Polsat TV stations’* in the *‘list of strategic companies’* and the processing of the draft regulation of the Council of Ministers in the announced form without any prior consultation or agreement on this matter with the National Broadcasting Council constitutes another attempt to take over the competences of the National Broadcasting Council by the Council of Ministers or its individual members, without legal basis, and any amendment to the regulation based on Article 4(2) of the Act of 24 July 2015 on the control of certain investments in the above-mentioned scope:

- will cause this regulation to be incompatible in this respect with the Polish Constitution and statutory regulations, including the Broadcasting Act;

- violates Article 7 of the Polish Constitution, which establishes the so-called principle of the rule of law according to which *public authorities act on the basis of and within the limits of the law*;

- may be excessive, because it goes beyond the limits already imposed by the provisions of the Broadcasting Act, by interference with the right of ownership for which there is no legal justification.

As has been demonstrated, the current legal system protects the interests of the Polish state, and for the broadcasting of radio and television programmes, in addition to the ownership structure, it is essential to meet the requirements of the law for holding and maintaining a broadcasting licence. The competent body to examine these requirements exclusively is the National Broadcasting Council.

Notwithstanding the above, a critical assessment of the actions of the Council of Ministers and the Prime Minister, especially those taken without a legal basis, if a situation that does not allow for delay in action makes it necessary to amend the regulation, even without the possibility of prior consultation of this issue with the National Broadcasting Council, it is the National Broadcasting Council, based on the Constitution of the Republic of Poland and the provisions of the Broadcasting Act, that is exclusively competent to exercise control as the controlling body of such an entity and, in the event that the Council of Ministers adopts regulation in the announced wording — it should be included in it as the supervisory body of these companies.

The National Broadcasting Council emphasises that the simultaneous liquidation by government administrative bodies of public radio and television stations, which have been on the list of enterprises of strategic importance for the Polish State for years, is completely contrary to information security and therefore to the strategic interests of the state.

The actions of the Prime Minister are an attempt to take over further competences of the National Broadcasting Council.

Maciej Świrski - Chairman of the National Broadcasting Council

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