
The financial stability of public service broadcasting in Poland is threatened by the current form of funding of the public service remit. The current arrangements contravene EU rules and legislation.

1. Poland has not defined the public service remit. The only attempt at regulating this issue is enshrined in the broadcasting law which contains a statement on what the law considers to be some of the most important elements of public service. However, this is neither a definition, nor a complete list. No other official act of government¹ attempts do define the public service remit. As a result, the Polish authorities and state owned broadcasters will find it impossible to prove that the subsidy to state owned media is proportional to the obligations imposed by the requirement to fulfill the public remit². In fact, it is widely believed that the scale of public aid to state owned broadcasters exceeds the amounts that would be needed in case of a typical, well-run undertaking³, and has resulted in significant distortions in the market.

2. Poland is providing aid to state owned broadcasters in clear violation of EU rules on state aid. Depending on whether aid to broadcasters is “old”⁴ or “new” the Commission follows different procedures. This distinction is important because the aim of the existing aid procedure is to amend the aid system for the future, whereas the new aid procedure investigates possible overcompensation in the past and may lead to an order to recover incompatible aid.

Poland’s license fee is “new” aid. Poland became an EU member in May 2004 and in June 2005 the Polish parliament passed a law⁵ on License Fees. The Polish authorities in contravention of EU rules didn’t notify the Commission of the pending aid. The illegality of introducing aid to state owned broadcasters in this form has been confirmed by Cezary Banasinski⁶ the head of the Office of Competition and Consumer Protection.

As a result of these two derelictions on the part of Polish authorities should the Commission choose to investigate aid to Polish state owned broadcasters it is highly likely to find that this aid contravenes EU rules and regulations. Furthermore, the Commission will then be entitled to require that state owned broadcasters return as yet unspecified but possibly large⁷ part of this aid to the budget thus imperiling the financial stability of state owned media.

¹ **Clear definition:** Commission’s 2001 Communication on applying state aid rules to public service broadcasting (IP/01/1429) stipulates that the government must “Set out in a formal act a clear remit for public service broadcasting.”

² **Proportionality:** Articles 86 & 87 of the EC Treaty as clarified in the so-called Amsterdam Protocol on public service broadcasting, and the Commission’s 2001 Communication on applying state aid rules to public service broadcasting (IP/01/1429) establish that proportionality of the public service obligations imposed on broadcasters to the level of reimbursement of the cost of meeting these obligations as one of the most important criteria in assessing the whether aid to broadcasters is exempt from standard EU restrictions on public aid.

³ **Altmark:** a ruling by the European Court of Justice in the “Altmark” case (Case C-280/00, 24 July 2003) provides that compensation for the costs incurred in the discharge of a public service obligation is exempt from the standard EU rules and restrictions regarding state aid if a number of conditions are cumulatively met: (i) clear public service obligations, (ii) pre-established parameters for determining the compensation, (iii) no overcompensation and, (iv) either selection of operator through tender procedure or determination of compensation with reference to costs of a typical, well-run undertaking.

⁴ **Existing aid** within meaning of Article 88 of the EC Treaty: State aid is considered “existing –aid” if: (a) aid measures have been put into effect before 10 December 1994; (b) aid measures are listed in the Appendix to Annex IV of the Accession Treaty; (c) aid measures which prior to the date of accession were assessed by the State aid monitoring authority of the new Member State and found to be compatible with the acquis, and to which the Commission did not raise an objection on the ground of serious doubts as to the compatibility of the measure with the common market.

⁵ **New law on aid to state owned broadcasters:** Law on License Fees of 21 April 2005, Official Gazette 2005, no. 85, item 728.

⁶ „Wpływy z abonamentu bez zgody Brukseli”, Rzeczpospolita 16-17 lipca 2005.

⁷ In a similar case in Denmark the EU ordered the repayment of over 84 million Euros.