

Independence: The Cornerstone of Public Service Media Governance

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Abstract.

Management and monitoring bodies of public service media (PSM) should reinforce and guarantee of independence of public audiovisual services. This paper aims at analyzing the governance bodies of the EU28 PSM, as well as checking whether they meet the criteria established by the EBU as regards transparency and independence. We used as research method the content analysis of the latest audiovisual acts in the European Union and the most recent reviews of their charters.

Keywords: Governance, Public service media. Regulation, European union

1. Introduction: Governance

Governance is a 20th century concept defined as the projection of the corporate government and governability with regard to stakeholders. Governance thus opposes to a nonhierarchical control model, characterized by a higher degree of cooperation and interaction [1].

Governance refers to as the intermediation tool between the independent players in connection with the media –stakeholders-, developing codes and ethical standards. Also, it represents a self-monitoring and accountability mechanism for strengthening PSM's legitimacy and reducing risks linked to their trust and reputation.

The concept of governance is essential to face the excessive politicization and governmentalization of PSM's management systems. It prevents PSM to be perceived as media managed by elites and political and union organizations. Governance can provide needed strategies based on transparency, interaction and interrelation between audience and media –social conversation-.

Governance is also important in a regulatory context. In 1994, the 4th European Ministerial Conference published the Resolution No.1 on media policy [2], according to which public broadcasting services are directly accountable to their audiences:

“...public service broadcasters should regularly publish information on their activities and develop procedures for allowing viewers and listeners to comment on the way in which they carry out their missions.”

In 2012, the Council of Europe issued the Declaration and Recommendation of the Committee of Ministers on Public Service Media Governance [3]. It suggests that a wellfunctioning management system is an essential factor for facing the challenges of public service media and Member States.

Nonetheless, European policies on governance are failing. Among the causes that prevent public service media from achieving greater transparency are: the bureaucratic complexity; the poor perception of governance at all levels; and the overlapping of state interests [4]. Management should go beyond expenditure control, quality administration and HR attention. These elements are relevant but insufficient [5].

1.1. Governance and European Regulation

The EU Council of Ministers released in 1996 the Recommendation No. (96) 10 on the guarantee of the independence of public service broadcasting [6]. It establishes that public corporations have the obligation to operate with editorial independence and institutional autonomy, especially in areas such as: programming; content production and creation; recruitment; purchasing, selling, and using goods and services; managing and preparing budgets; negotiating; and the representation of these organizations in legal proceedings. According to the same text, the respective PSM's board of directors should be the main responsible for the day-to-day activity of public organizations. Also, their members should be free from political or any other interferences. They are thus obliged to attend only the interests of the organization in the performance of their duties. This means that they could not –directly or indirectly- perform any function, receive payments, and to take advantage of communication companies and organizations that may lead to a clash of interests. The Recommendation states that public broadcasting services may not,

“receive any mandate or take instructions from any person or body whatsoever other than the bodies or individuals responsible for the supervision of the public service broadcasting organization in question, subject to exceptional cases provided for by law.”

The independence of public service media has two key elements: independence of origin and performance. A certain body has independence of origin when its members are elected on the basis of their skills and without state interference. With regard to the second element, a body has independence in its performance when its activities can not be changed and paralyzed by any state power [7].

The European Parliament resolution of 21 May 2013 on the standard settings for media freedom across the EU [8], calls upon Member States and the European Union to make sure that there are legally binding procedures to elect media managers, supervisory boards, and monitoring bodies. And these mechanisms are based on transparency, expertise, professionalism, integrity and independence.

Also, the resolution requires consensus on the representation of politicians and social players, legal protection and continuity. That would prevent public broadcasting services from using partisan criteria, based on the will of political powers.

However, the concept of independence is quite uncertain when it comes to broadcasting [9], as governments have never relinquished their potential power, starting with frequency allocations and public funding. Wolfgang Schulz, Kristina Irion and Peggy Valcke edited in 2013 the book *The Independence of the Media and its Regulatory Agencies* [10]. It explores the relationship between media governance and the independence of European regulatory authorities. The authors conclude that, depending on the social, economic, and legal context, the independence of the media may be flourished or dissolved. The Council of Europe demands a clear separation between managing and supervising activities. Management boards are in charge of financial resources and the designation of high-level positions. Monitoring is exercised by supervisory bodies, usually regulated by the State and composed by broadcasting representatives and social groups, including unions, industry, sport, science, cultural organizations, the Church, and universities.

2. Method

The aim of this paper is to analyze the governing bodies of the EU28 public service media and to test whether they respect or not the value of independence set by the European Broadcasting Union. This allow us to assess whether or not the 28 corporations are meeting the standards as laid down in the EBU criteria.

The research method is the content analysis of the latest audiovisual legislation and reviews of charters, the documents governing the operation of these corporations for a 10-year period in most of the cases. As regards management boards, a detailed list of their main features will be shown, paying special attention to selection processes, professional criteria and gender equality.

Also, an analysis of supervisory boards will be carried out, particularly with regard to selection processes of governing bodies, pluralism, and the involvement of civil society.

3. Results

Governance refers to the framework of standards and practices that set out the rules on how an organization is managed: how is taking decisions, how stakeholders are listened, and how the organization is being accountable to those groups. When it comes to public broadcasting services, governance is linked to the agreements based on legislation and on governing bodies –executive and supervisors-. The modern view also includes the code of behavior with audiences, authorities, economic players and civil society.

The basic requirements of PSM governance in Europe consist in strengthening the democratic debate, guaranteeing the freedom of expression and pluralism, defending social cohesion and contributing to cultural diversity. A good governance should help to meet organizational and corporate objectives.

In Germany, the ZDF Charter (2015) notes that the Council of Television, composed by 70 members –men occupying two-thirds-, issues guidelines for programming and develops surveillance tasks based on the *Interstate Treaty*. Its main role is to approve budgets, perform public value tests –Drei-Stufen-Test-, and participate in projects. This organism chooses its president every four years and among its members –secret ballot-. Also, it designates the DG every five years.

The Management Board, composed by 14 members (12 men and 2 women in 2016), is responsible for supervising the activity of the DG and appoint leading positions of each channel, the Chief Editor and the Executive Director. Also, the Board handles commercial activities via subsidiaries and launches proposals to modify statutes. The members of the Board are elected in the same way that the Council of Television. Decision are adopted by simple majority of all its members, and DG are allowed to attend meetings.

In March 2014, the German Constitutional Court established that the number of representatives of the State –including members of the government, PM and politicians in the Management Board could not exceed a third of the total. The same resolution notes that the representation of civil society should be relevant and requires the public broadcaster to guarantee a minimum of transparency. Also, parliamentary representatives of the supervisory board are elected using a system of proportional voting.

The Management Board of the Austrian ORF is composed by 35 members, appointed as follows: six by Parliament; nine by governments and regions; nine by the Federal Government; six by the Audience Council; and five by the Works

Council. All of them are required to have professional skills on management and media markets. This body is responsible for managing, appointing the DG for a 5-year-period, and approving medium and long-term plans, among others.

The Austrian Audience Council is in charge of safeguarding the rights and interests of society. It is composed by 31 representatives of chambers of commerce, agriculture, labor and trade unions, professional colleagues, the Catholic and Protestant churches, and the Academy of Sciences. The ORF's bylaws include an equity plan for guaranteeing woman representation, but detailed figures are not available.

The Management Board of the Belgian RTBF is composed by 16 members proposed by the Courts -11 men and five women-, who are responsible for guaranteeing compliance with laws, the public service mission, the management contract, and the financial stability of the company. The work of the board is complemented by the steering committee, composed by nine members, seven of them are men (2016).

The Board of the VRT has between 12 and 15 members –nine men and five women in 2016-, appointed every five years by the Government of Flanders according to the parliamentary representation. Members of the Supervisory Board are elected by qualified majority to guarantee the appointment of politically-independent people. Nonetheless, this protection is limited when government parties reach the required sum at Parliament. The Executive Board of the Croatian HRT is comprised by five members –four men and one woman in 2016-, who are elected by Parliament, including the DG, for a five-year period. The DG is responsible for making decisions, designing strategies and ensuring compliance with regulation. Also, it appoints the Supervisory Board –five members, four of them are elected by Parliament and one of them by the workforce-.

In Denmark, the DR has a Management Board composed by 11 members –six men and five women in 2016-, elected for a four-year period. They are appointed by the Ministry of Culture (3), Parliament (6), and the workforce (2).

The Slovak RTVS has two management bodies: The Board of Directors and the DG, according to the statutes (2011). The Board has nine members –six men and three women in 2016- and proposes the candidates of the Supervisory Board, an internal body that depends on the public broadcaster.

In Slovenia, the governing bodies of the RTV are the Management Board and the Supervisory Board. The first one is composed by 29 members, who are in charge of managing and developing proposals of the DG in terms of programming, economy and strategy for a four-year period. The selection process is made as follows: a member is proposed by the Hungarian community, another one by the Italians, and

other by the Slovenia Academy of Arts and Science; two people by the president of the Republic on the motion of religious communities; three members by the employees of the RTV; five of them by the National Assembly on the motion of political parties; and 16 members by audience, universities, associations and groups of arts, culture, journalism and science.

The Supervisory Board is an internal body of RTV, has 11 members and is responsible for monitoring and assessing economic transactions -amending budgets and setting prices-. The National Assembly elect five members, the government four, and the workforce two. The mandate covers a four-year period.

In Spain, RTVE has three governing bodies: The Management Board, the Advisory Council and the News Council. The Parliament, the audiovisual authority and the Court of Audit take care of the external monitoring.

The Management Board has nine high-skilled and experienced members –six men and three women in 2016-. These people are elected by the Spanish Parliament for a six-year and non-renewable period. The Congress also appoints the president of RTVE, the only member with full-time responsibility. In 2006, an enhanced majority of two-thirds was required for the appointment; however, since 2012 an absolute majority is allowed in the second round.

These bodies are presumed to have high-skills and expertise for the position, highly educated or recognized competence in management, direction, supervision or advice for at least five years. Also, they should have merits on communication. Among the incompatibilities, they could not have direct or indirect interests in audiovisual companies or media-related organizations.

The Advisory Council is the participatory board for society in RTVE. It has 15 members elected as follows: three people by the Economic and Social Council; two by the Council of Consumers and Users; one by the Ministry of Foreign Affairs; other by the Spanish Youth Council; one by the Woman Institute; one by bodies representing people with disabilities; one by the General Council of Migration; one by the Academy of TV Arts and Science; one by the Academy of Film Arts; one by the University Coordination Board; one by bodies representing advertisers; and one by national journalists' associations.

The Finnish YLE has two governing bodies: The Management Board and the Steering Committee. The first one is composed by 21 members -14 men and 7 women in 2016- representing science, arts, education, business, economy and social groups, and the Finnish and Swedish languages. The Steering Committee has between five and eight members –five men and three women in 2016-, who are in charge of choosing the DG and members of Senior Management, as well as planning the budget.

As regards supervision, in Finland, the United Kingdom and Germany, it depends on the Management Board of the public broadcaster, without having an independent authority. Nonetheless, there are specialized bodies, as the legal supervisory body, the Audiovisual Regulatory Authority. France Télévisions is managed by the Management Board, which is composed by 15 members for a term of office of five years. It is composed by the president, two members elected by the Commissions of Cultural Affairs of the National Assembly and the Senate; five representatives appointed by the government; five independent people designated by the Regulatory Council for Broadcasting; and two by staff of FT. The work of the Management Board is complemented with four general directorates and nine transversal directorates.

In 2007, FT became the first broadcaster to create a Foundation to support and collaborate with the Management Board in the supervision through multiannual action plans for five years. The Regulatory Council for Broadcasting (CSA, Conseil Supérieur de l'Audiovisuel) is an independent body created in 1989 with nine members: three of them are appointed by the President of the Government, three by the National Assembly and three by the Senate.

The Greek ERT has a Management Board composed by seven members: five are elected by the government and two by direct universal suffrage of the ERT's workforce. The mandate is for five years and is renewable only once. The Supervisory Board is external, independent and responsible for producing annual reports on ERT's performance.

According to the latest regulation (2010), the Management Board of the Hungarian MTV is elected by Parliament, with a two-third majority and a nine-year period. In 2013, the government proposed a bill, at the request of the EU, for the president of the National Authority of Communications to be elected directly by the President of the Republic, on the motion of the Prime Minister. The professional requirements are also tightened: from three to ten years of experience linked to the media market. The re-election of the president is forbidden.

The governance of RTE emanates from the Management Board, composed by 12 members –equal number of women and men in 2016-. Six of them are elected by the president of the government; four are proposed by the Ministry of Communications; one is the former DG; and the last one is a RTE employee. The corporation has an Audience Council composed by 15 members elected by the Management Board on the motion of representatives from various sectors. It is responsible for defending the public interest. The Broadcasting Act of 2009 created the Irish Broadcasting Authority, an independent supervisory body of nine members, five of them elected by the government and four by a parliamentary committee.

The Management Board of the Italian RAI reduced in 2015 the number of members from nine to seven. Nonetheless, in June 2016 members are still nine –two women and seven men-. Four of them are elected by Parliament; two of them by the Council of Ministers; and one by the RAI staff. Also, it provides for the creation of a chief executive, who will be responsible for approving contracts of up to 10 million euros and appoint the senior management.

The Italian public broadcaster does not have an external and independent supervisory body. However, there is parliamentary scrutiny via the Supervisory Commission of the RAI, which is composed by 20 deputies and 20 senators designated by the presidents of both chambers.

In Latvia, the public broadcaster is monitored by the National Council of Electronic Media, responsible for ensuring compliance with the normative. The organization is composed by five members –two women and three men in 2016- elected by Parliament on the motion of media-related, culture, science, and educational institutions. Members are required to hold a university degree and have at least five years of academic and/or professional experience.

The Latvian TV and Radio Commission is the decision-making body of the LRT. It has 12 members –nine men and three women in 2016- for a six-year period. Four of them are elected by the president of the republic; four by the Parliament; one by the committees of education, science, culture and development of the information society; another one by the opposition; one by the artists' association; one by the journalists' union; and the last one by the Bishops' Conference. Members of the Management Board should have higher education studies and at least five-year experience in audiovisual policies, production or dissemination of public information or academic texts. The term of office for members is limited to four years, and may be renewed once or even twice. The Chair shall be held by the oldest member.

The Management Board of the Dutch NPO has five members –three women and two men in 2016- and is in charge of the design of broadcasting formats, the coordination of programs, and the promotion of media cooperation. The Management Board of the Polish TVP has 15 members -10 men and five women in 2016-, appointed by the National Audiovisual Council. Ten members are elected on the motion of parliamentary groups and the remaining five are chosen by experts in culture and the media for a four-year period.

In Portugal, the General Assembly has the mission of electing and dismissing representatives of the Bureau of the Assembly and the Management Board. It also discusses on statutes, compensations and accounts. The Management Board has three members, appointed by the Independent General Council with immovable nature.

The public prosecutor is elected by the General Assembly and acts as a civil society watchdog, reviewing accounts and requesting an annual audit for public income. The governance is complemented by an Independent Council General. It has six members – four men and two women in 2016- elected by the government (six) and the opinion council every six years.

The 8th Royal Charter of the British BBC expired in December 2016. The new document (2017-2027) introduces structural changes. The internal government of the BBC will transform the governing body into a unified management in order for half of the executive to be appointed by the public broadcaster. Also, the BBC will no longer be autonomous, as the Ofcom extends its powers of investigation and application of sanctions.

The Board has now 14 members, and nine of them are elected by the BBC's appointments commission-. The government will protect the procedure for the election of the president and the remaining four, who will be representatives of Scotland, Wales, Northern Ireland and England. The Trust acts as a Management Board, a sovereign body concerning the implementation of the provisions of the Royal Charter or any other mandate. The body is in charge of safeguarding the public service and is composed by 12 members –seven men and five women in 2016- for a period not exceeding five years. They are appointed by the Queen on the motion of the government, including representatives of England, Scotland, Wales and Northern Ireland.

The Executive Board has the duty to launch BBC services and operating plans according to the priorities set by the Trust. This board is composed by 14 members – nine men and five women in 2016-, being eight of them non-executive. The Council delegates functions and decision-making processes to the corresponding commissions, individual members and the remaining staff. The president is designated by the Trust.

The British monitoring system is mixed and combines the work of internal bodies – the Trust-, in charge of ensure compliance with veracity and impartiality; and external control –the Ofcom-, which acts as competition regulator. The BBC has also Audience Councils –one by region-, which is responsible for assessing BBC's performance, recommending and commenting on decision-making processes, and identifying new audience trends.

The Management Board of the Czech CT has 15 members -14 men and one women in 2016- elected by the Congress of Deputies for a six-year period. In Sweden, the Management Board of the SVT has 10 members –six women and four men in 2016-, responsible for making decisions concerning the activity and programming of the broadcaster. There is also an independent and external body –the Broadcasting

Commission-, which has the duty to supervise the SVT's performance and ensure compliance with the law.

4. Conclusion

Findings show that Management Boards of European public service media have between three and 35 members –Portugal and Austria, respectively-, which indicates that there are various interpretations on their function and role.

The Parliament is in charge of the election procedure in the German ZDF; the Belgian RTBF and VRT; the Cypriot CyBC; the Croatian HRT; the Spanish RTVE; the Finnish YLE; the French FT; the Dutch NPO; the Portuguese RTP; the English BBC; and the Swedish SVT. This model should be a guarantee of independence, as they are mechanisms to avoid control by majorities that may pervert pluralism.

In Austria, apart from the election by Parliament, there is also participation of the Federal Government, the Governments of Regions, the Audience Council and the Works Council. Bulgaria, Slovenia and Lithuania also rely on the university, the Church, and other social organism. In Denmark and Greece, apart from Parliament, the decisions are also taken by the workforce.

Public broadcasters from Bulgaria, Cyprus, Latvia, Malta and Romania do not provide information on their governing bodies in their corporate websites, which is a sign of lack of transparency to their stakeholders. The Resolution of 21 May 2013 on the standards settings for media freedom across the EU notes that all Member States should seek consensus on the criteria to appoint PSM's management boards. This decision is in line with the principles of independence, integrity, experience, and professionalism.

In this regard, it urges Member States to establish guarantees to ensure independence of management and supervisory boards from political influences, parliamentary majorities and any other civil group.

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