

ENDGAME? CONTRACTS, AUDITS, AND THE FUTURE OF PUBLIC SERVICE BROADCASTING

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Abstract

Public service broadcasting (PSB) in its traditional form is the product of a long gone era. Social, technological, ideological and cultural change has altered the entire context within which public broadcasting operates. Also media policy has evolved, moving beyond its "public service" phase to a new paradigm, devoted primarily to economic goals. With these changes, attitudes to PSB are changing, too. It is increasingly treated as an exception to the "normal" market-based rules governing broadcasting, indeed an anomaly. In this paper we will seek to ascertain the effects of these changed attitudes, especially in terms of efforts to develop a precise definition of public broadcasting, and of evolution from "autonomy" to a "controlled public service" model of PSB. This involves a multitude of accountability systems, designed to ensure that PSB remains true to its remit and performs the service it was created to deliver. Defining public service broadcasting is notoriously difficult, all the more so that at least 9 models appear in European debates. Also developing accountability systems for PSB is far from easy because of the many contradictory views of the "product" that PSB is expected to "deliver." The question of auditing is part of a much wider debate on what public broadcasting needs to do to become more relevant to society today and how it needs to safeguard its own future. The main problem, however, is that imposition of "box-ticking" accountability systems based on outdated concepts on an institution in the midst of redefining itself could stop its modernization and thwart its ability to find a new identity in a much-changed context.

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A paternal system is how Williams (1968, 117-118) defined public service broadcasting (PSB), whose duty it is to protect and guide and to develop the majority in ways thought desirable by the minority. By contrast, Syvertsen (1999, 6-7) notes that a current definition of “public service” implies a concept of the public as individual consumers of the media, whereby the prime purpose is to satisfy the interests and preferences of individual consumers rather than the needs of the collective, the citizenry.

These widely different views of public service broadcasting are indicative of fundamental and multidimensional change over the last few decades that has created an entirely new context for its operation. In this paper we will seek to ascertain the nature of this change and its effect, both on public (including European) policy vis-à-vis the public media, and public broadcasters themselves, as they seek to respond to the changing media landscape and policy context. An important element of this process is the introduction or enhancement of an accountability system, designed to put to rest accusations that the performance of public broadcasters falls short of what is expected.

The main question here is whether this process does, or does not, lead to providing the answer as to how PSB can reinvent itself, and retain legitimacy and relevance in the new circumstances. We will seek to answer this question by drawing on what evidence is available of developments at the EU and national levels, and of the public broadcasters’ own efforts to respond to new challenges. We will conclude by pointing out that change of media policy objectives in some cases leads to much more serious results, including policy measures which seem to threaten the very existence of public service broadcasting itself.

The present paper cannot lead to any final conclusion. It is to serve, rather, to illuminate the current stage of the on-going debate about public service broadcasting and to offer elements of an analytical framework – relating the macro-structural context to directions of media policy pursued in Europe – which is needed to understand it.

Change Affecting Public Service Broadcasting

According to one view of this process of change (Digital Strategy Group 2002), it encompasses the following dimensions:

- Technology changes: the “analogue-to-digital” and “digital-to-software” (or IT) revolutions;
- Market environment changes: globalisation (or internationalisation) of media interests; growth of media companies (both geographically and by extending operations to more and more media, while also producing programme content for multiple delivery means); development by rights-owners in the areas of recorded music, sports, or films of new digital outlets with themselves, so that this programme content may not be available for broadcasters; international media corporations (whose interests range across media and technologies) will be able to act as gatekeepers and control complete media chains, from programme talent and rights, to the viewer and listener’s equipment at home, cutting public media out of these chains;
- Consumer behaviour changes: individualisation of the media experience from the consumer side is fuelled by the technological possibilities for providing more personalised services;

- Regulatory changes include the legal consequences of the change of delivery opportunities from scarcity to plenty. There are many more opportunities for broadcasting and media delivery, and thus new regulatory frameworks are being developed to cope with this. The place and influence of the public service broadcasters in the media landscape is changing. National media regulation is becoming less meaningful as the media market becomes more international. In addition, at least in some countries, there is some decline in public acceptance of collective financing for public services, or at least the perception of the need for it.

We may complement this view of change with Figure 1, portraying the evolution of television in terms of the arrival of successive “generations” of broadcasters. It illustrates some of the elements of change listed above.

Figure 1: Challenges to PSB as Electronic Communication Evolves

| | 1 st Generation Broadcasters ^a | 2 nd Generation Broadcasters ^b | 3 rd Generation Broadcasters ^c | Non-linear, on-demand communication, “pull technology” |
|------------------------------|--|---|--|---|
| Funding | Public Advertising | Advertising Subscription | Subscription Advertising | Video-On-Demand, Pay-per-view, micro-payments, commission on transactions, etc. |
| Output | General | General (but more entertainment) Premium Pay-TV | Thematic | No, or few “flow channels,” most content (except for live news and live coverage of events) available on demand |
| Licence Conditions | Strong | Moderate | Weak | Unknown at this stage |
| Programme Expenditure | Mainly originated | Mainly originated, but a lot acquired | Mainly acquired | Unknown at this stage |
| Challenge to PSB | None, PSB monopoly or domination | Loss of monopoly on audience, retention of monopoly on “PSB genres” | Loss of monopoly on most “PSB genres” | Channels, schedules disappear; PSB may have gradually to evolve into PSCP: public service content provision |

^a Mainly public;

^b Mainly commercial;

^c Mainly new digital thematic channels.

Adapted from EBU 1998.

Nevertheless, we believe that change is more fundamental than indicated above. Public service broadcasting was, after all, a product of what McQuail (2002) has called the “public service” phase of media policy development in Western European countries which reached its apex in the 1970s. It was dedicated to the achievement of cultural and social goals (mainly in broadcasting) and to the provision of “communication welfare,” also by ensuring the social responsibility of the print media and limiting the power of monopoly owners of the media. The ultimate goal was protection of the public interest and enhancement of democracy.

Today, a “new paradigm” of media policy is in the ascendance in Western European countries, oriented more to economic goals than to social and political welfare and concentrating primarily on such issues as continuation of commercial competition and technological innovation, openness and transparency of ownership and control, maximum access for all and choice for consumers. This phase is marked by deregulation and removal of as many constraints to the operation of the media market as possible. Policy-makers and regulators accept the de facto commoditization and commercialization of mass media in the hope that this will set the stage for the media’s expected contribution to economic and technological growth (Ostergaard 1998). Accordingly, current developments in television and audiovisual services in Europe are spurred on almost exclusively by commercial motives and private investment. Moreover, the principle of non-commercialism has been effectively transformed into one particular minority value. The old anti-commercial paradigm has almost disappeared (McQuail 1998). The very notion of the public interest in mass communication is in question (Brants et al 1998). If Europe is to move forward in its economic and technological development, it is argued, the process must be driven by private entrepreneurs. Commercialism is the engine of change and privatization is seen by some as best serving the public interest.

This new paradigm results from ideological evolution, involving the decline of the social-democratic and collectivistic social order in its traditional form, based i.a. on widespread acceptance of the role of public and publicly financed institutions created to provide a wide range of social services and benefits. PSB is precisely this sort of institution. This ideological turning away from the very rationale for the existence of public service broadcasting may be additionally reinforced by cultural change involved in the onset of post-modernism and its “playful celebration of chaos” (Shawver n.d.).

If this correctly describes the prevailing mood today, it is perhaps no wonder that earnest public service broadcasting content is spurned by audiences in favour of the “playful celebration” offered by entertainment, whether on public or commercial channels. Having lost its monopoly on the audience and (at least in big media markets) on most “PSB genres,” public service broadcasters are suffering from an identity crisis. In other quarters, a belief may be beginning to grow that the process of change described above has made PSB superfluous altogether.

“Public service television is under attack throughout the world” – so, back in 1991, wrote a UK economic consulting firm, National Economic Research Associates (NERA 1991, 1). “Public service broadcasters,” it continued, “will face increasing pressure to justify their use of public funds to provide their current range of programming. Where they also rely on advertising revenue, they will find competitive pressures increasing.” NERA believed that an “imaginative response” to this “attack” was necessary, consisting of three important steps:

- Public service broadcasters should formulate clear and precise statements of their programming objectives and obligations;
- Public service broadcasters should show a willingness for their performance to be measured and evaluated, and
- Public service broadcasters should put pressure on governments to introduce a more predictable, less discretionary process of agreeing funding levels.

More than a decade later, this “attack” is getting deadly serious. It is no longer just a question of justifying the use of public funds. It is a question of survival. Public service broadcasting is increasingly portrayed as an exception to the “nor-

mal” rules applying to broadcasting and audiovisual industries. As commercial media grow in power, they are able to affect government policy more and more. One of their objectives in this is certainly the marginalization of public service media as a market competitor (see Jakubowicz, forthcoming). Hence in part the European Union saga of debating the financing of public service broadcasting. Governments and regulators are under pressure to justify their policies vis-à-vis PSB. Public broadcasters are more and more required to justify their very existence. What may seem to hang in the balance is the future of the typically European dual system of broadcasting.

Different Visions of Public Service Broadcasting

The result of this situation is that a number of quite varied models of public service broadcasting appear in the European debate today. These are proposed by different actors and – depending on their approach to public service broadcasting – would result in defining its place on the media scene, and its future, in quite different ways. As can be seen from Figure 2, they differ mainly in terms of varying degrees of importance attached to the distinctiveness of PSB, its financing and its prospects for the future.

Figure 2: Models of Public Service Broadcasting in the European Debate

| PSB MODEL | DESCRIPTION |
|--|---|
| Selected models existing today | |
| Classical model | Typical PSB analogue broadcasters of today, trying to maintain distinctiveness on generalist channels while at the same time seeking to retain a sizable market share. |
| Semi-commercial model | PSB broadcasters who rely on advertising revenue to such an extent that it affects their programming policy, forcing them to compete for audiences with commercial broadcasters by means of very similar programming. |
| “Horses for courses” | Specialized public service broadcasters pursuing different aims (e.g. BBC and Channel 4; or France 2 and France 3). |
| Models proposed by enemies of PSB | |
| Attrition model | PSB broadcasters should not be allowed to adopt digital technology, develop new channels or services, or move into the Internet, as all of this should be reserved for commercial broadcasters. |
| Distributed public service | Public service programming can be separated from the organizations performing it today. It can be offered by any (commercial) broadcaster, commissioned (and probably financed) to do so by the regulator. |
| “Monastery” model | PSB as a “niche” broadcaster, a complementary service, making available content commercial broadcasters cannot broadcast profitably, and so posing no competitive threat to them. |
| Models proposed by supporters of PSB | |
| “Pure PSB” model and its future-oriented version “Pure PSB digital model” | PSB in its “pure” form, uncorrupted by commercialization. In this model, PSB broadcasters are able to launch new digital channels, but with strictly mission-oriented programming. The effect would not be much different from that of the application of the “monastery” model. |
| Full portfolio | Full gamut of universal and specialized broadcast, digital and on-line services, also of a commercial nature. In this model, PSB broadcasters are able to engage in commercial ventures in order to plough back funds into their core services. |
| Public service (PS) in the age of convergence | |
| Electronic programme guides with virtual channels | In the convergence/personalization scenario of future media development, when traditional flow channels have disappeared, PSB broadcasters would no longer be needed as programme packagers, but dedicated EPGs could direct viewers to “PS programming” available on all channels. |
| Public Service websites/portals | Websites or portals with “public service” content, ¹ potentially another form of public service-content delivery in the Internet age. Unlike the one above, it would retain a role for PS content providers as originators and producers of such content. |

The use of some of these models is illustrated by the EU debate on public service broadcasting (or, in fact, on how to apply competition law and State aid rules to PSB; see Jakubowicz 2003²). Following the 1997 Amsterdam Protocol on public service broadcasting, the European Commission issued a “discussion paper” by the Competition Directorate General (DG) IV “Application of Articles 90, paragraph 2, 92 and 93 of the EC Treaty in the broadcasting sector.” It sanctioned the “distributed public service model” (describing it as one of the options available to Member States in terms of providing for, and financing public service broadcasting: “public tenders open to all potential operators to provide the public service obligations; each Member State defines a set of public service obligations and calls for a public tender, open to all operators, in order to select the undertaking which will be in charge of the obligations; the best offer would be selected and the State would then reimburse the extra costs according to the contract”) and came down in favour of the “monastery model” by the way it described types of content obligations that could be financed from public funds (see Figure 3).

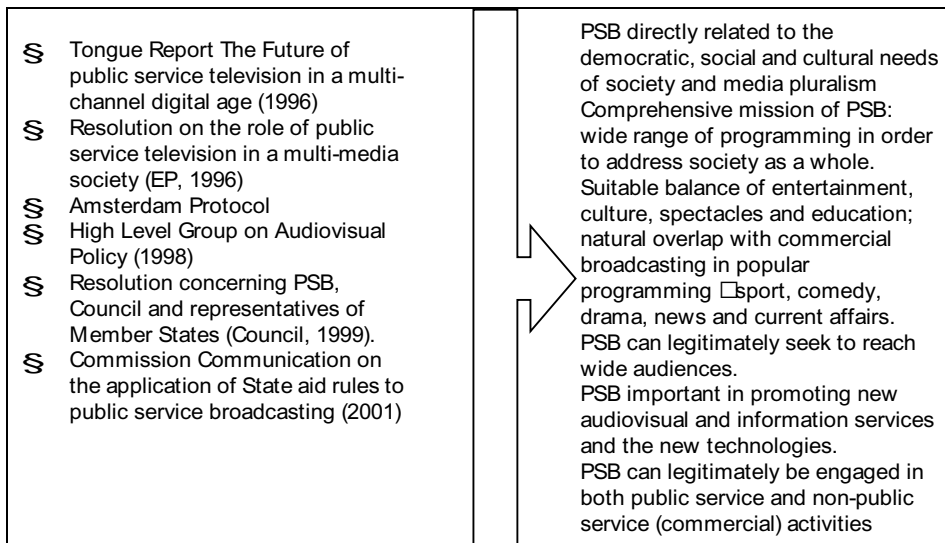
Figure 3: The PSB Remit According to DG Competition (1998)

| Type of obligations | Description |
|--|---|
| Obligations imposed on the public service broadcasters and not on other operators | (i) Specific infrastructure requirements (territorial coverage, technological standards); (ii) Stricter advertising rules (compared to commercial broadcasters); (iii) Content obligations *. |
| Content obligations | |
| Additional obligations on provision of services guaranteed to citizens only by public broadcasters | Commission would accept as a legitimate part of the public service remit such programme obligations as: <ul style="list-style-type: none"> ▪ Information programming; ▪ Educational programming; ▪ Cultural programming; ▪ Programmes with regional scope and/or directed to social and ethnic minorities; ▪ Fiction, serials, movies – maybe, if PSB broadcasters have special obligations regarding choice of these genres to broadcast [this probably meant: “Bergman – YES; Rambo – NO”] |

* No specific public service exemptions from State aid rules were seen as admissible for costs of “non-accountable obligations,” such as programme diversity, general quality requirements, etc.

This proposed approach could, in fact, have been counterproductive: after all, if public funds could only be used to finance production or purchase of a very narrow range of programme genres, and if PSBs did compete on the market, as encouraged to do so by the “discussion paper,” then they would have had to have considerable commercial revenue to finance production and purchase of all other types of programming, leading to far-reaching commercialization of PSB and reduction of the advertising revenue of commercial broadcasting - clearly the opposite of what was ostensibly intended. In any case, the proposed approach was roundly criticised and rejected by Member States, and the “discussion paper” was withdrawn. After a few more years of debate, the European Commission changed its tack and in its “Communication on the application of State Aid rules to public service broadcasting” (European Commission 2001) endorsed quite a different view of public service broadcasting, illustrated in Figure 4.

Figure 4: The European Union: the PSB Remit (2001)



Adoption of this approach signals an important victory for the “classical” model of public service broadcasting and a setback for the “attrition,” “monastery” and “distributed public service” models of PSB. Given that the Commission “Communication on the application of State aid rules to public service broadcasting” accepts “non-public service” activities by public service broadcasters (as long as they are not financed from public funds), this approach comes closest to the “full portfolio” model, supported also by the EBU Digital Strategy Group. In its effort to update and modernize the concept of public service broadcasting, the Group came out in favour of PSB being extended over the full gamut of broadcast, digital and on-line services, some of them of a commercial nature (with due regard for competition and fair-trading issues, and separation between public funded activities and those carried out on a commercial basis).

This approach is far from universally shared, however. Commercial broadcasters are stepping up their pressure on national and EU institutions in order to win support – in the interest of “fair competition” – for a mixture of the “monastery” and “attrition” models of public service broadcasting. There is also a growing number of complaints to the European Commission concerning the financing of public broadcasting (see below). Also European states seem to be heading in different directions as far as PSB is concerned.

Dilemmas and Forms of PSB Accountability

Whatever the state of the debate on the definition of public service broadcasting, many countries are introducing or enhancing accountability systems designed to ensure proper PSB performance and to counter criticism that this is not the case. The confusion concerning the meaning of “public service broadcasting” is certainly making this difficult, as different models of PSB assume a different definition of the performance that PSB is expected to deliver.

Developing accountability systems for public service broadcasting requires that an answer be formulated to such questions as “accounting for what, to whom, in what way, within what frame of accountability/responsibility.” Having discussed these dilemmas at some length elsewhere (see Jakubowicz, 2003), I will concentrate here on some of the practical forms these accountability systems take in various cases.

Only a few years ago, the EBU Legal Department (1998) wrote in its position paper “The Public Service Broadcasting Remit: Today and Tomorrow”:

Public service programming obligations cannot possibly be reduced to a clearly defined result that anyone could deliver. They are not quantifiable. [...] The entire range of a public broadcasting organization’s programme output constitutes public broadcasting, even if a cahier des charges or other such regulation may expressly highlight certain elements as an absolute must in the public broadcaster’s overall programming.

Today, faced with growing pressure, public service broadcasters view things somewhat differently:

The public service mission is quantifiable in general terms, but not to the last letter [...] Nevertheless, a key attribute of public service broadcasting is “accountability.” We need, as far as possible, to specify the public broadcasting mission and the extent to which we are fulfilling the obligations [...] Public broadcasters need to seek mechanisms for accountability, in a continuous search for feedback and appraisal of what they do. New technology, such as return channels and Internet, may make this process even more effective and convenient (Digital Strategy Group 2002, passim).

And indeed, in response to pressure from governments, and from critics, public broadcasters are developing forms of communicating their objectives and pledges to the public in an attempt to enhance their legitimacy this way. The BBC has developed a wide variety of some forms of self-regulation (see Born in this issue). For the first time, the BBC is to be brought under the control of an outside regulator (Ofcom), with the BBC Board of Governors left to oversee implementation of the qualitative aspects of the PSB commitments. An interesting case of such externally oriented self-regulation is the 2001-2003 Corporate Plan (SBS n.d.) adopted by Australia’s Special Broadcasting Service. In addition to defining SBS’s identity and values, the plan specifies objectives in four key performance areas (programmes and audiences; “Relationships with our Community”; “SBS’s People”; and business activities), and in addition defines performance indicators by which the corporation is prepared to be judged.

However, no performance indicators have been formulated for the following objectives: “Develop programming strategies to reach those groups identified above as low users of SBS services, while at the same time maintaining existing audiences”; “Produce and broadcast more programming that originates in Australia and which reflects Australian experiences”; “Foster an environment where creativity is valued and risk-taking is accepted” and “Maintain SBS’s position as the premier provider of diverse, informative and entertaining programming in different languages and from different cultures.” These are archetypical PSB objectives, yet SBS has not specified how we will know that they have been achieved. In turn, in areas of crucial importance for winning legitimacy and supporting the case for the

existence of public broadcasting, SBS was unable to go beyond purely formal “performance indicators.”

And so, if the objective is “Being open and responsive - collaborating and communicating in many ways with the broader community as well as with indigenous and non-English speaking communities,” the “performance indicators” are defined as follows: “(a) Maintenance of current levels of contact with the many different communities and stakeholders. (b) Opening of new channels of communication, particularly through use of the Internet.”

In the case of the following objective, “Ensure continued government, audience and stakeholder recognition of the value and importance of SBS as a public broadcaster,” the “performance indicator” is “Amount of positive feedback received.” “Performance indicators” of this nature may suffice when a public broadcaster’s position is not under challenge. In other circumstances, they may provoke the authorities, especially if their policy of supporting PSB is challenged, to step in and introduce a much more precise, detailed and intrusive accountability system.

PSB Accountability: the EU to the Rescue?

The European Commission’s “Communication on the Application of State Aid Rules to Public Service Broadcasting” (2001) has been greeted with sighs of relief that finally an EU-sanctioned PSB accountability system would be introduced. In fact, the “Communication” will introduce a bureaucratically designed system, serving an objective which is alien to the goals of the institution to which it is applied. It will make life difficult for broadcasters but will not assist them in the pursuit of their organizational, creative or programming goals. This is made amply evident by the fact that broadcasting is defined within the EU as a service of general economic interest and approached primarily in terms of internal market competition law. The Commission “Communication on Services of General Interest” (European Commission 2000a) and the amended “Transparency Directive” (European Commission 2000b) have clarified the issue of financing such service (including broadcasting) and the need for separate accounting in such services for public funds (which could be spent only on performing the public service mission, so as not to distort competition) and other, commercial revenue.

The Commission has announced that it would intervene in cases where a distortion of competition arising from State aid to PSB could not be justified with the need to perform the public service. However, while repeatedly making the case for “clear and detailed” definition of the PSB remit, the 2001 “Communication” also recognizes that a “wide” definition, entrusting a given broadcaster with the task of providing balanced and varied programming in accordance with the remit, may be considered legitimate and that public service duties may be either quantitative or qualitative or both. It also states that “Member States may consider the whole programming of the broadcasters as covered by the public service remit” (European Commission 2001a, 10). Further, it accepts that PSB broadcasters may be engaged in both public service and non-public service activities.

To leave no doubt at all as to its approach the Commission has stated that “no objections will be raised as to the nature of the programmes included in the public remit.” The definition of the public service remit, however, could not extend to activities that could not be reasonably considered to meet in the wording of the

Protocol the “democratic, social and cultural needs of each society” (European Commission 2001b). Elsewhere, it added that “as regards the definition of the public service in the broadcasting sector, the role of the Commission is limited to checking for manifest error” (European Commission 2001a, 9).

Thus, the EU approach is part of the problem, and not of the solution in terms of developing an accountability system for public service broadcasting. The goal is to protect competition and the operation of the internal market and the fact that this concerns PSB is merely coincidental. Each member state may define and organize the public service remit differently, and create a different accountability system for its public broadcasters.

Licences and Contracts for PSB Broadcasters

All in all, the willingness on the part of public broadcasters to accept the need for accountability in practice, and not just in theory, and what may appear in some cases to be a frantic search for ways of displaying responsibility and accountability as a way of forestalling greater public control and supervision over public service broadcasting, seems to be coming too late.

Under growing pressure to justify their policies vis-à-vis PSB, governments and regulators do so in keeping with the spirit of the times: “The core of the contract can remain. The state offers certain privileges to some channels, and in return each channel provides something of worth beyond that which the market alone would provide. The BBC is the most privileged ... In return the nation has on the whole been well-served” (Jowell 2002; see also Thomas 1999).

Obviously, any “contract” must clearly define terms, including benefits to be derived from PSB, as well as of the procedure and criteria of assessment that the expected result has actually been delivered. This is expected by the European Union; the Commission “Communication” makes heavy play of the need for a clear and precise definition of the obligations imposed upon the public service broadcaster. But it is also true that if the PSB regulatory framework is to form an exception to the general market- and competition-oriented media regulation, there must be a clearly defined conception of such broadcasting (Born & Prosser 2001).

According to Svendsen (2002), the following trends can be noted in current debates on public service broadcasting in European countries:

- There are initiatives to define PSB obligations more precisely, often by contracts, and follow up with accountability reports to Parliament and/or a regulatory agency. This is the situation in at least 13 countries (Finland, Norway, Poland, Turkey, Denmark, Luxemburg, Britain, Latvia, Netherlands, Portugal, Switzerland and Italy). Considerations about a Public Service contract or the like are topical both in countries with long traditions for PSB and rather late introduction of private competition (like Norway, Denmark, Netherlands, Switzerland), and in some of the newer PSB countries (like Poland or Latvia);
- Basic discussions on PSB itself and how the concept is to be understood are reported from countries where PSB is still quite new (Bulgaria, Bosnia, Hungary, Lithuania, Czech Republic, Slovakia) or where the political climate seems heavily against the continuation of PSB as institutions (Israel and Italy);
- Common to both debates for EU members and candidate countries is the demand from the Commission that the PSB remit must be clearly defined by

act or statute, the public finance be proportionate to the obligations, and control be exercised by a body independent from the broadcaster itself.

Figure 5 shows that evaluation and appraisal of PSB performance is conducted in many more cases by bodies other than those governing PSB organizations, i.e. by a regulatory authority (RA) and/or a government department, with the matter sometimes ultimately to be brought before Parliament for a debate. In many countries, Parliament has a special role to play with a yearly debate on the report directly from the PSB or from RA.

Figure 5: Assessment of PSB Performance

| Self regulation by PSB | Regulatory Authority (not Ministry) | | Ministry (plus perhaps Regulatory Authority) |
|------------------------|-------------------------------------|---------------|--|
| Denmark | Belgium (Fl)* | Macedonia | Austria |
| Finland* | Bosnia* | Malta | Belgium (Fr)* |
| Germany* | Bulgaria | Netherlands | France |
| Ireland | Czech* | Poland* | Italy* |
| Britain (BBC) | Greece* | Romania* | Norway |
| Cyprus | Hungary* | Slovakia | Portugal |
| | Israel* | Spain (Cat)* | Spain (Nat) |
| | Latvia | Sweden | Switzerland |
| | Lithuania | Turkey | |
| | Luxemburg* | Britain (ITC) | |

* Annual debate on PSB performance in Parliament (often as part of a debate on the annual report of the regulatory agency).

Source: Svendsen 2002.

Greater scrutiny of public broadcasting is only part of the picture, however. European countries seem to be moving in two complementary directions:

- from an “autonomy model” to a “controlled service model” of PSB regulation;
- and consequently from self-regulation by public service broadcasters to a greater role of external bodies in evaluating PSB performance within a system which ties financing to well-defined performance commitments and strategic as well as business plans.

According to Svendsen (2002), the two models of PSB regulation differ considerably. In terms of the key value for regulation, the former highlights freedom, the latter accountability. The regulatory instrument in the first case is a general act; in the second this is complemented by a service contract. Mode of control consists, respectively, in self-regulation or control of performance. In the first case, no authority may have the competence to sanction the PSB broadcaster, while in the second this is usually given to an independent regulatory authority. As for finance, in the first case this is usually the licence fee (+ advertising), in the second this may take the form of tax money or earmarked licence fee (+ advertising).

Svendsen warns against the assumption that a Controlled Service contract will necessarily secure “more” or “better” PSB, because the scope and quality of PSB depend not only on the regulatory model, but also on the form and volume of finance, competition from private stations, also from other countries, constitutional and political conditions, etc. Nevertheless, there is a growing tendency to go beyond hitherto existing forms of PSB regulation and lay down the obligations of public service broadcasters not only in legislation, but also in other documents, as shown in Figure 6.

Figure 6: Documents Specifying the Obligations of PSB Broadcasters

| Act only | Act + order, statutes or permission | Act + contract | Not in Act |
|----------------|-------------------------------------|----------------|-------------------------------------|
| Austria | Bulgaria | Belgium (Fl) | Luxembourg (contract) |
| Bosnia | Cyprus | Belgium (Fr) | Spain (Nat ^{III}) (order) |
| Czech Republic | Denmark | France | Norway (statute, permission) |
| Finland | Israel | Italy | Sweden (permission) |
| Germany | Lithuania | Latvia | Britain (BBC) (contract) |
| Greece | Netherlands | Portugal | |
| Hungary | Switzerland | Spain (Cat.) | |
| Ireland * | Britain (ITC) | | |
| Macedonia | | | |
| Malta | | | |
| Poland * | | | |
| Romania | | | |
| Slovakia | | | |
| Turkey | | | |

* This will change when new accountability systems now under discussion are implemented (see below).

Source: Svendsen 2002.

The documents mentioned in this table take the form either of outright licences to broadcast, e.g. in Canada,³ South Africa, or the Netherlands (see Bardoel in this issue), or as “programming licence” (soon to be introduced in Poland), or indeed of contracts or authorizations of some sort (e.g. France, the Flemish Community of Belgium). One can say that the more recent legislation concerning these “contracts” is, the more attention is paid to the financial aspects of the fulfilment of programming obligations and generally of the operation of the PSB broadcaster.

For example, while French public broadcasters have traditionally been bound by *cahiers des charges*, defining their programme obligations, amendments to the Freedom of Communication Act No. 86-1067 of 30 September 1986 adopted in 2000 also provided for “agreements in respect of objectives and means” (*contrats d’objectifs et de moyens*) to be concluded by the government for 3 to 5 years with each PSB company. Their purpose, as laid down in Article 53 of the Act, is to determine

for each company or public corporation: (i) the priorities of its development, including the undertakings made concerning diversity and innovation in creation; (ii) the estimated cost of its activities for each of the years in question and the quantity and quality indicators of performance and results applied; (iii) the amount of public funds to be allocated to it, by identifying as a priority those devoted to the development of the programme budgets; (iv) the amount of the income expected from own revenues, in particular, those from trademark advertising and sponsoring; (v) the economic prospects for the services that give rise to payment of a price.

A financial accountability system has also been created as concerns observance of the agreement.

To illustrate how intrusive this system is, let us note that these agreements are drawn up in consultation with the boards of directors of each PSB company, which then oversee their implementation. The chairman of France Télévision submits a report each year to the commissions with responsibility for cultural affairs of the

Assemblée nationale and the Sénat concerning the performance of the company's agreement in respect of objectives and means. Each year, at the time of the vote on the Finance Act, the Parliament, based on a report by a member of each of the finance commissions of the Assemblée nationale and Sénat with the powers of a special rapporteur, authorises the collection of a tax named licence for right to use based on television receivers and approves the allocation of public funds allocated to the licence application account between the companies France Télévision, Radio France, Radio France Internationale, France Overseas Network, the company Arte France and the Institut national de l'audiovisuel. Additionally, a government report on the situation and management of public sector institutions must be attached to the finance bill.

Another case in point is the five-year "management contract" concluded between the Flemish Community of Belgium and the Flemish Radio and Television Company (VRT). Under Article 15 of the "Decree for the Transformation of the BRTN into a Public Sector Public Limited Company" (1997), the contract specifies "special terms and conditions for the granting of financial means for the performance of the duties of a public service charged with fulfilling the task of public broadcaster" and regulates (i) measurable objectives with regard to the selection of radio and television programmes, arising from the VRT's commission as public broadcaster and the proposed strategy, which, amongst other things, concerns either overall reach or viewing and listening figures; (ii) the objectives concerning personnel management and financial policy, especially the generalised introduction of cost accounting for programmes; (iii) the calculation of the financial package required for the performance of the duties of a public service fulfilling the task of public broadcaster and the manner in which it will be paid; (iv) the publishing before first of June of the following year of an annual report evaluating the implementation of the management contract during the previous year and also of other documents which have to be presented annually, whether or not for approval by the Flemish government; (v) the measures to be taken should a party not fulfil the obligations it has entered into under the terms of the management contract.

In addition to specifying all these matters in considerable detail, the 2002-2006 management contract also devotes specific attention to innovative media projects, including development of a multimedia e-service platform in Flanders. It said it wanted the VRT to ensure that reliable electronic services were available to everyone. Under the terms of the new management contract, e-VRT will develop a software service platform (ASP), set up a MPEG⁴ research programme for the Flemish audiovisual sector and launch a Digital Home Platform trial project. The Flemish government has already allocated additional resources to finance the Digital Home Platform and the MPEG research project.

We might also mention here the RTE "Application for Licence Fee Increase to the Minister for Communications, Marine and Natural Resources" (2002) in Ireland, which amounts to a full programme of activity and business plan. Its acceptance, and adoption of the proposed Public Service Broadcasting Charter, will supplement broadcasting legislation and constitute something coming close to a "service contract." In addition, the Application contains a commitment to develop a new accountability system, involving very detailed reporting on programme and financial performance, as well as the establishment of the Audience Council, with

effect from mid 2003, and the publication, on an annual basis, of a Statement of Commitments, promises to the audience that can be measured at year-end.

The Polish proposed four-year programme licences for public service broadcasters are to lay down detailed, precise and verifiable programme obligations. The broadcasting regulator already has extensive knowledge of the finances of public broadcasters, as it decides each year on the division of licence-fee revenue between them, based on their financial reports and business plans.

In this context, also the interesting Estonian case should be mentioned, since it shows that post-Communist countries are not immune to “put-PSB-in-its-place” syndrome which is so obvious in some Western European countries. Shein and Lauristin (2003) state quite clearly that it was “as the result of successful lobby and pressure by private broadcasting companies and the will of political parties” that the Estonian Parliament decided to amend the Broadcasting Act, requiring public television and radio (in the latter case as of 2005) to stop broadcasting advertising, and to be financed from the state budget instead (the State was to recoup this expenditure in whole or in part by imposing a levy on commercial broadcasters).

The Amendment also stated that the further financing via subsidies from the state budget was to be based on a development plan of public broadcasting for three years (first plan for 2003-2005). The Broadcasting Board was entitled to submit this plan for parliament’s approval. The development plan has to reveal the nature and aims of the cultural, social and democratic public service and to reflect the structure and amount of programming according to the goals set up by the Broadcasting Act. Based on these foundations the plan had to include the needs for financing and investments for the whole three-year period and for each respective year in particular. The first development plan of Estonian public broadcasting was submitted to the parliament on March 1, 2002 and passed parliament in June.

The above examples show that PSB broadcasters are coming under very close scrutiny, with financing predicated on prior acceptance of the public service broadcaster’s programme and other plans by a regulator or a government department (let us note that in France, despite the existence of a broadcasting regulator, the Conseil Supérieur d’Audiovisuel, both *cahiers des charges* and *contrats d’objectifs et de moyens* are developed by the Prime Minister’s office). At best, therefore, the controlled service contracts constitute a limitation of PSB broadcasters’ autonomy. In a worst-case scenario, they may signify outright government control.

Conclusion

As we have seen, relations between public broadcasters and the State are placed, in more and more cases, on a foundation of multi-year development plans and contracts for financing earmarked for clearly specified goals. In itself, this would not appear to be a bad thing, as it may offer PSB organizations some degree of financial security and general stability.

However, these new regulatory and accountability systems may also potentially weaken or undermine public service broadcasters. First of all, they lose their programme and editorial, to say nothing of financial, autonomy and become completely dependent on the wish of government and parliament. Secondly, in some cases the governments and parliaments do not seem to be bound by the contracts

they have arrived at. In Estonia, the development plan, approved by the Parliament assumed that Estonian public television would receive 410 million EEKs, regarded as sufficient to produce high-quality public service programming and for technological modernisation. However, the government offered only 270 million EEKs, which is about 35 percent less than was accepted in the development plan. "The situation remained the same," Shein and Lauristin (2003) point out: "the Estonian State (Government) has ignored the development needs of public broadcasters for years [and] the coalition in Parliament listens [to] and is protecting the Government opinion."

That is not the only case, however. Also the right-wing French government refused to be bound by the contract signed by the previous left-wing government with French Television. It refused to provide over • 100 mln. for development of new digital services, envisaged in the contract, and in general changed plans for French Television's involvement in digital terrestrial television, leaving the organization in disarray and without a valid contract respected by both sides.

All this shows that PSB, left at the mercy of governments, cannot be certain of anything. Moreover, if governments do bend to pressure from commercial broadcasters and impose "monastery-model" remits on PSB organizations, to be assessed on the basis of a "box-ticking" approach, that would seriously damage prospects for PSB to modernize and find a new identity in a much-changed context. Just at the time, when public broadcasting needs to redefine its mission, it may be forced into a Procrustean bed of an ideologically-motivated concept of public service broadcasting that has the major virtue of not competing with commercial broadcasters, but does nothing to help public broadcasters adjust to new realities.

There are signs that precisely this may be beginning to happen. In May 2002 it was announced in Portugal that public television would be liquidated and replaced by a new organization with only one channel. In Spain, draft legislation is being prepared according to which the concept of public service broadcasting as such is to be weakened and eliminated. In the Netherlands, the government announced plans in 2003 to slash the public broadcasting budget by forty million euros in 2004, 20 million more in 2005, 10 million more in 2006, and 10 million more in 2007, resulting in an annual cutback of 80 mln. Euros in four years ("Spending Cuts Hit Hilversum" 2003). In Denmark, the liberal-conservative government wants to privatise TV2. In Italy, the Berlusconi government has prepared a draft law on the privatization of RAI.

The entire PSB accountability debate has, as we have seen, offered no real solution to the perennial problems plaguing public service broadcasting, or to the challenges and dilemmas arising out of the process of change that we described briefly at the beginning. Rather, it may perhaps be seen as signifying that the tide is turning against public service broadcasting. If this continues, PSB may increasingly be forced in various countries to adopt the "monastery model," as a niche broadcaster concentrating on culture, education and other content commercial broadcasters cannot broadcast profitably.

If public broadcasting can be presented as an exception today, what is to stop people from defining it as an anomaly tomorrow, and a useless throwback to a long-gone era the day after tomorrow?

With governments fully in control of PSB organizations, they can act on such views much more easily than in the past – by imposing accountability systems

which will stifle growth, adaptation and redefinition of the PSB identity and thus potentially turn public service broadcasting into a dinosaur of the analogue past, giving such views the force of self-fulfilling prophecies.

Notes:

1. In its 2000 Report on Media Pluralism in the Digital Environment, the Council of Europe Group of Specialists on Media Pluralism suggested the mandatory inclusion of certain culturally relevant "public service" sites in major portal sites. These could be provided by public service broadcasters.
2. The present paper draws to a limited extent on some ideas developed in that earlier article.
3. For Broadcasting Decisions 2000-1, 2 adopted by the Canadian Radio-Television and Telecommunications Commission to renew the licences of CBC English- and French-language television and radio networks, see <http://www.crtc.gc.ca/eng/public/2000/8045/Decisions01.htm>.
4. The Moving Picture Experts Group (MPEG) is a working group in charge of the development of standards for coded representation of digital audio and video. Established in 1988, the group has produced MPEG-1, the standard on which such products as Video CD and MP3 are based, MPEG-2, the standard on which such products as Digital Television set top boxes and DVD are based, MPEG-4, the standard for multimedia for the fixed and mobile web and MPEG-7, the standard for description and search of audio and visual content. Work on the new standard MPEG-21 "Multimedia Framework" started in June 2000.

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