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NOTE

on the

Draft Act on Radio Television Slovenia

London
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1. INTRODUCTION

This Note comments on the draft Act on Radio Television Slovenia (the draft Act) as published by the Slovenian government in April 2005.¹ We understand that the draft has already been through a first parliamentary discussion but that further debate will take place in the middle of May. This Note aims to provide comments and recommendations to feed into these debates. It focuses on the proposed changes to the management structure of RTV Slovenia, the proposal for the new third channel, the lack of proper minority representation and the lack of a mechanism to take audience complaints and suggestions into account.²

By way of preliminary comment, we are very concerned at reports that there has been virtually no consultation on this legislation with RTV Slovenia or with the general public. Considering the importance of RTV Slovenia, acknowledged in the draft Act's Explanatory Memorandum, and the magnitude of the proposed changes, there should have been several months' consultation involving RTV Slovenia and the civil society actors directly involved in its management, as well as other civil society groups and, more generally, the wider public. Ideally, the parliamentary process currently underway should be delayed in order to allow for wide societal input and subsequent changes to the draft Act.

With regard to the substance of the draft Act, we are concerned that the proposed changes to RTV Slovenia's management and governance will not enhance its independence or management's capacity to act decisively. We understand that one of the main reasons for the proposed regulatory change is that the current Council is perceived as overly political. However, the proposed change - to have civil society representatives on a new Programming Council appointed through a parliamentary vote - also carries with it a significant risk of politicisation. The new Supervisory Board will be even more political: 9 out of its 11 members would be political appointees, 4 of them government appointees. This will endanger the independence of the Board and of RTV Slovenia. Ideally, neither the Programming Council nor the Supervisory Board should have any political appointees. While we agree that the Programming Council should reflect Slovenia's cultural and social diversity, its members should be independent and serve on the basis of their substantive expertise. Members of the Supervisory Board should not serve any interest other than the general public.

We are also concerned at the idea of a new third channel that will be part-parliamentary and part-home shopping. Not only is this likely to confuse the public, it also sends out a very strange signal about democracy. While we appreciate that funding is required to run the parliamentary channel, there are other ways to obtain this - for example, from the licence fee or through an earmarked sum from

¹ We received a translated version of the draft Act, dated 18 April 2005, early in May 2005. Our comments are based on the translation, not the original, and it may be that certain nuances of the draft Act got lost in translation.

² Due to time constraints we have not yet conducted a full analysis of the draft Act.

the national budget. Production costs for a parliamentary channel are a lot lower than those for other channels and ‘milking’ airtime on a parliamentary channel for blatantly commercial activities seems very inappropriate. Notional parliamentary ‘down-time’ in evenings and weekends could be better used by broadcasting information programmes on the functioning of parliament or recorded sessions of parliamentary committees.

There are a number of other matters that need to be addressed as well. The draft Act should require RTV Slovenia to reflect Slovenia’s full cultural diversity and to serve actively the needs of all minorities. Although the Italian and Hungarian national minorities each have their own channel, other minorities are wholly neglected. The neglect of the Roma minority in particular is striking since international bodies such as the United Nations Committee on the Elimination of Racial Discrimination have repeatedly urged the Slovenian authorities to take steps better to protect their interests.³ We are also struck that there is no complaints mechanism or any other mechanism for audience feedback. Given the acknowledged lack of public confidence in the broadcaster, it would appear that there is a need for such mechanisms.

We elaborate on these and other concerns in our analysis of the draft Act, below.

2. ANALYSIS OF THE DRAFT ACT ON RTV SLOVENIA

2.1. Independence of Governing Bodies

According to the Explanatory Memorandum that accompanies the English translation of the draft Act, the prime motivation for the introduction of a new governance structure is the politicization of the ‘old’ RTV Council. Decisions of the RTV Council are often perceived as ‘political’ and there is criticism of the fact that a president of a political party was repeatedly elected onto the Council and even chosen as its Chairperson. The Council’s membership is criticised as being heavily weighed in favour of a number of a small number of civil society actors of a similar political leaning (they are described as ‘pre-democratic’), excluding hundreds of other groups.

The solution proposed in the draft Act is to reconstitute RTV Slovenia’s governing bodies, allocating programming and related responsibilities to a newly constituted Programming Council and establishing a new Supervisory Council which will have responsibilities in the areas of management and business operations. Under Article 17 of the draft Act, the new Programming Council will consist of 29 members: 16 civil society representatives appointed by Parliament; 5 persons representing the main political parties, also appointed by Parliament; 3 persons elected from RTV Slovenia staff; 2 representatives of religious communities, appointed by the President; 1 person appointed by the Slovene Academy of Arts and Sciences; and 1 person appointed by each of the Italian and Hungarian national communities. Members must have some knowledge, reputation or achievements in the fields of

³ See, for example, Concluding observations of the Committee on the Elimination of Racial Discrimination: Slovenia, 2 June 2003, CERD/C/62/CO/9.

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culture, education or another area of social life and may not be a member of a body within a political party, a member of the European Parliament, EU official or employee, an elected public official or a 'high state civil servant'. Further exclusions apply to persons connected with or employed by RTV Slovenia⁴ or rival media outfits, members of a regulatory body in the communications field and persons who are in a business relationship with RTV Slovenia. Council Members serve a four-year mandate. The Supervisory Board will consist of 11 members, 5 of whom are appointed by Parliament and who represent the 5 main political parties, 4 of whom are appointed by the government and 2 of whom are elected by RTV Slovenia employees.

In addition to the changes in the supervisory bodies, the draft Act proposes to reinforce the position of the Director General. According to the Explanatory Memorandum, under the existing arrangements the DG lacks the powers necessary to enable him to do his job. While the DG is formally responsible for a range of activities within RTV Slovenia, most decision-making powers relevant to the day-to-day management of the RTV Slovenia have been devolved to the directors of the RTV Slovenia's various radio and TV channels. Under this model, the Explanatory Memorandum reports that very poor business decisions have been made leading to the loss of several billions of Slovenian tolar (equivalent to several million Euros). The draft Act proposes to remedy this by concentrating more power in the person of the DG. Under Article 21, the DG will be appointed by the Programming Council on the basis of a public call for applications. Serving for four years, he or she will appoint a Director of radio and a Director of TV, who will also serve for four years and run RTV Slovenia's radio and television channels. Editors-in-chief are also appointed by the DG, on the proposal of the directors of radio or television, and will serve four-year terms; and the DG appoints other senior management positions. If the DG proposes to appoint an editor-in-chief who does not enjoy the support of RTV Slovenia's employees, they can refer the matter to the Programming Council for a decision.

Analysis

The independence of the regulatory bodies of a public service broadcaster is of paramount importance to their functioning. A public service broadcaster that is not independent from political or economic forces cannot properly serve the public interest. Acknowledging this, Recommendation R(96)10 of the Committee of Ministers of the Council of Europe states that the rules governing the status of these regulatory bodies should be such as to ensure their independence. The guiding principle for both internal management and external supervisory bodies is that they should not be at any risk of political or other undue interference.⁵ It lays down a number of minimum rules in this regard, differing slightly for the management bodies and for the general supervisory body. With regard to management bodies that oversee day-to-day operations, the Recommendation states:

⁴ With the exception of the three staff representatives.

⁵ Council of Europe Committee of Ministers Recommendation (1996)10 on the guarantee of the independence of public service broadcasting, adopted 11 September 1996, under II.2 and III.2.

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The rules governing the status of the boards of management of public service broadcasting organisations, especially their membership, should be defined in a manner which avoids placing the boards at risk of any political or other interference.

These rules should, in particular, stipulate that the members of boards of management or persons assuming such functions in an individual capacity:

- exercise their functions strictly in the interests of the public service broadcasting organisation which they represent and manage;
- may not, directly or indirectly, exercise functions, receive payment or hold interests in enterprises or other organisations in media or media-related sectors where this would lead to a conflict of interest with the management functions which they exercise in their public service broadcasting organisation;
- 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 organisation in question, subject to exceptional cases provided for by law.⁶

With regard to supervisory bodies, the Recommendation states:

The rules governing the status of the supervisory bodies of public service broadcasting organisations, especially their membership, should be defined in a way which avoids placing the bodies at risk of political or other interference.

These rules should, in particular, guarantee that the members of the supervisory bodies:

- are appointed in an open and pluralistic manner;
- represent collectively the interests of society in general;
- may not receive any mandate or take any instructions from any person or body other than the one which appointed them, subject to any contrary provisions prescribed by law in exceptional cases;
- may not be dismissed, suspended or replaced during their term of office by any person or body other than the one which appointed them, except where the supervisory body has duly certified that they are incapable of or have been prevented from exercising their functions;
- may not, directly or indirectly, exercise functions, receive payment or hold interests in enterprises or other organisations in media or media-related sectors where this would lead to a conflict of interest with their functions within the supervisory body.

Rules on the payment of members of the supervisory bodies of public service broadcasting organisations should be defined in a clear and open manner by the texts governing these bodies.⁷

Compared against these minimum rules and guidelines, the new governing structure proposed in the draft Act is deficient on several fronts. First, membership of both bodies is likely to be highly politicised: the majority of members of both bodies are

⁶ Note 5, at II.2.

⁷ Note 5, at III.2.

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appointed by a political body and there is no requirement that members should sit in their individual capacity. In the case of the Supervisory Board, 9 out of the 11 members are political appointees, and 4 of those are appointed directly by the government. This introduces a dangerous balance that is easily tipped in favour of the government. The Programming Council, while notionally more independent, still includes 5 overt political appointees and there are no guarantees to protect the independence of the 16 civil society representatives appointed by parliament. This is particularly concerning in a relatively young democracy where there is no established tradition of independence in public service broadcasting. We also note that there is very little detail on the procedure whereby civil society is supposed to nominate members. This can act as a serious constraint on the effectiveness of a civil society process.

Second, the draft Act fails to include several other measures that would enhance the independence of the governing bodies. For example, there is no explicit statement affirming the independence of the governing bodies or indeed of RTV Slovenia itself, which is constituted as a public institution, founded by the Republic of Slovenia. Also, there is no statement requiring that members of the supervisory board should not receive instructions from anyone in regard to their functioning, and no statement requiring members to serve in the public interest - not for the benefit of any third party or themselves. And finally, members of neither of the supervisory bodies are protected against early dismissal or external attempts to interfere with their independence. These are all serious oversights that weaken the independence of RTV Slovenia's governing bodies.

The changes to the position of the Director General are similarly concerning. Although not a political appointee - he or she will be appointed by the Programming Council on the basis of a public call for applications - the DG will be extremely powerful. We do not doubt that this achieves the stated aim of providing the DG with the powers necessary to enable him or her to do their job. We are, however, concerned that leading the programme work, appointing and managing the directors of radio and television, as well as editors-in-chief of programmes and all other senior management, represents undue concentration of power in the hands of one person.

Recommendations:

- There should be no political appointees on either the Supervisory Board or the Programming Council.
- The draft Act should enhance the independence of the Supervisory Board and Programming Council by including a specific statement of their independence in the Act and requiring that their members serve no interest other than that of the general public.
- The draft Act should protect members of the Supervisory Board and Programming Council against dismissal before the end of their term and limit the number of terms they may serve.
- The concentration of powers in the function of the Director General should be reconsidered.

2.2. New Parliamentary Channel

Article 3 of the draft Act establishes a parliamentary channel which will broadcast live sessions of parliament and its committees, as well as recordings. Article 15 provides that during weekends, parliamentary recesses and at night this channel may carry television sales or direct sales programmes insofar as these will not contradict the public service remit of RTV Slovenia. Any excess funds generated by these activities may be used to finance other programming. The Explanatory Memorandum explains that this way, the third channel will be “a regular source of revenues for other programs”. The Memorandum goes on to explain that it expects high viewing figures for the channel, implying a significant boost to income derived from it, pointing to recent parliamentary coverage by a commercial broadcaster which attracted a 40% audience share. Overall, the Explanatory Memorandum explains that the new channel will contribute significantly to the right of Slovenians to receive information on the activities of their elected representatives.

We are very concerned by this vision of the new channel which betrays a misunderstanding of the importance of parliamentary broadcasting. While it is undoubtedly true that there will be times when there are no live sessions of parliament to broadcast, this time can be put to better use by repeating important past sessions or by broadcasting general information programmes on the workings of parliament and its committees. Such broadcasts need not be expensive and can be easily financed from sources other than tele-shopping activities, such as the licence fee or an earmarked portion of the national budget. Setting up a channel which is part home-shopping, part-parliamentary will, we believe, send out a very strange signal to the public about the nature of democracy. We are also concerned at indications in the Explanatory Memorandum that this channel will generate significant excess revenue, suggesting that the new third channel may be seen as a ‘cash-cow’. We believe that this would contradict the public service remit of RTV Slovenia and undermine public trust in the new channel as well as in RTV Slovenia itself.

Recommendation:

- The new Parliamentary Channel should use notional ‘down-time’ to broadcast recordings of significant past parliamentary sessions or general information programmes regarding the workings of parliament.

2.3. Serving Minority Needs

The draft Act caters significantly for the needs of the Italian and Hungarian minority in Slovenia, providing each with their own radio and television channels and granting each the right to nominate a member of the Programming Council. Under Article 4(1), RTV Slovenia is furthermore under an obligation to “[ensure] the realisation of the constitutional rights of the Hungarian and Italian national communities in relation to radio and television public information supply”. By contrast, the needs of other minorities - and the Roma community in particular - are far less catered for. Article 4(1), detailing its general objectives, merely mentions that RTV Slovenia should provide authentic and impartial news programmes and offer complete information serving the needs of, amongst others

the Roma community; and that RTV Slovenia should “[support] the spreading of awareness of other cultures present in Slovenia and their representatives.”

We are concerned that this limited mandate fails fully to reflect Slovenia’s cultural diversity and that it fails to ensure access to the media for minorities other than the Italian and Hungarian national minorities. The Romany minority in Slovenia particularly suffers from discrimination and Slovenia has been urged by international bodies to take positive measures to combat intolerance.⁸ An important measure that Slovenia could take is by requiring its public service broadcaster to air programmes that will help combat intolerance of minorities. This is lacking from RTV Slovenia’s mandate envisaged under the draft Act.

Access to public service media for minority groups is important as well. The UN Sub-Commission on Prevention of Discrimination and Protection of Minorities has recommended that governments should ensure the right of minority groups “to have access on the basis of equality to State-owned or publicly controlled media.”⁹ As a State Party to the European Charter for Regional or Minority Languages,¹⁰ Slovenia is also under an obligation to ensure minority access to the media.¹¹ Again, while RTV Slovenia caters to the needs of the Italian and Hungarian national minorities by providing them with their own stations, the draft Act makes no provision for access by other minority groups. Depending on the existence of private or community stations that cater to the needs of specific minorities, strong consideration should be given to requiring RTV Slovenia to provide access for those groups.

Recommendations:

- RTV Slovenia should be required to provide programming that promotes cultural diversity and that helps combat intolerance.
- Consideration should be given to providing access to RTV Slovenia for minority groups other than the Italian and Hungarian national minorities.

2.4. Complaints Mechanism and Audience Input

It is clear from the Explanatory Memorandum that there has been significant loss of public confidence in RTV Slovenia. While the draft Act attempts to strengthen public accountability by reconstituting the governing bodies (which we comment on in Section 2.1 of this Note), it does not provide for any direct accountability to the public other than through an Annual Report drawn up by the Supervisory Board. The only other provision for audience input is in Article 16 of the draft Act, which

⁸ See, for example, Report of the Committee of Experts on the application of the European Charter for Regional and Minority Languages in Slovenia, 9 June 2004, ECRML (2004)3, under 2.2.2; see also the Concluding Observations of the United Nations Committee on the Elimination of Racial discrimination, note 3.

⁹ Report by the Special Rapporteur of the Sub-Commission, Asbjørn Eide, E/CN.4/Sub.2/1993/34 and Add.1-4.

¹⁰ CETS No. 148, signed 5 November 1992, entry into force 1 March 1998. Slovenia ratified on 4 October 2000.

¹¹ See, in particular, Article 11.

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requires the Programming Council to “discuss the comments and suggestions provided by the viewers and listeners of RTV Slovenia and [take] a stand in relation to them”.

We are concerned that this will not be sufficient to ensure public accountability of RTV Slovenia - even taking into account civil society representation on the Programming Council - or to restore public trust in the broadcaster. We recommend that other measures be implemented to ensure audience input. In particular, we would recommend that a complaints mechanism is established to allow members of the public formally to complain about RTV Slovenia broadcasts and that RTV Slovenia is required to undertake a form of audience research. As part of this, it could be required to hold regular meetings with audience groups in order to get general feedback on its programming.

Recommendation:

- The draft Act should provide for a complaints mechanism for members of the public as well as other formal ways to ensure that RTV Slovenia programming meets the needs of the public.