

Television across Europe:
regulation, policy and independence
Estonia

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List of Abbreviations

AEB	Association of Estonian Broadcasters
ER	Estonian Radio, <i>Eesti Raadio</i>
ETV	Estonian Television, <i>Eesti Televisioon</i>
PBK	Baltic Channel One, <i>Pervyi Baltiiski Kanal</i>

1. EXECUTIVE SUMMARY

The Estonian television sector has undergone fundamental changes since 1990. The former Soviet-controlled State television was transformed into a public service broadcaster, private broadcasters blossomed in 1993, and the Russian-speaking population were catered to primarily through Russian programmes rebroadcast through cable networks. However, liberalisation was followed by consolidation as private broadcasters made heavy losses, and private broadcasters came under the ownership of Scandinavian investors.

With 1.36 million inhabitants, Estonia is an extremely small market for television broadcasting. Revenues are further limited by the dominant position of the printed press in the advertising market. However, Estonians are keen watchers of television, while the two communities – the majority ethnic Estonians and the Russian-speaking minority – have radically different patterns of television consumption.

There are three national terrestrial broadcasters: the public service broadcaster Estonian Television (ETV), and two private broadcasters owned by Scandinavian investors. Although private broadcasters made heavy losses in the 1990s, they appear to have reached break-even point, especially since advertising on ETV ceased in 2002, in order to create more favourable conditions for private broadcasters. However, the State has failed to ensure stable and sufficient financing for the public broadcaster.

The Broadcasting Act defines three broadcasting regulators with different competencies: the Ministry of Culture, the Broadcasting Council and the State Communications Board. The Ministry of Culture has proposed the establishment of a single new, independent regulator for broadcasting, but there is no consensus among ministries over the wisdom of establishing the new regulator or its likely remit.

Broadcast licences are issued by the Ministry of Culture on the basis of open contests. A commission of representatives from a variety of institutions recommends a winner; the Minister makes the final decision, which has not always been the same. Television broadcasters must provide “universalist” coverage, satisfy quotas derived from EU requirements and fulfil the commitments they make in their licence application. The Media Division of the Ministry supervises fulfilment by private broadcasters of their obligations, and may impose penalties for violations, including revocation of the licence.

Estonian law both guarantees the independence of broadcasters from the State and prescribes political balance, and this does not appear to have been threatened in practice. The independence of ETV may be indirectly affected by restriction of its budget by politicians, the Estonian Journalists’ Union is weak as most active journalists are not members, and the editorial independence of private broadcasting stations from their owners is unregulated. However, good practice appears to have prevented interference by owners, although more research is needed in this area.

The public service broadcasting sector consists of Estonian Television (ETV) and Estonian Radio (ER), which were separated in 1990. The Government is currently planning to merge the two companies again to yield savings. In the Broadcasting Act, the main law regulating the broadcasting sector, the remit of public broadcasting is stated in very broad terms, and ten years after its adoption the Act does not present an up-to-date concept of public broadcasting. This gap has to some extent been covered by the “Development Plan for ETV and ER for 2003–2005”. However, many of its provisions cannot be implemented due to insufficient financing. The State subsidy that funds ETV’s activities is supposed by law to be based on three-year plans, but Parliament provides substantially less money than the plan envisages (30 per cent less in 2004). The shortfall and unpredictability of ETV funding prevents the broadcaster from fulfilling its remit optimally.

ETV is accountable to the Broadcasting Council, which enforces the provisions of the Broadcasting Act and its own written guidelines for accurate and balanced coverage. Since 1999 the Council has removed two Director Generals of ETV. The Council has initiated cases concerning violation of programming obligations only exceptionally. There is no clear system known to the general public for receiving or dealing with complaints either against ETV or private broadcasters.

ETV has largely succeeded in fulfilling its role as a public broadcaster. It remains Estonia’s biggest producer of original programmes in Estonian and Russian language, and is the main producer of news and political, educational, cultural, sports and children’s programming. Since it ceased selling advertising in 2002 – in order to create more favourable conditions for private broadcasters – it has been enabled to refrain from commercial temptations and its output has become more public service-oriented. Official policy recognises the wisdom of opening a second ETV channel to better serve the interests of non-Estonian speaking audiences and other groups, but this is unlikely to happen given current trends in funding.

The commercial broadcasting sector exhibits considerable vertical and horizontal concentration, especially through the extensive holdings of Norwegian Schibsted. The law currently does not provide for any measures to be taken against concentration that occurs *after* a broadcast licence has been allocated. The Government and regulators have failed to state a clear position regarding concentration, although there appears to be an informal presumption that concentration is inevitable in such a small market. The impact of media concentration has not yet been studied thoroughly. Private broadcasters’ programming consists mainly of entertainment.

The editorial independence of commercial broadcasting companies depends largely on good practice. The Broadcasting Act prohibits sponsorship for news and current affairs programmes. Ongoing research indicates that news programmes are influenced very little by private interests and news content maintains a high degree of independence from PR pressures and other external pressures. The Broadcasting Act also prohibits influence by sponsors on the content or scheduling of other programmes, but in practice such influence is common and visible. Both public and private television claim

to follow the Code of Ethics of the Estonian Press, and the public broadcaster is also governed by formal guidelines set by the Broadcasting Council.

There are only five general programme obligations for television broadcasters, two of which are derived from the EU “Television without Frontiers” (TWF) Directive. The so-called “Euro quotas” have drawn criticism from Estonian industry representatives for not taking into account the specific nature of small markets. In addition, the quotas as translated into Estonian law are in places more restrictive than the Directive itself.

The introduction of new media technologies to the TV sector is at a very early stage. The Government adopted a “Concept of Digital Television” in June 2004, while a strategy for broadband services was approved in April 2005. A test multiplex was launched in Tallinn in May 2004, and is expected to operate until 1 January 2007. The Concept includes a rough timetable for the transition to digital broadcasting, with the final switch over envisaged in 2015. However, the Concept provides insufficient incentives to broadcasters, and the development of digital television therefore remains uncertain.

2. CONTEXT

The Estonian television sector has undergone fundamental changes since 1990. After the end of the monopoly of Soviet-controlled State television, a public service broadcasting system was established, while the commercial television sector went through successive stages of liberalisation and consolidation. With 1.37 million inhabitants Estonia is an extremely small market, and the orientation of the Russian-speaking minority towards programmes produced in Russia effectively makes the market even smaller. There are three national terrestrial broadcasters – the public service broadcaster Estonian Television, and two private broadcasters owned by Scandinavian investors. While the financial situation of private broadcasters has stabilised, the government has failed to ensure sufficient and stable financing for the public broadcaster.

2.1 Background

From 1955 to 1990, television in Estonia formally served as a buttress for the Soviet regime, as the Communist Party defined it as an ideological institution. However, Estonian television also provided a degree of diversity and good journalism. It was often inspired by Finnish television, which could also be watched in Estonia. During the period of *Perestroika* (1986–1990), ETV became a local catalyst for the dismantling of the Soviet regime.

Since Estonia regained independence in 1991, the audiovisual sector has gone through fundamental changes. Even before independence, the Committee of Television and Radio of the Estonian Soviet Socialist Republic was replaced with the State

Broadcasting Company, controlled by the Government. In 1990, this was split into two parts: *Eesti Televisioon*, Estonian Television (ETV) and *Eesti Raadio*, Estonian Radio (ER). The two State broadcasters then embarked on the transition to becoming public service providers, a process formally completed with the passage of the Broadcasting Act in 1994.¹

In 1993 the retransmission by the Broadcasting Transmission Centre of television programmes produced in Russia ceased, the monopoly of ETV was abolished, and a liberal approach to broadcast licensing resulted in nine private broadcasters occupying the three networks which became vacant after ceasing Russian transmission. Most of the broadcasters were part-time programmers sharing the three networks. The advertising market grew rapidly.

The different quality and coverage of the transmission networks caused several “TV wars” for favourable frequencies between the strongest private broadcasting companies: Kanal 2, EVTV and Reklaamitelevisioon or RTV (the latter two later merged in 1996 to form TV 3).² Although private broadcasters were initially established by Estonian companies, in the mid-1990s the Estonian-owned broadcasters were either sold to foreign companies or went into bankruptcy.³ The size of the market dictated consolidation, with all private broadcasters making losses. By 1997 the number of private channels had dropped to three. Concentration of the market was given the official stamp of approval by amendments to the Broadcasting Act in 2002,⁴ which limited the number of national broadcast licences for private broadcasters to two.

In parallel with the expansion of terrestrial broadcasting, cable networks boomed as well, not least because of their ability to rebroadcast Russian-language programmes. Many of them then operated as pirate rebroadcasters of satellite programmes and illegal copies of American movies or films purchased from Russian companies. Persistent pressure from the USA and other film-producing countries, and from the Association of Estonian Broadcasters (AEB),⁵ led to the introduction of licensing and regulation of the cable sector, and piracy was largely eliminated by 2001. Managers of the larger cable companies claim that this form of piracy has returned, as small cable networks often rebroadcast satellite channels without any permit from the channel.⁶ Thus, STV – which

¹ Broadcasting Act, RT I 1994,42,680. RT (*Riigi Teataja*) is the Official Gazette of Estonia.

² H. Shein, “Development Trends of Public Television in Estonia 1991–2001”, in P. Vihalemm (ed), *Baltic Media in Transition*, Tartu 2002, pp. 135–172, (hereafter, Shein, *Development Trends*).

³ Shein, *Development Trends*.

⁴ Broadcasting Act, as amended on 19 December 2001 (entered into force 01 July 2002), RT I 2002,3,5.

⁵ See for example: “AEB Against Piracy”, in AEB Newsletter, I 1998, p. 2; and “Declaration of Estonian TV-channels, the Tallinn Cable TV Company, the Estonian Authors’ Society and the Estonian Union of Filmmakers”, in AEB Newsletter, I 1997, p. 2, both available (in English) on the website of the Association of Estonian Broadcasters at <http://www.ringhliit.ee/eng/oldies.html> (accessed 30 December 2004).

⁶ Interview with Raivo Mihkelsoo, Vice President of STV, Tallinn, 11 January 2005.

in the 1990s was one of the main alleged perpetrators⁷ of audiovisual piracy and is now one of the largest cable companies – now accuses its smaller competitors of piracy.⁸

2.2 Structure of the television sector

The audiovisual market in Estonia is very small by European standards. Furthermore, the market is divided into two distinct viewing groups – the majority Estonian speakers and the minority Russian speakers. In 2003, the Estonian population was 1.36 million, of whom 927,000 are ethnically Estonian and 349,000 Russian; the remainder is comprised of Ukrainians (29,000), Belarussians (17,000), Finns (11,000) and others (23,000).⁹ A total of 98 per cent of the ethnic Estonian population speak Estonian as their first language, and the same proportion of the ethnic Russian population speak Russian as their first language.¹⁰ The majority of Ukrainians, Belarussians and “other” minorities also speak Russian as their first language.¹¹ Correspondingly, ethnic Russians and other minority nationalities speaking Russian as their first language constitute the ‘Russian-speaking audience’ as referred to in this report.

The estimated number of television households is 565,000. Of all households, 97 per cent have at least one television set and 37 per cent of households have cable television, four per cent a private satellite dish and seven per cent have access to satellite television through a collective dish (SMATV).¹²

The total advertising revenue of all commercial television companies in Estonia was EEK 232 million (or approximately €14.8 million) in 2003 (ETV ceased carrying advertising in 2002).¹³ As shown below in Table 1, the share of television in total advertising expenditure has been rising gradually, reaching 26 per cent in 2003. The share of newspapers has been falling, although with 44 per cent of advertising turnover it still accounted for the largest proportion in 2003, and the combined share of all printed media has changed little over time.¹⁴ The total advertising market has been growing strongly, with a 38 percent increase from 1997 to 2003.

⁷ See, for example: “Declaration of Estonian TV-channels, the Tallinn Cable TV Company, the Estonian Authors’ Society and the Estonian Union of Filmmakers”, in *AEB Newsletter*, 1 1997.

⁸ Interview with Raivo Mihkelsoo, 11 January 2005.

⁹ Data of the Statistical Office of Estonia, available from the interactive database at www.stat.ee (accessed 15 June 2004), (hereafter, Statistical Office interactive database).

¹⁰ Statistical Office interactive database.

¹¹ Statistical Office interactive database.

¹² P. Vihalemm (ed.), *Meediasüsteem ja meediakasutus Eestis 1965–2004*, (*Media system and media usage in Estonia in 1965–2004*), University of Tartu, Department of Journalism and Communication, Tartu 2004, p. 363, (hereafter, Vihalemm, *Media system and media usage*).

¹³ The official fixed exchange rate is €1 = 15,6466 EEK.

¹⁴ Data of TNS EMOR (1997–2003), database information provided to EUMAP on 18 June 2004.

Table 1. Net media advertising revenue (1997–2003)

	1997			1999			2001			2003		
	m EEK	m €	%	m EEK	m €	%	m EEK	m €	%	m EEK	m €	%
Newspapers	280	17,9	50	305	19,5	48	360	23	48	402	25,7	44
Television	135	8,6	24	130	8,3	20	166	10,6	22	232	14,8	26
Magazines	48	3,1	8	81	5,2	13	98	6,2	13	108	6,9	12
Radio	57	3,6	10	77	4,9	12	75	4,8	10	81	5,2	9
Outdoor	44	2,8	8	42	2,7	6	34	2,2	5	57	3,6	6
Internet	NA	NA	NA	5	0,3	1	18	1,2	2	28	1,8	3
Total	564	36	100	639	41	100	751	48	100	908	58	100

Source: TNS EMOR¹⁵

Estonians are keen television viewers. The average viewer watched television for three hours 36 minutes per day in the period of March–May 2004;¹⁶ in November 2002 the average daily viewing time was as high as 4 hours 50 minutes.¹⁷ However, these two indexes are not directly comparable, as since January 2003 the diary-based methodology of audience measurement was changed to a meter-based methodology.¹⁸

Television is the main source for obtaining world and national news, while the importance of television as the carrier of local news is low. In 2003, 90 per cent and 78 per cent of survey respondents rated television as a very important source for getting world and national news respectively, while only 35 per cent regarded it as a valuable source of local news.¹⁹

¹⁵ TNS EMOR, database information received by EUMAP on 18 June 2004.

¹⁶ Data of TNS EMOR (March–May 2004), database information provided to EUMAP on 18 June 2004.

¹⁷ T. Paju, *Estonia* Chapter, in B. Petković (ed.), *Media Ownership and its Impact on Media Independence and Pluralism*, Peace Institute, 2004, available on the Peace Institute website at http://www.mirovni-institut.si/media_ownership/pdf/Estonia.pdf (accessed 15 March 2005), p. 187, (hereafter, Paju, *Media Ownership – Estonia*).

¹⁸ Comment provided by Margo Veskimägi, the Baltic regional integration manager of TNS EMOR, at the EUMAP Roundtable, Tallinn, 4 November 2004. *Explanatory note: OSI held a roundtable meeting in Estonia to invite critique of its country reports in draft form. Experts present generally included representatives of the Government and of broadcasters, media practitioners, academics and NGOs. This final report takes into consideration their written and oral comments.*

¹⁹ The proportion rating TV as a “very important” source for getting local news is higher in bigger cities (Tallinn – 54 per cent, Tartu and Pärnu – 41 per cent), while in rural regions the rate is down to 17 per cent. This also characterizes the selection of news by the national TV channels. Data from: *Meie, maailm, meedia, (We, World, Media)*, research by Department of Journalism and Communication, University of Tartu, 2003 (hereafter, University of Tartu, *We, World, Media*); research conducted on a sample of 1,500 people from December 2002 – January 2003.

Overall trust ratings in the media in general have been falling since 1996. While in 1996 around 60 per cent of survey respondents expressed trust in the media, by 2002 this had fallen to 44 per cent and in 2004 to 42 per cent.²⁰ According to Eurobarometer surveys, television and radio enjoy the highest trust ratings of any media in Estonia: in spring 2004, 75 per cent of respondents stated they generally or entirely trust both TV and radio, compared to 52 per cent for newspapers.²¹ In 2003 the trust rating for television was even 81 per cent.²²

According to polling research carried out by the University of Tartu, as shown below in Table 2, public television enjoys the highest trust rating of all media, and its ratings are consistent across different age, gender, language and education groups.

Table 2. Trust ratings towards the media (2003)

	Percentage of polled respondents											
	All	Language		Age						Education*		
		Est	Rus	15-19	20-29	30-44	45-54	55-64	65-74	P	S	H
ETV	52	61	34	58	51	46	51	52	61	58	50	50
Private TV	35	44	19	46	38	36	30	31	29	38	33	34
Newspapers	34	37	30	41	32	33	34	33	40	41	34	30
ER	49	58	35	47	45	45	50	55	58	50	49	49
Private radio	31	37	19	33	33	32	27	30	27	34	29	31
Internet news portals	20	19	22	32	23	23	19	12	8	22	20	16

*Education: P – below secondary; S – secondary; H – higher.

Source: University of Tartu, 2003.²³

Although viewers consider national television news programmes to be important sources of information, agenda setting in the Estonian media is carried out primarily by

²⁰ However, the Saar-Poll reported that in 2004 the trust rating in the media in general was 47 per cent. Data from: Saar-Poll (1996, 2002): Chart “Eesti riigi institutsioonide usaldamine” (“Trust in the state institutions of Estonia”) available in Estonian at http://www.saarpoll.ee/riik_ja_rahvas/kevad2004graafik3.gif (accessed 15 March 2005); Faktum (2004), “Avalik arvamus ja riigikaitse” (“Public opinion and national defence”), Tallinn, 2004, p. 10, available (in Estonian) on the Estonian Ministry of Defence website, <http://www.mod.gov.ee/static/sisu/files/natoaruanne0204.pdf> (accessed 15 March 2005).

²¹ “Eurobarometer 2004.1. Avalik arvamus kandidaatriikides. Rahvuslik aruanne: Eesti”, (Eurobarometer 2004. 1. Public opinion in candidate countries. National report: Estonia), available at <http://www.saarpoll.ee/eurobaro2004.pdf> (accessed 30 December 2004).

²² Vihalemm, *Media system and media usage*, p. 413.

²³ “*Meie, maailm, meedia*”, (“*We, World, Media*”) data from research by the Department of Journalism and Communication Department of Journalism and Communication, University of Tartu, 2003.

national newspapers.²⁴ Television news programmes often just broadcast the main newspaper stories. This results in a paradox: although the influence of television on public opinion is very significant – at least in terms of the importance Estonians attribute to it as a source of news – television channels do not appear to take advantage of this position.

Terrestrial broadcasters in Estonia have been unable to react adequately to the radically differing media consumption patterns of the Estonian and Russian-speaking communities. While Estonians tend to prefer programmes produced in Estonia, the Russian-speaking population pay little attention to Estonian production and rather watch programmes broadcast from Russia. For example, *Pervyi Baltiiski Kanal*, Baltic Channel One (PBK) – a Russian-language service broadcast by satellite from Latvia and distributed in Estonia through cable networks – holds an audience share among the Russian-speaking population of 27 per cent (see Table 2). The audience share of all Estonian television channels combined among the Russian speaking audience has been less than ten per cent since 2001/2002 and has been falling constantly.²⁵ Around one-third of the Russian-speaking audience does not watch Estonian television channels at all or watches once a month or less,²⁶ and only around four per cent of total programming even on ETV is in Russian (see Section 4.5.3). The shares of Estonian terrestrial television channels among the Russian speaking audience are approximately equal at about four to five minutes per day.²⁷ This effectively makes the market for Estonian television production even smaller, and the two communities are usually monitored separately to obtain an accurate picture of media consumption. It also means that the programme content watched by Russians is largely out of the control of domestic regulators. Finally, it poses a challenge to ETV concerning what its role should be *vis-à-vis* the Russian speaking minority.

2.3 Market shares of the main players

Since 2001 there have been three television broadcasters operating nationally with one terrestrial programme service each: the public broadcaster, ETV, and the private companies *Kanal 2* and TV 3. Predominantly due to the small size of the market, no regional or local terrestrial television networks have been launched. There is currently only one terrestrial local television channel.

²⁴ Estonian Journalists' Union, *EALi juhatuse aruanne kongressile*, report of the Estonian Journalists' Union management board, presented by the (then) chairman of the board of the Journalists' Union, Allan Alaküla to the congress of the Journalists' Union in Tallinn on 30 January 2004, available at <http://www.eal.ee/?f=uudised&cid=227>, (accessed on 7 June 2005), (hereafter, Estonian Journalists' Union, *Annual Report 2003*).

²⁵ Data of marketing research and consulting company TNS EMOR in: Vihalemm, *Media system and media usage*, p. 364.

²⁶ Data from: University of Tartu, *We, World, Media*.

²⁷ Data of TNS EMOR (January-May 2004), provided to EUMAP on 18 June 2004.

The number of cable television providers is 42. Two of these hold national licences. The rest are limited to small coverage areas. In total 79 technical licences have been issued by the State Communications Board for cable operators, while the Ministry of Culture has issued only 13 broadcast licences for cable programming.²⁸ All satellite and terrestrial programmes broadcast in Estonia are also rebroadcast by cable; indeed, rebroadcasting of all terrestrially broadcast programmes is a legal obligation for cable operators. Cable operators do not provide much original programming.

In addition to domestic channels, the television landscape includes all Finnish television stations, whose penetration rate is about 40 per cent (concentrated in the north of the country), Latvian television (near the southern border), and more than 60 channels (including over 30 Russian television channels) that are available via cable networks.²⁹

The main development in patterns of viewing between 1998 and 2003 was a steady fall in the audience share of ETV, as shown below in Table 4. Table 3 shows the average total audience shares for the major channels in 2003.

Table 3. Average total audience shares for most watched television channels (2003)

Channel	Audience share (per cent)
TV 3	24.4
Kanal 2	20.0
ETV	16.7
PBK	8.4
Other	31
Total	100.0

Source: State Communications Board and Ministry of Culture³⁰

²⁸ Data of State Communications Board and Ministry of Culture (December 2004), provided to EUMAP on 30 December 2004.

²⁹ See: Shein, *Development Trends*, p. 156.

³⁰ TNS EMOR, database information received by EUMAP on 18 June 2004.

Table 4. Average audience shares of the national television channels in the main season (September–May) – for the Estonian- and Russian-speaking populations

	Audience share (per cent)						
	1997-98	1998-99	1999-00	2000-01	2001-02	2002-03	2003-04
Estonian-speakers							
ETV	36.5	29.5	27.0	25.8	26.0	24.8	24.6
TV 3	22.1	26.0	24.9	26.5	29.2	33.8	36.4
Kanal 2	19.6	17.7	20.2	18.2	22.8	27.5	27.7
TV 1	5.1	12.7	13.5	15.5 ³¹	–	–	–
Other channels (and video)	16.7	14.1	14.4	14.0	22.0	13.9	11.3
Russian-speakers							
ORT (PBK)	36.7	29.9	28.3	25.2	30.1	21.1	26.0
RTR	11.7	13.2	17.0	17.6	14.6	12.6	13.6
NTV	–	13.1	17.7	15.9	12.0	?	?
Estonian terrestrial channels	13.1	11.7	11.1	10.8	9.5	8.3	5.8
Other channels (and video)	38.5	32.0	25.8	30.5	33.8	58.0	54.7

Source: TNS EMOR³²

Although the beginning of the gradual decrease in ETV's audience share in 1998 coincided with the first attempt at terminating advertising on the public channel (see Section 4.3), the primary reason for the fall in audience ratings is more likely to be found in the considerable investment by the owners of private broadcasters in popular programming to attract audiences (see Section 5.4).³³ This also coincides with the influx of foreign capital into the Estonian TV sector. The end of advertising on ETV helped to make such investments possible by improving the financial situation of private broadcasters. One of the reasons for the decline of the ratings was also ETV's decision to redefine its target audience towards viewers with higher education.³⁴ According to ETV, within this segment its audience share has increased (see Section 4.2).

³¹ TV1 went bankrupt in 1999.

³² Calculated by H. Shein, based on data of EMOR, in: Vihalemm, *Media system and media usage*, p. 363.

³³ Shein, *Development Trends*, pp. 148–157.

³⁴ Comments from EUMAP Roundtable, Tallinn, 4 November 2004.

The financial benefits to private television companies resulting from the end of advertising in ETV have not been matched by benefits to the public broadcaster itself. One of the most important issues facing the Estonian audiovisual sector remains the financing of ETV, which remains unstable and appears to be limited due to political considerations.

As shown above in Table 4, the consumption patterns of the Russian-speaking population are very different to the Estonian population: Estonian channels hold only a six per cent audience share among the Russian-speaking population.

3. GENERAL BROADCASTING REGULATION AND STRUCTURES

The Broadcasting Act defines three broadcasting regulators with different competencies: the Ministry of Culture (supervises adherence to the Act and fulfilment of licence conditions), the Broadcasting Council (regulates public television and radio) and the State Communications Board (supervises adherence to the technical conditions of broadcasting licences). The Ministry of Culture has proposed the establishment of a new, independent regulator for broadcasting, but there is no consensus among ministries over the wisdom of establishing the new regulator or its likely remit. Broadcasting licences are issued by the Ministry of Culture on the basis of open tenders, although the Minister has sometimes issued decisions against the recommendation of the commission that examines bids for broadcasting licences. The independence of broadcasters from the State is guaranteed by law and this does not appear to have been threatened in practice. The independence of ETV may be indirectly affected by the restriction of its budget by politicians. While mechanisms for protecting journalists or securing editorial independence in private broadcasters are weak or non-existent, on the limited evidence available good practice appears to prevail in this area.

3.1 Regulatory authorities for the television sector

The Broadcasting Act defines three broadcasting regulators: the Ministry of Culture, the Broadcasting Council and the State Communications Board. The Ministry of Culture regulates primarily the activities of private broadcasters,³⁵ the Broadcasting Council is responsible for regulating the public broadcaster,³⁶ and the State

³⁵ Broadcasting Act, RT I 1994,42,680, as last amended on 17 December 2003 (entered into force 8 January 2004), (hereafter, Broadcasting Act), available (in English) at <http://www.legaltext.ee/en/andmebaas/ava.asp?m=022> (accessed 1 April 2005), Chapter 6 (licensing) and 7 (supervision).

³⁶ Broadcasting Act, art. 32.

Communications Board supervises compliance with the technical requirements of broadcasting.³⁷

Ministry of Culture

The Ministry of Culture is responsible for allocating broadcast licences, and its Media Division³⁸ supervises adherence to licence conditions and other duties imposed by the Broadcasting Act.

The Ministry has the authority to regulate the public broadcasters only in terms of their adherence to the general provisions of the Broadcasting Act, for example on quotas and principles of broadcasting activities. It has done so rarely, and on such occasions has been accused by ETV of interfering in a sphere outside its competence – for example, when the Ministry requested from ETV a report detailing spending of its State subsidy.³⁹ This reflects a strong resistance to direct political interference in the media. On the other hand, private broadcasters have criticised the Ministry for not doing *more* to enforce provisions of the Broadcasting Act against ETV.

The Ministry's role with respect to private broadcasters is to supervise compliance with the Broadcasting Act and the conditions of their broadcasting licence. Some media experts and ETV executives believe that the Ministry should also enforce the law more strictly with respect to private broadcasters.⁴⁰

Broadcasting Council

The Broadcasting Council is the prime body responsible for supervision of the public broadcasters, ETV and ER. The Council supervises their performance in discharging their public broadcasting functions and decides the number of programme services transmitted by public radio and television. It approves the policies, development plans and detailed budgets of the public broadcasters and supervises their implementation. It has also produced a set of "Principles of Programming Impartiality and Balance in Public Broadcasting", which are legally binding (see Section 4.5.2).

The Broadcasting Council consists of nine members. According to the Broadcasting Act, on the proposal of the Cultural Affairs Committee of the Estonian Parliament

³⁷ Broadcasting Act, Chapter 7 (supervision); Act on Electronic Communications, RT I 2004, 87, 593, (passed on 8 December 2004, entered into force 1 January 2005), (hereafter, Act on Electronic Communications), Chapter 3 (Management of Radio Frequencies), Chapter 14 (responsibilities).

³⁸ The Media Division of the Ministry of Culture is a unit of the Department of Media and Copyright Issues and employs three officials to carry out these tasks.

³⁹ The request by the Ministry was based on the fact that the subsidy allocated to ETV occurs as an item in the State budget allocation for the Ministry of Culture.

⁴⁰ Comments from EUMAP Roundtable, Tallinn, 4 November 2004.

(*Riigikogu*), Parliament appoints five members of the Council from among the members of the Parliament on the basis of the principle of political balance. The content of the latter concept is not defined, but as of June 2005 all but the smallest of the six parties represented in Parliament were also represented on the Council. Their term lasts as long as that of the Parliament. On the proposal of the same Committee four members of the Council are appointed from among recognized specialists in fields related to public broadcasting. Specialists are appointed for a term of five years. The politicians on the Council therefore outnumber the specialists; however, the current chairman of the Council Andres Jõesaar is a specialist.

The Broadcasting Council is accountable to Parliament, so must submit a report once a year. The management of ETV must submit an overview of the broadcaster's "economic activities and financial situation" to the Broadcasting Council once every three months and inform the Council immediately of "any material deterioration of the broadcaster's economic situation".⁴¹

State Communications Board

The State Communications Board issues permission for broadcasters to put their technical equipment into operation and supervises compliance of public and private broadcasters with their technical obligations – the frequencies and channels used, the basic technical parameters for transmitters used for broadcasting and maximum permitted radiation levels. Two officials are responsible for these tasks for the broadcasting sector. The Board also specifies the frequencies allocated to licence holders.

Under the new Act on Electronic Communications,⁴² which from 1 January 2005 replaced the Act on Communications and Cable Television, the State Communications Board also allocates frequencies to the public broadcasters (see Section 3.2); previously this was done formally by the Ministry of Culture.

Proposed changes

The "Action Plan of the Ministry of Culture for 2002–2006"⁴³ envisages the establishment of a single regulator to carry out the role of licensing private broadcasters, supervising the adherence of all broadcasters to the Broadcasting Act, and in addition of private broadcasters to their license conditions; the State Communications Board's functions with respect to broadcasting would also be handed over to the new regulator. In this scenario the Broadcasting Council would remain only

⁴¹ Broadcasting Act, art. 32, Section 10.

⁴² Act on Electronic Communications, art.11-12.

⁴³ Ministry of Culture, *Kultuuriministeeriumi tegevuskava aastateks 2003–2006, (Action Plan of the Ministry of Culture for the period 2003–2006)*, Tallinn 2002, pp 104–105, (hereafter, Action Plan 2002–2006).

as the highest authority for governance of the public service broadcasters – formulating ETV's remit and other main guidelines (such as broadcasting standards), hiring its management etc.

According to the Plan, the new regulator would be based on the model of a separate State institution not subject to direct governmental influence (for example in appointments). It would issue licences and monitor the entire broadcasting sector. The status and remit of the new institution would be introduced in amendments to the Broadcasting Act. However, no such amendments have been drafted to date. The alternative options for concentrating the supervision tasks into one institution would be to widen the competency of the State Communications Board or the Broadcasting Council.⁴⁴

The new institution would also play a key role in laying out a clear media policy, which is so far lacking in Estonia. Not even the Action Plan 2002–2006 provides a comprehensive vision of the Government's intentions for media policy, and the lack of such a policy has also been repeatedly underlined by the AEB.⁴⁵

Planning and preparations for a new regulator have proved tough, as there is no consensus about the new regulator and its remit among different ministries. For example, a number of officials have argued that the creation of a new institution in a country as small as Estonia will result primarily in further bureaucracy and wasted resources. Also, the Ministry of Culture states in the Action Plan 2002–2006 that the State currently lacks sufficient resources to supervise the audiovisual sector effectively⁴⁶, and it is unclear whether the solution that is finally chosen will ensure that adequate resources are provided.

An independent research project in 2003 indicated that most experts broadly support the establishment of an independent regulator.⁴⁷ However, a number of legal experts doubt that the Estonian Constitution would allow such an institution to be created, on the grounds that a regulator not subordinated to the government or any other constitutional institution must be established by the Constitution.⁴⁸ According to the Ministry of Culture they are currently awaiting for scheduled improvements in the

⁴⁴ Action Plan 2002–2006, pp. 104–105.

⁴⁵ See for example letter of the AEB to the Ministry of Culture of 18 April 2001, available from the Ministry on request.

⁴⁶ Action Plan 2002–2006, p. 103.

⁴⁷ Uurimisprojekt "*Euroopa Liiduga liitumise mõjud Eesti audiovisuaalsektorile*", (Research project "*Impact of joining the European Union on the audiovisual sector of Estonia*"), riigihange 003668VT, lõpparuanne (final report), by Concordia International University, Tallinn 2003, (hereafter: "Impact of joining the EU").

⁴⁸ Interview with Halliki Harro-Loit, Head of the Department of Journalism and Communication at University of Tartu, Tartu, 7 June 2004; comments from EUMAP Roundtable, Tallinn, 4 November 2004.

field of broadcasting regulation on the EU before moving forward with regulatory reform.⁴⁹

3.2 Licensing

Broadcasting licences are issued by the Ministry of Culture on the basis of an open contest.⁵⁰ The Ministry must issue a notice of its intention to issue a licence in a daily national newspaper, specifying the type, number and other conditions of the licence or licences. Entities interested in acquiring the licence complete an application form and attach required documents about themselves and detailing their vision for the channel. Applications for a broadcast licence must be reviewed by the Ministry of Culture within three months of the deadline for applications.

Until 31 December 2004, the broadcast licence specified both the details of the programme (name, content, number of hours or transmission etc.) and the technical conditions (frequency, location of transmitter etc.). As of 1 January 2005, the latter are to be specified in a separate frequency licence issued by the State Communications Board – a purely technical matter that has no substantive impact on the broadcast licensing process.

The Ministry of Culture has formed a permanent Commission to examine bids for broadcast licences and recommend winners.⁵¹ The Commission consists of seven voting members from institutions involved in regulating or organizing the broadcasting sector: the Ministry of Culture (two members), Ministry of Economy and Communications, State Communications Board, Consumer Protection Board (a state body under the Ministry of Economy and Communications), Office of the President and Association of Estonian Broadcasters (AEB). The AEB is the only non-public institution represented in the Commission. Until 2002, the Commission was chaired by the Chancellor of the Ministry of Culture (the second highest official), and since then by the head of the Department of Media and Copyright Issues. The Commission examines the applications for, and discusses the terms of, the licences (both before and after announcing the issuance of the licences) and makes its recommendations to the Minister of Culture who makes the final decision.

Applications for a broadcast licence have to meet certain general requirements. It follows from Article 1 of the Broadcasting Act that the television channel has to be “universalist”, that is to cover all kinds of audiences and topics, and the Ministry of

⁴⁹ Interview with Peeter Sookruus, Head of the Department of Media and Copyright Issues, Ministry of Culture, Tallinn, 2 June 2004.

⁵⁰ The terms for issuance of broadcasting licences are specified in the Broadcasting Act, Chapter 6.

⁵¹ Ministry of Culture, rules of procedure for the Commission issuing broadcasting licenses, approved by decree No 44 of the Minister, 17 February 2000, available in Estonian on the website of the Ministry of Culture, <http://www.kul.ee/index.php?path=40&DocID=24> (accessed 15 March 2005).

Culture applies this rule in licensing activities. National TV broadcasting license holders must also observe other programming requirements contained in the Broadcasting Act, such as quotas (see Section 4.5.3). In addition, all commitments about intended programming made by the applicant are written into the licence. There have been occasional discussions of the possibility of imposing additional “cultural” programming obligations on private television broadcasters, for example obliging them to produce films,⁵² but these have not led to any changes.

Usually the Minister of Culture accepts the recommendations of the Commission, but on at least two occasions has issued a different ruling. In 1994, after the Broadcasting Act was adopted, the Minister Peeter Olesk decided to swap frequencies between two national television channels (RTV/EVTV and Kanal 2). This resulted in bitter attacks on the Ministry of Culture and the AEB, conflict between the rival stations and several court cases. The dispute ended when a new transmitter for one of the stations was launched in south-eastern Estonia.⁵³

The second case occurred in 1999 and concerned radio licensing. The (then) Minister Signe Kivi ignored the recommendation of the Commission to licence a talk format radio station in Pärnu and instead complied with the request of the station’s owner – who happened to be a colleague from the same political party as the Minister – to receive a licence for a pop music station instead. The AEB asked the Minister to explain her decision and set out the Ministry’s policies defining the relative weight of public interest and business interests in licensing decisions. The Minister answered that in her opinion the broadcasting companies know better than anybody else where and what to broadcast.⁵⁴

Until 2002 private broadcasters did not pay any licence fee. Since 1 July 2002 they have paid a fee established in return for ETV ceasing to broadcast advertising (see Section 4.3). In 2004, the broadcast licence fee was EEK 20 million (€1.28 million), and is supposed to increase by EEK 1.25 million (€80,000) per year.

3.3 Enforcement measures

Compliance with broadcast licensing obligations is monitored by the Media Division of the Ministry of Culture. However, due to limited capacity (the Division is staffed by three officials), supervision has to date been random and limited, according to Peeter Sookruus, Head of the Ministry of Culture Department of Media and Copyright

⁵² See, for example: M. Adamsoo, “Alanud aasta käejoontest. Mida oodata eesti filmilt 2005?”, (“Palm-reading for the new year. What can we expect of Estonian film in 2005?”), in *Sirp*, 7 January 2005. M. Adamsoo is Director General of the Estonian Film Foundation.

⁵³ H. Shein, *The Landscape of Estonian Television 1991–2001. Research Papers, Discussions, Databases*, Tartu, 2002, pp. 376–377 (hereafter, Shein, *Landscape of Estonian Television*).

⁵⁴ Letter of the AEB to the Minister of Culture Signe Kivi, 23 Nov 1999 and reply from the Minister of Culture, 3. Jan 2000, letters available from Ministry of Culture on request.

Issues.⁵⁵ Beginning in 2004, the Ministry has hired market research company, TNS EMOR, to monitor the compliance of television broadcasters with the rules on advertising placement and quotas and programming quotas.

In cases where the Broadcasting Act is violated, the Ministry of Culture can impose one or more of the following measures: a reprimand (a warning with a requirement for specific steps to be taken) not to repeat the offence, fines, suspension of a broadcast licence for up to 14 days and ultimately revocation of a broadcast licence. In case the broadcaster disagrees with the Ministry decision it may appeal to a court. In the case of the public broadcaster the Ministry may impose a sanction only for violation of the Broadcasting Act, whereas for private broadcasters it may also do so where license obligations are breached.

Fines of up to EEK 40,000 (or approximately €2,556) may be imposed for violation of the provisions of the Act, and up to EEK 50,000 (€3,195) for breaching the terms of a broadcast licence.⁵⁶ Similar fines are prescribed by the Act on Electronic Communications in cases of illegal transmission or use of nonconforming equipment.

The Ministry of Culture has issued warnings and reprimands to almost all private broadcasters for non-compliance with the law. TV 3 was fined in 2000 after its popular talk show *Kahvel* broadcast a scene that was declared pornographic. The Tallinn Administrative Court imposed a fine of EEK 10,000 (€639).⁵⁷ In 2004 the Ministry of Culture issued four reprimands to Kanal 2 and five to TV 3 for exceeding permitted advertising quotas.⁵⁸

Theoretically, the Ministry of Culture could apply fines to the public broadcasters but this measure has never been used. However, the Consumer Protection Board has imposed fines on ETV (see section 4.4.3).

A broadcast licence may be revoked if a broadcaster:⁵⁹

- applies itself to have its licence revoked;
- submits false information in order to obtain the licence;
- fails repeatedly to fulfil the conditions of the licence;
- violates the requirements of the Broadcasting Act.

In short, a broadcasting licence may be revoked if the broadcaster violates the Broadcasting Act once or breaches its licence conditions repeatedly. The only case of

⁵⁵ Interview with Peeter Sookruus, 2 June 2004.

⁵⁶ Broadcasting Act, art. 43.

⁵⁷ H. Harro, "Development of Media Regulation in Estonia 1988–2001", in Vihalemm, *Media system and media usage*, pp. 225–240.

⁵⁸ Data of the Ministry of Culture, received by EUMAP on 3 February 2005.

⁵⁹ Broadcasting Act, art. 41.

revocation occurred in 2001, when TV 1 lost its licence due to its inability to restore transmission within three weeks after the Estonian Broadcasting Transmission Centre switched their transmitters off – a measure imposed because of debts owed to the Centre by the broadcaster. TV 1 went bankrupt shortly thereafter.

Although the activities of broadcasters are now being observed more closely – especially when there is a specific complaint or publicised case of a suspected violation – comprehensive monitoring, supervision and enforcement have not yet been established. Managers of private channels have expressed doubt about the monitoring methodology and its ability to draw clear distinctions between advertising, information on sponsors and programme trailers. However, according to Ministry of Culture officials private broadcasters have become more disciplined as a result of supervision.⁶⁰

3.4 Broadcasting independence

Estonian law lays down a number of provisions to guarantee the independence of broadcasters from the State. Censorship is prohibited by the Constitution.⁶¹ The Broadcasting Act states that broadcasters have the right to decide freely on the content of their programmes and programme services in compliance with the law and the conditions of a broadcasting licence, and that violation of this freedom is punishable under administrative or criminal procedures.⁶² However, this statement is merely declaratory, as the provision does not define what constitutes infringement of broadcasting freedom. The Act also states that the public broadcasters are independent in the creation and broadcasting of their programmes and programme services are guided only by the requirements of the law.⁶³

In the absence of evidence to the contrary, it appears that good practice rather than regulation has resulted in a relatively high degree of independence. According to experts and industry representatives interviewed in the context of this report, there have been no major intrusions by the State against broadcasting independence. However, the public broadcaster may have been subject to more pressure, although this pressure appears indirectly through the restriction of ETV's budget. Discussions in the Parliament sometimes involve criticism of particular programme's content and format.⁶⁴ However, it should be stressed that although insufficient financing probably affects the level and quality of service that ETV is able to provide, this does not

⁶⁰ Interview with Peeter Sookruus, 2 June 2004.

⁶¹ Constitution of the Republic of Estonia, RT 1992,26,349; RT I 2003,29,174; 2003,64,429, available in English at <http://www.legaltext.ee/en> (accessed 14 June 2005), art. 45.

⁶² Broadcasting Act, art. 6.

⁶³ Broadcasting Act, art.28.

⁶⁴ Remarks of this kind can be found for example in verbatim reports of the Estonian Parliament (the *Riigikogu*) of 5 December 2001 and 14 May 2002.

constitute *direct* interference in editorial independence. Media experts agree that the independence of journalists from the State in Estonia is not threatened.⁶⁵

As Section 5.6 shows in more detail, the independence of editorial staff from owners of private broadcasting companies is not established in law or through any formal internal company rules. One possible source of protection of journalists' independence from the owners of broadcasters is the Estonian Journalists' Union. However, the Union has a weak position in the media sector and limited resources to protect individual journalists, and most active journalists are not even members. Individual independence is therefore in formal terms a matter for individual employment contracts, which leads to a risk of self-censorship to meet the expectations of the employer.

Managers of private TV companies claim that good practice has guaranteed such independence and that the owners of private stations, in particular, are too far removed to have a private or personal interest in interfering with programming.⁶⁶ There have been no publicised cases of owners' intervention into programming content, although further research in this area would be required to facilitate clear judgments.

4. REGULATION AND MANAGEMENT OF PUBLIC SERVICE BROADCASTING

The public service broadcasting sector consists of Estonian Television (ETV) and Estonian Radio (ER), which were separated in 1990. The Government is currently planning to merge the two companies again to yield savings, although there is a lack of commitment to provide the necessary funds for a successful merger. In the Broadcasting Act, the remit of ETV is stated in very broad terms, and even ten years after its adoption the act does not present a clear concept of public broadcasting. This gap has to some extent been covered by the "Development Plan for ETV and ER for 2003–2005" drafted by ETV, ER and the Broadcasting Council and approved by Parliament on 19 June 2002. However, Parliament has provided substantially less money than the Development Plan envisages, which prevents ETV from fulfilling its remit optimally.

ETV is accountable to the Broadcasting Council, which enforces the provisions of the Broadcasting Act and its own written guidelines for accurate and balanced coverage. The Council has initiated cases concerning violation of ETV's programming obligations only exceptionally; the Chairman of ETV's Management Board has been removed twice by the Council. There is no clear system known to the general public for receiving or dealing with complaints against either ETV or private broadcasters.

⁶⁵ EUMAP Roundtable, Tallinn, 4 November 2004.

⁶⁶ Interviews with Toomas Vara, Managing Director of TV 3, Tallinn, 28 May 2004; Urmas Oru, Director General of Kanal 2, Tallinn, 31 May 2004.

ETV appears to have increasingly fulfilled its role as a public service broadcaster, especially since it ceased to broadcast advertising in 2002. Official policy envisages the opening of a second channel to better serve the interests of minority audiences, but this is unlikely to happen given current trends in funding.

4.1 The public broadcasting system

Since 1990, public service broadcasting consists of two separate entities — Estonian Television (ETV) and Estonian Radio (ER). Legally, the ETV and ER are public institutions (organisations), established by the Broadcasting Act.

In 2004, a working group composed of members of the Broadcasting Council, experts from both the public and private media sector, and economists developed a “Development Strategy for the National Broadcasting Company for 2005–2008”, (hereafter, Development Strategy 2005–2008), which recommended the re-merging of ETV and ER.⁶⁷ A previous audit conducted by KPMG concluded that while short-term improvements in the financial situation of the two public broadcasters would not result from a merger, in the longer term, synergies would lead to significant savings⁶⁸ — a viewpoint shared by politicians and State officials. However, the expected economic benefits from merger are only expected if significant investment is carried out in new broadcasting premises and equipment. While a site has been found for such premises, Ministry of Finance officials have made public statements that there will probably be no money available from the state budget to finance the construction.⁶⁹ The Development Strategy itself is not legally binding, and has not been approved by Parliament.

Although the formal transformation of ETV into a public service broadcaster was completed in 1994 with the adoption of the Broadcasting Act, ETV still does not fulfil all the recognised standards of public broadcasting. In particular, the continuing system of discretionary and short term State funding prevents the broadcaster from fulfilling its remit entirely and opens possibilities for political interference. Many State officials and MPs still refer to ETV as “State television”, and experts still do not regard ETV as having become a fully-fledged public broadcaster.⁷⁰

⁶⁷ *Eesti Rahvusringhäälingu arengustrateegia aastateks 2005–2008, (Development Strategy for the National Broadcasting Company for years 2005–2008)*, available (in Estonian) at <http://www.etv.ee/index.php?popup=download&id=2254> (accessed 30 June 2004), (hereafter, Development Strategy 2005–2008).

⁶⁸ KPMG Estonia, *Ühtse rahvusringhäälinguorganisatsiooni moodustamise otstarbekuse uuring. Projekti lõppraport, (Expediency-analysis of constituting uniform national broadcasting company. The final report of the project)*, Tallinn, October 2003.

⁶⁹ A. Maimets and U. Seaver, “Tele- ja raadiojuhid plaanivad uut peamaja”, (“TV and Radio heads plan new headquarters”), in *Postimees*, 27 August 2004.

⁷⁰ Comments from EUMAP Roundtable, Tallinn, 4 November 2004.

4.2 Services

According to the Broadcasting Act the “basic requirements” of public service broadcasting are to preserve and develop the Estonian nation, language and culture, strengthen Estonian statehood and advance Estonia’s international reputation.⁷¹ The “functions” of public service broadcasters are to:

- advance and promote Estonian national culture and record, preserve and introduce its greatest achievements;
- present the greatest achievements of world culture to the public;
- create and transmit multifaceted and balanced programme services at high journalistic, artistic and technical standards;
- satisfy the informational needs of all sections of the population, including minorities;
- create primarily informational, cultural, educational and entertainment programmes.⁷²

ETV has one national channel, while ER has four national channels: a channel for adults (Vikerraadio), a youth channel (Raadio 2), a classical music channel (Klassika-raadio) and a Russian-language channel (Raadio 4).

The Broadcasting Act describes the remit of the public service broadcaster in very broad terms. In 2002, Parliament adopted the “Development Plan for ETV and ER for 2003–2005”, (hereafter, Development Plan 2003–2005), in which the remit of ETV and ER was set out in more detail⁷³; the Plan was drafted by a working group of members of the Broadcasting Council and representatives from ER and ETV, then approved by the Council and submitted to Parliament. The Plan, which is legally binding, lays down a strategy for the public broadcasters in the field of programming, technical development, archiving, personnel management and financing. It also defines partnership with different interest groups in society as a defining feature of public service broadcasting, stating that:

ER and ETV shall create a public forum for exchange of opinions about the development of the Estonian state. Public broadcasting shall promote, distribute and store Estonian culture, by that becoming an integral part of Estonian theatre, film, music, art, and literature. Thus, ER and ETV shall serve as partners for the creators of national culture as well as for the state – the carrier of the national identity.⁷⁴

⁷¹ Broadcasting Act, art. 26.

⁷² Broadcasting Act, art. 25.

⁷³ “Eesti Raadio ja Eesti Televisiooni arengukava aastateks 2003–2005” (“Development Plan for ETV and ER for 2003–2005”), RT I, 26.06.2002, 52, 328, (hereafter, Development Plan 2003–2005).

⁷⁴ Development Plan 2003–2005, Section 3.2.

In the area of programming, the Development Plan 2003–2005 defines news, cultural, educational and children’s programmes as priorities. It also details plans for introducing new formats or developing old ones.⁷⁵ By the end of 2004, some of these plans had been implemented successfully, for example launching daily children’s programmes in prime time, developing an analytical format for sports coverage, placing correspondents in Brussels and Pärnu (but still not in Moscow as planned) and introducing new formats for talk shows. Other plans have been implemented poorly or not at all, notably increasing the number of cultural and educational programmes, recommencing the recording and broadcasting of theatre performances and television film production (the first television film appeared only at the beginning of 2005, in addition to ETV’s one and only domestic television serial), increasing the number of programmes in Russian language (see Section 4.5.3) and especially producing programmes with archivable value.

As described in Section 4.3, Parliament has not observed the Development Plan 2003–2005 while adopting the annual budgets for 2003, 2004 and 2005, despite the fact the Plan is legally binding. Much of the Plan has been cut by ETV due to insufficient funding – illustrating the effect that unpredictable funding might have on ETV’s fulfilment of its remit.

The Broadcasting Council expressed an unofficial opinion⁷⁶ that in 2004 ETV should seek to secure an audience share of at least 18 per cent. This market share has not been achieved since 2002,⁷⁷ except for a few months in 2004 (for example, 22.6 per cent in August and 18.3 per cent in September).⁷⁸ ETV’s management have pointed out that public television has redefined its target audience as viewers with higher education, reflecting its aim of influencing the judgements of opinion-makers. In this audience segment ETV’s audience share was 32.6 per cent in 2003.⁷⁹ Another aim of ETV’s management is to increase its “quotability”, and to this end ETV holds media conferences and training of television professionals and runs an Internet news portal. During 2004 many other Internet news portals (including Delfi) and even newspapers began to refer to ETV as a news source, something that was rare previously. ETV also produces DVDs and VHS cassettes with old films and television dramas from its

⁷⁵ Development Plan 2003–2005, Appendix 5.

⁷⁶ Interviews with Ainar Ruusaar, ETV Programme Director, Tallinn, 11 June 2004; Andres Jõesaar, Chairman of the Broadcasting Council, Tallinn, 27 May 2004.

⁷⁷ The share has been achieved among the Estonian population – in 2003 the share was 24.1 per cent. Among the whole population the share was 16.7 per cent. The corresponding rates for prime time share were 27.8 (Estonians) and 19.8 per cent (the whole population). Data from ETV, “*Estonian Television at a Glance 2003*” (ETV brochure), Tallinn 2004.

⁷⁸ Data of TNS EMOR (2004). Database information, provided by ETV to EUMAP on 18 June 2004

⁷⁹ Data of TNS EMOR (2003). Database information provided by ETV to EUMAP on 11 June 2004.

archives. Again however, funding is insufficient to produce fresh material with long-term commercial value.

A second channel?

According to Ainar Ruusaar, ETV's Programme Director, having only one channel makes it difficult to provide a programme service that would meet equally the needs of different groups in society.⁸⁰ The unofficial requirement for ETV to secure a minimum 18 per cent audience share over the year also makes it necessary to broadcast programmes of general interest in prime time. As a result most programmes on more specific themes, and programming in Russian in particular, have been moved out of prime time and in some cases discontinued.

The launching of a second channel has been under discussion for some time. It was supported in June 2004 by the ETV Extended Programme Council (see section 4.5.1).⁸¹ It is also strongly recommended in the "Concept of Digital Broadcasting".⁸² Due to limited financial resources the second channel is envisaged as an outlet for repeats and minority programming. However, it seems unlikely that sufficient resources will be made available for this service to be launched.

4.3 Funding

4.3.1 The end of advertising on ETV

As ETV was the market leader in the late 1990s, it had a decisive influence on advertising rates and at the time was accused by private broadcasters of dumping.⁸³ Moreover, due to insufficient financing by the State, advertising accounted for 38 per cent of ETV's total income in 1997. This led to severe constraints on the potential revenues of private broadcasters, increased the orientation of ETV programming towards the interests of advertisers, and consequently represented a major constraint on the public service broadcaster's ability to pursue its public service mandate.⁸⁴

As a result, a first attempt was made to terminate advertising on ETV in late 1997, when the director general of ETV signed a private agreement with the (then) three

⁸⁰ Interview with Ainar Ruusaar, 11 June 2004.

⁸¹ Interview with Ainar Ruusaar, 11 June 2004.

⁸² "Digitaalringhäälingu kontseptsioon" ("Concept of Digital Broadcasting"), adopted by the Government of Estonia on 15 June 2004, available in Estonian at <http://www.levira.ee/digikontseptsioon.pdf> (accessed on 1 June 2005), (hereafter, Concept of Digital Broadcasting), Section 2.3.2.

⁸³ These allegations were investigated, but never confirmed, by the State Audit Office and the Competition Board. Private broadcasters claim that the State authorities did not have sufficient knowledge about the TV sector to make this finding. Information from interviews with Toomas Vara and Urmas Oru.

⁸⁴ Shein, *Development Trends*, pp. 140–145.

private channels under which they paid ETV directly a fixed annual fee not to accept advertising.⁸⁵ The experiment – carried out from 1 January 1998 – was evaluated positively by private TV companies, and the orientation of ETV programming became less commercial. However, in mid-1999 one of the private stations (TV 1) failed to pay its contribution to ETV in time, and this served as a pretext for the public broadcaster to begin selling advertising space again.⁸⁶ ETV's return to the advertising market shook both private TV broadcasters and radio advertising, as its advertising rates were almost as low as the larger radio stations. In addition, ETV programmes regained their commercial format (see Section 3.4).

However, the experiment proved that advertising-free public broadcasting could be achieved, pointing the way towards a partial solution of the economic unsustainability of private broadcasters. Accordingly, on 30 April 2001, the Ministry of Culture, the Broadcasting Council, the Association of Estonian Broadcasters (AEB) and the Estonian Association of Television Production Companies signed a joint agreement to again end advertising on ETV.⁸⁷ The private broadcasters agreed to pay a comparatively high annual broadcasting licence fee – EEK 15 million (€0.9 million) each in 2003, and the agreement to cease advertising on ETV and establish the fee was formalised in the 2001 amendments to the Broadcasting Act.⁸⁸ In 2004, the fee grew to EEK 20 million (€1.28 million) and according to an amendment to the Broadcasting Act passed in December 2003⁸⁹ will increase by EEK 1.25 million (€80,000) every following year. The latter amendment was passed despite strong opposition from private broadcasters, who argued that the increase was introduced too early and was set too high, not in accordance with the actual development of the television market. Moreover, as there is no direct legal link between the broadcast licence fee and the principles of financing the public broadcasting (the money generated in this way goes directly to the State), ETV and ER did not in fact benefit from the increased fees.

4.3.2 Present funding of ETV

The total budget for ETV in 2004 was EEK 210.9 million (or approximately €13.5 million). Of this, 93 per cent (EEK 197 million or €12.6 million) was provided by

⁸⁵ A. Straumanis. "Estonia Going Ad-free", in *Transitions* 5/1998, pp. 79–80; and "Public Television Became Ad-free", in AEB Newsletter, I, 1998 (III), pp. 4–5, available (in English) on the AEB website <http://www.ringhliit.ee/eng/oldies.html> (accessed 30 December 2004).

⁸⁶ Shein, *Landscape*, pp 384–385; "Relations with public advertising", in *AEB Newsletter*, released for the AER Information Day in Brussels, 15 October 2003.

⁸⁷ "Kultuuriministeeriumi juures tegutsenud töörühma ettepanekud 'Ringhäälinguseaduse' muutmiseks", ("Proposals of the working group at the Ministry of Culture for amending the Broadcasting Act"), 30 April 2001, available (in Estonian) at http://www.ringhliit.ee/paevakorral/tooryhma_ettepanekud.html (accessed 1 June 2005).

⁸⁸ Broadcasting Act (2001), art. 37. Initially the fee was agreed at EEK 10 million, but after the bankruptcy of TV 1 it was raised to EEK 15 million.

⁸⁹ Broadcasting Act (2003), art. 37.

direct subsidy from the State budget.⁹⁰ Other income sources are donations, project financing, grant of use of assets (including programmes), profit received from the organisation of public events necessary for the performance of the ETV by law and of training programmes, production of recordings and audiovisual materials.

The State subsidy is approved annually by Parliament. The Broadcasting Council proposes a budget to the Ministry of Culture, which itself operates within the constraint of an initial draft limit imposed by the Ministry of Finance. If the Broadcasting Council's proposal does not fit into the budget limit imposed on the Ministry of Culture by the Ministry of Finance, the Ministry of Culture alerts the Broadcasting Council. The Ministry of Finance submits a proposed subsidy to the Government, and its proposal is seldom changed much by Parliament during final approval. In practice, ETV has little influence on its budget, and according to the Chairman of the Broadcasting Council, Andres Jõesaar⁹¹ the Ministry of Finance has never taken into account the Council's budget request when determining ETV's budget. Parliament approves a single budget allocation for both ETV and ER together. On the basis of this approved subsidy and the broadcasters' own projected revenue, the Broadcasting Council then approves the annual budgets for ETV and ER.

Of the EEK 197 million (€12.6 million) provided for ETV by the State in 2004, EEK 30 million (€1.9 million) was covered by the above-mentioned broadcasting licence fees paid by private TV channels, although there is no explicit official link between these fees and the size of the State subsidy. There was some discussion of the option of introducing a licence fee paid by viewers in the early 1990s, but the widespread consensual view is that in addition to being an unpopular move, collection of the licence fee would cost more than the revenue it would yield. In other words, ETV depends for the vast majority of its funding on direct State subsidy, most of which is not covered by licence fees.

In order to ensure stable and sufficient funding, the above-mentioned 2001 agreement to end advertising on ETV also envisaged financing ETV on the basis of three-year plans. This model is reaffirmed both in the Development Plan 2003–2005 and in the Broadcasting Act.

According to the legally binding Development Plan 2003–2005, the total State subsidy for the public broadcasters in 2004 should have been EEK 447 million (€28.6 million).⁹² However, as is already apparent from the figures mentioned above, the process by which the actual annual budget of ETV is approved has led to a different outcome. The actual total subsidy approved for both public broadcasters for 2004 was

⁹⁰ By comparison, the total budget for 2004 for ER is EEK 107.5 million (or approximately €6.9 million), of which EEK 89 million (€5.7 million) is from the State subsidy. Data from the Annual Budgets for ETV and ER, provided by the Broadcasting Council to EUMAP on 27 May 2004

⁹¹ Interview with Andres Jõesaar, 27 May 2004.

⁹² Development Plan 2003–2005, Section 3.2.4.

EEK 283 million (€18.1 million), a 30 per cent shortfall on the legal commitment previously adopted.

The Development Plan 2003–2005 envisages a total subsidy of EEK 477 million (€30.5 million) for the public broadcasters in 2005.⁹³ However, the Development Strategy 2005–2008 envisages substantially less for 2005 – EEK 359 million (€22.9 million). On top of this, most of the losses suffered by ETV during the 1990s remain on its balance sheet, constraining the broadcaster further.

It is worth noting here that the relative weights of the Development Strategy (adopted by the Broadcasting Council) and Development Plan (adopted by Parliament) are in fact unclear, contributing to the unclear financing situation of public broadcasting. Given the failure of Parliament to observe its own Plan when approving the annual budget, the Broadcasting Council appears to try and adopt the Strategy to reflect the realities of financing.

According to Hagi Shein, Dean of the Media School at International University Concordia Audentes and a member of the Broadcasting Council, the current level of financing is sufficient for ETV to fulfil short-term tasks and make programmes of short-term value, but insufficient to produce programmes of permanent value (television, theatre and films), investigative journalism, or to carry out investment in technical development and sustaining archives.⁹⁴ For example, ETV conducts virtually no investigative journalism at all, making it doubtful that it carries out any key role in scrutinising the conduct of public affairs – something that is normally assumed to be an important task of public broadcasting in a democracy.

State officials and private broadcasters have often questioned whether the public broadcaster needs more funding. No clear explanation exists for the lack of sufficient stable financing for ETV. At the very least, providing sufficient funding is not a political priority, and more generally there is no consensus among political parties on the role and mission of public broadcasting.

Altogether, if ETV's funding is judged according to four standard criteria – stability/predictability, independence, sufficiency for fulfilment of tasks, and transparency⁹⁵ – problems remain in all four areas. Financing is not stable or predictable, as three-year planning is not observed by Parliament. Financing is not independent, as it comes directly from the state budget and depends on the momentary political mood of Parliament. It is also not sufficient to fulfil ETV's own remit. Finally, it is not transparent as the criteria by which funding is decided are unknown either to ETV itself or the public.

⁹³ Development Plan 2003–2005, Section 3.2.4.

⁹⁴ Interview with Hagi Shein, Dean of the Media School at International University Concordia Audentes, Member of the Broadcasting Council, Tallinn, 31 May 2004.

⁹⁵ Criteria suggested at EUMAP Roundtable, Tallinn, November 4.

Concerning the future of public broadcasting, there has been virtually no public debate on this issue since ETV ceased carrying advertising – reflecting the disappearance of conflict between public and private broadcasters. While Chairman of the Broadcasting Council, Andres Jõesaar, believes private broadcasters lack interest in the issue,⁹⁶ the private broadcasters allege irrational resistance from senior figures in public broadcasting to any criticism from politicians or private broadcasters.⁹⁷

4.4 Governance structure

4.4.1 Composition and appointments

ETV and ER are each governed by a Management Board consisting of up to five persons. The Broadcasting Council appoints the Management Boards of both ETV and ER. As a rule, the members of the boards are chosen by public contest. Members are usually persons with relevant professional experience, and there have been few allegations of political considerations taking priority in appointments. The tenure of the chairman and members of the Management Board is up to five years. The actual tenure is defined by contract, and is usually four to five years.

Concerning the transparency of ETV, both State officials and private broadcasters have accused the broadcaster of not producing sufficiently detailed accounts.⁹⁸ However, many experts believe that in recent years reporting has become more detailed and accessible to the public. At the time of compiling this report, the Ministry of Finance stated it had not carried out sufficient analysis to evaluate the transparency of ETV.⁹⁹ The Ministry stated that it is currently working on a new “financing concept”, without specifying exactly what this means. According to Andres Jõesaar all questions from the Ministry of Finance and others concerning ETV’s finances have received exhaustive answers, and all plans and accounting reports are publicly available on the web (www.etv.ee).¹⁰⁰

4.4.2 Responsibilities

The law does not prescribe any sanctions to be imposed on the public broadcaster for violating the Broadcasting Act, except – in theory – fines, although these have almost never been imposed in practice.

⁹⁶ Interview with Andres Jõesaar, 27 May 2004.

⁹⁷ Interview with Toomas Vara, 28 May 2004.

⁹⁸ See, for example: D. Vaarik, “Valgust ETV ekraanile”, (“Light onto ETV’s screen”), in *Postimees*, 23 May 2001. D. Vaarik was at this time an adviser to the Ministry of Finance.

⁹⁹ Interview with Maria Fedina, Chief Specialist of the Ministry of Finance Public Relations Department, Tallinn, 4 June 2004.

¹⁰⁰ Interview with Andres Jõesaar, 27 May 2004.

However, the Broadcasting Act does set down the conditions under which the Council may remove members of ETV management. Until the Act was amended in 2000, the only ground on which a member of the Management Board could be removed was a criminal conviction. At that time, the Broadcasting Council attempted to fire Director General Toomas Lepp on grounds of distrust, due to financial losses at ETV. The Council lost the case in court, although Lepp quit by agreement in 2000.¹⁰¹ After this case, Parliament amended the Broadcasting Act to specify the grounds for dismissal of ETV managers, and also to specify the liability of individual members of the Broadcasting Council for Council decisions that cause wrongful damage to ETV, ER or their creditors.¹⁰²

Since 2000, the Chairman (the new title for the former Director General) or a member of the Management Board can be removed in the following cases:¹⁰³

- if the Broadcasting Council expresses no confidence in the chairman or a member of the Management Board by a two-thirds majority of its members;
- if a member of the board is convicted of a criminal offence;
- on grounds provided for in the member's contract.

In other words, essentially the Broadcasting Council may draw ETV management's attention to breaches of the Broadcasting Act, and in the most extreme situation dismiss the managers.

In accordance with the amended Act, in January 2002 the Broadcasting Council dismissed the Chairman of the Management Board, Aare Urm. He was accused by the Council of neglect of public service programming principles, actions against the Council, violation of the Broadcasting Act and unwillingness to cooperate with the Council.¹⁰⁴ In particular ETV had allegedly continued selling advertising in breach of the new no-advertising policy approved by Parliament.¹⁰⁵

Apart from the personnel measures described above, the Broadcasting Council may not interfere in ETV's programming, as this field is considered to be independent.

¹⁰¹ Shein, *Landscape of Estonian Television*, pp. 386–389.

¹⁰² Broadcasting Act, (passed on 8 March 2000, entered into force on 29 March 2000), RT I 2000,25,143, art. 32(1), (hereafter, Broadcasting Act (8/3/2000)).

¹⁰³ Broadcasting Act (8/3/2000), art. 32(2).

¹⁰⁴ Shein, *Landscape of Estonian Television*, p. 397.

¹⁰⁵ See for example: "TV 3 juhi sõnul võiks ETV juhtidega tegeleda uurimisorganid" ("According to the manager of TV 3 ETV's management should be investigated by the authorities"), *Eesti Päevaleht Online* news item, 10 January 2002, available (in Estonian) at <http://www.epl.ee/artikkel.php?ID=186240> (accessed on 8 June 2005).

In 2003 one case of product placement was discussed by the Council.¹⁰⁶ ETV's management was alerted to the fact and specific employees were given oral reprimands. In one case the Broadcasting Council submitted a complaint about ETV to the Consumer Protection Board (which supervises the compliance of advertisers with the regulations of the Advertising Act), after ETV had broadcast a parody reality show before 21.00 which had a vodka brand as a sponsor. The Board forwarded the case to the Tallinn City Court, which in December 2001 found that a brand cannot be a sponsor, and judged that the sponsorship announcement constituted alcohol advertising broadcast at a prohibited time. The court imposed a fine of EEK 80,000 (or approximately €5,112) on the broadcaster, which was upheld on appeal to a district court.¹⁰⁷ The Broadcasting Council also decided to redirect this fine against the (then) ETV Chairman Aare Urm personally. However, as of September 2004 the Council had not applied to a court to impose this decision, as its implementation appears to be highly complicated in legal terms; moreover, the (then) chairman of the Board of ETV had in any case been dismissed.

The Broadcasting Council's "Principles of Programming Impartiality and Balance in Public Broadcasting",¹⁰⁸ (hereafter, Broadcasting Council Guidelines), also envisage the establishment of an independent ombudsman or jury to analyse cases of violation of the rules of impartiality and balance and propose penalties. However, this has not happened, nor did ETV currently participate in any other system of independent self-regulation at the time of writing this report. From 1997 to 2002, ETV was a member of the independent Estonian Press Council, which examined complaints against television channels. However, in 2002 the Newspaper Association accused the chairman of the Estonian Press Council of mismanagement, left the Council, called on broadcasters to leave the Council too and created a new Estonian Press Council of its own. The broadcasters left the Council to avoid conflict with publishers, but did not join the new Council (as it dealt almost exclusively with complaints against newspapers) or form any of their own.¹⁰⁹ Only in late spring of 2005, i.e. three years after leaving the original Press Council, did ETV join the self-regulatory body of the Newspaper Association – mainly by accepting its adjudications, while the organisation itself is being run by the print media industry.

¹⁰⁶ Interview with Andres Jõesaar, 27 May 2004.

¹⁰⁷ Shein, *Landscape of Estonian Television*, p. 397.

¹⁰⁸ Broadcasting Council, *Avalik-õigusliku ringhäälingu programme erapooletuse ja tasakaalustatuse põhimõtted (Principles of Programming Impartiality and Balance in Public Broadcasting)*, approved by the Broadcasting Council on 29 March 2001, available in Estonian at <http://www.er.ee/index.php?lang=est&linker=true&cid=376> (accessed 1 June 2005), (hereafter, Broadcasting Council Guidelines).

¹⁰⁹ H. Harro-Loit and E. Lauk, "Self-regulation: watchdog's collar or shelter for the guild?" cited in N. Malmelin (ed.), *Writings on International and National Communication*, in *Viestinnän julkaisu*, 8, Department of Communication, University of Helsinki, 2003, pp. 98–108.

The original Estonian Press Council has received only two to three complaints a year against broadcasters – far fewer than the number of complaints against newspapers. Currently, ETV deals with these complaints through the office of its programme director, and if requested provides an answer to the Press Council. In major cases the Programme Council (consisting of ETV employees, mainly chief producers) would also be involved in handling the complaints, although this has never occurred.¹¹⁰ In general, the system appears unlikely to be used or to work adequately without a clear complaints procedure and institutional structure for receiving and examining complaints.

4.5 Programme framework

4.5.1 Output

The annual output of the ETV in 2003 was 5,863 hours.¹¹¹ This is one of the smallest among members of the European Broadcasting Union (EBU)¹¹² and is due to the fact that only one channel is broadcast. ETV has the largest share in Europe of own production and European works as a proportion of total programming – 95 per cent. Own production accounts for 53 per cent of total programming.¹¹³

The breakdown of programme output of ETV by genre in 1997 and 2003 is shown below in Table 5. ETV appears to largely fulfil its role as a public broadcaster. It remains Estonia's biggest producer (in terms of output) of original programmes in Estonian and Russian, and is the main producer of news and political, educational, cultural, sports and children's programming.¹¹⁴ Since it ceased selling advertising (first in 1998, then definitively in 2002) it has been enabled to refrain from commercial temptations and its output has become more public service-oriented.

The overall design of the programme service is conducted by the management of ETV. The broadcaster is accountable to the Broadcasting Council, which supervises its fulfilment of its functions as laid down in the Broadcasting Act, and observance of other obligations under the Act. The Council also supervises ETV's adherence to the programming outline derived from the Development Strategy 2005–2008.

¹¹⁰ Interview with Ainar Ruusaaar, 11 June 2004.

¹¹¹ Data of ETV (2003) provided to EUMAP on 11 June 2004.

¹¹² Interview with Ainar Ruusaaar, 11 June 2004

¹¹³ Data of ETV (2003) provided for EUMAP on 11 June 2004.

¹¹⁴ Interview with Hagi Shein, 31 May 2004.

Table 5. Annual output of ETV – breakdown by genre (1997 and 2003)

Annual output		1997	2003
Total hours		4,012	5,863
Breakdown by genre – as a percentage of total annual output	Fiction	28.9	28.7
	“Infotainment”	6.0	15.1
	News	8.9	12.3
	Culture, science	10.5	6.5
	Education	1.7	0.9
	Music	5.6	6.2
	Information	6.6	6.0
	Sports	8.2	5.3
	Entertainment	5.5	2.7
	Human interest	6.4	11.5
	Religion	0.8	0.1
	Promotion	6.1	4.7
	Advertising	3.4	0
	Other	1.4	0

Source: P. Vihalemm¹¹⁵

A consultative Extended Programme Council discusses the output of ETV three times a year and makes suggestions regarding programming. The Council is composed of external experts and advisers in addition to chief producers and other internal ETV employees.

There has been no systematic monitoring and analysis of TV output to provide a breakdown of the programming of ETV or any other channel. Course projects of the Media School at the International University of Concordia Audentes surveyed the programme structures of the Estonian terrestrial television channels in spring 2002 and February 2003.¹¹⁶ According to their findings, the structure of ETV's output is distinct from those of commercial broadcasters. During the period of observation, ETV had the largest proportion of factual programming; 62 per cent, as compared to 41 per cent on Kanal 2 and 16 per cent on TV 3. On commercial channels, programmes about the activities of Parliament, culture and fine arts, religion and classical music were absent, while by contrast ETV did not screen any entertaining talk shows. Also, comparing the programme structure of ETV with the previous year (for spring 2002, when advertising was still broadcast), the volume of factual programming had increased and the volume of entertainment and music had decreased.

¹¹⁵ Vihalemm *Media system and media usage*, p. 359.

¹¹⁶ T. Rajaleid, *Estonian Television Stations' Readiness to Follow the Principles of EU Television without Frontiers Directive*, Course Project II, manuscript, Media Department, Concordia International University Estonia, Tallinn 2003, available on the University's website at <http://www.hot.ee/twf> (accessed 17 February 2005), (hereafter, Rajaleid, *Estonian Television Stations*).

Experts interviewed for this report¹¹⁷ broadly believe that ETV has increasingly fulfilled its role as a public service broadcaster, especially since advertising disappeared from the channel. Previously, commercial entertainment prevailed,¹¹⁸ while subsequently the share of programmes which address ETV's non-commercial remit (for example children's programmes¹¹⁹ or covering life in rural localities) has increased. There is a general perception among media experts and professionals that ETV's programming has moved closer to what is generally expected from a public service broadcaster. That said, given ETV's current remit and even within the current level of financing, the share of education, culture and science programmes in ETV's output should probably be larger.

4.5.2 Programme guidelines

Programme obligations and guidelines for both ETV and private broadcasters come from several sources: general programme requirements stemming from the Broadcasting Act, quotas (derived mainly from European requirements), obligations concerning journalistic standards deriving from other provisions of the Broadcasting Act, and the Broadcasting Council Guidelines.

In case of a threat to public security or the constitutional order, broadcasters are required to promptly transmit official announcements of Parliament, the President and the Government in all their services at their own expense. The broadcasters must also transmit without delay information which is necessary for protection of the life, health and security of persons or for the prevention of damage to property or of danger, or for the prevention of environmental damage. The public broadcasters are required to broadcast all official announcements of constitutional state authorities, without delay. The broadcasters are not allowed to change these announcements and therefore are not liable for their content.¹²⁰

The Broadcasting Council Guidelines do oblige the management of ETV to ensure that the programme service covers, along with current affairs and political issues, so-called "timeless" themes – that is, themes that are not connected to current affairs. They also state that thematic variety helps satisfy the informational needs of different groups of audience and performs diverse social and cultural functions.

¹¹⁷ Interviews with Hagi Shein, 31 May 2004; Peeter Sookruus, 2 June 2004; Halliki Harro-Loit, 7 June 2004; Toomas Vara, 28 May 2004; Urmas Oru, 31 May 2004; Aune Unt, Lecturer at the Department of Journalism and Communication at University of Tartu, Tartu, 10 February 2005.

¹¹⁸ See, for example: I. Taska, T. Lepp, O. Sõnajalg, "Enne vaimutoit, siis meelelahutus", ("Mental food first, entertainment afterwards"), in *Eesti Päevaleht*, 22 June 1996.

¹¹⁹ In 1997 1.2 per cent and 2.5 per cent in 1999, as compared to 5.8 per cent in 1998 (this was the first advertising free year in ETV), or 7.2 per cent in 2003. Data from: Shein, *Landscape of Estonian Television*, p. 58, and data provided by ETV to EUMAP on 27 August 2004.

¹²⁰ Broadcasting Act, art. 10.

As Section 4.3 describes, since July 2002 ETV has not carried advertising. The Broadcasting Act also prohibits using sponsorship to facilitate programme acquisition, production or transmission.¹²¹ ETV may accept donations and project financing, the source of which has to be disclosed only by name and without logos or trademarks, background sound or audiovisual background.¹²² ETV may broadcast advertising and information concerning sponsors if such material accompanies broadcasting rights to events acquired through the European Broadcasting Union (EBU); major international sporting events are a possible example. In addition the Ministry of Culture may, on the basis of a specific and reasoned request of the Broadcasting Council, permit ETV to broadcast advertising and information concerning sponsors, if these accompany broadcasting rights to events which are of major importance for society; the sponsorship information has to be presented in the same way as information about donations and project financing, unless otherwise stated in the broadcasting rights.¹²³ Managers of private broadcasters claim that the Minister tends to issue these permits too easily. After this legal provision came into effect, the Ministry established a working group to discuss the propriety of ETV's requests. However, the group soon ceased to meet, after discussions about particular cases led to fundamental disagreements between the private and public broadcasters.

Objectivity and balance

Under the Broadcasting Act, executive producers must ensure the compliance of programmes with 'fair press practice' and the principle of freedom of speech. However, neither the Act nor any other legal provision defines what constitutes "fair practice". The Act contains provisions mandating political balance, according to which all political parties must have equal access to transmission opportunities.¹²⁴ Upon granting broadcasting time to a political party or a political movement to present its positions, a broadcaster must also provide an opportunity for time to be granted in the same programme service, under equal conditions and without undue delay, to other political parties or movements requesting it.

The Broadcasting Council Guidelines allocate the responsibility for compliance with the guidelines to individual journalists, reporters, editors, directors and photographers.¹²⁵ Editorial control is exercised by executive producers, and responsibility for the balance and impartiality of the programme service as a whole lies with the Management Board. The Guidelines establish rules of good conduct and contain specific obligations regarding thematic balance, objectivity, coverage of controversial issues, political coverage, interviewing, and editing. They state that impartiality and balance must play an essential

¹²¹ Broadcasting Act, art. 20.

¹²² Broadcasting Act, art. 29 and 35.

¹²³ Broadcasting Act, art. 29.

¹²⁴ Broadcasting Act, passed on 16 June 1999, entered into force on 24 July 1999, RT I 1999, 59, 613.

¹²⁵ Broadcasting Council Guidelines, Chapter 14, art 6(1),

part of the service provided by the public broadcasters. The broadcaster should provide equal opportunities to speak to all parties (institutions, political parties, professional and social groups) involved in an issue that is covered, whether they be decision-makers or those affected by decisions.

The Broadcasting Council Guidelines also lay down the principle of objectivity, stating that opinions must be based on facts and that prejudice must be avoided. Commentary must be justified and conclusions that do not logically derive from presented facts should be avoided; in other words, all relevant facts that underpin a presented conclusion must themselves be presented.

A chapter in the Guidelines is dedicated to political balance. This prescribes equal treatment for all politicians regardless of their position, and the avoidance of psychological, situational or contextual preferences by the journalist. Where political issues are covered, different viewpoints must be heard. The use of politicians as hosts or interviewers must be well justified, and representatives of other parties must be given the same opportunity. Politicians may not be used as news anchors, interviewers or reporters. During election campaigns ETV must state how many debates it will hold, who will be invited and according to what criteria. No problems have been noted in implementation of these provisions.

4.5.3 Quotas

There are no special quotas for representation of languages or minority groups in Estonia. The issue of programming for the Russian-speaking minority has recently again become the subject of disagreement. There has been a general perception that the overall volume of these programmes has decreased in recent years. ETV denies this, pointing out that the volume of output in Russian (including Estonian programmes with Russian subtitles and language training programmes) has remained steady for the last three years at around four per cent of total programming: 203 hours per year in 2001, 207 in 2002 and 230 in 2003.¹²⁶ However, according to ETV Programme Director Ainar Ruusaar the placing of programmes in Russian in prime time has ceased (with the exception of the news in Russian), because – in his view – the concentration of Russian programmes in this period would cause the overall audience share of ETV in that period to drop to three per cent.¹²⁷ This is one of the main arguments for introducing a second ETV channel.

The Development Plan 2003–2005 states that ETV aims to attract more Russian viewers, and prescribes a big increase in Russian language feature programmes (excluding news and repeated programmes) from 55 hours per year in 2002 to 96 hours by 2003, accompanied by an increase in financial resources for Russian

¹²⁶ Interview with Ainar Ruusaar, 11 June 2004.

¹²⁷ Interview with Ainar Ruusaar, 11 June 2004.

programming of 2.7 times.¹²⁸ However, neither the increase in resources nor the increase in programming have materialised, and the volume of Russian programming stayed the same in 2004 as well.

Most of the finances for producing programmes in Russian comes from various foundations, for example the Integration Foundation. According to Ainar Ruusaar, Russian programming in 2005 will be increased “to some extent”, with assistance from EU Phare funds of approximately EEK 2 million (or approximately €128,000) to produce some bilingual programmes. Some professionals are critical of this practice,¹²⁹ arguing that project financing is likely to produce output designed to promote particular opinions rather than balanced journalism.

The problem of serving the needs of the Russian-speaking minority is a complex one, requiring detailed analysis and clear policy. Currently, Russian-language programmes in Estonia are watched predominantly by ethnic Estonian viewers.¹³⁰ Russian-speakers prefer watching programmes broadcast from Russia; a notable proportion of the Russian-speaking population does not understand Estonian or their knowledge of Estonian language is poor, and programming in Russian is not continuous, making such programming vulnerable to the tendency of viewers to leave one channel running. The Russian-language service of Estonian Radio has a substantial audience in Estonia, but this may be partly because programmes from Russia cannot be received on FM except near the border. It may be argued in addition that ETV has no ability to compete in terms of quality with Russian-language channels broadcast from Russia, especially with the rich variety of light entertainment programmes available.

In addition, the Russian-speaking minority is varied in terms of social and cultural background, age, education, occupation and place of residence, and according to media experts this creates a complicated target audience.¹³¹ The lower middle class, mainly not speaking the official language, identifies itself more with Russia, and also watches Russian television channels. More Western-oriented viewers tend to know foreign languages and are able to watch Western channels even without dubbing. Most of the latter can easily watch programming in Estonian, and therefore need no special programming in Russian. Also many other nationalities which speak Russian as their first language (such as Ukrainians and Belorussians) and who have cultural autonomy under Estonian law, have different patterns of media consumption as they tend more than average to identify

¹²⁸ Development Plan 2003–2005, Appendix 5.

¹²⁹ P. Ivanov, “Siin Tallinn: ste-ste-stereo, stereotüübid” (“Tallinn calling: ste-ste-stereo, stereotypes”), in *Eesti Päevaleht*, 8 April 2004. P. Ivanov is the former ETV chief producer of Russian programmes.

¹³⁰ The bilingual talkshow *Unetus* [Insomnia] gained 72,000 Estonian viewers and 4,200 Russian speaking viewers; *Subboteya* [Saturday Show] of Kanal 2 gained 30,000 Estonian viewers and 3,500 Russian speaking viewers. I. Raag, “Potjomkinluse lõpp”, (“End of the Potjomkin approach”), in *Eesti Päevaleht*, 7 April 2004, (hereafter, Raag, *End of the Potjomkin approach*).

¹³¹ Interview with Halliki Harro-Loit, 7 June 2004.

themselves with Estonia.¹³² ETV managers claim that this fragmented audience is hard to serve effectively, especially under circumstances of limited finances and with only one channel. In this situation, the argument runs, placing Russian-language programs in Estonian prime time would only lower ETV's audience share without bringing any noticeable benefit to the Russian-speaking community.

Chair of the Board of ETV, Ilmar Raag, for example argues that the production of programming in Russian is expensive and needless because Russian programmes have an extremely small impact on their target audience.¹³³ He characterized the attempts to attract a Russian-speaking audience that is predominantly interested in entertainment as a complete failure.¹³⁴ Such views are mainstream. The counterargument is that the Russian-speaking population are also taxpayers and that ETV should produce Russian-language programmes with the aim of integrating them into Estonian society.¹³⁵

In order to reach consensus on such issues and design programming accordingly, more research is needed on the information needs of minority communities. Such research as has been conducted indicates there is room for improvement in catering to the Russian-speaking audience. One academic thesis indicates, for example, that Russian-language news on ETV focuses very little on life within the Russian-speaking community and tends rather to report on "official issues", as the established routines for collecting preliminary information do not facilitate the inclusion of issues of direct relevance to the Russian-speaking community.¹³⁶ In other words, journalists know little about the life of the Russian-speaking community and presumably do not value its newsworthiness.

Regarding other quotas, the following requirements exist:¹³⁷

Minimum weekly transmission

The required minimum weekly transmission time is 56 hours for a national terrestrial television broadcaster, and 21 hours for a local terrestrial television broadcaster or cable network. At least five per cent of daily transmission time has to be allocated for news

¹³² See, for example: T. Vihalemm and A. Masso, "Russian speaking minority on different cultural flows: media orientation, social attitudes and collective identity", in E. Lauk *et al* (eds), *Media and National Identities*, by Hampton Press, (forthcoming).

¹³³ I. Raag, "Memo rahvusringhäälingu asjus", ("A memo about public broadcasting"), in *Sirp*, 20 February 2004; and Raag, *End of the Potyomkin approach*.

¹³⁴ Comments at EUMAP Roundtable, Tallinn, 4 November 2004.

¹³⁵ L. Keedus, "Kallid ja mõttetud venelased?" ("Expensive and senseless Russians?"), in *Eesti Päevaleht*, 14 April 2004.

¹³⁶ D. Vasilyev, *Uudiste valik venekeelses Aktuaalses Kaameras*, (*Choice of News in the Russian Language Aktuaalne Kaamera*), Bachelor's Thesis, manuscript, University of Tartu, Department of Journalism and Communication, Tartu, 2004.

¹³⁷ Broadcasting Act, Chapter 1.

produced by the channel itself, except for Sundays and public holidays when there is no quota.

European works

At least 51 per cent of transmission time (excluding news, sports events, games, advertising, teleshopping and teletext services) has to be reserved for the transmission of European works, defined precisely in the law according to the EU TWF Directive.¹³⁸

At least ten per cent of transmission time (with the same exceptions) must be allocated to the transmission of European works created by producers who are independent of the broadcaster, and the works must include works transmitted within five years of production. (The required proportion of such works is not specified.)

Own production

At least ten per cent of monthly transmission time (excluding the time appointed to news, sports events, games, advertising, teleshopping and teletext services) has to be allocated for “own production”, defined as programmes relating to contemporary Estonia or Estonian cultural heritage, produced by the broadcaster or in cooperation with producers from the member states of the EU commissioned from an independent European producer. At least 50 per cent of the minimum quota for own production must be broadcast during prime time, defined as the period from 19.00 to 23.00.

Exclusive broadcasting rights

The Broadcasting Act provides restrictions on the exercise of exclusive broadcasting rights. The Government has established a list of events which are regarded as being of major importance for society and which are therefore to be transmitted such that a substantial proportion of the general public has the possibility of following such events for free on terrestrial television. The events listed are the National Singing and Dancing Festival, Olympic Games, World and European Football and Athletics Championships, World Skiing Championships, Skiing World Cup, and all World and European championships held in Estonia.¹³⁹

¹³⁸ EU “Television without Frontiers” Directive (hereafter, TWF Directive): European Council Directive of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities, 89/552/EEC, OJ L 298 of 17 October 1989, as amended by European Parliament Directive of June 1997, 97/36/EC, OJ L 202 60 of 30 July 1997, consolidated text available on the European Commission website at http://europa.eu.int/eur-lex/en/consleg/pdf/1989/en_1989L0552_do_001.pdf (accessed 15 March 2005).

¹³⁹ Government Decree on the List of events of major importance for society of Estonia, which need to be transmitted in free television, No. 138, RT I, 2003,40,276, adopted on 6 May 2003.

Implementation of quotas

ETV has fulfilled its programming quotas easily: in 2003, 82.8 per cent of programming was European works, 51.2 per cent from independent producers and 52.7 per cent own production.¹⁴⁰ Since the beginning of 2004 the fulfilment of quotas has been monitored by TNS EMOR. Previously, the Ministry found it difficult to monitor adequately because the quotas for European works and independent producers are set per calendar year, the quota for own production per calendar month and the news quota on a daily basis, yet recordings of transmitted programmes which would enable the Ministry to track output, only have to be preserved for 20 days under the Broadcasting Act.

Some experts believe national audiovisual production should be encouraged to a greater extent, either by having stricter quotas for production by Estonian producers or by providing resources to domestic producers.¹⁴¹ Such opinions are based on the fact that domestic production is negligible, with one or two films, a few documentaries and/or animated films per year. After amendments to the Broadcasting Act passed in 2003, the conditions for television broadcast licences also include the requirement that at least three hours per week are to be allocated to audiovisual works supported by Estonian film foundations.

4.6 Editorial standards

As Section 4.5.2 describes, both the Broadcasting Act and the Broadcasting Council Guidelines provide external regulation of broadcasting standards. In addition, the Code of Ethics of the Estonian Press is another potential source of regulation of the activities of TV journalists.¹⁴² The Code is based on similar codes found in Northern European countries, prescribing rules for the provision of impartial and accurate information and states the moral obligations of journalists and editors separately. However, the Code is of greater relevance to newspaper journalists, as the printed press is subject to almost no legal regulation. The Broadcasting Council Guidelines refer to the Code in some clauses and the general approach of the two documents is similar. According to information provided by the Estonian Press Council, ETV has not yet signed the Code of Ethics due to formal disagreement with one clause; at the time of writing this disagreement had been resolved, but no opportunity had occurred for the public broadcaster to sign the Code. Both ETV and private broadcasters (for whom the Code is potentially more important as these broadcasters are not regulated by the Principles) acknowledge the importance of the Code.

¹⁴⁰ Database information, provided by the Ministry of Culture to EUMAP on 3 February 2005.

¹⁴¹ "Impact of joining the EU", pp. 31–33.

¹⁴² The Code of Ethics may be found (in English) on the website of the Estonian Press Council at http://www.asn.org.ee/english/code_of_ethics.html (accessed 15 March 2005), (hereafter, Code of Ethics of the Estonian Press).

5. REGULATION AND MANAGEMENT OF COMMERCIAL BROADCASTING

The commercial broadcasting sector in Estonia exhibits considerable vertical and horizontal concentration, especially through the extensive broadcasting and press holdings of Norwegian Schibsted. The Broadcasting Act fails to provide for any measures to be taken against concentration that occurs *after* a broadcasting licence has already been allocated. Neither the Government nor the regulators have adopted a clear position regarding concentration, and the impact of media concentration has not yet been studied thoroughly. The editorial independence of private broadcasting companies depends largely on good practice. While independence is not thought to be threatened in practice, the absence of a definition of good editorial practice in the Broadcasting Law and of clear mechanisms for processing complaints against broadcasters raises some doubts in this area.

5.1 The commercial broadcasting system

Terrestrial

There are two private terrestrial TV broadcasters in Estonia: Kanal 2 and TV 3. There is currently only one terrestrial local television channel, Alo TV, operating in Tartu and providing mainly text news, amateur videos and music videos.

The commercial broadcasting system – and indeed the Estonian TV market as a whole – is strongly affected by the existence of two main groups with very different TV consumption patterns, and in particular a substantial Russian speaking minority that hardly watches Estonian channels at all, preferring to watch Russian channels redistributed in Estonia via cable. (See also Section 2).

In addition to the two licence paying private broadcasters, another competitor entered the market in 2001, Baltic Channel One (PBK). PBK is the Baltic version of Russian State-controlled Pervyi Kanal, with a mixture of Russian-language programmes produced in Russia (two thirds) and locally (one third).¹⁴³ PBK is produced and broadcast via satellite from Latvia and disseminated in Estonia through cable networks. The news programmes of PBK have 52,000 Russian-speaking viewers, while only 11,000 watch ETV's news in Russian.¹⁴⁴

From 2004, PBK has introduced local news produced in Estonia. As the company operates under Latvian jurisdiction, the provisions of Estonian broadcasting law do not apply to the channel and it does not pay the broadcasting licence fee. Estonian private

¹⁴³ M. Rebane, "Eestlased ei võta Baltimaade Vene telekanalit omaks" ("Estonians do not adopt the Baltic Russian channel"), in *Eesti Päevaleht*, 30 October 2003.

¹⁴⁴ Data of TNS EMOR (March-May 2004), provided to EUMAP on 18 June 2004.

broadcasters regard the operations of PBK to be a legalized form of piracy.¹⁴⁵ PBK holds approximately 8 per cent of both the Estonian audience and advertising market (see Section 2.3).

In addition to the fair competition issue, PBK has raised national security concerns in Estonia linked to its potential distribution of false information among the Russian population of Estonia. For example, on the eve of Estonia's accession to the European Union (EU), PBK aired reports about expected increases in prices of salt and other essential commodities, leading to panic buying among the Russian-speaking community.¹⁴⁶ The fact that the PBK's owner (Russian Pervyi Kanal) is tightly controlled by the Russian State authorities¹⁴⁷ fuels worries that it may serve as a propaganda tool for influencing the local Russian population.

The Estonian Ministry of Culture has been powerless to interfere in PBK's activities: the law guarantees freedom of reception and retransmission, and the channel has not broadcast items that might serve as grounds for imposing restrictions (infringement of morals, inciting hatred, pornography or gratuitous violence). The Ministry has contacted the Latvian authorities and recently raised the issue with the EU Council of Ministers to attempt to find a solution.¹⁴⁸

Cable

There are currently 42 cable television operators in Estonia. Only four of these produce their own programmes. Two companies – Starman and Esdata – possess national cable licences. Starman, which has been operating since 1992, purchased one of its competitors – several companies under the Tele 2 trademark – in 2004 and integrated the networks. Esdata is currently building its network. In reality, Starman and STV – which holds a set of local licences covering most of the larger cities – are the two largest cable operators.

Starman still runs only one own-produced channel, Information Channel TV 9, containing a mixture of miscellaneous programmes and text news (including chat). STV runs three own-produced channels: Mirovoye kino (World Films), STV (news, feature programmes and films), and Video-radio STV. STV caters primarily to the Russian-speaking audience, while Starman's channel is in Estonian.

¹⁴⁵ Interviews with: Urmas Oru, 31 May 2004; Toomas Vara, 28 May 2004.

¹⁴⁶ See for example: "Venelane tahab vene uudist", ("A Russian wants Russian news"), Baltic News Service, 3 April 2004, available (in Estonian) at Delfi Internet Portal <http://www.delfi.ee/archive/print.php?id=7558969> (accessed on 7 June 2005).

¹⁴⁷ See for example: Center for Anticorruption Research and Initiative Transparency International Russia, *Monitoring the Misuse of Administrative Resources during the Campaign for the December 2003 Russian Federal State Duma Elections*, Center for Anti-corruption Research and Initiative, Transparency International – R, Moscow, 2004, pp. 59–60.

¹⁴⁸ Interview with Peeter Sookruus, 2 June 2004.

Not all of the own-produced programme packages for which broadcast licences have been issued are actually operating. For instance, STV has been issued five broadcast licences, but their Internet homepage reports on only three programmes.¹⁴⁹ Starman possesses six broadcast licences (including those of the former affiliates of Tele 2), but only one can be found on their homepage.¹⁵⁰ Not commencing broadcasting as stated in the licence is grounds for sanctions, but the absence of monitoring means that no penalties have yet been imposed. The Ministry of Culture has promised to supervise the activities of cable broadcasters more closely.¹⁵¹

5.2 Services

Commercial broadcasters in Estonia are not subject to any public service obligations with the exception of the requirement that at least five per cent of daily transmission time has to be allocated for news, except for Sundays and public holidays (see Section 4.5).

Private television channels broadcast primarily foreign films and entertainment, although they have also been able to produce competitive news, infotainment and fiction. Table 6 shows the breakdown of output for the two private broadcasters.

¹⁴⁹ Homepage of the STV website, available at <http://www.stv.ee> (accessed 30 January 2005).

¹⁵⁰ Homepage of the *Starman* website, available at <http://www.starman.ee> (accessed 30 January 2005).

¹⁵¹ Follow-up interview with Peeter Sookruus, 3 February 2005.

Table 6. Programme output of the two national terrestrial commercial television stations – breakdown by genre (2003)

		Kanal 2	TV 3
Total output in 2003 (hours)		6,844	7,181
Breakdown of output by genre (as a percentage of total output in 2003)	Fiction	38.1	59.2
	“Infotainment”	5.1	4.0
	News	3.7	4.8
	Culture, science	3.7	0
	Education	0	0
	Music	8.9	1.2
	Information	1.2	0
	Sports	3.4	2.1
	Entertainment	19.9	9.2
	Human interest	2.2	5.0
	Religion	0	0
	Promotion	1.9	3.6
	Advertising and teleshopping	11.5	10.8
Other	0.4	0	
Programmes for children as a percentage of total output in 2003		1.3	7.4

Source: Kanal 2 and TV 3¹⁵²

Research carried out by the International University of Concordia has revealed big differences between the programme content of private broadcasters and ETV. During the period of observation (February 2003), Kanal 2 and TV 3 had no programmes on the work of Parliament, culture and fine arts, religion, and serious music, while Kanal 2 offered entertaining talk shows and interactive chat rooms which were absent on the public channel.¹⁵³ TV 3 is notable for its extremely high proportion of fictional programming (70 per cent in February 2003), while the proportion of news and any other form of factual programming is rather low.

Casual observation of programming in 2004 yields the impression that the proportion of news and informational programmes shown by private channels has decreased further, while purchased or locally produced reality shows have appeared and gained popularity.

¹⁵² Reports of Kanal 2 and TV 3, filed to the Statistical Office of Estonia – provided to EUMAP on 1 September 2004.

¹⁵³ Rajaleid, *Estonian Television Stations*, Section 3.2.

Table 7. Examples of most watched programmes on Estonian television channels (October 2004)

Channel	Programme	Description of programme/ format	Rating (in October 2004 ¹⁵⁴)	
			(1) Ranking ¹⁵⁵	(2) Audience share ¹⁵⁶ (per cent)
ETV	Pealtnägija ("Eyewitness")	Series of short journalistic features, often of an investigative nature.	1	25.4
	Õnne 13 ("13, Luck Street")	Original domestic TV drama serial.	3	18.1
	Aktuaalne Kaamera	News	6	15.3
TV3	Kes tahab saada miljonäriks?	International TV quiz format of Who Wants To Be A Millionaire, produced in Estonia.	4	17.6
	Naistevahetus	Reality show, international format of Wife Swap, produced in Estonia.	7	15.1
	Raport ("Report")	Weekly crime newsreel	9	14.4
Kanal 2	Tähed muusikas	International format of Lyrics Board, produced in Estonia.	8	14.6
	Reporter	Extended news programme with inserts of infotainment and entertainment.	13	12.2
	Ärapanija ("Mocker")	Ironical-humorous reconstrung of the week's events, simulated newscasts.	14	12.2

Source: TNS EMOR¹⁵⁷

¹⁵⁴ Programmes included were on air during the whole period of October 2004. Single highly rated performances of films or other programmes are not included in the 'Description of programme/format' column.

¹⁵⁵ Ranking of a particular programme in the ranking list for all channels combined

¹⁵⁶ Percentage of the total potential audience.

¹⁵⁷ TNS EMOR Database information provided to EUMAP on 22 February 2005.

5.3 Ownership of commercial broadcasters

5.3.1 Ownership

Ownership of terrestrial channels

Under Estonian law, programmes may be broadcast by any individual or legal entity that holds a broadcast licence. Until 2000 broadcasters could only be owned by Estonian citizens with permanent residence in Estonia, or by legal persons (entities) in which the majority of votes belonged to Estonian citizens. This provision was repealed as it contradicted the equal opportunities requirements of EU directives.

The only restrictions on ownership remaining in the law are anti-concentration clauses. Under the Broadcasting Act, the Ministry of Culture may not issue a broadcast licence under either of the following two circumstances:¹⁵⁸

- The allocation of the licence would result in a press or information monopoly or cartel in the territory planned for the broadcasting activity, or the broadcasting in the planned territory or part of the territory of Estonia would accumulate in the hands of persons who cooperate with each other. Unfortunately, neither the concepts of monopoly or cartel are defined in the law.
- A person operating as a television and radio broadcaster would become simultaneously the publisher of a daily or a weekly newspaper in the planned territory or part of the territory of Estonia, or *vice versa*. This restriction does not apply to the TV guide published by a broadcaster itself.

The Ministry of Culture has so far never invoked the above provisions. The broadcasting market nevertheless exhibits a considerable degree of concentration and particularly cross-ownership of private broadcasters and press publishers, as will be seen below. Such concentration appears to be legal as it occurred subsequent to the acquisition of the broadcasting licence in question.

The national private televisions belong to Scandinavian companies. TV 3 is 100 per cent owned by the Swedish MTG Group (Viasat Broadcasting AB). Kanal 2 is 100 per cent owned by the Norwegian Schibsted ASA. TV 3, which also operates national terrestrial channels in Latvia and Lithuania, enjoys the largest audience share of the three Estonian TV channels (24.4 per cent in 2003) as well as absorbing the majority of TV advertising revenue (56 per cent). Kanal 2 held a 20 per cent audience share in 2003 and 35 per cent of advertising revenue (see Section 2.3. and Table 8 below).

¹⁵⁸ Broadcasting Act, art. 40.

Table 8. Breakdown of the television advertising market (2003)

	Share of television advertising market (per cent)
TV 3	56.0
Kanal 2	35.0
PBK	8.0
Other	1.0
Total	100

Source: AEB¹⁵⁹

Cable television ownership

The largest cable company is Starman, owned by Royalton Partners (65 per cent) and individuals including management (34 per cent).¹⁶⁰ In 2004 Starman purchased one of its competitors – several companies under the trademark Tele 2, mainly owned by Swedish Kinnevik (also the owner of MTG Group) – and integrated the networks. Currently they also provide other data communication services.

STV launched its operations in 1991, and is owned by three individuals. The company has recently started providing other data communication services.

Esdata – which has not fully entered the cable television business yet – has been an affiliate of the biggest national telephone company, Elion, since 2003. Elion is itself owned by Baltic Tele AB (TeliaSonera, 50.00004 per cent) and the Estonian state (27.2 per cent), with 23 per cent listed on the stock exchange. Esdata was the first company to provide Internet services in Estonia (as of 1993), and received a licence for cable television operations in April 2004.

5.3.2 Cross-media ownership

As is clear from the licence conditions mentioned above, a broadcast licence may not be awarded if the recipient would also be the publisher of a printed publication. However, despite this provision the Estonian market displays considerable cross-media ownership.

MTG Group owns also a radio company in Estonia – Mediainvest Holding, which operates two radio stations: Star FM (in major cities) and Power Hit Radio (in Tallinn and Pärnu). These stations play mainly music. Their share in the radio advertising

¹⁵⁹ AEB database information provided to EUMAP on 2 March 2005.

¹⁶⁰ Data provided by Starman.

market is around 12 per cent¹⁶¹ and their audience share three per cent.¹⁶² MTG Group does not hold any stakes in the printed press.

By contrast, Schibsted ASA owns 93 per cent of the shares of Eesti Meedia (Estonian Media), the largest media group in Estonia, which owns newspapers, magazines and radios.¹⁶³ The group publishes the daily newspapers with the biggest circulation, owning 100 per cent of the shares of the largest morning paper *Postimees* (with circulation of 63,000) and 50 per cent of shares of popular tabloid *SL Õhtuleht* (with circulation of 64,100). These publications enjoy 26 per cent and 23 per cent coverage respectively, and 27 per cent and 14 per cent of the daily newspaper advertising market. Eesti Meedia also owns stakes in five local newspapers, including 100 per cent in the largest – *Pärnu Postimees*; stakes in the others vary from 42 to 56 per cent.

Eesti Meedia also owns a 50 per cent stake in *Ajakirjade Kirjastus*, the largest magazine publishing house; the company publishes 14 different titles including the five largest and controls 75 per cent of the magazine market. In autumn 2003, Eesti Meedia purchased 32 per cent of the shares of Trio LSL Radio Group, which operates six radio stations, including the only country-wide talk format *Radio Kuku*, two country-wide music stations (the all-Estonian language music format *Radio Elmar* and pop/hit format *Radio Uuno*), and two Russian language music stations. Trio LSL controls 35 per cent of the radio advertising market¹⁶⁴ and enjoys a combined audience share of 27 per cent.¹⁶⁵

In addition to these holdings, Eesti Meedia owns a printing house and newspaper delivery ventures. Figure 1 provides an overview of all the Estonian holdings of Schibsted ASA.

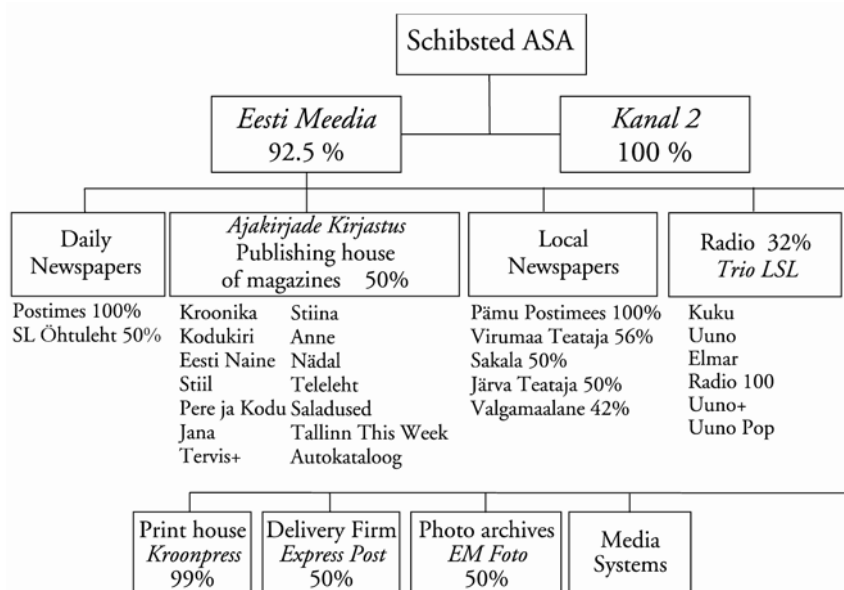
¹⁶¹ Calculated on the basis of data for 2003 provided by TNS EMOR and Mediainvest Holding.

¹⁶² Data of TNS EMOR (2003), provided to EUMAP on 18 June 2004.

¹⁶³ Data in this paragraph originates from the website of *Eesti Meedia*, <http://www.eestimeedia.ee> (accessed 30 June 2004). Data about circulation (May 2004) and advertising market share (2003) originate from the Estonian Newspaper Association, for circulations, see: <http://www.eall.ee/tiraazhid/index.html> (accessed 30 June 2004). Data about coverage from TNS EMOR (2003) provided to EUMAP on 18 June 2004.

¹⁶⁴ Calculated on the basis of data of TNS EMOR and Trio LSL Ltd (2003), both provided to EUMAP on 18 June 2004.

¹⁶⁵ Data of the TNS EMOR (2003) provided to EUMAP on 18 June 2004.

Figure 1. The structure of Schibsted ASA ventures in Estonia

The second largest print media group is the Ekspress Group, which owns the second largest daily newspaper, the largest weekly, and 50 per cent of the tabloid SL Öhtuleht and of Ajakirjade Kirjastus. It is not involved in broadcasting.

Schibsted's holdings in Estonia are regarded as clearly constituting heavy cross-media concentration by the independent media experts interviewed.¹⁶⁶ However, after consultation with lawyers the Ministry of Culture argues that under the Broadcasting Act concentration provides grounds only for refusing to issue a broadcasting licence, not for revoking a licence. Monopoly or cartel conditions are not listed as one of the reasons for which a licence may be revoked, nor is there any general statement prohibiting concentration in the media market.

Moreover, although the relevant provision of the Broadcasting Act refers to the 'responsible publisher of a daily or a weekly newspaper' as the entity to which the concentration provisions apply, this term is not defined clearly. Inter alia this may allow the argument that Schibsted's holdings do not exhibit concentration according to the law, as Kanal 2 is registered as the property of Schibsted, but Postimees as the property of Eesti Meedia.

¹⁶⁶ See for example: Estonian Journalists' Union, *Annual Report 2003*; H. Shein, "Is Media Concentration Avoidable in a Small Country?", unpublished paper, presented (in English) at a conference on "Media Concentration and Regulation of Cross-Ownership", held in Vilnius, 13-14 May 2004, (hereafter, Shein, *Media Concentration*).

A further consequence of the absence of an overall media policy is that Estonia lacks a clear policy regarding media concentration, making it impossible to tell what the government's viewpoint on the issue is.

In fact, the pros and cons of concentration in a country of Estonia's size are complex, and there is a marked lack of research into and analysis of the impact of media concentration; a recent report on media ownership in Estonia devotes a section to the "silence on media concentration".¹⁶⁷ There are strong arguments for the view that a level of concentration that might be perceived as impermissible in a larger television market may be necessary in Estonia in order for commercial broadcasting to be viable. All private broadcasters made losses in the 1990s when the number of broadcasters was larger, and even the attainment of a 17 per cent audience share among Estonians for TV 1 did not prevent bankruptcy. Indeed, it appears likely that only two private terrestrial national television channels are viable economically – hence the legal restriction of the number of licences to two.

While concentration of the television market and cross media ownership may facilitate commercialization, reduce choice and reduce the opportunities of access to public communication for persons or institutions not favoured by the dominant media owners, it may also increase the quality and depth of coverage through the merging of newsrooms and journalism output units. For example, the newsrooms of Kanal 2 and *Postimees* have to some extent been integrated. In addition, concentration of the private broadcasting media and cross ownership might provide added impetus for public television and radio to remerge in order to yield similar synergies.¹⁶⁸ In other words, in such a small market, competition between consolidated and efficient private broadcasters on the one hand, and a consolidated public broadcaster on the other, might be seen as more desirable than competition between weaker private broadcasters and a public broadcaster that is thereby exposed to less competition. Given the ban on advertising on ETV, the public broadcaster would in this situation be encouraged to fulfil its public service remit as well as possible.

The actual impact of concentration and cross-media ownership on the Estonian television market has still not been researched much, although academic research on this topic is currently in progress.

5.4 Funding

The primary source of income for private television is advertising revenue: in 2001 and 2002 this accounted for 94 per cent of total revenue of private broadcasters.¹⁶⁹ As of July 2002 ETV has been free of advertising. The ending of advertising on ETV appears

¹⁶⁷ Paju, *Media Ownership – Estonia*, p. 182.

¹⁶⁸ I. Raag, "Memo rahvusringhäälingu asjus", ("A memo about public broadcasting"), in *Sirp*, 20 February 2004.

¹⁶⁹ Vihalemm, *Media system and media usage*, p. 358.

to have stabilised the market, boosting the revenues of private broadcasters. The annual expenditure of the then four national televisions in 1999 was about EEK 400 million (€25.5 million) while their total revenue was only EEK 288 million (€11.2 million).¹⁷⁰ By 2002 revenue covered expenditure in the sector as a whole for the first time. In 2003 the leading private television company, TV 3, earned a profit of EEK 30 million (€1.9 million), while the second – Kanal 2 – still made a small loss of EEK 3 million (€0.2 million).¹⁷¹ The improving financial situation of commercial broadcasters has been facilitated by heavy investment by foreign-owned channels in popular programming, to attract audiences.

5.5 Programme framework

5.5.1 Instruments

As explained in Section 3.4, the independence of commercial broadcasters from the State is guaranteed by law and implemented through what appears to be well-established good practice. Current legislation addresses the independence of broadcasters from the state and includes provisions to prevent the influence of commercial interests on programming.

As Section 4.5.2 notes, the Broadcasting Act requires executive producers to observe “fair press practice”. However, there is no legal definition of what constitutes fair practice, and the Ministry of Culture has not taken any enforcement measures that might establish a precedent. As far as independence from the influence of advertisers and commercial interests on programme content is concerned, the Act prohibits sponsorship of news and current affairs programmes. This provision appears to work well: while news departments are flooded with PR materials,¹⁷² the research carried out for this report and other academic research indicate that news programmes are influenced very little by such materials or the interests behind them.¹⁷³

The Broadcasting Act also prohibits the influence of sponsors on the content or scheduling of programmes. Promotional references to products and services of a sponsor are forbidden during the sponsored programme. However, the influence of sponsors is obvious and can be observed in many programmes, for example in the form of product placement in “thematic” programmes about road safety (with particular makes of car featured heavily), construction (building materials), health, beauty and

¹⁷⁰ Shein, *Development Trends*, pp. 156–157.

¹⁷¹ H. Kaio, “TV3 majanduslikult edukaim meediafirma”, (“TV3 – the most successful media company”), in *Äripäev*, 14 April 2004.

¹⁷² H. Harro-Loit and K. Saks, “The Dim Border Between Advertising and Journalism. The Case for re-defining the Border in Estonian Media Products”, manuscript submitted to *Journalism Studies*, Tartu 2003, (hereafter: Harro-Loit and Saks, *The Dim Border*).

¹⁷³ Ongoing comparative research “Baltic Media World”, by University of Bergen, Vytautas Magnus University, Vidzeme University College, and University of Tartu, 2004.

fashion.¹⁷⁴ Managers of television channels admit that this is a problem. It is made more difficult to address by the fact that such programmes are produced by independent production companies who associate with sponsors directly, and broadcasters usually do not intervene in the production matters. However, no one has been prosecuted for violation of the Broadcasting Act. The same is true of the Advertising Act, which prohibits “surreptitious advertising” (i.e. hidden advertising¹⁷⁵).

In addition to the above provisions, the Broadcasting Act also includes provisions to protect journalists’ source of information, and the right of reply of persons affected by media items.¹⁷⁶ Nobody may force a broadcaster to reveal its sources of information, nor may the broadcaster do this itself if a source has requested anonymity. Persons affected by media coverage have the right to reply if their lawful rights – in particular their reputation – have been damaged by the assertion by a programme of incorrect information. A request for a reply must be filed to the broadcaster within 20 days of the alleged offending programme, and the broadcaster must broadcast the reply within 20 days of receiving the request. A request may be rejected if it is not well-founded, if its broadcast would itself involve an illegal assertion, bring about civil liability to the broadcaster, or transgress generally recognised moral standards. If the broadcaster refuses to broadcast a reply, the complainant may submit a claim to a court.

Apart from the above provisions, the only external guidelines for accurate and balanced coverage available to private broadcasters are contained in the Code of Ethics of the Estonian Press.¹⁷⁷ These provisions are the only written rules governing journalistic programme content. The Code prescribes rules for impartial and accurate information, setting up moral obligations for both journalists and editors to preserve journalistic independence, protect sources, provide covered persons with a right to reply and so on. However, there is no institution in place to supervise adherence to the Code. Broadcasters neither employ an ombudsman nor have joined or created an independent media complaints council or equivalent organization. As Section 3.4 explained, there is currently no clear system for addressing complaints against private broadcasters, especially since all broadcasters left the Estonian Press Council in 2002.

5.5.2 Programme guidelines

Section 4.5 describes programme obligations and guidelines for all broadcasters. Relating to private broadcasters only, the placement of advertising is regulated

¹⁷⁴ Harro-Loit and Saks, *The Dim Border*.

¹⁷⁵ Advertising which, regardless of the manner or means of publication and, given ordinary attention by the public, is not readily recognised as advertising or is not readily separated from other information published simultaneously in the same advertising medium. Advertising Act, RT I 1997,52,835; as last amended on 16 December 2004, art. 8.

¹⁷⁶ Broadcasting Act, art. 7, 8.

¹⁷⁷ Code of Ethics of the Estonian Press.

according to the EU TWF Directive. However, Estonian law appears to be overly strict in its implementation of the provision in the Directive which states that the transmission of audiovisual works may be interrupted “once for each period of 45 minutes”.¹⁷⁸ The Broadcasting Act states that interruption may occur “once after every period of 45 minutes”, a stricter provision which led to intense disputes between broadcasters and the Ministry of Culture. According to the Head of the Ministry’s Department of Media and Copyright Issues the Ministry recently issued a clarification that in case of possible conflict the Directive shall take precedence.¹⁷⁹

In addition, under the Language Act,¹⁸⁰ foreign language television programmes broadcast terrestrially or by cable have to be translated into Estonian; this is usually done with subtitles. Satellite programmes rebroadcast by cable do not have to be translated. Ten per cent of total programming time may remain untranslated, to allow, for example, the appearance of foreign languages in live shows. In September 2004 the Language Inspectorate, the government body responsible *inter alia* for supervising adherence to the Language Act,¹⁸¹ issued a reprimand to Orsent TV (a production company) for not including Estonian translation in a programme. In December, Starman (the largest cable operator) ceased broadcasting Orsent TV’s programmes. On New Years Eve 2004, Orsent TV ‘was given one more opportunity’ by Starman,¹⁸² whereupon Orsent’s director accused the authorities of political interference in programming.¹⁸³ Overruling this claim, the Ministry of Culture stated that the programme simply did not comply with the law. Similar failures to comply with the law have been reported on other Russian-language cable channels, but no similar measures have been taken against them yet.

5.5.3 Quotas

Commercial broadcasters are subject to the same quotas for programming content as the public broadcaster (see Section 4.5.3). The same quotas also apply to cable companies with national coverage, with the exception of the quotas of European works and independent producers. However, currently no cable companies have achieved national coverage as defined by the law; that is that they cover over 80 per cent of the territory of Estonia.

¹⁷⁸ TWF Directive, art. 11, para. 3.

¹⁷⁹ Interview with Peeter Sookruus, 2 June 2004.

¹⁸⁰ Language Act, RT I 1995,23,334; as last amended on 15 December 2004.

¹⁸¹ For details on the Language Inspectorate see the Inspectorate’s website, <http://www.keeleinsp.ee/index.php3?lng=1> (accessed 30 June 2005).

¹⁸² L. Šein, “Keeleseaduse eiramise tõttu suletud Orsent kaebles Vene meedias” (“Orsent, closed due to violating the Language Act, mourned in Russian media”), in *Eesti Päevaleht*, 11 January 2005.

¹⁸³ N. Adashkevich, “Russian-language TV channel taken off the air in Estonia”, in *RIA Novosti* news item in English, 29 December 2004.

Only TV 3 failed to meet the requirements of European works quota in 2003, according to data provided by the Ministry of Culture (see Table 9). However, figures provided by broadcasters to the Ministry of Culture for programme content in 2004 differ considerably from figures received from TNS EMOR, and the former should therefore be treated with some caution.¹⁸⁴

Table 9. Implementation of programming quotas (in 2003)

	Share of total programme output (per cent)		
	European Works	Independent producers	Own production
ETV	82.8	51.2	52.7
Kanal 2	53.9	23.9	35.8
TV 3	39.7	39.7 ¹⁸⁵	24.7

Source: ETV, Kanal 2, TV 3¹⁸⁶

In practice, Estonian broadcasters often achieve formal compliance with the European quotas by “adding material” to American content and then classifying it as “own production” or “European production”. For example, one American show *60 Minutes* was presented on Kanal 2 by an Estonian host who briefly introduces features that are produced in America. Such content counts as “own production”, and some other “infotainment” shows have been arranged in the same way.

5.6 Editorial standards

Until 1999, the Broadcasting Act guaranteed the freedom of broadcasting stations; however, among the changes introduced in that year the word “station” in this clause was replaced with “broadcasting organization” – in effect changing the law to define freedom as that of the owner. The change was retained despite objections from the Association of Estonian Broadcasters (AEB). The independence of editorial staff from owners is thus no longer covered by legislation, but is addressed directly or indirectly by internal procedures and the Code of Ethics of the Estonian Press. The effect in practice of this change has not been researched; however, it reinforces the point that

¹⁸⁴ Interview with Peeter Sookruus, 2 June 2004. As Section 4.5.3 explained, monitoring was effectively outsourced to TNS EMOR from the beginning of 2004.

¹⁸⁵ Data provided by broadcasters to the Ministry may be misleading as different broadcasters do not necessarily use the same methodology. For example, TV 3’s share of programming from ‘independent producers’ apparently includes purchased European works as well. Omitting the latter, calculation based on the data provided by TV 3 (filed to the Estonian Statistical Office) would result in 18.4 per cent for the share of works by ‘independent producers’.

¹⁸⁶ ETV, Kanal 2, TV 3, reports filed for the Ministry of Culture, provided to EUMAP by Ministry of Culture.

independence of editorial staff from owners of private broadcasting companies in Estonia depends mostly on good practice rather than legal provisions, regulations and enforcement.

The two biggest television-companies – Kanal 2 and TV 3 – do not have in place any formal in-house rules to ensure the independence of editorial staff from the owners of the companies. In most cases, employment contracts impose duties on journalists and editors to observance of rules for presenting impartial and accurate information. According to the Director General of Kanal 2, the editorial board is separated from economic management.¹⁸⁷

The news department of TV 3 practices a “double-consent system” according to which topics to be covered are decided by the department itself and confirmed by both the chief editor of news and the editor of the day, but this procedure is not formalized in written form. According to Toomas Lepp, Chief News Producer at Kanal 2 items for news coverage are chosen at a staff meeting every morning on the basis of professional criteria.¹⁸⁸

6. EUROPEAN REGULATION

Estonian legislation for broadcasting complies with the European Union *Acquis communautaire* – all the provisions were incorporated into national broadcasting law in 1999 and 2000. By 2001, the audiovisual policy chapter within the accession talks was closed.

Implementation of the “Euro-quotas” has generated some controversy. Managers of private broadcasters in particular claim that programme decisions should be based on the interest of the audience, not on quotas, which they suggest serve the interests of filmmakers rather than the objective of ensuring quality. For example the managing director of TV 3 cited the example of “compulsory” German serials enjoying lower ratings than Hollywood serials.¹⁸⁹

Another concern expressed by broadcasters is that Estonia has implemented the EU TWF Directive more strictly than the wording of the directive itself would require. This appears to have been the result of imprecise translation. For example, the directive states that: “Member States shall ensure *where practicable* and by appropriate means, that broadcasters reserve for European works [...] a majority proportion of their

¹⁸⁷ Interview with Urmas Oru, 31 May 2004.

¹⁸⁸ Interview with Toomas Lepp, Chief News Producer, Kanal 2, Tallinn, 10 June 2004

¹⁸⁹ Interview with Toomas Vara, 28 May 2004.

transmission time”¹⁹⁰ (emphasis added). However, the Broadcasting Act sets a rigid 51 per cent quota, leaving no flexibility for implementation.

Estonian experts also have reservations concerning the applicability of some of the provisions of the Directive to a country with such a small television market. Among other issues, they believe that the quotas in the Directive do not take into account the distinctive character of the audio-visual sector of a small country,¹⁹¹ especially when the production capacity of domestic producers (both intellectual and financial) is limited and broadcasters cannot afford to buy more expensive local production. In particular, the exclusion of news and sports coverage from the definition of own production and of European works raises the quota for European works *de facto* to 60-70 per cent. The Estonian Government has raised this issue at sessions of the EU Council of Ministers, arguing that the Directive should be altered, so that the quotas for European works and independent production both include news and sports events in which Estonian athletes participate.¹⁹²

7. THE IMPACT OF NEW TECHNOLOGIES AND SERVICES

The implementation of new media in the television sector is at a very early stage. The Government adopted a “Concept of Digital Television” in June 2004, which includes a rough timetable for a transition to digital broadcasting by 2015. However, the Concept provides insufficient incentives to broadcasters to invest in new technologies, and the development of digital television remains uncertain as a consequence.

7.1 New media

On 15 June 2004 the Government approved the “Concept of Digital Television”, formulated by a multilateral working group at the Ministry of Economic Affairs and Communications. The Concept envisages implementation in Estonia of the Digital Video Broadcasting Terrestrial (DVB-T) and Handheld (DVB-H) standards, which are considered the most promising in Estonia.¹⁹³

Other types of broadcasting are not expected to be introduced in Estonia in the near future. High Definition Television (HDTV) is expected to be implemented later within the DVB-T network, as it involves higher launching costs for broadcasters, providers of transmission services and consumers. Digital satellite broadcasting (DVB-S) probably has no future for transmitting Estonian national programmes, as the country’s territory is small and the

¹⁹⁰ TWF Directive, art. 4, para. 1.

¹⁹¹ “Impact of joining the EU”, p. 32.

¹⁹² Interview with Peeter Sookruus, 2 June 2004.

¹⁹³ Concept of Digital Television, Section 1.5.

terrestrial broadcasting infrastructure is more than adequate. According to the Concept, the DVB-S standard will remain in use for receiving foreign programme services for individual use or retransmission through cable networks. Digital cable broadcasting (DVB-C) has not been implemented in Estonia, and the Concept expects this standard to be more widely used after the launch of DVB-T.

There is as yet no State policy regarding Internet television. Broadband standards were also worked out by a multilateral working group in the Ministry of Economic Affairs and Communications and were approved by the Government in April 2005.

7.2 Market conditions

The rate of computerisation and Internet penetration in Estonia is comparatively high. There are 21 computers per 100 inhabitants and 52 per cent of home computers and 75 per cent of office computers have permanent connection to the Internet. Some 52 per cent of the population aged 15 to 74 uses a computer every day (including the Internet), 34 per cent of the population uses online banking or financial services.¹⁹⁴ There are around 40 providers of broadband services.¹⁹⁵

Regarding digital television, the estimated number of digital receivers owned by Estonians is currently only around 50, which have been mainly used in Northern Estonia to receive test programming from Finland.¹⁹⁶ This raises serious questions concerning the viability of the government's vision of the transition to digital television (see Section 7.5).

7.3 Services

Internet television is in its infancy. Some providers¹⁹⁷ make the archives of the broadcasters available on Internet but no independent programming has occurred yet.

Regarding digital television, a test period for the implementation of DVB-T began in May 2004 with the launch of the AS Levira test multiplex in Tallinn. The multiplex was planned to broadcast ETV on a test basis until 1 January 2007. However,

¹⁹⁴ 2003 data from the Estonian Informatics Centre (a government institution responsible for coordinating state information policy and public sector IT development), available in Estonian at <http://www.ria.ee/atp/index.html?id=379> (accessed 30 June 2004).

¹⁹⁵ February 2002 data from the Estonian Informatics Centre, available in Estonian at <http://www.ria.ee/atp/index.php?id=217> (accessed 30 June 2004).

¹⁹⁶ Shein, Media Concentration.

¹⁹⁷ For example <http://tv.ee> provides selected programmes of TV 3 and Kanal 2; www.itv.ee provides programmes of ETV on a paid basis (both accessed 30 June 2004).

broadcasting was terminated at the beginning of 2005 for financial reasons.¹⁹⁸ ETV objects that it had to pay unreasonable fees for the test transmission, even though digital television test transmission was the state's project and not ETV's exclusive interest, and moreover that AS Levira (the former Estonian Broadcasting Transmission Centre) is 51 per cent state-owned and makes substantial profits as the sole provider of transmission services in Estonia.

According to the Concept of Digital Television, an expert group will be formed to discuss and resolve problems that appear during the test period and propose corresponding legislative measures. The Broadcasting Act clearly needs amending, as it limits the number of terrestrial national or international television broadcasters to two, making the parallel operation of analogue and digital television illegal.

7.4 Funding

The Concept of Digital Broadcasting does not include any estimates of the cost of transition to digital broadcasting, nor any specific related financial allocations to fund the transition. According to some experts, the absence of any financial analysis or strategy may serve as a constraint on transition.

7.5 Digital television

The Concept of Digital Broadcasting envisages a rough timetable for the transition to digital television. Private broadcasters would not be forced to switch over to the new standard but would be motivated financially, as for the first five years (the Concept does not specify exactly when this would begin) there would be no broadcasting licence fee for digital broadcasting. The state would ensure parallel broadcasting of the public television programme service in both analogue and digital networks. All programmes currently accessible for free would be accessible for free in digital form (excluding digitally added services). After the end of analogue transmission the private broadcasters would be provided the possibility of broadcasting at least one digital programme service.

The Concept envisages the final switch over to fully digital television broadcasting to take place in 2015, after 75 per cent of terrestrial television receivers have become digital. However, in reality the prospects for digitalization do not appear promising, for two reasons. First, as Section 7.2 notes, the proportion of the population equipped to receive digital television is very small. Second, the Concept does not provide sufficient incentives that would motivate broadcasters to invest in digital broadcasting facilities in the absence of prior consumer demand.

¹⁹⁸ T. Tänavsuu, "Majandusminister Ansip müüiks riigi osaluse Levira saatekeskuses", ("Minister of Economy Ansip would sell off the State's shareholdings in Levira transmission centre"), in *Eesti Päevaleht*, 8 February 2005.

As a result of these factors, private broadcasters have adopted a wait-and-see attitude, and many of the details of transition remain unclear to them. The basic issue for broadcasters is that the renewal of studio and transmission facilities remains economically unjustified without an increase in the number of digitally equipped viewers or interest among advertisers in digital broadcasting.

If the market fails to resolve the transition – that is, if consumers fail to purchase digital receivers in the absence of sufficient services, and broadcasters refrain from investment until enough of the population possesses digital receivers – the Concept proposes to address the solution by legal regulation. However, it does not specify what this would mean in practice. The lack of significant incentives in the Concept as it stands may prove to be a major barrier to transition.

8. CONCLUSIONS

Television in Estonia has undergone fundamental transformation since 1990, through the creation of a public service broadcaster, a (now) profitable private broadcasting sector and a thriving cable sector. However, the sector still faces significant problems. Estonia still lacks a clear and comprehensive policy for the broadcasting sector, and specifically on the role of broadcasting in general and the rights and relations of citizens in relation to broadcasting. This is reflected in a number of specific unresolved issues in the sector.

First, the regulation and supervision of television broadcasters remains very light. In particular, the Ministry of Culture does not play a sufficiently active role in monitoring broadcasters and enforcing fulfilment of their legal and licence obligations. While the Ministry of Culture initiated proposals for the establishment of a new independent regulator to carry out all supervision and licensing, leaving the Broadcasting Council only to carry out regulatory activities specifically needed for ETV, the reform process has stalled as a result of lack of consensus between different ministries.

Second, the financial situation of ETV remains a source of concern. Funding is unstable, non-transparent and insufficient, preventing ETV from being a fully-fledged public service broadcaster. Constraints on funding – in breach of legal commitments made in 2001 – prevent the broadcaster from fulfilling its public service obligations to the highest quality and with a longer-term perspective. Both plans to remerge ETV and ER and recommendations to open a second public channel lack clear rationale in the absence of a clear commitment to adequate funding.

Third, while ETV has retained a vital position in the sector, its strategy concerning minority programming – and especially programming for the Russian-speaking minority – remains unresolved. This is partly the result of financial constraints (preventing the establishment of a second channel), but also of the lack of a clear broadcasting policy *vis-à-vis* this minority.

Fourth, while the consolidation of private broadcasters into two companies fully controlled by Scandinavian media companies has enabled them to achieve profitability, consolidation has also exposed the lack of clear restrictions on media concentration and cross-ownership. The Estonian Government and broadcasting regulators have failed to issue a clear opinion on the limits of concentration.

Fifth, mechanisms for processing complaints are inadequate or missing at both the public and private broadcasters. In particular, since all broadcasters left the Estonian Press Council, this has left a situation where there is no clear process by which citizens may file complaints and have a clear right to their processing.

Finally, while EU directives have been fully implemented in Estonia, some provisions have been implemented more strictly than the EU TWF Directive requires. However, the size of the Estonian television market may create room for debate on the wisdom of applying some of the directive's provisions identically in different sized markets.

9. RECOMMENDATIONS

9.1 Media policy

Broadcasting policy

1. The Government, the Broadcasting Council and media experts should organise a public debate on the role of broadcasting in general, focusing on the rights and relations of citizens in relation to broadcasting.
2. The Government should formulate and implement a clear broadcasting policy that outlines a vision for public and private broadcasting, includes participatory mechanisms for citizen inclusion, and *inter alia* defines clearly the role of public broadcasting *vis-à-vis* the Russian-speaking minority. This policy should define tasks and goals that are measurable and whose fulfilment is therefore assessable.
3. The Government should amend the “Concept of Digital Broadcasting”, in order to address the issue of how to finance the transition to digitalisation and motivate citizens and broadcasters to participate.

Research

4. Academic and other research institutions should examine the performance of the broadcasting sector. This should focus, in particular, on the issues of balance and objectivity; the distinction between public and commercial services; the fulfilment of the public service remit of Estonian Television (ETV); and the impact of State authorities and owners on programming

output. The Government and media industry should fund independent research in this field.

9.2 Regulatory authorities

Reform of regulatory structures

5. The Government should initiate amendments to the Broadcasting Act to clarify regulatory structures. These should preferably establish an independent regulator to supervise compliance of broadcasters with the requirements of the Broadcasting Act and other requirements and standards applying to all broadcasters, while leaving the Broadcasting Council to supervise the daily management of public broadcasters. Such amendments, and the activities of the resulting regulatory structures, should be directed at establishing systematic and permanent monitoring of the broadcasting sector, including programme content, to ensure compliance by broadcasters with their legal and license obligations.

Licensing

6. In the absence of changes in regulatory structures, the Minister of Culture should be required to fully and transparently justify any licensing decision that conflicts with the recommendation of the Commission established to examine license bids.

Complaints procedures

7. The Broadcasting Council, broadcasters and media organisations should establish a transparent and publicly accessible procedure for dealing with viewers' complaints against both public and private broadcasters.

9.3 Public and private broadcasters

Media diversity and transparency

8. The Government should initiate amendments to the Broadcasting Act to establish more clearly the principle of independence of editorial staff *vis-à-vis* owners.

Quotas

9. The Government should initiate amendments to the Broadcasting Act to modify quotas derived from EU requirements in order that they are not stricter than the EU TWF Directive.

9.4 Public broadcasters

Independence

10. The Government and Parliament should adopt legislation or adopt clear rules to ensure financing for Estonian Television (ETV) that is stable, independent, transparent and sufficient for it to fulfil its tasks.

Minority programming

11. The Broadcasting Council should specify in detail ETV's remit with respect to programming for the Russian-speaking minority.

9.5 Commercial broadcasters

Media diversity and transparency

12. The Government should initiate amendments to the Broadcasting Act to clearly address the issue of ownership concentration.

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