

EXECUTIVE SUMMARY

This report is the result of the study by the Danish Radio and TV Board (the Board) complying with the Minister of Culture's commission of 8 December 2004 to study the managerial relations of public service stations.

In accordance with the commission, the study includes public service stations in the European countries that for media purposes Denmark usually compares itself with, including those countries with public service stations not financed by advertising.

In addition to the countries referred to in the commission, i.e. Great Britain, Norway, Sweden and Finland, the Board's study covers public service stations in the Netherlands, Austria and Germany.

The report details the legal code of practice that applies to the appointment of the board for each public service station in the relevant countries, and the code of practice that establishes the powers of this board. There is also a description of the organisational structure of the stations, including their corporate form. (Overviews of this information can be seen in section 6).

The three main sections covered by the study are:

1. Appointment of the board
2. Powers of the board
3. Experience of management models

The Board goes into greater detail for the experiences in Great Britain, Norway and Sweden than for the other countries because there are greater similarities between regulations in Denmark and those in these three countries. Furthermore, in Great Britain significant changes to the BBC's organisation and governance have been considered in connection with the renewal of its charter.

The Board has, amongst other things, learnt about experience and practice in the three named countries by interviewing key players.

In addition to studying the legislation and its application in each country, the Board has chosen to look at public service broadcasting in a wider social context, beyond the basic legal situation, by highlighting the relationship between public service broadcasting and the political system.

The Board has found it relevant to look at public service governance in relation to the concept of corporate governance (the name for principles of good corporate management) and specifically with the two models for management organisation that are traditionally used in Europe, i.e. the one-string model and two-string model. The first model allows a partial overlap between the board and senior management, whilst the second is based upon clearly defined roles. The first model also brings governance and monitoring into one and the same function, whilst the second differentiates between the two functions.

Behind these two management models lies the conflict between the board's need for independence from senior management and its need for information and knowledge of day-to-day operations.

In its summary and evaluation on the basis of the results of the study, the Board states that:

- political influence and control of public service broadcasting is in reality taken for granted in all the countries studied;
- the responsibility of the politicians in this respect is to ensure that the political influence in/on public service broadcasting does not take on the character of any political party;
- assuming that it is unbiased, political influence on public service broadcasting is harmless, and can be an advantage because public service broadcasters operate in a political environment;
- the question of balance of power in relation to governance and programming responsibility is treated differently in the countries studied; in Norway and Sweden, for example, where public service broadcasters are limited companies, the formal regulations for this come from the legislation on limited companies, which states that the board has overall responsibility; In contrast, the UK chose a more complex solution for the organisation of the BBC, as did Denmark for DR, where the balance of power is specially regulated;
- The limited company model appears to be the simplest form of organisation in terms of solving the problem of dividing powers, in that the starting point is a simple, well thought-out, tried and tested model.
- Legislation on limited companies, however, does not solve the problem as clearly as radio and television broadcasting legislation.

7. SUMMARY AND EVALUATIONS

The primary purpose of all public service broadcasters (those studied) is generally: the provision of public service programming, which is virtually identical in the countries studied, in relation to the regulations stipulated in legislation, government order, licences, etc. As it will soon become clear, this is basically the same task being accomplished in different ways.

7.1. Commission

The Danish Minister of Culture's commission for the study has the following headers regarding public service management in the various countries:

1. Appointment of the board
2. Powers of the board
3. Experience of management models

The commission has guided the structure of the Board's study into the managerial relations in each of the country's public service broadcasters, as described in the previous section.

In this section the Board will make a broad summary and evaluation of the organisational forms of the public service broadcasters, their management models and tasks, following a layout more appropriate to this report.

An important parameter in fulfilling the primary purpose of public service broadcasters is without a doubt the extent and type of its financing, but the Board has not – as this falls outside the framework of its commission – occupied itself to an great degree with the extent and type of public service financing.

Nor has the Board occupied itself with the special options for external – from a political point of view – governance/definition of the broadcaster by regulating and ear-marking grants. More often than not the extent and allocation of the licence is decided politically, which means that political influence is possible. Bearing this in mind, it should be mentioned that the licence has been abolished in the Netherlands in favour of a special media tax and the allocation of funds to NOS, etc., via financial legislation, leading to the subsequent scaling down of grants to NOS. In the previous section the Board described the more specific questions covered by the commission surrounding the appointment of the board and its powers. This section will concentrate on questions to which there is no one answer, but where a beneficial assessment can use differences and similarities in the countries' organisation of their public service broadcasters as a starting point.

This applies not only to the question of experiences with different management models, but also to the type of organisation and its importance in the division of responsibilities between the roles etc. of the company.

7.2. Political influence

Seen from a general social context, public service broadcasting can be categorised by different systems depending upon the type of political influence on the broadcaster in question.

As stated in Section 4.1, in *Comparing Media Systems* Hallin and Mancini differentiate between three different systems of political influence:

- Politics-over-broadcasting systems
- Autonomous systems
- Politics-in-broadcasting systems

The models described in more detail in Section 4.1 can be categorised into systems as follows: the professional model is autonomous, the government model is politics over broadcasting, and the parliament and social models are usually politics in broadcasting systems. The social model, however, risks breaking down into a parliament model in which the relevant groups have close relations with the political parties.

Each level of political influence will be expressed differently. It may be a matter of establishing a large number of detailed regulations for programming, or ensuring governance representation and/or governance regulations, such as those referred to above. It may also be a question of more indirect influences in the form of financial management, or governance via grants and prioritisations.

It was also mentioned earlier that none of the public service broadcasters in the countries studied can be defined as any of the four models, i.e. it is primarily a question of autonomous or professional systems with elements of political influence from both outside and within the system.

The public service broadcasters in the Nordic countries and the UK are overwhelmingly organised as a combination of the professional and representation models and in Germany, Austria and the Netherlands, the broadcasters are overwhelmingly organised as a combination of the professional and the social models. However, all the broadcasters possess elements of the parliament and/or representation model, i.e. in some form or other, such as political influence playing a part in the appointment of the board, etc.

7.3. Organisation

This section covers types of company, management structure, appointing the board and selecting directors/senior management.

Types of company

The public service broadcasters studied are organised like limited companies (NRK, SVT, YLE), or they are unique in their own country, e.g. a foundation (NOS, ÖRF), a corporation (BBC) or institution (ZDF and WDR).

In practice, however, these differences are not of any importance. What is important is how the administration and governance works, i.e. how the broadcaster's public service obligations are described and handled, how the board and senior management are nominated and how managerial powers and relations between the board and the senior management are organised and function. Equal weight is given to the way the regulating authority's powers are exercised in relation to the enforcement of public service requirements.

For limited companies, however, there are fixed rules applying to the structure of governance, management structure, etc., and broadcasters that are not organised like limited companies will often have adapted this model, with certain deviations from the regulations set out in the national legislation relating to limited companies. Broadcasters organised on the same lines as limited companies also derogate from national company legislation due to the peculiarity of the public service broadcasters themselves.

The limited importance of the actual form of the company means that the model used in itself does not answer all the questions on how the internal structure of the public service broadcasters should be organised.

As previously mentioned, the public service broadcasters in Norway, Sweden and Finland are organised as limited companies. There is quite a big difference here though, in that the limited companies in Sweden are owned by a foundation, in Norway by the state, but in Finland the clear majority is owned by the state with only 0.02 % owned by associations. This proportion is slowly being reduced and Finland has almost matched the Norwegian model with a 100 % state-owned company. However in Sweden the thinking has traditionally been that the state should not own shares in the public service

broadcaster, and therefore an owner foundation has been established, which owns shares in SVT, SR and UR. However, this structure seems to be more for form's sake than of any real or practical significance. The differences between Norway and Finland on the one hand and Sweden on the other, where a foundation model is used, do not seem to be reflected on a practical level in the relations and working relationship between the board and senior management or in the extent of political influence.

The Norwegian and Swedish contacts have been unanimous in their opinion that there is a clear advantage in modelling public service broadcasters after limited companies. This is due to the regulations applying to limited companies in relation to governance and division of powers etc. being tried and tested. In other words, this type of organisation is known to executives and other players on the market, who, in step with technological development and increased competition, are more and more often being appointed as board members of public service broadcasters.

If a public service broadcaster is organised like a limited company, more detailed regulations are not necessary. Only in radio and television broadcasting legislation (media legislation) can references be made to the national limited company legislation, i.e. any deviations from legislation are laid down in the media legislation. For example, there may be special requirements relating to the makeup of the board and their special knowledge or autonomy, or allowing longer terms of office for board members than is set out in the legislation on limited companies.

Not every country has chosen the limited company model. The British Department for Culture, Media and Sport has announced that a change to the structure of the BBC has been considered in conjunction with the review of its charter. In this context turning the BBC into a limited company was under consideration, but was not found to be a suitable plan.

Whilst it has been made very clear that even if the actual type of company concerned can be of practical importance, what is more important is the type of people who administer the regulations and standards that apply to the broadcaster and how these people choose to behave.

Structure of governance -- special rules for public service broadcasters

Although there is general uniformity amongst the countries whose public service broadcasters are run as limited companies, from a practical point of view the applicability of this model is obviously not that important in relation to how the broadcasters run public service programming.

The limited company model is a comfortable and widely-spread organisational form that solves many problems associated with running a public service broadcasting operation, including the issue of responsibility for programming, but it should be remembered that the board of limited companies can be organised in several ways.

Governance and its objectives must be taken in context with the general development of the media market. In other words, this refers to the structural development that began with a public service monopoly and its subsequent requirements applying to the board

and senior management regarding politically motivated governance, particularly towards programme content.

As a result of the monopoly being rescinded a (small) market for competition arose between a small number of companies, by which it was seen as a task for the board to develop strategies, etc. aimed at keeping viewers/listeners.

The present/future more complex market must be looked at in the light of technological development and convergence, i.e. DAB, DTT and broadband, etc. The new extra requirements for public service broadcasters and by extension their board and senior management mean there is a need for other types of board members and directors with, for example, more commercial and management experience.

Together with the development described, the intricate EU code of practice and the more and more complicated media market, more requirements have been set for the governance and management of public service broadcasters.

Consequently there is a need for another method of organising the governance of public service broadcasters. Political influence is also taking on a different form to before, in that there is currently a debate over how public service institutions should act on the market, just as programming content used to be the primary subject of discussion.

Corporate Governance

Against a background of the stricter and amended requirements for public service governance, the Board has observed that corporate governance and recommendations in relation to public governance (see Section 4.3), including any (future/necessary) development of public service governance, have a more major role in step with the development of the media market.

According to the Nørby committee, corporate governance is defined as the goals a company is trying to achieve and the general principles and structures that regulate the interaction between the various players.

In theory there are basically two different methods of appointing boards, the one-string model and two-string model. In the one-string model there is more or less an overlap between the board and senior management, whilst in the two-string model there is a clear distinction between these company roles. The background of the different styles of governance is the conflict, described in Section 4.3, between the board's need for independence from the senior management and its need for information and knowledge of day-to-day operations.

Officially governance of the NRK is two-stringed, whilst SVT's is one-stringed because the MD is a member of the board. In practice, however, there is no significant difference in the relations between the senior managements and boards at NRK and SVT.

Governance of the BBC has in practice been one-stringed, but over time there have been more concerted efforts to ensure the independence of the BBC Governors from the senior management, which means that the governance structure of the BBC is already becoming more like a two-string model, or a hybrid. This has been strengthened by the proposal for a BBC Trust separate from the Executive Board set out in a Green Paper.

The advantages of following the corporate governance recommendations described in Section 4.3 can be seen on several levels. First and foremost, the right mix of people with the necessary industry knowledge is secured by appointing the board, which both the external decision-makers and the potential members should presumably see as an advantage. Such a measure can, amongst other things, also help to attract qualified board members.

Internally at the organisation, a board selected using qualitative judgements ensures clarity and transparency in the board and decision-making processes, and finally an independent monitoring body ensures day-to-day governance.

In those countries where corporate governance is being seriously considered, such as Sweden and Great Britain, the parties concerned believe that this will have a positive effect on the governance of that particular public service broadcaster. The use of corporate governance recommendations could therefore help to invigorate the planning and implementation of programme operations.

If there is a desire for political participation in the management roles, the two-stringed model immediately seems the easiest to apply due to the clear distinction between the board and the senior management, which is a characteristic of this model.

The choice between the two models must, amongst other factors, take into account which of the two main factors – the independence of the board or its insight into day-to-day operations – is to be emphasised the most. However, it must also be recognised that hybrid forms of the one- and two-string models have developed, which cover both factors. As a result it is not that uncommon for the governance of public service institutions to be a hybrid of the two models.

Corporate governance recommendations do not in themselves solve all the problems associated with public service broadcasting, but if they are used in conjunction with more traditional commercial operations they can help to identify the most appropriate solutions.

Appointment of the board

Governance of a public service broadcaster can, as previously mentioned, be organised in several different ways, which to a certain extent are based on culture and tradition, but can also be seen as the result of deliberate attempts to establish a model based on experience.

It is important that the board and senior management can, in practice, work together and agree on both the division of responsibilities and the goals for the broadcaster. Set regulations can ensure this cooperation to some extent, but personal issues will always play a role. That is why the method and criteria used to appoint the board and select/nominate the senior management is so important.

The expression “professional board” is used in the public debate, often without it being clear what this actually means. Bearing this in mind, the Board has reason to indicate that this concept is best used to describe a board whose members are appointed or chosen for their specialist qualifications and experience and who, at the same time,

realise and accept their task is to pursue the goals that the broadcasting operation has been created for.

In Norway, where NRK is state-owned, there is direct political influence on the appointment of the board of governors, as it is the Culture Minister who makes the appointments. Something similar happens in Finland, where the political parties appoint YLE's board. And even members of parliament or other people with links to the political system can be board members.

In the other countries it is more or less a question of the political system remaining at arm's length from the appointment of the board.

In the UK, where Governors are appointed by the Queen, i.e. the government, there is no "arm's length" in the traditional sense. However, the Nolan principles described earlier are seen to be a guarantee for, amongst other things, the impartiality and independence of the members. However, this does not prevent the government, via its choice of Governors from candidates approved in line with the Nolan principles, wanting to make sure the governors' opinions agree with the government's.

In Sweden the four largest political parties directly appoint a chairman for each of the owner foundations for SVT, SR and UR respectively, just as they have indirect influence on the appointment of the board members. This is due to the board of the owner foundation that chooses the boards of the public service broadcasters also being appointed by the political parties. However, it should be remembered that in Sweden there is great weight placed upon the independence of SVT and the other public service broadcasters from the political system. The creation of the owner foundation was an attempt to make this independence completely clear.

Out of the public service broadcasters studied, it is in fact only the Dutch NOS that has a board of governors whose members, or the majority of members, are not political appointees of either (some) national parliamentary parties or the government, whether indirectly or directly.

Thus (indirect) direct political influence prevails when it comes to appointing the boards of public service broadcasters.

In reality political influence and control of public service broadcasters is the general premise. This is especially true in countries where public service broadcasters are considered to be "owned" by the licence payers. The owners provide the broadcasting operations with considerable income which must be administered in a responsible and proper way, in terms of achieving the best public service programming as far as this is possible in relation to the requirements set by law, licence or some other form. The political systems can ensure to a certain extent, due to their appointing powers, that the public service broadcasters meet their responsibilities. This view is especially prevalent in the UK, where the viewers and listeners are seen as the BBC's "shareholders" and not just "stakeholders".

So we could assume then that the approach of some countries (such as Norway, for example, where the Minister for Culture, as the owner's representative, appoints the

whole board) could mean the appointment of a board containing the people with the expertise necessary for the board of a public service broadcaster. This would be in contrast to those countries, such as Finland and Denmark (DR), where in principle each political party can appoint the candidate(s) they think are the best suited, but where the basis of the appointments is not the collective expertise of the board. In Denmark, however, DR's board of governors must represent media and cultural interests as well as managerial and business viewpoints. Yet regardless of the regulations in place, in reality there does not seem to be any distinct difference between the countries where one minister is allowed to select the board personally and the countries where there is some sort of party political quota in the selection.

One of the factors which has also been highlighted is that the politicians' responsibility in this situation is to make sure that the political influence in/on public service broadcasters is not party-political. The previous sentence suggests that political influence is harmless and can be an advantage because public service broadcasters operate in a political environment; although this is true only if this influence is unbiased, i.e. that appointing members and these members' positions in the board are not based on party-politics or lack of objectivity.

Employee representatives on public service boards have the same role as the other members, but they can face conflict between their task as board members – to look after the interests of the company – and the fact that they are employee representatives and as employees have a special interest in, amongst other issues, the political slant of programming.

Selecting senior management/directors

Usually the Director-General (D-G) is selected by the board, which also often selects the rest of the senior management, possibly on the recommendations of the Director-General. Examples are SVT, whose board selects the Director-General and Head of Programming, YLE, whose administrative council selects the entire senior management, whilst NRK's board only selects the Head of Broadcasting who then personally selects the rest of the senior management, an arrangement something similar to that in place at the BBC and ÖRF.

In the meantime, the studies of each country do provide a clear impression that the selection of the rest of the senior management is in reality decided by the Director-General together with the board of governors, even if it is only the governors with this power. Presumably a Director-General who has the power to select the rest of the senior management will also discuss the appointments with the board or the chairman of the board. In both situations it is appropriate that the opinion of the party without any decision-making power be heard. The special working relationship between the Director-General and the rest of the senior management is such that it is difficult to imagine that the D-G's opinion would not be heard before any appointments are made. According to the Danish Companies Act, it is the board of governors that selects the senior management, which must consist of at least one member of staff.

Unsurprisingly, the statements from the key people interviewed also indicate that it is very important that the D-G and the rest of the senior management can work together. Thus it is essential that the board of governors does not select senior management

without the involvement of the D-G. The fact that the power to select the senior management is allocated to the board is likely to increase the power of the board. When these issues arise it is a balancing act between demonstrating the independence of the board from the D-G and taking the day-to-day governance of the organisation into consideration.

The proposed Trust and Executive Board for the BBC, where the Trust decides if the chairman for the Executive Board will be the D-G or an outsider, has created a debate about the relationship between the board (the Trust) and the senior management.

Programming responsibility – overall and day-to-day

The issue of responsibility for running programming operations and the associated powers is a basic problem peculiar to public service broadcasting.

The regulations for running a programming operation can take the form of:

- General public service requirements
- Specific positive requirements/negative limits – which programmes/types of programmes must/must not be broadcast
- Quantitative requirements

General public service requirements set by legislation or other authority apply for all the public service broadcasters studied. These requirements are frameworks for running the broadcasters' programming and are typically closer to policy statements that cannot be immediately and physically carried out. In addition to this, but not always, there can be more detailed requirements or quota requirements made clear by the licence or other specifications.

Whilst implementing the quota requirements will usually be relatively simple and incontestable, running programming operations within a fairly broad framework can place strict requirements on the governance of the broadcaster, i.e. on the working relationship between the board and the senior management. This includes the issue of division of powers and responsibilities.

Each country has treated the issue of division of powers in respect of the programming operations differently. In Norway and Sweden, for example, where the public service broadcasters are limited companies, the formal regulations for this come from the legislation on limited companies, which states that the board has overall responsibility, which also applies to programming. In contrast, the UK chose a more complicated solution for the organisation of the BBC, as did Denmark for DR, where the balance of power is specially regulated.

The limited company model thus appears to be the simplest and least complicated method of also solving the problem of dividing powers. This is due to the starting point being a simple, well-thought out and tried and tested system, where all that needs to be decided is to what extent and in which areas public service broadcasters are different from other businesses – and factor this in the derogations from company legislation introduced into radio and television broadcasting legislation.

In the meantime company legislation (with necessary deviations) does not solve the problem of division of powers for programming operations as clearly as radio and television broadcasting legislation would. Legislation can only construct the overall framework to provide for more precise limitations in licences, statutes or procedures, but there will also be a grey zone in which the solution to problems ultimately depends upon the board and senior management and upon their acceptance of their roles.