RESOLUTION
NO. 230/2021
OF THE NATIONAL BROADCASTING COUNCIL
of 22 September 2021

on taking actions aimed at organising the rules of broadcasting radio and television programs in Poland in terms of the possibilities of operation of entities from outside the European Economic Area.

1. The National Broadcasting Council states that, in its view, an entity based in Poland in which the capital share of the controlling entity from outside the European Economic Area exceeds 49% is not entitled under applicable law to obtain a licence regarding the broadcasting of radio and television programs in Poland. Furthermore, an entity based in Poland being a subsidiary of an entity from outside the European Economic Area due to the fact that this foreign entity has indirectly or directly over 49% of votes in the meeting of shareholders or in the general meeting is not entitled to obtain a licence, even if this entity based in Poland is also a subsidiary of an entity based in a country from the European Economic Area.

2. Having regard to the practice of law used so far and to doubts in interpretation raised within the aforementioned scope, the National Broadcasting Council states that, in order to ascertain that a specific case involves a gross infringement of the law within the meaning of Article 38(1)(2) in conjunction with Article 35a(2) of the Broadcasting Act by an entity holding a licence regarding the broadcasting of radio and television programs in Poland that is, in the manner described above (item 1), a direct subsidiary of an entity based in the European Economic Area and, at the same time, an indirect subsidiary of an entity from outside the European Economic Area, it is necessary to request such entity to correct infringements within this scope.

3. The National Broadcasting Council obliges the Chairman of the National Broadcasting Council to request all licensees being subsidiaries of entities from the European Economic Area within the meaning of the Code of Commercial Companies and, at the same time, subsidiaries of entities from outside the European Economic Area, with the latter being controlling entities in the ownership structure concerned, to adapt their capital structures to the requirements laid down in Article 35(2) of the Broadcasting Act.

4. Pursuant to Article 6(2)(1) of the Broadcasting Act, the National Broadcasting Council obliges the Chairman of the National Broadcasting Council to undertake actions aimed at shaping the broadcasting policy of the state in a way leaving no doubt that the possibility of operation in the field covering the broadcasting of radio or television programs does not apply to entities from outside the European Economic Area, even if they act through their subsidiaries from the European Economic Area. These actions should include, in particular:

a. Requesting the Prime Minister to commence legislative work aimed at putting legal regulations in order within the scope indicated above with reference to the best practices existing, for example, in the competition law.

b. Requesting the entities listed in Article 191 of the Constitution of the Republic of Poland to file a motion to the Constitutional Tribunal to check the compatibility of the provisions of Article 35 of the Broadcasting Act with the Constitution, if such provisions were to be interpreted by any state authorities, or if there is even a risk of interpretation in such a way that a subsidiary of a company from the European Economic Area or a foreign entity from the European Economic Area (controlled by an entity from outside the European Economic Area) does not have to comply with restrictions indicated in Article 35(2) of the Broadcasting Act in contrast to entities based in Poland that are not also subsidiaries of foreign entities from the European Economic Area, which Polish entities are obliged to comply with such restrictions. In the view of the National Broadcasting Council, this would mean discrimination against Polish entities in relation to entities from the European Economic Area if such entities are controlled by entities from outside the European Economic Area. This is inconsistent with the constitutional order applicable in Poland.

In view of the above, if such a situation arises, it is necessary to eliminate Article 35(3) of the Broadcasting Act from the Polish legal framework, for example, through a relevant decision of the Constitutional Tribunal and, if possible, replacement of this provision with a solution that shall not create discrimination against Polish entities in relation to foreign entities.

5. The National Broadcasting Council also notes that the issue described above takes a particularly qualified form in a situation in which a licensee is controlled by an entity from outside the European Economic Area that is also engaged in the broadcasting of radio or television programs in countries outside the European Economic Area.

In such a situation, irrespective of the above, the National Broadcasting Council shall undertake actions aimed at the exercise of the rights provided for in Article 38(2)(4) of the Broadcasting Act that are independent of the rights provided for in paragraph 1 of this article.

6. This resolution comes into force as of the day of its adoption.

Chairperson
of the National Broadcasting Council
Witold Kołodziejski

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