

## TURKEY

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Lately, changes to the law on broadcasting, adopted in March 2011, have unsettled the broadcasting sector. This relatively recent law was enacted to comply with EU Directive 2007/65/EC on similar services, and has introduced significant changes. Mainly, it has brought less restriction for the broadcaster shareholder companies; increased direct foreign capital share limit to 50 per cent.



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### Change to the Broadcasting Legislation Triggers National Debate and Criticism in View of Predicted Consequences

Shares of the media service provider corporations may now be traded in the stock market, gross ad revenue government share has been reduced from 10 per cent to 3 per cent and an extended license period from five years to 10 years now applies. The law also regulated political ads and product placement and provided less restriction for advertising placements.

The media sector in Turkey is regulated under separate pieces of legislation. The main laws are:

1. Press Law for printed media (Law No. 5187)
2. Radio and Television Law of Turkey (Law No. 2954)
3. Law on the Establishment of Radio and Television Enterprises and Their Media Services, or Broadcasting Law (Law. No. 6112)
4. Law on Radio and Television Incomes in Turkey (Law. No. 3093)
5. Advertisement Regulation of Radio and Television Authority of Turkey

The Broadcasting Law also sets out some other changes for the broadcasting sector. According to these further changes, radio and television frequency planning and allocations will be performed within two years, terrestrial transmitter facilities will be installed and operated by a single company, and analogue television will be switched off within four years. The Broadcasting Law defines multiplex, platform, cable and satellite broadcast operators and regulates their rights and obligations.

"Media services" falling under the scope of Broadcasting Law are defined as television broadcast services, on-demand media services, and commercial communication and radio broadcast services under the editorial liability of the media service provider that are offered via electronic communication networks for the main purpose of informing, entertaining or educating the public. The definition excludes personal communication as defined under the Broadcasting Law.

The foreign ownership and control of broadcasters are restricted under Turkish laws. The Broadcasting Law allows foreign entities to hold a maximum 50 per cent of a Turkish broadcasting company in accordance with Article 19/f of the relevant legislation. Moreover, a foreign entity cannot be a direct shareholder of more than two Turkish broadcasting companies. If a foreign entity is an indirect shareholder of a broadcasting company, (i) the broadcasting company's chairman, vice chairman and the majority of the board of directors and general manager must be Turkish citizens; and (ii) the majority of

the general assembly must be composed of real and legal persons with Turkish citizenship. The broadcasting company's articles of association must specifically and clearly include these matters. Still, there is an attempt to increase foreign capital investments in this sector. In time, foreign broadcasting companies abroad started to broadcast quality Turkish television series which apparently attracted attention of foreign companies and inclined them to invest in the Turkish broadcasting sector.

Under Article 19 of the Broadcasting Law, a real person or legal entity can directly or indirectly hold shares in a maximum of four media service providers. Considering there are already few broadcasting companies, holding shares in four media service providers might lead to monopolisation and might set a barrier for competition in the sector. The same article sets out that annual total commercial communication income of media service providers in which a real person or legal entity is a direct or indirect shareholder cannot exceed thirty per cent of the total commercial communication income of the sector. This provision applies in case of holding shares in more than one media service provider. The Broadcasting Law, with its new provisions, also takes into account the flip side of the coin and brings more of a commercial perspective. As for "new media" platforms; they lack specific regulations with respect to cross-ownership.

Broadcasting Law prohibits political parties, labor unions, professional organisations, cooperatives, associations, societies, foundations, local



administrations, or any companies which are established by them and of which they are direct or indirect shareholders from obtaining a broadcast license. A broadcasting license is defined as a permit issued to media service providers by Radio and Television Supreme Council (RTUK) separately for each broadcast type, technique and medium to enable them to broadcast through any kind of technology via cable, satellite, terrestrial and similar means. Provided that such companies fulfill the requirements specified under the Broadcasting Law and other relevant regulations, it may be granted to joint stock companies established in accordance with the provisions of Turkish Commercial Code solely for the purposes of providing radio, television and on-demand broadcast services. Although public institutions may broadcast on certain topics such as for purposes of education and warning, this prohibiting provision prevents public institutions from free broadcasting, unlike joint stock companies. Broadcasting sector, however, should be a powerful means to obtain and spread information for all real and legal persons, regardless of whether they are public or not.

Furthermore, a media service provider must obtain separate licenses from RTUK for each broadcasting technique and environment in order to be able to broadcast through cable, satellite, terrestrial, and similar means. Companies willing to broadcast simultaneously through different broadcasting techniques and environments must obtain separate licenses for each broadcasting technique and environment, and broadcast simultaneously. The broadcasting license's term has been increased from five years

to ten years due to sector demand.

The Broadcasting Law also has detailed provisions for television broadcasters, stating that holders of national terrestrial broadcasting licenses must: (i) allocate at least fifty per cent of their broadcast time to European works, excluding the time allocated to news, sport events, contests, advertisements, tele-shopping and related data broadcasts; and (ii) allocate ten percent of their broadcast time or program budget broadcasts to European works of independent producers, excluding the time allocated to news, sporting events, contests, advertisements, tele-shopping and related data. European works are defined as audio-visual works, which are produced or co-produced by real persons or legal entities settled in signatory states of the European Convention on Transfrontier Television or in member states of the European Union. Online media falls outside the scope of this regime. The rule is to broadcast in Turkish. However, broadcasts may also be conducted in dialects and other languages. The broadcasts must be conducted in conformity with the rules of the language selected. RTUK is the authority to determine the procedures and rules pertaining to the relevant broadcasts.

In fact, RTUK has broad powers which are worth mentioning in terms of understanding where the broadcasting sector stands. RTUK was established in 1994 as the responsible authority for the regulation of all radio and television broadcasters all across Turkey. It had been established as an independent authority and in 2005 acquired constitutional status in Turkey. RTUK regulates both technical

and content aspects, which are mainly; (i) frequency allocations (ii) licensing and (iii) content monitoring. RTUK is the main independent administrative body for policy making and supervision for the radio and television sectors with its own independent budget. However, considering its certain connection with Turkish Parliament, one can hardly state that it is entirely independent. Since all nine members of RTUK are assigned by the Turkish Parliament.

A main critic about RTUK is that, during the recent years, it turned into a censoring authority rather than a regulatory one. Its approach to the broadcasts and broadcasting companies may be deemed conservative as RTUK frequently intervenes and renders administrative fines to broadcasting companies based on matters which should be considered free flow of information and speech. These interventions mainly stem from misinterpretation and disproportionate application of Article 8 of the Broadcasting Law, which stipulates that broadcasts cannot include humiliating, insulting and libelous statements against persons or institutions. As stated in Article 10 of the European Convention of Human Rights, exercise of freedom, including freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers, may be subject to restrictions as is necessary in a democratic society. Restrictions shall also be proportionate. However, RTUK's certain decisions exceed these necessities and restrain basic human rights.

RTUK is also entitled to supervise television channel and radio frequencies

under the frequency bands allocated to RTUK for terrestrial radio and television broadcasts in the national frequency plan. In the frequency plans, the numbers of national, regional and local terrestrial broadcast networks, their types and their multiplex numbers for digital broadcasts are determined.

It is possible to criticise that the regulatory authority on the broadcasting sector has broader powers than necessary. Hence, providing its full independence would matter in terms of serving only for public benefit and preventing RTUK from any political influence. The new Broadcasting Law of 2011, together with its benefits, fails in providing more transparency, clear borders on RTUK's competency, enabling competition and balancing public service and its commercial terms. The Broadcasting Law once again attests that enacting a law without taking into account previous sector-based experiences and critics, and gathering opinion from experts would not solve. Therefore, the Broadcasting Law needs patches to become a pluralistic one and serve for good.

There are no expected amendments pending before Turkish Parliament on broadcasting laws as of January 2014.

## BIOGRAPHIES

**Gönenç Gürkaynak** is the managing partner of ELIG, Attorneys-at-Law, which is a leading law firm in Istanbul Turkey. He holds an LLM degree from Harvard Law School, and he is qualified to practice in Istanbul, New York, Brussels, and



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