NEW ADVERTISING TAX SPARKS MAJOR PROTESTS FROM POLISH MEDIA PLAYERS:

Proposed legislation will introduce sweeping new tax on traditional & online media advertising revenues

17 February 2021

On 2 February 2021, the Polish Ministry of Finance published a draft bill[1] introducing a controversial new advertising tax on both conventional and online advertising revenues. Following the pre-consultation period, which closed on February 16, the Bill will be open for public consultation, after which the Government is aiming to ratify it quickly in Parliament - discussions are scheduled for March while the official introduction is planned for July 1. The move caused an outcry among the media sector in Poland, with many companies uniting in a major protest against the Government's move, and opposition to the Bill seemingly growing within the governing coalition.

Independent media companies are incensed by the Government, in their words, using the pandemic crisis as a reason to impose further onerous taxes on a sector already struggling to deal with a range of recent financial and operational restrictions.

- In July 2020, for example, as part of the so-called anti-crisis shield 3.0, the Government introduced the so-called 'VoD tax' for on-demand audiovisual media services (some broadcast companies will now be hit by both this and the new advertising tax).
- Additionally, in January this year, the Ministry of Justice proposed a draft bill[2] on the protection of freedom of speech on social media platforms which opponents argue increases State control of social media by imposing potential fines (of up to PLN 50 million / EUR11.1m) for failing to restore deleted posts or accounts (a policy officially billed as a fightback against the censoring of Conservative content).
- Finally, concern is growing in the sector towards the Government's controversial 'repolonisation' policy, aimed at legislating the minimum amount of locally-produced media content, a measure that also features in the new draft Bill.

---

[1]Click here for the full version of the draft Law on Additional Revenues for the National Health Fund, the National Historic Monument Protection Fund, and the establishment of a Fund for the Support of Culture and National Heritage in the Area of Media
[2]Click here for the full version of the draft Law on the Protection of Freedom of Speech on Social Media Platforms

Privately-held media companies in Poland have united in their opposition to the new Bill. On 10 February, in a protest unprecedented in Polish history, private broadcasters across the country stopped broadcasting TV and radio channels, blocked their websites and transmitted a collective message "Media Without Choice" in response to the draft Bill. A day earlier, 43 media organizations had issued an open letter[3] to the authorities of the Republic of Poland and leaders of political groups, opposing the use of the pandemic as a pretext to introducing heavy additional burdens on the media sector and claiming the Bill is in fact part of a wider government plan to reduce the editorial independence of private media companies.

The letter claims that independent media companies already face an unsupportable array of taxes, levies and fees to the State budget (such as CIT, VAT, emission, copyright, licences, frequencies, booking decisions and VOD fees) and further argues that the asymmetrical and selective financial burden on the media will:

- lead to the weakening or even bankruptcy of some media companies;
- limit the possibilities of financing high-quality and local content;
- deepen the unequal treatment of State-run and independent media businesses.

Another point of contention is the positioning of the new range of taxes as a 'solidarity fee' to help with the recovery from the pandemic – a claim contested by the media sector given there is no proposed finite period for the new tax. Indeed, the earmarking of the additional revenue for the National Health Fund (NFZ), the National Fund of Monument Protection (NFOZ) and the creation of the Fund for Supporting Culture and National Heritage in the Media suggests the new taxes will be permanent. The Government forecasts that the new law will bring PLN 800 million (Euro 178m) in additional tax revenues in 2022.

All the parliamentary opposition parties, including Confederation (which has stressed its aversion to any tax increases), have spoken out against the draft Bill. Civic Coalition, the Left Parliamentary Club and the PSL-Polish Coalition submitted three identical draft resolutions calling on the Government to de-politicise the media and abandon the project completely. The Senate Marshal also stated the draft aims to "suppress any criticism of the Government and muzzle the independent media".

The proposed Bill also seems to be attracting a growing level of opposition within the ruling coalition itself. The Agreement Party (AP) and United Poland (which together with the Law & Justice party PiS form the ruling United Right coalition) are publicly sceptical, but could change their positions after negotiations with PiS: AP issued a statement expressing its concern over the proposal and saying it was not consulted on the Bill. PiS politicians and Government representatives have responded by underlining that the draft is at early pre-consultation stage and changes are inevitable before it is finally adopted, but recent history suggests a significant climbdown is unlikely.

The ongoing protest has already received the attention of a range of international institutions, not least the European Commission and the US Embassy in Warsaw, quickly escalating the matter politically in a move that seemingly has taken the PiS party by surprise. European Commission spokesman Christian Wiegand said the Commission's concerns about media pluralism in Poland "are well known", while commissioners Vera Jourova and Frans Timmermans were also critical. The US Chargé d'Affaires in Poland, Bix Aliu, said that "the United States will always defend media independence".

[3] Click here for the full version of the open letter

OVERVIEW OF THE MAIN NEW TAXES PROPOSED IN THE DRAFT BILL

Tax on Conventional Media Advertising	Tax on Online Advertising
• Imposed if the value of the advertising exceeds PLN 1 million (EUR 222,383). For advertising published in the press - if the value exceeds PLN 15 million (EUR 3,3 million). • The definition of "advertisement" is expected to include e.g. video materials, advertising banners and sponsored articles. • The rate of the tax will vary from 2% of advertising revenue for press ads to 15% for television ads, depending on overall revenues and the type of advertising. The smallest platforms and outlets are meant to be exempt, while print media will pay smaller levies. Fees will also be differentiated based on the products advertised. • For TV, radio, cinema, and outdoor media advertising - 7.5% tax if their revenues do not exceed PLN 50 million (EUR 11 million) or 10% if they do. • In case of selected products and services deemed by the regulator as harmful (e.g. online betting, medicinal products, dietary supplements, medical devices or sweetened beverages), a higher tax is due: 10% on revenues below PLN 50 million (EUR 11 million), 15% above. • Tax on conventional advertising will depend on the type of media and advertising revenue: between PLN 15 million (EUR 11 million) and PLN 30 million (EUR 7 million) it is 2% tax, above: 6%.	• The tax on online advertising will apply to advertisers whose global revenues reach EUR 750 million and if advertising revenues in Poland exceed PLN 5m (EUR 1,1 million). Both conditions must be met at the same time, and the tax will amount to 5% of the base of these incomes. • The taxable revenue will be calculated by multiplying the total advertising revenue by the number of Polish advertisement recipients (determined on the basis of geolocation methods, such as IP addresses), and dividing the product by the number of total advertisement recipients. • Online advertising means every digital service that allows the user to direct the advertisement to the recipient, in particular by displaying or broadcasting it in the form of sound or audio-visual material on the recipient's device, as well as any other digital service relevant to directing the advertisement to the recipient.

FURTHER POTENTIAL IMPLICATIONS OF THE DRAFT BILL

- Critics fear a long-lasting negative impact on the private media market in Poland: the Bill targets media's most significant source of income, thus increasing investment uncertainty and limiting its development and restricting competitiveness;
- The regulation also includes elements of the planned "repolonisation" policy promoted by the Government (increasing the share of Polish broadcast content from 33% to 49% and thus further restricting foreign-owned media), which will have a significant impact on the activities of TV and radio stations;
- Media analysts say that the proposed levies will specifically hit large independent media companies, such as Agora (owner of leading daily newspaper Gazeta Wyborcza, the Helios cinema chain, various radio stations and the outdoor advertising company AMS), Axel Springer (Onet & Newsweek) and Discovery (TVN). The tax on online advertising will probably impact online news portal Onet (due to the large scale of its parent company's global operations), but not, for example, another leading portal Wirtualna Polska (its revenues are too low);
- The consequence of the introduction of the new tax will be an increase in advertising rates, which will ultimately affect the consumer. A similar mechanism was triggered by new taxes on retail sales and sweetened beverages, in force from 2021;
- As companies potentially look to restructure their advertising to avoid the higher rates resulting from the new taxes (e.g. by increasing the online element of their advertising spend, particularly to those

smaller media untouched by the new taxes), the implications for struggling sectors already damaged by the pandemic could be far-reaching – particularly print media, which already faces an uncertain future.

LOOKING AHEAD

As pre-consultation on the Bill closed on February 16, the next step is a public consultation. It is expected that the draft Bill will arrive in the Sejm (Parliament) in March, since the Government wants the new legislation to come into force from July.

However, given the scale of the protests, the reluctance of PiS' coalition partners to endorse the Bill and public pressure from abroad, the draft has little chance of being adopted in its present form and the Government has already indicated changes will be made. We also expect the Bill to be discussed through diplomatic channels with Brussels and the US: the proposed regulations put Poland at risk of further conflict with the US in particular, as the "repolonisation" of media content looks set to impact the wave of imported US content.

The establishment of a fund to support culture and national heritage in the area of media, which many fear could become a tool for financing openly pro-Government media, will also cause controversy. Employers' organisations and industry associations will want to reject or delay the draft and have already issued statements claiming that it targets industries severely affected by the crisis (for example cinemas, traditional media).

While the media industry awaits confirmation of the Bill's consultation date, rumours persist that it may not be passed to the Sejm at the next meeting. On 16th February, Prime Minister Mateusz Morawieck announced that changes may be forthcoming related to the reduction or elimination of the burden on the press, a reduction of the maximum tax rate and corrections in the redistribution of proceeds from the new fee. We expect most of these changes to be aimed at alleviating the intense pressure on the offline / traditional media. Whatever the changes, however, the scale of both the proposed taxes and the opposition to the Bill mean it is set to dominate headlines moving forward, as both sides lobby for the optimal outcome.

# # #

If you would like to discuss the matter on this paper, please contact: Aigerim Fazylova, Senior Counsel a.fazylova@kesarev.com or Chris Dobson, Executive Partner c.dobson@kesarev.com

About Kesarev

Kesarev - is the leading independent public affairs and government relations consultancy in Central & Eastern Europe, Russia, Ukraine, Central Asia, Turkey and Israel, covering 25 countries and specializing in government and corporate affairs, risk management and corporate reputation services

Since 2014, Kesarev consultants have been ranked by The Best Lawyers in the areas of Government Relations, Government and Regulatory Practice, including the "Best Lawyer of the Year" award. Kesarev partners were recognized among the Top-20 communications managers by the TOP-COMM rating in 2020 and 2019 and within the Top 1000 Managers of Russia rating in 2017, 2015 and 2014.

www.kesarev.com