



Brussels, 15 January 2009

## **Position on the**

### **Review of the Communication from the Commission on the Application of State Aid Rules to Public Service Broadcasting**

#### Introduction

The following text expresses the joint positions of the European Federation of Journalists (EFJ) and the European Region of UNI-MEI Global Union (EURO-MEI) in response to the Communication from the Commission on the Application of State Aid Rules to Public Service Broadcasting (hereafter “the Broadcasting Communication”). The EFJ, the European group of the International Federation of Journalists, represents trade unions and associations of journalists in all media sectors across Europe. UNI-MEI Global Union represents unions and guild affiliating creators, technical and administrative staff in the media, entertainment and arts. We represent journalists and media workers in both public and commercial broadcasting.

The EFJ and EURO-MEI support the positions of those Member States, which have adopted a common position paper entitled “Main Principles for a Revision of The Broadcasting Communication of the European Commission”.

#### General

The Broadcasting Communication aims at revisiting the broadcasting Communication of 2001 taking into account technological, legal and market developments. The Commission proposes new tools and rules to adapt the Broadcasting Communications of 2001 to those developments. The EFJ and EURO-MEI believe that the Commission needs to take into account the following question before drafting any new regulation: Is the current framework not able to tackle those developments?

The EFJ and EURO-MEI stress that the decisions taken in the state aid cases since the entering into force of the Broadcasting Communication of 2001 have dealt with success with the dynamics of the technological developments, in particular the digital convergence resulting in the emergence of new platforms of distribution and new broadcasting services. We agree with the Commission that the Broadcasting Communication of 2001 “has served as a good basis for the Commission to develop

significant decision-making practice". Therefore, there is no need to introduce radical new measures or propose new institutional measures.

However, it is vital for a coherent approach in the audiovisual sector that the EU Commission integrates the definition of broadcasting as defined in the Audiovisual Media Services Directive (hereafter "AVMS Directive"). We would like to stress the importance of the Amsterdam Protocol and point out that any new legislation and communication need to respect the principles laid down in the Protocol. In line with the Protocol Member States can and do formulate remits for public service broadcasting that are much broader than the scope of the AVMS Directive (such as radio and interactive services for example).

We share the view of the Commission that technological and market development have altered and will continue to alter the broadcasting and audiovisual market. For the medium future we can expect apart from the unforeseeable developments, a further fragmentation of the traditional broadcasting market, increase of distribution of broadcasting and other audiovisual media services over new platforms, increase of online consumption and in particular of on-demand services, decrease of consumption of traditional broadcasting, advertising spending will become more important on new media platforms than on traditional broadcasting, increase of mobile services, and growth and fragmentation of audiovisual market.

As far as state aid rules in public service broadcasting are concerned we believe that the current European legal framework provides sufficient flexibility and will ensure legal certainty if these developments materialise. However, regulations at Member States level may need to be adapted in order to allow public service broadcasters to adapt their remit to technological change and the digital environment.

In summary we believe that the Commission needs to continue to take into account the dynamic reality of the nature of broadcasting and apply the state rules in recognition of those new realities. However we do not share the opinion that those new realities which will continue to evolve rapidly do require a new legal framework.

#### Definition of public service remit

The Commission comments on the remit with respect the to development of broadcasting in the digital environment should be clearer and the reviewed broadcasting communication should not contain any wording which could cast doubts whether public service broadcasters will be able to continue to develop new services and offer access to citizen on all available existing and future distribution platforms. It must be clarified that public service broadcasters must be enabled to fulfil their public service missions in the digital environment and evolve with the same dynamic as other players in the audiovisual sector. This is important not only for the public but also for the journalists and media workers who are in charge of creating quality programmes in the digital environment. It is important to underline that the means of distribution are not relevant for clarifying the permissible scope of public service broadcasting activities. The crucial criteria is the content and it needs to be ensured that the content responds to the democratic, social and cultural needs of society on whatever platform this content is distributed. New services have to respond to the same criteria as traditional TV programmes.

Further, we believe that new services should not be evaluated solely by their impact on commercial competitors and should not be regulated solely according to economic/market criteria. At worst, such an approach could lead to a situation in which free market principles are the automatic default position

and in which public service broadcasting always needs to justify itself as an exception. We take the opposite view that public service broadcasting in line with the Amsterdam Protocol is self-justifying and should not be required to provide evidence of its level of impact on commercial competitors.

Finally we would like to underline that in the future the availability of public service broadcasting and new public audiovisual media services on all distribution platforms is a condition for these contents to remain public services, because of the need to give citizens universal access: the Internet as well as mobile platforms have to be open for public services if we want to preserve Europe's unique dual broadcasting system. This view is also expressed in the Recommendation of the Committee of Ministers of the Council of Europe on the remit of public service media in the information society (2007).

The Commission raises the issue of pay services. The signatories would like to underline that in general public service broadcasting services should be universally accessible and free at the point of use. From our viewpoint, there needs to be a special justification for pay services as part of a public service remit. Such a justification can be that the pay service is an additional service (for example digital archives), which cannot be provided within in the current financing situation. In any case the fees need to be reasonable and should cover the costs of the service. Obviously, all existing or new pay services need to fulfil the democratic, social and cultural needs of each society and preserve media pluralism just as for any other elements of the public service remit. Each existing and future pay service may be admitted within the public service remit because of different criteria than we mentioned in the example of the online catch-up service.

We do not think that it would be helpful to automatically define pay services as purely commercial services. Therefore pay services should not be excluded for public broadcasters or considered exclusively for services which are not offered on the market.

### Entrustment and Supervision

The Broadcasting Communication should require member states to ensure that there is a clear and adequate definition and entrustment of the public service remit. The role of the European Commission is limited to the control for manifest errors.

A requirement to perform specific ex-ante assessments is not compatible with the established competence of Member States to define the public service remit. The Amsterdam Protocol is very clear on this aspect and the Commission should respect the subsidiarity principle. It is the key principle guiding the distribution of competences between Member States and the EU in regulating public service broadcasting.

The Commission already has the tool of "manifest error" to verify if necessary whether a Member State did cover purely commercial services when updating the public service remit. This ex-post measure ensures that the public service remit can evolve and respects the dynamic definition of broadcasting. Ex-ante measures would threaten innovation and development of new public audiovisual media services and can not be imposed to all public broadcasters in a harmonised way at EU level . The Commission commits here in our view the biggest mistake in its broadcasting communication: The business of broadcasting is about experimenting and developing, and public broadcasters should be allowed to freely do so.

Public service broadcasters enjoy editorial independence. This is very important to ensure quality programming and objective information services free from political pressure or interference. We believe

that an ex-ante evaluation for new media service would open up possibilities to interfere with the editorial independence of public service broadcasters.

### Funding and Transparency

Financial transparency is important to guarantee the separation of public service and commercial activities. In our opinion the provisions the Transparency Directive provide a coherent and sound framework to regulate the separation of public service and commercial activities. The determination of the funding mechanism and the financial needs of the public broadcasters is an exclusive competence of the Member States. It is the competence of the Commission to check whether the amount of the compensation does not exceed what is necessary to cover the totality of costs and continuity arising from carrying out the public service broadcasting remit, taking into account related income, as well as a reasonable profit for carrying out the remit.

Regarding the Commission statement on separation of accounts we would like to stress that structural or functional separation result in the same objective being achieved, but with additional costs which would be out of proportion to the objectives to be attained. Functional separation may be an appropriate and adequate solution for the very large public service broadcasters. However, small broadcasters would have to bear additional, disproportional costs.

Regarding overcompensation we are opposed to any overtly restrictive approach to overcompensation by which surpluses from public service activities would automatically have to be returned to the state, or by which public service broadcasters were restricted in their ability to channel profits from their commercial activities into the development of their public service activities, both in terms of programming and in terms of technology. We believe the approach to overcompensation is in danger of assuming that a free market approach is the default position and that public service broadcasting is an exemption, which has to be restricted or specially justified.