

Draft Communication from the Commission on the application of State aid rules to Public Service Broadcasting – comments from Ireland.

Introduction

Ireland thanks the Commission for the opportunity to comment on the revised draft of the proposed Broadcasting Communication.

Ireland considers that the existing Communication from 2001 is largely appropriate and that there is only a need for small changes. That said, Ireland recognizes that the revised draft Communication proposed by the Commission contains a number of changes from the first draft that reflect many of the points raised previously by Member States, including Ireland. Ireland welcomes many of these changes and also wishes to thank the Commission for its considerable engagement with Member States with regard to the Communication.

Ireland still has a number of significant concerns in relation to the draft Communication. In a number of areas Ireland considers that the Communication is over prescriptive and that an approach based on subsidiarity is more appropriate, particularly in relation to the '10%' issue in relation to reserves.

Specific Comments

Ireland wishes to make a number of specific points in relation to the text of the revised Draft.

Part 1

It would be appropriate to make reference to the existence of the Amsterdam Protocol early on in the text, perhaps in paragraph 3.

Part 2

In common with some other Member States, Ireland questions why the Commission has strengthened the language in paragraph 16 in relation to the role of commercial broadcasters, as it does not seem relevant to the purpose of the Communication

Part 4

Paragraph 31 represents a change from its predecessor paragraph 36 and in doing so appears to place a greater emphasis on ‘severability’ rather than ‘substance’ in assessing for new aid. The previous draft focused on the issue of substance. In this regard, Ireland prefers the approach of the previous draft.

Part 6

Ireland welcomes the inclusion of paragraph 42 in relation to smaller States.

Section 6.5

Ireland has a number of particular concerns in relation to section 6.5 – ‘Net cost principle and overcompensation’.

Ireland agrees that over-compensation is of course not compatible with State aid. However, an approach is required in respect of public service broadcasters which reflects their unique remit and circumstances. A public service broadcaster is typically an organization formed with one primary role – public service broadcasting (as recognized by the Communication in paragraph 72). In this regard, the compensation of a PSB must reflect the ‘entire organisation’ aspect. Compensating PSBs should not be thought of in the same way as compensating for instance an airline for the running of a number of specific and quantifiable unprofitable routes. Instead the compensation must recognize the need to establish, run and maintain an entire organization on a multi-annual basis. To not do so would, in Ireland’s view, be contrary to the Amsterdam Protocol. To run an organization over time inevitably will require the existence of reserves. Any reserve built-up by a PSB will naturally be for the fulfillment of its public service obligations – in future years.

Ireland of course considers that such reserves should not be excessive. A process involving independent oversight can give a view as to whether reserves are excessive and need to be reduced. However, Ireland does not agree with the Commission’s proposed language that caps any reserves at the somewhat arbitrary figure of 10%. This is entirely a ‘one size fits all’ approach, ignoring subsidiarity and ignoring the huge differences in scale between different PSBs across Europe. Therefore, Ireland would request the second sentence of paragraph 73 be replaced with a more flexible statement.

While paragraphs 74 and 75 attempt to go somewhat in recognizing the ‘organisational’ aspects of PSBs, the language in both paragraphs is burdensome and very specific. It would appear to place exceptional and burdensome ex ante obligations on both PSBs and Member States before any general or specific reserves are established (e.g. ‘Member States shall lay down the precise conditions....’).

A final point in relation to reserves is that the draft Communication does not recognize the existence of different accounting standards, pension and tax obligations which may require the creation and maintenance of reserves.

Section 6.6

In paragraph 79 the Communication proposes in-depth review at the end of each ‘financing period’ or else every four years. A number of Member States have questioned the specificity of ‘four years’. In Ireland’s case, such a review is planned every five years. Ireland would suggest that more flexible language is used here, given the variety of timescales likely in different Member States.

Section 6.7

While Ireland recognizes the general improvement in the text in relation to platform neutrality, there are some concerns in relation to paragraph 85. To align the Communication with the new Audiovisual Media Services Directive, the Commission should make it clear that the provision of PSB broadcasting content on a non-linear basis comparable with the linear offering is permissible and is not considered a ‘new’ service. Paragraph 85 talks of ‘simultaneous distribution’ not being a new service. However, this may be construed as relating only to ‘linear’ distribution.

In line with other Member States, Ireland has concerns in relation to some of the text proposed in paragraph 88. In describing the market impact assessment, it would be better to use the term ‘et cetera’ rather than ‘inter alia’. The phrase ‘clear added value’ is problematic. Language in line with the Amsterdam Protocol (“democratic, social and cultural needs”) would be more appropriate.

Dublin
7 May 2009