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Neelie Kroes (Commissioner for Competition)  
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Dear Neelie Kroes,

**Subject : Review of the Communication from the Commission on the application of state aid rules to public service broadcasting (PSB)**

The Federation of Screenwriters in Europe (FSE) has twenty-six member organisations coming from twenty-one European countries. It is these writers who create much of what is shown by European Public Sector Broadcasters (PSBs). We are grateful to you for giving to us the opportunity to express a view on the future application of state aid rules towards PSBs.

PSBs are still an important player in the European audio-visual industry. Indeed back in the 1980s with the advent of satellite and cable TV it was thought PSBs would gradually become redundant, however, their value to society has not diminished and they remain one of the most important funders as well as transmitters of new audio-visual works. In particular PSBs continue to contribute to the funding and the projection of high quality European programmes and films. They also apply the rules of the European Television Without Frontiers Directive without any serious fault which is not something that can be said for private TV, particularly satellite TV.

Indeed the recently adopted Audio-visual Media Services (AMS) Directive (2007/65/EC) states:

**Recital 9 - *The Resolution of the Council and of the Representatives of the Governments of the Member States, meeting within the Council of 25 January 1999 concerning public service broadcasting [9] reaffirmed that the fulfilment of the mission of public service broadcasting requires that it continue to benefit from technological progress. The co-existence of private and public audiovisual media service providers is a feature which distinguishes the European audiovisual media market.***

The Directive builds on the existing Amsterdam Protocol of the Treaty establishing the European Union and on the UNESCO convention on the protection and promotion of the diversity of cultural expressions (20.10.2005) which permits member states to fund cultural policies<sup>1</sup>. Consequently when drafting a revised Communication, the Commission must be mindful of the wishes of the Member

<sup>1</sup> See Article 6 of the Convention – Rights of parties at the national level.

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states as indicated by the protocol and the convention to recognise the ultimate legal responsibility and power to determine the levels of funding of PSBs lies with Member states.

Though the questionnaire asks questions concerning the situation in one's individual Member state, FSE, due to its federal structure can best respond in a general way at European level. Therefore, there are some general remarks that we would like to make.

Regarding the General questions (1.1; 1.2; 1.3), a revised Communication can refer to the Commission Decision and Framework on public service compensation which relates to Article 86(2) of the treaty on state aid rules, but most importantly the fundamental need is to adopt the Communication to take the AMS Directive into account.

Regarding the **remit** of PSBs (question 2.2), we are of the opinion that PSBs should be allowed to maximise all the opportunities offered by new technologies, as indicated in the above recital of AMS and the UNESCO Convention. In other words, PSBs should be allowed to develop in full non-linear services. The rules that PSBs should be subject to include those in the AMS Directive and any further national rules. It is very important that the condition is that the PSBs compensate the writers separately for such use. It cannot be accepted that such services will be accepted as inclusive in present contracts as this would be against the remit of PSBs.

But, we insist that as the PSBs are publicly funded and responsible to the public they must **respect the rights of authors**. Too often PSBs demand that screenwriters sign up to contracts that in effect make them give away their rights of authorship. In this way denying writers desperately needed royalty income which is their due. Within the remit of the PSBs, provision should be made to ensure that authors retain their rights of authorship and that buy-out-clauses in contracts are deemed illegal. This should be indicated in the revised Communication.

Regarding **scope** of PSBs (also question 2.3), they should ensure that the qualitative and quantitative rules in the AMS directive and rules stipulated by national governments of the showing of European audio-visual works is applied rigorously, in particular *the Communication should state categorically that PSBs apply recital 20 and article 4 and 5 of the AMS to all their services*.

PSBs should be allowed to transmit all kinds of programmes, including programmes that have a commercial or a popular interest; but above all they should show *quality* programmes like dramas, documentaries, children's programmes and films. More commercial programmes like quiz shows, can be shown but should be limited in favour of quality programmes like drama and documentaries. Indeed the quotas in the AMS Directive should only apply to quality programmes, like drama, film and documentary.

Regarding the state of **competition** between PSBs, privately owned commercial TV and now new entrants like Telecoms, we are of the view that there is a competition problem with the Telecoms. Telecoms are new to the business and therefore, unlike existing TV networks are not obliged to ensure that more than half their broadcasts comprise European audiovisual works in the same way as existing broadcasters. This is a serious competition anomaly and Telecoms should be obliged to apply the same rules to their services as existing TV networks.

Furthermore, PSBs tend themselves to behave like commercial TV in spite of the fact that they are publicly funded. The content the PSBs deliver to viewers should be determined according to their charters granted to them by the Member states and no by the market.

Regarding the **regulation** of PSBs (question 2.3.4), this is best done by the Member state. Nonetheless, the controlling body ought to be independent and should itself be accountable to all stakeholders. It should respond to complaints and explain in a transparent way its decisions. It should

also have teeth and make sure that PSBs, indeed all audiovisual media service providers apply the AMS directive to the letter.

Sincerely,

Christina Kallas  
President, on behalf of the Federation of Screenwriters in Europe