

COMMON POSITION PAPER (Draft 5 August 2008)

MAIN PRINCIPLES FOR A REVISION OF THE BROADCASTING COMMUNICATION OF THE EUROPEAN COMMISSION

Introduction

In January 2008 the European Commission published a consultation paper on a possible revision of the Broadcasting Communication of 2001. The Netherlands, ...*other MS*..., consider that there is only limited need for a change of the current Communication. In this paper we set out the principles for a possible revision of the Broadcasting Communication (hereafter: BC).

General

1. In respect of the Amsterdam Protocol the BC must acknowledge the principle of subsidiarity with regard to defining, organizing and financing public service media in the member states.
2. Although similar in essence, the details of the remit, the organization and the financing of public service media cannot be harmonized across Europe, but should continue to reflect national needs, national culture and national constitutional law. Therefore, the BC may include only a number of basic and flexible principles and can not create detailed rules on the basis of State aid measures taken within individual member states over the past years.
3. The requirements of the 2005 Framework for services of general economic interest are not well suited to the public service broadcasting area.

Definition of the public service remit

4. The BC may underline that the public service remit is to respond to the democratic, social and cultural needs of society. The benchmark for public services lies in criteria such as diversity, independence, quality, accessibility and reach. The BC cannot limit the public service remit to services which are not available on the market, neither by criteria with regard to *content* nor by rules concerning the entrustment *procedure*.
5. In line with the principle of technological and platform neutrality, the BC should acknowledge that in the digital media landscape the public service remit can include all electronic content. A flexible definition should allow member states to entrust public service broadcasters with a remit that could include a diversity of programmes on digital radio and television and which could include the possibility to make full use of new forms of distribution, such as the internet and mobile telecommunication networks. Thus, it should be made clear that the means of distribution are not relevant for classifying a public service activity.
6. The BC may acknowledge that the public service remit is fulfilled by the *totality* of programmes and services which public broadcasters offer and can not be broken up into independent parts. This also means that 'old' and 'new' media services are inextricably linked.

Entrustment and supervision

7. In line with the present communication the BC should require the member states to ensure that there is a clear and adequate definition and entrustment of the public service remit. The role of the Commission is to control for *manifest errors*. It should be made clear that the form of the legal act and the choice of procedure for entrustment is for the individual member states to decide.
8. The BC may require member states to have procedures demonstrating how public service media meet the democratic, social and cultural needs of their respective societies. However, any

inclusion or suggestion on the use of criteria concerning the public service character of activities goes beyond the Community's competence.

9. The BC may invite the member states to consult on the public service remit, but should not limit member states options for ex ante evaluation by requiring them to perform a broad, independent, market impact assessment before approving any (new) activities of public service media.

Funding and transparency

10. The BC should clarify the possibility of forming a reserve for public service media as a financial buffer that can absorb fluctuations in income and costs. More far-reaching conditions with respect to a reserve, for example the way the surpluses are used or the maximum period for which a reserve can be maintained, should be left to the national level. It is also for the member states to decide on mechanisms to ensure efficient use of the funding.
11. The BC should not exclude the possibility for public service broadcasters to offer pay services as part of the public remit. This can be necessary to ensure appropriate and secure funding of public service media in the digital media landscape, especially in smaller language markets within the EU.
12. The member states acknowledge the importance of rules concerning the separation of the accounts between public service activities and commercial activities, but the BC should not require a structural separation (in separate commercial subsidiaries).

Conclusion

Above we have set out the main principles for a revised BC: clear definition, entrustment and monitoring of the public service remit in the digital age and transparent funding. Together these principles are sufficient to ensure that public service media meet the democratic, social and cultural needs of society. As these principles are already in place in the communication of 2001 there is to our opinion only need for small changes in order to adapt it to the technical developments of the digital age.