

**CONTRIBUTION TO THE  
EUROPEAN COMMISSION CONSULTATION ON THE  
APPLICATION OF STATE AID RULES TO PUBLIC SERVICE  
BROADCASTING**

**10 March 2008**

**Introduction**

The Open Society Institute published in October 2005 the monitoring study ‘Television across Europe: regulation, policy and independence’, covering 20 European countries and including an extensive regional overview as well as concrete policy recommendations for change where needed.

The country reports contained in the monitoring comprise 14 European Union member States, three candidates and three aspirants. Together, these in-depth studies give an unprecedented picture of the audiovisual sector in today’s Europe. Follow-up reports are currently being prepared on ten of these countries and will be released throughout 2008, starting at the end of March.<sup>1</sup>

On the basis of this research, as well as on the basis of its support for media development in Europe’s ‘new democracies’ over two decades, the Open Society Institute (OSI) welcomes the opportunity to comment on the Commission’s review of its Communication on the Application of State Aid Rules to Public Service Broadcasting.

**On the Definition of Public Service Remit**

(Point 2.1.2.) The principle that a public service remit should be defined following wide consultations is a good one, and should be included in a revised Broadcasting Communication.

(Points 2.2.3. and 2.2.8.) At a time of unprecedented flux and unpredictability, it is important that public service broadcasters should not be liable to debarment from the ever-widening range of audiovisual (and other) content provision “other than TV programmes in the traditional sense”. The Broadcasting Communication should help to protect public service broadcasters against attempts to impose such preclusion.

The existing provision (34) is sufficiently broad in its language to serve this purpose.

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<sup>1</sup> The 2005 series of EUMAP reports ‘Television across Europe’ covering twenty countries is available online at <http://www.eumap.org/topics/media>. The follow up reports, covering ten countries of the original twenty, will be available at the same web page starting from late March 2008.

Given the rapidity and dynamism of change in this sector, it may not be helpful to attempt greater specificity. It is not obvious what positive benefit would accrue from the additional “legal certainty” which, allegedly, might be obtained from a fuller definition of the “permissible scope” of public service activities. Or rather, it is all too easy to imagine that an expanded definition might be used to try and debar public service broadcasters from certain areas of activity – including areas that do not yet exist.

The onus is on the Commission to explain its interest in expanding this provision of the Communication.

(Points 2.2.4. and 2.2.5.) There is currently a tendency in many countries to reduce the funding that public service broadcasters can collect from advertising. This trend has been proven to have a negative impact on the quality of public service programming.

Moreover, financing from State budgets is uncertain and often politically tied, and there are difficulties in collecting licence fees from households. Hence, the financial future of public service broadcasting is precarious.

In many countries included in the OSI monitoring, public service broadcasters are today in a very difficult financial situation. In Bulgaria, for example, the OSI study recommended to the Government to earmark more funding from the budget to keep the public service broadcaster afloat.

With the advent of digitalization, public service broadcasters will face even greater difficulty in ensuring funding to cover their operations.

The general approach to public service funding in the Commission’s recent decision-making practice has delivered equitable solutions.

We are concerned by the underlying logic of further elaborating the conditions of legitimate funding that public service broadcasters must fulfil. For this logic points in one direction: it may make it harder for public service broadcasters to justify their activity on a range of new platforms.

If it becomes even more difficult for public service broadcasters to access public funding, their situation will deteriorate even further.

### **On Entrustment and Supervision (point 2.3.)**

The Commission notes that the best way of monitoring the fulfilment of the public service mission is by means of an ‘independent authority’. The Explanatory Memorandum observes that ‘only a few Member States’ have established such an authority.

The OSI monitoring study confirms that the public service broadcasters with independent governance structures, or overseen by independent regulatory authorities, are few indeed. Political elites are still highly inventive at finding ways to influence these bodies unduly.

What the Questionnaire terms “the increased effectiveness of national supervisory mechanisms” is a very important objective, fully in line with the commitments by all members of the EU and the Council of Europe.

The Open Society Institute welcomes the Commission’s wish, mentioned in the Explanatory Memorandum, for a discussion of these mechanisms with ‘stakeholders and Member States’. Such a discussion should, in our opinion, form the subject of a separate consultation, one which would probably be more important for the health of the ‘dual system’ of European broadcasting than the present exercise concerning the Broadcasting Communication.

### **On the situation in Smaller Member States (point 2.8.)**

The reference to the difficulties of smaller Member States is justified. Public service broadcasters in smaller States are easily trapped in a downward spiral caused by undercapitalisation, low productive capacity, vulnerability to political pressure, lack of ownership transparency, and transnational corporate acquisitions.

### **Additional OSI observations on public service broadcasting**

The broad assumption underlying the Commission questionnaire appears to be that public service broadcasters hold advantages over their commercial rivals. The chief such advantage is presented as the guaranteed revenue stream from the state budget and/or a licence fee which is levied upon television-owning households or added to utility bills as a supplement. Other such advantages or privileges may include exemption from the need to apply for a broadcasting licence.

OSI’s research on ‘Television across Europe’ finds, however, that such advantages are purely theoretical for most public service broadcasters, which face multiple and profound challenges in a multiplatform world.

All public service broadcasters today – even those performing most successfully – are caught in an unsustainable and vicious circle whereby on the one hand they need to justify their privileges by offering standard-setting output in mainstream strands, while at the same time also provide services that commercial rivals do not offer, notably in cultural, educational, children’s and minority programming.

One index of the challenges facing public service broadcasters is the general decline in their daily audience share. Of the countries included in the OSI monitoring survey, only in two did public service television have a share over 50 per cent: Bosnia Herzegovina and Romania. (Bosnia is a special case in many respects, while Romania’s public service broadcaster appears to have lost its leading position in 2007.) In most countries, this share was under 32 per cent.

Most of the public service broadcasters in the ‘new democracies’ haemorrhaged viewers between 1995 and 2003, losing almost half their market share (Poland), two-thirds of it (Slovakia), or even three-quarters (Hungary). Albania’s national TV is regularly watched by only 10 per cent of viewers in the capital, Tirana.

Probably a dozen public service broadcasters in Central and Eastern Europe are trapped in a crisis, which may have the result that some important programme strands

soon become unavailable to viewers who only watch terrestrial analogue television, and also to a lowering of standards in mainstream strands. These problems also exist, sometimes in acute form, in Western Europe, as the situation in Italy confirms.

Accordingly, we suggest that the present initiative to revise the Broadcasting Communication may exaggerate the risks posed in most Member States to fair competition – and by extension, to the ‘dual system’ of broadcasting, and the capacity of that system to meet the “*democratic, social and cultural needs of each society*” – by the funding arrangements for public service broadcasters.

Finally, we urge the Commission to formalise its admirable idea for an inclusive discussion of how to make the “national supervisory mechanisms” (which monitor the public service broadcasters’ performance vis-à-vis their mission) more effective.

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