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## **The way ahead for the Broadcasting Communication**

*Check Against Delivery*  
*Seul le texte prononcé fait foi*  
*Es gilt das gesprochene Wort*

Broadcasting conference

**Strasbourg, 17 July 2008**

Good morning, Ladies and Gentlemen,

It is a pleasure to be here in Strasbourg today. I should like to thank the French Presidency and in particular Minister Albanel for her initiative to organise this event.

This conference will be a valuable contribution to the Commission's work and the upcoming informal meeting of the Ministers of Culture and Audiovisual Affairs in Versailles on 21 and 22 July.

Today I would like to share with you my views on the way ahead for the Broadcasting Communication.

Let me start my speech by stating the obvious: the Media are more than a multi-billion euro business. They are also at the heart of democracy and cultural diversity in Europe.

Whether publicly or privately owned, each media outlet has an important responsibility in our society.

Public service broadcasting in particular plays a crucial role with regard to cultural and linguistic diversity and in objectively informing public opinion. It facilitates media pluralism and supplies, on a free-to-air basis, high quality programming which respond to the democratic, social and cultural needs of the society.

The importance of the public service media is also reflected in the Treaty, more precisely in the Protocol to the Treaty of Amsterdam.

The Amsterdam Protocol strikes a careful balance between the needs of public and private service media.

It enshrines the liberty of Member States to design the mission and the architecture of their public service broadcasting systems. At the same time, the Protocol also calls upon Member States to observe a certain measure of restraint when using public money to support media activities.

The Amsterdam Protocol has been and will remain the Commission's point of reference. It is the foundation of the 2001 Broadcasting Communication which enshrines our State aid policy in the broadcasting sector.

The Broadcasting Communication has been a great success.

It has provided enhanced legal certainty on the Commission's policy in this sector. Already 23 state aid decisions have been taken on the basis of this instrument.

But past success cannot make us complacent.

In the seven years of the Broadcasting Communication, our media markets have changed dramatically.

Technological advances, particularly digitalisation, are driving convergence and have changed consumption patterns.

In order to keep up with these new challenges, both public and private broadcasters are expanding their activities to new distribution platforms. But certain initiatives by public broadcasters have led their commercial competitors to complain in increasing numbers to the Commission. And in recent years these complaints have spread beyond the broadcasting sector.

For instance, newspaper publishers and other private content providers fear that State aid may be used excessively to fund on-line activities of public service broadcasters.

Germany, Ireland and Belgium have seen recent cases on this issue, others in Austria and The Netherlands are pending.

The rapidly changing media environment raise many questions: What are the fair limits of using state aid in the new media? Is, for example, public funding of chat rooms and online dating clubs going too far?

All these questions are real life, concrete examples. And the current Communication does not answer them.

That is why we began a public consultation on whether or not we should review the Broadcasting Communication. We received more than 120 submissions including opinions of 17 Member States. I am grateful to everyone who contributed.

If there is one thing that is clear from all these submissions it is that there is a great measure of uncertainty in the market. Where are the boundaries for using State aid in the new media environment? I believe that the market deserves more clarity.

So, my strong view is that we should modernise the Broadcasting Communication.

By "modernising" I do not mean a revolution.

I mean that we should consolidate our existing case practice and make sure that an updated Communication takes full account of the Amsterdam Protocol and of the new media environment.

In modernising the Broadcasting Communication, four principles will guide our thinking:

- First, we want to give full value to the Amsterdam Protocol.
- Second, we want to strengthen the principle of subsidiarity.
- Third, we want to enhance the flexibility of the existing regulatory framework in view of the quickly evolving market situation
- Fourth, we want more effective control at the national level.

### **Give "full value" to the Amsterdam Protocol**

Public service broadcasters must be able to fulfil their fundamental role in society at present but also in the future. They must be able to engage new generations and apply new technologies to create public value, and have fair funding to do so.

But The Amsterdam Protocol cuts both ways.

It says also that public funding for broadcasting services "may not affect trading conditions and competition in the Community to an extent which would be contrary to the common interest".

I want to give full value to BOTH elements of the Protocol.

That means being honest when answering whether all emerging media services serve the social, democratic and cultural needs of a society. When you think of the dating clubs and video games that sometimes proliferate – you have to wonder what purpose they really serve. But the same question can be raised regarding pay per view offers of premium contents which are normally provided by commercial broadcasters.

To be able to answer these questions, we need better definitions for the public mission of broadcasters where they enter new media markets. I am not the first one to require a clear role for the public media. The Council of Europe has recommended this already in January 2007. Without a clear role for public media, there is no certainty for the market. Both public and private operators have a right to know precisely how state aid will be invested in the new media environment.

Secondly, we need better measures to assess the market impact of state aid in the new media. I believe that no Member State has an interest to subsidise a new media

service that seriously harms innovation by private operators but hardly produces clear value for citizens.

However, you will ask me now: 'But isn't this a matter for the Member States to assess?'

This brings me to the second pillar of our plans for modernising the Broadcasting Communication: subsidiarity. We agree with many of you: we wish more subsidiarity in our policy.

### **More subsidiarity – the public value assessment**

I believe that the assessment of public value and market impact should essentially be done on the national level and not on the EU-level.

The BBC offers an example of how to achieve this with the "public value test" it applies before offering new media services on the market.

Similar procedures are now also being put in place in Germany, Ireland and Belgium. And our consultation suggests that other Member States see merit in this approach.

The questions in the test matter – they have to cover BOTH elements of the Amsterdam Protocol: public value AND market impact.

It is also essential to apply the test BEFORE the new service is started. It is obviously better to prevent harm rather than to mend it.

And finally, stakeholders and citizens should be *heard* before hand. Only then can a fair and fully informed decision be taken.

I am an enemy of red tape – so I take seriously concerns that such tests may be an unnecessary burden.

But we should not forget: good governance helps any public body to maintain legitimacy.

Whatever the precise shape and format of the test, it will be in Member States' hands to make it work.

Let me now turn to another issue which has also attracted high interest in our public consultation.

It is the question how far we need to ensure consistency between the Broadcasting Communication and our general framework for services of general economic interest.

In other words: should we treat public broadcasters the same as utilities when it comes to transparency and cost allocation?

### **More flexibility – reserves and entrustment act**

Public broadcasters have told us in the consultation that they must build up reserves to save money for large investments such as the digitisation of existing channels.

However, the 2001 Broadcasting Communication applies a strict net cost principle. A public broadcaster must therefore pay back public funds if they exceed the cost of providing the public mission. The Commission has indeed ordered recovery of such aid in two instances.

Conversely, under the terms of the 2005 SGEI Framework, utilities (such as electricity companies or the post) can –as a rule– keep reserves of up to 10% of their annual compensation.

In view of the current market developments, we should extend such benefits to the Broadcasting Communication – a great assistance to public broadcasters, I would hope.

At the same time, however, public broadcasters should also be subject to the transparency safeguards which are foreseen in the SGEI Framework.

This means that Member States should determine the parameters for providing the compensation, as well as the arrangements for avoiding and repaying any overcompensation.

Besides flexibility on reserves, we also believe that some more flexibility for the national entrustment mechanisms may be required in view of the current market environment.

Today, the Broadcasting Communication stipulates that *"when ever the scope of the public service remit is extended to cover new services, the definition and the entrustment act should be modified"*.

However, many Member States entrust their public broadcasters in licence agreements which are in force for 4 to 5 years.

During the life span of such agreement a public broadcaster may be hampered to launch new media activities if they are not clearly mentioned in the licence agreement. I do not like such "strait jackets". A modernised Broadcasting Communication could provide redress to this problem in the broader context of the public value assessment.

### **More effective control**

We also need more effective control mechanisms. And when I say this, I again mean more effective control on the national level.

Only three weeks ago the Court in Luxembourg have insisted that Portugal puts in place better control procedures to verify that its public service broadcaster RTP fulfils the mission. And the Court held the Commission accountable for verifying the effectiveness of this control mechanism. Clearly, this important precedent for Portugal applies on a general level.

We will have to further analyse this important judgment. But do not be under any illusion about the responsibility the court has placed on the Commission.

I want flexibility for public service broadcasters, but the Commission will need to know that the money that is made flexibly available is being spent correctly.

All these considerations will feed our modernisation of the Broadcasting Communication.

Ladies and Gentlemen, let me conclude.

I have set out to you how in essence we want to modernise the Commission's Broadcasting Communication.

Such changes would give more flexibility, autonomy and responsibility to the Member States. The ability of public broadcasters to provide services on all platforms would be confirmed. And in return Member States would offer better governance and controls at the national level.

I would like this process to continue in its current cooperative manner.

We will therefore present a first draft of the new Communication after the summer and discuss it with all Member States in a multilateral conference. We will also listen to the views of public and private broadcasters as well as to other stakeholder

groups and citizens. And we will aim to have a future proof Communication, with your support, in the first half of 2009.