

POSITION PAPER (Draft 17 June 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 no need for a fundamental 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. 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 and national culture. Therefore, the BC may include only a number of 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 may acknowledge that in the digital media landscape the public service remit includes all electronic content. A flexible definition should allow public service broadcasters to diversify programmes on digital radio and television and make full use of new forms of distribution, such as the internet and mobile telecommunication networks. Thus, the means of distribution are not relevant for classifying a public service activity. It is sufficient that the content responds to the democratic, social and cultural needs of society, also in the case of 'new' media services.
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. The BC must require the member states to ensure that there is a clear and adequate definition and entrustment of the public service remit, with respect of the editorial independence from the government. The role of the Commission is to control for *manifest errors*. The form of the legal act and the choice of procedure for entrustment is for the individual member states to decide. The BC cannot impose a preferred model.

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 or ways of defining or determining the public service character of activities goes beyond the Community's competence.
9. It is for member states to decide whether public consultation and/or *ex ante* evaluation of (new) media services are part of the procedure. The BC may invite the member states to consult on the public service remit, but can not require the member states to perform a broad market impact assessment before approving any (new) activities of public service media. Apart from arguments with respect to the wide and independent public service remit (see under 4), a market impact assessment could substantially add to the administrative burden in the member states.

Funding and transparency

10. The BC should respect the competence of the member states to decide what level of funding of the public service remit is appropriate. This include the yearly contribution asked from the licence-fee - or tax payers and examining the possible scope for efficiency savings.
11. The BC should continue to allow for mixed funding of public service media, including licence fees, public funding, advertising and individual payment by users. This is 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. Pay services can be part of the public service remit when they fulfill the democratic, social and cultural needs of society. In other cases, pay services can be offered as commercial services (financially) separated from the public service task.
13. The BC may 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.
14. There is no need to include further rules regarding the separation of the accounting and the attribution of costs to the public service remit and commercial activities in a revised BC.

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, transparent funding and cost allocation between public and purely commercial activities. Together these principles are sufficient to ensure that public service media meet the democratic, social and cultural needs of society. To our opinion there is no need for more far-reaching conditions in a revised BC.