

41<sup>st</sup> EPRA meeting  
Berne, 14-15 May 2015

### Working group 1

## Public Service Content in a Multiplatform Environment: Focus on Remit & Financing

### Introduction & Objectives

Content producer: Maja Cappello (European Audiovisual Observatory)

#### Introduction

Since the Plenary session at the 37<sup>th</sup> EPRA meeting in Krakow in 2013<sup>1</sup> the “Broadcasting communication” of 2009<sup>2</sup> which revisited the previous Communication of 2001 on the application of State aid rules to public service broadcasting, in consideration of the development of new digital technologies and of Internet-based services, has entered a very lively phase.

This Communication reflects the transition from the traditional linear “public service broadcasting” environment to the provision of “public service content” in a multiplatform context, where services are provided on various devices and even enjoyed in multiple screen settings. Since this is a segment where competition with commercial broadcasters is particularly strong, the assessment of the added value of the provision of publicly financed audiovisual content by “services of general economic interest”, pursuant to art. 86 TEU, has to be made according to pre-defined set of criteria:

*[...] In order to guarantee the fundamental role of public service broadcasters in the new digital environment, public service broadcasters may use State aid to provide audiovisual services over new distribution platforms, catering for the general public as well as for special interests, provided that they are addressing the same democratic, social and cultural needs of the society in question, and do not entail disproportionate effects on the market, which are not necessary for the fulfilment of the public service remit.<sup>3</sup>*

About half of the Member States have implemented the renewed indications from the EU Commission on in their national systems. Since the regulatory tool chosen by the EU Commission is not a binding instrument, the selection of the responsible institutions and of features of the required procedures clearly reflect the lack of harmonisation. The Communication itself requires the Member States to decide according to their national systems, so any analysis in this field has therefore to be carried out on a case-by-case basis:

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<sup>1</sup> See Background document prepared by Susanne Nikoltchev, Different Shades using New Opportunities, available at [http://epra3-production.s3.amazonaws.com/attachments/files/2154/original/PSM\\_Nikoltchev\\_final\\_2405.pdf?1369379131](http://epra3-production.s3.amazonaws.com/attachments/files/2154/original/PSM_Nikoltchev_final_2405.pdf?1369379131)

<sup>2</sup> Communication from the Commission on the application of State aid rules to public service broadcasting, 2009/C 257/01, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2009:257:0001:0014:EN:PDF>.

<sup>3</sup> Paragraph 81 of the Broadcasting Communication.

*[...] Member States shall consider, by means of a prior evaluation procedure based on an open public consultation, whether significant new audiovisual services envisaged by public service broadcasters meet the requirements of the Amsterdam Protocol, i.e. whether they serve the democratic, social and cultural needs of the society, while duly taking into account its potential effects on trading conditions and competition.<sup>4</sup>*

When it comes to the definition of public service remit and the legitimacy of its public financing, the Broadcasting Communication asks Member States to apply the so-called “public value test” and the “market impact assessment”. These are defined in a very broad way, which explains why the exercises that have been carried out so far show a wide variety of approaches:

*In order to ensure that the public funding of significant new audiovisual services does not distort trade and competition to an extent contrary to the common interest, Member States shall assess, based on the outcome of the open consultation, the overall impact of a new service on the market by comparing the situation in the presence and in the absence of the planned new service. In assessing the impact on the market, relevant aspects include, for example, the existence of similar or substitutable offers, editorial competition, market structure, market position of the public service broadcaster, level of competition and potential impact on private initiatives. This impact needs to be balanced with the value of the services in question for society. In the case of predominantly negative effects on the market, State funding for audiovisual services would appear proportionate only if it is justified by the added value in terms of serving the social, democratic and cultural needs of society taking also into account the existing overall public service offer.<sup>5</sup>*

In the background of these exercises, which are more of economic nature, are the several Recommendations of the Council of Europe recalling that public service plays a crucial role in ensuring basic safeguards as to the guarantees of pluralism in a democratic society and differs from commercial broadcasting precisely because of its special remit:

*Public service broadcasting, whether run by public organisations or privately-owned companies, differs from broadcasting for purely commercial or political reasons because of its specific remit, which is essentially to operate independently of those holding economic and political power. It provides the whole of society with information, culture, education and entertainment; it enhances social, political and cultural citizenship and promotes social cohesion. To that end, it is typically universal in terms of content and access; it guarantees editorial independence and impartiality; it provides a benchmark of quality; it offers a variety of programmes and services catering for the needs of all groups in society and it is publicly accountable. These principles apply, whatever changes may have to be introduced to meet the requirements of the twenty-first century.<sup>6</sup>*

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<sup>4</sup> Paragraph 84 of the Broadcasting Communication.

<sup>5</sup> Paragraph 88 of the Broadcasting Communication.

<sup>6</sup> Recommendation of the Parliamentary Assembly of the Council of Europe 1641 (2004), available at <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta04/EREC1641.htm>.

## **Objectives of the session**

The session aims to dig into the European regulatory framework concerning the definition of public service remit in the online environment and the circumstances under which its financing can be considered legitimate under State aid rules. The purpose is to get an overview of what has happened during the first six years of application of the Broadcasting Communication and how the principles laid down by the Council of Europe as to the role of public service media in ensuring pluralism and contributing to culture have been respected when determining their remit and financing.

## **Structure of the session**

The session will be ideally divided into two parts, each of them followed by a Q&A session with the floor.

The first part aims at providing a general overview of the regulatory framework applicable to public service media in Europe when it comes to the definition of remit and financing. Particular attention will be paid to the “public value test” and to its application across the Member States. Figures on the state of art of PSM funding across Europe will be shown.

Speakers in this part are:

**Peter Matzneller**, EMR

**Richard Burnley**, EBU/Legal

**Florence Hartmann**, EBU/MIS

The second part goes into how these general rules have been practically implemented at the national level. Ukraine and Italy have been selected as introductory case study examples of a non-EU country and an EU Member State in order to obtain the widest possible horizon.

Speakers in this part will be:

**Olha Herasymiuk**, NCTR (UA)

**Francesco Sciacchitano**, AGCOM (IT)

## **Issues for debate**

- The variety of solutions when it comes to the definition of the public service remit show a very inhomogeneous picture across Europe. Are there any best practices as to how to carry out the public value test?
- Convergence leads to fast development of new services. How has the experience been so far with the definition of “new significant services”?
- According to the wide freedom of choice left to Member States as to the institutions to involve in the definition of public service remit, regulators are not always involved. What role do they play when involved and is it desirable to strengthen their position in case their role is not foreseen?
- Would regulators consider that there would be a value in having guidance or standard models at the EU level for the conduct of Market Impact Assessments (MIA) and Public Value Tests (PVT)?