

Online Activities of Public Service Media

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The Definition of the Remit within the European Framework



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Content



- I. European Statutory Law
- II. European Jurisprudence
- III. Practice of the European Commission
- IV. The Public Value Test
- V. Conclusions

I. European Statutory Law



a) Council of Europe

- Art. 10 ECHR
- Committee of Ministers
- Parliamentary Assembly

I. European Statutory Law



b) European Union

- TFEU (Free movement of services, state aid rules)
- AVMS Directive 2010/13/EU
- Amsterdam Protocol
- Resolutions of the Council and the Parliament

II. European Jurisprudence



a) European Court of Human Rights

- The important role of the Internet in
 - enhancing the public's access to news and
 - facilitating the dissemination of information (*Times Newspapers Ltd.*, 2009)
- The Internet as a multiplier (*Mouvement Raëlien Suisse*, 2011)

II. European Jurisprudence



b) General Court of the European Union

- Member States' wide margin when defining a service as a service of general economic interest (*TV2 Denmark*, 2008)
- Freedom to decide how to finance these services (*TV2 Denmark*, 2008)
- Only Member States to assess fulfillment of remit (*SCI*, 2008)

III. Practice of the European Commission



a) Broadcasting Communications

2001

- Wide definition of public service remit is legitimate, but be as precise as possible

“[...] even services that are not ‘programmes’ in the traditional sense, such as online information services, might be included in the public service remit if they address ‘the same democratic, social and cultural needs of the society in question’.”

III. Practice of the European Commission



a) Broadcasting Communications

2009

- Emergence of new media services
- Awareness regarding possible negative effects on commercial media providers
- No distortion of competition through financing of public service broadcasting

III. Practice of the European Commission



b) Decisions

- Definition of remit by Member States (*France 2 and 3, 2003*)
- Digital entertainment channel covered by remit (*BBC, 2003*)
- Remit can include books, but no purely commercial activities (*RTÉ, 2005*)

III. Practice of the European Commission



- c) The State-Aid Compromise (2005)
 - Commercial activities must be clearly separated and exercised according to economic principles
 - Conditions to secure a most precise definition of the remit (lists, criteria, journalistic-editorial services)
 - Three-Stage-Test in Germany as a result

IV. The Public Value Test



a) History

Broadcasting Communication 2001



State-aid Compromise 2005



Broadcasting Communication 2009

IV. The Public Value Test



b) Nature

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 [...] serve the democratic, social and cultural needs of the society, while duly taking into account its **potential effects on trading conditions and competition**.

Broadcasting Communication 2009, para. 84.

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b) Nature

The test consists of:

1) Value assessment

- democratic, social and cultural needs of society

2) Market impact assessment

- potential effects on competition and cross border trade

3) Added value test

- Balance between the added value for society and the potential negative effects of the market impact

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c) Consequences for Member States

- Implement test into national legislation
- Proper execution secures assumption that financing is in line with EU law
- Cope with indefinite terms (e.g., “significant”, “new”)

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d) Examples of National Implementation

- **Crucial elements of the test:**
 - Responsible institution
 - Initiation of procedure
 - Involvement of stakeholders
 - Decision
 - Duration
 - Costs

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d) Examples of National Implementation

- **Responsible Institution:**
 - Governing body of PSB (e.g. Germany, Finland, UK)
 - Governmental representative (e.g. Finland, the Netherlands)
 - Independent Regulator (Austria, Denmark)

IV. The Public Value Test



d) Examples of National Implementation

- **Initiation of the test:**
 - Application by PSB (Austria, Germany)
 - Responsible institution (UK)
 - Combination of both (Denmark, Finland)

IV. The Public Value Test



d) Examples of National Implementation

- **Involvement of stakeholders:**
 - Possibility to share views (Finland, Ireland)
 - Open consultation (Austria, Germany, UK)
 - No obligation at all (Belgium/fl)

IV. The Public Value Test



d) Examples of National Implementation

- **Decision:**
 - Publication required (Austria, Germany, Ireland, UK)
 - No obligation to publish (Belgium/fl)

IV. The Public Value Test



d) Examples of National Implementation

- **Duration:**
 - Maximum period (UK, 6 months)
 - Average durations vary from 4 months (Ireland) to 11 months (Germany)

IV. The Public Value Test



d) Examples of National Implementation

- **Costs:**
 - No fixed sums
 - Average costs vary from 12,000 € (Austria) to 580,000 € (UK)

V. Conclusions



- CoE and EU acknowledge the digital world as a tool also for PSB
- European Commission developed helpful guidance for Member States
- No harmonisation due to
 - Missing formal requirement to implement the public value test
 - Indefinite terms and criteria
- Consequence: widespread solutions amongst Member States

Thank you for your kind attention!

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