



**Comité européen de liaison
sur les Services d'intérêt général**

**European Liaison Committee
on Services of General Interest**

**Europäisches Verbindungskomitee
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**CELSIG's response to the European Commission's consultation
on the draft Communication of 4th November 2008
on the application of State Aid rules to
Public Service Broadcasting**

The Commission's draft Communication "on the application of State aid rules to public service broadcasting" dated 4th November 2008 calls for a number of remarks and proposals.

On a number of occasions, the Commission's draft refers to the Amsterdam Protocol and stresses that the Protocol is perfectly balanced: the Protocol makes clear reference to "the democratic, social and cultural needs of each society", it specifies that "The provisions of the Treaty establishing the European Community shall be without prejudice to the competence of Member States to provide for the funding of public service broadcasting insofar as such funding is granted to broadcasting organisations for the fulfilment of the public service remit as conferred, defined and organised by each Member State, and insofar as such funding does not affect trading conditions and competition in the Community to an extent which would be contrary to the common interest, while the realisation of the remit of that public service shall be taken into account."

From this point of view, we cannot accept the approach presented in the draft Communication, which refers the funding of public service broadcasting either to the consideration of the 4 Altmark criteria, or to "State Aid" under Articles 86, 87 and 88; these two options do not take into account the specificities stated in the Protocol by which such funding cannot come under State Aid.

Whereas we agree on:

- the fact that Article 86-2 implies a clear and transparent definition of the public service remit by Member States, "the Commission's role is limited to checking whether or not there is a manifest error" (47);
- the need that "in order to qualify for an exemption on the basis of Article 86, paragraph 2, of the Treaty, the public service remit should be entrusted to one or more undertakings through an official act (legislation, contract or binding terms of reference)" (65);
- that "It is not sufficient, however, that the public service broadcaster be formally entrusted with the provision of a well-defined public service. It is also necessary that the public service be actually supplied as provided for in the formal agreement between the State and the entrusted undertaking... it is not for the Commission to judge on the fulfilment of quality standards" (68)

we regret that the Commission did not seize this opportunity to clarify something which in this issue is the "common interest" in the implementation of Article 87, paragraph 3, point d) of the Treaty which provides the possibility of "regarding aid for the promotion of culture as compatible with the common

market, in so far as it does not adversely affect trading and competition conditions in the Community to an extent contrary to the common interest.”

We cannot accept restrictive interpretations of treaties and of the case law, such as that which asserts, without justification, that “It should be noted that provisions to waive the prohibition of State Aid must be applied in a restrictive manner” (39) or one which claims that “In accordance with the Court’s case law, Article 86 of the treaty provides for a derogation and must therefore be interpreted restrictively” (42).

It is unacceptable that the Commission waters down the Amsterdam Protocol when the draft states that “these services actually serve the social, democratic and cultural needs of the society without unduly distorting competition” (53), whereas the quote continues as follows “to an extent which would be contrary to the common interest, while the realisation of the remit of that public service shall be taken into account.”

The principle of technological neutrality should be the guideline to any new revised Communication on broadcasting and, it is unacceptable that the Commission applies, *de facto*, different standards to the "new" media services.

In accordance with the principle of subsidiarity and the Protocol on Services of general interest annexed to the Treaty of Lisbon, the Commission should recognise that Member States have sufficient powers to ensure that every public service broadcaster can respond to changes underway in a manner suitable to the country, culture and society in which it operates. The Commission should refrain from prescribing detailed rules at European level for the definition, organisation, prior assessment for new services and the operation of public service broadcasting.

More generally, it is clear from the draft that there is a general suspicion in respect of public services in broadcasting and their public funding, as can be attested by following quote from it: “possible negative effects of the public funding, such as preventing other operators from entering media markets, leading to increased market concentration or to possible anti-competitive behaviour of public service operators in the relevant markets ”(89)

It is not the presence of public services only that could distort competition but, equally damaging is domination by an oligopoly of a few large groups - usually multimedia - who may abuse their dominant position, this is also condemned by the treaty. Yet, the draft communication does not propose any initiative to assess and address these very real threats against the “democratic, social and cultural needs of each society.”

Contrary to what was written in the press release of 4th November 2008 (IP/08/1626) the Commission's role is not only “to oversee the sustenance of fair competition”, but to act as a guardian of the treaties and of the balances that they provide, between competition and general interest.

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