

## THE MISSION OF PUBLIC SERVICE BROADCASTERS

by Bernd Holznel

### A. Public service broadcasting confronts new challenges

Whether we like it or not, the media world is in a state of upheaval, and the extent, duration and goals of this transformation cannot be estimated precisely. New digital technology, with new possibilities for transmission and reproduction, will profoundly change the television industry, its programming and audience behaviours.

In Germany, more than 30 channels are currently financed through licence fees and advertising, and it may be expected that in the near future there will be an additional 100 to 150 services for which the viewer will have to pay extra. Special interest channels will complement what is provided by public service and commercial generalist channels. All this will redefine viewing habits. The broadcasters will bundle their services in programme bouquets. Electronic programme guides (EPGs) will enable viewers to have access to an enhanced variety of programming. Only providers who at this stage already have successful, popular brands affiliated with their services will be able to succeed in this multichannel environment. New technologies will also facilitate the launching of new media services. One example is the worldwide distribution of on-line offers available over the Internet. In the long run, the technology for broadcasting and for new media services will converge, and may one day even partly replace one another.

Not for the first time in the history of broadcasting, technology has become the motor for changes in the fields of regulation, programme making and the use made of television by the viewer. But public service broadcasters (PSB) cannot simply let themselves be driven by technology. Public service broadcasters have their own understanding of how to implement their mission, defined by the law, and achieve their specific programming goals.

### B. The Public Broadcasters specific functional remit

In Western Europe, the obligation to provide a balanced and pluralistic program offer has often been derived from the national Constitutions. The French Conseil Constitutionnel and the Italian Corte Costituzionale, for example, argue that pluralism in the media sector is an “*objectif de valeur constitutionnelle*” or a “*fondamentale valore costituzionale*”. They also stress the important role of PSB to fulfil this legal obligation. The German Constitutional Court (Bundesverfassungsgericht) requires PSB to be the “*fundamental provider*” (*Grundversorgung*) of broadcast programming. Only “as long and so far” as PSB efficiently accomplishes this assigned role, according to the Court, can it be justified not to require the same range of programming diversity from private broadcasters. Therefore, PSB is entitled to have its existence and future development

guaranteed. This entitlement includes, for example, sufficient financing. The framework for the functional remit of *each* of the broadcasting *organizations* is, for example in Italy, Spain or Germany, defined by the national legislator. A more specific description of PBS tasks can often be found in governmental regulation like the French Cahier des Charges or the British Royal Charter. In most cases, the establishment of guidelines for the *ongoing fulfilment* of these obligations and for programme development comes within the remit of the self-governing bodies of each broadcaster.

The specific functional remit of German Public Broadcasters covers basically eight dimensions. They may serve as a typical example for the mission of European PBS:

- *Information remit*: PBS have a duty to convey objective information as a basis for the free forming of opinions. Coverage, therefore, has to be comprehensive, truthful and factual.
- *Guiding role*: as a source of independent and unbiased information, PBS provide reliable, credible reference points and, consequently, guidance for a free forming of opinion.
- *Role of forum*: PBS have to ensure that all relevant opinions on a particular subject receive a hearing. They have to offer a forum for public discussion in which the relevant social groups can participate.
- *Integration role*: PBS should aim for mutual understanding and, thus, foster social cohesion.
- *Benchmark*: PBS have the obligation to provide guiding, high-quality and innovative programming. In this way they set standards.
- *Cultural mission*: PBS programming has to reflect Germany's cultural diversity and the events taking place in all the Länder.
- *Mission to produce*: appropriate fulfilment of the respective obligations cannot be guaranteed by the mere acquisition of foreign productions. Because of that, PBS have a mission to produce independently and creatively.
- *Innovative role*: PBS are encouraged to take an innovative lead in testing and using new technology and new services in the broadcasting sector.

## **C. The positioning of PSB in a digital communications system**

### **I. The need for PSB in the digital age**

It is often argued that PSB programme services will become obsolete after the nationwide introduction of digital broadcasting technology and, as a consequence, the 'special situation' (*Sondersituation*) in broadcasting will disappear. Most advocates of this idea try to substantiate their standpoint with both legal and economic arguments.

From a legal point of view it can be replied that spectrum scarcity and the high start-up costs of new programming offers have been considered irrelevant in recent rulings by European constitutional courts. Instead, the guarantee of media pluralism and of the pluralism of opinions in general has been the focus of these rulings. The Amsterdam Protocol on PSB in the Member States has introduced these objectives into primary EU law. The new alliances and mergers in the multimedia sector, the gatekeeper positions in the field of distribution digital television and the new barriers with regard to access to programming rights are there to remind us that media pluralism will remain a cause for concern even in the digital world. PBS has to counterweight this “concentration of power” and to balance its influence on public opinion.

From the perspective of media economics a market failure inherent in commercial broadcasting needs to be stressed. Contrary to what is generally the case in the market economy, the programme output of commercial broadcasters is not primarily determined by consumer interests. What comes first for commercial broadcasters are the wishes of the advertising industry, which aims at high audience ratings. Given the general societal hype about youth, the programme-related interests of minorities (this term nowadays includes people aged 50 years and older) have a chance of being taken into account only if they promise particularly high earnings generated by advertising income. Pay by channel or pay by view broadcasting may, in theory, be more sensitive to consumer demand but there remain many obstacles to achieving a perfect response by suppliers to demand. Recent research in the field of media economics has also uncovered market failures and secondary effects in the case of pay-TV services. Quality programmes in the fields of culture, education and information are merit goods. Such goods are characterised by the fact that consumers would in general only be willing to pay an amount which would be insufficient to cover production costs - even if it were in their interest to do so. The consequence would be a permanent shortage. In the broadcasting sector, such a situation can only be compensated for by PSB. Furthermore, the enhancing information society raises the danger of a “digital divide”. In my view, PBS will be in an outstanding position to prevent social exclusion from using the new media.

## **II. Putting the mission in concrete form in the light of the new challenges**

The PSB’s mission is usually embodied in a legal basis which was conceived at a time when neither the possibilities of digital technology nor the degree of globalisation of the media markets were foreseeable. However, if one looks for example at the specific functional remit of European PSB, in general it has not lost any of its relevance. Thus some of its aspects have to be interpreted in the light of recent challenges.

There are ten central missions for PSB to fulfil in a digital communications system:

- PSB has to serve as an “island of credibility” in fragmented media markets.
- PSB guarantees participation by everybody in the advantages of the digital revolution.

- PSB has to serve as an independent and credible provider of information.
- PSB guarantees the provision of information based on nationwide perspectives and interests.
- PSB serves as a nation's (or region's) voice in Europe and in the world.
- PSB guarantees quality standards.
- PSB corrects the supply shortages of the commercial sector.
- PSB serves as a guarantor of cultural identity and preserves the national language.
- PSB encourages national and European productions.
- PSB is a motor for innovation.

The public service broadcasters have to adapt their programme offers in order to implement these ten central specific missions in accordance with the needs and possibilities of the digital age. It is self-evident that they cannot fulfil their role as an "island of credibility", as the provider of information or as the nation's (or region's) voice in the world with only one generalist channel and a limited number of additional thematic channels. In a media landscape in which multimedia services are entering the markets in rapid succession and where differences between users are increasingly identified, new, innovative programme strategies are necessary. In recent months public service broadcasters from all over Europe have begun to develop and implement concepts for digital programme bouquets, for on-line offers and for other hybrid forms of services such as InterCast and Web TV.

In my view, the internet – being a tool to promote content that reflects European values, culture and language - should be used on a larger scale. It would, moreover, be desirable and natural for PSB's to operate portal sites making such content available as widely as possible. Such sites should also include internet search engines offering users better and easier access to European and national web resources. Content of European origin could also be distributed via email or other means of personal communication. This approach would also allow new collaborations between different European PBS. A common strategy could probably diminish the American influence in the "network of networks" and promote European diversity and national cultures.

In the context of the recent media policy debate, the claim has been made that the functional remit of PSB should be further specified by law or by regulation. Those in favour of this claim argue that PSB would otherwise widen the scope of their activities just as they wish and without effective control. This would infringe – it is argued - the existing national broadcasting laws and regulations and, if public broadcasters are financed by license fees, the competition rules of the EC treaty.

Owing to the rapid changes on the offer side in the media sector, it appears however impossible to define clearly the possibilities and limits in the field of programming policy. Furthermore, detailed regulations would have the disadvantage of interfering with the broadcaster's autonomy and of limiting its editorial freedom. The rapidly changing environment makes it nec-

essary to keep the implementation guidelines and policies flexible and open to new technological developments – as is already the case with the existing functional remit of the public service broadcasters. Commercial providers might criticise that approach, especially if they regard PSB as undesired competitors. A rigid “corset” of PSB obligations could obviously prevent PSB services from fulfilling its constitutionally guaranteed mission.

However, self-regulatory rules or commitments issued by the supervisory broadcasting bodies could be a means of describing the functional remit more concisely and concretely. This special form of self-regulation or co-regulation would be binding for the management of the PBS. An other example is the practice of the BBC making in writing annual commitments and reporting on their realization. Through this the general mission could be stated in more concrete terms without excessive limitations on its programming autonomy. Such a procedure would also strengthen the self-scrutiny by the public service broadcaster and increase the legitimacy of its programming policy in the public's eyes.

It is important to note in this context that it is not for European law to define the specific functional remit of each public broadcaster. According to the Amsterdam Protocol, the EC legal framework respects fully the member states' definitions of the remit. However, greater transparency in defining this remit, through more concrete descriptions by the supervisory bodies and via self-commitments by the broadcasters, could also make it easier for the European competition authorities to implement the Protocol. If, as seems probable, the competences of the European Union and the member states (including the regions of the latter) should be defined more clearly in a revised Treaty, it would probably make sense to have an article on the media, to create further clarity regarding the delimitation of competences in the media sector<sup>1</sup>. The provision on culture (Article 151) could serve as a model here. (See annex.)

To sum it up: In order to define the role of PBS a three level model should be used:

- The (general) mission of PBS is already or should be laid down in the national constitutions.
- The specific functional remit of *each* public broadcaster and consequently the scope of programming should be specified by law or regulation.
- self-regulatory rules and commitments should be a means of describing this specific functional remit more concisely and concretely.

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<sup>1</sup> Such an article could also deal with the possible introduction, in view of increased European integration, of public broadcasting at the European level, with a Union-wide remit.

**Annex: Amendments to the EC-Treaty**

**Title IV „Culture and Media“**

**New Article 151 a**

The Community shall contribute to the existence and development of free and pluralistic media systems, at local, regional, national and European levels, while respecting the primary competence of the Member States for regulatory and other measures in this area.

Action by the Community shall be aimed at encouraging cooperation between Member States and, if necessary, supporting and supplementing their action in the following areas:

- independence of the media, pluralism of opinion and cultural diversity in media content, safeguards against media concentration;
  - equal and affordable access by all citizens to a diverse and comprehensive choice of content, meeting the democratic, social and cultural needs of each society;
  - measures to foster social cohesion and prevent exclusion in the information society (such measures may include public services, universal community services, public access points, affordable access rates, etc.)
  - using the new media in order to publish public documents and to improve communication with the citizens
1. The Community and the Member States shall foster cooperation with third countries and the competent international organisations in the sphere of the media, in particular the Council of Europe.
  2. The Community shall take media aspects into account in its action under other provisions of this Treaty, in particular in order to respect and to promote the functioning of media systems, both public and commercial.
  3. 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 organizations for the fulfillment of the public service remit as conferred, defined and organized 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 realization of the remit of that public service shall be taken into account.