

EBU

OPERATING EUROVISION AND EURORADIO

LEGAL FOCUS **PUBLIC FUNDING PRINCIPLES FOR PUBLIC SERVICE MEDIA**

Dr Richard Burnley
EBU Legal Director



ABOUT THE EUROPEAN BROADCASTING UNION (EBU)

The EBU is the world's foremost alliance of public service media organisations, with Members in 56 countries in Europe and beyond.

The EBU's mission is to defend the interests of public service media and to promote their indispensable contribution to modern society. It is the point of reference for industry knowledge and expertise.

The EBU operates Eurovision and Euroradio.

ABOUT THE EBU LEGAL DEPARTMENT

In a fast-changing technological, political and regulatory environment, we advise our Members on specific legal issues, offering practical solutions in the fields of EU and national competition, copyright and media law that are specific to their needs. We analyse proposals, explore the implications with legislators and promote a legal framework which allows our Members to operate with optimum efficiency whilst continuing to contribute to the democratic, social and cultural needs of society. We also manage EBU membership and statutory matters and advise on all EBU contracts, including the Eurovision Song Contest, sports, news and networks.



Dr Richard Burnley

Legal Director

E-mail: burnley@ebu.ch

Tel.: +41 (0)22 717 2513

PUBLIC FUNDING PRINCIPLES FOR PSM

STABLE AND ADEQUATE

A stable and predictable source of funding enabling full coverage of the public service remit in the digital media age

INDEPENDENT FROM POLITICAL INTERFERENCE

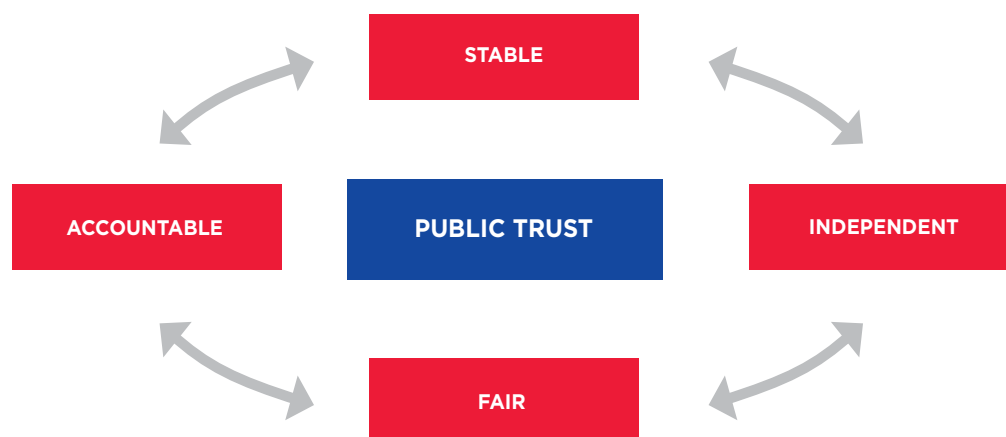
Not reliant on political favour, thereby promoting public trust in PSM and its role as a truly indispensable service

FAIR AND JUSTIFIABLE

Fair and objectively justifiable to the public and the market

TRANSPARENT AND ACCOUNTABLE

An open and clear funding mechanism holding PSM accountable to its audience



FOREWORD

The media landscape is radically changing. Digital technology is opening the door to a vast array of new linear and on-demand media services carrying a huge diversity of content from around the world. The picture of a single, publicly-funded incumbent broadcaster in the market place is now a distant memory. Instead, the viewer/listener lives in a multimedia on-demand environment, in which international content is available anywhere, at any time, from apparently unlimited sources.

In the face of such developments, some even question the existence of public service media ("PSM"): is there still a need for a publicly-funded media in the digital media world? In some countries, these questions gain momentum given the unprecedented budgetary difficulties governments are experiencing as a result of the global economic crisis.

But even in the face of all these pressures, the core purpose of, and reason for, PSM remains the same: a trusted source of objective and impartial information; a reliable provider of high quality and cultural content; a guardian of pluralistic and minority views; a reference point in times of national crisis. The crucial democratic, cultural and social role PSM plays in the dual broadcasting system has been recognised in many international texts and court judgments.

However, for PSM to be able to play this role in society, it is imperative that it receives stable and adequate funding. Without sufficient means to fulfil its public interest service, PSM is critically weakened: it is unable to produce quality content or provide quality journalism; it cannot innovate and compete in the global market; its audience becomes disillusioned and it can face a downward spiral of less funding and less relevance. Democracy and the social and cultural fabric of society suffer.

It is not just the level of funding that matters. How that funding is carried out is just as important. The funding mechanism must be independent from political interference. It must be up-to-date and in tune with the contemporary media environment. And, above all, it must be perceived as fair and transparent by its audience. Viewers (and listeners) must understand what they pay for and why. Ideally, they should feel that they contribute to an institution providing quality and relevant content, and that this contribution directly makes a difference to the society in which they live.

In the context of all the challenges facing its Members, the EBU is for the first time publishing Public Funding Principles for PSM. Building on the EBU Core Values of Public Service Media declared by the General Assembly in Strasbourg in 2012 (and taking into account that each country has its own constitutional structures, culture and traditions), the Public Funding Principles should serve as a non-binding source of guidance and reference for PSM in the assessment and implementation of new and existing funding models.

In some countries, the Public Funding Principles could be an inspiration for change. In others, a validation of an existing system that works. In all countries, the Funding Principles should serve as a basis for debate and consideration of the optimum model to fund PSM's crucial social, democratic and cultural role for the future.

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1. INTRODUCTION

1.1. PSM FUNDING MIX

Three main approaches to PSM funding

Public service media can be funded by:

- Pure public funding;
- Mixed funding (or dual funding), i.e. public and commercial funding combined;
- Pure commercial funding.

Traditionally, public funding is regarded as a predictable source of funding for PSM organisations, enabling them to plan, invest in long-term quality content and innovate. Broadly, public funding may be via a licence fee model or via the direct receipt of public funds from the State budget. For some PSM organisations (e.g. in Finland, Denmark), public funding alone is sufficient and indeed can be a crucial element of what that broadcaster stands for culturally. But the majority also depend on advertising revenue or other commercial activities to supplement the funding of their remit. Indeed, for many a system of dual funding is vital to sustain the required level of income to provide the public service.

In 2016, licence fee revenues were the main source of income for PSM in the EBU area, providing 64.5% of total PSM income. Direct public funds from the State budget accounted for 14.3%. Commercial revenues accounted for 18.2% (of which 10.5% from advertising alone) of PSM revenues.¹

1.2. TRADITIONAL PUBLIC FUNDING MECHANISMS

The licence fee remains the most popular form of PSM funding

In 2016, the licence fee accounted for 81.9% of public funding.² The obligation to pay the licence fee has traditionally been attached to the possession of a functioning radio and/or TV device - usually, the ability alone to receive PSM transmissions is sufficient to trigger the obligation.

The main advantage of the licence fee is that it is more stable and predictable than most other means of PSM funding (i.e. funding direct from the State budget or commercial revenue). Furthermore, it is relatively independent from political interference and it establishes a direct link between broadcaster and public - the broadcaster is more accountable to its audience. Usually, PSM organisations funded by the licence fee also benefit from the right to self-administration in the internal allocation of their funding, allowing them to remain competitive in the market (whilst at the same time fulfilling the high levels of transparency and efficiency expected of a public service).

Other traditional public funding mechanisms for broadcasters include direct contributions from the State budget, which some might consider to have the advantage of simplicity. A State grant can be via direct payments to broadcasters by a government/parliament, or indirect support such as subsidies for TV programmes/productions/transmissions.

¹ EBU Funding Report 2017.

² Idem.

An advantage of such a system is that no special collection or enforcement mechanisms are required. However, there can be significant downsides. First, a tax collection system may not be as simple or cheap to implement as expected.³ Second, because the payment of the State grant relies on a decision by the government (or parliament), it can easily be subject to political interference and pressure. In the Netherlands, for example, the licence fee was abolished in 2000 in favour of funds paid from the State budget by the government. This handing of direct control over NPO's budget to the government led almost immediately to a series of dramatic cuts in the organisation's budget. NPO was subject to another unexpected 25% reduction in its funding when the government changed in 2010 (as opposed to the increase promised by the previous government). Further cuts were imposed in 2012.

In cases where smaller countries and new/emerging democracies cannot afford to introduce a complex system of funding like the licence fee, and consequently direct funding from the State budget appears to be the only option, a specific amount (e.g. a percentage of GDP) enshrined in the law can help to maintain the independence of PSM, as well as the stability and adequacy of its funding.

In line with the global economic crisis, both public and commercial revenue streams have been under pressure in past years, leading to new challenges for the PSM sector. But new challenges also lead to new ideas about how to sustain PSM. In some countries (Finland, Germany), revised public funding mechanisms have been introduced. In others, new ways have been found to supplement core public funding. In France and Spain, for example, a tax was imposed on the revenues of telecoms providers, albeit with only limited success in practice.⁴

1.3. COLLECTION AND ENFORCEMENT

Effective collection procedures are needed

In order to ensure adequate funding, a licence fee mechanism must incorporate effective procedures to collect the public contribution. And if that collection procedure relies on the action of the individual (e.g. the obligation to pay arises upon confirmation/registration of ownership of a broadcasting reception device), it is also necessary to have some kind of enforcement mechanism.

The fee can be collected in a number of ways. For example, it can be collected by a State department or ministry. But since this can undermine the political independence of the PSM organisation, it is preferable to use a third party intermediary company or organisation. In Finland, although the tax authorities collect the public contribution, PSM funding sits outside the State budget negotiations and is paid to YLE via the independent State Television and Radio Fund. Another approach is for a specific third party organisation set up for this purpose to collect the fee (e.g. Billag in Switzerland⁵). If a third party company from another industry sector is used, the risk of conflicts of interest should be avoided (i.e. an electricity company may be more appropriate than a telecoms company). In a number of countries, the collecting agency is a subsidiary of the broadcaster itself.

³ This reflects recent experience in Switzerland, where it was proved that active collection by a third party organisation, Billag, was the cheaper option.

⁴ The new funding regimes were upheld by the European Courts, but remain strongly opposed by the telecoms sector and have yielded less funding than expected. See, <http://www3.ebu.ch/contents/news/2013/07/eu-court-of-justice-confirms-fre.html>; and <http://www3.ebu.ch/contents/news/2014/07/eu-general-court-upholds-rtve.html>.

⁵ Billag will be replaced by Serafe from 2019.

Depending on the collection method, separate enforcement procedures may be necessary to ensure payment of the PSM contribution. In some countries, evasion of the licence fee is a criminal offence that can be prosecuted before the courts (e.g. Ireland, the UK). In other countries (e.g. Austria, Switzerland), it is an administrative offence, leading to an enforceable fine. The cost of enforcement can be reduced if the contribution is either deducted automatically at source or payable by all households/individuals (e.g. Finland, Germany). In such cases, the burden is on the individual to prove they are exempt (rather than on the collection agent to prove they must pay).

Collection of the licence fee

There are numerous ways to collect the licence fee:

- Collection by a Government department (e.g. Belgium Wallonia, France, FYR of Macedonia)
- Collection by electricity companies (e.g. Albania, Algeria, Bosnia-Herzegovina,⁶ Egypt, Greece, Italy, Jordan, Morocco, Portugal, Romania, Tunisia, Turkey)
- Collection by post offices (e.g. Czech Republic, Ireland, Poland)
- Collection by a subsidiary of the national broadcaster (e.g. Austria, Sweden)
- Collection by a department of the national broadcaster or its agent (e.g. Croatia, Denmark, Norway, Slovakia, Slovenia, UK)
- Collection by a joint venture between broadcasters (e.g. Germany)
- Collection by an independent legal body/company (e.g. Switzerland)

⁶ Under a July 2017 agreement, Bosnia-Herzegovina switched from collection by telecoms operators to electricity companies (EBU MIS Licence Fee Report, 2017).

2. PUBLIC FUNDING IN THE DIGITAL AGE: NEW CHALLENGES

2.1. GLOBAL ECONOMIC CRISIS

PSM funding is hit by the general public spending cuts

The global economic crisis has put all public funding under pressure and all public services under scrutiny. Taxpayers want and deserve value for money. They expect efficiently run services that they need. These dynamics naturally create pressure on public funding for broadcasters. There is in every country less public money to go round. Public funds for broadcasting are being frozen and sometimes reduced. Public broadcasters in many cases are expected to fulfil the same public service remit with less money, logically leading to cuts and efficiency drives. In times of crisis, the key contribution made by PSM to positively stimulate the local economy may become obscured.

2.2. MODERN AND UP-TO-DATE?

PSM funding mechanisms in the digital media age

The broadcasting markets are developing quickly, with more and more interactive digital services. It is important that the basis and the principle on which PSM is funded reflect these dynamics. This can raise questions about the suitability of, for example, a licence fee based on the possession of a radio or TV, when increasingly broadcasting content is partly or completely received over a computer or smart phone/tablet. Conversely, consumers accessing PSM content via new media devices alone (i.e. without possessing a traditional broadcasting device) should contribute to the funding of that PSM organisation. Such anomalies in PSM funding mechanisms could in the future contribute to serious underfunding problems if they are not urgently addressed. In September 2016, the UK modified its licence fee system to include access to its free-to-air iPlayer (catch-up TV).

2.3. LICENCE FEE EVASION AND TURNING OFF PSM

Citizens may lose sight of the importance of PSM in light of new market offers

Citizens do not expect to pay for services that they do not need. In some countries, citizens are beginning to question more and more why they are obliged to pay a fee for a service that has limited relevance for them. This attitude tends to be particularly prevalent in younger generations, who access all types of media and information online, over-the-top and on-demand. To them, traditional PSM seems to be somehow overly paternalistic and irrelevant. Political motivations and influences combine with these developments to question even the *raison d'être* of PSM. In some countries, the central message about the importance and relevance of PSM for democracy and social and cultural cohesion is being questioned, despite a continued high demand for linear TV content and overall high levels of trust in PSM.

At the same time, certain countries are also experiencing high evasion rates in the payment of licence fees: in Poland, it is as high as 65.5% and TVP is obliged to rely on commercial/advertising revenue in order to fulfil its public interest objectives. In Italy evasion rates of up to 30% were countered by a complete overhaul of the system in 2016, leading to more funding for Rai and a reduced licence fee.

Funding mechanisms in Finland and Germany

In Finland and in Germany, the PSM organisations were faced with the perception that the licence fee funding mechanisms (based on ownership of a TV or radio) were outdated and out of touch.

In response, and following extensive consultation and consideration, Finland introduced the new YLE tax in 2013, according to which a fee is paid by all individuals, based on a means-tested sliding scale. The contribution is paid into a dedicated fund, which is separate from the State budget.

In Germany a new "household charge" was introduced in 2013, according to which each household or business pays the contribution (with specific social exceptions). The "household charge" is justified on the assumption that every household, wherever situated, has access to the PSM offer and possesses some kind of receiving device.

3. THE PUBLIC FUNDING PRINCIPLES FOR PSM

PSM's role is even more crucial in the digital media age

The crucial role performed by PSM in the dual system of European broadcasting is widely acknowledged in international texts and cases. Indeed, PSM - as a trusted source of independent information - becomes ever more important to a viewer mesmerised by the kaleidoscope of content (of unknown origin and intention) in the modern media environment.

However, in order to fully succeed in its public interest mission, it is imperative that PSM is, and continues to be, properly and adequately funded. Without a stable source of independent public funding, public broadcasters cannot hope to achieve the high standards that they set for themselves (and which are rightly expected of them by their audience). They cannot plan, innovate and remain relevant in the digital media age.

PSM funding has become a serious concern in many countries

The funding pressures currently faced by PSM have led a number of countries to reconsider their public funding mechanisms. This does not mean that change is essential. In many cases, the mechanism continues to work well.⁷ But in others discussions are underway or legislation has been passed to assess and evaluate the existing funding mechanism (Austria, Denmark, France, Ireland, Norway, Sweden). In June 2015 Swiss voters accepted a revision to the Federal Act on Radio and Television, replacing the licence fee based on possession of a radio or TV device, by a general contribution. The new law entered into force in 2016. In Finland and Germany far-reaching reforms were implemented in 2013 (see above).

Four key public funding principles

It seems right to say that PSM funding in general is at an unprecedented crossroads. And in light of all these developments and challenges, the EBU has identified four principles (the "Public Funding Principles"), that can act as a guide and benchmark against which funding models can be measured:

- (1) Stable and adequate;
- (2) Independent from political interference;
- (3) Fair and justifiable;
- (4) Transparent and accountable.

No "one-size-fits-all" approach to PSM funding

Of course, each funding mechanism has its own advantages and disadvantages and each country has its own needs and challenges. There is no perfect solution, no "one-size-fits-all" approach. Public funding of broadcasters cannot be addressed in an abstract generic way; the unique constitutional structures, cultures and social traditions must be taken into account at a national level. However, the *Public Funding Principles* can help to provide some basic parameters for the assessment of existing and proposed PSM funding mechanisms.

⁷ <http://www.bbc.co.uk/blogs/aboutthebbc/posts/Why-the-licence-fee-is-the-best-way-to-fund-the-BBC>.

3.1. STABLE AND ADEQUATE

The importance of adequate and secure funding for PSM determined at the national level is widely recognised in Council of Europe texts, which refer to the range of funding methods, including "*direct contributions from the state, licence fees, income-generating activities or a combination of these sources*".⁸

PSM funding must reflect PSM's broad remit

PSM is not commercially driven nor designed to generate profit, and its identity lies in its cultural, social and democratic objectives. Nevertheless, the provision of the PSM service and the production of PSM content also require high levels of investment and long-term planning. Its main cost drivers are determined by the public interest remit, which, in addition to the high production value of sports and entertainment content, includes the obligation to produce quality news, as well as diverse culturally and socially relevant original programming (with quota objectives for particular genres such as news, children, minority issues, languages). In order to stay relevant, PSM needs adequate funding to be able to plan, innovate and create.

A clear economic methodology to calculate the net cost of the PSM service

Under the EU State aid rules, PSM public funding must not exceed the net cost of providing the public service (allowing for reasonable operational flexibility).⁹ Therefore, the public funding mechanism must provide for a clear economic methodology to calculate the net cost of fulfilling the entire scope of the public remit. The methodology should incorporate set and transparent economic accounting parameters.

PSM funding must be stable and set for the same period as the public service remit

Ideally, the level of the funding should be fixed for the same period as the instrument that defines the public service remit. If instead the scope of the remit is fixed for multiple years, but funding is revised on an annual basis, any unexpected reduction in the budget will inevitably prevent the PSM from fulfilling its public service remit. This can lead to the dropping of PSM services and channels, to the overall detriment of the broadcaster's audience, the public. Above all, the funding should be sufficiently stable to allow for long term planning.

⁸ See e.g., Council of Europe Recommendation 1878 on the funding of public service broadcasting (2009); Declaration of the Committee of Ministers on the guarantee of the independence of public service broadcasting in the member states, 27 September 2006.

⁹ "In general, the European Commission considers that up to 10% of the annual budgeted expenses of the public service mission may be necessary to withstand cost and revenue fluctuations", Communication from the Commission on the Application of the State Aid Rules to Public Service Broadcasting, 2009, paragraph 73.

3.2. INDEPENDENT FROM POLITICAL INTERFERENCE

A key element of any PSM funding mechanism is independence from political interference, as emphasised in numerous European Standards: *"Recalling that public service broadcasters must be independent from the government and be able to function without its political interference, the Assembly emphasises that their funding model should reflect this independence"*.¹⁰

Funding decisions must be based on cost, not politics

Politics play a role in the allocation of all public funds and PSM is no different. However, there must be an effective mechanism in place to ensure that the decisions made about the level of funding are not influenced by undue political or commercial interests. Rather, they should be based wholly on the public interest and the overall cost of providing the public service remit (on a multi-annual basis). This promotes public trust in PSM and its role as a truly indispensable service.

Each country has its own unique constitutional framework, but a typical structure might involve a body of experts, independent of parliament and of the broadcaster's management, assessing the cost forecast proposed by the broadcaster to fulfil its public service remit (e.g. the KEF in Germany or the Broadcasting Council in Switzerland). This independent body challenges the broadcaster's assessment and ensures that a rigorous analysis of expected costs is carried out (incorporating appropriate efficiency goals), before making a final budget recommendation to the government (or parliament).

Any necessary cuts must be applied proportionately across all State services

Of course, countries may periodically face serious economic crises that can require exceptional political and economic responses. In such circumstances, pressure on PSM budgets at the political level may be inevitable (irrespective of the recommendation by the expert body). However, and as recognised by the German Constitutional Court,¹¹ any such cuts imposed by the government (or parliament) can only be in extraordinary circumstances, for example to avoid an unsustainable economic burden on the public. Cuts should always be applied proportionately across all State services. This avoids the risk of politically motivated measures being taken against PSM under the guise of public cuts.

¹⁰ Council of Europe Recommendation 1878 on the funding of public service broadcasting (2009).

¹¹ Constitutional Court, 1 BvR 2270/05, judgment of 11 September 2007.

3.3. FAIR AND JUSTIFIABLE

PSM should be perceived as an indispensable service for a fair price

The funding mechanism should be fair and objectively justifiable. The perception of viewers/listeners is crucial to their willingness to contribute, and therefore to the success of the PSM organisation. For PSM to succeed, citizens must consider that they pay a fair price for an indispensable service. There must be a virtuous circle of: adequate funding; efficient use of that funding; pluralistic, objective news and high-quality content; and a strong democratic/cultural/social role in society. And this role of PSM must be understood by, and clearly communicated to, the public on an on-going basis. Complacency leads rapidly to viewer disillusionment, increased fee evasion and a downward spiral of less funding, less quality and loss of viewers/listeners.

Specific social exemptions and reductions in the amount of contribution to pay can assist with this objective (e.g. for the aged, unemployed and disabled). It is also important to ensure that the funding mechanism is up-to-date and relevant; there must be a connection between audience and broadcaster. The funding mechanism should fit the viewers' world and not appear to them to be linked to past technology and practice.

Subscription funding would undermine PSM as a universal merit good for society

In some countries, it is sometimes argued that subscription-based PSM would be a fairer system. But this ignores the central role of PSM, which is to promote democracy, social cohesion and cultural values. It misses the fact that PSM is a universal merit good. The contribution made by every citizen to PSM is not just for broadcasting content; it is an active contribution to the stable, democratic and peaceful society in which they want to live. The PSM viewer is a citizen, not simply a consumer - PSM content is tailored to reach all, not only the fee-paying few.¹² The small monthly average amount in Europe contributed by each citizen to sustain the universal PSM service must always be considered in this context.

An effective, low cost and culturally appropriate collection/enforcement procedure is needed

In each country, there must also be a collection mechanism for the PSM contribution. To the greatest extent possible, that mechanism (and any accompanying enforcement procedure) should be effective, low cost and mindful of local cultural and social factors (to avoid driving public support away from PSM).

No disproportionate impact on competition

Finally, the funding system must be fair in relation to its impact on the market and third party commercial competitors. The EU State aid rules are designed to ensure that the public funding does not have a disproportionate impact on the market and competition.

¹² Research suggests that a subscription-based service would need to charge much higher fees in order to produce the same quality service, see <http://www.bbc.co.uk/blogs/aboutthebbc/posts/Why-subscription-isnt-the-best-way-to-fund-the-BBC>. This would reduce "accessibility and affordability for the public at large", see Council of Europe Recommendation 1878 on the funding of public service broadcasting (2009), paragraph 14.

3.4. TRANSPARENT AND ACCOUNTABLE

Public funds cannot be used to subsidise commercial activities

The EU State aid rules¹³ and the Council of Europe Standards¹⁴ provide that the PSM funding mechanism must be transparent. Moreover, the State aid rules oblige PSM organisations to have separate accounts for their public and commercial activities. Commercial revenues may be used to subsidise a public broadcaster's public activities, but public funding can never be used to subsidise commercial activities.

The transparency of PSM finances ensures public accountability

All public services have the responsibility to clearly demonstrate a high level of efficiency and effectiveness in their use of public funds (including compliance with public procurement rules). They must be able to hold themselves fully accountable to their owners, the public. Therefore, a public broadcaster's annual budget should be clearly published on its website, together with a clear summary of how the previous year's public funds were spent and allocated to fulfil the public service remit. The website could also include efficiency cost-saving goals set and achieved over time (taking into account the specific cultural and social objectives of PSM).

Public accountability builds public trust, the cornerstone of PSM

Naturally, the transparency and accountability principle is directly linked to the social acceptability of the mechanism and the perception of fairness, making clear to the public an appropriate use of public funds. Overall, it should be easily possible for a member of the public to gauge the annual performance of the PSM organisation in its delivery of public service. Public trust in PSM as a service and as an institution is after all the cornerstone of its *raison d'être*.

¹³ See the Communication from the Commission on the Application of the State Aid Rules to Public Service Broadcasting, 2009: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52009XC1027%2801%29>.

¹⁴ Recommendation No. R(96) 10 on the Guarantee of the Independence of Public Service Broadcasting (1996); Declaration of the Committee of Ministers on the guarantee of the independence of public service broadcasting in member states, 27 September 2006.

EUROPEAN BROADCASTING UNION

L'Ancienne-Route 17A
CH-1218 Le Grand-Saconnex
Switzerland

T +41 (0)22 717 21 11
F +41 (0)22 747 40 00
E ebu@ebu.ch
www.ebu.ch

