# European Commission: Procedure for Monitoring Aid to Public Broadcasters Discontinued

**IRIS 2007-6:1/3**

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With its decision of 24 April 2007, the European Commission provisionally discontinued the proceedings to examine the compatibility of the description of the remit and funding of public broadcasting in Germany with the terms of Articles 87 ff. and 86 of the EC Treaty (see IRIS 2007-2: 5, IRIS 2006-6: 10, IRIS 2005-4: 4 and IRIS 1997-9: 13). It informed the German authorities, in a letter of the same date, setting out the procedure, the essential arguments concerning the matter examined and its assessment in terms of the law relating to subsidies, as well as the measures considered expedient, and the commitments made by Germany in this context.

The Commission basically stands by its opinion that funding by means of licence fees constitutes aid and that the same applies to institutional liability (*Anstaltslast*) and guarantor liability (*Gewährträgerhaftung*). At the moment, it only considers that the special treatment regarding the calculation of corporation tax does not constitute aid. It points out that the criteria established by the ECJ in its *Altmark* decision have not been met. It also says that before the funding arrangements are classified as so-called “old subsidies” there is (potentially) a distortion of competition. In its examination of the compatibility of the subsidy with the rules on the Single Market on the basis of Article 86 of the EC Treaty, the Commission considers that, in the light of the additional digital channels operated by ARD and ZDF and the “new media services”, the description of the remit was not sufficiently clear and precise. It points out that an “obvious error” might lie in the fact that purely commercial activities are included in the public remit, in particular when financial resources are not sufficiently separated. In principle, however, the provision of new services via new platforms and the broadcasting of sports programmes are also a permissible part of the remit. The Commission notes the absence of a clear remit in respect of the extent to which ARD and ZDF can provide additional digital channels and new services. With regard to the supervision exercised by the internal bodies of the broadcasters, the Commission still has its doubts about its effectiveness, at least as long as no clear remit exists. When conducting the proportionality test, the Commission brings into play the so-called “Transparency Directive” and says that, contrary to its provisions, there is no separation of accounts. In the context of examining whether the payments made as compensation for fulfilling the public remit are limited to the net costs, the Commission criticises the existing procedure operated by the *Kommission zur*

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*Ermittlung des Finanzbedarfs der Rundfunkanstalten* (Commission for Establishing the Financial Requirements of Broadcasters). As it is impossible to establish precise requirements, there is no supervision of the complete deduction of commercial revenue and it is impossible to conduct effective ex-post controls with the aim of ruling out over-compensation. The existing arrangements do not ensure the exclusion of behaviour that is not in conformity with market rules. As regards the acquisition of sports rights, it reaffirms its opinion that there is a lack of a suitable system that would enable commercial providers to acquire sub-licences for unused rights on reasonable terms and conditions.

The Commission then describes the "appropriate measures" that it thinks must be taken in respect of the above matters in order to dispel its doubts under the law relating to subsidies. It then follows these remarks with a description of the commitments that Germany made in December 2006 and details how it understands these commitments, which it considers to be appropriate.

Germany, i.e. primarily the *Länder* responsible, now has two years to enact the necessary measures.

***„Staatliche Beihilfen: Kommission stellt Untersuchung betreffend die Finanzierung des öffentlich-rechtlichen Rundfunks in Deutschland ein", Pressemitteilung der Europäischen Kommission vom 24. April 2007***

http://europa.eu/rapid/pressReleasesAction.do?reference=IP/07/543&format=HTML&aged=0&language=DE&guiLanguage=en

*"State aid: Commission closes investigation regarding the financing regime for German public service broadcasters", European Commission press release of 24 April 2007*

http://europa.eu/rapid/pressReleasesAction.do?reference=IP/07/543&format=HTML&aged=0&language=EN&guiLanguage=en

***Entscheidung der Europäischen Kommission K(2007) 1761 endg. vom 24. April 2007 - Staatliche Beihilfe E 3/2005 (ex- CP 2/2003, CP 232/2002, CP 43/2003, CP 243/2004 und CP 195/2004) – Deutschland - Die Finanzierung der öffentlich-rechtlichen Rundfunkanstalten in Deutschland***

http://ec.europa.eu/community_law/state_aids/comp-2005/e003-05.pdf

*Decision of the European Commission C (2007) 1761 FINAL, 24 April 2007 - State aid E 3/2005 (ex- CP 2/2003, CP 232/2002, CP 43/2003, CP 243/2004 and CP 195/2004) – Financing of public service broadcasters in Germany*

http://ec.europa.eu/comm/competition/state_aid/register/ii/doc/E-3-2005-WLWL-en-24.04.2007.pdf

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