Court of Justice of the European Union: Funding scheme of the national public service broadcaster in Spain confirmed

IRIS 2014-8:1/6

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In its judgment of 11 July 2014, the Court of Justice of the European Union confirmed the current funding scheme of the Spanish national public service broadcaster Corporación de Radio y Television Espanola (RTVE). In particular, the Court analyses and validates the measures introduced by the Law number 8 of 2009. This Law modifies the regime originally established by the - still in force - Law number 17 of 2006 which generally regulates the provision of the national public broadcasting service in Spain.

The main and very important changes introduced by this Law include the elimination of commercial advertising and sponsorship as sources of income for RTVE, as well as the creation of three new taxes and levies in order to compensate for this loss of resources. These new fiscal measures cover three areas: a) the 3% levy on the annual income of open television operators -which goes down to 1,5% in the case of pay television-, b) the 0,9% levy on the annual income of electronic communications service providers, and c) the 80% of the tax on the use of the spectrum already paid by different operators. These measures were declared to be compatible with the internal market by the European Commission in June 2010 and confirmed by the Court in its decision.

It is worth noting that the second measure has been particularly problematic as in March 2010 the Commission asked Spain to eliminate it due to its incompatibility with the Directive of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive). However, the analysis of the Commission and the Court in the present case was only based on the compatibility of the measures in question with the internal market in the exclusive terms of article 106 paragraph 2 of the Treaty on the Functioning of the European Union, that is to say without prejudice to the abovementioned incompatibility.

Within this specific scope, the Court validates the changes introduced in the funding scheme of RTVE on the basis that they do not represent the introduction of a new regime completely dissociated from the one originally set out by law in 2006. As the Court stresses, the new measures do not change the main parameters which determine that funds granted to RTVE must be calculated on the basis of the net costs of the provision of the public service, therefore avoiding

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any form of overcompensation. The fiscal measures introduced in 2009 do not change this basic scheme as the income derived from them does not determine the funding of RTVE, which is still calculated taking into account the parameters just mentioned. Moreover, the legislator introduces two additional safeguards: a) the general cap of 1,200 million euro vis-à-vis RTVE's annual income which cannot be surpassed in any case, and b) the provision according to which only in cases when the income derived from the fiscal measures is not sufficient to cover the net costs of the provision of the service, the Government should add the funding necessary in order to fully cover them - without prejudice to the cap mentioned in a).

In any case, this is a very relevant decision as it finally puts an end to a delicate controversy with political and economic implications, which has jeopardised the viability of the Spanish national public service broadcaster in the recent years.

Arrêt du Tribunal (troisième chambre), Telefónica de España, SA et Telefónica Móviles España, SA c. Commission européenne, Affaire T-151/1, 11 juillet 2014

http://curia.europa.eu/juris/document/document.jsf?text=&docid=154904&pageIndex=0&doclang=FR&mode=lst&dir=&occ=first&part=1&cid=295570

Judgment of the General Court (Third Chamber), Telefónica de España, SA and Telefónica Móviles España, SA v European Commission, Case T-151/1, 11 July 2014

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