Advocate General: German broadcasting fee is not unlawful state aid

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In his opinion delivered on 26 September 2018 in Case C-492/17, Advocate General Manuel Campos Sánchez-Bordona proposed that the Court of Justice declare that the amendment of the event triggering the chargeability of the broadcasting fee used to finance public service broadcasting in Germany does not constitute unlawful state aid.

In a 2007 ruling, the Commission had stated that the method for financing public service broadcasting in Germany - then known as the 'Rundfunkgebühr' (broadcasting fee) - could be classified as 'existing aid' within the meaning of EU law. This means that the aid existed before the Treaty entered into force and remained applicable thereafter.

In 2013, the financing model for public service broadcasting was changed from one based on the possession of a receiver to one based on the possession of a dwelling or of business premises.

The referring court, Landgericht Tübingen (Tübingen regional court), thought the legislative change amounted to a substantial amendment that should have been notified to the Commission and that the aid resulting from the amendment was incompatible with the internal market. It also considered that the change had generated a significant increase in revenue and that public service broadcasters benefited from further state aid in the form of access to simpler and less expensive enforcement procedures.

In his opinion, the Advocate General explained that the German law changing the event triggering the chargeability of the broadcasting fee did not constitute an alteration of existing aid and therefore did not create new aid that should have been notified to and approved by the Commission. The new broadcasting fee did not amount to a substantial change to the existing scheme since the beneficiaries and objective features of the aid, such as the purpose of the measure, remained unaltered. Furthermore, the amount received by the public service broadcasters did not depend on a change to the event triggering the chargeability of the fee. In addition, the mechanism for using administrative enforcement in order to recover unpaid fees was not incompatible with EU law. The Commission had already evaluated this mechanism in its 2007 decision.

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