

Court of Justice of the European Union: German broadcasting contribution confirmed

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In a judgment of 13 December 2018 (case C-492/17), the Court of Justice of the European Union (CJEU) confirmed the broadcasting contribution used to finance public broadcasting in Germany. In the decision, the CJEU stated that the alteration to the criterion on which the contribution was based, introduced in Germany through the Rundfunkbeitragsstaatsvertrag (Inter-State Agreement on the Broadcasting Contribution - RBStV) in 2013, does not constitute an alteration to existing aid within the meaning of Article 1(c) of Council Regulation (EC) No. 659/1999, which should be notified to the Commission under Article 108(3) of the Treaty on the Functioning of the European Union (TFEU).

Public broadcasting in Germany is financed mainly through the broadcasting contribution. Since 2013, payment of the contribution has been based on ownership of a residence or business premises. Previously, a broadcasting fee was payable on the basis of possession of a receiving device under a rule that was assessed by the European Commission in the context of its examination of aid schemes in 2007 (decision of 24 April 2007, C(2007) 1761 final - State aid E 3/2005, see IRIS 2007-2/5 and IRIS 2007-6/3). Public broadcasters also have the power to enforce claims in respect of unpaid broadcasting contributions themselves. In this context, the Landgericht Tübingen (Tübingen regional court) had submitted to the CJEU a number of cases in which Südwestrundfunk (SWR) had issued enforcement instructions for unpaid contributions, asking, among other things, whether the alteration of the financing system should have been notified to the Commission as an alteration to existing aid.

The CJEU judges ruled that the change did not need to be notified to the Commission under Article 108(3) TFEU, which requires notification of any new aid or alteration to existing aid. The first sentence of Article 4(1) of Regulation No. 794/2004 provides that, for the purposes of Article 1(c) of Regulation No. 659/1999, an alteration to existing aid means any change, other than modifications of a purely formal or administrative nature which cannot affect the compatibility of the aid measure with the internal market. In this context, the CJEU noted that the replacement of the broadcasting fee by the broadcasting contribution essentially pursued an objective of simplifying the conditions of levying the broadcasting contribution against a background of evolving technologies. In addition, the alteration had not led to a substantial increase in

the amount received by the public broadcasters. This was still in keeping with the costs associated with fulfilling their public service remit.

The CJEU also ruled that European Union law did not preclude national legislation that confers on public broadcasters' powers, as exceptions to the general law, allowing them to enforce claims in respect of unpaid contributions. These powers had already been examined by the Commission in 2007 and remained unchanged.

Additional questions submitted by the Landgericht Tübingen concerning the general compatibility of the financing of broadcasting in Germany with EU law were dismissed by the Court as inadmissible. The Landgericht had failed to explain the connection between the provisions of EU law and the main action. According to the CJEU's established case law, the justification for making a request for a preliminary ruling is not that it enables advisory opinions to be delivered on general or hypothetical questions.

CJEU judgment of 13 December 2018 (case C-492/17)

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