

[DE] Remit and structure of public service broadcasting to be reformed

IRIS 2022-2:1/21

Christina Etteldorf
Institute of European Media Law

In November 2021, the *Rundfunkkommission* (Broadcasting Commission) of the German *Bundesländer*, which acts as a joint discussion forum and decision-making body on media policy and related legal questions for the Heads of the State and Senate Chancelleries, published a draft proposal on the remit and structural reform of public service broadcasting. If the proposal is adopted, it will be the third time that the *Medienstaatsvertrag* (state media treaty – MStV) has been reformed, the current version of which came into force in November 2020. Its main purpose is to future-proof public service broadcasting in Germany, in particular in response to the digital transformation and changing user behaviour, as well as to improve the recognition of public broadcasting as an important pillar for media diversity, pluralism and, therefore, democracy.

The reforms will mainly be achieved by redefining the public service remit (Article 26 MStV), which will be supplemented with the following addition: "The public service broadcasters have a duty to provide a comprehensive service for everyone. When designing their services, they must make use of the opportunities they are given through their licence fee income and contribute to media diversity through their own ideas and perspectives. All population groups should be able to participate in the Information Society. Due consideration must therefore be given to all age groups, especially children, teenagers and young adults, as well as to the needs of people with disabilities and families. Public broadcasting services must promote culture, education, information and advice. Entertainment, as part of a public service offer profile, is part of their remit." Meanwhile, the addition of the following sentence is yet to be finally agreed: "The public service offering profile should be especially noticeable in the broadcaster's own programmes and telemedia services whose audience figures are usually very high." The draft proposal takes into account the case law of the Constitutional Court, which considers the ARD members, ZDF and Deutschlandradio, as important pillars for media diversity and, therefore, democracy in Germany. Their remit, i.e. the radio, television and the online services that they should provide, must be regularly adapted in accordance with the need to guarantee the existence and development of public service broadcasting, not least in view of the digital transformation and changing user behaviour. The draft achieves this, *inter alia*, by improving the accessibility of media services for certain groups of users and by giving broadcasters greater flexibility through an amendment of the offer

profile required under their remit in relation to content and distribution methods. New provisions regarding the offer of high-quality, independent and impartial information, pluralism of content and diversity of opinion are also proposed.

The draft also provides broadcasters with greater opportunities and flexibility in decision-making insofar as only Das Erste Programm (ARD), ZDF, the Dritte Programme and the channels Arte and 3sat, which are jointly operated with European partners, will be required to provide linear programmes in the future. The other seven public service TV channels (Tagesschau 24, One, ARD-alpha, ZDFneo, ZDFinfo, PHOENIX and Kinderkanal (KI.KA)), which until now have been under the same obligation, will in future be able to decide for themselves whether or not they want to continue providing linear services or whether they want to become online-only. The draft also seeks to create greater transparency and diversity in relation to public broadcasters' online (telemedia) services: if the broadcasters use online recommendation systems, they should facilitate an open opinion-forming process and broad debate regarding content. Broadcasters' own online services should also be explicitly offered outside their own platforms, such as their own video libraries.

With the main purpose of safeguarding public acceptance of public service broadcasting and its financing through the licence fee in the future, the draft also makes provision for stricter monitoring and control obligations, in particular for the broadcasters' governing bodies. For example, these bodies should set targets for content quality and will be more closely involved in the evaluation of budgetary and financial management. The draft also requires the broadcasters to hold continuous dialogue with the public, especially with regard to quality, performance and service development.

The broadcasting licence fee and its size are, for constitutional reasons, linked to the distinction between state treaty provisions concerning the public service remit and those governing its financing, not covered by the draft proposal for a state treaty on the remit and structural reform of public service broadcasting.

Diskussionsentwurf zu Auftrag und Strukturoptimierung des öffentlich-rechtlichen Rundfunks

<https://www.rlp.de/de/regierung/staatskanzlei/medienpolitik/rundfunkkommission/reform-ard-zdf-deutschlandradio>

Draft proposal on the remit and structural reform of public service broadcasting

