The Public Service Broadcasting Remit: Today and Tomorrow

In the preamble to the Amsterdam Protocol, the Member States of the European Union consider

"that the system of public broadcasting in the Member States is directly related to the democratic, social and cultural needs of each society and to the need to preserve media pluralism".

This express recognition of the role of public broadcasting in a Protocol to the Treaty on European Union is not merely an echo of the 1996 European Parliament Resolution on the role of public service television in a multimedia society; it enshrines the essence of this Resolution in a binding text which has the same legal force as the Treaty articles themselves.

How could the democratic, social and cultural needs of society, and the need to preserve media pluralism, be served by a marginalized broadcasting organization catering only for cultural elites or other minority interest groups and essentially concentrating on those types of programmes which - for understandable economic reasons - the commercial broadcasting sector will not provide? To fulfil their role, public broadcasting organizations need to be a major force on the national audiovisual scene, and they must cater for all sections and groups of society, through, in particular, quality mass-appeal programming.

Public service programming obligations cannot possibly be reduced to a clearly-defined result which anyone could deliver. They are not quantifiable. Furthermore, the cost of programmes of identical duration within a given programme category (sport, films, magazines, etc.) tends to vary considerably, and so does quality and the degree of relevance of programming to civil society. Therefore, public service programming obligations cannot be performed by commercial broadcasting organizations which - quite legitimately - are guided by commercial logic. In contrast, as not-for-profit organizations, public broadcasting organizations will - by definition - strive to meet the public programming remit as best they can with the various financial resources at their disposal. Without them, the "merit good" quality programming for all sections of society would not be provided, since the market itself cannot and will not produce it.

The Amsterdam Protocol wisely makes do with a reference to the public broadcasting remit "as conferred, defined and organized by each Member State". This recognizes the fact that public service broadcasting is defined and organized quite differently from one Member State to another. Far from requiring even so much as a minimum
standard or level of definition of public broadcasting, the Protocol definitely does not prescribe that there must be "clearly defined public service obligations". Member States are perfectly free, for instance, to define the public broadcasting remit in a broad general manner by making a global reference to quality programming for all sections of the population, responding to the democratic, social and cultural needs of society (to repeat the terms used in the preamble to the Protocol). Furthermore, there can be no question of singling out specific public service obligations (implying that the rest of the public broadcaster's programming is not covered by the public broadcasting remit). The entire range of a public broadcasting organization's programme output constitutes public broadcasting, even if a cahier des charges or other such regulation may expressly highlight certain elements as an absolute must in the public broadcaster's overall programming. Fully consistent with this, the Protocol itself uses not the plural ("obligations") but the singular (remit in English, mission in French, Auftrag in German) when referring to the mandate of a public broadcasting organization.

Licence fee funding, together with more or less limited revenue from other sources (such as programme sales, advertising or sponsorship), provides public broadcasting organizations in the large majority of European countries with the necessary means to accomplish their mission. Since it serves exclusively the fulfilment of the remit conferred upon a not-for-profit organization, rather than assisting that organization to compete with others, with the ultimate purpose of generating profits, it may seriously be wondered how this unique method of funding could possibly be referred to as "aid" (within the meaning of Article 92 of the EC Treaty). Nevertheless, even assuming that under special circumstances licence fee funding paid directly by viewers and listeners to the public broadcaster could be regarded as "aid", the Protocol expressly prescribes that even where, furthermore, such funding should be found to affect trading conditions and competition in the Community to an extent which would be contrary to the common interest, such a finding could not be definitive without the realization of the public service remit having first been taken into account. In other words, the "common interest" is conditioned by the need to fulfil the given public service remit.

Public broadcasting organizations have always been at the forefront of innovation in the broadcasting field, both on the technical side and in terms of diversifying their programming offer. In line with this tradition, and except where expressly and exceptionally stipulated otherwise, they continue to be entitled, and indeed are obliged, to make their programme offer available to the public in the most appropriate manner and form suggested by the changing viewing and listening habits of the public in an evolving audiovisual environment. This includes a complementary and diversified programme offer (thematic channels), its technical delivery (digital transmission, bouquets, on-line delivery) and its mode of funding (pay-TV, pay-per-view). As long as the additional programme offer is provided by the public broadcasting organization itself, the same legal principles of funding apply as in the case of its traditional core service.