

EBU RESPONSE TO THE PUBLIC CONSULTATION ON THE DRAFT TREATY ON THE REFORM OF PUBLIC SERVICE BROADCASTING (REFORMStV)

11 OCTOBER 2024

ABOUT THE EBU

The European Broadcasting Union (EBU) is the world's leading alliance of public service media (PSM). The EBU has 115 member organizations in 56 countries which operate nearly 2,000 television, radio and online channels and services and reach an audience of more than one billion people in 160 languages. PSM organizations are entrusted with the performance of a service of general economic interest, which consists, *inter alia*, of the provision of high-quality content that fulfils the cultural and democratic needs of the society they serve.

On behalf of its members, the EBU welcomes the opportunity to provide feedback on the [draft treaty for the reform of public service broadcasting in Germany](#) (ReformStV), released for public consultation on 26 September 2024. As a media organisation, we wish to emphasize the significant value and strength of Germany's public service media (PSM), which serves as a vital pillar of democracy. Germany's PSM framework is widely regarded as one of the most robust and comprehensive in Europe, admired by many other Member States as a model of effective public broadcasting. It plays a critical role in informing, educating, and entertaining citizens, while ensuring that diverse perspectives are represented in the media landscape. In this context, we urge caution in implementing reforms that may unnecessarily diminish the remit or effectiveness of German PSM. It is crucial to preserve the unique contribution that PSM makes to the democratic fabric of Germany, and to avoid making concessions that could weaken its capacity to serve the public interest.

WHY THIS CONSULTATION MATTERS TO THE EBU AND PSM?

We commend the initiative to modernize Germany's PSM system, its emphasis on a responsible and focused use of public money, and the recognition of the need for public broadcasters to adapt in an increasingly digital landscape.

However, we are very concerned that some of the proposed measures, particularly those that would restrict the digital and online offerings of PSM, could undermine their ability to meet their public service remit in a fully digital age. In a media environment characterized by rapid technological change and evolving audience behavior, it is essential that PSM have the flexibility to innovate and deliver services across all platforms to reach and engage the whole of society and to fulfil their public interest role.

While we understand the need to rationalize resources and improve efficiency, restrictions on online services—especially the so-called "press-like" ban—would critically undermine the ability of PSM to fulfil their mandate to provide comprehensive, reliable, and accessible information to the public. It is imperative that PSM has the scope to deliver news and content across a range of digital formats, as this is increasingly how audiences, particularly younger viewers, engage with media.

In this submission, we will focus specifically on the restrictions to online services and, more concretely, the implications of the revised press-like ban proposed in the draft reform (§ 30 Abs. 7 – Telemedienangebote), in particular:

- *Material scope:*
 - the extension of the press-like restrictions (*Verbots der Presseähnlichkeit*) to PSM content on third party platforms.

- the required link with prior broadcast must be precise and tied to an actual programme that includes the news item. Certain limited exceptions are allowed, in particular the display of: overviews of PSM news offers, headlines on current events, or measures for the purpose ensuring accessibility (in accordance with the Annex to this Interstate Treaty).¹
- the fact that each public service broadcaster shall be required formally to make a reference to its specific own programme to which the press-like offer is linked (i.e. available in its own offering)
- *Time coverage:*
 - Accompanying text within the meaning of §30(7) related to “[...] *the subsequent editing of content from a specific own programme that was broadcast no more than a fortnight ago*”. Hence, the press like service must always come after a specific linear program that was broadcast no more than 2 weeks ago.

In our view, the above proposal would represent a severe and unprecedented limitation on the ability of German PSM to reach the audience, especially the younger audience (see explanations below) and therefore fulfil their democratic role and contribution to media pluralism and freedom in Germany, as explained below. Again, this is even more unfortunate given the fact that German PSM remit and broadcasting system is held as a model throughout Europe.

1. The new restrictions would have little effect on the market and could have negative effects on German democracy and media pluralism

There is no evidence that PSM online news negatively impacts the business model of the written press. Traditionally, newspaper revenues have been driven by advertising and classifieds revenues. We have witnessed these revenue streams being significantly affected by global platform giants, which are now heavily present in the information and news business (with access to sophisticated data collection software to attract advertisers). Social media sites and bloggers also play a significant role in the fight for viewer’ attention. Meanwhile, at the more local level, newspapers are apparently losing revenues to new online entrants (e.g. real estate, second-hand sale and job recruitment portals). The newspaper industry has understandably moved away from primary reliance on advertising to subscription-based services. However, a 2016 Reuters Institute Report noted that PSM online news consumption has no negative effect on willingness to pay newspaper subscriptions. Countries like Norway, Sweden and Finland all have strong PSM online presence and nevertheless high levels of newspaper subscriptions. By contrast, the US has no significant PSM tradition and yet relatively low levels of online newspaper subscriptions. These conclusions led certain jurisdictions (e.g. Denmark) to lift online news restrictions previously in place.²

The EBU notes that the proposed amendments are not accompanied with any study or figures demonstrating that readers of German PSM online text news and information would automatically transfer to local commercial media news websites. It is likely that many such

¹ The Draft Law refers to “*Angebotsübersichten, Schlagzeilen zu aktuellen Ereignissen, Informationen über die jeweilige Rundfunkanstalt, Maßnahmen zum Zweck der Barrierefreiheit*”.

² The new remit provides that DR service includes a news and current affairs offering with both audiovisual and text-based content that includes a number of editorially editorially selected subpages with regional, national and international news, politics, sports, culture, etc. as well as a number of theme pages on current topics and news history. Previously, DR was required to concentrate its online offer on its own productions and Danish productions in picture, sound and text (and refrain from long, in-depth articles) (see Public service contract 2019-2023, section 4.4).

readers would actually transfer to global media sources online or private social media sources and bloggers in order to continue to access news and information for free. The end result would simply be less availability and less choice for German citizens in accessing impartial and objective news and information regulated according to European democratic standards and norms. This could have a serious detrimental effect on German democratic processes and media pluralism.

2. The new restrictions are impractical and would have no significant effect in terms of diverting citizens to press pay offers

An obligation to link all text-based information and news with a pre-existing and specific broadcasting programme (delivered over the last two weeks) would create an excessive and disproportionate burden on German PSM. Recent studies³ have impressively demonstrated that even further restrictions or limitations on online text offers of PSM would not lead to any significant increase of consumers to pay for press publishers online pay offers.

3. The new restrictions create a tension with the EU Media Freedom Act and Council of Europe standards

The new EU Media Freedom Act⁴ (EMFA) addresses the European media markets in a platform and technology neutral way. A media service is defined as a service whose principle purpose is to: “*provide programmes or press publications to the general public by any means, in order to inform, entertain or educate*” (Article 2(1)). The definition and the scope of the EMFA encompasses TV broadcasting, radio broadcasting, press and online content providers. This mirrors long-standing international standards that recognise the rapid evolution of the European media markets and the increasing convergence of traditional media providers in terms of content and distribution formats. Recital 29 of the EMFA expressly refers to private and public audiovisual providers and the press expanding into the online sphere together.⁵ The EMFA also explicitly affirms that PSM funding should factor the “*capacity to develop within their public service remit*”⁶. Member States are therefore obliged to provide sufficient funding to PSM to be in a position to innovate and to adapt to changing technologies and viewer consumption habits (see section 2 below).

The fundamental need for all PSM to deliver its linear and non linear offers has never been questioned in EU law or in international standards. In 2022 the Council of Europe stated:

“Public service media’s contribution to society: independent public service media, in particular, have an important social function as a trusted source of information. They play a central role in portraying events in a comprehensive and inclusive manner, explaining complex situations and changes, allowing the public to distinguish the important from the trivial and highlighting constructive solutions to important challenges. States have the specific obligation of ensuring that public service media

³ See Christian Zabel, Daniel O'Brien und Frank Lobigs: Effekte des Marktaustritts von öffentlichen-rechtlichen Online-Nachrichtengebotes auf den Absatz von digitalem Paid Content - Eine Simulation für den österreichischen Markt, 2024 ([hier](#)) and Goldmedia, Wettbewerbssituation im Online-Informationsmarkt in Deutschland 2024, Oktober 2024 ([hier](#)).

⁴ Regulation (EU) 2024/1083 of the European Parliament and of the Council of 11 April 2024 establishing a common framework for media services in the internal market and amending Directive 2010/13/EU (European Media Freedom Act), OJ L, 2024/1083.

⁵ Recital 29, EU Media Freedom Act.

⁶ Regulation (EU) 2024/1083 of the European Parliament and of the Council of 11 April 2024 establishing a common framework for media services in the internal market and amending Directive 2010/13/EU (European Media Freedom Act), OJ L, 2024/1083, Article 5 paragraph 3.

*enjoy editorial autonomy and are able to operate independently, and that their content is universally available, including online.*⁷

Hence, the proposed amendments could lead to tensions with the legal principles set out in EU secondary law, as well as long-established international standards that expressly endorse the need for PSM to adapt to and join new technologies and modes of information delivery to carry out its role effectively.

4. The new restrictions go far beyond what EU law prescribes

The Amsterdam Protocol and the Broadcasting Communication, which provides guidance on how to apply state aid rules to PSM broadcasting, set out a number of principles that should be followed by Member States in order to ensure that PSM do not compete unfairly with commercial providers. In short, the European Commission intervenes only where (i) there is a manifest error in the definition of the PSM mission (e.g., unprecise definition, lack of entrustment) or that (ii) the amount of the aid makes it 'impossible or excessively difficult' for commercial providers to conduct their business (e.g. funding of a purely commercial activity).

When assessing the definition of the PSM remit, the European Commission has in certain cases requested that PSM text-based content be, as a general rule, related to services containing moving images and sound (online and/or offline). For instance, in a recent case regarding the provision of online news by PSM (2022)⁸ involving the Finnish broadcaster Yleisradio Oy (YLE), the commitments requested *'the primary emphasis of content services must be on publications containing moving pictures or sound.'* It also states that: *"text-based content must relate to a Yle publication that contains moving pictures or sound."*

However, the Commission has never imposed a requirement for there to be a link with a specific programme. Nor has it insisted that any such link should be within a specific timeframe. In all cases, the Commission was satisfied with PSM online text that has a general link to linear content.

Crucially, it should be noted in such cases that the European Commission's primary concern was whether the PSM remit was defined clearly enough. For instance, recent complaints from the press sector in Lithuania and Denmark alleging that the online text presence of PSM was negatively impacting their operations have been dismissed precisely because the PSM remit was deemed clear and precise enough.⁹ The Commission's approach is in line with the guidance set out in the Broadcasting Communication, which defines PSM audiovisual services as: *"the linear and/or non-linear distribution of audio and/or audiovisual content and of other neighbouring services such as online text-based information services."*¹⁰

Accordingly, §30(7) of the Draft Law goes well beyond the requirements of EU state aid law. This approach has significant implications not only for media markets but also for the availability of diverse and timely news content. By imposing additional restrictions on the online activities of public service media, German Länder risks limiting the ability of these

⁷ Recommendation CM/Rec(2022)4 of the Committee of Ministers to member States on promoting a favourable environment for quality journalism in the digital age .

See also, e.g. Council of Europe Recommendation CM/Rec(2007)2 of the Committee of Ministers to member states on media pluralism and diversity of media content; Council of Europe Recommendation CM/Rec(2007) on the remit of public service media in the information society.

⁸ European Commission, SA.48486 – Alleged illegal aid to the Finnish public service broadcaster Yleisradio Oy.

⁹ European Commission, SA.61387 - State aid for the online activities of the Danish public service broadcaster – DK and : SA.57787(2020/FC) - State aid to public service broadcaster LRT- LT.

¹⁰ Communication from the Commission on the application of State aid rules to public service broadcasting, OJ C 257, 27.10.2009. , (2009/C 257/01).

broadcasters to respond quickly and effectively to current events, which in turn impacts the broader media landscape and the citizens' access to essential information.

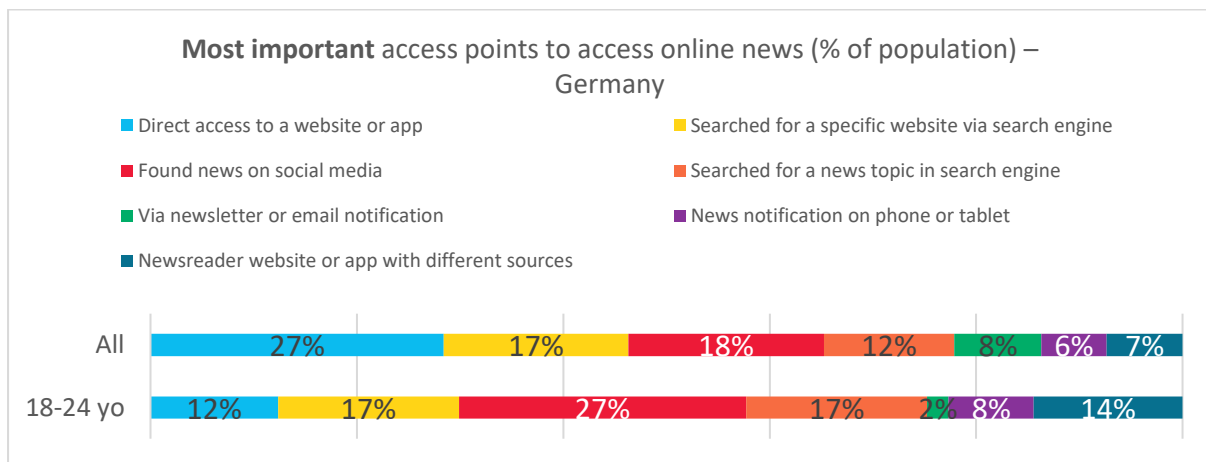
5. The new restrictions are at odds with end users' behaviours and obstruct German PSM from fulfilling its democratic mission

The proposed amendments fundamentally contradict media consumption trends and the realities of today's digital-first media environment. Indeed, given the way markets and viewing habits are evolving, they could critically undermine German PSM's ability to carry out its democratic role in Germany. Our primary concerns relate to (i) the application of the press-like content ban to third-party platforms such as social media, (ii) the requirement that online content must be linked to a specific linear programme, and (iii) the restriction limiting online content to material linked to a broadcast aired within the past two weeks.

- *Third-party platforms (e.g. social networking services) are indispensable to reach younger audiences and fight disinformation*

In today's media ecosystem, platforms like *Facebook*, *X* (formerly *Twitter*), *YouTube*, *Instagram*, and others are essential channels for reaching audiences, particularly younger demographics who consume most of their news and content through digital platforms rather than traditional linear broadcasting. Social media is a very important news source for 18-24 years old (50% use it weekly or more frequently, compared to 34% of the general population). Social media is generally more focused on short-form video but also contains links to online text-based news services.¹¹

Overall, younger generations put less importance on a brand and tend to be led more by an algorithm or a specific search engine, and thus the platform they consume the news on. In Germany 18-24 year olds primarily use indirect access points to consume news. Only 18% will go directly to a website or app, while social media and search engines are the first access points for (respectively) 37% and 33% of the respondents.



Source: EBU based on Reuters Institute – Digital News Report 2024 – Germany ([link](#))

In line with their universality obligation, PSM must be present where their audiences are. Social media now provides a crucial avenue for sharing news, factual information, and editorial content. Restricting PSM from publishing text content on these platforms would not only

¹¹ Source: EBU based on Reuters Institute – Digital News Report 2024 – Germany ([link](#))

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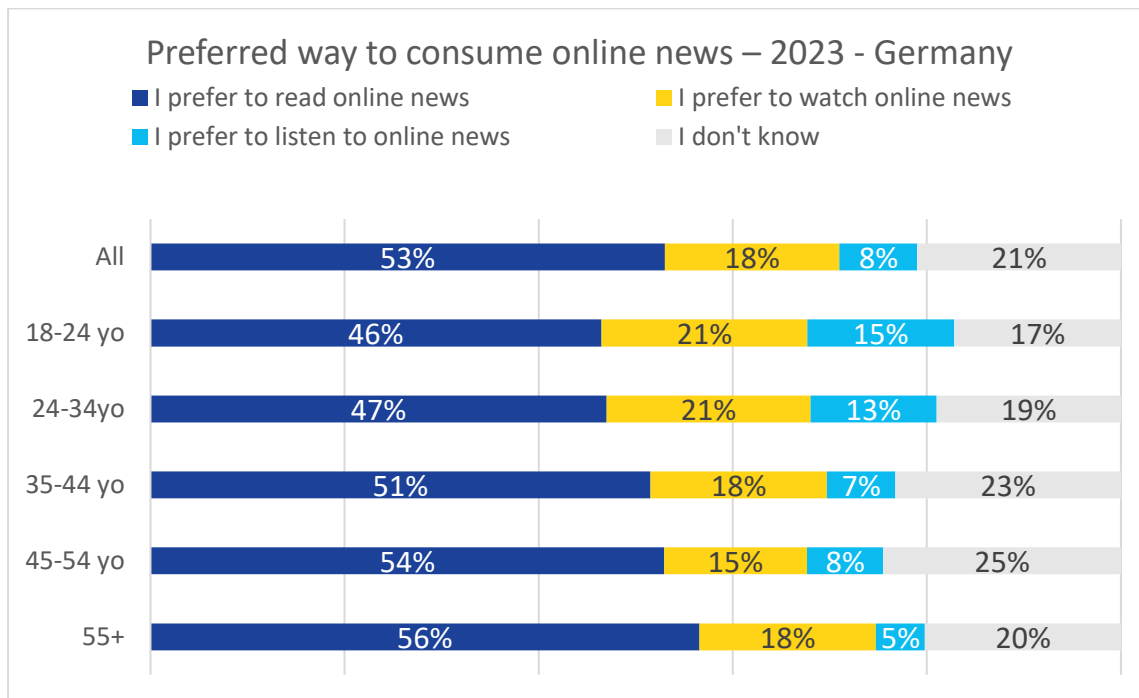
diminish their ability to inform the public effectively but would also create a competitive disadvantage against private media actors who are fully leveraging these channels.

All age groups in Germany still have a preference for written articles online, compared to listening to or watching news online. Besides, research shows that since 2024, online news (incl. news consumed on social media) has taken over from TV as the main source of news for German people.

Moreover, social media platforms provide the possibility for PSM to engage with their audience in real-time, particularly during unfolding news events or crises. This aligns with the core public service mandate of providing timely, accurate, and widely accessible information. Limiting the presence of PSM on such platforms would undoubtedly impede their role in serving the public interest.

- *The reference to a specific programme is outdated in a digital-first world*

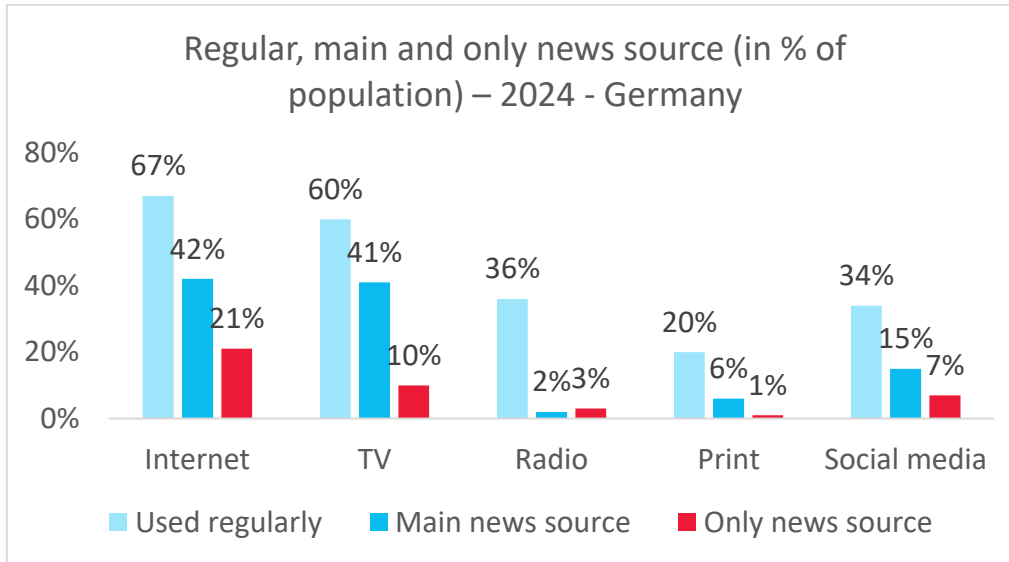
The requirement that all digital content must be linked to a specific programme does not reflect how audiences consume media in the modern era. Today, the concept of broadcasting is increasingly intertwined with on-demand services, and PSM need the flexibility to offer news, commentary, and analysis that is independent from traditional programming.



Note: Question discontinued after 2023
 Source: EBU based on Reuters Institute – Digital News Report 2023 – Germany ([link](#))

Much of today’s public discourse and news consumption happens outside the traditional broadcast schedule. For instance, certain programmes are broadcast fortnightly to foster the efficiencies between the two German PSM (e.g. *Morgenmagazin*, which is produced one week by ARD and the other week by ZDF). If a major event happens during the week when ARD is the producer (e.g. news on the “developments” in Israel), it is not clear whether it could be covered. This is just one example of the proposed amendments leading to less information, diminished media pluralism and potential inefficiencies where certain programmes may even have to be duplicated.

PSM are expected to provide real-time, up-to-date information that reflects current events. Imposing a rigid link to a specific programme disregards the fluidity and immediacy of the digital media environment. In 2024, online news is the exclusive news source for 21% of the population in Germany (all age groups together). It is therefore the most exclusive news touchpoint, as no other touchpoint has such a high percentage of people relying on it as their only source of news. The Draft Law would create unnecessary administrative burdens and restrict broadcasters' ability to respond swiftly to news developments, ultimately reducing their ability to fulfill their remit.



Source: EBU based on Reuters Institute – Digital News Report 2024 – Germany ([link](#))

In an era where 42% of Germans use the internet as main source of news, PSM must be allowed to produce standalone content that informs and educates without the constraint of linking to a specific broadcast.

- *The limitation related to the timing of the publication of online news content could prevent PSM from providing critical information in real time*

The requirement that all online content must be linked to a programme broadcasted within the past two weeks is overly restrictive, particularly in the fast-paced news environment. The proposed rule would mean that PSM could only publish online content related to past broadcasts. However, PSM often need to publish certain news items very quickly, even ahead of any planned broadcast to ensure that the public receives critical information without delay. The two-week linkage rule would prevent public broadcasters from releasing time-sensitive content independently from the linear programming schedule, which is not practical in a world where news breaks 24/7.

Timely reporting on current events allows PSM to maintain their role as trusted sources of accurate and unbiased news. For example, in urgent situations like the COVID-19 pandemic or natural disasters, such as the 2021 floods in Germany¹², PSM must be able to provide rapid

¹² During the catastrophic floods that hit several regions, including North Rhine-Westphalia and Rhineland-Palatinate, fast and continuous updates were crucial. Public broadcasters played an essential role in disseminating information on road closures, emergency contacts, evacuation orders, and safety tips. Imposing restrictions on their ability to publish headlines online about evolving situations would have delayed critical information reaching the public.

updates that serve public safety. Similarly, during political events like federal elections¹³, or international crises such as the Ukraine conflict, real-time news coverage is vital for public understanding. The proposal also limits PSM's ability to provide longer-term coverage of important topics or ongoing investigations, where content might not always neatly align with recent broadcasts.

In addition, PSM, as outlined in Germany by §26 MStV, have a broad mandate to inform, educate, and entertain the entire population, with special attention given to diverse and minority audience groups. All citizens should be enabled to participate in the information society. To fulfil this mandate effectively, PSM must have the flexibility to be reactive on all relevant platforms, particularly in sharing the latest news and information to all sections of society.

Finally, digital content often takes on a life of its own, fostering discussions and engaging audiences in ways that extend well beyond a specific broadcast window. Limiting PSM's ability to update or follow up on critical issues due to a time-limited window for related content would prevent them from fully serving the public with sustained, in-depth reporting. Important national discourse and debate, a crucial pillar of democratic and free society, could be stifled and/or pass to the level of unregulated and unchecked global platforms.

The flexibility to provide impartial news and information in all formats and on all platforms is key to PSM staying relevant, being found and being able to fulfil their public service mandate effectively, thereby underpinning the right of freedom of expression for citizens and journalists.

Conclusion

While the reform of PSM in Germany is a welcome opportunity to modernize and strengthen the sector, it is crucial that the proposed restrictions on online PSM services are urgently reconsidered. The media markets in Europe are changing and converging at unimaginable pace. The EU and its member countries are facing military conflict on its doorstep and an information war in its media space. Imposing limits on PSM online news would be a backwards and unprecedented step. In the worst case, and given the importance of online services to reach citizens, we consider that such limitations could undermine media pluralism and freedom of expression and potentially democratic processes in Germany.

We urge any future reshaping of the German PSM remit to fully consider the evolving media landscape and ensure that public service media are equipped to fulfil their role in a dynamic and ever-changing digital world.

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¹³ Election nights and the days leading up to an election involve frequent updates, as poll results are counted and exit polls are conducted. Public broadcasters, with their mandate to provide non-partisan, factual reporting, are best positioned to provide reliable election results.