

European Commission evaluation of its 2009 Communication on the application of State aid rules to public service broadcasting (“Broadcasting Communication”)

14 January 2026

The European Magazine Media Association (EMMA) and the European Newspaper Publishers' Association (ENPA), representing the vast majority of European publishers of newspapers, magazines, periodicals and specialised press, including in digital, welcome this opportunity to provide feedback to the European Commission on the evaluation of 2009 Communication from the Commission on the application of State aid rules to public service broadcasting (henceforth, “Broadcasting Communication”).

The stated purpose of this Commission evaluation is, inter alia, assessing “whether the Broadcasting Communication has provided (and continues to provide) clear guidance to stakeholders and Member States on the application of State aid rules in the public service broadcasting sector”. As acknowledged by the Commission in the introductory part to its questionnaire, since 2009 the sector has undergone significant technological, market and legal changes.

From the perspective of the press publishing sector, the numerous legal and arbitration proceedings that have been taking place across EU countries for well over a decade, including State aid complaints, demonstrate that the existing legal framework – both at the EU level and its national implementation – displays structural shortcomings. The fundamental challenge faced by our sector pertaining to the application of State aid rules to public service broadcasters (PSBs) stems from the progressive, uncontrolled expansion of PSBs’ offerings into online text-based content directly competing with that of press publishers, in the same primary markets and in wholly unfair terms.

Intended objectives and effectiveness of the 2009 Broadcasting Communication

The 2009 Broadcasting Communication is the centerpiece of the EU State aid framework regarding the financing of PSBs as a service of general economic interest within the meaning of Article 106(2) TFEU. Its core objective is to reconcile State aid with the protection of competition whilst ensuring legal certainty for all parties involved.

The starting point is the expectation that member states would define the public service remits in a manner “as precise as possible.” This clarification in the Communication is intended, in particular, to enable effective State aid control, provide private media companies with sound planning and investment conditions, and allow for effective national oversight of the scope and limits of the fulfillment of the public service remit. Conversely, unclear or overly broad mandates jeopardize these objectives and undermine the Communication’s intended steering effect.

An unsustainable status quo

For new digital offerings from PSBs, the Broadcasting Communication stipulates a national prior evaluation procedure. This was intended to allow for flexibility while simultaneously ensuring that new offerings demonstrate clear societal added value, that their impact on competition and markets is adequately considered and ultimately – crucially – that the material requirements of the Amsterdam Protocol are met.

At present, across EU Member States, experience demonstrates that PSBs have been operating in a framework which, due to structural shortcomings, has enabled them to increasingly and systematically offer unlimited and free-of-charge text-based press content online, continuously extending their remit and evolving from broadcasters to full-fledge media companies offering, inter alia, a full range of press-like offerings. In doing so, PSBs overstep the boundaries between their public service remit and their commercial activities, particularly when supported by State aid

intended for their core missions. PSBs important role in our society must not come to the expense of a sustainable environment for a free and pluralistic press that, given the challenging market conditions, demands significant entrepreneurial initiatives from publishers, and fair competitive conditions.

Furthermore, the oversight based on the national prior evaluation procedures has not yet led to a lasting solution to the well-known demarcation problems. This applies both at the national level and to State aid control as a whole. The Broadcasting Communication has hitherto failed to act as a deterrent against the progression and consolidation of this unfair and anticompetitive state of affairs. This seriously harms and undermines the economic sustainability of the free press, thereby also threatening the media freedom and pluralism which are the backbone of European democracy.

Unprecedented, unforeseen challenges

In addition to facing growing competition from state media's unhindered expansion into text-based editorial content, press publishers also contend with digital gatekeepers unfairly monopolising digital markets and – like PSBs – offering their services for free. This is clearly reflected on the serious challenges linked to establishing a strong subscription base and to the online advertising markets.

To these challenges we must add those linked to (generative) artificial intelligence (AI), including the fact that online press content is being systematically used, without permission and in total disregard for EU rules, as raw material by digital gatekeepers and other companies. This allows them to develop, maintain and continuously improve independent, competing AI-powered services that make available to users content based on the press' source material.

However, PSB's text-based content itself is also being sought for AI-related purposes. As this content which competes directly with that of with private commercial media is made available online free-of-charge, a further distortion and structural devaluation occurs: as the incentive for online platforms and other tech companies to negotiate and compete for commercial licenses is potentially removed, since said companies can secure press-like content for free, the licensing market for the entire commercial press sector in relation to AI-related, copyright relevant purpose uses is thereby undermined. To prevent this systemic harm to the media ecosystem, EU State aid rules must impose a general requirement on PSBs to only make their press-like content available to tech companies on commercial, market-based terms.

All these developments corroborate the Commission's assessment that, since 2009, the media sector has undergone significant technological, market and legal changes. The growing market power of digital platforms and the rapid development of AI-powered services pose new challenges for media diversity, press freedom, and refinancing models that were not foreseeable when the Broadcasting Communication was published. They also highlight that clear, effective, and enforceable guidelines for publicly funded media services are more important than ever.

Crowding out of commercial media prevents a functioning market

State-funded media are, in many Member States, almost invariably the largest actors in media markets, benefiting from vast and often unchecked financial resources – outweighing those competing in the same markets – endangering fair competition. To put the size of PSBs into perspective, the annual subsidies received by several European PSBs reach billions of euros. These distinctive resources, along with PSB's inherent outreach capabilities, make their growing online distribution of press-like content a particularly challenging issue for commercial press publishers.

Unfair competition manifests itself in a number of ways, including:

- PSBs misusing their unrivalled funding and leading market positions, to distort competition across TV, radio and internet.
- Dual funding (tax/licence plus advertising, sponsorship), capturing commercial revenues in addition to State Aid.

- Discrepancy between the remits and the actual activities of the PSBs.
- Cross-subsidy across media channels.
- Cross-promotion.

Violation of EU State aid rules

The interference of state media in online markets for press-like content harms the proper functioning of the market. This is a clear contravention of EU State aid rules, as laid down in the Services of General Economic Interest (SGEI) framework and the Amsterdam Protocol, which clarify that (i) State aid to state media should only cover their main broadcasting activity and those activities that are clearly related and ancillary to that main activity; and that (ii) State aid must “not affect trading conditions and competition in the Community”.

As already mentioned, the uncontrolled expansion of the operational remit of PSBs to include the provision of text-based, press-like content online that is unrelated, or only artificially related, to their main broadcasting activities is by now a familiar trend across the EU. As the use of State aid to supporting such activities is fundamentally illegal, it must therefore be stopped and rolled back. What is more, PSB’s press-like content is now, with the financial support of the EU, also expanding into European editorial press distribution platforms¹ providing written articles in several languages with the support of AI.

The EU framework on State aid for PSBs rightly requires that public funding is transparent, strictly limited to the costs of the public service audiovisual remit and regularly supervised to avoid market distortions. Ensuring that the provisions of the Broadcasting Communication support the enforcement by the Commission of strict compliance with these principles must be a key priority.

State aid complaints lack of progress

Across the EU, relevant State aid rules are being simply circumvented or ignored by PSBs, partly with the tacit support of Member States. Numerous State aid complaints have been filed in this context, illustrating both the extent of the problem and the systematic failure to ensure adequate governance of PSBs. At present, some of these complaints are undergoing legal review by DG COMP, while others are under consideration by national authorities and courts.

DG COMP has opened procedures concerning cases in various EU countries which we are closely monitoring with unreserved support our members. We are concerned about the lack of progress across these cases. Regrettably, it is now clear that an approach of promoting dialogue with the parties involved as well as involving Member States (potentially called upon to amend national rules to facilitate a resolution) has failed to bring upon any meaningful change in the conduct of state funded media or in the online press market.

It is therefore crucial that the Commission stands ready to act swiftly and effectively against any Member State failing to comply with EU State aid rules. In this context, the Broadcasting Communication ought to act as an enabler of affective action – not as a deterrent.

Press content and journalism are a necessary precondition for the proper functioning democracies and pluralistic societies. The free press has developed business models based on subscriptions and advertising that reflect this, but the uncontrolled expansion of PSBs’ operational remits makes it impossible to compete under fair conditions.

A failure by the Commission to address in an effective manner this state of affairs by ensuring that the Broadcasting Communication and the application thereof are fit for purpose will result in the European free press remaining in an unsustainable status quo at the expense of European citizens, media diversity and the democratic debate.

¹ By way of example: <https://yepnews.eu/>

KEY RECOMMENDATIONS

In the interest of a stable, diverse, and future-proof media ecosystem safeguarding media pluralism in the Union, and with a view to ensuring fair market conditions and competition between press publishers and PSBs, the Broadcasting Communication should not only provide guidance but contribute effectively to fair market conditions. We call on the Commission to take the following recommendations on board:

Clarification on the scope of text-based content services on PSBs

- While the Amsterdam Protocol confirms that public service remits are conferred, defined and organised by each Member State, any offerings of text-based content by PSBs do not constitute an integral part of the “audiovisual service” and must necessarily be subject to strict limitations. The Protocol establishes a framework intended to facilitate public service broadcasting, not the development of full-fledge public press services. Therefore, the Communication should state explicitly that text-based online services do not generally constitute the core of an audiovisual service and therefore, if part of the public service remit, may only be so to a clearly limited, functionally ancillary extent, including when said remits may be updated to promote a diversification of PSB services.

Clarification of the limits under State aid rules

- State aid to PSBs should only cover the main broadcasting activity and those activities that are clearly related and ancillary to that main activity. **The Communication should therefore include a dedicated paragraph in which unrestricted, State financed offerings of text-based online content by PSBs are explicitly mentioned as an example of anti-competitive practice clearly affecting trading conditions and therefore, by not meeting the Amsterdam Protocol requirements, their inclusion in the definition of public service remits would constitute a manifest error.**

Strengthening ex-ante controls

- One key issue flagged by our members concerns the assessment criteria applied by Member States in relation ex-ante market controls. To be effective, the assessment criteria should be adapted to all market realities and not allow PSBs to benefit from undue leeway. The Communication should therefore mandate rigorous, ex-ante market assessments for any significant new PSB digital offering before public funds are allocated.
- The evaluation should examine how any national prior evaluation procedures can be developed in a manner that both allows for potential concerns and objections from affected market participants to be duly accommodated and enables real adjustments to be implemented.

Definition of audiovisual services

- The current definition under the Communication is unclear and too vague. An updated definition, reflecting present-day market realities, should exclude all non-ancillary text content and be limited to services where the dominant content element is clearly of audio or audiovisual character.

Relationship with the European Media Freedom Act (EMFA)

- The EMFA Regulation should not legitimise a remit creep of PSBs. The EMFA notion of “adequate, sustainable and predictable financial resources” is a safeguard intended to ensure the budgetary independence of PSBs – not a tool legitimising ex-post the uncontrolled expansion of PSBs beyond their main broadcasting activities in a way that directly undermines the interests of other media service providers under the EMFA

Role of the Commission in enforcement

- Consideration could be given to more clearly defining the role of the Commission in monitoring and, where necessary and appropriate, correcting structural enforcement shortcomings, in

order to ensure that the Broadcasting Communication not only provides guidance but also effectively contributes to limiting competition distortions.

Transparency of commercial revenues

- Given the growth and diversification of PSB funding, their commercial revenues (i.e. advertising, sponsorship, product placement) must be disclosed for fairness and transparency. To keep a functional and balanced advertising market, the advertising space sold by PSBs must be regulated.