

56.

**Pr Mulqueen**

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**From:** Elleonora.SOARES@ec.europa.eu  
**Sent:** Friday, February 23, 2007 1:24 PM  
**To:** Paul Mulqueen  
**Subject:** RE: State Aid

Hi Paul,

Yes, thank you. I received it. Sorry for not confirming receipt.

best regards,  
Elleonora

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**From:** Paul Mulqueen [mailto:Paul.Mulqueen@dcmnr.gov.ie]  
**Sent:** Friday, February 23, 2007 1:45 PM  
**To:** SOARES Elleonora (COMP)  
**Subject:** FW: State Aid

Hi Ellenora,

Can you confirm that you received this email.

Thanks,

Paul

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**From:** Paul Mulqueen  
**Sent:** Friday, February 16, 2007 12:01 PM  
**To:** 'Elleonora.SOARES@ec.europa.eu'  
**Subject:** State Aid

Dear Elleonora,

Apologies for not reverting back to you sooner.

### Archives

The objective behind Head 109(1)(e) is to require both RTÉ and Teilifis na Gaeilge to maintain archives/libraries of the material generated during the course of their activities.

This objective is a recognition of the growing cultural and historical importance to Ireland of preserving such material (e.g. documentation associated with the commissioning or preparation of a programme, drafts of scripts, footage shot or audio material recorded in the making of a programme, the programme itself, documentation relating to public reaction to a programme which might include public comments posted to an Internet forum established by the broadcaster etc.)

In essence Head 109(1)(e) imposes a public service obligation/objective, with its significant attendant costs (cataloguing, preservation, digitisation), on RTÉ and Teilifis na Gaeilge. Head 116 provides that public funds may be utilised for such a purpose subject to the supervision of the Broadcasting Authority of Ireland and the Minister. Head 109(1)(e) does not deal with the issues of access to, or reuse of the material contained in such an archive or library.

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Similar requirements have in the past been placed on public service broadcasters in other jurisdictions (see attached annex).

Head 77 comprises two separate and distinct parts:

- Subheads (1) and (2) deal with the issue of access to the RTÉ and Teilifis na Gaeilge archives/libraries referenced in Head 109(1)(e).
- Subheads (3) to (12) deal with the issue of reuse of the material contained in the RTÉ and Teilifis na Gaeilge archives/libraries in Head 109(1)(e).

In relation to the access issue, the intention is that the public (whether individuals or companies i.e. anyone) should be able to access the archives/libraries in a manner similar to public libraries – such access might be by electronic means (<http://www.rte.ie/laweb/>) or by visiting a particular premises. The head empowers RTÉ and Teilifis na Gaeilge, should they so wish, to impose a limited nominal charge for access – such a charge is intended purely as an administrative mechanism to ensure that access is not abused to the detriment of other users of the archive/library – it is not intended for the purposes of significant cost recovery or profit.

In relation to the issue of reuse of the material contained in the archives/libraries, subheads (3) to (12) require RTÉ and Teilifis na Gaeilge to prepare schemes for the reuse by third parties of material contained in the archives/libraries. Subhead (3) envisages two forms of scheme being prepared by each company. The first scheme would set the terms and conditions (including cost) for reuse of the material for educational/research purposes e.g. by schools or universities, the second scheme would set the terms and conditions (including cost) for reuse of the material for purely commercial purposes e.g. by media companies.

A scheme once prepared, but prior to its implementation, would be subject to the approval of the Minister, the Minister having consulted with the Broadcasting Authority of Ireland. Subhead (12) provides that the Minister may request a report from the Compliance Committee of the Broadcasting Authority of Ireland on the compliance by RTÉ and Teilifis na Gaeilge with an approved scheme.

The wording in Head 77(1), particularly “The company shall at its own expense” will require redrafting as it is confusing. The intention remains as outlined in Heads 109(1)(e) and Head 116 i.e. that public funding can be used for the purposes of maintaining the archives/libraries.

As a general point it should be noted that these heads merely outline the general intention for the purposes of public consultation and are not in final legal form.

I hope that this provides some of the background thinking to the legislative proposals.

### **The Broadcasting (Amendment) Bill 2006**

You may also wish to note the progress of The Broadcasting (Amendment) Bill 2006 which was published and introduced in the Houses of the Oireachtas (First Stage) on 21st December 2006. It sets out a framework for the future licensing of Digital Terrestrial Television (DTT) in Ireland and provides for consideration of analogue switch-off. In addition, the Bill amends the remit of the Irish public service broadcaster, RTÉ, to use public funding for provision of broadcasting services to Irish emigrant communities abroad. The Original Bill was forwarded to you in December. (Explanatory Memorandum attached)

The Bill was debated on Second Stage in the Seanad (Senate) during 31 January and 1 February 2007. Amendments to the Bill were debated during Committee Stage on 7 February 2007 when some Government amendments were agreed. These amendments related to extending the remit of the Irish public service broadcaster to provide radio as well as television services to Irish emigrant communities and also setting out a timeframe for the DTT licensing process. Further amendments to the Bill were discussed but not accepted on the Fourth and Final stages on 13 February 2007. The amended Bill was then passed by the Seanad.

The Bill now goes to the Dáil for debate on all stages, beginning on 22 February 2007. Further amendments to the Bill may be made in the Dáil. I have enclosed a copy of this latest version of the Bill – as it will go to the Dáil – for your information.

### **Draft general scheme of the Broadcasting Bill 2007**

In relation to the larger piece of legislation, the draft general scheme of the Broadcasting Bill 2007, you may also wish to note its progress to date. Since the Bill was published in September 2006 the draft general scheme of the Broadcasting Bill was submitted to the Joint Oireachtas Committee on Communications, Marine and Natural Resources on 6th September 2006 for the purposes of public consultation under the eConsultation initiative. The Joint Oireachtas Committee on Communications, Marine and Natural Resources have completed their consultation on the draft bill and are expected to produce a report on their deliberations shortly. This has followed the receipt of written submissions under the eConsultation process and public hearings held on 10<sup>th</sup> & 11th January 2007.

The following outlines the various steps in the legislative process:

**First Stage:** the initiation of a Bill.

There are two ways that a bill may be initiated:

- Presentation  
A Bill can be published without the prior permission of House.
- Leave to Introduce

**Second Stage:** whether the law should be amended as broadly envisaged in the Bill

- The House discusses what the Bill contains and also what might be relevantly included.
- Debate takes place on a motion:  
"That the Bill be now read a second time".

**Third (Committee) Stage:** detailed examination and improvement of what is proposed

- Detailed consideration of the Bill section by section, either in:
  - Committee of the whole House or
  - Select Committee or
  - Special Committee.

**Fourth (Report) Stage:** a review of changes made at Third Stage

- Consideration is limited to amendments tabled which arise from proceedings at Third Stage.

**Fifth (Final) Stage:** whether the Bill, in its current form, would constitute good law

- Debate takes place on a motion "That the Bill do now pass".

The Bill, if passed, is then sent to other House

Typically from Dáil to Seanad, and second, third, fourth and fifth stages are repeated.

**Enactment**

As a general rule, the President is required to sign a Bill presented to him or her for signature not earlier than the fifth day or later than the seventh day after it has been so presented (Art.25.2.1).

A Bill becomes law on the day it is signed by the President and, unless the contrary intention appears, comes into operation on that day (Art. 25.4.1). A Bill may, for example, contain provision for its commencement (in whole or in part) by way of Ministerial order.

The Minister proposes to introduce the Broadcasting Bill into the Houses of the Oireachtas in 2007 in the light of the outcome of the eConsultation process and the formal legal drafting of the Broadcasting Bill - once the draft general scheme is finalised the Office of the Parliamentary Counsel (OPC) can complete its work on the formal legal drafting of the Bill. It is difficult at this point to estimate when the

OPC will complete its work given its existing considerable workload. It is further noteworthy that a general election will be held in Ireland in the first half of 2007 and this is likely to have some impact on the progress of the legislation through the steps outlined above. The passing of the Bill through the various stages outlined will also reflect the scope and the number of heads being introduced.

Finally please feel free to come back on any of these items as we appreciate the complexity of the detail under consideration.

Kevin has also asked me to let you know that should you prefer a meeting we are always available to brief you in Brussels.

Regards,

Paul

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**Annex**

**Broadcasting legislative provisions relating to archives in other jurisdictions**

**Denmark**

The Danish Radio and Television Broadcasting Act 2002

Section 89

The Minister for Culture may lay down rules to the effect that, against compensation for expenses incurred, Danmarks Radio shall place recordings of its programmes at the disposal of an archive established for research purposes, and rules concerning access to the recordings on file. Expenses towards the establishment and operation of such an archive shall be defrayed by the Treasury.

**Hungary**

Act I of 1996 on Radio and Television Broadcasting

Section 27

- (1) Public service broadcasters shall provide for the permanent preservation of the cultural values and documents of historic importance transferred to their possession in the course of their activity in their archives, and shall collect, store and look after the above in a professional manner.
- (2) The rules and conditions of transferring the above to the archives, and the manner of utilization, shall be established by the board of trustees in agreement with the Board in a separate set of rules.

Section 138 (Extract) *Parliamentary Broadcast*

- (4) A recorded copy of the outgoing signal accessible to all shall be deposited in the Parliamentary Library and in the National Széchenyi Library. The Parliamentary Library shall provide for the accessibility of the recorded material, and, against the payment of costs, shall prepare a copy that may be freely used by anybody. A copy each shall also be deposited in the archives of the Hungarian Television and the Hungarian Radio (sound recordings).

**Netherlands**

Media Act (as amended)

Section 28 (Extract)

The revenue earned by the Radio and Television Advertising Foundation shall, after deduction of its expenses as approved by Our Minister, be at the disposal of Our Minister. The revenue thus remitted shall be used to cover the costs incurred in connection with:

- (k) payments to the institution designated by Our Minister for the purpose of maintaining and operating a broadcasting archive

**South Africa**

Broadcasting Act 1999

Chapter IV

Public Broadcasting Service and Charter of Corporation

Part II

Section 8

- (j) to establish and maintain libraries and archives containing materials relevant to the objects of the Corporation and to make available to the public such libraries and archives with or without charge

**UK**

BBC Charter

Section 3 (Extract)

The objects of the Corporation are as follows:-

- (m) To establish and maintain libraries and archives containing material relevant to the objects of the Corporation, and to make available to the public such libraries and archives with or without charge.

Agreement Dated 25 January 1996 Secretary of State for Culture Media and Sport and the BBC

11. Archives

11.1 The Corporation shall at its own expense make appropriate arrangements to establish and maintain (or to procure that a designated body establish and maintain) to commonly accepted standards an archive or archives of films, sound recordings and other recorded and printed matter which is representative of the sound and television programmes and films broadcast or

transmitted by the Corporation. The Corporation shall make reasonable arrangements, itself or with such body or bodies as it chooses, for public access to its sound, television or film archives with or without charge as the Corporation thinks fit.

11.2 Prior to and in making such arrangements the Corporation shall consult such designated bodies as are engaged in the maintenance of sound, television and film archives as it considers appropriate.

11.3 The Corporation shall not sell, destroy or otherwise dispose of any broadcast or transmitted material which it decides not to include in any archive established pursuant to subclause 11.1 without first offering such material free of charge to an appropriate designated body or bodies engaged in the maintenance of sound, television and film archives and transferring such material to such designated body or bodies which accept such offer as the Corporation may think fit.

11.4 For the purposes of this clause, "designated body" shall mean a body designated by order of the Secretary of State for Trade and Industry pursuant to section 75 of the Copyright, Designs and Patents Act 1988.

#### Section 297 of the Communications Act 2003

##### *Channel 4 contribution towards national television archive*

- (1) Section 185 of the 1990 Act (contributions towards maintenance of the national television archive) shall be amended as follows.
- (2) In subsections (1) and (3), after "Channel 3" there shall be inserted ", Channel 4".
- (3) In subsection (5), at the end there shall be inserted-
  - " 'Channel 4 licence' means-
  - (a) the licence referred to in section 231(1)(b) of the Communications Act 2003; and
  - (b) a licence renewing that licence on the first or any subsequent occasion."
- (4) This section has effect in relation only to financial years beginning after the television transfer date.

#### Section 185 of the Broadcasting Act 1990

- (1) The Commission shall, for the financial year which includes the commencement of this section and each subsequent financial year, determine an aggregate amount which they consider it would be appropriate for the holders of Channel 3 and Channel 5 licences to contribute, in accordance with this section, towards the expenses incurred by the nominated body in connection with the maintenance by it of a national television archive.
- (2) In this section "the nominated body" means such body as may for the time being be nominated by the Commission for the purposes of this section, being a body which—
  - (a) is for the time being a designated body for the purposes of section 75 of the [1988 c. 48.] Copyright, Designs and Patents Act 1988 (recordings for archival purposes), and
  - (b) appears to the Commission to be in a position to maintain a national television archive.
- (3) A Channel 3 or Channel 5 licence shall include conditions requiring the licence holder to pay to the Commission, in respect of each of the financial years mentioned in subsection (1), such amount as they may notify to him for the purposes of this section, being such proportion of the aggregate amount determined for that year under that subsection as they consider appropriate (and different proportions may be determined in relation to different persons).
- (4) Any amount received by the Commission by virtue of subsection (3) shall be transmitted by them to the nominated body.
- (5) In this section—
 

"the Commission" means the Independent Television Commission; and

"Channel 3 licence" and "Channel 5 licence" have the same meaning as in Part I of this Act.

Paul Mulqueen,  
Assistant Principal,  
Broadcasting Policy Division,  
Department of Communications, Marine and Natural Resources,  
29-31 Adelaide Road,  
Dublin 2.

Tel: 353 -1- 6783092  
Fax: 353 -1- 6783099  
[Paul.Mulqueen@dcmnr.gov.ie](mailto:Paul.Mulqueen@dcmnr.gov.ie)

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This is also to certify that this mail has been scanned for viruses.

Tá eolas sa teachtaireacht leictreonach seo (agus b'fhéidir sa chomhaid ceangailte leis) a d'fhéadfadh bheith príobháideach nó faoi rún. Is le h-aghaidh an duine/na ndaoine nó le h-aghaidh an aonáin atá ainmnithe thuas agus le h-aghaidh an duine/na ndaoine sin amháin atá an t-eolas. Murab ionann tusa agus an té a bhfuil an teachtaireacht ceaptha dó bíodh a fhios agat nach gceadaítear nochtadh, cóipeáil, scaipeadh nó úsáid an eolais agus/nó an chomhaid seo. Más trí earráid a fuair tú an teachtaireacht leictreonach seo cuir, más é do thoil é, an té ar sheol an teachtaireacht ar an eolas láithreach.

Deimhnítear leis seo freisin nár aimsíodh víreas sa phost seo tar éis a scanadh.

57

Paul Mulqueen

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**From:** Elleonora.SOARES@ec.europa.eu  
**Sent:** 28 March 2007 16:12  
**To:** Bill Morrissey; Paul Mulqueen  
**Subject:** Case E4/2005 State Financing of RTÉ and TG4

Dear Bill and Paul,

I refer to my call with Bill yesterday (thank you very much for the explanations!) where we touched very briefly on the question of timing. I would very much appreciate if you could give me an up-date on how the work on the [big] Bill is proceeding and what the remaining steps are. If you could also explain a bit the possible impact of a shift in Government that would be useful. It would help me a lot if I could get a reply before tomorrow afternoon. I hope that is feasible.

Thank you for your help!

Kind regards,

Elleonora

**Paul Mulqueen**

**From:** Elleonora.SOARES@ec.europa.eu  
**Sent:** Tuesday, April 24, 2007 6:08 PM  
**To:** Paul Mulqueen; Bill Morrissey  
**Subject:** E4/2005 State Financing of RTE and TG4

Hi Paul and Bill,

Thank you for the update and the report. It was useful and I have read it with great interest. It will be interesting to see the next draft of the Bill.

Talking about the Bill, going through it again, I noted down some very minor questions - or rather clarifications - that I was hoping you and Bill could help me with. I believe most can be answered really quickly - unless they will be substantially amended.

**Questions**

- a) Head 2 - presumably RTE and TG4 are covered by the definition of broadcaster?
- b) Head 25 - what is the difference between 25(h) "advise the Minister as to the sector impact" and 25 (i) "consult with the minister as to the sector impact?" What is actually meant by a sector impact test and how do you see it carried out? Can you provide an example? Similarly with a public value test.
- c) How do you envisage carrying out the public value and/or sector impact test under for example, Head 75, Head 109(1)(g)-(i), Heads 114, 106 and 107. How do you envisage the sector impact test under for example Head 100(2), Head 102(1) and head 104(3)?
- d) Head 27(1) - are RTE and TG4 covered? In general, what are the consequences for not complying?
- e) Head 40 - Please confirm that TG4 (not only RTE and other broadcasters) is covered.
- f) Head 41 - Please confirm that RTE and TG4 are covered as any other broadcaster.
- g) Head 47 - Are RTE and TG4 covered by this provision?
- h) Looking at Head 109(6) and Head 88 - if RTE makes inclusions to its memorandum of association these presumably need to be approved by the Minister. Please confirm. Similarly for the same provisions relating to TG4.
- i) During the April 27 2006 meeting you mentioned that Head 109(6) is not intended to allow RTE to include new objectives into its remit but only to grant it the power to buy property. Please confirm that this is the intention and that the same is true for the very similar provision relating to TG4's remit.
- j) During the April 27 2006 meeting you also mentioned that Head 109(7) is only intended to ensure that RTE has the necessary powers to carry out its objectives. Please confirm that that is the only intention. Similarly for the provision governing TG4's remit.
- k) Head 110(5) - Is the meaning that all and any change to RTE or TG4's remit requires Parliament approval? If so, please confirm that there are no exceptions.
- l) Head 116(3) - Please confirm that any ad hoc payments are, and would be, for public service functions only and explain why and when such a payment could be necessary. It is assumed that any ad hoc payment will be notified to the European Commission. Comments?
- m) In the Irish Government's reply to the Commission dated 30 May 2005, paragraph 30, it is stated that it will be proposed to require RTE to conduct its commercial activities under market conditions. This seems not to be reflected in the current Bill. Please let me know if I have missed the relevant Head(s) and if not, please explain why this is not reflected in the Bill. Please also confirm that any such proposal would also cover TG4.

n) I note TV3's concerns that the Bill does not exclude that persons with current or previous interest in RTE o. 34 are members of the new Broadcasting Authority. Please explain to what extent Heads 11 and 88 (or any other Head) leave room for employees of RTE, TG4 or the Authority to be involved in each others business.

I would appreciate if you could have an answer for me by next **Wednesday, May 2**. If it is possible to let me know by then how you are doing on the particular points that we have been discussing in our various exchanges and meetings that would be great. However, I do understand that this may not be possible.

Kind regards,  
Elleonora

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**From:** Paul Mulqueen [mailto:Paul.Mulqueen@dcmnr.gov.ie]  
**Sent:** Friday, April 20, 2007 11:29 AM  
**To:** SOARES Elleonora (COMP)  
**Subject:**

Hi Elleonora,

Just a short email to update you on the progress of the draft general scheme of the Broadcasting Bill and the Broadcasting (Amendment) Bill.

#### Draft general scheme of the Broadcasting Bill

The Joint Committee on Communications Marine and Natural Resources completed its public consultation (eConsultation process) into the draft general scheme of the Broadcasting Bill on the 18<sup>th</sup> April. I attach for information a copy of the Committee's report.

The Minister is now considering the report to ascertain whether changes are required to the draft general scheme of the Broadcasting Bill.

In respect of a final timescale for publication of the Bill, much will depend on the wishes of the incoming Minister. It is anticipated that the Taoiseach will next week announce a date in late May for the Irish general election. It is likely that a new Government will be formed in June.

As requested my colleague Bill Morrissey is currently preparing a list of the existing legislative provisions that will remain in force on enactment of the draft general scheme of the Broadcasting Bill, it is hoped to forward this to you during the course of next week.

#### Broadcasting (Amendment) Bill

As you are aware, the Broadcasting (Amendment) Bill 2006 was introduced into the Houses of the Oireachtas in December 2006. The Bill passed all stages in the Houses of the Oireachtas on the 3<sup>rd</sup> of April 2007 and was signed by the President on the 10th of April 2007. In addition the Minister commenced on the 18<sup>th</sup> April 2007 by order the operation of all sections of what is now the Broadcasting (Amendment) Act 2007.

I attach for information a copy of the Bill as passed by Dáil Éireann. We are currently awaiting

a pdf version of the Act, which I will forward to you once it becomes available, however the text of the Bill as passed by Dáil Eireann and the final act is the same.

This new legislation develops a transparent regulatory framework for digital terrestrial broadcasting and to begin the process of analogue switch-off in Ireland, and contains certain obligations for PSB's and Regulators. The legislation also amends the public service remit of the RTÉ Authority to require it to provide a television and radio broadcasting service to Irish communities outside the island of Ireland.

If you have any particular queries regarding the new legislation or would like to be briefed either Kevin, Bill or myself would be delighted to assist.

Paul Mulqueen,  
Assistant Principal,  
Broadcasting Policy Division,  
Department of Communications, Marine and Natural Resources,  
29-31 Adelaide Road,  
Dublin 2.

Tel: 353 -1- 6783092  
Fax: 353 -1- 6783099  
[Paul.Mulqueen@dcmnr.gov.ie](mailto:Paul.Mulqueen@dcmnr.gov.ie)

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Deimhnítear leis seo freisin nár aimsíodh víreas sa phost seo tar éis a scanadh.

## DRAFT

## Questions

a) Head 2 - presumably RTE and TG4 are covered by the definition of broadcaster?

Response: RTÉ and Teilifis na Gaeilge (TG4) are included within the scope of the definition of a broadcaster.

b) Head 25 - what is the difference between 25(h) "advise the Minister as to the sector impact" and 25 (i) "consult with the minister as to the sector impact?" What is actually meant by a sector impact test and how do you see it carried out? Can you provide an example? Similarly with a public value test.

c) How do you envisage carrying out the public value and/or sector impact test under for example, Head 75, Head 109(1)(g)-(i), Heads 114, 106 and 107. How do you envisage the sector impact test under for example Head 100(2), Head 102(1) and head 104(3)?

Response to b) and c): In relation to the distinction between "advising" and "consulting", whilst further work is required to ensure consistency of language in the formal legal text of the Broadcasting Bill, the primary intent is that the BAI should "advise" the Minister as to the sectoral impact, and "consult" with the Minister as to the public value, of a particular proposal.

This distinction derives from the view that the BAI will be the principal expert body as far as conducting sectoral impact assessments are concerned (and as such will be in a position to "advise" the Minister), but that whilst having an important contribution to make in the decision making process in relation to public value tests, the BAI will not be the "sole" expert voice on which the Minister will base his or her decisions (hence the use of the phrase "consult").

The current draft general scheme does not lay out the specifics of how a sectoral impact test would be conducted (and as such allows the BAI considerable flexibility and independence as to how it goes about fulfilling its obligations) however the general intent is that the BAI should develop methodologies for the conduct of such assessments and that where possible the outcome of such assessments should be made public.

Head 75(5) outlines the particular process associated with the public value test.

Further consideration will be given to the modalities of the sectoral impact and public value tests prior to the publication of the formal legal text of the Broadcasting Bill.

d) Head 27(1) - are RTE and TG4 covered? In general, what are the consequences for not complying?

Response: Head 27(1)(c) to (h) applies to all broadcasters including RTÉ and Teilifis na Gaeilge (TG4). Head 27(1)(a) and (b) applies to commercial and community broadcasters but not RTÉ and Teilifis na Gaeilge (TG4) – commercial and community broadcasters derive their authorisation to broadcast by way of contract from the BAI