

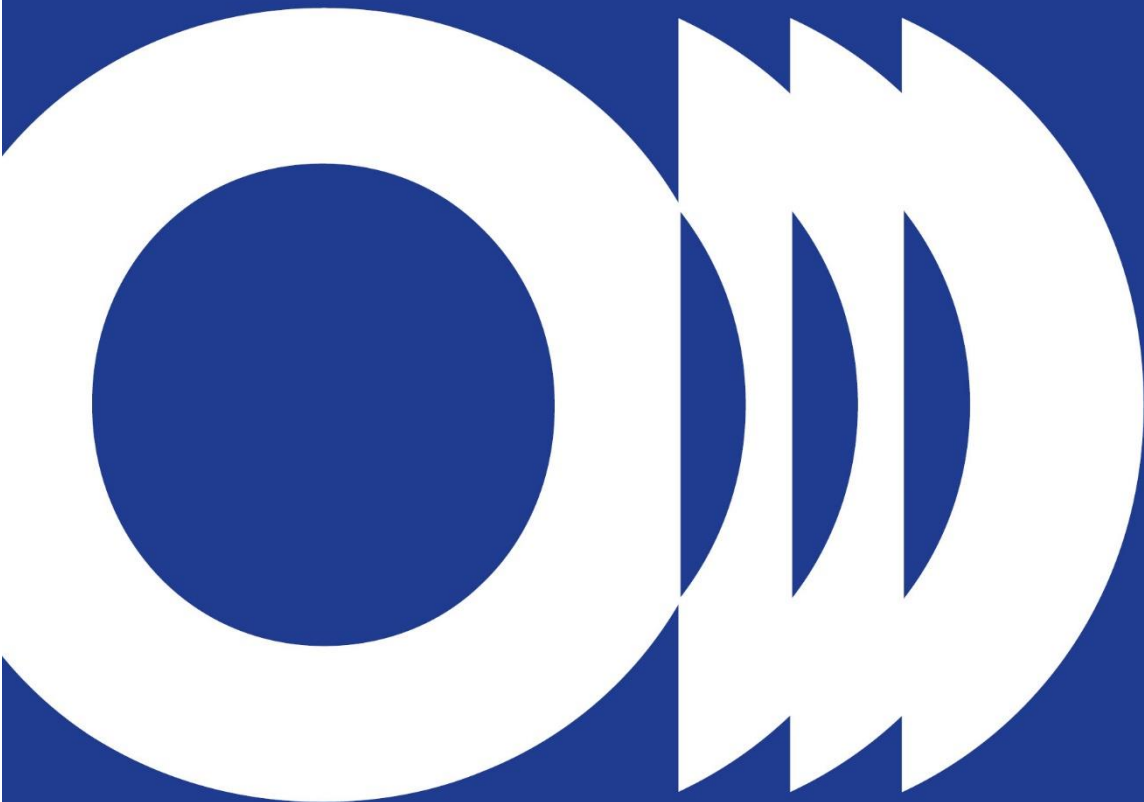
EBU

OPERATING EUROVISION AND EURORADIO

POSITION PAPER

EBU response to the call for evidence on the evaluation of the public procurement Directives

11 MARCH 2025



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The European Broadcasting Union (EBU) is the world's leading alliance of public service media (PSM). Together, our 113 member organisations operate nearly 2,000 television, radio and online services across 56 countries. They also offer a wealth of content across third-party platforms, reaching an audience of more than one billion people around the world, in 153 languages.

We welcome the opportunity to comment on this European Commission's call for evidence on the evaluation of the public procurement Directives. PSM play a critical role in ensuring media pluralism, cultural diversity, and democratic discourse in the European Union. The Public Procurement Directives—2014/23/EU, 2014/24/EU, and 2014/25/EU—are key instruments in regulating procurement practices across the EU. However, their application must remain aligned with the unique characteristics and needs of PSM.

The following paper brings to the Commission's attention certain issues that are common to EBU Members. This response represents our preliminary input. We anticipate contributing further comments and refinements as the evaluation process and related consultations advance.

PSM would like to stress the continued importance of Article 10(b) of the Directive on Public Procurement 2014/24/EU which excludes from the scope of the Directive contracts for:

“the acquisition, development, production or co-production of programme material intended for audiovisual media services or radio media services, that are awarded by audiovisual or radio media service providers, or contracts for broadcasting time or programme provision that are awarded to audiovisual or radio media service providers. For the purposes of this point, ‘audiovisual media services’ and ‘media service providers’ shall, respectively, have the same meaning as pursuant to points (a) and (d) of Article 1(1) of Directive 2010/13/EU of the European Parliament and of the Council. ‘Programme’ shall have the same meaning as pursuant to point (b) of Article 1(1) of that Directive, but shall also include radio programmes and radio programme materials. Furthermore, for the purposes of this provision, ‘programme material’ shall have the same meaning as ‘programme’;”

This provision ensures that such contracts are not subject to rigid procurement rules that could undermine (i) editorial independence (acting otherwise contracts for programming would be based on competitive bidding and pure economic considerations rather than editorial and cultural considerations), and (ii) cultural and linguistic diversity (PSM must be able to commission and co-produce local, regional, and minority-language content without being constrained by purely economic selection criteria).

As reminded in Directive 2014/24/EU¹, the aim of this exclusion is to “allow aspects of cultural or social significance to be taken into account” in the awarding of public contracts for certain audiovisual and radio media services. This provision can be traced back to Council Directive 92/50/EEC², and it was maintained and clarified in further reviews³.

The exception is of fundamental importance for public service media to fulfill their remit. In certain cases, such as the coverage of live events and news, tender processes are even simply inadequate considering the pressure and time constraints, thus putting at risk public service media’s activities. The principle of editorial independence of PSM is also upheld by the recently adopted European Media Freedom Act.⁴

The specific role of public service media in promoting cultural diversity has been recognised by the EU primary law (in particular the Amsterdam Protocol)⁵ and EU case law⁶. It was also recognized by the 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, as well as the Council of Europe’s Recommendation on media pluralism and diversity of media content⁷. Finally, the recently adopted European Media Freedom Act also acknowledges the special role that public service media play in supporting media pluralism by ensuring that citizens and businesses have access to a diverse content offering.⁸

Also, we would like to underline that this provision must be interpreted in a dynamic way in accordance with the evolution of other European legal instruments, such as the Audiovisual Media Services Directive. It should also remain technologically neutral and apply to all audiovisual, radio media services, as well as hybrid services (e.g., linear and non-linear services, offline/online, audio podcasts and other related media services).⁹ This point is partly addressed by Recital 23 of Directive 2014/24/EU and could be strengthened.¹⁰

In view of these elements, Public Service Media ask the European Commission to maintain the exception in Article 10(b) of the Public Procurement Directive in future reviews of this text.

¹ See Recital 23 of [Directive 2014/24/EU](#) on Public Procurement.

² See Article 1(a)(iv) of [Directive 92/50/EEC](#) on the coordination of procedures for the award of public service contracts.

³ See Article 16(b) and Recital 25 of [Directive 2004/18/EC](#) on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts.

⁴ See Article 5(1) of [Regulation 2024/1083/EU](#) establishing a common framework for media services in the internal market (European Media Freedom Act).

⁵ The Amsterdam Protocol on the system of public broadcasting in Member States specifies that “the system of public broadcasting in the Member States is directly related to the democratic, social and cultural needs of each society and the need to preserve media pluralism”. The public service remit of broadcasting, defined by Member States, is thus closely linked to imperatives such as independence, media pluralism, cultural diversity and support for creativity.

⁶ The Court of Justice of the European Union explains case C-337/06 (Bayerischer Rundfunk) that the “broadcasting exclusion” of Article 16 (b) “reflects the same purpose as it is expressed in the German Constitution (Article 5), namely the guarantee of the independent and impartial completion of the public service broadcaster’s remit” (point 63).

⁷ See [CM/Rec\(2007\)2](#).

⁸ See Recitals 27 and 29 of [Regulation 2024/1083/EU](#) establishing a common framework for media services in the internal market (European Media Freedom Act).

⁹ Communication from the Commission on the application of State aid rules to public service broadcasting (Text with EEA relevance) *OJ C 257, 27.10.2009, p. 1–14*. The exemption should account for the fact that public service broadcasters distribute their content on a technology neutral basis, see fn 8.

¹⁰ Recital 23 of Directive 2014/24/EU states that “it should also be clarified that that exclusion should apply equally to broadcast media services and on- demand services (non-linear services).”

Further, we contend that the scope of exemptions under Article 10(b) of Directive 2014/24/EU could even be adapted to reflect the evolving media landscape, characterised by evolving media consumption habits and related needs of audiences/recipients, as well as increasing competition from private broadcasters and digital platforms. PSM must compete in an environment where private operators—unconstrained by public procurement rules—can rapidly acquire and deploy cutting-edge technical equipment essential for content production and broadcasting. In concrete terms, the purchase of lenses (variable focal length lenses dedicated to television production), cameras (UHD recording systems) or software for recording, editing, and post-production may e.g., be subject to a tender of 15 months, excluding the planning phase. As a result, there is a significant risk of acquiring technologically outdated equipment at high costs.

The current obligation for PSM to comply with public procurement rules for technical equipment procurement creates structural disadvantages, imposing slower decision-making, administrative burdens, and the disclosure of commercially sensitive information.

To ensure fair competition, we urge the Commission to extend the exemption in Article 10(b) of Directive 2014/24/EU to cover technical materials and services intended for programme production, co-production, broadcasting and distribution, overcoming the restrictive interpretation laid down in Recital 23.

For the same reason, we consider that the purchase of data services that are necessary to produce certain audio and audiovisual content, such as traffic data or opinion and polling data, should be covered by the exemption. Such services are the material basis for several audio and audiovisual programmes (e.g. traffic flashes, election news) and should be treated the same as programme material. For the avoidance of doubt, we would appreciate if the Commission could clarify, that the procurement of such data services for the purpose of audio and audiovisual content production is covered by the exemption.

Finally, any reform should remain internally coherent with other EU policy objectives, particularly those outlined in the Audiovisual Media Services Directive (AVMSD) and European Media Freedom Act. Procurement regulations should not undermine cultural diversity objectives or hinder public funding mechanisms designed to foster high-quality and pluralistic European content.