

Provisional text

JUDGMENT OF THE COURT (Fourth Chamber)

13 December 2018 (*)

(Reference for a preliminary ruling — State aid — Article 107(1) TFEU — Article 108(3) TFEU — Public broadcasting institutions — Financing — Legislation of a Member State under which all adults possessing a dwelling within the country are required to pay a contribution to public broadcasters)

In Case C-492/17,

REQUEST for a preliminary ruling under Article 267 TFEU from the Landgericht Tübingen (Regional Court, Tübingen, Germany), made by decision of 3 August 2017, received at the Court on 11 August 2017, in the proceedings

Südwestrundfunk

v

Tilo Rittinger,

Patrick Wolter,

Harald Zastera,

Dagmar Fahner,

Layla Sofan,

Marc Schulte,

THE COURT (Fourth Chamber),

composed of T. von Danwitz, President of the Seventh Chamber, acting as President of the Fourth Chamber, K. Jürimäe (Rapporteur), C. Lycourgos, E. Juhász and C. Vajda, Judges,

Advocate General: M. Campos Sánchez-Bordona,

Registrar: K. Malacek, Administrator,

having regard to the written procedure and further to the hearing on 4 July 2018,

after considering the observations submitted on behalf of:

- Südwestrundfunk, by H. Kube, Hochschullehrer,
- the German Government, by T. Henze and J. Möller, acting as Agents,
- the Swedish Government, by A. Falk, H. Shev, C. Meyer-Seitz, L. Zettergren and A. Alriksson, acting as Agents,

– the European Commission, by K. Blanck-Putz, K. Herrmann, C. Valero and G. Braun, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 26 September 2018,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Articles 49, 107 and 108 TFEU, Article 11 of the Charter of Fundamental Rights of the European Union (‘the Charter’) and Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 (‘the ECHR’), and of the principles of equal treatment and non-discrimination.

2 The request has been made in proceedings between Südwestrundfunk (SWR), a *Land* broadcasting institution governed by public law, and Tilo Rittinger, Patrick Wolter, Harald Zastera, Marc Schulte, Lydia Sofan and Dagmar Fahner concerning enforcement instruments issued against them by SWR for recovery of the broadcasting contributions they failed to pay.

Legal context

EU law

Regulation (EC) No 659/1999

3 Article 1 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article [108 TFEU] (OJ 1999 L 83, p. 1) provided:

‘For the purpose of this Regulation:

- (a) “aid” shall mean any measure fulfilling all the criteria laid down in Article [107](1) of the [FEU] Treaty;
- (b) “existing aid” shall mean:
 - (i) ... all aid which existed prior to the entry into force of the Treaty in the respective Member States, that is to say, aid schemes and individual aid which were put into effect before, and are still applicable after, the entry into force of the Treaty;
 - (ii) authorised aid, that is to say, aid schemes and individual aid which have been authorised by the Commission or by the Council;
- ...
- (c) “new aid” shall mean all aid, that is to say, aid schemes and individual aid, which is not existing aid, including alterations to existing aid;

...’

4 Regulation No 659/1999 was repealed by Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ 2015 L 248, p. 9). That regulation contains the same definitions as those cited in the preceding paragraph of this judgment.

Regulation (EC) No 794/2004

5 Article 4 of Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Regulation No 659/1999 (OJ 2004 L 140, p. 1, and corrigendum OJ 2005 L 25, p. 74), headed ‘Simplified notification procedure for certain alterations to existing aid’, provides:

‘1. For the purposes of Article 1(c) of Regulation ... No 659/1999, an alteration to existing aid shall mean any change, other than modifications of a purely formal or administrative nature which cannot affect the evaluation of the compatibility of the aid measure with the common market. However an increase in the original budget of an existing aid scheme by up to 20% shall not be considered an alteration to existing aid.

2. The following alterations to existing aid shall be notified on the simplified notification form set out in Annex II:

- (a) increases in the budget of an authorised aid scheme exceeding 20%;
- (b) prolongation of an existing authorised aid scheme by up to six years, with or without an increase in the budget;
- (c) tightening of the criteria for the application of an authorised aid scheme, a reduction of aid intensity or a reduction of eligible expenses;

The Commission shall use its best endeavours to take a decision on any aid notified on the simplified notification form within a period of one month.

...’

German law

6 On 31 August 1991 the *Länder* concluded the Staatsvertrag für Rundfunk und Telemedien (State Treaty for broadcasting and telemedia) (GBl. 1991, p. 745), last amended by the 19. Rundfunkänderungsstaatsvertrag (19th Amending State Broadcasting Treaty) of 3 December 2015 (GBl. 2016, p. 126). Paragraph 12 of the State Broadcasting Treaty, headed ‘Appropriate financial provision, principle of financial equalisation’, reads as follows:

‘(1) The financial provision must put public-law broadcasting in a position to perform its constitutional and statutory tasks; it must in particular guarantee the maintenance and development of public-law broadcasting.

(2) Financial equalisation between the broadcasting institutions of the *Länder* is a component of the financing system of the [Arbeitsgemeinschaft der öffentlich-rechtlichen Rundfunkanstalten der Bundesrepublik Deutschland (Consortium of public-law broadcasting institutions of the Federal Republic of Germany) (ARD)]; it guarantees in particular the proper performance of tasks by the institutions Saarländer Rundfunk (Saarland Radio) and Radio Bremen. The extent of the financial equalisation fund and its adjustment to the broadcasting contribution shall be determined in accordance with the Rundfunkfinanzierungsstaatsvertrag (State Treaty on Broadcasting Financing).’

7 Under Paragraph 13 of the State Broadcasting Treaty, headed ‘Financing’:

‘Public-law broadcasting shall be financed by broadcasting contributions, income from advertising and other income; the primary source of financing shall be the broadcasting contribution. Programmes and offers within its mandate in return for special payment are not permitted; ...’

8 Paragraph 14 of the State Broadcasting Treaty, headed ‘Financial needs of public-law broadcasting’, provides:

‘(1) The financial needs of public-law broadcasting shall be examined and ascertained on a regular basis, in accordance with the principles of economy and thrift, including the associated rationalisation potential, on the basis of statements of need from the broadcasting institutions of the *Länder* which are members of the ARD, from [Zweites Deutsches Fernsehen (ZDF)] and from the public-law corporation “Deutschlandradio”, by the independent Kommission zur Überprüfung und Ermittlung des Finanzbedarfs der Rundfunkanstalten (Commission for examining and ascertaining the financial needs of broadcasting institutions).

(2) The basis of examination and ascertainment of the financial needs shall be, in particular:

1. the competitive continuation of existing broadcasting programmes, and the television programmes authorised by State treaty of all the *Länder* (existing needs),
2. new broadcasting programmes, permitted under the law of the *Länder*, which participate in new technical broadcasting possibilities in the production and for the diffusion of broadcast programmes, and the possibility of organising new forms of broadcasting (development needs),
3. the general development of costs and the specific development of costs in the media sector,
4. the development of income from contributions, advertising income and other income,
5. the investment, interest yield and targeted application of surpluses arising from the total annual income of the broadcasting institutions of the *Länder* which are members of the ARD, of ZDF or of Deutschlandradio exceeding total expenditure for the performance of their tasks.

...

(4) The contribution shall be set by State treaty.’

- 9 The *Land* of Baden-Württemberg (Germany), by the Baden-Württembergisches Gesetz zur Geltung des Rundfunkbeitragsstaatsvertrags (Law of Baden-Württemberg on the application of the State Treaty on the Broadcasting Contribution) of 18 October 2011, last amended by Article 4 of the 19th Amending State Broadcasting Treaty of 3 December 2015 (‘the Law on the broadcasting contribution’), implemented the State Treaty on the Broadcasting Contribution which abolished the previous fee on 31 December 2012 and replaced it by the contribution. The law sets out the rules for collection of the contribution, payment of which became compulsory for those liable to pay it from 1 January 2013. It provides in Paragraph 1:

‘The broadcasting contribution serves the appropriate provision of finance for public-law broadcasting within the meaning of Paragraph 12(1) of the State Broadcasting Treaty and the financing of the tasks set out in Paragraph 40 of the State Broadcasting Treaty.’

- 10 Paragraph 2 of the Law on the broadcasting contribution, headed ‘Broadcasting contribution in the private sphere’, provides:

‘(1) In the private sphere, a broadcasting contribution is payable for each dwelling by its owner (the contribution debtor).

(2) An owner of a dwelling is every adult who lives in the dwelling himself. Every person is presumed to be an owner who

1. is registered there in accordance with the law on registration or
2. is named as the lessee in the lease for the dwelling.

...

- (3) Where there are several contribution debtors, they shall be jointly and severally liable in accordance with Paragraph 44 of the Abgabenordnung (Code of taxation). ...
- (4) No broadcasting contribution shall be payable by contribution debtors who enjoy privileges on the basis of Article 2 of the Gesetz zu dem Wiener Übereinkommen vom 18. April 1961 über diplomatische Beziehungen (Law on the Vienna Convention of 18 April 1961 on diplomatic relations) of 6 August 1964 (BGBl. 1964 II, p. 957) or equivalent provisions of law.'
- 11 Under Paragraph 10 of the Law on the broadcasting contribution:
- '(1) The revenue from the broadcasting contribution shall belong to the *Land* broadcasting institution and, to the extent defined in the State Treaty on Broadcasting Financing, to [ZDF], Deutschlandradio and the *Land* media institution in whose territory the dwelling or business premises of the contribution debtor are situated or the vehicle is registered.
- ...
- (5) Arrears of broadcasting contributions shall be determined by the competent *Land* broadcasting institution. ...
- (6) Payment notices shall be enforced by the administrative enforcement procedure. ...
- (7) Each *Land* broadcasting institution shall itself assume the tasks allocated to it under this State Treaty and the associated rights and duties wholly or partly through the unit of the public-law *Land* broadcasting institutions operated within the framework of a public-law joint administrative body without legal capacity. The *Land* broadcasting institution is authorised to transfer to third parties individual activities in connection with collecting the contribution and ascertaining contribution debtors and to lay down detailed rules by the regulation under Paragraph 9(2). ...'
- 12 Since the detailed rules on administrative recovery of debts (*Beitreibung*) are also within the competence of the *Länder*, the *Land* of Baden-Württemberg on 12 March 1974 adopted the Verwaltungsvollstreckungsgesetz für Baden-Württemberg, Landesverwaltungsvollstreckungsgesetz (Law of Baden-Württemberg on administrative enforcement).

The disputes in the main proceedings and the questions referred for a preliminary ruling

- 13 The applicants in the main proceedings are persons owing the broadcasting contribution (*Rundfunkbeitrag*) who did not pay it or did not pay it in full.
- 14 In 2015 and 2016 SWR, the competent *Land* broadcasting institution, sent the contribution debtors enforcement instruments for the purpose of recovering the unpaid amounts for the period from January 2013 to the end of 2016.
- 15 When the contribution debtors still did not pay the contribution, SWR sought to enforce its claims on the basis of those instruments.
- 16 According to the order for reference, the debtors brought proceedings before the courts with territorial jurisdiction over them, namely the Amtsgericht Reutlingen (Local Court, Reutlingen, Germany), the Amtsgericht Tübingen (Local Court, Tübingen, Germany) and the Amtsgericht Calw (Local Court, Calw, Germany), against the enforcement procedures concerning them.
- 17 The Amtsgericht Tübingen (Local Court, Tübingen) allowed the three applications brought before it by the debtors concerned. The actions brought before the Amtsgericht Reutlingen (Local Court, Reutlingen) and the Amtsgericht Calw (Local Court, Calw) were dismissed.

- 18 According to the documents before the Court, the parties whose claims were dismissed all appealed to the referring court against the judgments dismissing their claims.
- 19 The referring court, which has joined the cases, states that the disputes in the main proceedings essentially concern questions regarding the law on the enforcement of unpaid debts, but those questions are closely connected with the applicable provisions of substantive law.
- 20 The referring court takes the view that the provisions of the legislation in question are contrary to EU law.
- 21 First, the court observes that German public broadcasting is partly financed by the broadcasting contribution. The contribution must in principle be paid, on pain of a fine, by all adults living in Germany, and in the *Land* of Baden-Württemberg is paid in particular to the public broadcasters SWR and ZDF. The contribution constitutes State aid within the meaning of Article 107(1) TFEU in favour of those broadcasters which should have been notified to the Commission pursuant to Article 108(3) TFEU.
- 22 The court notes that the previous broadcasting fee, which was payable on the basis of possession of a receiving device, was substantially altered on 1 January 2013 with the entry into force of the obligation to pay the broadcasting contribution, in that it is now payable by every owner of a dwelling. It recalls that the German system of financing public broadcasting was assessed by the Commission in the context of the permanent examination of aid schemes existing in the Member States, under Article 108(1) TFEU. In this respect, it appears from the documents before the Court that, in the Commission's decision of 24 April 2007 (C(2007) 1761 final — State aid E 3/2005 (ex CP 2/2003, CP 232/2002, CP 43/2003, CP 243/2004 and CP 195/2004) — Financing of public service broadcasters in Germany (ARD/ZDF)) ('the decision of 24 April 2007') concerning that system, the Commission found that the broadcasting fee was to be classified as existing aid. The referring court further considers that, because of the substantial amendments made to the financing of broadcasting by the Law on the broadcasting contribution, the new system of financing should have been notified. Furthermore, the resulting State aid is not compatible with the internal market in accordance with Article 107(3) TFEU.
- 23 Second, the broadcasting contribution is contrary to EU law, in so far as the revenue from that contribution is used to finance the establishment of a new terrestrial digital broadcasting system, DVB-T2, the use of which by foreign broadcasters is not provided for. In the referring court's view, the situation is similar to that of the case in which judgment was given on 15 September 2011, *Germany v Commission* (C-544/09 P, not published, EU:C:2011:584), concerning the transition from analogue to digital transmission technology.
- 24 The referring court considers that the contribution at issue in the main proceedings should in fact be equated to a special purpose tax (*Zwecksteuer*). The replacement of the broadcasting fee previously levied by a person-based broadcasting contribution was an essential change to the public broadcasting financing system. Thus, unlike the previous system of financing, payment of this contribution did not give rise to an individual counterpart for those liable to pay it. The entire adult population possessing a dwelling in Germany thus contributed to the financing of the public broadcasting service, as in the case of taxes. It is financing by the most part from the State within the meaning of the judgment of the Court of 13 December 2007, *Bayerischer Rundfunk and Others* (C-337/06, EU:C:2007:786). The present system of contributions thus constitutes unlawful aid for the introduction of the DVB-T2 system, financed by taxation.
- 25 Third, as a result of the legislation at issue, public broadcasters enjoy a number of advantages not available to private broadcasters, which constitute an economic advantage and, in view of the general nature of the obligation to pay the broadcasting contribution, State aid. Those advantages consist in particular in the exceptions to the ordinary law which allow public broadcasters themselves to issue the enforcement instruments for the enforcement of those debts. That method of issuing enforcement instruments is quicker, simpler and cheaper than having recourse to judicial proceedings for the recovery of debts. Moreover, it is disadvantageous for users, in that their opportunity to bring proceedings and have a court review the case before the enforcement instrument is issued and enforced is excluded or made extremely difficult.

26 Fourth, the Law on the broadcasting contribution, in particular Paragraphs 2 and 3, infringes the freedom of information mentioned in Article 11 of the Charter and Article 10 of the ECHR. The broadcasting contribution is deliberately structured as an obstacle to access to all kinds of information transmitted by satellite, cable or mobile telephone network. The broadcasting contribution is payable by an individual regardless of whether he actually makes use of the public broadcasters' programmes.

27 Fifth, according to the referring court, the broadcasting contribution is contrary to freedom of establishment. It also infringes the principle of equal treatment and produces discrimination against women. On that last point, the referring court observes that the contribution is payable per dwelling regardless of the number of persons living there, so that the amount of the contribution to be paid by an adult varies considerably according to the number of persons in the household. Single parents, a majority of whom are women, are disadvantaged compared to adults living together.

28 In those circumstances, the Landgericht Tübingen (Regional Court, Tübingen, Germany) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

- '(1) Is the [Law on the broadcasting contribution] ... incompatible with EU law because the contribution unconditionally levied since 1 January 2013 in principle from every adult living in the German *Land* of Baden-Württemberg to finance the public service broadcasters SWR and ZDF constitutes preferential aid that infringes EU law for the exclusive benefit of those public service broadcasting bodies compared to private broadcasting organisations? Are Articles 107 and 108 TFEU to be interpreted as meaning that the Law on the broadcasting contribution should have been approved by the Commission and is invalid without that approval?
- (2) Are Articles 107 and 108 TFEU to be interpreted as encompassing the provision laid down in the [Law on the broadcasting contribution] under which a contribution for the exclusive benefit of official/public-law service broadcasters is unconditionally levied in principle from every adult living in Baden-Württemberg, because that contribution contains preferential aid that infringes EU law with the effect that broadcasters from EU States are excluded for technical reasons, as the contributions are used to set up a competing transmission method (DVB-T2 monopoly) whose use by foreign broadcasters is not provided for? Are Articles 107 and 108 TFEU to be interpreted as encompassing not only direct financial aid but also other privileges with economic relevance (right to issue enforcement instruments, authority to act both as an economic undertaking and also as an official body, better position in the calculation of debts)?
- (3) Is it compatible with the principle of equal treatment and the prohibition of preferential aid if, under a national Baden-Württemberg law, a German television broadcaster which is organised under public law and takes the form of a public body but which at the same time competes with private broadcasters in the advertising market is put in a privileged position compared to them, in that, unlike its private competitors, it does not have to go through the ordinary courts to obtain an enforcement instrument for its claims against viewers before being able to enforce these claims, but is entitled itself to create an instrument equally entitling it to enforcement without the need for a court?
- (4) Is it compatible with Article 10 of the ECHR/Article 11 of the Charter ... that a Member State provides in a national Baden-Württemberg law that a television broadcaster which takes the form of a public body is entitled to demand a contribution, on pain of an administrative fine, to finance precisely that broadcaster from every adult living within the broadcasting territory, regardless of whether he even possesses a receiving device or uses only other broadcasters, namely foreign or private ones?
- (5) Is the [Law on the broadcasting contribution], in particular Paragraphs 2 and 3, compatible with the principle of equal treatment and the prohibition of discrimination in EU law if the contribution payable unconditionally by every resident for the purpose of financing a public-law television broadcaster burdens a single parent much more per head than a member of a shared household? Is

[Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services (OJ 2004 L 373, p. 37)] to be interpreted as also encompassing the contribution at issue and as meaning that an indirect disadvantage is sufficient when it is 90% women who are more heavily burdened in the actual circumstances?

- (6) Is the [Law on the broadcasting contribution], in particular Paragraphs 2 and 3, compatible with the principle of equal treatment and the prohibition of discrimination in EU law if the contribution payable unconditionally by every resident for the purpose of financing a public-law television broadcaster is twice as high for persons who need a second home for work reasons than for other workers?
- (7) Is the [Law on the broadcasting contribution], in particular Paragraphs 2 and 3, compatible with the principle of equal treatment in EU law, the prohibition of discrimination in EU law and the freedom of establishment in EU law if the contribution payable unconditionally by every resident for the purpose of financing a public service television broadcaster is organised as regards persons in such a way that, where the reception is the same, a German living immediately before the border with a neighbouring EU State owes the contribution solely because of the location of his place of residence, but a German living immediately beyond the border does not owe the contribution, and similarly a foreign EU citizen who for work reasons has to settle immediately beyond an internal EU border is charged the contribution while an EU citizen immediately before the border is not, even if neither is interested in receiving the German broadcaster?'

Admissibility of the request for a preliminary ruling

- 29 SWR submits that, in accordance with the national procedural rules, the referring court, which consists of a single judge, should have transferred the proceedings to a formation of the court with several judges, so that the single judge was not entitled to make a reference to the Court for a preliminary ruling under Article 267 TFEU.
- 30 On this point, it suffices to recall that by virtue of the second paragraph of Article 267 TFEU, whenever a question that is capable of being the subject of a reference for a preliminary ruling is raised in a case pending before a court of a Member State, that court may, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court to rule on it.
- 31 In this connection, it must be pointed out that the functioning of the system of cooperation between the Court of Justice and the national courts established by Article 267 TFEU requires, as does the principle of primacy of EU law, the national court to be free, at whatever point during the proceedings it considers appropriate, to refer to the Court for a preliminary ruling any question that it considers necessary (see, to that effect, judgment of 4 June 2015, *Kernkraftwerk Lippe-Ems*, C-5/14, EU:C:2015:354, paragraph 35 and the case-law cited).
- 32 Furthermore, it should be recalled that it is not for the Court to determine whether the decision to make the reference was taken in accordance with the national rules on the organisation of the courts and their procedure (order of 6 September 2018, *Di Girolamo*, C-472/17, not published, EU:C:2018:684, paragraph 24 and the case-law cited).
- 33 SWR's argument based on an alleged failure to comply with the national rules on the organisation of the courts is not therefore capable of preventing the referring court from requesting the Court for a preliminary ruling under Article 267 TFEU.
- 34 The request for a preliminary ruling is therefore admissible.

Consideration of the questions referred

Admissibility

- 35 SWR and the German Government submit essentially that, as regards most of the questions referred, the interpretation of EU law sought by the referring court bears no relation to the actual facts or purpose of the main actions and the problem raised is hypothetical. Only the questions relating to the public broadcaster's privileges in connection with enforcement are relevant in this respect.
- 36 It must be recalled that, in the context of the cooperation between the Court and the national courts provided for in Article 267 TFEU, it is solely for the national court before which a dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine in the light of the particular circumstances of the case both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted concern the interpretation of EU law, the Court is in principle bound to give a ruling (judgment of 26 July 2017, *Persidera*, C-112/16, EU:C:2017:597, paragraph 23 and the case-law cited).
- 37 Nonetheless, the Court cannot rule on a question submitted by a national court where it is quite obvious that the interpretation sought by that court of a rule of EU law bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (judgment of 31 January 2008, *Centro Europa 7*, C-380/05, EU:C:2008:59, paragraph 53).
- 38 It must be recalled that the need to provide an interpretation of EU law which will be of use to the national court means that the national court is bound to observe scrupulously the requirements concerning the content of a request for a preliminary ruling, expressly set out in Article 94 of the Rules of Procedure of the Court of Justice, of which the referring court should be aware (judgment of 26 July 2017, *Persidera*, C-112/16, EU:C:2017:597, paragraph 27). Those requirements are, moreover, stated in the Court's Recommendations to national courts and tribunals in relation to the initiation of preliminary ruling proceedings (OJ 2018 C 257, p. 1).
- 39 Thus it is essential, as is stated in Article 94(c) of the Rules of Procedure, that the reference for a preliminary ruling itself must contain a statement of the reasons which prompted the national court to inquire about the interpretation or validity of certain provisions of EU law, and the relationship between those provisions and the national legislation applicable to the case before the referring court. It is also essential, as is provided for in Article 94(a) of the Rules of Procedure, that the order for reference itself contains, at least, an account of the facts on which the questions are based. In accordance with the case-law of the Court, those requirements are of particular importance in the area of competition, where the factual and legal situations are often complex (judgment of 26 July 2017, *Persidera*, C-112/16, EU:C:2017:597, paragraphs 28 and 29).
- 40 In the present case, first, by Questions 1 to 3 the referring court essentially questions the Court on the interpretation of Articles 107 and 108 TFEU, in order to determine whether the Commission should have been notified, pursuant to Article 108(3) TFEU, of the alteration to the German broadcasting finance system made by the Law on the broadcasting contribution, and whether Articles 107 and 108 TFEU preclude such a system.
- 41 Contrary to the submissions of SWR and the German Government, the fact that the disputes in the main proceedings concern the recovery of the broadcasting contribution does not rule out the possibility of the referring court having to interpret and apply the concept of aid in Article 107(1) TFEU, in particular to determine whether or not the broadcasting contribution should have been subjected to the advance review procedure under Article 108(3) TFEU and, if necessary, to ascertain whether the Member State concerned complied with that obligation.

- 42 It follows from the direct effect of Article 108(3) TFEU that national courts must guarantee to individuals that all the appropriate conclusions will be drawn from an infringement of that provision, in accordance with their national law, as regards the validity of implementing measures, the recovery of financial support granted in disregard of that provision and possible interim measures (see, to that effect, judgments of 11 July 1996, *SFEI and Others*, C-39/94, EU:C:1996:285, paragraphs 39 and 40; of 16 April 2015, *Trapeza Eurobank Ergasias*, C-690/13, paragraph 52; and of 11 November 2015, *Klausner Holz Niedersachsen*, C-505/14, EU:C:2015:742, paragraphs 23 and 24).
- 43 Moreover, the Court can give the referring court full guidance on the interpretation of EU law in order to enable it to assess the compatibility of a national measure with that law for the purposes of deciding the case before it. In the case of State aid, the Court can in particular give the referring court guidance on interpretation in order to enable it to determine whether a national measure may be classified as State aid under EU law (judgment of 10 June 2010, *Fallimento Traghetti del Mediterraneo*, C-140/09, EU:C:2010:335, paragraph 24) or whether that measure constitutes existing aid or new aid (see, to that effect, judgment of 19 March 2015, *OTP Bank*, C-672/13, EU:C:2015:185, paragraph 60).
- 44 Consequently, with respect to the purpose of the disputes in the main proceedings, Questions 1 to 3 do not appear manifestly irrelevant, in that they concern the interpretation of Articles 107 and 108 TFEU.
- 45 Next, it must be stated that by the first part of Question 2 the referring court raises more specifically the question whether the broadcasting contribution at issue is compatible with Articles 107 and 108 TFEU, in so far as that contribution might involve State aid for the introduction of a transmission system using the DVB-T2 standard whose use by broadcasters established in other EU Member States is not provided for.
- 46 However, the order for reference does not contain the factual or legal material to enable the Court to give a useful answer to the referring court's questions in this respect. In particular, while the referring court states that the broadcasting contribution enabled that system to be financed for the sole benefit of broadcasters in Germany, it does not explain the conditions of financing of that system or the reasons why other broadcasters are excluded from using the system.
- 47 Consequently, the first part of Question 2 is inadmissible. Questions 1 to 3 are otherwise admissible.
- 48 Second, by Questions 4 to 7 the referring court questions the Court on the interpretation of the right of freedom of expression and information laid down in Article 11 of the Charter and Article 10 of the ECHR, the provisions of Directive 2004/113, the principles of equal treatment and non-discrimination, and freedom of establishment.
- 49 However, the referring court provides no explanation as to the connection it finds between the provisions of EU law to which it directs those questions and the disputes in the main proceedings. In particular, it has not produced any specific element from which it might be considered that the persons in question in the main proceedings are in one of the situations referred to in those questions.
- 50 According to settled case-law of the Court, the justification for making a request for a preliminary ruling is not that it enables advisory opinions to be delivered on general or hypothetical questions, but rather that it is necessary for the effective resolution of a dispute concerning EU law (judgment of 21 December 2016, *Tele2 Sverige and Watson and Others*, C-203/15 and C-698/15, EU:C:2016:970, paragraph 130 and the case-law cited).
- 51 Questions 4 to 7 are therefore inadmissible.
- 52 In the light of all the above factors, only Question 1, the second part of Question 2, and Question 3 are admissible.

Substance

Question 1

- 53 It should be recalled, as a preliminary point, that, as the Advocate General observes in point 45 of his Opinion, it is common ground that the adoption of the Law on the broadcasting contribution altered existing aid within the meaning of Article 1(c) of Regulation No 659/1999.
- 54 In those circumstances, it must be understood that by Question 1 the referring court is asking essentially whether Article 1(c) of Regulation No 659/1999 must be interpreted as meaning that an alteration to the system of financing the public broadcasting of a Member State which, like that at issue in the main proceedings, consists in replacing a broadcasting fee payable on the basis of possession of a receiving device by a broadcasting contribution payable in particular on the basis of occupation of a dwelling or business premises constitutes an alteration to existing aid within the meaning of that provision which should be notified to the Commission under Article 108(3) TFEU.
- 55 It must be recalled that the first sentence of Article 4(1) of Regulation No 794/2004 provides that, for the purposes of Article 1(c) of Regulation No 659/1999, an alteration to existing aid means any change, other than modifications of a purely formal or administrative nature which cannot affect the compatibility of the aid measure with the internal market. In that respect, the second sentence of Article 4(1) of Regulation No 794/2004 specifies that an increase in the original budget of an existing aid scheme by up to 20% is not to be considered an alteration to existing aid.
- 56 In order to provide the referring court with a useful answer, it must therefore be determined whether the Law on the broadcasting contribution, in that it alters the basis of the obligation to pay the contribution whose purpose is to finance public broadcasting in Germany by providing that it is no longer payable on the basis of possession of a receiving device but on the basis in particular of occupation of a dwelling, constitutes an alteration to existing aid within the meaning of the provisions referred to in the preceding paragraph.
- 57 That question ultimately means that it must be determined whether the adoption of the Law on the broadcasting contribution entails a substantial alteration to the existing aid that was the subject of the decision of 24 April 2007, or whether that law is confined to making a modification of a purely formal or administrative nature which cannot affect the compatibility of the aid measure with the internal market.
- 58 As SWR, the German and Swedish Governments and the Commission argued in the observations they submitted to the Court, and as also follows from material in the documents before the Court, the substitution of the broadcasting contribution for the broadcasting fee is no more than an alteration to the existing aid which was the subject of the decision of 24 April 2007, and that alteration cannot be classified as substantial.
- 59 The alteration to the basis of payment of the broadcasting contribution did not affect the constituent elements of the system of financing German public broadcasting, as assessed by the Commission in connection with the decision of 24 April 2007.
- 60 Thus, first, it is common ground that the Law on the broadcasting contribution did not change the objective pursued by the system of financing German public broadcasting, since the broadcasting contribution, like the broadcasting fee it replaced, is still intended to finance the public broadcasting service.
- 61 Second, it is also common ground that the class of beneficiaries of the system is identical to that which existed previously.
- 62 Third, it does not appear from the points raised in oral argument before the Court that the Law on the broadcasting contribution altered the public service task assigned to the public broadcasters or the activities of those broadcasters capable of being subsidised by the broadcasting contribution.

- 63 Fourth, the Law on the broadcasting contribution altered the basis of liability to pay the contribution.
- 64 However, as pointed out *inter alia* by SWR, the German Government and the Commission, the alteration at issue in the main proceedings pursued essentially an objective of simplifying the conditions of levying the broadcasting contribution, in a context of evolving technologies for receiving the public broadcasters' programmes.
- 65 In addition, as the German Government and the Commission argued in the observations they submitted to the Court, and as the Advocate General observes in point 55 of his Opinion, the replacement of the broadcasting fee by the broadcasting contribution did not lead to a substantial increase in the compensation received by the public broadcasters to cover the costs associated with the public service tasks entrusted to them.
- 66 In those circumstances, in the light of the documentation available to the Court, it has not been shown that the Law on the broadcasting contribution entailed a substantial alteration to the system of financing public broadcasting in Germany which required the Commission to be notified of its adoption, pursuant to Article 108(3) TFEU.
- 67 In the light of the above, the answer to Question 1 is that Article 1(c) of Regulation No 659/1999 must be interpreted as meaning that an alteration to the system of financing the public broadcasting of a Member State which, like that at issue in the main proceedings, consists in replacing a broadcasting fee payable on the basis of possession of a receiving device by a broadcasting contribution payable in particular on the basis of occupation of a dwelling or business premises does not constitute an alteration to existing aid within the meaning of that provision which should be notified to the Commission under Article 108(3) TFEU.

Second part of Question 2 and Question 3

- 68 By the second part of Question 2 and Question 3, which should be considered together, the referring court essentially asks whether Articles 107 and 108 TFEU must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which confers on public broadcasters powers, as exceptions to the general law, allowing those broadcasters themselves to enforce claims in respect of unpaid broadcasting contributions.
- 69 As SWR and the German Government emphasised in the observations they submitted to the Court, the public authority rights enjoyed by public broadcasters in relation to recovery of the broadcasting contribution were taken into account by the Commission in its examination of the system of financing public broadcasting, and more particularly of that contribution, in connection with the decision of 24 April 2007. In the light of that decision, those rights, the aim of which is precisely to recover the contribution, must be regarded as an integral part of the existing aid constituted by the contribution.
- 70 As the Advocate General observes in point 87 of his Opinion, the Law on the broadcasting contribution made no alteration to those rights.
- 71 In those circumstances, it must be found that the Law on the broadcasting contribution is not liable to affect the assessment made by the Commission in connection with the decision of 24 April 2007 as regards those rights.
- 72 Moreover, as the Commission submitted in its written observations, and as the Advocate General stated in point 84 of his Opinion, the public authority rights enjoyed by public broadcasters in connection with the recovery of the broadcasting contribution are inherent in their public service tasks.
- 73 Consequently, the answer to the second part of Question 2 and to Question 3 is that Articles 107 and 108 TFEU must be interpreted as not precluding national legislation, such as that at issue in the main

proceedings, which confers on public broadcasters powers, as exceptions to the general law, allowing those broadcasters themselves to enforce claims in respect of unpaid broadcasting contributions.

Costs

- 74 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Fourth Chamber) hereby rules:

- 1. Article 1(c) of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article [108 TFEU] must be interpreted as meaning that an alteration to the system of financing the public broadcasting of a Member State which, like that at issue in the main proceedings, consists in replacing a broadcasting fee payable on the basis of possession of a receiving device by a broadcasting contribution payable in particular on the basis of occupation of a dwelling or business premises does not constitute an alteration to existing aid within the meaning of that provision which should be notified to the Commission under Article 108(3) TFEU.**
- 2. Articles 107 and 108 TFEU must be interpreted as not precluding national legislation, such as that at issue in the main proceedings, which confers on public broadcasters powers, as exceptions to the general law, allowing those broadcasters themselves to enforce claims in respect of unpaid broadcasting contributions.**

[Signatures]

* Language of the case: German.