
Austria: Financing and Transparency in the Case of the ORF. Strong Structures, Several Controversies and a Little Flexibility

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Abstract

Public service broadcasting (PSB) in Austria occupies a particularly central role in this small media market. Public debates about the ORF in Austria are controversial in relation to transparency issues, but less predominant when it comes to changes in the financing regime. ORF structures are strong and largely inflexible. Changes in financing regimes and transparency as a core value have been made, following formal requests by the European Commission. Overall, consumers have adapted comparatively slowly to digital content and this contributes to ORF's slower rate of change. Additionally, media law obstructs more stringent digitalisation efforts. Licence fees in Austria are accordingly still bound to devices, excluding the mobile phone. National debates are mainly led by political parties and ORF officials and frequently concern personnel and structural changes. ORF's distribution of content via apps and social media accounts is subject to controversial debates. Like in Germany, commercial players claim unfair competition as ORF's content is largely licence fee funded. In summary, ORF's strong structures, Austrian media consumption habits, and media and competition laws foster ORF's central position in Austria. These factors also impede further changes to its established financing regime.

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The Role and Market Position of Public Service Broadcasting in Austria

This chapter examines the role of the public debate on financing and transparency with regard to the Austrian public service broadcaster, the ORF (*Österreichischer Rundfunk*). We show that these two issues are highly relevant and have attracted considerable attention over the last years, although this attention is divided between the national and European arenas. Changes to the financing regime of the ORF were introduced in 2012 at the request of the European Commission but, at first, these were not the subject of intense national debate. Only recently have discussions around the financing models of the ORF gained urgency at the national levels, as the ORF law (Bundeskanzleramt 2012) requested a debate concerning this issue until the end of 2016.

We argue in this contribution that the strong position of the ORF in this comparatively small media market is the reason for why transparency and financing are debated to a different extent and scope in Austria. This constellation makes transparency a critical, national issue, whilst the evaluation of the financing models is treated as of secondary importance. A second factor that might explain the lack of public debate on the financing model is the relatively slow adjustment of the Austrian market to digital models for distributing news. Austrian news organisations operate in a market where news consumption habits have remained comparatively traditional, as digital and mobile forms of consuming content are developing more slowly compared to other countries (Fletcher et al. 2015; Newman et al. 2016).

According to the Austrian TV and Radio Licence law, all Austrian households with a television or radio need to register and pay a licence fee. The Federal Administrative Board decided in 2014 to exclude computer and mobile devices with internet access (Bundesverwaltungsgericht 2014). The *Gebühren Info Service GmbH* (GIS) is a 100% subsidiary of the ORF and administers the payments. The fee differs from one federal estate to another (*Länder*), but accounts for around 244 m € per year for TV and radio (GIS 2015). The licence fee accounts for 60% (578.4 m €) of the ORF's budget, and the remainder is obtained from

advertising (221 m €) and ‘other services’ (176.9 m €). In 2015, the overall budget consisted of 976.3 m € (ORF 2015).

The ORF provides a wide range of channels, including four television and 12 radio channels. These compete directly for audience attention with other national commercial channels, such as ATV, as well as with other German speaking channels, such as RTL, SRG, ARD and ZDF. According to a news consumption survey, 19% of the participants stated that, in 2015, they accessed the ORF online weekly, whilst 43% said that they used the TV-channel ORF II and 42% said that they used ORF I weekly for consuming news (Fletcher et al. 2015, p. 20). The *Digital News Report 2016*, however, shows that Austrian consumers are catching up with other countries (Newman et al. 2016). The ORF is, after the daily newspaper *Kronenzeitung*, the most influential news brand in the country and the fact that competitors were only granted access to the terrestrial TV market in 2001 favoured this development (Trappel 2007).

As consumers integrate new digital channels slowly into their consumption habits, the ORF has been even less pressured to explore new ways of distributing content. It was only in 2014 that the ORF launched their first news app. The restrictive nature of the new media law (Bundeskanzleramt 2012) also obstructs more stringent digitalisation efforts. This confirms once more that the environment in which the ORF operates contains strong, traditional structures (see also: Ortner et al. 2009). This situation supports the status quo and in only a few cases allows for debate which has the potential to trigger a more profound change to the existing structures.

Developments and Debates: Intervention of the European Commission and the Legal Consequences

The most fundamental change in the last few years was the legal amendment of the audiovisual laws in Austria. In 2010, the new KommAustria law (BGB1 2010/50 ‘Rundfunkrechtsnovelle’) amended the existing audiovisual laws to create a new regulatory structure that complies with the rules set by the European Audiovisual Media Service Directive (AVMSD). With the establishment of this new regulatory frame, the Austrian government reacted to the need to adapt the regulatory frame to the new situation created by the digitalisation of audiovisual content.

The changes enacted transformed the regulatory body from an authority subordinated to the Federal Chancellor (with all the decisions taken by the general director) into an independent panel authority which is not subject to instructions

from any other authority. The revision of the ORF Act in February 2010 expanded KommAustria's supervisory powers to include the ORF and its subsidiaries. The ORF is now steered by the communications regulator KommAustria, and the *Rundfunk und Telekom Regulierungs-GmbH*, that supports its activities (Rundfunk und Telekom Regulierungs-GmbH 2010). The Audiovisual Media Services Act (formerly the Private Television Act) implements the AVMSD and expands KommAustria's control over public service broadcasting (PSB) to include audiovisual media services on the Internet.

Based on paragraph 4 f) of the so-called 'ORF-law', KommAustria decided in 2012 that the ORF had to withdraw from social media and delete its 39 different Facebook accounts. This restrictive position towards the use of new platforms for distributing news significantly influenced the development in Austria. For instance, the ORF waited until 2014 to introduce its first news apps. In the same year, the constitutional court had decided that the use of Facebook accounts by the ORF did not violate the constitution. Today, the ORF uses social media and also several news apps to distribute its content.

In addition to the need to regulate the use of digital means of distributing ORF content, the other driver of this legal reform was the European Commission's legal action regarding the financing regime of the ORF (European Commission 2008b). The investigation was based on the European Commission's state aid rules, which the Commission considered were being violated in several countries, including Austria (European Commission 2008a; Steinmaurer 2012). Possible market activities beyond the public service commitment were detected by the Commission, particularly in the areas of sports programmes and online activities. The Commission therefore demanded a clarification of the public service remit as well as the introduction of ex-ante tests to evaluate the public value of any proposed programmes.

This discussion plays out in a wider context in which the Commission encouraged its member states to (a) 'Set out in a formal act a clear remit for public service broadcasting', (b) 'Ensure independent national monitoring of the fulfilment of the PSB remit', and (c) 'Ensure that the funding of the PSB is proportionate' (European Commission 2005). In reaction to this, many European countries developed public value tests to evaluate the impact of planned, publicly-funded media services prior to their introduction (see Breitenacker 2013; Donders and Moe 2011). The Commission closed its investigation by concluding that the 'financing regime of Austria's public service broadcaster ORF is now, following formal commitments from the Austrian Government, in line with EU state aid rules' (European Commission 2008b). Neeli Kroes, European Commissioner for Competition (2004–2010), stated that 'the commitments offered by Austria will ensure the right

balance between the need to ensure high quality PSB and the need to maintain a level playing field in the sector' (European Commission 2008b). The required changes were enacted through the Audiovisual Media Services Act, that established a financial fund for non-commercial audiovisual services (Bundeskanzleramt 2012).

According to the ORF-law, the licence fee has to be negotiated every five years. Accordingly, the ORF had to present a new proposal regarding the form and amount of the licence fee until the end of 2016. In the meantime, ORF general director Alexander Wrabetz emphasised the need for a new ORF reform. He proposed, for example, the introduction of a licence fee which includes streaming services and also mentioned the possibility of a fee per device or of opting for the household model. Wrabetz also articulated a need to experiment with new business models. Finally, he suggested a decentralisation of the budget administration. Wrabetz reiterated these claims after his re-election in 2016 (Wrabetz 2016).

Developments and Debates: Transparency as a Core Value

Similarly to the changes to the financing, the issue of transparency emerged following an EC legal request to introduce a public value test in Austria (European Commission 2009). Austria complied with this demand in 2009. At the same time, calls for stronger external and autonomous control of the tests arose in Austria (Wentzel 2012). Transparency was portrayed as an important dimension of public value, as defined by the ORF. According to the ORF public value consists of five dimensions of quality and 18 categories of success. The five dimensions of quality are (1) individual value, (2) social value, (3) Austria value (*Österreichwert*), (4) international value, and (5) organisational value. Within these five core dimensions, transparency is a sub-category of organisational value (Bundeskanzleramt 2010, § 4, 5, 10). Transparency is defined as 'giving people orientation' and as 'opening up', which was also the theme of the *Public Value Report* published in 2016 (ORF 2016, own translation). Opening up, as articulated by ORF representatives, means being open to people, but also to technological change and innovation, as Klaus Unterberger, Public-Value-Commissioner of the ORF, outlined (Der Standard 2016).

In public discussions, transparency has been claimed in three main areas in the last years; (1) handling information, (2) communicating processes inside the ORF, and (3) making human resources decisions. The discussions, however, have been less controversial and seem to fulfil something of a control function. Some

of these discussions were processed through parliamentary debates, with others in the media or via press releases (see, for example: NEOS 2014; ORF 2015, 2016; Der Standard 2016). One of the main debates in Austria was initiated by ORF journalists themselves. In 2015, the ORF general director suggested structural reform, with the introduction of a head of information, amongst other changes. ORF journalists reacted by writing a resolution in which they demanded complete transparency about the restructuring and its possible staffing implications. In the resolution, they claimed that, with the re-election of the general director due only the following year, party politics was influencing decisions that would shape the ORF's mission in the long term (Wirtschaftsblatt 2015). In 2016, several political parties, particularly the New Austria and Liberal Forum (NEOS) and the Greens, unsuccessfully demanded a public debate on television hosted by the candidates running for ORF general director (Wrabetz 2016; Der Standard 2016).

Actors, Positions and Impact

Whilst the audiovisual media law reforms in Austria were imposed by the European Commission, debates around this issue were less prominent initially. However, the implementation of the suggested reforms is likely to cause national debates in the longer term. In particular, the general issue of adjusting the licence fee to suit the new consumption habits was left unresolved, as an administrative court's decision from 2015 excluded Internet devices and streaming from the licence fee.

Recent discussion around the licence fee is fostered by the ORF general director and the association of private sector broadcasters (*Verband Österreichischer Privatsender*), but also by the political parties. The association of private sector broadcasters as well as the Austrian association of newspapers (*Verband Österreichischer Zeitungen*) have, in the past, demonstrated their increased activities and effectiveness in lobbying. Hence, it was the Austrian association of newspapers which, in 2012, demanded that the ORF should immediately close all its social media accounts, when the constitutional court ruled that the PSB should stop using Facebook to distribute its content. In 2009, the association of private sector broadcasters supported the Commission's investigation into the Austrian application of the PSB's financing regime (European Commission 2009). Representative Ernst Swoboda argued that 'this is not about weakening the ORF, but we must also ask what is sustainable for the market' (Wrabetz 2016, own translation). The association is lobbying intensely at the ORF Council (*Stiftungsrat*), the deciding organ in this matter. One of its key demands is the reduction of the ORF budget, particularly for marketing as well as copyright licences (Verband Österreichischer Privatsender 2016).

As the ORF general director proposed an increase of up to 10%, the political parties displayed a similar reluctance regarding a possible increase in the licence fee, albeit for different motives. The parties' take on this issue is important, because the ORF Council is filled according to party affiliation. This structural condition has fostered a situation in which the various parties have engaged frequently in questions concerning ORF policies. The Austrian People's Party (ÖVP) announced that it was available for negotiations if the ORF agreed to engage in fundamental structural reforms. Current minister for media Thomas Drozda, a member of the social democratic party (SPÖ), claiming that he favours a 'strong PSB', proposed an alternative plan entitled *New Media Sponsorship*. He also announced the creation of a parliamentary committee of enquiry (*Enquete Kommission*) in the course of the next year to discuss the future of the media in Austria. The Green Party followed this line, announcing that the PSB is in need of public support.

Other parties like the Freedom party (FPÖ) or the liberal NEOS suggest a fundamental restructuring of the ORF (Pressedienst der Parlamentsdirektion 2016). Particularly the NEOS has dwelt on this topic for some time, criticising the inadequacy of the licence fee. As early as 2014 the NEOS demanded the abolition of the licence fee amongst a number of other measures to improve the sustainability and public legitimacy of the Austrian PSB (NEOS 2014). The ORF council finally decided to increase the license fee a 6,5 percent. Depending on the federal estate, this leads to a monthly fee of between 20.93 € to 26.73 € per month and household from May 2017 onwards.

The Financing Model and Transparency of the ORF in Austria: Similarities and Differences with Germany

The European Commission demanded from both countries, Austria and Germany, to adjust their financing regime, and particularly to define the public remit of their activities (Lewke 2011). Consequently, the German and Austrian governments adjusted their treaties and laws accordingly. Even though their market structures differ, Austria and Germany share strong PSBs that occupy an important market share and have a strong brand. Whilst Germany has adapted its licence fee to match the rising importance of digital devices for consuming audiovisual content, Austria is more hesitant in that regard. Recent trends indicate, however, that the ORF will adapt its licence fee accordingly.

Since 1 January 2013, all households in Germany must pay a flat licence fee of 17.98 € (since 1 April 2015 17.50 €) per month for PSM. This fee replaced the

old radio and TV licence fee, which was bound to the possession of a receiving device. Companies pay according to the number of their employees, but every company has to pay, no matter what kind of business it operates. Under the old system, inspectors were sent door to door to check whether people owned a relevant electronic device and were not paying for it. Whilst this has become obsolete now that every household has to pay in Germany, it remains common practice in Austria.

Public funding accounted for 86% of the ARD's total revenues of 6,942 m € and 85% of ZDF's 2,254 m € in 2014, with the rest coming from commercial activities (European Audiovisual Observatory 2016). Combined, the German PSBs have the largest public service budget in Europe. Comparable to Austria, the private sector media in Germany claim that they occupy an unfair market position, especially with regard to new media (e.g., Woldt 2010, p. 178 et seq.). Therefore, they repeatedly complained to the European Commission, citing distortion of competition due to the guaranteed public funding of PSBs. In both Germany and Austria, this had consequences for the development of digitalisation strategies and the new ways of distributing content. In Germany, there was a five-year court case, in which several print publishers accused the ARD of market distortion with regard to the ARD news app. In Austria, the ORF's use of Facebook to distribute its content was contested and it was only allowed to resume the use of this platform in 2014.

Regarding the role of transparency as core value, both countries have implemented a public value test. The German public value test is called the 'three-step test' (*Drei-Stufen-Test*). It requires that PSBs justify any proposed online services and other 'telemedia offerings' to the relevant broadcasting council in terms of three steps (RStV, § 11 f. [4]):

1. To what degree does the offer conform to the democratic, social and cultural needs of society?
2. To what degree does the offer make a qualitative contribution to media diversity and competition?
3. What are the financial costs and does the offer deliver value for money?

In contrast to previous treaties, which limited public service media to investing no more than 0.75% of their budget in online offerings, the 12th Interstate Treaty on Broadcasting and Telemedia removes any cap on investment in online services. Now, ARD and ZDF have complete freedom when allocating their budgets across different platforms (Weberling 2011, p. 15).

Interestingly, both countries share similar actor constellations in their diverse processes and conflicts at work. Private sector media organisations, particularly news publishers, lobby to prevent the growth of digital shares in PSBs in both countries – albeit with decreasing long-term success. Whereas the adjustment of the financing models to an increasingly digital market is still hindered by the existing market structures, competition laws and consumption habits in Austria, the German example suggests that the situation in Austria will also change soon.

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