



Press and Information

General Court of the European Union  
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Judgment in Joined Cases T-231/06 and T-237/06  
Netherlands and Nederlandse Omroep Stichting v Commission

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**The General Court confirms the Commission's decision finding that the funding system in place for Netherlands public service broadcasters constitutes State aid which is incompatible with the common market**

*The amount of €76.327 million, plus interest, must therefore be recovered by the Netherlands from the Netherlands radio and television association (NOS)*

In addition to commercial broadcasters, various public service broadcasters operate on the Netherlands market. One such public service broadcaster is the Nederlandse Omroep Stichting (NOS) (Netherlands radio and television association), which performs a dual role. On the one hand, it is a public service broadcaster operating under the name of NOS RTV. On the other hand, its management board, which operates under the name of Publieke Omroep (PO) (public broadcasting), is responsible for coordinating the entire public service broadcasting system.

The main sources of funding of the public service broadcasters, including the NOS in both of its roles, are annual State payments. Those broadcasters may keep reserves to absorb budgetary fluctuations. Since 1994, they have also received *ad hoc* payments.

After receiving complaints in 2002 and 2003, in particular from Netherlands commercial broadcasters, alleging that the funding of Netherlands public service broadcasters constituted State aid which was incompatible with the common market, the Commission initiated an investigation.

In Decision 2008/136/EC of 22 June 2006, the Commission concluded that the *ad hoc* payments constituted State aid. In addition, they had to be regarded as new aid, which should have been notified to it. The Commission found that certain public service broadcasters had benefited from over-compensation, generally transferred to their programme reserves, but considered that State aid to be compatible with the common market provided that the surplus compensation was held in a special purpose reserve, the amount of which must not exceed 10% of the broadcaster's annual budget. The Commission also regarded as *ad hoc* funding the part of those programme reserves which has been transferred to the PO in 2005, and which increased the over-compensation of the PO.

In the Commission's view, that *ad hoc* State aid granted to the NOS in its capacity as the PO for its public service mission in the Netherlands public service broadcasting system was incompatible with the common market and had to be recovered from the NOS. The amount to be recovered was €76.327 million, plus interest.

On 30 August 2006 and 4 September 2006 the Netherlands and the NOS brought actions before the General Court for annulment of the Commission's decision.

In support of their actions, they raised several arguments, including infringement of the rights of the defence, incorrect categorisation of the *ad hoc* funding as State aid, incorrect categorisation of the *ad hoc* funding as new aid, and errors in the calculation of the alleged over-compensation.

**In today's judgment, the General Court rejects all of the arguments raised by the Netherlands and the NOS and thus confirms the Commission's decision.**

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**NOTE:** An appeal, limited to points of law only, may be brought before the Court of Justice against the decision of the General Court within two months of notification of the decision.

**NOTE:** An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to European Union law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

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*The [full text](#) of the judgment is published on the CURIA website on the day of delivery*

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