

The end of the EU state-aid probe:

"Appropriate Measures" for AFP - Painless or Toxic?



Bringing Agence France-Presse's finances into conformity with EU competition law is one of the main stated goals of the changes under way for AFP: the bill modifying the 1957 Statute, the creation of a finance subsidiary, the Aims and Means Contract, the strategic plan, a new social contract ...

Are these changes a simple cosmetic makeover that preserve the essential, or will they destroy the fundamental principles upon which AFP was founded?

Opinions diverge sharply. This document aims to contribute to the debate by going to the source: the oft-mentioned but little-known "*appropriate measures*" that the European Commission has said must be implemented for AFP's finances to be brought into compliance with EU rules.

Despite these "*appropriate measures*" being key to the debate, they were not initially made public and since they have been published management has made no mention of them. The measures were listed by in a letter from European Commission Vice President Joaquin Almunia sent on October 28, 2014 to French Foreign Minister Laurent Fabius and which was published on the EU's website a month later.¹

In the letter the Commission acknowledged the French government's acceptance of its demands regarding measures to take concerning AFP and its promise to inform Brussels of their complete implementation by March 27, 2015 at the latest. Thus this letter is of historic importance for AFP as it signifies -- at least temporarily -- the end of the Commission's state aid probe.

Spelling it out

In the present text, we aim to analyse the measures listed, but not spelled out explicitly, in Almunia's letter. The measures are shown, in our translation, on a green background.

We also base our analysis on an earlier letter Almunia sent to the French government on March 28, 2014 which provided greater detail about the "*appropriate measures*". SUD was allowed to briefly consult this confidential letter of over 40 pages, which we have repeatedly requested be made public in the interests of greater transparency and informed debate. We also consulted other texts cited by Almunia, including the document entitled *EU framework for State aid in the form of public service compensation*.²

Below we set out our views regarding the "*appropriate measures*", which we cite in full as listed by the Commission in its October 28 letter. Despite AFP's international role, the measures in question had not previously been provided in English, just as AFP's founding statutes had not been available in that language until SUD translated them.³

AFP's public service mission: planned obsolescence

"Appropriate measures":

· "a highly detailed definition of the agency's public service mission, to be set out in the future Aims and Means contract between the State and AFP;

¹ http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_30481

² http://ec.europa.eu/commission_2010-2014/president/news/speeches-statements/pdf/framework_en.pdf

³ See <http://www.sud-afp.org/spip.php?article197>

- the requirement to specify the provision of services of general economic interest via a formal act (the future Aims and Means Contract, combined with the law of January 10, 1957 that lays down AFP's statutes);
- the re-notification in ten years for the continuation of the services of general economic interest;"

What it means: the present EU treaties enshrine free markets as the norm, and anything that impinges on the operation of free markets is to be an exception.

It is in this light that the Commission examined AFP's Statute and finances and concluded that the aid provided to the agency to date is compatible with the common market to the extent that the French state tasks it with public service missions (activities serving the economic interest) and that the said missions predate the signing of the first European treaties in the late 1950s.

What does this recognition of AFP's public service mission imply?

First of all, it implies that for the European Commission, AFP is not a public entity, and that it must like all private companies comply with competition regulations. EU regulations leave no place for the legal UFO that French lawmakers created for AFP in 1957: an entity that was neither private nor public, without capital, and yet operated under commercial law for the most part. **AFP is now considered a private company.** AFP's management has endorsed this view (see its Q&A published on December 1, 2014⁴).

Secondly, this private company has activities that fall under its public service mission and which justify state aid, along with other purely commercial activities.

For the Commission, the public service missions should therefore be clearly identified -- in order to be limited in scope and duration. The missions are not recognised in perpetuity, but only on a short-term basis, for 10 years, during which period state aid may be provided to help with AFP's *operating costs*. However this recognition does not authorise state aid for *investments* (which is why the decision was taken to create "AFP-Blue", the planned investment subsidiary).

The ultimate objective is to ensure free competition in the international market for information and thus it implies a progressive restriction of the public service missions in favour of purely commercial activities. This is explicitly stated in the Commission's letter of March 28, 2014: **"the French authorities agree ... to adopt a legislative act obliging AFP to spin off activities others than those defined in articles 1 and 2 of the law of 10 January 1957 into legally distinct companies."**⁵

The Françaix bill fulfils that obligation, with a proposal to amend the 1957 law so that AFP may have activities that do not fall under its public service missions.⁶ While it is true that AFP already had such activities, they were contrary to the spirit of the 1957 Statute. The latter gave AFP just one mission: to "provide French and foreign users with exact, impartial and trustworthy information on a regular and uninterrupted basis".

Inserting into the law a provision that AFP may have activities which do not fall under this simple and clear mission is a **fundamental revision** of the Statute, irrespective of whether the new language is inserted in article 1 of the law, as Françaix originally proposed, or added to article 13, as in the version approved by lawmakers in the National Assembly (with the support of AFP's management, plus the SNJ journalist's union⁷ and the Society of Journalists, or SDJ).

The years ahead will show whether this change is purely cosmetic or whether it opens the way for a **progressive transformation in AFP's activities.**

4 See <http://www.sud-afp.org/spip.php?article311> (French)

5 [□]We were the first to point this out. Cf. <http://www.sud-afp.org/spip.php?article297>

6 See <http://www.sud-afp.org/spip.php?article284>

7 Cf. <http://snj-afp.org/?p=159> (French)

Austerity carved in stone

"Appropriate measures":

- "definition of the method used to calculate the compensation for the public service missions, which should be laid out in the future Aims and Means Contract, and follow the method known as net avoidable cost; including the points made by the European Commission in its letter on appropriate measures; the implementation of these rules, while ensuring the absence of cross-subsidies, is to be carried out by AFP's financial commission;"

What it means: In the negotiations with the European Commission, the value (or "net cost") of the public service missions was calculated using a counter-factual scenario simulating the operation of AFP without state subsidies. This methodology is summarily explained in a document published by management.⁸

According to that perfunctory explanation, this calculation is more of a technical exercise than a real evaluation of the agency's editorial goals and social needs. **It lays down for once and for all a financial framework** that cannot evolve except within the targets laid down by the Aims and Means Contract. Take for example the limit on AFP's global wages bill, which is a real **straitjacket**. According to available data, growth of AFP's wage bill will be limited to between 1 and 1.3 percent per year.

AFP's Financial Commission (defined under article 12 of the 1957 Statute) will be charged with ensuring that the French state does not compensate AFP for more than 100 percent of the net additional costs that the agency is deemed to incur in carrying out its public service missions.

In fact, Brussels had originally insisted that the level of compensation for the additional costs be trimmed by 2 to 3 percent per year, lawmaker Michel Françaix stated during a meeting with AFP unions in November 2014. French negotiators in the end obtained the right to maintain the level of compensation at 100 percent, but Françaix said nothing prevented the government from making cuts as part of its overall drive to reduce state spending. We see confirmation of this in the draft 2015 budget, which sets out a gradual disengagement of the state from AFP.⁹

It is worth noting that the additional costs for providing the public service missions is estimated at 105.7 million euros for 2013; whereas the level of compensation laid out in the 2015 budget is 102.82 million euros, which is just 97.3 percent of the sum calculated for 2013.

Independence threatened

What it means: Another point regarding the "appropriate measures" we'd like to highlight concerns the multi-year **Aims and Means Contracts** (*contrats d'objectifs et de moyens*, or *COM*). Since 2003 relations between the French state and AFP have been governed by such agreements: COM-1 from 2003 to 2007 and COM-2 for 2009 to 2013.

Nowhere in AFP's 1957 Statute are there provisions for any such contracts, the first two of which constituted basic attacks on the agency's independence in that they laid down financial, social and even *editorial* obligations.¹⁰

The Statute as modified by the Françaix bill will also make no mention of Aims and Means Contracts. The true force behind the latter is **EU regulations**, which via the "appropriate measures" will take on quasi-legal status.

We will soon find out to what extent COM-3 limits AFP's independence, not only vis-à-vis the French state, but also with respect to the European Commission.

⁸ AFP's public service mission and public finance, 4-4-14 - <http://u.afp.com/7Gh> p. 5 (French)

⁹ See <http://www.sud-afp.org/spip.php?article299>

¹⁰ See <http://www.sud-afp.org/spip.php?article162> (French)

"Appropriate measures":

- "measures to ensure that subscriptions by French authorities to AFP's services do not contain any elements of state aid: a subscription agreement for AFP's services will be signed that will limit the number of subscriptions to a level that effectively corresponds to the needs of French authorities and which is based on the rate AFP charges for companies and institutions including any bulk discounts applicable due to the number of state subscriptions;"

What it means: Up until now the French state subsidized AFP through subscriptions, which were charged at a special rate. From now on the subsidy will be identified as compensation for carrying out public service missions and the rate paid by state institutions for AFP's services will be the same as for other clients. Within the Commission's terms of reference, this is logical.

"Appropriate measures":

- "measures to avoid cross subsidies: accounting and structural separation of activities that do correspond to the public service mission shall be ensured by appropriate legal provisions;"

What it means: The ban on "cross subsidies" means that a private company which receives state aid for carrying out public service missions may not use such aid to enter other, competitive markets.

The Commission's letter of March 28, 2014 states that "*the definition of the public service mission does not cover AFP's activities in the role of providing services similar to those of a "national news agency" in other languages in other countries in competition against local agencies. Therefore, the activities of AFP GmbH in Germany do not fall under this public service mission.*"

Under such a restriction AFP would have never been able to move into Germany as it did in the 1980s. SUD believes that it is necessary to evaluate more closely what the application of this restriction will imply for AFP's future. Management has so far failed to present convincing arguments to allay our concerns:

- Given that AFP is here defined as a quasi private company operating in a competitive environment (the market for information) **the restriction on cross subsidies blocks the development of its public service mission**
- And what the European Commission specified for Germany risks hitting AFP in other countries and regions, obliging the agency to **place more of its activities in subsidiaries.**

"Appropriate measures":

- "the other related conditions of the framework applicable to state aid to compensate for providing a public service: in the event of difficulties the aid received by AFP will be governed by EU guidelines concerning state aid to rescue and restructure firms in financial difficulty;
- the modification of the bankruptcy procedure: a change of AFP's Statute of January 10, 1957 to specify that in the event of insolvency in which the government turns to the parliament, the responsibility of the agency is limited, and to specify the rights of creditors in the event of bankruptcy."

What it means: Article 14 of the 1957 Statute states that AFP "*cannot be wound up other than by an act of parliament.*" This has been one of the key differences between the agency and other commercial companies.

That is the reason why the European Commission insisted on modifying this article of the Statute and bring it into line with EU "guidelines". The ideas underpinning these guidelines are: "*The exit of inefficient firms is a normal part of the operation of the market.*" and "*It cannot be the norm that a company which gets into difficulties is rescued by the State.*"¹¹

¹¹ [http://eur-lex.europa.eu/legal-content/en/TXT/HTML/?uri=CELEX:52004XC1001\(01\)&from=en](http://eur-lex.europa.eu/legal-content/en/TXT/HTML/?uri=CELEX:52004XC1001(01)&from=en)

Given the gradual disengagement of the French state and the agency's growing debt we fear that this change to the bankruptcy process is more than a simple housekeeping exercise...

Conclusions

After reading these arguments, who can seriously affirm that the application of these "*appropriate measures*" will not pose problems? And in any case it is more than regrettable that the transcription of these measures into French law has been rushed through via an accelerated parliamentary procedure in the absence of sufficient transparency that would allow better evaluation of their consequences.

This evaluation remains necessary and will remain necessary even after the adoption of the changes to the Statute.

SUD's demands and suggestions:

- **publication of the European Commission's letter** of March 28, 2014 that details the changes required under the "*appropriate measures*", as we have long been seeking.
- An **expert analysis of the consequences of the "*appropriate measures*" on AFP and possible alternatives** (public entity with strong guarantees of editorial independence?, a European Agency in the framework of an "important project of common European interest"?...)
- The introduction of a **review clause** into the bill modifying the Statute, requiring an evaluation and impact study after a year of operation
- AFP's Works Council to adopt a resolution in favour of having an **outside evaluation of AFP's strategy** as set out in the Aims and Means Contract being finalised.

Paris, 13 January 2015

SUD-AFP
(Solidarity - Unity - Democracy)

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Other texts by SUD, or co-signed by SUD, on these issues:

- Statut de l'AFP – **La contre-réforme en procédure accélérée** – <http://www.sud-afp.org/spip.php?article319>
- Social negotiations, reform of AFP's statute, Françaix subsidiary: **Whither AFP?** - <http://www.sud-afp.org/spip.php?article310>
- **L'AFP, une entreprise privée ?** Questions réponses de la direction, avec commentaires SUD – <http://www.sud-afp.org/spip.php?article311>
- Open Letter to French MPs: **"Don't let AFP lose its independence!"** (joint union text) - <http://www.sud-afp.org/spip.php?article316>
- **Rapports d'experts sur l'AFP** - <http://www.sud-afp.org/spip.php?article186>