

Public value tests and citizen participation in public service media's decision-making

Story of a missed opportunity

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ABSTRACT

The public value tests that are used to approve the new services of public service broadcasters must include a public consultation open to all stakeholders. However, these consultations have not been studied from a comparative perspective. In this chapter, we approach the participation of citizens and civil society in these public consultations from the point of view of multistakeholderism practices in media policy-making and structural participation in media governance. Our research design is focused on the cases of the UK, Ireland, Germany, and Austria and relies on document analysis to study how their respective public consultations have been implemented and which level of participations they have achieved. The results allow us to conclude that *ex ante* tests can hardly achieve citizen participation through their public consultations, and thus constitute a missed opportunity for public service media organisations to enhance their contribution to society by opening their decision-making structures to structural participation.

KEYWORDS: public value tests, media policy, multistakeholderism, participation, public service media

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Introduction

Public service media (PSM) organisations around the world have been facing, to a greater or lesser extent, major challenges affecting their ability to fulfil their public service remit. The increasing market power absorbed by global digital platforms (D'Arma et al., 2021), the stagnation (if not reduction) of their budgets (Campos-Freire et al., 2020), the drop of audience figures (Gesto-Louro & Campos-Freire, 2020), and the alarming attacks from far-right political parties (Holtz-Bacha, 2021; Sehl et al., 2020b) are just some of the many problems affecting the legitimacy of PSM organisations.

One of the strategies that could help PSM organisations regain at least some of this essential legitimacy (see Fehlmann, Chapter 2 in this volume) is the implementation of participatory strategies that open the governance of these institutions to the citizens and civil society. While participation is a deeply contested concept (Carpentier, 2011), it has become a key principle in both the definition of the distinctive values of PSM (Vanhaeght & Donders, 2015) and in the shaping of PSM regulation. This chapter explores a specific aspect within European PSM governance and regulation that could have opened a window for structural participation but didn't: the open consultations included within public value tests. In this regard, we try to answer the following five research questions:

- RQ1. Which stakeholders are more active in public value tests' open consultations?
- RQ2. Is there room for citizen participation in these consultations?
- RQ3. Do the organisations in charge favour citizen participation in the public consultations?
- RQ4. Are the public consultations fully transparent in terms of calling for opinions, publication, and reporting on the results?
- RQ5. Are there remarkable differences between countries in terms of stakeholder involvement? If so, which factors are likely to influence such participation?

First, we turn to how the involvement of the audience and the civil society in media policy decision-making has become increasingly important for PSM organisations, due to the promotion of multistakeholderism practices. As part of the framework within which this chapter is developed, we also offer a brief perspective on how public value tests have been implemented across Europe to regulate PSM's new media services. After explaining our method, we present the results of this research regarding how public consultations within public value tests have been designed and implemented and which level of participations they achieve. We conclude that due to their *ex ante* nature and to the complexity of these processes, public consultations within

public value tests do not constitute an effective way of promoting citizen participation within the regulation of PSM.

Audience participation in media policy: Between deliberative democracy and tokenism

Participation, in its many understandings and articulations, has always been both a goal and a challenge for policy-making as well as for media governance. Media scholars such as Uwe Hasebrink have pointed out the role of audiences as independent and pluralistic civil society actors with “a special sensitivity for the problems and concerns of media users” and “oriented towards the common welfare” (Hasebrink, 2011: 329). By conceiving the audiences as citizens rather than consumers (Livingstone & Lunt, 2011), policy-makers, institutional actors, and PSM organisations could open their governance structures to place them in the centre of PSM decision-making, therefore contributing to boosting their own legitimacy (Horz, 2016).

In the field of PSM governance, for instance, establishing more bidirectional relationships with the audiences and involving them in content production and in decision-making practices was considered by PSM organisations as a means of enhancing some of their core values, such as universality, creativity, diversity, social cohesion, and participation in democracy (Vanhaeght & Donders, 2015). Although most of the strategies put into practice by PSM organisations in the last few years have been linked to content production, there is also a chance for a participatory turn (Bonini, 2017) that would allow for structural participation (Carpentier, 2011) within the decision-making processes of PSM organisations and for a consequent distribution of power, thus contributing to the legitimisation of PSM organisations (Vanhaeght, 2019).

Within European media policy, the trend toward more audience (and civil society) involvement in policy-making has been propelled by the European Commission that, as pointed out by Donders and colleagues (2019: 348), has encouraged member states “to evolve from top-down to bottom-up policymaking”. This has affected PSM regulation since the implementation of the 2009 Broadcasting Communication (the one where the incorporation of a public value test is recommended). This text was partly the result of a policy transfer process that considered the UK’s consultation tradition as a best practice and thus promoted multistakeholderism within the member states’ regulation of PSM (Donders & Raats, 2012; Donders et al., 2019).

Defined as the “diversification of the actors involved in framing issues and problems, defining priorities, negotiating possible solutions, and taking relevant decisions in relation to any policy area” (Padovani & Pavan, 2011: 544), multistakeholderism has been widely considered as a more suitable approach to developing more inclusive and better evidence-based policy-making (Donders et al., 2019; Walter, 2009). Donders and Raats (2012), for instance,

have studied the multistakeholder approach developed in the Netherlands and in Flanders (Belgium) from a deliberative democracy framework. Despite the many advantages that could stem from this perspective, such as granting policy-making processes more independence and pluralism, the analysis of these two case studies – and further research on the Flemish case by Donders and colleagues (2019) – allowed them to identify some of the most persistent pitfalls of multistakeholder policy-making.

The first shortcoming of audience participation in multistakeholder practices is the interpretation of participation itself. Andrea Cornwall (2008: 269) defined participation as an “infinitely malleable concept” that can be easily reinterpreted, reframed, and reshaped to “meet almost any demand made of it”. This malleability has led many scholars to question the alleged benefits of multistakeholderism, arguing that “the normative values and democratic aspirations also tend to be lost easily in the translation of the concept into concrete governance practices” (Padovani & Pavan, 2011: 546). In the specific case of the Flemish multistakeholderism practices involving PSM regulation and governance, Donders and colleagues (2019) pointed to four specific flaws: 1) the scarce influence of the stakeholders in the outcome of the policy process, as the policy-makers in control cherry-pick the arguments that better suit their original position; 2) consultation fatigue among stakeholders, especially when considering the previous pitfall; 3) the abuse of multistakeholderism as a transparency practice deployed to contribute to legitimate policy processes (e.g., by the number of actors involved), while their views are not that identifiable in their outcomes; and 4) the lack of political will to actually give stakeholders the chance to influence policy-making.

In this regard, multistakeholderism could be understood as an umbrella term covering different means of participation depending on the actual political will to open regulation and governance practices to different actors. Multistakeholderism could include practices that range up and down Arnstein’s (1969) ladder of participation, from delegating power and establishing functioning partnerships with different stakeholders, to mere consultations with no further value besides pure tokenism: mere symbolic concessions that grant stakeholders little capability to overturn the status quo.

The object of study in this chapter, public consultations, has been pointed out as such an expression of tokenism. Cornwall (2008: 270) considered this practice as a widely used method to legitimate “already-taken decisions, providing a thin veneer of participation to lend the process moral authority”. As policy-makers act as gatekeepers of the policy process, “such a consultative process does not concede any share in decision-making, and professionals are under no obligation to take on board people’s views” (Pretty, 1995: 1252).

Public value tests: A chance to turn a challenge into an opportunity

It's been over a decade since the BBC first applied its public value test, an *ex ante* procedure to decide over the approval of the public service broadcaster's new services by counterbalancing the proposal's public value and its market impact (Michalis, 2012), a tension that has traditionally been a core dilemma within the regulation of European PSM (Sehl et al., 2020a; see also Raats, Chapter 6 in this volume). After the European Commission considered the BBC's public value test a best practice to solve this policy crossroad and recommended to member states that they introduce a similar procedure to regulate the transition of their public service broadcasters into PSM (Lowe & Bardoel, 2007), *ex ante* testing spread irregularly across Europe (Donders & Moe, 2011; Gransow, 2018, 2020).

At the time of writing, nine member states had introduced a public value test in the regulation of their PSM system: Germany, Belgium (both in Flanders and in the French Community), Ireland, the Netherlands, Denmark, Sweden, Hungary, Finland, Croatia, and Spain (even though in these last two countries the *ex ante* test was never actually developed). Beyond the borders of the European Union and the UK, two other countries of the European Economic Area, Iceland and Norway, also regulate the new media services of their public service broadcasters with public value tests. Table 11.1 provides an overview of the main aspects of these 15 European *ex ante* tests.

The definition of the services that must undergo an *ex ante* test, the length of the procedure, or the agents in charge of the evaluation and the decision-making vary widely from country to country (Rodríguez-Castro & Cañedo, 2021). Major differences can also be found in the results of these procedures. While the trend is to approve the services under evaluation (until the end of 2020, 41 tests concluded with the approval of the service, another 45 accepted the proposal with some changes, and only 5 services were cancelled), some countries seem to make it harder for their PSM organisations to pass this assessment. Austria's PSM organisation, ORF, saw three of its proposals rejected, one was not approved in the UK under a public value test due to the market impact of the proposal, and in Flanders the only *ex ante* test that has been applied concluded with the cancellation of the project to create a new television channel for children under the Ketnet Jr. brand (Donders & Van den Bulck, 2020).

Table 11.1 *Overview on the expansion of public value tests across Europe*

Country	Name of the test	Year of implementation	Legal text	Number of times applied
UK	Public Value Test/ Public Interest Test	2007/2016	Royal Charter	5/3
Denmark	Værditest [Value Test]	2007	Executive Order on the approval of DR's and the regional TV 2 companies' new services	3
Germany	Dreistufentest [Three-step-test]	2009	Rundfunkstaats-vertrag	53
Ireland	Public Value Test	2009	Broadcasting Act	3 (7 services)
The Netherlands	Nieuwediensten-procedure [New services procedure]	2009	Media Law	5
Flanders (Belgium)	Advice on new services	2009	Media Decree	1
Spain	Evaluación ex ante [Ex ante evaluation]	2010	General Law on Audiovisual Communication	0
Norway	Forhåndsgodkjenning [Ex ante test]	2010	Norwegian Media Law	2
Croatia	Ex ante test	2010	HRT Law	0
Austria	Auftragsvorprüfung [Preliminary examination of the mission]	2010	ORF-Gesetz [ORF Law]	11
Sweden	Förhandsprövning [Preliminary test]	2011	Broadcasting and audiovisual services law	0
Finland	Ennakkoarviointi [Ex ante test]	2013	Laki Yleisradio Oystä [Yle Law]	4
Iceland	Ex ante test	2013	RÚV Law	0
French Community (Belgium)	Ex ante test	2013	Media Decree	0
Hungary	Közzszolgálati értékteszt [Public value test]	2015	Hungarian Media Law	3

One core aspect that has been shared by all the countries that adopted a public value test has been the introduction of at least one public consultation. The European Commission picked up this element from the British public value test and recommended that member states base part of the ex ante assessment on an open consultation where all interested stakeholders could express their views and concerns about the service under evaluation:

In the interest of transparency and of obtaining all relevant information necessary to arrive at a balanced decision, interested stakeholders shall have the opportunity to give their views on the envisaged significant new service in the context of an open consultation. The outcome of the consultation, its assessment as well as the grounds for the decision shall be made publicly available. (European Commission, 2009: para. 87)

The considerable pressures exerted by commercial media lobbies against the digital expansion of public service broadcasters leaned the Commission towards a pro-market approach that leveraged the influence of private broadcasters and publishers within European Union policy-making (Brevini, 2013). As Donders and Raats (2012: 166) have pointed out, “the main idea underlying the demand for the *ex-ante* test [...] is the introduction of consultation-based or multi-stakeholder regimes at national level, in order to prevent complaints being filed constantly at the European level”. Therefore, even though such consultations can be considered a step towards good governance and multistakeholderism, and thus greater structural participation, they are also a new way for commercial media’s lobbying.

This chapter departs from Donders and Raats’s (2012) analysis of multi-stakeholder consultations in the Netherlands and Flanders. This first study on the type of participation that dominates public consultations within *ex ante* tests concluded that there is a certain tendency “to over-focus on market questions relating to the future of public service broadcasting” (Donders & Raats, 2012: 164), a situation that might hamper the ideals of deliberative democracy. The main aim of our study is to expand Donders and Raats’s analysis to different national contexts, in order to determine which agents are influencing the decision-making of PSM’s new services.

Method

In connection to the five research questions, the main objective of this chapter is to analyse the way public consultations within public value tests work as a multistakeholderism practice, how they are developed, and which actors (if any) have greater influence in the results of the *ex ante* evaluation.

In order to fulfil this purpose, we have selected a sample of four countries: the UK (BBC), Ireland (RTÉ), Germany (ZDF, ARD, NDR¹), and Austria (ORF). The main reason behind this choice is that all these countries have experienced at least three services evaluated through an *ex ante* procedure, thus allowing for a broader comparative perspective. Due to the heavily textual component of public value tests, document analysis (Karppinen & Moe, 2019) was the method applied to study all of the *ex ante* tests within the sample.

Results

The UK

The British “Public Value Test” is the most well-known *ex ante* test, mainly because it was the first among this kind of procedures and thus led to much academic analysis and reflection. The seed that led to the “Public Value Test era of the BBC” (Brevini, 2010: 357) was the development of BBC Online, which triggered heavy protests from commercial broadcasters and print media. The concern about the possible negative market impact of the BBC made its way into the Royal Charter renewal and led to the implementation of a public value test in 2007.

A total of five public value tests were fulfilled between 2007 and 2015 (BBC on-demand, High-Definition television, Gaelic Digital Service, local video, and changes to BBC television and online services). In the most recent Charter renewal (2017–2027), the public value test was rebranded as the public *interest* test, and major changes were introduced in the procedure, the most remarkable one being the replacement of the BBC Trust by the Office of Communications (Ofcom) as the organisation in charge of the evaluation. At the time of writing, three public interest tests had been fulfilled (BBC Scotland, changes to the BBC iPlayer, and the relaunch of BBC Three as a television channel).

Both the public value test and the public interest test include public consultations. In the public value test, there can be up to three public consultations, but the most relevant one is the consultation on the provisional conclusions of the BBC Trust, once both the public value assessment and the market impact assessment (which can include specific public consultations as well) are completed. The BBC Trust then consults on its provisional decision during a period of 28 days, although this timeframe can be expanded if required. As both the consultation and the arguments that ground the decision of the BBC Trust are part of the same document, stakeholders can have access to the main features of the service under evaluation and to the main results of both the public value assessment and the market impact assessment.

The consultation is structured around a series of questions to gather information on the main issues that the BBC Trust would like to explore with the different stakeholders. Interested parties can provide their perspectives on the new service through an online form on the BBC Trust’s website, through e-mail, or through postal mail. In just one specific public value test (on the changes to the BBC television and online services), comments posted on social media platforms such as Twitter and Change.org have also been considered by the BBC Trust.

Once the consultation period is over, the BBC Trust analyses all the responses, in order to critically include them in its final decision. The Trust published two documents in this regard: one with the full responses presented

by organisations and another including a report of the answers sent by the public, mostly on an individual basis. Table 11.2 summarises the number of answers received by the BBC Trust on its provisional decisions within public value tests.

Table 11.2 *Participation in public consultations within public value tests*

Responses	BBC on-demand	HD Television	Gaelic Digital Service	Local Video	Changes to BBC TV and online services
Individuals	10,579	913	246	24	5,383
Organisations	21	8	34	11	12
Total	10,608	921	280	35	5,395

These participation data are characterised by major disparities: While the first public value test obtained over 10,000 responses, the local video proposal only received 35 answers. The high number of responses of the first procedure was never repeated, although the public value test on the changes affecting BBC television and online services (consisting mainly of the conversion of BBC Three into an online-only channel) triggered a remarkable participation boost. The social movement in support of keeping the regular broadcast of BBC Three, branded as “Save BBC Three”, was very active both on Twitter and Facebook and launched a collection of signatures on the Change.org platform. This led to the BBC Trust considering tweets and statements within the Change.org campaign as responses to the public consultation for the first (and by then, only) time. This way, the BBC Trust received over 5,000 citizen responses to this consultation through the online form (307 through e-mail and 76 through postal mail) and complemented this feedback with 1,787 comments and an unknown number of tweets.

Regarding the type of organisations participating in the consultations, there was an important presence of industry associations (commercial broadcasters, television production companies, independent producers), but there was also a remarkable presence of cultural, religious, and political associations in cases such as the evaluation of the Gaelic Media Service. Other agents always part of the consultations were the BBC Audience Councils and the Voice of the Listener and Viewer.

In the case of the public interest test, we included several consultation periods: one within the BBC’s Public Interest Test, and two others opened by Ofcom (one at the beginning of the Competition Assessment and another one on its provisional decision). Table 11.3 summarises the number of responses received in each of these three consultations for the two public interest tests fulfilled between 2016 and 2020.

Table 11.3 *Participation in public consultations within public interest tests*

Service	BBC's public interest test consultation			Ofcom's first consultation			Ofcom's consultation on provisional decision		
	Ind.	Org.	Total*	Ind.	Org.	Total*	Ind.	Org.	Total*
BBC Scotland	4	36	45	7	9	17	10	11	24
Changes on iPlayer	51	32	83	2	11	13	2	10	12

*Total includes responses marked as confidential

However, despite the many opportunities for stakeholders to express their views on the BBC's proposals, participation in public interest tests is even lower than in most public value tests. A difference in the number of answers received depending on the agent in charge of the consultation can also be noted: The consultation opened by the BBC in its public interest test achieved greater levels of participation than the two opened by Ofcom combined.

Ireland

The Irish public value test was the result of the pressures exerted towards its PSM's funding, which was investigated by the European Commission between 2005 and 2008 and was heavily influenced by the traditional relationship between the Irish and the British media systems. The public value test used for the approval of the RTÉ and TG4's new services proposals was introduced in the Irish Broadcasting Act in 2008 and has since then been applied on three occasions (2011, 2016, and 2018) to approve 7 RTÉ new services (a pack of digital services, Oireachtas TV and improvements do RTÉ One +1, and the creation of RTÉ2 +1).

The minister of tourism, culture, arts, gaeltacht, sport, and media is the agent in charge of the Irish test, which is also structured around a public value and a market impact assessment. In the Irish public value test, the public consultation opens when the minister decides to formally launch an ex ante evaluation. This public consultation is usually open for a period of four weeks, is structured around different questions that the minister seeks to be informed about, and provides plenty of information about the services under evaluation.

Interested stakeholders can submit their responses via e-mail or through postal mail, and they are reminded by the minister that their responses will be published on its website in order to promote openness and transparency. Those stakeholders who want to protect delicate information from being disclosed should mark such information as confidential. Moreover, a summary of the results of the consultation is included in the minister's decision

along with the main conclusions of both the public value and the sectoral impact assessments.

One peculiarity of the public consultation of the Irish public value test is that it combines an open model – where anyone can express their opinion – with an invitation to comment to those organisations (cultural, social, political, or media-related) whose perspective is deemed relevant by the Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media. Despite this effort, this model does not lead to a significant participation. As shown in Table 11.4, the first public value test conducted in Ireland was the one that obtained a greater number of responses. Even though specific organisations were directly asked to participate in the second and third public value tests (17 and 26, respectively), participation was lower, especially considering the scarce involvement of individuals (just one in the consultation on Oireachtas TV and none in the one on the enhanced services).

Table 11.4 *Participation in public consultations within the Irish public value test*

Responses	RTÉ One+1; RTÉ 2 HD; RTÉjr; RTÉ News Now; Aertel Digital	Oireachtas TV	Enhanced Services (+1 Channels)
Individuals	11	1	0
Organisations	18	8	10
Total	29	9	10

Regarding the type of participation that was achieved in the Irish case, there was a predominance of organisations over individuals’ participation. When looking at the type of organisations that took part in the consultations, there was a predominance of media-related stakeholders (press organisations, telcoms, and producers, mostly), but there was also an important presence of cultural and social associations, such as organisations supporting the Irish language and culture and educational associations.

Germany

Germany has one of the most complex ex ante tests in Europe, the Dreistufen-test [three-step-test]. The three-step-test was introduced in the Rundfunkstaatsvertrag [German Media Law] in 2008 and entered into force in 2009. The German procedure, as the Irish one, is also the result of an investigation of the European Commission into the funding of the German PSM system. As this PSM system is constructed on a regional basis, where a wide array of both regional and nationwide public service broadcasters coexists, the three-step-test is also the most used ex ante test. At the time of writing, over 50 procedures had been completed.

Also due to the regional structure of the German PSM system, the three-step-test can have small variations depending on the public service broadcaster that conducts it, but overall, the process always consists of five phases: 1) the public service broadcaster sends its proposal to its Broadcasting Council, which conducts a preliminary assessment to determine whether a three-step-test is required; 2) the broadcaster prepares a detailed description of the service where it connects it with the three steps of the test (how the service fulfils society's needs, how it affects editorial competition, and which financial resources are required to launch it) and sends it to the Broadcasting Council; 3) the Broadcasting Council assesses the proposal by conducting a public consultation and commissioning a market impact evaluation; 4) the Broadcasting Council decides on the approval of the service considering the three steps of the test; and 5) the decision undergoes a legal control, that is, it is published in the corresponding official journal.

The public consultation included in the three-step-test is thus managed by the Broadcasting Council and is located in the information-gathering phase. The consultation is opened after the new service's concept is published and divulged. Even though the three-step-test's legal framework establishes that the consultation must be open for six weeks, in practice, this period has been widely extended to eight, ten, or even twelve weeks. As in the Irish case, interested stakeholders can submit their responses to the Broadcasting Council by e-mail or postal mail, and confidentiality is guaranteed if required, although commercial media were never keen on sharing strategic information directly with an internal body of the public service broadcasters (Humphreys, 2010).

The three-step-test's public consultations offer enough information about the service under evaluation, but they are not structured, so interested stakeholders may expose their views freely and send them to the Broadcasting Council either through e-mail or through postal mail. To curb the criticism shown by commercial media towards the requirement to share their strategic plans with the public broadcasters, in some cases, the Broadcasting Council offered these stakeholders the possibility to send their responses directly to the external consulting firm in charge of the market impact evaluation.

The ZDF's Television Council is the only one that published the responses to the consultation in full (respecting confidentiality when required). In all the other procedures, the information collected in the public consultations are only divulged through the mentions to them included in the final decision of the corresponding council. In any case, this last document of the three-step-test always includes a general assessment of the responses received in the public consultation.

The level of participation reached in these public consultations varies depending on the reach of the services under evaluation: Nationwide services that affect a greater number of stakeholders receive more answers than regional proposals. Thus, the number of responses can range from 53

answers on the 2010 three-step-test on ZDF’s digital services to just one or two responses on the consultation on RBB Mediathek (2011) or BREMEN Next (2016).

However, there is a common thread among all these public consultations: the predominance of media stakeholders over other civil society organisations and individual citizens. In 22 out of the 53 three-step-tests completed in Germany, no citizen responses were received. In the other 31 consultations, citizen participation was limited, reaching a maximum of 18 responses in the evaluation of the SWR new media services.

The four case studies selected for this research depict this participation fluctuation in the public consultations. As shown in Table 11.5, the service that triggered a greater number of responses was Tagesschau. The launch of the popular news bulletin’s app was heavily confronted by commercial media, namely press outlets, as they considered this service too press-like and not directly connected to the traditional broadcasting services. Nine industry agents expressed their views in the public consultation on Tagesschau, including the association of commercial broadcasters (then VPRT, now VAUNET), the association of press editors (BDZV) and the alliance of producers [Produzentenallianz], as well as media groups such as ProSieben, Sat.1, and RTL. Another remarkable feature of this public consultation is the relatively high number of responses sent by individual citizens, as well as the participation of an exceptional number of non-commercial organisations with interests ranging from education to religion, unions, libraries, arts, or sports.

Table 11.5 Participation in public consultations within the three-step-test

Service	Length	Responses published?	Responses			
			Individuals	Non-commercial organisations	Media industry	Total
NDR Mediathek	6 weeks	No	0	0	16	16
Tagesschau	8 weeks	No	16	18	9	43
KiKA Telemedien	8 weeks	No	1	0	4*	5*
ZDF Telemedien	6 weeks	Yes (14)	1	0	16	17

* In the consultation on KiKA Telemedien, the BDZV and the VDZ sent a joint response. The table’s data refers to the number of agents that participated in the consultation, not to the number of documents.

On the opposite side, the public consultation on KiKA Telemedien (the new media services of the children’s channel) only received five answers, four of which were from industry agents (RTL, VPRT, a shared response by BDZV

and VDZ, and the Association of German Magazine Publishers) and one from a professor. Overall, the participation of organisations outweighs those of individuals, although organised civil society plays an important role in the exposure of cultural, social, and educational perspectives that can counterbalance the dominance of market-led comments of industry actors.

Austria

In Austria, the *Auftragsvorprüfung* [preliminary examination of the mission] was introduced in the law that regulates the ORF in 2010, also as a consequence of a European Commission investigation on the funding of the public broadcaster. The Austrian *ex ante* test is a heavily legal procedure by which the services proposed by the ORF are evaluated by the media authority *KommAustria*, which oversees gathering the opinions of the Austrian Federal Economic Chamber (WKO), the Chamber for Workers and Employees (AK), the national competition authority, and a public value advisory council.

At the time of writing, the Austrian *ex ante* test had been applied on ten occasions: ORF III, *Ö1 macht Schule*, *Focus Sendungsarchiv*, *TVthek.ORF.at*, *Ö3 – Live/Visual*, *radiothek.orf.at*, a proposal for social media, two fiction-based on-demand services, and online short pieces of news. The eleventh procedure on *Topos.ORF.at* was under way. Austria is one of the countries that rejected more services after an *ex ante* test: Of the ten procedures that were completed, seven were passed (three of them including major changes) and three were rejected (*Ö3 – Live/Visual*, the social media proposal, and the first fiction-based video-on-demand service).

The public consultation is opened when the ORF sends its proposal to *KommAustria*, the WKO, and the AK and publishes it on its website. The law establishes that the consultation must be open for at least six weeks. Once the consultation is closed, the ORF should determine whether any changes should be included in the original proposal, forward the responses to *KommAustria*, and publish them on its website, always safeguarding confidentiality when required. The responses to the public consultation conform to one of the multiple information sources for *KommAustria* to decide on the future of the service under evaluation.

Despite the transparency stipulations that require the pertinent information around the procedure to be published and made available to the wider public, the preliminary examination of the mission is still an opaque and hardly accessible process to the citizens, a feature that confers advantage to organised media-related stakeholders defending their commercial interests over social, cultural, or democratic interests. That is reflected in the analysis of the responses received in the public consultations, summarised in Table 11.6. Only one of the ten consultations received comments from individuals and civil society: Four citizens responded to the consultation on ORF III, which

added to the contributions of four civil society organisations (associations for blind people, deaf people, the unemployed, and pensioners).

All the other preliminary examinations of the mission achieved very low participation, with just the institutional comments of the AK and the WKÖ as well as representation of the media industry by the associations of commercial broadcasters and newspaper editors (VÖP and VÖZ), which sent comments to most of the public consultations.

Table 11. 6 *Participation in public consultations within the preliminary examination of the mission*

Service	Responses				
	Individuals	Civil Society	Official institutions	Media industry	Total
ORF III	4	4	2	5	15
Ö1 macht Schule	0	0	2	0	2
Focus Sendungs-archiv	0	0	2	0	2
TVthek.ORF.at	0	0	1	4	5
Ö3 – Live/Visual	0	0	2	2	4
Radiothek.orf.at	0	0	2	2	4
Social Media proposal	0	0	1	2	3
Fiction-based VOD I	0	0	2	1	3
Fiction-based VOD II	0	0	2	2	4
Online short news	0	0	1	0	1

The complexity of the legal procedure, as well as its opacity, drives citizens away from this structural participation possibility, while it leaves an open door for industry stakeholders, better funded and organised, to express their views on the service under evaluation.

Discussion

Our analysis shows how different designs of public consultations within different public value tests can achieve different levels of participation, from the remarkable results of the British public value test to the scarce comments received in the Austrian procedure. The differences among these public consultations are also latent in their design, from the location of the consultation to how the results are analysed and divulged, as summarised in Table 11.7.

For instance, the British public value test and its successor, the public interest test, include several consultation periods, although the most relevant one is placed at the end of the procedure, where either the BBC Trust or Ofcom consults on its provisional decision. On the other hand, Germany,

Ireland, and Austria place the public consultation at an earlier stage, just at the beginning of the procedure. This would be the most advisable design, as this way the agent in charge of the evaluations will be able to consider the feedback of stakeholders from the start and include any potential changes over the original proposal in its provisional decision already.

Table 11.7 *Comparison of the public consultations of the UK, Ireland, Germany, and Austria*

Country	Timeframe	Duration	Structured	Published	Citizens and civil society involvement	Industry involvement
UK	During the evaluations and on the provisional decision	4 weeks	Yes	Yes	Medium	High
Ireland	When the test is launched	4 weeks	Yes	Only in the first test	Medium	High
Germany	When the test is launched	6 weeks (sometimes more)	No	Only by the ZDF-Fernsehrat	Medium	High
Austria	When the test is launched	6 weeks	No	No	Low	High

Regarding the length of the consultation period, the UK and Ireland opt for a four-week consultation, while Germany and Austria establish a minimum of six weeks. However, these official timeframes are often exceeded, especially when the service under evaluation is far-reaching or complex. That was the case in most of the German three-step-tests, which usually extended their public consultations to eight, ten, or even twelve weeks. The length of the consultations should be enough to allow all interested stakeholders to prepare their responses, but not so long that it can slow the ex ante evaluation even more. One of the major problems that these public value tests present are how long they take to be completed, hampering the innovation of public service broadcasters, that must wait for the pertinent authorisation before launching the service.

Another relevant component of a public consultation is whether it is structured around given questions or topics that stakeholders should cover in their responses, or if it is just open, so interested parties can freely organise their answers. The UK and Ireland opt for the first option and provide a list of questions around the topics they are interested in receiving feedback on, while Germany and Austria opt for free models. In this regard, it should be noted that Ofcom’s consultation guidelines consider that being clear about

the questions that are at the centre of the consultation might contribute to ease the participation of less organised stakeholders. Therefore, structured consultations could help prompt the participation of civil society organisations and individual citizens.

To guarantee transparency, it is also important that the stakeholders who participate in the consultation, as well as their responses, are published. While all four public value tests studied in this chapter are open about the stakeholders who send their responses to the public consultations, not all publish such responses in full. The procedures in the UK (both the public value and the public interest tests) publish in full the responses sent by the stakeholders (deleting information when confidentiality prevails), while in Ireland and Germany, this was an exception that happened in some tests. The most common option is to publish a summary of the answers received for the consultation, contrasting different points of view on different issues pointed out in the responses (something that is also done by the BBC Trust and Ofcom, even when they publish all the answers). This summary is most often included in the final document that determines whether the proposed service is approved or not and is used as a substantiation for the corresponding authority's decision.

In terms of participation, we observed in all the *ex ante* tests that industry-related agents are the ones that dominate the consultations. We can conclude that, the way these procedures are currently designed, they do not encourage citizens' participation, and only organised civil society can counterbalance the influence of commercial media in these public consultations. We consider that there are two main reasons that explain this lack of citizen mobilisation: the *ex ante* design of these tests and their complexity.

The fact that public value tests are applied prior to the launch of the analysed services constitutes a major boundary for the establishment of a connection with the audiences and mobilising them into participating in these public consultations, as there is no previous link between citizens and the services under evaluation. In this regard, the public value test that assessed the conversion of BBC Three from a broadcasting to an online-only channel demonstrates how an increase in citizen participation is achieved when the service under evaluation (this time, also at risk) has been widely experienced and is familiar to the citizens. This also leads us to the idea of "negative public value" (Michalis, 2012: 27) and the challenge to counterbalance the negative public value implications of removing a service with the market impact derived from this decision. While this task might be challenging for the authority in charge, citizen participation has been easier to achieve when the audiences believed that the public value of the BBC could be diminished.

On the other hand, public value tests are complex and bureaucratic processes, embedded in a legal and regulatory sphere and targeted to the formal approval of new media services. Therefore, the presentation, structuring, and

wording of both the ex ante tests and the consultation documents hamper citizen participation. Even in those cases where individual citizens send comments to these consultations, they are usually people with a high level of education or somehow related to the academic field. This kind of individual participation thus arises from specific interests and experiences that cannot be transposed to the whole society.

Conclusion

Considering the results and the discussion presented in this chapter, it can be concluded that ex ante tests can hardly achieve citizen participation through their public consultations, and thus they constitute a missed opportunity for PSM organisations to open their decision-making structures to structural participation. The hopes and expectations placed in multistakeholderism practices as a means not only for PSM organisations and policy-makers to contribute to society, but also for the society itself to contribute to a more balanced, fair, and transparent media environment vanish when public consultations are analysed in detail. The predominance of industry actors and the scarce impact of stakeholder comments in the results of ex ante tests seem to consolidate the idea that “being involved in a process is not equivalent to having a voice” (Cornwall, 2008: 278).

Still, the participation of the organised civil society, as mentioned above, should be positively assessed. Even if these associations and institutions (educational, cultural, religious, and unions, among others) also face difficulties when approaching complex public consultations, their organisational capacity enables them to participate and counterbalance the predominance of industry agents. Considering this, it would be advisable that all public consultations are directly sent to all the relevant civil society organisations that can provide interesting insights that could improve the service under evaluation, as it is done in the Irish public value test. This good practice can of course be complemented with more traditional audience research with representative samples of the population, as already done in the UK, although this will increase the costs of a procedure that is already excessively expensive for some countries.

Even though we conclude that the spaces opened up by public value tests through public consultations cannot be considered a successful environment for citizen participation, the study of the design of such consultations, as well as the results they obtained and the context within which they are embedded can contribute to identify and learn from good practices that could improve the participation levels, help build communities, and legitimise ex ante testing. This way, policy-makers and PSM organisations could redress their approach to public consultations, compensate this cascade of missed opportunities, and enhance their contribution to society by opening their decision-making structures to structural participation.

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Endnote

¹ Due to the high number of Dreistufentest [three-step-tests] completed in the moment of writing ($n = 53$), we selected four case studies that represent the different articulations that the German *ex ante* test can present: a service by a regional PSM (NDR Mediathek, 2009); a service operated by the ARD through the collaboration of regional broadcasters (Tagesschau, 2010); a service operated conjointly by the ARD and the ZDF (KiKA Telemedien, 2016); and a service operated by the ZDF alone (ZDF Telemedien, 2020).