

Enabling visibility

Online transparency practices of German public service media organisations

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ABSTRACT

Transparency has become a buzzword of public sector reforms in recent decades, evident as well in public service media (PSM) frameworks such as the European Broadcasting Union's contribution to society concept. At the same time, the interventions of the European Commission to PSM governance were accompanied by new reporting obligations in many member states, although to a varying extent. In Germany, media legislators, public broadcasters, and their governance bodies have increasingly implemented transparency regulations and practices following a 2014 decision of the Federal Constitutional Court. Taking a visibility perspective on transparency as a means to provide for an informed citizenry, which is necessary for a legitimising dialogue on PSM, I set out to explore these measures in this chapter. I draw on a qualitative document analysis of legal and self-regulatory documents and online information-sharing practices of all twelve German PSM organisations and their governance bodies. The results reveal noticeable differences between the various broadcasters, both regarding legal obligations and voluntary disclosures.

KEYWORDS: transparency, governance, regulation, reporting practices, reporting requirements

Speck, D. (2023). Enabling visibility: Online transparency practices of German public service media organisations. In M. Puppis, & C. Ali (Eds.), *Public service media's contribution to society: RIPE@2021* (pp. 289–310). Nordicom, University of Gothenburg.
<https://doi.org/10.48335/9789188855756-14>

Introduction

In the wake of current political, social, and technological changes, public broadcasters face increasing demands to reach out to the public and maintain their relevance within society. Consequently, rethinking transparency practices may be an important cornerstone of the legitimacy management of public service broadcasters (PSBs). A notion of showcasing contribution to society through impact measurement and public communication to build legitimacy is evident in the initiative of the European Broadcasting Union (EBU) (2015a) of the same title. An expectation for transparency to cause a boost in legitimacy is also evident in a guide developed by the EBU to advise its member organisations on how to disclose organisational information online. The advocacy coalition of public broadcasters argues that “the long-term benefits in terms of legitimacy and case-building for [public service media] outweigh any possible disadvantages of being transparent” (EBU, 2015b: 7).

However, organisational transparency is hardly considered “a feature of public broadcasters’ DNA” (Donders & Raats, 2018: 43), due to their reliance on the path dependencies of media policy and their notoriously bureaucratic character. It is, though, fair to say that more recent developments such as the European Commission’s interventions with PSB in several European Union member states have contributed to more transparent funding and governance mechanisms in a range of countries (Donders, 2021; Ganter & Sehl, 2018). Furthermore, the implementation of the public value framework and new public management reform doctrines during the 2000s may be regarded as a spill-over of “audit society” (Power, 1997) paradigms to PSB governance and management. Since then, the measurement of performance indicators, new reporting obligations, as well as public consultations have become a crucial part of public service media (PSM) regulation and governance in many European states. This has fostered a multistakeholder approach in PSM policy (Baldi, 2007; Donders et al., 2019), opening spaces for public debate on PSM performance. These developments have been widely criticised though, for instance, for their focus on quantitative rather than qualitative data (Rodríguez-Castro et al., 2021) or on regulators, experts, and competitors instead of citizens (Van den Bulck, 2015; Donders et al., 2019; see also Rodríguez-Castro & Campos-Freire, Chapter 11 in this volume).

Despite the pervasiveness of transparency as a buzzword of these reforms and the great expectations towards it being an enabler of legitimacy, both empirical research on and theoretical conceptualisations of public broadcasters’ organisational transparency have remained rather scarce. To name a few exceptions, an anthology edited by Herzog and colleagues (2018a) has described the status quo of funding transparency of PSM in 15 countries and pointed out important issues such as the transparency of PSM policy-making itself (Donders & Raats, 2018) or a lack of inclusion of the public into relevant decision-making processes (Kuhn, 2018). Yet, it also describes

how difficult it is “to get the licence fee payers involved in internal PSM matters” (Nissen, 2018: 101). Rivera Otero and colleagues (2021) have surveyed experts and analysed corporate websites to assess the transparency policies implemented by PSB in nine European states. Thomass (2016) has interrelated the concepts of transparency, civil society, and the public sphere with regard to PSM supervisory bodies.

In this chapter, I take a closer look at the case of PSM transparency in Germany. I draw from a qualitative document analysis of online information disclosure practices and legal reporting obligations of all twelve German PSBs, including their governing bodies. I aim to answer the following research questions:

- RQ1. Which legal and self-regulatory reporting and transparency obligations must German public broadcasters and their governance bodies fulfil?
- RQ2. Which information is being made available online by German public broadcasters and their governance bodies?

The analysis is based on a previous study (Speck, 2019) commissioned by the German Trade Union Confederation (DGB). The indicator grid underlying this first study was refined, and the analysis repeated in August 2021 to capture more recent developments.

Transparency: A definition

In Western democracies, public expectations towards the transparency of both public and private organisations have increased throughout the last decades in line with “the rise of the right to know” (Schudson, 2015). A plethora of monitory mechanisms and practices, with varying degrees of institutionalisation, have emerged within the “monitory democracy” (Keane, 2018). “Rituals of verification” (Power, 1997) have put accessible performance measurement at the core of public institutions and private organisations alike. Transparency has become a pivotal concept in areas such as policy-making, public administration, and economy, and has been idealised as “the key to better governance” (Hood & Heald, 2006), almost regardless of whether one talks about a political party, a public authority, or a commercial enterprise. Transparency is also regarded as closely connected to the accountability of organisations and the individuals acting within them (e.g., Fengler et al., 2014; Fox, 2007; Williams, 2015). In public policy research and organisation studies, transparency has often been discussed as a tool to increase efficiency (Hebb, 2006; Stasavage, 2004), trust (Bentele & Seiffert, 2009; Heald, 2018), or legitimacy (Curtin & Meijer, 2006; De Fine Licht et al., 2014).

However, the actual effects of transparency mechanisms remain highly controversial, as research indicates that “the transparency-trust-legitimacy

path is fragile” (Heald, 2018: 331). Scholars point to unintended – or even intended – consequences, such as an information overload, which comes at the expense of true transparency (August & Osrecki, 2019; Etzioni, 2010; O’Neill, 2002; Stohl et al., 2016; Tsoukas, 1997). Critics also warn against its potential to sow distrust rather than building legitimacy or to establish regimes of expertocracy instead of facilitating the participation of citizens (O’Neill, 2002; Valentinov et al., 2019; Wever, 2014; for PSM, see Donders & Raats, 2018) – to highlight just a few of manifold critiques of an overly enthusiastic stance on organisational transparency.

A common understanding relates transparency to proactive information-sharing of organisations and describes it as a means to reduce information asymmetries between those inside and those outside (e.g., Florini, 2000; Forssbaeck & Oxelheim, 2014; Heald, 2006). Rather than solely emphasising the act of disclosure and its effects on the sender, transparency efforts may thus also focus on the quality of the information and its relevance for the intended receivers. Michener and Bersch (2013) defined two necessary conditions for the quality of information: visibility and inferability. While the former implies the degree to which information is available, complete, and easily located (i.e., visible), the latter refers to the degree to which the information enables its intended receivers to draw accurate conclusions. Referring to this approach, this chapter focuses on the visibility of selected indicators of PSM transparency, describing the availability of organisational and governance information.

While one should avoid the pitfalls of techno-optimism, as for many other organisations, digital technologies present an opportunity for PSM to share information not only with an expert audience, but with potentially everyone in society. This is essentially the intended target audience if adhering to universalism as a core principle of PSM (Savage et al., 2020) and defining it as an institution to strengthen citizenship and democracy instead of as a mere tool to cure market failure (Donders, 2021). Whereas “it cannot be expected that a general public would dig into all of the regulations [...] of PSM, the possibility to do so is a normative prerogative for a public broadcaster, which lives up to its name” (Thomass, 2016: 307). From this perspective, it is possible to distil a normative understanding of PSM openness that goes beyond an instrumental framework of transparency as a means to exhibit the distinctiveness of PSBs during policy debates. In this understanding, transparency practices have “the potential to transport discourses among the elites to a broader public sphere and to provide them with the necessary information and insight to participate and engage in those discourses” (Thomass, 2016: 303). This is important, given that “a public sphere that is well informed about issues of regulation is necessary, so that a legitimating dialogue can take place”, as Thomass (2016: 303) argued concerning PSM supervisory bodies.

However, we should acknowledge the fluidity of transparency, with no clear endpoint or ideal “amount” to be reached. The wide array of infor-

mation already available in many sectors has not stopped calls for even greater transparency. According to Wallis (2020), this is not surprising, as the availability of more data increases social complexity, which in turn stipulates demands for transparency. Hence, the question of which transparency measures are needed is a contextual and processual one requiring interaction and negotiation between organisations and their environments (Heimstädt & Dobusch, 2018; Meijer, 2013).

Setting out from these presuppositions, I present in this chapter a descriptive assessment of online information-sharing practices by PSM organisations and their governing bodies. This includes both the provision of information required by law as well as self-imposed practices going beyond legal reporting obligations, thereby contrasting transparency regulation and actual practice. This is pivotal if we consider PSM not necessarily as “victims of evil and malevolent governments” (Donders, 2021: xiv), but as organisations having a certain degree of agency over introducing new corporate practices. Arguably, this is the case in Germany to a considerable extent: Internally organised governance bodies play a crucial role, and the Federal Constitutional Court has been constantly safeguarding the freedoms of PSBs.

Public service media transparency: Outlining the case of Germany

In Germany, transparency measures addressed at wider parts of the public have rather slowly been implemented as an element of broadcasting regulation compared with particularly Anglo-Saxon media systems (Thomass, 2016). The 2014 ZDF Decision of the Federal Constitutional Court (BVerfG, 2014) marks a milestone here. Whilst a decrease of the number of state representatives in PSB governing bodies was at the core of the ruling, it also called for an increase of transparency of these bodies (Speck, 2014). The court demanded legislators to ensure “a minimum of transparency” of governing bodies to counteract the misuse of power and influence of vested interests. This implies, according to the judgement,

easy access to information on the organisational structures, the composition of the bodies and committees, as well as upcoming agendas, and that, at least in principle, the minutes of the meetings be made available in a timely manner, or that the public receive substantial information on the subject matter and the results of the deliberations. (BVerfG, 2014: para. 85)

Following this, public broadcasters and their governance boards increased their efforts to provide information to the public (Horz-Ishak & Thomass, 2021; Thomass, 2016). Traditionally, German PSBs have seen their Gremien [governance bodies] as the main addressee of accountability and transparency measures, rather than the general public (Dörr, as cited in Wagner, 2016; as

cited in Herzog et al., 2018b). Unlike in other countries, “at last, the boards are composed of members of socially relevant groups, and in turn, represent the public” (Herzog et al., 2018b: 6). Yet, a notion of transparency as a requirement towards citizens would need to set focus on society at large, including individual citizens (see also Donders, 2021; Fehlmann, Chapter 2; Rodríguez-Castro & Campos-Freire, Chapter 11 in this volume). Furthermore, the Federal Constitutional Court has repeatedly stated that the members of governance bodies are to represent the public instead of serving the interests of the organisations they are attached to (BVerfG, 2014; Schulz, 2008).

PSM transparency was a key issue in German media policy in 2017, when the then-chairperson of the *Arbeitsgemeinschaft der öffentlich-rechtlichen Rundfunkanstalten der Bundesrepublik Deutschland* [ARD – Working Group of Public Service Broadcasters in the Federal Republic of Germany], Karola Wille, declared the topic a priority (Herzog et al., 2018b). For the first time, ARD published an overview of the salaries of directors-general of its nine member organisations on a dedicated transparency website during that year and increased the amount of information provided online considerably (ARD, 2017). However, the debate on transparency of German PSM has not stopped, and the fierce discussion on the licence fee increase in 2020 and 2021 has once more put the legitimacy of public funding under scrutiny.¹ In 2021, ARD initiated a “future dialogue” with citizens, including an open online consultation and workshops with selected members of the audience (ARD, 2021).

Admittedly, the picture of PSM transparency in Germany is somewhat more diverse and difficult to capture compared with many other European countries due to the sheer size and complexity of institutional settings: Nine regional broadcasters constituting ARD are active in the market,² alongside *Zweites Deutsches Fernsehen* (ZDF) [Second German Television] and *Deutschlandradio* (DRadio) operating on the nationwide level, and *Deutsche Welle* (DW) as an international broadcaster. Organisational cultures differ between these twelve organisations, as do legal requirements. Broadcasting law and regulation is a task performed by the *Länder* [federal states], except for DW, which it is the sole PSM organisation legally constituted on the federal level and receiving its funding from state budget instead of licence fees. PSM governance is fairly complex, too, as 24 bodies perform tasks which are entrusted to only a few, or even a single entity in other countries. There are two bodies per broadcaster: The *Rundfunkrat* [Broadcasting Council, hereafter, council; TV council in the case of ZDF] and the *Verwaltungsrat* [Board of Governors, hereafter, board]. Whereas the (much bigger) council usually deals with questions related to programming and public remit, the smaller board takes care of controlling the finances of public broadcasters, approving greater investments, and holding the director-general to account.³ As mentioned above, the councils consist of members representing socially

relevant groups, including political parties, religious groups, labour unions, or employers' associations. Within the boards, often, but not in any case, the state governments are represented, whereas a certain number of seats are reserved for representatives elected by the councils, and sometimes representatives of PSM employees. Board and council members serve in an honorary capacity but receive some expense allowance. It is important to note that it is not always easy to distinguish between the supervisory bodies and PSM themselves, as the former are internally organised, and thus play a considerable role in decision-making processes of PSM organisations, even though critics argue that they rarely exert their power (Wolf, 2013).

Summing up, while “the opaque decision processes in PSM as public institutions are a topic of concern” (Horz-Ishak & Thomass, 2021: 235), in Germany, “for a few years now, public service media published comprehensive online data on facts and figures such as the spending of broadcasting fees” (Horz-Ishak & Thomass, 2021: 239). In this chapter, I set out to explore these increased practices of online information disclosure of German PSM in more detail.

Methodology

The analysis looks at practices of information disclosure published at PSM corporate websites and available to potentially all citizens; rather than practices mediated through other fora or dedicated to more specific and closed target audiences.

To answer RQ1, about legal and self-regulatory transparency obligations, the relevant laws and corporate charters constituting the twelve German public broadcasters have been analysed. The corporate charters are decided upon by the governance bodies and thus considered self-regulatory. The analysis only comprises transparency obligations specific to these laws and regulations, not taking into account general rules for transparency of public bodies or large corporations set out in other laws (e.g., compliance to GDPR rules or FOI laws, if not further specified in broadcasting laws).

To answer RQ2, about the information made available online, the corporate websites of all twelve German public broadcasters and their 24 governing bodies have been analysed. Additionally, the joint corporate website of ARD members and their common governing body GVK [Committee of the Chairpersons of Governance Bodies] as well as the Programmbeirat [Programme Advisory Board] has been taken into account.

All relevant documents (e.g., PDF files of laws and charters, screenshots of websites at the time of analysis) were gathered, coded, and evaluated using the qualitative research software MAXQDA. Additionally, relevant media reports, press releases, academic literature, and policy documents accompanying related law-making, governance, or organisational decision-making processes

were added to the analysis as “background material” (Karppinen & Moe, 2019: 256), for instance, to clarify when a certain practice of transparency had been introduced or whether there had been broader discussions about it.

To assess which information is released or must be released according to the relevant laws, a checklist of relevant indicators (see Table 14.1 below) has been created. The indicators have been identified deductively by consulting a checklist developed by the EBU (2015b). During an initial coding phase of the document analysis, the EBU checklist was adapted inductively by assessing the information available at the corporate websites and required to be published by law. Consequently, the list presented here deviates from the one put forward by the EBU, to better capture the specifics of the German PSB system.

Five categories have been created to group the indicators: Governance transparency relates to transparency practices and obligations of the supervisory bodies. This category has been added to the original EBU list of four categories to reflect the particular focus of this study on governance bodies. Adding this category was also considered appropriate to capture the specificities of the German PSB system, with internally organised bodies taking over tasks executed by external regulators in other European countries – a situation not necessarily reflected within the EBU guide. Corporate transparency refers to more general information about a public broadcaster, such as its structures and management. Financial transparency relates to all funding-related indicators, such as the publishing of annual reports. Remit transparency assembles those indicators which are closely related to the public remit, programming, or editorial issues, such as complaint procedures or transparency obligations concerning public value tests. Social transparency relates to information on areas such as inclusion, diversity, or sustainability.

Table 14.1 *Transparency indicators*

Category	Indicators
Governance transparency	- Public meetings - Meeting agendas - Attendance records - Session templates - Summary of relevant decisions & outcomes of a meeting - Meeting minutes - Names of members - Profiles (bio/CV) of members - Structures (e.g., existence of committees, executive board) - Legal framework & self-regulatory rules for governance bodies - Remuneration of members
Corporate transparency	- Corporate structure - Profiles (bio/CV) of managers - Legal framework & self-regulatory rules for corporate management - Statements in policy processes & other consultations - Corporate FAQ - Information on request; right to information - Corporate blog - Corporate codes of conduct - Information on subsidiaries (e.g., annual subsidiary report) - Production reports; Rules for cooperation with production sector - Results of corporate research - Number of employees - Additional personnel data (e.g., gender breakdown)
Financial transparency	- Results - Budget of current year - Annual report - Information on licence fees - Breakdown of licence-fee spending (for different programmes or departments) - Management salaries - Salary structures - Total income; Sources of income - Compliance rules (Links to) audit reports - Guidelines for advertising & sponsoring (Average) costs of selected programmes
Remit transparency	- Reports on fulfilment of remit & evaluation - Other remit-related reports & mission information - List of offers - Editorial guidelines - Correction site for all offers - Information on right to complain & complaints management - Complaints reports & statistics - Programme statistics - Public value concepts & proceedings for digital offers
Social transparency	- Information on data privacy & data protection policies - Core values - Sustainability policies - Diversity & inclusion policies & reports - Contribution to culture - Contribution to economy

Source: adapted from EBU, 2015b

While this methodology is suited for obtaining a broad picture of publishing requirements and practices across the German PSB system, it has several shortcomings. Notably, online content is highly volatile; meaning that some information might have been added to the websites under study just shortly after the analysis. Moreover, while it is reasonable to suggest that the information under study will be provided within specialised corporate sections of an organisation's online offer, the analysis may overlook information published elsewhere. Further, it only assesses whether organisations “score well against formal checklist criteria” (Heald, 2018: 323), instead of considering the demand side as well and analysing how potential users perceive the information being made available. Using the terms introduced by Michener and Bersch (2013), the analysis thus remains at the level of visibility rather than also considering the inferability of information.

Results

In general, the analysis reveals that legal and self-regulatory PSM transparency obligations differ considerably between the twelve organisations. Likewise, the degrees and practices of online information disclosure vary, unfolding a muddle of different PSM transparency policies within a single country, and even between those organisations constituting ARD. In the following, I take a closer look at the results for the five categories of transparency outlined above. For reasons of space, the analysis provides insights for only a selected range of particularly relevant indicators outlined in Table 14.1, that is, indicators relating to aspects of PSM transparency which have frequently been subject to public discussions in recent years.⁴ If not explicitly stated otherwise, all data refers to the status quo of August 2021. A more recent decision by the German federal states in 2023 to introduce at least some harmonised transparency requirements for all PSBs came after the deadline of this volume and could thus not be considered anymore.

Governance transparency

In principle, eleven of the twelve councils hold their meetings publicly, meaning that interested citizens are allowed to visit the sessions. Commonly, this is explicitly stated in the relevant laws constituting the PSM organisations, which usually contain rules on which agenda items are to be dealt with behind closed doors. Unsurprisingly, these are typically issues touching privacy and secrecy concerns of the broadcaster, staff members, or third parties. The number of councils obliged to meet publicly has increased considerably following the 2014 ZDF ruling (BVerfG, 2014): In 2013, only four councils had to meet in public (Wolf, 2013). After a decision from HR's broadcasting council to convene publicly from 2022 (Nünning, 2021), the DW broadcasting council is now the only one left to generally meet behind closed doors.

Principally, though, visitors of the meetings are not entitled to ask questions or participate in the discussions; additionally, they usually do not get insight into the session templates before or during the meetings (see also Dobusch, 2020; Hoff, 2019). Some broadcasting councils do occasionally provide video streams of particularly relevant meetings. The sessions of the committees, however, which usually prepare the plenary sessions, are not open to the public; this is usually explicitly stated in the relevant laws. The same holds true for the boards, which admittedly take care of more delicate financial issues.

Eight councils are required to publish summaries of the meetings and the most relevant decisions, the detailedness and completeness of which differs from organisation to organisation. These are typically not verbatim records or otherwise detailed minutes providing insights into discussions. A legal obligation to publish (the more detailed) minutes rather than just a summary exists for RB only. For six councils, such summaries are to be published for committee meetings, too. A legal obligation to publish meeting agendas exists for ten councils (all except the broadcasting councils of DW and RBB). Seven councils must publish attendance records – a measure often implemented following discussions about low attendance rates of particularly state and political party representatives (Rosenkranz, 2016). A legal obligation to publish summaries of the meetings as well as the agendas exist for six of the twelve boards; only three of these must publish attendance records. At WDR, the members of both supervisory bodies are obliged to publish self-disclosures about their jobs as well as functions in associations, institutions, political parties, or other governance boards once a year. A similar practice exists for the members of the ZDF and DRadio councils and boards.

Looking at the information disclosed on the websites of supervisory bodies, only four of the twelve councils and five of the twelve boards publish more detailed information, such as a short CV, about their members, beyond a mere mentioning of their names and the organisations delegating them. For most of the councils, more detailed information is available for the chairpersons only.

For DRadio, ZDF, and RB, reporting obligations for both supervisory bodies are almost equivalent. For some other organisations such as MDR, NDR, and WDR, legislators have foreseen wide-ranging transparency obligations for the councils, whereas the boards of these organisations must disclose only a minimum of information, such as their composition. The broadcasting councils of RB (as set out in law), RBB, SR, and SWR (voluntarily) publish rather detailed minutes of their meetings, which do include more information on who said what in discussions, rather than just representing the results of the meetings. The TV council of ZDF does publish some templates for its plenary sessions on a regular basis, including the activities reports of the director-general and the complaints report. However, there is no obligation to publish all templates discussed within the public meetings, and a respec-

tive proposal to introduce such a mandatory disclosure was dismissed by the council in 2020 (Dobusch, 2020). Still, the TV council is the only body which does publish such templates in a structured and regular manner – publishing the most information among the councils. The governing bodies of ZDF also introduced a self-obligation to publish annual attendance quotes for all members, besides the mandatory attendance lists for each session.

GVK, the governing body at ARD level, does not publish any structured summaries of its meetings or even the agendas, aside from some information included in press releases, and it does not have any legal obligation to do so. The Programme Advisory Board, which monitors and discusses the joint national television programme of ARD, publishes only basic information about the topics covered during its meetings. Even though this body, being constituted by one member from each ARD broadcasting council, does not have any mandate to exert its decisions, this has been widely criticised as a lack of transparency. The members of the Programme Advisory Board have been described as “clandestine TV critics [translated]” (Niggemeier, 2014). It is only via the detailed minutes published by some broadcasting councils through which the public can get insights into the discussions of this body, as its members are expected to provide reports of their activities to the councils.

In sum, whereas the information disclosed by the governance bodies has increased in recent years, the degree to which information must be made available and is made available still differs considerably in between organisations, and often even between the two governing bodies within an organisation. While it may be considered reasonable that the boards are subject to higher secrecy due to the issues they deal with, in many cases, reporting requirements for them are still very limited. This is the case even within the two most recently reformed laws, the MDR-Staatsvertrag [Interstate Treaty on MDR] and NDR-Staatsvertrag [Interstate Treaty on NDR]. To a lesser extent, this observation holds true for the committees of the council as well, which arguably are the places for more “open” discussions compared with the plenary meetings (Dobusch, 2020; Wolf, 2017).

The fact that some governing bodies already introduced enhanced policies of information-sharing before such rules have been implemented by law, or that they move beyond legal obligations (see also Thomass, 2016), underlines the agency they have here. However, an arguably important part of the German PSM governance and decision-making processes cannot be regulated by law, as it does not formally exist: the *Freundeskreise* [circles of friends]. These groups of councillors typically meet before plenary meetings to discuss their standing on the agenda items and “reflect political leanings towards the leading social democrats and the conservative party” (Horz-Ishak & Thomass, 2021: 238–239).

Corporate transparency

Two of the twelve broadcasters should provide for maximum transparency vis-à-vis the public, according to the laws constituting them: RB and ZDF. The Interstate Treaty on NDR introduces a general right to information towards the broadcaster, ruling out access to journalistic-editorial information. It is the only law analysed here explicitly stating such a right of citizens towards a PSM organisation.

All broadcasters publish an overview of their corporate structures, alongside profiles of the director-general and the other members of the executive board. Every organisation discloses the total number of employees working for them (and sometimes the number of freelancers); increasingly, additional personnel statistics such as a gender breakdown are provided. For example, RB publishes an annual report on the situation of its female employees.

The vast network of subsidiaries and sub-subsidiaries of German public broadcasters remains an often-debated issue. These direct and indirect shareholdings include production companies and advertising sales houses, but also several non-commercial organisations. In many cases, these are operated jointly by several or even all German PSBs. Frequently, these structures have been criticised for a lack of transparency (Rau & Hennecke, 2016). The Medienstaatsvertrag [Interstate Media Treaty], a law implemented by all 16 federal states and setting basic rules for the media landscape across the whole of Germany, implies that PSM organisations must submit an annual report of these shareholdings to their governing bodies as well as to the court of auditors and state governments. It does not state, though, that this report must be made available to the greater public, too. Such an obligation is implemented by only some laws constituting the individual broadcasters, such as the WDR-Gesetz [WDR Act]. However, seven organisations do publish their subsidiary report on their corporate websites, despite the missing legal obligation for most of them. Typically, the annual reports disclose at least basic information on the subsidiaries as well. Many organisations also provide a list of at least the most important subsidiaries on their websites.

Closely related to the subsidiary debate, the relationship between PSB and the independent production sector has repeatedly been an issue of concern. The important position of PSB production subsidiaries in the market has been steadily criticised, and broadcasters have been accused of privileging “their” companies over independent producers (Meier, 2015). In 2013, ARD and the Producers’ Alliance, the association of independent producers, reached an agreement according to which ARD had to disclose its commissioning policies in a structured manner. For the first time in 2015, ARD published its annual Produzentenbericht [producers report] (Nünning, 2015), comprising figures for all regional ARD members and breaking down the shares of productions commissioned to dependent and independent companies. Four ARD organisations also publish corporate-level production reports on their

websites. The Interstate Media Treaty requires PSM organisations to publish an overview of the share of productions commissioned to dependent and independent companies within their annual reports.

Financial transparency

As it is elsewhere in Europe, PSM executive compensation has consistently been an issue of heated debate in Germany. Eight of the twelve organisations are required to publish management salaries in some form. The relevant laws differ considerably though, concerning the degree to which these figures must be disclosed: Whereas the obligations for the director-general are usually most far-reaching, in some cases, it is sufficient to publish the average salary across all top-level management members (executive board) rather than the annual or monthly pay for each of them. Only three laws oblige broadcasters to disclose the payments PSB top executives receive for the functions they perform at subsidiaries.

Even without legal obligations for all organisations, it is meanwhile possible for citizens to find out the salaries of most top-ranking PSM managers, at least approximately: Since 2017, ARD has been publishing the annual basic salaries of the directors-general of its regional member organisations on a dedicated website, alongside the average monthly salaries of the other members of the top management (directors). ZDF and DRadio must publish that information by law, whereas the DW-Gesetz [DW Act] does not contain such a provision.

Six organisations must publish an overview of the wage structures for staff on collective wage agreements, as well as the general wage structures for employees outside such agreements. Typically, the boards must approve contracts with such staff members. Some laws contain an obligation that the boards must mention the salaries of such employees within the summary of the meeting in which such contracts are approved; arguably, this is a rather difficult place to find the information. So far, German PSB do not publish “star salaries” or the remuneration of middle-level management staff on a regular basis, as, for instance, the BBC does (BBC, n.d., 2021). Fees paid to star hosts, sports experts, or journalists are usually kept secret. A 2021 amendment of the Interstate Media Treaty on MDR, though, establishes that the annual report of the broadcaster must in going forward contain information on agreements with freelancers receiving more than EUR 150,000 per annum.

As for the annual reports of broadcasters, most are obliged to publish a “summary of essential parts” only, aside from the mandatory publication of the annual results. Many organisations do provide comprehensive information on the spending of licence fees, such as a breakdown of which shares of the fee are used for what programmes. A comprehensive overview of the organisations’ budget of the current year is provided online by five broadcasters.

Remit transparency

According to the Interstate Media Treaty, all PSM organisations must publish reports on how they have been fulfilling their remit during a two-year period, as well as reports on their future corporate and remit priorities. The law also contains rules on the publication of the public value concepts underlying newly launched or relaunched digital offers, alongside regulations on publicity throughout the different stages of a public value test.

The question of how PSM organisations deal with formal complaints from citizens about violations of standards within their programmes is closely related to remit transparency. It is only the laws constituting RB and WDR which require the organisations to regularly report on the formal complaints they receive from viewers, listeners, and users. At ZDF, a complaints report is published at the occasion of each TV council meeting. Usually, the complaint procedures foresee a multistep process, in which formal complaints are answered by the director-general's office, deciding whether rules of conduct have been violated or not. Complainants can then decide whether they want to uphold their complaint, in which case it is transferred to the council. The council may then approve or dismiss the complaint. With the above-mentioned exception of ZDF, none of the councils publishes regular structured reports or comprehensive regular (e.g., annual) statistics on the complaints that have reached that final stage. In many cases, the only way to track the decisions is to look at the summaries of council meetings; though, the latter do not always contain comprehensive information about what a complaint has been about, or on which grounds a decision has been taken. Moreover, for most organisations, it is impossible to get structured information about initial-stage complaints that have not been passed on to the councils. Consequently, citizens may only hardly inform themselves about the complaints filed with most German PSM and the issues of concern behind these complaints. In this regard, German PSM fall behind organisations such as the German Press Council, which publishes its decisions as well as annual statistics. The BBC has been obliged to provide fortnightly complaints reports by its regulator, Ofcom, in 2017, a move which has not gone unchallenged (Preston, 2017).

Social transparency

A range of reporting obligations exists in the field of data privacy policies. Topics such as sustainability have also increasingly been put on the agenda; even though there are rarely any reporting obligations in this field so far. In 2020, ARD published a sustainability report for the first time. Far-reaching reporting obligations or self-regulations in the field of diversity (e.g., diversity schemes off-screen and on-screen) could not be identified; yet, some broadcasters have increasingly started to publish such information. Generally, indicators of social transparency are less prominent in both legal frameworks and the information published online.

Conclusion

Summing up, the analysis demonstrates that German PSM organisations and their governing bodies do indeed publish a wide range of information, and that an increase of both legal transparency obligations and voluntary practices has occurred in recent years. However, the degree to which information is revealed and must be disclosed according to legal requirements differ considerably between broadcasters. While the most recently revised acts constituting PSM organisations (the Interstate Treaties on MDR and NDR, amended in 2021) do impose new transparency regulations, these also differ. Further, the two acts deviate from the transparency rules agreed upon in the Interstate Treaties on DRadio and ZDF, which are constituted jointly between all 16 federal states.

The respective broadcasting acts constituting RB, ZDF, and DRadio may be considered particularly advanced regarding transparency measures. In contrast, only very few legal obligations are to be found in the Interstate Treaty on RBB and the DW Act.⁵ As DW is the only broadcaster constituted by federal law, the federal level has not yet reflected the rise of transparency measures discussed and implemented on the state and interstate level following the ZDF ruling of the Federal Constitutional Court.

The degree of voluntary information disclosure also varies considerably between the different PSM organisations and their supervisory bodies. Most notably, both governing bodies of ZDF publish a wide range of information. Whereas the councils do generally disclose more than only basic information, many of the boards still lack increased transparency. Considering the importance of this aspect for an informed dialogue with society, strikingly little information is available regarding the processing of citizen complaints. The degree to which PSM organisations publish funding figures also differs starkly. Social transparency, comprising data on issues such as diversity and sustainability, has mostly only recently been put on the agenda.

Consequently, despite an increase of information-sharing by German PSM and their governing bodies, some considerable “black boxes” remain, even for those organisations and supervisory bodies which have implemented more advanced practices of information-sharing. PSM organisations and their supervisory bodies should thus make efforts to harmonise transparency practices across the country to enable citizens to obtain an equivalent degree of knowledge of their broadcasters’ activities. While this could be regarded as a task for legislators, PSM organisations and their supervisory bodies may also introduce self-commitments to achieve a greater degree of information sharing.

This study analyses which information is available for the public – and hence visible. However, it does not reveal how receivers digest that information, that is, whether it is inferable (Michener & Bersch, 2013). It does not assess whether the publishing of the indicators under study lives up to

transparency aspirations such as an increase in public trust or legitimacy, or whether it really “transport[s] discourses among the elites to a broader public sphere” (Thomass, 2016: 303). As Rivera Otero and colleagues (2021: 15) rightly argued in their comparative study of PSM online information-sharing, “transparency, both theoretically and practically, goes beyond the publishing of data and reports on the website of the corporation to become something that must be approached holistically”. Further research could thus shed light on the processes through which public broadcasters react to (differing) information demands from their institutional environments (for a conceptualisation of organisational transparency as negotiation process, see Heimstädt & Dobusch, 2018), and the question of whether a culture of transparency has been embraced within public broadcasters (see Donders, 2021). A cross-country comparative perspective could serve to map different (best) practices and regulations, and to identify common information demands and obstacles to greater PSM transparency.

Certainly, debates on the future of PSM and their contribution to and legitimacy within society will not stop anytime soon. A constructive legitimating dialogue will, however, require an informed citizenry (Thomass, 2016). Taking on a society-oriented stance, studies could assess which information citizens would wish to obtain from public broadcasters and how they perceive the information being shared. Enhancing audience participation in PSM decision-making processes, for example, through (online) consultations or citizen assemblies, could be an additional step towards more transparency (see Rodríguez-Castro & Campos-Freire, Chapter 11 in this volume). Potentially, this would foster an approach to transparency that exceeds an understanding of PSM organisations and their governing bodies as “active” information providers on the one hand, and “passive” audiences on the other (see Fehlmann, Chapter 2 in this volume).

An enhanced culture of accountability and transparency towards society at large is crucial in order “to make sure public broadcasters behave in an accountable manner towards citizens instead of governments” (Donders, 2021: 216). If contribution to society is to be understood as a concept that moves beyond the mere pleasing of governments or competitors towards one that sets particular focus on the needs and interests of citizens, both the theoretical framework and practical implications of the calls for transparency evident within it deserve further discussion and elaboration.

Acknowledgements

The author received funding from the German Trade Union Confederation (Deutscher Gewerkschaftsbund, DGB) for a previous version of the study presented in this chapter.

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Endnotes

¹ The increase from EUR 17.50 per month and household to EUR 18.36 was finally enacted by the Federal Constitutional Court in July 2021, after the state government of Saxony-Anhalt had refused to put the vote on the state parliaments’ agenda in late 2020 and thus stopped the increase planned for January 2021. Subsequently, ARD, ZDF, and Deutschlandradio had filed complaints at the constitutional court.

² These are (in alphabetical order): Bayerischer Rundfunk (BR), Hessischer Rundfunk (HR), Mitteldeutscher Rundfunk (MDR), Norddeutscher Rundfunk (NDR), Radio Bremen (RB), Rundfunk Berlin-Brandenburg (RBB), Saarländischer Rundfunk (SR), Südwestrundfunk (SWR), and Westdeutscher Rundfunk (WDR).

³The size of councils varies, ranging from 74 (SWR) to 32 (RB). The number of board members ranges from 18 (SWR) to 7 (BR, DW).

⁴ For more detailed tabular oversights of the results, please contact the author.

⁵ Though, it must be noted that an initial draft discussed in early 2021 to reform the Interstate Treaty on RBB contained new transparency obligations, also reacting to the requirements set by the Federal Constitutional Court in 2014 (Grimm, as cited in Hartung, 2021). Yet, the reform was halted later in 2021 and postponed following debates about the future of two radio stations.