

Doc CC TVSF (2005) 2

MINUTES OF THE 22nd MEETING OF THE CONTACT COMMITTEE ESTABLISHED BY THE TELEVISION WITHOUT FRONTIERS DIRECTIVE on 06 April 2005

1. Agenda

The Chairman welcomed the members of the Contact Committee. The agenda was adopted with one amendment – the presentation of OFCOM was moved to the beginning of the meeting.

2. Presentation by OFCOM: 'The UK's approach to independent production - the story so far'

OFCOM presented a first assessment of the new UK approach concerning independent production, in particular the positive effect of the provision on retention of rights by independent producers (code of practice for public service broadcasters adopted on the basis of section 285 of the Communications Act). Although a detailed impact assessment has not been conducted, this provision seems to have created an interest of the financial sector to invest in independent production.

3. Review of the “Television without Frontiers Directive”- Focus Groups

The Chairman recalled the history of the Focus Groups (FG) and the timetable for the review process:

- May 26th 2005: Meeting of the last FG on Art 4/5
- May 30th/31st 2005: Seminar in Luxemburg with Member States
- End of June/ Beginning of July: Publication of issues papers by the Commission which will then be open to public discussion
- September 20th-22nd 2005: Liverpool conference
- End of 2005: Draft legislative proposal by the Commission.

The Commission services then presented their conclusions drawn from the discussions with the experts:

In view of the scope of the Directive (FG 1) a possible way forward could be to distinguish between linear and non-linear audiovisual services. Audiovisual services could be defined as:

- Services as defined by the treaty (Art 49),
- for the delivery of moving pictures and/ or sound,
- to the general public,
- by electronic networks.

A set of minimum obligations (basic tier) should apply to all audiovisual services while the stricter rules (second tier) of the present Directive –with possibly more flexible rules on the insertion of advertising - would only apply to linear services (excluding radio).

In the following areas a basic (first) tier of obligations could be adopted:

- Protection of minors and human dignity
- Identification of commercial content
- Right of reply

- Basic identification / masthead requirements

As the result of the work of FG 2 on advertising, a new definition of ‘commercial communications’ is possible. A basic tier of obligations would apply to all commercial communications (principle of identification, rules on human dignity, protection of children, rules on alcohol). Traditional broadcasting services would also be applied rules on insertion and duration as under the current legislation, subject to more flexibility. The rules should be more flexible and simple than in the present directive, e.g. the 20 minutes insertion rule could be replaced by a maximum number of three interruptions per hour.

Concerning the right of reply (FG 3) no binding regulation at community level is envisaged but the goal is to ensure non-discriminatory application of existing regulation and self-regulation in the Member States.

The delegations expressed their preliminary views on these matters. The Commission confirmed that editorial responsibility is part of the definition for the second tier since linear services are by definition edited.

4. Regulation of non-linear audiovisual services in the Member States

The Commission presented the questionnaire sent to the Member States the previous week and asked the delegations to submit, in writing, their answers by end of April 2005.

5. Any other business

On April 28th there will be a seminar in Brussels to present the interim report of the co-regulation study commissioned by the Commission to the Hans Bredow Institute.

The summary of the questionnaire on access to audiovisual services for people with disabilities is still being elaborated. Three Member States have not yet responded.

6. Jurisdiction: Better cooperation between regulatory authorities and negotiations with third countries on minimum standards for satellite broadcasting

On the request of the French authorities the issue of incitement to hatred in broadcasts coming from outside of the European Union was discussed within the Contact Committee.

The commission summarised the discussions in the FG. The country of origin principle was not questioned while the criteria of Art 2 (4) of the Directive may be arranged in a different order with the satellite uplink coming first. It reported on the High Level Group of Regulators which convened on March 17th following the invitation of Commissioner Reding and pointed to the common conclusions of the group which can be found on the Commission website.

(http://europa.eu.int/comm/avpolicy/legis/conclusions_regulateurs/conclusions_regulateurs_fin_en.pdf)

The Commission informed that it examined the possibility of establishing a restricted electronic platform to exchange information between it and the regulatory authorities. One delegation expressed the expectation that in case of realisation the Commission will also grant access to the competent Ministries of the Member States.

The French delegation then submitted a discussion paper which - going beyond a possible adaptation of Article 2 of the TVWF Directive as indicated above - proposes the setting up of a mechanism of mutual recognition of the decisions of prohibition of a programme infringing Article 22a of the TVWF Directive.

The delegations supported the idea of a better coordination between regulatory authorities. However, the proposal that negative decisions in one Member State might be binding for other Member States was questioned by a number of delegations. Some delegations expressed their concerns about the possibility of circumvention of national rules through establishment in another Member State. The Commission recalled the Court of Justice case law in that respect.

The meeting was followed by a brief meeting in the margin of the Contact Committee with representatives from Switzerland who explained their practice with regard to TV programmes which incite to hatred and expressed their readiness to cooperate with the Member States on these issues.