

**MINUTES OF THE 26th MEETING OF THE  
CONTACT COMMITTEE  
ESTABLISHED BY THE TELEVISION WITHOUT FRONTIERS DIRECTIVE  
19 February 2008**

**1. Agenda**

The Chairman welcomed the members of the Contact Committee (CC). The agenda was adopted.

**2. Transposition AVMSD – Jurisdiction**

The UK, FR and LU delegations presented how the **reversal of the subsidiary jurisdiction criteria** in Art 2(4) AVMSD will affect the number of satellite broadcasters currently subject to their jurisdiction.

FR will keep jurisdiction for many of the 500 broadcasters not established in the Union but are distributed via Eutelsat. However, the reversal of the order of the jurisdiction criteria will mean that about 210 channels will move under the jurisdiction of the Member States where the up-link is situated. A minimum of 40 satellite channels that are now subject to FR jurisdiction will fall under UK jurisdiction.

LU will be less affected by these changes. ASTRA has notified all channels to the government and delivered information needed to identify the competent Member State. ASTRA almost exclusively transmits signals from broadcasters established in one of the Member States.

The Commission services stressed the importance of transparency requirements: Member States need to have available the necessary information with regard to satellite operators and uplinks, so that they can exercise their responsibility to ensure the application of the Directive. It flows from the principle that media service providers should be subject only to a single jurisdiction that an *anteriority rule* needs to be applied: The Member State where the uplink is used first keeps jurisdiction, even if the same signal is also up-linked later - for other bouquets - from another Member State. Delegations agreed that cooperation between the regulatory authorities in the different Member States will be essential to ensure a smooth transition between TVwF and AVMSD and the full ongoing application of the Directive.

The Commission services also recalled the **cooperation and the circumvention procedure** as provided for in Art 3(2) and (4) AVMSD. Though it is not binding to involve and inform the Commission in the cooperation procedure, it seems advisable to do so, because it will facilitate a swift Commission decision in a possible consecutive circumvention procedure. Discussions in the Contact Committee will not prolong the two months deadline provided for in Art 3(2) AVMSD.

The criteria for the Commission decision according to Art 3(3) on the compatibility of notified measures with Community Law in cases of circumvention will be deduced from ECJ case law. The Commission decision itself is subject to full judicial review by the ECJ and cannot be limited to manifest errors by Member States. The measures to be taken by Member States in practical terms will have to be such that can be enforced within the respective Member State.

### **3. Transposition AVMSD – Self- and Co-regulation**

The German delegation presented the German regulatory model for the protection of minors ("regulierte Selbstkontrolle").

The Commission services highlighted the differences between Art 3(7) and Art 3e(2) AVMSD as regards the addressees, the scope and the specific obligations. In the discussion the Commission services confirmed that with regard to Art 3(7) AVMSD there is no obligation to set up co- or self regulatory regimes. However Member States are expected to assess the possibility of such instruments, consult with stakeholders and provide reasons, if they came to the conclusion that these instruments were not appropriate for a given field. With regard to Art 3(7) AVMSD this is a single reporting obligation after the end of the transposition period, whereas the results of the transposition of Art 3e(2) AVMSD will be subject to a regular reporting obligation (Art 26 AVMSD).

### **4. Transposition AVMSD – Product Placement**

The Commission services launched the discussion with a short presentation. The discussion between delegations focused on the notions of *undue prominence*, *editorial independence* and *significant value* as well as the distinction between *sponsorship* and *product placement*. AT reported about the Austrian rules that are in place since 7 years and agreed to deliver a more detailed presentation on its regulatory experience at the next Contact Committee meeting.

On this and other issues a number of delegations asked for Commission guidelines concerning the transposition of AVMSD. The Commission agreed to consider these requests but stressed the risks of freezing the discussion at this early stage and in general that detailed guidelines might lead to detailed regulation, which might run against the Commission's intention to have a light touch implementation of the Directive.

### **5. Transposition AVMSD – Commercial Communication**

This item will be discussed at the next meeting. The Commission repeated its invitation to delegations to launch the discussion with presentations on national practices/experiences that might be interesting for other delegations.

**6. Revision of the Contact Committee working document on Art 3a TVwF (events of major importance to society)**

The Commission will present a revised *working document on events of major importance to society* to the Contact Committee as soon as the ECJ has adopted its judgment in case C-125/06.

**7. Any other business.**

Next meetings:

16 April 2008: product placement (AT), audiovisual commercial communication, definitions of on demand audiovisual media services; if enough time: specific obligations for on demand audiovisual media services.

17 or 18 June 2008: two-days meeting possible, if necessary to discuss all the other issues relevant with regard to the transposition of the Directive.