

**MINUTES OF THE 27th MEETING OF THE
CONTACT COMMITTEE
ESTABLISHED BY THE TELEVISION WITHOUT FRONTIERS DIRECTIVE
16 April 2008**

1. Agenda

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

The Chair informed delegations about the current state of the AVMSD codification. A Commission proposal will be available before the summer, on which the Council is expected to act before the end of the year. Conclusion of the procedure, which does not involve a full reading by the EP, should take place within this electoral term.

Reference was also made to the ongoing revision of the ECTT. The representative of the Council of Europe Secretariat explained that an almost complete draft should be discussed in the Standing Committee in November 2008. The adoption of the instrument is envisaged for spring 2009.

2. Transposition AVMSD – Product placement (Art. 3g)

The AT delegation presented, in the light of its domestic experience, some reflections on the requirements of Art 3g AVMSD, addressing (i) the concept of significant value with respect to product placement; (ii) the relationship between product placement and sponsoring; and (iii) the relationship between product placement and (surreptitious) advertising/commercial communication.

The Commission services reiterated that the objective of the provision is to ensure that consumers/viewers are informed when payments are involved in the placement of a certain product and explained that the concept of *significant value* in Recital 61 only refers to the "provision of goods and services free of charge". It was emphasized that the Directive makes no differentiation in the treatment of product placement between linear and on-demand AVMS. The presentation of production props of non-significant value would not be considered as product placement, but remains subject to the general rules on audiovisual commercial communications. The discussions among delegations showed that Member States will have to examine carefully which administrative rules (burden of proof, transparency rules) need to be put in place to ensure an effective implementation of the Directive. The Commission also referred to earlier studies that show how the value of product placement is and can be calculated.¹

3. Transposition AVMSD – Definitions (Art. 1)

The Commission introduced the point with an overview of definitional issues, focusing on the notion of audiovisual media services and the distinction between linear and on-demand

¹ Study on the development of new advertising techniques,
http://ec.europa.eu/avpolicy/info_centre/library/studies/index_en.htm#finalised

services. It was reiterated that the transmission of audiovisual content via electronic networks as defined in Art 1(a) AVMSD is a service. The fact that users might create physical products like DVDs from this downloads does not change this fact.

With respect to the question of how the mass media character of services should be assessed, the Commission underlined that the actual size of the audience is not decisive for the qualification of an audiovisual service as a media service. An important criterion however is whether the recipients are individually identified or identifiable; if this is the case, e.g. when messages sent to individual addressees constitute private correspondence or services can be received only by the customers of companies providing goods or services other than audiovisual media service (e.g. train operators), the service will not be considered a mass media / an audiovisual media service. In this context the issue of determining the boundary between public and private space (trains stations, shopping malls etc) may arise. This question needs to be resolved with regard to the Member States' domestic legal orders.

Where a service provider does not exercise editorial control, the requirements of Art 1(a) and 1(d) AVMSD ("media service provider") are not fulfilled and such services are not "audiovisual media services"; removing objectionable content to comply with an administrative order or general rights clearance does not by itself constitute the active decision-making that would be necessary to meet this criterion. This is the case for hosting providers and operators of platforms featuring user-generated content (e.g., YouTube).

It was also discussed how the notion of service should be interpreted. It appears that a number of elements should be taken into account: how will the user perceive the service (independent or not), own branding, separate use possible etc. Within a given service the contribution of the audiovisual offers to the overall revenues will be an important element to take into account when deciding whether the audiovisual elements are ancillary or the principal purpose of the service.

4. Transposition AVMSD – Commercial Communication

The discussion was prefaced by an introductory presentation by the Commission services. There was a discussion on the differences between Art 3e(f) and Art 14 AVMSD. The latter ban for teleshopping only concerns medicinal products which are subject to a marketing authorisation (Dir 65/65/EEC). Where measures for on-demand audiovisual media services stricter than those foreseen by the Directive are envisaged in the course of transposition, they have to be notified to the Commission pursuant to the Article 8 procedure of Directive 98/34/EC.

5. Transposition AVMSD – New obligations / on-demand services (Art 3i)

The Commission introduced the provision relating to the promotion of European works in on-demand services. Following requests for guidance on the implementation of this provision by several delegations, the Commission services clarified that stricter rules to promote national minority and regional languages remained possible, subject to the usual proportionality test. Such a stricter provision would be subject to the notification requirement under the Article 8 procedure of Directive 98/34/EC.

Regarding the use of actual consumption figures as a measure of the effectiveness of Member State actions to promote on-demand services, the Commission services emphasized

that this is one among several indicators mentioned in Recital 48 that needs to be taken into account within the framework of the reporting obligations set out in the Directive.

The chair explained with regard to co-operation agreements the state of play and indicated that these developments had also been discussed at the meeting of the Cinema expert group.

6. Transposition AVMSD – Transparency requirements (Art 3a)

With respect to the transparency requirement imposed by Article 3a AVMSD there was a generally shared sentiment that effective implementation may pose bigger challenges with respect to linear than for on-demand services.

Irrespective of the source of information, a reference to a physical entity to which users of the service can address themselves must be available. However, a reference to a website alone is not sufficient. It was also discussed whether a reference to a national register could ensure an appropriate information of viewers.

7. Transposition AVMSD – Protection of minors (Art. 3h)

The discussion centred on how delegations intend to achieve adequate protection of minors in on-demand services, and notably the use of self- and co-regulatory measures. Greece has launched a consultation on the topic, while the UK seeks to adopt co-regulatory measures. Spain intends to flag appropriate as well as inappropriate content in the catalogues of on-demand service providers and related access services to enhance user control. The EEA secretariat raised the question to which extent national access systems could become barriers to communitywide services – a concern shared by the Commission services.

8. Transposition AVMSD – Accessibility (Art. 3c)

Delegations were invited to share their thoughts on how to encourage media service providers to make their services available to people with visual or hearing disabilities.

Concerns were voiced over the need to provide additional funding for public service broadcasters to increase service provision in this area and its compatibility with state aid rules. Some delegations indicated that legislative measures would be needed to induce substantive progress. The UK delegation agreed to verify that all media service provider under UK jurisdiction comply with adequate, non-discriminatory obligations in this respect.

9. Next meeting

The next meeting is scheduled for Wednesday, 18 June 2008, subject to confirmation.

Delegations are invited to volunteer a presentation on one of the topics to be discussed at that meeting (sponsoring; television advertising, including teleshopping; short reporting; cooperation between regulatory bodies).