

**MINUTES OF THE 28th MEETING OF THE  
CONTACT COMMITTEE  
ESTABLISHED BY THE TELEVISION WITHOUT FRONTIERS DIRECTIVE  
18 June 2008**

**1. Agenda**

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

**2. Transposition AVMSD – European works (Art. 3f AVMSD)**

The FR delegation introduced the topic with a presentation on the national approach to promoting European works in on-demand services. Future legislative measures will take into account existing measures applied to linear services. They will support the development of on demand services, as is shown by the will to apply to these services a reduced VAT rate. The answers to the public consultation considered all possible measures: financial contributions to European production, catalogue quotas and an attractive presentation of European works. It would seem that financial contributions are favoured by most stakeholders. The BE and ES delegations indicated that they would also likely apply a financing requirement, whereas AT plans to rely primarily on the attractive presentation of European works in catalogues to achieve the objective of Art 3f AVMSD.

**3. Transposition AVMSD – Co-regulation (Art. 3(7) AVMSD)**

The UK delegation gave an overview of the intended role of co-regulation as a means of transposition, building on existing self-regulatory practices. The main issues raised concerned (i) the allocation of powers, including the relationship between the regulator, existing self-regulatory and possible co-regulatory bodies; (ii) the number of co-regulators and their financing; and (iii) membership rules for media-service providers in relation to such bodies. In the ensuing discussion, the Commission services confirmed that co-regulation can be a appropriate instrument to meet obligations under the Directive that require Member States to ensure the attainment of particular objectives, whereas self-regulatory measures cannot be used towards that end.

**4. Transposition AVMSD – Television advertising (Chapter IV)**

The Commission services recalled how the AVMSD changes the rules on television advertising. The AT, ES, FR and UK delegations outlined their intended transposition strategies developed against the backdrop of national consultation exercises.

On the definition of *spot advertising* the last sentence in Recital 59 of Directive 2007/65/EC says that the "notion of a television advertising spot should be understood as television advertising ... having a duration of not more than 12 minutes". The Commission understands that this is a clarification with regard to the maximum duration of a spot. To make a distinction between short and long forms of advertising the case-law of the European Court of Justice and the indicators outlined by the Court remain relevant. Longer forms of advertising "*require more time than spot advertisements on account of their method of presentation*"<sup>1</sup>. The Directive provides for specific rules with regard to "long forms" of teleshopping = "teleshopping windows" which have to have a minimum duration of 15 minutes [Art 18a AVMSD]. As a result teleshopping either should be a spot of a duration of not more than 12 minutes or a window of at least 15 minutes.

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<sup>1</sup> See the judgment in case C-320/94 *RTI v Ministero delle Poste e Telecomunicazioni*, ECR [1996] I-6471.

The Commission confirmed that merely informative announcements by the broadcaster concerning its own programmes should be treated as programmes and not as advertising at all. Self promotional announcements are to be considered as advertising. However, Article 18(2) exempts "announcements made by the broadcaster in connection with its own programmes" from the application of Article 18.

With regard to Art 10(1) AVMSD the Commission explained that any form of audiovisual commercial communication shall be readily recognisable [Art 3e (1) a) AVMSD]. Product placement is a form of audiovisual commercial communication [Art 1(h) AVMSD] but not a form of television advertising. Television advertising and teleshopping, like any form of audiovisual commercial communication, have to be readily recognisable, but Art 10(1) AVMSD provides that these forms of commercial communication in addition have to be "*distinguishable from editorial content*". In the view of the Commission this qualification, which was added in the co-decision procedure, stresses the difference between product placement, which is part of the storyline, and television advertising, which has to be distinguishable from editorial content, but does not add additional requirements with regard to the current wording of Art 10 (1) of the Television without Frontiers Directive.

The Commission reiterated that according to Art 11(2) AVMSD children's programmes may only be interrupted by television advertising and/or teleshopping if the programme has a scheduled duration greater than 30 minutes.

### **5. Transposition AVMSD – Sponsoring (Art. 3f AVMSD)**

In response to Member State queries, the Commission clarified that Art 3f (1) c AVMSD requires that "*sponsored programmes shall be clearly identified as such by the name, logo and/or any other symbol of the sponsor such as a reference to its product(s) or service(s) or a distinctive sign thereof*": This means identification can be achieved by reference to the sponsoring company or one of its brands. The discussion also touched upon the distinction between sponsored programmes and services, with an emphasis on how to ascertain the editorial independence of individual programmes forming part of a sponsored service.

### **6. Transposition AVMSD – Short reporting (Art. 3k AVMSD)**

A Commission presentation outlined the scope of the provision, and during the discussion, the ES and UK delegations outlined their plans for its transposition. It was emphasized that, despite resemblances in the subject matters dealt with, events of public interest are not synonymous to events of major importance to society. The freedom of information issues that would arise if Member States were to define which events could be of "high interest" were flagged. The Directive provides for a right to access to events "which are transmitted" on an exclusive basis, but does not deal with the acquisition of exclusive rights.

Member State have the obligation to put in place a system that works effectively but they are, within the usual limits of Community Law, free to choose the appropriate means. This is particularly true with regard to issues not touched upon by the Directive, like how exactly the source has to be identified, or how exactly the right can be exercised (signal quality, time elapsed between event and broadcast, etc.).

### **7. Transposition AVMSD – Cooperation between regulatory bodies (Art. 23b AVMSD)**

By way of introduction, the Commission services stressed the recognition given for the first time to functionally independent national regulatory authorities under the AVMSD. The Council of Europe delegate pointed in this respect to a recent declaration of the Committee of

Ministers, which provides guidance on how this may be achieved.<sup>2</sup> Concerning cooperation, the Commission services confirmed that existing administrative arrangements may suffice, whereas legislative measures can become necessary in areas that currently may not have an adequate legal framework to support cooperation, e.g., in the data protection field.

#### **8. Transposition AVMSD – Communication of main implementing provisions**

The Commission clarified the distinction between the notification requirement (applicable to actions taken to comply with AVMSD obligations) and the correlation table (intended to give a complete overview of all implementing measures irrespective of their date of origin). Assuming the agreement of the Member States, the information provided in the correlation tables will be made available on the Commission's website. This will not prejudice any other measures taken by the Member States to publicize this information.

#### **9. Next meeting**

The next meeting is scheduled for Thursday 6 November 2008, subject to confirmation.

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<sup>2</sup> Declaration of the Committee of Ministers on the independence and functions of regulatory authorities for the broadcasting sector of 26 March 2008, available online at: [https://wcd.coe.int/ViewDoc.jsp?Ref=Decl\(26.03.2008\)&Language=lanEnglish&Ver=original&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75](https://wcd.coe.int/ViewDoc.jsp?Ref=Decl(26.03.2008)&Language=lanEnglish&Ver=original&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75).