

**MINUTES OF THE 29th MEETING OF THE CONTACT COMMITTEE
ESTABLISHED BY THE
"TELEVISION WITHOUT FRONTIERS" DIRECTIVE
Tuesday, 16 December 2008**

1. Adoption of the agenda

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

2. Transposition AVMSD – State of Play

Delegations reported on the transposition of the AVMSD in the Member States – see table in the Annex. Most of the delegations are still in a preparatory phase, but feel confident that the work will be finalized by the end of next year. Several delegations pointed out that the process might be affected by the elections taking place in 2009. (See Annex)

Mr Kogler (AT, member of the drafting group) reported that the Standing Committee had reached a provisional agreement on most issues concerning the revision of the Council of Europe Convention on transfrontier television. The Commission emphasized that the Convention - as it also covers areas where there exists Community Law (the AVMSD) - is subject to mixed powers. The Commission recalled that Member States shall fully comply with their obligations under the Directive and avoid entering into conflicting obligations under the Convention.

3. Transposition AVMSD – Short Reporting (Art 3k AVMSD)

The Directive leaves the definition of the modalities and conditions as well as the definition of the notion of "event" to the Member States. Finland created a working group to implement this provision and the FI delegation outlined the working group's proposal to implement Art 3k AVMSD solely by amending the Copyright act, not the audiovisual legislation. After discussions with broadcasters and sports rights holders, the main challenges for the drafting process remain the definition of "event", the concrete time limits of the right and the potential effect on the sports rights holders.

The definition of "event", especially in terms of so-called "multiday events" was discussed.

4. Transposition AVMSD – Television advertising – quantitative limitations

The Commission presented some issues concerning the rules on TV advertising, self promotion and quantitative limits: self promotion in itself amounts to television advertising, whereas Art 18 AVMSD covers "announcements" of programmes and ancillary products.

The Dutch delegation afterward presented specific issues concerning self-promotion followed by a roundtable discussion on topics such as the requirement of payment in the definition of television advertising including self-promotion.

The Commission recalled the distinction between promotional messages and announcements of programmes. It also stressed the need to pitch the right level of detail to ensure a consistent interpretation of the Directive throughout the EU in order to obtain a level playing field, while at the same time leaving sufficient flexibility in the application of the rules on a case by case basis through the competent independent regulatory authorities. However, independent regulators are encouraged to cooperate closely with each other and with the Commission in order to achieve a correct and coherent application of the Directive and develop common approaches to the same practices. Some delegations (AT, DE) explained that according to them indications such as "*X the best movie channel*" are not considered to be self promotion in the meaning of the Directive.

5. Transposition AVMSD – Change of subsidiary jurisdiction criteria

A draft working document, presented by the Commission, outlined a procedure to ensure a smooth transition from TVwF to AVMSD. As a consequence of the change of the subsidiary jurisdiction criteria in Art 2 (4) AVMSD, a considerable number of audiovisual services will change jurisdiction and Member States already had agreed that to avoid distortions this should take effect at the end of the transposition period. The Commission proposed that the Contact Committee - with the help of the national regulators - cooperates in a one-off exercise to identify the audiovisual media services which will be affected.

The delegations endorsed this approach. The Chairman recalled that in implementing the AVMSD Member States have to ensure that they dispose of all relevant information in order to determine whether they are competent or which other Member State has jurisdiction (especially with regard to services distributed using an up-link in or a satellite capacity appertaining to that Member State).

6. Guidelines on the Implementation of Art 4 and 5 AVMSD

The Contact Committee discussed possible options for an update and an extension of the 1999- guidelines. Three main aspects were presented:

1. Shift from "per channel" to "per broadcaster" (and "per media service provider" approach)
2. Practical solutions for making the reporting process easier, quicker and smoother
3. The indicators for measuring compliance with the new Article 3i to be included in the guidelines

As to the first point, there were two different views: a number of delegations agreed with the Commission proposal (DE, AT, UK, RO) to shift from "per channel" to "per broadcaster"/"per media service provider" approach, others (FR, BE), though not completely opposed, stressed the risk that such an approach could lead to the concentration of European content in some channels only.

Delegations also would like to improve the reporting process and to make better use of electronic tools for data collection. As to the proposed criteria under the 3rd point, the delegations considered them as good examples to be included in the guidelines, but pointed out that the final decision which criteria suits best should be left to Member States. Alternatives (differentiated pricing, bundling) were also put forward (UK).

7. Accessibility of audiovisual media services for people with a visual or hearing disability (Art 3c AVMSD)

The Commission presented industry/user co-operation initiatives on accessible digital television: for the increasing number of disabled and older watchers, digital TV offers a number of new features which present opportunities as well as challenges/barriers that need to be overcome jointly by governments, manufacturers and broadcasters. It was recalled that Member States will have to inform the Commission of actions undertaken on the basis of Art.3c AVMSD, as part of the general reporting obligation of Art 26 AVMSD.

The AT Delegation stressed the importance an additional community support scheme could have for the transposition of Art 3c AVMSD.

8. Media literacy

The reporting obligation in Art 26 AVMSD explicitly refers to "the levels of media literacy in Member States" that have to be part of the future application reports. In this context, the Commission pointed out that the Parliament recently adopted the Commission's report on "media literacy in the digital media world". Furthermore the Commission reported on the

launch of the "study on assessment criteria for media literacy", that will provide a tool to carry out the reporting obligations under the AVMSD.

9. Cultural cooperation protocols in new trade agreements

Cultural Cooperation Protocols are a means of external implementation of the UNESCO Convention on cultural diversity by the EU. They include sectoral provisions on audiovisual cooperation which link to the AVMSD when they provide for the treatment of certain audiovisual international co-productions as European works. Such provisions have been included in the 1st Cultural Cooperation Protocol (CCP) that has been negotiated by the EU: the CCP to the Economic Partnership Agreement signed with 14 countries of the Caribbean region last October. Discussions are currently on-going on the development of audiovisual cooperation provisions in the CCP proposed for the Free Trade Agreement with the Republic of Korea. The terms of this CCP are different, since Korea has a strong audiovisual industry and the agreement needs to ensure strict reciprocity.

10. Any other business

a. Agreement with Switzerland

The Commission presented the agreement with CH, which was signed in Brussels on the 11th Oct 2007 and is being provisionally applied. The Swiss Parliament had voiced concerns regarding the provisions in Art 1 of Annex I of the Agreement concerning freedom of broadcast reception and retransmission. Nevertheless, a solution had been identified which provides good prospects for the ratification of the Agreement.

b. Al Manar

Commission recalled the case of Al Manar: Al Manar TV, established in Lebanon, was removed in 2005 from satellites all over EU, because its programmes were inciting to hatred. Today, it can still be received in the EU via satellites from third countries. The German delegation reported on an order recently adopted by the German Government, containing a general ban of any activities of Al Manar TV.

With regard to the Lebanese statement that they had never received a complaint on Al Manar TV, the chairman asked the Member States whether recent evidence exists that Al Manar TV still incites to hatred and, if this was the case, whether they would consider to launch a diplomatic complaint with the Lebanese Government (and inform the Commission thereof).

c. Representation of minorities

The Commission delivered the final report based on Member States replies to a questionnaire that examined how far racial, ethnic or national diversity in the audiovisual media could reinforce freedom of expression, diversity of points of view and pluralism. It concludes that the presence of minorities in newsrooms and on-screen helps to counteract prejudices vis-à-vis minorities and it indicates that the challenge is how to encourage audiovisual media to reflect the diversity of European societies better.

d. Article 3j: Major events

- In view of three cases pending before the Court of Justice, the Commission decided not to revise the Contact Committee working document at this stage. However, Member States are advised to read the document in conjunction with ECJ case law and encouraged to contact the Commission before any formal notification of the measures taken pursuant to Art 3j AVMSD.

- The Commission is currently discussing the measures notified by Slovakia with the national authorities and asked for additional information as some elements are missing in the notification which therefore is not complete.

e. NO intervention on ECHR ruling concerning political advertising

The NO Delegation pointed to a case concerning the Norwegian prohibition on political advertisements in broadcasting by referring to a judgment (Dec 11th) from the European Court of Human Rights (in case of TV Vest and Rogaland Pensjonistparti vs. Norway). The Court unanimously ruled against Norway, by concluding that the prohibition of political advertising in this case represents a violation of Article 10 of the ECHR. The Norwegian government is presently contemplating whether to appeal to the Grand Chamber.

11. Next meeting

The next meeting is scheduled for end of March, beginning of April 2009.

Annex