

**MINUTES OF THE 32ND MEETING OF THE CONTACT COMMITTEE ESTABLISHED BY THE  
AUDIOVISUAL MEDIA SERVICES DIRECTIVE  
WEDNESDAY, 16 JUNE 2010 - BRUSSELS**

**1. Adoption of the agenda**

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

**2. Transposition AVMSD – State of Play**

A letter of formal notice for non notification of transposition measures or notification of incomplete measures was sent to 23 Member States in January and 12 of them received a reasoned opinion in June. In parallel, the substantial examination of the already notified transposition measures and conformity assessment has now started. The Commission called on the Member States to also submit a correlation table.

Member States reported on progress made with regard to the adoption of transposing measures.

The Commission confirmed that the codified Directive 2010/13/EU repealed Dir 89/552/EEC as last amended by Dir 2007/65/EC and therefore all references should be made to the codified directive.

**3. Transposition AVMSD – Change of subsidiary jurisdiction criteria**

The monitoring of changing jurisdiction (due to the reversal of the subsidiary jurisdiction criteria in Article 2(4) AVMSD) was carried out in 3 phases with the last phase ending at the end of last year. Delays occurred because some regulators had problems collecting the correct data, others had problems verifying that data. To date, 140 changes have been confirmed, 195 changes of jurisdiction have been refused by the Member States and 65 services are still under examination. As a result of this still ongoing exercise, no arbitration is necessary by the Commission and the cooperation between regulators has improved.

**4. Commission Report on the application of rules concerning European and independent production**

German authorities proposed to examine the possible reintroduction of a "de minimis" rule in order to exempt channels with a very low audience share from the reporting obligation on the application of Articles 16 and 17 of the AVMS Directive. The Commission has examined the possibility of applying two different audience share thresholds (0.5% and 0.3%) and presented the results of this study (see Annex).

DE supported by ES, SE and the UK, justified this request recalling the principle of proportionality and the need for clarity. SE also proposed to weight the results of the reporting exercise according to the audience shares of the channels. Some delegations enquired as to whether it is reasonable to have the same threshold for every Member State. The Commission answered that to impose different thresholds would be discriminatory. To the question asked by NL on whether the threshold would be based on the audience shares of the channels in the countries of origin or reception, it was answered that the audience share in the country of reception should be taken into consideration. The Chairman explained that also other elements could be explored, such as the turnover. Reflexion on this issue will continue and Member States are invited to send their considerations to the Commission for the next Contact Committee Meeting.

## **5. Content Online**

The Commission indicated that the Digital Agenda of Europe, which was adopted on 19 May 2010, announces a Green Paper addressing the opportunities and challenges of an on-line distribution of European audiovisual works and other creative content. After a stakeholder dialogue a report on the need for additional measures is scheduled in 2012. Furthermore, the Commission informed delegations of the "Going local" initiative where the Commission meets with various stakeholders in the Member States to inform on the Digital Agenda.

## **6. EPGs as audiovisual media services?**

Michael Bryan-Brown presented UPC's EPG service arguing that it is an audiovisual media service in itself as UPC makes editorial choices on the pictures shown with the text.

The discussion on the qualification of this service will be continued at further meetings.

## **7. Implementation of the Framework Decision 2008/913/JHA on combating Racism & Xenophobia by means of criminal law**

In her presentation Maria Fernandez Molinero of JLS stated that the Framework Decision 2008/913/JHA on combating racism and xenophobia by means of criminal law is the first instrument of penal law which will punish any intentional conducts of racism or hate crimes. An Expert Group has been implemented and the Framework Decision has to be transposed by 28 November 2010. CC members are advised to liaise with their responsible colleagues at national level.

## **8. Cooperation between regulatory authorities**

Monica Ariño, Senior Manager for European Policy from OFCOM, held a presentation on the procedural cooperation guidelines between the regulatory authorities. Several Member States raised questions regarding the duration and the cultural context of the procedures.

## **9. EU external powers and the Council of Europe's draft convention on transfrontier audiovisual media services (ECTT)**

The Commission recalled its position that (1) most of the matters covered by the Convention are subject to exclusive external powers of the Union, (2) the EU has no intention to becoming a party to the Convention as this would constrain the speed and scope of any policy response in the areas covered, (3) the Convention and the Directive contain a number of conflicting obligations, (4) the Union's audiovisual acquis is already relevant to almost all parties to the Convention and Member States should aim towards functional instead of geographical complementarity, (5) the Secretary General of the Council of Europe proposed in a note to the Committee of Ministers that the work on the revision of the Convention should be discontinued and (6) informal contacts between the legal service of the Commission and the legal adviser of the Council of Europe, as well as the standard setting department are underway and have been intensified since the meeting between Commissioner Reding and SG Jagland.

The Commission considers that after the implementation of the AVMSD it is primarily for Member States to decide whether from an international treaty law perspective they would have to act and to denounce the Convention. The Commission, however, recalled the obligation to comply with EU law. Finally, the Commission proposed two options for further work with the CoE in this area: firstly, a convention on subject matters which are not addressed by the AVMSD (such as media pluralism, independence of regulators or the remit and governance of the public service broadcasting) or secondly, an instrument to consolidate and develop ECHR case law on freedom of speech and media.

Jan Malinowski, Head of the Media and Information Society Division of the Council of Europe, recalled positions of various bodies of the CoE on this matter and stressed that the ECTT is the tool for covering content from outside of Europe. Turkey in its function as Chair of the T-TT of the CoE opened the debate by expressing its regret that the revision of the Convention is now in a deadlock and joined the Commission in its invitation to all members of the CC to discuss this issue and to work together on a solution.

Several delegations deplored that the Commission had expressed its objections so late and indicated their interest in a convention based on a pragmatic solution. The UK suggested focusing more on the areas of functional complementarity. It was agreed that the Standing Committee established by the Convention would identify those items where parties to the Convention think there is a need for a convention in addition to the AVMSD. The Commission then will take a position whether these matters fall under the exclusive external powers of Member States or whether they would require a mixed agreement. The Commission Services did not exclude to enter into such a mixed agreement if the nature of the provision envisaged would be future proof and not require revision in the foreseeable future.

## **10. Any other business**

- **Corrigendum AVMSD codification**

The Commission informed about a wrong reference in Article 14(3) of the codified AVMS Directive. A corrigendum, correcting the reference from *18 December 2007* to *30 July 1997* will be published in due course.

- **Short reporting**

The Commission Services explained their view on the scope of Article 15 AVMSD and its interaction with the provisions of Directive 2001/29/EC on copyright as regards a provisional judgment in the Netherlands on the use of extracts of the football league by the Organisation of Regional Broadcasters. Article 15 AVMSD encompasses both the right to access to the short extracts and the right to use those short extracts because it doesn't differentiate these rights and because this approach is in line with the ratio legis of this provision according to Recital 55 AVMSD.

- **Application Report**

The Commission shall submit a report on the application of the AVMSD by December 2011 and therefore a questionnaire will be sent to the Member States this autumn concerning notably commercial communications in children's programmes, Article 9(2) concerning codes of conducts regarding commercial communications for inappropriate food and beverages, Article 4(7) concerning the introduction of co/self regulatory regimes at national level and Article 7 concerning the accessibility of the audiovisual media services to people with visual or hearing disability.

Furthermore, the Commission announced the next regulators' meeting on 16 September 2010 and invited the Members of the Contact Committee to a workshop with stakeholders on codes of conduct for commercial communications for food high in salt, sugar and fat on 25 October 2010.

Next meeting: 2<sup>nd</sup> half of October 2010