

**MINUTES OF THE 34TH MEETING OF THE CONTACT COMMITTEE ESTABLISHED BY THE
AUDIOVISUAL MEDIA SERVICES DIRECTIVE
TUESDAY, 24 MAY 2011 — BRUSSELS**

1. Adoption of the agenda

The Chairman welcomed the members of the Contact Committee (CC). The minutes of the previous meeting and the agenda were adopted.

2. Transposition of the Audiovisual Media Services Directive (AVMSD) — State of Play

Almost all Member States have notified transposing measures. In March 2011, the Commission completed a preliminary analysis of the measures notified by 16 Member States to implement the AVMS Directive in their national law, and on this basis has sent follow-up fact-finding letters to verify further whether and how the various aspects, such as the rules on country of origin, product placement, incitement to hatred and protection of minors, have been implemented. Currently, the Commission is in the process of analysing the measures notified by the remaining Member States, following which a second round of letters will be sent during the second quarter of 2011. The conformity of the transposing measures could not be assessed until these questions had been clarified.

3. Infringement procedures AVMSD

One Member State (SI) has not yet notified to the Commission any measures to implement the AVMSD into its national law and a number of partial notifications were received (PL, FI, UK, BE). Another infringement procedure against Spain was still pending before the Court (case C-281/09), the Advocate General's opinion was recently published and considers that the Commission's action is well founded and supports the Commission's view that the types of advertising considered as being "other forms of advertising" have to be regarded as "advertising spots" and included in the 12-minute time limit. Member States reported on progress made with regard to the adoption of transposing measures.

4. Preparation of the First Application report on the AVMSD

According to Art 33 AVMSD the Commission has to report on the implementation of the Directive by December 2011 and every three years thereafter. The report is being drawn up, among others, on the basis of a questionnaire that was sent to the Member States last year. Tables summarizing the state of play on a specific number of issues have also been drawn up on this basis; Member States wishing to react to those tables can do so in writing until 7 June 2011.

The Commission has also received a first draft on the study on media literacy, the findings of which will be included in the application report. A presentation of the preliminary findings of the study was made to the Committee.

5. Revised Guidelines for the application of Articles 16 and 17 of the AVMSD

These guidelines explain how the Commission understands the respective Articles and how it intends to apply them. They are without prejudice to possible Court rulings on the interpretation of these provisions. The Member States recalled their position and the Commission presented the revised guidelines. These have been updated and adapted to the wording of the codified AVMSD. They also clarify the concept of "local" channels and they introduce information on the possible exemption of very small channels, as suggested by DE. The concept of a "de minimis rule" used previously has been replaced by the concept of a

"tolerance threshold" set at 0.3% of the audience share. Individual exemption of small channels with a slightly higher audience share would still be possible. The total audience share represented by the channels exempted on the basis of the "tolerance threshold" should not exceed 10% of the global viewing in a given Member State in order to preserve the representativeness of the national reports. The audience shares to be taken into account would be those registered in the countries of reception, which involves co-operation between national authorities.

A number of Member States expressed their support for the introduction of such a threshold, although some would have preferred a 0.5% threshold (namely NL, DE, PL, UK, SE, IT, RO). FR was the only delegation expressing opposition to the measure. Member States also raised concerns about the practical application of the 10% cap and the aggregated audience shares of the countries of reception. The Commission took note of those concerns.

6. Article 14 AVMSD (events of major importance for society)

The Commission informed the Committee about the recent judgement of the General Court in cases T-385/07, T-55/08 and T-68/08, by which the FIFA and UEFA had lodged a complaint against the decisions taken by the Commission on the BE and UK lists of major events. The General Court recognised the validity of the BE and UK lists as regards the inclusion of the entire final tournament of the FIFA World Cup and UEFA European Championship. On 6 May 2011, FIFA and UEFA appealed against the judgments of the General Court (C-201/11 UEFA, C-204/11 FIFA and C-205/11 FIFA), but the appeal is limited to points of law.

The Commission also informed the Committee of some procedural aspects of the amendment of the BE measures. In 2003, BE submitted draft measures to be taken pursuant to Article 14 of the AVMSD. These measures included a list of events and implementation measures by the French and the Flemish Communities of Belgium respectively, according to the division of competences in Belgium. These draft measures were approved by the Contact Committee on 11 March 2004. The implementation measures to be adopted by the French Community of Belgium provided for the possibility of authorising a non qualifying broadcaster to make use of its exclusive rights for an event of major importance in the case where no qualifying broadcaster would buy the rights. The Contact Committee adopted its Opinion on this basis. However, following the opinion of the legislative section of the *Conseil d'Etat*, this provision was removed from the French Community decree which had been the basis for the Commission decision. The French Community of Belgium would now like to reinstate this provision. Since this amendment will reinstate the measure as already approved by the Contact Committee on 11 March 2004, the Commission does not deem a new decision of the Contact Committee necessary. However, since the measures will differ from those that are finally published, the Commission will take a new decision which will be limited to the amendment of the implementation measures.

A number of Member States (HU, IE, IT, LT, DK) then gave an update to the Committee on the relevant ongoing processes in their respective territories.

7. Council of Europe decision to discontinue work on ECTT

The Commission reported on the various stages of this issue: it had been discussed at two earlier Contact Committee meetings and was originally prompted by a letter of 23 October 2009 in which Commissioner Reding reminded Member States that the matters covered by the Council of Europe Convention fall largely under Union (then Community) competence. This position, on the request of the Council of Europe, was further explained by a letter of Vice-

President N. Kroes of 10 December 2010, which stressed that, according to Article 3(2) TFEU, the Union has exclusive competence for the conclusion of an international agreement, in particular in so far as its conclusion may affect common rules or alter their scope. The matters covered by the draft revised ECTT are largely covered by the AVMS Directive: for those matters, the Union has thus acquired exclusive competence to enter into international agreements. As a consequence, even if the substance of the Convention were not to conflict with Union law - which is not the case here - EU Member States may not become parties to the Convention on their own. Moreover, the EU becoming a party to the Convention would constrain the speed and scope of any future policy response in the areas covered, while the added value to the EU of such a convention in terms of its wider geographical scope seems to be rather limited. These two elements distinguish it from the Convention on conditional access which the European Union wishes to join. In a letter of 10 December 2010 the Commission Vice President also announced a more detailed reply on matters which are deemed to fall outside the EU's exclusive powers. However, this was pre-empted by the Council of Europe announcement (by letter of 31 January) to discontinue the work on the ECTT.

Mr Jan Malinowski, Head of Media and Information Society Division of the Council of Europe (CoE), explained that, in order to avoid similar problems in the future, more cooperation between the institutions is needed. On the issue of conflicting obligations, J. Malinowski referred to the ongoing process of reform of the Council of Europe, which entails a general review of all its conventions in order to determine which ones should be retained, be dealt with differently or are obsolete. Member States discussed how best to deal with the situation in which the implementation of more flexible AMVSD rules on television advertising implies a breach of the stricter ECTT obligations.

Five Member States (AT, DE, PL, EE, and HU) and TK reiterated their position and underlined their attachment to the Convention. Some delegations reiterated their request for a Commission position concerning matters falling outside the exclusive external powers of the EU. The Commission took note of this request, but stressed that it had complied with its commitment. The letter from Vice-President Kroes to the CoE provided the answer that had been asked for. As the CoE decided to discontinue the work on the ECTT, there no longer appeared to be a basis for an analysis of the scope of the EU's exclusive external powers, which can only be undertaken with regard to specific provisions.

8. Application of the Audiovisual Media Services Directive and the Authorisation Directive to digital terrestrial TV (DTT) services

This issue was discussed with the representatives of the Member States in the Contact Committee meeting of 20 October 2010, and in the Communications Broadcast Issues Sub-group meeting of 15 December 2010. In order to gain a more detailed picture of the situation in the Member States, a questionnaire was sent to the Member States in March 2011. Of the 16 replies, apart from basic requirements, some Member States have laid down conditions related to content when granting DTT licences in their territories. In most cases, however, no distinction is made in this context between providers under the jurisdiction of the DTT Member States and those established in other Member States. Those Member States who have not yet responded are encouraged to do so.

9. Fundamental rights and the AVMSD

Given the ongoing process of the EU joining the Convention on Human Rights and the provisions of the EU treaties and of the EU Charter of Fundamental Rights, the Commission

took this opportunity to exchange views with the Member States on fundamental rights and their relevance to the application of secondary law and the specific case of the AVMSD. The Commission referred to some examples where fundamental rights had been raised in recent discussions and asked the Member States whether they considered that the independence of the regulators should be strengthened. A number of Member States commented on fundamental rights in general, but none of them mentioned the role of the regulators.

10. DTV4All

Peter Looms gave a presentation of the project, including the DTV4All mission, what has been done and achieved, and the way forward. Member States (UK, ES, PT, DE, BE, IE, HU, GR, NL) reported on the accessibility measures that they were implementing.

11. AOB

- **Norway**

The Commission informed the Committee of the discussions it held with the Norwegian authorities in March. The Commission cannot accept temporary extensions being further extended in time and scope, as it would put EEA States in a privileged position vis-à-vis the Member States.

- **Interpretation of Art 11 AMVSD**

Following a request from the PT delegation, the Committee discussed the definition of "light entertainment programmes" and the concept of "significant value",

The Commission services referred to discussions in academia according to which "light entertainment programmes" are programmes without a fictional plot and that in the case of *RTL v. NLM*, which dealt with the concept of films made for television, the ECJ had advocated a strictly literal interpretation of the terms mentioned in Article 11(3) TVWFD. As the Directive does not include any definition of "light entertainment programmes", Member States can exercise some discretion in their assessment.

As to the concept of "significant value" in the "provision of goods or services free of charge, such as production props or prizes", roundtable discussions had already taken place during the 27th and 30th Meetings of the CC, where delegations exchanged views on the implementation of the rules concerning product placement and the Commission agreed that "significant value" can also be defined in relation to the production costs of the programme.

Workshops:

The Commission invited the members to the Workshop on the DTV4All project (25 May 2011, 9:30 – 13:00, CCAB 1C) and announced the Workshop on the study of the application of Articles 13, 16 and 17 (to be held on 14 September 2011).

Next meeting: November 2011.