

MINUTES OF THE 33RD MEETING OF THE CONTACT COMMITTEE ESTABLISHED BY THE
AUDIOVISUAL MEDIA SERVICES DIRECTIVE
WEDNESDAY, 20 OCTOBER 2010 — BRUSSELS

1. Adoption of the agenda

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

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

Most Member States had notified transposing measures. The Commission had started to analyse them and would write to Member States for clarifications by the end of this month. Issues that seemed to recur in a number of Member States were: questions regarding jurisdiction, cooperation between regulatory authorities, rules on product placement, promotion of European production in on-demand services and fostering co- and self-regulation. The conformity of the transposing measures could not be assessed until these questions had been clarified.

3. Infringement procedures AVMSD

The Commission was still waiting for notifications from 8 Member States: EE, EL, PL, CY, LT, HU, PT and SI. A number of partial notifications were investigated.

As well as cases involving non-communication of transposition measures, an infringement procedure against Spain was still before the Court (case C-281/09). Member States reported on progress made with regard to the adoption of transposing measures.

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

The 9th Communication on the application of Articles 4 and 5 during the period 2007-2008 was adopted on 23 September¹. It showed satisfactory results, well above the proportions specified in the AVMS Directive for European and independent works, and a rather stable trend over the period under review.

The Committee further discussed the possibility of introducing a '*de minimis*' rule, as suggested by Member States during the last meeting.

A number of Member States expressed their support for the introduction of the '*de minimis*' rule, emphasising the need to limit the administrative burden on the national regulators. Member States discussed setting the threshold at the 0.2% or 0.3% audience share level. NL thought the threshold could be even higher. According to the results of a simulation it had carried out, with an 0.5% threshold, the number of channels excluded from reporting obligations would be less than 1% of the market share. France raised concerns about the impact such a rule could have on the distribution of French audiovisual work in other Member States.

The Commission indicated that the point of introducing the '*de minimis*' rule was to avoid overburdening small channels that can be exempted from the obligation to report to the national authorities, without jeopardising the objectives of the Directive. Thus, a careful cost-benefit analysis was necessary. Member States were invited to send their contributions in

¹ COM 2010/0450 final.

writing (within a month) on the basis of which the Commission would prepare draft revised guidelines for discussion at the next meeting.

5. EU external powers and the Council of Europe's Draft Convention on Transfrontier audiovisual Media Services (ECTT)

Anita van de Kar, Secretary to the Standing Committee on Transfrontier Television (T-TT) presented the advancement of the work on the draft convention. She referred to the difficulties that had arisen as a result of uncertainties with regard to the scope of EU exclusive competence. The Standing Committee examined two approaches to taking matters further: (i) a convention limited to issues deemed not to fall under EU competences or (ii) a framework convention covering all elements deemed to be essential. The second approach only was possible, provided that the EU became party to the Convention. The Standing Committee formally asked the Commission to provide its opinion on whether a number of issues fell outside the competence of the EU.

The Commission stressed that a formal Commission decision would be necessary. Specific reference was made to Article 3(2) of the Treaty on the Functioning of the European Union, according to which the EU has exclusive external competence in so far as the conclusion of an international agreement would affect common rules or alter their scope. In a first tentative analysis this would imply that the EU had exclusive external powers with regard to news presenters appearing in commercial communications, provision of information, and human dignity as well as the other issues (Articles 8, 9 and 10 of the ECTT) covered by the AVMSD. Member States might have some margin of appreciation as far as independence of regulators, media pluralism, public service media, political advertising, charity appeals and fair presentation of news were concerned. It was not clear what would be meant by 'minority issues'.

Some Member States indicated that the Convention was very important, emphasising its role in promoting European standards and values outside Europe. HU was sceptical about the added value of the Convention, as the trans-frontier element was the main one. All Member States requested a clear and prompt reply from the Commission, in order to avoid legal uncertainty.

The Commission recalled its position and would provide an answer in writing to the Standing Committee as soon as possible.

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

The Commission outlined the provisions of the AVMS and Authorisation Directives relating to general interest obligations and possible commitments undertaken in the selection procedure for obtaining DTT authorisations. It made a political statement encouraging Member States to reduce regulatory complexities for cross-border providers of DTT programmes in this context in order to support cultural diversity, media pluralism and consumer choice.

The Commission referred in particular to the provisions of Annex B (points 1 and 7) of the Authorisation Directive. It explained that only obligations and commitments which were in line with the provisions of the Authorisation Directive could be attached, that the respective

provisions in Member States would have to be examined on a case-by-case basis and that detailed legal analysis was still ongoing.

It was agreed that the issue should be on the agenda of the next Contact Committee meeting in March 2011.

7. Any other business

- **Change of jurisdiction criteria**

The Commission announced the results of the exercise to identify the audiovisual media services which would change jurisdiction at the end of the transposition period because of the reversal of subsidiary jurisdiction criteria in the AVMS Directive.

There seemed to remain a question as to jurisdiction over only one channel. The Commission would follow up this case individually with the Member States concerned. The remaining channels were considered to remain under the jurisdiction of the Member States with satellite capacity.

- **Re-transmission of television programmes with access services for disabled people**

Further to an Irish complaint that access services for blind or deaf people had been removed from Irish television programmes re-transmitted over satellite or cable platforms, the Commission invited Member States to share their findings and discuss possible solutions.

- **E cigarette**

The Commission replied to a question from Latvian regulators whether electronic cigarettes were subject to the ban on tobacco advertising expressed in Article 9 (1)(d) of the AVMSD. As electronic cigarettes did not contain tobacco, they were not tobacco products under the Tobacco Directive. Hence, audiovisual commercial communications relating to electronic cigarettes were not covered by Article 9(1)(d) of the AVMSD. They might, however, be covered by another provision of the AVMSD, namely Article 9 (1)(f), which prohibits audiovisual commercial communications for medicinal products available only on prescription. That would be the case with respect to electronic cigarettes, which were regarded as human medicine available only on prescription.

- **Draft Convention on Preventing and Combating Violence against Women and Domestic Violence**

UK drew the other Member States' attention to Article 13 of the Council of Europe Draft Convention on Preventing and Combating Violence against Women and Domestic Violence. The draft might raise concerns with respect to freedom of expression and independence of the media.

Corrigendum AVMSD codification

The corrigendum to Article 14(3) of the codified AVMSD was published on 6 October 2010.²

Workshop

² O. J. 2010 L 263/15.

The Commission invited the participants to the Workshop on audiovisual commercial communication to children concerning foods high in fat, salt and sugar (25 October 2010, 9:30 – 17:00, CCAB 0/A)

Next meeting: March 2011