

**Doc CC AVMSD (2011) 6**

**MINUTES OF THE 35<sup>TH</sup> MEETING OF THE CONTACT COMMITTEE ESTABLISHED BY  
THE AUDIOVISUAL MEDIA SERVICES DIRECTIVE  
23/11/ 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.

ES and IT protested because no interpretation was provided from these two languages.

**2. Connected TV**

The Commission had already launched a discussion on Connected TV issues during the meeting of the EU audiovisual regulatory authorities on 15 November 2011. The simultaneous display of different types of linear and non-linear content from various sources raises questions regarding the regulatory framework, integrity of editorial content and control of the screen in general. There are many uncertainties concerning market developments and consumption patterns. All on-demand services in total for the moment only cover less than 1% of the market, but most delegations shared the assessment that these developments merit further analysis and discussion.

The MS were invited to identify problems and challenges from their perspective. The main issue raised was the expected lack of a level playing field between linear and non-linear services. This would challenge the regulatory concept of the AVMSD (NL, AT, DE). Despite the fact that the AVMSD already largely aligned the rules for linear and non-linear services with regard to qualitative advertising rules and public policy objectives like the ban of hate speech or accessibility requirements, DE and AT called for further deregulation of television advertising rules (quantitative restrictions). AT proposed to think about reducing regulation in general to some few basic principles. FR announced a report to be published soon and pointed to the possible problem of market fragmentation through different standards and operator platforms and was concerned about services from outside the EU that would not be subject to EU regulation. A number of MS is reflecting and consulting on these issues (UK, currently reviewing rules in the communications sector; FI, developing a media policy programme that will be published in 2012).

**3. Transposition of the AVMSD – State of Play.**

The Commission reported on the AVMSD transposition and the on-going infringement procedures. Almost all MS have notified transposing measures. SI had just notified the law transposing the Directive and PL has only partially notified. Infringement procedures were launched against these MS. The Commission is currently analysing the measures notified by Portugal. Some issues that arose in BE should be resolved by the end of 2011.

**4. Possible Infringement procedures (AVMSD)**

The Commission is currently analysing the transposing measures in substance and will also hold bilateral meetings. After an exchange in the "Pilot-System" some MS already may have received a "rejection" of their reply, which means that the Commission is not satisfied with the reply, but it is not yet the opening of a formal

infringement procedure. The issues that occur in more than one MS and that may lead to infringement procedures are:

- *Country of origin principle and jurisdiction issues*: some MS have implemented the derogation procedure by a cross reference to the provision implementing the prohibition of incitement to hatred. As this provision in some cases has been implemented with a wider scope, this would unduly enlarge the scope of the derogation procedure.
- *Rules on incitement to hatred*: transposing measures may cover broader cases of incitement to hatred, but should not be discriminatory in a way as to conflict with Charter obligations.
- *Accessibility requirements*: it is not in line with the AVMSD to subject only broadcasters, targeting the national population or broadcasting in the national language to specific obligations.
- *Audiovisual commercial communications*: if MS do not define the notion of commercial communication as such, they have to ensure that all objectives of the Directive are fully achieved nevertheless.

Some MS (NL, SK, DK and DE) flagged practical difficulties of determining the presence of product placement in foreign productions. This kind of issues could be addressed in a review of the interpretative communication on television advertising.

- *Protection of minors*: an extension of rules for linear services *tel quel* to non linear services could be disproportionate.
- *Promotion of European works*: for non linear services (Art 13 AVMSD) transposing measures should be more specific than the Directive. With regard to Art 16 AVMSD territorial criterion would be considered as discriminatory. An exclusion from the obligations established by Art 16 and 17 cannot be created through new categories in national law but only on individual exemptions based on a case-by-case analysis.
- *Events of major importance*: with regard to the date of entry into force of measures the MS adopting a list has to strike a balance between the legitimate interests of rights holders and the policy objectives pursued.
- *Short news extracts*: in line with ECJ case law, transposing measures have to ensure sufficient clarity and legal certainty, so that also operators from other Member States can effectively exercise their rights. Pure self regulatory codes and simple reference to national case law usually will not fulfil these requirements.
- *Independent Regulators*: Art 30 AVMSD requires MS to ensure effective cooperation between regulators.

##### **5. Study on the implementation of the provisions of the Audiovisual Media Services Directive concerning the promotion of EU works in audiovisual and media services**, presented by Mr. David Graham (Attentional Ltd) and Mr. Arnaud Dupont (Headway International).

This Study was launched at the beginning of 2011 by the Commission in conformity with Article 13 AVMSD. It surveys the implementing measures concerning EU works, in both linear and non linear services in the EU MS and the EEA contracting parties. It contains an economic and content analysis underlining the main trends on the EU market. On the basis of these trends, the study also carries out a prospective analysis and provides elements of reflection on the adequacy and effectiveness of the existing provisions of the AVMS Directive to promote European works in EU linear and non-linear services.

The presentation was followed by a Q&A section. FR was concerned about the 'negative' perception of the term 'prescriptive' used in the survey of the national implementing measures of the AVMSD provisions; CY commented on the fact that there are no working mechanisms for the promotion of cross border movement of EU works. In reply to a question from the DE delegation Mr Graham explained that the study stresses the fact that while the cultural objectives of the AVMSD are achieved, economic ones are underserved and need to be reflected upon.

#### **6. Revised list of Italian events of major importance to society.**

In September, 2011, the Italian authorities submitted to the Commission an updated list of major events, amending the measures already into force. Mrs Maja Capello (IT) presented the revised measures, including justifications in light of the criteria established in the working document of the CC. The Commission recommended to the CC to adopt a positive opinion on the Italian draft measures. The CC adopted the opinion as suggested by the Commission. The Commission will adopt the decision on the compatibility of the draft measures with Union law and will publish them in the Official Journal as soon as the final measures are notified.

A number of Member States are either drafting or plan to draft lists in the future (HU, LT, CY, UK, NO, SI, DK, PL). MS were invited to consult their lists (in terms of content and procedures) with the Commission at an early stage to insure a smooth approval.

#### **7. Preparation of the First Application Report on the AVMSD**

Pursuant to Article 33 of Directive 2010/13/EU, the Commission has the obligation to report on the application of the Directive and, if necessary, make further proposals in the light of recent technological developments. The Commission presented a number of issues that will be covered by the report: for instance audiovisual commercial communication and the concepts of sponsorship, advertising spot and self-promotion; For the first time, the implementation of the qualitative provisions on advertising was monitored separately. The relevant provisions concern alcohol advertising, gender discrimination and advertising targeting minors. Connected TV is also a subject in the report.

A questionnaire was sent to all MS; the replies were used in the report, summarised in tables and were forwarded to the MS for verification. MS did not have any comments on the tables. The tables are to be published.

#### **8. Updating of Annex XI to the EEA Agreement, to include the Audiovisual Media Service Directive (AVMSD)**

The AVMSD still has not been incorporated in Annex XI of the EEA Agreement. Directive 89/552/EEC, which is currently referred to in Annex XI, was repealed (Art. 34 AVMSD), so there currently is no legal base for the association of EEA countries to the works related to the AVMSD and the audiovisual acquis in general. This has an impact i.a. for the participation of EEA countries in the Contact Committee or the future Media programme.

#### **9. Application of the AVMSD and of the Authorisation Directive to digital terrestrial TV services.**

The Commission presented the replies of the MS to a questionnaire on the concurrent application of the AVMS Directive and of the Authorisation Directive to situations

where a media service provider from one Member State, in order to get the authorisation for accessing digital terrestrial television (DTT) network in another MS, takes specific commitments which may relate to stricter rules falling within the coordinated areas of the AVMS Directive. Seven Member States did not reply and the answers vary greatly. However, it seems that most MS negotiate or take into consideration commitments related to content when granting access to the DTT platform.

#### **10. AOB**

EFTA informed the Commission and the MS representatives about the set up of their Contact Committee and invited the Commission to participate.

*The next meeting will be in held in March or April, no date specified yet.*