

**MINUTES OF THE 38TH MEETING OF THE CONTACT COMMITTEE ESTABLISHED
BY THE AUDIOVISUAL MEDIA SERVICES DIRECTIVE
30/05/2013 — BRUSSELS**

1. Adoption of the agenda

The Chair welcomed the members of the Contact Committee. The minutes of the previous meeting and the agenda were adopted.

2. Green Paper: Preparing for a Fully Converged Audiovisual World: Growth, Creations and Values

The Commission reminded the Committee that the Green Paper was published on 24th April 2013 and a public consultation has been launched subsequently, which is open until the end of August. The Commission invited Member States to discuss this initiative, as well as to update other members of the Committee on any related activities or concerns.

The FR, EL, IT, PT, UK and DE delegations informed the Committee on exercises focused on the convergence of media they recently undertook or are about to do. The FR delegation expressed doubts whether a potential revision of the AVMSD, resulting from conclusions of the ongoing public consultation, would be desirable. The FR delegation also discussed the exclusion of the audiovisual sector from the EU-US Transatlantic Trade and Investment Partnership negotiations. On the EL delegation's prompt to include copyright issues into current considerations, the Commission recapitulated all its recent and ongoing activities in this respect (the 2011 AV Green Paper, the ongoing Licences for Europe stakeholder dialogue, the DG MARKT's actions on review of the Copyright Directive). The NL, ES, AT and PT delegations addressed the differentiation in the regulation of audiovisual commercial communications in linear and non-linear services, arguing that the consumer has changed and does not need such a strong protection as before, while overregulation would hinder the market. Therefore, the AVMSD should allow a more competitive audiovisual market, while focusing on protection of the essential values, as protection of minors and accessibility for disabled people. At the same time, the Directive should set up only the basic framework and leave details on the Member States. The NL, ES, UK and DE delegations supported enhanced utilization of the self- and co-regulatory approach. The ES delegation pointed out the need for harmonisation of technical standards, facilitation of cross border accessibility of content, as well as the need to focus on strengthening of media literacy. It also questioned the necessity of differentiation of linear and non-linear services in the promotion of European works, and advocated an obligation to financial contribution.

3. Public Consultation on the independence of regulatory bodies competent for audiovisual media services and on possible options for strengthening their independence

The Commission introduced Prof. Dr. Wolfgang Schulz of the Hans-Bredow-Institut, who recapped the results of the INDIREG study¹ and the follow up survey among EPRA members. Dr. Schulz

¹ An independent study conducted on behalf of the European Commission: Indicators for independence and efficient functioning of audiovisual media services regulatory bodies for the purpose of enforcing the rules in the AVMS Directive, 2009, www.indireg.eu.

expressed the difficulty in establishing criteria to test independence, but claimed that certain criteria must be present (the status of institutions and instruments; the authority to implement policy independent of another body, financial autonomy, knowledge, accountably and transparency mechanisms). The Commission explained that the study results fed into the content of public consultation on independence of audiovisual regulatory bodies, briefly presented the ongoing consultation, and stressed that any potential revision of Article 30 would not prejudice the supervision by Member States in accordance with national constitutional law. Member states were invited to contribute into this consultation (which closes on June 14th), as well as to discuss the revision of Article 30 in the Committee.

The ES and EE delegations informed the Committee of recently adopted laws on national regulators, the former creating a new body, the latter passing this competence from the ministry of culture to the telecom regulator. The AT delegation recalled the discussions concerning the competency regarding the independence of regulatory authorities which had already taken place in the context of the elaboration of the AVMSD. This issue should always be born in mind when discussing the questions of the Commission. AT would also be willing to participate in further debates; however, AT is seeking legal security as to the legal question of Union competency. The Commission reassured the Member States that it will act strictly within its competences. The PL delegation, expressed support, but suggested uncertainty over the four options presented in the Public Consultation, as each option would prompt drastically different outcomes. PL also emphasised the importance of these regulatory authorities remaining independent from not only national governments, but also EU bodies. The SK delegation inquired on the likely outcomes of the formalisation of the regulators group, to which the Commission claimed that one of the options proposed would imply no substantial differences, and that the group would meet on a regular basis. The IT delegation expressed its doubts on applying so called BEREC model from telecommunications to audiovisual sector, emphasised the predominance of the cultural aspect over the economic one in this sector.

4. List of Events of Major Importance: Update on audience figures indicators, date of application of the list and other issues arisen in recent cases

The Commission explained that due to recent developments with regard to the lists of events of major importance it had to reconsider its approach in this matter. Firstly, the criterion of audience figures should be given a predominant weight in assessing whether an event is of major importance, with a threshold of around 5%. Secondly, the applicability of the list may be under certain conditions extended also on events for which the rights have been sold before the list entered into force. The Commission opened the floor for discussion and asked MS to indicate plans to adopt or change a list and to notify it to the Commission.

The CY delegation affirmed their intention to adopt a list of events of major importance, launching a public consultation after the summer. PL questioned whether the mentioned rules resemble those in the working document from 2006, and asked for creation of one single document containing rules. This request was echoed by the delegation of DK. The Commission claimed that this would be clarified after the judgment in the ongoing case before the Court of Justice of the EU is issued. However, the Commission stressed out that the substantial rules remain unchanged, only its application will be carried out in a more comprehensive and evidence based manner. The Member States were asked to consult the Commission on the intent to adopt or amend their list of events of major importance in advance to straighten out the process. The EFTA Surveillance Authority confirmed that in Norway the list has been created and is now being assessed. The HU delegation informed the Committee that the list should be adopted by the Media Committee by the end of the year. Finally, DK assured the Commission that the list would be submitted by the end of summer.

Following its communication made to the contact committee on the 24 May 2011, the Commission indicated that the Belgian delegation had readopted the implementing measures of the Belgian list of events of major importance as they had been initially notified to the contact committee.

5. The right to short news reporting Under Article 15 AVMSD in the Digital Single Market

The Commission presented the results of a survey on current practise in respect of the short news reporting right, which indicate that there is no systematic collection of data on utilization of this right; broadcasters' lack of awareness is not an issue; in some Member States legislative, administrative or judicial guidance is provided; in some Member States an institution providing information about exclusive rights holders exists; on-demand services currently do not require short news reporting rules. Member States provided no feedback on this topic.

The Commission invited those Member States that had not sent their contribution to the questionnaire to do so in due course.

6. Public Consultation on the independent report of the High Level Group on media Freedom and Pluralism

In view to facilitate the attendance of the representative of the Council of Europe for this point, the Committee agreed on a change in the order of agenda. The Commission stressed the great importance of ensuring respect for media freedom and pluralism and summarised the main points of the 30 recommendations of the independent High Level Group which are subject of an ongoing public consultation, open until June 14th.

The Council of Europe delegation commented that although the Council of Europe had met the High Level Group, it was not referred to in any of the report's recommendations. The Commission pointed out that the report was prepared by an independent group and the Commission did not interfere with its content. The AT, IE and EE delegations were concerned by the Council of Europe's exclusion from the High Level Group recommendations, and a possible lack of coherence between the work of the Council of Europe and the EU. The AT, IE, EE and HU delegations also inquired about Council of Europe draft convention where the Commission pointed to the information by the Council of Europe on the cease of work on this convention during the 34th meeting (24 May 2011) of the Contact Committee.

7. Transposition AVMSD – State of Play

The Commission noted their considerations of the AVMSD implementation in the Member States, stating that all Member States have notified full transposing measures. The Commission sent letters to all Member States seeking information about their implementation of the AVMSD. As a follow-up to the correspondence, bilateral meetings with over 20 Member States have taken place. The Commission acknowledged that three Member States have already fully and correctly transposed the Directive, while the infringement procedures have been launched against two Member States. The Commission stressed that the specific commitments to align the national legislation with the Directive have been made by the Member States more than a year ago; therefore, the Member States should ensure early adoption of appropriate measures to avoid the infringement procedure to be launched.

The delegation of EE confirmed that parliament recently adopted amendment of the Audiovisual Act and it will be promulgated in the form of the Presidential decree soon. The delegation of CY explained its reasons for the delay in implementation and informed the Commission about its efforts to adopt relevant provisions before the end of the summer session.

8. Studies on advertising and AV commercial communications to be launched

The Commission noted that the AVMSD implementation report concluded that the matter of the implementation of rules on audiovisual commercial communications should be further monitored and assessed. The current framework for monitoring studies has expired, and the Commission expressed its intention to renew this contract, with an open call for tenders to be published later this year. The Commission also articulated its plans to conduct a study on the exposure of minors to TV alcohol advertising, along with exposure online on certain platforms.

The UK Delegation commented that its regulatory body, Ofcom, published a report on alcohol advertising last week, concluding that it was not advertising patterns that have changed, but children's viewing patterns.

9. Application of Articles 13, 16, 17 AVMSD

The Commission summarised its finding from the recent questionnaire on indicators for monitoring the application of Article 13 AVMSD. The Member States that have not yet submitted their responses were invited to do so as soon as possible. The Commission explained that the responses to the questionnaire will serve as useful input regarding the reflections whether the indicators for monitoring Article 13 AVMSD should be refined for the next report (due in 2015/2016). Member States were invited to submit further input by e-mail if they wish to do so after the meeting.

The HR delegation explained that they have yet to complete this questionnaire but explained that their lack of data from Video-On-Demand service providers does not permit them for the moment to do so. They explained that they will submit their response once they receive sufficient data. The FR delegation informed the Committee that they launched a public consultation with service providers exploring appropriate ways to implement Article 13, and will share this information with the Commission in due course. Member States were encouraged to share information regarding recent developments and their practical experiences with regard to the implementation of Article 13.

The Commission explained that the report on the application of Article 16 and 17 AVMSD is due next year, therefore the questionnaires will be sent out soon and Member States will be asked to send them back completed with all necessary data in due time (there will be a 3-month deadline to send back the questionnaires).

10. Licenses for Europe

The Commission noted its commitment to ensuring that the EU's copyright framework stays fit for its purpose in the digital environment. It introduced the structured stakeholder dialogue 'Licenses for Europe', which seeks to deliver rapid progress to bringing content online through practical industry-led solutions. The Commission also commented on its on-going review of EU copyright framework.

The delegation for ES responded to the Commission by expressing its desire for a single digital market and its concerns with piracy and the need for discussion on the user generated content. Furthermore, ES articulated the need for greater harmonisation of IPR policy with other areas. The delegation of HU asked whether the issue of audiovisual archives is taken into consideration in this exercise, which the Commission confirmed. EE finished the debate by welcoming the initiatives, and expressing anticipation that the same question raised a number of years ago by AV groups would remain valid.

11. Any Other Business

There were no points under any other business.