

**MINUTES OF THE 39TH MEETING OF THE CONTACT COMMITTEE ESTABLISHED
BY THE AUDIOVISUAL MEDIA SERVICES DIRECTIVE**

13/03/2014 — BRUSSELS

1. Adoption of the agenda

The Chair welcomed the members of the Contact Committee. The EL delegation expressed their intention of making a point under AOB Point 11. The minutes of the previous meeting and the agenda were adopted.

2. Formalisation of the EU Working Group of Regulatory Authorities in the field of Audiovisual Media Services

The Commission reminded the Committee that the European Regulators Group for Audiovisual Media Services (ERGA) was created on 3 February 2014 and informed that its inaugural meeting took place on 4 March 2014 where the Chair and the Vice-Chairs of the Group were elected. The Commission explained to the Committee the role and competences of ERGA and underlined the difference between such Group and the Contact Committee. The members of ERGA will comprise the heads or other high-level representatives of the independent national regulatory authorities. The Commission will attend the meetings and take part in the discussions without having voting rights.

The BE delegation supported the creation of the Group and inquired about its role in the revision of the Directive. The DE delegation expressed its dissatisfaction as to the way the group was created. In particular they pointed to the lack of sufficient discussion with Member States and raised doubts as to the legal basis for its creation. DE has substantial concern as to the lack of a clear separation of tasks between the Contact Committee and ERGA. A duplication of structures would not be desirable. Only the Member States represented in the Contact Committee are entitled to define media policy and have the democratic legitimacy to do so. Therefore, it had already been difficult to nominate a representative for ERGA. This shall be done subject to two conditions only: Media policy issues should be dealt with exclusively by the Member States represented in the Contact Committee; the new expert group would not engage in media policy, it would be only responsible to address practical questions on the interpretation of the AVMSD with cross-border implications. The representative in the expert group has no mandate for public broadcasting. The German regulatory authority represented in ERGA has no mandate to supervise public broadcasting, as this task lies with the institution composed within the public broadcasters in a pluralistic manner.

The AT delegation, together with the EL delegation, expressed concerns as regards the interaction of the Group with the Contact Committee, in particular as regards possible overlaps. The AT delegation also expressed its concerns as regards the creation of the Group. NL felt that these initial concerns have been addressed by the Commission, especially on the division of tasks and working relationships between the two bodies. The PL delegation indicated that they did not see any possible clashes between the Contact Committee and ERGA, as the latter is an expert group, representing knowledge of the local markets and not Member States' views. They welcomed more experts' advice from the latter indicating that the group has to prove its value but that there is a great potential. The HU delegation welcomed the creation of the Group and underlined that the Group will provide better means of communication between the regulatory authorities and the European Commission.

The Commission pointed out that the European Regulators Group and the Contact Committee are two different fora which complement each other. The Commission indicated that it feels comfortable about the legality and acknowledged the specificities of the German system.

3. Functioning of the Contact Committee

The Commission received 22 answers to the questionnaire sent to Member States on the functioning of the Contact Committee. The questionnaire covered the level of satisfaction of Member States regarding the scope of topics addressed during the meetings and the content of the agenda, the balance between information exchange and interactive discussion, the logistics and the frequency of the meetings.

The Commission presented a summary of the replies to the questionnaire and explained that, due to budgetary implications, some of the suggestions of the Member States were not feasible. The Commission stressed the usefulness of the suggestions concerning the agenda. It welcomed the proposals by, among others the PT and PL delegations, to have more presentations on Member States' legislation and concrete examples. The FR delegation expressed its satisfaction with the scope and logistics of the meetings and underlined that the Committee should be well informed of ERGA's outcomes and could gain from working on thematic issues. The DE delegation pointed out that, as the latest example of the establishment of ERGA has shown, the Contact Committee does not meet with a sufficient frequency to be able to react on an ad hoc basis. Only more frequent meetings of the Contact Committee would meet the preconditions to enable it to deal also with current issues in a thorough way and close to practice. In addition, a timely dispatch of documents would allow for better internal coordination. Moreover, the topics should be defined in advance together with the Commission. The AT delegation emphasised the importance of focusing on more practical, legal issues rather than organising further meetings. The Commission reiterated the difficulty of hosting more meetings because of budgetary reasons but confirmed that there could be more focused meetings and that delegations would be asked for suggestions for the next agenda. Following the request of the PL delegation to receive important information from the Commission in writing, the Commission explained that the need for such documents should be examined on a case by case basis and that the most important points were reflected in the minutes or in Contact Committee documents.

4. Green Paper: Preparing for a Fully Converged Audiovisual World: Growth, Creation and Values

The Commission gave feedback to the Committee on the public consultation which ran from 24 April 2013 to 30 September 2013. It has received over 230 responses to the Green Paper and all those for which there was agreement to publication have been published. The Commission pointed out the main issues that, following the replies, would have to be further explored: the scope of the AVMSD, the country of origin principle, the distinction between linear and non-linear services, protection of minors, the promotion of European works and findability of content. More studies and contacts with stakeholders will be needed. A factual summary of the replies might be published.

The DE delegation informed about their decision to establish a working group at federal and state level which would look at a legislative approach appropriate for convergence. With regard to a review of the AVMSD, the country of origin principle should not be touched. Deregulation of advertising rules was advocated and the importance of protection of minors as well as data and consumer protection were underlined. DE's priority is to focus on content and free access to appropriate material. The SK delegation expressed its dissatisfaction with the current system for the protection of minors. Co-regulatory systems should be explored in more detail. The NL delegation suggested the Commission to prepare a written general analysis of the responses and a market analysis. It further mentioned its approach towards protection of minors together with the UK, IE and IT, regarding user generated

content. The FR delegation pointed to the need to reflect on a possible expansion of the scope of the AVMSD and advocated in favour of the country of destination approach instead of the country of origin principle. EE highlighted new challenges regarding disinformation and active propaganda content from third countries in some TV channels licensed by some Member State and targeted to other Member States, especially in times of serious crisis, as in the case of the Crimea and Ukraine. It underlined the need to examine several aspects of jurisdiction and of editorial responsibility and control, in the process of a possible revision of the AVMS Directive. The IT delegation underlined the difficulty for consumers to distinguish between linear and non-linear services and pointed out that it is preparing an investigative study. The DE delegation inquired about the contacts with DG TRADE due to their concerns that TTIP negotiations put culture and media diversity at risk. The PL delegation sought more information about the further roadmap of the Commission, including regarding the REFIT exercise.

Following a request by the SK delegation, the Commission provided more background on the discussion regarding findability. The Commission informed the Committee that audiovisual is excluded from TTIP negotiations. DG CONNECT however participates in the discussions. The Commission confirmed that a representative responsible for the negotiations in the services of DG TRADE will report in the next Contact Committee on the details of the TTIP negotiations, especially in view of the consistent adherence to the principle of exception for audiovisual services and the protection of cultural diversity in the EU. The Commission explained that a review of the Directive is not foreseen for this year. The Commission suggested focusing during the next meeting on the country of origin principle and protection of minors. Following a request by the Commission, the FR delegation explained that the upcoming Law "Loi création" is expected to be adopted in June.

5. Lists of events of major importance: Update on issues arisen in recent cases

The Commission explained that in view of the recent decision on the amendments of the Belgian measures and the new lists that Member States are currently drawing up, the purpose of the discussion was to set out some considerations on the preparation of the lists in substantive and procedural terms. This should be done against the backdrop of the appeal judgments rendered by the Court after the last Committee meeting. The Commission emphasised the limits of its verifying role when assessing Member States' notifications and the primary importance for Member States to present all relevant reasoning and evidence therein. It further explained the procedural requirements for drawing up the list as well as the timing of the notification and final adoption of the measures. The Commission confirmed that a written version of the presentation will be made available, following the AT delegation's request. The EFTA Surveillance Authority asked whether the Commission intends to update existing guidance documents and whether the scope will be changed after the judgments. The Commission replied that there is no immediate need for a change of the scope, but some aspects of the judgments will be further examined such as the necessity for the Commission to engage in comparative assessments.

6. Application of Article 13 AVMSD

The Commission presented to the Committee the findings on the methods of application of Article 13 AVMSD which are included in a document that will be circulated to the Committee. The Commission asked the members to give feedback on the findings and to present new developments in their Member States regarding the promotion of European works on-line and opened the floor to the members and to the PL delegation to make the intervention they asked for.

The IT delegation informed the Committee that they are launching a public consultation on the promotion of European works in on-demand services. They are reflecting in particular upon the

inclusion of prominence tools in their legislation that currently provides only for a share in the catalogue and financing obligations. They esteem that this reflection is crucial as the efficiency of prominence tools was very much indicated in the Hearing of VoD providers on the promotion of European works that the Commission Services organised in November last year. The FR delegation mentioned that the French Regulator has published a report on the application of the measures transposing Article 13; the report indicates among other findings that the operators are respecting those obligations. The ES delegation expressed their interest in receiving the document mentioned by the Commission and indicated that, in Spain, a Committee is currently reflecting about the financing obligations and how to potentially amend the Audiovisual law in this regard. The NL delegation indicated that they have adopted a new reporting form for VoD providers, based on the indicators proposed by the study commissioned by the European Commission. This form has been sent out recently to the operators. The delegation also underlined that operators have indicated that this reporting obligation imposes a significant burden on them. The delegation also mentioned the difficulty of assessing whether a work qualifies as a European work. SE stressed the value of hearing stakeholders' views regarding this subject but questioned the purpose of the exercise. They also stressed that European works can be promoted in different ways, thus it is important that Member States have the option to choose the way that they consider as most efficient. BE mentioned that financing contributions impose a significant burden on VOD providers but also stressed the importance of such financial contributions to facilitate further creation and production. The DE delegation mentioned the problems they are facing regarding VOD providers established outside of DE but providing their services also to DE. A new legislation imposes a levy also on such providers. It has already been notified to the Commission as a state aid measure and DE is waiting for feedback. Following LU's question regarding the nature of the document that the Commission will produce, the Commission replied that the document will have an informal, non-legislative nor interpretative nature, purely factual, informative nature, drafted in a neutral way, in the spirit of transparency. The LU delegation also stressed that the Directive gives flexibility to Member States on how to implement Article 13. The PL delegation welcomed the document. They believe that prominence tools are the best method for the promotion of European works. The Polish legislation currently contains a mandatory share of European works in the catalogue and prominence tools, but according to the industry, mandatory shares do not have an impact on viewing patterns and it is difficult for providers to get European works in the catalogue. Prominence tools can be a mix of tools used by the VoD providers, e.g. labelling European works and making them searchable, organising promotion campaigns or e.g. a European week. Regarding financial obligations, it is, in their view, not the right moment to introduce such tools as smaller entities could not comply with them while bigger providers do already contribute to the financing of new works in practice, thus this issue may be solved by the market. The Commission announced that a study conducted by the European Audiovisual Observatory on the presence of a sample of 50 European works (25 European Blockbusters and 25 European Film Awards winners) in the catalogue of VoD providers in several Member States will be published in the future.

7. State of accessibility services in the EU

Ms Mia Ahlgren from the European Disability Forum (EDF) presented the state of accessibility services in the EU. She underlined the economic and social reasons to provide accessible media and reminded the Commission about the provisions of the Convention on the rights of persons with disabilities and the pressure exercised by global competition for innovative accessible media. She also underlined the fragmented EU market for accessibility services and mentioned in this context a very

good overview of the accessibility measures in all Member States provided in a document¹ prepared by the European Platform of Regulatory Authorities (EPRA). She supported further harmonisation in this area and presented EDF's position on the green paper with respect to questions on measures supporting accessibility and standardisation. She also stressed the need not just for an increased number of accessibility services but also high demand for quality of these services. The Commission replied that the EU accessibility act – which has been just drafted by the Commission services, will cover audiovisual services. The PT delegation asked Ms Ahlgren for further information on the situation in Member States as regards the state of subtitling. EDF indicated that the Commission has recently published a study² comparing the situation in all Member States. The UK delegation stressed that regulation can prompt activity and presented the actions of the broadcasters in the UK. They argued that it is too early to say how legislation works. DE informed the Committee about changes in radio broadcasting fees and about the progress they made by including subtitles in all broadcasting programmes. The Commission announced that it will soon send the questionnaires concerning the 2nd application report where it will ask for an update as regards implementation of Article 7 AVMSD.

8. Entitlement to audiovisual co-productions under the EU-Korea Protocol on Cultural cooperation

The Commission explained to the Committee the reasons why no film was co-produced yet under the EU-Korea Protocol on Cultural cooperation and why the entitlement for EU-Korean co-productions was extended for three more years. The Commission announced that it is now proposing to the Council another three-year extension of the entitlement.

9. Transposition AVMSD – State of Play

The Commission updated the Committee on the state of play of the transposition of the AVMSD. It acknowledged that all Member States have notified full transposing measures, 5 Member States have already fully and correctly transposed the Directive while infringement procedures have been launched against 5 other Member States. The Commission invited those Member States that made commitments to change their legislation to notify said legislation and reminded the Committee that a questionnaire to prepare the 2nd application report of the AVMSD will be sent soon.

10. Application of Articles 16 and 17 AVMSD

The Commission reminded the Committee that the letter regarding the reporting obligation related to Articles 16 and 17 AVMSD was sent out on 30 January 2014; the deadline for replies was however extended till 4 June 2014 due to a delay in preparing and sending out the Excel tables for the reporting. The Commission reminded to use these Excel tables and the accompanying Word document for the reporting. The replies should be provided in electronic form by sending back these documents filled in.

11. Any Other Business

The EL delegation welcomed the participation of the Commission in the conference on the protection of minors in the digital era, organised by the Hellenic presidency on 14 and 15 April 2014 in Athens.

¹ http://epra3-production.s3.amazonaws.com/attachments/files/2202/original/accessibility_WG3_final_revised.pdf?1373379195

² <https://ec.europa.eu/digital-agenda/en/news/study-assessing-and-promoting-e-accessibility>