

**48th Meeting of the Contact Committee of the
Audiovisual Media Services Directive
Wednesday 30 May 2018
Charlemagne Building, 170 rue de la Loi, 1049 Brussels
Room SICCO MANSCHOLT, ground floor**

1. Adoption of the agenda – [Doc CC AVMSD (2018) 1]

The Chair welcomed the members of the Contact Committee. The minutes of the previous meeting have been sent to the members and have been published. The Chair informed the members of the Contact Committee the order of some points of the agenda may need to be revised during the meeting in order to accommodate a video-conference as the first point in the afternoon. The agenda was adopted.

2. The satellite up-link criterion under Article 2(4) AVMSD

The Chair introduced the discussion on the satellite uplink criterion to establish jurisdiction. The Chair informed the delegations that this criterion had not been changed in the revision of the AVMSD. The Chair stated that the new obligation for Member States to communicate to the Commission a list of the audiovisual media service providers under their jurisdiction and the criteria on which their jurisdiction is based (Article 2(5) of the new AVMSD) requires Member States to have an active role in finding out whether providers are established in their territory based on an uplink satellite criterion. The Chair acknowledged that the application of the satellite criterion presents some challenges and reiterated the Commission's goal to elaborate guidelines to assist in its practical implementation.

The Chair gave the floor to the satellite operators (SES and Eutelsat) to hear their views on this issue.

Presentation from SES

The presentation by SES focused on three main topics: the regulatory aspect of the jurisdiction criterion, their particular experience and some suggestions for going forward.

On the first point, SES pointed out that the jurisdiction criterion remained unchanged in the new text of the AVMSD (Article 2(4)) and highlighted several questions that arise when applying this criterion. They also highlighted the importance of ensuring an effective cooperation between national regulators in this field, in particular through exchanges of information and best practices.

As for their particular experience, SES has a concession with the Luxembourg government to use public orbital and spectrum resources. This concession comes with certain obligations, such as information requirements, imposition on their customers to observe the applicable national rules and international conventions and, for non-EU programmes, requirement for their customers to ensure compliance with the relevant Luxembourg Legislation. In addition, SES relationship with their clients is government by a standard customer agreement according to which clients shall abide by the AVMSD and provide certain information to SES.

SES has faced some challenges in terms of enforcement. They mentioned in particular those relating to multiplex players, multiplicity of uplinks or changes in their location and issues regarding the monitoring of the footprint.

With the view of improving the enforcement of the satellite criterion, SES suggested to have a clear overview of national provisions applicable to the sector, including the national interpretation of Article 2(4). They also mentioned the example of Luxembourg where there is a formal notification requirement to all service providers from third countries using national satellites or uplinks. Finally, SES suggested setting up a central EU database (e.g. Mavise) and reflecting on some question marks and possible challenges. SES argued that the Contact Committee could have an important role in answering these question marks.

Presentation from Eutelsat

Eutelsat started their presentation with some information on the company. They operate under two main fundamental principles: (i) usually, Eutelsat has no direct contractual relationships with media service providers, and (ii) usually, Eutelsat customers or their partners are responsible for uplinking content to Eutelsat satellites (they develop their MUX¹ (10 to 15 channels in each) according to their commercial strategy (bouquets)). As a result, the contracts between Eutelsat and distributors include provisions enabling Eutelsat to ensure the effectiveness of content regulations and rules (in particular, the immediate termination of transmission).

Eutelsat pointed out the difficulties associated to the reversal, in 2007, of the subsidiary jurisdiction criteria in Article 2(4) AVMSD. According to Eutelsat, the combination of the anteriority rule and the footprint rule (for cases of several uplinks) is not applied in the same way by national authorities. Eutelsat used the examples of the CSA in France and Ofcom in the UK to illustrate this point.

Eutelsat highlighted that the new guidelines to assist in the application of the satellite criterion should aim at: (i) reducing the volatility of satellite uplinks, which can result in a situation where regulators may be deterred from initiating control of a channel's content in view of the fact that their jurisdiction may be only transient, (ii) further define and better articulate the relationship between the anteriority and the footprint criteria, to avoid fragmentation in the implementation by national regulators; and (iii) further define the satellite capacity criterion for cases where the uplink is not located in the EU. Eutelsat put forward some suggestions to address these objectives.

Open discussion

The FR delegation inquired the Commission about the timing for the questionnaire and the subsequent guidelines. The Chair informed delegations that a questionnaire to be filled in will be sent to them in autumn.

LU stated that this is a very important issue for them. They also indicated that there are relatively few channels in Luxembourg coming from third countries. LU pointed out at the distinction between full and partial satellite coverage and suggested to circulate the

¹ Also referred to as multiplex. Multiplexing is a networking technique that integrates multiple analog and digital signals into a signal transmitted over a shared medium.

documents by the Contact Committee referring to the anteriority and the footprint criteria². On this point, Eutelsat stated that according to their understanding, the AVMSD is applicable also to satellites with partial or marginal coverage in the EU. However, this is a point that should be clarified in the new guidelines.

On LU remark, the Chair informed that from the negotiations it became apparent that the previous guidance has proven not to be as useful as was intended since they have led to different interpretations. The Chair reiterated its intention of attempting to address this situation under the new guidelines.

EE expressly welcomed the fact that Article 2(4) has remained unchanged in the revised AVMSD. NL suggested including a list of technical terms and corresponding definitions in the new guidelines, which the Chair will consider. HU inquired about the implementation of the database under Article 2(5) of the new AVMSD. The Chair stated that at this stage the practical details of the database have not yet been agreed.

3. Update on on-going initiatives related to audiovisual media services

Presentation from the Commission on the Communication "Tackling online disinformation: a European approach"

The Commission adopted the Communication "Tackling online disinformation: a European approach" in April 2018, following the results of a public consultation to gather the views of a wide range of stakeholders on fake news. These results showed that the phenomenon of disinformation - or fake news - has a bigger impact than ever before as it is easier for anyone to post and share any news or information online: 97% of EU citizens have been confronted to fake news, 38% of them on a daily basis and 32% on a weekly basis. Social media and online platforms play an important role in speeding up the spread of such news and they enable a global reach without much effort from the author.

In its Communication, the Commission puts forward an action plan and self-regulatory tools to tackle the spread and impact of online disinformation in Europe, and ensure the protection of European values and democratic systems.

Four principles guide the action:

1. Improve transparency regarding the way information is produced or sponsored;
2. Diversity of information;
3. Credibility of information;
4. Inclusive solutions with broad stakeholder involvement.

The Commission will shortly convene a multi-stakeholder forum to provide a framework for efficient cooperation among relevant stakeholders, including online platforms, the advertising industry and major advertisers, and to secure a commitment to coordinate and scale up efforts to tackle disinformation. The forum's first output should be an EU-wide Code of Practice on

² Contact Committee documents on this issue:

26th CC 2008 (anteriority)

http://ec.europa.eu/archives/information_society/avpolicy/docs/reg/tvwf/contact_comm/26_minutes_en.pdf

31st CC 2009 (footprint)

http://ec.europa.eu/archives/information_society/avpolicy/docs/reg/tvwf/contact_comm/31_minutes_en.pdf

Disinformation to be published by July 2018, with a view to having a measurable impact by October 2018.

By December 2018, the Commission will report on the progress made. The report will also examine the need for further action to ensure the continuous monitoring and evaluation of the outlined actions.

The Chair opened the floor to the delegations for their reactions to the presentation.

CY expressed concerns that self-regulatory initiatives as the ones included in the Communication would be sufficient to address the phenomenon of disinformation. They also inquired about the freedom of expression angle. In this line, IE raised questions about the potential next steps on this issue.

On CY remark, the Chair explained that, given the fact that the content at stake is usually not illegal, the self-regulatory approach seems more appropriate as a first step. Social media platforms are already implementing some of the measures included in the Communication and they seem open to cooperate. The Chair also explained that freedom of expression had been carefully balanced when drafting the Communication. As regards the next steps, the Chair pointed out that the multi-stakeholder forum has created a working group which is responsible for drafting an EU-wide Code of Practice with a view to producing measurable effects by October 2018.

LV raised some questions about the willingness of platforms to be transparent in their algorithms and to give access to their data to fact checkers. The Chair informed that full transparency of algorithms may not be the most effective solution; some selection would need to be done. The centre of fact checkers is in the early stages of development at this time but the Commission will work to ensure that they have access to trustworthy and reliable data. EL raised some questions on the practicalities of the initiative on quality journalism. The Chair explained that the open call has been published and is directed to journalists. The outcome will be presented together with European Centre for Press and Media Freedom based in Leipzig.

DE and IT pointed out that they have adopted national measures on the issue of disinformation online. IT highlighted that, in their view, a supranational initiative is needed and congratulated the Commission on the Communication.

Presentation from the Commission on the Recommendation on measures to effectively tackle illegal content online

As a follow-up of the Communication on tackling illegal content online, in March 2018 the Commission has adopted a Recommendation containing a set of operational measures – accompanied by the necessary safeguards – to be taken by companies and Member States to further step up the fight against the dissemination of illegal content online. This Recommendation applies to all forms of illegal content ranging from terrorist content, incitement to hatred and violence, child sexual abuse material, counterfeit products and copyright infringement. It applies to all online platforms, thus including illegal content shared on video-sharing platforms.

It sets out operational measures to ensure faster detection and removal of illegal content online, to reinforce the cooperation between companies, trusted flaggers and law enforcement authorities, and to increase transparency and safeguards for citizens. The Recommendation encourages companies to follow the principle of proportionality when removing illegal content.

Given the particular threat of terrorist content online, the Recommendation includes certain specific provisions to further curb such terrorist content online. This is the case, for instance, of the one-hour rule: platforms should remove such content within one hour from its referral as a general rule.

The Commission will monitor the actions taken in response to this Recommendation and determine whether additional steps, including, if necessary legislation, are required.

The Chair opened the floor to the delegations for their reactions to the presentation.

EE requested further information on the practical implementation of the reporting mechanism included in the Recommendation. The Chair explained that the first reporting on the fight against terrorist content online took place in the context of the Internet Forum. Players reported on, for instance, how many referrals they received and how many of those resulted in take down of content. The next reporting will take place in the Ecommerce Expert Group in June 2018. To the question by the EL delegation on whether the conclusions of this expert group will be made public the Chair confirmed that these will be made public under the transparency registry.

DE raised a question on the functioning of the limited liability regime for platforms under the Ecommerce Directive when platforms adopt proactive measures to tackle illegal content as provided in the Recommendation. The Chair clarified that the limited liability regime set out in the Ecommerce Directive remains applicable.

4. Update on the revision of the AVMSD

The Chair provided an update on the state of play of the ongoing revision of the AVMSD.

At the trilogue of 26 April 2018 the EU institutions reached a preliminary agreement on the main points of the revised Directive, which was a major breakthrough in the negotiations. One final technical trilogue to agree on remaining technical issues is scheduled for 6 June 2018. The co-legislators will then proceed with the formal adoption of the revised Directive, which will be published in the Official Journal. Member States will then need to transpose the new rules into their national law. The Commission indicated that it will closely cooperate with Member States to ensure a correct and timely transposition of the rules, including by issuing guidelines on certain aspects of the new provisions. The Chair stressed that the Contact Committee is expected to have an important role in this process.

RO inquired about how the new GDPR would affect the new provisions regarding the creation and making publicly available of a database of service providers. The Chair stated that the application of the new rules on data protection will certainly need to be assessed once the new provisions enter into force. Special attention will need to be paid to any personal data concerning individuals while data concerning legal persons is not covered by the GDPR.

The DE delegation raised the issue of the rules on promotion of European works in the context of BREXIT. On this issue, the Chair indicated that all issues regarding BREXIT are being treated in a centralised manner within the EC and would welcome contributions from the delegations on such issues.

LV raised a concern regarding the latest text being negotiated between the co-legislators on Article 5(1b). According to LV, text that had already been agreed and endorsed should not be renegotiated and, in any event, in their view the latest text on the table would create legal uncertainty. EE and IE supported this view. The Chair reassured the delegations that the Commission is working with the co-legislators to achieve good compromises for all the pending issues.

5. Presentation of the report *Mapping of licensing and related systems for AVMS in EU-28*

The Chair explained that, although licensing systems are not regulated under the AVMSD, the application of national licensing requirements is closely linked with the issue of jurisdiction and with the principle of country of origin enshrined in the AVMSD. Licensing systems enhance market transparency and ensure that the regulatory authorities have the information they need to monitor compliance with the AVMSD provisions. The study conducted by the European Audiovisual Observatory (EAO) will be particularly interesting considering the requirement under the new AVMSD for the Commission to make available the lists of audiovisual media services under the jurisdiction of Member States.

The EAO presented the main findings of their report *Mapping of licensing and related systems for AVMS in EU-28*. The purpose of the report is to provide an inventory of the licensing and related systems for AVMS in the EU-28 in order to help provide for a clarification to the question of applicable jurisdiction and avoid potential conflicts of jurisdiction. The EAO provided some information on the methodology and the structure of the report.

Regarding the substance, the report mainly looks into the licensing systems (systems applied, authorities involved and potential appeals in case of refusal), procedures currently in place, existing license or registration fees and the management of granted licenses. The report also analyses the aspect of media ownership and concentration and any related national provisions regulating this issue. Finally, the report looks into the future and potential initiatives considering the extension of the AVMSD to cover video sharing platforms, including how to improve the MAVISE database.

The Chair informed the delegations that they would receive a copy of the draft report in order to comment only on possible factual mistakes or inaccuracies by 8 June 2018.

ES asked whether the report had looked into national rules regarding the access to licenses by foreign operators. LV raised the issue of the interplay between the MAVISE database and the database required under the revised AVMSD. EE asked about the procedure followed to select of national experts for the purposes of the report.

The EAO clarified that the report had looked on media concentration from the point of view of licensing but they had not specifically looked into the issue of foreign operators. To the EE question, the EAO explained that they use a transparent list of experts.

On the issue of the databases, the EAO indicated that they will continue to operate the MAVISE database and stated that the EAO is available to assist the Commission with the implementation of the new provisions under the AVMSD. The Chair added that when implementing the new rules the Commission will look at all the available alternatives, including the budgetary implications. This includes the existing projects such as the MAVISE database, which the Commission has been funding this project through the EAO.

6. ECJ judgment in Peugeot YouTube channel case (Case C-132/17)

Without prejudice to the EC position in future similar cases, the Chair informed of the ECJ preliminary ruling on case C-132/17 according to which the definition of "audiovisual media service" of Article 1(1)(a) of the current AVMSD covers neither a video channel, such as that at issue, on which internet users can view short promotional videos, nor a single video of that kind considered in isolation.

In its assessment, the ECJ first analyses whether the video channel fulfils the principal purpose criterion of Article 1(1)(a), that is, whether the principal purpose of the channel is the provision of programmes in order to inform, entertain or educate. According to the ECJ, the principal purpose of the Peugeot video channel is to promote, for purely commercial purposes, the product or service advertised and, as such, cannot be regarded as having as its principal purpose the provision of programmes in order to inform, entertain or educate the general public.

As a second step, the ECJ assesses whether such promotional videos could constitute an "audiovisual commercial communication" (AVCC) within the meaning of Article 1(1)(a)(ii) of the current Directive. The ECJ concludes that a promotional video as the one of Peugeot cannot be regarded as "accompanying or being included in a programme", inasmuch as a video channel, such as that run by Peugeot Deutschland, contains solely videos, which are individual elements independent of one another and are promotional in their entirety.

LV questioned about the ECJ ruling in Netflix International BV and Netflix, Inc. v European Commission – Case T-818/16 and regretted that, by ruling on inadmissibility, the ECJ did not adopt a position on contributions (aka levies) to be received by MS from other MS participating in their markets.

7. Commission Decision of 4.5.2018 on the compatibility of the measures adopted by Lithuania pursuant to Article 3 (2) of Directive 2010/13/EU (C(2018) 2665 final)

The Chair informed the delegations about the Commission decision regarding the suspension of the retransmission in Lithuania of the Russian language channel "RTR Planeta" broadcasting from Sweden³. According to the Lithuanian authorities, the channel was distributing content inciting to hatred. In its Decision, the Commission concluded that the measures taken by the Lithuanian authorities to counteract the broadcast of programmes containing hate speech are proportionate and justified.

³ <https://ec.europa.eu/digital-single-market/en/news/lithuanias-decision-suspend-broadcast-russian-language-channel-rtr-planeta-complies-eu-rules>

This was the third time the Commission decided on a suspension of the retransmission of RTR Planeta on the basis of incitement to hatred. In 2015 and 2017, the Commission already considered that a temporary suspension of three months of the retransmission of RTR Planeta decided by Lithuania in April 2015 was compatible with Union law as well. It should be noted that a suspension measure under the AVMSD requires that at least three infringements are detected over the period of a year. In view of the circumstances and in particular the repeated nature of the infringements, the Commission considered that a substantially longer suspension would be in this case justified.

8. Commission Decision of 31.1.2018 on the incompatibility of the measures adopted by Sweden pursuant to Article 4 (5) of Directive 2010/13/EU (C(2018) 532 final)

The Chair informed the delegations about the Commission decision on the incompatibility with EU law of the Swedish intention to impose their ban on alcohol advertising on two broadcasters based in the UK and broadcasting in Sweden⁴.

Both MTG and Discovery are broadcasters established in the United Kingdom and therefore falling under British jurisdiction. Both broadcasters have a license to broadcast in the Swedish terrestrial network.

The Commission took its decision on the basis of the procedure laid down in Article 4 of the AVMSD. The provision allows Member States to adopt stricter rules in the fields coordinated by this Directive, provided that these are compatible with Union law. Member States may apply these stricter rules to broadcasters established in other Member States directing their broadcasts towards their territories, if certain conditions are met.

In order to impose such a ban on the UK broadcasters, Sweden should have demonstrated, under the specific procedure contained in Article 4 of the AVMSD, that the broadcasters in question established themselves in the UK in order to circumvent such rules. The burden of proof lies with the Member State and the Commission found in this case that Sweden failed to prove circumvention on the part of the two broadcasters.

9. Information on the last ERGA Plenary session

The Chair gave an update on the 9th ERGA Plenary session which took place on 23 March in Zagreb.

In the plenary the heads of National Regulatory Authorities adopted the Terms of Reference, which in detail define the work of each of the four Subgroups. ERGA's work in 2018 will be delivered through four subgroups (internal plurality, exchange of information between national regulators, potential new implementation challenges and self and co-regulation) and the outcomes of their work will be presented at the next ERGA Plenary, which will take place in November in Brussels.

⁴ <https://ec.europa.eu/digital-single-market/en/news/commission-decides-swedish-ban-alcohol-advertising-not-compatible-eu-rules>

The ERGA Plenary session was also marked by the visit of Commissioner Gabriel, who gave a speech stressing the importance of regulatory coherence between the EU and the Western Balkans countries, the fight against online disinformation and the role of women in media.

10. Any other business

There were no comments raised under any other business.

For a list of the participants see next page

Albania	AV Media Authority – Secretary General
Austria	Bundeskanzleramt – Verfassungsdienst – Media Policy
Belgium	Ministère de la Fédération Wallonie-Bruxelles
Bulgaria	Ministry of Culture
Croatia	Ministry of Culture
Croatia	Electronic Media Council – Agency for Electronic Media
Czech Republic	-
Cyprus	Ministry of Interior – AV and Media Sector
Denmark	Ministry of Culture
EFTA	Ministry of Education, Science and Culture (Iceland)
EFTA	Ministry of Culture of Norway
EFTA	Surveillance Authority
EFTA Secretariat	EFTA Brussels Office
Estonia	TJA – Technical Regulatory Authority
Finland	Ministry of Transport and Communications
France	Représentation permanente auprès de l'UE
France	Ministère de la Culture et de la Communication
France	Conseil Supérieur de l'Audiovisuel
FYROM	Agency for Audio and AV Media Services
Germany	Vertretung Staatskanzlei Rhénanie Palatinat
Germany	Vertretung des Freistaates Bayern bei der EU
Germany	Beauftragte der Bundesregierung für Kultur und Medien
Greece	Permanent Representation to the EU
Greece	SG for Information & Communication – Directorate Mass Media
Hungary	National media & Infocommunications authority (NMHH)
Ireland	Dpt of communications, Climate Action and Environment
Ireland	Broadcasting Authority of Ireland
Italy	Ministero dello Sviluppo Economico – Comunicazioni
Italy	Agcom
Latvia	Ministry of Culture
Latvia	National Electronic Mass Media Council
Lithuania	Permanent Representation to the EU
Luxembourg	Ministère d'Etat - Service des Médias et des Communications
Luxembourg	Permanent Representation to the European Union
Luxembourg	ALIA
Malta	-
Montenegro	Agency for Electronic Media of Montenegro
Netherlands	Commissariaat voor de Media
Poland	Ministry of Culture and National Heritage
Poland	National Broadcasting Council of Poland (KRRIT)

Portugal	General Secretariat - Council of Ministers - Media Policy
Portugal	Entidade Reguladora para a Comunicaçao Social - ERC
Romania	Conseil National Audiovisuel
Serbia	Electronic Media Regulatory Authority
Slovak Republic	Ministry of Culture, Dpt Media Law & av
Slovak Republic	CBR – Broadcasting Authority
Slovenia	Ministry of Culture
Spain	Secretaría de Estado de Telecomunicaciones y para la Sociedad de la Informacion
Sweden	Ministry of Culture - Regeringskansliet
Sweden	MPRT – Press and Broadcasting Authority
Turkey	Radio and TV Supreme Council - RTÜK
United Kingdom	Department of Culture, Media and Sport
United Kingdom	Ofcom