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EUROPEAN CONVENTION ON TRANSFRONTIER TELEVISION

STANDING COMMITTEE ON TRANSFRONTIER TELEVISION

(T-TT)

36th meeting
15-16 April 2004
Human Rights Building, Strasbourg
Room of the Directorate General

REPORT

Items 1 and 2 of the agenda: **Opening of the meeting and election of a new Chairperson**

1. The meeting was opened by the Secretariat, who recalled that Ms Carolyn MORRISON had resigned as Chairperson and member of the Standing Committee. The Committee was invited to elect a new Chairperson under Article 5 § 4 of its Rules of procedure. Mr Boris BERGANT (Slovenia) was unanimously elected Chairperson of the Standing Committee. As his post as first Vice-Chairperson subsequently became vacant, the Committee decided to appoint Ms Juliana TONCHEVA (Bulgaria) as first Vice-Chairperson. The Committee then proceeded to unanimously elect Ms Christel FRANZ-BORCK (Germany) as second Vice-Chairperson.

Item 3 of the agenda: Adoption of the agenda

2. The Standing Committee adopted the draft agenda set out in document T-TT (2004) OJ 1 rev. The list of participants is set out in Appendix I. The agenda, as adopted, is set out in Appendix II.

Item 4 of the agenda: Signatures and ratifications of the revised Convention, correction of the amending Protocol

3. The Secretariat informed the Committee that Bosnia-Herzegovina had signed the Convention on 9 December 2003 and that the latter had entered into force in respect of the Czech Republic and "the Former Yugoslav Republic of Macedonia" on 1 March 2004.

4. The Secretariat also provided the Committee with information concerning the correction of a material error in Article 6 of the amending Protocol. This correction had been approved by the Ministers' Deputies on 21 January 2004, and a certificate of correction had been notified to all Permanent Representations on 12 February 2004.

5. The Observer Delegate of Romania informed the Committee that the domestic ratification procedures of the Convention were at a well advanced stage in his country and that formal ratification was expected during the next few months.

Item 5 of the agenda: The impact of technological and market changes in the broadcasting sector on the European Convention on Transfrontier Television

(i) Continuation of the review of the provisions of the Convention

a. Questions concerning advertising, sponsorship and teleshopping

6. The Delegate of Austria presented the revised version of his analytical paper (cf. document T-TT (2004) 2). He recalled that he had received contributions from seven delegations. In revising the paper, he had taken into consideration those contributions as well as the European Commission draft interpretative communication on advertising. He stressed that his paper represented an in-depth analysis of the problems which had been raised, but it was not intended to provide any solution to them. The main controversial issues concerned Articles 12, 14 and 17 of the Convention. He clarified that the Delegations' contributions were too diverse to be easily summarised. In Appendix III of his paper he raised specific and general questions. In his opinion, the general questions should be answered first.

7. Following the Austrian Delegate's presentation, the Committee held a general discussion on the best way to proceed with the revision of the Convention, given the work currently under way within the framework of the European Union on the revision of the "Television without Frontiers" Directive. Several Delegates expressed the opinion that, although the developments at the European Union level should be closely followed and taken into consideration, the Standing Committee should proceed in its work. Some Delegates suggested that the Committee should examine whether new provisions should be added to the Convention in order to cover the Council of Europe's areas of concern regarding the protection of human rights, democracy and pluralism.

8. Following this general discussion, the Committee examined in detail the questions, both specific and general, listed in Appendix III to the Delegate of Austria's paper.

9. In conclusion, the Committee thanked the Delegate of Austria for the excellent document that he had prepared and decided that the remarks made by the Delegations during the discussion would be incorporated into a new document which the Delegate of Austria agreed to prepare for the next meeting of the Committee. The Delegate of Austria would also address in this document the question of whether the rules of the Convention concerning advertising, sponsorship and teleshopping could apply to new communication services. This document would summarise the most relevant issues on which the Committee would be invited to adopt conclusions at the next meeting.

b. Questions concerning the scope of the Convention, jurisdiction, freedom of reception and retransmission, the duties of the Parties of the Convention, advertising directed at a single Party and the abuse of rights granted by the Convention

10. The Delegate of Poland presented his discussion document (cf. document T-TT (2004) 3). He thanked the Delegations which had sent him contributions to his reflection and went through the main issues addressed in his paper.

11. As regards the scope of the Convention, he pointed out that the developments in the new technology field could call for opposite content regulation approaches. On the one hand, it could be argued that as a result of the development of specialised services through digital technology, television could be increasingly assimilated to the written press, thus requiring less detailed and strict regulation than before. On the other hand, the view could be taken that a number of new communication services were in essence comparable to traditional broadcasting services and therefore should be subject to the same rules as the latter. He indicated that, given the rapid pace of developments of these services and the uncertainties which still existed concerning their future, it would not be appropriate to try to regulate them at this stage. However, at the same time these developments should be closely monitored so as to prepare the ground for future regulation.

12. As regards the issue of jurisdiction, he pointed out that the actual wording of Article 5 of the Convention appeared to be no longer adequate, given the new developments in the transfrontier television market. He also mentioned the categories of “delocalised channels” and “relocated channels”, which could be regarded as examples of “abusive transfrontier television”.

13. Following this presentation, the Committee thanked the Delegate of Poland for his excellent work and held an in-depth discussion on the issues identified in his document. Some Delegations pointed out that it would be important to review whether the objectives of the Convention were still relevant, having regard to the aforementioned developments, and in the affirmative how these objectives could be secured in the future. One of these Delegates was of the opinion that the future scope of the Convention should be limited to television, regardless of the means of transmission used, as it would be unrealistic to try to cover all new information services. Following this remark, the Committee questioned whether or not webcasting should be assimilated to traditional television services under the Convention.

14. On the question of jurisdiction, the Observer Delegate of the European Commission recalled that a recent Conference of the European Union Media Ministers in Dublin, his authorities had clearly indicated that the fundamental principle of the free reception and retransmission of television services should be upheld in the "Television without Frontiers" Directive, following the concerns expressed by a number of Ministers regarding competition from foreign broadcasting services originating from "larger" European countries. He subsequently recalled the relevant case law of the European Court of Justice. While taking note of this information, some Delegates considered that the above concerns should still be addressed in one way or the other. One of these Delegates indicated that a possible solution worth reflecting upon could be that, when granting a licence to a television service targeting the audience of another country, the licensing authority could include in this licence a provision requiring this broadcaster to abide by the national rules of the receiving country.

15. At the end of the discussion, the Delegate of Poland was invited to revise his document taking into consideration the remarks made by the Committee. It was also decided that all Delegations could, **by 30 June 2004**, send to the Polish Delegate any comments which they might wish to add in relation to the issues dealt with in his analytical paper. The Committee would examine the revised document at its next meeting, so as to bring the discussion forward.

(ii) Information by the Observer Delegate of the European Commission on progress of work concerning the review of the "Television without Frontiers" Directive

16. The Observer Delegate of the European Commission informed the Committee that the Commission would adopt in the next few weeks an interpretative Communication on advertising, which was intended to assist member States of the European Union in the application of the existing rules of the "Television without Frontiers" Directive to new forms of advertising. He agreed to inform the Secretariat of the Committee of the adoption of this Communication in due course and to provide a link to the web site of the European Commission where the members of the Standing Committee could download the Communication.

17. He also pointed out that the review of the Directive was well under way. As indicated in the conclusions of the Communication on the Future of European Regulatory Audiovisual Policy adopted by the Commission in December 2003, three focus groups would be established within the next few months in order to examine further the following questions: (i) how to regulate different means of delivery of content (this group would also address the question of jurisdiction), (ii) what should be the appropriate level of regulation of advertising and (iii) the right of the public to information. Studies would also be carried out on co-regulatory measures in the media sector, on the impact of television advertising on the internal market and on the impact of measures concerning the promotion of the production of European programmes (Articles 4 and 5 of the "Television without Frontiers" Directive). These studies should be available in 2005. A possible proposal for the revision of the Directive could be available at the end of 2005, subject to a decision of the new Commission. The adoption of a revised Directive might reasonably be scheduled for 2007.

18. The Secretariat reminded the Committee that two groups of questions concerning the review of the Convention (questions concerning the right to information and cultural

objectives and questions concerning the protection of minors and respect for human dignity) which had been previously identified had not yet been addressed.

19. The French Delegation agreed to prepare a reflection paper on questions concerning the right to information and cultural objectives for the first meeting of the Committee in 2005. The German Delegation accepted to draft a reflection paper on issues concerning the protection of minors and respect for human dignity for the same meeting.

20. In conclusion, the Committee requested the Secretariat to prepare for its next meeting a discussion document on questions concerning the protection of human rights, pluralism and democracy in the context of transfrontier television services which were not addressed at present in the Convention but could possibly be included in this instrument in the context of its future revision. Furthermore, following the above debate on webcasting, it was agreed that the Secretariat would conduct research on how it was dealt with outside Europe, so as to provide points of comparison to the Committee for its future discussions.

Item 6 of the agenda: Examination of a draft recommendation on the protection of minors

21. It was recalled that, at its previous meeting, the Committee had examined a revised draft opinion on whether the retransmission of pornographic programmes was compatible with the Convention and had decided that the draft opinion could not be adopted as it stood, given that Article 7 of the Convention clearly stipulated that programme services should not contain pornography. The Committee had asked the Secretariat to contact the Legal Advice Department and ask it to look into the possibility of an alternative solution to adopting an opinion or revising Article 7 of the Convention.

22. The Secretariat presented a draft recommendation on the protection of minors from pornographic programmes, which had been prepared following the suggestion of the Legal Advice Department. Several Delegates felt that the draft recommendation, as it stood, raised the same problem encountered during the examination of the aforementioned draft opinion, namely the impossibility to reconcile the concrete need to protect minors from pornographic programmes with the absolute prohibition of the retransmission of pornographic programmes under Article 7. Other Delegates expressed the view that, given the impossibility to quickly revise the Convention in this respect, it would be very useful to adopt a recommendation. They suggested several modifications to the draft text prepared by the Secretariat. On the other hand, another Delegate expressed the view that the adoption of a recommendation would have in practice no impact, given the weak value of such a text.

23. Following this discussion, the Committee agreed on the necessity to adopt a recommendation which, pending the process of revision of the Convention, would express the Committee's concern about pornographic programmes. The Delegations were invited to send their proposals for modifications to the draft recommendation to the Secretariat **before 30 June 2004**. In the light of these proposals, the Secretariat would prepare a revised version of the draft recommendation for the next meeting of the Committee.

Item 7 of the agenda:**Access by the public to events of major importance****(i) Examination of a list of events submitted by Slovenia under Article 9a of the Convention**

24. The Chairperson, in his capacity as Delegate of Slovenia, informed the Committee that, after having exchanged views with the Secretariat, he would prefer to postpone the examination of the Slovenian list until the next meeting of the Committee. One Delegate indicated some problematic issues concerning the Slovenian submission, in particular with regard to the consultation procedure, the definition of skiing events and the description of football events.

25. The Observer Delegate of the European Commission pointed out the need for Slovenia to notify the list in parallel to the Commission under Article 3a of the “Television without Frontiers” Directive. He made several remarks concerning the Slovenian submission to the Standing Committee concerning the description of the events, the consultation procedure, the absence of an arbitration mechanism, the proportionality of the events covered by the list, the kind of justification given for the events and the absence of detailed audience figures in relation with each event.

(ii) Information on the state of progress of the work carried out by the Group of Specialists on the democratic and social implications of digital broadcasting (MM-S-DB) on a draft recommendation on the right to short reporting on major events where exclusive rights have been acquired

26. The Secretariat indicated that, at its meeting from 4 to 5 March 2004, the above-mentioned Group of Specialists had examined a preliminary draft Recommendation prepared in the light of comments made at a hearing organised during its previous meeting. It had made a number of changes to the draft text and had decided to leave aside the paragraphs concerning news agencies and Information Society services. The Group had also decided to send the revised text to the CDMM's Advisory Panel on Intellectual Property for possible comments from the perspective of the protection of copyright and neighbouring rights and had requested the Secretariat to contact all delegations within the CDMM, asking them to carry out consultations on the revised draft at the national level. As regards the professional organisations, the Group had decided that at its next meeting, it would consider whether to organise another hearing with professional organisations at a possible third meeting.

27. The members of the Standing Committee were invited to send to the Secretariat, **by mid-May 2004**, any additional comments which they might wish to formulate on the revised draft Recommendation (cf. Appendix III to document MM-S-DB (2004) 2). One Delegate asked whether the criteria for defining major events were a matter of self-regulation. Another Delegate pointed out that the draft text did not include any provision concerning the settlement of disputes. She suggested that the MM-S-DB should consider following in this respect the same approach as the MM-S-OD in the draft Recommendation on the right of reply in the new media environment (cf. item 8 below).

Item 8 of the agenda: Other business

(i) Information on the state of progress of the work carried out by the Group of Specialists on on-line services and democracy (MM-S-OD) on a draft recommendation on the right of reply in the new media environment

28. The Secretariat informed the Standing Committee that at its last meeting from 5 to 6 February 2004, the Group had almost completed the drafting of the above text, with the exception of the definition of the term “medium”. The Group should finalise the text at its next meeting (17-18 June 2004), in which case this text would be forwarded to the CDMM for approval and subsequent adoption by the Committee of Ministers during the second half of the year. All Delegations were invited to send to the Secretariat, **by mid-May 2004**, any additional comments which they might wish to formulate on the draft Recommendation.

(ii) Resignation of Ms Carolyn MORRISON

29. The Committee expressed its deep regret for the resignation of Ms Carolyn MORRISON as Chairperson and member of the Standing Committee, thanked her for the excellent work done for the Committee and addressed to her its best wishes for a prompt recovery.

(iii) Dates of forthcoming meetings

30. The Committee agreed to hold its next meeting on 11-12 October 2004.

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APPENDIX II**Agenda****1. Opening of the meeting****2. Election of a new Chairperson**Working document

- Rules of procedure

3. Adoption of the agendaWorking documents

- Draft agenda
(Document T-TT (2004) OJ 1 rev)
- Annotations on the draft agenda
(Document T-TT (2004) 7)

4. Signatures and ratifications of the revised Convention, correction of the amending ProtocolWorking document

- Secretariat Memorandum
(Document T-TT (2004) 8)

5. The impact of technological and market changes in the broadcasting sector on the European Convention on Transfrontier Television**(i) Continuation of the review of the provisions of the Convention****a. Questions concerning advertising, sponsorship and teleshopping****b. Questions concerning the scope of the Convention, jurisdiction, freedom of reception and retransmission, the duties of the Parties of the Convention, advertising directed at a single Party and the abuse of rights granted by the Convention**Working documents

- Report of the 35th meeting of the Standing Committee
(Document T-TT (2003) 18, item 4 (i))
- Revised version of the discussion document prepared by the Delegate of Austria on questions concerning advertising, sponsorship and teleshopping
(Document T-TT (2004) 2)

- Discussion document prepared by the Delegate of Poland on questions concerning the scope of the Convention, jurisdiction, freedom of reception and retransmission, the duties of the Parties of the Convention, advertising directed at a single Party and the abuse of rights granted by the Convention
(Document T-TT (2004) 3)
- Background document prepared by the Secretariat on questions concerning the scope of the Convention, jurisdiction, freedom of reception and retransmission, the duties of the Parties of the Convention, advertising directed at a single Party and the abuse of rights granted by the Convention
(Document T-TT (2004) 1)
- Final report by Dr Grünwald on possible options for the review of the Convention
(Document T-TT (2003) 2)

Information document

- Draft report on convergence prepared by the AP-CV
(Document AP-CV (2004) 1)

(ii) Information by the Observer Delegate of the European Commission on progress of work concerning the review of the “Television without frontiers” Directive

Information document

- Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on the Future of European Regulatory Audiovisual Policy
(Document COM (2003) 784 final)

6. Examination of a draft recommendation on the protection of minors

Working documents

- Report of the 35th meeting of the Standing Committee
(Document T-TT (2003) 18, item 5)
- Draft recommendation prepared by the Secretariat
(Document T-TT (2004) 4)
- Statement (2002) 1 on Human Dignity and the Fundamental Rights of Others
(Document T-TT-Info)

7. Access by the public to events of major importance

(i) Examination of a list of events submitted by Slovenia under Article 9a of the Convention

Working documents

- List of events submitted by Slovenia
(Document T-TT (2004) 5)
- Guidelines for the implementation of Article 9a
(Document T-TT (2002) 18 rev.1)

- (ii) Information on the state of progress of the work carried out by the Group of Specialists on the democratic and social implications of digital broadcasting (MM-S-DB) on a draft Recommendation on the right to short reporting on major events where exclusive rights have been acquired**

Working documents

- Report of the 35th meeting of the Standing Committee (Document T-TT (2003) 18, item 6 (ii))
- Report of the 9th meeting of the MM-S-DB (Document MM-S-DB (2004) 2)

8. Other business

- (i) Information on the state of progress of the work carried out by the Group of Specialists on on-line services and democracy (MM-S-OD) on a draft Recommendation on the right of reply in the new media environment**

Working documents

- Report of the 35th meeting of the Standing Committee (Document T-TT (2003) 18, item 7 (i))
- Report of the 10th meeting of the MM-S-OD (Document MM-S-OD (2004) 1)

- (ii) Dates of forthcoming meetings**

- (iii) Planning of future work**