



Strasbourg, 7 December 2007

T-TT(2007)007

EUROPEAN CONVENTION ON TRANSFRONTIER TELEVISION

STANDING COMMITTEE ON TRANSFRONTIER TELEVISION

(T-TT)

**42nd meeting
8 and 9 October 2007
Palais de l'Europe
Room 9**

REPORT

Item 1 of the agenda: **Opening of the meeting and adoption of the agenda**

1. In the absence of the Chairperson, who was not able to attend, the meeting was opened by the Vice-Chairperson of the Standing Committee on Transfrontier Television (T-TT), Ms Nuran Yardimci (Turkey). She welcomed all delegates and observers, particularly the representatives of the Audiovisual Communication Authority of Morocco and of the Council for Cable TV and satellite Broadcasting of Israel who had been invited to participate in the meeting for the first time. The list of participants appears in Appendix I to the report.

*This document will not be distributed at the meeting. Please bring this copy.
Ce document ne sera pas distribué en réunion. Prière de vous munir de cet exemplaire.*

2. Mr Jan Malinowski, Head of the Media and Information Society Division, introduced Ms Anita van de Kar-Bachelet who succeeded Ms Alessia Sonaglioni as Secretary to the T-TT. He informed the Standing Committee of recent changes to the structure of the Secretariat General, in particular the newly created Directorate General of Human Rights and Legal Affairs, resulting from a merger of the former Directorates General I (Legal Affairs) and II (Human Rights). This decision was taken in line with the conclusions of the Warsaw Summit of Heads of State and Government of the Council of Europe in 2005 to improve the efficiency of the Secretariat. The structure of the new Directorate General, divided into three main Directorates, aims at promoting synergies within and across the different types of work, respectively standard-setting, targeted assistance or cooperation and monitoring. The new structure should not affect the functioning of the Standing Committee.

3. The Standing Committee adopted the agenda as reproduced in Appendix II.

Item 2 of the agenda: Signatures and ratifications of the Convention

4. The Standing Committee noted that no further ratifications of the European Convention on Transfrontier Television had taken place since its previous meeting. The total number of states that have ratified the Convention to date therefore stands at 31, with a further 7 states having signed it.

5. The Standing Committee noted with satisfaction that ratification of the Convention was on the agenda of the Parliament in Serbia.

Item 3 of the agenda: Exchange of information on the implementation of the Convention

6. Delegates raised no issues on the implementation of the Convention.

- Lists of events of major importance, Article 9a of the Convention

7. On 7 April 2006 “the former Yugoslav Republic of Macedonia” submitted a list of events of major importance to the Standing Committee under Article 9a of the Convention. During its 41st meeting (9 and 10 October 2006), the Standing Committee held an exchange of views on the subject (documents T-TT(2006)023 and T-TT(2007)005) and considered a first analysis of the above-mentioned list. It postponed adoption of a formal decision on the list and accompanying measures pending clarification on a number of issues raised by delegates. On the basis of additional information provided by the authorities of “the former Yugoslav Republic of Macedonia” and amendments to the list notified, a second analysis was subsequently prepared (document T-TT(2007)001).

8. In the interim, the question of the effects of the mutual recognition procedure foreseen by Article 9a of the Convention was raised and, more particularly, that of the procedural rights of third parties potentially affected by those decisions.

9. Following consultation with the Chairperson of the Standing Committee and the delegation of “the former Yugoslav Republic of Macedonia”, the Secretariat sought advice from the Council of Europe’s Legal Advice Department. The legal opinion of the latter, dated 3 September 2007, concluded that “[t]he present wording of Article 9 a, paragraph 2 creates much uncertainty and a possible denial of justice for rightholders who feel harmed by the

application of the mechanism of mutual recognition. It is contrary to the principles promoted by the Council of Europe, in particular the right to an effective remedy (Article 13 ECHR), that an act which produces legal effects cannot be challenged before a jurisdiction".

10. Having sought the views of the delegation of "the former Yugoslav Republic of Macedonia", the Chairperson felt that the Standing Committee should examine the matter further at its 42nd meeting. He asked the Secretariat to prepare a note on the subject (document T-TT(2007)002) on the basis of the opinion of the Council of Europe's Legal Advice Department, inviting the Standing Committee to decide how to proceed with this matter.

11. The Standing Committee discussed the issue with representatives of the Legal Advice Department of the Council of Europe and considered document T-TT(2007)002. It concluded that the present mechanism for mutual recognition of lists of events of major importance and corresponding measures foreseen in Article 9a, paragraphs 2 and 3, of the Convention lacked clarity and legal certainty in respect of the decision making procedure and possible effects of these decisions on the procedural rights of rightholders.

12. The Standing Committee decided to re-examine Article 9a in the context of the broader revision of the Convention. It asked the drafting group and Secretariat to prepare a proposal having regard to the Standing Committee's discussions, which could include offering states party to the Convention the possibility to opt out from the recognition of a particular list. Further consideration is also required as to the manner in which lists, measures and the guidelines are published (cf. Article 9a, paragraph 3 b, of the Convention).

13. As regards the second analysis of the list of events of major importance submitted by "the former Yugoslav Republic of Macedonia" (document T-TT(2007)001), the Standing Committee decided, without prejudice to the contents of the list and measures notified, to refrain from giving a formal opinion on the issue in the light of the existing legal uncertainty attached to the application of Article 9a, paragraph 2, of the Convention in its present wording. It noted, however, that a state may well be entitled, with due respect to its own legal framework, to adopt measures with a view to ensuring that a broadcaster within its jurisdiction does not exercise exclusive rights over an event of major importance listed in another state in such a way that a substantial proportion of the public in that other state is deprived of the possibility of following those events via whole or partial live coverage or whole or partial deferred coverage on free television.

- **Authorities designated according to Article 19 of the Convention**

14. The Standing Committee noted that further to the request by the Treaty Office of the Council of Europe to States Parties to the Convention that had not done so to designate authorities for the purposes of Article 19 of the ECTT, the number of Parties who still have to designate their authorities has been reduced to three (Bosnia-Herzegovina, Hungary and San Marino). The Secretariat informed the Committee that the list of designated authorities is available on the website of the Standing Committee.

- **Other**

15. The Secretariat recalled outstanding issues from the previous meeting of the Standing Committee and in particular the possible follow-up to give to **Item 27 of the Action Plan to**

22. The information provided by the representatives from Israel and Morocco is available on the Council of Europe's web page concerning the Standing Committee.

Item 5 of the agenda: Revision of the Convention

(i) Information by the Observer Delegate of the European Commission on the proposal for an Audiovisual Media Services Directive

23. The European Commission delegate informed the Standing Committee that a political agreement on a common position on the proposal for an Audiovisual Media Services (AVMS) Directive had been adopted on 24 May 2007. Since then the text has been transposed into an amending Directive to the Television without Frontiers Directive 89/552/EEC and reviewed by lawyer-linguists. All language versions will soon be available. The European Parliament is expected to formally adopt the Directive on 28 or 29 of November 2007 which will then be published in the Official Journal. Following publication, Member states will have two years to transpose the Directive into their national law.

(ii) Examination of the draft amendments to the ECTT

24. The Chairman of the Drafting group of the Standing Committee, Mr Chris Bone (United Kingdom), gave a short account of the work of the Group that met in Paris on 29 and 30 March 2007 and on 21 and 22 June 2007. The drafting Group is composed by delegates from Austria, France, Germany, Poland, Switzerland, Turkey and the United Kingdom. The observer delegate of the European Commission participated in the second meeting of the drafting Group.

25. The Committee examined the draft proposals and comments as contained in the document "proposed amendments to the European Convention on Transfrontier Television" (document T-TT (2007)006 and addressed as a priority the issues most in need of clarification and guidance from the Standing Committee.

26. The Committee discussed the package of measures (draft Articles 5.5, 5.6, 6.3 and 28.2) proposed to regulate the issue of abuse of rights or circumvention of national rules by the delocalisation of a broadcaster in a state with less strict rules. The Committee agreed that the approach chosen in Article 3 of the AVMS Directive was difficult to incorporate into the Convention given the different nature of the European Commission and the Standing Committee. It was agreed to focus on the provisions needed in the Convention so as to ensure alignment with the spirit of the Directive. Any enforcement mechanism concerning these provisions would necessarily be different and adapted to the nature of the Standing Committee.

27. As regards media pluralism, the Committee agreed to develop and strengthen the present Article 10a taking into account Recommendation Rec (2007)2 of the Committee of Ministers on media pluralism and diversity of media content as well as the Declaration of the Committee of Ministers on protecting the role of the media in democracy in the context of media concentration adopted on 31 January 2007. Although there was agreement that the amendments proposed would not change its present nature of a political statement, the proposal was accepted in a shortened version. The Secretariat recalled that the finalisation of

the “White Paper on Intercultural Dialogue”, expected by the end of 2007, might provide additional guidance as to the wording of the proposed amendment to Article 10a.

28. Concerning Article 16 of the Convention, dealing with television advertising and tele-shopping directed specifically at a single Party, the Standing Committee decided to look for ways of preserving the content of this Article. In this context, due consideration should be given to the relationship between this article and the possible enforcement mechanism mentioned earlier, as well as to the compatibility of this provision with Community Law and with Article 10 of the European Convention on Human Rights.

29. The Standing Committee discussed Article 19 and the possibility of inserting a reference to the “independence of regulatory authorities”. In the absence of consensus on this issue, in particular by the fact that there was no common understanding of the concept of “independence”, it was agreed that the Explanatory Report should refer to the norms contained in Recommendation No. R (2000) 23 on the independence and functions of regulatory authorities for the broadcasting sector.

30. Concerning the proposed Article 24bis on violations with regard to on demand audiovisual media services, the Standing Committee considered that this proposal, which is inspired on Article 2a paragraph 4 of the AVMS Directive, should take into account the nature and possibilities of the Standing Committee, in particular “in case of urgency” where an issue should be addressed “in the shortest possible time” (paragraph 2). Recalling that the convocation of a meeting requires six week prior notice and is subject to budgetary constraints, it was decided to re-examine this provision so as to develop a procedure enabling the parties and the Bureau of the Committee to find a solution, including, where appropriate, involving electronic voting.

31. Concerning Article 24a on “alleged abuses of rights conferred by this Convention”, the Standing Committee considered that an effort should be made to define clear criteria for action and procedures compatible with the nature and possibilities of the Committee.

32. The discussion on article 7 on respect for human dignity and the protection of minors raised the issue of draft paragraph 2 (present paragraph 3) which states that “providers of all audiovisual media services shall ensure that news fairly presents facts and encourage the free formation of opinions”. Some delegates felt that this requirement might not always be appropriate in particular when it applies to on-demand services. The Committee agreed that this should be considered very carefully in the light of the case law of the European Court of Human Rights. It was also noted that paragraph 2 did not fit under the proposed title of article 7.

33. The Standing Committee took note of various other, non-controversial, proposals by delegates and of the comments by the observer delegate of the European Commission. It asked the Secretariat to take the Committee’s comments into due account when updating document T-TT (2007)006 containing the proposed amendments to the Convention and drafting the draft explanatory report thereto.

34. Given the lack of time, document T-TT (2007)003, containing a secretariat memorandum on possible issues to be covered by the Convention, could not be discussed. Delegates, including observer delegates, were therefore invited to send additional comments

on both this memorandum and the proposed amendments to the Convention to the Secretariat by 10 November 2007.

(iii) Planning of future work

35. In order to ensure an efficient and timely preparation of a consolidated draft amended Convention, its draft explanatory report and rules of procedure for examination at its next plenary meeting, the Standing Committee decided to organise, resources permitting, a third Drafting Group meeting in 2007 and to replace one of its plenary meetings in 2008 by two further meetings of the Group. The Committee noted with satisfaction that the observer delegate of the European Commission would continue to take part in the meetings of the Drafting Group.

36. The Secretariat was instructed to update the proposed amendments to the Convention in line with the comments made during the Standing Committee's meeting and to take account of any additional comments received until 10 November 2007.

37. The Drafting Group and the Secretariat were asked to prepare a consolidated proposal for a draft amended Convention, its draft explanatory report and the draft rules of procedure to be sent for comments to the Standing Committee and observer delegates in due time before the plenary meeting.

38. The Standing Committee decided to limit the agenda of its next meeting as much as possible to the examination of the draft texts mentioned above and asked the Secretariat to consider the budgetary feasibility of extending the 43rd meeting to three full working days.

Item 6 of the agenda: Dates of next meetings

39. It is expected that the Drafting Group of the Standing Committee will meet in Strasbourg on 26 and 27 November 2007, on 27 and 28 March 2008 and on 19 and 20 June 2008. The 43rd plenary meeting of the Standing Committee will take place on 13 and 14 November 2008 (see paragraph 38 above as to the desirability of adding a third day to this meeting; this would be 12 November 2008).

Item 7 of the agenda: Other business

40. The Committee noted with regret that Ms Séverine Fautrelle (France) had ceased her functions as delegate and Vice chairperson to the Standing Committee due to a change in her professional occupation. The Standing Committee thanked Ms Fautrelle for her valuable contribution to its work.

41. The Secretariat observed that since the terms of office of the Chairperson, the remaining Vice-Chairperson and the Bureau would expire in April 2008, delegates would have had to elect new Bureau members at their spring meeting. In the absence of a plenary meeting in the springtime, the Committee agreed that these elections would be held at the opening of its subsequent meeting and that Mr Bergant and Ms Yardimci would retain the chair and vice-chair in the interim.

* * *

APPENDIX I**List of participants****CONTRACTING PARTIES / PARTIES CONTRACTANTES****Albania/Albanie****Austria/Autriche**

Mr Michael KOGLER, Deputy Head of Department, Head of Division, Federal Chancellery, Constitutionnal Service, Media Department, WIEN

Bosnia-Herzegovina/Bosnie-Herzégovine

Mr Emir POVLAKIĆ, Senior Expert for Broadcasting, Communications Regulatory Agency (CRA), SARAJEVO

Bulgaria/Bulgarie

Mme Violetta DIMITROVA, Service International, Commission de la Régulation des Communications, SOFIA

Mrs Lilia RAYCHEVA-KOLAROVA, Member of Council for Electronic Media, SOFIA

Croatia/Croatie

Mr Tomislav JELIĆ, Head of Department for European Integration, Ministry of Culture, ZAGREB

Cyprus/Chypre

Mr Andreas CHRISTODOULOU, Head of Media Section, Ministry of Interior, NICOSIA

Czech Republic/République Tchèque

Mr Artus REJENT, Lawyer, Media Section, Ministry of Culture of the Czech Republic, PRAGUE

Estonia/Estonie

Mr Peeter SOOKRUUS, Head of Media and Copyright Department, Ministry of Culture, TALLINN

Finland/Finlande

Mr Jussi MÄKINEN, Ministerial Adviser, Media and Communications Services, Ministry of Transport and Communications Finland

France

Mme COQUET, Chef du bureau des affaires juridiques et multilatérales, Direction de l'audiovisuel extérieur, Ministère des Affaires étrangères et européennes, PARIS

M. Xavier INGLEBERT, Adjoint au chef du bureau des affaires européennes et internationales, Direction du Développement des Médias, PARIS

Germany/Allemagne

Ms Alexia REWER, International Cooperation in Media Affairs, Federal Government Commissioner for Culture and the Media, BONN

Dr. Tim SCHÖNBORN, LL.M., Adviser for Media Affairs, Representation of the State of Rhineland-Palatinate, to the European Union, BRUSSELS, Belgium

Hungary/Hongrie

Dr György OCSKÓ, Head of Department, Presidential Secretariat, National Radio and Television Commission (ORTT), BUDAPEST

Italy/Italie

Mr Nicola GAVIANO, Director of the Legal Service, Autorità per le garanzie nelle comunicazioni, Italian Communication Authority (AGCOM), ROMA

Latvia/Lettonie

Mr Andris MELLAKAULS, National Broadcasting Council of Latvia, RIGA

Ms Ina PORIETE, Lawyer, National Broadcasting Council of Latvia, RIGA

Liechtenstein**Lithuania/Lituanie**

Mr Nerijus MALIUKEVIČIUS, Executive Director, Radio and Television Commission of Lithuania, VILNIUS

Malta/Malte

Mr Ray MICALLEF, Assistant Director (Boards, Committees and Customer Care), Office of the Prime Minister, VALLETTA

Moldova

Mrs Vera GALCOVSKI, Head of International Relations and European Integration Department, Council for coordination on Audiovisual of Moldova, CHISINAU

Norway/Norvège

Mr Olav GUNTVEDT, Assistant Director General, Norwegian Ministry of Culture and Church Affairs, OSLO

Ms Liv LUNDE, Senior Adviser, Ministry of Culture and Church Affairs, OSLO

Poland/Pologne

Ms Malgorzata PEK, Deputy Director of the Legal Department, National Broadcasting Council, WARSAW

Portugal

Mr Joao Paulo PALHA, Deputy Director of GMCS, Gabinete para os Meios de Comunicação Social, LISBOA

Romania/Roumanie

M. Răsvan POPESCU, Président, Conseil National de l'Audiovisuel de Roumanie (CNA), BUCAREST

Mr Petre DINCA, Conseiller de Régelementation, Direction Juridique et Règlements, National Audiovisual Council (CNA), BUCAREST

San Marino/Saint-Marin**Slovak Republic/République Slovaque****Slovenia/Slovénie**

[Apologised/excusé]

Mr Boris BERGANT, Deputy Director General, RTV Slovenija, LJUBLJANA

Spain/Espagne

Mme Concepción SOTO CALVO, Sous-direction générale des moyens audiovisuels, Ministère de l'Industrie, du Tourisme et du Commerce, MADRID

Switzerland/Suisse

Mr Frédéric RIEHL, Vice-Director, Office fédéral de la communication, Département fédéral de l'environnement, des transports, de l'énergie et de la communication, BIENNE

Ms Karin STÖCKLI, Office fédéral de la communication, Département fédéral de l'environnement, des transports, de l'énergie et de la communication, BIENNE

"The former Yugoslav Republic of Macedonia"/"L'ex-République Yougoslave de Macédoine"

Mr Mirce ADAMCEVSKI, President of the Broadcasting Council, SKOPJE

Mrs Emilija JANEVSKA, Head of the Department for programming issues, the Broadcasting Council, SKOPJE

Turkey/Turquie

Ms Nuran YARDIMCI, Turkish Radio and Television Supreme Council, BILKENT ANKARA

United Kingdom/Royaume-Uni

Mrs Kate JONES, Deputy Head of International Broadcasting Policy Department, Department for Culture, Media and Sport, LONDON

Mr Chris BONE, International Broadcasting Policy Department, Department for Culture, Media and Sport, LONDON

Holy See/Saint-Siège

M. Régis DE KALBERMATTEN, Délégué du Saint-Siège au Comité Permanent sur la Télévision Transfrontière, SION

OBSERVER DELEGATES / DELEGUES OBSERVATEURS**Andorra/Andorre****Armenia/Arménie****Azerbaijan/Azerbaïdjan****Belarus****Belgium/Belgique****Denmark/Danemark****Georgia/Géorgie****Greece/Grèce**

Mme Maria GIANNAKAKI, Attachée de Presse, Représentation Permanente de la Grèce auprès du Conseil de l'Europe / Bureau de Presse et de Communication, STRASBOURG, France

Iceland/Islande**Ireland/Irlande**

Mr Joe MELEADY, Higher Executive Officer, Department of Communications, Marine and Natural Resources, DUBLIN

Israël/ Israël

Ms Naama HENIG, Chairperson of the Israeli Council of Cable TV and Satellite Broadcasting, TEL AVIV

Luxembourg

[Apologised/excusée]

Mme Isabelle MARINOV, Service des Médias et des Communications (SMC), LUXEMBOURG

Morocco/ Maroc

M. Ahmed GHAZALI, Président de la Haute Autorité de la Communication Audiovisuelle, RABAT

Monaco

Montenegro/ Monténégro

Netherlands/Pays-Bas

[Apologised/excusé]

Mr Frederik Jan INGEN HOUSZ, Policy Adviser Media, Department for Media, Literature and Libraries/IPC 3400, Ministry of Education, Culture and Science, DEN HAAG

Russian Federation/Fédération de Russie

Serbia/Serbie

Mrs Marija ČOSIĆ, Senior Expert Associate, Media Department, Ministry of Culture and Media of the Republic of Serbia, BELGRADE

Sweden/Suède

Ukraine

European Commission/Commission européenne

Mr Harald E. TRETENBREIN, Deputy Head of Unit, European Commission, DG Infos and Media, BRUSSELS

SECRETARIAT

Mr Jan MALINOWSKI, Head of Media and Information Society Division, Directorate General of Human Rights and Legal Affairs / Chef de la Division Media et Société de l'Information, Direction Générale des droits de l'Homme et des affaires juridiques

Ms Anita VAN DE KAR-BACHELET, Administrator, Media and Information Society Division, Directorate General of Human Rights and Legal Affairs / Administratrice, Division Media et Société de l'Information, Direction Générale des droits de l'Homme et des affaires juridiques

INTERPRETERS/INTERPRETES

Jenny GRIFFITH, Chef d'équipe
Katia DI STEFANO
Jean-Pierre RINGLER

* * *

APPENDIX II**Agenda**

- 1. Opening of the meeting and adoption of the agenda**
- 2. Signatures and ratifications of the Convention**
- 3. Exchange of information on the implementation of the Convention**
 - Lists of events of major importance, Article 9*a* of the Convention
 - Authorities designated according to Article 19 of the Convention
 - Other
- 4. Exchange of views with the representatives of the Audiovisual Communication Authority of Morocco and the Council for Cable TV and satellite Broadcasting of Israel**
- 5. Revision of the Convention**
 - (i) Information by the Observer Delegate of the European Commission on the proposal for an Audiovisual Media Services Directive
 - (ii) Examination of the draft amendments to the ECTT
 - (iii) Planning of future work
- 6. Dates of next meetings**
- 7. Other business**