

Steering Committee on Media and Information Society(CDMSI)

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Information note on the Revision of the European Convention on Transfrontier Television (ECTT)

This information note describes chronologically and in a succinct way the discussions and/or decisions in the Standing Committee on Transfrontier Television (T-TT), CDMSI, the Committee of Ministers and the Parliamentary Assembly with regard to the revision of the ECTT as well as positions taken by the European Commission. It covers the period of time from the finalisation of the draft second amending protocol to the ECTT until the present. The information note is prepared to facilitate discussions in the CDMSI at its 12th meeting (20-23 June 2017).

2009

1. The Standing Committee on Transfrontier Television (T-TT) finalised the revision of the ECTT during its 44th meeting of 11 and 12 June 2009, inviting the Committee of Ministers to adopt the draft second amending protocol to the Convention at the earliest possible date.

2. The secretariat was informed that on 23 October 2009 Ms Viviane Reding, the then European Commissioner for Information Society and Media, addressed a letter to EU member states which are also parties to the ECTT reminding them "of their dual obligation not to enter into international commitments that conflict in substance with Community Law and to respect the case law of the European Court of Justice with regard to the external powers of the Community".

3. On 4 November 2009, at the 1069th meeting of the Committee of Ministers' Deputies, the Committee of Ministers agreed to postpone the agenda item concerning the protocol to one of their forthcoming meetings. There was no debate of significance.

2010

4. The Steering Committee on Media and New Communication Services (CDMC), during its 12th meeting of 8 to 11 June 2010, expressed its deep concern about the interruption of the process towards adoption of the draft second amending protocol prepared by the T-TT and decided to bring this concern to the attention of the Committee of Ministers. The CDMC furthermore asked the Secretary General to write to the competent European Commissioner to seek precise explanation on the position of the European Commission on the revision and on the future of the Convention.

5. The T-TT, during its 45th meeting of 1 and 2 July 2010, acknowledged with deep regret the standstill in the revision process of the ECTT and considered consequences and possible solutions. It agreed that:

- the draft second amending protocol to the ECTT was unlikely to be adopted and opened for signature given the position of the European Commission;
- the larger and essential elements of the ECTT were still valid and useful for the parties;
- almost all parties would have difficulties in complying with a limited number of ECTT provisions that are inconsistent with the Audiovisual Media Services Directive;

- a different amending text would be necessary to ensure the update and essential functions of the ECTT in regulating transfrontier aspects of audiovisual media services and of its Standing Committee in solving issues related to the implementation.

6. The T-TT welcomed the willingness of the European Commission to assist the T-TT in finding an appropriate solution, for example, for the purpose of preparing a convention based on issues falling outside EU competency. Alternatively, the Commission representative did not exclude entering into a mixed agreement on issues falling within EU competency if the instrument envisaged would stand the test of time and not require revision in the foreseeable future

7. Also, the T-TT agreed to set up an informal drafting group to consider the feasibility of such alternative revision in cooperation with the European Commission. The T-TT underlined that prior to initiating the work of the drafting group it would need to obtain legal clarification with regard to EU competency issues. The representative of the European Commission would seek the Commission's legal opinion on the EU competency question regarding a list of issues identified at the 45th T-TT meeting.

8. Further to the request by the CDMC, the Secretary General addressed on 7 September 2010 a letter to EU Commissioner Ms Neelie Kroes to seek a response in writing on the position of the European Commission on the revision and future of the convention. The reply by the EU Commissioner Ms Neelie Kroes of 1 December 2010 stated that "as my predecessor already noted in her letter of 23 October 2009, the matters covered by the draft revised Council of Europe Convention on transfrontier television are largely covered by the Audiovisual Media Services Directive, which coordinates certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services. For those matters the Union thus has acquired exclusive competence to enter into international agreements. As a consequence, even if the substance of the Convention would not conflict with Union Law – which is not the case here – EU Member States may not become party to the Convention on their own".

9. During the meeting of the Contact Committee of the Audiovisual Media Services Directive on 20 October 2010, it was explained that the Commission was not yet in a position to give a formal opinion on the competency of member states with regard to the list of issues identified at the 45th meeting of the T-TT. The question on the Commission's position regarding a possible mixed agreement, necessary to draw up a framework convention, was answered by underlining the complexity of such procedure, expressing doubts both on the added value of a European Convention in this field and on the willingness of the EU to accede. The Commission representative concluded that answering all these questions would require several months, given the complexity of the issues and procedures.

10. The CDMC, at its 13th meeting which took place from 16 to 19 November 2010, reiterated its concern in respect of the current standstill of the revision of the Convention. It expressed support for work designed to identify solutions which meet the needs of member states and avoid a legal vacuum in respect of audiovisual media services received from places not bound by European Union law and the possibly undesirable consequences to the European audiovisual media landscape. It asked the Committee of Ministers to accord due priority to this work and allocate resources taking account of the obligations that stem from the Convention in force.

2011

11. The CDMC, at its 14th meeting which took place from 29 November to 2 December 2011, noted the motion for a recommendation presented by Sir Roger Gale, PACE member (European Democrat Group, United Kingdom). Some delegations underscored the position outlined in the motion, expressing "regret [about] the discontinuation, following the intervention of the European Commission, of work upon the vital revision of the European Convention on

Transfrontier Television”, highlighting the broad territorial scope of the Convention, refuting the claim that the European Union has exclusive competence to enter into international agreements in the field covered by the Convention, and proposing that, without prejudice to European Union input, “work upon the revision of the Council of Europe Convention on Transfrontier Television must proceed without further delay or interference from the European Commission in the interests of the wider Europe not represented by the European Union”.

12. The Committee of Ministers, upon a proposal by the Secretary General, decided not to include in the programme of activities and budget for 2011 allocation for staff and other resources. This decision remains unchanged and no resources have since then been allocated to this area of work over the last few years.

2014

13. The Parliamentary Assembly in Recommendation 2036(2014) ‘Revision of the European Convention on Transfrontier Television’, adopted on 31 January 2014, recommended that the Committee of Ministers resumes work on the ECTT revision and negotiations with the EU, enables the Standing Committee on Transfrontier Television (T-TT) to resume its work and if need be consider drafting a new convention focusing on freedom of expression aspects of media regulation.

14. The Committee of Ministers on 23 September 2014 issued its reply to PACE Recommendation 2036(2014), based also on the comments provided by the CDMSI (doc CDMSI(2014)002). The Committee of Ministers stated that despite the fact that it considered the discontinuation of the revision of the convention a serious step back from, it saw no possibility to continue the work on the ECTT revision, since it had been informed by the EU delegation that most issues covered by the convention fall under the exclusive external competence of the EU and that the EU did not have any intention to become party to the convention. Due to this regrettable deadlock, the Committee of Ministers has not allocated any resources to work on the convention over the last three years and sees no reason to review its position for the time being. Given also the present budgetary context, it will not presently consider the drafting of a new convention focusing on freedom of expression aspects of media regulations.

2016

15. The Explanatory Memorandum accompanying the draft directive amending the Audio Visual Media Services Directive (AVMSD) (COM(2016) 287 final, 25.05.2016), notes that “21 EU Member States are contracting parties to the 1989 European Convention on Transfrontier Television (CETS No. 132) which was amended by a 1998 Protocol. The Union is not a party to the Convention. The Convention allows contracting parties to apply stricter or more detailed rules to programme services transmitted by broadcasters under their jurisdiction. To the extent that some of the existing AVMSD rules are less strict than the Convention rules, implementation of the AVMSD rules by EU Member States which are contracting parties to the Convention could already result in some differences between EU Member States depending on whether they are contracting parties to the Convention in respect of their international obligations. This will also be the case for some amendments contained in this proposal, which would introduce in the AVMSD further rules that are less strict than the Convention rules. For the matters covered by the AVMSD the Union has acquired exclusive competence to enter into international agreements. Any changes of the obligations stemming from the Convention would thus require action on the part of the Union.”