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[T-TT\35e\T-TT(2003)018 E Report]

T-TT(2003)018

EUROPEAN CONVENTION ON TRANSFRONTIER TELEVISION

STANDING COMMITTEE ON TRANSFRONTIER TELEVISION

(T-TT)

35th meeting
20-21 November 2003
Human Rights Building, Strasbourg
Room of the Directorate General

REPORT

Items 1 and 2 of the agenda: **Opening of the meeting and adoption of the agenda**

1. The meeting was opened by the Vice-Chairperson of the Standing Committee, Mr B. BERGANT (Slovenia), who informed the Committee that the Chairperson, Ms C. MORRISON, had unfortunately been unable to attend the meeting for health reasons. Mr Bergant also pointed out that his authorities had recently presented to the Secretariat a list of events of major importance in order to obtain an opinion from the Committee on this list, in accordance with Article 9a of the Convention. He indicated that this list would be presented under item 6 on the agenda. He also indicated that under item 7, the Committee would be apprised of a substantive error recently identified in the two official versions of the

Convention. Furthermore, under the same item, the Committee would be required to consider a revised version of a draft Recommendation on the right of reply in the new media environment, a preliminary version of which it had considered at its previous meeting.

2. The list of participants is set out in Appendix I. The agenda, as adopted, is set out in Appendix II.

Item 3 of the agenda: Signatures and ratifications of the revised Convention

3. The Chairperson announced that two new ratifications of the revised Convention had taken place: The Czech Republic ratified on 17 November 2003 and “the Former Yugoslav Republic of Macedonia” on 18 November 2003. For both States, the revised Convention would enter into force as from 1 March 2004. It was also announced that Georgia signed the revised Convention on 29 October 2003.

4. The Delegate of Turkey informed the Committee that her country had ratified the amending Protocol to the Convention.

5. The Observer Delegate of Bosnia-Herzegovina announced that her country would sign the revised Convention next week.

6. The Observer Delegate of Ireland informed the Committee that his country would ratify the revised Convention in the first half of 2004.

Item 4 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 re-examination of the provisions of the Convention

7. The Chairperson recalled that, at its last meeting, the Committee had drawn up a work programme for reviewing the Convention (cf. Appendix III to document T-TT (2003) 11) and that it had been agreed that an initial series of issues relating to advertising, sponsorship and tele-shopping would be considered at the present meeting, on the basis of a discussion document to be prepared by the Delegate of Austria.

8. The Delegate of Austria presented the discussion document in question (cf. document T-TT (2003) 15). By way of introduction, he indicated that the document was not intended to be a substitute for the Committee’s discussions on the possible need to review the rules on advertising, sponsorship and tele-shopping contained in the Convention. It merely sought to present a number of personal thoughts and issues which could serve as input to the discussion. Mr KOGLER then outlined the general conclusions of the document, stressing that some of the issues went beyond the rules on advertising, sponsorship and tele-shopping contained in the Convention. He singled out the matter of the future scope of the Convention and of how self-regulating measures fitted in with the provisions of the Convention.

9. Following this presentation, the Committee held an initial exchange of views on some of the issues identified in the Austrian Delegate's document. With reference to the provisions on the duration of advertising (Article 12 of the Convention), one Delegate indicated that the reference to "a given clock hour" in Article 12 paragraph 2 of the Convention posed a problem for her country in that prime time for certain broadcasters in that country did not coincide with the start of a clock hour. She therefore thought that this provision should be re-considered to see whether it should be retained. Another Delegate, supported by the Observer Delegate of the European Commission, responded that at present, paragraph 56 of the Explanatory Report of the Convention and the "Television without frontiers" Directive were very clear on how "a given clock-hour" should be interpreted.

10. With regard to the provisions on the insertion of advertising (Article 14 of the Convention), several Delegates wondered whether the reasons which had led to the time-frames for interrupting programmes being laid down were sufficient to justify their being retained in the future, particularly in view of certain broadcasters' claims that these rules meant that they were subject to greater restrictions than other means of communication. Some of these Delegates called for a relaxation of these provisions. However, another Delegate draw attention to the need not to lose sight of the fundamental objectives of these provisions, namely to protect viewers and ensure that the integrity of programmes was not prejudiced, which, according to her, should also apply to new advertising techniques. She considered that in view of these objectives, the time-frames specified in Article 14 of the Convention should be maintained.

11. With specific reference to one of these new techniques, split-screen advertising, one Delegate indicated that his country did not allow this and that he was not in favour of authorising it, as the separation between advertising and programmes should continue to be a temporal one. Several Delegates challenged this approach, taking the view that spatial separation should be sufficient. It was recalled that in its Opinion No. 9 (2002), the Standing Committee had not taken a firm position on the rules governing the separation of split-screen advertising, as it had been unable to reach agreement on the matter.

12. It was agreed that the Committee would have to return to this issue as it continued this work. One Delegate pointed out that one line which might be explored, beyond the issue of the rules on separation, was that of whether the use of split-screen advertising should be prohibited for certain kinds of programmes. He drew attention to the fact that this approach was also discussed within the framework of the European Union. Another Delegate, however, drew attention to the difficulties which such an idea might raise, in view of the implicit risk of discrimination between operators.

13. Lastly, the Committee discussed product placement. Several Delegates indicated that, in their respective countries, the attitude taken was one of greater flexibility where the placement of a product occurred in the context of a programme over the content of which the broadcasters had no control, such as the retransmission of sporting events or cinematographic films. In contrast, product placement was banned in the context of a programme over which the broadcasters had complete editorial control. One of these Delegates said that such control was quite particularly exercised in her country in respect of fiction intended for a young audience.

14. Following these interventions, one Delegate pointed out that, in the aforementioned countries, product placement, where prohibited, was treated as surreptitious advertising. However, the Convention did not currently contain any definition of these two concepts. He therefore took the view that the Committee should give thought in future to the advisability of including such definitions in the Convention.

15. Another Delegate noted that the Committee should consider whether the general rules on advertising should in future be applied solely to traditional forms of advertising or, in contrast, be extended to new forms of advertising.

16. In conclusion, the Committee thanked the Austrian Delegate for the excellent document that he had prepared. It was decided that all Delegations could, **by 31 January 2004**, send to the Austrian Delegate any questions, ideas or lines of action which they might wish to suggest in relation to the re-examination of the provisions of the Convention on advertising, sponsorship and tele-shopping. The Austrian Delegate would then revise his document, and the revised version would be examined by the Committee at its next meeting, so as to take the discussion forward.

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17. The Committee agreed that, at that same meeting, it would hold an initial exchange of views about the issues relating to the future field of application of the Convention (Article 3) and its provisions relating to freedom of reception and retransmission (Article 4), the duties of the transmitting Parties (Article 5) and the alleged abuses of the rights granted by the Convention (Article 24*a*). The Polish Delegate confirmed his readiness to draw up an analytical paper on these issues. All Delegations were invited to send him, **by 31 January 2004**, any ideas, questions or lines of action which they would like to put forward.

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

18. The Observer Delegate of the European Commission informed the Committee that the Commission had opened infringement procedures concerning the violation of the provisions of the Directive related to the insertion of advertisements.

19. He also informed the Committee that the Commission was preparing a Communication on the European regulatory audiovisual policy, which would be adopted in December 2003. In this Communication, the Commission would present its actions in the short and in the long term.

20. As regards the short term, the Commission would adopt in the first half of 2004 an interpretative Communication covering new forms of advertising and other debated issues concerning the interpretation of the Directive. The adoption of an updated Recommendation on the protection of minors and human dignity was also foreseen.

21. As regards the long term, in the perspective of the revision of the “Television without frontiers” Directive, the Commission intended to create three focused groups composed of independent experts. The groups would deal respectively with the regulation of audiovisual content in general, advertising, the right to short report and access to information. A number

of studies would also be conducted concerning the regulation of interactive television, the impact of advertising regulation on the market, the impact of measures concerning the promotion of European and independent productions and the impact of co-regulation on achieving public policy objectives.

22. With reference to the results of the consultation process conducted in view of the revision of the Directive, he reported that a broad consensus had been reached on the point that there was no need to review the provisions concerning the protection of minors, European production quota requirements and events of major importance for society.

Item 5 of the agenda:

Examination of a draft opinion on whether the retransmission of pornography is compatible with the Convention

23. It was recalled that, at its previous meeting, the Committee had considered an initial draft opinion, further to a request submitted by the Delegate of Bulgaria. Following this, the Secretariat had been asked to revise the draft in order to take account of the comments made during the meeting. The Secretariat presented the revised draft opinion it had prepared (cf. document T-TT (2003) 17).

24. Several Delegates felt that it was not possible to adopt the draft opinion as it stood, given that Article 7 of the Convention clearly stipulated that programme services should not contain pornography, whereas the draft opinion stated that the transmission or retransmission of pornographic programmes should only be considered compatible with the Convention if certain specific measures were taken. In their view, if there were a wish to authorise the retransmission of pornographic programmes subject to certain conditions, the only solution would be to revise Article 7 of the Convention. Another Delegate pointed out that Article 7 of the Convention did not provide a legal basis for the technical measures referred to in the draft reply. Finally, some Delegates felt that it would be inappropriate to send broadcasters a message encouraging them to transmit such programmes.

25. Other Delegates, while acknowledging the problem that there was no legal basis in the wording of Article 7 of the Convention authorising the retransmission of pornographic programmes subject to certain conditions, pointed out that this type of programme was a reality which had to be addressed. One of the Delegates concerned indicated that he could therefore endorse the draft opinion prepared by the Secretariat, while reiterating the comment he had made at the previous meeting to the effect that the transmission of pornographic programmes should be restricted to dedicated channels accessible only to those who took out a subscription. .

26. Following discussion, it was noted that the problems which had led the Bulgarian Delegation to refer the matter to the Standing Committee for opinion were problems which this Delegation should be able to resolve itself through a variety of measures, including by approaching the cable operators in Bulgaria and other Parties to the Convention from which the pornographic programmes accessible in Bulgaria were being transmitted. A similar situation which had recently concerned Norway and Sweden could provide the Bulgarian Delegation with possible ways forward in dealing with the problem. The Delegate of Norway agreed to provide information on this matter at the next meeting. For its part, the Secretariat was requested to contact the Legal Department to look into the possibility of an alternative solution to adopting an opinion or revising Article 7 of the Convention. In this connection,

one Delegate suggested that one way of getting round the difficulty might be to focus any opinion on the protection of minors and not on the retransmission of pornographic programmes as such.

Item 6 of the agenda: Access by the public to events of major importance

(i) Prospects concerning the submission of lists to the Standing Committee under Article 9a of the Convention

27. The Secretariat informed the Committee that the Slovenian authorities had just submitted a list of events of major importance under Article 9a of the Convention. It invited the other Delegates to indicate whether their national authorities also intended to submit such a list of events to the Committee.

28. The Chairperson explained that the Slovenian authorities had been through laborious consultations and had ended up with a list of international sport events to be submitted to the Standing Committee. However, since the guidelines for the implementation of Article 9a of the Convention were not strictly followed and some factual information were missing, he indicated that the lacking elements would be provided before the next meeting of the Committee.

29. The Observer Delegate of the European Commission suggested to the Slovenian Delegate that the same list should be forwarded to the European Commission, which would submit it to the Contact Committee of the “Television without frontiers” Directive. He invited all other Delegations to do so.

30. It was agreed that the Secretariat would carry out a preliminary evaluation of the list in order to submit it to the Committee at the next meeting.

(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

31. It was recalled that, following a complaint from the Reuters press agency concerning the difficulties it had encountered in recent years in having access to major sports events to be able to inform the public, the Steering Committee on the Mass Media (CDMM) had asked the above Group of Specialists to consider whether an initiative should be taken, and if so what sort of initiative, to guarantee the public’s right of access to information on these events, above and beyond Recommendation No. R (91) 5 which the Committee of Ministers of the Council of Europe had adopted in order to enable television companies to broadcast extracts of major events for which exclusive broadcasting rights had been granted.

32. The Secretariat indicated that at its meeting from 6 to 8 October 2003, the Group of Specialists had held a hearing on this matter with representatives of a number of professional organisations from the various sectors of the media and certain major sports federations. Following the hearing, the Group had decided to work towards drafting a Recommendation on the public’s right to information on major events, which would deal with each media sector separately, so as to address the specific nature of the questions applying to the press, radio and

on-line services. The Standing Committee would be kept informed of the progress made, in view of the initiative's relevance to the provisions of Article 9 of the Convention.

Item 7 of the agenda:

Other business

(i) Draft Recommendation on the right of reply in the new media environment

33. It was recalled that, at its last meeting, the Committee had considered an earlier version of the aforementioned draft Recommendation. The Secretariat presented a new version of the draft, prepared in the light of the comments made at that meeting.

34. With regard to the definition of the term "medium", one Delegate wondered whether the word "regular" was the most suitable, since a static Web page reappearing every day might also be considered to be "regular". He also felt that the expression "frequently updated" could give rise to very different interpretations. Similarly, he felt that the word "inaccurate" in Principle No. 1 might not be sufficient, as it could be questioned if it also covered the meaning of "untrue". Furthermore, he thought that the verb "affect" was too general, given that many people might consider themselves to be affected by inaccurate statements. He therefore suggested "specifically affect".

35. With regard to the exceptions provided for in paragraph 5, the same Delegate, supported by another, pointed out that exception viii should be worded "if the original information contains accurate reports" rather than "if the reply relates to truthful reports". Furthermore, he suggested that paragraph 5 should provide for an additional exception in case the reply itself would be untrue. Lastly, with regard to the draft Explanatory Memorandum, he felt it was dangerous to indicate at the end of paragraph 13 that minor inaccuracies did not necessarily call for a right of reply, given that there could be a very broad interpretation of the adjective "minor". He suggested that if "minor" were to be retained, it would have to be clarified.

36. The Observer Delegate of the European Commission indicated that the Communication on the European regulatory audiovisual policy to which he had previously referred would lend explicit support to the Council of Europe's work on the right of reply. Nonetheless, he had some doubts as to the reasons given why the Recommendation should not also cover websites run by individuals since, in his opinion, the information disseminated on such sites could be just as damaging as the material carried by the media. One Delegate replied that it was not possible to impose on individuals the same obligations as on professional information providers such as the media. In this respect, he pointed out that at the 60th meeting of the CDMM (4-7 November 2003), he had suggested limiting the scope of the text to on-line services providing journalistic content. Other Delegates, however, expressed their reservations about such an approach.

37. Lastly, the Observer Delegate of the European Commission commented that the definition of the term "information" in paragraph 13 of the draft Explanatory Memorandum raised a number of questions with regard to the reference to "images", given the possibility of using virtual technology to manipulate images.

38. In conclusion, it was agreed that all delegations could send to the Secretariat, **by the end of 2003**, any additional comments which they might wish to formulate on the draft Recommendation.

(ii) Correction of a substantive error in the Protocol amending the Convention

39. The Secretariat informed the Committee that the Delegate of Portugal had recently drawn its attention to an error in the Protocol amending the Convention. An oversight had led to the omission in the Protocol of the definition of the word "sponsorship", which should be understood as referring to "the participation of a natural or legal person, who is not engaged in broadcasting activities or in the production of audiovisual works, in the direct or indirect financing of a programme with a view to promoting the name, trademark, image or activities of that person", exactly as appeared in the amended version of the Convention and its Explanatory Report.

40. The Legal Department had been consulted and concluded that this was a substantive error which should be corrected after approval of the Committee of Ministers, which would instruct the Secretariat to officially notify the correction in question to all the states concerned and the European Community. The Secretariat would inform the Delegates and Observer Delegates in good time of this correction procedure.

(iii) Dates of forthcoming meetings

41. The Committee agreed to hold its next meeting in Strasbourg on 15-16 April 2004.

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APPENDIX II

Agenda

1. Opening of the meeting

2. Adoption of the agenda

Working documents

Draft agenda T-TT (2003) OJ 3

Annotations on the draft agenda T-TT (2003) 14

3. Signatures and ratifications of the revised Convention

Working document

Secretariat Memorandum T-TT (2003) 12 rev

4. 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

Working documents

Report of the 34th meeting of the Standing Committee T-TT (2003) 11,
item 5 (iii) and Appendix III

Discussion document prepared by the Delegate of Austria T-TT (2003) 15
on questions concerning advertising, sponsorship and teleshopping

Background document prepared by the Secretariat T-TT (2003) 16
on questions concerning advertising, sponsorship and teleshopping

Final report by Dr Grünwald on possible options for the T-TT (2003) 2
review of the Convention

Information documents

Report by Professor Holznagel for the expert seminar on “The European Convention on Transfrontier Television in an evolving broadcasting environment” (Strasbourg, 6 December 2001)

Presentation by Dr Grünwald for the expert seminar on “The European Convention on Transfrontier Television in an evolving broadcasting environment” (Strasbourg, 6 December 2001)

Conclusions of the study prepared by Bird & Bird on behalf of the European Commission addressing convergence questions T-TT (2002) 23

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

Information document

Fourth report from the Commission on the application of Directive 89/552/EEC “Television without Frontiers” COM(2002) 778 final

5. Examination of a draft opinion on whether the retransmission of pornographic programmes is compatible with the Convention

Working documents

Report of the 34th meeting of the Standing Committee T-TT (2003) 11, item 6 (ii)

Draft opinion prepared by the Secretariat T-TT (2003) 17

Statement (2002) 1 by the Standing Committee on human dignity T-TT-Info

Information on how countries restrict the retransmission of programmes which seriously contravene applicable legislation T-TT (2003) 8

6. Access by the public to events of major importance

(i) Prospects concerning the submission of lists to the Standing Committee under Article 9a of the Convention

Working document

Guidelines for the implementation of Article 9a 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 34th meeting of the Standing Committee T-TT (2003) 11, item 8 (ii)

Report of the 8th meeting of the MM-S-DB MM-S-DB (2003) 8, item 4

Comments submitted by professional organisations on the preliminary draft Recommendation

MM-S-DB (2003) 6 rev

7. Other business

(i) Draft Recommendation on the right of reply in the new media environment

Working document

Draft Recommendation Rec (2004) ... of the Committee of Ministers to member States on the right of reply in the new media environment

T-TT (2003) Misc 4

(ii) Correction of a substantive error in the Protocol amending the Convention

(iii) Dates of forthcoming meetings