



Strasbourg, 13 October 2004

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EUROPEAN CONVENTION ON TRANSFRONTIER TELEVISION

STANDING COMMITTEE ON TRANSFRONTIER TELEVISION

(T-TT)

**37th meeting
11-12 October 2004
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 Chairperson of the Standing Committee, Mr B. BERGANT (Slovenia), opened the meeting and welcomed all those Delegates and Observer Delegates who were attending a meeting of the Committee for the first time. The Standing Committee adopted the agenda set out in document T-TT (2004) OJ2 rev.

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 Committee was informed that Romania had ratified the Convention on 13 July 2004, thus bringing the number of Parties to this instrument to 29. The Convention would come into force in respect of Romania on 1 November 2004.

4. The Observer Delegate of Ireland indicated that the procedure for ratifying the Convention would shortly recommence in his country. The observer Delegate of Luxembourg informed the Committee that, following a recent government reshuffle in her country, the ratification procedure was at a standstill.

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 review of the provisions of the Convention****a. Questions concerning advertising, sponsorship and teleshopping**

5. The Delegate of Austria presented the final version of his discussion paper on the above questions (cf document T-TT (2004) 13). He noted that a number of issues were still in abeyance and that the answer to them would depend on the decision to be taken about the future scope of the Convention (see point b. below). He therefore suggested returning to these issues once that question had been decided.

6. The Committee then reviewed the conclusions mentioned by the Austrian Delegate at the end of each chapter of his discussion paper. On the question of the possible inclusion in the Convention of a definition of surreptitious advertising, one Delegate referred to the conclusions on this subject in the European Commission's Interpretative Declaration on certain aspects of the provisions on televised advertising in the "Television without Frontiers" Directive. He suggested adopting the same approach, in particular by referring to the concept of "undue prominence".

7. Another Delegate challenged the statement that the rules in Article 12 of the Convention on the duration of advertising and tele-shopping could not apply to webcasting services. The Observer Delegate of the European Commission supported this comment, noting that, having regard to the principle of technology-neutrality which should guide any revision of the provisions of the Directive and the Convention, the relevant distinction to be made for the application of Article 12 should be between linear and non-linear services. Another Delegate questioned the 15 and 20% rule in Article 12 of the Convention, saying that it would be preferable to set a single 20% limit.

8. Regarding the conclusion on Article 18bis of the Convention, it was noted that it did not reflect what was stated at the beginning of the document about the fact that some delegations only wanted a clearer definition of self-promotion. In this connection, one Delegate stressed that this concept should be clarified in the Explanatory Report on the Convention, particularly in order to determine whether promotion of the products of a subsidiary of a television service operator fell within the scope of self-promotion or not.

9. Following this in-depth debate, the committee discussed what further action to take on this subject. It was decided that the Austrian Delegate's discussion paper would be posted on the Secretariat's website for consultation among all interested parties. It would be specified in the call for consultation that comments should primarily concern the questions still in abeyance in the conclusions on each chapter of the document. At the same time, the Secretariat would send a circular letter to all the professional organisations concerned to notify them of this consultation process. A time-limit would be set for submitting contributions. The answers received would be analysed by the Austrian Delegate in consultation with the Secretariat. The conclusions of this analysis would then be submitted to the Committee at its next meeting. The Committee thanked the Delegate of Austria for his willingness to continue working on this subject.

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 the revised version of his discussion paper on the above questions (cf. document T-TT (2004) 14). In so doing, he focused on the first part of the document, concerning the future scope of the Convention. In this connection, his preliminary conclusion was that the distinction drawn hitherto between broadcasting and information society services seemed less and less relevant and, hence, less and less tenable. He indicated that, if technology-neutral rules were to be laid down, the technical aspects of the transmission methods used could no longer be adopted as the starting-point for those rules. An alternative might be to start from the criterion of availability for reception of editorial content by members of the public, irrespective of the technical means employed to secure it and the presumed power of such services to influence public opinion. In conclusion, he indicated that he was willing to prepare a revised document for the next meeting in the light of the any comments received from the committee members.

11. Following this presentation, several participants agreed that service regulation should no longer be linked to the mode of transmission. In this connection, some participants felt that the distinction which should henceforth be drawn was between mass communication services and individual communication services. The Polish Delegate pointed out, however, that the concept of one-to-many communication was insufficient to differentiate new communication services which should be likened to traditional broadcasting services and other new communication services. This concept should therefore be refined through the addition of further criteria.

12. One Delegate wondered whether simultaneous transmission and reception of services might not be one of these criteria. Another participant added the criterion of the impact of services on the public. A third speaker mentioned as another possible criterion whether or not it was possible for the user to control the content of the communication. Referring to the distinction previously made between linear and non-linear services (cf. paragraph 7 above), one Delegate felt that the notion of "linear services" should be clarified.

13. Several Delegates also commented on various other sections of the Polish Delegate's discussion paper. One drew attention to the fact that the approach consisting in likening new communication services such as webcasting services to traditional broadcasting services might have an impact on the regulatory authorities of the broadcasting sector by forcing them

to monitor these new services too, which could make their task very cumbersome. He therefore considered that it would be preferable to keep for the time being to the current scope of the Convention and subsequently only extend it gradually. Conversely, two other Delegates felt that on-line television services should not be excluded *a priori* from the scope of the Convention.

14. Regarding the other Convention provisions dealt with in the Polish Delegate's discussion paper, the Committee discussed those concerning the jurisdiction of states with regard to broadcasters and cases where the latter circumvented national legislation. In this connection, the Polish Delegate noted that paragraph 14 of the preamble to the "Television without Frontiers" Directive seemed to give the EU Member States some latitude for taking measures in response to the relocation of broadcasting services with the aim of circumventing national legislation. He wondered what these measures might be in practice. The Observer Delegate of the European Commission confirmed that according to the case law of the European Court of Justice, member States of the European Union can take action if a broadcaster chooses his establishment only with a view to evading the legislation of the respective member State. However, it is fully in line with Community law for a broadcaster to set up his enterprise in a more favourable business environment. In the expert group on the review of the Directive, it was discussed whether the language used in the programmes of a broadcaster could be a criterion to identify the intention of circumvention, but this suggestion did not find majority support.

15. One Delegate also stressed that the current rules under the Convention regarding alleged violations of its provisions were too complex, with the result that they were not used in practice, the Parties preferring to employ less cumbersome and formal procedures to settle certain problems with which they were confronted. He therefore suggested that the Committee should move towards a simplification of these rules.

16. In conclusion, the Delegate of Poland proposed drawing up in time for the next meeting a much shorter, revised document which would suggest lines of action on the various questions under consideration. The Committee thanked him for his commitment.

c. New issues to be incorporated in the Convention

17. The Secretariat presented a memorandum on new issues which might warrant inclusion in the Convention, prepared at the Standing Committee's request. Several Delegates considered that most of the issues addressed in the Secretariat document were neither new nor suitable for inclusion in the current scope of the Convention, given that they were of purely national interest. However, some Delegates stressed the importance of wider and more detailed consideration of the issues suggested by the Secretariat, particularly as regards their transfrontier dimension. One Delegate drew attention to the importance of including new issues in order to give the Convention an added value in relation to the "Television without Frontiers" Directive, in view of the Council of Europe's mandate relating to human rights protection, the rule of law and democracy. Some Delegates indicated that these questions should include the protection of minors and human dignity, which should be the subject of specific provisions in the Convention.

18. In conclusion, the Committee asked the Secretariat to revise its memorandum in time for the next meeting, in the light of the discussions. The members of the Standing Committee were accordingly invited to submit any suggestions to the Secretariat by 31 January 2005.

One Delegate noted that the work on human rights in the information society carried out within the framework of Integrated Project No. 1 of the Council of Europe could be useful for the revision of the Secretariat memorandum. The documents under preparation for the 7th European Ministerial Conference on Mass Media Policy (Kyiv, 10-11 March 2005) could be another source of inspiration.

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

19. The Observer Delegate of the European Commission informed the Committee that focus group no 1 set up by the Commission to revise the “Television without Frontiers” Directive had met on 8 October 2004 to discuss issues relating to the scope of the Directive and jurisdiction. The other two focus groups would be meeting before the end of the year to discuss issues relating to the regulation of advertising and the public’s right to information. The results of the informal discussions held within the groups could be put together in a Commission White Paper which would serve as a basis for revising the Directive. The Delegate Observer of the European Commission also mentioned that a conference on the revision of the Directive would be organised in September 2005 by the UK Presidency of the European Union. Lastly, he pointed out that, for the first time, a Commissioner would now be responsible for the coordination of all media issues.

Item 5 of the agenda: Examination of a draft recommendation on the protection of minors

20. The Committee examined a new version of the above-mentioned draft recommendation, prepared by the Secretariat in the light of the discussions held at the previous meeting. It was decided to make a number of amendments to the text and in particular to remove the reference to paragraph 2 of Article 7 of the Convention, in view of the fact that it dealt with issues other than pornography. Furthermore, after a Delegate had reported on difficulties encountered by his country’s broadcasting regulatory authority in obtaining information from a regulatory authority in another country on a pornographic programme, it was agreed to add a sentence calling on the Parties to the Convention to promote co-operation between regulatory authorities. Another Delegate indicated that, in his country, the trend was not towards an increase, but rather towards a decrease in the number of pornographic channels. It was therefore decided to amend the paragraph referring to an increase in the number of such channels. Lastly, it was decided to modify the text in order to make it clearer that the problem lay mainly with pornographic programmes broadcast on free-access services.

21. Following these amendments, the committee formally adopted the recommendation (see Appendix III) and asked the Secretariat to disseminate it as widely as possible.

Item 6 of the agenda: Interpretation of several provisions of the ECTT

22. The Delegate of Turkey requested information on how the insertion of advertisements during play stoppages in football matches was regulated in other countries (cf. document T-TT (2004) 19). The Observer Delegate of the European Commission mentioned the case of "minispots" in Italy, underlining that while the Commission’s Interpretative Communication on advertising gave the European Union Member States some latitude, it did not go so far as to authorise the practice adopted in Italy. The Delegate of Italy indicated that the approach adopted by her country’s broadcasting regulatory authority, which hitherto had been to allow

the insertion of such advertising, had recently been called into question following the infringement procedure initiated by the European Commission against Italy for violation of the provisions of Article 11 of the "Television without Frontiers" Directive. The authority in question had therefore started work to amend the text which it had adopted on this subject in order to allow the insertion of short advertising messages only during legally authorised breaks and during play stoppages where it was possible to add time at the end of the match. Furthermore, this authority had decided to encourage broadcasters to adopt a code of conduct in order to enable them to implement the above-mentioned statutory provisions in an effective manner.

23. Several other Delegates described how the matter was dealt with in their respective countries. In conclusion, the Delegate of Turkey thanked the Committee members for this information and said that she would pass it on to her authorities.

Item 7 of the agenda: Access by the public to events of major importance

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

24. The Secretariat presented the last version of the above-mentioned draft Recommendation, as drawn up by the MM-S-DB at its 11th meeting (27-28 September 2004). The discussion at the meeting had focused mainly on the question of the treatment to be accorded to news agencies, given that these were intermediaries which marketed the information they obtained to their clients. In view of the sensitivity and complexity of the issue, it was very likely that the CDMM would be unable to approve the draft at its next meeting (2-5 November 2004). The Standing Committee would be kept informed of developments.

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

25. The Secretariat presented the final version of the above-mentioned draft Recommendation, as drawn up by the MM-S-OD at its 11th meeting (17-18 June 2004). Where this text was concerned, the main sticking point had been the question of whether the scope of the draft should be confined to the traditional media and equivalent Internet services or whether it should possibly be extended to include Internet services provided by private individuals. The MM-S-OD had finally opted for the former solution. It was hoped that the CDMM would be in a position to approve the text at its next meeting and then forward it to the Committee of Ministers for adoption. However, the questions raised by two delegations would first have to be resolved by the CDMM.

26. The Observer Delegate on of the European Commission informed the Committee of the work in progress within the European Union on a proposal for a Recommendation on the protection of minors and human dignity and on the right of reply. It was hoped that this work would be completed by the end of the year. In substance, the proposal for a recommendation

followed the same approach as the Council of Europe text regarding the scope of the right of reply.

(ii) Dates of forthcoming meetings

27. Members were reminded that the Committee would be holding two meetings next year, subject to adoption of the 2005 budget by the Committee of Ministers. Members would be informed of the date of the first meeting as soon as possible.

(iii) Planning of future work

28. Members were reminded that, at its next meeting, the Committee would be called upon to consider the results of the forthcoming consultation process on the Austrian Delegate's discussion paper (see item 4.1.a) above) and to continue work on the issues raised in the Polish Delegate's discussion paper (see item 4.i.b) above). The Committee would also be called upon to examine another discussion paper which the German delegation had agreed to prepare on the subject of the protection of minors and respect for human dignity. As for the discussion paper to be prepared by the French delegation on the question of "quotas", it would not be examined until the committee's second meeting in 2005.

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APPENDIX II**Agenda****1. Opening of the meeting****2. Adoption of the agenda**Working documents

- Draft agenda
(Document T-TT (2004) OJ2 rev.)
- Annotations on the draft agenda
(Document T-TT (2004) 10 rev.)

3. Signatures and ratifications of the revised ConventionWorking document

- Secretariat Memorandum
(Document T-TT (2004) 12)

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****a. Questions concerning advertising, sponsorship and teleshopping**Working documents

- Report of the 36th meeting of the Standing Committee
(Document T-TT (2004) 9, item 5 (i))
- Final version of the document prepared by the Delegate of Austria on questions concerning advertising, sponsorship and teleshopping
(Document T-TT (2004) 13)

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 ConventionWorking documents

- Report of the 36th meeting of the Standing Committee
(Document T-TT (2004) 9, item 5 (i))

- Revised version of the 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) 14)

c. New issues to be incorporated in the Convention

Working documents

- Report of the 36th meeting of the Standing Committee
(Document T-TT (2004) 9, item 5)
- Secretariat memorandum
(Document T-TT (2004) 18)

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

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

Working documents

- Report of the 36th meeting of the Standing Committee
(Document T-TT (2004) 9, item 6)
- Revised draft recommendation prepared by the Secretariat
(Document T-TT (2004) 15)
- Statement (2002) 1 by the Standing Committee on Human Dignity and the Fundamental Rights of Others
(Document T-TT-Info)

6. Request for exchange of information and opinion

Working document

- Request for exchange of information and interpretation of the ECTT submitted by Turkey
(Document T-TT (2004) 19)

7. Access by the public to events of major importance

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 36th meeting of the Standing Committee (Document T-TT (2004) 9, item 7 (ii))
- Report of the 11th meeting of the MM-S-DB (Document MM-S-DB (2004) 11, Appendix III)

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 36th meeting of the Standing Committee (Document T-TT (2004) 9, item 8 (i))
- Report of the 11th meeting of the MM-S-OD (Document MM-S-OD (2004) 7, Appendix III)

- (ii) Dates of forthcoming meetings**

- (iii) Planning of future work**

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APPENDIX III**RECOMMENDATION
ON THE PROTECTION OF MINORS
FROM PORNOGRAPHIC PROGRAMMES**

*(adopted by the Standing Committee on Transfrontier Television
at its 37th meeting on 11-12 October 2004)*

In application of Article 21 (a) of the Convention and Article 24 of its Rules of procedure, the Standing Committee adopted the Recommendation set out below:

“As already underlined in its Statement (2002) 1 on Human Dignity and the Fundamental Rights of Others, the Standing Committee recalls that the Parties to the European Convention on Transfrontier Television must ensure that programme services under their jurisdiction respect human dignity and the fundamental rights of others (Article 7, paragraph 1 of the Convention).

The Standing Committee reaffirms also the importance that it attaches to the protection of minors from programmes which might harm their physical, mental or moral development.

The Committee notes that, as a result of the growing competition between a large number of television services in Europe, an increase in the number of programme services or broadcasts which constitute an infringement of Article 7 paragraph 1, letter a) of the Convention can be observed in some countries.

This phenomenon is particularly worrying with respect to free-to-air programme services containing pornographic content, which can be easily accessible by minors and seriously impair their development.

In view of the necessity to protect minors from exposure to programme services or broadcasts which constitute an infringement of Article 7 paragraph 1, letter a), the Committee invites the Parties to the Convention:

a) to assess to what extent broadcasters under their jurisdiction comply with the requirements set out in Article 7, paragraph 1, letter a) and, if that is not the case, to take, without delay, measures to meet these requirements, and in any case, in line with Article 7, paragraph 2 of the Convention, to ensure that children and adolescents are prevented from accessing programme services or broadcasts which constitute an infringement of Article 7, paragraph 1, letter a);

b) to co-operate between themselves, providing each other with information and any other type of assistance in order to effectively implement the above measures, and to promote the full co-operation between broadcasting regulatory authorities in this area;

c) to report within one year to the Committee on the measures which they may have taken under the preceding paragraphs. In the light of this information, the Committee will re-examine the situation in order to take any measures in its area of competence that it may consider appropriate to ensure the protection of minors.”