

Strasbourg, 27 November 2008

T-TT(2008)004rev

**EUROPEAN CONVENTION ON TRANSFRONTIER TELEVISION**

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**STANDING COMMITTEE ON TRANSFRONTIER TELEVISION**

**(T-TT)**

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**43rd meeting  
12, 13 and 14 November 2008  
Agora Building  
Room G.01**

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**REPORT**

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**Executive summary**

The T-TT examined the draft amendments to the Convention as proposed by its drafting Group. Due account was taken of the comments and proposals received from State Parties, Observers and non governmental stakeholders during the preliminary consultation procedure launched on 5 September 2008.

**Decisions taken:**

- a provisional agreement was reached on the draft Convention, with a few controversial provisions to be reconsidered at the 44<sup>th</sup> meeting (25 to 27 February 2009) where the amendments to Convention and its explanatory report should be finalised.
- T-TT members, observer States and all stakeholders in the broadcasting sector are invited to comment on the draft Convention and its explanatory report by 9 January 2009.
- Ms Nuran Yardimci (Turkey) was elected Chairperson of the Standing Committee. Mr Michael Kogler (Austria) and Mr György Ocskó (Hungary) were elected Vice-Chairpersons.

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

1. In the absence of the Chairperson, Mr Boris Bergant (Slovenia), the meeting was chaired by the Vice-Chairperson of the Standing Committee, Ms Nuran Yardimci (Turkey). The Chairperson welcomed all delegates and observers and expressed, in the name of the Standing Committee, her gratitude to the outgoing Chair and long-standing member Mr Boris Bergant (Slovenia) for his excellent Chairmanship and work for the Committee. She extended her thanks to outgoing member Ms Lilia Raycheva (Bulgaria) for her valuable contribution to the activities of the Standing Committee.

2. The list of participants appears in Appendix I to the report.

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

**Item 2 of the agenda:                   Information by the Secretariat**

4. Mr Jan Malinowski, Head of the Media and information society Division informed the Standing Committee of recent Council of Europe achievements and developments in the media and information society sector of relevance to their work. He mentioned in particular the adoption in November 2007 of Recommendation CM/Rec(2007)15 of the Committee of Ministers to member states on measures concerning media coverage of election campaigns; the Declaration of the Committee of Ministers on the allocation and management of the digital dividend and the public interest, adopted on 20 February 2008 as well as the Declaration of the Committee of Ministers on the independence and functions of regulatory authorities for the broadcasting sector, adopted by the Committee of Ministers on 26 March 2008.

5. The Standing Committee was furthermore informed about the preparation of the first Council of Europe Ministerial Conference on the media and new communication services, which will take place in Reykjavik on 28 and 29 May 2009. The Conference will address the theme “A new notion of media”, and will comprise, in addition to a main session, a series of round-table discussions involving civil society, youth and industry. The Conference will result in the adoption of resolutions on various aspects of the theme discussed including a plan of action which will constitute the basis of the work of the CDMC for the next four years.

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

6. The Secretariat informed the Committee that, further to the ratification of the Convention by Montenegro on 26 February 2008, the number of Parties to the Convention has risen to 32; the number of signatory States remains unchanged (7).

**Item 4 of the agenda:                   Exchange of information on the implementation of the Convention**

7. Given the time constraints of this particular meeting, delegates agreed to limit their interventions on this point of the agenda to priority matters. No urgent issues were raised.

8. The delegate from Bosnia Herzegovina informed that his authorities were preparing a new list of events of major importance for society. Bosnia-Herzegovina furthermore had recently designated authorities for the purpose of mutual assistance as stipulated by Article 19 paragraph 2 of the Convention. The Secretariat recalled that two further Parties, Hungary and San Marino, still have to designate authorities in this context.

**Item 5 of the agenda: Revision of the Convention**

**(i) Presentation by Mr Chris Bone (UK) on the work of the Drafting Group**

9. In the absence of Mr Chris Bone, Chair of the Drafting Group, Mr Michael Kogler (Austria) presented Mr Bone's introductory remarks on the work of the drafting Group (Report on the work of the drafting group Doc T-TT-GDR(2008)005rev.) Particular attention of the Standing Committee was drawn to the proposals by the drafting Group dealing with the ability of State Parties to suspend in certain cases retransmission of audiovisual media services from other Parties to the Convention (Articles 24, 24bis and 28). It was recalled that the Convention, due to its intergovernmental nature and the role of its Standing Committee, does not allow for an equivalent of the procedures and safeguards available in the context of the Directive and the European Commission.

**(ii) Information by the Observer Delegate of the European Commission on the Audiovisual Media Services Directive**

10. Mr Harald Trettenbrein, recalled that the Audiovisual Media Services Directive (AVMSD), adopted on 11 December 2007, reached the mid-term of its two year transposition period. Most EU Member States are still at the consultation stage of their draft legislation. It was recalled that Article 2 paragraph 4 AVMSD concerning the reversal of subsidiary jurisdiction criteria will take effect at the end of 2009.

**(iii) Examination of the draft amendments to the Convention**

11. The Standing Committee examined the draft amendments to the Convention as proposed by its drafting Group (Doc T-TT-GDR(2008)001Fin) as well as the draft amendments proposed to the Convention's preamble (Doc T-TT-GDR(2008)004Fin). Due account was thereby taken of the comments and proposals received from State Parties, Observers as well as by non governmental stakeholders in the context of the preliminary consultation procedure launched on 5 September 2008. The comments received (Doc. T-TT(2008)001) had been discussed by the drafting Group in an informal meeting on 12 November prior to the plenary of the Standing Committee.

12. With regard to the draft revised preamble to the Convention, the Standing Committee agreed on the text as proposed by the drafting Group, with some minor amendments. The revised preamble as agreed is contained in Doc T-TT (2008) 002. The Committee noted that the reference to "[the texts] adopted during the 1<sup>st</sup> Council of Europe Ministerial Conference on the Media and New Communication Services" would be conditional upon the agreement of the CDMC to including a reference to the draft revised Convention in the texts for adoption at the Conference.

13. The Standing Committee considered the amendments proposed to the Convention in the light of the explanations contained in the report of the working Group

(Doc T-TT-GDR(2008)005rev). The Committee discussed in particular the following provisions<sup>1</sup>:

14. With regard to Article 2, “Terms employed”, the Committee questioned the need for a definition in the Convention of the terms “transmission “ and “retransmission” as these are not defined in the AVMSD. The Committee decided to retain the definitions concluding that these terms were needed in Article 4 [3], and used throughout the draft convention<sup>2</sup>.

15. With regard to draft Article 5 [4], paragraph 4, concerning ancillary jurisdiction criteria, the Committee considered the need to align these criteria with those contained in Article 2, paragraph 4 of the Audiovisual Media Services Directive (AVMSD). In order to improve alignment and avoid conflict of jurisdiction between the two instruments to the extent possible, the Committee decided to provisionally delete sub-paragraph “c” which contains the reference to “frequencies”. Re-introduction of this ancillary jurisdiction criterion would only be reconsidered at the next meeting if one of the Parties to the Convention would explicitly indicate a need to retain it.

16. Similarly, with regard to Article 7 [6], paragraph 1, sub-paragraph “b” concerning the responsibility of media service providers not to “give undue prominence to violence”, the Committee considered the importance of alignment with the Directive and felt that protection against violence in the presentation and content of audiovisual media services is sufficiently ensured by paragraph 3 which bans gratuitous violence on television in the context of the protection of minors. The prohibition of incitement to hatred (Article 7 [6] paragraph 1) was already regarded as a general safeguard against a particularly harmful form of violence. It was furthermore observed that Article 24bis [29] and Article 28 [33] provide Parties with means to take action against on-demand services or in the context of circumvention of stricter national law. In view of the above, the Committee decided to provisionally delete sub- paragraph “b” which contains the reference to “undue violence”. Re-introduction would only be reconsidered at the next meeting if one of the Parties to the Convention would explicitly indicate its wish to retain it.

17. The Committee also discussed Article 7 [6] paragraph 2, concerning the requirement that “news fairly present facts and encourage the free formation of opinions”. The drafting Group, divided over the question whether this requirement should apply to all audiovisual media services or remain limited to television broadcast, had provided the Committee with an alternative choice. The Committee, considering the arguments exposed in the report of the drafting Group (paragraphs 40 and 41), discussed possible options for a compromise text whereby the requirement of paragraph 2 might also apply to on-demand services with a public service mission and not only to television broadcast.

18. With respect to Article 9a [10], paragraph 2, the Committee decided to delete the brackets around the words “as well as where appropriate, the national constitution” considering that there was no reason to amend the existing Convention on this point.

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<sup>1</sup> References to the draft articles discussed are followed by [...] mentioning the equivalent article in the renumbered update of the Convention on the basis of the agreement reached during the meeting (Doc T-TT (2008)003)

<sup>2</sup> In draft Article 5 [4] paragraph 1, Article 7[6] paragraph 3, Article 8, Article 9 paragraphs 1, 3 and 6, Article 10 [11] paragraphs 1, 2 and 6, Article 14 [17] paragraphs 1, 2 and 4, Article 16 [20], Article 24 [28], paragraphs 2, 3 and 4 and Article 32 [37] paragraph 2.

19. The Standing Committee furthermore discussed Article 10 [11], cultural objectives in combination with the definition of European works under Article 2 sub-paragraph (p). The representative of the European Commission stated that, if adopted and transposed into national law by EU member States, these provisions would result in a conventional obligation that is in contradiction with their obligations under Community Law and expose the Member States concerned to infringement procedures. A few members of the Committee shared this view, others felt that there was no incompatibility. It was observed that the Standing Committee was not in a position to efficiently monitor compliance of Parties with the quota obligations. A proposal not to mention quota in Article 10 [11] but to limit the requirement to a more general encouragement to promote European work (including possibly euro-Mediterranean work) was however not retained. In order to exclude (possible) incompatibility between the AVMSD and the Convention, a delegation proposed a reformulation of the disconnection clause in Article 27 [32] paragraph 1. The Standing Committee decided to retain this proposal as an alternative option and to address this issue again in the next meeting pending consultation between the Secretariat and the representative of the European Commission in view of legal advice.

20 With regard to commercial communications, the Committee discussed and accepted the proposals of its drafting Group to uphold the scope of television advertising, as defined in current Article 2f of the Convention, by extending the definition of commercial communication and television advertising to images and announcements “designed to advance a cause or idea or to bring about some other effect desired” (Article 2j sub 2 and 2k sub 2). As a result, and with the exception of duration requirements for television advertising (Article 12 [15] paragraph 2) the Convention rules governing commercial communication also cover “images designed to advance a cause or idea, or to bring about some other effect desired”. Since “announcements in the public interest and charity appeals free of charge” fall outside the definition of commercial communication, the Standing Committee agreed to extend the application of the conventional rules on commercial communication (as regards general standards, form and presentation and insertion) to announcements free of charge by the insertion of a new Article “X” [14].

21. With regard to Article 12 [15], the Standing Committee approved the proposal of the drafting group to align the requirements for duration to the more flexible approach in the AVMSD. The proposed regulation contains therefore no longer any limits to the daily transmission time, the limit is linked to a given clock hour. The Committee furthermore approved the exceptions to this hour limit mentioned in paragraph 2.

22. Delegates drew attention to the fact that Article 11 [13], paragraph 4, which concerns the requirement that “audiovisual commercial communication shall not cause physical or moral detriment to minors” does not mirror the wording of Article 7 [6], paragraph 3, which refers to “ the physical, mental or moral development of minors”. In reply to a proposal to add the word “mental” to paragraph 4, the majority of the Committee preferred to maintain the text as it stands, because it is aligned with Article 3e (g) AVMSD, and to recall in the explanatory report that Article 7 [6], paragraph 2, which protects minors against mental detriment, applies to all programme elements including commercial communication. It was decided to reconsider alignment with the wording of Article 7[6], paragraph 3 in case one of the Parties would explicitly indicate the wish to do so.

23. With regard to Article 15 [18], paragraph 6 concerning the development of codes of conduct regarding inappropriate audiovisual commercial communication, the Committee

agreed with a proposal by ACT and EASA to amend the wording of Article 15 [18], paragraph 6 so as to ensure that their development take place at the appropriate level. The explanatory report should explain that the difference in wording does not have any bearing on the obligation of Parties.

24. The Committee furthermore decided to incorporate draft Article 18new [22] which concerns television broadcasting devoted exclusively to advertising, tele-shopping and/or self-promotion in Chapter III. The subsequent Chapters would be renumbered accordingly.

25. With regard to Article 19 [23], which deals with co-operation between the Parties, the Committee agreed with a proposal to amend paragraph 1 so as to insert an explicit reference to the role of independent regulatory authorities. The Committee agreed that this amendment, inspired by Article 23b AVMSD, will be reflected in the explanatory report by references to the existing norms on the role and independence of regulatory authorities. Reference was furthermore made to the amendment to Article 20 [24], paragraph 2 which encourages delegations to the Standing Committee to include at least one person with expertise in the regulation of audiovisual media services.

26. The Standing Committee also agreed with the new draft provision under Article 19, paragraph 3bis [Article 23, paragraph 3d] which provides, where appropriate, for a consultation procedure between authorities designated under paragraph 2 to prevent circumvention of stricter national laws. It was recalled that the wording stems from a provisional agreement reached during the 40th meeting of the Standing Committee on a proposal initiated by the Latvian delegation and that this consultation procedure is not foreseen in the operative part of the AVMSD.

27. With regard to the functions of the Standing Committee, as set out in Article 21 [25], the Committee provisionally agreed with the proposals of the drafting Group to confirm in paragraph 3 the role of the Standing Committee to give an opinion on measures referred to in Article 24bis [29], paragraphs 1 and 2 and in Article 28 [33], paragraph 3. With regard to Article 21 [25] paragraph 3, where alternative options were proposed, the Committee agreed on the formulation that “Parties commit themselves to refrain from taking any proposed measures or urgently put an end to the measures in question” if the Standing Committee comes to the conclusion that the measures are incompatible with the Convention.

28. The Standing Committee paid particular attention to the examination of “restrictions to the principle of freedom of expression and retransmission” as detailed in Articles 24 [28] and 24bis [29], recalling that the Convention aims to promote this fundamental principle (Article 1, paragraph 1 and Article 4[3]).

29. In this spirit, the Committee reconsidered, with regard to Article 24 [28], paragraph 2, the possibilities for a Party to suspend provisionally the retransmission of television broadcast within two weeks following communication to the Party having jurisdiction. It agreed to limit this possibility - reserved for violations of a manifest, serious and grave nature which raises important public issues - to programme content related to the dignity of the human being and protection of minors, as well as advertising for particular products (Articles 7[6], paragraphs 1 or 3 or 15 [18], paragraphs 1, 2, 4 or 5). The Committee decided to expand the explanatory memorandum to Article 24 [28] to give some further explanations on the procedure to be followed and to recall the possibility to challenge a measure by applying to the European Court of Human Rights.

30. With regard to Article 24bis [29], concerning possible measures against on-demand services, a view was expressed that this text, aligned with Article 2a paragraph 4 AVMSD, might not present sufficient safeguards against undue restrictive measures or might not be sufficiently adapted to the nature of the Convention and the Standing Committee. Pending reception of written comments on this issue, the Committee approved the article on a provisional basis.

31. For similar reasons, the text of Article 28 [33] paragraph 2, concerning the procedure to follow in case of alleged circumvention by broadcast which is wholly or mostly targeted to another party, met strong resistance by some delegates who felt that the alignment with Article 3 paragraph 3 of the AVMSD was inappropriate in the context of the Convention. Mr Andrew McIntosh, who was invited as an observer on behalf of the Parliamentary Assembly, indicated that he was strongly opposed to this provision and that the Assembly might follow his views. Many other delegates expressed their strong support in favour of the provision. The Standing Committee decided to keep the controversial paragraph within brackets and to reconsider the provision at the 44th meeting in the light of the comments received.

#### **(iv) Planning of future work**

32. The Standing Committee agreed on the follow-up to be given to the preliminary consultation procedure, and decided to invite major stakeholders to take part in a hearing during the 44<sup>th</sup> meeting

33. Members and observers furthermore agreed to send their comments on the provisional agreement reached on the draft revised Convention and on the preliminary explanatory report to the Secretariat by 9 January 2009 at the latest.

34. In preparation to the 44th meeting of the Standing Committee, the Secretariat was asked to:

- update the consolidated version of the draft Convention and post it on the public website by 5 December 2008 (a provisional version of the text as agreed could be posted earlier in view of the CDMC meeting from 25 to 28 November);
- prepare a document presenting the draft changes to the Convention in the form of an amending protocol, including a preamble setting out the reasons for the amendment;
- update the draft explanatory report on the basis of comments received and publish it by 16 January 2009;
- invite Council of Europe member States, through the CDMC to comment on the proposed amendments to the Convention prior to the 44th meeting.

35. The Standing Committee agreed to formally finalise the text of the draft second amending protocol and the amendments proposed to the explanatory report during its 44th meeting in February 2009. In order to proceed as efficiently as possible, the Committee agreed to limit consideration of proposals for amendment to the explanatory report to those on which discussion was requested to the Secretariat in writing by 23 February at the latest.

36. The Secretariat informed that following its finalisation by the Standing Committee, the amending protocol will be forwarded to the Legal Advice Department and Treaty Office for legal check and submitted to the Committee of Ministers. The Committee of Ministers is expected to ask the Parliamentary Assembly and the CDMC for an opinion before it will consider the adoption of the 2nd amending protocol and open it for signature. The Committee of Ministers will also be invited to take note of the amendments to the explanatory report.

37. The length of this procedure will depend on the time needed by the Standing Committee, the Legal Advice Department and Treaty Office, the Committee of Ministers, the Parliamentary Assembly and the CDMC to give their views/take their decisions but is expected to end in the autumn of 2009 or the beginning of 2010.

**Item 6 of the agenda: Election of a Chairperson and two Vice-Chairpersons of the Standing Committee**

38. Following the end of the term of office of Mr Boris Bergant (Slovenia) as Chairperson and that of Mrs Nuran Yardimci (Turkey) as Vice-Chairperson, and considering the second post of vice-chairperson left vacant following the resignation as a delegate to the Committee of Vice-chairperson, Ms Séverine Fautrelle (France), the Standing Committee held elections in accordance with Rule 5 of the Rules of Procedure. Ms Nuran Yardimci (Turkey) was unanimously elected Chairperson of the Standing Committee. Mr Michael Kogler (Austria) and Mr György OCSKÓ (Hungary) were unanimously elected Vice-Chairpersons.

**Item 7 of the agenda: Other business**

39. The Standing Committee expressed its warm gratitude and best wishes to Ms Alice Eleuterio who was leaving the Secretariat of the Standing Committee after 7 years of efficient support.

**Item 8 of the agenda: Dates of forthcoming meetings**

40. The 44th plenary meeting of the Standing Committee will take place from 25 to 27 February 2009.

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## 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, Constitutional Service, Media Department, Ballhausplatz 2, AT-1014 WIEN  
 Tel: +43 1 53115 4272 Fax: +43 1 53115 4285 E-mail: michael.kogler@bka.gv.at

##### Bosnia and Herzegovina/Bosnie-Herzégovine

Mr Emir POVLAKIĆ, Senior Expert for Broadcasting, Communications Regulatory Agency (CRA), Mehmeda Spaha 1, 71000 SARAJEVO  
 Tel: +387 33 250 600 Fax: +387 33 713 080 E-mail: epovlakic@rak.ba

Ms Maida ĆULAHOVIĆ, Head of Audiovisual Services Department, Communications Regulatory Agency (CRA), Mehmeda Spaha 1, 71000 SARAJEVO  
 Tel: +387 33 250 600 Fax: +387 33 713 080 E-mail: mculahovic@rak.ba

##### Bulgaria/Bulgarie

Ms Maya VAPTSAROVA, Member of Council for Electronic Media, 69, Shipchenski Prohod blvd., BG-1574 SOFIA  
 Tel: +359 889 46 46 32 E-mail: faith\_sofia@yahoo.com

##### Croatia/Croatie

Mr Tomislav JELIĆ, Head of Department for European Integration, Ministry of Culture, Runjaninova 2, HR-1000 ZAGREB  
 Tel: +385 1 48 66 216 Fax: +385 1 48 66 280 E-mail: tomislav.jelic1@min-kulture.hr

Ms Nives ZVONARIĆ, Legal Adviser, Electronic Media Agency, Palmoticeva 60, HR-1000 ZAGREB  
 Tel: +385 1 48 82 610 Fax: +385 1 48 82 614 E-mail: nives.zvonaric@zg.t-com.hr

##### Cyprus/Chypre

Mr Andreas CHRISTODOULOU, Head of Media Section, Ministry of Interior, Demosthnes Severis Ave., CY-1453 NICOSIA  
 Tel: +357 22 867 765 Fax: +357 22 867 782 E-mail: anchristodoulou@moi.gov.cy

##### Czech Republic/République Tchèque

Mr Marián ORAVEC, Media and Audio-Visual Department, Ministry of Culture of the Czech Republic, Maltézské nám. 471/1, CZ-118 11 PRAHA 1  
 Tel: +420 2 57 08 52 47 E-mail: marian.oravec@mkcr.cz

**Estonia/Estonie**

Mrs Riina VALVERE, Adviser for Media and Copyright Division, Ministry of Culture, 23 Suur-Karja Street, 15076 TALLINN

Tel: +372 6 282 343

Fax: +372 6282 320

E-mail: riina.valvere@kul.ee

**Finland/Finlande**

Mr Jussi MÄKINEN, Ministerial Adviser, Media issues, Ministry of Transport and Communications, P.O. Box 31, FI-00023 Government Finland

Tel. + 358 9 160 284 98

Email: jussi.makinen@mintc.fi

**France**

M. Xavier INGLEBERT, Adjoint au chef du bureau des affaires européennes et internationales, Direction du Développement des Médias, 69 rue de Varenne, FR-75348 PARIS 07 SP

Tel: +33 (0)1 42 75 56 96

Fax: +33 (0)1 42 75 56 73

E-mail: xavier.inglebert@pm.gouv.fr

**Germany/Allemagne**

Dr. Tim SCHÖNBORN, LL.M., Adviser for Media Affairs, Representation of the State of Rhineland-Palatinate, to the European Union, Avenue de Tervuren 60, BE-1040 BRUSSELS, Belgium

Tel: +322 2 790 1337

Fax: +322 2 790 1333

E-mail: tschoenborn@lv.rlp.de

Ms Susanne DING, Federal Government Commissioner for Culture and the Media, International Cooperation, Stresemannstr. 94, DE-10963 BERLIN

Tel: +49 1888 681 4917

Fax: +49 1888 681 55706

E-mail: susanne.ding@bkm.bmi.bund.de

**Hungary/Hongrie**

Dr György OCSKÓ, Head of Department, Presidential Secretariat, National Radio and Television Commission (ORTT), Reviczky utca 5, HU-1088 BUDAPEST

Tel: +36 1 429 86 92

Fax: +36 1 429 87 63

E-mail: ocsko.gyorgy@ortt.hu

**Italy/Italie**

Mrs Daniela ESPOSITO VEZZOLER, Autorità per le garanzie nelle comunicazioni, Italian Communication Authority (AGCOM), Via Poli, 29, IT-ROME

Tel: +39 06 696 44 133

Fax: +39 06 69 644 157

E-mail: d.vezzoler@agcom.it

**Latvia/Lettonie**

Mrs Dace BUCENIECE, Vice-chairperson of the National Broadcasting Council of Latvia, Smilsu 1/3, LV-1939 RIGA

Tel: +371 67 22 18 48

Fax: +371 67 22 04 48

E-mail: dace.buceniece@nrtp.lv

**Liechtenstein****Lithuania/Lituanie**

Mr Nerijus MALIUKEVIČIUS, Executive Director, Radio and Television Commission of Lithuania, Vytenio str. 6, LT-03113 VILNIUS

Tel: +370 52 330 660

Fax: +370 52 647 125

E-mail: n.maliukevicius@rtk.lt

**Malta/Malte**

Mr Raymond MICALLEF, Assistant Director (Boards, Committees and Customer Care), Office of the Prime Minister, Auberge de Castille, MT-VALLETTA CMR 02

Tel: +356 2200 1852 Fax: +356 2200 1854 E-mail: raymond.micallef@gov.mt

**Moldova**

Mr Vitalie TABUNSCIC, Council for coordination on Audiovisual of Moldova, Mihai Eminescu Str. 28, MD-2012 CHISINAU

Tel: + 373 22 277 470 Fax: + 373 22 277 471 E-mail: vtabunscic@mail.md

**Montenegro/ Monténégro**

Ms Jadranka VOJVODIC, Deputy Director, Broadcasting Agency of Montenegro, Bulevar Svetog Petra Cetinjskog 9, 81000 PODGORICA

Tel: +382 20 201 430 Fax: +382 20 201 440 E-mail: jadranka.vojvodic@ard.mn.yu

**Norway/Norvège**

[Apologised/excusé]

Mr Olav GUNTVEDT, Assistant Director General, Norwegian Ministry of Culture and Church Affairs, PO.Box 8030 Dep, NO-0030 OSLO

Tel: +47 22 24 80 47 Fax: +47 22 24 80 39 E-mail: Olav.Guntvedt@kkd.dep.no

**Poland/Pologne**

Ms Malgorzata PEK, Deputy Director of the Legal Department, National Broadcasting Council, Skwer Kardinala Wysznkiego 9, PL-01-015 WARSAW

Tel: +48 22 597 31 57 Fax: +48 22 597 31 13 E-mail: pek@krrit.gov.pl

**Portugal**

Mrs Maria Margarida RIBES, Gabinete para os Meios de Comunicação Social, Palácio Foz, Praça dos Restauradores, PT-1250-187 LISBOA

Tel: +351 231 22 12 48 E-mail: margarida.ribes@gmcs.pt

**Romania/Roumanie**

Mrs Laura FRUNZETI, Head of European Affairs and Projects unit, Communication Dept, National Broadcasting Council (CNA), Bd Libertatii nr. 14, sector 5, RO-70060 BUCAREST

Tel: +40 21 305 53 53 Fax: +41 21 305 53 53 E-mail: laura.frunzeti@cna.ro

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

Mr Martin KRIZIAN, Legal Section of the Office, Council for Broadcasting and Retransmission of the Slovak Republic, Kolarska 6, SK-81000 BRATISLAVA 1

E-mail: krizan@rada-rtv.sk

**Slovenia/Slovénie**

[Apologised/excusé]

Mr Boris BERGANT, Deputy Director General, RTV Slovenija, Kolodvorska 2, SL-1550 LJUBLJANA

Tel: +386 1 475 21 51 Fax: +386 1 475 21 50 E-mail: Boris.Bergant@rtvslo.si

**Spain/Espagne**

Mr Francisco Javier BARTOLOMÉ ZOFÍO, Head of Sector, Adjoint Direction General for Audiovisual Media, Secretary of State for Telecommunications and Information Society, Ministry of Industry, Tourism and Commerce, Capitan Haya, 41, ES-28071 MADRID

Tel: +34 91 346 27 43 Fax: +34 91 346 28 68 E-mail: fjbartolome@mityc.es

**Switzerland/Suisse**

Mr Matthias RAMSAUER, Vice-Directeur, chef de la Division Radio et Télévision, Office fédéral de la communication, Département fédéral de l'environnement, des transports, de l'énergie et de la communication, 44, rue de l'Avenir, CH-2501 BIENNE

Tel: +41 32 327 55 10 (direct) Fax: +41 32 327 55 33 E-mail: matthias.ramsauer@bakom.admin.ch

Mr Franz ZELLER, Conseiller Juridique, Médias nationaux et internationaux, Office fédéral de la communication, Département fédéral de l'environnement, des transports, de l'énergie et de la communication, 44, rue de l'Avenir, CH-2501 BIENNE

Tel.: +41 32 327 59 42 Fax: +41 32 327 55 55 E-mail: franz.zeller@bakom.admin.ch

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

Mrs Emilija JANEVSKA, Head of the Department for programming issues, Broadcasting Council, Bul "Marks & Engels" 3, MK-1000 SKOPJE

Tel: +389 2 3103 420 Fax: +389 2 3103 401 E-mail: e.janevska@srd.org.mk

Mr Slobodan BELICANSKI, Senior assistant at the Legal Department, Broadcasting Council, Bul "Marks & Engels" 3, MK-1000 SKOPJE

Tel: +389 21 03 416 Fax: +389 21 03 401 E-mail: belicanskis@yahoo.com

**Turkey/Turquie**

Ms Nuran YARDIMCI, Turkish Radio and Television Supreme Council, Bilkent Plaza B2 Blok, TR-06530 BILKENT ANKARA

Tel: +90 312 397 5356 Fax: +90 312 266 1964 E-mail: nuranyardimci@rtuk.org.tr

Mr Hamit ERSOY, Head of Section at the Department of International Relations of Radio and Television Supreme Council, Bilkent Plaza B2 Blok, TR-06530 BILKENT ANKARA

Tel: 0312 297 53 56 Fax: 0 312 266 19 64 E-mail: hamitersoy@rtuk.org.tr

**United Kingdom/Royaume-Uni**

[Apologised/excusé]

Mr Chris BONE, International Broadcasting Policy Department, Department for Culture, Media and Sport, 2-4 Cockspur Street, GB-LONDON SW1Y 5DH

Tel: +44 207 211 6444 Fax: +44 207 211 6460 E-mail: chris.bone@culture.gsi.gov.uk

Mr Peter DOOGAN, Senior Policy Adviser, International Broadcasting, Media Team, Department for Culture, Media and Sport, 2-4 Cockspur Street, GB-LONDON SW1Y 5DH

Tel: +44 207 211 6441 Fax: +44 207 211 6339 E-mail: peter.doogan@culture.gsi.gov.uk

**Holy See/Saint-Siège**

M. Régis DE KALBERMATTEN, Délégué du Saint-Siège au Comité Permanent sur la Télévision Transfrontière, Gravelone 55, CH-1950 SION

Tel: +41 27 323 42 89 Fax: +41 27 323 42 12

**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, 21, place Broglie, 67000 STRASBOURG, France

Tel: +33 (0)3 88 32 47 33

Fax: +33 (0)3 88 75 53 30

E-mail: [grpresse@magic.fr](mailto:grpresse@magic.fr)

**Iceland/Islande****Ireland/Irlande**

[Apologised/excusé]

Mr Joe MELEADY, Higher Executive Officer, Department of Communications, Marine and Natural Resources, 29-31 Adelaide Road, IE - DUBLIN 2

Tel: +353 1 67 83 094

Fax: +353 1 67 83 099

E-mail: [joe.meleady@dcmnr.gov.ie](mailto:joe.meleady@dcmnr.gov.ie)

**Israël/ Israël****Luxembourg****Morocco/ Maroc****Monaco****Netherlands/Pays-Bas**

Mr Frederik Jan INGEN HOUSZ, Policy Adviser Media, Department for Media, Literature and Libraries/IPC 3400, Ministry of Education, Culture and Science, Rijnstraat 50, P.O. Box 16375, NL-2500 BJ DEN HAAG

Tel: +31 70 412 3618

Fax: +31 70 412 4979

Email: [f.j.ingenhousz@minocw.nl](mailto:f.j.ingenhousz@minocw.nl)

Mrs Katja MUTSAERS, Department for Media, Literature and Libraries/IPC 3400, Ministry of Education, Culture and Science, Rijnstraat 50, P.O. Box 16375, NL-2500 BJ DEN HAAG

Tel: +212 70 - 412 2545

Fax: +212 70 - 412 4979

E-mail: [k.e.a.mutsaers@minocw.nl](mailto:k.e.a.mutsaers@minocw.nl)

**Russian Federation/Fédération de Russie**

Mrs Ekaterina LARINA, Director, Department for State Policy in Mass Media, Ministry of Telecom and Mass Communications, Dept of the State Policy in Mass Media, Tverskaya Str. 7, RU-MOSCOW

Tel: +7 495 771 89 69

Fax: +7 495 771 87 38

E-mail: [e.larina@minsvyaz.ru](mailto:e.larina@minsvyaz.ru)

Mrs Nataliya V. ROMASHOVA, Deputy Director, Department for State Policy in Mass Media, Ministry of Telecom and Mass Communications, Dept of the State Policy in Mass Media, Tverskaya Str. 7, RU-MOSCOW

**Serbia/Serbie**

Mrs Marija ČOSIĆ, Senior Expert Associate, Media Department, Ministry of Culture and Media of the Republic of Serbia, Vojkovićeveva 3, 11000 BELGRADE  
Tel: +381 11 33 98 183 Fax: +381 11 33 98 936 E-mail: marija.cosic@min-cul.sr.gov.yu

**Sweden/Suède**

**Ukraine**

Mr Vladyslav LIASOVSKYI, Executive Secretary, National Council of Television and Radio Broadcasting, 2 Proreznaya Street, 406, KYIV  
Tel: +380 44 27 875 58 Fax: +380 44 278 75 58 E-mail: lyasovsky@nrada.gov.ua

**European Commission/Commission européenne**

Mr Harald E. TRETENBREIN, Deputy Head of Unit, European Commission, DG Infos and Media, A1, BU 33 3/43, BE-1043 BRUSSELS  
Tel: +32 2 298 49 55 Fax: +32 2 296 52 98 E-mail: harald.trettenbrein@ec.europa.eu

**OBSERVER / OBSERVATEURS**

**Parliamentary Assembly of the Council of Europe / Assemblée parlementaire du Conseil de l'Europe**

M. Andrew McINTOSCH, Président de la sous-commission des médias de la Commission de la culture, de la science et de l'éducation de l'Assemblée parlementaire du Conseil de l'Europe

**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  
Tel: +33 (0)3 88 41 28 92 Fax: +33 (0)3 88 41 27 05 E-mail: jan.malinowski@coe.int

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  
Tel: +33 (0)3 88 41 29 29 Fax: +33 (0)3 88 41 27 05 E-mail: anita.vandekar@coe.int

**INTERPRETERS/INTERPRETES**

M. Olivier OBRECHT  
Mme Maryline NEUSCHWANDER  
M. Rémy JAIN

**APPENDIX II****Agenda**

- 1. Opening of the meeting and adoption of the agenda**
- 2. Information by the Secretariat**
- 3. Signatures and ratifications of the Convention**
- 4. Exchange of information on the implementation of the Convention**
- 5. Revision of the Convention**
  - (i) Presentation by Mr Chris Bone (UK) on the work of the Drafting Group**
  - (ii) Information by the Observer Delegate of the European Commission on the Audiovisual Media Services Directive**
  - (iii) Examination of the draft amendments to the ECTT**
  - (iv) Planning of future work**
- 6. Election of a Chairperson and two Vice-Chairpersons of the Standing Committee**
- 7. Other business**
- 8. Dates of forthcoming meetings**