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**EUROPEAN CONVENTION ON TRANSFRONTIER TELEVISION
CONVENTION EUROPEENNE SUR LA TELEVISION TRANSFRONTIERE**

**DRAFTING GROUP
ON THE REVISION OF THE EUROPEAN CONVENTION
ON TRANSFRONTIER TELEVISION**

**GROUPE DE REDACTION
POUR LA REVISION DE LA CONVENTION EUROPEENE
SUR LA TELEVISION TRANSFRONTIERE**

(T-TT-GDR)

**3rd meeting / 3ème réunion
26 and 27 November 2007 / 26 et 27 novembre 2007
Human Rights Building / Palais des Droits de l'Homme, Strasbourg
Room 20 RC Jardin / Salle 20 RC Jardin**

**Comments concerning the proposed amendments to the ECTT
Commentaires concernant les amendements proposés à la CETT**

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European Commission preliminary remarks

This note seeks to provide a first assessment of the draft European convention on transfrontier television (Convention) from the perspective of Community Law and with regard to the Audiovisual Media Services Directive (AVMSD). The comments refer to the text as sent out on 29 June 2007. This draft is subject to further discussions in the Standing Committee and the Commission will later deliver a formal opinion on the results of the discussions in the Standing Committee.

The Commission fully supports the approach of the drafting group to align Convention and Directive. This is necessary to ensure that Member States that are parties to the Convention do not have to implement possibly conflicting rules for service providers subject to the jurisdiction of one of the European Union (EU) Member States and service providers subject to the jurisdiction of a party to the Convention that is not Member State of the EU.

However, this approach does not exclude that the revised Convention covers subject matters others than those covered by the Directive. The Commission has always appreciated the added value the Convention could bring with regard to issues like media pluralism, public service broadcasting or independent regulators, where human rights aspects are particularly important.

The explanatory report should be clear in all cases where there is a difference between the Convention and the AVMSD. It should be stated whether different wording simply was chosen for institutional or drafting reasons, but in substance it is not intended to create diverging obligations. Similarly it should be made explicit when and why the Convention chooses a substantially different approach.

It also should be noted that the political agreement at a common position stage between European Parliament and Council, which was the basis of the discussion in the Convention drafting group, is still subject to changes made by lawyer linguists.

Titre

- ***France***

"Convention européenne ~~des~~ sur les services de médias audiovisuels transfrontières".

Article 1: *Object, purpose and field of application* / Article 1er : *Objet et but*

- ***France***

1. La présente Convention concerne les services [~~linéaires et non linéaires~~] de médias audiovisuels. Son but est de faciliter, entre les Parties, leur transmission transfrontière et leur retransmission de services de programmes de télévision et la distribution de services de médias audiovisuels non linéaires.

2. Elle s'applique à tout service de médias audiovisuels transmis ou retransmis par un fournisseur de service de médias¹ ~~qui est transmis ou retransmis par des organismes ou à l'aide de moyens techniques~~ relevant de la compétence d'une Partie et qui peut être reçu, directement ou indirectement, dans une ou plusieurs autres Parties.

{3. La présente Convention ne s'applique pas aux services de médias audiovisuels exclusivement destinés à être captés dans les Etats qui ne sont pas Parties à la présente Convention et qui ne sont pas reçus directement ou indirectement, à l'aide de matériel classique destiné aux particuliers par le public d'une ou de plusieurs Parties.}

- ***Germany / Allemagne***

...

{3. This Convention shall not apply to audiovisual media services intended exclusively for reception in States which are not Party to this Convention and which are not received with standard consumer equipment directly or indirectly by the public in one or more Parties.}

- ***Italy / Italie***

As regards footnote n. 1, and specifically the reference to the questions posed by a member of the Drafting Group on paragraph 2, our opinion is as follows:

a) about the question regarding a possible need of clarification and major details concerning the rule of jurisdiction for transfrontier television, the provision contained in Article 5 could be probably sufficient; at least, we suggest to introduce the provision contained in article 2 of the EU draft AVMS, in the Explanatory Report (ER) – there a reference should be inserted related to the jurisdiction regime in case of satellite up-link or satellite capacity;

b) as regard as the notion of “*technical means*”, a clarification should probably be inserted in the ER.

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

Concerning Article 1 Point 2, the Explanatory Report (ER) should contain comment on the remarks in footnote 1 regarding both the issue of jurisdiction and the meaning of the term "technical means".

Regarding Article 1 Point 3, there should be a clarification in the Explanatory Report (ER) on the scope of the phrase "standard consumer equipment".

- ***European Commission / Commission européenne***

Art 1 of the revised Convention defines the object, purpose and scope of the Convention. The AVMSD does not contain a similar provision. This, however, poses no problem. It might be asked whether it would not be appropriate for a Council of Europe document to refer to the European Convention on Human Rights and recall that the Convention intends to give effect

¹ Ce passage est modifié, pour ne pas se trouver en porte-à-faux avec les critères de détermination de compétence.

to the freedom of expression for audiovisual media services as it is also enshrined in Art 10 ECHR.

Article 2: Terms employed / Article 2 : Expressions employées

- France

...

"Service de médias audiovisuels" désigne un service qui relève de la responsabilité éditoriale d'un fournisseur de services de médias et dont le but principal est d'offrir au grand public [par le moyen d'un réseau de communications électroniques]² des programmes visant à informer, à divertir ou à éduquer. Les services de médias audiovisuels peuvent être des émissions télévisées, des services à la demande et/ou des communications commerciales audiovisuelles. [Ces services englobent toutes les formes d'activité économique, dont les entreprises de service public, mais excluent les activités essentiellement non économiques et n'entrant pas en concurrence avec les émissions télévisées, telles que les sites Internet et les services privés consistant à fournir ou à diffuser des contenus audiovisuels émanant d'utilisateurs privés à des fins de partage et d'échange au sein de groupes d'utilisateurs ayant les mêmes intérêts]³ ;

"Transmission" désigne l'émission primaire, par émetteur terrestre, par câble ou par tout type de satellite, codée ou non, de services de médias audiovisuels destinés à être reçus [par le public en général] ;

...

"Responsabilité éditoriale" désigne l'exercice d'un contrôle effectif à la fois sur la sélection des programmes et sur leur organisation chronologique, dans le cas d'émissions programmées, ou dans un catalogue, dans le cas de services à la demande. [L'exercice de la responsabilité éditoriale n'entraîne pas nécessairement une responsabilité juridique, en droit interne, à l'égard des contenus et des services fournis]⁴ ;

...

"Communication commerciale audiovisuelle" désigne des images, combinées ou non à du son, conçues afin de promouvoir, directement ou indirectement, les biens, les services ou l'image d'une personne physique ou morale exerçant une activité économique. Ces images accompagnent un programme ou y sont insérées moyennant rémunération ou toute contrepartie similaire ou à des fins d'autopromotion. Les communications commerciales audiovisuelles peuvent prendre la forme, entre autres, de publicités télévisées, de ~~sponsoring~~ parrainage, de télé-achat et de placement de produits. [Les règles de la communication commerciale audiovisuelle s'appliquent également aux communications audiovisuelles conçues pour promouvoir une cause ou une idée, ou pour produire quelque autre effet souhaité par l'annonceur, le parrain ou par le radiodiffuseur lui-même]⁵ ;

"Publicité télévisée" désigne toute forme d'annonce diffusée moyennant rémunération ou toute contrepartie similaire ou à des fins d'autopromotion par une entreprise publique ou

² Le Rapport Explicatif devra définir la notion de réseau de communications électroniques, cette portion de texte se calquant sur la Directive SMA qui dans son dispositif définit cette notion par une référence à la Directive 2002/21, ce que ne peut pas faire la présente Convention.

³ Ce passage pourrait être transféré au RE pour alléger le corps de l'article.

⁴ Ce passage, qui n'est pas directement lié à l'objet de la présente Convention, pourrait être transféré au RE pour alléger le corps de l'article.

⁵ Ce passage pourrait être déplacé dans le RE. D'une manière générale, il conviendrait d'insérer dans le RE un considérant global définissant les deux types d'annonces (communication commerciale audiovisuelle et publicité télévisée) en étendant les règles à la promotion d'une cause ou d'une idée.

privée ou par une personne physique dans le cadre d'une activité de commerce, liée aux affaires, artisanale ou de profession libérale dans le but de promouvoir la fourniture de biens ou de services, y compris les biens immeubles, les droits et les obligations, de promouvoir une cause ou une idée⁶, ou de produire quelque autre effet souhaité par l'annonceur [le parrain], ou par le radiodiffuseur, [moyennant rémunération] ;

...

"Œuvres audiovisuelles européennes" désigne des oeuvres de création dont la production ou la coproduction est contrôlée par des personnes physiques ou morales ~~européennes et/ou par des personnes physiques ou morales établies dans un État partie à la Convention.~~

- *Germany / Allemagne*

For the purposes of this Convention:

"Audiovisual media service" means a service which is under the editorial responsibility of a media service provider and the principal purpose of which is the provision of programmes in order to inform, entertain or educate, to the general public by means of an electronic communications/~~media~~ network. Such audiovisual media services are either television broadcasts or on-demand services and/or audiovisual commercial communication. [These services may take any form of economic activity, ~~including that of public service enterprises,~~ but exclude activities which are primarily non economic and which are not in competition with television broadcasting, ~~such as private websites and services consisting of the provision or distribution of audiovisual content generated by private users for the purposes of sharing and exchange within communities of interest;~~]

...

"Editorial responsibility" means the exercise of effective control both over the selection of the programmes and over their organisation either in a chronological schedule, in the case of television broadcast, or in a catalogue, in the case of on-demand services. [Editorial responsibility does not necessarily imply any legal liability under national law for the content or the services provided];

...

"Audiovisual commercial communication " means images with or without sound which are designed to promote, directly or indirectly, the goods, services or image of a natural or legal entity pursuing an economic activity. Such images accompany or are included in a programme in return for payment or for similar consideration or for self-promotional purposes. Forms of audiovisual commercial communication include, inter alia, television advertising, sponsorship, teleshopping and product placement. Rules of audiovisual commercial communication also apply to audiovisual communication designed to advance a cause or idea, or to bring about some other effect desired by the advertiser [the sponsor] or the **media service provider itself in return for payment or for similar consideration or for self-promotional purposes;**

"Television advertising" means any form of announcement broadcast whether in return for payment or for similar consideration or broadcast for self-promotional purposes by a public or private undertaking or natural person in connection with a trade, business, craft or profession in order to promote the supply of goods or services, including immovable property, rights and obligations, **in return for payment**, to advance a cause or idea, or to bring about some other effect desired by the advertiser [the sponsor] or the broadcaster itself [~~in return for payment~~];

...

⁶ Voir note 5.

- ***Italy / Italie***

We agree on the need of explanations about the concept of “audiovisual media service” in the ER: so we share the content of proposals in footnotes n. 5 and 6.

As regards footnote 7, about the concept of “editorial responsibility”, we think it could be useful to leave the last sentence just as it is, like in the new directive.

Referring to the concept of “*audiovisual commercial communication*” (page 5 T-TT doc.), we agree on the usefulness of the insertion of the word “*sponsor*” in add to the “*advertiser*”, because the experience demonstrated that a considerable amount of advertising is contained in sponsored programmes.

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

More acceptable, for the "former Yugoslav Republic of Macedonia", is the wider definition on the audiovisual commercial communication from the Convention since it covers not only the economic marketing but also the other forms of advertising including the forms of political advertising.

The same definition should refer both for the linear and the non-linear services.

The Macedonian Law on Broadcasting Activity is harmonized with the Directive regarding the concept on broadcasting European audiovisual works. However, the new concept for promoting production and distribution of audiovisual works, offered by the Convention, is also acceptable for Macedonia. According to this concept, the quota for audiovisual works would contain the works of all states, Parties to the Convention, including the non-European Countries. Should this be accepted, the name "European audiovisual works" should be changed, perhaps with the phrase "creative works from the Parties to the Convention".

- ***European Commission / Commission européenne***

The definitions in Article 2 are largely aligned with Article 1 of the AVSMD. The ECTT draft adds the definition of “Transmission” and retains its definition of “Retransmission”.

The definition of “audiovisual media service” is aligned with the AVMS Directive except for two instances due to the fact that a reference to community aquis would not be appropriate in a Council of Europe document:

1. The draft Convention refers to "electronic [communications/media] network" without quoting Art 2(a) of Directive 2002/21/EC.
2. The reference to Art 49 and 50 of the Treaty is replaced by a definition of "services" which builds upon Recital 13 AVMSD. The first part of the definition indeed might be a useful alignment between the two instruments, the second part (starting with... "and which are not in competition with...") seems better placed in the explanatory report.

The intention of the two indents in Art 1(a) AVMSD is to cover audiovisual media services as such and audiovisual commercial communication. The explanatory report should make clear that the wording of the Convention is different only for grammatical reasons but that the scope of both instruments is identical.

The last sentence of the definition of “Programme”- “Examples of programmes include feature length films, sports events, situation comedy, documentary, children's programmes and original drama” is not mentioned in the Convention but seems to be moved to the explanatory report, which should also highlight that both linear and non-linear services are made up of “programmes”.⁷

The definition of “Audiovisual commercial communication” in the draft contains a last sentence: “Rules of audiovisual commercial communication also apply to audiovisual communication designed to advance a cause or idea, or to bring about some other effect desired by the advertiser or the broadcaster itself.” This is not mentioned in the Directive and is specific to the Convention. This means that the Convention covers political advertising. This difference to the AVMSD should be explained in the explanatory report.

The same applies to the definition of “Television advertising” as to the scope which in the Convention includes advertising for a cause, idea or other effect. The formulation “in return for payment” at the end is aligned with the draft AVMSD.

A major difference appears in the definition of “European works”. The Directive defines European works in Article 1(n) i as originating either from Member States or other European countries which are party to the European Convention on Transfrontier Television. The qualification as *European* parties to the Convention is not required in the draft Convention. It has to be made clear that parties to the Convention that are also Member States of the EU are obliged to implement the Directive.

Additionally the Directive provides that works originating from third European States shall only be covered if works originating from the Member States are not subject to discriminatory measures in the third countries concerned. Together with the other differences in the definition of European works, this seems to put Member States under the obligation to implement two different and not easily to reconcile notions of "European works".

- ***Morocco / Maroc***

Concernant tout d’abord la notion de « responsabilité éditoriale », qui est fondamentale dans la définition de « service de médias audiovisuels » et de « fournisseur de services de médias », tout comme le groupe de rédaction, l’on s’interroge sur la pertinence du maintien de la phrase entre crochets au sein du paragraphe définissant cette notion. Plus encore, il s’avère impératif de la supprimer aussi bien du corps de la Convention que de celui de son Rapport Explicatif. En effet, si la définition du concept général de « responsabilité éditoriale » doit être fondée sur l’élément de « contrôle effectif », sans avoir à intégrer nécessairement l’idée de responsabilité juridique à l’égard des contenus vis-à-vis du droit interne de l’Etat Partie, autant n’en faire aucune mention.

⁷ Report of the preliminary draft Convention paper T-TT- GDR (2007)003.

Pour ce qui a trait à l'ajout de la dernière partie de la phrase visant à définir la notion d'« Œuvres audiovisuelles européennes », il n'est pas sans intérêt de noter sa pertinence au regard de la volonté d'élargissement du champ d'application territorial de la CETT. Cependant, et afin de prendre en considération aussi bien les intérêts des pays européens que non européens, il semblerait plus adéquat d'utiliser une expression neutre, comme par exemple celle d'« Œuvres originaires des Etats Parties ».

Article 3: *Field of application* / Article 3 : *Champ d'application*

- **France**

Annulé et remplacé par l'art. 1 § 2

Article 4: *Freedom of reception* / Article 4 : *Liberté de réception et de retransmission*
(Article 2a AVMSD)

- **France**

Les Parties assurent la liberté d'expression et d'information conformément à l'article 10 de la Convention de sauvegarde des droits de l'homme et des libertés fondamentales, garantissent la liberté de réception et ne s'opposent pas aux retransmissions sur leur territoire de services de médias audiovisuels conformes aux dispositions de la présente Convention.

- **European Commission / Commission européenne**

The Convention refers to Art 10 of the ECHR. The Convention asks Parties not to "restrict the retransmission on their territories of audiovisual media services which comply with the terms of this Convention" while the Directive forbids the restriction of retransmission on the territory of the Member States of audiovisual media services "for reasons which fall within the fields coordinated by this Directive". This seems to be a divergence between the two instruments, which is consequential to their different legal nature.

Article 5: *Duties of the transmitting Parties* / Article 5 : *Engagements des Parties de transmission*

- **France**

...

[1bis. Les Parties encouragent au niveau national les régimes de co-régulation et/ou d'autorégulation dans les domaines couverts par la présente Convention, dans la mesure où leurs systèmes juridiques l'autorisent. Ces régimes doivent être tels qu'ils soient largement acceptés par les principaux acteurs des Parties concernées et assurent une bonne application des règles]⁸

⁸ Cette disposition devrait être transférée, et explicitée, au sein du RE, la terminologie de la co-régulation et de l'autorégulation n'étant pas clairement établie.

2. Aux fins de la présente Convention, relèvent de la compétence d'une Partie le fournisseur de services de médias:

- qui est considéré comme étant établi dans cette Partie conformément au paragraphe 3 ;
- auquel s'applique le paragraphe 4.

3. Aux fins de la présente Convention, un fournisseur de services de médias est considéré comme étant établi dans une partie contractante, ci-après dénommée "Partie émettrice", dans les cas suivants:

(a) le fournisseur de services de médias a son siège social effectif dans cette Partie et les décisions rédactionnelles relatives au service de médias audiovisuels sont prises dans cette Partie;

(b) le fournisseur de services de médias a son siège social dans une Partie, mais les décisions rédactionnelles relatives au service de médias audiovisuels sont prises dans une autre Partie, il est réputé être établi dans la Partie où opère une partie importante des effectifs employés aux activités du service de médias audiovisuels; lorsqu'une partie importante des effectifs employés aux activités de service de médias audiovisuels opère dans chacune de ces Parties, le ~~distributeur~~ fournisseur de services de médias est réputé être établi dans la Partie où il a son siège social effectif; lorsqu'une partie importante des effectifs employés aux activités de service de médias audiovisuels n'opère dans aucune de ces Parties, le ~~distributeur~~ fournisseur de services de médias est réputé être établi dans la première Partie où il a commencé son activité conformément au droit de cette Partie, à condition qu'il maintienne un lien économique stable et réel avec cette Partie;

(c) le fournisseur de services de médias a son siège social dans une Partie, mais les décisions rédactionnelles relatives au service de médias audiovisuels sont prises dans un Etat qui n'est pas Partie à la présente Convention, ou vice-versa, il est réputé être établi dans la Partie en question si une partie importante des effectifs employés aux activités de service de médias audiovisuels y opère;

(d) si, en application des critères du paragraphe 3 de l'article 2 de la Directive [n°] du Parlement européen et du Conseil visant à la coordination de certaines dispositions législatives, réglementaires et administratives des États membres relatives à la prestation de services de médias audiovisuels, un ~~distributeur~~ fournisseur de services de médias est considéré comme étant établi dans un Etat membre de la Communauté européenne, ce fournisseur de services de médias est également considéré comme étant établi dans cet Etat aux fins de la présente Convention.

4. Les fournisseurs de services de médias auxquels ne s'applique pas le paragraphe 3 sont réputés relever de la compétence d'un État membre, appelé «Partie émettrice», dans les cas suivants:

(a) s'ils utilisent une liaison montante vers un satellite située dans cet État membre;

(b) si, n'utilisant pas une liaison montante vers un satellite située dans cet État membre, ils utilisent une capacité satellitaire relevant de cette Partie;

~~5. Chaque Partie émettrice prend des mesures pour empêcher tout abus des droits octroyés par la présente Convention, tels que définis à l'article 24a, ou les autres agissements frauduleux de fournisseurs de services de médias relevant de sa compétence, et coopère à cette fin avec les autres Parties [conformément aux dispositions des articles 6, 16, 19, 24, 24a] et avec le Comité permanent.~~

6. Chaque Partie émettrice prend les mesures appropriées afin de garantir qu'un fournisseur de services de médias qui tourne entièrement ou principalement son activité vers le territoire

d'une Partie autre que celle qui est compétente à son égard respecte les éventuelles règles plus strictes en matière de contenu des émissions, y compris la publicité, applicables aux radiodiffuseurs fournisseurs de services de médias de cette autre Partie si, ~~en vertu de l'article 28, elles ont été déclarées les Parties concernées~~⁹ les considèrent comme étant compatibles avec la Convention et si elles apportent une contribution équilibrée à tout programme de soutien de l'audiovisuel ou du cinéma mis en place par l'autre Partie.¹⁰

7. Dans l'éventualité où le paragraphe 4 ne permettrait pas de désigner la Partie émettrice, le Comité permanent examine la question conformément à l'article 21, paragraphe 1, alinéa a, de la présente Convention en vue ~~de désigner d'émettre un avis consultatif sur la désignation de cette Partie, et appelle la Partie ainsi concernée à se prononcer sur l'acceptation de sa compétence~~¹¹.

~~8. La présente Convention ne s'applique pas aux services de médias audiovisuels exclusivement destinés à être captés dans les Etats qui ne sont pas Parties à la présente Convention et qui ne sont pas reçus directement ou indirectement, à l'aide de matériel classique destiné aux particuliers par le public d'une ou de plusieurs Parties.~~

- **Germany / Allemagne**

...

~~{1bis. Parties shall encourage co-and/or self regulatory regimes at national level in the fields covered by this Convention to the extent permitted by their legal systems. These regimes shall be such that they are broadly accepted by the main stakeholders in the Parties concerned and provide for effective enforcement.}~~

...

~~{5. Each transmitting Party shall take measures to prevent abuses of rights conferred by this Convention, as defined in Article 24a, or other fraudulent behaviour by media service providers within its jurisdiction, and to this end shall cooperate with other Parties [as provided for in Articles 6, 16, 19, 24, 24a] and with the Standing Committee.~~

~~6. Each transmitting Party shall take appropriate measures to ensure that the media service provider that directs all or most of the activity to the territory of a Party other than that which has jurisdiction over the media service provider respects any stricter rules on programme content, including advertising, applicable to broadcasters in that other Party, when under Article 28 they have been found to be compatible with the Convention, and contributes proportionately to any audiovisual or cinematographic support scheme in that other Party.}~~

...

~~{8. This Convention shall not apply to audiovisual media services intended exclusively for reception in States which are not Party to this Convention and which are not received with standard consumer equipment directly or indirectly by the public in one or more Parties.}~~

- **Italy / Italie**

Article 5, paragraph 1bis, should be inserted in the ER rather than in the text of the new Convention so as to avoid introducing any additional burden on this point.

⁹ Voir la problématique exposée en introduction de ce document.

¹⁰ A rapprocher des articles 16, 24 et 24 bis, le cas échéant dans un chapitre spécifique ?

¹¹ Idem.

As it concerns Article 5, paragraphs 5 and 6, related to the measures ANR could adopt to prevent abuses of rights, it could be useful to leave them in the text of the Convention, considering that such measures are substantially different from the provisional measures described in Articles 24 and 24bis. In fact, the measures provided in the present rules give the ANR the opportunity to dispose of a range of atypical remedies against the risk of abuses of rights conferred by the Convention itself wider than those provided in Articles 24 and 24bis.

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

In Article 5, 1 bis should be kept in the text of the Convention.

Concerning Article 5 Point 3(b), the Explanatory Report (ER) should give an explanation how to calculate "significant part of the workforce".

Point 5 of Article 5 is repeated in another part of the Convention, thus it is not necessary.

The proposals from Point 6 of Article 5 endanger the principle of "country of origin". It can not be expected that the services from the countries, Parties to the Convention would respect all rules concerning the programs in the states where they will be broadcast or retransmitted. It is enough if the rules for advertising are respected.

Point 8 of Article 5 should be placed in Article 1 Point 3.

- ***European Commission / Commission européenne***

The wording of Art 5 of the draft Convention and Art 2 of the AVMSD are largely aligned.

Article 6: Provision of information / Article 6 : Transparence

- ***France***

~~[1. Les responsabilités des distributeurs fournisseurs de services de médias sont, {le cas échéant}, spécifiées de manière claire et suffisante dans l'autorisation toute autorisation pouvant être délivrée par l'autorité compétente de chaque Partie, dans le contrat pouvant être conclu avec celle-ci, ou par toute autre mesure juridique].~~

...

~~[3. Les Parties à la Convention échangent les informations nécessaires pour empêcher tout abus des droits octroyés par la présente Convention et tout autre agissement frauduleux de la part de fournisseurs de services de médias relevant de leur compétence.]~~

- ***Germany / Allemagne***

[1. The responsibilities of media service providers shall, {where applicable}, be clearly and adequately specified in the authorisation issued by, or contract concluded with, the competent authority of each Party, or by any other legal measure].

...

~~[3. Parties to the Convention shall exchange information needed to prevent abuses of rights conferred by this Convention and other fraudulent behaviour by media service providers within their jurisdiction.]~~

- ***Italy / Italie***

Article 6, para. 1: It could be useful to leave the provision as it is, included the words now in brackets: on one hand, this paragraph allows the Convention to deal with the present regime of authorization and licensing; on the other hand the insertion of the parenthetical sentence “where applicable” avoids to collide with the regime of those providers who – as it can be read in the footnote 18 – would not be subject to licensing and authorization anymore.

The remark expressed above is valid also for Article 6, paragraph 2, letter d) and 3, concerning the information which should be provided by the Parties to the Convention. The latter paragraph could be left there, apart from the decisions regarding articles 5.5 and 5.6.

- ***European Commission / Commission européenne***

The Convention provides that the responsibilities of broadcasters must be clearly and adequately specified in the authorisation issued by, or contract concluded with, the competent authority of each Party, or by any other legal measure [Art 6(1)]. The drafting group added “where applicable”, to make clear that providers of non-linear audiovisual media services are not usually subject to a licensing or authorization regime.

Art 6(2) which asks for minimum information about broadcasters that must be available was brought into the AVMS Directive.

The third Paragraph, the proposal to exchange information between the Parties to prevent abuse and fraudulent behaviour, seems better placed in the context of Art 5 and be better aligned with Art 23b AVMSD.

Article 7: Respect for human dignity and protection of minors / Article 7 : Responsabilités du radiodiffuseur

- ***France***

1. Tous ~~[les éléments]/[programmes]~~ des services de médias audiovisuels doivent, par leur présentation et leur contenu, respecter la dignité de la personne humaine et les droits fondamentaux d'autrui.

...

- ***Germany / Allemagne***

1. All ~~[elements]/[programmes]~~ of Audiovisual media services, as concerns their presentation and content, shall respect the dignity of the human being and the fundamental rights of others.

In particular they shall not:

- a) contain any incitement to hatred based on race, sex, religion or nationality;
- b) give undue prominence to violence.

2. ~~Providers of a~~ All audiovisual media services **providers** shall ensure that news fairly present facts and encourage the free formation of opinions.

3. The Parties shall take appropriate measures [...] to ensure the adequate protection of minors by all audiovisual media services.

In particular, they will ensure that:

- television broadcasts under their jurisdiction do not include programmes which might seriously impair the physical, mental or moral development of minors, in particular programmes that involve pornography or gratuitous violence. This provision shall be extended to other television programmes which are likely to impair the physical mental or moral development of minors, except where it is ensured, by selecting the time of the broadcast or by any technical means, that minors in the area of transmission will not normally hear or see such broadcasts.

- on-demand services provided by media service providers under their jurisdiction which might seriously impair the physical, mental or moral development of minors are only made available in such a way that ensures that minors will not normally hear or see such on-demand services.

- ***Italy / Italie***

As far as the requirement described in letter b ("*give undue prominence to violence*") is concerned, we agree on the option of maintaining it in the text of the new Convention.

As to article 7, paragraph 3 and the sentence referred to the "*appropriate measures*", it could be better to leave the text as it is, not including any other reference to co/self regulation's measures.

- ***European Commission / Commission européenne***

Concerning "respect for human dignity" there are differences with regard to wording "shall not *prejudice* respect for human dignity" and scope; AVMSD refers to commercial communication. It is self understood that all programmes have to respect human dignity and fundamental rights.

With regard to television and the protection of minors (pornography) the draft Convention seems to be better in line with Art 22 of the Directive. However, Art 22 (3) AVMSD obliges the Member States to identify programmes broadcasted in unencoded form that can harm minors, by an acoustic warning or by the presence of a visual symbol throughout their duration. There is no such provision in the Convention.

On the other hand only the Convention obliges all providers of audiovisual media services to ensure that "news fairly presents facts and events and encourages the free formation of opinions".

- ***Morocco / Maroc***

Concernant l'article 7 alinéa 3, par rapport à la disposition visant à assurer, par le choix de l'heure de l'émission, la garantie de la protection adéquate du jeune public par tous les

services de médias audiovisuels, il est à noter que ce mécanisme n'est pas à même d'assurer la protection escomptée en raison des décalages horaires entre les Etats Parties (actuels et potentiels). L'institution de l'obligation d'accès contrôlé aux programmes susceptibles de nuire à l'épanouissement physique ou mental du jeune public semble offrir une solution plus efficace et, surtout, opérationnelle.

Article 7bis: Access for disabled persons / Article 7bis : Personnes handicapées

- **France**

⊕ Les Parties incitent les fournisseurs de services de médias relevant de leur compétence à faire en sorte que leurs services deviennent progressivement, ~~[et dans la mesure du possible]~~, accessibles aux personnes présentant des déficiences visuelles ou auditives.

- **Germany / Allemagne**

1. Parties shall encourage media service providers under their jurisdiction to ensure that their services are gradually ~~[and where feasible]~~ made accessible to persons with a visual and hearing disability.

- **European Commission / Commission européenne**

Art 7bis (1) – except for the square brackets - is aligned with Art 3c AVMSD.

Art 7bis (2) asks the Parties to report to the Standing Committee on implementations of the measures concerning the access for disabled persons. For EU member states, this provision would entail an additional reporting obligation to the general reporting obligations according to Art 26 AVMSD. In general it can be asked whether the Convention should intend to duplicate the reporting done in the framework of Community Law.

Article 8: Right of reply / Article 8 : Droit de réponse (Art 23 AVMSD)

- **France**

⊕ Chaque Partie de transmission s'assure que...

- **European Commission / Commission européenne**

The current draft maintains the different wording with regard to the right of reply.¹²

¹² The Convention refers to Art 23 and Recital 38a of the EU draft AVMS directive. The Directive limits the right of reply to persons “whose legitimate interests, in particular reputation and good name, have been damaged by an assertion of incorrect facts in a television programme “[Art 23(1)]. The text of the Convention [Art 8(1)] does not lay down specific limits for the exercise of the right of reply although the Explanatory note to the Convention notes that a right of reply within the meaning of the Convention is a right exercised by a person “in order to correct inaccurate facts or information, in cases where such facts or information concern him/her or constitute an attack on his/her legitimate rights (especially in regards to his/her dignity, honour or reputation). The Directive provides for the possibility to reject an application for the exercise of the right of reply in certain circumstances and provides for disputes relating to the right of reply to be subject to judicial review (Art 23 (4) and (5)).

In the explanatory report, reference will be made to Recommendation Rec (2004)16 of the Committee of Ministers on the right of reply in the new media environment. It furthermore could be mentioned in the explanatory report that the differences between the Convention and the TVWF Directive have not led to difficulties in the implementation of the two instruments.

Article 9: Access of the public to information by means of television / Article 9 : Accès du public à l'information télévisée

- France

1. Les Parties veillent à ce que, pour la réalisation de brefs reportages d'actualité, tout organisme de radiodiffusion ~~télévisuelle~~ établi dans un État partie ait accès, dans des conditions équitables, raisonnables et non discriminatoires, à des événements d'un grand intérêt pour le public qui font l'objet d'une transmission en exclusivité par un radiodiffuseur relevant de leur compétence.

{1bis. Si un autre radiodiffuseur établi dans le même État partie que le radiodiffuseur sollicitant l'accès a acquis des droits d'exclusivité pour la manifestation en question, c'est à ce premier radiodiffuseur que l'accès doit être demandé.

2. Les Parties veillent à ce que cet accès soit garanti en permettant aux radiodiffuseurs de choisir librement de brefs extraits à partir du signal du radiodiffuseur qui assure la transmission, moyennant au minimum l'indication de leur source.

3. En alternative au paragraphe 2, une Partie peut établir un système équivalent permettant d'offrir, par d'autres moyens, l'accès dans des conditions équitables, raisonnables et non discriminatoires.

4. Ces extraits ne sont utilisés que dans des programmes d'information générale, [et ne peuvent être utilisés dans des services à la demande que si le fournisseur de services en question diffuse ce même programme en différé]¹³.

5. Sans préjudice des paragraphes 1 à 4 du présent article, les Parties veillent, conformément à leur régime juridique et à leurs pratiques, à ce que les modalités et conditions régissant l'utilisation de ces brefs extraits soient définies, notamment en ce qui concerne les éventuels mécanismes d'indemnisation, la durée maximale des extraits et les délais limites pour leur transmission. Lorsqu'une indemnisation est prévue, elle n'excède pas les coûts supplémentaires directement occasionnés par l'offre de l'accès.}

- Germany / Allemagne

1. Parties shall ensure that for the purpose of short news reports, any broadcaster established in a Party has access on a fair, reasonable and non-discriminatory basis to events of high interest to the public which are transmitted on an exclusive basis by a broadcaster under their jurisdiction.

¹³ Le sens de ce passage n'est pas clair, un service à la demande étant mécaniquement diffusé en différé.

{1bis. If another broadcaster established in the same Party as the broadcaster seeking access has acquired exclusive rights to the event in question, access must be sought from that broadcaster.

2. Parties shall ensure that such access is guaranteed by allowing broadcaster to freely choose short extracts from the transmitting broadcaster's signal with, unless impossible for reasons of practicality, at least the identification of their source.

3. As an alternative to paragraph 2, a Party may establish an equivalent system which achieves access on a fair, reasonable and non-discriminatory basis through other means.

4. Such extracts shall be used solely for general news programmes and may be used in on-demand services only if the same programme is offered on a deferred basis by the same media service provider.

5. Without prejudice to paragraphs 1 to 4 of this article, Parties shall ensure, in accordance with their legal systems and practices, that the modalities and conditions regarding the provision of such short extracts are defined, in particular any compensation arrangements, the maximum length of extracts and time limits regarding their transmission. Where compensation is provided for, it shall not exceed the additional costs directly incurred in providing access.}

- ***Italy / Italie***

About the notion of “*events of high interest*”, that includes events of high interest not limited to events which have been “listed”, we share the opinion expressed in the footnote 33 concerning the opportunity to explain in the ER the wideness of this concept. We also agree also with the arguments explained in the subsequent footnote referring to the need of legal certainty, which imposes to insert here such detailed provisions referring to the discipline of exclusive rights on the events in question.

- ***European Commission / Commission européenne***

The draft Article is aligned with the wording of Art 3k of the AVMS. The explanatory report surely will explain the importance of the right to short-reporting, with regard to the right to information (Art 10 ECHR).

Article 9a: Access of the public to events of major importance by means of television / Article 9bis : Accès du public aux événements d'importance majeure via la télévision

- ***France***

...

2. Les Parties s'assurent par des moyens appropriés, en respectant les garanties juridiques énoncées par la Convention de sauvegarde des droits de l'homme et des libertés fondamentales et, le cas échéant, par la Constitution nationale, que les radiodiffuseurs relevant de leur compétence exercent les droits d'exclusivité qu'ils ont acquis après la date d'entrée en vigueur du Protocole d'amendement à la Convention européenne sur la télévision transfrontière de manière à ne pas empêcher une partie importante du public d'une autre Partie de suivre, intégralement ou partiellement en direct, ou si nécessaire ou approprié pour

des raisons objectives d'intérêt général, intégralement ou partiellement en différé, sur une télévision à accès libre, conformément aux dispositions prises par cette autre Partie en application du paragraphe 1, les événements que cette autre Partie a désignés, en respectant les exigences suivantes :

- (a) la Partie mettant en oeuvre les mesures mentionnées au paragraphe 1 établit une liste d'événements, nationaux ou non, qu'elle juge d'une importance majeure pour la société ;
- (b) la Partie établit cette liste selon une procédure claire et transparente, en temps opportun et utile ;
- (c) la Partie détermine si ces événements doivent être transmis intégralement ou partiellement en direct ou, si nécessaire ou approprié pour des raisons objectives d'intérêt général, transmis intégralement ou partiellement en différé ;
- (d) les mesures prises par la Partie qui établit la liste sont proportionnées et aussi détaillées que nécessaire afin de permettre aux autres Parties de prendre les mesures mentionnées dans ce paragraphe ;
- (e) la Partie établissant la liste communique au Comité permanent cette liste et les mesures correspondantes dans un délai fixé par le Comité permanent, qui en informe toutes les Parties et leur transmet la liste et les mesures correspondantes dans les plus brefs délais¹⁴ ;
- (f) ~~les mesures prises par la Partie établissant la liste entrent dans le cadre des limitations indiquées dans les lignes directrices du Comité permanent mentionnées au paragraphe 3, et ont reçu un avis favorable du Comité permanent.~~ les Parties ont été appelées à se prononcer sur la liste et les mesures correspondantes, en cherchant notamment à savoir si les mesures prises par la Partie établissant la liste entrent dans le cadre des limitations indiquées dans les lignes directrices du Comité permanent mentionnées au paragraphe 3, et ont donné leur approbation¹⁵

Les Parties conviennent que les mesures se rapportant à ce paragraphe ne s'appliquent qu'aux événements publiés par le Comité permanent dans la liste annuelle mentionnée au paragraphe 3 et aux droits d'exclusivité acquis après l'entrée en vigueur du présent Protocole d'amendement.

3. Une fois par an, le Comité permanent :

- (a) publie une liste consolidée de tout événement désigné et des mesures correspondantes communiqués par les Parties conformément au paragraphe 2(e) ou 4 ;
- (b) établit des lignes directrices adoptées à la majorité des trois-quarts des membres en complément aux conditions énumérées au paragraphe 2 (a) à (e) afin d'éviter des différences entre la mise en oeuvre de cet article et celle des dispositions correspondantes du droit communautaire.

4. Lorsqu'une Partie dispose d'une liste et de mesures correspondantes conformes à l'article [3i] de la Directive [n°] du Parlement européen et du Conseil (Directive sur les services de médias audiovisuels) publiée au Journal officiel des Communautés européennes, ~~le Comité permanent, à la demande de la Partie concernée, décide de publier~~ la Partie concernée peut demander aux Parties qui ne sont pas membres de l'Union Européenne de se prononcer sur cette liste et les mesures correspondantes dans le cadre de la présente Convention.

¹⁴ L'article pourrait également fixer ce délai.

¹⁵ Voir la problématique exposée en introduction de ce document. Le RE expliquera que chaque Partie se prononce selon son ordre juridique interne, dans le but de conférer force juridique opposable. Il sera également précisé que la liste ne pourra s'appliquer par conséquent qu'aux Parties l'ayant effectivement approuvée.

- *Germany / Allemagne*

1. Each Party retains the right to take measures to ensure that a broadcaster within its jurisdiction does not broadcast on an exclusive basis events which are regarded by that Party as being of major importance for society in such a way as to deprive a substantial proportion of the public in that Party of the possibility of following such events by live coverage or deferred coverage on free television. If it does so, the Party concerned may have recourse to the drafting of a list of designated events which it considers to be of major importance for society.

2. Parties shall ensure by appropriate means, respecting the legal guarantees granted by the Convention for the Protection of Human Rights and Fundamental Freedoms as well as, where appropriate, the national constitution, that a broadcaster within their jurisdiction does not exercise the exclusive rights purchased by that broadcaster following the date of entry into force of the Protocol amending the European Convention on Transfrontier Television in such a way that a substantial proportion of the public in another Party is deprived of the possibility of following events which are designated by that other Party via whole or partial live coverage or where necessary or appropriate for objective reasons in the public interest, whole or partial deferred coverage on free television as determined by that other Party under paragraph 1, respecting the following requirements:

(a) the Party implementing the measures referred to in paragraph 1 shall draw up a list of national or non-national events which are considered by that Party as being of major importance for society;

(b) the Party shall do so in a clear and transparent manner in due and effective time;

(c) the Party shall determine whether these events shall be available via whole or partial live coverage, or where necessary or appropriate for objective reasons in the public interest, whole or partial deferred coverage;

(d) the measures taken by the Party drawing up the list shall be proportionate and as detailed as necessary to enable other Parties to take measures referred to in this paragraph;

(e) the Party drawing up the list shall notify the list and the corresponding measures to the Standing Committee, the time limit for which shall be fixed by the Standing Committee;

(f) the measures taken by the Party drawing up the list shall be within the limitations of the guidelines of the Standing Committee referred to in paragraph 3 and the Standing Committee must have given a positive opinion on the measures.

Measures based on this paragraph shall apply only to those events published by the Standing Committee in the annual list referred to in paragraph 3 and to those exclusive rights purchased after the entry into force of this amending Protocol.

3. Once a year the Standing Committee shall:

(a) publish a consolidated list of any enlisted events and corresponding measures notified by Parties in accordance with paragraph 2 (e) or 4;

(b) draw up guidelines to be adopted by a majority of three quarters of the members in addition to the requirements listed up in paragraph 2 (a) to (e) in order to avoid differences between the implementation of this Article and that of corresponding European Community provisions.

4. Where Parties have a list and corresponding measures in compliance with article [3i] of Directive [No] of the European Parliament and the Council (Audiovisual Media Services Directive) published in the Official Journal of the European Communities, the Standing

Committee may, upon request by the Party concerned, decide to publish this list and corresponding measures in the framework of the present Convention.

5. If measures of a Party are published pursuant to the procedure in paragraph 3, those regulations are binding for another Party unless that other Party refuses within six months to accept the regulations. Refusal to accept the regulations is only possible if the provisions of the Party in question contravene the European Convention for the Protection of Human Rights and Fundamental Freedoms or, where appropriate, the national constitution. The provisions that are accepted in a Party under the aforementioned procedure must be published in the Official Journal of the respective Party.¹⁶

- *Italy / Italie*

About the problem of effectiveness of the rights conferred by the Convention, a reference might be inserted regarding the possibility for the stakeholder, whose interest would be harmed by a list of events, to appeal the list before the judiciary competent court of the State of transmission.

As to the need to draw up guidelines (paragraph 3, letter b), it should be better to replace the expression “once a year” with “every three years or when required by the majority of the State Parties in the Standing Committee”.

As regards paragraph 4 (concerning the decision of the Standing Committee to publish some lists), we do not think it is necessary to amend the former provision contained in the present paragraph 3.

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

The existing Article 9a of the Convention should be changed in accordance to the Opinion of the Legal Department of the Council of Europe. Since the Standing Committee has no legal legitimacy to take decisions, it should be allowed that, after a national list with events of major importance received positive opinion by the Standing Committee, each Party to the Convention should bring a decision whether it will recognize the list and the measures of that country.

¹⁶ Cf. Article 4 (4) of the Interstate Treaty on Broadcasting and Telemedia of the German Länder from 31 August 1991 as amended most recently by the Ninth Interstate Treaty for amending the Interstate Broadcasting Treaties from 10 October 2006: “If provisions of a state that has ratified the European Convention on Transfrontier Television as amended according to the provisions of the Protocol from 9 September 1998 are published pursuant to the procedure in Article 9 a (3) of the Convention, those regulations apply for broadcasters in the Federal Republic of Germany in accordance with sentence 4 unless the Minister Presidents of the States unanimously refuse within six months to accept the regulations. Refusal to accept the regulations is only possible if the provisions of the State in question contravene the Constitution or the European Convention for the Protection of Human Rights and Fundamental Freedoms. The provisions that apply to broadcasters in the Federal Republic of Germany under the aforementioned procedure must be published in the Official journals of the States. Upon the date of the latest publication in the Official Journals of the States the broadcasting of major events in encrypted form and in return for payment is only permitted for that State if the television broadcaster enables a transmission there in a freely accessible channel pursuant to the published provisions of the respective State.” (Unofficial translation).

We disagree with the part of the Legal Opinion concerning Article 9a where it is suggested that the parties could object either to some of the events included in the list or to the entire list. The position of the "former Yugoslav Republic of Macedonia" is that the Parties to the Convention can either recognize the entire list or not recognize it at all, since if each country can recognize the same list with different composition, the further actions to be taken according to that list will be too complicated.

Notes on the Guidelines on Implementation of Article 9a

The experience of the "former Yugoslav Republic of Macedonia", regarding the process of evaluation of our List of Events of Major Importance, says that the Guidelines for Implementation of Article 9a should be changed, i.e. there should be some clarification concerning the procedure for preparing the list and concerning the criteria for qualifying certain event as an "event of major importance".

As far as the procedure is concerned, the duration of each of the phases of the preparation of the list should be defined. We were faced with claims that some of the phases were too short while the Guidelines have no rules on the optimal duration of each of the phases.

It is important that the criteria are objective to their maximum i.e. that there would be objective measures, data to prove the importance of a certain event both for the countries where audience measurement data are available and for the countries where there are no such data. For example, the proposal of the Austrian delegate, given on the last Standing Committee meeting, that a minimum of 10% rating should be a criterion to claim an event is of major importance, is quite acceptable. However, this can be applicable only in the countries where there are regular audience measurements.

In general, it should be considered which events could find their place on the national lists. For example, will the qualification matches for some European or world sporting event, no matter which is the sport in question, be considered as events of major importance provided that they have a 10% rating. This is important in order to avoid repeating the situation with the List of Events of Major Importance of the "former Yugoslav Republic of Macedonia". Namely, during the process of evaluating the List, it was insisted that the qualification matches were not to be considered as events of major importance, while there is a List recognized in accordance to the Directive (the Irish List), where the qualification matches of the football national team are considered as events of major importance.

Also, some more thinking should be done concerning the period for which data should be provided. For all events of the list, it will probably be quite enough to submit data from the last year when each of them happened.

Concerning the criteria for the countries where there are no audience measurement data, good indicators would probably be some of the data that the "former Yugoslav Republic of Macedonia" tried to provide:

Treatment of the events on the front and sports pages of the daily newspapers (it appears enough to make analysis only of the daily with biggest circulation);

Data on how wide that sport is spread in the country (number of junior and senior clubs);

Data on the attendance of the matches (Although this criterion is not of much use. In small countries, such as Macedonia, where the capacity of, for example, the biggest hall for handball is 3.000 seats, the information that all the tickets are sold for all the matches does not mean anything).

- ***European Commission / Commission européenne***

The provisions concerning "listed events" (Art 9a Convention and Art 3a TVWF Directive) have not been revised. Art 9a (4) is new in the draft Convention, which allows parties that already have lists published in the Official Journal of the European Communities to ask the Standing Committee to publish these list. Even though, Art 9a (3) b of the current European Convention on Transfrontier Television (ECTT) obliges the Standing Committee to draw up guidelines in order to avoid differences between the implementation of this provision and the corresponding one in the Directive (Art 3a), this provision highlights the problems which result from the transformation of provisions of Community law in a Directive into provisions of international law: Whereas Commission decisions lists submitted by Member States are subject to judicial review by the ECJ it is not evident how similar standards of legal protection would be granted in the Convention framework.

Article 10: Cultural objectives / Article 10 : Objectifs culturels

- ***France***

1. Chaque Partie émettrice veille, chaque fois que cela est réalisable et par des moyens appropriés, à ce qu'un ~~télédiffuseur~~ radiodiffuseur de télévision relevant de sa compétence réserve à des œuvres européennes une proportion majoritaire de son temps de transmission, à l'exclusion du temps consacré aux informations, à des manifestations sportives, à des jeux, à la publicité, aux services de télétexte et au téléachat. Cette proportion, compte tenu des responsabilités du radiodiffuseur à l'égard de son public en matière d'information, d'éducation, de culture et de divertissement, devra être obtenue progressivement sur la base de critères appropriés.

{1bis. Les Parties veillent, chaque fois que cela est réalisable et par des moyens appropriés, à ce que les radiodiffuseurs de télévision réservent au moins 10 % de leurs temps d'antenne, à l'exclusion du temps consacré aux informations, à des manifestations sportives, à des jeux, à la publicité ou aux services de télétexte, ou alternativement, au choix de l'État partie, 10 % au moins de leur budget de programmation, à des oeuvres européennes émanant de producteurs indépendants de tout radiodiffuseur. Cette proportion, compte tenu des responsabilités des radiodiffuseurs à l'égard de leur public en matière d'information, d'éducation, de culture et de divertissement, devra être obtenue progressivement sur la base de critères appropriés ; elle doit être atteinte en réservant une proportion adéquate à des oeuvres récentes, c'est-à-dire des œuvres diffusées dans un laps de temps de cinq ans après leur production.}

...

3.(a)–Les Parties s'engagent à rechercher ensemble les instruments et procédures les plus adéquats pour soutenir, sans discrimination entre les radiodiffuseurs, l'activité et le développement de la production européenne, notamment dans les Parties à faible capacité de production audiovisuelle ou à aire linguistique restreinte.

~~{3.(b)}~~bis. Les Parties veillent à ce que les services à la demande proposés par les fournisseurs de services de médias relevant de leur compétence promeuvent, lorsque cela est réalisable et par des moyens appropriés, la production des œuvres européennes ainsi que l'accès à ces dernières. Cet effort de promotion pourrait être lié, entre autres, à la contribution financière de ces services à la production et à l'acquisition de droits sur les œuvres européennes, ou à la proportion et/ou mise en avant des oeuvres européennes dans le catalogue de programmes proposé par le service.

...

~~{5. Chaque Partie soumet~~ communique au Comité permanent, au plus tard à la fin de la troisième année à compter de la date d'entrée en vigueur de la présente disposition, puis tous les trois ans, un rapport sur la mise en oeuvre des mesures énoncées aux paragraphes 1, ~~{1bis}~~, 3 et ~~3bis~~. Le Comité permanent examine ces rapports et peut formuler un avis sur les résultats obtenus.]

5bis. Lorsqu'une Partie soumet un rapport conformément à la Directive [n°] du Parlement européen et du Conseil (Directive sur les services de médias audiovisuels), celle-ci peut communiquer un rapport au Comité permanent aux mêmes échéances.

- ***Germany / Allemagne***

1. Each transmitting Party shall ensure, where practicable and by appropriate means, that a television broadcaster within its jurisdiction reserves for European works a majority proportion of its transmission time, excluding the time appointed to news, sports events, games, advertising, teletext services and tele-shopping. This proportion, having regard to the broadcaster's informational, educational, cultural and entertainment responsibilities to its viewing public, should be achieved progressively, on the basis of suitable criteria.

~~{1bis. Parties shall ensure, where practicable and by appropriate means, that television broadcasters reserve at least 10% of their transmission time, excluding the time appointed to news, sports events, games, advertising and teletext services, or alternatively, at the discretion of the Party, at least 10% of their programming budget, for European works created by producers who are independent of broadcasters. This proportion, having regard to broadcasters' informational, educational, cultural and entertainment responsibilities to its viewing public, should be achieved progressively, on the basis of suitable criteria; it must be achieved by earmarking an adequate proportion for recent works, that is to say works transmitted within five years of their production.}~~

...

~~{3.(b)}~~ Parties shall ensure that on-demand services provided by media service providers under their jurisdiction promote, where practicable and by appropriate means, production of and access to European works. Such promotion could relate, inter alia, to the financial contribution made by such services to the production and rights acquisition of European works or to the share and/or prominence of European works in the catalogue of programmes proposed by the service.

...

~~{5. Each Party shall forward to the Standing Committee, not later than the end of the third year after the entry into force of this provision and every three years thereafter, a report on the implementation of the measures set out in paragraphs 1, [1bis] 3 and 3b. The Standing Committee will examine the reports and may give an opinion on the results arrived at.}~~

- ***Italy / Italie***

As far as the imposition of a certain time of transmission of EU works is concerned, the need of promotion of EU production keeps on being a priority for the State Members of EU; however, the risk of burdening not European Parties with such a kind of obligations could be surely avoided by inserting (as in the present version of the article 10) the sentence “where practicable”, and introducing in the ER a clarification about the States which could take advantage of that expression. So, we think the paragraphs 1bis and 3.b are appropriate as they are in the current version. The same remarks is worth also for the content of footnote 44, about the need to standardize the timing to reporting cycle for linear and not linear services.

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

If the concept for promoting production and distribution of audiovisual works, proposed in the Convention, is adopted, in order to ensure a higher quality of the works, and thus an opportunity for their circulation in transfrontier context, an issue to be considered is that the quota on audiovisual works should include only stock programs with long-term value and repeated value.

Point 3(a) of Article 10 should be applied to all services not only to television.

Concerning point 5 of Article 10, the periods for sending reports on fulfilling the quota to the Standing Committee, should be synchronized with the periods from the Directive, in case if the concept on audiovisual works is the same as the one in the Directive

However, having in mind the status of the Standing Committee, an acceptable solution for us would also be if the Parties to the Convention have no obligation at all to regularly report on the implementation of the obligation from Article 10.

- ***European Commission / Commission européenne***

The draft Convention is largely in line with the Directive's provisions and eliminates differences that existed with regard to independent production. The reporting obligation of the Parties to the Standing Committee concerning the implementation of the measures concerning European works is new. These are however not synchronized with the EU-reporting obligations: three years in the Convention and two, respectively four years in the Directive.

Parties to the Convention are asked to look together for the most appropriate means to support the development of European production, Art 10.3(a), while there is no such provision in the Directive.

See also the difference in the definitions.

Article 10a: Media pluralism / Article 10bis : Pluralisme des médias**- France**

1. Dans l'esprit de coopération et d'entraide qui sous-tend la présente Convention, les Parties s'efforcent d'éviter que ~~[les services de programmes]~~[les services de médias audiovisuels] transmis ou retransmis par un radiodiffuseur ou par d'autres personnes physiques ou morales relevant de leur compétence, ~~au sens de l'article 3,~~ ne mettent en danger le pluralisme des médias.¹⁷

~~[2. À cette fin, les Parties garantissent la pleine transparence de la propriété des services de médias audiovisuels et adoptent des mesures réglementaires, le cas échéant et compte tenu des caractéristiques de chacun des services de médias audiovisuels, afin d'éviter une concentration de ces derniers telle qu'elle pourrait menacer la démocratie ou le rôle des médias dans les processus démocratiques.~~

~~3. Les mesures réglementaires visées au paragraphe 2 devraient tenir particulièrement compte du besoin d'une séparation réelle et manifeste entre l'exercice du pouvoir politique ou les influences politiques et le contrôle des services de médias audiovisuels ou les décisions relatives au contenu des programmes.]~~

~~4. Les radiodiffuseurs de service public devraient être incités à jouer un rôle actif dans la promotion de la cohésion sociale et l'intégration de toutes les communautés, groupes sociaux et générations, dont les groupes minoritaires, les jeunes, les personnes âgées, les catégories sociales défavorisées, les personnes handicapées etc., tout en respectant leurs identités et leurs besoins respectifs. Dans ce contexte, il convient de porter attention aux contenus créés par et pour ces groupes, à leur accès aux médias de service public, à leur présence dans ces médias et à la manière dont ils y sont représentés. Les questions d'égalité entre les femmes et les hommes doivent aussi être dûment prises en compte.~~

- Germany / Allemagne

1. The Parties, in the spirit of co-operation and mutual assistance which underlies this Convention, shall endeavour to avoid that ~~[programme services]~~[audiovisual media services] transmitted or retransmitted by a broadcaster or any other legal or natural persons within their jurisdiction, within the meaning of Article 3, endanger media pluralism.

~~[2. To this end Parties will **guarantee full promote** transparency of ownership of audiovisual media services and adopt regulatory measures, if appropriate and having regard to the characteristics of each audiovisual media service, with a view to preventing such a level of media concentration as could pose a risk to democracy or the role of the media in democratic processes.~~

~~3. Regulatory measures as referred to under Paragraph 2 should pay particular attention to the need for effective and manifest separation between the exercise of political authority or influence and control of the audiovisual media service or decision making as regards programme content.]~~

¹⁷ Les références aux instruments pertinents du Conseil de l'Europe pourront être mentionnées dans le Rapport explicatif.

4- **3. Public service broadcasters as well as private broadcasters** should be encouraged to play an active role in promoting social cohesion and integrating all communities, social groups and generations, including minority groups, young people, the elderly, underprivileged and disadvantaged social categories, disabled persons, etc., while respecting their different identities and needs. In this context, attention should be paid to the content created by and for such groups, and to their access to, and presence and portrayal in, ~~public service broadcasting programmes~~ **programmes**. Due attention should also be paid to gender equality issues.

- *Italy / Italie*

We share the purpose of strengthening the rules about media pluralism. At this extent we agree on the current version of paragraphs 2, 3, 4 of the present article. As to the latters and the doubts reported in footnote 48 (if such provisions fit into a Convention which is about cross-border broadcasting), we stress that they would not be the sole provisions referring to “internal” issues.

However, we suggest to amend paragraph 1, because it does not seem realistic that programme services or audiovisual media services themselves could ever “endanger” media pluralism; this provision could rather provide the duty of the State Parties to encourage and guarantee media pluralism through the diversity of the audiovisual and media offers of contents and services.

- *European Commission / Commission européenne*

This is one of the areas where the Commission welcomes all endeavours to draw from the rich Council of Europe aquis and to incorporate elements from recommendations in this binding instrument.

- *Morocco / Maroc*

La disposition de l’article 10bis.4, incitant les radiodiffuseurs de service public à jouer un rôle actif dans certains domaines et pour des groupes sociaux particuliers, la question s’est posée de savoir si la CETT constituait le cadre adéquat à cet effet. La thématique du rôle du service public semble mériter un traitement spécifique, global et intégré, dans une démarche à même de promouvoir une vision rapprochée de la mission des radiodiffuseurs de service public européens et non européens, en tant qu’éléments essentiels pour une communication pluraliste, stimulatrice de la cohésion sociale et respectueuse de la richesse de la diversité culturelle.

Article 11: General standards / Article 11 : Normes générales

- *Germany / Allemagne*

...

4. Audiovisual commercial communications must not cause moral or physical ~~harm~~ detriment to minors. Therefore they shall not directly exhort minors to buy or hire a product or service by exploiting their inexperience or credulity, directly encourage them to persuade their parents or others to purchase the goods or services being advertised, exploit the special trust

minors place in parents, teachers or other persons, or unreasonably show minors in dangerous situations.

4bis. Parties should encourage audiovisual service providers to develop codes of conduct regarding inappropriate audiovisual commercial communication, accompanying or included in children's programming, of ~~potentially dangerous toys and games~~ foods and beverages containing nutrients and substances with a nutritional or physiological effect, in particular those such as fat, trans-fatty acids, salt sodium and sugars, excessive intakes of which in the overall diet are not recommended.

...

- ***Italy / Italie***

Only a remark is stressed referring to the word "harm" in para. 4: it is a too strong word, which could affect and limit the scope of this provision. "Detriment" – like in the Directive – is probably better.

- ***European Commission / Commission européenne***

Art 11 draft Convention on commercial communication is partially aligned with Art 3e AVMSD. However, Art 11 (1) and (2) are specific to the Convention.

Also not mentioned in the Directive is the reference to potentially dangerous toys and games [Art 11 (4)] which would create additional obligations for Member States.

Article 12: Duration / Article 12 : Durée (Art 18 and 18 a AVMSD)

- ***European Commission / Commission européenne***

Art 12 of the Convention draft is aligned with Articles 18, 18a AVMSD. Art. 12 (4) of the draft excludes announcements in the public interest and charity appeals broadcast free of charge from the provisions of this Article. This is a consequence of the wider notion of audiovisual commercial communication as defined in Art 2 ECTT which also covers "communications designed to advance a cause or idea or to bring about some other effect desired by the broadcaster itself". These are not covered by the definition of audiovisual commercial communication in the AVMSD.

Article 13: Form and Presentation / Article 13 : Forme et présentation

- ***France***

1. Sans préjudice de l'usage de nouvelles techniques publicitaires, les communications commerciales audiovisuelles doivent être aisément identifiables comme telles et clairement distinctes du contenu éditorial.

...

- ***Germany / Allemagne***

1. Audiovisual commercial communication must be readily recognizable as such ~~and distinguishable from editorial content.~~

...

- ***European Commission / Commission européenne***

Art 13 (1), (2), (3) seems to combine Art 3e (1) a) b) and c) and Art 10 (1) AVMSD. However, this combination would raise the question whether product placement, which is considered to be a form of commercial communication, can be considered to be "distinguishable from editorial content" as is required in Art 13 (1). Otherwise the proposed provision would mean a ban of product placement in any form, including in films etc.

Art 13 (4) says that audiovisual commercial communication shall not feature, visually or orally, persons regularly presenting news and current affairs programmes. AVMSD does not contain a similar provision.

Article 14: Insertion of television advertising and tele-shopping / Article 14 : Insertion de publicité télévisée et de télé-achat

- ***France***

...

2. La transmission de films conçus pour la télévision (à l'exclusion des séries, feuilletons et documentaires), des œuvres cinématographiques et des journaux télévisés peut être interrompue par des écrans publicitaires et/ou des spots de téléachat une fois par tranche de 30 minutes au moins. La transmission des émissions pour enfants peut être interrompue par des écrans publicitaires et/ou des spots de téléachat une fois par tranche de 30 minutes au moins, {à condition que la durée programmée de l'émission soit supérieure à 30 minutes.}

...

- ***Germany / Allemagne***

...

1bis. Television advertising and tele-shopping shall be readily recognizable and distinguishable from editorial content. Without prejudice to the use of new advertising techniques, television advertising and tele-shopping shall be kept quite distinct from other parts of the programme service by optical and/or acoustic and/or spatial means.

...

2. The transmission of films made for television (excluding series, serials and documentaries), cinematographic works and news programmes may be interrupted by advertising and/or tele-shopping once for each scheduled period of at least 30 minutes. The transmission of children's programmes may be interrupted by advertising and/or tele-shopping once for each scheduled period of at least 30 minutes, {provided that the scheduled duration of the programme is greater than 30 minutes}.

...

- ***Italy / Italie***

As for paragraph 2 (the transmission of children programmes) we agree on the second opinion reported in footnote 62: the level of child protection in the Convention should not be lower than the one in the Directive.

- ***European Commission / Commission européenne***

Art 14 of the draft Convention is aligned with Art 11 (1) and (2) and Art 10 (1) and (2) of the AVMS Directive.

The new draft ensures that the level of protection of minors is the same in the Convention and the Directive.

Article 15: *Audiovisual commercial communication for particular products* / Article 15 : *Communication commerciale audiovisuelle pour certains produits*

- ***France***

...

3. Les communications commerciales audiovisuelles pour tous les autres médicaments et traitements médicaux doivent être clairement identifiables comme telles, [~~loyales, véridiques~~] et contrôlables, et doivent se conformer à l'exigence d'absence d'effet dangereux pour le patient.

...

- ***Italy / Italie***

As regards para. 3 we also think the insertion of adjectives "honest, truthful" would be a useless duplication of the general standards set up in article 11; so they could be deleted from the text.

- ***European Commission / Commission européenne***

Art 15 of the draft Convention is partially aligned with the AVMSD [Art 3d (d) and (f), Art 14 (2) and 15].

Art 14(3) of the draft Convention on audiovisual commercial communication for medicines and medical treatment that are not subject to prescription has no parallel in the AVMSD. To the extent to which this provision requires that commercial communication should be clearly distinguishable as such it is redundant with Art 13(1) of the draft. The further requirement, "honest, truthful and subject to verification" and "shall comply with the requirement of protection of the individual from harm" in this paragraph are a lot more ambiguous than the horizontal provisions in Art 86 ff of Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use.¹⁸

¹⁸ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32001L0083:EN:HTML>

Article 15a: *Product placement* / Article 15bis : *Placement de produit*

- ***France***

1. Le placement de produits est interdit.

2. Par dérogation au paragraphe 1, et à moins que les Parties n'en décident autrement, le placement de produits est admissible dans les cas suivants :

- dans les oeuvres cinématographiques, les films et séries conçus pour les services de médias audiovisuels, les émissions sportives et les émissions de divertissement, ou
- lorsqu'il n'y a pas rétribution, mais uniquement mise à disposition gratuite de certains biens ou services, tels que des prix ou des accessoires de production, en vue de leur insertion dans un programme.

La première dérogation ne s'applique pas aux émissions pour enfants.

Les programmes comportant un placement de produits respectent au moins l'intégralité des critères suivants :

- i) leur contenu et, dans le cas d'émissions télévisées, leur programmation ne sont en aucun cas influencés de manière à porter atteinte à la responsabilité et à l'indépendance éditoriale du fournisseur de services de médias ;
- ii) ils n'incitent pas directement à l'achat ou à la location de biens et de services, en particulier à travers des références promotionnelles à ces biens ou services ;
- iii) ils ne mettent pas excessivement en valeur le produit en question n'accordent pas au produit en question une prééminence indue ;

...

- ***Italy / Italie***

Rules concerning this issue, contained in the Convention, should not consistently differ from those provided in the new Directive, so as to avoid conflict of rules for States members of EU and Parties of the Convention. Probably, if there is a certain lack of clarity in the latter, the problem could be solved through some specific clarification in the ER.

- ***European Commission / Commission européenne***

Article 15a is largely aligned with Art 3g AVMSD.

Article 16: *Television advertising and teleshopping directed specifically at a single Party* / Article 16 : *Publicité télévisée et télé-achat s'adressant spécifiquement à une seule Partie*

- ***France***

1. Afin d'éviter des distorsions de concurrence et la mise en péril du système télévisuel d'une Partie la publicité et le télé-achat dirigés spécifiquement et fréquemment vers l'audience d'une seule Partie autre que la Partie de transmission ne doivent pas contourner les règles relatives à la publicité télévisée et au télé-achat dans cette Partie.

2. Les dispositions du paragraphe précédent ne s'appliquent pas lorsque :

- (a) les règles concernées établissent une distinction entre les messages publicitaires ou le téléachat transmis par un radiodiffuseur relevant de la compétence de cette Partie et la publicité ou le télé-achat transmis par un radiodiffuseur ou d'autres personnes physiques ou morales relevant de la compétence d'une autre Partie, ou
- (b) les Parties concernées ont conclu des accords bi- ou multilatéraux en ce domaine.}

- ***Italy / Italie***

As regards specifically paragraph 1, we suggest to leave this rule as it is, as a form of protection for smaller countries.

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

The wording of Article 16 should be kept as it is and it should be applied both to the linear and the non-linear services.

- ***European Commission / Commission européenne***

This provision has not been revised and has no counterpart in the Directive. It would be incompatible with Community Law and the country of origin principle.

Article 17: *Sponsoring* / Article 17 (remplace les articles 17 et 18) : *Parrainage*

- ***European Commission / Commission européenne***

Text is largely aligned with Article 3f AVMS Directive.

Article 18: *Prohibited sponsorship* / Article 18 : *Parrainages interdits*

- ***France*** : Supprimé cet article

Article 18a: *Programme services devoted exclusively to self-promotion* / Article 18bis : *Services de programmes consacrés exclusivement à l'autopromotion*

- ***France*** : Supprimé cet article

Article 18b: *Television broadcasting devoted exclusively to audiovisual commercial communication* / Article 18ter : *Émissions télévisées consacrées exclusivement à la communication commerciale audiovisuelle*

- ***France***

Les dispositions de la présente Convention s'appliquent mutatis mutandis aux émissions télévisées consacrées exclusivement à ~~la publicité et au téléachat, ainsi qu'aux émissions~~

~~télévisées consacrées exclusivement à l'autopromotion}~~ la communication commerciale audiovisuelle. Les articles 10, [10bis], 12 et 14 ne s'appliquent pas à ces types d'émissions.

- ***European Commission / Commission européenne***

Text is largely aligned Article 19 AVMS Directive. It should be mentioned in the explanatory report that the word "channels" was replaced by "broadcasting", but that no other meaning is intended.

Article 19: Co-operation between the Parties / Article 19 : Coopération entre les Parties

- ***France***

1. Les Parties s'engagent à s'accorder mutuellement assistance pour mettre en œuvre la présente Convention ~~{et prévenir l'abus des droits qu'elle confère}~~.

2. À cette fin :

(a) chaque État contractant désigne une ou plusieurs autorités ~~{dont une autorité indépendante sur le plan opérationnel}~~ dont il communique la dénomination et l'adresse au Secrétaire général du Conseil de l'Europe, au moment du dépôt de son instrument de ratification, d'acceptation, d'approbation ou d'adhésion ;

(b) chaque État contractant qui a désigné plusieurs autorités indique, dans la communication visée à l'alinéa a, la compétence de chacune de ces autorités.

3. L'autorité désignée par une Partie :

(a) fournira les informations prévues à l'article 6, paragraphe 2, de la présente Convention ;

(b) fournira, à la demande d'une autorité désignée par une autre Partie, des informations sur le droit et la pratique internes dans les domaines couverts par la présente Convention ;

(c) coopérera avec les autorités désignées par les autres Parties chaque fois qu'il sera utile de le faire et notamment lorsque cette coopération pourra renforcer l'efficacité des mesures prises en application de la présente Convention ;

~~{(cbis.)}~~ demandera, le cas échéant, le point de vue des autorités désignées par une autre Partie avant d'accorder une autorisation à un radiodiffuseur dont les émissions sont entièrement ou principalement tournées vers le territoire de cette autre Partie, de procéder à l'enregistrement de ce radiodiffuseur ou de conclure un contrat avec lui ;

(d) examinera toute difficulté soulevée dans l'application de la présente Convention qui lui sera notifiée par une autorité désignée par une autre Partie.

- ***Germany / Allemagne***

...

2. For that purpose:

(a) each Contracting State shall designate one or more authorities ~~{including an authority which is operationally independent}~~, the name and address of each of which it shall communicate to the Secretary General of the Council of Europe at the time of deposit of its instrument of ratification, acceptance, approval or accession;

(b) each Contracting State which has designated more than one authority shall specify in its communication under sub-paragraph a. the competence of each authority.

3. An authority designated by a Party shall:

- (a) furnish the information foreseen under Article 6, paragraph 2, of this Convention;
- (b) furnish information at the request of an authority designated by another Party on the domestic law and practices in the fields covered by this Convention;
- (c) co-operate with the authorities designated by the other Parties whenever useful, and notably where this would enhance the effectiveness of measures taken in implementation of this Convention;
- ~~[(c)bis.] where appropriate to seek the views of the authorities designated by another Party prior to issuing an authorisation, registering or concluding a contract with a broadcaster whose programme service is to be wholly or principally directed at the territory of that other Party.]~~
- (d) consider any difficulty arising from the application of this Convention which is brought to its attention by an authority designated by another Party.

- ***Italy / Italie***

We would like to leave in the text of the new Convention the provisions inserted in brackets, referring to: a) the prevention of abuse of rights (para. 1); b) the operational independence of the NRA (in para. 2); c) the exchange of views between the authorities of State Parties prior to issuing a licence. These provisions deal with the need of legal certainty and clarity.

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

In Point 2 of Article 19, in connection to footnote 75, it is more appropriate to accept the proposal of a member of the Group - that instead of the words "including an authority which is operationally independent", a reference to "a regulatory or supervisory body" should be made. The point here is that one of the authorities to communicate with the Council of Europe should be the body in charge of regulating the media in each of the countries.

Regarding Point 3 (c)bis), in order not to impair the concept of free transfrontier broadcasting and to avoid situation of promoting different standards for the broadcasters, we believe that the Point should be changed and that the regulator from the country that issues the license should only inform the regulatory body in another state that such license has been issued, but not to ask for its opinion before issuing it.

- ***European Commission / Commission européenne***

Newly added to Art 19 (1) is the obligation of Parties to the Convention to assist each other in order to prevent the abuse of rights. Such an obligation does not exist in the Directive.

Art 19 (2) (a) adds the reference to an authority which is "operationally independent". It might be discussed whether this should not be "functional" independence.

To prevent problems before they arise, the newly inserted Art 12 (3) (c)bis) of the draft Convention obliges an authority designated by a Party of the Convention to seek the views of the authorities designated by another Party prior to issuing an authorisation, registering or concluding a contract with a broadcaster whose programme service is to be wholly or principally directed at the territory of that other Party. This would create obligations different from those in the Directive. Regulatory authorities would have to consult regulatory

authorities in Parties that are not Member States. Furthermore this paragraph makes a link between the provision of audiovisual medias services –including on-demand services - and authorising, registering and contracting, which is not the case in the Directive (see Recital 15 AVMSD).

Article 20: Standing Committee / Article 20 : Le Comité permanent

- Germany / Allemagne

...

2. Each Party may be represented on the Standing Committee by one or more delegates. ~~Parties are encouraged to ensure that their delegations include at least one person with expertise in the regulation of audiovisual media services.~~ Each delegation shall have one vote. Within the areas of its competence, the European Community shall exercise its right to vote with a number of votes equal to the number of its member States which are Parties to this Convention; the European Community shall not exercise its right to vote in cases where the member States concerned exercise theirs, and conversely.

...

- European Commission / Commission européenne on Art 20 and 21: Standing Committee

The revised draft provides some amendments to the current text with regard to the composition of the Committee and the qualifications its members should have [Art 20(2)], the possibility of a written procedure [Art 20(7bis)], reporting obligations [Art 21(d)] and with regard to measures regarding on-demand services[Art 21(e)].

However, there is a bigger problem underlying the institutional set up this provision tries to achieve. Basically the Standing Committee in framework of the Convention should play the role that two bodies, Contact Committee and Commission, play in the context of the Directive.

The Standing Committee is the forum for discussion on matters relating to the Convention, as is the Contact Committee for the Directive. Additional to the tasks the Contact Committee would perform, the Standing Committee plays a more important role within the Convention and especially duties that are in the Directive carried out by the Commission are delegated in the Convention to the Standing Committee.

According to Art 21 (2) the Standing Committee has to monitor and ensure compliance with Art 9a of the Convention concerning lists of major event. In the AVMS Directive this role is given to the Commission. The same applies with regard to proposals for amendments concerning the instruments. The Standing Committee has to propose amendments to the Convention (Art 23 ECTT) while the Commission proposes modifications to the Directive. The Standing Committee also takes decisions concerning the interpretation of and compliance with the Convention, and according to the newly added in Art 21 (2) (e), the compatibility of measures in respect of on- demand- services in accordance with Art 24 (7). Also new is the examination obligation of reports submitted by the Parties in respect of Art 7bis (2) and Art 10 (5) of the Convention draft.

If the parties indeed were to attribute these tasks to the Standing Committee and in fact to the Secretariat which supports the Standing Committee, appropriate resources need to be allocated. The Commission is particularly sceptical with regard to electronic voting. Usually the decisions to be taken by the Standing Committee are rather complicated and need discussion. In any case the requirements for electronic voting - a simple majority - should not be less strict than in session – three quarters.

Furthermore it should be discussed which kind of legal remedies can be considered against decisions of the Standing Committee.

Article 21: Functions of the Standing Committee / Article 21: Fonctions du Comité permanent

- **France**

1. Le Comité permanent est chargé de suivre l'application de la présente Convention. Il peut :

- (a) faire des recommandations aux Parties concernant l'application de la Convention ;
- (b) suggérer les modifications à la Convention qui pourraient être nécessaires et examiner celles qui sont proposées conformément aux dispositions de l'article 23 ;
- (c) examiner, à la demande d'une ou plusieurs Parties, toute question relative à l'interprétation de la Convention ;
- (d) faciliter autant que de besoin le règlement amiable de toute difficulté qui lui est notifiée conformément aux dispositions de l'article 25 ;
- (e) faire des recommandations au Comité des Ministres relatives à l'invitation d'États autres que ceux visés à l'article 29, paragraphe 1, à adhérer à la Convention ;
- (f) émettre des avis sur les abus de droit en application de l'article 24bis, paragraphe ~~2~~ 3 (c).

2. En outre, le Comité permanent :

- (a) établit les lignes directrices mentionnées à l'article 9bis, paragraphe 3 (b) afin d'éviter des différences entre la mise en oeuvre des règles de cette Convention concernant l'accès du public à des événements d'importance majeure et celle des dispositions correspondantes du droit communautaire ;
- (b) donne un avis sur les mesures prises par les Parties ayant établi une liste d'événements, nationaux ou non nationaux, qu'elles jugent d'une importance majeure pour la société, conformément à l'article 9bis, paragraphe 2 ;
- (c) publie une fois par an une liste consolidée de tout événement désigné et des mesures juridiques correspondantes communiqués par les Parties conformément à l'article 9bis, paragraphe 2 (e) ou 4 ;
- (d) examine les rapports présentés par les Parties conformément à l'article 10, paragraphe 5 ~~et à l'article 10, paragraphe 5~~, et peut formuler un avis sur les résultats obtenus ;
- (e) examine la compatibilité des mesures relatives aux services à la demande conformément à l'article 24bis, paragraphe 3.

- **Germany / Allemagne**

1. The Standing Committee shall be responsible for following the application of this Convention. It may:

- (a) make recommendations to the Parties concerning the application of the Convention;

- (b) suggest any necessary modifications of the Convention and examine those proposed in accordance with the provisions of Article 23;
- (c) examine, at the request of one or more Parties, questions concerning the interpretation of the Convention **in case of concrete difficulties arising from its application**;
- (d) use its best endeavours to secure a friendly settlement of any difficulty referred to it in accordance with the provisions of Article 25;
- (e) make recommendations to the Committee of Ministers concerning States other than those referred to in Article 29, paragraph 1, to be invited to accede to this Convention.
- (f) give opinions on abuse of rights under Article 24a, paragraph 2 (c).

2. In addition, the Standing Committee shall:

- (a) draw up the guidelines referred to in Article 9a, paragraph 3 (b) in order to avoid differences between the implementation of the provisions of this Convention concerning access of the public to events of major importance for society and that of corresponding European Community provisions;
- (b) give an opinion on the measures taken by Parties which have drawn up a list of national or non-national events which are considered by those Parties as being of major importance for society in accordance with Article 9a, paragraph 2;
- (c) publish once a year a consolidated list of any enlisted events and corresponding legal measures notified by Parties in accordance with Article 9a, paragraph 2.
- ~~(d) examine the reports submitted by Parties in respect of Article 7bis paragraph 2 and Article 10 paragraph 5 and may give an opinion on the results arrived at.~~
- ~~(e)~~ **(d)** examine the compatibility of measures in respect of on-demand-services in accordance with Article 24 paragraph 7.

- ***Italy / Italie***

We agree on the intention of introducing stronger input powers of the Committee in the matter of the exam of compatibility of measures in respect of on-demand-services, and of reinforcing the role of the chair of the Committee, including its duty to put in the agenda issues of relevance to the application of the Convention.

Art 22: Reports of the Standing Committee / Article 22 : Rapports du Comité permanent
(Art 26 AVMSD)

- ***European Commission / Commission européenne***

This Article has not been revised.

Article 23: Amendments / Article 23 : Amendements

- ***European Commission / Commission européenne***

This Article has not been revised.

Article 24: *Alleged violations of this Convention* / **Article 24 : *Violations alléguées de la présente Convention concernant la radiodiffusion télévisée***

- ***France***

...

2. Si la violation alléguée présente un caractère manifeste, sérieux et grave, tel qu'elle soulève d'importants problèmes d'intérêt public et concerne les articles 7, paragraphes 1 ou 3 premier alinéa, 12, 13, paragraphe 1, 14 ou 15, paragraphes 1 ou 2, et si elle continue deux semaines après la communication, la Partie de réception peut suspendre, à titre provisoire, la retransmission ~~{du service de programmes}~~ mise en cause.

3. Dans tous les autres cas de violation alléguée, à l'exception de ceux prévus au paragraphe 4, la Partie de réception peut suspendre, à titre provisoire, la retransmission ~~du service de programmes~~ mise en cause après huit mois à dater de la communication, lorsque la violation alléguée continue.

4. La suspension provisoire de la retransmission n'est pas admise lors de violations alléguées des articles 7, paragraphe 2, 8, 9, 10 ~~{ou 10bis a}~~.

- ***Germany / Allemagne***

...

2. If the alleged violation is of a manifest, serious and grave nature which raises important public issues and concerns Articles 7, paragraphs 1 or 3 first indent, 12, 13, paragraph 1, 14 or 15, paragraphs 1 or 2, and if it persists within two weeks following the communication, the receiving Party may suspend provisionally the retransmission of the incriminated ~~{programme service}~~ **programme**.

3. In all other cases of alleged violation, with the exception of those provided for in paragraph 4, the receiving Party may suspend provisionally the retransmission of the incriminated ~~{programme service}~~ **programme** eight months following the communication, if the alleged violation persists.

...

- ***Italy / Italie***

As to para. 2 and, specifically, as to the mention in it of article 15, concerning the audiovisual commercial communication for particular products, we think it's necessary to make reference to the whole of article 15, not only to its paragraphs 1 and 2.

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

It should be applicable to all audiovisual media services.

In Point 2 of Article 24 a reference should be made to Article 15 as a whole.

- ***European Commission / Commission européenne***

With regard to television the draft Convention basically keeps the current provision. For on-demand services the draft Convention largely uses the same wording as the AVMSD which itself copies the e-Commerce Directive.

It has to be noted that the derogations provided for by the Convention with regard to television broadcasting remain wider than in the Directive and that parties may suspend retransmission also with regard to advertising rules.

It also should be discussed to which extent it is appropriate in a human rights context to have such far reaching exceptions to the freedom to receive information by on-demand services

Article 24bis: *Alleged violations with regard to on-demand services* / Article 24*: *Violations concernant les services à la demande*

- ***France***

Article 24bis*: *Violations concernant les services à la demande*

...

3. Sans préjudice de la liberté de la Partie concernée d'appliquer les mesures visées aux paragraphe 5 et 6¹⁹, le Comité permanent examine dans les plus brefs délais leur compatibilité avec la Convention ; s'il conclut à l'incompatibilité des mesures en question avec la Convention, il invite la Partie concernée à ne pas les prendre ou à cesser d'urgence de les appliquer.

4. Lorsque la Partie concernée n'a pas répondu favorablement à l'invitation du Comité permanent de ne pas prendre les mesures visées ou de cesser d'urgence de les appliquer, la Partie de la compétence duquel relève le fournisseur de services peut demander à soumettre le différend à la procédure d'arbitrage prévue à l'article 26.

- ***Germany / Allemagne***

1. In respect of on-demand services, Parties may take measures in respect of a given service if the following conditions are fulfilled:

a) the measures shall be:

(i) necessary for one of the following reasons:

- public policy, in particular the prevention, investigation, detection and prosecution of criminal offences, including the protection of minors and the fight against any incitement to hatred on grounds of race, sex, religion or nationality, and violations of human dignity concerning individual persons,

- the protection of public health,

- public security, including the safeguarding of national security and defence,

- the protection of consumers, including investors;

(ii) taken against an on-demand service which prejudices the objectives referred to in point (i) or which presents a grave risk of prejudice to those objectives;

(iii) proportionate to those objectives;

¹⁹ De quels paragraphes/articles est-il ici fait mention ?

b) before taking the measures in question and without prejudice to court proceedings, including preliminary proceedings and acts carried out in the framework of a criminal investigation, the Party has:

- asked the Party under whose jurisdiction the **media** service provider falls to take measures and the latter did not take such measures, or they were inadequate,
- notified the Standing Committee and the Party under whose jurisdiction the **media** service provider falls of its intention to take such measures.

2. Parties may, in case of urgency, derogate from the conditions stipulated in paragraph 1 (b). Where this is the case, the measures shall be notified in the shortest possible time to the Standing Committee and to the Party under whose jurisdiction the **media** service provider falls, indicating the reasons for which the Party considers that there is urgency.

3. Without prejudice to the Party's possibility of proceeding with the measures referred to in paragraph 5 1 and 6 2, the Standing Committee shall examine the compatibility of the notified measures with the Convention in the shortest possible time; where it comes to the conclusion that the measure is incompatible with the Convention, the Standing Committee shall ask the Party in question to refrain from taking any proposed measures or urgently to put an end to the measures in question.

4. Any measures pursuant to paragraph 1 and 2 shall comply with Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms and shall be objectively necessary, applied in a non-discriminatory manner, be suitable for attaining the objectives which they pursue and may not go beyond what is necessary to attain them.

Article 24a: Alleged abuses of rights conferred by this Convention / Article 24bis : Abus allégués des droits octroyés par la présente Convention

- *France*

Article 24ter bis : Abus allégués des droits octroyés par la présente Convention

1. Lorsque le service de programmes d'un radiodiffuseur de télévision est entièrement ou principalement tourné vers le territoire d'une Partie autre que celle qui est compétente à l'égard de ce radiodiffuseur (la "Partie de réception"), et que ce radiodiffuseur s'est établi en vue de se soustraire aux lois dans les domaines couverts par la Convention qui lui seraient applicables s'il était établi sur le territoire de cette autre Partie, cela constitue un abus de droit.

2. Une Partie peut, afin de ~~prévenir~~ réprimer des abus des droits octroyés par la présente Convention ~~ou des méthodes frauduleuses~~, adopter des mesures appropriées à l'encontre d'un radiodiffuseur considéré comme étant établi dans un autre État partie.

3. Dans de tels cas, la procédure suivante s'applique :

- (a) les Parties concernées s'efforcent de parvenir à un règlement amiable ;
- (b) si elles n'y parviennent pas dans un délai de trois mois, la Partie réceptrice informe le Comité permanent et la Partie sur le territoire de laquelle le radiodiffuseur est réputé établi de son intention de prendre de telles mesures ;

(c) le Comité permanent émet, dans un délai de six mois à compter de la date à laquelle il a été saisi, un avis sur la compatibilité des mesures proposées avec la Convention, et en informe les Parties concernées. La Partie concernée s'engage à s'abstenir de prendre les mesures envisagées²⁰ dans tous les cas où Si le Comité permanent conclut à une incompatibilité des mesures proposées avec la Convention, la Partie concernée s'abstient de prendre les mesures envisagées.

4. Toutes les mesures prises en vertu du paragraphe 3 doivent être conformes à l'article 10 de la Convention de sauvegarde des droits de l'homme et des libertés fondamentales et doivent être nécessaires d'un point de vue objectif, appliquées sans discrimination, convenir aux objectifs poursuivis et ne pas aller au-delà de ce qui est nécessaire pour les atteindre.}

- *Germany / Allemagne*

{1. When the ~~programme service television broadcast~~ of a ~~television broadcaster~~ **media service provider** is wholly or principally directed at the territory of a Party other than that which has jurisdiction over the ~~broadcaster~~ **audiovisual media service provider** (the "receiving Party"), and the ~~broadcaster~~ **audiovisual media service provider** has established itself with a view to evading the laws in the areas covered by the Convention which would have applied to it had it fallen within the jurisdiction of that other Party, this shall constitute an abuse of rights.

2. A Party may, in order to {prevent} abuse or {fraudulent conduct}, adopt appropriate measures against that {a} ~~broadcaster~~ **audiovisual media service provider** {who is deemed to be established in another Party}.

...

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

If the phrase "fraudulent conduct" is to be kept in the wording of the Article, then its meaning should be defined in the Explanatory Report (ER).

- *European Commission / Commission européenne*

The amendment to this provision tries to mirror the Commission Procedure of the Directive in the Convention, with the Standing Committee as the main actor. Thereby questions of implementation and interpretation will be decided by a political body, whose decisions are not subject to judicial review.

Article 25: Conciliation / Article 25 : Conciliation

- *France*

1. En cas de difficulté dans l'application de la présente Convention, les parties concernées s'efforcent de parvenir à un règlement amiable, conformément à la procédure définie par le règlement intérieur visé à l'article 20, paragraphe 8²¹.

²⁰ Voir la problématique exposée en introduction de ce document.

²¹ Déplacer ici la référence au règlement intérieur permet d'alléger la structure de l'article en ne créant pas un nouveau paragraphe 4.

...

~~[4. La procédure relative aux règlements amiables sera définie par le règlement intérieur visé à l'article 20, paragraphe 8.]~~

- *European Commission / Commission européenne*: does not appear in the AVMSD

Article 26: Arbitration / Article 26 : Arbitrage

- *European Commission / Commission européenne*: does not appear in the AVMSD

Article 27: Other international agreements or arrangements / Article 27 : Autres accords ou arrangements internationaux

- *European Commission / Commission européenne*

This provision allows that EU Member States and EEA members can comply with their obligations arising from Community and EEA Law.

Article 28: Relations between the Convention and the internal law of the Parties / Article 28 : Relations entre la Convention et le droit interne des Parties

- *France*

1. Aucune disposition de la présente Convention ne saurait empêcher les Parties d'appliquer des règles plus strictes ou plus détaillées que celles prévues dans la présente Convention aux services de médias audiovisuels ~~transmis~~ émis par un fournisseur de services de médias relevant de leur compétence, au sens de l'article 5.

~~[2. Les Parties qui prennent des mesures en vertu du paragraphe 1 peuvent les soumettre au Comité permanent pour examen. Dans un délai de six mois à compter de la date à laquelle il a été saisi, le Comité permanent émet un avis sur la compatibilité de ces mesures avec la Convention.]~~

- *Germany / Allemagne*

...

~~[2. Parties that have taken measures pursuant to paragraph 1 may submit them for consideration by the Standing Committee. The Standing Committee shall, within six months, give an opinion on whether these measures are compatible with the Convention.]~~

- *European Commission / Commission européenne*

Paragraph 2 intends to give the Standing Committee the power to deliver an opinion on the compatibility of national measures with the Convention. The explanatory report should explain the added value of this provision with regard to Art 21(1)c).