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EUROPEAN CONVENTION ON TRANSFRONTIER TELEVISION

STANDING COMMITTEE ON TRANSFRONTIER TELEVISION

(T-TT)

**45th meeting
1 and 2 July 2010
Agora Building
Room G 02**

REPORT

Executive summary

The T-TT acknowledged with deep regret the standstill in the revision procedure of the European Convention on Transfrontier Television (ECTT) and considered the consequences and possible solutions.

The T-TT agreed that:

- the draft second amending protocol to the ECTT was unlikely to be adopted and opened for signature given the position of the European Commission;
- the larger and essential elements of the ECTT were still valid and useful for the Parties;
- almost all Parties would have difficulties in complying with a limited number of ECTT provisions that are inconsistent with the Audiovisual Media Services Directive;
- an alternative revision would be necessary to ensure the update and essential functions of the ECTT in regulating transfrontier aspects of audiovisual media services and of its Standing Committee in solving issues related to the implementation ;

The T-TT decided to set up a drafting Group to consider the feasibility of such alternative revision in cooperation with the European Commission.

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The gender distribution of the 33 participants in the meeting was as follows: 12 women (36.3%) and 21 men (63.6%).

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

1. The meeting was opened by the Chair of the Standing Committee on Transfrontier Television (T-TT), Ms Nuran Yardimci (Turkey). She welcomed all delegates and recalled that the previous meeting had been devoted to the finalisation of the draft second amending protocol to the European Convention on Transfrontier Television.
2. The list of participants appears in Appendix I to this report.
3. The Standing Committee adopted the agenda as reproduced in Appendix II.

Item 2 of the agenda: Information by the Secretariat

4. Mr Jan Kleijssen, Director of Standard Setting, Directorate General of Human Rights and Legal Affairs, informed the Standing Committee about the standstill in the revision process of the Convention. This situation resulted from a letter dated 23 October 2009 by European Commissioner Viviane Reding to EU member states which are Parties to the Convention and the subsequent decision of the Committee of Ministers on 4 November 2009 to postpone the agenda item concerning the amending protocol to one of their forthcoming meetings. Mr Kleijssen recalled the steps taken by the Secretariat to obtain clarification on the position of the European Commission and allow the Committee of Ministers to resume its discussion on this issue. The Secretary General, Mr Thorbjørn Jagland, met with Commissioner Reding in November 2009 and Mr Kleijssen met with the Legal Services of the European Commission in March 2010. Mr Kleijssen underlined that the Steering Committee on the Media and new Communication Services (CDMC), during its meeting held from 8 to 11 June 2010, had expressed its deep concern about the interruption of the revision process and had asked the Secretary General to write to the competent Commissioner to seek a precise explanation on the position of the European Commission on the revision and future of the Convention. In line with the CDMC's request, the Secretariat conveyed the views of this Committee in the 32nd meeting of the Contact Committee of the Audiovisual Media Services Directive held on 16 June. At this meeting, member states had delivered a clear message underlining the importance of the Convention for the wider Europe.

5. Mr Kleijssen stressed that the purpose of the present meeting was to move forward and to find solutions for the future which were adapted to the needs of the Parties. Referring to the discussion paper prepared by the Secretariat (Doc T-TT(2010)001), he said that there were several options which could be envisaged to address the present difficulties of a Convention which needed update and which contained inconsistencies when compared with the Audiovisual Media Services Directive (AVMSD).

Item 3 of the agenda: Information by the European Commission representative

6. The Commission representative noted that the European Commission was in a period of change of paradigm, since the EU had gone through four Treaty revisions and community case law had evolved and been codified by the Lisbon Treaty. With regard to the position of the European Commission on the amending protocol to the Convention, he mentioned in particular that:

- most matters covered by the Convention are subject to the EU's exclusive competency;

- the EU does not wish to accede to the Convention; being bound by the latter would be an obstacle to revising EU rules in light of a rapidly changing media landscape;
- the AVMSD and the Convention contain conflicting obligations and jurisdiction rules.
- from a geographical viewpoint the Convention has little added value since the AVMSD applies to almost all Parties to the Convention. The EU and the Council of Europe should aim for functional complementarity;
- the Secretary General of the Council of Europe proposed in a note to the Committee of Ministers that the work on the revision of the Convention should be discontinued;
- informal contacts between the legal services of the Commission and the Council of Europe, in particular the Directorate of Standard-Setting, have been intensified since the meeting between Commissioner Reding and the Secretary General.

7. Referring to the Contact Committee meeting, the Commission representative confirmed the interest of the European Commission in promoting the application of the rules of the AVMSD beyond its member states by stability and association agreements in the context of the neighbourhood policy.

8. For the future, the Commission representative proposed two possible options, either member states could negotiate a convention based on issues falling outside EU competency or member states could develop a convention in association with the EU to consolidate case law on article 10 of the European Convention on Human Rights in the context of audiovisual media services.

9. The Commission representative said he hoped to identify the Parties' needs on issues that were not covered by the Directive and ascertain if there was political support for a new treaty. He further added that the legal service of the Commission would be in a position to give an opinion on whether the issues considered could be negotiated by the member states alone or by a mixed agreement with the EU. The Commission Services did not exclude entering into a mixed agreement if the instrument envisaged would stand the test of time and not require revision in the foreseeable future.

Item 4 of the agenda: Signatures and ratifications of the Convention

10. The Secretariat informed the Committee that further to the ratification of the Convention by Serbia on 14 September 2009, the number of Parties to the Convention had risen to 34.

Items 5 of the agenda: Revision process of the Convention

11. On the basis of the information provided, delegates acknowledged with deep regret that it was highly unlikely that the draft second amending protocol proposed by the Standing Committee would be adopted and opened for signature. The Standing Committee deplored in particular that the European Commission, who had been closely associated with the revision process, had not made its position clear at an earlier moment. The Committee shared the opinion of the CDMC that an official written explanation by the Commission would be essential in order to clarify its situation and enable the Committee of Ministers to resume discussion on the revision process of the Convention.

Item 6 of the agenda: Value of the European Convention, specific needs of the Parties and further action

12. Delegates unanimously stressed the legal, political, cultural and regulatory value of the Convention for the wider Europe, with added value stemming from the possibility of extending its application to non-European countries, in particular those around the Mediterranean. Several delegates mentioned that the possible accession of Russia would also provide considerable added value. Delegates furthermore highlighted the importance of the Standing Committee in offering a platform to Parties to solve questions or disputes related to the implementation of the Convention.

13. The European Commission representative mentioned that negotiations for an association agreement to extend application of the standards contained in the Directive had started with Ukraine and Moldova. As a result, almost all Parties to the Convention, except the Holy See and San Marino, would be in a position to align their national legislation with the Directive. Delegates recognised that the European Commission, by extending bilateral agreements with non EU countries, could promote application of the standards contained in the Audiovisual media services Directive on a large geographical scale so as to harmonise national legislations in, and possibly beyond, the European continent . They stressed however that these agreements did not offer any means to non-EU countries to address questions related to the implementation of these standards, or to settle disputes on this issue between non-EU countries. The Commission representative indicated that he would look for a possible solution to this need.

14. As a first alternative to the draft Council of Europe Convention on transfrontier audiovisual media services, the Standing Committee considered the possibility of basing a new draft on issues which did not fall under EU competency. They discussed issues previously suggested by the European Commission such as public service broadcasting, the independence of regulators and media pluralism. Most delegates reiterated their earlier view that there was no scope for binding regulation on these issues, other than the provisions in article 12 of the draft Council of Europe Convention. They furthermore considered regulation of audiovisual media services related minority questions. Several delegates considered these to be sufficiently covered by the Council of Europe Framework Convention on national minorities and the European Charter for regional or minority languages. During the discussion, several other issues, listed in Appendix 3 to this report, were mentioned. On the basis of this discussion, the Secretariat prepared a version of the draft Council of Europe Convention excluding issues falling under EU competency (Doc T-TT(2010)misc). When considering this version, some delegates felt that it lacked essential elements and the Secretariat was asked to update the document accordingly. It was also asked to draw up a list of issues deemed to fall outside the competency of the EU subject to confirmation by the European Commission (Appendix 3).

15. As a second alternative, the Standing Committee considered the possibility of developing an instrument in association with the European Union. Consideration was firstly given to the proposal made by the European Commission to focus on human rights issues in the context of audiovisual media services, consolidating the Court's case law on article 10 of the European Convention on Human Rights. Most delegates were not convinced that a "codification" of such case law would have added value, taking into account that case law is evolving rapidly and interpretation is to be ensured by the Court. It was also argued that such a Convention was not likely to attract ratification by non-European states. The Standing

Committee furthermore discussed the possibility of drafting a framework convention, maintaining only the general principles of the issues covered in the AVMSD. More detailed rules could then be developed gradually by a soft law approach, for example by recommendations or opinions of the Standing Committee on the interpretation of the general rules in the framework convention. The advantage of this approach would be that the convention would be flexible and little affected by technological and societal developments. The possibility of widening the scope of such a framework convention to new media (beyond the AVMSD scope) was also mentioned. Some delegates pointed out that a mixed agreement with the European Union would be a heavy procedure with an uncertain outcome given the questionable added value of a convention of such general nature. Some delegates were not convinced of the feasibility of having more detailed elements developed by a soft law approach.

Item 7 of the agenda: The implementation of the Convention in the present circumstances

16. Referring to the discussion paper prepared by the Secretariat (Doc T-TT(2010)001), the Standing Committee acknowledged that, due to the commitment of most Parties to align their national legislation with the norms contained in the AVMSD, they would have difficulties in complying with those provisions that are inconsistent with the Directive. The Standing Committee stressed however that the larger and essential elements of the Convention were still valid. No delegate was therefore considering denouncing the Convention or proposing to suspend it (wholly or partially). The Standing Committee agreed that the European Convention on Transfrontier Television Convention should be maintained pending the development of a new instrument to update and replace the existing Convention.

Item 8 of the agenda: Other business (conclusions)

17. In conclusion to its discussions, the Standing Committee agreed to set up a drafting group with the task to further explore the approaches mentioned in paragraphs 14 and 15 above and to develop concrete proposals. These proposals would be submitted to the Standing Committee and commented by written consultation. The drafting Group would consist of the delegates of the following Parties: Austria, France, Germany, Switzerland (at their own expense if necessary), and Turkey. The European Commission would be invited to participate as an observer. Several delegates mentioned that the participation of a Russian observer delegate would bring added value to the work of the drafting Group. It was agreed that if the Russian Federation declared its interest in participating, the Standing Committee would consider the request by written procedure.

18. The Standing Committee underlined that prior to initiating the work of the drafting Group it would need to obtain legal clarification with regard to EU competency issues. The Secretariat would therefore liaise with the representative of the European Commission so as to seek the Commission's legal opinion on the EU competency question regarding the issues listed in appendix 3 of this report. Delegates reserved the right to propose further issues and send them to the Secretariat after the meeting. The Standing Committee hoped that this opinion would be provided as soon as possible so that, Secretariat resources permitting, the Drafting Group could meet in October 2010.

APPENDIX I**List of participants****T-TT MEMBERS / MEMBRES T-TT****Albania/Albanie**

Ms Endira BUSHATI, Chairwoman, National Council of Radiotelevision, TIRANA

Mr Enio HAXHIMIHALI, Chairwoman's Adviser, National Council of Radiotelevision, TIRANA

Mr Erion JASHARI, Director of Law and Licence Department, National Council of Radiotelevision, TIRANA

Austria/Autriche

Mr Michael KOGLER, Deputy Head of Department for Media Affairs, Head of Division, Federal Chancellery, Constitutional Service, Media Department, WIEN

Bosnia and Herzegovina/Bosnie-Herzégovine

Ms Maida ČULAHović, Head of Audiovisual Services Department, Communications Regulatory Agency, SARAJEVO

Ms Helena MANDIĆ, Lawyer for Broadcasting Issues, Communications Regulatory Agency, SARAJEVO

Bulgaria/Bulgarie**Croatia/Croatie**

Mr Tomislav JELIĆ, Head of European Integration Department, Ministry of Culture of the Republic of Croatia, ZAGREB

Ms Nives ZVONARIC, Legal Adviser, Electronic Media Council, ZAGREB

Cyprus/Chypre

Mr Andreas CHRISTODOULOU, Head of Audiovisual Department, Head of Audiovisual Department, Ministry of Interior - Media Section, NICOSIA

Czech Republic/République Tchèque

Mr Jan FUČÍK, Department of media and audiovision, Ministry of culture, PRAGUE

Mr Zdenek MALACH, Head of Head of Licensing, Council for Radio and TV Broadcasting, PRAGUE

Estonia/Estonie

Mr Peeter SOOKRUUS, Head of Media and Copyright Department, Ministry of Culture of Estonia, TALLINN

Finland/Finlande

France

Mr Gabriel TAR, Chef du bureau des affaires européennes et internationales, Sous-direction du développement de l'économie culturelle, Direction générale des médias et des industries culturelles, PARIS

Germany/Allemagne

Ms Amélie KUHN, Advisor for Media Affairs, Representation of the State of Rhineland-Palatinate in Brussels, MAINZ

Mr Philipp STIEL, Bavarian Representation, BRUSSELS

Mr Wolfgang WOHNHAS, Head of Division K31, International Media Cooperation, Broadcast, Federal Government Commissioner for Culture and the Media, BERLIN

Holy Sea/Saint Siège

Mr Régis de KALBERMATTEN, Expert, SION

Mr Michael LUKAS, Expert, HILDESHEIM

Hungary/Hongrie

Dr. György OCSKÓ, Head of Department, International & Parliamentary Relations, National Radio and Television Commission, BUDAPEST

Ms Annamária SZALAI, Member of the Board, National Radio and Television Commission, BUDAPEST

Italy/Italie

Ms Daniela ESPOSITO VEZZOLER, Autorità per le Garanzie nelle Comunicazioni, EU and International Affairs Office, ROME

Latvia/Lettonie

Ms Dace BUCENIECE, Vice-Chair, National Broadcasting Council of Latvia, RIGA

Liechtenstein**Lithuania/Lituanie**

Mr Nerijus MALIUKEVIČIUS, Executive Director, Radio and Television Commission of Lithuania, VILNIUS

Malta/Malte

Dr Yana HABER, Senior Case Officer, Office of the Permanent Secretary within the Office of the Prime Minister, MALTA

Moldova**Montenegro/ Monténégro**

Ms Jadranka VOJVODIC, Deputy Director, Broadcasting Agency of Montenegro, PODGORICA

Norway/Norvège

Mr Olav GUNDEVEDT, Assistant Director General, Ministry of Culture, OSLO

Poland/Pologne

Ms Malgorzata PEK, Deputy Director of the Legal Department, National Broadcasting Council, WARSAW

Portugal

Ms Maria Margarida RIBES, Legal Adviser - Advisement, conception and Evaluation Division, Department for the Media, LISBON

Romania/Roumanie**San Marino/Saint-Marin**

Apologised/Excusé

Serbia/Serbie

Jelena KOLO, Head of Public Relations Department, Ministry of Culture of the Republic of Serbia, BELGRADE

Maja PETROVIC, Adviser, Media Department, Ministry of Culture of the Republic of Serbia, BELGRADE

Slovak Republic/République Slovaque

Ms Silvia STAŠKOVÁ, Council for Broadcasting and Retransmission of the Slovak Republic, BRATISLAVA

Slovenia/Slovénie**Spain/Espagne**

Mr Francisco Javier BARTOLOMÉ ZOFÍO, Head of Section, Audiovisual Media Division, Secretariat for Telecommunications and the Information Society, Ministry of Industry, Tourism and Trade, MADRID

Switzerland/Suisse

Ms Vera BEUTLER, Media Lawyer, Federal Office of Communications, BIENNE

Mr Franz ZELLER, Media Lawyer, Federal Office of Communications, BIENNE

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

Ms Emiliya JANEVSKA, Head of Programming Department, Broadcasting Council, SKOPJE

Turkey/Turquie

Dr. Hamit ERSOY, Head of International Relations Department, Radio & Television Supreme Council, ANKARA

Ms Nuran YARDIMCI, Expert, Department of International Relations, Radio and Television Supreme Council, ANKARA (**Chair of the Standing Committee**)

Ukraine

Mr Serhii SAENKO, Sous-directeur du Département de la politique d'information, Ministère des Affaires étrangères de l'Ukraine, KIEV

United Kingdom/Royaume-Uni

Apologised/Excusé

OBSERVER DELEGATES / DELEGUES OBSERVATEURS**EUROPEAN COMMISSION/COMMISSION EUROPEENNE**

Mr Harald E TRETTEBREIN, Deputy Head of Unit, Audiovisual and Media Policies Unit, European Commission, Directorate General for Information Society and Media, BRUSSELS

Belgium/Belgique

Ms Edith PIRLOT, Lawyer, Audiovisual and Multimedia Section, Ministry of the French Community of Belgium, BRUSSELS

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Mr David KUTATELADZE, Chief Specialist, Competition Support Department, National Communications Commission, TIBILISI

Mr Nino NIJARADZE, Chief Specialist, Legal Department, National Communications Commission, TIBILISI

Greece/Grèce

Ms Vasiliki KORDATOU, Attachée de Presse, Représentation Permanente de la Grèce, STRASBOURG

Mr Ioannis MANTZOURANIS, Conseiller de Presse, Représentation Permanente de la Grèce auprès du Conseil de l' Europe / Bureau de Presse et de Communication, STRASBOURG

Russian Federation/Fédération de Russie

Mr Serguey DALECHIN, Deputy to the Permanent Representative, Permanent Representation of the Russian Federation to the Council of Europe, STRASBOURG

SECRETARIAT

Mr Jan KLEIJSSSEN, Director, Directorate of Standard Setting / Directeur, Direction des Activités Normatives, Directorate General of Human Rights and Legal Affairs / Chef de la Division Médias et Société de l'Information, Direction Générale des Droits de l'Homme et des Affaires Juridiques
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INTERPRETERS/INTERPRETES

Ms Sylvie BOUX-STINTZY
Ms Chloé CHENETIER
Ms Marie-Christine FARCOT

APPENDIX II**Agenda****1. Opening of the meeting and adoption of the agenda**

T-TT(2010)0J1

2. Information by the Secretariat

The Secretariat will provide information of relevance to the Standing Committee's work, in particular with regard to the standstill in the revision of the Convention.

T-TT(2010)001

3. Information by the European Commission representative on the EU external powers and the Council of Europe draft convention on transfrontier audiovisual media services

(T-TT(2009)012)

4. Signatures and ratifications of the Convention

CETS No. 132

5. Revision process of the Convention

The Parties are invited to discuss the consequences of the standstill in the revision process and possible solutions.

(Discussion paper prepared by the Secretariat Doc T-TT(2010)001)

(T-TT(2010)001)

(T-TT(2009)007FIN)

6. Value of the European Convention, specific needs of the Parties and further action

Parties are invited to examine the value of the European Convention for their specific needs and to discuss possible courses of action to meet these needs.

(T-TT(2009)13FIN)

7. Round table discussion on the implementation of the Convention in the present circumstances

Parties will be invited to discuss present and expected difficulties in complying with the requirements of the ECTT as a consequence of the standstill in the revision process and explore possible courses of action.

(T-TT(2009)009FIN)

8. Other business

(T-TT(2009)011FIN)

(Directive 2010/13/EU)

(Rules of Procedure)

APPENDIX III

List of issues related to the regulation of audiovisual media services which are deemed to fall outside the competency of the EU subject to confirmation by the European Commission

independence of regulators
media pluralism
public service media

political advertising
announcements in the public interest and charity appeals
ban on featuring regular presenters of news and current affairs programmes in commercial communications

provision of information (Art 6 ECTT)

human dignity (Art 7 ECTT)
fair presentation of facts in news programmes (Art 7 ECTT)
minority issues

The following 3 issues, although regulated by the AVMSD, were also felt to be core issues to the Council of Europe (to what extent do they fall outside EU competency?)

right of reply (Art 8 ECTT)
access to information by the public (Art 9,9a ECTT)
cultural objectives (Art 10ECTT)

Note: T-TT members reserved the right to think of further issues which they would send to the Secretariat after the meeting.