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Revision of the European Convention on Transfrontier Television

Committee Opinion¹

Committee on Culture, Science, Education and Media

Rapporteur: Sir Roger GALE, United Kingdom, European Democrat Group

A. Conclusions of the committee

1. The Committee on Culture, Science, Education and Media, together with its rapporteur for opinion who had tabled the motion for a recommendation on the “Revision of the European Convention on Transfrontier Television” in 2011 ([Doc. 12752](#)), strongly welcome the report by Mr James Clappison on behalf of the Committee on Legal Affairs and Human Rights.

2. The report is very timely for at least two reasons: it comes at a moment when broadcasting is technically converging even further with digital online media, and the Parliament and Commission of the European Union will be reshuffled following the parliamentary elections in May 2014.

B. Proposed amendments

Amendment A (to the draft resolution)

In the draft resolution, after paragraph 2, insert the following paragraph:

“The Assembly recalls Article 24 of Directive 89/552/EEC as amended by Directive 2007/65/EC, which stipulates that, in fields which this Directive does not co-ordinate, it shall not affect the rights and obligations of member States of the European Union resulting from existing conventions dealing with telecommunications or broadcasting.”

Amendment B (to the draft resolution)

In the draft resolution, in the second sentence of paragraph 3, replace the words “current situation” with the words “current blockage of the revision”.

Amendment C (to the draft resolution)

In the draft resolution, paragraph 4, replace the second sentence with the following sentence:

“Therefore, the Assembly strongly shares the legitimate intention expressed by the high contracting parties of the ECTT to revise and modernise the ECTT in order to adapt it to the newest technological standards.”

1. Reference to committee: [Doc. 12752](#), Reference 3820 of 25 November 2011. Reporting committee: Committee on Legal Affairs and Human Rights. See [Doc. 13383](#). Opinion approved by the committee on 28 January 2014.



Amendment D (to the draft resolution)

In the draft resolution, paragraph 5.1, replace the words “fall outside” with the words “it believes to fall within”.

Amendment E (to the draft resolution)

In the draft resolution, replace paragraph 5.3 with the following paragraph:

“reflect on the need for a new convention embodying a modern legal framework on media issues at the trans-European level.”

Amendment F (to the draft resolution)

In the draft resolution, at the end of paragraph 6.2, add the following text:

“and the protection of freedom of expression and media freedom by Article 10 of the European Convention on Human Rights (ETS No. 5) and also properly reflecting the needs and interests of non-European Union member States of the Council of Europe.”

Amendment G (to the draft recommendation)

In the draft recommendation, paragraph 1, after the words “European Convention on Transfrontier Television”, insert the following words:

“as well as its Resolution 1636 (2008) on indicators for media in a democracy”

C. Explanatory memorandum by Sir Roger Gale, rapporteur for opinion

1. General comments

1. Media regulation has been undergoing frequent changes over the past decade due to the technical convergence of the press and broadcasting with the Internet and other online media. The average number of hours spent using media have increased per capita, and the economic competition for customers and advertising revenue has increased even more. In the wake of such competition, especially Internet companies have grown into global players with considerable economic and political powers. The latter have had a remarkable impact on European Union policies and regulation in general, which consequently focused more on global economic aspects rather than traditional media policies based on cultural and democratic values including regional diversities.

2. Assembly [Recommendation 1855 \(2009\)](#) on regulation of audiovisual media services reaffirmed “that the AVMS [European Union Audiovisual Media Services] Directive has the main objective of ensuring freedom of services within the internal market of the European Union in accordance with primary European Community law. This approach differs from the ECTT [European Convention on Transfrontier Television], which has the aim of ensuring freedom of transmission and retransmission of broadcasting in Europe, regardless of frontiers, in accordance with Article 10 of the European Convention on Human Rights”.

3. The European Convention on Transfrontier Television is a valid and existing treaty under public international law. However, in a letter of 10 December 2010 to the Secretary General of the Council of Europe, Ms Neelie Kroes, Vice-President and Commissioner for the Digital Agenda of the European Union, expressed the views that the European Union had exclusive competence for the issues covered by the revised convention and that EU member States were not allowed to become a Party to this revised convention. She had furthermore indicated that the European Union did not intend to become a Party to the convention as this would constrain the European Union in its action.

4. Article 3 of the Treaty on the Functioning of the European Union confers upon the latter exclusive competence in the following areas only: a) customs union; b) the establishing of the competition rules necessary for the functioning of the internal market; c) monetary policy for the member States whose currency is the euro; d) the conservation of marine biological resources under the common fisheries policy; and e) common commercial policy. While the European Union has shared competence with its member States in the areas of internal market as well as freedom, security and justice under Article 4, Article 6 of that Treaty clearly stipulates that the European Union shall have competence only to carry out actions to support, co-ordinate or supplement the actions of its member States in such areas as culture and industry. Broadcasting falls under

the latter. This is also reflected in Article 24 of EU Directive 89/552/EEC which relates to the ECTT. The European ministers responsible for media policy had agreed on the ECTT in 1989 before some of them subsequently agreed on the corresponding Directive 89/552/EEC on television without frontiers.

5. This case is disturbing and requires an adequate political debate in Europe, because it concerns the power of member States of the European Union to legislate and enter into international treaties in an area which is of high national importance, but it equally affects a great number of member States of the Council of Europe which are not members of the European Union.

6. Obviously, broadcasters and other audiovisual media would highly benefit from achieving a revision of the current ECTT in line with EU Directive 2007/65/EC on Audiovisual Media Services (AVMS), which would allow Europe to be united in an area where the national borders of the 28 EU member States do not and should not matter, and beyond which EU Directives cannot reach.

2. Specific explanations

7. Amendment A: Despite repeated efforts by the Council of Europe, the European Commission has not clarified the legal standpoint expressed by its Vice-President and Commissioner for the Digital Agenda, Ms Neelie Kroes, in her letter of 10 December 2010 to the Secretary General of the Council of Europe, in which she stated that the European Union had exclusive competence for the issues covered by the ECTT and that EU member States were not allowed to become Party to this Council of Europe convention. Article 24 of the Directive 89/552/EEC as amended by Directive 2007/65/EC contradicts this position.

8. Amendment B: The current situation is determined by the blockage by the European Commission. The European Commission threatened EU member States with sanctions if they signed the revised ECTT. Nevertheless, the European Commission has continuously refused to explain its legal views to the member States who had signed the current ECTT. It is appropriate to identify this situation rather than calling it a "situation".

9. Amendment C: This amendment in fact only concerns two phrases in the second sentence of paragraph 4: the phrase "is convinced that the Council of Europe should" is replaced by the phrase "strongly shares the legitimate intention expressed by the high contracting parties of the ECTT to". Under public international law, the Parties to the ECTT are the masters or owners of the ECTT. They had worked on a draft revision for several years and finally expressed their intention to revise and modernise the ECTT. This should be stated clearly in the resolution.

10. Amendment D: The competences of the European Union are determined by the EU member States under treaty law, that is the so-called primary EU law. The European Union should therefore be invited to express its views on what is within its exclusive competence, rather than what is outside such competence.

11. Amendment E: The focus of this report is on the European Convention on Transfrontier Television and thus also on broadcasting or audiovisual media. The idea that the European Union should "consider other possible avenues aimed at adopting a modern legal framework governing media freedom issues at the pan-European level" is not convincing.

12. Firstly, media freedom is guaranteed by Article 10 of the European Convention on Human Rights at pan-European level, interpreted and kept up-to-date through the case law of the European Court of Human Rights. It seems neither desirable nor feasible to elaborate a new legal instrument which would compete with and thus probably undermine Article 10. Secondly, even assuming that a justification for a new legal instrument would exist in the field of media freedom, standard setting in this area should be a task of the Council of Europe and its member States, also bearing in mind that the European Union would not have any mandate to produce or otherwise provide avenues for a legal framework outside its geographical limits. Finally, any possible alternative "modern legal framework" would probably be intended to replace the ECTT, which is certainly not what we would like to propose here.

13. Amendment F: It is legally neither feasible nor desirable for member States of the European Union to work towards a trans-European legal framework without all the member States of the whole Council of Europe. Freedom of expression and media freedom are protected by Article 10 of the European Convention on Human Rights and the latter must not be undermined by drafting another trans-European legal framework.

14. Amendment G: It may indeed be useful for the Committee of Ministers to start work on guidelines for member States on media freedom. Obviously, such guidelines would have to be based on the relevant case law of the European Court of Human Rights under Article 10 of the Convention. In addition, however, the Committee of Ministers should be reminded of the directly relevant Assembly [Resolution 1636 \(2008\)](#) on indicators for media in a democracy, which contains a check list of fundamental media freedom principles.