

Introduction & Objectives

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The EPRA work programme for 2014 sees the establishment of an *ad hoc* working group for the meeting in Budva, focused on the list of events of major importance to society, a theme EPRA has dealt with the last time at the Barcelona meeting in 2001¹, following also the approval of the revised lists of various countries after the entrance into force of AVMS Directive.

From TVWF to AVMSD: the EU framework

The provision regarding the list of events of major importance to society was firstly introduced in 1997, at the occasion of the revision of the TVWF Directive, being proposed by the European Parliament, and then kept in the 2007 AVMSD and in the consolidated text of 2010.

Article 14 gives Member States the faculty to draw up a list of events of major importance to society, which shall not be broadcast exclusively in such a way that a substantial proportion of the public would be deprived of the possibility of following them free to air. Events of major importance for society should meet certain criteria, being *“outstanding events which are of interest to the general public in the Union or in a given Member State or in an important component part of a given Member State”*². In drafting their lists, Member States shall set down, in absence of more specific details from the text of the Directive, the appropriate criteria to determine what is an important event in accordance with the Directive, and perform a far-reaching consultation procedure among all interested stakeholders.

As clarified by recitals no. 48 and 49 of the AMVSD, the acquisition of the rights of an event included in the list is, of course, not forbidden; nonetheless, this has to be reconciled with the need for promoting pluralism and right to information of the users, as codified in Article 11 of the Charter of fundamental rights of the EU. In this view, it is necessary for the States *“to take measures to protect the right to information and to ensure wide access by the public to*

¹ <http://www.epra.org/attachments/barcelona-wg1-major-events-background-paper>

² Recital no. 52 of the AVMS Directive.

television coverage” of events of major importance for society, providing recital 49 also an exemplificative list.

With this purpose, Member states may take measures compatible with Union law aimed at regulating the exercise by broadcasters under their jurisdiction of exclusive broadcasting rights to this kind of events and, on the basis of the principle of mutual recognition, Member States must ensure that broadcasters under their jurisdiction respect the lists of other countries.

In the absence of a more articulated provision of the directive, what a State has to face when adopting (or revising) its list is how to determine the crucial points: how to qualify the events as “of major importance”, what “substantial proportion” means numerically, if the broadcasting has to be live or on a deferred basis, what actions could be implemented in order to guarantee the smooth running of the system.

How can an event be qualified as “of major relevance”?

The guidelines to help the countries orientating in qualifying an event as “of major relevance” come from the European Commission’s Contact Committee *Working Document: Implementation of Article 3a of Directive 89/552/EEC, as modified by directive 97/36/EC (CC TVSF (97)9/3)*, in which are listed the criteria that an event should fulfil (at least two of them) in order to be inserted in a national list:

- (a) the event and its outcome are of special and widespread interest in the country, interesting persons other than those who usually watch this type of event;
- (b) the event enjoys widespread recognition by the general public, has particular cultural significance and strengthens national cultural identity;
- (c) the event involves a national team in a specific sporting discipline in a major international tournament;
- (d) the event has traditionally been broadcast on free television and has enjoyed high viewing figures.

Objectives and structure of the discussion

The aim of the WG is to focus on the development in implementing article 14 of the AVMSD, taking into consideration the different approaches of the countries whose lists have been recently amended and the main issues they experienced during and after the proceeding.

The attempt is to address the topic from different points of view: on one side the regulatory approach, whose goal is to protect the national audience from the risk of viewing events of particular relevance only on a premium subscription, on the other side the interests of the market players, competing to acquire the rights of particularly appealing events in order to

gain more subscribers and investments, since it has to be recognised that inserting these events in the national lists has also an impact on commercial strategies.

This, also in the light of a few judgements of the European Court of Justice and taking into consideration the recent amendments to various national lists, gives us many hints for the discussion: from the concrete application of the four aforementioned criteria for inserting the events in the lists, to the impact on the market and competition, from the practical remedies in case of acquisition of the events' rights by broadcasters not able to reach freely the "substantial proportion" of the public.

The session is planned as follows:

- Damir Hajduk, EPRA Vice Chairperson, will introduce the topic, outlining the most relevant elements;
- Francesca Pellicanò (AGCOM, IT) will present the process AGCOM went through in 2012 in adopting a revised list of events;
- Marcello Dolores (Director of legal and regulatory affairs for southern Europe at Discovery) will express the point of view of an operator and the impact of the list on the market;
- Jan Anders Sæter (Medietilsynet, NO) will present the Norwegian experience, since it is approaching the 1 of July, day of entrance into force of the Norwegian list;
- Q&A session, floor intervention and debate.