

EN

EN

EN



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 30.11.2009  
COM(2009)657 final

Proposal for a

**COUNCIL DECISION**

**on the Community position to be taken in the EU – Switzerland Joint Committee established in the Agreement between the European Community and the Swiss Confederation in the audiovisual field, establishing the terms and conditions for the participation of the Swiss Confederation in the Community program MEDIA 2007, as regards a Joint Committee decision updating Article 1 in Annex I of the Agreement**

## EXPLANATORY MEMORANDUM

The Agreement between the European Community and the Swiss Confederation in the audiovisual field, establishing the terms and conditions for the participation of the Swiss Confederation in the Community program MEDIA 2007<sup>1</sup> was signed on 11 October 2007 and, as per its article 13, it is provisionally applied as from 1 September 2007.

On 12 June 2009 the Swiss Parliament approved the Agreement and on 25 September 2009 it approved modifications to the Swiss Law on Radio and Television (LRTV) that, upon entry into force, will render it compatible with the *acquis*.

Official notification from the Swiss government on the ratification of the Agreement is expected shortly, and the modifications to the Swiss LRTV should enter into force in January after the expiration of the 100 days delay during which a referendum might be requested.

Ratification by the EU side should follow the entry into force of the modifications to the LRTV.

Following the entry into force on 19 December 2007 of the Audiovisual Media Services Directive (Directive 89/552 as last amended by Directive 2007/65/EC of the European Parliament and the Council)<sup>2</sup>, it appears appropriate to the Parties not only to replace the references to this Directive as provided in the Final Act to the agreement in the *Joint Declaration by the Contracting Parties on the adaptation of the Agreement to the new Community Directive*, but to update Article 1 in Annex I of the Agreement as well, pursuant to Article 8 (7) of the Agreement.

The new drafting proposed will replace the current procedure in Article 1 of Annex I by a similar mechanism which is more in line with the legal framework brought up by the AVMS Directive.

Regarding the adoption of the Community position to be taken to the Joint Committee, Article 2 of the Decision of the Council and of the Commission of 4 April 2002 on the conclusion of seven Agreements with the Swiss Confederation provides that positions taken by the Community in the course of the implementation of the Agreement as regards decisions of the Joint Committee shall be laid down by the Council in accordance with the corresponding provisions of the Treaty establishing the European Community.<sup>3</sup>

In that respect, Article 300, paragraph 2, subparagraph 2 of the Treaty establishing the European Community provides that the positions adopted on behalf of the Community in a body set up by an agreement shall be approved by the Council when such body is called upon to adopt decisions having legal effects.

---

<sup>1</sup> O.J. (2007) L 303 p.11

<sup>2</sup> O.J. (2007) L 332 p.27

<sup>3</sup> O.J. (2002) L 114 p.1

Proposal for a

## COUNCIL DECISION

**on the Community position to be taken in the EU – Switzerland Joint Committee established in the Agreement between the European Community and the Swiss Confederation in the audiovisual field, establishing the terms and conditions for the participation of the Swiss Confederation in the Community program MEDIA 2007, as regards a Joint Committee decision updating Article 1 in Annex I of the Agreement**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 150(4) and Article 157(3) thereof, in conjunction with Article 300(2) sub-paragraph 2 thereof,

Having regard to the proposal from the Commission<sup>4</sup>,

Whereas:

- (1) Article 8 of the Agreement between the European Community and the Swiss Confederation in the audiovisual field, establishing the terms and conditions for the participation of the Swiss Confederation in the Community programme MEDIA 2007 signed on 11 October 2007, hereinafter referred to as 'the Agreement', establishes a Joint Committee responsible for the management and proper implementation of this Agreement.
- (2) Following the entry into force on 19 December 2007 of Directive 89/552 as last amended by Directive 2007/65/EC of the European Parliament and the Council (Audiovisual Media Services Directive)<sup>5</sup>, it appears appropriate to the Parties not only to replace the references to this Directive as provided in the Final Act to the agreement in the *Joint Declaration by the Contracting Parties on the adaptation of the Agreement to the new Community Directive*, but to update Article 1 in Annex I of the Agreement as well, pursuant to Article 8 (7) of the Agreement,

HAS DECIDED AS FOLLOWS:

### *Article 1*

The Council approves the draft decision in the Annex as Community position regarding a decision to be adopted by the EU–Switzerland Joint Committee established in the Agreement, on the updating of Article 1 in Annex I of the Agreement.

---

<sup>4</sup> OJ C [...], [...], p. [...].

<sup>5</sup> O.J. (2007) L 332 p.27

*Article 2*

The decision of the joint committee shall be published in the Official Journal of the European Union.

Done at Brussels, [...]

*For the Council*  
*The President*  
[...]

**ANNEX**

**Draft**

**DECISION No ...  
OF THE EU-SWITZERLAND JOINT COMMITTEE ESTABLISHED IN THE  
AGREEMENT BETWEEN THE EUROPEAN COMMUNITY AND THE SWISS  
CONFEDERATION IN THE AUDIOVISUAL FIELD, ESTABLISHING THE TERMS  
AND CONDITIONS FOR THE PARTICIPATION OF THE SWISS  
CONFEDERATION IN THE COMMUNITY PROGRAMME MEDIA 2007**

**of ... 2010**

**on the updating of Article 1 in Annex I of the Agreement.**

**DECISION No ...**

**OF THE EU-SWITZERLAND JOINT COMMITTEE ESTABLISHED IN THE  
AGREEMENT BETWEEN THE EUROPEAN COMMUNITY AND THE SWISS  
CONFEDERATION IN THE AUDIOVISUAL FIELD, ESTABLISHING THE TERMS  
AND CONDITIONS FOR THE PARTICIPATION OF THE SWISS  
CONFEDERATION IN THE COMMUNITY PROGRAMME MEDIA 2007,**

**of ... 2010**

**on the updating of Article 1 in Annex I of the Agreement.**

THE JOINT COMMITTEE,

Having regard to the Agreement between the European Community and the Swiss Confederation in the audiovisual field, establishing the terms and conditions for the participation of the Swiss Confederation in the Community programme MEDIA 2007<sup>6</sup>, hereinafter referred to as 'the Agreement', and the Final Act to Agreement<sup>7</sup>, both signed in Brussels on 11 October 2007.

Whereas:

1. The Agreement entered into force on [.....],
2. Following the entry into force on 19 December 2007 of Directive 89/552 as last amended by Directive 2007/65/EC of the European Parliament and the Council (Audiovisual Media Services Directive)<sup>8</sup>, it appears appropriate to the Parties not only to replace the references to this Directive as provided in the Final Act to the agreement in the *Joint Declaration by the Contracting Parties on the adaptation of the Agreement to the new Community Directive*, but to update Article 1 in Annex I of the Agreement as well, pursuant to Article 8 (7) of the Agreement,

HAS DECIDED AS FOLLOWS:

*Article 1*

- (1) Article 1 in Annex I of the Agreement shall be replaced by the following:

<<Article 1

Freedom of broadcast reception and retransmission

1. Switzerland shall ensure freedom of reception and retransmission on its territory with regard to television broadcasts under the jurisdiction of a Member State of the Community, as determined pursuant to Directive 89/552/EEC of the European Parliament and of the Council of 3 October 1989 on the coordination of certain

---

<sup>6</sup> O.J. (2007) L 303 p.11

<sup>7</sup> O.J. (2007) L 303 p.20

<sup>8</sup> O.J. (2007) L 332 p.27

provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (footnote 1), (hereinafter referred to as the 'Audiovisual Media Services Directive'), in accordance with the following procedures:

Switzerland shall maintain the right to:

(a) suspend retransmission of broadcasts from a television broadcasting organisation under the jurisdiction of a Member State of the Community which has manifestly, seriously and gravely infringed the rules on the protection of minors and human dignity set out in Articles Article 22(1) or (2) and/or Article 3b of the Audiovisual Media Services Directive;

(b) require broadcasters under its jurisdiction to comply with more detailed or stricter rules in the fields coordinated by the Audiovisual Media Services Directive provided that such rules are proportionate and non-discriminatory.

2. In cases where Switzerland:

(a) has exercised its freedom under paragraph 1.b to adopt more detailed or stricter rules of general public interest; and

(b) assesses that a broadcaster under the jurisdiction of a Member State of the Community provides a television broadcast which is wholly or mostly directed towards its territory; it may contact the Member State having jurisdiction with a view to achieving a mutually satisfactory solution to any problems posed. On receipt of a substantiated request by Switzerland, the Member State having jurisdiction shall request the broadcaster to comply with the rules of general public interest in question. The Member State having jurisdiction shall inform Switzerland of the results obtained following this request within two months. Either Switzerland or the Member State may ask the Commission to invite the parties concerned to an ad-hoc meeting with the Commission on the fringe of the Contact Committee to examine the case.

3. Where Switzerland assesses;

(a) that the results achieved through the application of paragraph 2 are not satisfactory; and

(b) that the broadcaster in question has established itself in the Member State having jurisdiction in order to circumvent the stricter rules, in the fields coordinated by the Audiovisual Media Services Directive, which would be applicable to it if it were established within Switzerland, it may adopt appropriate measures against the broadcaster concerned.

Such measures shall be objectively necessary, applied in a non-discriminatory manner and be proportionate to the objectives which they pursue.

4. Switzerland may take measures pursuant to paragraph 1.a or paragraph 3 of this article only if the following conditions are met:

(a) it has notified the Joint Committee and the Member State in which the broadcaster is established of its intention to take such measures while substantiating the grounds on which it bases its assessment;

(b) and the Joint Committee has decided that the measures are proportionate and non-discriminatory, and in particular that assessments made by Switzerland under paragraphs 2 and 3 are correctly founded.

Footnote (1):

OJ L 298, 17.10.1989, p. 23. Directive as amended by Directive 97/36/EC of the European Parliament and of the Council of 30 June 1997, (OJ L 202, 30.7.1997, p. 60) and by Directive 2007/65/EC of the European Parliament and of the Council of 11 December 2007 (OJ L 332, 18.12.2007, p. 27).>>

## *Article 2*

This Decision shall enter into force on the first day following that of its adoption.



Done at Brussels, [...].

*For the Joint Committee*

*The President*

*The Secretaries*