

ACTS ADOPTED BY BODIES CREATED BY INTERNATIONAL AGREEMENTS

DECISION No 1/2011 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 21 January 2011

on the updating of Article 1 of Annex I to the Agreement

(2011/193/EU)

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 ⁽¹⁾, hereinafter referred to as 'the Agreement', and the Final Act to the Agreement ⁽²⁾, both signed in Brussels on 11 October 2007,

Whereas:

- (1) The Agreement entered into force on 1 August 2010.
- (2) Following the entry into force on 19 December 2007 of Council Directive 89/552/EEC ⁽³⁾ as last amended by Directive 2007/65/EC of the European Parliament and of the Council ⁽⁴⁾, as codified (Audiovisual Media Services Directive), it appears appropriate to the Contracting Parties to update the references to that Directive accordingly, 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, and to update Article 1 of Annex I to the Agreement, pursuant to Article 8(7) of the Agreement,

HAS DECIDED AS FOLLOWS:

Article 1

Article 1 of Annex I to 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

Union, as determined pursuant to Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (*), (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 Union which has manifestly, seriously and gravely infringed the rules on the protection of minors and human dignity set out in Article 27(1) or (2) and/or Article 6 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 Union 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

⁽¹⁾ OJ L 303, 21.11.2007, p. 11.

⁽²⁾ OJ L 303, 21.11.2007, p. 20.

⁽³⁾ OJ L 298, 17.10.1989, p. 23.

⁽⁴⁾ OJ L 332, 18.12.2007, p. 27.

having jurisdiction shall inform Switzerland of the results obtained following this request within 2 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; and

- (b) 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.

(*) 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 as last amended 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) and as codified in Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual services (Audiovisual Media Services Directive) in the version OJ L 95, 15.4.2010, p. 1).

Article 2

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

Done at Brussels, 21 January 2011.

For the Joint Committee

<i>The Head of the EU Delegation</i>	<i>The Head of the Swiss Delegation</i>
Jean-Eric DE COCKBORNE	J.-F. JAUSLIN