

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**

THE EUROPEAN COMMUNITY, hereinafter referred to as 'the Community',

of the one part, and

THE SWISS CONFEDERATION, hereinafter referred to as 'Switzerland',

of the other part,

hereinafter together referred to as 'the Contracting Parties',

WHEREAS the Community, pursuant to Decision No 1718/2006/EC of the European Parliament and of the Council of 15 November 2006 concerning the implementation of a programme of support for the European audiovisual sector (MEDIA 2007) ⁽¹⁾, (hereinafter referred to as the 'Decision establishing the MEDIA 2007 programme'), has established a programme of support for the European audiovisual sector;

WHEREAS Article 8 of the Decision establishing the MEDIA 2007 programme provides, under certain conditions, for the participation of third countries which are party to the Council of Europe Convention on Transfrontier Television, other than EFTA countries party to the EEA Agreement and candidate countries for accession to the European Union, on the basis of supplementary appropriations and specific procedures to be established in agreements between the parties concerned;

WHEREAS the abovementioned provision makes the opening up of the programme to these third countries subject to a prior examination of the compatibility of their legislation with the relevant *acquis communautaire*;

WHEREAS Switzerland took part in the MEDIA Plus and MEDIA Training programmes that came to an end on 31 December 2006;

WHEREAS Switzerland is committed to completing its legislative framework in order to ensure the required level of compatibility with the *acquis communautaire*; whereas, therefore, on the date of entry into force of this Agreement, Switzerland fulfils the participation conditions laid down in Article 8 of the Decision establishing the MEDIA 2007 programme;

WHEREAS, in particular, cooperation between the Community and Switzerland, with a view to pursuing the objectives fixed for the MEDIA 2007 programme, within the context of transnational cooperation activities involving the Community and Switzerland, by its nature enriches the impact of the different actions undertaken pursuant to that programme and strengthens the skill levels of human resources in the Community and Switzerland;

WHEREAS the Contracting Parties have a common interest in the development of the European audiovisual programme industry in the context of wider cooperation;

WHEREAS the Contracting Parties consequently expect to obtain mutual benefits from the participation of Switzerland in the MEDIA 2007 programme,

HAVE AGREED AS FOLLOWS:

⁽¹⁾ OJ L 327, 24.11.2006, p. 12.

*Article 1***Subject matter**

The objective of the cooperation between the Community and Switzerland established by this Agreement is the participation of Switzerland in all actions under the MEDIA 2007 programme. Unless otherwise provided by this Agreement, this shall take place with due regard for the objectives, criteria, procedures and deadlines laid down by the Decision establishing the MEDIA 2007 programme.

*Article 2***Compatibility of legislative frameworks**

In order to be able to fulfil the participation conditions laid down by the Decision establishing the MEDIA 2007 programme on the date of entry into force of this Agreement, Switzerland shall implement the measures described in Annex I, with a view to completing its legislative framework so as to ensure the required level of compatibility with the *acquis communautaire*.

*Article 3***Eligibility**

Unless otherwise provided in this Agreement:

1. The conditions for the participation of organisations and individuals from Switzerland in each of the actions shall be the same as those applicable to organisations and individuals from the Member States of the Community.
2. The eligibility of institutions, organisations and individuals from Switzerland shall be governed by the relevant provisions in the Decision establishing the MEDIA 2007 programme.
3. In order to ensure the Community dimension of the programme, all projects and activities necessitating a European partnership shall, in order to be eligible for Community financial support, include at least one partner from one of the Member States of the Community. Other projects and actions shall present a clear European and Community dimension.

*Article 4***Procedures**

1. The terms and conditions for the submission, assessment and selection of applications from institutions, organisations and individuals from Switzerland shall be the same as those applicable to eligible institutions, organisations and individuals from the Member States of the Community.
2. In accordance with the relevant provisions of the Decision establishing the MEDIA 2007 programme, the Commission of the European Communities (hereinafter referred to as 'the

Commission') may consider Swiss experts when appointing independent experts to assist it with project evaluation.

3. The language to be used in all contacts with the Commission, as regards the application process, contracts, reports to be submitted and other administrative aspects of the programme, shall be one of the official languages of the Community.

*Article 5***National structures**

1. Switzerland shall establish the appropriate structures and mechanisms at national level and shall adopt all other necessary measures for national coordination and organisation of activities to implement the MEDIA 2007 programme in accordance with the relevant provisions of the Decision establishing the MEDIA 2007 programme. In particular, Switzerland undertakes to establish a MEDIA Desk in cooperation with the Commission.
2. The maximum amount of financial support to be allocated by the programme to the activities of the MEDIA Desk shall not exceed 50 % for the total budget for those activities.

*Article 6***Financial provisions**

To cover the costs resulting from its participation in the MEDIA 2007 programme, Switzerland shall each year pay a contribution to the general budget of the European Union in accordance with the terms and conditions set out in Annex II.

*Article 7***Financial control**

The rules on financial control relating to Swiss participants in the MEDIA 2007 programme are set out in Annex III.

*Article 8***Joint Committee**

1. A Joint Committee is hereby established.
2. The Joint Committee shall consist of representatives of the Community and representatives of Switzerland. It shall act by mutual agreement.
3. The Joint Committee shall be responsible for the management and proper implementation of this Agreement.
4. At the request of either one of them, the Contracting Parties shall exchange information and hold consultations within the Joint Committee on the activities covered by this Agreement and related financial aspects.

5. In order to discuss the proper functioning of this Agreement, the Joint Committee shall meet at the request of either of the Contracting Parties. It shall adopt its rules of procedure and may create working groups to assist it with its task.

6. The Contracting Parties may submit any disputes relating to the interpretation or application of this Agreement to the Joint Committee. The Joint Committee may settle such disputes and shall be provided with any information which might be useful for an in-depth examination of the situation with a view to finding an acceptable solution. To this end, the Joint Committee shall examine all possibilities for maintaining the proper functioning of this Agreement.

7. The Joint Committee shall periodically examine the Annexes to this Agreement. Acting on a proposal from either of the Contracting Parties, it may decide to amend them.

Article 9

Monitoring, evaluation and reports

Without prejudice to the responsibilities of the Community in relation to programme monitoring and evaluation pursuant to the relevant provisions in the Decision establishing the MEDIA 2007 programme, the participation of Switzerland in the MEDIA 2007 programme shall be continuously monitored in the context of a partnership between the Community and Switzerland. In order to help it to prepare reports on the experience acquired in the application of the MEDIA 2007 programme, Switzerland shall submit to the Commission a contribution describing the national measures taken by Switzerland in this regard. It shall take part in any other specific activity proposed by the Community for this purpose.

Article 10

Annexes

Annexes I, II and III shall form an integral part of this Agreement.

Article 11

Territorial application

This Agreement shall apply to the territories in which the Treaty establishing the European Community is applicable, under the

conditions laid down in that Treaty, and to the territory of Switzerland.

Article 12

Duration and termination

1. This Agreement is concluded for the duration of the MEDIA 2007 programme.

2. If the Community adopts a new multi-annual programme of support for the European audiovisual sector, this Agreement may be extended or renegotiated under mutually agreed conditions.

3. Either the Community or Switzerland may terminate this Agreement by notifying the other Party of its decision. The Agreement shall cease to apply 12 months after the date of such notification. Projects and activities in progress at the time of termination shall continue until their completion according to the conditions laid down in this Agreement. The Contracting Parties shall settle by mutual agreement any other consequences of termination.

Article 13

Entry into force and provisional application

This Agreement shall enter into force on the first day of the first month following the notification by the Contracting Parties of the completion of their respective procedures. It shall be provisionally applied as from 1 September 2007.

Article 14

Use of languages

This Agreement shall be drawn up in duplicate in the Bulgarian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish languages, each of these texts being equally authentic.

Съставено в Брюксел на единадесети октомври две хиляди и седма година.

Hecho en Bruselas, el once de octubre de dos mil siete.

V Bruselu dne jedenáctého října dva tisíce sedm.

Udfærdiget i Bruxelles, den ellefte oktober to tusind og syv.

Geschehen zu Brüssel am elften Oktober zweitausendsieben.

Kahe tuhande seitsmenda aasta oktoobrikuu üheteistkümnendal päeval Brüsselis.

Έγινε στις Βρυξέλλες, στις ένδεκα Οκτωβρίου δύο χιλιάδες επτά.

Done at Brussels on the eleventh day of October in the year two thousand and seven.

Fait à Bruxelles, le onze octobre deux mille sept.

Fatto a Bruxelles, addì undici ottobre duemilasette.

Briselē, divtūkstoš septītā gada vienpadsmitajā oktobrī.

Priimta du tūkstančiai septintųjų metų spalio vienuoliką dieną Briuselyje.

Kelt Brüsszelben, a kétezer-hetedik év október havának tizenegyedik napján.

Magħmul fi Brussell, fil-ħdax-il jum ta' Ottubru tas-sena elfejn u sebgħa.

Gedaan te Brussel, de elfde oktober tweeduizend zeven.

Sporządzono w Brukseli, dnia jedenastego października roku dwa tysiące siódmego.

Feito em Bruxelas, em onze de Outubro de dois mil e sete.

Încheiat la Bruxelles, unsprezece octombrie două mii șapte.

V Bruseli jedenásteho oktobra dvetisícšedem.

V Bruslju, dne enajstega oktobra leta dva tisoč sedem.

Tehty Brysselissä yhdentenätoista päivänä lokakuuta vuonna kaksituhattaseitsemän.

Som skedde i Bryssel den elfte oktober tjugohundrasju.

За Европейската общност
 Por la Comunidad Europea
 Za Evropské společenství
 For Det Europæiske Fællesskab
 Für die Europäische Gemeinschaft
 Euroopa Ühenduse nimel
 Για την Ευρωπαϊκή Κοινότητα
 For the European Community
 Pour la Communauté européenne
 Per la Comunità europea
 Eiropas Kopienas vārdā
 Europos bendrijos vardu
 az Európai Közösség részéről
 Ghall-Komunitá Ewropea
 Voor de Europese Gemeenschap
 W imieniu Wspólnoty Europejskiej
 Pela Comunidade Europeia
 Pentru Comunitatea Europeană
 Za Európske spoločenstvo
 Za Evropsko skupnost
 Euroopan yhteisön puolesta
 På Europeiska gemenskapens vägnar

За Конфедерация Швейцария
 Por la Confederación Suíza
 Za Švýcarskou konfederaci
 For Det Schweiziske Forbund
 Für die Schweizerische Eidgenossenschaft
 Šveitsi Konföderatsiooni nimel
 Για την Ελβετική Συνομοσπονδία
 For the Swiss Confederation
 Pour la Confédération suisse
 Per la Confederazione svizzera
 Šveices Konfederācijas vārdā
 Šveicarijos Konfederācijas vardu
 a Svájci Államszövetség részéről
 Ghall-Konfederazzjoni Žvizzera
 Voor de Zwitserse Bondsstaat
 W imieniu Konfederacji Szwajcarskiej
 Pela Confederação Suíça
 Pentru Confederația Elvețiană
 Za švajčiarsku konfederáciu
 Za švicarsko konfederacijo
 Sveitsin valaliiton puolesta
 På Schweiziska edsförbundets vägnar

ANNEX I

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 Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities⁽¹⁾, (hereinafter referred to as the 'Television without Frontiers 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 22 and 22a of the 'Television without Frontiers' Directive;
- (b) take action against a television broadcasting organisation which is established in the territory of a Member State of the Community but whose activity is entirely or mainly directed towards Swiss territory, if the place of establishment was chosen with a view to evading the rules which would have applied to the organisation had it been established on Swiss territory. These conditions will be interpreted in the light of the relevant case law of the Court of Justice of the European Communities.

2. In the cases referred to in paragraph 1 of this Article, action shall be taken after an exchange of views within the Joint Committee established under this Agreement.

Article 2

Events of major importance for society

1. Switzerland shall ensure that broadcasters within its jurisdiction will not exercise exclusive rights on events of major importance according to the list of a Member State of the Community in such a way that a substantial proportion of the public of this Member State is deprived of following these events, according to Article 3a of the 'Television without Frontiers' Directive.

2. In accordance with the provisions established in Article 3a of the 'Television without Frontiers' Directive, Switzerland shall inform the European Commission of the measures taken or to be taken in this regard.

Article 3

Promotion of distribution and production of European works

For the purpose of implementing the measures regarding the promotion and distribution of European works, the definition of a European work shall be that set out in Article 6 of the 'Television without Frontiers' Directive.

Article 4

Transitional provisions

Article 1 of this Annex shall apply from 30 November 2009.

Before 30 November 2009, the provisions set out in Article 1 of Annex II of the Agreement of 26 October 2004 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 programmes MEDIA Plus and MEDIA Training⁽²⁾ shall continue to apply.

⁽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 (OJ L 202, 30.7.1997, p. 60).

⁽²⁾ OJ L 90, 28.3.2006, p. 22.

ANNEX II

FINANCIAL CONTRIBUTION OF SWITZERLAND TO THE MEDIA 2007 PROGRAMME

1. The financial contribution to be made by Switzerland to the budget of the European Union in order to participate in the MEDIA 2007 programme shall be as follows (in euro):

2007	2008	2009	2010	2011	2012	2013
4 205 000	5 805 677	5 921 591	6 039 823	6 160 419	6 283 427	6 408 897

2. Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities ⁽¹⁾ and Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 ⁽²⁾ shall apply, in particular to the management of Switzerland's contribution.
3. The travel and subsistence expenses of representatives and experts from Switzerland in connection with their participation in meetings organised by the Commission in relation to the implementation of the programme shall be reimbursed by the Commission on the same basis and in accordance with the procedures currently in force for experts from the Member States of the Community.
4. Following the provisional application of this Agreement, and at the beginning of each subsequent year, the Commission will send to Switzerland a request for funds corresponding to its contribution to the budget for the programme, in accordance with this Agreement. This contribution shall be expressed in euro and shall be paid into a euro bank account held by the Commission.
5. Switzerland shall pay its contribution by 1 April, if the request for funds is sent by the Commission before 1 March, or no later than 30 days after the request for funds if this is sent by the Commission after that date. Any delay in the payment of the contribution will entail the payment of interest by Switzerland on the outstanding amount from the due date. The interest rate shall correspond to the rate applied by the European Central Bank, on the due date, for its operations in euro, increased by 3,5 percentage points.

⁽¹⁾ OJ L 248, 16.9.2002, p. 1. Regulation as amended by Regulation (EC, Euratom) No 1995/2006 (OJ L 390, 30.12.2006, p. 1).

⁽²⁾ OJ L 357, 31.12.2002, p. 1. Regulation as last amended by Regulation (EC, Euratom) No 478/2007 (OJ L 111, 28.4.2007, p. 13).

ANNEX III

FINANCIAL CONTROL OF SWISS PARTICIPANTS IN THE MEDIA 2007 PROGRAMME*Article 1***Direct communication**

The Commission shall communicate directly with programme participants established in Switzerland and with their subcontractors. These may submit directly to the Commission all relevant information and documentation which they are required to provide on the basis of the instruments referred to in this Agreement and of the contracts concluded to implement them.

*Article 2***Audits**

1. In accordance with Regulation (EC, Euratom) No 1605/2002 and Regulation (EC, Euratom) No 2342/2002 and with the other provisions referred to in this Agreement, the grant agreement decisions involving programme participants established in Switzerland may provide for scientific, financial, technological or other audits to be conducted at any time on the premises of participants or their subcontractors by Commission staff or other persons mandated by the Commission.
2. Commission staff and other persons mandated by the Commission shall have appropriate access to sites, works and documents and to all the information required in order to carry out such audits, including information in electronic form. This right of access shall be stated explicitly in the contracts entered into to implement the instruments referred to in this Agreement.
3. The Court of Auditors of the European Communities shall have the same rights as the Commission.
4. Audits may be conducted after the programme or this Agreement expire, on the terms laid down in the contracts in question.
5. The Swiss Federal Audit Office shall be informed in advance of audits to be conducted on Swiss territory. This information shall not be a legal condition for carrying out such audits.

*Article 3***On-the-spot checks**

1. Within the framework of this Agreement, the Commission (and OLAF) shall be authorised to carry out on-the-spot checks and inspections on Swiss territory, in accordance with the terms and conditions laid down in Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities⁽¹⁾.
2. On-the-spot checks and inspections shall be prepared and conducted by the Commission in close collaboration with the Swiss Federal Audit Office or with the other competent Swiss authorities designated by the Swiss Federal Audit Office, which shall be notified in good time of the object, purpose and legal basis of the checks and inspections, so that they can provide all the requisite help. To that end, officials of the competent Swiss authorities may participate in on-the-spot checks and inspections.
3. If the Swiss authorities concerned so wish, on-the-spot checks and inspections may be carried out jointly by the Commission and by them.
4. Where the participants in the MEDIA 2007 programme resist an on-the-spot check or inspection, the Swiss authorities, acting in accordance with national rules, shall give Commission inspectors such assistance as they need to allow them to discharge their duty of carrying out an on-the-spot check or inspection.

⁽¹⁾ OJ L 292, 15.11.1996, p. 2.

5. The Commission shall report as soon as possible to the Swiss Federal Audit Office any fact or suspicion relating to an irregularity which has come to its notice in the course of an on-the-spot check or inspection. In any event, the Commission shall be required to inform the abovementioned authority of the result of such checks and inspections.

Article 4

Information and consultation

1. For the purposes of proper implementation of this Annex, the competent Swiss and Community authorities shall regularly exchange information and, at the request of one of the Parties, shall conduct consultations.

2. The competent Swiss authorities shall inform the Commission without delay of any information which has come to their notice suggesting an irregularity in connection with the conclusion and implementation of contracts or agreements concluded to implement the instruments referred to in this Agreement.

Article 5

Confidentiality

Information communicated or acquired in any form under this Annex shall be covered by professional secrecy and protected in the same way as similar information is protected by Swiss law and by the corresponding provisions applicable to the Community institutions. Such information may not be communicated to persons other than those in the Community institutions, in the Member States or in Switzerland whose functions require them to know it, nor may it be used for purposes other than to ensure effective protection of the Contracting Parties' financial interests.

Article 6

Administrative measures and penalties

Without prejudice to application of Swiss criminal law, administrative measures and penalties may be imposed by the Commission in accordance with Regulation (EC, Euratom) No 1605/2002, Regulation (EC, Euratom) No 2342/2002 and Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities' financial interests ⁽¹⁾.

Article 7

Recovery and enforcement

Decisions taken by the Commission under the MEDIA 2007 programme within the scope of this Agreement which impose a pecuniary obligation on persons other than States shall be enforceable in Switzerland. The enforcement order shall be issued, without any checks other than verification of the authenticity of the act, by the authority designated by the Swiss government, which shall inform the Commission thereof without any undue delay. Enforcement shall take place in accordance with the Swiss rules of procedure. The legality of the enforcement decision shall be subject to control by the Court of Justice of the European Communities. Judgments of the Court of Justice of the European Communities and the Court of First Instance pursuant to an arbitration clause shall be enforceable on the same terms.

⁽¹⁾ OJ L 312, 23.12.1995, p. 1. Regulation as amended by Commission Regulation (EC) No 1233/2007 (OJ L 279, 23.10.2007, p. 10).