

## COMMISSION DECISION

of 25 June 2007

**on the compatibility with Community law of measures taken by France pursuant to Article 3a(1) of Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities**

(2007/480/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard 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 <sup>(1)</sup>, and in particular Article 3a(2) thereof,

Having regard to the opinion of the Committee established pursuant to Article 23a of Directive 89/552/EEC,

Whereas:

- (1) By letter of 30 December 2003, France notified to the Commission measures to be taken pursuant to Article 3a(1) of Directive 89/552/EEC.
- (2) The Commission verified, within three months from this notification, whether such measures are compatible with Community law, in particular as regards the proportionality of the measures and the transparency of the national consultation procedure.
- (3) In its examination, the Commission took into consideration the available data on the French media landscape.
- (4) The list of events of major importance for society included in the French measures was drawn up in a clear and transparent manner and a far-reaching consultation process had been launched in France.
- (5) The Commission was satisfied that the events listed in the French measures met at least two of the following

criteria considered to be reliable indicators of the importance of events for society: (i) a special general resonance within the Member State, and not simply a significance to those who ordinarily follow the sport or activity concerned; (ii) a generally recognised, distinct cultural importance for the population in the Member State, in particular as a catalyst of cultural identity; (iii) involvement of the national team in the event concerned in the context of a competition or tournament of international importance; and (iv) the fact that the event has traditionally been broadcast on free television and has commanded large television audiences.

- (6) A number of the events listed in the French measures, including the summer and winter Olympic Games, the opening match, semi-finals and final of the football World Cup as well as the semi-finals and final of the European Football Championship, fall within the category of events traditionally considered to be of major importance for society, as referred to explicitly in recital 18 of Directive 97/36/EC. These events have a special general resonance in France, as they are particularly popular with the general public, not just with those who usually follow sport events.
- (7) The other listed football events, including the official matches of the French national football team in the FIFA calendar, the final of the UEFA Cup, where a French club involved in one of the French championships is playing, the French football Cup final and the final of the football Champions' League, have a special general resonance in France, as football is the most popular sport in that country.
- (8) Rugby is an important sport and attracts a considerable audience, particularly in the south-west of France and thus a large part of the country. The French Rugby Championship final, the European Rugby Cup final where a French club involved in one of the French championships is playing, the Six Nations rugby tournament, and the semi-finals and final of the Rugby World Cup therefore have a special general resonance in France.
- (9) The listed tennis events have a special general resonance in France as tennis is the most important individual sport in that Member State.

<sup>(1)</sup> 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).

- (10) The French Formula 1 Grand Prix has a special general resonance in France in view of the importance of this event for the French racing car industry.
- (11) The Tour de France (men) has a special general resonance in France and has a generally recognised, distinct cultural importance for the population in France as a catalyst of cultural identity, due to the fact that it is the most important cycling event in the world. It reflects the popularity of cycling in France and has an important impact on tourism as an occasion to promote the country.
- (12) The Paris-Roubaix cycling race has a special general resonance in France as it forms part of the French heritage.
- (13) The listed basketball events have a generally recognised, distinct cultural importance for the population in France, in particular as a catalyst of cultural identity, given that basketball is an important factor for social cohesion in France.
- (14) The listed handball events involve the French national team in a major international tournament and therefore have considerable cultural importance for the French population.
- (15) The World Athletics Championship has a generally recognised, distinct cultural importance for the French population, in particular as a catalyst of cultural identity, especially in view of the usual success of French participants.
- (16) The listed events have traditionally been broadcast on free television and have commanded large television audiences.
- (17) The French measures appear proportionate so as to justify a derogation from the fundamental EC Treaty freedom to provide services on the basis of an overriding reason of public interest, which is to ensure wide public access to broadcasts of events of major importance for society.
- (18) The French measures are compatible with EC competition rules in that the definition of qualified broadcasters for the broadcasting of listed events is based on objective criteria that allow actual and potential competition for the acquisition of the rights to broadcast these events. In addition, the number of listed events is not disproportionate so as to distort competition on the downstream free television and pay television markets.
- (19) After communication by the Commission to the other Member States of the French measures and consultation of the Committee established pursuant to Article 23a of Directive 89/552/EEC, the Director-General for Education and Culture informed France, by letter of 7 April 2004, that the European Commission did not intend to object to the measures notified.
- (20) The measures were adopted by France on 22 December 2004.
- (21) It follows from the judgment of the Court of First Instance in Case T-33/01, *Infront WM v Commission*, that the declaration that measures taken pursuant to Article 3a(1) of Directive 89/552/EEC are compatible with Community law constitutes a decision within the meaning of Article 249 of the EC Treaty, which must therefore be adopted by the Commission. Accordingly, it is necessary to declare by this Decision that the measures notified by France are compatible with Community law. The measures, as finally taken by France and set out in the Annex to this Decision, should be published in the *Official Journal of the European Union* in accordance with Article 3a(2) of Directive 89/552/EEC,
- HAS DECIDED AS FOLLOWS:
- Article 1*
- The measures pursuant to Article 3a(1) of Directive 89/552/EEC notified by France to the Commission on 30 December 2003 are compatible with Community law.
- Article 2*
- The measures, as finally taken by France and set out in the Annex to this Decision, shall be published in the *Official Journal of the European Union* in accordance with Article 3a(2) of Directive 89/552/EEC.
- Done at Brussels, 25 June 2007.
- For the Commission*  
Viviane REDING  
Member of the Commission

## ANNEX

**Publication in accordance with Article 3a(2) of Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities**

The measures taken by France to be published pursuant to Article 3a(2) of Directive 89/552/EEC are as follows:

**'Decree No 2004-1392 of 22 December 2004 applying Article 20-2 of Law No 86-1067 of 30 September 1986 on the freedom of communication**

The Prime Minister,

Having consulted the report of the Minister for Culture and Communication,

Having regard 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, as amended by Directive 97/36/EC of the European Parliament and of the Council of 30 June 1997, and in particular Article 3a thereof;

Having regard to the European Convention on Cross-Border Television, opened for signature on 5 May 1989, as amended by the Protocol adopted by the Committee of Ministers of the Council of Europe on 9 September 1998, opened for acceptance by Parties to the Convention on 1 October 1998, and in particular Article 9(a) thereof, together with Law No 94-542 of 28 June 1994 and Law No 2001-1210 of 20 December 2001, which authorise the approval thereof, and Decrees No 95-438 of 14 April 1995 and No 2002-739 of 30 April 2002, which published it;

Having regard to the Agreement on the European Economic Area signed at Porto on 2 May 1992 and the Protocol adjusting the Agreement on the European Economic Area signed at Brussels on 17 March 1993, and in particular Annex X thereto, together with Law No 93-1274 of 2 December 1993, which authorises the ratification thereof, and Decree No 94-43 of 1 February 1994, which published it;

Having regard to Law No 86-1067 of 30 September 1986, as amended, on the freedom of communication, and in particular Article 20-2 thereof;

Having regard to the letter of 7 April 2004 from the European Commission on the draft measures communicated by France for the implementation of Article 3a of Directive 89/552/EEC, as amended by Directive 97/36/EC;

Having consulted the Council of State (Home Affairs section),

HEREBY DECREES AS FOLLOWS:

**Article 1** — This Decree lays down the conditions under which television services are to handle the exclusive broadcasting of events of major importance such that a substantial proportion of the public is not denied the opportunity of watching them on freeaccess television.

**Title I**

*Provisions applicable to the broadcasting of events of major importance on French territory*

**Article 2** — For the application of this Title, the following definitions apply:

- (a) "freeaccess television service": any television service that does not seek payment from its users and that can be received by at least 85 % of households in metropolitan France;
- (b) "conditionalaccess television service": any television service that does not fulfil the two conditions set out in the previous subparagraph.

**Article 3** — The list of events specified in Article 20-2 of Law 86-1067 of 30 September 1986 is as follows:

1. The winter and summer Olympics;
2. Official matches of the French national football team in the Fédération Internationale de Football Association (FIFA) calendar;
3. The opening match, semi-finals and final of the Football World Cup;
4. The semi-finals and final of the European Football Championship;
5. The final of the UEFA Cup, where a French club involved in one of the French championships is playing;
6. The final of the Football Champions League;
7. The French Football Cup Final;
8. The Six Nations rugby tournament;
9. The semi-finals and final of the Rugby World Cup;
10. The French Rugby Championship final;
11. The European Rugby Cup final, where a French club involved in one of the French championships is playing;
12. The finals of the men's and women's singles events of the Roland Garros tennis tournament;
13. The semi-finals and finals of the Davis Cup and the Fed Cup, where the French tennis team is playing;
14. The French Formula 1 Grand Prix;
15. The Tour de France (cycling, men);
16. The Paris-Roubaix cycling race;
17. The men's and women's finals of the European Basketball Championship, where the French national team is playing;
18. The men's and women's finals of the World Basketball Championship, where the French national team is playing;
19. The men's and women's finals of the European Handball Championship, where the French national team is playing;
20. The men's and women's finals of the World Handball Championship, where the French national team is playing;
21. The World Athletics Championships.

**Article 4** — The exercise by a television service in France of exclusive rights acquired after 23 August 1997 to broadcast an event of major importance listed in Article 3 may not prevent a freeaccess television service from broadcasting this event, which should be shown live and in full, except in the following cases:

1. Broadcasting of the event indicated in point 15 of Article 3 may be limited to highlights, in accordance with the broadcasting tradition for this event;

2. Broadcasting of the events indicated in points 1 and 21 of Article 3 may be limited to representative moments reflecting the diversity of sporting disciplines and participating countries and may include recorded material when events take place at the same time;
3. Events of major importance may also be broadcast in pre-recorded form where they take place between midnight and 6 am, French time, on condition that the broadcast in France starts before 10 am;

The fact that a conditional access television service that seeks payment from its users and whose programmes can be received under the conditions specified in Article 2(a) of this Decree broadcasts an event of major importance live and in full, subject to the above provisions, without subjecting it to specific conditions for access, is not deemed to constitute an obstacle to the broadcast of that event by a free access television service.

**Article 5** — In order to allow a free access television service to broadcast an event of major importance under the conditions specified in Article 4, a television service with exclusive broadcasting rights to all or part of an event of major importance and which does not meet the conditions must, reasonably in advance of the event, inform the free access television services that it proposes to cede the rights to broadcast this event under the conditions specified in Article 4. This offer must be made under fair, reasonable and non-discriminatory market conditions and terms.

If, in response to this offer, no proposal is made by a television service or if the proposal is not made according to fair, reasonable and non-discriminatory market conditions and terms, the television service that holds the exclusive broadcasting rights may exercise those rights without meeting the conditions of Article 4.

## **Title II**

### *Provisions applicable to the broadcasting of events of major importance in other European countries*

**Article 6** — The provisions of this Title shall apply to television services coming under French jurisdiction and broadcasting to another Member State of the European Union, a member country of the European Economic Area or a State which is party to the European Convention on Cross-Border Television an event designated by that State as being of major importance to its society within the meaning of Directive 89/552/EEC of 3 October 1989 and to which they acquired the broadcasting rights after 23 August 1997.

**Article 7** — Television services coming under French jurisdiction shall exercise, in the States specified in Article 6, their broadcasting rights to events of major importance, as defined by those States, in such a way as not to deny a significant proportion of the public the option of viewing such events, either live or pre-recorded, via a free access television service as set out in Article 3a of the aforementioned Directive of 3 October 1989.

**Article 8** — Where a television service coming under French jurisdiction broadcasts an event of major importance in one of the States specified in Article 6, it must comply with the conditions laid down by that State on broadcasting by the television service.

## **Title III**

### *Final provisions*

**Article 9** — Where referred to by a television service, or on its own initiative, the Audiovisual Council may deliver an opinion on the conditions of application of the provisions of this Decree.

**Article 10** — A subsequent Council of State decree shall establish the list of events of major importance and the conditions of televised broadcasting for the overseas departments Saint Pierre-et-Miquelon, Mayotte, New Caledonia, French Polynesia and the islands of Wallis and Futuna, taking into account the individual needs of each community and the technical issues of broadcasting overseas.

**Article 11** — The Minister for Culture and Communication and the Minister for Overseas Territories are responsible for the execution of this Decree, which shall be published in the *Official Journal of the French Republic*.

Done at Paris, 22 December 2004.

By the Prime Minister:  
Jean-Pierre RAFFARIN

Minister for Culture and communication,  
Renaud DONNEDIEU DE VABRES

Minister for the Overseas Territories:  
Brigitte GIRARDIN.