II

(Acts adopted under the EC Treaty/Euratom Treaty whose publication is not obligatory)

DECISIONS

COMMISSION

COMMISSION DECISION

of 25 June 2007

on the compatibility with Community law of measures taken by Italy 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

(2007/475/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to 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 [1], 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 10 May 1999, Italy notified to the Commission measures taken on 9 March 1999 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 Italian media landscape.

(4) The list of events of major importance for society included in the Italian measures was drawn up in a clear and transparent manner.

(5) The Commission was satisfied that the events listed in the Italian 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 significant number of the events listed in the Italian measures, including the summer and winter Olympic games, the World Cup and the European Championship football matches involving the Italian national team, as well as the finals of these tournaments, 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 Italy, as they are particularly popular with the general public, not just with those who usually follow sport events. Moreover, they have a generally recognised, distinct cultural importance for the Italian population, given their important contribution to understanding between peoples and the importance of sport for the Italian society as a whole and for the national pride, as they provide the occasion for top Italian sportsmen to succeed in these most important international competitions.

[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).

(7) The other listed football events have a special general resonance in Italy and have a generally recognised, distinct cultural importance for the Italian population, given the importance of football for the Italian society as a whole and for the national pride, as they provide the occasion for Italian teams to succeed in top-level football matches attracting international attention.

(8) The Giro d'Italia has a special general resonance in Italy and a generally recognised, distinct cultural importance as a catalyst of national cultural identity, not only because of its importance as a highlevel sports event but also as an occasion to promote the country of Italy.

(9) The special general resonance in Italy and the generally recognised, distinct cultural importance of the Formula One Italian Grand Prix for the Italian population results from the great success of Italian cars in Formula One races.

(10) The San Remo Italian music festival has a special general resonance in Italy and has a generally recognised, distinct cultural importance for Italian cultural identity as a 'popular culture' event forming part of the Italian cultural tradition.

(11) The Italian measures appear proportionate so as to justify a the 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.

(12) The Italian 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 which 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.

(13) After communication by the Commission to the other Member States of the Italian measures and consultation of the Committee established pursuant to Article 23a of Directive 89/552/EEC, the Director-General for Education and Culture informed Italy, by letter of 5 July 1999, that the European Commission did not intend to object to the measures notified.

(14) On 7 September 1999, an amendment to the Italian measures was notified to the Commission. This amendment did not introduce any changes to the events listed.

(15) The Italian measures were published in the C Series of the *Official Journal of the European Communities* [1] in accordance with Article 3a(2) of Directive 89/552/EEC. The corrigendum to that publication was subsequently published in the C Series of the *Official Journal of the European Communities* [2].

(16) 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 Italy are compatible with Community law. The measures, as set out in the Annex to this Decision, should be published in the Official Journal 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 Italy to the Commission on 10 May 1999, as published in the *Official Journal of the European Communities* C 277 of 30 September 1999 (corrigendum in the *Official Journal of the European Communities* C 208 of 26 July 2001), are compatible with Community law.

Article 2

The measures, as set out in the Annex to this Decision, shall be published in the Official Journal 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

[1] OJ C 277, 30.9.1999, p. 3.
[2] OJ C 208, 26.7.2001, p. 27.

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 Italy to be published pursuant to Article 3a(2) of Directive 89/552/EEC are set out in the following extracts from Decision No 8/1999 of the Communications Authority of 9 March 1999, as amended by its Decision No 172/1999 of 28 July 1999:

'Article 1

1. This Decision concerns television broadcasting of events considered of major importance to society.
2. An "event of major importance to society" means an event of a sporting or non-sporting nature which satisfies at least two of the following four criteria:
   (a) the event and its outcome are of special and widespread interest in Italy, interesting persons other than those who usually watch this type of event on television;
   (b) the event enjoys widespread recognition by the general public, has particular cultural significance and strengthens Italian 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 in Italy.

Article 2

1. The Authority has drawn up the following list of events considered to be of major importance for society which may not be transmitted by television broadcasters under Italian jurisdiction on an exclusive basis and in encrypted form, in order to make it possible for a substantial proportion (more than 90 %) of the Italian public to follow them on free television without incurring additional costs for the acquisition of technical equipment:
   (a) the summer and winter Olympic Games;
   (b) the football World Cup final and all matches involving the Italian national team;
   (c) the European football Championship final and all matches involving the Italian national team;
   (d) all matches involving the Italian national football team, at home and away, in official competitions;
   (e) the final and the semi-finals of the Champions League and the UEFA Cup where an Italian team is involved;
   (f) the Tour of Italy (Giro d'Italia) cycling competition;
   (g) the Formula One Italian Grand Prix;
   (h) the San Remo Italian music festival.
2. The events referred to in paragraph 1(b) and (c) above are to be given full live coverage. For the other events, the television broadcasters are free to decide on the arrangements for unencrypted transmission.'