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COMMISSION DECISION

of 25 June 2007

on the compatibility with Community law of measures taken by Belgium 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

(2007/479/EC)

(OJ L 180, 10.7.2007, p. 24)

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COMMISSION DECISION

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(2007/479/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 December 2003, Belgium 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, that 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 Belgian media landscape.

(4) The list of events of major importance for society included in the Belgian measures was drawn up in a clear and transparent manner and a far-reaching consultation process had been launched in Belgium.

(5) The Commission was satisfied that the events listed in the Belgian 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.

[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).

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(6) A number of the events listed in the Belgian measures, including the summer and winter Olympic Games as well as the World Cup Finals and the European Football Championship Finals tournaments (men), 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 Belgium, as they are particularly popular with the general public, not just with those who usually follow sport events.

(7) Given that the Belgian Football Cup Final (men) is intended to bring together the two best Belgian clubs and ends in the award of a trophy (the Cup), it is popular far beyond the ranks of those normally following sport events, and has thus special general resonance in Belgium.

(8) The listed football events involving national teams have a special general resonance in Belgium as they give Belgian teams the opportunity to promote Belgian football at international level.

(9) The finals and semi-finals of the Champions League and the UEFA Cup have a special general resonance in Belgium given the popularity of football in Belgium and the prestige of those matches, which are followed by the general public, and not only by those who usually follow sport events.

(10) Road cycling is a popular sport in Belgium. Part of the Tour de France (men), the most important cycling event in the world, takes place in Belgium. The Belgian Road Cycling Championship (men) has a special general resonance in Belgium as it closes the professional cycling season, followed by the general public and the Belgian media. The other listed cycling events have a special general resonance in Belgium given the usual success of Belgian participants at international level. The listed international cycling events taking place in Belgium also provide an opportunity to promote Belgium as a country.

(11) The Ivo Van Damme Memorial, part of the Golden League, has a special general resonance in Belgium given that it is an international highlevel athletics event held in Belgium to commemorate a great Belgian athlete and combining sport and music, so it is very popular with the general public.

(12) The listed parts of the World Athletics Championships involving Belgian players have a special general resonance in Belgium as they represent an opportunity for Belgian athletes to compete at international level.

(13) The Belgian Formula 1 Grand Prix has a special general resonance as it promotes an especially beautiful Belgian circuit, which is an object of particular national pride.

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(14) The listed tennis matches involving national players or teams have a special general resonance in Belgium in view of the success of Belgian tennis players at international level.

(15) The final of the Queen Elisabeth Music Competition has a distinct cultural importance as a catalyst of Belgian cultural identity, due to the important contribution of Queen Elisabeth and her husband King Albert to Belgian history and to the extremely high quality and the worldwide significance of that cultural event.

(16) The listed events, including those to be considered as a whole, and not as a series of individual events, have traditionally been broadcast on free television and have commanded large television audiences. Where, exceptionally, no specific viewing data is available (European Football Championship Finals tournament), the inclusion of the event is further justified by its generally recognised, distinct cultural importance for the Belgian population, given its important contribution to understanding between peoples, as well as the importance of football for the Belgian society as a whole and for the national pride, as it provides the occasion for top Belgian sportsmen to succeed in this important international competition.

(17) The Belgian 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 Belgian 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 Belgian measures and consultation of the Committee established pursuant to Article 23a of Directive 89/552/EEC, the Director-General for Education and Culture informed Belgium, by letter of 7 April 2004, that the European Commission did not intend to object to the measures notified.

(20) The Belgian measures were adopted in the Flemish Community on 28 May 2004 and in the French Community on 8 June 2004.

(21) Those measures were published in the C Series of the *Official Journal of the European Union* [1] in accordance with Article 3a(2) of Directive 89/552/EEC.

[1] OJ C 158, 29.6.2005, p. 13.

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(22) 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 Belgium are compatible with Community law. The measures, as finally taken by Belgium and 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:

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Article 1

The measures pursuant to Article 3a(1) of Directive 89/552/EEC notified by Belgium to the Commission on 10 December 2003, as published in the *Official Journal of the European Union* C 158 of 29 June 2005 and modified by a measure published in the *Moniteur belge* of 19 March 2013 [C-2013/29212], p. 16401, and notified to the Commission pursuant to Article 14(2) of Directive 2010/13/EU of the European Parliament and of the Council ([1]) on 26 November 2013, are compatible with Union law.

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Article 2

The measures, as finally taken by Belgium and 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.

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Article 3

The measures taken by Belgium, modifying the measures taken pursuant to Article 3a(1) of Directive 89/552/EEC, and set out in Annex A, shall be published in the *Official Journal of the European Union* in accordance with Article 14(2) of Directive 2010/13/EU.

([1]) 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 (Audiovisual Media Services Directive) (OJ L 95, 15.4.2010, p. 1).

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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 Belgium to be published pursuant to Article 3a(2) of Directive 89/552/EEC are set out in the following extracts from instruments adopted respectively by the Flemish and French Communities and published in the Moniteur Belge:

— for the French Community, in the Decree of 27 February 2003 on broadcasting (MB No 137, 17.4.2003) and the Order of 8 June 2004 (MB No 318, 6.9.2004);

— for the Flemish Community, in the Decree of 25 January 1995 (DCFL No 1995-01-25/38) and the Order of 28 May 2004 (MB No 295, 19.8.2004).

A consolidated list of events of major importance for Belgium is contained in the agreement concluded between the French Community and the Flemish Community on 28 November 2003.

FRENCH COMMUNITY

‘***1. Broadcasting Decree***

[…]

Art. 4 § 1

After consulting the CSA, the Government may adopt a list of events which it considers to be of major importance for the public of the French Community. Such events may not be subject to the exercise of exclusive rights by a television broadcaster or by the RTBF, such as to deprive a large part of the public in that Community of access to these events via a free-access television service.

The Government shall determine whether the events are to be transmitted live, deferred, in full or in excerpts.

Art. 4 § 2

An event is considered to be of major importance for the public of the French Community if it meets at least two of the following criteria:

1. the event is particularly popular with the public of the French Community in general, not just those who follow such events as a matter of course;

2. the event has a cultural importance generally recognised by the public of the French Community and is part of that Community's cultural identity;

3. a Belgian personality or team is participating in the event concerned in the context of a competition or event of international importance;

4. the event is traditionally broadcast in a programme of a free-access television service in the French Community and attracts a wide public.

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After consulting the CSA, the Government may adopt the procedures by which the abovementioned events have to be made accessible.

Art. 4 § 3

A television broadcasting service is considered to be "free-access" if it broadcasts in the French language and can be received by 90 % of households with television reception equipment located in the French-speaking region or the bilingual Brussels-Capital region. Apart from the technical costs, reception of this service cannot be subject to payment other than the subscription price for the basic cable package.

Art. 4 § 4

Television broadcasters and the RTBF shall refrain from exercising any exclusive rights they might have acquired after 30 July 1997, such as would deprive a large part of the public of a Member State of the European Union of access via a free-access television service to events of major importance, a list of which has been published in the *Official Journal of the European Communities*.

They shall comply with the special conditions set at the time of publication of the abovementioned lists, concerning live or deferred access, in full or in excerpts.

2. Order designating events of major importance and determining the procedures for making them accessible

Article 1

Within the limits laid down in this order, access by the public of the French Community to these events shall be live, deferred, in full or in excerpts, in accordance with the Annex to this order.

Article 2

A television broadcaster service in the French Community intending to exercise the exclusive broadcasting rights it holds to an event of major importance must broadcast it on a free-access television service in accordance with the Annex to this Order.

Article 3

A television broadcaster which has acquired the live-and-in-full transmission rights to an event may nevertheless postpone the broadcasting of this event on a free-access television broadcasting service in the following cases:

— if the event takes place between midnight and 8 a.m., Belgian time;

— if the event coincides with a news or current affairs programme normally broadcast by the service at that time;

— if the event comprises several elements taking place simultaneously.

Article 4

This Order does not create any broadcasting obligation for the head of RTBF or the television broadcasting services of the French Community.

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Article 5

The Minister for Audiovisual is responsible for the implementation of this Order.

Brussels, 8 June 2004.

For the Government of the French Community

The Minister for Audiovisual

O. CHASTEL

3. Annex to the Order

List of events and categories of events of major importance and arrangements for free public access to them:

Summer and Winter Olympic Games, live and with excerpts;

Belgian Football Cup Final (men), live and in full;

All matches involving the Belgian men's football team, live and in full;

Football World Cup Finals Tournament (men), live and in full;

European Football Championship, final round (men), live and in full;

Champions League, matches involving Belgian clubs, live and in full;

UEFA Cup, matches involving Belgian clubs, live and in full;

Tour de France, men, professional, live and with excerpts;

Liège-Bastogne-Liège, live and with excerpts;

Amstel Gold Race, live and with excerpts;

Tour of Flanders, live and with excerpts;

Paris-Roubaix, live and with excerpts;

Milan-San Remo, live and with excerpts;

Belgian Road Cycling Championships, professional (men), live and with excerpts;

World Road Cycling Championships, professional (men), live and with excerpts;

Ivo Van Damme Memorial, live and in full;

Belgian Formula 1 Grand Prix, live and in full;

The following Grand Slam tennis tournaments: Roland Garros and Wimbledon, quarter finals, semi-finals and finals involving a Belgian player, live and in full;

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The Davis Cup and the Fed Cup, quarter-finals, semi-finals and finals involving the Belgian team, live and in full;

Queen Elisabeth Music Competition, the final, live and in full;

La Flèche wallonne, live and with excerpts;

World Athletics Championships, where Belgian athletes are taking part, live and in full;

To be annexed to the order of 8 June 2004.'

The Minister for Audiovisual

O. CHASTEL

FLEMISH COMMUNITY

'1. Decree of 25 January 1995

Art. 76 § 1

The Flemish Government shall draw up a list of events considered to be of major importance for the public and which, for this reason, may not be broadcast on an exclusive basis so that a large part of the public of the Flemish Community cannot watch them live or deferred on free-access television.

The Flemish Government shall decide whether these events shall be broadcast via whole or partial live coverage or, where necessary or appropriate for objective reasons of general interest, via whole or partial deferred coverage.

Art. 76 § 2

Television broadcasting undertakings of or recognised by the Flemish Community may not exercise the exclusive rights thus gained such that a large part of the public of another Member State of the European Community cannot without payment watch the events designated by that Member State wholly or partially live or, where necessary or appropriate for objective reasons of general interest, wholly or partially deferred, as determined by that Member State.

2. Order of the Flemish Government establishing the list of events of major importance to society […]

Whereas an event can be considered as an event of major importance to society if two of the following conditions are met:

1. the event has great topical value and attracts considerable public interest;

2. the event is taking place in the context of an important international competition or is a competition in which the national team, a Belgian club team or one or more Belgian athlete(s) is/are taking part;

3. the event belongs to an important sporting discipline and represents an important cultural asset to the Flemish Community;

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4. the event is broadcast traditionally by free-access television and has a high viewer rating for its category.

[…]

Article 1 § 1

The following events are considered as events of major importance to society:

1. Summer Olympic Games;

2. Football (men): all matches involving the national team and all final-round World Cup and European Championship matches;

3. Champions League and UEFA Cup:

   — matches in which a Belgian club team is playing;

   — semi-finals and finals;

4. Belgian Football Cup Final (men);

5. Cycling:

   The Tour de France for elite cyclists (men): all stages;

   the following World Cup races: Milan-San Remo, Tour of Flanders, Paris-Roubaix, Liège-Bastogne-Liège, Amstel Gold Race, Paris-Tours and Tour of Lombardy;

   the Belgian Championship and the World Championship for elite cyclists (men).

6. Cyclo-cross: the Belgian Championships and World Championships for elite cyclists (men).

7. Tennis:

   Grand Slam tournaments: all matches with Belgian players from the quarter-finals onward and all finals (singles);

   Davis Cup and Fed Cup: quarter-finals, semi-finals and finals involving Belgian teams.

8. Belgian Formula 1 Grand Prix.

9. Athletics: the Van Damme Memorial.

10. Queen Elisabeth Competition.

Article 1 § 2

The events referred to under 2, 3, 4, 6, 7, 8, 9 and 10 are made available via whole live coverage.

The events referred to under 1 and 5 are made available via partial live coverage.

Art. 2

The exclusive rights over the events mentioned in Article 1 § 1 may not be exercised in such a way as to prevent a large part of the population from following these events on free-access television.

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A large part of the population of the Flemish Community is considered to be able to follow an event of major importance to society on free-access television when the event is broadcast by a television station transmitting in the Dutch language and can be received by at least 90 % of the population without any payment in excess of the television distribution subscription price.

Art. 3 § 1

Television stations which do not satisfy the requirements of Article 2 and which acquire exclusive transmission rights in the Dutch-speaking region and the bilingual Brussels-Capital region for the events mentioned in Article 1 § 1 may not exercise these rights unless they can guarantee, on the basis of contracts concluded, that a large part of the population will not be prevented from following these events on free-access television as provided for in Articles 1 § 2 and 2.

Art. 3 § 2

Television stations which hold exclusive transmission rights may grant sub-licences, at reasonable market prices and within time limits to be agreed with the television stations, to television stations which satisfy the requirements of Article 2.

Art. 3 § 3

If no television station declares itself willing to take sub-licences under these conditions, the television station concerned may, by way of derogation from Article 2 and Article 3 § l, make use of the transmission rights acquired.

Art. 4

The Flemish Minister with responsibility for media policy shall be responsible for the implementation of this Order.

Brussels, 28 May 2004.

The Minister-President of the Flemish Government

B. SOMERS

The Flemish Minister for Housing, Media and Sport

M. KEULEN

Consolidated list of events of major importance for Belgium

1. Summer Olympic Games

   Flemish Community: live and with excerpts

   French Community: live and with excerpts

2. Belgian Football Cup Final (men)

   Flemish Community: live and in full

   French Community: live and in full

3. All matches involving the Belgian men's football team

   Flemish Community: live and in full

   French Community: live and in full

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4. Football World Cup Finals Tournament (men)
   Flemish Community: live and in full
   French Community: live and in full

5. European Football Championship, final round (men)
   Flemish Community: live and in full
   French Community: live and in full

6. Champion's League, matches involving Belgian clubs
   Flemish Community: live and in full
   French Community: live and in full

7. UEFA Cup, matches involving Belgian clubs
   Flemish Community: live and in full
   French Community: live and in full

8. Tour de France, men, professional
   Flemish Community: live and with excerpts
   French Community: live and with excerpts

9. Liège-Bastogne-Liège
   Flemish Community: live and with excerpts
   French Community: live and with excerpts

10. Amstel Gold Race
    Flemish Community: live and with excerpts
    French Community: live and with excerpts

11. Tour of Flanders
    Flemish Community: live and with excerpts
    French Community: live and with excerpts

12. Paris-Roubaix
    Flemish Community: live and with excerpts
    French Community: live and with excerpts

13. Milan-San Remo
    Flemish Community: live and with excerpts
    French Community: live and with excerpts

14. Belgian Road Cycling Championships, professional (men)
    Flemish Community: live and with excerpts
    French Community: live and with excerpts

15. World Road Cycling Championships, professional (men)
    Flemish Community: live and with excerpts
    French Community: live and with excerpts

16. Ivo Van Damme Memorial
    Flemish Community: live and in full
    French Community: live and in full

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17. Belgian Formula 1 Grand Prix

    Flemish Community: live and in full

    French Community: live and in full

18. The following Grand Slam tennis tournaments: Roland Garros and Wimbledon, quarter-finals, semi-finals and finals involving a Belgian player

    Flemish Community: live and in full

    French Community: live and in full

19. The Davis Cup and the Fed Cup, quarter-finals, semi-finals and finals involving the Belgian team

    Flemish Community: live and in full

    French Community: live and in full

20. Queen Elisabeth Music Competition, the final

    Flemish Community: live and in full

    French Community: live and in full

Events specific to the French list

1. La Flèche wallonne (live and with excerpts).
2. Winter Olympic Games (live and with excerpts).
3. World Athletics Championships, where Belgian athletes are taking part, live and in full.

Events specific to the Flemish list

1. Champions League: finals and semi-finals, live and in full.
2. UEFA Cup: finals and semi-finals, live and in full.
3. Cycling, Paris-Tours and Tour of Lombardy: live and with excerpts.
4. The Belgian and World Cyclo-cross Championships, men, professional: live and in full.
5. The following Grand Slam tennis tournaments: Australian Open and US Open, quarter-finals, semi-finals and finals involving a Belgian player, live and in full.'

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ANNEX A

Publication pursuant to Article 14 of Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive)

The provisions adopted by Belgium modifying the measures taken under Article 3(a) of Directive 89/552/EEC are presented in the Order of the Government of the French Community of 17 January 2013, published in the *Moniteur belge/Belgisch Staatsblad* of 19 March 2013.

17 JANUARY 2013 — Order of the Government of the French Community amending the Order of the Government of the French Community of 8 June 2004 designating events of major importance and laying down the arrangements for their access by the public in the French Community via a free-access television broadcaster

Article 1. The title of the Order of the Government of the French Community of 8 June 2004 designating events of major importance and laying down the arrangements for their access by the public in the French Community via a free-access television broadcaster is replaced by the following:

'Order establishing the list of events of major importance and the arrangements for broadcasting them'.

Article 2. Article 2 of the Order is replaced by the following:

'A broadcaster of linear television services, including RTBF, intending to exercise the exclusive broadcasting rights it holds to an event of major importance must broadcast it on a free-access linear television service in accordance with the Annex to this Order.'

Article 3. The following Article 2(a) is added to the Order:

'§ 1. A broadcaster of linear television services wishing to exercise the exclusive rights to an event listed in the Annex may broadcast it on a linear television broadcasting service which is not free to access as long as the following conditions have been met:

— the event has already been offered to broadcasters of linear television services with a view to its broadcast on a free-access linear television service in accordance with the conditions set out in the Annex to this Order;

— this offer was made within a reasonable time-frame and under conditions (in particular financial conditions) that take into account the market for broadcasting rights;

— the broadcasters of linear television services to which the broadcasting rights were offered did not intend to acquire these rights within a reasonable time.

§ 2. In the event of disagreement between the broadcaster of linear television services holding the exclusive rights to an event and a free-access broadcaster of linear television services with regard to the conditions (in particular the financial conditions) in the broadcasting offer, the matter shall be referred to the competent judicial or administrative authority or to arbitration. If the free-access broadcaster of linear television services refuses to accept the acquisition conditions laid down by this authority or by the arbitration authority, the holder of the exclusive rights to the event may broadcast the event in question on a linear television broadcasting service which is not free to access.'

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Article 4. Article 3 of the Order is replaced by the following:

‘§ 1. A broadcaster of linear television services which has acquired the live-and-in-full transmission rights to an event may postpone the broadcasting of this event on a free-access linear television broadcasting service in the following cases:

— if the event takes place between midnight and 8 a.m., Belgian time;

— if the event coincides with a news or current affairs programme normally broadcast by the service at that time;

— the event comprises several elements taking place simultaneously.

§ 2. Where a broadcaster of linear television services which makes use of § 1 above has acquired its live-and-in-full transmission rights pursuant to Article 2(a) above, the broadcaster of linear television services that has ceded its exclusive rights pursuant to Article 2(a) is authorised to broadcast the event if it so wishes on a linear television service that is not free to access’.

Article 5. In Article 4 of the Order, the words ‘the television broadcasting services of the French Community’ are replaced by the words ‘broadcasters of linear television services’.

Article 6. The Minister with responsibility for audiovisual affairs is responsible for the implementation of this Order.

Brussels, 17 January 2013.

Minister for Culture, Audiovisual Affairs,
Health and Equal Opportunities

Mrs F. LAANAN