COMMISSION DECISION

of 25 February 2014

amending Decision 2007/479/EC on the compatibility with Union law of the 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

(2014/110/EU)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard 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 (Audiovisual Media Services Directive) ([1]) and in particular Article 14(2) thereof,

Whereas:

(1) By Decision 2007/479/EC ([2]), the Commission decided that measures pursuant to Article 3a(1) of Council Directive 89/552/EEC ([3]) notified by Belgium to the Commission on 10 December 2003 are compatible with Community law. That decision was upheld by the Court of Justice ([4]).

(2) Article 3a of Directive 89/552/EEC has been replaced by Article 14 of Directive 2010/13/EU.

(3) By letter dated 19 November 2013 the Kingdom of Belgium notified the Commission with an Order of 17 January 2013 adopted by the Government of the French Community of Belgium, modifying the measures applying to the French Community of Belgium.

(4) The Commission has verified that the Order of 17 January 2013 adopted by the Government of the French Community of Belgium amounts only to terminological updates and very limited and formal modifications of the same measures originally notified to the Commission in 2003, in respect of which the Commission carried out its review and adopted the Decision mentioned in recital 1. This Order brings only formal and terminological updates to the measures. More specifically, it replaces the title of the measure; replaces, throughout the text, the term 'television broadcasting' by the term 'linear television' services; amends the definition of a 'broadcaster' exercising an exclusive right concerning an event of major importance (without by this terminological change covering other broadcasters than those covered in the originally notified measures); and restates the latter's right to broadcast such events on a linear service that does not qualify as free television subject to their exploitation having been offered to providers of such services.

(5) The Commission informed the other Member States that the Government of the French Community of Belgium intended to adopt and finally adopted amending measures, as referred to in recital 3, at the 34th and 38th meetings of the Committee established pursuant to Article 29 of Directive 2010/13/EU,

HAS ADOPTED THIS DECISION:

Article 1

Decision 2007/479/EC is amended as follows:

(1) Article 1 is replaced by the following:

'*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 (*) on 26 November 2013, are compatible with Union law.

([1]) OJ L 95, 15.4.2010, p. 1.

([2]) Commission Decision 2007/479/EC 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 (OJ L 180, 10.7.2007, p. 24).

([3]) 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 (OJ L 298, 17.10.1989, p. 23).

([4]) Case C-204/11 P *FIFA* v *Commission*, judgment of 18 July 2013, not yet reported.

(*) 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).';

(2) the following Article 3 is added:

'*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.';

(3) Annex A is added in accordance with the Annex to this Decision.

Article 2

This Decision shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Done at Brussels, 25 February 2014.

For the Commission

The President

José Manuel BARROSO

ANNEX

'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."

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'