



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 6.10.2004
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2004/0230 (CNS)

Proposal for a

COUNCIL DECISION

concerning the conclusion of an Agreement between the Community and the Swiss Confederation in the Audiovisual field, establishing the terms and conditions for the participation of the Swiss Confederation in the MEDIA Plus and MEDIA Training Community programmes, and a final Act.

(presented by the Commission)

EXPLANATORY MEMORANDUM

The Commission has negotiated an Agreement between the Community and the Swiss Confederation in the Audiovisual field, establishing the terms and conditions for the participation of the Swiss Confederation in the MEDIA Plus and MEDIA Training Community programmes, and a Final Act.

Negotiations were conducted on the basis of the Directives adopted by the Council on 17 June 2002 and in consultation with the relevant committee appointed by the Council.

The Agreement and a Final Act were initialled on 25 June 2004, and signed on behalf of the Community on2004, subject to its conclusion at an ulterior date, in accordance with the Council Decision .../.../2004.

The Commission requests the Council to conclude the Agreement between the Community and the Swiss Confederation in the Audiovisual field, establishing the terms and conditions for the participation of the Swiss Confederation in the MEDIA Plus and MEDIA Training Community programmes, and a Final Act.

Proposal for a

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concerning the conclusion of an Agreement between the Community and the Swiss Confederation in the Audiovisual field, establishing the terms and conditions for the participation of the Swiss Confederation in the MEDIA Plus and MEDIA Training Community programmes, and a final Act.

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 150 (4) and 157 (3), in conjunction with Article 300(2), first sentence, and Article 300(3), first sub-paragraph thereof,

Having regard to the proposal from the Commission

Having regard to the opinion of the European Parliament¹,

Whereas:

- (1) The Commission has negotiated, on behalf of the European Community, an agreement to enable the Swiss Confederation to participate in the MEDIA Plus and MEDIA Training Community programmes, and a Final Act.
- (2) The Agreement and the Final Act were signed on behalf of the Community on2004, subject to conclusion at an ulterior date, in accordance with the Council Decision/....../2004.
- (3) This Agreement should be approved,

HAS DECIDED AS FOLLOWS:

Article 1

The Agreement between the European Community and the Swiss Confederation in the Audiovisual field, adopting the terms and conditions for the participation of the Swiss Confederation in the MEDIA Plus and MEDIA Training Community programmes, is hereby approved on behalf of the European Community.

The text of the Agreement and the Final Act are attached to this Decision.

¹ OJ C, p....

Article 2

The Commission shall represent the Community in the Joint Committee provided for in Article 8 of the Agreement.

Article 3

The President of the Council shall, on behalf of the Community, give the notifications provided for in Article 13 of the Agreement.

Article 4

This Decision shall be published in the *Official Journal of the European Union*.

Done at Brussels,

*For the Council
The President*

AGREEMENT

**between the 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**

THE EUROPEAN COMMUNITY, hereinafter referred to as “the Community”, and

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

hereinafter referred to as "the Parties",

WHEREAS the Community, pursuant to Decision No 2000/821/EC of 20 December 2000 and Decision No 2001/163/EC of 19 January 2001, as last amended by Decision No 846/2004/EC of the European Parliament and of the Council of 29 April 2004 and Decision No 845/2004/EC of the European Parliament and of the Council of 29 April 2004, has established a programme to encourage the development, distribution and promotion of European audiovisual works and a training programme for professionals in the European audiovisual programme industry (hereinafter referred to as the “MEDIA programme”);

WHEREAS the MEDIA programme provides, under certain conditions, for the participation of third countries which are party to the Convention of the Council of Europe 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 agreement between the parties concerned;

WHEREAS the above-mentioned provisions make the opening up of programmes to these third countries subject to a prior examination of the compatibility of their legislation with the relevant *acquis communautaire*;

WHEREAS Switzerland and the Community, in the Joint Declaration on further future negotiations in the Final Act of the seven agreements of 21 June 1999, have expressed a wish to negotiate Switzerland’s participation in these programmes;

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 by the above-mentioned Decisions;

WHEREAS, in particular, cooperation between the Community and Switzerland, with a view to pursuing the objectives fixed for the MEDIA 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 programme;

HAVE AGREED AS FOLLOWS:

Article 1

Subject of the Agreement

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 programme. Unless this Agreement contains provisions to the contrary, this shall take place in line with the objectives, criteria, procedures and deadlines laid down by the legal acts concerning the programmes and listed in Annex 1.

Article 2

Compatibility of legislative frameworks

In order to be able to fulfil the participation conditions laid down by the above-mentioned Decisions on the date of entry into force of this Agreement, Switzerland will implement the measures described in Annex 2, 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 provisions of the legal acts concerning the programmes and listed in Annex 1.
3. In order to ensure the Community dimension of the programmes, 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 Decisions listed in Annex 1, 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 arrangements for the programmes, 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 programme in accordance with the relevant provisions of the legal acts listed in Annex 1. 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 programmes to the activities of the MEDIA Desk shall not exceed 50% of the total budget of those activities.

Article 6

Financial provisions

To cover the costs resulting from its participation in the MEDIA programme, Switzerland shall each year pay a contribution to the general budget of the European Communities in accordance with the terms and conditions set out in Annex 3.

Article 7

Financial control

The rules on financial control relating to Swiss participants in the MEDIA programme are set out in Annex 4.

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 due 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 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 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 provisions of the Decisions concerning the programmes and listed in Annex 1, the participation of Switzerland in the MEDIA 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 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 activities proposed by the Community in this regard.

Article 10

Annexes

The Annexes to this Agreement form an integral part thereof.

Article 11

Territorial scope

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 programme.
2. If the Community adopts new multiannual programmes to encourage the development, distribution and promotion of European audiovisual works or in the field of training for professionals in the European audiovisual programme industry, 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 common consent any other consequences of termination.

Article 13

Entry into force

This Agreement shall enter into force on the first day of the second month following the notification by the Contracting Parties of the completion of their respective procedures.

Article 14

Use of languages

This Agreement is drawn up in duplicate in the Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Polish, Portuguese, Slovak, Slovenian, Spanish and Swedish languages, each text being equally authentic.

Done at.....on.....

For the European Community

For the Swiss Confederation

...

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ANNEX 1

List of legal acts concerning the MEDIA programme

Council Decision No 2000/821/EC of 20 December 2000 on the implementation of a programme encouraging the development, distribution and promotion of European audiovisual works (Media Plus - Development, Distribution and Promotion) (2001-2005) (OJ L 336, 31.12.2000, p. 82).

Decision No 163/2001/EC of the European Parliament and of the Council on the implementation of a training programme for professionals in the European audiovisual programme industry (MEDIA-Training 2001-2005) (OJ L 26, 27.1.2001, p.1).

Council Regulation (EC) No 885/2004 of 26 April 2004 adapting Regulation (EC) No 2003/2003 of the European Parliament and of the Council, Council Regulations (EC) No 1334/2000, (EC) No 2157/2001, (EC) No 152/2002, (EC) No 1499/2002, (EC) No 1500/2003 and (EC) No 1798/2003, Decisions No 1719/1999/EC, No 1720/1999/EC, No 253/2000/EC, No 508/2000/EC, No 1031/2000/EC, No 163/2001/EC, No 2235/2002/EC and No 291/2003/EC of the European Parliament and of the Council, and Council Decisions 1999/382/EC, 2000/821/EC, 2003/17/EC and 2003/893/EC in the fields of free movement of goods, company law, agriculture, taxation, education and training, culture and audiovisual policy and external relations, by reason of the accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia (OJ L 168, 1.5.2004, p. 1).

Decision No 845/2004/EC of the European Parliament and of the Council amending Decision No 163/2001/EC of the European Parliament and of the Council on the implementation of a training programme for professionals in the European audiovisual programme industry (MEDIA-Training) (2001-2005) (OJ L 157, 30.4.2004, p. 1).

Decision No 846/2004/EC of the European Parliament and of the Council amending Council Decision 2000/821/EC on the implementation of a programme to encourage the development, distribution and promotion of European audiovisual works (MEDIA Plus - Development, Distribution and Promotion) (2001-2005) (OJ L 157, 30.4.2004, p. 4).

ANNEX 2

Article A

Freedom of broadcast reception and retransmission

1. Where a Member State of the European Union is party to the Convention of the Council of Europe on Transfrontier Television, Switzerland shall ensure the freedom of reception and retransmission on its territory with regard to television broadcasts under the jurisdiction of that Member State in accordance with the provisions of the Convention.
2. In cases other than those referred to in paragraph 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 European Union (as determined pursuant to the "Television without Frontiers" Directive, 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), 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 European Union 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 European Union 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 (*Case 33/74 Van Binsbergen v Bestuur van de Bedrijfsvereniging*, [1974] ECR 1299; and *Case C-23/93 TV10 SA v Commissariaat voor de Media*, [1994] ECR I-4795).
3. In the cases referred to in paragraph 2 of this Article, action shall be taken after an exchange of views within the Joint Committee established under this Agreement.

Article B

Promotion of distribution and production of television programmes

1. Switzerland shall apply by analogy Articles 4 and 5 of 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, and shall ensure that broadcasters subject to the jurisdiction of its authorities implement them.

2. For the purposes of implementation of the previous paragraph, the definition of a European work shall be that set out in Article 6 of 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.
3. Switzerland shall ensure that works originating from Member States of the Community are not subject to discrimination in the context of the application of this Agreement and for the period of its duration.
4. The procedures for realising these commitments shall be defined in the Swiss regulations applicable to television broadcasting and shall be legally binding from the date of entry into force of this Agreement. This regulatory framework shall require broadcasters to ensure that the proportions laid down in Directive 89/552/EEC are achieved, in accordance with paragraphs 1 and 2 of this Article, and that each year they provide the Swiss regulator with a report on the proportions achieved and the reasons for any failure to comply. Where these proportions are only partially achieved and the reasons given are inadequate, the competent authority shall adopt appropriate measures. In all cases, broadcasters shall ensure that progress is made towards the proportions laid down in the Directive.

ANNEX 3

Community financial contribution to “MEDIA Plus” and “MEDIA Training”

1. The financial contribution to be made by Switzerland to the budget of the European Union in order to participate in the “MEDIA Plus” and “MEDIA-Training” programmes, which will be allocated proportionally to the respective programme budgets, shall be as follows (in million €):

2005	2006
4.2	4.2

2. The Financial Regulation applicable to the general budget of the European Union 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 conjunction with implementation of the programmes shall be reimbursed by the Commission on the same basis and in accordance with the same procedures as apply to experts from the EU Member States.
4. Following the entry into force of this Agreement, and at the start of each subsequent year, the Commission shall send to Switzerland a request for funds corresponding to its contribution to the budget for the programmes, 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.

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 one month 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%.

ANNEX 4

Financial control relating to Swiss participants in the MEDIA programme

Article A

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 the contracts concluded to implement them.

Article B

Audits

1. In accordance with Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 and Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 and with the other provisions referred to in this Agreement, the contracts concluded with 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 European Court of Auditors shall have the same rights as the Commission.
4. Audits may take place before the end of the programme or of this Agreement, in accordance with the terms laid down in the contracts in question.
5. The Swiss Federal Audit Office shall be notified in advance of audits to be conducted on Swiss territory. Such notification is not a legal condition for carrying out such audits.

Article C

On-the-spot inspections

1. Within the framework of this Agreement, the Commission (OLAF) is 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 (EC, Euratom) No 2185/96 of 11 November 1996.
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 audits and inspections so that they can provide all the required 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 them.
4. Where programme participants 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 complete their task of carrying out an on-the-spot check or inspection.
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 the on-the-spot check or inspection. In any event the Commission shall inform the above-mentioned authority of the result of checks and inspections.

Article D

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 either Party, 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 or implementation of contracts or agreements entered into to implement the instruments referred to in this Agreement.

Article E

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, Member States or Switzerland whose functions require them to be aware of it, nor may it be used for purposes other than to ensure effective protection of the Contracting Parties' financial interests.

Article F

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.

Article G
Recovery and enforcement

Decisions taken by the Commission under the MEDIA 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 further checks other than verification of the authenticity of the act, by the authorities designated by the Swiss government, which shall inform the Commission thereof. Enforcement shall take place in accordance with the Swiss rules of procedure. The legality of the enforcement decision shall be subject to verification by the Court of Justice of the European Communities.

Judgments delivered by the Court of Justice of the European Communities pursuant to an arbitration clause shall be enforceable on the same terms.

Final Act of the Agreement between the 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

The plenipotentiaries:

of the European Community

and

of the Swiss Confederation,

meeting at on in the year two thousand and four, for the signature of the 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 programmes MEDIA Plus and MEDIA Training, have adopted the following joint declaration, which is attached to this Final Act:

Joint Declaration by the Contracting parties on the development of a mutually beneficial dialogue on audiovisual policy.

They have also noted the following declaration, which is attached to this Final Act:

Declaration of the Council on Swiss participation in committees.

Done at ,

For the Swiss Confederation

For the European Community

...

...

Joint Declaration by the Contracting Parties on the development of a mutually beneficial dialogue on audiovisual policy.

The two Contracting Parties declare that, with a view to ensuring the due implementation of the Agreement and consolidating the spirit of cooperation in matters relating to audiovisual policy, the development of a dialogue on these subjects is a matter of mutual interest.

The Parties declare that this dialogue will take place both within the Joint Committee established under the Agreement and in other arenas, wherever appropriate and whenever necessary. The two Parties declare that, with this in mind, representatives of Switzerland may be invited to meetings held on the fringe of meetings of the “Contact Committee” established by Directive 97/36/EC of the European Parliament and of the Council of 30 June 1997 amending Directive 89/552/EEC.

Declaration of the Council on Swiss participation in committees.

The Council agrees that Switzerland's representatives may, in so far as the items concern them, attend meetings of the MEDIA programme committees and expert groups as observers. These committees and working groups shall meet without the Swiss representatives when voting.