DECISION OF THE EEA JOINT COMMITTEE

No 45/2009

of 9 June 2009

amending Annex X (Audiovisual services) and Annex XI (Telecommunication services) to the EEA Agreement

THE EEA JOINT COMMITTEE,

Having regard to the Agreement on the European Economic Area, as amended by the Protocol adjusting the Agreement on the European Economic Area, hereinafter referred to as 'the Agreement', and in particular Article 98 thereof,

Whereas:

(1) Annex X to the Agreement was amended by Decision of the EEA Joint Committee No 161/2007 of 7 December 2007 [1].

(2) Annex XI to the Agreement was amended by Decision of the EEA Joint Committee No 47/2009 of 24 April 2009 [2].

(3) Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market [3] is to be incorporated into the Agreement.

(4) Acts concerning audiovisual services and currently referred to in Annex X should henceforth be incorporated into Annex XI,

HAS DECIDED AS FOLLOWS:

Article 1

Annexes X and XI to the Agreement shall be amended as specified in the Annex to this Decision.

Article 2

The text of Directive 2006/123/EC in the Icelandic and Norwegian languages, to be published in the EEA Supplement to the *Official Journal of the European Union*, shall be authentic.

Article 3

This Decision shall enter into force on the day following the last notification to the EEA Joint Committee under Article 103(1) of the Agreement (*).

Article 4

This Decision shall be published in the EEA Section of, and in the EEA Supplement to, the *Official Journal of the European Union*.

Done at Brussels, 9 June 2009.

For the EEA Joint Committee
The President
Alan SEATTER

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[1] OJ L 124, 8.5.2008, p. 27.
[2] See page 28 of this Official Journal.
[3] OJ L 376, 27.12.2006, p. 36.
(*) Constitutional requirements indicated.

ANNEX

Annexes X and XI to the Agreement shall be amended as follows:

1. The text of Annex X shall be replaced by the following:

'**SERVICES IN GENERAL**

List provided for in Article 36(2)

INTRODUCTION

When the acts referred to in this Annex contain notions or refer to procedures which are specific to the Community legal order, such as:

— preambles,

— the addressees of the Community acts,

— references to territories or languages of the EC,

— references to rights and obligations of EC Member States, their public entities, undertakings or individuals in relation to each other, and

— references to information and notification procedures.

Protocol 1 on horizontal adaptations shall apply, unless otherwise provided for in this Annex.

ACTS REFERRED TO

1. **32006 L 0123**: Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (OJ L 376, 27.12.2006, p. 36).

   The provisions of the Directive shall, for the purposes of this Agreement, be read with the following adaptations:

   (a) In Article 3(3), "rules of the Treaty" shall read "rules of the EEA Agreement";

   (b) In Article 4(1), "Article 50 of the Treaty" shall read "Article 37 of the EEA Agreement";

   (c) In Articles 4(2) and 4(3), "Article 48 of the Treaty" shall read "Article 34 of the EEA Agreement";

   (d) In Article 4(5), "Article 43 of the Treaty" shall read "Article 31 of the EEA Agreement";

   (e) Article 4(8) shall read:

   " "overriding reasons relating to the public interest" means, without prejudice to Article 6 of the EEA Agreement, reasons recognised as such in the rulings of the Court of Justice of the European Community, including the following grounds: public policy; public security; public safety; public health; preserving the financial equilibrium of the social security system; the protection of consumers; recipients of services and workers; fairness of trade transactions; combating fraud; the protection of the environment and the urban environment; the health of animals; intellectual property; the conservation of the national historic and artistic heritage; social policy objectives and cultural policy objectives;";

   (f) The following subparagraph shall be inserted after the first subparagraph of Article 15(7):

   "When the Commission and the EFTA Surveillance Authority, in accordance with paragraph 4(d) of Protocol 1 to the EEA Agreement, exchange information on notifications received from the EU Member States or the EFTA States respectively, the Commission shall communicate the information received from the EFTA Surveillance Authority to the EU Member States and the EFTA Surveillance Authority shall communicate the information received from the Commission to the Standing Committee of the EFTA States. Furthermore, the EFTA Surveillance Authority shall inform the Standing Committee of the notifications received from the EFTA States.";

(g) The following subparagraph shall be inserted in Article 21(2):

"When the Commission and the EFTA Surveillance Authority, in accordance with paragraph 4(a) of Protocol 1 to the EEA Agreement, exchange information on the names and contact details received from the EU Member States or the EFTA States respectively, the Commission shall communicate the information received from the EFTA Surveillance Authority to the EU Member States and the EFTA Surveillance Authority shall communicate the information received from the Commission to the Standing Committee of the EFTA States.";

(h) Article 22(1)(d) shall not apply with regard to the EFTA States;

(i) The following shall be added in Article 28(8):

"With regard to the EFTA States, it shall be the EFTA Surveillance Authority to periodically inform them about the functioning of the mutual assistance provisions.";

(j) The following shall be added in Article 39(2):

"Without prejudice to paragraph 4(d) of Protocol 1 to the EEA Agreement, the Commission shall forward the reports received from the EU Member States to the EFTA Surveillance Authority for distribution to the EFTA States and the EFTA Surveillance Authority shall forward the information received from an EFTA State to the other EFTA States, to the Standing Committee of the EFTA States and to the Commission for distribution to the EU Member States. The Commission and the EFTA Surveillance Authority shall exchange information on the observations received from the EU Member States and the EFTA States respectively.";

(k) The following shall be added in Article 39(3):

"The EFTA States may also present their reports and observations in the Committee.";

(l) The following subparagraph shall be added in Article 39(5):

"When the Commission and the EFTA Surveillance Authority, in accordance with paragraph 4(d) of Protocol 1 to the EEA Agreement, exchange information on the requirements transmitted by the EU Member States or the EFTA States respectively, the Commission shall communicate the information received from the EFTA Surveillance Authority to the EU Member States and the EFTA Surveillance Authority shall communicate the information received from the Commission to the Standing Committee of the EFTA States. Furthermore, the EFTA Surveillance Authority shall inform the Standing Committee of the requirements transmitted by the EFTA States." '

2. The title of Annex XI 'TELECOMMUNICATIONS SERVICES' shall be replaced by 'ELECTRONIC COMMUNICATION, AUDIOVISUAL SERVICES AND INFORMATION SOCIETY'.

3. The following shall be inserted after point 5o (Commission Decision 2006/215/EC) of Annex XI:

'**Audiovisual services**

5p. **389 L 0552**: 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), as amended by:

— **397 L 0036**: Directive 97/36/EC of the European Parliament and of the Council of 30 June 1997 (OJ L 202, 30.7.1997, p. 60).

The provisions of the Directive shall, for the purposes of this Agreement, be read with the following adaptations:

(a) In Article 2(5), "Article 52 and following of the Treaty establishing the European Community" shall read "Article 31 and following of the Agreement on the European Economic Area";

(b) with regard to EFTA States, the works referred to in Article 6(1)(c) of the Directive are also works made, as described in Article 6(3), by and with producers established in European third countries with which the EFTA State concerned has agreements to this effect.

If a Contracting Party intends to conclude an agreement as mentioned in Article 6(3), it shall inform the EEA Joint Committee thereof. Consultations concerning the contents of such agreements may take place at the request of any Contracting Party;

(c) the following shall be added to Article 15 of the Directive:

"The EFTA States shall be free to compel cable companies operating on their territories to scramble or otherwise obscure spot advertisements for alcoholic beverages in programmes of television broadcasters whose main audience is in an EEA EFTA State. For the purpose of assessing whether a particular programme or spot advertisement falls within the scope of this adaptation, importance shall be attached to the following factors, inter alia:

— whether the broadcast is, *de facto*, primarily received in one of the EEA EFTA States,

— whether the goods or services advertised are available in the country of reception,

— whether the language of the country in which the broadcasts are received is used in the programmes or advertisements,

— whether points of sale in the country of reception are referred to or mentioned in the advertisements,

— whether the prices are quoted in the currency of the country of reception.

The scrambling or otherwise obscuring of spot advertisements shall not have the effect of restricting the retransmission of parts of television programmes other than advertising spots for alcoholic beverages.

The Contracting Parties shall jointly review this exception in 2003."

Detailed arrangements for the association of Liechtenstein, Iceland and Norway in accordance with Article 101 of this Agreement:

Each EFTA State may designate one representative of the competent authority designated by each EFTA State who is to participate in the meetings of the Contact Committee on television broadcasting activities to which reference is made in Article 23a of Council Directive 89/552/EEC.

The EC Commission shall in due time inform the participants of the dates of the meetings of the Contact Committee and shall transmit to them the relevant information.

5q. **398 L 0084**: Directive 98/84/EC of the European Parliament and of the Council of 20 November 1998 on the legal protection of services based on, or consisting of, conditional access (OJ L 320, 28.11.1998, p. 54).'

4. The following shall be inserted after point 30 (Council Resolution 96/C 376/01) of Annex XI:

'**Audiovisual services**

31. **394 Y 0702(02)**: Council Resolution 94/C 181/02 of 27 June 1994 on a framework for Community policy on digital video broadcasting (OJ C 181, 2.7.1994, p. 3).

32. **398 X 0560**: Council Recommendation 98/560/EC of 24 September 1998 on the development of the competitiveness of the European audiovisual and information services industry by promoting national frameworks aimed at achieving a comparable and effective level of protection of minors and human dignity (OJ L 270, 7.10.1998, p. 48).

33. **499 Y 0205(01)**: Resolution 1999/C 30/01 of the Council and of the Representatives of the Governments of the Member States, meeting within the Council of 25 January 1999 concerning public service broadcasting (OJ C 30, 5.2.1999, p. 1).

34. **32005 H 0865**: Recommendation 2005/865/EC of the European Parliament and of the Council of 16 November 2005 on film heritage and the competitiveness of related industrial activities (OJ L 323, 9.12.2005, p. 57).'