



Brussels, 10.7.2015
C(2015) 4609 final

COMMISSION DECISION

of 10.7.2015

on the compatibility of the measures adopted by Lithuania pursuant to Article 3(2) of 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

(only the Lithuanian text is authentic)

COMMISSION DECISION

of 10.7.2015

on the compatibility of the measures adopted by Lithuania pursuant to Article 3(2) of 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

(only the Lithuanian text is authentic)

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 (henceforth referred to as 'the Directive'), and in particular Article 3(2) thereof,

Whereas:

- (1) Article 11(1) of the Charter of Fundamental Rights of the EU provides that everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. According to Article 11(2) of the Charter, the freedom and pluralism of the media shall be respected.
- (2) Article 52(1) of the Charter of Fundamental Rights stipulates that any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.
- (3) Article 3(1) of the Directive stipulates that Member States shall ensure freedom of reception and shall not restrict retransmission on their territory of audiovisual media services from other Member States for reasons which fall within the fields coordinated by the Directive.
- (4) Article 3(2) of the Directive provides for an exception to this rule where a television broadcast from another Member State manifestly, seriously and gravely infringes Article 27(1) or (2) relating to the protection of minors and/or Article 6 on incitement to hatred based on race, sex, religion or nationality.
- (5) Article 6 of the Directive provides that Member States shall ensure by appropriate means that audiovisual media services provided by media service providers under their jurisdiction do not contain any incitement to hatred based on race, sex, religion or nationality.
- (6) Article 3(2) of the Directive also stipulates the conditions to be fulfilled before a Member State may provisionally adopt measures restricting the rule laid down in Article 3(1).

- (7) By letter of 24 February 2015, Lithuania notified the Commission of certain alleged infringements of Article 6 of the Directive in programmes of RTR Planeta, a Russian-language channel retransmitted in Lithuania via cable and satellite. According to the Lithuanian authorities, these infringements occurred in programmes of 2 March 2014 and 18 January 2015. In the same letter, Lithuania informed the Commission of its intention to take specific measures concerning RTR Planeta, should any such infringement occur again.
- (8) The Lithuanian authorities have gathered compelling evidence that the competent Member State for this broadcaster, by reason of use of a satellite up-link, is Sweden. According to Lithuania, the television broadcast was registered as "Россия РТР" (Rossija RTR) by the Swedish Broadcasting Authority on 16 May 2012.
- (9) Therefore, by letter of 24 February 2015, the Lithuanian authorities notified the Swedish authorities of the matters referred to in recital 7 above.
- (10) On 17 February 2015, the Lithuanian authorities sent a letter to the broadcaster from which it emerges that they met with the broadcaster on 22 January 2015. In that letter, they asked the broadcaster to examine compliance of its programmes with the requirements of Lithuanian legislation, including the prohibition of incitement to hatred, and to inform them as to what concrete measures it intends to take to ensure compliance. In a letter of 24 February 2015, the Lithuanian authorities informed the broadcaster that the content of the broadcast of 18 January 2015 incited to hatred and that a similar case of incitement to hatred had been established in the broadcast of 2 March 2014. In the same letter, the Lithuanian authorities pointed out that, in case of repeated infringements, they would have to suspend the re-broadcasting of RTR Planeta in Lithuania for a period of not less than 12 months. In a reply to the Lithuanian authorities of 8 April 2015, the broadcaster argued that there were many examples of programmes of other media service providers in Lithuania inciting to hatred and underlined the importance of freedom of speech.
- (11) Following their letter of 24 February 2015, no amicable settlement with the Swedish authorities, as the authorities of the transmitting Member State, was reached.
- (12) The alleged infringement persisted in programmes of 1 and 12 March 2015. Therefore the Lithuanian Radio and Television Commission adopted a decision pursuant to the Law on Provision of Information to the Public on 8 April 2015, the effect of which is to order the temporary suspension of the retransmission of the television broadcast RTR Planeta in the territory of Lithuania for a period of three months, starting on 13 April 2015. Lithuania notified the said decision by letter of 9 April 2015 to the Commission, in accordance with Article 3(2) 2nd subparagraph of the Directive.
- (13) Following a meeting of 21 May 2015 and subsequent exchanges with the Commission services concerning the national procedure leading to the adoption of the suspension decision, the Lithuanian authorities informed the Commission services that, by letter of 3 June 2015, they had given the broadcaster an opportunity to be heard on the detected infringements and had given the broadcaster notice of their intention to restrict the free reception of RTR Planeta in Lithuania for three months. It moreover emerges from the letter of 3 June 2015 that the broadcaster was invited to comment on the adequacy of the measures limiting the free reception of RTR Planeta. The Lithuanian authorities informed the Commission services that the broadcaster had not replied within the deadline set and, on 8 June 2015, notified to the Commission a decision of the same date amending the decision of 8 April 2015. In their notification of 8 June 2015, the Lithuanian authorities asked the Commission to take into account

their decision of 8 June 2015 and to assess it together with the earlier decision of 8 April 2015.

- (14) According to Article 3(2) 2nd subparagraph of the Directive, the Commission shall, within 2 months following the notification of the measures taken by the Member State, take a decision on whether they are compatible with Union law.
- (15) By letter of 9 June 2015, the Commission informed the Lithuanian authorities that, given that the latter chose to carry out an additional assessment of the circumstances related to the decision of 8 April 2015, the two-month deadline set out in Article 3(2) 2nd subparagraph of the Directive which started running on 9 April 2015 no longer bound the Commission.
- (16) The Lithuanian authorities have respected the procedural requirements laid down in Article 3(2) of the Directive, including the broadcaster's right to be heard.
- (17) In the *Roj TV case*¹, the Court of Justice interpreted the words 'incitation' and 'hatred' as referring to, first, an action intended to direct specific behaviour and, second, a feeling of animosity or rejection with regard to a group of persons. The Court of Justice also noted that in Article 6 of the Directive, the legislator intended to lay down a ground for the prohibition based on public order considerations which would be distinct from the grounds relating particularly to the protection of minors.
- (18) In particular, the Lithuanian authorities found that the content of the programme of 2 March 2014 instigates discord and a military climate and refers to demonization and scapegoating with reference to the situation in Ukraine. The programme could therefore be considered to foster a feeling of animosity or rejection. As regards the programme of 18 January 2015, the Lithuanian authorities highlighted a number of statements that could also be considered as being aimed at creating tensions and violence between Russians, Russian-speaking Ukrainians and the broader Ukrainian population. Some of the statements contained in the programme of 1 March 2015 could also be considered as inciting tensions and violence between the Russians and the Ukrainians but also against the EU and NATO States. The same findings apply to the programme of 12 March 2015.
- (19) Article 3(2) of the Directive provides for an assessment of the infringement by the Member State concerned during which it has to establish that the infringement was manifest, serious and grave. Given that the statements made during these programmes relate to an ongoing military confrontation involving Russia; that Lithuania has a sizable Russian-speaking minority which appears to be the addressee of RTR Planeta; and that consequently tensions within Lithuania, with its history of formerly being part of the Soviet Union, could arise, the said television broadcasts manifestly, seriously and gravely infringe Article 6 of the Directive.
- (20) Moreover, the Lithuanian authorities have provided information on the basis of which the statements made in these programmes can be considered as incitement to hatred, since they involve express language that can be considered on the one hand as an action intended to direct specific behaviour and, on the other hand, as creating a feeling of animosity or rejection with regard to a group of persons.
- (21) Lithuania has therefore sufficiently demonstrated that there have been infringements of manifest, serious and grave character of the prohibition of incitement to hatred in

¹ Joint cases C-244/10 and C-245/10 *Mesopotamia Broadcast and Roj TV* [2011] ECR I-08777

the television broadcast of RTR Planeta on two occasions in the twelve months previous to the notification of 24 February 2015 and that the infringement persisted after having failed to find an amicable settlement with the transmitting Member State. The measures taken by Lithuania are not discriminatory and are proportionate to the objective of ensuring that media service providers comply with the rules of Article 6 of the Directive according to which audiovisual media services do not contain any incitement to hatred based on race and/or nationality.

- (22) In its only written reply of 8 April 2015 to the Lithuanian authorities concerning the first two infringements, the broadcaster invoked as justification to the infringements attributed to it, the fact that the participants in the programmes were expressing their views and were therefore exercising their freedom of expression and that there have been programmes on other channels which, according to the broadcaster's opinion, were inciting to hatred. However, none of these arguments are relevant regarding the incitement to hatred in the programmes of the broadcaster, which in any case is not disputed in its letter.
- (23) The legislator made an express choice in Directive 2010/13/EU to limit the freedom of expression of audiovisual media services in two specific circumstances, namely for the protection of minors and the incitement to hatred based on race, sex, religion or nationality. Therefore, the legislator's balancing between the said different fundamental rights concluded that the limitation in the exercise of the freedom of expression was necessary in order to ensure the effectiveness of Article 3 of the Directive.
- (24) In order to ensure the effectiveness of Article 3 of the Directive, the Commission is required to examine only the effects of the decision of the Lithuanian authorities on the freedom of expression which exceed those which are intrinsically linked to the suspension of retransmission of RTR Planeta. It is clear that the freedom of expression of the broadcaster has been affected by Article 3 of the Directive for the purposes explained above. On the circumstances of this case, given that the qualification of these programmes as inciting to hatred was validly decided by the Lithuanian authorities and also that the procedure of Article 3(2) of the Directive was followed by the said authorities, the Commission considers that the arguments put forward by the broadcaster, namely that there are other broadcasters transmitting programmes which the broadcaster considers as inciting to hatred, cannot constitute a valid argument that the effects of the suspension go beyond those which are intrinsically linked to the suspension of retransmission of the RTR Planeta.
- (25) The Commission therefore concludes that the measures notified by Lithuania on 9 April and 8 June 2015 are compatible with Union law.

HAS ADOPTED THIS DECISION:

Article 1

The measures taken by Lithuania against RTR Planeta, as notified by letters of 9 April and 8 June 2015, are compatible with Union law.

Article 2

This Decision is addressed to the Republic of Lithuania.

Done at Brussels, 10.7.2015

For the Commission
Günther OETTINGER
Member of the Commission

