



Brussels, 4.5.2018
C(2018) 2665 final

COMMISSION DECISION

of 4.5.2018

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 4.5.2018

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, and in particular Article 3(2) thereof,

Whereas:

- (1) Article 11(1) of the Charter of Fundamental Rights of the EU (hereinafter – the Charter) provides that everyone has the right to freedom of expression. This right includes 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 must be respected.
- (2) Article 52(1) of the Charter stipulates that any limitation on the exercise of the rights and freedoms recognised by it 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 Directive 2010/13/EU stipulates that Member States must ensure freedom of reception and must 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 Directive 2010/13/EU provides for an exception to the rule set out in Article 3(1) of the Directive where a television broadcast from another Member State manifestly, seriously and gravely infringes Article 27(1) or (2) of the Directive relating to the protection of minors and/or Article 6 of the Directive on incitement to hatred based on race, sex, religion or nationality.
- (5) Article 6 of Directive 2010/13/EU provides that Member States must 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 Directive 2010/13/EU also stipulates the conditions to be fulfilled before a Member State may provisionally adopt measures restricting the rule laid down in Article 3(1) of the Directive.
- (7) On 10 July 2015 and 17 February 2017, respectively, the Commission adopted two decisions¹ pursuant to Article 3(2) of Directive 2010/13/EU on the compatibility with Union law of the measures taken by Lithuania as regards RTR Planeta, a Russian-language channel retransmitted from Sweden in Lithuania via cable and satellite and also disseminated via the Internet. The measures taken by Lithuania, which were analysed in those decisions, consisted of a temporary suspension of the retransmission of RTR Planeta in the territory of Lithuania for a period of three months. In both decisions, the Commission considered that the measures taken by Lithuania against RTR Planeta, in view of several infringements of Article 6 of the Directive, were compatible with Union law.
- (8) By letter of 22 August 2017, Lithuania notified the Commission of new identified infringements of Article 6 of Directive 2010/13/EU in programmes of RTR Planeta. According to the Lithuanian authorities, these infringements occurred in programmes of 16 March 2017 and 31 May 2017. In the same letter, Lithuania informed the Commission of its intention to take specific measures concerning RTR Planeta, should any such infringement occur again.
- (9) In its two previous decisions, the Commission found that the Lithuanian authorities had gathered compelling evidence that RTR Planeta is under Swedish jurisdiction, due to the use of a satellite uplink in Sweden. According to the Lithuanian authorities, RTR Planeta is broadcast by the Russian State Television and Radio Broadcasting Company (VGTRK). It was registered as "Россия РТР" (Rossija RTR) by the Swedish Broadcasting Authority on 16 May 2012. In response to a Commission request for information, the Lithuanian authorities clarified that the legal and factual situation compared to the 2015 and 2017 decisions did not change with regard to Swedish jurisdiction over the broadcaster. The suspension decision by the Lithuanian authorities does not differ in any material respect on this point with respect to the earlier decision of 16 November 2016.
- (10) Therefore, by letters of 16 May 2017 and 22 August 2017, the Lithuanian authorities notified the Swedish authorities of the matters referred to in recital 8 above.
- (11) By their letters of 16 May 2017 and 22 August 2017, the Lithuanian authorities equally informed the broadcaster of the matters referred to in recital 8 above. In those letters, the Lithuanian authorities invited the broadcaster to submit observations on the identified infringements referred to in recital 8 as well as the envisaged measure of restricting the retransmission of RTR Planeta in Lithuania for a period between 12 and 18 months, should any such infringement occur again.
- (12) Following the letter of the Lithuanian authorities to the Swedish authorities of 22 August 2017, no amicable settlement with the Swedish authorities, as the authorities of the transmitting Member State, was reached.
- (13) According to Lithuanian authorities, the alleged infringement persisted in a programme of 3 November 2017. By letter of 17 January 2018, the Lithuanian authorities invited the broadcaster to attend the meeting of the LRTC of 14 February 2018 in which the LRTC intended to adopt a decision ordering the suspension concerning RTR Planeta. According to the notification, in this meeting the

¹ Commission Decision C(2015) 4609 final of 10.7.2015 and Commission Decision C(2017) 814 final.

representatives of the broadcaster stated that they did not agree with the objections raised by the LRTC. They claimed that the broadcaster ensures freedom of expression on its channels and, therefore, does not restrict in any way the speeches of the participants of the shows during live broadcasts.

- (14) On 14 February 2018 the LRTC adopted a decision pursuant to the Law on Provision of Information to the Public. The effect of that decision is to order the temporary suspension of the re-transmission of the television programme RTR Planeta in the territory of Lithuania for a period of twelve months, i.e. until 23 February 2019. Lithuania notified the said decision by letter of 7 March 2018 to the Commission, in accordance with the second subparagraph of Article 3(2) Directive 2010/13/EU.
- (15) On 8 March 2018, the Commission forwarded the notification to the broadcaster for comments, which were provided on 23 March 2018. The Commission then forwarded the broadcaster's submission to the LRTC. The Lithuanian authorities provided comments on the broadcaster's submission on 27 March 2018.
- (16) According to the second subparagraph of Article 3(2) of Directive 2010/13/EU, the Commission must, within two months following the notification of the measures taken by the Member State, take a decision on whether they are compatible with Union law.
- (17) 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.
- (18) In the *Roj TV* case,² 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 Directive 2010/13/EU, 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.
- (19) The Lithuanian authorities found that the content of the programme of 16 March 2017 incited to war and hatred on the basis of nationality, particularly by calling for physical violence against American and British people; threatening to invade foreign countries such as Ukraine and France; threatening to restore the Soviet Union with all its previous territories and to shoot and deport opposition to concentration camps. The programme could, therefore, be considered to foster a feeling of animosity or rejection amongst nations and ethnic communities. As regards the programme of 31 May 2017, the Lithuanian authorities highlighted a number of statements propagating instigation to war and terrorism and incitement to hatred; threatening the military occupation of foreign countries such as Baltic States, Germany and France; and claiming that Western people hate and despise Russians. Again, those statements could be considered as being aimed at creating a feeling of animosity or rejection and inciting enmity and hatred among nations and ethnic communities. The same findings apply to the programme of 3 November 2017, particularly to those statements included therein threatening military operations and violence against Ukraine.
- (20) The Lithuanian authorities have therefore provided information on the basis of which the statements made in the aforesaid three 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.

² Joined Cases C-244/10 and C-245/10 *Mesopotamia Broadcast and Roj TV* [2011] ECR I-08777.

- (21) In its reply, the broadcaster objected that the participants in the programmes were expressing their views and were therefore exercising their freedom of expression in live programmes and that there have been programmes also in other channels which, according to the broadcaster's opinion, were inciting to hatred. However, none of these arguments appears relevant regarding the qualification as incitement to hatred of the contested statements, which in any case are not disputed in the letter.
- (22) Freedom of expression is a fundamental right protected by the Charter and a founding element of democratic states. As a fundamental right, however, freedom of expression may be subject to limitations, for example in the interest of national security or for the protection of the reputation or rights of others³. The legislator made an express choice in Directive 2010/13/EU to limit the freedom of expression of audiovisual media services under Article 3(2) of the Directive in two specific circumstances, namely for the protection of minors and for cases of incitement to hatred based on race, sex, religion or nationality. Given their unequivocally violent and hateful character, the fact that these statements have been made in political talk shows or during live broadcasts does not change their qualification for the purpose of Article 6 of Directive 2010/13. It should be noted in this respect that the broadcaster provided no concrete indication that the host has on any occasion corrected or taken distance from such statements. The broadcaster's arguments cannot therefore be accepted.
- (23) Article 3(2) of Directive 2010/13/EU 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 partly relate to an ongoing military confrontation involving Russia and contain unambiguous threats of occupation and/or destruction of other States, including the Baltic States; 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.
- (24) Lithuania has therefore sufficiently demonstrated that there have been infringements of manifest, serious and grave character of the prohibition of incitement to hatred in the television broadcast of RTR Planeta on two occasions in the twelve months previous to the notification of 17 January 2018 and that the infringement persisted after having failed to find an amicable settlement with the transmitting Member State.
- (25) In its reply to the Commission, the broadcaster further argued that the version of the channel registered under the jurisdiction of the Kingdom of Sweden (the one with the logo "Россия РТР) was not distributed in the territory of the Republic of Lithuania during the relevant period. The broadcaster claimed that it is another version of the channel (with the logo "RTR Planeta"), which was distributed in Lithuania and that the LRTC has therefore no legal base to suspend the channel registered in Sweden. Thus, the broadcaster seems to allege that the channel concerned by the decision (the one visible in Lithuania) may not be under the jurisdiction of the Kingdom of Sweden. However, the broadcaster does not provide any evidence, which would rebut the LRTC conclusion that the channel concerned is under Swedish jurisdiction. Its argument cannot therefore be accepted.

³ Article 10(2) of the European Convention on Human Rights and Article 52 of the Charter of Fundamental Rights of the EU.

- (26) While in the previous two decisions against RTR Planeta the LRTC imposed a suspension of three months, in the present case the Lithuanian authorities have imposed a suspension for a substantially longer period (i.e. twelve months). The Commission observes that national authorities enjoy a margin of discretion in deciding which measures and/or sanctions to impose on broadcasters for infringements of the prohibition under Article 6 of Directive 2010/13/EU. Therefore, the Commission would only question under Article 3(2) of the Directive the measures taken by the national authority, and precisely the duration of the suspension imposed on the broadcaster concerned, in cases where this appears to be manifestly disproportionate.
- (27) In its decision, the LRTC emphasised that RTR Planeta engaged in violations of Article 6 of Directive 2010/13/EU already several times in the past. In particular, the LRTC already adopted on two prior occasions, in 2015 and 2016, decisions ordering the temporary suspension of the free reception of the television channel RTR Planeta in Lithuania. The Commission has confirmed in its 2015 and 2017 decisions the compatibility with Union law of these measures. According to the notifying authorities, therefore, the fact that the violations are repeated and that the broadcaster has not modified its behaviour following the two previous suspension decisions justify a substantially longer suspension period. The Commission shares this assessment.
- (28) Furthermore, the Commission observes that the contested statements in this and the previous cases all refer to the same or essentially the same political talk show, with the same presenter and recurring guests. Not only, therefore, the broadcaster has repeatedly infringed the prohibition on incitement to hatred despite the two prior LRTC decisions, but it has also done so with identical modalities. Moreover, there is no indication that the host of the programme has on any occasion corrected or taken distance from such statements. In view of the foregoing, the Commission considers that in the present case there are sufficient grounds to justify a substantially longer suspension of the TV channel concerned.
- (29) The Commission therefore concludes that the measures notified by Lithuania on 7 March 2018 are compatible with Union law.

HAS ADOPTED THIS DECISION:

Article 1

The measures taken by Lithuania against RTR Planeta, as notified by letter of 7 March 2018, are compatible with Union law.

Article 2

This Decision is addressed to the Republic of Lithuania.

Done at Brussels, 4.5.2018

For the Commission
Mariya GABRIEL
Member of the Commission