



Brussels, 17.2.2017
C(2017) 814 final

COMMISSION DECISION

of 17.2.2017

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 17.2.2017

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) of the Directive.

- (7) On 10 July 2015, the Commission adopted a decision¹ on the compatibility with Union law of the measures taken by Lithuania as regards RTR Planeta, a Russian-language channel retransmitted in Lithuania via cable and satellite, pursuant to Article 3(2) of the Directive. The measures taken by Lithuania consisted of a temporary suspension of the retransmission of RTR Planeta in the territory of Lithuania for a period of three months. 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 28 April 2016, Lithuania notified the Commission of certain alleged infringements of Article 6 of the Directive in programmes of RTR Planeta. According to the Lithuanian authorities, these infringements occurred in programmes of 29 November 2015 and 14 February 2016. 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) The Lithuanian authorities have gathered compelling evidence that RTR Planeta is under Swedish jurisdiction. According to Lithuania, 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.
- (10) Therefore, by letters of 1 December 2015 and 28 April 2016, the Lithuanian authorities notified the Swedish authorities of the matters referred to in recital 8 above.
- (11) By their letters of 10 December 2015, 28 April and 27 June 2016, 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 alleged infringements referred to in recital 8 above as well as the envisaged measure of restricting the retransmission of RTR Planeta in Lithuania for three months, should any such infringement occur again. In a reply to the Lithuanian authorities of 25 July 2016, the broadcaster argued that the alleged infringements consisted of views expressed by participants in a talk show which are not covered by the broadcaster's editorial responsibility. The broadcaster moreover underlined the importance of freedom of expression.
- (12) Following the letter of the Lithuanian authorities to the Swedish authorities of 28 April 2016, no amicable settlement with the Swedish authorities, as the authorities of the transmitting Member State, was reached.
- (13) The alleged infringement persisted in a programme of 6 October 2016. Therefore, on 16 November 2016 the Lithuanian Radio and Television Commission 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 retransmission, including on the internet, of the television broadcast RTR Planeta in the territory of Lithuania for a period of three months, starting on 21 November 2016. Lithuania notified the said decision by letter of 2 December 2016 to the Commission, in accordance with Article 3(2) 2nd subparagraph of the Directive.

¹ Commission Decision C(2015) 4609 final 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.

- (14) According to Article 3(2) 2nd subparagraph of the Directive, the Commission shall, 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.
- (15) 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.
- (16) In the *Roj TV* case², 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.
- (17) The Lithuanian authorities found that the content of the programme of 29 November 2015 incited hatred against Turkey and Ukraine, and called for physical violence against the Turkish people. The programme could also be considered to foster a feeling of animosity or rejection. As regards the programme of 14 February 2016, the Lithuanian authorities highlighted a number of statements propagating the instigation of war and incitement to hatred and calling for the physical destruction of, among others, the United States, Turkey, and the Baltic States. Those statements could be considered as being aimed at creating tensions and reactions of animosity or rejection from the Russian minority in Lithuania. Some of the statements contained in the programme of 6 October 2016 refer to a future occupation and destruction of Romania, as well as military operations against Poland, the Czech Republic and the United States. Those statements could equally be considered as inciting tensions and violence against EU Member States and the United States.
- (18) 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.
- (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 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.
- (20) 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 28 April 2016 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

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

of the Directive according to which audiovisual media services do not contain any incitement to hatred based on race and/or nationality.

- (21) In its only reply to the Lithuanian authorities of 25 July 2016, the broadcaster invoked as justification of the infringements attributed to it that the views expressed in the programmes of 29 November 2015 and 14 February 2016 were the views of the guests of a talk show and were thus outside the broadcaster's editorial responsibility. Referring to the Universal Declaration of Human Rights, the broadcaster put forward that the views expressed constituted an exercise of the freedom of expression. Restricting those views would amount to censorship and would be in conflict with recital 8 of the Directive. Lastly, the broadcaster argued that it is difficult to define the notion of incitement to hatred in an objective way, while hatred itself is part of everyday life and society has a right to be informed.
- (22) Pursuant to Article 52(1) of the Charter of Fundamental Rights, any limitation on the exercise of the rights and freedoms recognised by this Charter, which include the right to freedom of expression, must be provided for by law and respect the essence of those rights and freedoms. The legislator made an express choice in the Directive 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 to ensure the effectiveness of Article 3 of the Directive.
- (23) 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 do not validly demonstrate that the effects of the suspension go beyond those which are intrinsically linked to the suspension of retransmission of the RTR Planeta. As regards the argument that the broadcaster does not have editorial responsibility over views expressed by participants of a talk show, the Commission recalls that, in relation to television broadcasts, the Directive defines editorial responsibility as the exercise of effective control both over the selection of the programmes and their organisation in a chronological schedule (Article 1(c) of the Directive). As a consequence, the broadcaster's argument that editorial responsibility does not extend to the views expressed in a programme cannot be retained. Moreover, as required by Article 3(2) of the Directive, the Lithuanian authorities could demonstrate that the broadcaster has infringed Article 6 on three occasions.
- (24) The Commission therefore concludes that the measures notified by Lithuania on 2 December 2016 are compatible with Union law.

HAS ADOPTED THIS DECISION:

Article 1

The measures taken by Lithuania against RTR Planeta, as notified by letter of 2 December 2016, are compatible with Union law.

Article 2

This Decision is addressed to the Republic of Lithuania.

Done at Brussels, 17.2.2017

*For the Commission
Andrus ANSIP
Vice-President*