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COMMISSION DECISION

of 7.5.2021

**on the compatibility of the measures adopted by Latvia pursuant to Article 3(2) of
Directive 2010/13/EU of the European Parliament and of the Council to restrict
retransmission on its territory of an audiovisual media service from another Member
State**

Only the Latvian text is authentic

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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 (Audiovisual Media Services Directive)¹, and in particular Article 3(2) thereof,

Whereas:

- (1) Pursuant to Article 3(1) of Directive 2010/13/EU Member States are to ensure freedom of reception and are not to restrict retransmission on their territory of audiovisual media services from other Member States for reasons which fall within the fields coordinated by that Directive.
- (2) Article 3(2) of Directive 2010/13/EU allows Member States to provisionally derogate from Article 3(1) of that Directive where an audiovisual media service provided by a media service provider under the jurisdiction of another Member State prejudices or presents a serious and grave risk of prejudice to public health or manifestly, seriously and gravely infringes Article 6(1), point (a) or Article 6a(1) of that Directive. Those provisions relate respectively to incitement to violence or hatred directed against a group of persons or a member of a group based on any of the grounds referred to in Article 21 of the Charter of Fundamental Rights of the European Union ('the Charter'), and to the protection of minors. Such derogation is subject to certain conditions, and its compatibility with Union law is to be assessed by the Commission.
- (3) By letters of 18 August 2020 and 13 January 2021, the Latvian authorities notified the Commission that they had identified several infringements of Article 6(1), point (a) of Directive 2010/13/EU in television programmes of the channel Rossiya RTR. By the same letters, pursuant to Article 3(2) of Directive 2010/13/EU, Latvia informed the Commission of its intention to take a specific measure concerning Rossiya RTR consisting of the temporary restriction of the retransmission of its television programmes in the territory of Latvia.
- (4) According to the Latvian and Swedish authorities, the channel in question is retransmitted from Sweden by the audiovisual media service provider "Federal State Unitary Enterprise - The Russian Television and Radio Broadcasting Company" ('the broadcaster'). The broadcaster is not established in a Member State within the

¹ OJ L 95, 15.4.2010, p. 1–24.

meaning of Article 2(3) of Directive 2010/13/EU. However, the broadcaster uses a satellite up-link situated in a Member State within the meaning of Article 2(4) of Directive 2010/13/EU, namely in Sweden. Therefore, the Latvian authorities conclude that the provider in question falls under the jurisdiction of Sweden. That is consistent with the decisions adopted by the Commission, respectively, on 10 July 2015, 17 February 2017, 4 May 2018 and 3 May 2019² pursuant to Article 3(2) of Directive 2010/13/EU on measures taken by Lithuania and Latvia. In those decisions, the Russian-language channel retransmitted from Sweden in Lithuania and Latvia, registered as "Россия РТР" (Rossiya RTR or Rossija RTR) by the Swedish Broadcasting Authority on 16 May 2012, was considered to be under Swedish jurisdiction.

- (5) Therefore, by letters of 18 August 2020 and 13 January 2021, the Latvian authorities notified the Swedish authorities of the infringements and their intention of taking the specific measure referred to in recital 3. Following those letters, the Latvian and Swedish authorities have not reached an amicable settlement.
- (6) By the same letters of 18 August 2020 and 13 January 2021, the Latvian authorities also informed the broadcaster of the infringements and their intention of taking the specific measure referred to in recital 3. By their letter of 13 January 2021, the Latvian authorities invited the broadcaster to submit written observations on the identified infringements and informed of the potential measure of restricting the retransmission of Rossiya RTR in Latvia for a period of up to 15 months. In addition, the Latvian authorities invited the broadcaster to attend a meeting with the Latvian National Electronic Mass Media Council ('NEPLP') on 28 January 2021. The broadcaster provided its comments in writing on 27 January 2021, as well as orally at the meeting of 28 January 2021, stating that it did not agree with the objections raised by the Latvian authorities.
- (7) On 8 February 2021, the NEPLP adopted its decision No 68/1-2 pursuant to the Latvian Electronic Mass Media Law. That decision included an order for a temporary suspension of the retransmission of the television programmes of the channel Rossiya RTR in the territory of Latvia for a period of 12 months. Latvia notified that decision to the Commission by letter of 12 February 2021, in accordance with Article 3(2) of Directive 2010/13/EU.
- (8) On 15 February 2021, the Commission requested the European Regulators Group for Audiovisual Media Services ('ERGA') to provide an opinion on the matter in accordance with Article 3(2) and Article 30b(3), point (d) of Directive 2010/13/EU. On 10 March 2021, ERGA adopted its Opinion on decision No. 68/1-2 of the Latvian National Electronic Mass Media Council restricting the retransmission of the channel "Rossija RTR" in the territory of Latvia for 12 months. The Opinion concluded that "given the factual and technical circumstances of the case at hand, ERGA is of the opinion that the decision (No. 68/1-2) by NEPLP to provisionally derogate from Article 3(1) was substantiated and is compatible with the Directive."³.

² Commission Decisions C(2015) 4609 final of 10 July 2015, C(2017) 814 final of 17 February 2017, C(2018) 2665 final of 4 May 2018 and C(2019) 3220 final of 3 May 2019.

³ ERGA Opinion on decision No. 68/1-2 of the Latvian National Electronic Mass Media Council restricting the retransmission of the channel Rossija RTR in the territory of Latvia for 12 months, <https://erga-online.eu/wp-content/uploads/2021/04/2021-03-10-ERGA-Opinion-on-decision-No.-68-1-2-of-the-Latvian-National-Electronic-Mass-Media-Council-as-adopted.pdf> .

- (9) On 2 March 2021, the Commission invited the broadcaster to send comments on the decision of the NEPLP. In its reply of 9 March 2021, the broadcaster confirmed its disagreement with the decision. On the other hand, NEPLP rebutted all the objections raised by the broadcaster in that reply, in a letter sent to the Commission on 29 March 2021.
- (10) In the *Roj TV* case⁴, 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.
- (11) The Latvian authorities found that in several cases the content broadcast by the broadcaster constituted incitement to violence or hatred within the meaning of Article 6(1), point (a) of Directive 2010/13/EU. In particular, they found that the programme of 17 September 2020 included statements which incited to hatred and violence, including military actions against Latvia and other Member States (such as Estonia, Germany, Lithuania and Sweden). The statements concerned have the potential of creating tensions and reactions of animosity or rejection within the Latvian population. Moreover, the programme of 21 October 2020 included statements which were found to incite to violence and hatred in the form of references to military destruction, notably against Ukrainians. The statements in that programme have the potential to lead to tensions and provoke violence within groups of the Ukrainian population. It was considered that also the programme of 6 December 2020 contained incitement to violence and hatred against Ukrainians and calls for a military invasion of Baltic states, including Latvia.
- (12) The Commission considers that, on the basis of the information provided by the Latvian authorities, the statements made during the three programmes referred to in recital 11 can be considered as incitement to violence or hatred, since they involve unambiguous 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.
- (13) In its comments to the NEPLP, dated 27 January 2021, the broadcaster objected by arguing that there have been comparable statements also in programmes of other channels, which were not sanctioned. In addition, the broadcaster argued that any restrictions would interfere with human rights, in particular the freedom of opinion and expression. In its reply to the Commission, dated 9 March 2021, the broadcaster reiterated those objections, arguing that broadcasting standards were applied in a discriminatory manner in Latvia and that the decision of the NEPLP would interfere with the freedom of expression.
- (14) The Commission considers that those arguments are not relevant regarding the qualification of the contested statements as incitement to violence or hatred. Freedom of expression is a fundamental right protected by the Charter and a founding element of democratic states. However, even the fundamental right of 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 others⁵. The legislator made a choice in

⁴ Judgement of 22 September 2011, *Mesopotamia Broadcast and Roj TV*, joined Cases C-244/10 and C-245/10, ECLI:EU:C:2011:607.

⁵ Article 10(2) of the European Convention on Human Rights and Article 52 of the Charter.

Directive 2010/13/EU to limit the freedom of expression in relation to audiovisual media services under Article 3(2) of that Directive in specific circumstances, such as the protection of minors and the cases of incitement to violence or hatred directed against a group of persons or a member of a group based on any of the grounds referred to in Article 21 of the Charter. Given their extreme and hateful character, the fact that the statements under examination have been made in political talk shows or during live broadcasts does not change their qualification for the purposes of Article 6(1), point (a) of Directive 2010/13/EU. It should also be noted that the broadcaster provided no indication that the hosts of the programmes in question have corrected or taken distance from such statements. Overall, the broadcaster's arguments are not enough to rebut the assertions of the Latvian authorities on the matter.

- (15) 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 the programmes concerned partly relate to present and past conflicts involving Russia and contain threats of occupation or destruction of other states, including Latvia, that Latvia has a sizable Russian-speaking minority which appears to be the addressee of Rossiya RTR in Latvia, and that consequently tensions within Latvia, with its history as a former part of the Soviet Union, could arise, those television programmes manifestly, seriously and gravely infringe Article 6(1), point (a) of Directive 2010/13/EU.
- (16) In that regard, the Latvian authorities specify that measures had been already taken in 2019 to restrict the retransmission of Rossiya RTR in Latvia due to violations of the prohibition of incitement to hatred. The Commission confirmed the compatibility of those measures with Union law in its 2019 Decision⁶.
- (17) The Commission observes that national authorities enjoy a margin of discretion in deciding which measures or sanctions to impose on broadcasters for infringements of the prohibition under Article 6(1), point (a) of Directive 2010/13/EU. Therefore, the Commission verifies, pursuant to Article 3(2) of that Directive, whether the measures taken by the national authority, and particularly the duration of the restriction imposed on the broadcaster concerned, appear to be manifestly disproportionate. In its 2018 Decision⁷, the Commission agreed that repeated violations may justify a substantially longer restriction period.
- (18) The Commission therefore considers that Latvia has sufficiently demonstrated that the television broadcasts of Rossiya RTR included infringements of manifest, serious and grave character of the prohibition to incite to violence or hatred, pursuant to Article 6(1), point (a), of Directive 2010/13/EU, on at least three occasions in the 12 months previous to the decision of the Latvian authorities of 8 February 2021 and that no amicable settlement with the Member State having jurisdiction over that channel could be reached. Moreover, the Commission considers that the Latvian authorities have respected the procedural requirements laid down in Article 3(2) of Directive 2010/13/EU. The Commission takes note of the ERGA Opinion on the matter, which substantiates its conclusions.
- (19) The Commission therefore concludes that the measures notified by Latvia on 12 February 2021 are compatible with Union law,

⁶ Commission Decision C(2019) 3220 final of 3 May 2019.

⁷ Commission Decision C(2018) 2665 final of 4 May 2018.

HAS ADOPTED THIS DECISION:

Article 1

The measures taken by Latvia against Rossiya RTR by decision No. 68/1-2 of the Latvian National Electronic Mass Media Council, as notified to the Commission by letter of 12 February 2021, are compatible with Union law.

Article 2

This Decision is addressed to the Republic of Latvia.

Done at Brussels, 7.5.2021

For the Commission
Thierry BRETON
Member of the Commission