

COMMISSION DECISION (EU) 2015/163**of 21 November 2014****on the compatibility with Union law of the measures to be taken by Poland pursuant to Article 14 of Directive 2010/13/EU of the European Parliament and of the Council 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)**

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 14(2) thereof,

Having regard to the opinion of the committee established pursuant to Article 29 of Directive 2010/13/EU,

Whereas:

- (1) By letter of 19 August 2014, Poland notified to the Commission certain measures to be taken, pursuant to Article 14(1) of Directive 2010/13/EU.
- (2) The Commission verified, within a period of 3 months from this notification, the compatibility of those measures with Union law, in particular with regard to the proportionality of the measures and the transparency of the national consultation procedure.
- (3) In examining the measures, the Commission took into consideration the available data on the Polish audiovisual market, in particular as regards the impact on the television market.
- (4) The list of events of major importance for society was drawn up by Poland in a clear and transparent manner, following a wide consultation.
- (5) On the basis of detailed evidence and viewing figures provided by the Polish authorities, the Commission services verified that the list of designated events drawn up in accordance with Article 14(1) of Directive 2010/13/EU met at least two of the following criteria considered to be reliable indicators of the importance of events for society: (i) a special general resonance within the Member State, and not simply a significance to those who ordinarily follow the sport or activity concerned; (ii) a generally recognised, distinct cultural importance for the population in the Member State, in particular as a catalyst of cultural identity; (iii) involvement of the national team in the event concerned in the context of a competition or tournament of international importance; and (iv) the fact that the event has traditionally been broadcast on free television and has commanded large television audiences.
- (6) The notified list of events of major importance for society contains both the events which are already on the statutory list foreseen by Article 20b of the Broadcasting Act of 29 December 1992, as modified by Act of 31 March 2000, and other events which are part of the draft regulation of the Broadcasting Council of the list of major events. A number of the designated events are generally considered as events of major importance for society such as the summer and winter Olympic Games, the final and semi-finals of the Football World Cup and the European Football Championship. The list also includes other football matches within those events involving the Polish national team, including qualifying games. As demonstrated by the Polish authorities, these events commanded large television audiences and have traditionally been broadcast on free-to-air television. In addition they have a special general resonance in Poland, as they are particularly popular with the general public, not just with those who usually follow sport events. Moreover, some matches within the Football World Cup and the European Football Championship including qualifying games, involve the Polish national team.
- (7) These other football matches in official tournaments and the Champions League and UEFA Cup where the Polish national team or Polish club participate, command large television audiences and traditionally have been broadcast on free-to-air television and have special general resonance in Poland.

⁽¹⁾ OJ L 95, 15.4.2010, p. 1.

- (8) The matches of world and European men's and women's volleyball championships where the Polish national team participates, including the qualifying tournaments and the men's volleyball World League, commanded large television audiences and have traditionally been broadcast on free-to-air television. Additionally, they generate a particular and widespread interest in Poland, even for audiences that do not usually follow this discipline. They also involve a national team in an international tournament of major importance. This interest is reinforced by the fact that Polish participants have earned significant achievements in these tournaments.
- (9) The semi-finals and finals of world and European men's handball championships, apart from commanding large television audiences and being traditionally broadcast on free-to air television, generate a particular and widespread interest in Poland, even for audiences that do not usually follow this discipline. Other competitions during semi-finals and finals of world and European men's handball championships where the Polish national team was involved also commanded large television audiences and have traditionally been broadcast on free-to air television. In addition, they generate a particular and widespread interest in Poland even for audiences that do not usually follow this discipline. They also involve a national team in an international tournament of major importance where Polish participants have earned significant achievements.
- (10) The Nordic Ski World Championships, Ski Jumping World Cup events and women's Cross-Country Ski World Cup events, apart from commanding large television audiences and being traditionally broadcast on free-to-air television, generate a particular and widespread interest in Poland even for audiences that do not usually follow this discipline. They also involve the Polish national team in an international tournament of major importance where the Polish participants have earned significant achievements.
- (11) The World Championship in Athletics commanded large television audiences and have traditionally been broadcast on free-to-air television. Moreover, they have special and wide-spread resonance in Poland, even for audiences that do not usually follow the disciplines represented at this event. Polish competitors have earned significant achievements in pole vault, shot-put and discus throw.
- (12) Taking into account the modalities according to which those events of major importance for society will be broadcast, the definition of a 'qualifying broadcaster', the role of the Broadcasting Council in the resolution of disputes mechanism in case of disputes in the course of the implementation of the measures, and the date foreseen for the entry into force of the final Polish measures (12 months after the publication in the *Official Journal of the European Union*), the designated measures do not go beyond what is necessary for the achievement of the aim pursued, namely the protection of the right to information and the wide access of the public to television coverage of national or non-national events of major importance for society. Therefore, it may be concluded that the effects on the right of property, as provided for in Article 17 of the European Charter of Fundamental Rights, do not go beyond those which are intrinsically linked to the inclusion of the events in the list provided for in Article 14(1) of Directive 2010/13/EU.
- (13) For the same reasons, the Polish measures appear to be proportionate to justify, by the overriding reason of public interest in ensuring wide public access to broadcasts of events of major importance for society, the derogation from the fundamental freedom to provide services laid down in Article 56 of the Treaty on the Functioning of the European Union (TFEU). In addition, the Polish measures do not constitute any discrimination or market foreclosure against other Member States' broadcasters, right holders or other economic operators.
- (14) The designated measures are also compatible with Union competition rules in so far as the definition of the qualifying broadcasters for the broadcasting of listed events is based on objective criteria, which allow actual and potential competition for the acquisition of the rights to broadcast these events. In addition, the number of designated events is not disproportionate to an extent that would distort competition on the downstream free television and pay television markets. Therefore, it may be considered that the effects on the freedom of competition do not go beyond those which are intrinsically linked to the inclusion of the events in the list provided for in Article 14(1) of Directive 2010/13/EU.
- (15) The Commission communicated the measures to be taken by Poland to the other Member States and presented the results of its verification to the committee established pursuant to Article 29 of Directive 2010/13/EU. The committee adopted a favourable opinion,

HAS DECIDED AS FOLLOWS:

Sole Article

1. The measures to be taken by Poland, pursuant to Article 14(1) of Directive 2010/13/EU, and notified to the Commission pursuant to Article 14(2) of that Directive are compatible with Union law.

2. The measures, as taken by Poland, shall be published in the *Official Journal of the European Union*.

Done at Brussels, 21 November 2014.

For the Commission
Günther OETTINGER
Member of the Commission

ANNEX

Publication pursuant to Article 14 of Directive 2010/13/EU 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).

The measures taken by Poland, to be published in accordance with Article 14 of Directive 2010/13/EU, are set out in the following extract from the Broadcasting Act of 29 December 1992 (Journal of Laws No 43/2011, item 226, as amended) and the Regulation of the National Broadcasting Council of 17 November 2014 establishing a list of major events:

'Broadcasting Act of 29 December 1992

Article 20b 1. A television broadcaster may broadcast live coverage of an event of major importance for society, hereinafter referred to as a "major event", only:

- (1) on a national channel (programme service), as referred to in this Act or in its broadcasting licence, which may be viewed entirely free of charge except for licence fees as referred to in the Licence Fees Act of 21 April 2005 and basic fees charged by cable network operators, or
- (2) if the same event is being transmitted by the broadcaster of a channel meeting the conditions specified in subparagraph 1, under a contract with the broadcaster who has acquired broadcasting rights for the event in question, or with any other authorised party, subject to the provisions of paragraph 6.

2. In view of the high level of public interest, the following events shall, amongst others, be regarded as major events:

- (1) the summer and winter Olympic Games;
- (2) the semi-finals and finals of the football World Cup and European Championship and any other matches in those events involving the Polish national team, including qualifying matches;
- (3) other matches involving the Polish national football team in official tournaments, and Champions League and UEFA Cup matches involving Polish clubs.

3. The National Council may adopt a regulation establishing a list of major events other than those specified in paragraph 2, having regard to the level of public interest in those events and their significance for social, economic and political life.

4. If a major event is to comprise more than one part, each part shall be regarded as a major event.

5. Paragraph 1 shall apply to deferred coverage if the delay in broadcasting a major event does not exceed 24 hours and occurs for important reasons, notably:

- (1) if the event concerned is timed to take place between midnight and 06:00 Polish time;
- (2) if there are overlaps between major events or parts thereof.

6. Paragraph 1 shall not apply if a broadcaster can demonstrate that no broadcaster of a programme service meeting the conditions specified in paragraph 1(1) was willing to conclude a contract for the provision of coverage in accordance with paragraph 1(2).

7. The National Broadcasting Council may, as provided for in international agreements binding upon Poland, adopt a regulation establishing:

- (1) lists of events deemed by other European countries to be major events;
- (2) rules governing the exercise of exclusive television broadcasting rights for the events referred to in subparagraph 1 so as to ensure that the exercise of such rights by broadcasters subject to this Act does not deprive viewers in the country concerned of the possibility of receiving coverage of those events under rules laid down by that country in accordance with international law.'

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Warsaw, 3 December 2014

Item 1705

REGULATION

OF THE NATIONAL BROADCASTING COUNCIL

of 17 November 2014

establishing a list of major events

The following provisions are laid down pursuant to Article 20b(3) of the Broadcasting Act of 29 December 1992 (Journal of Laws No 43/2011, item 226, as amended ⁽¹⁾):

Section 1. This Regulation lays down a list of major events other than those referred to in Article 20b(2) of the Broadcasting Act of 29 December 1992.

Section 2. In view of the level of public interest in these events and their significance in social, economic and political life, the following shall be considered major events:

- (1) matches involving Polish national teams in the men's and women's World and European Volleyball Championships, including qualifying matches;
- (2) men's Volleyball World League matches played in Poland;
- (3) semi-finals and finals of the World and European Men's Handball Championships and any other matches in those events involving the Polish national team, including qualifying matches;
- (4) the Nordic World Ski Championships;
- (5) Ski Jumping World Cup competitions;
- (6) women's Cross-Country World Cup (skiing) competitions;
- (7) the World Championships in Athletics.

Section 3. This Regulation shall enter into force 12 months after the date of its publication

Chairman of the National Broadcasting Council: J. DWORAK

⁽¹⁾ Amendments to this Act were published in Journal of Laws Nos 85/2011, item 459; 112/2011, item 654; 153/2011, item 903; 160/2011, item 963; and Journal of Laws 2012, items 1209 and 1315.