

COMMISSION DECISION**of 8 May 2017****on the compatibility with Union law of the measures taken by Hungary pursuant to Article 14 of the 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)**

(2017/C 214/04)

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 20 February 2017, Hungary notified to the Commission certain measures taken, pursuant to Article 14(1) of Directive 2010/13/EU.
- (2) The Commission verified, within a period of three months from receipt of 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 Hungarian 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 Hungary in a clear and transparent manner, following a wide public consultation.
- (5) On the basis of detailed evidence and viewing figures provided by the Hungarian authorities, the Commission 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 such 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 of 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-to-air television and commands large television audiences.
- (6) The notified list of events of major importance for society contains a number of designated events which are considered to be events of major importance for society, such as the Summer and Winter Olympic Games involving the participation of the Hungarian national team or one or more Hungarian athletes. As demonstrated by the Hungarian authorities, the Summer and Winter Olympic Games are particularly popular with the general public, not just with those who usually follow sporting events. These events also command large television audiences and have traditionally been broadcast on free-to-air television.
- (7) The opening matches, quarter-finals, semi-finals and finals of the FIFA World Cup and of the UEFA European Championship are also considered to be events of major importance for society. As demonstrated by the Hungarian authorities, these events have a special general resonance in Hungary, as they are particularly popular with the general public, not just with those who usually follow sporting events. They involve a national team playing in an international tournament of major importance. They also command large television audiences and have traditionally been broadcast on free-to-air television.
- (8) The list also includes all the matches of the Hungarian men's national team played at the FIFA World Cup and the UEFA European Championship, as well as qualifiers for these events and official friendlies. As demonstrated by the Hungarian authorities, these events have a special general resonance in Hungarian society, not just with those who ordinarily follow football. They involve a national team playing in an international tournament of major importance. They also command large television audiences and have traditionally been broadcast on free-to-air television.

⁽¹⁾ OJ L 95, 15.4.2010, p. 1.

- (9) The UEFA Champions League Final, and matches of the UEFA Champions League and of the UEFA Europa League featuring a Hungarian club team are also considered to be events of major importance for society. They have a special general resonance in Hungarian society, as they are popular with the general public and not just among the traditional audiences of football matches. They also involve Hungarian club teams playing in an international tournament of major importance. They command large television audiences and have traditionally been broadcast on free-to-air television.
- (10) Matches of the Men's and Women's EHF European Handball Championship featuring the Hungarian national team are also considered to be events of major importance for society. The Hungarian authorities point out that they have special general resonance in Hungary that extends beyond the fans of this sporting discipline. They usually involve the participation of a Hungarian national team and command large television audiences and have traditionally been broadcast on free-to-air television.
- (11) The list also includes all the matches of the EHF Champions League and the Women's EHF Champions League featuring Hungarian club teams. The Hungarian authorities demonstrated that these events have a special general resonance in Hungarian society, not limited to those who ordinarily follow handball. They involve Hungarian club teams playing in an international tournament. They also command large television audiences and have traditionally been broadcast on free-to-air television.
- (12) Matches of the FINA Men's Water Polo World League and the LEN Champion's League featuring the Hungarian national team have also been considered to be events of major importance for society. The Hungarian authorities point out that they have special general resonance in Hungary not limited to those who ordinarily follow this sport. The particular and widespread interest is reinforced by the fact that the Hungarian national team has enjoyed considerable success in these tournaments. They involve the national team playing in an international tournament. They command large television audiences and have traditionally been broadcast on free-to-air television.
- (13) The list also includes the Hungarian Formula One Grand Prix that is considered to be an event of major importance for society. As demonstrated by the Hungarian authorities, this event has a special general resonance in Hungarian society, going beyond significance to those who ordinarily follow this sport. This event also commands large television audiences and has traditionally been broadcast on free-to-air television.
- (14) The designated measures do not go beyond what is necessary to achieve the aim pursued, namely protection of the right to information and wide access of the public to television coverage of events of major importance for society. This conclusion takes into account the methods according to which the events in question will be broadcast, the definition of a 'qualifying broadcaster', the role of the Hungarian Media Council in the resolution of disputes arising in the course of implementation of the measures, and the fact that the decision establishing the list of events will apply to events for which contracts on exclusive rights are concluded after the decision entered into force. It may therefore be concluded that the effects on the right to 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.
- (15) For the same reasons, the Hungarian measures appear to be proportionate to justify derogation from the fundamental freedom to provide services laid down in Article 56 of the Treaty on the Functioning of the European Union. The overriding public interest is to ensure wide public access to broadcasts of events of major importance for society. In addition, the Hungarian measures do not constitute any discrimination or market foreclosure against other Member States' broadcasters, right holders or other economic operators.
- (16) The designated measures are moreover compatible with Union competition rules. The definition of the qualifying broadcasters for the broadcasting of listed events is based on objective criteria which allow actual and potential competition for acquiring 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-to-air and pay television markets. Therefore, it may be considered that the effects on 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.
- (17) The Commission communicated the measures taken by Hungary 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 taken by Hungary, 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 taken by Hungary shall be published in the Official Journal of the European Union.

Done at Brussels, 8 May 2017.

For the Commission

Andrus ANSIP

Vice-President
