European Commission: Decision to suspend broadcast of Rossiya RTR in Latvia compatible with AVMS Directive

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On 7 May 2021, the European Commission delivered an important decision, finding that the Latvian National Electronic Mass Media Council's 12-month suspension of the television channel Rossiya RTR in Latvia, due to incitement to violence or hatred, was compatible with the EU's Audiovisual Media Service Directive (AVMDS). This follows a recent EU Court of Justice judgment on restricting transmissions of broadcasts from other EU member states on the basis of incitement to hatred (IRIS 2019-8/3), and earlier European Commission decisions on this issue (see IRIS 2018-7/7 and IRIS 2017-6/5).

The case concerned Rossiya RTR, which is a Russian-language television channel retransmitted from Sweden into Latvia by the audiovisual media service provider "Federal State Unitary Enterprise - The Russian Television and Radio Broadcasting Company". Importantly, under Article 3(1) AVMSD, member states "shall not restrict retransmissions" of audiovisual media services from other member states for "reasons which fall within the fields coordinated by this Directive". This includes incitement to hatred, which is covered under Article 6 AVMSD. However, a member state may "provisionally derogate" from Article 3(1) where: (a) the television broadcast coming from another member state manifestly, seriously and gravely infringes Article 6, (b) during the previous 12 months, the broadcaster has infringed the provision "on at least two prior occasions", and (c) the broadcaster has notified the European Commission of the measures that it intends to take. The Commission must then deliver a decision on whether the measure is compatible with EU law. Crucially, in late 2020 and early 2021, the Latvian National Electronic Mass Media Council notified the European Commission and Swedish authorities that it had identified several infringements of Article 6 AVMSD in the television programmes of Rossiya RTR, and it intended to temporarily restrict retransmission of its television programmes in Latvia. Then, on 8 February 2021, the Council adopted a decision, which suspended the channel for a period of 12 months. The Council held that in "several cases" the content broadcast by Rossiya RTR constituted incitement to violence or hatred, including "references to military destruction, notably against Ukrainians"; "calls for a military invasion of Baltic states, including Latvia"; and "military actions against Latvia and other Member States (such as Estonia, Germany, Lithuania and Sweden)".

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In the Commission's decision of 7 May 2021, the Commission reviewed the Council's decision, and found that it was compatible with EU law. First, the Commission held that the broadcasted statements could be considered as an incitement to violence or hatred, as they involved "unambiguous language" that could be considered as an "action intended to "direct specific behaviour" and, "creating a feeling of animosity or rejection with regard to a group of persons". Crucially, the Commission held that the fact that the statements had been made in political talk shows and during live broadcasts "does not change their qualification", given their "extreme and hateful character". Furthermore, the broadcaster had provided "no indication" that the hosts of the programmes had "corrected or taken distance" from the statements. Importantly, the Commission considered that the programmes "manifestly, seriously and gravely infringed" Article 6 AVMSD, as the statements made during the programmes "partly relate to present and past conflicts involving Russia", and contained "threats of occupation or destruction of other states, including Latvia", and 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". Finally, the Commission held that the sanctions imposed – a 12-month retransmission suspension – was not manifestly disproportionate.

European Commission, Decision 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, C(2021) 3162 final, 7 May 2021

https://digital-strategy.ec.europa.eu/system/files/2021-05/C%282021%293162_final_EN.pdf

European Commission, Decision of Latvia to suspend broadcast of the TV channel 'Rossiya RTR' compatible with EU law, 7 May 2021

https://digital-strategy.ec.europa.eu/en/news/decision-latvia-suspend-broadcast-tv-channel-rossiya-rtr-compatible-eu-law

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