

DECISIONS

COMMISSION DECISION (EU) 2015/1097

of 8 April 2015

on the compatibility with Union law of the measures to be taken by Denmark 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 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 6 January 2015, Denmark 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 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 Danish 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 Denmark in a clear and transparent manner, following a wide public consultation.
- (5) On the basis of detailed evidence and viewing figures provided by the Danish 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 has commanded large television audiences.
- (6) The notified list of events of major importance for society contains a number of designated events, which are considered as events of major importance for society, such as the summer and winter Olympic Games. As demonstrated by the Danish authorities, the summer and winter Olympic Games commanded large television audiences and have traditionally been broadcast on free-to-air television. In addition they have a special general resonance in Denmark, as they are particularly popular with the general public, not just with those who usually follow sport events.

⁽¹⁾ OJ L 95, 15.4.2010, p. 1.

- (7) The finals and semi-finals of the football World Cup for men and of the European football championship for men are also considered as events of major importance for society. The list also includes all the matches involving the Danish national team within those events, as well as the qualifying games of the Danish national team. As demonstrated by the Danish 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 Denmark, as they are particularly popular with the general public, not just with those who usually follow sport events. They involve a national team in an international tournament of major importance.
- (8) The finals, semi-finals and all matches involving the Danish national team as well as the qualifying matches involving the Danish national team of the women's World and European handball championships commanded large television audiences and have traditionally been broadcast on free-to-air television. Additionally, they generate a particular and widespread interest in Denmark, even among audiences that do not usually follow this sport. They involve a national team in an international tournament of major importance. The particular and widespread interest is reinforced by the fact that the Danish national team has earned significant achievements in these tournaments.
- (9) The finals, semi-finals and all matches involving the Danish national team as well as the qualifying matches involving the Danish national team of the men's World and European handball championships commanded large television audiences and have traditionally been broadcast on free-to-air television. Moreover, they generate a particular and widespread interest in Denmark, even among audiences that do not usually follow this sport. They involve a national team in an international tournament of major importance. The particular and widespread interest is reinforced by the fact that the Danish national team has earned significant achievements in these tournaments.
- (10) 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 modalities according to which the events in question will be broadcast, the definition of a 'qualifying broadcaster', the role of arbitration in the resolution of disputes arising in the course of implementation of the measures, and the fact that the executive order containing the list of events will apply to events for which contracts on exclusive rights are concluded after the executive order 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.
- (11) For the same reasons, the Danish 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 Danish measures do not constitute any discrimination or market foreclosure against other Member States' broadcasters, right holders or other economic operators.
- (12) 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.
- (13) The Commission communicated the measures to be taken by Denmark 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 FOLLOW:

Sole Article

1. The measures to be taken by Denmark, 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 Denmark, shall be published in the *Official Journal of the European Union*.

Done at Brussels, 8 April 2015.

For the Commission
Günther OETTINGER
Member of the Commission

ANNEX

ORDER ON THE USE OF TELEVISION RIGHTS TO EVENTS OF MAJOR IMPORTANCE FOR SOCIETY

The following is laid down pursuant to Sections 90(1) and 93(2) of the Radio and Television Broadcasting Act, see Consolidation Act No 255 of 20 March 2014:

SCOPE

- Section 1.** (1) This Order covers the use by television broadcasters of exclusive rights to events of major importance for society. The term 'television broadcaster' refers to undertakings providing programme services pursuant to Sections 1 and 2 of the Radio and Television Broadcasting Act.
- (2) Exclusive rights to such events may not be utilised in a way that prevents a substantial proportion of the public from following the events by live or deferred coverage on free television.

EVENTS OF MAJOR IMPORTANCE FOR SOCIETY

Section 2. In this Order an 'event of major importance for society' is understood to mean a sporting event fulfilling at least two of the following conditions:

- (1) It is of interest to persons other than those who normally follow the sport or sports concerned on television.
- (2) It belongs to a branch of sports which traditionally occupies a central place in Danish sports culture.
- (3) It is generally followed by many viewers.

Section 3. The following events are considered to be of major importance for society:

- (1) (summer and winter) Olympic Games: the games in their entirety, including the opening and closing ceremonies, subject to Section 7(2);
- (2) football World Cup and European Championship final rounds (men): all matches involving Denmark, plus the semi-finals and finals;
- (3) handball World Cup and European Championship final rounds (men and women): all matches involving Denmark, plus the semi-finals and finals;
- (4) Denmark's football World Cup and European Championship qualifying matches (men);
- (5) Denmark's handball World Cup and European Championship qualifying matches (men and women).

USE OF TELEVISION RIGHTS

Section 4. A substantial proportion of the public is considered to be prevented from following an event on free television unless:

- (1) the event is broadcast on a television channel or channels that a total of 90 per cent of all households can access on their television receiver(s) by aerial, satellite, cable or as IP/fibre TV at the time of broadcasting, and
- (2) the households receive the event free of charge except for:
 - (a) a media licence fee and
 - (b) any subscription fee paid to television operators providing the channel concerned in the least expensive package, or
 - (c) a subscription fee paid to receive that channel alone in the case of subscriptions not requiring subscription to a package.

- Section 5.** (1) Television broadcasters that are unable to utilise exclusive rights to an event of major importance for society in accordance with the restriction on the right of use laid down in Section 1(2), see Section 4, and that have acquired exclusive rights to broadcast such an event, see Section 3, may utilise those rights only if they can ensure by agreement with the broadcaster that a substantial proportion of the public is not prevented from following that event by live or deferred coverage on free television.
- (2) Television broadcasters that are unable to utilise exclusive rights to an event of major importance for society in accordance with the restriction on the right of use laid down in Section 1(2), see Section 4, and that have acquired exclusive rights to broadcast such an event, see Section 3, shall in good time, and where permitted by the time of acquisition of those rights no later than six months before the event, grant the rights to (groups of) television broadcasters that are able to utilise exclusive rights to such an event in accordance with the restriction on the right of use laid down in Section 1(2), see Section 4, in order to determine whether there are (groups of) television broadcasters that wish to conclude fair commercial agreements to broadcast that event, see (3) and (4) below and Section 8. In cases where it is possible under point (1) of Section 6(1) to broadcast the event by deferred coverage, agreements proposed by a broadcaster or service provider that is unable to utilise exclusive rights to such an event in accordance with the restriction on the right of use laid down in Section 1(2), see Section 4, shall include the right to both live and deferred coverage.
- (3) Television broadcasters that have been offered under (1) above an agreement to broadcast an event of major importance for society, see Section 3, shall give written notice of their interest in concluding such an agreement within 14 days of receipt of a written offer containing, in addition to a proposed price and other terms of contract, specific information on the event, including where and when it will be held.
- (4) The provisions of (1) above do not apply in cases where a television broadcaster or service provider can demonstrate that no broadcaster or group of broadcasters that is able to utilise exclusive rights to an event of major importance for society in accordance with the restriction on the right of use laid down in Section 1(2), see Section 4, wishes to conclude a fair commercial agreement to broadcast that event.

Section 6. (1) Events of major importance for society as defined in Section 3 shall generally be broadcast live. The broadcasting of such events may, however, be deferred where such deferral is due to objective circumstances, e.g. where

1. the event takes place at night (00:00-06:00, Danish time);
 2. the event consists of a series of concurrent events, such as the Olympics, or
 3. live broadcasting would require rescheduling of the broadcast of events of major importance for society other than those referred to in Section 3.
- (2) Coverage of an event of major importance for society shall generally be deferred by no more than 24 hours.
- (3) The provisions of (1)-(2) above do not apply to events broadcast pursuant to Section 5(4).

Section 7. (1) Events of major importance for society as defined in Section 3 shall be broadcast in their entirety, subject to (2) below.

- (2) Broadcasting of the summer and winter Olympics, see point (1) of Section 3, may be restricted to broad and representative coverage over a significant length of time of the event as a whole in the form of extracts that adequately reflect the full range of sports and participating countries. Emphasis shall also be placed on coverage of Denmark's participation and on the conditions set out in Section 2. The opening and closing ceremonies shall be broadcast live and in full, subject to Section 6. Parts of the Olympics that are not broadcast under the first and second points may be broadcast on channels that do not meet the requirements of Section 4.
- (3) The provisions of (1)-(2) above do not apply to events broadcast pursuant to Section 5(4).

OTHER PROVISIONS

- Section 8.** Disputes relating to the agreement under Section 5(1)-(3) to broadcast an event of major importance for society, including price-related disputes, shall be resolved by arbitration, see the Arbitration Act.
- Section 9.** The Ministry of Culture will evaluate the Order within three years of its entry into force. The evaluation will cover developments in forms of distribution and discussions with the parties concerned.

INFRINGEMENT

- Section 10.** (1) Infringements of Sections 1(2), 5(1) and (2), 6(1) and (2) and 7(1) and (2) will be punishable by a fine.
- (2) Companies, etc., (legal entities) may be held liable under the provisions of Chapter 5 of the Penal Code.
- Section 11.** (1) Under point (1) of Section 50(1) of the Radio and Television Broadcasting Act, a programme licence issued pursuant to Section 45 of that Act may be temporarily or permanently withdrawn if the holder grossly or repeatedly infringes the Act or provisions laid down pursuant thereto.
- (2) Under point (1) of Section 50(2) of the Radio and Television Broadcasting Act, the Radio and Television Board may decide to temporarily or permanently discontinue programme services pursuant to Section 47 of the Act if the registered undertaking grossly or repeatedly infringes the Act or provisions laid down pursuant thereto.

ENTRY INTO FORCE

- Section 12.** This Order will enter into force on 1 May 2015 and apply to events for which an agreement concerning the use of exclusive rights is concluded after that date.

Ministry of Culture, 19 April 2015.

Marianne JELVED/Lars M. BANKE
