



NACIONĀLĀ ELEKTRONISKO
PLĀSSAZIŅAS LĪDZEKĻU PADOME

Rīga 30 June 2020

DECISION No.216

**On Restriction of Distribution of Certain Programmes in the List of Audio and
Audiovisual Programmes Retransmitted in Latvia**

The National Electronic Mass Media Council (hereinafter – Council) as an independent, autonomous institution, which in accordance with the competence established in the Electronic Mass Media Law represents the interests of the public in the field of electronic mass media and supervises the compliance of the operations of electronic mass media with the Constitution of the Republic of Latvia, Electronic mass media law and other legislation.

detects:

In compliance with Paragraph 10 of Annex No. 5 to the National Strategy for the Development of the Sector of Electronic Mass Media for 2018 – 2022 “Procedures for issuing retransmission permits and implementation of operation” (hereinafter – Annex No. 5 to the Strategy), the Council shall develop and maintain the electronic registration system of electronic mass media retransmitting audio and audiovisual programmes (hereinafter referred to as the Registration System). Besides, Paragraph 12 of Annex No. 5 to the Strategy envisages that the Registration System consists of two parts: the register of electronic mass media retransmitting audio and audiovisual programmes and the list of audio and audiovisual programmes retransmitted in Latvia. The National Strategy for the Development of the Sector of Electronic Mass Media is an external regulatory enactment which has been developed and confirmed with regulatory provisions by the National Electronic Mass Media Council in accordance with the procedures laid down in Section 60 Paragraph three of the Electronic Mass Media Law (hereinafter referred to as the EMMML).

In accordance with Section 60 Paragraph one Clause 13 of the Electronic Mass Media Law (hereinafter referred to as the EMMML), the Council shall have a duty to *promote the policy of the electronic mass media appropriate to the national interests of Latvia* which refers also to

programmes included in the list of audio and audiovisual programmes retransmitted in Latvia. Thus the Council have a duty to check particularly carefully the right of the owner of the programme (holder of the rights as well as its representative or a means of electronic mass media) to distribute the programme in the Republic of Latvia.

The Council has received an opinion from the state security institution (hereinafter – Institution) in which the Council is informed that currently there are several programmes included in the list of audio and audiovisual programmes retransmitted in Latvia which assets, financial resources and economic resources are actually controlled by one person – Dmitry Kiselyov via the sole shareholder of the owner of the programmes.

In compliance with the information received from the institution, television programmes "RT (Russia Today)"; "RT (Russia Today) HD"; "RT (Russia Today) Arabic"; "RT (Russia Today) Spanish"; "RT Documentary (HD)"; "RT Documentary", and "RT TV (Russia Today TV)" that are being distributed in the territory of Latvia are in personal possession and under control of person Dmitry Kiselyov who is subjected to sanctions.

The owner/holder of the rights of "RT" television programmes is company "TV-Novosti" which was founded on April 6, 2005. The sole founder (shareholder) of "TV-Novosti" is federal unitary state company "International Information Agency of Russia "RIA Novosti"" (hereinafter – "RIA Novosti") which since December 20, 2013 has been in the stage of liquidation. The head of the liquidation commission of "RIA Novosti" is the citizen of the Russian Federation, Dmitry Kiselyov, who is the sole person having the right to act on behalf of the company without the authorisation. Having regard to the aforementioned, it can be concluded that Dmitry Kiselyov actually implements the control over "RIA Novosti", its assets, financial resources and economic resources as well as actual operation of "RIA Novosti" in the process of its liquidation.

In addition to the aforementioned, it has to be indicated that the basis for the liquidation of "RIA Novosti" is Decree No. 894 "On Measures to Enhance the Efficiency of National Mass Media" which was signed on December 9, 2013 by the president of the Russian Federation, Vladimir Putin. Paragraph 6 of the decree assigns "to liquidate federal unitary state company "International Information Agency of Russia "RIA Novosti""¹. Besides, it is indicated in paragraph 7 of the aforementioned decree that as from the liquidation of "RIA Novosti", the right of the founder with regard to organisation that have been established by federal unitary state company "International Information Agency of Russia "RIA Novosti"", are transferred to

¹See: kremlin.ru/events/president/news/19805

federal unitary state company "International Information Agency "Rossiya Segodnya""². It can be concluded from the aforementioned that as from the liquidation of company "RIA Novosti" the right of its founder in media company "TV-Novosti" will be transferred to "Rossiya Segodnya".

On the basis of European Union Council Implementation Regulation No. 2010/151/CFSP of March 21, 2014, Dmitry Kiselyov has been included in the list of the persons subjected to restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine indicated in European Union Council Decision 2014/145/CFSP of March 17, 2014.

Section 11 of the Law on International Sanctions and National Sanctions of the Republic of Latvia regarding introduction, imposition, and enforcement of sanctions envisages that "... *the sanctions imposed by the European Union regulations are binding and directly applicable to the Republic of Latvia*". Apart from that, in accordance with Article 288 of the Treaty on the European Union, the provisions of regulations and decisions of the European Union are directly applicable in the member states.

Article 2 of the Regulation envisages that *member states shall have a duty to freeze funds and economic resources and deny access to funds and economic resources directly or indirectly for the subject of sanctions and natural or legal persons, units or structure related to them for the purpose of the Regulation*. The contents of the aforementioned provisions include two types of restrictions: restrictions of funds and economic resources.

On the basis of Section 5 paragraph one of the Law on International Sanctions and National Sanctions of the Republic of Latvia, if financial restrictions are determined with regard to the subject of sanctions financial restrictions have been imposed on the subject of sanctions, all persons in accordance with their competence have the obligation to immediately and without a prior warning take the following actions:

1) *to freeze all financial resources and financial instruments, which are directly or indirectly, completely or partially under the ownership, possession, holding or control of the subject of sanctions, including those financial resources and financial instruments that have been transferred to third persons;*

2) *to deny access for the subject of sanctions to financial resources and financial instruments;*

²See: kremlin.ru/events/president/news/19805

3) *not to provide the financial services specified in international or national sanctions to the subject of sanctions (including by means of an authorization)*".

Section 19 Paragraph one of the EMMML envisages that: *"For retransmission and distribution of programmes on public electronic communications networks, it is necessary to receive the consent of the owner (holder) of the programme to be retransmitted and a retransmission permit from the National Electronic Mass Media Council"*. In compliance with Paragraph 6.3 of Annex No. 5 of the Strategy of the Council, to include a programme in the list of the audio and audiovisual programmes retransmitted in Latvia (hereinafter referred to as a list of programmes) and if documents are submitted to the Council by a representative of the owner of the programme or EMM, there must be documents submitted confirming the right of the representative of the owner of the programme or EMM to distribute the programme in the Republic of Latvia, namely, a transcript of the licence contract or power of attorney for the distribution of the programme issued by the owner (holder of the right) of the programme. It can be concluded that such transfer of the right of distribution of a programme is conducted for remuneration to the owner of the programme. Thus it can be concluded from the aforementioned that the person indicated by the Institution which implements control over the assets, funds and economic resources of the owner of the programme, receives income from distribution of television programmes, which belong to this media company, in the Republic of Latvia.

In accordance with Article 1 clause (d) of the Regulation, *"economic resources" are a variety of tangible or intangible, movable or immovable assets which are not funds but which can be used to obtain funds, goods or services*. Apart from that, Article 1 clause (e) of the Regulation envisages that *"freezing of economic resources" is a prohibition to use the economic resources to obtain funds, goods or services, including but not limited to selling, leasing out or pledging these economic resources*.

Section 57 Paragraph one of the EMMML envisages that: *"The National Electronic Mass Media Council is an independent, autonomous institution enjoying full rights, which in accordance with the competence thereof shall represent the interests of the public in the field of electronic mass media and supervise the latter so that in their operations the Constitution of the Republic of Latvia, this Law and other laws and regulations be observed ..."*.

On the basis of the aforementioned, and upon making a careful assessment of the information indicated in the opinion the competent Institution as well as in order to avoid violation or possible evasion of the sanctions imposed by the EU, and in order to protect

electronic mass media from the violation of the Regulation, the Council concludes that developing of programmes and production of the contents is economic activity for the purpose of Section 1 Paragraph two and three of the Commercial Law, thus television programmes as the product of economic activity of mass media company is to be considered as an economic resource in the context of Article 1 Paragraphs (d) and (e) of Regulation 269/2014.

In compliance with the Commission Opinion of June 19, 2020 on the application of Article 2 of the Regulation³ in which it is indicated that the competent institutions of the member states taking into account information elements at their disposal and the current circumstances have the right to determine if a certain person controls a respective unit, it can be concluded that retransmission of these television programmes in the territory of Latvia and their maintenance in the list of audio and audiovisual programmes retransmitted in Latvia contradicts the prohibition envisaged by the Regulation "*making funds or economic resources [...] indirectly available to the subject of sanctions*".

Having regard to the aforementioned and on the basis of Section 12, Section 15 Paragraph four, Section 57, Section 62 Paragraph two Clause 1, Section 63 Paragraph one Clause 1 of the Administrative Procedure Law, Section 57, Section 60 Paragraph one Clause 13 the Electronic Mass Media Law, Section 11 of the Law on International Sanctions and National Sanctions of the Republic of Latvia, and Regulation No. 269/2014 of the Council of the European Union of March 17, 2014,

decided:

1. To prohibit the distribution of programmes "RT (Russia Today)"; "RT (Russia Today) HD"; "RT (Russia Today) Arabic"; "RT (Russia Today) Spanish"; "RT Documentary (HD)"; "RT Documentary"; RT TV (Russia Today TV) in the territory of the Republic of Latvia in all public electronic media networks under the supervision of the Council for the period of time till revoking the sanctions determined by the Council of the European Union in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine against a specific person who is directly or indirectly linked with the respective programmes.
2. To publish the notice of the Council regarding the prohibition of the distribution of programmes in the Council internet website and in official journal "Latvijas Vēstnesis".

³ https://ec.europa.eu/info/sites/info/files/200619-opinion-financial-sanctions_en.pdf

3. To determine that the appeal of the decision shall not terminate its application in accordance with Section 185 Paragraph four Clauses 9 and 10 of the Administrative Procedure Law.
4. To determine that the member of the Council in charge of the control over the fulfilment of this Decision shall be the chairman of the Council, Ivars Āboliņš.

The decision shall take effect at the moment of notifying it.

The decision can be appealed in Administrative District Court, at Baldones Street 1A, in Riga, within one month time as from the date when it has come into force.

Chairperson of the Council

Ivars Āboliņš