



Nacionālā elektronisko plašsaziņas līdzekļu padome

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Rīga, 24 February 2022

DECISION No. 87/1-2

On restricting “TV Centre International” programme in the territory of Latvia

The National Electronic Mass Media Council of Latvia (hereinafter referred to as the Council) in the following composition: Chairman of the Council Ivars Abolins (*Ivars Āboliņš*), Deputy Chairman of the Council Aurelija Ieva Druviete (*Aurēlija Ieva Druviete*), Member of the Council Ieva Kalderauska (*Ieva Kalderauska*), Member of the Council Ilva Milzarāja (*Ilva Milzarāja*), Member of the Council Andis Plakans (*Andis Plakans*) have considered an administrative case on the violation of the Section 26, Part one, Clause 7 of the Law by the content of the programme “TV Centre International” distributed in the territory of Latvia.

1. FACTUAL DESCRIPTION OF THE CASE

1.1. TV news show “Events” on 21 February 2022

The programme broadcasts a speech by Vladimir Putin, President of the Russian Federation, as well as stories about events in Ukraine. It is stated that there are regular shootings on the part of Ukraine, that Ukraine has gathered a lot of troops on the front line in Donbass region. There are mainly soldiers, radicals, fighters, aggressive nationalists, terrorists. In fact, there is information provided that presents Ukraine as an aggressor seeking to attack Donbass territory.

[1.1.1] From 22:30:48 to 22:35:58 a story is presented with a speech by the President of the Russian Federation V. Putin, in which he addresses the Russians and says, among other things, that “*modern Ukraine was completely created by communist Russia and the process began almost immediately after the Revolution in 1917. Before and after World War II, Stalin had ceded part of the land of Poland, Romania and Hungary to the Soviet Union, and Khrushchev had deprived Russia of Crimea in 1954 and given it to Ukraine, resulting in the formation of the Soviet Ukraine territory.*” This means that Russian President Putin does not fully recognise the independence of Ukraine — not only the territories of Donetsk and Luhansk, but the whole of Ukraine are considered to be Russian.

[1.1.2] From 22:36:00 to 22:42:36 the programme presents a story that the President of Russia has convened an extraordinary meeting of the Security Council to decide on the recognition of the independence of the “People's Republics” of Donetsk and Luhansk, where, among other things, at a meeting of the Russian Security Council, answering V. Putin’s question — whether Ukraine complies with Minsk agreement, Dmitry Kozak, a spokesman for Russia's Security Council, said

that, in the normal course of events, Kiev authorities will never comply with the Minsk agreement. It is then shown that the Ukrainians do not want peaceful talks on the Donetsk and Luhansk territories, which is the reason why the leaders of the Donetsk and Luhansk Republics are asking Russia to recognise the independence of the Donetsk and Luhansk republics.

[1.1.3] From 22:40:36 to 22:40:57 Leonid Pasechnik (leader of the Luhansk territory) says that: *“In order to prevent the deaths of the civilian population of the republic, 300 thousands of whom are Russian citizens, I ask you to recognise the sovereignty and independence of the Lugansk People's Republic;”*

[1.1.4] From 22:40:58 to 22:41:25 Denis Pushilin (leader of the Donetsk territory) says that: *“On behalf of the entire population of the Donetsk People's Republic, we ask you to recognise the DPR as an independent, democratic, legal and social state. Please also consider the possibility of concluding an agreement on friendship and cooperation between the Donetsk People's Republic and the Russian Federation, providing for cooperation in the field of defence”*. The journalist de premier plan then adds that the decision was then supported by the entire Security Council, citing statements by several members of the Security Council, such as Russia's Speaker of the State Duma, V. Volodin, who said that he had offered various options, but a majority of 351 votes out of 450 in the Russian State Duma have called for an immediate appeal to the president to appeal to the President to recognise the Donetsk and Luhansk People's Republics. Russian Foreign Minister S. Lavrov says that it will hopefully send a strong signal to the Russian world, as it is no longer possible to see the mockery of Russian citizens for eight years, and the Prime Minister of the Russian Federation, M. Mishustin, says he will support this decision and will do everything possible for the economic development and prosperity of the Russian Federation. The truthfulness of the information presenting during the programme was not questioned by the host of the programme, nor was any alternative information provided in the stories presented during the programme.

Also, the news show “Events” that was broadcast on 22 February 2022 at 11:20 and 18:10 has repeatedly demonstrated V. Putin's call for immediate recognition of the independence and sovereignty of the Donetsk and Luhansk People's Republics.

1.2. TV news show “Events. Twenty-fifth hour”

The news show broadcast the continuation of the speech of the President of the Russian Federation Vladimir Putin and stories related to the events in Ukraine, as well as an interview with Mikhail Delagin, a member of the Russian State Duma. There is a narrative developed that Russia is struggling for peace, but the policies of Western and NATO leaders have become policies of lies, and their hysteria encourages and calls for war. Neither the host of the show, nor any of the participants of the stories demonstrated in the show, nor the guest of the show question this opinion, nor was any alternative information provided in the stories presented during the programme.

[1.2.1] From 00:41:58 The broadcast is a continuation of Vladimir Putin's speech, stating, among other things, that every effort is being made by NATO and the world to stop Russia's development and that sanctions against Russia will be imposed regardless of the situation in Ukraine for no reason just because it is Russia, as well as in this case *“he considers it necessary to take long-standing decisions, to immediately recognise the independence and sovereignty of the*

“people's republics” of Donetsk and Luhansk”, requesting the support of the Federal Council of the Russian Federation and the ratification of the agreements on friendship and mutual assistance with the two republics. Russian President Vladimir Putin's call for long-standing decisions and the immediate recognition of the independence and sovereignty of the “people's republics” of Donetsk and Luhansk is evidence that President V. Putin is directly calling on Russia to violate Ukraine's sovereignty, thereby threatening not only Ukraine's national security, but other independent states' security as well.

[1.2.2] From 01:03:39 to 01:08:04 Mikhail Delagin, a deputy of the Russian State Duma, appears as a guest at the show studio. Among other things, the host says that all the time we are driving to a “dead end”, tormented by pointless talks, threatened with sanctions that will certainly be imposed and the “*hysteria of the western world*” in relation to us. The guest of the programme M. Delagin answers that there is no real opportunity for the western world and they have already done all the painful things they could in 2015, therefore the sanctions are only aimed at the public. The truthfulness of the information presenting during the programme was not questioned by the host or the guest of the programme, nor was any alternative information provided in the stories presented during the programme.

2. LEGAL ASSESSMENT OF THE FACTS OF THE CASE

2.1. Section 26, Part one, Clause 7 of the Electronic Mass Media Law provides that: “***The programmes and broadcasts of the electronic mass media may not contain any call that constitutes a threat to national security or a serious threat to public order or public safety.***”

In turn, Section 26, Part one, Clause 4 of the Electronic Mass Media Law provides that: “*The programmes and broadcasts of the electronic mass media may not contain incitement to war or the initiation of a military conflict.*” However, Section 26, Part one, Clause 5 of the Electronic Mass Media Law provides that: “*the programmes and broadcasts of the electronic mass media may not contain incitement to overthrow State power, or to violently change the State political system, to destroy the territorial integrity of the State, or to commit any other crime.*”

2.2. Article 3, Paragraph 1 of Directive 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 (hereinafter referred to as the Directive) provides that: “***Member States shall ensure freedom of reception and shall not restrict retransmissions on their territory of audiovisual media services from other Member States for reasons which fall within the fields coordinated by this Directive.***”

Article 3, Paragraph 3 of the Directive provides that: “***A Member State may provisionally derogate from paragraph 1 of this Article where an audiovisual media service provided by a media service provider under the jurisdiction of another Member State manifestly, seriously and gravely infringes point (b) of Article 6(1) or prejudices or presents a serious and grave risk of prejudice to public security, including the safeguarding of national security and defence.***” The derogation referred to in the first subparagraph shall be subject to the following conditions: (a) during the previous 12 months the conduct referred to in the first subparagraph occurred on at least one prior occasion; and (b) the Member State concerned has notified the

media service provider, the Member State having jurisdiction over that provider and the Commission in writing of the alleged infringement and of the proportionate measures it intends to take should any such infringement occur again.

In turn Article 3, Paragraph 5 of the Directive provides that: ***“Member States may, in urgent cases, no later than one month after the alleged infringement, derogate from the conditions laid down in points (a) and (b) of paragraph 3. Where this is the case, the measures taken shall be notified in the shortest possible time to the Commission and to the Member State under whose jurisdiction the media service provider falls, indicating the reasons for which the Member State considers that there is urgency. The Commission shall examine the compatibility of the notified measures with Union law in the shortest possible time. Where it comes to the conclusion that the measures are incompatible with Union law, the Commission shall require the Member State in question to urgently put an end to those measures.”***

2.3. In the Republic of Latvia, the provisions of the Directive have been implemented by implementing them in the Electronic Mass Media Law. In view of the above, it can be concluded that both the Law on Electronic Mass Media and the Directive prohibit the inclusion of content and calls that endanger national security or pose a significant threat to public order or safety in programmes and broadcasts. It is also forbidden to include the content that calls for war or military conflict, a call to violently change the state power or to violently change the state system, to destroy the territorial integrity of the state or to commit another crime. In the light of the above, the Council will further examine whether the content of the “TV Centre International” programmes contains evidence of the content that constitutes a threat to national security or a serious threat to public order or public safety (Part one, Clause 7 of the Electronic Mass Media Law), and whether the programme contains such violations that are prohibited by Section 26, Part one, Clause 7 of the Electronic Media Law that states that “the programmes and broadcasts of the electronic mass media may not contain incitement to war or the initiation of a military conflict” or by Section 26, Part one, Clause 5 that states that “the programmes and broadcasts of the electronic mass media may not contain incitement to overthrow State power, or to violently change the State political system, to destroy the territorial integrity of the State, or to commit any other crime.

2.3.1. Section 26, Part one, Clause 7 of the Electronic Mass Media Law provides that: ***“The programmes and broadcasts of the electronic mass media may not contain any call that constitutes a threat to national security or a serious threat to public order or public safety.”***

The term “call” means a form of influence on people's consciousness, will, their behaviour; as a result of direct influence people acquire a desire to perform certain types of purposeful actions to achieve the set goal.¹ The call is usually made using verbs in the imperative mood. A verb in the imperative mood is used when it expresses an order or inducement, but it is important to emphasise that calls can also be made indirectly through allegories (events and phenomena are represented symbolically rather than narratively), metaphors (one of the means of artistic expression often used in poetry), or rhetorical questions

¹ Krimināllikuma komentāri otrā daļa (IX – XVII nodaļa) (Comments to the Criminal Law (Part IX – XVII)), 73 pages, Tiesu namu aģentūra (Court House Agency), 2018

(questions that do not need to be answered).² The term “threat” refers to the exposure of a person to danger, the creation of dangerous, unsafe conditions.

The term “national security” refers to a system of measures for the protection of the political and economic foundations of the state and the borders of the state. The term also includes “national security”. Section 1 of the National Security Law states: “*National security is a state, attained as a result of joint, purposeful measures implemented by the State and society, in which the independence of the State, its constitutional structure and territorial integrity, the prospect of free development of society, welfare and stability are guaranteed.*”. The necessity to ensure such a state justifies the restriction of certain fundamental rights of a person.³ Given the necessity to ensure national security and to anticipate and prevent internal and external threats to the country in a timely manner, as well as to guarantee national defence, public security and its democratic development, the distribution of content in electronic mass media programmes that endangers or threatens the national security (including national sovereignty, territorial integrity, public order and safety, as well as other elements) is not permissible.

- 2.3.2. Section 26, Part one, Clause 4 of the Electronic Mass Media Law provides that: “***The programmes and broadcasts of the electronic mass media may not contain incitement to war or the initiation of a military conflict.***”

The term “war” means an organised armed struggle between two or more countries, peoples, tribes, etc. or a social group within the country. War is characterised by the use of violent, physical force against the warring party and also against civilians. But “instigators of a war” are individuals, including nations, groups of countries whose policies aim to create and maintain political tension in the world, as well as to increase military potential. A “call to war”, on the other hand, refers to the actions of a person or group of people that incite others to behave violently, usually by provoking or angering them in some way. War threatens national security. Section 1 of the National Security Law states that “*National security is a state, attained as a result of joint, purposeful measures implemented by the State and society, in which the independence of the State, its constitutional structure and territorial integrity, the prospect of free development of society, welfare and stability are guaranteed.*” Given the necessity to ensure national security and to anticipate and prevent internal and external threats to the country in a timely manner, as well as to guarantee national defence, public security and its democratic development, the distribution of content in electronic mass media programmes that call for a war or military conflict or endanger national security in another way is unacceptable.

- 2.3.3. Section 26, Part one, Clause 5 of the Electronic Mass Media Law provides that: “***The programmes and broadcasts of the electronic mass media may not contain incitement to overthrow State power, or to violently change the State political system, to destroy the territorial integrity of the State, or to commit any other crime.***”

Calls to violently change the State power or political system, as well as to destroy the territorial integrity of the state or commission another crime related to changes in the state power or territorial integrity of the state, may take the form of calls for the organisation of

² Criminal liability for public provocation to commit illegal acts. Available at: www.trels.lv

³ Latvijas Republikas Satversmes komentāri. (*Comments on the Constitution of the Republic of Latvia.*) VIII nodaļa Cilvēka pamattiesības (*Part VIII, Fundamental human rights*), 2011, 775 pages.

various types of events, organisations, groups whose activities are aimed at the illegal change of legal power, calls for the illegal destruction of the government. These calls are applicable to any state, as calls to violently change the state power or to violently change the state system, to destroy the territorial integrity endanger the internal security of any state, its sovereignty and the stability of state power.

TV news show “Events” on 21 February 2022

The programme broadcasts a speech by Vladimir Putin, President of the Russian Federation, as well as stories about events in Ukraine. There is a narrative developed that Russia is struggling for peace, but the policies of Western and NATO leaders have become policies of lies, and their hysteria encourages and calls for war. The programme states that the territories of Luhansk and Donetsk are recognised as the territory of Russia, but not Ukraine. The narrative of the programme clearly has a negative attitude towards the European Union, as well as NATO member states. Misinformation and fake information is also repeatedly presented during the broadcast. Hostile and false statements are not only uttered by the participants of the programme, but also by the host and the creators of the programme.

Among other things, there is an opinion expressed that the peaceful population of Donetsk and Luhansk in Ukraine is being shot and killed by the Ukrainians, and the leaders of Donetsk and Luhansk territories are calling on Russia to recognise the “people's republics” of Donetsk and Luhansk as independent and sovereign republics. Quotes: *“In order to prevent the deaths of the civilian population of the republic, 300,000 of whom are Russian citizens, I ask you to recognise the sovereignty and independence of the Lugansk People's Republic”* and *“On behalf of the entire population of the Donetsk People's Republic, we ask you to recognise the DPR as an independent, democratic, legal and social state. Please also consider the possibility of concluding an agreement on friendship and cooperation between the Donetsk People's Republic and the Russian Federation, providing for cooperation in the field of defence”*. In essence, it is stated that the Russian Federation could include the territories of Luhansk and Donetsk in the Russian Federation, and given the geopolitical situation and events in Ukraine, there is no doubt that such statements pose a serious threat to national security, sovereignty and territorial integrity. It should be borne in mind that the violation is related to national security, in which case the producers of the show should strongly oppose the presentation of such information in the electronic mass media programme. The interests of national security and territorial integrity should be particularly protected in order to guarantee the existence of any state, the absence of riots and territorial indivisibility.

Assessing the information presented in the programme, as well as analysing its content in connection with the prohibition to disseminate information and calls that endanger national security or significantly endanger public order or safety, the Council concludes that the Television talk show “Events” on 21 February 2022 broadcast by “TV Centre International” violates Section 26, Part one, Clause 7 of the Electronic Mass Media Law, as well as Article 3 of the Directive.

It should also be mentioned that the news show “Events” broadcast on 22 February 2022 at 11:20 and 18:10, has repeatedly showed Putin's call for immediate decisions on the recognition of the independence and sovereignty of Donetsk and Luhansk People's Republics.

TV news show “Events. 25th hour” on 22 February 2022

The news show broadcast the continuation of the speech of the President of the Russian Federation Vladimir Putin and stories related to the events in Ukraine, as well as an interview with Mikhail Delagin, a member of the Russian State Duma at the end of the show. It is stated that there are regular shootings on the part of Ukraine, that Ukraine has gathered a lot of troops on the front line in the Donbass region. There are mainly soldiers, radicals, fighters, aggressive nationalists, terrorists. In fact, there is information provided that presents Ukraine as an aggressor seeking to attack Donbass territory. Neither the host of the news show nor any of the participants of the discussion during the show, nor the guest of the show call this view into question, as well as no opposite opinions are expressed.

Among other things, it is argued that our [meaning Russian] equal opportunities for dialogue on fundamental issues have remained unanswered by the United States and NATO, and the threat to Russia is clearly increasing, Russia has every right to take measures to ensure its security. In essence, it is stated that Russia has not only adopted orders recognising the independence and sovereignty of the “people's republics” of Donetsk and Luhansk but is also ready to start military activity in Ukraine, thereby threatening Ukraine's national sovereignty and its internationally recognised territorial boundaries. It should be borne in mind that the violation is related to national security, in which case the creators of the show should strongly oppose the presentation of such information in the electronic mass media programme. The interests of national security and territorial integrity should be particularly protected in order to guarantee the existence of any state, the absence of riots and territorial indivisibility.

Assessing the information presented in the programme, as well as analysing its content in connection with the prohibition to disseminate information and calls that endanger national security or significantly endanger public order or safety, the Council concludes that the Television talk show “Events. 25th hour” on 22 February 2022 broadcast by “TV Centre International” violates Section 26, Part one, Clause 7 of the Electronic Mass Media Law, as well as Article 3 of the Directive.

3. ACTIONS OF THE COUNCIL IN THE EVENT OF FOUND INFRINGEMENTS

- 3.1. Section 26, Part one, Clause 7 of the Electronic Mass Media Law provides that: ***“The programmes and broadcasts of the electronic mass media may not contain any call that constitutes a threat to national security or a serious threat to public order or public safety.”*** In turn, Section 26, Part one, Clause 4 of the Electronic Mass Media Law provides that: ***“The programmes and broadcasts of the electronic mass media may not contain incitement to war or the initiation of a military conflict.”*** However, Section 26, Part one, Clause 5 of the Electronic Mass Media Law provides that: ***“the programmes and broadcasts of the electronic mass media may not contain incitement to overthrow State power, or to violently change the***

State political system, to destroy the territorial integrity of the State, or to commit any other crime.”

In the light of the findings set out in this Decision, as well as the following ones, the Council considers that all the “TV Centre International” programmes demonstrated on 21 February 2022 in the news show “Events” and on 22 February 2022 in the news show “Events. 25th hour” contain information that is in conflict with the provisions of Section 26, Part one, Clauses 4, 5 and 7 of the Electronic Mass Media Law. Namely, the information presented in the programmes demonstrated by “TV Centre International” is in direct contradiction and thus significantly violates the prohibitions specified in the Section 26, Part one, Clauses 4, 5 and 7 of the Electronic Mass Media Law that state restrictions on the production of programmes that contain incitement to war or the initiation of a military conflict, incitement to overthrow state power, or to violently change the state political system, to destroy the territorial integrity of the state, or to commit any other crime, as well as incitement that endangers national security or significantly endangers public order or security. In addition to the provisions of regulatory enactments, the Council making a decision shall take the following information into account as well.

3.2. The Russian Federation ranked 150th out of 180 listed countries in the Press Freedom Index in 2021.⁴ The Council emphasises that the “Study Regarding the Media Literacy and Media Content Usage Habits of the Latvian Population” conducted in 2021 revealed that almost half (44%) of the surveyed residents of Latvia watch television programmes made in Russia, such as “Rossija RTR”, “NTV Mir”, “Ren TV”. 32% of the respondents sometimes watch Russian television programmes, but 12% of respondents regularly watch them. The largest audience of the Russian television programmes is represented by non-Latvians, reaching almost two-thirds (59%) of the total number of respondents. Every third Latvian (35%) also regularly or sometimes watches television programmes made in Russia, including the “TV Centre International” programme. The results obtained in various socio-demographic groups reveal that a relatively larger number of viewers of Russian television programmes belong to the elderly (45+) group of respondents and the population of Latgale.⁵ However, Russia continues to impose ever new and stricter restrictions on the mass media, as well as opportunities to provide objective journalistic stories, undermining ethical standards of journalists.⁶ There are also repressions against journalists and the independent media, with the repeated detention of journalists and bloggers.⁷

3.3. Electronic mass media are used to disseminate information relevant to Russia's foreign policy interests, officially arguing for the protection of its compatriots, the content of the programmes broadcasted by “TV Centre International” and controlled by the Russian

⁴ Available at: <https://rsf.org/en/ranking?fbclid=IwAR2LXYd5WhbwsSENfoF6B3xNpntSPRKnDhEGltfD9p7rrfb6JZJhAoWluxg>

⁵ Study Regarding the Media Literacy and Media Content Usage Habits of the Latvian Population. Available at: https://www.neplpadome.lv/lv/assets/documents/Petijumi/Pētījums_par_Latvijas_iedzīvotāju_medijpratību_un_mediju_satura_lietošanas_paradumiem_2021.pdf

⁶ European Parliament Resolution of 10 June 2015 on the state of EU-Russia relations. Clause O and Clauses 12-14 (2015/2001(INI))

⁷ European Parliament resolution of 8 February 2018 on the state of EU-Russia political relations (2018/2158(INI)), Clause I.

Federation has been found to contain incitement to war or the initiation of a military conflict, incitement to overthrow state power, or to violently change the state political system, to destroy the territorial integrity of the state, as well as incitement that endangers national security. It is important to point out that in the current geopolitical situation, the threat to national security can be seen not only in relation to the Ukrainian state, but also to the Republic of Latvia, as military aggression in the neighbouring countries and unpredictable geopolitical situation undeniably threatens the security of the Republic of Latvia, especially taking into account the fact that Latvia was a member of the Soviet Union until 1990 and programmes broadcasted by “TV Centre International” presented information that *“modern Ukraine was completely created by communist Russia and the process began almost immediately after the Revolution in 1917. Before and after World War II, Stalin had ceded part of the land of Poland, Romania and Hungary to the Soviet Union, and Khrushchev had deprived Russia of Crimea in 1954 and given it to Ukraine, resulting in the formation of the Soviet Ukraine territory. Our [meaning Russian] equal opportunities for dialogue on fundamental issues have remained unanswered by the United States and NATO, and the threat to Russia is clearly increasing, Russia has every right to take measures to ensure its security. And so Russia will act. (See Clause 1.1 of the Decision). The Council emphasises that threats to security of Ukraine as an independent state include the use of force or threats to the very existence of a state or its territorial integrity, whether external, internal, direct or indirect. There is no doubt that expressing the position that “Russia has every right to take measures to ensure its security and acting to ensure it,” means a direct threat to Ukraine's national security.*

- 3.4. Electronic mass media broadcasts often not only provide information unilaterally, but are also manipulatively staged as aids for military aggression and are presented as instruments of warfare, thus clearly creating a valid reason to see a threat to national security. Also in cases when the calls for threat to national security or content with an incitement to war or the initiation of a military conflict are found in the news shows, in the Council's view, the broadcaster is responsible for not restricting the expression of such views and for the unreasonable imbalance of the views. The Council draws attention to the fact that freedom of speech is considered to be one of the greatest values of a democratic state, enjoyed by every member of its society. The right to freedom of expression, which includes the right to freely receive, keep and distribute information and to express his or her views. However, in certain cases, freedom of speech must be restricted in order to protect the rights of others, the democratic order, the security and well-being of the state and society. Namely, in the case that the right granted to the participants of the discussion to express their opinion freely is used unfairly, in the Council's view, the exercise of freedom of speech for the purpose of making calls that endanger national security is not permissible, as it does not meet the general objectives of electronic mass media to inform, educate and entertain the public and is contrary to the fundamental principles of democracy.

The Council also emphasises the obligation of the electronic media to present information in news broadcasts in such a way that facts and events are fairly, objectively, with due accuracy and impartiality reflected in broadcasts, promoting the exchange of opinions, and comply with the generally accepted principles of journalism and ethics. The term “accuracy” within

the framework of the above-mentioned legal norm means that, especially in disputed issues, the most important different opinions and facts must be taken into account — it is necessary to clarify the exact circumstances of the case. In turn, the term “appropriate” within the framework of the above-mentioned legal norm means conformity and suitability to the subject and essence of the specific programme. Thus, the public's right to receive not only true but also sufficiently accurate and undistorted, incomplete information is ensured. The Council emphasises that those principles were not observed in the news broadcasts of the “TV Centre International” programme; on the contrary, the stories shown were contrary to those principles, presenting false and untrue information. Similarly, the host of the show does not inform the audience that this information is one-sided and possibly untrue, and no alternative views or sources of information are provided, thus preventing the audience from receiving objective, truthful and accurate information in news programmes and seriously violating journalism and show creation principles.

Assessing the provided information both in the given context and as individual statements, there is a clear call for war or military conflict, which undoubtedly has a significant impact on and threatens national security. The Council therefore concludes that the information presented in the programmes broadcasted by “TV Centre International” clearly and seriously violates Section 26, Part one, Clause 7 of the Electronic Mass Media Law, as well as Article 3 of the Directive.

3.5. According to Section 1, Clause 28 of the Electronic Mass Media Law retransmission is “the reception and immediate complete or partial distribution of a programme distributed in Latvia without making any changes in the content. [...]” The legal basis for restricting the distribution of television programmes in the territory of Latvia, established by regulatory enactments, is set out below.

- 3.5.1. Section 21¹, Part one of the Electronic Mass Media Law provides that: “*The National Electronic Mass Media Council shall ensure the freedom of reception and shall not restrict the retransmission of an audiovisual programme of electronic mass media in the territory of Latvia from another European Union Member State or Economic Area State, except for the cases when an electronic mass medium programme has gravely violated the provisions of Section 24, part nine or ten or Section 26, Clauses 1, 2, 3, 4, 5, 6 or 9 of this Law, and such violation has occurred at least twice in the last 12 months.*”
- 3.5.2. Section 21¹, Part 3.¹ provides that “*The National Electronic Mass Media Council shall decide on the prohibition to distribute a programme of an electronic mass medium if the audiovisual programme of the electronic mass medium under the jurisdiction of any European Union Member State or European Economic Area State seriously and gravely violates Section 26, Clause 7 or 8 of this Law and such violation has occurred at least once in the last 12 months.*” Section 21¹, Part 3.² indicates the responsibilities of the Council to restrict the programme on the basis of the case provided for in Section 21¹, Part 3.¹. Specifically, “*In the case referred to in Paragraph 3.¹ of this Section the National Electronic Mass Media Council shall inform the respective electronic mass medium, the respective country and the European Commission of:*
- 1) broadcasts in which violations have been established;*
 - 2) nature of the violation;*

3) *expected duration of the prohibition to distribute the electronic mass medium programme in the territory of Latvia.*”

- 3.5.3. Meanwhile Section 21.¹, Part 3³ of the Electronic Mass Media Law states: ***“Upon detecting violations of Section 26, Clause 7 or 8 of this Law, the National Electronic Mass Media Council may, in urgent cases, not later than within one month after the potential violation, derogate from the procedures laid down in Paragraph 3.² of this Section and prohibit the distribution of a programme of an electronic mass medium in the territory of Latvia.”***

3.6. Reading Section 21¹, Part one, Part 3.¹ and Part 3.³ of the Electronic Mass Media Law together with the definition of retransmission specified in Section 1, Clause 28 of the Electronic Mass Media Law, it can be concluded that in certain cases the Council is entitled to decide on termination of retransmission of a programme in the territory of Latvia, regardless of whether the retransmission is provided by an entity that has received a retransmission licence or a broadcasting licence issued by the Council, or by an entity that does so without the respective permission, for example, because it is under the jurisdiction of another state. It can be concluded that the legislator has granted the Council the right to restrict the retransmission of “TV Centre International” programme if a clear and serious breach of the prohibitions contained in the relevant paragraphs of the Section 26, Part one of the Electronic Mass Media Law is found.

3.7. In the light of the findings set out in this Decision, the Council concludes that all the “TV Centre International” programmes demonstrated on 21 February 2022 in the news show “Events” and on 22 February 2022 in the news show “Events. 25th hour” violate Section 26, Part one, Clause 7 of the Electronic Mass Media Law, and the situation provided for in Section 21¹, Part 3.³ of the Electronic Mass Media Law for restricting the distribution of the programme has occurred, because, given the alarming nature and seriousness of the violations, the spread of calls that clearly threaten the security of both Ukraine and Latvia, as well as the current geopolitical situation in the world, the Council acknowledges that the restriction of the distribution of the “TV Centre International” programme in the territory of Latvia is an urgent matter.

3.8. Section 21¹, Part 3.³ of the Electronic Mass Media Law foresees restriction of the retransmission (distribution of the programme) upon detecting violations of Section 26, Clause 7 or 8 of the Electronic Mass Media Law and the Council decides that the prohibition of the distribution of the programme in Latvia should be imposed as a matter of urgency. The Council considers that Section 21¹ of the Electronic Mass Media Law should be interpreted more broadly and the term “retransmission” used in the text of the Law should be understood not only as retransmission within the meaning of Section 28, Clause 1 of the Electronic Mass Media Law, but also as the distribution of any other foreign programme in Latvia. Therefore, Section 21¹, Part 3.³ of the Electronic Mass Media Law is also applicable to the circumstances of the specific case, when the programme “TV Centre International” is distributed in Latvia without the use of retransmission. The Council justifies this broader interpretation of the concept of retransmission referred to in the Section 21¹ of the Electronic Mass Media Law with the objectives of the Directive and the case law of the Court of Justice of the European

Union. Specifically, Article 3, Part 1 of the Directive states that “*Member States shall ensure freedom of reception and shall not restrict retransmissions on their territory of audiovisual media services from other Member States for reasons which fall within the fields coordinated by this Directive.*” In turn the second part sets out the cases when a Member State may derogate from the obligation to ensure freedom of reception in respect of television broadcasting. The Council considers that allowing a Member State to derogate from the obligation to only ensure freedom of reception if a foreign television programme is retransmitted would not achieve the Directive's objective to restrict television broadcasting in cases when the relevant infringements are committed by distributing the television programmes in any other technological way than by retransmission. Therefore, in order to ensure the achievement of the Directive's objective (right to derogate from the obligation to ensure freedom of reception if the relevant infringements occur in any case regardless of the type of broadcasting), the concept of retransmission stated in the Section 21¹ of the Electronic Mass Media Law should be interpreted in an expanded way and include all types of broadcasting, not just retransmission. In this case, the Council justifies the broad interpretation of the concept of retransmission referred to in the Section 21¹ of the Electronic Mass Media Law with the clarifications provided in the judgments of the Court of Justice of the European Union for the Cases 14/83 *Von Colson and Kamann v. Land Nordrhein-Westfalen* (see Clause 26 of the Judgment) and C-106/89 *Marleasing SA v. La Comercial Internacional de Alimentacion SA* (see Clause 8 of the Judgment) and stating how the national authority should contribute to the achievement of the objectives of the Directive in the event of non-implementation or incomplete implementation of the Directive. There is no doubt that these provisions should also be implemented in cases when the directive has been fully implemented. In the Council's view, the concept of retransmission in the context of the Section 21¹ of the Electronic Mass Media Law should cover all forms of distribution of a programme, including satellite broadcasting and distribution of a programme on the internet.

- 3.9. The provisions of the Electronic Mass Media Law state the Council has the right to decide whether an administrative act is to be issued in a particular case. Also, regulatory enactments do not provide for the issuance of an administrative act of a certain content, therefore the determination of the content of such an administrative act is the responsibility of the Council. The legislator has established such procedure in Section 65, Part four of the Administrative Procedure Law (hereinafter referred to as the APL), that states: “*If the norm of law to be applied allows an institution to decide whether to issue or not to issue an administrative act and, in the event of issue, does not determine its specific content (free administrative act), the institution shall first consider the usefulness of issue. If the institution concludes that the administrative act is to be issued, it shall issue such act, observing the limits laid down by norms of law and, within this framework, on the basis of considerations of usefulness, determine the content of the administrative act. [...]*”

In the light of the foregoing, the Council should carry out a comprehensive assessment of the expediency considerations as to the usefulness of issuing and content of an administrative act. The criteria for assessing the usefulness of the issue of an administrative act are set out in Section 66, Part one of the APL that states the considerations to be considered by an institution taking a decision:

- a. the necessity of the administrative act for attaining a legal (legitimate) goal;
- b. the suitability of the administrative act for attaining the relevant goal;
- c. the need for the administrative act, that is, whether it is possible to attain such goal by means which are less restrictive of the rights and legal interests of participants in the administrative proceeding; and
- d. the conformity of the administrative act, comparing the infringement of the rights of a private person and the benefits for the public interest, as well as taking into account the fact that substantial restriction of the rights of a private person may only be justified by a significant benefit to the public.

The Council considers that this decision is necessary in order to achieve a legitimate goal on the basis of the following considerations.

The necessity of the administrative act for attaining a legitimate goal

According to Section 100 of the Constitution of Latvia *“Everyone has the right to freedom of expression, which includes the right to freely receive, keep and distribute information and to express his or her views. Censorship is prohibited.”* Section 116 provides that the rights of persons set out in Section 100 of the Constitution may be subject to restrictions in circumstances provided for by law in order to protect the rights of other people, the democratic structure of the State, and public safety, welfare and morals.

The Constitutional Court has explained that the Constitution has established restrictions on freedom of expression in general, while the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as the ECHR) provides more specific criteria. Therefore, with regard to the permissible broader restrictions on freedom of expression, the norms of the Constitution must be interpreted within the meaning of Article 10 of the ECHR (*Clause 22 of Judgment of the Constitutional Court of 29 October 2003 in case No. 2003-05-01*). The purpose of restriction of the fundamental right to freedom of expression shall only be recognised as legitimate if it complies not only with the purposes referred to in the Article 116 of the Constitution, but also with Article 10 of the ECHR, based on which the freedom of expression may be restricted (*Clause 9 of Judgment of the Constitutional Court of 22 February 2010 in case No. 2009-45-01*). Section 10, Part two of the ECHR states: *“The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”* Section 21¹, Part 3.³ and correspondingly Section 26, Part 1, Clauses 4, 5 and 7 of the Electronic Mass Media Law state the cases when an institution has the right to restrict a person's freedom of expression (retransmission of electronic mass media programmes from other countries), in essence already refer to the legitimate aims of this restriction, which are specified in the Section 116 of the Constitution and Section 10, Part two of the ECHR. The legitimate aim of

restricting freedom of expression in this case is clearly the security of the state and society, as well as the preservation of the democratic state system. Protection of the democratic state system as a legitimate aim includes the protection of national security and the territorial integrity of Latvia.⁸ The Council emphasises that the distribution of content that threatens national security in electronic mass media programmes is prohibited, and this threat to national security must be assessed not only in the context of security in Latvia, but also in the context of other countries' security.

In accordance with Article 2 of the Constitution of the Republic of Latvia, the sovereign power of the State of Latvia is vested in the people of Latvia. The people of Latvia exercise power directly, as well as through state and local government institutions. The fundamental expression of people power is a referendum and free elections. State power consists of the legislative (the Saeima of the Republic of Latvia), executive (Cabinet of Ministers of the Republic of Latvia) and the judicial power. Thus, practically, a call to violently change the state power of the Republic of Latvia may be directed not only to the Saeima of the Republic of Latvia, but also the Cabinet of Ministers of the Republic of Latvia and their subordinate public administration institutions, as well as Latvian courts. This does not exclude the possibility that the call may be directed against the entire state power. It should also be emphasised that the threat to national security can have several levels — depending on the type of threat, its intensity, nature, as well as the area of the territory under threat. After assessment of the information disseminated in the electronic mass media programme, as well as the geopolitical situation in which it is disseminated, the Council considers it reasonable to decide that the disseminated information poses a significant threat to national security and public safety.

The Constitutional Court has recognised that everyone has the right to freely express their opinion in any form — orally, in writing, visually, using artistic means of expression, etc. (see *Clause 1 of the Conclusions, Judgment of the Constitutional Court of 5 June 2003 in case No. 2003-02-0106* and *Clause 21, Judgment of the Constitutional Court of 29 October 2003 in case No. 2003-05-01*). In addition to freedom of speech, alongside its traditional manifestations, for example, speeches, diversity of opinion in mass media, participation in demonstrations and other events, also comprises various forms of artistic expression, for example, fiction, painting, music, as well as other combined forms of expression for freedom of speech, inter alia, use of symbols (see *Clause 11.4, Judgment of the Constitutional Court of 2 July 2015 in case No. 2015-01-01*); however the Constitutional Court has recognised that the right to freedom of speech is not absolute and may be restricted if necessary in the public interests (see *Clause 13, Judgment of the Constitutional Court of 2 July 2015 in case No. 2015-01-01*). Nor does the right to freedom of expression imply permissiveness. It follows from both the Constitution and the international human rights treaties binding for Latvia that the right to freedom of expression may be restricted. The State may impose restrictions on freedom of expression in cases where a person's right to freedom of expression directly affects the rights of other persons, as well as in cases where freedom of expression poses a clear and direct threat to society (see *Clause 22 of the Conclusions, Judgment of the Constitutional Court of 29 October 2003 in case No. 2003-05-01* and *Manfred Nowak. U.N. Covenant on Civil and Political Rights. CCPR Commentary. — Publisher N. P. Engel, Kehl, Strasbourg, Arlington, 1993, p. 337*). In view of the above, the Council considers that the

⁸ Constitutional Court judgment. 2000–03–01. 30.08.2000. Paragraph 7 of the Conclusions.

legitimate aim, according to which it is permissible to restrict the freedom of expression of a person by an administrative act in accordance with Section 21¹, Part 3³ of the Electronic Mass Media Law due to a violation of Section 26, Part one, Clause 7 of the Electronic Mass Media Law is the protection the national interests, protection of national security, territorial integrity and public security.

The Council considers that the decision is appropriate for achieving a legitimate aim. If the legitimate aim to be protected is directly affected by the retransmission of an electronic mass media programme from other countries, then the restriction of such retransmission clearly prevents the violation of the legitimate aim. Such a restriction is appropriate, permissible and necessary in a democratic country.

Suitability of the administrative act for attaining the relevant goal

With regard to the assessment of restrictions on freedom of expression, account should also be taken of the findings of the European Court of Human Rights (hereinafter referred to as the ECtHR) that audiovisual media, such as radio and television, have the potential to influence society more quickly and effectively than the printed press (*see ECtHR Judgment in the case of Manole and Other v. Moldova, Clause 97*). Thus, information harmful to the public provided by means of the television also has a much more significant negative effect on the public than the print media. Consequently, the state should not impose equally strict criteria for the restriction of television programmes as on the restriction of freedom of expression in the print media. In this respect, it is important to take into account the impact of television broadcasts on viewers using different techniques that affect viewers' perception.

Also in this aspect, it is necessary to take into account the findings stated in the Judgment of the Constitutional Court of 29 October 2003 in case No. 2003-05-01. In that judgment, the court referred to the views expressed by Lucius Wildhaber, former President of the ECtHR, in an interview in which he stated that a distinction should be made between information considered as a point of view of a journalist or a third party and information provided as news. The news must always be true, but the opinion is always subjective and emotional, so it can be very unpleasant for someone (*see Clause 24 of the Judgment*). The judgment also states that the right to freedom of expression and the press is derived from the people's right to freely receive information and does not constitute a special right provided for a journalist. The people have a right to get true information — this is an axiom. And the role and duty of the media is to serve the public interests. In the Council's view, it is not in the public interest to receive information that contains calls that threaten the security of a country, its territorial integrity, calls for war and the initiation of a military conflict. Such information can cause social anxiety and fear for the people about the existence of their country, their future and the future of their families. Furthermore, this information also contains misinformation and may lead to the appearance and activation of radical organisations that support these ideas, as well as their opponents, thus not excluding the possibility of impact on public order and human security, and a significant and clear impact on national security on the whole. If the television programmes in which this information is provided were not distributed in the territory of Latvia, there is no doubt that the availability of this information would be limited, thus the harm caused by this information would be significantly reduced.

Consequently, in the opinion of the Council, the instrument provided for in Section 21¹, Part 3³ of the Electronic Mass Media Law for restricting the right to freedom of expression — restriction of retransmission of electronic mass media programmes from other countries — is considered to be an appropriate means to achieve a legitimate aim.

Necessity of the administrative act in a democratic society

In this specific case, as concluded above, the violation of the rights of a person is caused by the distribution of the programme “TV Centre International” in the territory of Latvia.

The European Court of Human Rights (hereinafter also referred to as the ECtHR) has concluded that it cannot be excluded that a person or group of persons may refer to the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as the ECHR) or the rights enshrined in its protocols, so that they have a “right” to act that in practice means actions with the aim to undermine the rights or freedoms set forth in the ECHR; any such destructive actions would put an end to democracy. It was these concerns that made the authors of the ECHR include Article 17 in the document, which states: “*Nothing in (...) the ECHR provisions may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction (...) rights and freedoms recognised by the ECHR or at their limitation to a greater extent than is provided for in the ECHR*” (*Collected Edition of the “Travaux Préparatoires”: Official Report of the Consultative Assembly, 1949, 1949, 1235-1239 pages*). No one should be allowed to use the provisions of the Convention to undermine or destroy the ideals and values of a democratic society (*ECHR judgment in the case Refah Partisi and Others v. Turkey [GC] No. 41340/98, 41342/98, 41343/98 and 41344/98, Clause 99*). Thus, in order to guarantee the security, stability and efficiency of a democratic system, a country may need to take special measures to protect itself. The ECtHR has therefore recognised the legitimacy of the concept of “democracy able to defend itself” (*Judgment of the Grand Chamber of the European Court of Human Rights of 16 March 2006 in the case Ždanoka v. Latvia, Clause 100*).

In the Council's view, the concept of “democracy able to defend itself” enshrined in the case-law of the ECHR is applicable to the current case, implying the right of a State to restrict the rights enshrined in the ECHR, including the right to freedom of expression, if this right is exercised contrary to the aims provided for in the ECHR. The Constitutional Court has also acknowledged that a democratic state has not only the right but also the duty to protect the principles on the basis of which it was created (*see: Judgment of the Constitutional Court of 15 June 2006 in Case No. 2005-13-0106, Clause 13.6*).

In this case, there is no doubt that the information presented in the broadcasts of the “TV Centre International” programme clearly and significantly breaches Section 26, Part one, Clause 7 (as well as Clause 4 and 5) of the Electronic Mass Media Law, as well as Article 3 of the Directive. Consequently, this information also conflicts the legitimate aim protected by Section 26 of the Electronic Mass Media Law. Thus, in the Council's view, it is necessary to prevent a violation of a legitimate aim commenced by retransmission of the “TV Centre International” programme in order to protect national security, territorial integrity and public security. In addition, given the important role of television in providing information to the public, the Council considers that there are no legal mechanisms that can be used to limit the harm caused by the “TV Centre International” programme other than the Council's right to restrict retransmission of the

programme under Section 21¹, Part 3³ of the Electronic Mass Media Law, as the committed violations clearly and seriously breach the requirements for programmes creation set by the Directive and Electronic Mass Media Law and pose a significant threat to the national security of Ukraine and Latvia, especially in the current geopolitical situation.

The Council considers that the restrictive aim of the administrative act can be achieved applying a reasonable period of time for which the retransmission of the restricted programme “TV Centre International” would take place in the territory of Latvia. In the opinion of the Council, this period is **3 (three) years**. The stated period is considered to be appropriate, as the military conflict in Ukraine and the future actions of the Russian Federation, including in relation to other countries, are unpredictable and therefore it is not possible to predict what the content of the television programme will look like in the future and how it will affect the security of Latvia and other countries. Considering the fact that the military aggression is accompanied by a purposeful hybrid war, both in Ukraine and elsewhere in the world, including the spread of misinformation and false news. The Council emphasises that the information obtained in the study “Study Regarding the Media Literacy and Media Content Usage Habits of the Latvian Population” shows that almost all (85%) respondents have seen false news, biased or fabricated information.⁹ Thus, there is no doubt that in the current situation it is also important to guarantee the security of the information space and the availability of reliable and verified information, especially in the context of news broadcasts.

The Council emphasises that by renewing the distribution of this programme in the territory of Latvia in the current geopolitical situation, Latvia will not be able to guarantee the protection of its population and the audience of this programme against harmful content that threatens the security of Latvia and other countries. Such time period provides an opportunity to the creators of the programme “TV Centre International” to consider and find an appropriate solution to ensure that after the possible resuming of retransmission of the programme “TV Centre International”, the prohibitions in respect of the content of retransmitted programmes established by the legislator in the Electronic Mass Media Law are not repeatedly violated.

Proportionality of the Administrative Act

Proportionality (reasonableness) of the legal consequences must be considered in every case of issuance of an administrative act. Specification of the legal consequences is an integral part of the application of rights, and during this stage an obligation of the party applying the rights is to assess the legal consequences and select the consequences which reach the goal of the rights — justice (*Clause 14.2 of the Judgment of the Constitutional Court of 28 February 2007 in case No. 2006-41-01*). The proportionality principle included in Section 13 of the APL states: “*The benefits which society derives from the restrictions imposed on an addressee must be greater than the restrictions on the rights or legal interests of the addressee. Significant restrictions on the rights or legal interests of a private person are only justified by a significant benefit to society.*”

In the Council's view, the benefits to society in this case definitely outweigh the restriction of rights, as the public will no longer be exposed to broadcasts with calls that threaten the security of

⁹ Study Regarding the Media Literacy and Media Content Usage Habits of the Latvian Population. Available at: https://www.neplpadome.lv/lv/assets/documents/Petijumi/Pētījums_par_Latvijas_iedzīvotāju_medijpratību_un_mediju_satura_lietošanas_paradumiem_2021.pdf

Ukraine and Europe as a whole, statements calling for war or military conflict. In the same way the public will no longer be subject to the pressure of biased information and false information that is disseminated both within the news programmes and in the programme as a whole.

It must be established what potential damage and losses could be caused by the administrative act to the distributors of the programme “TV Centre International” and the electronic mass media retransmitting this programme or in any other way distributing it in the territory of Latvia. In respect of the restriction of the right to freedom of speech of the distributors of the programme “TV Centre International”, it may be concluded that the public benefit is greater than the violation of the personal rights, as protection of the public from biased broadcasts, including news shows, the content whereof calls to war or military conflict and incites hatred due to ethnicity or nationality is in the public interest. The Constitutional Court, in Section 31 of the conclusion part of its Judgment in case No. 2003-05-01 of 29 October 2003, concluded that an obligation of the press is to provide only true information, and freedom of speech in this aspect also includes the obligations and responsibility. Such conclusion in respect of the journalists has been made on multiple occasions by the ECtHR, indicating that Article 10 of the ECHR only protects them if *“they act in good faith, provide precise and verified information in conformity with the journalist’s ethics”* (please refer to *Human Rights. The 1998 Act and the European Convention*. London, Sweet & Maxwell, 2000, p. 300, please also refer to the *Judgment of the Human Rights Court in the case Bladet Tromsø and Stensaas v. Norway*, para. 65, the *Judgment of 27 March 1996 in the case Goodwin v. United Kingdom*, para. 39 and the *Judgment of 21 January 1999 in the case Fressoz and Roire v. France*, para. 54).

The Council also evaluates the potential damages that could be caused to the electronic mass media retransmitting the programme “TV Centre International” in the territory of Latvia due to the prohibition of retransmission. ECtHR has established that pluralism and democracy are based on a compromise that requires making of various concessions by individuals who sometimes have to be ready to restrict some of their freedoms to ensure greater stability of the country in general (*ECtHR Judgment in the case Refah Partisi and Others v. Turkey [GC]*, No. 41340/98, 41342/98, 41343/98 and 41344/98, Clause 99). Thus, the question posed is on reaching a compromise between the requirements to protect a democratic society, on the one hand, and the requirements to protect human rights, on the other hand. Each time, when the state wishes to use the principle of “democracy able to defend itself” to justify interfering with the individual’s rights, it must carefully assess the range and consequences of the considered measure to ensure reaching of the aforementioned balance (*Clause 100 of the ECtHR Judgment of 16 March 2006 in the case Ždanoka v Latvia [GC]*).

The Council sees the grounds for the assumption that the losses of the electronic mass media that retransmit the programme “TV Centre International” that may be incurred in relation to the prohibition established in the decision to retransmit the programme “TV Centre International” during a definite period will not be especially great. The Council therefore concludes that the public benefit will be greater than a prohibition to companies to retransmit the programme “TV Centre International”, the content of broadcasts of which causes significant harm to the society, for a certain period of time. Such restriction of rights may be justified by the right of society to security and greater stability of the country in general.

Taking the aforementioned into account, the Council believes that in accordance with Section 21¹, Part 3³ of the Electronic Mass Media Law the grounds exist to adopt a decision on a

prohibition to retransmit the programme “TV Centre International” in the territory of Latvia for **3 (three) years** from the day of this decision coming into force.

This decision, pursuant to Section 1, Clause 3 of the APL is a general administrative act as it relates to a range of persons not established individually, being in specific and identifiable circumstances. Namely, this administrative act relates to any person (including but not limited to electronic mass media), which retransmits the programme “TV Centre International” in the territory of Latvia for the purpose of Section 1, Clause 28 of the Electronic Mass Media Law (*retransmission in the broader meaning of this term according to the information already mentioned in this decision*). This decision, as a general administrative act, taking into account exceptional circumstances and special urgency, shall be announced publicly in accordance with the procedures specified in the Section 11, Part four of the Notification Law — by means of oral announcement on Latvian public television. The decision is also to be announced publicly in the official newspaper “Latvijas Vēstnesis”.

The Council, in accordance with Section 62, Part three of the APL indicates the considerations, explaining why it believes that the decision of the recipients of this decision had to not be listened to during the adoption of the relevant decision. In accordance with the provisions of Section 62, Part two, Clause 1 of the APL *“it shall not be necessary to clarify the opinion and arguments of a person if the issue of the administrative act is urgent, and any delay directly poses a threat to the national security, public order, environment, or life, health or property of a person”*. In the light of the foregoing, it must be concluded that the Council was not required to hear the views of the recipients of the decision, since any delay in taking a decision constitutes a threat to national security and public safety. Since the restriction established in the administrative act in the relevant situation is directed at any person who retransmits the programme “TV Centre International” in the territory of Latvia to protect significant public interests, listening to potential recipients is actually impossible due to their significant number. Besides, in the administrative act the Council has carried out an assessment of the arguments of potential administrative act recipients, and has justified the conformity of such restriction in the context of the protection of the right to freedom of speech. By concluding that the administrative act proportionally restricts the right of the person retransmitting the programme “TV Centre International” in the territory of Latvia, and such restriction in the public interest must be established without a delay, listening to an opinion of the potential recipients may not be adequate.

4. ACTIONS OF THE COUNCIL IN THE EVENT OF DISTRIBUTION OF CONTENT INCITING HATRED FOR THE PURPOSE OF THE DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL “AUDIOVISUAL MEDIA SERVICES DIRECTIVE”

Since the programme in the territory of Latvia is being distributed (including retransmitted) from Sweden (holder of the broadcasting permit of the programme “TV Centre International” in the Kingdom of Sweden is Federal State Unitary Enterprise — The Russian Television and Radio Broadcasting Company), the Directive must be taken into account when restricting programme distribution in the territory of Latvia.

Article 3(1) of the Directive sets forth that *“Member States shall ensure freedom of reception and shall not restrict retransmissions on their territory of audiovisual media services from other*

Member States for reasons which fall within the fields coordinated by this Directive”; however, it is set forth in Article 3(2) that “A Member State may provisionally derogate from paragraph 1 of this Article where an audiovisual media service provided by a media service provider under the jurisdiction of another Member State manifestly, seriously and gravely infringes point (a) of Article 6(1) or Article 6a(1) or prejudices or presents a serious and grave risk of prejudice to public health.”

The Directive provides for the possibility for Member States to restrict the freedom of movement of television broadcasting, but only under the conditions and following the procedure laid down in this Directive.

Article 3, Paragraph 2 of the Directive provides that a Member State may temporarily suspend television retransmission from other countries if the following conditions are met: *“1. A Member State may provisionally derogate from paragraph 1 of this Article where an audiovisual media service provided by a media service provider under the jurisdiction of another Member State manifestly, seriously and gravely infringes point (a) of Article 6(1) or Article 6a(1) or prejudices or presents a serious and grave risk of prejudice to public health.”*

Article 3, Paragraph 3 of the Directive provides that: ***“A Member State may provisionally derogate from paragraph 1 of this Article where an audiovisual media service provided by a media service provider under the jurisdiction of another Member State manifestly, seriously and gravely infringes point (b) of Article 6(1) or prejudices or presents a serious and grave risk of prejudice to public security, including the safeguarding of national security and defence.”*** The derogation referred to in the first subparagraph shall be subject to the following conditions: (a) during the previous 12 months the conduct referred to in the first subparagraph occurred on at least one prior occasion; and (b) the Member State concerned has notified the media service provider, the Member State having jurisdiction over that provider and the Commission in writing of the alleged infringement and of the proportionate measures it intends to take should any such infringement occur again.

In turn Article 3, Paragraph 5 of the Directive provides that: ***“Member States may, in urgent cases, no later than one month after the alleged infringement, derogate from the conditions laid down in points (a) and (b) of paragraph 3. Where this is the case, the measures taken shall be notified in the shortest possible time to the Commission and to the Member State under whose jurisdiction the media service provider falls, indicating the reasons for which the Member State considers that there is urgency. The Commission shall examine the compatibility of the notified measures with Union law in the shortest possible time. Where it comes to the conclusion that the measures are incompatible with Union law, the Commission shall require the Member State in question to urgently put an end to those measures.”***

Measures taken by the Council during the procedure

1. The Council has found violations in the show “Events” broadcast by the programme “TV Centre International” on 21 February.
2. The Council has found violations in the show “Events. 25th hour” broadcast by the programme “TV Centre International” on 22 February.
3. The Council has assessed the usefulness, proportionality and possible consequences of the decision (already described above in the decision).

4. The Council has assessed the need to adopt a decision restricting the distribution of the programme on the territory of Latvia as a matter of urgency, deviating from the basic procedure stated in the Directive and used for acceptance of a decision to restrict the distribution of a programme.

In the present case, the Council has taken the following facts into account:

- 1) the alarming nature and seriousness of the violations committed;
- 2) the spread of calls that clearly threaten the security of both Ukraine and Latvia, as well as the security of Europe as a whole;
- 3) the current geopolitical situation in the world and the development of events in Ukraine posing a significant threat to national security and the territorial integrity of Ukraine.

In the Council's view, immediate action is needed, as any delay poses a direct threat to national security, public order and life of people.

When adopting a decision, the Council has taken into account the fact that the “TV Centre International” programme’s jurisdiction is the Kingdom of Sweden and that the programme has been licensed by the Swedish Media Regulator — “Federal State Unitary Enterprise — The Russian Television and Radio Broadcasting Company”. Representatives of the Swedish Media Regulator have informed the Council that a new body had been set up in late 2020 to deal with such and similar issues related to incitement to hatred, threats to national security. However, the Council has already carefully considered all the aspects that, in this case, provide for a restriction on the distribution of the programme as a matter of urgency.

The Council points out that the procedure for restricting the distribution of the programme “TV Centre International: in the territory of Latvia has not been used, but violations and inappropriate content were found that significantly endanger national security. In view of these circumstances, the Council concludes that the producers of the programme have not complied with the rules governing the production of programmes and news shows, have broadcast biased, false and untrue information having a significant effect on public order and security, as well as endangering national security. In the case that the right granted to a person to express his/her opinion freely is used in bad faith or in a manner consistent with the editorial policy of the media, the Council considers that the exercise of freedom of speech to express calls that endanger national security, pose a serious threat to public order and security, or a call for war is not an expression of freedom of expression because it is not permissible, as it does not meet the general objectives of electronic mass media to inform, educate and entertain the public and is contrary to the fundamental principles of democracy. In the Council's view, the work of the electronic media is not expected to change dramatically in the future in the current geopolitical situation.

In view of the above, the Council concludes that it has fulfilled all its obligations under the Electronic Mass Media Law and the Directive by informing the electronic mass media, as even discussions with the creators of the “TV Centre International” programme have not led to the prevention of further infringements in the programme. The Council supposes that it is unacceptable that calls are being made in the electronic mass media in the territory of Latvia, particularly in the context of news and information programmes, that endanger national security, pose a serious threat to public order and security, as well as calls for war and military conflict endanger the Republic of Latvia and the sovereignty and independence of other countries. The Council emphasises that

the harmful consequences for the public have already occurred at the moment of showing these broadcasts and it is not possible to measure how much harm has already been done to the public; therefore, there is no doubt that immediate action is necessary to protect audiences in Latvia and prevent similar situations.

In view of all the above facts, and reiterating the need for urgency, the Council exercises its rights under the Directive and the Electronic Mass Media Law: *“Upon detecting violations of Section 26, Clause 7 or 8 of this Law, the National Electronic Mass Media Council may, in urgent cases, no later than within one month after the potential violation, derogate from the procedures laid down in Paragraph 3² of this Section and prohibit the distribution of a programme of an electronic mass medium in the territory of Latvia.”*

Taking the above stated facts into consideration and based on Section 21¹, Part 3³ and Section 26, Part 7 of the Electronic Mass Media Law, the National Electronic Mass Media Council

decides:

- 1. To restrict retransmission (including distribution) of the programme “TV Centre International” in the territory of Latvia for 3 (three) years from the day of this decision coming into force.**
- 2. The Decision enters into force upon its announcement — on 24 February 2022.**
- 3. Inform the European Commission and the Swedish Media Regulator — “Swedish Press and Broadcasting Authority” of the decision taken.**

In accordance with Section 188, Paragraph two of the Administrative Procedure Law, this decision may be appealed within one month from the day of its coming into force, by filing an appeal in the Administrative Regional Court.

The Council decides that an appeal of this decision shall not stop its validity. It may be derived from the Section 21¹ of the Electronic Mass Media Law that in the exceptional situations prescribed in the relevant part of the Section, the Council may restrict the retransmission of programmes from other countries. Such restriction of retransmission of a programme by its essence is similar to the suspension of operation of the electronic mass media prescribed in the Section 21, Part two of the Electronic Mass Media Law. These legal instruments are similar as the Council may not stop the operation of the foreign electronic mass media whose programme is being retransmitted in Latvia, as it is located abroad and is subjected not to the Council, but to a foreign supervisory authority. Yet, as it can be derived from Section 21¹, Part 3³ of the Electronic Mass Media Law, the Council may instead restrict the transmission of the foreign electronic mass media programme in Latvia. The result in both cases is actually identical, namely, the programme created by the electronic mass media does not get to the potential audience of this programme in Latvia. Since restriction of the retransmission by its nature is similar to the legal instrument prescribed in the Section 21, Part two of the Electronic Mass Media Law, the purpose of which is to affect the operation of the electronic mass media, i.e., to motivate the electronic mass media to comply with the law and create its programme in accordance with the requirements of the law in the future, then restriction of retransmission has the same goal — to motivate the foreign electronic mass media to continue creating its programme in accordance with the laws of Latvia, including the Audiovisual Media Services Directive.

Since due to the aforementioned considerations, restriction of retransmission must serve as an instrument motivating the electronic mass media, restriction of retransmission in the event of the application of such legal instrument must

start working immediately, and it must be in force regardless of whether the decision on the restriction of retransmission is being appealed. Only then will the goal that the restriction of retransmission motivates foreign mass media to comply with the law of Latvia in the future, be reached. Otherwise, i.e., if the validity of the decision on restriction of retransmission was stopped as a result of an appeal of the decision, the decision on the restriction of retransmission could actually not perform its task to motivate the electronic mass media breaching the law to comply with the law in the future. In turn, possibly in several years, when litigation in the dispute regarding the decision, whereby the retransmission was restricted, the circumstances could have changed, and thus the decision on the restriction of retransmission could actually not be able to fulfil its task to motivate foreign electronic mass media to comply with the law of Latvia.

The Council also emphasises that in the event if the goal of the retransmission restriction or a task of such decision is to motivate a foreign electronic mass media to comply with the law of Latvia in the future, it is important that restriction of the retransmission as the negative consequences of not complying with the law will take place as soon as possible after the events of non-compliance with the law. Only in such case could the restriction of retransmission have the greatest motivating impact on the foreign electronic mass media. By contrast, if the restriction of retransmission were to only come into force in many years, when litigation in the matter regarding legality of the restriction of retransmission had ended, restriction of retransmission as the negative consequences of failing to comply with the law in terms of time would be distanced from the event of a failure to comply with the law. The Council believes that the restriction of retransmission in such case could actually not fulfil its duty to motivate foreign electronic mass media to comply with the law in the future. In addition, the Council believes that the violations established in the decision are so severe that the appeal should not suspend the validity of the decision restricting retransmission, since due to the severity of violations it is important that the foreign electronic mass media as soon as possible, and to a greater extent, would become motivated to comply with the law of Latvia in the future.

Taking into account the aforementioned, the Council establishes that in accordance with Section 185, Part four, Clause 2 of the Administrative Procedure Law, an appeal of this decision shall not stop its validity.

Chairperson of the Council
Abolins (*Ivars Āboliņš*)

Ivars

***THE DOCUMENT IS SIGNED ELECTRONICALLY WITH A SECURE ELECTRONIC SIGNATURE
AND CONTAINS A TIME STAMP***