

ASSESSMENT OF THE NEED TO UPDATE THE LIST OF EVENTS OF MAJOR IMPORTANCE FOR SOCIETY

1 Background

According to section 212, subsection 3 of the Act on Electronic Communications Services (917/2014), where necessary, it shall be designated by Government Decree which events are considered to be of such importance to society in Finland that their coverage shall be broadcast in the area of Finland so that a substantial proportion of the public can follow the coverage of the events free via live coverage or deferred coverage. A television broadcast of an event that is of importance to society is deemed to have reached a substantial proportion of the public, if 90 per cent of the population are able to receive the broadcast without a separate charge. The purpose of the provision is to secure the opportunity for the public to follow events that are of major importance for society on free television channels.

The provision is based on the Directive 2010/13/EU of the European Parliament and of the Council on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (the “AVMS Directive”). Article 14 of the directive contains the provisions on the use of exclusive rights. Member States are required promptly notify the EU Commission of any measures limiting the exercise of exclusive rights related to television broadcasting. Within three months of receipt of the notification, the Commission verifies that the proposed measures are in conformity with Union law and informs the other Member States thereof.

The procedure laid down by the directive has been transposed as part of national legislation in section 212, subsection 1 of Act on Electronic Communications Services, according to which if a television broadcaster has purchased an exclusive right to broadcast an event which is included in the list of events that are of importance to society, it may not exercise its exclusive right in such a way as to deprive a substantial proportion of the public in that Member State of the possibility of following the coverage of the event on free television as provided for by the State in question.

2 Events of major importance for society

Section 6 of the Government Decree on Television and Radio Operations (1245/2014) lists the events that are considered to be of major importance for society in Finland. These events include:

- 1) The Summer and Winter Olympic Games organised by the International Olympic Committee;
- 2) The opening match, quarter-finals, semi-finals and final of the Football World Cup, organised by FIFA (the Fédération Internationale de Football Association), and the matches of the Finnish team;

- 3) The opening match, quarter-finals, semi-finals and final of the European Football Championships, organised by UEFA (Union of European Football Associations), and the matches of the Finnish team;
- 4) The men's Ice Hockey World Championships, organised by the International Ice Hockey Federation (IIHF);
- 5) The Nordic World Ski Championships, organised by the International Ski Federation (FIS);
- 6) The World Championships in Athletics, organised by the International Association of Athletics Federations (IAAF);
- 7) The European Athletics Championships, organised by the European Athletics Association (EAA).

The purpose of the measures related to the exercise of broadcasting rights for events of major importance is to ensure the attainment of public interest objectives in television broadcasting activities. On the other hand, the measures may not unduly and contrary to the principle of proportionality interfere with the operation of the sports broadcasting rights market. The aim is to keep the list of individuals events included in the Government decree short and to only include those events that can be justifiably considered to be of major importance for society in Finland.

Limiting the exercise of exclusive rights related to television broadcasts can be expected to have effects on the relationships between television broadcasters, so the matter also involves competition policy aspects. A limitation on the exercise of exclusive rights may affect the income from television rights of the organisers of various events – in practice, major sports events. For these reasons, the Commission has been given a central role in the implementation of the system. Member States are required promptly notify the EU Commission of any measures limiting the exercise of exclusive rights related to television broadcasting. Within three months of receipt of the notification, the Commission verifies that the proposed measures are in conformity with Union law and informs the other Member States thereof.

The list concerning the broadcasting of events of major importance for society was last prepared in 2007. As for the list of events of major importance for society, on 25 June 2007, the Commission issued a decision on the compatibility with Community law of measures taken by Finland pursuant to the AVMS Directive. The Commission was satisfied that the events listed in the Finnish measures met at least two of the following criteria considered to be reliable indicators of the importance of events for society:

- (i) a special general resonance within the Member State and not simply a significance to those who ordinarily follow the sport or activity concerned;
- (ii) a generally recognised, distinct cultural importance for the population in the Member State, in particular as a catalyst of cultural identity;
- (iii) involvement of the national team in the event concerned in the context of a competition or tournament of international importance; and
- (iv) the fact that the event has traditionally been broadcast on free television and has commanded large television audiences.

The Information Society Code is currently being amended. The amendments will implement nationally the amendments made to the AVMS Directive, among other things. The revised directive will also require amendments to the Government Decree on Television and Radio Operations. In connection with the updating of the decree, it is also appropriate to assess the up-to-dateness of the list of events of major importance for society and the impact of the changes in viewer behaviour on the content of the list. The list was drawn up 12 years ago, and since then, the viewing figures for women's sports events, for example, have increased and the status of women's sports has changed dramatically.

When the list of events of major importance for society is assessed, the changes in the popularity of different sports should also be considered, as well as whether the list should be supplemented with new sports, such as the Paralympics. It should also be considered whether the potential extension of the list could affect the willingness of television broadcasters to acquire television rights for less popular sports or whether the extension of the list could in some cases lead to such sports being no longer necessarily made available to the public at all if the right holder did not receive sufficient compensation for the rights of the freely received channels. When assessing the possible change, it must also be taken into account that it must meet the requirements of Union law. The events must therefore meet at least two of the criteria defined by the Commission to be reliable indicators of the importance of events for society.

3 Questions for stakeholders

In view of the above, the Ministry of Transport and Communications invites views on the following questions in particular:

1. Should the list of events of major importance for society be updated with new sports or other events and, if so, on what grounds? What effects would the change have?

In keeping with the stated objective of not interfering with the operation of the sports broadcasting rights market, we believe that the list of events should not be updated with new sports or other events, it should actually be reduced. This is especially valid, given that some events were simply adopted in the listed legislation and the inclusion of events in their entirety e.g. FIS and IIHF events, cannot reasonably be considered to fulfil the key criteria set out above in the context of a modern broadcast environment.

As a consequence, we would consider it more balanced to review Clause 2 Events of major importance for society (as set out above) and in particular sub-clauses 4) and 5) as follows:

- 4) *The Finnish National Team games, and the final of the men's Ice Hockey World Championships, organised by the International Ice Hockey Federation (IIHF);*
- 5) *The Nordic World Ski Championships, organised by the International Ski Federation (FIS), to the exclusion of any training and qualifying rounds held in the context of such World Ski Championships.*

2. Should an event be removed from the current list and, if so, on what grounds? What effects would the change have?

The list is representative of the legacy of 'traditional linear broadcasting' and does not reflect the digital transformation that has taken place in the interim period.

Following the cessation of analogue transmissions, the broadcast landscape has evolved to a market with multiple players supported by new technology including OTT and online broadcasting capabilities. Additionally, Pay TV and subscription VOD services such as Netflix, have become the accepted standard for all member countries, being widely accessible and adopted. The proliferation of channels/broadcast options also means that the 90% reach obligation for linear broadcast has become outdated and in fact, no longer relevant.

We believe that in order to improve competition in a market and incentivise all broadcasters to become more active in the bidding process of major rights, the list should be reduced to a minimum (see some examples in our answer to Question 1).

This will result in a higher quality output for the event as the winning bidder of the rights is not only bidding for the rights to broadcast, but very often also for production and all other ancillary content to enhance the product for viewers. The result is that broadcasters dedicate more time to the linear broadcast but also increase output and exposure for additional content e.g. more digital output, more targeted content for specific audience groups and more 'behind the scenes' material. This leads to a more detailed, engaging product for the viewing public and to the involvement of a far wider target audience.

3. How do the potential proposals meet the aforementioned criteria set out by the Commission?

The criteria set out above are in part, a legacy of an analogue broadcasting world and should be updated to reflect new consumption habits and the digital environment in which we live.

The criteria also do not reflect the commercial decision-making process concerning the award of broadcast rights. Decisions are not limited to price/licence fees, but in fact place a comparable weighting on exposure for the event (i.e. audience engagement and reach as it relates also to sponsorship valuations and other metrics) and commitment from broadcasters to enhance the product beyond the live event. It is therefore unnecessary for legislation to stifle competition in this regard given the ability for 'traditional' broadcasters to fulfil these objectives for sports/events and participate in bidding processes fully and on an equal basis.

Whilst the availability of certain listed content on freely available television remains a cornerstone of policy, the criteria should not adversely impact on the commercial viability of sporting events, it should not interfere with the operation of the sports broadcasting rights market and it should not indirectly reduce the quality of the product offering by limiting bidding for rights to a monopoly position.