



## EUROPEAN COMMISSION

DIRECTORATE-GENERAL FOR COMMUNICATIONS NETWORKS, CONTENT AND TECHNOLOGY

The Director-General

Brussels  
CNECT.B.2.002/AR

H.E. Ambassador  
Dr. Tibor Stelbaczky,  
Permanent Representative of  
Hungary to the European Union,  
Brussels

Your Excellency, Dear Dr. Stelbaczky,

I am writing to you to express my concerns with regard to the ongoing process in Hungary on assignment and prolongation of radio frequencies for radio broadcasting, which, coupled with issues related to the compliance with EU rules on radio spectrum management, may undermine media pluralism in the country.

It has been brought to my attention that the Hungarian Media Council rejected the request of Klubradio for the prolongation of its current right of use of fm spectrum at 92.2 MHz and that the Council's decision has been confirmed in the Budapest court on 5 and 9 February 2021<sup>1</sup>. I have also been informed that a new assignment procedure for the same spectrum is currently on hold due to ongoing court proceedings initiated by one undertaking participating in the procedure and whose application has been rejected, thus leaving Klubradio as the only candidate currently considered eligible for the frequency. Lastly, I understand that Klubradio's right of use expires in a few days.

Against this background, I am writing to you to express my concern of what I consider to be an imminent risk of Klubradio being forced to cease its broadcasting activities on the basis of highly questionable legal grounds.

It is doubtful whether the Hungarian legislation regulating the renewal of these rights of use and the manner in which it has been implemented by the Media Council in the case at stake respects EU law and the principle of proportionality<sup>2</sup>. It does not seem to be proportionate that occasional non-respect of deadlines for reporting obligations on music quotas, dating several years back and remedied at the time with fines which had been fully paid could result in the recent rejection decision by the Hungarian authorities. My

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<sup>1</sup> A judgment on a possible appeal cannot realistically be expected in the remaining [five] days before its current rights to use the frequency expires on 14 February 2021.

<sup>2</sup> The Hungarian law relating to the extension of rights of use of FM spectrum must comply with the Authorisation Directive, and more specifically Articles 4, 5, 6, 10 and 14 thereof<sup>1</sup>, as well as Articles 1(3a) and 9 of the Framework Directive.

services have been in contact with the Hungarian authorities and have explained in detail these concerns, without receiving so far any plausible response, including as regards the requirements of proportionality and non-discrimination of the rejection decision compared to other similar decisions of the Hungarian authorities.

Furthermore, the imminent discontinuation of the use of the 92.2 MHz spectrum by Klubradio before its new assignment to a future user, following a general legislative provision against temporary licences during periods of litigation, would not seem to ensure efficient use of that spectrum<sup>3</sup> or to enable national courts to avail of all necessary interim measures to avoid irreparable harm during the pendency of litigation.

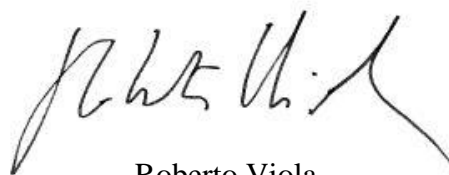
When implementing EU telecoms law on spectrum Hungary should respect the EU's Charter of Fundamental Rights, including the right to freedom of expression and information enshrined in Article 11 and the freedom to conduct a business enshrined in Article 16.

Under these circumstances, I request you to ensure that the current use of this spectrum can continue in the interim period until final decisions on the rejection of the renewal request and on any new assignment become legally binding.

This request is without prejudice to measures that the European Commission may take as regards the compliance with EU law of the decision of the Hungarian Media Council to reject the request of Klubradio, and of the currently on-going assignment procedure for this frequency.

I would request the Hungarian authorities to take urgent action, pending the ongoing court proceedings and final decisions on the rights of use of spectrum, to ensure that the above-mentioned requirements of EU law are respected while avoiding irreparable damage to the current holder of the frequency.

Yours faithfully,



Roberto Viola

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<sup>3</sup> See in particular Article 3(2c) of the European Electronic Communications Code.