[FR] Suspension of ARCOM decision on Eutelsat retransmission of Russian channels

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French company Eutelsat, in which the French state is the biggest shareholder, provides the satellite transmission of television channels and radio stations including Russian channels Rossiya 1, Perviy Kanal and NTV, which are distributed by NTV+ and Trikolor in Russia, Ukraine and the Baltic countries.

Since July 2022, Reporters Without Borders (RSF), an international non-profit organisation that seeks to defend and promote freedom of information, has been challenging Eutelsat's activities. It claims that content broadcast by the Russian channels breaches the obligations of audiovisual media and satellite operators in relation to respect for human dignity and media independence and pluralism. Meanwhile, NTV+ and Trikolor have recently stopped carrying eight international news channels (BBC World, CNN, Deutsche Welle, Euronews (in Russian), France 24, NHK World, RAINews 24 and TV5 Monde).

In this context, RSF has stepped up its efforts to end the dissemination of disinformation and content that incites hatred and violence against the Ukrainian population and that calls for mass extermination. It began by calling on the French authorities to reallocate the satellite slots used by the Russian channels to independent media. Then, on 8 September 2022, considering that, under Article 43-4 of the French freedom of communication law of 30 September 1986 (known as the Léotard law), the three channels were subject to French jurisdiction and to the authority of ARCOM (the French audiovisual and digital communications regulator), RSF asked ARCOM to order Eutelsat to stop transmitting them.

According to Article 43-4, ARCOM has legal authority if TV signals are transmitted from a satellite uplink station located in France or another European Union member state, or if the transmission involves the use of satellite capacity over which France has jurisdiction.

Just a few weeks later, on 29 September, ARCOM declared that it lacked the legal authority to grant RSF's request. It claimed that the location of the satellite uplink was uncertain and that the number of EU citizens having access to the channels via Eutelsat could only be very small since they were aimed at Russian territory and were encrypted.

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On 17 November, RSF therefore asked the *Conseil d'Etat* (Council of State) to overrule ARCOM's assertion and asked an administrative judge to suspend its decision. In a ruling of 9 December 2022, the *Conseil d'Etat* then suspended the execution of ARCOM's decision and ordered the regulator to re-examine RSF's request. It ruled that there was "serious doubt about the legality of the decision" because ARCOM had failed to examine whether it had jurisdiction under Article 43-6 of the law of 30 September 1986 and Article 5 of the European Convention on Transfrontier Television of 5 May 1989 (to which France and Ukraine are parties). The *Conseil d'Etat* also emphasised the "conditions in which the disputed television services are distributed and broadcast in the Ukrainian territories annexed by Russia in 2014 and 2022".

Conseil d'État 468969, lecture du 9 décembre 2022, ECLI:FR:CEORD:2022:468969.20221209 Decision n° 468969

https://www.conseil-etat.fr/fr/arianeweb/CE/decision/2022-12-09/468969

Council of State 468969, reading of 9 December 2022, ECLI:FR:CEORD:2022:468969.20221209 Decision no. 468969

Dans le dossier Eutelsat, le Conseil d'Etat donne raison à RSF contre l'Arcom

https://rsf.org/fr/dans-le-dossier-eutelsat-le-conseil-d-%C3%A9tat-donne-raison-%C3%A0-rsf-contre-l-arcom

French regulator told to reconsider RSF's request for ban on Russian propaganda broadcasts by Eutelsat

https://rsf.org/en/french-regulator-told-reconsider-rsf-s-request-ban-russian-propaganda-broadcasts-eutelsat

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