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EDITORIAL

As 2023 draws to a close, two major pieces of EU legislation, the European Media Freedom Act (EMFA) and the Artificial Intelligence Act (AI Act), are on the verge of being passed in Brussels.

While we wait for these legislative developments to be finalised, this newsletter contains a number of articles relating to the implementation of a momentous EU regulation, the Digital Services Act (DSA). On 18 October, the European Commission published a set of recommendations for member states to coordinate their response to the distribution and amplification of illegal content, such as terrorist content or unlawful hate speech. This prompted the French and Irish regulators to sign an agreement with the EC to support the enforcement of the DSA. Other notable recent developments in Brussels include a report adopted by EP committees recommending new EU legislation on working conditions for artists and other cultural professionals, and an IMCO committee report on the addictive design of digital platforms.

But you know, there is life beyond the *plat pays*. A little further north, in the Netherlands, the *Commissariaat voor de Media* published updated guidelines for video influencers. In another neighboring country, Luxembourg, the Court of Justice of the EU issued a judgment in a case opposing Google, Meta and TikTok Technology Limited to *KommAustria*. Way down south, regulators in both Portugal and Spain have been busy with issues relating to the promotion of European works. And far, far away in sunny California, a much-discussed strike has ended with an agreement between the US actors' union SAG-AFTRA and the Alliance of Motion Picture and Television Producers (AMPTP).

And no matter where you are, south, north, east or west, I wish you on behalf of our team a happy end to 2023 and a peaceful 2024!

Maja Cappello, Editor

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INTERNATIONAL

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AUSTRIA

European Court of Human Rights: Zöchling v. Austria

Dirk Voorhoof
Human Rights Centre, Ghent University and Legal Human Academy

A judgment of 5 September 2023 of the European Court of Human Rights (ECtHR) dealt with a complaint under Article 8 of the European Convention on Human Rights (ECHR) about the refusal to hold the publisher of an Internet news portal liable for hate speech in users' comments against a female journalist. With reference to its earlier Grand Chamber case law in the context of freedom of expression under Article 10 ECHR, as in *Delfi AS v. Estonia* (IRIS 2015-7/1) and more recently *Sanchez v. France* (IRIS 2023-6:1/15), the ECtHR reiterated that when comments take the form of hate speech and direct threats to the physical integrity of individuals, the rights and interests of others and of society as a whole may entitle states to impose liability on Internet news portals if they have failed to take measures to remove clearly unlawful comments without delay. According to the ECtHR, a minimum degree of subsequent moderation or automatic filtering is required in order to identify clearly unlawful comments as quickly as possible and to ensure their deletion within a reasonable time, even where there has been no notification by an injured party.

The applicant in this case is a journalist, Christa Zöchling, working for the Austrian news magazine *Profil*. An Internet news portal belonging to the media company Medienvielfalt Verlags GmbH, allows users registered with an email address to post comments relating to the online articles on the portal, without the content of the comments being checked before or after their publication. Users are given notice that unlawful comments are undesirable. The comments are technically cleared for publication by an employee and are visible on the portal under the relevant article. On 11 September 2016 the news portal published an article about Christa Zöchling, along with an image of her. On 12 September 2016 a user posted that he had printed out Christa Zöchling's image and had successfully shot her in the face and encouraged others to do the same. Another user posted a comment calling the applicant a "plague", a "dumb person" and a "larva" and stated that he regretted that gas chambers no longer existed. On 23 September 2016 the applicant asked the company to delete the comments and to disclose the users' data. The news portal deleted the comments within a few hours after receipt of the request and informed the applicant of the users' email addresses on 29 September 2016. The comments had been visible on the portal for 12 days. The users in question were blocked, but Zöchling subsequently failed to obtain

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the names and postal addresses of the users because their email providers refused to share those data with her.

Zöchling lodged an application with the Vienna Regional Criminal Court against the Internet news portal claiming damages for the publication of insulting statements. The Vienna court granted Zöchling's request, referring to the content of the initial article, which intentionally stirred up antipathies against Zöchling, the content of the comments, which contained incitements to violence against her, and the fact that offensive comments about Zöchling had repeatedly been posted under articles published on the portal. But in 2017 the Court of Appeal quashed this decision, stating that media owners did not have the obligation to monitor all comments posted on their website, and that they were exempted from liability when they had removed alleged illegal content upon request without delay. The Court of Appeal found that the Internet news portal had acted with the due diligence required under the Austrian Media Act by deleting the impugned comments immediately at Zöchling's request. It was therefore not liable for the damages claimed by Zöchling. Zöchling lodged an application with the ECtHR under Article 8 ECHR, with the complaint that Austria had not fulfilled its positive obligation to protect her private life and reputation when rejecting her claims.

The ECtHR first clarified that it would apply the criteria as developed by the Grand Chamber in the Delfi case. In that judgment the ECtHR identified the following criteria for the assessment of liability for third-party comments on the Internet: the context of the comments, the measures applied by the company in order to prevent or remove defamatory comments, the liability of the actual authors of the comments as an alternative to the intermediary's liability, and the consequences of the domestic proceedings for the company. In striking a fair balance between an individual's right to respect for his or her private life under Article 8 and the right to freedom of expression under Article 10, the nature of the comment must be taken into consideration, in order to ascertain whether it amounted to hate speech or incitement to violence. The ECtHR focussed in particular on the question whether or not the removal upon request by Zöchling was a sufficient reason to exempt the Internet news portal from liability. The ECtHR observed that the Court of Appeal did not examine the possibility for the Internet portal to operate a notice-and-take-down system which could have been a useful tool for balancing the rights and interests of all those involved. The ECtHR emphasised that a minimum degree of subsequent moderation or automatic filtering would be desirable in order to identify clearly unlawful comments as quickly as possible and to ensure their deletion within a reasonable time, even where there has been no notification by an injured party. It also noticed that the Court of Appeal did not have regard to the Regional Criminal Court's finding that offensive comments about Zöchling had repeatedly been posted under articles published on the Internet news portal at issue and that the news portal could have anticipated further offences. Furthermore, the Court of Appeal did not consider the Regional Criminal Court's finding that the article the comments were based on intentionally stirred up antipathies against Zöchling, nor did it refer to the content of the comments, despite the fact that they clearly amounted to hate speech and contained incitements to violence. The ECtHR also referred to the fact that

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although Zöchling pursued claims against the anonymous authors of the comments, she was refused access to the authors' data by their email providers.

The ECtHR confirmed that there is no obligation for internet platforms to generally monitor stored information, but it reiterated that a certain balancing is needed between the interests of an applicant claiming damages and thus relying on Article 8, and those of a media owner in protecting his or her rights under Article 10 ECHR. The Austrian Government conceded that such a balancing exercise was necessary and the Court of Appeal explicitly referred to the case of *Delfi AS*, but subsequently did not apply the relevant criteria. The ECtHR found that in the absence of any balancing of the competing interests at issue the Court of Appeal did not satisfy its procedural obligations to safeguard Zöchling's rights to respect for her private life and reputation. The ECtHR therefore found a violation of Article 8 ECHR.

Judgment by the European Court of Human Rights, Fourth Section, sitting as a Committee, in the case of Zöchling v. Austria, Application No. 4222/18, 5 September 2023

https://hudoc.echr.coe.int/eng?i=001-226418

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REPUBLIC OF TÜRKIYE

European Court of Human Rights: Durukan and Birol v. Türkiye

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The European Court of Human Rights (ECtHR) in a judgment of 3 October 2023 found a violation by the Turkish authorities of the right to freedom of expression via social media as guaranteed by Article 10 of the European Convention on Human Rights (ECHR). The case concerns the conviction and prison sentences of two persons, Mr Baran Durukan and Mrs İlknur Birol, on account of content they posted on Facebook and Twitter. Although the effects of their convictions were suspended, subject to probation periods of three and five years respectively, the ECtHR considered the convictions and their suspension, in view of their potentially chilling effect, as unjustified interferences with the rights of Durukan and Birol under Article 10 ECHR. According to the ECtHR, the interferences did not afford the requisite protection against arbitrary abuse by the public authorities of the rights guaranteed under the ECHR.

As to the facts, Durukan had posted photographs and comments on his Facebook account, including the slogans “Long live the Kurdistan resistance” and “Long live Abdullah Öcalan” which led to a conviction on charges of disseminating propaganda for a terrorist organisation, while Birol was sentenced for insulting the Turkish President in a tweet – in connection with ongoing anti-corruption investigations – labelling President Erdogan as a “thief”. Durukan and Birol argued before the ECtHR that the criminal proceedings brought against them and the suspended prison sentences had breached their right to freedom of expression.

In its judgment the ECtHR focussed on the deficient legal basis for the suspension of the prison sentences and on the potential chilling effect of such probation measures. In the absence of adequate procedural safeguards to regulate the discretion granted to the domestic courts in applying the suspension of prison sentences, the applicable legal basis did not afford the requisite protection against arbitrary abuse by the public authorities of the rights guaranteed under the ECHR. Hence the applicants were not guaranteed the degree of protection of their right to freedom of expression required by the rule of law in a democratic society. Therefore the ECtHR, unanimously, found a violation of Article 10 ECHR.

Arrêt de la Cour européenne des droits de l'homme, deuxième section, rendu le 3 octobre 2023 dans l'affaire Durukan et Birol c. Türkiye, requêtes nos 14879/20 et 13440/21

Judgment by the European Court of Human Rights, Second Section, in the case of Durukan and Birol v. Türkiye, Application nos 14879/20 and 13440/21, 3 October

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EUROPEAN UNION

CJEU judgment: Google Ireland and others v. Austria

Amélie Lacourt
European Audiovisual Observatory

The Court of Justice of the European Union (CJUE) issued a judgment (C-376/22) in a case opposing Google Ireland Limited, Meta Platforms Ireland Limited and TikTok Technology Limited to the *Kommunikationsbehörde* (the Austrian National regulatory Authority – *KommAustria*) - on 9 November 2023. This judgment follows the request for a preliminary ruling made by the Verwaltungsgerichtshof *(* Supreme Administrative Court of Austria) under Article 267 TFEU on 24 May 2022.

Google, Meta and TikTok, while established in Ireland, provide communication platform services abroad, in particular in Austria. In 2021, *KommAustria* declared in a set of decisions, that the three services were subject to an Austrian law, known as the *Bundesgesetz über Maßnahmen zum Schutz der Nutzer auf Kommunikationsplattformen* - BGBl. I, 151/2020 (Federal Act on Measures for the Protection of Users on Communication Platforms). This law imposes in particular a set of obligations on domestic and foreign providers of communication platforms for monitoring and notifying allegedly illegal content. The three providers at stake, who considered they should not be subject to such measures, lodged complaints against the decisions of *KommAustria*, which were rejected. The claimants therefore appealed before the Austrian Administrative Court, arguing in particular that the obligations introduced by the Austrian law were disproportionate and incompatible with the free movement of information society services and with the principle of control of those services by the member state of origin, which is the state on whose territory the service provider is established, as provided in the E-Commerce Directive.

It is in this context that the Administrative Court referred to the CJEU for a preliminary ruling on the interpretation of the Directive. The Court of Justice ruled in particular on whether a member state receiving information society services may derogate from the free movement of those services by taking not only individual and specific measures, but also general and abstract measures aimed at a given category of services and, whether those measures are capable of falling within the concept of “measures taken against a given information society service” within the meaning of article 3 paragraph 4 of the E-commerce Directive.

On this matter, the Court first provided a literal interpretation of the said article and noted that the possibility of derogating from the principle of free movement of information society services concerns a "*given* information society service". The use of the word "given" tends to indicate that the service in question must be understood as an individualised service. In other terms, member states may not

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adopt measures of a general and abstract nature which apply without distinction to any provider of a category of information society services. The term 'without distinction' means providers established in that member state and providers established in other member states. The CJEU also addressed in particular the concept of "*measures*" as provided in the E-Commerce Directive and stated that, although such a broad and general concept leaves member states the discretion as to the nature and form of the measures that may be taken to derogate from the principle of free movement of information society services, it does not in any way prejudge the substance or material content of those measures.

In addition, the CJEU recalled that the possibility of derogating from the principle of free movement is subject to the condition that the member state of destination of such services must first request the member state of origin to take measures (according to Article 3, paragraph 4 (b)), which also presupposes the possibility of identifying the providers and, consequently, the member states concerned.

The Court also pointed out that the E-commerce Directive is intended to remove legal obstacles to the proper functioning of the internal market arising from the divergence of legislation and the legal uncertainty of the national regimes applicable to those services. However, the possibility of adopting the aforementioned measures would ultimately mean subjecting the service providers concerned to different legislation and, consequently, reintroducing the legal obstacles to freedom to provide services that this directive aims to remove. The E-commerce Directive is based on the application of the principles of control in the member state of origin and of mutual recognition, so that, within the coordinated field, information society services are regulated only in the member state on whose territory the providers of those services are established.

The Court concluded that a member state may therefore not subject a provider established in another member state to general and abstract obligations.

Judgment of the Court (Second Chamber) in Case C-376/22, Google Ireland and others, 9 November 2023

https://curia.europa.eu/juris/document/document.jsf?text=&docid=279493&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=550990

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Administrative arrangement between the Irish regulatory Authority and the European Commission to support the enforcement of the DSA

Amélie Lacourt
European Audiovisual Observatory

On 20 October 2023, the Directorate General Communications Networks, Content and Technology of the European Commission – DG CONNECT – responsible for digital policies, signed an administrative arrangement with the Irish media regulator (*Coimisiún na Meán*) to support the enforcement of the Digital Services Act (DSA). This bilateral arrangement follows the Commission Recommendations to member states for coordinating their response to the spread and amplification of illegal content on Very Large Online Platforms (VLOPs) and Very Large Online Search Engines (VLOSEs), ahead of the deadline for Member States to play their role in the enforcement of the DSA.

According to the European Commission, ensuring closer cooperation with member states and national regulatory authorities has become even more crucial to achieve this in the current context of conflict and uncertainty.

This agreement establishes that both participants "intend to cooperate in order to increase common supervisory expertise in the area of digital regulation and, in particular, with regard to those services designated by the Commission as [VLOPs] and [VLOSEs]". The Agreement also sets out, *inter alia,* a list of objectives, fields of cooperation, and modes of cooperation. According to Jeremy Godfrey, Executive Chair of the Irish regulatory authority, "thirteen of the nineteen VLOPs and VLOSEs have their EU headquarters in Ireland, [meaning] that *Coimisiún na Meán* will have a special role, working in tandem with the European Commission (…)".

Although not intended to create any rights or obligations on any of the participants under EU or national law, the agreement aims to enhance cooperation and share knowledge in relation to the enforcement of the DSA. This applies in particular as regards the assessment of systemic risks, and the early flagging of emerging ones, and to contribute to ensuring that the results obtained are used to support supervisory expertise and capabilities. The objectives pursued cover in particular the exchange of information, data, good practices, methodologies, technical systems and tools with the purpose of supporting supervisory efforts.

As per the agreement, the participants are intended to share with each other research, reports or any other general information falling within the scope of the arrangement. Besides, either party may ask for specific information or data. In addition, DG CONNECT may ask the Irish regulator to collect evidence to support the Commission's powers in connection with the supervision, investigation,

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enforcement and monitoring of VLOPs and VLOSEs, and to produce a report on a specific situation with potential regulatory implications, also within the scope of the arrangement.

A similar agreement has been established between the European Commission and French regulatory Authority (ARCOM). According to the Commission, DG CONNECT is in discussions with other national regulators and EU bodies to sign similar administrative arrangements to support it in its assessment of systemic and emerging issues under the DSA. Thierry Breton, Commissioner for Internal Market, welcomed “these first agreements with national regulators which will ensure their expertise supports the Commission’s assessment of the risks stemming from illegal and harmful content on very large online platforms.”

Administrative arrangement between Directorate General Communications Networks, Content and Technology of the European Commission and Coimisiún na Mean

https://www.cnam.ie/wp-content/uploads/2023/10/AA-CONNECT-Coimisiun-na-Mean.pdf

Commission recommendation of 20.10.2023 on coordinating responses to incidents in particular arising from the dissemination of illegal content, ahead of the full entry into application of Regulation (EU) 2022/2065 (the ‘Digital Services Act’)

https://ec.europa.eu/newsroom/dae/redirection/document/99469

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European Commission recommendations to accelerate DSA governance to enhance response to online illegal content

Amélie Lacourt
European Audiovisual Observatory

At the end of August 2023, the Digital Services Act (DSA) became legally enforceable for designated Very Large Online Platforms (VLOPs) and Very Large Online Search Engines (VLOSEs). For more information, refer to IRIS 2023-5:1/2 and IRIS 2023-9:1/7. The designated platforms have now completed the first annual risk assessment exercise to examine risks such as how illegal content might be disseminated through their services.

On 18 October 2023, the European Commission published a set of recommendations for member states to coordinate their response to the spread and amplification of illegal content, such as terrorist content or unlawful hate speech. This Recommendation was also introduced in view of the unprecedented period of conflict and instability affecting the European Union. The aim is for member states to support the Commission in ensuring full compliance by VLOPs and VLOSEs, with their new obligations under the DSA, ahead of the deadline for member states to play their role in its enforcement.

The Recommendation focuses in particular on three elements: the Digital Service Coordinators, incident protocols and the instruments to tackle illegal content.

Digital Service Coordinators

Under the DSA, member states have to designate a Digital Services Coordinator (DSC), an independent authority to supervise the compliance of the online services established on their territory, by 17 February 2024. The Commission is encouraging them to designate one already now, ahead of the 2024 deadline, and to coordinate their actions through an Informal Network in relation to the dissemination of illegal content on VLOPs and VLOSEs that have already been designated. The effective monitoring and enforcement of the DSA by the Commission in relation to those designated VLOPs and VLOSEs indeed requires the assistance of and active cooperation with member state national authorities.

Incident protocols

The Commission further recommends cooperation with the Information Network in case of incidents, in particular arising from the dissemination of illegal content, posing a clear risk of intimidating groups of population and destabilising political and social structures in the Union or parts thereof, including those which risk leading to a serious threat to public security or public health in the Union or in significant parts of it. Where extraordinary circumstances justify it, the Commission therefore recommends that the Informal Network of prospective

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DSCs meets on a regular basis to achieve a coordinated understanding of the development of the extraordinary circumstances at national level and to propose a framework for any follow-up action that may be considered necessary in view of the identified extraordinary circumstances.

Instruments to tackle illegal content online

According to the Commission, the multiplicity of national and Union legislation and different forms of coordination in relation to illegal content increases the need to ensure coordination between member states in the phase leading up to the full application of the DSA. In this context, it also recalls that several voluntary cooperation frameworks already exist to address the dissemination of illegal content online and encourages member states' participation thereto. These include in particular the EU Crisis Protocol, which provides for a voluntary mechanism to respond to a suspected crisis in the online space, stemming from a terrorist or a violent extremist act. Member states are encouraged to coordinate via international fora for counter terrorism, such as the Christchurch Call and the industry-led Global Internet Forum to Counter Terrorism. In addition, the Commission refers to the powers conferred on member states by the different instruments under European Union law, such as the Regulation on addressing the dissemination of terrorist content online, in force since June 2022.

The Recommendation will apply until 17 February 2024. After that date, the enforcement framework established in the DSA will apply fully, including the Board for Digital Services, which will be composed of independent Digital Service Coordinators of the member states.

Commission recommendation of 20.10.2023 on coordinating responses to incidents in particular arising from the dissemination of illegal content, ahead of the full entry into application of Regulation (EU) 2022/2065 (the 'Digital Services Act')

https://ec.europa.eu/newsroom/dae/redirection/document/99469

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IMCO Committee adopts Report on addictive design of digital platforms

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On 25 October 2023, the European Parliament's Committee on Internal Market and Consumer Protection (IMCO) adopted an important new Report on the addictive design of online services and consumer protection in the EU single market. Notably, the Report stressed that the issue of addictive design is “not sufficiently covered” in existing EU legislation, and if unaddressed could lead to “further deterioration” in public health, especially affecting minors. Crucially, the Report called on the European Commission to examine which policy initiatives are needed and present legislation against addictive design, where “appropriate and necessary”.

The first draft of the Report was published in July 2023, with compromise amendments published on 18 October 2023. It opens by noting that many digital services, such as online games, social media, streaming services for films, series or music, online marketplaces or web shops and dating apps are “designed to keep users on the platform for as long as possible so as to maximise the time and money they spend there”; and many online services are “designed to be as addictive as possible”. Further, the Report expresses alarm that certain platforms and other tech companies “exploit psychological vulnerabilities” to design digital interfaces for commercial interests that “maximise the frequency and duration of user visits, so as to prolong the use of online services and to create engagement with the platform”.

In this regard, the Report calls on the Commission to examine which policy initiatives are needed and present legislation against addictive design, where appropriate and necessary. Notably, if the topic remains “unaddressed”, Parliament should be the “frontrunner and use its right of legislative initiative”. In additon, the Report “demands” that in its review of existing EU legislation on addictive design, the Commission puts forward a digital “right not to be disturbed” to empower consumers by turning all attention-seeking features off by design. The Report also urges the Commission to foster ethical design of online services by default; and calls on the Commission to create a list of “good practices” of design features that are not addictive or manipulative and ensure users are fully in control and can take “conscious and informed actions online without facing an information overload or subconscious influencing”.

Finally, the Commission is currently reviewing the Unfair Commercial Practices Directive, Consumer Rights Directive, and Unfair Contract Terms Directive, and the Report urges the Commission in its review to ensure a high level of protection in the digital environment with attention to tackling the growing issues around the “addictive, behavioural and manipulative design of online services”.

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European Parliament, New EU rules needed to make digital platforms less addictive, 25 October 2023

https://www.europarl.europa.eu/news/en/press-room/20231023IPR08161/new-eu-rules-needed-to-make-digital-platforms-less-addictive

Committee on the Internal Market and Consumer Protection, Final Compromise Amendments 1 - 22 on the Draft Report on addictive design of online services and consumer protection in the EU single market, 18 October 2023

https://www.europarl.europa.eu/meetdocs/2014_2019/plmrep/COMMITTEES/IMCO/DV/2023/10-25/15-CAs_AddictiveDesignEN.pdf

Committee on the Internal Market and Consumer Protection, DRAFT REPORT on addictive design of online services and consumer protection in the EU single market (2023/2043(INI)), 19 July 2023

https://www.europarl.europa.eu/doceo/document/IMCO-PR-750069_EN.pdf

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Platform regulation and DSA implementation: ARCOM and European Commission increase cooperation

Amélie Blocman
Légipresse

While the wars in the Middle East and Ukraine, together with recent terrorist attacks in France and Belgium, have only served to exacerbate the online dissemination of hate content and disinformation, these events and their repercussions have highlighted and increased the urgent need to implement the Digital Services Act (DSA). In this context, on 18 October, the European Commission adopted a recommendation urging each EU member state to appoint an independent authority to join a network of Digital Services Coordinators before 17 February 2024.

Shortly afterwards, on 23 October, Roch-Olivier Maistre, president of the *Autorité de régulation de la communication audiovisuelle et numérique* (the French audiovisual regulator – ARCOM), and Roberto Viola, Director-General for Communications Networks, Content and Technology at the European Commission, signed a cooperation agreement strengthening the operational links between their respective institutions with regard to the regulation of online platforms. This agreement should make it possible to monitor more effectively the compliance of very large online platforms and search engines with obligations under the DSA that came into force on 25 August 2023. It will also make it easier for the Commission to investigate potential infringements of the DSA.

To this end, the agreement facilitates the exchange of information and analysis between ARCOM and the European Commission. ARCOM will, in particular, present its findings and specific expertise relating to the activities of large online platforms in France. As the first practical illustration of this enhanced cooperation, it is already sharing with the European Commission its initial findings, gathered with the help of the administrative authorities and civil society stakeholders, on the moderation of content linked to the conflict in the Middle East.

Concluded for a renewable one-year term, the agreement is immediately applicable. It therefore covers the period leading up to the official appointment of France's Digital Services Coordinator, which needs to be completed by 17 February 2024. Under the *Projet de loi visant à sécuriser et réguler l'espace numérique* (Digital Safety and Regulation Bill), which is currently being debated by the French parliament, this role will be filled by ARCOM. ARCOM will therefore be responsible for ensuring coordination between the various national authorities concerned, the *Commission Nationale de l'Informatique et des Libertés* (the French data protection authority – CNIL), the competition and consumer protection authority and itself. It will also sit on the Board of Digital Services Coordinators and help to monitor very large online platforms and search engines that fall under the European Commission's jurisdiction. At national level, ARCOM

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will be in charge of monitoring the obligations of services established in France. If these services fail to meet their obligations, ARCOM will be able to issue sanctions, including fines of up to 6% of their global turnover.

The agreement may be amended in the future, taking into account the experience gained and changing priorities.

Arcom, communiqué du 23 octobre 2023

https://www.arcom.fr/sites/default/files/2023-10/CP-R%C3%A8glement%20sur%20les%20services%20num%C3%A9riques-lArcom%20et%20la%20Commission%20europ%C3%A9enne%20renforcent%20leur%20coop%C3%A9ration%20op%C3%A9rationnelle.pdf

ARCOM, press release of 23 October 2023

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Report adopted recommending new EU legislation on working conditions of artists and other cultural professionals

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On 24 October 2023, the European Parliament's Committee on Culture and Education (CULT) and Committee on Employment and Social Affairs (EMPL) adopted a notable Report on the social and professional situation of artists and workers in the cultural and creative sectors. Importantly, the Report requests that the European Commission submit proposals for legislative instruments establishing an EU Framework on the social and professional situation of artists and other professionals in the cultural and creative sectors (CCS). In particular, a Directive on "decent working conditions" of CCS professionals.

The 33 page Report was adopted by 43 votes to five, and three abstentions, by the CULT and EMPL committees. The Report opens by noting that the cultural and creative sectors play an "essential role" in ensuring the delivery of culture as a public good and the cultural rights of European citizens. However, the Report notes that the living and working conditions of CCS professionals can be "characterised by precariousness, instability and the intermittent nature of their work", with "unpredictable incomes, weaker bargaining power in relation to their contractual counterparts, short-term contracts, weak or no social security coverage, and a lack of access to unemployment support". In this regard, the Report deals with a number of notable issues, including the status of artists; access to social protection and decent working conditions for CCS professionals; fair remuneration, practices and funding in the CCS sector; gender equality and measures against workplace harassment and discrimination in the cultural and creative sectors; and digital challenges, including the spread of powerful generative AI systems to generate content.

Crucially, the Report calls for the creation of a legal EU framework to improve the social and professional conditions in the CCS. This would include (a) a Directive on decent working conditions for CCS professionals and the correct determination of their employment status; (b) a European platform to "improve the exchange of best practice and mutual understanding among member states to improve working and social security conditions with the involvement of social partners"; and (c) adapting EU programmes that fund artists, such as Creative Europe, to include "social conditionality to contribute to the compliance with EU, national or collective labour and social obligations".

The European Parliament will later vote on the initiative; and the Commission will then have three months to reply by either informing the Parliament on steps it plans to take or giving reasons for any refusal to propose a legislative initiative along the lines of Parliament's request.

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European Parliament, Status of the artist: improve working conditions of artists and cultural workers, 24 October 2023

https://www.europarl.europa.eu/news/en/press-room/20231023IPR08139/status-of-the-artist-improve-working-conditions-of-artists-and-cultural-workers

Committee on Employment and Social Affairs and Committee on Culture and Education, Report with recommendations to the Commission on an EU framework for the social and professional situation of artists and workers in the cultural and creative sectors, 25 October 2023

https://www.europarl.europa.eu/doceo/document/A-9-2023-0304_EN.html#_section5

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NATIONAL

GERMANY

[DE] Administrative Court overturns media authority decision on TV programme's human dignity violation

Christina Etteldorf
Institute of European Media Law

In a ruling of 11 October 2023 (case no. 11 A 185/21), the *Schleswig-Holsteinische Verwaltungsgericht* (Schleswig-Holstein Administrative Court) overturned a decision of the *Medienanstalt Hamburg/Schleswig-Holstein* (Hamburg/Schleswig-Holstein media authority – MA HSH) alleging a breach of human dignity and programming guidelines by private broadcaster Sat.1. The MA HSH had ruled that a sequence in the real-life documentary series "*Lebensretter hautnah – Wenn jede Sekunde zählt*" showing a person who had suffered a serious seizure had been voyeuristic and sensationalist, violating human dignity under Article 4(1)(1)(8) of the German *Jugendmedienschutzstaatsvertrag* (state treaty on the protection of minors in the media – JMStV). However, the *Verwaltungsgericht* ruled that the sequence had not breached human dignity and overturned the decision.

The TV series "*Lebensretter hautnah*" follows the work of paramedics in Germany, showing video footage of emergencies and the paramedics' response in an edited series format. The episode broadcast on 2 November 2020 showed a man who had suffered a seizure in a supermarket. In a sequence lasting around 15 minutes, unpixellated images of the unconscious man's motionless, bloody face were shown, with foam around his mouth, as the paramedics tried to save him. Viewers could also see the man lying helpless on the floor with his upper torso exposed. Audio and video footage of his journey to hospital was also shown. The MA HSH believed this infringed Article 4(1)(1)(8) JMStV, which states that broadcast and telemedia content is illegal if it violates human dignity, especially by presenting people who are dying or those who are, or were, exposed to serious physical or mental suffering while reporting actual facts without any justified public interest in such form of presentation or reporting being given. The voyeuristic and sensationalist depiction of the man's suffering was considered by the MA HSH as an example of such unlawful content. The scenes of suffering and close-up shots of the man's face in particular had been shown, with commentary and a variety of background music, not once but several times. The footage of the paramedics' work had also been interrupted with other storylines in order to create tension among the viewers, so the sequence had not shown the event as it had actually unfolded. The man's suffering had therefore been deliberately dragged out for dramatic effect, even though it could easily have been shown in a different way. Although the programme's portrayal of the important, exhausting work carried out by paramedics was commendable, this could have been achieved without showing such gratuitous human suffering. The MA HSH also rejected the

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broadcaster's argument that the programme had shown a real-life event and was therefore authentic rather than voyeuristic.

However, the *Verwaltungsgericht* disagreed. It held that the scenes in question had not violated human dignity in the manner described in Article 4(1)(1)(8) JMStV. In order to judge if human dignity had been infringed, it was necessary to examine the overall character of the programme. In this case, i.e. the portrayal of paramedics' day-to-day work, the main focus of the programme had not been inhumane, but, first and foremost, a realistic presentation of real events.

The decision is not yet final and is open to appeal for a one-month period.

Pressemitteilung des Verwaltungsgerichts

https://www.schleswig-holstein.de/DE/justiz/gerichte-und-justizbehoerden/OVG/Presse/PI_VG/2023_10_13_Klage_Seven-One_erfolgreich.html

Administrative Court press release

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[DE] Comprehensive revision of Saarland media law with new rules for public service broadcasting and media regulation

Sven Braun
Institute of European Media Law

On 17 October 2023, the Saarland state parliament adopted a law modernising Saarland media law. Under the reform, a separate law concerning the public service broadcaster *Saarländischer Rundfunk* (SR) was created, with structural changes to its management and internal control. Meanwhile, the provisions relating to the supervisory body, the *Landesmedienanstalt Saarland* (LMS), were amended, including changes to its governing bodies and director election procedure as well as the broadening of its remit.

SR is one of the nine regional public service broadcasters in Germany. Under the amendment, the rules governing it, previously contained in the *Saarländische Mediengesetz* (Saarland Media Act – SMG), were incorporated in a separate *SR-Gesetz* (SR Act), bringing the legal situation into line with that of the other regional broadcasters. In terms of content, SR's future programming should improve regional news reporting, including cross-border cooperation with partners in neighbouring France and Luxembourg. The requirements in terms of public service programming were also more clearly explained, and entertainment, for example, was specifically mentioned as part of the public-service remit, provided it retained the appropriate profile.

The most hotly debated changes concern organisational matters. The SR director-general, who previously had sole overall control of the broadcaster, will instead form part of a three-person board of directors along with an administrative and technical director, and a programming and information director. In response to widespread criticism of the proposals, another important change was approved during the last parliamentary session before the final vote. As a result, the director-general will remain responsible for determining overall policy and will have the casting vote at board meetings. At the same time, the director-general's salary will be capped in order to increase public acceptance of the use of the revenue generated by the broadcasting levy paid by every household in Germany to fund public broadcasting. The salary, currently set at EUR 245,000, will be limited to EUR 180,000. Further organisational changes concern the internal supervision of programming by the *Rundfunkrat* (Broadcasting Council), which will be significantly smaller in size. Four other amendments are particularly notable. Firstly, in order to increase the broadcaster's independence and separation from the state, the federal state government will no longer have a representative on its Broadcasting Council. For the same reason, although some Broadcasting Council members will still be appointed by parliamentary groups from the Saarland state parliament, these members will no longer have voting rights and will be limited to an advisory role. Secondly, in order to increase social diversity within the Broadcasting Council, organisations that appoint members will no longer be named in the law (e.g. Saarland Chamber of Crafts), but rather the types of

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organisation they represent will be specified (e.g. chambers of commerce and professional associations). This should make the Broadcasting Council's structure more dynamic and open to social changes. Thirdly, one such group of organisations, which was not previously included, is defined in the law as "digital society and digital economy". From this sector, for example, media platform representatives will be appointed in order to reflect the growing importance of the digital revolution and the platform economy. In principle, the Broadcasting Council will have equal numbers of male and female members. Male members will always be replaced by a female at the end of their terms and vice versa. Fourthly, the Broadcasting Council's work will be made more transparent through the live broadcast of its meetings and the development of public dialogue forums.

As one of Germany's 14 *Landesmedienanstalten* (state media authorities), the LMS issues licences to private broadcasters in Saarland, monitors their compliance with the law and undertakes further tasks, such as protecting media pluralism. Under the amended law, its remit has been broadened and now includes the possibility of promoting local journalism for the first time. From an organisational point of view, its political independence will be increased since, as is already the case with the other state media authorities, its director will no longer be appointed by the *Landtag* (state parliament), but by the independent *Medienrat* (Media Council). In order to increase its independence, the *Medienrat*, which supervises the programming of private broadcasters, will undergo the same changes as the SR Broadcasting Council, in particular with regard to its composition. In terms of both the LMS's remit and providers' obligations, the law takes account of accelerating digitisation and the use of artificial intelligence in the media sector.

The newly revised SMG is the first piece of legislation in Germany to expressly state that the use of artificial intelligence (AI) or virtual elements does not release media from their obligation to exercise journalistic due diligence. Responsible media use of AI should, on the one hand, be transparent in terms of identifying AI-produced content. On the other, media should prevent manipulation and discrimination, and guarantee the authenticity of their reporting. By setting out these requirements, the legislator has emphasised the importance of media freedom and diversity when AI is used.

After its adoption by the *Landtag*, the law entered into force the day after it was promulgated and replaces the previous SMG.

Gesetz Nr. 211 zur Modernisierung des saarländischen Medienrechts vom 17. Oktober 2023

https://www.landtag-saar.de/File.ashx?FileId=69226&FileName=G2113.pdf

Act no. 211 modernising Saarland media law, 17 October 2023

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[DE] State media authorities' new FAQs on media intermediary transparency obligations

Christina Etteldorf
Institute of European Media Law

On 10 October 2023, the German *Landesmedienanstalten* (state media authorities) published their new transparency-related FAQs for media intermediaries. The FAQs are designed to explain to intermediary services, i.e. mainly search engines and social networks, how they can meet their transparency obligations under the 2020 *Medienstaatsvertrag* (state media treaty – MStV). They also stress that these rules, which promote media diversity, apply regardless of the entry into force of the Digital Services Act (DSA), which also contains transparency obligations for online platforms and search engines and already applies to certain very large providers.

The term "media intermediary" is defined in the MStV as a service that aggregates, selects and generally presents third-party journalistic-editorial offers without combining them into an overall offer. It mainly covers the aggregation of content relevant to the formation of opinion, such as the content of a social network newsfeed or the search results of an online search engine. Article 93(1) MStV imposes certain transparency obligations on media intermediaries. In order to ensure diversity of opinion, they must make the following information easily understandable, directly accessible and continuously available: the criteria that serve as the basis for the decision as to whether content is accessible to a media intermediary and whether it remains that way, and the central criteria of an aggregation, selection and presentation of content and the weighting thereof, including information about the functionality of the implemented algorithms in plain language. They are therefore required, firstly, to tell users why they are being shown particular content (or not) and, secondly, to explain to content providers which criteria are used to determine when their content is played and when it is not. In order to help media intermediaries better understand the provisions of both the state treaty and the *Satzung der Landesmedienanstalten zur Regulierung von Medienintermediären* (state media authority statute on the regulation of media intermediaries - *MI-Satzung*), adopted under Article 96 MStV to regulate the details of the treaty, the recently published FAQs lay down minimum standards that they must uphold in order to meet their transparency obligations.

The FAQs begin by explaining that the MStV's provisions apply in their current form regardless of those of the DSA. Unlike the DSA, which is mainly aimed at safeguarding the Digital Single Market from an economic point of view, the primary aim of the MStV is to protect plurality of opinion and media diversity. As well as the MStV's scope of application, the FAQs deal with practical aspects of transparency. For example, in the media authorities' view, it is unacceptable that users should only be informed about transparency when they initially access a service, e.g by opening an app. Although such pop-ups are relatively prominent

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for a short time, they then disappear, meaning that the information is not, as the legislation requires, available throughout the time of usage. Transparency information should be available when logging in to a service and via all types of access (desktop, mobile, app) so it can be found by all interested parties. As a rule, a clearly labelled, easy-to-find (e.g. not hidden in the settings) and understandable link (e.g. “How the rankings work”) must be provided to enable users to find the relevant information. It is not sufficient to require users to carry out an active search. Rather, via the link provided, users must be able to find all the essential information in the same place with no more than two clicks. Additional links should therefore always be preceded by a one-pager containing all the essential basic details. In order to be easily understandable, transparency information (in German) should, generally speaking, appear in short sentences, without any technical language, and include practical examples or diagrams. In order to ensure accessibility, explanations should always be available, while users should be able to use a voice assistant to have the information read aloud if they wish.

FAQ für Medienintermediäre in Sachen Transparenz

https://www.die-medienanstalten.de/fileadmin/user_upload/die_medienanstalten/Themen/Medienintermediaere/20230929_FAQ_Medienintermedia__re_final_ua.pdf

Transparency-related FAQs for media intermediaries

Pressemitteilung der Medianstalten 18/2023 vom 10. Oktober 2023

https://www.die-medienanstalten.de/service/pressemitteilungen/meldung/google-instagram-co-muessen-den-transparenzpflichten-des-medienstaatsvertrags-unveraendert-nachkommen-trotz-inkrafttreten-des-digital-services-act

Media authorities press release 18/2023 of 10 October 2023

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SPAIN

[ES] Concern about the exposure of minors to harmful audiovisual content increases in Spain but parental control is rarely implemented

Azahara Cañedo & Marta Rodriguez Castro

According to the latest Spanish Household Panel Survey, carried out by the National Commission on Markets and Competition (*Comisión Nacional de los Mercados y la Competencia* – CNMC), the concern about the exposure of minors to audiovisual content that could be detrimental to their physical and mental development is very high in Spain. However, perceptions vary depending on the age of the child. On the one hand, in households having children between 0 and 6 years of age, the concern revolves around explicitly violent content. On the other hand, in those households that have teenagers between 12 and 15 years of age, the percentage of concern is higher for content that may show dangerous behaviours that could be imitated.

The study shows that 86.1% of Spanish households having underage members are aware of the existence of child protection schedules on television, while this percentage drops to 72.6% when it comes to those who are aware of the tools for blocking or filtering audiovisual content. However, it is noteworthy that most of the households do not run any parental control options. Thus, 77.55% of the sample recognise that they do not have any parental control activated for traditional TV content, while in the case of VOD platforms and social media, this figure is reduced to 62.6% and 60.6%, respectively. In all cases, there was a significant increase with respect to previous years.

Beyond the confirmation of a greater concern about content disseminated through social media , the data also indicates that there is no understanding of how to complain or protest about audiovisual content for minors. Almost 75% of the sample confirms this. In this vein, 96.4% recognise that, in the last two years, they have not complained or protested about any audiovisual content aimed at children and teenagers.

Spanish Household Panel Survey CNMC – October 27, 2023

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[ES] The Spanish National Commission on Markets and Competition agrees on the transfer of sensitive information to the Ministry of Economic Affairs and Digital Transformation regarding the obligations relating to the promotion of European audiovisual works

Azahara Cañedo & Marta Rodriguez Castro

Article 5 of the Spanish General Law on Audiovisual Communication (Law 7/2010 of 31 March 2010) establishes a series of obligations relating to the promotion of European audiovisual works for television providers, electronic communication service providers broadcasting television channels and programme catalogue providers. According to this article, 5% of the revenues of these audiovisual providers must finance audiovisual works of various types (such as cinematographic films, films and television series, documentaries and animated series). To ensure this, the law establishes a system of quotas for the protection of Spanish audiovisual works, with special emphasis on the independent film industry, and the production of audiovisual content in the official languages of Spain.

The competent body for verifying compliance with this obligation is the Spanish National Commission on Markets and Competition (*Comisión Nacional de los Mercados y la Competencia* – CNMC). Therefore, on 31 May 2023, the General Directorate of Telecommunications and Management of Audiovisual Communication Services (*Dirección General de Telecomunicaciones y Ordenación de los Servicios de Comunicación Audiovisual* – DGTELECO), asked the CNMC for sensitive information on this process with a view to drafting a regulatory initiative on the obligations to promote European works. DGTELECO, which is part of the Spanish Ministry of Economic Affairs and Digital Transformation, requested the following information relating to the year 2021:

1) For each of the providers obliged to comply with the obligation:

a. Revenues computed in the fiscal year and which have been taken as the basis for calculating the lender's financing obligation (5%).

b. The advance financing obligation in European works of each provider obliged to comply with the obligation.

c. Investment finally acounted for the provider.

2) For each of the providers that have made the contribution:

a. The provider(s) that have made the contribution.

b. The title of the audiovisual work.

c. The type of audiovisual format of the work.

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d. An indication of whether the audiovisual work has been computed for compliance with the independent audiovisual work obligation.

e. An indication of whether the audiovisual work has been computed for compliance with the obligation of being produced in Spanish languages, indicating, if applicable, those works produced in the official languages of the Autonomous Communities.

f. An indication of how the provider has executed the obligation, specifically:

• Compliance through direct participation in the production.

• Compliance through the acquisition of exploitation rights of the audiovisual work.

As of 28 September 2023, the Regulatory Oversight Board of the CNMC Council has agreed to transfer this information to DGTELECO in application of the legislation in force. However, it clarifies that the CNMC does not have information on the language of production of the audiovisual work nor on the forms of direct participation, as providers are not obliged to report this. Moreover, the CNMC observes that the use of this sensitive information provided must be limited to what is required for the fulfilment of the functions entrusted to DGTELECO by virtue of its powers, specifically, the preparation of the aforementioned new regulation on the obligations to promote European works, on the understanding that this information cannot be passed on to third parties.

Agreement to provide DGTELECO with confidential information on the obligation established in Article 5.3 of Law 7/2010 of 31 March 2010, the General Law on Audiovisual Communication, for the fiscal year 2021 (IFPA/DTSA/192/23/DGTELECO)

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FRANCE

[FR] Publication of addendum to agreement amending media chronology

Amélie Blocman
Légipresse

On 25 September, an addendum to the agreement amending media chronology of 24 January 2022 was adopted, providing for two experiments on the blackout period stipulated in the co-exploitation agreement between free-to-view television channels and subscription-based on-demand audiovisual media services. The Minister of Culture implemented the addendum under a decree of 29 September 2023.

Under the agreement of 24 January 2022, platforms are required to wait 17 months after a film's cinema release before making it available online, and must withdraw access to it when the free-to-view window opens. The first change to be trialled concerns the blackout period stipulated in the co-exploitation agreement and applies to works not produced by a subscription-based on-demand audiovisual media service or its affiliates, or whose production costs are above EUR 5 million. Such works may not be made available by subscription-based on-demand audiovisual media services from the time the relevant window opens until at least one month after they are first broadcast by the free-to-view television service concerned.

The second change concerns works produced by subscription-based on-demand audiovisual media services or their affiliates with a production cost greater than EUR 25 million and that are not prefinanced by a free-to-view television service.

On a trial basis and by way of derogation from the provisions of the media chronology agreement, the co-exploitation agreement makes provision for a two-month continuous blackout period around the first planned broadcast of a work, during which subscription-based on-demand audiovisual media services may not show the work concerned. The dates of the blackout period, which can only be triggered once for each work, are determined by the free-to-view television service concerned and must fall during its exploitation window. The television service must inform the on-demand audiovisual media service of its chosen blackout period at least two months before it starts.

These trials will apply to contracts concluded during the remainder of the term of the media chronology agreement.

Arrêté du 29 septembre 2023 portant extension de l'avenant du 25 septembre 2023 à l'accord pour le réaménagement de la chronologie des médias du 24 janvier 2022, JO du 6 octobre 2023

https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000048158944

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Decree of 29 September 2023 implementing the addendum of 25 September 2023 to the agreement amending media chronology of 24 January 2022, official gazette of 6 October 2023

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[FR] Request to block pornographic website: Internet access providers can be taken to court before acting against hosting providers, publishers or authors

Amélie Blocman
Légipresse

Two child protection organisations filed a summons against several Internet access providers, asking the court to order them to take every appropriate step to block access to various pornographic websites on French soil.

The appeal court considered the requests inadmissible on the grounds that, before Internet access providers were asked to block access, it had to be proven that effective, rapid legal action could not be taken against the host, publisher or author, and that the organisations concerned had failed to do this. In addition, since all the websites concerned were published by a company with an address within the European Union, it would have been possible to take action against the website hosts, some of which could have been identified using free “Who Hosts This?” services or “Whois”. The organisations filed an appeal with the Court of Cassation.

The Court of Cassation noted that, under Article 6-I.8 of Law no. 2004-575 of 21 June 2004 on confidence in the digital economy, in the version prior to that contained in Law no. 2021-1109 of 24 August 2021, the judicial authority could, in summary proceedings or on request, order measures against any natural or legal person who, even free of charge, for the purpose of making them available to the public through online public communication services, stored signals, written data, images, sounds or messages of any kind provided by the recipients of these services, or, failing that, any person who offered access to such services, in order to prevent or put an end to harm caused by the content of such a service.

Therefore, the admissibility of a request that Internet access providers be required to take such measures was not dependent on legal action having already been taken against the hosts, publishers or authors of the content, nor on the provision of proof that such action could not be taken. The appeal court had therefore violated the aforementioned law.

Civ. 1re, 18 octobre 2023, n°22-18.926, Associations La voix de l’enfant et e-Enfance

https://www.courdecassation.fr/en/decision/652f7686b0532083189957da

Court of Cassation, 1st civil chamber, 18 October 2023, case no. 22-18.926, La voix de l'enfant and e-Enfance

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[FR] National Assembly adopts Digital Safety and Regulation Bill

Amélie Blocman
Légipresse

On 17 October, the French National Assembly adopted, on first reading, the *Projet de loi visant à sécuriser et réguler l'espace numérique* (Digital Safety and Regulation Bill), which had previously been adopted on first reading by the Senate on 7 July. Under the accelerated procedure launched by the government, a joint committee is now expected to meet, probably in December.

This extensive piece of legislation aims to strengthen the "protection of minors online" and of "citizens in the digital world", "confidence and competition in the data economy", "the governance of digital regulation" and to "adapt the national law", in particular by transposing the European Digital Services Act (DSA) and Digital Markets Act (DMA).

To this end, the bill gives the *Autorité de régulation de la communication audiovisuelle et numérique* (French audiovisual regulator – ARCOM) new powers to monitor the accessibility of online pornography to minors and to draw up technical requirements that must be met by age verification systems restricting access to such content. During their deliberations, the members of the National Assembly extended the age verification requirements to include online gambling services. The adopted text includes the formal notice and sanction procedure for companies that breach the ARCOM requirements, and sets the maximum fines for repeated infringements by Internet access providers, search engines or directories (EUR 150,000 or 2% of global turnover), and publishers (EUR 500,000 or 6% of global turnover). After Article 3, which sanctions hosting providers that fail to comply with a request to remove child pornography, an additional article was created, extending the obligation for hosting providers to remove such content to include sexual content involving adults that is disseminated without their consent. While child pornography must be removed within 24 hours of receipt of an injunction from the administrative authority, content involving adults must be taken down within seven days.

In an effort to raise awareness of the fight against disinformation, a new Article 4a makes it an offence to publish deepfakes, i.e. audio or video content created by an algorithm that reproduces a person's image or voice and is published without their consent, if it is not obvious or expressly stated that it was generated by an algorithm. Under Article 5, an additional ban of between six months and one year is introduced for those convicted of certain criminal offences (child pornography, pimping, Holocaust denial, glorification of terrorism, sexual harassment of a spouse or schoolchild, direct public incitement to commit certain serious offences, etc.), requiring online platforms to block accounts used to commit such offences. Criminals convicted of these offences may also be prohibited from creating new accounts.

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It should also be noted that Article 29 of the bill revokes three provisions of the Law of 22 December 2018 on combating the manipulation of information (chapter III concerning online platform operators' duty to cooperate in the fight against the dissemination of false information).

Finally, amendments aimed at limiting anonymity on the Internet were not adopted, while the proposal to introduce fixed fines for racist or sexist public insults or defamation committed online was also dropped.

Projet de loi n°175, modifié, par l'Assemblée nationale, visant à sécuriser et réguler l'espace numérique

https://www.assemblee-nationale.fr/dyn/16/textes/l16t0175_texte-adopte-seance

Digital Safety and Regulation Bill no. 175, amended by the National Assembly

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[FR] Regulatory amendments concerning programming commitments and cinema passes

Amélie Blocman
Légipresse

Under a recently adopted decree, the *Code du cinéma et de l'image animée* (Cinema and Animated Image Code – for more information about the process, see IRIS 2022-10:1/1) was amended to take into account certain recommendations contained in the report entitled "*Cinéma et régulation - Le cinéma à la recherche de nouveaux équilibres : relancer des outils, repenser la régulation*" (Cinema and regulation – Cinema in search of new balances : relaunching tools, rethinking regulation) that was submitted to the Ministers of Culture and the Economy by Bruno Lasserre, former *Conseil d'Etat* (Council of State) vice-president and former president of the French competition authority, last April (IRIS 2023-5:1/12).

Firstly, one of the key issues identified in the report is the need to safeguard the diversity of works and their distribution throughout the country. Programming commitments are the main regulatory tool for achieving this. These commitments are obligations concerning cinema programmes, which are proposed by the operators and approved by the *Centre national du cinéma et de l'image animée* (National Centre for Cinema and the Moving Image – CNC). The decree describes the approval procedure for cinema groups' programming commitments and extends the powers of the CNC president, which already apply to owner-operators (Art. R. 212-36 of the Cinema and Animated Image Code), to determine programming commitments if the operator's proposals do not do enough to safeguard film diversity.

A second issue identified in Lasserre's report is the need to ensure a balanced commercial relationship between cinema operators and film distributors. In this regard, the report recommended simplifying the rules governing unlimited cinema passes (the main two examples of which are sold by UGC and Pathé). Under the decree, the procedure under which the CNC president approves unlimited cinema passes is made more flexible. Article R. 212-46 of the Cinema and Animated Image Code states that these passes must be reapproved whenever changes are made, in particular to their conditions of use, which are automatically regarded as substantial changes. In order to facilitate the commercial development of these passes, especially in terms of pricing, the decree revokes this requirement. As a result, companies that issue unlimited passes will have greater flexibility in their relations with their customers, will be able to amend their conditions of sale during the term of their licence, and will only be required to seek approval for substantial changes that are likely to call into question the parameters under which approval was initially granted.

Décret n° 2023-999 du 27 octobre 2023 modifiant le Code du cinéma et de l'image animée et relatif aux engagements de programmation et aux

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formules d'accès au cinéma

https://www.legifrance.gouv.fr/download/pdf?id=lxs02rOAPigvGZJSXMRv5QmEMiykiJvwYHs2k2p5fXg=

Decree no. 2023-999 of 27 October 2023 amending the Cinema and Animated Image Code and regarding programming commitments and unlimited cinema passes

Rapport de Bruno Lasserre : « Le cinéma à la recherche de nouveaux équilibres : relancer des outils, repenser la régulation »

https://www.cnc.fr/cinema/etudes-et-rapports/rapport/rapport-de-bruno-lasserre---le-cinema-a-la-recherche-de-nouveaux-equilibres---relancer-des-outils-repenser-la-regulation_1928729

Report by Bruno Lasserre: "Cinema and regulation – Cinema in search of new balances : relaunching tools, rethinking regulation"

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UNITED KINGDOM

[GB] Ofcom determines GB News breached impartiality rules

Julian Wilkins
Wordley Partnership

An Ofcom investigation has concluded that an episode of *Saturday Morning with Esther and Phil*, which aired on GB News on 11 March 2023, breached due impartiality rules.

Saturday Morning with Esther and Phil is a weekly two-hour discussion programme presented by Esther McVey and Philip Davies, two sitting Conservative Party Members of Parliament (MPs).This particular programme featured a pre-recorded interview between the two presenters and the finance minister, Jeremy Hunt MP. The interview focused on the government's approach to economic and fiscal policies ahead of the financial announcement on the Spring Budget. A total of 45 viewers complained that the programme had failed to preserve due impartiality.

Ofcom applied the following rules, namely:

- Rule 5.3: "*No politician may be used as a newsreader, interviewer or reporter in any news programmes unless, exceptionally, it is editorially justified. In that case, the political allegiance of that person must be made clear to the audience.*"

- Rule 5.11: "*In addition to the rules above, due impartiality must be preserved on matters of major political and industrial controversy and major matters relating to current public policy by the person providing a service (listed above) in each programme or in clearly linked and timely programmes.*"

- Rule 5.12: "*In dealing with matters of major political and industrial controversy and major matters relating to current public policy an appropriately wide range of significant views must be included and given due weight in each programme or in clearly linked and timely programmes. Views and facts must not be misrepresented.*"

Ofcom, in reaching its decision, took account of the right to freedom of expression and the fact that broadcasters were entitled to determine their editorial approach. This included offering their audiences innovative forms of debate, especially the ability to discuss and analyse controversial matters and take a position on those issues. However, broadcasters must observe the rules set out in Ofcom's Broadcasting Code.

The interview with Mr Hunt covered a wide range of subjects of national importance such as the cost of living, government spending and the controversial

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high speed rail project HS2. GB News accepted that the subjects were of major political controversy and contended that special impartiality rules had applied. However, Ofcom considered that the viewpoints during the programme reflected those of the Conservative Party and not the wider political spectrum. There was limited consideration of a wider perspective in relation to the various issues discussed. Ofcom determined that no real attention was given to the viewpoints of politicians, political parties, organisations or individuals that criticised, opposed or put forward policy alternatives to the viewpoints given by the three Conservative politicians interviewed or presenting. Further, there was no other content that might have contained alternative views.

Given that this programme featured two sitting MP presenters from one political party interviewing the finance minister of the same political party about a matter of major political controversy and current public policy, Ofcom considered that GB News should have adopted measures to ensure due impartiality. Ofcom acknowledged that there was a panel discussion but, in this case, it did not address an appropriately wide range of significant views, nor did it give such views due weight in relation to the economic and fiscal policies of the Conservative government discussed in the programme, which were not limited to the issue of taxation.

GB News considered that Ofcom had interpreted the rules in too narrow a way. Ofcom's response was that as the programme had two sitting MPs from one political party as presenters and they were interviewing a government minister from the same party about matters of major political controversy and public policy, it was incumbent on GB News to take additional steps to ensure the preservation of due impartiality.

As a consequence, GB News failed to represent and give due weight to an appropriately wide range of significant views on a matter of major political controversy and current public policy within this programme thus breaching Rules 5.11 and 5.12.

Also, Ofcom determined that there were three clearly separate and standalone news bulletins presented by a news anchor. The content presented on this day by Ms McVey and Mr Davies constituted current affairs and not news. Ofcom therefore considered that Rule 5.3 of the Code, which relates to politicians presenting news programmes, was not engaged in this particular case.

Issue 481 of Ofcom’s Broadcast and On Demand Bulletin 18 September 2023

https://www.ofcom.org.uk/__data/assets/pdf_file/0027/268146/Saturday-Morning-with-Esther-and-Philip,-GB-News,-11-March-2023.pdf

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GREECE

[GR] New board in the National Council of Radio and Television but implementation of Article 30 AVMS Directive still pending

Alexandros Oikonomou
National Council for Radio and Television

On 28 September 2023 the College of Presidents of the parliament decided on the appointment of new members to the board of the ESR (*Ethniko Symvoulio Radiotileorasis*, the Greek independent authority responsible for electronic media). Mrs Euterpe Koutzamani, former prosecutor of the Supreme Court and former vice president of the ESR, was appointed to the role of president, whilst Giannis Politis, journalist and political analyst, was appointed to that of vice president (both of these roles being full-time positions). A futher six individuals were appointed as new members (four of them being retired journalists); they join one other member who had been nominated in 2021 for a six-year term.

This decision of the College of Presidents caused a backlash, as political parties from the opposition considered that the increased three-fifths majority had not been achieved (16 out of 27 members), although the composition of this high parliamentary commission was changed a few days before its session by the addition of one further member. Criticisms were also raised over the lack of consultation and consent regarding the individuals proposed as members, as their names had only been announced to the members of the College of Presidents two days before its session. In fact, none of the existing Rules of Procedure of the parliament or laws specific to the ESR contain any disposition on this specific matter. Article 30 paragraph 5 of the AVMS Directive states that the procedures for the appointment of the heads of national regulatory authorities or the members of the collegiate body fulfilling that function "shall be transparent, non-discriminatory and guarantee the requisite degree of independence".

More generally, Greece has not yet fully implemented Article 30 paragraph 1 of the AVMS Directive which prescribes that regulatory authorities are to be “legally distinct from the government and functionally independent of their respective governments …”. Paragraph 4 of the same Article 30, which requires member states to ensure that national regulatory authorities shall “have adequate financial and human resources and enforcement powers to carry out their functions effectively” and are “provided with their own annual budgets” is also still pending implementation. The ESR belongs to the legal entity of the Greek State; its budget is attached to that of a governmental General Secretariat and it is understaffed.

Furthermore, the ESR is among the few European authorities having no regulatory powers; this is why it cannot fully exercise its constitutional responsibility for the

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licensing of radio, regional television stations and part of the nationwide television terrestrial stations. Its competence in the publication of tenders, which leads to the licensing of services, is subject to the issuance of ministerial decisions.

In general, detailed rules necessary for the application of existing laws are also fixed by ministerial decisions (the ESR having a consultative role). The regulatory authority's role is limited to sanctioning powers.

Απόφαση ΠΡΟΕΔΡΙΑΣ ΤΗΣ ΚΥΒΕΡΝΗΣΗΣ Αριθμ. 280

https://www.esr.gr/wp-content/uploads/FEK_2023_Tefxos_YODD_1037_28092023.pdf

Decision of the presidency of the government No. 280

ΝΟΜΙΚΗ ΑΝΑΛΥΣΗ VOULIWATCH, ΕΚΛΟΓΗ ΜΕΛΩΝ ΑΔΑΕ ΚΑΙ ΕΣΡ, Παρέμβαση στην ανεξαρτησία των ανεξάρτητων αρχών;

https://vouliwatch.gr/resources/file/2023/10/16/1532042d-e347-42a4-9208-7b26b4b8fff6.pdf

LEGAL ANALYSIS VOULIWATCH: ELECTION OF THE MEMBERS OF ADAE AND ESR, Interference with the independence of independent authorities?

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IRELAND

[IE] Irish Media Commission publishes a Designation Decision Framework for video-sharing platform services

Eric Munch
European Audiovisual Observatory

On 10 November 2023, the Irish media regulator *Coimisiún na Meán* (the Media Commission) published a Designation Decision Framework (further referred to as "Framework") for video-sharing platforms services (VSPS) to inform individual providers of online services of the assessment and decision-making process it intends to follow in order to determine whether a named service meets the defining criteria of a VSPS, and whether the provider of such a service is under Irish jurisdiction.

The Online Safety and Media Regulation Act of 2022 amending the Broadcasting Act of 2009, which transposed the Audiovisual Media Services Directive (AVMSD) in Ireland and foresaw the creation of the Media Commission, also provided for a regulatory framework for online safety. Under the Act, the Media Commission is granted the power to designate relevant online services as services to which the online safety codes may apply. On 14 August 2023, it published a notice designating VSPs as a category of relevant online services, which became effective on 11 September 2023.

As indicated in the Framework itself, it aims to inform providers of online services of the Media Commission's assessment and decision-making process to "determine whether a named service meets the defining criteria of a 'video-sharing platform service' and the provider of such service is under the jurisdiction of Ireland," based on criteria established in Articles 1(1)(aa), 28a and 28b AVMSD.

The process involved in the Framework is divided into a legal and evidential review, the first stage ending – if the Media Commission has "reason to believe" that a relevant online service may be a VSP – with the issue of one or more Information Notices, "requiring the provision of any information that appears to the Commission to be relevant for the purpose of designation." This first stage is followed by an initial view and consultation stage, taking into consideration the elements provided by the service provider in response to the Information Notice(s) issued, before the final decision and designation. According to the Framework, the final decision is taken on the basis of "the information, data and evidence that is available to the Commission." However, if a provider fails to "provide the requested information and/or fails to engage in the consultation process, the initial view taken at Stage 2 will inform the final decision."

Services designated as VSP within the context of the Framework will have the details of their provider and service included in the Register of Designated Online Services published and maintained by the Media Commission. If a services

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estimates that it was wrongfully qualified as VSPS, it has the possibility of providing the Media Commission with additional elements to overturn the initial qualification.

VSPS Designation Decision Framework

https://www.cnam.ie/wp-content/uploads/2023/11/DecisionFrameworkVSPS.pdf

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LUXEMBOURG

[LU] Digital Services Act Implementation Bill proposed to Parliament

Mark D. Cole
Institute of European Media Law

The Luxembourgish government agreed on a law for the implementation of the EU Digital Service Act (DSA) on 8 September 2023. Subsequently, under the responsibility of the Ministry of Economy, it deposited the bill with the *Chambre des députés* (Chamber of Deputies) on 14 September 2023. The bill proposes the provisions necessary in Luxembourgish law to implement the DSA concerning those parts of EU regulation that rely on additional national rules. The DSA establishes unified rules for a secure online environment to support the effective operation of the internal market for "intermediary services" and maintains the liability privileges for intermediaries while clarifying particular due diligence requirements for certain kinds of intermediary service providers, including online platforms. The DSA lays down stricter obligations for so-called Very Large Online Platforms (VLOPs) and Very Large Online Search Engines (VLOSEs), the first list of such providers having been designated by the European Commission on 25 April 2023 (see IRIS 2023-5:1/2). The statement on the objective of the bill points out that one of these is established in Luxembourg (Amazon), although it should be noted that this provider has challenged its designation before the General Court. In terms of national action to be taken, one of the main points is the designation of a Digital Services Coordinator (DSC), which has to take place and be notified to the European Commission by 17 February 2024 at the latest, the date on which the DSA becomes fully applicable. By that time the bill is also supposed to have been enacted and is due to take full effect on that day. The bill confirms the designation of the *Autorité de la concurrence* (competition authority) as the national DSC under Article 49 (1) DSA. The government had already taken this decision in principle on 3 February 2023 and argues that in light of the short deadline it took a “pragmatic approach” by choosing an already existing national authority, namely the one that is already in charge of monitoring the P2B Regulation and Digital Markets Act (DMA) rules, with the aim of facilitating a coherent application of the different rules concerning platforms. As the actual workload for the authority remains unclear in the view of the government – an internal assessment resulted in the assumption that around 250 platforms would fall under the monitoring remit of the Luxembourgish DSC – the bill suggests that changes might occur in the future after evaluation of the law following two years of its applicability. The bill is accompanied by an explanatory table detailing which provisions of the DSA are implemented by which provision of the bill and for which of the DSA provisions implementation is not necessary; explanations are given as to why the government does not see a need for action concerning these particular provisions. If the bill is adopted by the Chamber of Deputies as proposed, the competition authority will be responsible for ensuring the supervision and

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enforcement of all regulatory issues related to the DSA in Luxembourg. Therefore, the bill also includes the procedures required for the effective use of the powers and procedures inferred by Article 49, in accordance with Article 51 (6) DSA. It includes a provision guaranteeing the independence of the authority when acting as DSC. The explanations to the bill emphasise the fact that the competences of other existing national authorities charged with monitoring violations by platforms in specific areas, such as the supervisory authority for data protection or the law enforcement authorities for terrorist content or child sexual abuse material, remain untouched, but that the coordinating function will be the focus of the DSC. Chapter 3 of the bill details the power and procedures of the DSC, including the competence to receive and respond to complaints and the power to request information regarding non-compliance issues from the service provider. The inspection powers of the competition authority and competence to conduct interviews with relevant parties are detailed and the decision-making powers concerning issues of compliance are laid down. For the latter the internal procedures of the authority are also defined. Chapter 4 refers to the penalties that can be imposed on service providers found to be non-compliant, reflecting the requirement of Article 52 DSA. Subsequent Chapters of the bill set out the procedural rights of the providers under investigation including the allocation of jurisdiction to the Administrative Tribunal. Cooperation with other DSCs and with the European Commission as well as participation in the European Board for Media Services are all described in the bill. In addition to the introduction of these rules in a new law aimed at implementing the DSA, as a consequence of the inclusion of the liability privilege rules for intermediaries now in the DSA and therefore a directly binding regulation, the corresponding provisions in the Luxembourgish E-commerce law of 14 August 2000 have been deleted and the institutional provisions in the Competition Law of 30 November 2022 have been amended by the bill.

Projet de loi n° 8309

https://www.chd.lu/fr/dossier/8309

Le gislative procedure No. 8309

Projet de loi portant mise en œuvre du règlement (UE) 2022/2065 du Parlement européen et du Conseil du 19 octobre 2022 relatif à un marché unique des services numériques et modifiant la directive 2000/31/CE (règlement sur les services numériques) et portant modification de la loi modifiée du 14 août 2000 sur le commerce électronique et la loi modifiée du 30 novembre 2022 relative à la concurrence

https://wdocs-pub.chd.lu/docs/exped/0142/073/284731.pdf

Draft law implementing Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a single market for digital services and amending Directive 2000/31/EC (Regulation on digital services) and amending the

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amended Law of 14 August 2000 on electronic commerce and the amended Law of 30 November 2022 on competition

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MOLDOVA

[MD] Methodology for detecting disinformation approved by media regulator

Andrei Richter
Comenius University (Bratislava)

Following public discussions, the Audiovisual Council (CA), the national regulatory authority in Moldova, approved in its meeting on 15 September 2023 a methodology for the detection and evaluation of cases of disinformation in audiovisual content. This methodology refers both to the need for implementation of the Republic of Moldova's Code of Audiovisual Media Services (AVMSC) in terms of counteracting disinformation on topics of public interest, as well as to the need for compliance with the EU legislation. These are the reasons for its adoption.

The evaluation of a potential case of disinformation begins whenever the CA is petitioned by anyone, including its own members. The process requires a three-stage analysis: 1) a preliminary examination of the petition; 2) a description of the context in which the case arose; 3) the application of evaluation criteria to determine whether or not the potential case constitutes disinformation and whether or not it is in breach of the AVMSC.

The third element is verified by the CA’s responsible experts by answering the following questions:

- Can the message be considered to contain elements of disinformation?

- Is the information in the message false or misleading?

- In what terms or in what words is the false or misleading information expressed?

- What facts contradict the false or misleading information?

- What are the primary sources of facts that contradict the false or misleading information?

- If there are no primary sources, what are the secondary sources of facts that contradict the false or misleading information? (At least two secondary sources should be indicated.)

- Are the primary/secondary sources sufficient to prove that the information in the message constitutes misinformation?

If false or misleading information is detected in the disseminated content, the analysis of the case continues with the question as to whether fact-checking organisations have published analyses that prove the false or misleading nature

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of the information in the disseminated message, and whether these analyses confirm the conclusions of the CA experts.

Unlike falsity, the misleading character of the content refers to information that, through equivocal, ambiguous or confusing formulations, accents, interpretations or presentation, misleads the public, abusing its good faith. According to the document, “misleading information creates in the human mind a wrong idea or impression about the facts, and the repeated dissemination of such messages leads over time to the creation of a wrong image about the facts and phenomena, reinforcing stereotypes and perpetuating prejudices”.

To determine the intent of the messenger, the CA experts are to answer the following questions:

- Is the information spread accidentally (e.g. an unintentional journalistic mistake), cyclically (during election campaigns, around important events for the state and citizens) or on a long-term basis (such as on the country’s foreign vector, public policies in key areas, reforms in the context of the European course)?

- Is the owner/final beneficiary of the audiovisual media service politically affiliated? (This can serve as an indicator of intent.)

As to whether the false or misleading information harmed or is capable of harming national security, the following four evaluation criteria taken together, if positive, point to the violation of the ban on disinformation as stated in the AVMSC:

- Does it concern national security?

- Is it intentionally aimed at national security?

- Has it already caused or is it capable of causing significant damage to national security?

- Is there a direct causal link between the damage and the spread of false or misleading information?

Metodologia privind constatarea și evaluarea cazurilor de dezinformare în conținuturile audiovizuale

https://consiliuaudiovizual.md/wp-content/uploads/2023/09/Metodologia-privind-constatarea-si-evaluarea-cazurilor-de-dezinformare.pdf.

Methodology regarding the detection and evaluation of cases of disinformation in audiovisual content, approved by the Decision of the Audiovisual Council No. 285 of 15 September 2023

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NETHERLANDS

[NL] Media Authority updates guidance for video influencers

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Institute for Information Law (IViR)

On 25 October 2023, the *Commissariaat voor de Media* (Dutch Media Authority – CvdM) published updated guidance for video influencers in the Netherlands. Notably, this resulted from recent discussions by the CvdM with video influencers who fall under its supervision, but "who do not yet sufficiently comply" with the rules under the *Mediawet* (Media Act), transposing the revised EU Audiovisual Media Services Directive (AVMSD) (see IRIS 2019-1/3 and IRIS 2021-1/24). This follows an earlier supervisory investigation into video-uploader compliance in May 2023, with the CvdM noting that video uploaders "need to be more compliant" (see IRIS 2023-7/21). This also follows a high-profile announcement in May 2022 that the CvdM would be monitoring video uploaders under its new policy rule for the qualification of commercial on-demand services in 2022, which clarified which video uploaders must register with the Media Authority (see IRIS 2022-7/17).

The CvdM noted from its latest investigation that "self-promotion" is one of the topics that was still "unclear" among video uploaders. The CvdM emphasised that "many" uploaders engage in self-promotion, and as such, it was necessary to update the CvdM's guidance on video influencing. In this regard, self-promotion is considered to include an influencer promoting their own products or services and merchandising under their own management. Notably, the CvdM considers that self-promotion is a special form of advertising. Crucially, if the "context" of the video clearly shows that there is self-promotion, then this form of advertising is probably sufficiently recognisable as such for the viewer. However, if the context of the video does not indicate that it is self-promotion, then the expression is "not sufficiently recognisable as an advertisement". In that case, the video influencer must clearly state that the video contains advertising for their own products, as well as third-party products or services.

The CvdM actively monitors influential influencers. That is, video influencers with more than 500,000 followers on YouTube, Instagram and/or TikTok. The CvdM also reiterated that video uploaders must adhere to the rules under the Media Act more closely, and it has held discussions with influencers who did not sufficiently comply with the rules. It has given these influencers the opportunity to correct violations and learn how to prevent future violations. However, if this does not achieve the desired effect, the CvdM will take further action, including, in the form of "warnings or fines".

Finally, the CvdM noted that the European Commission had recently launched the Influencer Legal Hub, with information on how influencers can be transparent about advertising and commercial influence. However, the CvdM emphasised that this hub was about "general European rules", and "not specifically" about rules

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under the Dutch Media Act.

Commissariaat voor de Media, Commissariaat wijst video-uploaders op regels over o.a. zelfpromotie, 25 oktober 2023

https://www.cvdm.nl/nieuws/commissariaat-wijst-video-uploaders-op-regels-over-o-a-zelfpromotie/

Dutch Media Authority, the CvdM reminds video uploaders of rules about self-promotion, among other things, 25 October 2023

Commissariaat voor de Media, Veelgestelde vragen en antwoorden voor video-uploaders, 25 oktober 2023

https://www.cvdm.nl/voor-mediamakers/video-uploaders/nieuwe-regels-voor-video-uploaders/veelgestelde-vragen-en-antwoorden-voor-video-uploaders/

Dutch Media Authority, frequently asked questions and answers for video uploaders, 25 October 2023

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[NL] National Coordinator for Combating Anti-Semitism recommends faster enforcement against online anti-Semitism

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On 25 October 2023, the *Nationaal Coördinator Antisemitismebestrijding* (National Coordinator for Combating Anti-Semitism) issued a noteworthy recommendation, stating that both the *Autoriteit Consument & Markt* (Consumer and Markets Authority – ACM), and the *Autoriteit Persoonsgegevens* (Dutch Data Protection Authority – AP), "must immediately strictly monitor" whether online platforms Instagram and X (formerly Twitter) are complying with the law and tackling online anti-Semitism. Notably, the ACM will be designated as the national Digital Services Coordinator in the Netherlands under the EU's Digital Services Act (DSA), while the AP will be a further competent national authority, with competence to supervise certain rules under the DSA concerning online platforms (see IRIS 2023-8/16). The National Coordinator for Combating Anti-Semitism emphasised that it has received a growing number of notices of online anti-Semitism, and this "must now be the top priority" of the Dutch regulators under the DSA.

The National Coordinator for Combating Anti-Semitism (NCAB) was established in 2021 under a decree issued by the Minister of Justice and Security. The NCAB brings together expertise in the field of anti-Semitism within the government, identifies developments in the field of anti-Semitism, and coordinates and facilitates cooperation between various ministries. In its 25 October 2023 recommendation, the NCAB noted that since violence had flared up in Israel and Gaza on 7 October 2023, the NCAB has established that online platforms had not been "sufficiently" removing hate speech from their platforms. The NCAB had received a growing number of reports of online anti-Semitism, and stated that these types of expressions "increase social divisions in the Netherlands and can lead to physical insecurity for Jews".

The NCAB also noted that since August 2023, very large online platforms must comply with the DSA, and while the Netherlands is still working on the implementation of the DSA, "action is needed now". The NCAB emphasised that regulators "already have the authority to monitor the implementation of the DSA by the major social media platform". It also stated that people are being "poisoned with inflammatory messages", and regulators "must take tough action when boundaries are crossed"; online anti-Semitism should not be treated with impunity. As such, the NCAB reiterated that, for the perpetrators, criminal law must be used "to the fullest", while the ACM and AP should "strictly monitor" whether online platforms are tackling anti-Semitism, and where appropriate, regulators should impose fines on social media platforms.

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Nationaal Coördinator Antisemitismebestrijding, Sneller handhaven bij online antisemitisme, 25 oktober 2023

https://www.rijksoverheid.nl/ministeries/ministerie-van-justitie-en-veiligheid/nieuws/2023/10/25/ncab-sneller-handhaven-bij-online-antisemitisme

National Coordinator for Combating Anti-Semitism, faster enforcement against online anti-Semitism, 25 October 2023

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PORTUGAL

[PT] Positive compliance of Portuguese television channels with European and independent works quotas

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In 2022, the majority of Portuguese broadcasters complied with the pre-determined quota of transmission time for Portuguese, European and independent works. The annual report, prepared by the national Media Regulatory Authority (ERC), points out, however, that the second public broadcaster (RTP2) has failed to meet its obligations in terms of broadcasting Portuguese works in 20% of its transmission time. All of the other free-to-air generalist channels, as well as the generalist pay-TV channels (mainly dedicated to informative services), have fulfilled their obligations.

The quotas were established in 2021, when the Television Law, which implemented the revised AVMSD, came into force. The new legal provisions established that free-to-air broadcasters should dedicate at least 50% of their transmission time to programmes in Portuguese language, including at least 20% of the total schedule for creative works in Portuguese (no more than a quarter of which can be accomplished with work from other Portuguese-speaking countries, such as Brazil). However, the ERC has reported that most programming is based on Portugal-based works, with an exception in the case of the free-to-air channel SIC, which has daily transmission of Brazilian telenovelas.

Although linear broadcasters are complying with quota obligations, the amount of transmission time dedicated to European and independent works in general has been diminishing, in particular in the last two years. The most significant reductions in the case of Portuguese works occurred in thematic entertainment pay-TV channels from a broadcaster that also has free-to-air channels (SIC Mulher and SIC Caras). In addition, when pay-TV channels register with the regulatory authority, they must present a programming project and, on the basis of this project, they can request an exemption from the quota obligation. Thematic cinema channels, owned by the NOS distributor, have presented programming projects based on North American films (one of the channels is called Canal Hollywood). In the overall group of channels, the transmission time for Portuguese and European works has decreased, giving more space to North American films and series.

One particular genre in pay television that is not being widely served with Portuguese works is child and youth programming. A particular distributor (DREAMIA, a joint venture of the Portuguese distribution network NOS and of AMC Networks International Southern Europe), which broadcasts themed channels, has not complied with quota obligations in terms of programming originally produced

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in Portuguese language. Although some transmission time is dedicated to programmes in Portuguese, these are mainly reruns of previously broadcast programmes (only the first five exhibitions are eligible for the quota compliance). For the children's TV channel Panda, in the last five years, the total amount of original Portuguese works diminished from 1.9% to 0.2%.

There is generalised compliance with the quota obligations in terms of European and independent works (10% of the transmission time), but in 23 out of 48 channels analysed the quota of recent independent works is not achieved, mainly in thematic channels dedicated to TV shows and movies (mainly of north American production). Also, there have been some negative trends in the last five years, with percentages of transmission time weakening over time. On a positive note, the public broadcaster has fulfilled its obligations in terms of independent and European works in all its channels.

Finally, the media regulatory authority has also registered a positive performance by the video-on-demand services in terms of the inclusion of European works, with almost all of the services targeting Portuguese audiences presenting 30% of these works in their catalogues.

Produção Audiovisual nos Serviços de Programas Televisivos em 2022

https://www.flipsnack.com/ercpt/produ-o-audiovisual-nos-servi-os-de-programas-televisivos-2022/full-view.html

Audiovisual Production in Television Programme Services in 2022

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UNITED STATES OF AMERICA

[US] Hollywood strike: actors reach agreement

Justine Radel-Cormann
European Audiovisual Observatory

Following the recent massive strikes in Holywood, screenwriters and producers reached a tentative agreement on 24 September 2023 (see IRIS 2023-9:1/5), while the actors strike went on for additional weeks until very recently in November 2023.

A tentative agreement to amend the 2020 Codified Basic Agreement between SAG-AFTRA (actors) and the Alliance of Motion Picture and Television Producers was reached on 10 November 2023. The amendments cover areas such as:

- Meaningful protections around the use of artificial intelligence, including informed consent and compensation for the creation and use of digital replicas of SAG-AFTRA members, living and deceased, whether created on set or licensed for use ;

- Wage pattern increases: 7% increase upon ratification, 4% increase effective July 2024, and 3.5% effective 1 July 2025;

- Wages for background actors will increase by 11% from 12 November 2023, and then by an additional 4% from 1 July 2024 and by another 3.5% from 1 July 2025 ;

- New compensation stream for performers working in streaming.

An online vote will be conducted to ratify the tentative agreement. SAG AFTRA members' ratification votes can be received by the voting deadline of 5 December 2023.

The current agreements remain in effect during the ratification process, except for wages increases (in effect during the ratification period). The new agreement should apply until 30 June 2026, and is retroactive upon ratification.

SAG AFTRA tentative agreement

https://www.sagaftra.org/contracts-industry-resources/contracts/2023-tvtheatrical-contracts

SAG AFTRA press release

https://www.sagaftra.org/sag-aftra-national-board-approves-tentative-agreement-recommends-ratification-2023-tvtheatrical

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