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EDITORIAL

The first editorial of the year is always a special one. It allows the editor to talk about what is expected to happen in the next twelve months or so. And in this new year of 2024, two words come furiously to mind: war and elections.

In addition to the ongoing war in Ukraine, 2023 saw the outbreak of a new cycle of death in Gaza. These ongoing conflicts have created many challenges in terms of hate speech and disinformation. For example, the European Commission recently opened formal proceedings against X for allegedly spreading illegal content and disinformation, in particular terrorist and violent content and hate speech related to Hamas' terrorist attacks against Israel. In parallel, member states have started to take action at national level. As part of a task force set up to focus on the application of the DSA, the German state media authorities reported over 160 violations by VLOPs related to the Middle East conflict to the European Commission.

This year will also see many elections that will determine the future of the world (US, Russia, European Parliament, etc.). Unfortunately, elections mean disinformation more than ever. It is a particularly sensitive issue that has been at the centre of discussions around the European table for some time, and in December the European institutions reached a preliminary political agreement on two important legal instruments, the EMFA and the AI Act, which could hopefully have a positive impact on the fight against disinformation.

And yet, in the midst of this uncertain (and frightening) geopolitical situation, it is heartening to see that the Council of Europe, the international organisation of which the European Audiovisual Observatory is proud to be part, is celebrating its 75th anniversary. 75 years of tireless defence throughout Europe of "the three fundamental, interdependent and inalienable principles of democracy, the rule of law and human rights" (as expressed in the CoE Reykjavík Declaration of May 2023). We can only add: many, many more happy returns!

And to you, dear reader, a Happy New Year 2024!

Maja Cappello, Editor

European Audiovisual Observatory

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COUNCIL OF EUROPE

GERMANY

European Court of Human Rights: *Bild GmbH & Co. KG v. Germany*

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

A judgment of 31 October 2023 of the European Court of Human Rights (ECtHR) found a violation of Article 10 of the European Convention on Human Rights (ECHR) at the request of *Bild GmbH & Co. KG* (Bild), the owner and operator of a news website (bild.de) in Germany. The case concerns a court ruling ordering Bild to cease publication of the CCTV footage of a police arrest without the face of one of the police officers involved being blurred. The ECtHR was opposed in particular to the general reasoning in the court order that any unpixelated coverage of the police action would be unlawful. Such an approach could lead to an unacceptable ban on any non-consensual future publication of unedited images of police officers performing duties irrespective of the public interest in the use of force by the police. Therefore, the court ruling was not necessary in a democratic society, which resulted in the finding of a violation of Bild's right to freedom of expression and information.

In 2013 bild.de published two articles that reported on a police intervention at a nightclub, after a customer (D.) had behaved aggressively towards a staff member of the club. Together with the articles, bild.de published CCTV footage it had obtained from the club owner. The video published with the first article showed several police officers standing around D. and bringing him down to the ground by force. One of the officers could be seen hitting D. with a police baton and kicking him while he was already immobilised on the floor. The video with the second article, published two days later, also showed D.'s aggressive behaviour before the police intervened . P. was one of the police officers involved in D.'s arrest. The CCTV footage showed him assisting his fellow officers in bringing D. down to the ground. His face was clearly visible for several seconds. However, the video gave no indication that P. had used excessive force during the arrest. P.'s lawyer requested that Bild cease publication of the CCTV footage without his client's face being blurred. When Bild refused, P. lodged a claim with the Oldenburg Regional Court. Bild was ordered to cease publication of the CCTV footage without P.'s face being blurred. The Oldenburg Court of Appeal confirmed the order. The Appeal Court confirmed that the use of the unpixelated image of P. violated his personality rights. It stated: "If future reporting were to portray the claimant in a negative light, suggesting criminal responsibility, pixelation would be necessary ... Similarly, if the coverage were to be positive from the claimant's

perspective – that is, reflecting the actual circumstances – pixelation would also be necessary, since the footage could no longer be considered to be portraying an aspect of contemporary society but only a routine and everyday police intervention."

Bild lodged an application with the ECtHR, complaining that the injunction to cease publication of the CCTV footage without P.'s face being pixelated had violated its freedom of expression under Article 10 ECHR. The ECtHR focussed on the question whether the interference was necessary in a democratic society, recalling the general principles as established in the Court's case-law when balancing the rights under Article 8 (privacy/reputation) and Article 10 ECHR (see *Axel Springer AG v. Germany*, IRIS 2012-3/1). Notably, the ECtHR referred to the relevant criteria, including: the contribution to a debate of public interest, how well known the person affected is, the prior conduct of the person concerned, and the content, form and consequences of the publication. The way in which the information was obtained and its veracity, and the gravity of the penalty imposed on the journalists or publishers were also to be considered. The ECtHR emphasised that the quality of the judicial examination regarding the necessity of the measure is of particular importance in the context of assessing the proportionality under Article 10 ECHR. It also reiterated that where the "duties and responsibilities" of journalists are concerned, the potential impact of the medium of expression involved is an important factor in assessing the proportionality of the interference. It further stated that the audiovisual media have a more immediate and powerful effect than the print media, and that this a fortiori applies to publications on the Internet, since the capacity to store and transmit information, and the risk of harm posed by content and communications on the Internet to the exercise and enjoyment of human rights and freedoms – particularly the right to respect for private life – is certainly higher than that posed by the press.

The ECtHR agreed with the domestic courts that the CCTV footage portrayed an aspect of contemporary society and expressly acknowledged the importance of the news media in covering the use of force by police officers. It recognised that the use of force by state agents was inherently a matter of public interest. But it noted that in the present case the applicant company did not argue that P. had been involved in any kind of misconduct. The ECtHR confirmed that P. was not a public person, but it considered that in some circumstances, civil servants, when acting in an official capacity, are subject to wider limits of acceptable criticism than private individuals, for instance in the case of alleged misconduct by a civil servant or public official. However, civil servants, including police officers, are not deprived of a legitimate interest in protecting their private life against, *inter alia*, being falsely portrayed as abusing their office. The ECtHR also observed that, whereas there is no general rule under Article 8 ECHR requiring that police officers should generally not be recognisable in press publications, there may be circumstances in which the interest of the individual officer in the protection of his or her private life prevails. This would be the case, for example, if publication of the image of a recognisable officer, irrespective of any misconduct, is likely to lead to specific adverse consequences in his or her private or family life. The

ECtHR clarified that the right to private life, as protected under Article 8 ECHR, may make it necessary to impose on press organs an obligation to blur the image of an individual depicted in its publication (see also *Haldimann a.o. v. Switzerland*, IRIS 2015-4/1).

The ECtHR accepted the ruling by the German courts as to the publication of the CCTV accompanying the first article. But it decided that the order to cease publication of the second article with the CCTV footage and of any future publication of the unpixelated CCTV footage, regardless of the accompanying coverage, did not meet the standard of necessity in a democratic society. The ECtHR referred to the reasoning of the Court of Appeal that in all circumstances P.'s prior consent was needed. The ECtHR was opposed to such general reasoning. The mere fact that the use of force by the police is not portrayed in a negative way does not mean that its coverage in the media should cease to enjoy any protection. Taking into account the public interest in the coverage of the use of force by state agents and the potentially dissuasive effect that the obligation to blur the images of police officers involved in an operation would have on the exercise of the right to freedom of expression, there is a need to balance the competing rights involved, which in the present case the domestic courts failed to do in respect of any future unedited CCTV footage. And while the order did not constitute a particularly severe restriction on Bild's freedom of expression, the ECtHR found the interference not justified, since, in the circumstances of the present case and for the reasons stated above, its imposition lacked the necessary balancing of the competing interests with respect to the second publication and any future publication of the unedited CCTV footage. Finally, the ECtHR emphasised that the court order imposed by the Court of Appeal could lead to a ban – unacceptable in such general terms irrespective of the public interest in the use of force by the police – on any future publication, without the consent of the persons concerned, of unedited images of police officers performing their duties. Therefore, the ECtHR, unanimously found the court order at issue not necessary in a democratic society, and it concluded that Bild's right under Article 10 ECHR had been violated.

Judgment by the European Court of Human Rights, Fourth Section, in the case of Bild GmbH & Co. KG v. Germany, Application No. 9602/18, 31 October 2023

https://hudoc.echr.coe.int/eng?i=001-228530

UKRAINE

European Court of Human Rights: *Avramchuk v. Ukraine* and *Eastern Ukrainian Centre for Public Initiatives v. Ukraine*

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

The European Court of Human Rights (ECtHR) has once again been requested to evaluate the justification by the Ukrainian authorities of their refusal to give access to administrative documents to journalists or other public watchdogs (see also IRIS 2020-4:1/7 and IRIS 2020-5:1/24). In two judgments of 5 October 2023, the ECtHR made clear that the protection of privacy or personal data cannot be an absolute exception to the right of access to public or administrative documents under Article 10 of the European Convention on Human Rights (ECHR). In both judgments the ECtHR found that the Ukrainian authorities made no pertinent attempt to balance the interests of a journalist and an NGO in having access to information of public interest under Article 10 ECHR and the need to protect the rights of private persons under Article 8 ECHR. In both cases, the ECtHR found a violation of the right to freedom of expression and information under Article 10 ECHR.

The applicant in the first case, Kateryna Sergiyivna Avramchuk, is a journalist working for the Internet media outlet *Ukrainska Pravda* (Ukrainian Truth). In 2012 she requested the Parliament of Ukraine to provide her with information about the number of apartments, paid for out of the state budget, which were allocated to the sitting members of parliament and the price and surface area of these apartments. She also asked for the names of the MPs who had received said apartments.

The head of the Parliamentary Secretariat informed Avramchuk that a total of fifteen apartments of different surface areas had been allocated to MPs, but that their names could not be provided, as this constituted confidential information about a person and could not be disseminated without that person's consent. Avramchuk challenged that refusal before the courts, complaining that she had received an incomplete reply to her request for information. She stated that it was important to know the names of the MPs who had received the housing in order for the public to be able to control such a large budgetary expenditure. She referred to a set of legal provisions, pursuant to which information about public expenditure and the use of state property could not be restricted, in particular the names of persons receiving such property. She also argued that a three-part test for restricting access to information had not been applied. The Kyiv City Administrative Court however dismissed her request, confirming that the data about a person, including one's name, address and financial status, was confidential information and could not be disseminated without that person's consent. Her appeal before the Kyiv Administrative Court of Appeal also failed.

Avramchuk logded an application with the ECtHR, complaining that the interference with her freedom of expression had not been in accordance with the law and that the domestic courts had failed to protect her right of access to documents of public interest, held by the authorities as guaranteed under Article 10 ECHR (see IRIS 2017-1/1). She also argued that section 6(2) of the Ukrainian Law on Access to Public Information contained a three-part test quite similar to that under paragraph 2 of Article 10 ECHR, which provided for the balancing of conflicting interests. Neither the Parliamentary Secretariat nor the domestic courts had applied that test, but rather simply referred to the allegedly confidential nature of the information sought. Furthermore, section 6(5) of the Law on Access to Public Information provided that access to information about the use of budgetary funds and state property, including access to copies of documents with the names of persons to whom such property had been transferred, could not be limited.

The ECtHR observed that the domestic courts gave only very succinct reasons for their refusal, essentially endorsing those advanced by the Parliamentary Secretariat with reference to the Constitutional Court's decision of 2012, which qualified any information about a person as confidential (see also *Centre for Democracy and the Rule of Law v. Ukraine*, IRIS 2020-5:1/24). The ECtHR found that the domestic courts had disregarded the journalist's persistent arguments based on a set of legal provisions on access to public documents. In particular, no explanation was given as to why section 6(5) of the Law on Access to Public Information or its three-part test had not been applied. This also led to the courts making no attempt to balance the potential interests involved, that is, the journalist's interest in having access to information of public interest and the need to protect the rights of private persons. Therefore the ECtHR found that the reasons adduced to justify the interference were not sufficient, and that, consequently, the interference was not "necessary in a democratic society". There has accordingly been a violation of Article 10 ECHR.

In a judgment on the same day, 5 October 2023, the ECtHR found another violation of Article 10 ECHR, after a refusal by the Ukrainian authorities to give access to public documents about urban planning, at the request of an NGO. According to the ECtHR the domestic courts made no attempt to weigh up the potential interests involved, namely that of the need to protect sensitive information on urban planning on the one hand, and the public interest in having access to open information and the applicant NGO's rights under Article 10 on the other. Therefore, in this case the ECtHR also found that the reasons adduced to justify the refusal were not sufficient, and that, consequently, the interference with the NGO's right of access to public documents was not "necessary in a democratic society". Hence also in the case of *Eastern Ukrainian Centre for Public Initiatives v. Ukraine* the ECtHR found a violation of Article 10 ECHR.

Judgment by the European Court of Human Rights, Fifth Section, sitting as a Committee, in the case of Avramchuk v. Ukraine, Application No. 65906/13, 5 October 2023

https://hudoc.echr.coe.int/eng?i=001-227728

Judgment by the European Court of Human Rights, Fifth Section, sitting as a Committee, in the case of Eastern Ukrainian Centre for Public Initiatives v. Ukraine, Application Nos. 18036/13 and 13 others, 5 October 2023.

https://hudoc.echr.coe.int/eng?i=001-227725

EUROPEAN UNION

Audiovisual industry kept out of geo-blocking regulation

Justine Radel-Cormann
European Audiovisual Observatory

In a recent development highlighted previously (see 2023-7:1/5), the European Parliament's committee on internal market and consumer protection (IMCO) initiated a report during the summer of 2023 on the practical application of the Geo-blocking Regulation.

This procedure followed the Commission's report in November 2020 titled "First short-term review of the Geo-blocking Regulation" (COM(2020)0766). Mandated by Article 9 of the regulation, this report is slated for a five-year release, starting in 2020. Post this review, the European Commission engaged in a dialogue with the audiovisual sector, seeking ways to facilitate the circulation of audiovisual content across the EU before considering further measures.

In October 2023, the IMCO committee adopted its draft, considering the possibility of incorporating audiovisual content into the scope of the Geo-blocking Regulation – something which has been so far been exempted. On 6 December 2023, over 600 members from the film, cinema, and audiovisual sector joined forces, urging the European Parliament to protect cultural content by resisting its inclusion within the EU Geo-blocking Regulation.

On 13 December 2023, during the plenary sitting, the European Parliament debated and ultimately dismissed the proposal, thus aiming to safeguard the current financing and distribution model in the audiovisual industry, which is predominantly reliant on territorial exclusivity.

The EP resolution pits two concepts against each other: consumer accessibility and the protection of the audiovisual industry's production and diversity. The resolution reflected this conflict, addressing consumers' desires for broader access to audiovisual content while underscoring the importance of geo-blocking in preserving cultural diversity.

Paragraph 24 of the resolution outlined concerns that a change to the current model would put the industry at risk:

"Considers that the inclusion of audiovisual services in the scope of the Geo-blocking Regulation would result in a significant loss of revenue, putting investment in new content at risk, while eroding contractual freedom and reducing cultural diversity in content production, distribution, promotion and exhibition; emphasises that such an inclusion would result in fewer distribution channels, ultimately driving up prices for consumers;"

Paragraph 25 calls upon the Commission to devise solutions tailored for consumers in cross-border areas or belonging to linguistic minorities, ensuring access to diverse content across borders.

It is now down to the European Commission to contemplate the parliament's proposals and prepare for a fresh review of the Geo-blocking Regulation in 2025.

Regulation (EU) 2018/302 of the European Parliament and of the Council of 28 February 2018 on addressing unjustified geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market

https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32018R0302

First short-term review of the Geo-blocking Regulation' (COM(2020)0766)

https://digital-strategy.ec.europa.eu/en/news/commission-publishes-its-short-term-review-geo-blocking-regulation

Joint statement: Vote for Culture in the European Parliament INI Report on the EU Geo-blocking Regulation

https://www.ebu.ch/files/live/sites/ebu/files/News/Position_Papers/open/2023/Geoblocking_joint_Statement_FINAL.pdf

EP Resolution of 13 December 2023 on the implementation of the 2018 Geo-blocking Regulation in the digital single market (2023/2019(INI))

https://www.europarl.europa.eu/doceo/document/TA-9-2023-0473_EN.html

EMFA: Interinstitutional negotiations and adoption of a provisional agreement

Amélie Lacourt
European Audiovisual Observatory

The European Commission published its proposal for a regulation and recommendation for the safeguarding of media freedom, pluralism and independence: the European Media Freedom Act (EMFA) on 16 September 2022 (IRIS 2022-9:1/3).

The EMFA addresses in particular:

- the independence of public service media (including the appointment and dismissal of members) and stable sources of funding,

- transparency of media ownership,

- the protection of editorial independence,

- spyware against journalists,

- protection against unjustified online content removal,

- safeguards to ensure media pluralism and prevent media concentration, and

- the creation of the European Board for Media Services (EBMS), a new watchdog for media freedom, composed of representatives of national authorities, with the Commission as an observer.

The Council of the European Union adopted its negotiating position on 21 June 2023. The Committee on Culture and Education (CULT) adopted its draft position on 7 September 2023 (IRIS 2023-8:1/9), which was later voted on in parliament on 3 October 2023 (IRIS 2023-9:1/12).

Some of the main topics discussed by both institutions concerned the protection of journalists from surveillance, including spyware (Article 4), protection against unjustified online content removal ("media exemption") (Article 17), and the allocation of state advertising (Article 24) .

Pursuant to the ordinary legislative procedure, the Council, the Parliament and the Commission entered the first cycle of interinstitutional negotiations only a few days later, on 19 October 2023. This was followed by a second cycle on 29 November and a third on 15 December 2023.

The Commission welcomed a political agreement during the last session of the interinstitutional negotiation round. According to Thierry Breton, Commissioner for Internal Market, "With the agreement today on EMFA, we have

made a key contribution to the sustainability and future development of independent media in the EU. Media pluralism and independence are a pillar of EU democracy, and the European Media Freedom Act will be a powerful tool to protect them, while fostering an environment where media can grow and operate freely across borders."

The Council and the Parliament will officially endorse the provisional agreement once the text is finalised at the technical level. The EMFA should be formally adopted in the spring of 2024. Once officially adopted and published in the Official Journal of the European Union, the regulation will be binding in its entirety and directly applicable in all member states after 15 months.

Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing a common framework for media services in the internal market (European Media Freedom Act) and amending Directive 2010/13/EU

https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2022%3A0457%3AFIN

Council of the European Union mandate for negotiations with the European Parliament on the proposal, as agreed by the Permanent Representatives' Committee

https://data.consilium.europa.eu/doc/document/ST-10954-2023-INIT/en/pdf

Amendments adopted by the European Parliament on 3 October 2023 on the proposal for a regulation of the European Parliament and of the Council establishing a common framework for media services in the internal market (European Media Freedom Act) and amending Directive 2010/13/EU (COM(2022)0457 – C9-0309/2022 – 2022/0277(COD))

https://www.europarl.europa.eu/doceo/document/TA-9-2023-0336_EN.html

Press release – Commission welcomes political agreement on European Media Freedom Act

https://ec.europa.eu/commission/presscorner/detail/en/ip_23_6635

EU Institutions reached agreement on AI Act

Justine Radel-Cormann
European Audiovisual Observatory

As mentioned in previous articles (IRIS 2021-6:1/25 and IRIS 2023-6:1/5), the European Commission (EC) presented, on 21 April 2021, a proposal for a regulation laying down harmonised rules on artificial intelligence and amending certain Union legislative acts (Artificial Intelligence Act – AI Act). In December 2022, the Council of the European Union established its general approach. Subsequently, the European Parliament (EP) adopted its position in June 2023, initiating trilogue discussions.

On 9 December 2023, the EP and the Council of the EU reached a political agreement on the AI Act. While technical discussions persist to finalise the text, both EU bodies have reached alignment on the fundamental aspects of the legislation.

In its position from 14 June 2023, the EP emphasised the necessity for transparent usage of AI, especially concerning copyright-protected content and the creation of manipulated content, such as deep fakes, portraying individuals in actions or statements they did not consent to.

The two institutions agreed on this call for transparency. The EP press release underscores the requirements for general-purpose AI systems and their underlying models to comply with transparency standards. This includes the development of technical documentation, adherence to EU copyright law, and the dissemination of comprehensive summaries detailing the training data utilised.

Following the political agreement, further technical refinement of the text is expected. Upon conclusion, each institution (the European Parliament and the Council) will formally approve the text before its publication in the EU Official Journal.

European Commission, 21 April 2021, proposal for a regulation laying down harmonised rules on AI

https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52021PC0206

Council of the EU, General Approach, 25 November 2022, on the proposal for a regulation laying down harmonised rules on AI

https://www.consilium.europa.eu/en/press/press-releases/2022/12/06/artificial-intelligence-act-councilcalls-for-promoting-safe-ai-that-respects-fundamental-rights/

European Parliament, amendments adopted on 14 June 2023 on the proposal for a regulation laying down harmonised rules on AI

https://www.europarl.europa.eu/doceo/document/TA-9-2023-0236_EN.html

EP IMCO Press release on provisional agreement for AI

https://www.europarl.europa.eu/news/en/press-room/20231206IPR15699/artificial-intelligence-act-deal-on-comprehensive-rules-for-trustworthy-ai

European Commission opens formal proceedings against X under the Digital Services Act

Amélie Lacourt
European Audiovisual Observatory

On 25 April 2023, the European Commission adopted its first designation decision under the Digital Services Act (DSA) based on the user data which platforms had to publish by 17 February 2023 (see: IRIS 2023-5:1/2). With 112 million monthly active users in the EU, X (formerly Twitter) was designated as a Very Large Online Platform (VLOP).

The Commission may decide to open an investigation when it has suspicions of infringements by a VLOP or VLOSE (Very Large Online Search Engine) stemming either from its assessment of the information obtained during its monitoring, or from reliable sources.

On 12 October 2023, the Commission formally sent X a request for information under the DSA. This request followed indications received by the Commission services of the alleged spreading of illegal content and disinformation, in particular the spreading of terrorist and violent content and hate speech in the context of the Hamas terrorist attacks against Israel.

Following its preliminary investigation, the Commission decided to open formal infringement proceedings against X pursuant to Article 66 of the DSA. This decision was further based on an analysis of the risk assessment report submitted by X in September 2023, its transparency report published on 3 November 2023 and its replies to the formal request for information. According to Margrethe Vestager, Executive Vice-President for a Europe Fit for the Digital Age, “The higher the risk large platforms pose to our society, the more specific the requirements of the Digital Services Act are. We take any breach of our rules very seriously. And the evidence we currently have is enough to formally open a proceeding against X. The Commission will carefully investigate X's compliance with the DSA, to ensure European citizens are safeguarded online – as the regulation mandates.”

According to the Commission, the proceedings will focus in particular on:

Compliance with the DSA obligations related to countering the dissemination of illegal content in the EU, notably in relation to the risk assessment and mitigation measures adopted by X to counter the dissemination of illegal content in the EU, as well as the functioning of the notice and action mechanism for illegal content in the EU mandated by the DSA, including in light of X's content moderation resources. The effectiveness of measures taken to combat information manipulation on the platform, notably the effectiveness of X's so-called "Community Notes" system in the EU and the effectiveness of related policies mitigating risks to civic discourse

and electoral processes. The measures taken by X to increase the transparency of its platform. The investigation concerns suspected shortcomings in giving researchers access to X's publicly accessible data as mandated by Article 40 of the DSA, as well as shortcomings in X's ads repository. A suspected deceptive design of the user interface, notably in relation to checkmarks linked to certain subscription products, the so-called Blue checks.

If proven, these failures would constitute infringements of Articles 34(1), 34(2) and 35(1), 16(5) and 16(6), 25(1), 39 and 40(12) of the DSA. Such formal proceedings will eventually allow the Commission to assess whether X has breached the DSA in areas linked to risk management, content moderation, dark patterns, advertising transparency and data access for researchers.

In the event of the adoption of a non-compliance decision, a decision imposing fines or a decision imposing periodic penalty payments, the Commission will have to give X the opportunity of being heard on its preliminary findings, including any matter to which the Commission has taken objection; and any measures that the Commission may intend to take in view of those preliminary findings.

Press release – Commission opens formal proceedings against X under the Digital Services Act

https://ec.europa.eu/commission/presscorner/detail/en/IP_23_6709

NATIONAL

BULGARIA

[BG] Bulgaria transposed Directive 2019/789 and Directive 2019/790

Nikola Stoychev
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On 1 December 2023, the act amending and supplementing the Copyright and Neighbouring Rights Act – the Act (*Закон за изменение и допълнение на Закона авторското право и сродните му права)* was promulgated in the state gazette.

The Act transposes the provisions of 1) Directive 2019/789 laying down rules on the exercise of copyright and related rights applicable to certain online transmissions of broadcasting organisations and retransmissions of television and radio programmes; and 2) Directive 2019/790 on copyright and related rights in the Digital Single Market.

To add some context, the implementation process in Bulgaria started in June 2020 with consultations on a preliminary draft which were initiated by *Министерство на културата* (the Ministry of Culture). Based on this, an updated draft was published by the Ministry of Culture for official public consultation in September 2021. This happened after the implementation deadlines had already passed and after the European Commission had opened infringement procedures against Bulgaria and 22 other member states.

Following these consultations, a final draft was approved by the government and submitted to parliament. The Act was finally adopted by parliament on 23 November 2023.

During the long period of implementation (both before entering parliament and afterwards), relevant stakeholders (including collective management organisations (CMOs), international media and tech companies, and others that would be affected by the new rules) provided multiple statements and proposals for amendments. On the one hand, the conflicting interests of the various parties and the controversies over some of the texts of the directives contributed significantly to the delay. On the other hand, stakeholders actively participated in all of the stages and thus helped to some extent in clarifying some of the controversies in order to reach a balanced final text.

Ultimately, the Act introduces the mandatory requirements of Directive 2019/789 and Directive 2019/790 as well as a number of provisions that were left at the discretion of each member state. The Act also stipulates changes to provisions

that are not covered by the EU directives. A brief, non-exhaustive overview of the new provisions is as follows:

- The Act explicitly provides that copyright exceptions cannot be circumvented and any such agreements will be considered void.

- The Act introduces new rules on the transmission of programmes through direct injection.

- It also provides new and important definitions of the transmission, retransmission, etc. of programmes.

- The Act includes the copyright exceptions for:

• text and data mining for the purposes of scientific research,

• the use of works and other subject matter in digital and cross-border teaching activities,

• the preservation of cultural heritage,

• quotation, criticism and review,

• use for the purpose of caricature, parody or pastiche.

- Article 17 of Directive 2019/790 about the liability of online service providers for sharing content has been transposed.

- The Act abolishes the historic rule that works can only be used for a period of 10 years. This limitation was a significant hindrance to software developers and other parties relying on the use of works.

- The Act also stipulates the rules on the "country of origin" principle for ancillary online services.

- The Act now recognises the rights of publishers of press publications.

In conclusion, many of the changes follow the wording of the directives very closely and are generally a step in the right direction. High praise can be given for some of the changes to longstanding national provisions not covered by the directives which constitute significant progress in terms of modernising the national legislation and abandoning outdated understandings embedded within it.

Закон за изменение и допълнение на Закона за авторското право и сродните му прав

https://dv.parliament.bg/DVWeb/showMaterialDV.jsp?idMat=201485

Act amending and supplementing the Copyright and Related Rights Act

GERMANY

[DE] State media authorities report over 160 legal violations relating to the Middle East conflict to the European Commission

Katharina Kollmann
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The terror recently waged by Hamas against Israel is currently being reflected in German media. Much of the content being distributed in relation to the Middle East conflict violates youth protection law and human dignity, especially when it promotes anti-Semitism or glorifies violence. In Germany, the 14 *Landesmedienanstalten* (state media authorities) are responsible under the *Jugendmedienschutz-Staatsvertrag* (State Treaty on the Protection of Minors in the Media – JMStV) for taking action against such content if it is being distributed via privately owned telemedia services.

In recent months, the state media authorities have been busy preparing for the Digital Services Act (DSA) and its effects on their regulatory work. A task force set up to focus on the application of the DSA, for example, has adopted work processes for order procedures instigated under Article 9 DSA. These processes, which are based on the principle that crimes should be prosecuted and unlawful content deleted, involve all relevant stakeholders. As a result, in cooperation with the *Zentrale Meldestelle für strafbare Inhalte im Internet* (Central Reporting Office for Criminal Content on the Internet – ZMI) of the *Bundeskriminalamt* (Federal Criminal Police Office), more than 600 pieces of content that were inadmissible under media law have so far been removed via the reporting channels provided by platforms. In addition, over 200 hearing notifications have been sent since June this year as part of order procedures under Article 9 DSA.

In the context of the current Middle East conflict, the state media authorities are now reporting legal violations directly to the European Commission. They suspect that the measures taken by some very large online platforms (VLOPs) to combat illegal content are systematically inadequate. In accordance with the division of tasks provided for in the DSA, the media authorities and their European sister authorities report legal violations directly to the European Commission, which checks the existence of a systematic failure and can impose sanctions on offending VLOPs. The media authorities expect to have reported around 160 cases to the European Commission by the end of October 2023.

According to Tobias Schmid, the media authorities' European representative and director of the North-Rhine Westphalia media authority, this development, which he said was shocking in many ways, required "decisive and prudent action from all democratic institutions. Clear work processes and many years of experience are crucial." He pointed out that this was not the first time the media authorities had played a pioneering role in the regulation of media intermediaries, as they

were called in the *Medienstaatsvertrag* (state media treaty) and which included many VLOPs, at EU level. This reference should also be understood in the context of the ongoing debate within Germany concerning the extent to which the state media authorities are included in the supervisory structure under the Federal Government's proposed *Gesetz über digitale Dienste* (Digital Services Law – DDG), which is partly designed to supplement the DSA.

Meanwhile, Marc Jan Eumann, chairman of the *Kommission für Jugendmedienschutz* (Commission for the Protection of Minors in the Media – KJM) and director of the Rhineland-Pfalz media authority, stressed that, in exceptional situations such as the Israel-Gaza conflict provoked by Hamas, it was important to carefully weigh up which content and images should be distributed. Less extreme, pixellated images were sufficient to document the "horrors of terrorism". Detailed footage of corpses, for example, was not suitable for a 12-year-old's social media feed.

Last but not least, Wolfgang Kreißig, chairman of the *Direktorenkonferenz der Landesmedienanstalten* (Conference of State Media Authority Directors – DLM) and president of the Baden-Württemberg state communication authority, also referred to the regulatory impact of these processes. Against the background of the significant need for effective platform supervision, he said it was appropriate, in order to protect users, to enshrine the basis for effective law enforcement in the provisions of the DDG. The media authorities were therefore keen to see their role as the responsible authority for the sector suitably recognised in the DDG.

Pressemitteilung von „die medienanstalten"

https://www.die-medienanstalten.de/service/pressemitteilungen/meldung/deutsche-medien-und-plattformaufsicht-muss-zeigen-was-sie-kann

Press release of the state media authorities

[DE] ZAK bans broadcast of Auf1 content by “schwarz rot gold tv” due to unlawful thematic placement

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The *Kommission für Zulassung und Aufsicht* (Commission on Licensing and Supervision – ZAK) of the *Landesmedienanstalten* (state media authorities) has ruled that schwarz rot gold tv GmbH breached the ban on thematic placement enshrined in the *Medienstaatsvertrag* (state media treaty - MStV). The infringement occurred when six hours of editorial content from Media in res Medien GmbH (Auf1) were broadcast each day on the schwarz rot gold tv (SRGT) channel in return for a fee. As a result, schwarz rot gold tv GmbH has been banned from distributing such content for payment.

The ZAK is the central organ of the 14 German state media authorities whose main task is to grant licences to and monitor national private broadcasters. Under Article 105(1) of the MStV, it is also responsible, *inter alia*, for monitoring telemedia and regulating media intermediaries, media platforms and user interfaces.

In 2021, the *Landesanstalt für Kommunikation in Baden-Württemberg* (Baden-Württemberg communication authority – LFK) granted schwarz rot gold tv GmbH a licence to organise and distribute the national television channel schwarz rot gold tv (SRGT), which has been transmitted via satellite since 1 September 2023. Also starting on 1 September 2023, schwarz rot gold tv GmbH allowed Austrian company Media in res Medien GmbH, the producer of Auf1, to broadcast its programmes on SRGT for six hours per day in return for a fee. News bulletins, topical magazine programmes, chat shows and interviews, as well as service and satirical programmes from the Auf1 portfolio were therefore broadcast between 6am and 7.45am and from 6pm until 10pm every day. The editor-in-chief of Auf1, Stephan Magnet, is part of Austria’s right-wing extremist scene.

According to the ZAK’s findings, the arrangement effectively involved airtime being sold. This gave Media in res Medien GmbH influence over SRGT programming, which was classified as thematic placement. This is prohibited under Article 8(7) sentence 1 of the MStV. Thematic placement is defined in Article 3(13) of the state media authorities’ *Satzung zur Durchführung der Werbevorschriften des Medienstaatsvertrags* (Statute on the implementation of the advertising rules of the state media treaty – *Werbesatzung*) as “the treatment of themes in editorial content in the interests or at the instigation of third parties, in particular if the provider receives or is promised remuneration or similar reward for doing so.” It is prohibited because it influences programme content in a way that is detrimental to the provider’s editorial responsibility and independence. Product placement on the other hand, i.e. the deliberate placement of a product in a broadcast, is allowed in principle, except in news programmes and programmes intended for political information or if it prejudices editorial responsibility and independence concerning content and placement in the

programme schedule (see Article 8(7) sentence 3 No. 1 MStV).

The broadcaster must immediately implement the LFK's decision, which was taken in application of the ZAK's ruling.

Pressemitteilung von „die medienanstalten"

https://www.die-medienanstalten.de/service/pressemitteilungen/meldung/zak-untersagt-die-ausstrahlung-von-redaktionellen-inhalten-von-auf1-im-programm-schwarz-rot-gold-tv-wegen-unzulaessiger-programm-einflussnahme

Press release of the state media authorities

[DE] BLM Media Council adopts AI guidelines

Katharina Kollmann
Institute of European Media Law

At its ninth meeting held on 19 October 2023, the *Medienrat* (Media Council) of the *Bayerische Landeszentrale für neue Medien* (Bavarian New Media Authority - BLM) adopted new guidelines on the use of artificial intelligence (AI) in journalism. Designed to protect the credibility of journalism and preserve democratic debate, the guidelines are merely an initial set of recommendations regarding the use of AI systems in journalism. In view of AI's rapid development, however, they will need to be continuously updated.

The authors accept that the use of AI in journalism has some benefits. For example, it can ease the burden of repetitive tasks and research activities, search through archives and documents or pre-filter content in order to provide initial protection against hate messages on social media. However, they also warn that AI systems bring certain risks, such as a lack of transparency around decision-making processes (so-called "black box technology") or misuse in journalism for targeted disinformation campaigns.

In the absence of a universal definition of AI, the BLM guidelines define it as "technologies that enable computers and machines to imitate human cognitive skills such as logical thinking, learning or creativity. Using algorithms, these technologies analyse data and recognise patterns so they can fulfil tasks, solve problems and make decisions independently."

The first guideline is "Observe journalistic due diligence": even when AI is used, research and reporting must meet journalistic quality standards such as objective reporting, careful presentation and research, and fact-checking prior to publication. This particularly concerns the disclosure of information sources and technical aids used.

The second guideline is "Editorial responsibility remains with people": AI results should not be trusted unconditionally. Responsible use of AI must include the possibility for humans to make corrections. Approval processes at editorial level must also be clearly regulated and a complaints body set up.

The third guideline is "Label transparently": AI use must be appropriately labelled when published content is produced and when it is used to moderate content. For example, the technology used, the data collected and the person responsible for the published content should be identified.

The fourth guideline is "Certify AI voluntarily": certified AI that meets certain security and quality standards should be used if possible.

The fifth guideline is "Keep an eye on copyright and exploitation rights": journalists must look out for infringements of third-party copyright in particular. At

the same time, the remuneration rights of media professionals must also be respected if works they have created are used by or with the help of AI.

The sixth guideline is “Comply with relevant data protection laws”: when data is collected, prepared or processed using AI, data protection laws must be upheld, especially where personal data is concerned.

The seventh guideline is “Enable balanced opinion formation despite personalisation”: even when AI is used, reporting must be balanced, diverse and neutral. AI data sources must be scrutinised regularly. Filter bubbles resulting from personalised content should be avoided.

The eighth guideline is “Stay critical”: journalists should remain critical regarding the results of generative AI and data sources used in order to stop existing prejudices being exacerbated or to prevent overconfidence in AI results despite a lack of quality control, for example.

The ninth and final guideline is “Relieve staff instead of replacing them”: AI can ease the burden on staff, but can never replace them. The objective of AI use in day-to-day editorial work should be to create a “balanced relationship” between machine and human activity.

Leitlinien des Medienrats der BLM zum Einsatz von Künstlicher Intelligenz im Journalismus

https://www.blm.de/files/pdf2/ki-leitlinien.pdf

BLM Media Council guidelines on the use of artificial intelligence in journalism

Pressemitteilung der Bayerischen Landeszentrale für neue Medien (BLM)

https://www.blm.de/de/infothek/pressemitteilungen/2023.cfm?object_ID=20162

Press release of the Bavarian New Media Authority (BLM)

DENMARK

[DK] Extended collective licensing for text and data mining (AI)

Terese Foged
Lassen Ricard, law firm

On 1 June 2023 – about two years late – the Danish Parliament passed a bill to implement the Digital Single Market (DSM) Directive in full. This led to the introduction of such things as new rules on text and data mining in sections 11b and 11c of the Danish Copyright Act, equivalent to DSM Directive Articles 3 and 4 (where section 11c corresponds to Article 3 and section 11b to Article 4).

There was no provision in the Danish rules, nor any indication in the legislative history, regarding extended collective licensing in connection with text and data mining, often referred to as the use of Artificial Intelligence (AI).

Rightsholder organisations had lobbied for such licensing, including via a letter of 15 May 2023 which contained a concrete proposal on a specific extended collective licence for reproductions and extractions in connection with text and data mining outside the Copyright Act sections 11b and 11c.

This was reflected in the Ministry of Culture's letter of 28 May 2023 to the parliamentary Cultural Affairs Committee, stating that the plan immediately following implementation of the DSM Directive was to look, *inter alia*, at the proposal for an extended collective licence in the field of text and data mining. Thus, a specific extended collective licence of this nature was expected.

On 7 December 2023 the Ministry of Culture sent out for consideration a proposal for amendments to the Danish Copyright Act, with a deadline for comments of 12 January 2024.

The proposal includes no specific extended collective licence for text and data mining, but it stresses that rightsholders' consent may be necessary; it indicates that the existing general extended collective licence could be used in this connection; and it introduces the possibility of mediation. Thus the proposal states :

"It is further proposed that section 50 paragraph 2 be added to the list in section 52, so that mediation in connection with negotiations under the general extended collective licence in section 50, paragraph 2 be possible.

The Ministry of Culture notes that, for example, in the field of artificial intelligence and text and data mining, there are often large international players, and experience has shown that there may be a need to formalise discussions in negotiations with large tech companies, which mediation can contribute to.

The proposed change means that in connection with general extended collective licensing – e.g. with regard to collective agreements on text and data mining and artificial intelligence (AI) – mediation can be used to facilitate the conclusion of agreements. The parties themselves, i.e. the rightsholders and providers of AI services, can enter into and define agreements, which can then - provided that the conditions are met - be given extended collective licensing effect. This means that such an agreement can define which types of works, etc. are covered. […]

Text and data mining may be associated with the use of material protected by copyright law. This is the case when protected material is copied or content is extracted from a database, for example, when data is normalised during the text and data mining process. In such cases, permission must be obtained from the rightsholders if the exceptions or restrictions in the Copyright Act does not apply.

The exceptions in section 11b and section 11c do not give full access to text and data mining of protected works. The general extended collective licence can be used here to fill the gaps by allowing collective agreements to the extent that use is not permitted under section 11b or section 11c.

It is becoming increasingly common to use automated algorithms (artificial intelligence), whereby a large number of works can be scraped and analysed in a short time. When training models are based on generative AI, taking place during scraping, there is a mass exploitation of works involving a large number of rightsholders. Since the core of the Nordic extended collective licensing model is to ensure agreement on mass exploitation, so that users are ensured easy access to rights clearance, and rightsholders are ensured reasonable payment for the use of their works, the extended collective licence is an option that can be used as a tool in this area.

Like other agreements under the general extended collective licence, agreements on text and data mining under section 50, paragraph 2, have to be approved by the Ministry of Culture."

Forslag til aftalelicens om TDM

https://www.ft.dk/samling/20222/lovforslag/L125/henvendelser.htm

15 May 2023 – letter with a proposal (wording) on extended collective licensing (see Bilag 3)

23. maj 2023 - brev fra Kulturministeriet til Folketingets Kulturudvalg med indikationer på kommende ændringer af ophavsretsloven

https://www.ft.dk/samling/20222/lovforslag/L125/bilag/8/2712861.pdf

23 May 2023 – letter from the Ministry of Culture to the parliamentary Cultural Affairs Committee with indications on forthcoming amendments to the Copyright Act

30. maj 2023 - Forslag til Lov om ændring af lov om ophavsret

https://www.ft.dk/ripdf/samling/20222/lovforslag/l125/20222_l125_efter_2behandling.pdf

30 May 2023 – bill amending the Danish Copyright Act to implement the DSM Directive

1. juni 2023 - Forslag til Lov om ændring af lov om ophavsret

https://www.ft.dk/ripdf/samling/20222/lovforslag/l125/20222_l125_som_vedtaget.pdf

1 June 2023 – bill amending the Danish Copyright Act to implement the DSM Directive, as passed by parliament

Høring over forslag til lov om ændring af lov om ophavsret og ændring af lov om kunstneriske uddannelsesinstitutioner under Kulturministeriet

https://hoeringsportalen.dk/Hearing/Details/68225

7 December 2023 – hearing about proposal for amendments to the Danish Copyright Act, with deadline for comments of 12 January 2024

SPAIN

[ES] TikTok collaborates with the Spanish Data Protection Agency to control the dissemination of harmful content of social vulnerable groups

Azahara Cañedo & Marta Rodriguez Castro

The Spanish Data Protection Agency (AEPD) has incorporated TikTok into its Priority Channel, a communication channel established between the agency and Spanish citizens to report content (photographs or videos) published on social media that is of a sexual nature or that shows acts of aggression that put the rights and freedoms of the people affected at high risk. The legal basis for this channel is that one's own image constitutes personal data and , under Spanish law, the AEPD has the power to adopt urgent measures to limit the publication of content that undermines the protection of personal data. As clarified by the agency, social media activity is generally excluded from the application of data protection law when it involves personal or domestic activities, so this channel may be used only in exceptional cases where the privacy of the person concerned is being put at serious risk.

In a context where content is increasingly being distributed online in an uncontrolled manner, and can be used as a tool for harassment, the AEPD and TikTok have agreed to cooperate jointly to promptly address citizens' complaints about the dissemination of content depicting women victims of gender-based violence, minors, and other vulnerable groups. This will allow the AEPD to work closely with the Chinese platform to remove videos quickly. Thus, TikTok joins other technological companies that already have this collaboration in place, such as Alphabet, Meta or Microsoft.

At the procedural level, the agency may call for the urgent removal of sensitive content, which usually takes place within 72 hours if the platform manager is located in Spain and the individuals whose privacy is affected are Spanish. In addition, accountability can also be determined through a sanctioning procedure, which is assessed subsequently on the basis of the specific facts submitted with the complaint. Since the launch of the Priority Channel, the AEPD has ordered the removal of 165 items of online content of a sexual or violent nature published without consent or that put the physical or mental health of the individuals concerned at serious risk. During the 2022-2023 biennium alone, the agency intervened in more than 80 cases.

La AEPD suma a TikTok como entidad comprometida con el Canal Prioritario

https://www.aepd.es/prensa-y-comunicacion/notas-de-prensa/la-aepd-suma-tiktok-como-entidad-comprometida-con-el-canal

AEPD adds TikTok as an entity committed to the Priority Channel

FRANCE

[FR] CNews application to European Court of Human Rights against CSA formal notice ruled inadmissible

Amélie Blocman
Légipresse

On 27 November 2019, the *Conseil Supérieur de l'Audiovisuel* (the French audiovisual regulatory body – CSA) issued a formal warning to the company that operates the CNews television channel following comments made by Eric Zemmour, a journalist and political commentator at the time, during the programme 'Face à l'info' in which he had been debating with a member of the French Senate on issues linked to immigration, the integration of persons of foreign origin, France's peri-urban neighbourhoods and Muslims' place in France. Citing Articles 6(1) and 10 of the European Convention on Human Rights, the channel complained that the reasoning of the CSA's decision, and of the decision of the *Conseil d'Etat* (Council of State) of 16 June 2021 rejecting its request that the formal warning be set aside as *ultra vires*, had been insufficient. It also alleged that its freedom of expression had been infringed.

The European Court of Human Rights emphasised that, having regard to its nature and subject matter, the contested decision had to be viewed as a condition placed on the exercise of the applicant's freedom of expression, amounting to an interference within the meaning of Article 10(2) of the Convention. The formal notice sent by the CSA was a warning, the only consequence of which was to allow for the possibility of a penalty being imposed if, in the future, the applicant company was found liable for another breach of the duty to comply with its legal and contractual obligations, specifically the obligation, as a television service provider, to ensure that the programmes it broadcast did not contain incitement or encouragement to hatred or violence, especially on the grounds of religion or nationality.

The Court saw no reason to depart from the assessment made of the disputed comments by the CSA and the *Conseil d'Etat*. It pointed out that, in its decision of 16 June 2021, the *Conseil d'État* had expressly quoted the contested statements and, placing them in the context in which Eric Zemmour had spoken, i.e. the "current debates on peri-urban neighbourhoods, the integration of persons of foreign origin and the place of Islam and Muslims in France", it held that they "legitimatised, in the context [of this] current-affairs debate, violence committed against population [groups] defined by their religious beliefs, and created confusion between immigration, Islam and Islamisation."

The *Conseil d'Etat* held that the CSA had acted in accordance with the powers invested in it by section 42 of the Law of 30 September 1986 and Article 4-2-1 of the agreement of 19 July 2005 in so far as these referred to formal notices, and had neither disproportionately interfered with the right to free communication of

ideas and opinions, guaranteed in particular by Article 10 of the Convention, nor breached the constitutionally recognised aim of pluralistic expression of ideas and opinions.

The Court concluded that this interference, which was measured in nature, had been proportionate to the legitimate aim pursued, namely the protection of the reputation or rights of others, and dismissed the application as manifestly ill-founded.

Cour européenne des droits de l'homme, 30 novembre 2023, no 60131/21, CNews c/ France

https://hudoc.echr.coe.int/fre?i=001-229482

European Court of Human Rights, 30 November 2023, no. 60131/21, CNews v France

[FR] Competition authority conditionally approves Canal Plus Group's acquisition of OCS and Orange Studio

Amélie Blocman
Légipresse

On 11 July 2023, the Canal Plus Group, which produces pay and free-to-air channels, distributes pay-per-view and subscription video-on-demand, aggregates and distributes pay TV and subscription video-on-demand services, and produces, acquires and distributes films and TV series, notified the *Autorité de la concurrence* (French competition authority) of its plan to acquire exclusive control of the companies OCS and Orange Studio. Prior to the proposed transaction, OCS was jointly controlled by Orange SA and the Canal Plus Group, operating pay TV channels and a subscription video-on-demand and catch-up TV service. OCS also produces original content. Meanwhile, Orange Studio was wholly owned by Orange SA. Its main activities include the co-production, acquisition, distribution and sale of cinematographic works and TV series.

On 12 January 2024, after examining the transaction, the competition authority announced that it had approved it, subject to conditions.

As part of an investigation involving the parties and operators in the film, TV and video-on-demand sectors, the competition authority concluded that segmentation according to broadcasting mode (linear and non-linear) was no longer relevant, either in the upstream markets for the acquisition of broadcasting rights or in the intermediate markets for the production and marketing of pay TV channels.

The competition authority found that the transaction could have had a significant impact on the diversity of French cinema. It would have placed the Canal Plus Group in the position of sole pre-buyer of recent French films for first-pay-window broadcast. To date, the Canal Plus Group and OCS are the only two first-pay-window outlets available to French film producers seeking pre-financing for their projects. The disappearance of the alternative financing outlet would have entailed the risk, as was widely emphasised by the operators interviewed, of a deterioration in the diversity of French cinema, by making the new entity the sole investor in first-window pay TV.

In addition, the competition authority found that the transaction would have led to possible limitations on the availability of Orange Studio's French catalogue films on the catch-up TV services of free-to-air channels, as well as a possible reduction in the number of channels offered by certain ISPs to consumers in the French overseas territories, as these operators do not have sufficient alternatives for the OCS channels.

In order to address the identified risks of harm to competition, the Canal Plus Group has made a number of commitments for a five-year period, designed in particular to protect the diversity of French cinema.

Firstly, it has committed to maintain an alternative outlet for the financing of French cinema. The Canal Plus Group has committed to maintain an OCS/Ciné+ acquisition team dedicated to pre-purchasing first-pay-window French films from French producers, separate from that of Canal+ (independent decision-making, separate staff and budget, dedicated cost accounting system). In this regard, the annual budget of the Ciné+/OCS team will correspond to the amount guaranteed by OCS as part of its interprofessional agreement with cinema trade associations of 9 February 2022. To further guarantee the diversity of French cinema, the Canal Plus Group has also committed to make, on behalf of the Ciné+/OCS team, pre-purchase proposals for a minimum of 25 French film projects over five years, including at least four French film projects per year (of which one per year with a budget of less than EUR 4 million) for films rejected by the Canal+ acquisition team for first-pay-window broadcast.

In addition, to address the other anti-competitive risks identified, the Canal Plus Group has committed, for French catalogue films for which Orange Studio, prior to the transaction, is a co-producer and does not hold a distribution mandate, not to oppose the transfer of broadcasting rights to a free-to-air broadcaster's catch-up TV service.

Décision 24-DCC-04 DU 12 janvier 2024 relative à la prise de contrôle exclusif des sociétés OCS et Orange Studio par Groupe Canal Plus (Bolloré)

https://www.autoritedelaconcurrence.fr/fr/communiques-de-presse/acquisition-docs-et-orange-studio-par-groupe-canal-plus-lautorite-conditionne

Decision 24-DCC-04 of 12 January 2024 on the acquisition of exclusive control of the companies OCS and Orange Studio by the Canal Plus Group (Bolloré)

[FR] Contentious comments in a news and entertainment programme: honest presentation of controversial issues and respect for the presumption of innocence

Amélie Blocman
Légipresse

The company C8 asked the *Conseil d'Etat* (Council of State) to annul decision no. 2022-704 of 16 November 2022 in which the *Autorité de régulation de la communication audiovisuelle et numérique* (French audiovisual regulator, ARCOM) issued a formal notice requiring it to comply with the provisions of Article 2-3-8 of its licence agreement of 29 May 2019 and Articles 1 and 3 of decision no. 2018-11 issued by ARCOM's predecessor, the *Conseil supérieur de l'audiovisuel* (CSA), on 18 April 2018 concerning the honesty and independence of information and news programmes, following comments made on 18, 19 and 24 October 2022 by the presenter of the programme '*Touche pas à mon poste*' after the murder of a young girl.

The *Conseil d'Etat* pointed out that the requirements of section 3-1 of the Law of 30 September 1986, under which ARCOM guarantees the honesty, independence and pluralism of information and news programmes, also applied to programmes that were not exclusively dedicated to the presentation of information, but that also contributed to the processing of information. Contrary to the TV channel's claim, it ruled that there was a legal basis to issue a formal notice based on a decision taken in application of these provisions in relation to comments made during a programme that combined news and entertainment.

France's highest court stressed, first of all, that Article 3 of the decision of 18 April 2018 required broadcasters, in programmes dealing with ongoing judicial proceedings, to exercise restraint when dealing with such cases and pay particular attention to respect for the presumption of innocence. It held that ARCOM had correctly applied this provision, considering that the broadcaster had breached this obligation since the presenter had repeatedly and provocatively referred to the person under investigation as the 'alleged perpetrator', a term that had appeared in a banner on the screen, and expressed very strong and clear views on how the person concerned should be tried and the punishment that should be imposed.

The *Conseil d'Etat* also pointed out that the final paragraph of Article 1 of CSA decision no. 2018-11, requiring broadcasters to present controversial issues with honesty, did not prevent them from adopting an editorial approach that determined their processing of information. However, even when a controversial issue was being discussed, including in programmes that were not exclusively dedicated to the presentation of information, but that also contributed to the processing of information, it did require them to tackle such issues in a way that distinguished between the presentation of facts and commentary on those facts,

as well as allowing different viewpoints to be expressed in accordance with their legal obligation concerning honesty of information. Whether this final requirement was met depended in particular on the subject-matter, author and content of the comments expressed, as well as the type of programme, its audience and the context in which it was broadcast.

In the case at hand, during two sequences shown on 18 and 19 October 2022, the programme's presenter had decided to discuss the criminal treatment of suspected child murderers just a few days after a tragic case had hit the headlines. On both occasions, he had given his opinion at great length about the need to hold trials quickly in such cases and to automatically issue life sentences, whatever the person's state of mind at the time of the offence. During the sequence of 24 October, the presenter, responding to the controversy that the two previous sequences had caused, had spent about ten minutes firmly reiterating his views, before other guests on the programme spoke to support him following the criticism he had received.

The *Conseil d'Etat* ruled that, under the circumstances, the honesty of information requirement meant that the views expressed by the presenter on this controversial issue should have been contradicted by other participants, which had not been the case. Therefore, since the broadcaster had, during this sequence, breached its obligation under the aforementioned decision no. 2018-11 to present controversial issues with honesty, ARCOM had correctly applied these provisions. C8's application was therefore rejected.

Conseil d'Etat, 21 décembre 2023, n° 470575, C8

https://www.conseil-etat.fr/fr/arianeweb/CE/decision/2023-12-21/470565

Council of State, 21 December 2023, no. 470575, C8

UNITED KINGDOM

[GB] GB News’ "Don’t Kill Cash" campaign breached Ofcom due impartiality rules

Julian Wilkins
Wordley Partnership and Q Chambers

The GB News programme "The Live Desk" promoted the broadcaster’s campaign called "Don’t Kill Cash" to promote the use of cash. Ofcom considered that the campaign was addressing an issue of political controversy and related to current public policy. The GB News campaign breached Rule 5.4 of Ofcom’s Broadcasting Code which requires licensees to exclude all expressions of the views and opinions of the person providing the service. Further, GB News breached rule 5.5 requiring a broadcaster to preserve due impartiality on matters of political or industrial controversy and matters of current public policy.

GB News is a UK-based channel that broadcasts a range of news content and current affairs programmes. The licence for GB News is held by GB News Ltd.

On 3 July 2023, GB News launched its "Don’t Kill Cash" campaign (the campaign) to "call on the government to introduce legislation to protect the status of cash as legal tender and as a widely accepted means of payment in the UK until at least 2050". The campaign was extensively advertised across GB News programming and included a QR Code and links to the GB News website.

During the Live Desk programme on 7 July 2023 (the programme), the campaign was heavily featured and included encouragement for viewers to sign a petition to enable the matter to be discussed in parliament. The programme discussed the merits and demerits of cash including the security costs of handling sums of money; it also highlighted the fact that some citizens had no access to digital devices to use online banking.

GB News contended that there had been a history in the UK of broadcasting campaigns. Also, GB News said the campaign was not about "matters of political and industrial controversy and matters relating to current public policy". GB News considered there was no alternative view that needed to be broadcast.

Ofcom acknowledged the arguments GB News used to justify running its campaign. Ofcom’s role was not to comment on the merits of the campaign whilst the Broadcasting Code is not intended to prohibit broadcasters from broadcasting content encouraging viewers to support campaigns on particular issues. However, the legislative framework, as reflected in the code, clearly states that broadcasters must ensure that, where they promote such campaigns, they must do so in a manner compliant with section five of the code, particularly rules 5.4 and 5.5.

Rule 5.4 says: "Programmes in the services ... must exclude all expressions of the views and opinions of the person providing the service on matters of political and industrial controversy and matters relating to current public policy (unless that person is speaking in a legislative forum or in a court of law). Views and opinions relating to the provision of programme services are also excluded from this requirement."

Rule 5.5 says: "Due impartiality on matters of political or industrial controversy and matters relating to current public policy must be preserved on the part of any person providing a service ... This may be achieved within a programme or over a series of programmes taken as a whole."

Ofcom observed that the campaign was a matter of current public policy and a matter of political controversy including controversy over the Financial Services and Markets Bill (the Bill) which was introduced to parliament on 20 July 2022 and included legislation to ensure the maintenance of access to cash. The Bill gained Royal Assent on 29 June 2023, just four days before GB News launched its campaign.

The government had mandated that there should be no obligation for a business to accept cash. Ofcom saw the campaign as being directly opposed to the government. The broadcaster was effectively advocating its opinion in derogation of rule 5.4 of the Broadcasting Code.

GB News' output, in the context of the overall coverage, had few counterarguments in support of a cashless society. Ofcom’s Guidance on rule 5.5 states that the preservation of due impartiality does not require a broadcaster to include every argument on a particular subject or to provide, in each case, a directly opposing argument to the one presented in the programme. However, while current affairs programmes are able to investigate issues and take a position even if that is highly critical, a broadcaster must maintain an adequate and appropriate level of impartiality in its presentation of matters of political controversy.

Whilst other broadcasters had previously supported campaigns such as ITV’s campaign on mental health and Sky’s campaign to combat racism in football, an obligation nevertheless remained to comply with rules 5.4 and 5.5 and in GB News' case, that compliance had not occurred. Ofcom determined that GB News had breached rules 5.4 and 5.5.

Ofcom, in their determination, gave consideration to freedom of expression under Article 10 of the European Convention on Human Rights.

The Live Desk, GB News, 7 July 2023, 12:00, Ofcom Broadcast and On Demand Bulletin Issue 488, 18 December 2023

https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwi_9eK0t9eDAxV8_rsIHXw-AUMQFnoECBAQAQ&url=https%3A%2F%2Fwww.ofcom.org.uk%2F__data%2Fassets%2Fpdf_file%2F0025%2F273445%2FThe-Live-Desk%2C-GB-News%2C-7-July-2023.pdf&usg=AOvVaw3JC-xEBVUZhJy8sA0251tX&opi=89978449

Ofcom Broadcasting Code

https://www.ofcom.org.uk/tv-radio-and-on-demand/broadcast-codes/broadcast-code

[GB] Ofcom Study on Audience Attitudes Towards TV Content

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Ofcom, the UK's communications regulator, released a comprehensive study examining viewers' attitudes to violent and sexual content on TV and their expectations about content they watch on linear and on-demand services. Conducted as part of Ofcom's ongoing efforts to discern evolving viewer attitudes towards harm and offences, as well as preferences and tolerances among viewers, this latest study was designed to enhance the regulator's understanding of viewers' experiences with audiovisual content and the various factors that shape their standards of acceptability.

1. Modernisation of TV portrayals of sex

In Ofcom's study on audience attitudes toward sex and violence on television, viewers observed a relatively high level of sexual content but expressed a collective sentiment of improvement and modernisation in the portrayal of sex and sexual relationships. This shift is characterised by a diminished presence of gender stereotyping, the absence of objectification of women, and a move away from uncritical depictions of exploitative relationships.

Participants noted a decrease in the portrayal of intimate scenes from an exclusively male perspective, emphasising a more inclusive approach. Audiences recognised a heightened focus on consent in sexual relationships and the empowerment of female characters. Notably, parents highlighted television's role in offering positive role models, citing characters like Connell from the BBC drama *Normal People*.

2. Positive shifts in nudity and sexual content

Regarding nudity and sexual content, viewers noted a positive transformation, with programmes now reflecting more body-positive and inclusive attitudes. Participants praised television's role in raising awareness of medical issues and fostering openness about potentially sensitive health concerns. By understanding these changes, broadcasters can align their content with audience expectations while respecting freedom of expression.

3. Redefining norms: the rise of realistic violence on TV

Viewers expressed a perception of intensified violence on television, with graphic and realistic violent content considered the "norm" post-watershed (i.e. the time when TV programmes that might be unsuitable for children can be broadcast. Under the Ofcom Broadcasting Code, the watershed begins at 9 p.m. and material unsuitable for children should not, in general, be shown before 9 p.m. or after 5.30 a.m.). This shift was attributed to societal changes and evolving audience

preferences, possibly influenced by the competition with more graphic content on streaming services. Citing examples from popular shows like *Game of Thrones*, viewers found realistic depictions of violence "more immersive, exciting, and powerful" compared to "staged" depictions of the past. Modern portrayals of violence were acknowledged for showcasing the negative consequences of such actions.

4. Concerns and safeguards: navigating the watershed

The study revealed that concerns about TV content primarily revolve around protecting children. Participants emphasised the significance of the 9 p.m. watershed and the importance of warnings to guide viewer choices. However, the effectiveness of the watershed as a parental control has diminished with the advent of on-demand viewing.

5. On-demand services and changing viewing habits

In response to changing viewing habits, Ofcom conducted a further study to explore audience expectations from different content on TV and on-demand services. Viewers perceived a distinction between live broadcast TV and subscription on-demand services (e.g., Netflix and Amazon Prime) but did not separate broadcaster on-demand services (e.g. BBC iPlayer and ITVx) from live broadcast TV in the same way. Subscription streaming services were acknowledged for offering "edgier" content (e.g., Amazon Prime's *The Boys*), reflecting changing expectations as viewers actively select their content. Some confusion emerged over the extent of regulation covering different services, with misconceptions about the Broadcasting Code's applicability to all broadcaster on-demand services.

6. Adapting regulation to evolving perspectives

The findings from these studies will guide future approaches to regulation, ensuring it aligns with the dynamic concerns of the public. Moreover, these recent insights will aid broadcasters in creating diverse content that meets audience expectations while respecting editorial freedom.

Attitudes towards violence, sexual content, linear and on-demand services

https://www.ofcom.org.uk/research-and-data/tv-radio-and-on-demand/tv-research/attitudes-towards-violence-sexual-content-linear-on-demand-services

ITALY

[IT] AGCOM adopts new sanctioning measures against Google and Twitch

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On 5 December 2023, the Italian Communications Authority (AGCOM), adopted three significant measures against major video-sharing platforms for violating the Italian prohibition on advertising games with cash prizes. Italian regulations prohibit any such form of direct or indirect advertising conducted on any transmission platform, including social media.

In particular, with Resolution No. 317/23/CONS, Google Ireland Ltd. was fined EUR 2 250 000 (for the third time), and with Resolution No. 318/23/CONS, Twitch Interactive Germany GmbH was fined EUR 900 000 for violating the prohibition on gambling advertising under Article 9 of Legislative Decree No. 87 of 12 July 2018, converted into Law No. 96 of 9 August 2018, known as the "Dignity Decree".

These measures were taken in response to numerous reports received by AGCOM in recent months, denouncing alleged violations of the aforementioned regulations through the YouTube and Twitch video-sharing platforms.

Google had previously been fined by AGCOM for similar conduct in 2020 under Resolution 541/20/CONS (EUR 100 000) for a violation via the Google Ads service and in 2022 under Resolution 275/22/CONS (EUR 750 000) for violations through YouTube (see IRIS 2022-8:1/4). For Twitch, this was the first sanctioning measure adopted by AGCOM.

The aforementioned measures led to the blocking of over 20 000 videos in Italy on more than 80 channels of the video-sharing platforms in question that advertised slot machines, gambling, sports betting, and scratch cards.

In both proceedings, the companies were held responsible as owners of the means of video dissemination published by third parties with whom they had specific commercial partnership contracts. Regarding the reported and contested channels in the respective proceedings, AGCOM found the companies liable only for the channels (15 on YouTube and 6 on Twitch) targeting Italian audiences.

Furthermore, the platforms were ordered to prevent (notice and staydown) and remove (notice and takedown) the uploading of similar violative videos by those entities, in accordance with Article 6, paragraph 1, letter b) of the DSA.

Finally, with Resolution No. 316/23/CONS, AGCOM closed the proceedings against TikTok Technology Ltd., noting the absence of a contractual relationship with the 30 content creators who uploaded the contested content.

Delibera n. 317/23/CONS "ordinanza-ingiunzione nei confronti della società google ireland limited per la violazione della disposizione normativa contenuta nell'art. 9, comma 1, del decreto legge 12 luglio 2018, n. 87 convertito con legge 9 agosto 2018, n. 96 (cd. decreto dignità) contestazione n. 5/23/DSDI – proc. 21/FDG

https://www.agcom.it/documentazione/documento?p_p_auth=fLw7zRht&p_p_id=101_INSTANCE_FnOw5lVOIXoE&p_p_lifecycle=0&p_p_col_id=column-1&p_p_col_count=1&_101_INSTANCE_FnOw5lVOIXoE_struts_action=%2Fasset_publisher%2Fview_content&_101_INSTANCE_FnOw5lVOIXoE_assetEntryId=32623456&_101_INSTANCE_FnOw5lVOIXoE_type=document

Resolution No. 317/23/CONS "Order-injunction against the company Google Ireland Limited for breach of the regulatory provision contained in Article 9, paragraph 1, of Decree-Law No. 87 of 12 July 2018, converted by Law No. 96 of 9 August 2018 (the so-called Dignity Decree) Dispute No. 5/23/DSDI - proc. 21/FDG

Delibera n. 316/23/CONS "Archiviazione del procedimento avviato nei confronti della società tiktok technology limited per la violazione della disposizione normativa contenuta nell'art. 9, comma 1, del decreto-legge 12 luglio 2018, n. 87 convertito con legge 9 agosto 2018, n. 96 (cd. Decreto dignità) Contestazione n. 9/23/DSDI - proc 25/FDG"

https://www.agcom.it/documentazione/documento?p_p_auth=fLw7zRht&p_p_id=101_INSTANCE_FnOw5lVOIXoE&p_p_lifecycle=0&p_p_col_id=column-1&p_p_col_count=1&_101_INSTANCE_FnOw5lVOIXoE_struts_action=%2Fasset_publisher%2Fview_content&_101_INSTANCE_FnOw5lVOIXoE_assetEntryId=32623373&_101_INSTANCE_FnOw5lVOIXoE_type=document

Resolution No. 316/23/CONS "Archiving of the proceedings initiated against the company TikTok Technologies Limited for the violation of the regulatory provision contained in Article 9, paragraph 1, of Decree-Law No. 87 of 12 July 2018, converted by Law No. 96 of 9 August 2018 (the so-called Dignity Decree) Complaint No. 9/23/DSDI - proc 25/FDG"

Delibera n. 318/23/CONS "Ordinanza-ingiunzione nei confronti della società twitch interactive germany gmbh per la violazione della disposizione normativa contenuta nell'art. 9, comma 1, del decreto-legge 12 luglio 2018, n. 87 convertito con legge 9 agosto 2018, n. 96 (cd. Decreto dignità) Contestazione n. 6/23/DSDI - proc. 22/FDG"

https://www.agcom.it/documentazione/documento?p_p_auth=fLw7zRht&p_p_id=101_INSTANCE_FnOw5lVOIXoE&p_p_lifecycle=0&p_p_col_id=column-1&p_p_col_count=1&_101_INSTANCE_FnOw5lVOIXoE_struts_action=%2Fasset_publisher%2Fview_content&_101_INSTANCE_FnOw5lVOIXoE_assetEntryId=32623589&_101_INSTANCE_FnOw5lVOIXoE_type=document

Resolution No. 318/23/CONS "Order-injunction against the company Twitch Interactive Germany GmbH for the violation of the regulatory provision contained in Article 9, paragraph 1, of Decree-Law No. 87 of 12 July 2018, converted by Law No. 96 of 9 August 2018 (the so-called Dignity Decree) Complaint No. 6/23/DSDI - proc. 22/FDG"

[IT] AGCOM adopts a regulation on video-sharing platforms

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The Italian Communications Authority (AGCOM), with Resolution No. 298/23/CONS of 22 November 2023, has adopted, following the public consultation initiated with Resolution No. 76/23/CONS (see IRIS 2023-5:1/5), a regulation that establishes rules aimed at protecting minors and consumers from harmful content disseminated on digital video-sharing platforms (VSPs).

The regulation, which will come into effect on 8 January 2024, defines the procedures through which AGCOM can restrict the circulation of content intended for the Italian public, issuing an order to to the hosting platforms requiring them to remove one or more videos, even if these platforms are established in another member state.

In order to determine whether a programme, user-generated video, or audiovisual commercial communication disseminated by a provider established in another member state is directed at the Italian public, at least one of the following criteria must be satisfied: (1) predominant use of the Italian language, (2) reaching a significant average number of unique monthly users in the Italian territory, and/or (3) the VSP achieving revenues in Italy, even if accounted for in the financial statements of companies based abroad.

The regulation, in line with Article 3, paragraphs 4 and 5 of the E-Commerce Directive (2000/31/EC), has established two different intervention methods.

In particular, the first scenario stipulates that AGCOM, either on its own initiative or upon user notification, after ascertaining the presence of one or more videos intended for the Italian public on a VSP that (1) may harm the physical, psychological, or moral development of minors, (2) may incite racial, sexual, religious, or ethnic hatred, or offend human dignity, or (3) do not adequately protect consumers, informs the competent national authority of the member state in which the platform is established or considered. This communication occurs by activating the relevant cooperation procedures between member states through the Internal Market Information system (as per EU Regulation No. 1024/2012), also utilising the relevant indications provided by the Memorandum of Understanding of the ERGA. In this case, the competent authority has seven days to intervene. In cases where there is no action by the member state within the seven-day period or if no communication is received from the competent national authority within the specified cooperation procedures, or if the action taken appears inadequate, AGCOM may issue the order directly to the platform.

The second intervention method is immediate and direct, applying to cases where AGCOM observes that one or more videos intended for the Italian public contain content that could lead to a situation of urgency due to the risk of serious,

imminent, and irreparable harm to users' rights due to the disseminated content. In such cases, AGCOM can immediately issue the order to inhibit access to said content to the platform, which must comply within three days. Any measures taken are promptly communicated, within no more than three days from the notification, to the European Commission and the competent administrative authority in the member state where the provider is established or considered to be established, along with the reasons for the urgency and to all Digital Service Coordinators under Article 9, paragraph 4, of the DSA.

Delibera n. 298/23/CONS "Regolamento recante attuazione dell'art. 41, comma 9, del decreto legislativo 8 novembre 2021, n. 208 in materia di programmi, video generati dagli utenti ovvero comunicazioni commerciali audiovisive diretti al pubblico italiano e veicolati da una piattaforma per la condivisione di video il cui fornitore è stabilito in un altro stato membro"

https://www.agcom.it/documentazione/documento?p_p_auth=fLw7zRht&p_p_id=101_INSTANCE_FnOw5lVOIXoE&p_p_lifecycle=0&p_p_col_id=column-1&p_p_col_count=1&_101_INSTANCE_FnOw5lVOIXoE_struts_action=%2Fasset_publisher%2Fview_content&_101_INSTANCE_FnOw5lVOIXoE_assetEntryId=32597765&_101_INSTANCE_FnOw5lVOIXoE_type=document

Resolution No. 298/23/CONS "Regulation implementing Article 41(9) of Legislative Decree No. 208 of 8 November 2021 concerning programmes, user-generated videos or audiovisual commercial communications directed at the Italian public and conveyed by a video-sharing platform whose provider is established in another Member State".

NETHERLANDS

[NL] Secretary of State refuses to withdraw broadcaster Ongehoord Nederland's recognition as a public broadcaster

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On 27 November 2023, the Secretary of State for Culture and Media issued a high-profile provisional decision, refusing a request by the *Stichting Nederlandse Publieke Omroep* (Dutch Public Broadcasting Foundation - NPO) to withdraw the recognition of the broadcaster *Ongehoord Nederland* (ON) as a public broadcaster. This follows the NPO having imposed three separate fines on the broadcaster, including a EUR 131 000 fine in April 2023 for "systemic violation" of the NPO Journalistic Code in relation to the broadcaster's news programme; a EUR 84 000 fine in July 2022 for an earlier systematic violation of the NPO Journalistic Code, and a EUR 56 000 fine in December 2022 for a "lack of cooperation" (IRIS 2023-6:1/16). Subsequently, the NPO requested the *Commissariaat voor de Media* (Dutch Media Authority) to take further enforcement action against the broadcaster, which the Authority refused in April 2023 (IRIS 2023-6:1/16). While in July 2023, the Board of Directors of the NPO issued a decision, upholding the financial sanction imposed on the broadcaster (IRIS 2023-8/17).

Crucially, in April 2023, the NPO's Board of Directors made a formal request to the Secretary of State for Culture and Media to withdraw the recognition of the broadcaster, based on a "lack of willingness to cooperate" on the part of the broadcaster. The State Secretary considered the request, and on 27 November 2023, issued a provisional decision rejecting the request. First, the State Secretary noted that it had "never happened that a minister had to consider a request for withdrawal", and revoking the permit was a "very serious measure" and, the government "must therefore be particularly cautious in doing so". Importantly, the State Secretary stated that "cooperation is indeed difficult due to Ongehoord Nederland's attitude". However, according to the State Secretary, there is "insufficient legal basis to make such a far-reaching decision". The State Secretary stated that the "journalistic code is not about collaboration, but about quality requirements that a broadcaster must meet".

However, this does not mean that "nothing is wrong", as the NPO had imposed a sanction on the broadcaster several times and the Ombudsman has repeatedly found that the broadcaster had violated the journalistic code. However, the broadcaster has "shown in the past year that it is willing to improve things", and the State Secretary expected the broadcaster to "continue this line of improvement". The State Secretary also wants the NPO and the broadcaster to "resume constructive discussions".

Finally, the State Secretary added that there are “not enough legal grounds to withdraw ON's provisional recognition. I see there are problems. But for the time being I have not observed such a manifest and structural lack of willingness to cooperate that this justifies the severe remedy of withdrawal. I would like to emphasize that I cannot and do not wish to pass judgment on the content of ON’s programming. It is essential that we protect journalistic freedom, in all its manifestations and extremes”.

The Secretary of State’s decision is provisional. The parties involved will now have two weeks to submit their views, and a final decision will then follow.

Staatssecretaris Cultuur en Media, Ongehoord Nederland behoudt voorlopige erkenning, 27 november 2023

https://www.rijksoverheid.nl/ministeries/ministerie-van-onderwijs-cultuur-en-wetenschap/nieuws/2023/11/27/ongehoord-nederland-behoudt-voorlopige-erkenning

Secretary of State for Culture and Media, Ongehoord Nederland retains provisional recognition, 27 November 2023

[NL] Senate passes bill requiring major streaming platforms to invest in Dutch productions

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On 31 October 2023, the senate (*Eerste Kamer*) approved an important bill amending the Media Act (*Mediawet*) 2008. The bill was introduced in July 2022 by the Secretary of State for Culture and Media (*Staatssecretaris Cultuur en Media*) (see IRIS 2022-8/16) and will now require major streaming platforms – with an annual Dutch turnover of more than EUR 10 million – to invest 5% of that turnover in Dutch audiovisual productions such as series, films and documentaries (see IRIS 2023-7/10). The primary objective is to encourage Dutch cultural offerings – sports are explicitly excluded – to compete effectively with the large international offerings. This obligation, according to the secretary of state, is expected to generate more than EUR 40 millions in investment and is designed to increase the supply of Dutch productions on streaming services.

The bill entered into force on 1 January 2024. According to the secretary of state, this is appropriate for several reasons. The relevant turnover of these media institutions will also be calculated from that point in time. Given the organisation of the financial year, 1 January is a logical and workable date of entry into force for the streaming platforms involved, in the sense that it will be easier to determine the relevant annual turnover. In addition, the sector is familiar with the content of this bill. Only a limited number of parties will have to meet the investment obligation. These parties are, according to the secretary of state, sufficiently prepared for its entry into force. This also applies to the *Commissariat voor de Media* (Dutch Media Authority) as the supervisory authority.

Going forward, the Minister of Education, Culture and Science will report annually to the States General (Parliament and Senate) on the amounts invested by streaming platforms in Dutch cultural audiovisual productions during the preceding financial year , whether in documentary films, documentary series, drama series or feature films. Moreover, the minister will also send a report to the States General within three years after the entry into force of this bill on its effectiveness and the effects of this investment obligation in practice.

Invoeren investeringsverplichting ten behoeve van Nederlands cultureel audiovisueel product, 31 oktober 2023

https://www.eerstekamer.nl/wetsvoorstel/36176_invoeren

Bill to amend the Media Act 2008 in connection with the introduction of an investment obligation for the benefit of Dutch cultural audiovisual productions, 31 October 2023

Saatssecretaris Cultuur en Media, "Streamingdiensten moeten per 1 januari 2024 meer investeren in Nederlandse producties", 31 oktober 2023

https://www.rijksoverheid.nl/ministeries/ministerie-van-onderwijs-cultuur-en-wetenschap/nieuws/2023/10/31/streamingdiensten-moeten-per-1-januari-2024-meer-investeren-in-nederlandse-producties

Secretary of State for Culture and Media, "Streaming services must invest more in Dutch productions as of 1 January 2024", 31 October 2023

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