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EDITORIAL

Our loyal readers will remember that a year ago I hinted that 2023 would be the year of EMFA for the European audiovisual sector, and it certainly has been.

The year 2024 will likely be the year of Artificial Intelligence. After all the hype around the now-famous ChatGPT, 2024 should be the time when AI, particularly generative AI, really enters our lives with its share of wonders and its share of problems. And relatively obscure and complicated problems, I fear. Listen to what Sam Altman, co-founder of OpenAI and creator of ChatGPT, has to say: “The dangerous thing there is not what we already understand … but it’s all the new stuff — the known unknowns, the unknown unknowns […] there’s a whole bunch of other things that we don’t know because we haven’t all seen what, you know, generative video or whatever can do, and that’s going to come fast and furious during an election year.”

Regulation is catching up: on 2 February 2024, the ambassadors of the 27 countries of the European Union unanimously approved the AI Act after lengthy negotiations. Numerous initiatives are also taken at national level to address the challenges posed by AI. You may be interested to read about the approaches taken in Austria, Slovenia, and the UK.

In this context, the Council of Europe deserves a special chapter. As you may know, our mother organisation is drafting a Framework Convention on the Development, Design and Application of Artificial Intelligence. This convention will be complemented by sectoral work across the organisation, and one example of this are the Guidelines for the Responsible Use of Artificial Intelligence Systems in journalism, recently adopted by the CoE’s Steering Committee on Media and Information Society (CDMSI).

And there is more, much more, to read on our electronic pages: for example, on the regulation of influencers in Spain and Italy, on the protection of minors on social media in Spain, and on the development of a guidance note by the Council of Europe on countering the spread of online mis- and disinformation.

All this AI-free guaranteed!

Enjoy your read!

Maja Cappello, Editor

European Audiovisual Observatory

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Good practices for sustainable news media financing

Urška Umek
Council of Europe, Directorate General of Democracy and Human Dignity

Recent years have witnessed a consistent deterioration in the sustainability of conventional business models of news media. Newspapers and audiovisual services have been facing a severe decrease in revenues from advertising due to the rise of new digital platforms competing in the advertising market, coupled with a decreased willingness to pay for news in light of the abundance of free news online. A general economic crisis, the Covid-19 pandemic and the Russian aggression on Ukraine have exacerbated the situation.

To be able to secure financial income in this context, news media need sustainable business models that enable them to perform their democratic mission – critically overseeing power and providing citizens with the information they need to navigate society and make decisions. A report on "Good practices for sustainable news media financing" was thus prepared by the Committee of Experts on Increasing Resilience of the Media (MSI-RES), to collect examples of sustainable practices at national levels and analyse the trends in Council of Europe member states which can help forecast future scenarios and envisage media policies fit to ensure media sustainability and plurality in a fast-changing environment.

The report, based on desk research and data provided by member states, confirms the analysis of recent academic studies and policy reports to the effect that no single model has successfully replaced the advertising-based traditional model of funding. Furthermore, the success of a funding model must be analysed within the context of different political systems, regions, cultures, media market characteristics and sizes, as well as the levels of media independence and journalistic working conditions. In short, there is no one-size-fits-all solution to ensure the sustainability of the news media sector.

As an alternative to advertising, direct funding in the form of a fee in exchange for news content or for a service seems the dominant strategy, practised especially by media companies which operate in more affluent countries with a good level of media literacy and where users are willing to pay for news.

The report also stresses the importance of other sources of funding, like philanthropy, as far as it does not unduly influence or compromise content or journalistic standards. Philanthropy in relation to online platforms, in particular,

raises concerns as there is a risk that the projects funded by them will serve to reinforce platforms' business models rather than journalism. There are many experiences with crowdfunding, but they seem limited in effectiveness, as they require a great deal of effort for the raising of funds and have a low level of sustainability in the long run. They are particularly popular and used in markets with a high level of political influence over the media.

The declining trend in advertising revenues has also given rise to initiatives that innovate in the digital advertising space, by creating, in particular, the conditions for media companies to compete with big tech players for the use of data. Often conducted as a synergistic effort between various actors in the digital environment, these initiatives may prove successful in attracting advertising resources to quality news content.

Regarding the media's use of data, the report highlights some cases of media organisations moving to contextual advertising, as a compromise between user privacy and effective targeting which involves the use of relevance criteria to ensure that advertisements are displayed in contexts that align with the content and interests of the audience. Investments in innovative business models and AI tools for journalism can enhance the media outlet's competitiveness.

There is also an important role for governments in adapting their policies to ensure that commercial digital markets remain competitive. Data sharing and standards for AI and data analytics should be part of new policies to support the media market. Digital platforms, in particular large ones, should be transparent about news reach and engagement metrics, ensuring fair allocation of resources to news content creators.

As for state support to the media, direct state support is an important source of funding that is functional for sustainability and media plurality only if public funds are granted through transparent, non-discriminatory, objective, predictable, and accountable criteria. The report also recommends funding public service media (PSM) through earmarked taxes.

Taxation policies seem useful instruments to sustain media businesses beyond direct public support, such as tax relief as an indirect benefit for hiring journalists, tax relief for consumer spending on journalism, and extending charitable status to allow more news media to enjoy these tax benefits. While good practices in the realm of tax policies have been implemented in Canada, this solution has yet to be discussed realistically at the European level.

Overall, business models that privilege diverse revenues can be deemed more sustainable in the sense promoted by this report. A business model that diversifies income streams is not only the most sustainable in economic terms, but it also ensures more independence for media outlets and guarantees external influence on newsrooms and media content is minimal. This includes both political and state interference, as well as influence from publishers, advertisers, and private interests.

Based on the analysis, the report makes several recommendations to member states, news media companies, philanthropic donors and the Council of Europe.

The report was drafted by co-rapporteurs Elda Brogi, Scientific Coordinator at the Centre for Media Pluralism and Media Freedom and professor (part-time) at the European University Institute in Florence, and Helle Sjøvaag, Professor of Journalism at the University of Stavanger. It was endorsed by the Steering Committee on Media and Information Society (CDMSI) at its 24th Plenary meeting (29 November - 1 December 2023).

Good practices for sustainable news media financing

https://rm.coe.int/msi-res-2022-08-good-practices-for-sustainable-media-financing-for-sub/1680adf466

Guidance Note on countering the spread of online mis- and disinformation

Urška Umek
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At its 24th Plenary meeting (29 November - 1 December 2023), the Steering Committee on Media and Information Society (CDMSI) adopted a Guidance Note on countering the spread of online mis- and disinformation through fact-checking and platform design solutions in a human rights compliant manner elaborated by its subordinate body, the Committee of Experts on the integrity of online information (MSI-INF).

The Guidance Note is a response to the proliferation of various kinds of mis- and disinformation in the digital space, making it more challenging to maintain the integrity of elections, ensure healthy pluralism, and protect the democratic process from manipulation. Malicious actors, including some foreign governments, spread disinformation online to disrupt free and fair elections and undermine the very notion that facts matter to democracy and can be meaningfully identified and discussed. Also, there is a growing amount of disinformation generated and spread with AI tools that poses distinctive threats to democratic dialogue. The quality of public debate is also threatened by the propagation of false information by individuals who consider it as true and share it in good faith.

The Guidance Note proposes strategies to counter online mis- and disinformation in a manner that is compliant with human rights standards. These strategies focus on three areas of action: fact-checking, platform design and user empowerment which may all contribute, at different levels and in different ways, to reducing the spread and negative impacts of disinformation.

Regarding the first, the Guidance Note stresses the centrality of fact-checking as a key institution of public debate and calls for the independence of fact-checking organisations vis-à-vis states and other stakeholders with potential interests. There should be transparency of the fact-checking processes, and such processes should be delivered by independent fact-checking organisations, to foster user trust in fact-checking. Furthermore, support from both states and digital platforms is vital to ensure the financial sustainability of fact-checking. Given the importance of fact-checking for public watchdog activities in democratic societies, such checks require continuous quality control. In this connection, it is also important for online platforms to integrate external fact-checking into their content curation systems.

Platform design should involve "human rights by design" and "safety by design" features, to promote and protect human rights and fundamental freedoms. Both states and online platforms, in designing their regulatory frameworks and implementing self-regulatory policies around platform design, should first conduct

and publish human rights impact assessments, with concrete measures to prevent or mitigate risks arising from the proposed interventions.

Platform design is to focus on processes through which online platforms rank, moderate and remove content, rather than on content itself, and granular responses should be employed in terms of content moderation techniques. It is, furthermore, important that online platforms invest in non-English moderators with in-depth understanding of different cultural contexts, so that their content moderation tools may function at similar levels of efficacy across different languages. That said, any state regulatory frameworks, including co-regulation, targeting platform design in relation to mis-and disinformation, should contain requirements that are proportional to the risk level that platforms' functioning involves, based on risk level criteria such as the size (e.g. number of users and capitalisation), resources (e.g. technical and economic means), and reach (e.g. potential impact on audiences).

As part of their policies on countering the spread of online mis- and disinformation, states and platforms may, where necessary, and consistent with the right to freedom of expression, introduce appropriate and proportionate measures to ensure the prominence of public interest content online, particularly content produced by reliable and professional news organisations, in line with the principles set out in the Guidance Note on the Prioritisation of Public Interest Content Online (CDMSI(2021)009).

Last but not least, the section on user empowerment proposes a number of measures for building user resilience to disinformation, including by enhancing the capacity for collective action within communities. Collaboration between states, civil society, platforms, public service media, news organisations, fact-checkers, civil society organisations, user communities, etc. is necessary to maximise the impact of user empowerment initiatives.

This Guidance Note contains recommendations for member states of the Council of Europe, online platforms which have human rights responsibilities of their own and other stakeholders engaged in addressing the spread of mis- and disinformation online, in particular news organisations and fact-checkers.

Guidance Note on countering the spread of online mis- and disinformation through fact-checking and platform design solutions in a human rights compliant manner

http://rm.coe.int/cdmsi-2023-015-msi-inf-guidance-note/1680add25e

Guidance Note on the Prioritisation of Public Interest Content Online

https://rm.coe.int/cdmsi-2021-009-guidance-note-on-the-prioritisation-of-pi-content-e-ado/1680a524c4

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https://rm.coe.int/cdmsi-2021-009-guidance-note-on-the-prioritisation-of-pi-content-e-ado/1680a524c4

Guidelines on the responsible implementation of artificial intelligence systems in journalism

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Council of Europe, Directorate General of Democracy and Human Dignity

Recent years have seen a rapid change in the way we consume and produce news, information, and entertainment. The rise of artificial intelligence (AI) has opened new frontiers in journalism. Algorithms can now help with complex data analysis and fact-checking; they can power news recommendation systems to deliver personalised and engaging content to audiences; and they can also generate articles and video content.

AI can be a valuable tool for journalists; it can greatly improve the efficiency of newsgathering and reporting. But it also raises many questions as to what it means for the future of journalism. As more and more news organisations incorporate AI-powered systems into their professional practices, important legal and ethical issues arise. Will AI facilitate journalists' work, or will it eventually replace them? Which journalistic processes are – and which are not – suitable for automation? If an AI algorithm produces inaccurate, biased or misleading content, who is responsible? How can editorial values be translated into algorithms? How to ensure proper oversight of the use of AI in journalism?

Also, AI systems do not have the ability to critically assess the sources of information on which they are trained, so AI-generated stories can lead to the spread of mis- and disinformation. In journalism, mistakes can be costly and can easily undermine public trust in the media, so there is also a need for transparency vis-à-vis the audience. These questions highlight the need for clear and transparent guidance around the use of AI in journalism.

In the past two years, the Committee of Experts on Increasing Resilience of Media (MSI-RES), together with member states' representatives, researchers in the fields of journalism, information law and technology, members of journalists' associations and civil society organisations, has developed such guidance in the form of a soft-law instrument – Guidelines on the responsible implementation of artificial intelligence systems in journalism. These guidelines were adopted by the Council of Europe's Steering Committee on Media and Information Society on 30 November 2023.

They are a practical tool detailing how AI systems should be used to support the production of journalism. They focus on the use of journalistic AI, that is, technologies which support the core business of journalism, namely producing information, ideas and opinions about contemporary affairs. The text first addresses news media organisations, covering different stages of journalistic production from the decision to use AI systems, the acquisition of AI tools and

their incorporation into professional practice to the external dimension of using AI in newsrooms, that is, how it affects the audiences and wider society.

The key idea of the guidelines is that the use of AI should not only facilitate journalistic work and the sales of media products but should also be used in a way that promotes the society's interests in being informed. AI should support the functioning of the media as a forum for public discourse and a public watchdog. The guidelines include a list of factors which need to be considered by news media organisations when implementing AI systems into their work. They also include guidelines on how to implement AI in a way that does not undermine the accuracy and credibility of news content.

For example, the use of AI is an editorial decision and requires editorial oversight of outputs to prevent or mitigate bias and false information. News organisations should carry out appropriate risk assessments before opting for specific AI solutions. The guidelines further call for the disclosure of use where AI systems could meaningfully affect the audience's rights or influence how they interpret the outputs. The guidelines also talk about how the use of AI involves new values and priorities in relation to the audience, such as the transparency and explainability of AI, respect for privacy and data protection, cognitive autonomy, etc.

In addition, there are three sections for other addressees: the guidelines propose specific responsibilities for technology providers which develop and design AI systems used for journalistic production. They also provide a summary of the existing guidance applicable to online platforms which disseminate news. Finally, the guidelines include obligations for states, with guidance on how they can support quality and sustainable journalism both through financial support and regulation – by introducing standards for the responsible development and use of journalistic AI, for example for labelling synthetic content (produced by AI systems), an issue which is much discussed at the moment as it relates to the authenticity of journalistic content.

The guidelines also include two annexes; the first one is very practical and includes a procurement checklist specifying the most important considerations that should lead the processes of acquiring AI systems and implementing them in the media organisations' professional practices. The second annex includes a summary of all relevant Council of Europe instruments, detailing specific concerns related to the use of technology and the solutions provided in the organisation's texts.

Guidelines on the responsible implementation of artificial intelligence systems in journalism

https://rm.coe.int/cdmsi-2023-014-guidelines-on-the-responsible-implementation-of-artific/1680adb4c6

FRANCE

European Court of Human Rights: *Allée v. France*

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In a judgment of 18 January 2024 the European Court of Human Rights (ECtHR) found a violation of the right of a victim of sexual harassment to freedom of expression as guaranteed by Article 10 of the European Convention on Human Rights (ECHR). The case concerns the applicant's criminal conviction for public defamation following her allegations of harassment and sexual assault against a senior executive of the association where she worked. The ECtHR in particular stressed the need to provide appropriate protection to individuals alleging that they have been subjected to mental or sexual harassment.

On 7 June 2016 the applicant in this case, Ms Vanessa Allée, had sent an email with the subject line "Sexual assault, sexual and mental harassment" to six persons, including the managing director of the association where she was employed as a secretary. A copy of the email was also sent to the State Labour Inspector, as well as to Mr A., the then executive vice-chair of the association, whom she accused of sexual harassment towards her. About a year earlier, Ms. Allée had asked for a transfer in her job environment, arguing that she was experiencing sexual harassment by Mr A. Also, Ms Allée's husband had sent SMS messages to the association's managing director, alleging that Mr A. had harassed and sexually assaulted his wife, with a request to the management to intervene. In response, the managing director suggested that Ms Allée should take sick leave, until such time as her contract could be terminated by mutual consent or a new position could be found for her. In reply to Ms Allée's email of 7 June 2016 the managing director repeated his earlier suggestion. A few weeks later Ms Allée's husband posted a message on the Facebook wall of one of his acquaintances, reiterating his wife's allegations and describing the situation as a "sex scandal". The message named Mr A. and the association, which gave rise to a number of strongly worded comments. Mr A. brought private proceedings against Ms Allée and her husband before the Paris Criminal Court, alleging that they had committed public defamation. Both were found guilty of public defamation of a private individual. Ms Allée was ordered to pay a suspended fine of EUR 1 000, and to pay Mr A. the symbolic sum of one euro in addition to the sum of EUR 2 000 in respect of litigation costs, to be paid jointly with her husband. Ms Allée appealed against the judgment. The Paris Court of Appeal upheld the conviction but reduced the fine imposed by half. It held that the allegations against Mr A. had been damaging to his honour and reputation. And while there were elements corroborating that mental and even sexual harassment as perceived by Ms Allée had occurred, there was no evidence that sexual assault by Mr A. had taken place. Subsequently Ms Allée invoked whistle-blower protection on the basis of specific

provisions in French labour law and she appealed before the Court of Cassation, complaining in particular of a violation of her right to freedom of expression. The Court of Cassation dismissed the appeal and ordered that EUR 2 500 were to be paid in respect of costs incurred in the proceedings before it.

Relying on Article 10 ECHR, Ms Allée complained that her criminal conviction for defamation had violated her right to freedom of expression. In its judgment of 18 January 2024 the ECtHR clarified that the application had to be evaluated from a balancing perspective between the right to freedom of expression of Ms Allée and the right to privacy and reputation of Mr A. Therefore, a set of relevant factors needed to be examined, such as the context and nature of the allegations, the situation and intent of Ms Allée, the number and qualifications of the persons to whom the mail was sent, the nature of the allegations damaging the reputation of Mr A., as well as the impact of the sanction imposed on Ms Allée.

The ECtHR drew attention to the fact that the email for which Ms Allée was criminally convicted had been sent in a tense situation in which her work and private life were intermingled. It noted that the email had been sent to a limited number of people, all but one in a position entitling them to receive reports of harassment. The email had not been intended for public dissemination: its sole purpose had been to alert the recipients of Ms Allée's situation, so that a means of ending it could be found. By considering the public nature of the email in issue, within the meaning of the Freedom of the Press Act of 29 July 1881, the approach by the French courts appeared to neglect the requirements for compliance with Article 10 ECHR. With regard to the nature of the impugned statements, the ECtHR was of the opinion that Ms Allée had acted in her capacity as the alleged victim of the acts she was reporting and that the email contained statements of fact. Furthermore, Ms Allée should not be criticised, given the situation she was experiencing, for expressing herself in a heated manner, while there had been elements corroborating her claims that mental and even sexual harassment had occurred. However, the domestic courts had considered that Ms Allée could not rely on the defence of good faith, as her claims of sexual assault had lacked a sufficient factual basis. The ECtHR reiterated that private documents disseminated to a restricted number of people had to have a factual basis and that, the more serious the allegation, the stronger that factual basis needed to be. It noted, however, that the actions complained of had been committed in the absence of witnesses, and that Ms Allée's failure to report such acts to the prosecuting authorities could not be used to establish her bad faith. Stressing the need, under Article 10 ECHR, to provide appropriate protection to individuals alleging they had been subjected to acts of mental or sexual harassment, the ECtHR considered that the domestic courts' refusal to adapt the concept of sufficient factual basis and the criteria for assessing good faith to the circumstances of the case had placed an excessive burden of proof on Ms Allée, by requiring that she provide evidence of the acts she wished to report. The ECtHR also took into consideration that it was not so much the impugned email itself, but the Facebook message posted by Ms Allée's husband that had generated heated discussions and brought the matter to public attention. Finally, the ECtHR found that although the financial penalty imposed could not be described as particularly severe, Ms Allée had nonetheless been convicted of a criminal offence. By its nature, such a conviction had a chilling

effect, which could discourage people from reporting such serious actions as those amounting, in their view, to mental or sexual harassment, or even sexual assault. Therefore, the ECtHR found unanimously that there had been no reasonable relationship of proportionality between the interference with Ms Allée's right to freedom of expression and the protection of Mr A.’s reputation. There had therefore been a violation of Article 10 ECHR.

Arrêt de la Cour européenne des droits de l'Homme, cinquième section, rendu le 18 janvier 2024 dans affaire Allée c. France, requête n° 20725/20

https://hudoc.echr.coe.int/eng?i=001-230297

Judgment by the European Court of Human Rights, Fifth section, in the case of Allée v. France, Application no. 20725/20, 18 January 2024

LITHUANIA

European Court of Human Rights: Narbutas v. Lithuania

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In one of its last judgments in 2023, the European Court of Human Rights (ECtHR) found a violation of an applicant's rights both under Article 8 (right to privacy) and Article 10 (right to freedom of expression) of the European Convention on Human Rights (ECHR). The ECtHR found that by disclosing the identity of the applicant on the day of his arrest, by exposing him to media coverage and by publishing several (online) press releases during the pre-trial investigation, the authorities had breached the applicant's right to reputation under Article 8 ECHR.

A ban imposed on the applicant from discussing his case in the media and on his Facebook page, which had put him at a disadvantage in comparison to the authorities who had remained free to make public comments on the case, amounted to a violation of the applicant's right to freedom of expression as guaranteed under Article 10 ECHR.

The present case concerns the arrest and prosecution of Mr Šarūnas Narbutas in the context of a high-profile criminal investigation relating to Narbutas' involvement in the acquisition by the Lithuanian government of a large number of COVID-19 tests.

Narbutas had been the president of the Lithuanian Cancer Patient Coalition (POLA) and a legal advisor to the President of Lithuania. He had also been working in the area of public health and at the same time, he was a university lecturer, the head of a private company and a self-employed consultant. In 2020, he acted as an intermediary for the contacts between a Spanish pharmaceutical company and the National Public Health Surveillance Laboratory, a public entity supervised by the Ministry of Health in Lithuania. These contacts led to the purchase of 303,360 COVID-19 tests at a total cost of more than five million euros.

The Special Investigations Service (STT) opened an investigation into the circumstances of the purchase. Narbutas was arrested and held in provisional detention for two days, while he was officially notified that he was suspected of trading in influence and had requested and accepted a bribe of EUR 303 360, disguised as commission, from the pharmaceutical company.

The same day, the STT published a press release on its website, mentioning Narbutas' full name and earlier function as head of POLA, stating that he was suspected of trading in influence and that searches, seizures, interviews and other necessary investigative measures were being carried out in various locations in Vilnius.

The information included in the press release was republished by several major news websites. The spokesperson for the STT also gave interviews to various journalists, providing essentially the same information as in the press release. The next day, after Narbutas was released from detention and placed under house arrest, he and the prosecutor spoke to several journalists, and the videos of their interviews or quotes were published online the same day.

Some of the news articles also included photographs or videos of Narbutas being led into the courtroom by police officers with his hands behind his back. In the interviews, Narbutas criticised the STT's use of criminal-law measures against what he considered to have been lawful commercial activity. In the following days the case was breaking news in Lithuania, with several politicians commenting on the lack of transparency about purchasing such a large number of COVID-19 tests.

Narbutas continued to give more interviews to various news outlets and publish posts on his Facebook page, in which he discussed his role in the purchase of the tests, insisting that his actions had been lawful. He criticised, in particular, the actions of the STT. A few weeks later, Narbutas was officially warned by the prosecutor's office that he was not allowed to disclose information about the pre-trial investigation without the prosecutor's permission. Several appeals to lift the ban commenting on his case failed.

In 2023, Narbutas was acquitted by the Vilnius Regional Court, finding that Narbutas had not acted in breach of the criminal law. The prosecutor appealed against this acquittal, and the case was still pending during the proceedings before the ECtHR.

Narbutas lodged a series of complaints with the ECtHR, including a breach of this right to reputation under Article 8 and his right to freedom of expression under Article 10 ECHR. He complained that the STT had revealed his name and employment history on the day of his arrest in a press release, and that he was escorted to a court hearing in front of journalists. He asserted that this exposure and regularly commenting on the case in the media by the STT and public officials had violated his rights under Article 6 § 2 (presumption of innocence) and Article 8 ECHR.

The ECtHR found that the domestic authorities failed to strike a fair balance between the authorities' right to inform the public of the pre-trial investigation under Article 10 ECHR and Narbutas' right to respect for his private life, including his reputation, under Article 8 ECHR. The ECtHR was unable to find that the degree of Narbutas' notoriety or his public role was such as to justify the disclosure of his identity by the STT when announcing the suspicions against him.

It emphasised that Narbutas was not a politician and was not in public office at the time: he was a university lecturer, the head of a private company and a self-employed consultant. Although he had previously been an advisor to an MP and the President, his work in those positions had ended ten and four years respectively prior to the events in question.

Furthermore, the ECtHR shared Narbutas' view that by making his identity public, the authorities increased the media's interest in the case and created the conditions for the impugned photographs and videos of him to be taken and published. Narbutas did not voluntarily expose himself to the public but was forced to attend the court hearing, and, under these circumstances, he had no means to protect his privacy and to prevent journalists from obtaining the images of him being led by police officers in a position which made it appear as if he was handcuffed.

The ECtHR also found that some parts in the press releases of STT, quoting the prosecutor's statements, amounted to a moral judgment of Narbutas, expressed in strong and unambiguous terms, liable to damage his reputation. Hence, although the ECtHR agreed that the pre-trial investigation against Narbutas concerned a matter of public interest and that providing the public with information about this investigation contributed to a debate of public interest, it found that the way the Lithuanian authorities had given publicity to the case had violated Narbutas' right to reputation under Article 8 ECHR.

The ECtHR also reiterated that the authorities cannot be prevented from informing the public of criminal investigations in progress. However, they are required to do so with all the discretion and circumspection necessary if the presumption of innocence is to be respected. Lastly, the ECtHR also referred to the fact that all the press releases and articles reproducing the authorities' statements about the case were available online. It referred to 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. Such a risk of harm is certainly higher than that posed by the press, mainly on account of the important role of search engines. Therefore, the ECtHR found that the content and form of the press releases and public comments issued by the investigating authorities were not justified by the need to inform the public of the ongoing criminal proceedings and that they were such as to cause serious damage to Narbutas' reputation.

The ECtHR also found that by imposing a ban on Narbutas from discussing the case in the media and on his Facebook page, the authorities were liable for creating a chilling effect and had precluded Narbutas from expressing himself publicly about the pre-trial investigation. It observed that by the time the warning was given, a significant amount of information about the pre-trial investigation had already become public. There were no indications that Narbutas may have disclosed information about secret surveillance measures or any other confidential information about the pre-trial investigation.

Where a case is widely covered in the media, on account of the seriousness of the facts and the individuals likely to be implicated, an individual cannot be penalised for breaching the secrecy of the judicial investigation where they have merely made personal comments on information which is already known to the journalists and which they intend to report, with or without those comments. Therefore, the ECtHR concluded that the interference with Narbutas' right to freedom of expression violated his right under Article 10 ECHR.

Judgment by the European Court of Human Rights, Second section, in the case Narbutas v. Lithuania, Application no. 14139/21, 19 December 2023.

https://hudoc.echr.coe.int/eng?i=001-229604

EUROPEAN UNION

Opinion of Advocate General Szpunar in the joined cases of Airbnb, Amazon et al.

Justine Radel-Cormann
European Audiovisual Observatory

In Italy, providers of online intermediation services and online search engines are required by law to be entered in a register and to provide information relating to their structure and economic situation, even if they are not established on Italian soil. This information must be provided to the Italian Communications Authority (AGCOM) and entered in the Register of Communications Operators (RCO). Service providers must also pay an annual contribution to AGCOM.

Various providers of online intermediation services and online search engines (including Amazon and Airbnb, which are based in Luxembourg and Ireland respectively) contested this Italian legislation with the Lazio Regional Administrative Court, claiming that it was incompatible with European Union (EU) law. The Italian court decided to stay the proceedings and to refer some questions to the Court of Justice of the European Union (CJEU) for a preliminary ruling on whether these measures are consistent with EU law or not.

In this context, Advocate General Maciej Szpunar presented his conclusions to the CJEU.

The Advocate General analysed the questions in the light of various EU laws, in particular the directive on electronic commerce (E-Commerce Directive), which introduces the principle of mutual recognition between member states. According to this principle, a service provider that meets the requirements in its member state of origin (the state in which it is established) may operate in another member state of destination, which may not restrict its freedom to provide services. The member states therefore mutually recognise the conditions for access to the activity of information society services (and for the exercise of that activity). These conditions fall within the coordinated field established under Article 3 of the E-Commerce Directive.

A member state may derogate from this principle of mutual recognition to protect public policy, public health, public security or consumers.

The Advocate General pointed out that, under Article 3(1) of the E-Commerce Directive, the member state of origin must ensure that a service provider respects said rules of establishment. Moreover, Article 3(2) of the directive prevents member states from restricting the freedom to provide services for reasons falling within the coordinated field (access to and exercise of the activity).

Since the three measures challenged in this case (entry in the RCO, communication of information to AGCOM and payment of a financial contribution) allow access to and the exercise of an activity in Italy, they fall within the coordinated field, within the meaning of Article 3 of the directive. According to the Advocate General, they therefore restrict the freedom to provide services, as the CJEU explained in its recent judgment in the case of Google Ireland (IRIS 2023-10:1/4). In that case, it was decided that rules within the coordinated field that were adopted by a member state of destination were contrary to EU law if the information society service provider met its obligations in its country of origin (where it was established). It therefore could not be subjected to new measures concerning access to and exercise of its activity in a member state of destination.

According to Article 3(4) of the directive, a member state may derogate from Article 3(2) and take restrictive measures on its territory as long as the measures are necessary and proportionate. It must do so for a reason linked to public policy or the protection of public health, public security or consumers.

In the case at hand, the Italian government argues that these measures are necessary to monitor and manage distortions of competition. The Advocate General therefore considers that they do not pursue any of the objectives referred to in Article 3(4) of the directive and are therefore incompatible with EU law.

The Advocate General proposes that the CJEU should declare the Italian rules incompatible with EU law in the sense that they impose measures of a general and abstract nature on the provider of an information society service established in another member state, and are therefore in contravention of Article 3 of the E-Commerce Directive.

Conclusions de l'AG Maciej Szpuar, présentées le 11 janvier 2024, dans les affaires C-662/22 à C-667/2

https://curia.europa.eu/juris/document/document.jsf?mode=req&pageIndex=1&docid=281166&part=1&doclang=FR&text=&dir=&occ=first&cid=1018444

Opinion of Advocate General Maciej Szpunar, delivered on 11 January 2024 in cases C-662/22 to 667/22

https://curia.europa.eu/juris/document/document.jsf?mode=req&pageIndex=1&docid=281166&part=1&doclang=EN&text=&dir=&occ=first&cid=1018444

Directive 2000/31/CE du 8 juin 2000 relative à certains aspects juridiques des services de la société de l'information, et notamment du commerce électronique, dans le marché intérieur (« Directive sur le commerce électronique »)

https://eur-lex.europa.eu/legal-content/FR/TXT/?uri=CELEX%3A32000L0031

Directive 2000/31/EC of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market

('Directive on electronic commerce')

https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32000L0031

European Parliament resolution on the rule of law and media freedom in Greece

Amélie Lacourt
European Audiovisual Observatory

On 7 February 2023, the European Parliament adopted a resolution on the rule of law and media freedom in Greece, following debates held on 17 January 2023. This resolution was adopted under Rule 132(2) of the European Parliament's Rules of Procedure, which states that when a statement with debate has been placed on its agenda, Parliament shall decide whether or not to wind up the debate with a resolution.

In its resolution, Parliament recalls that the rule of law and freedom of the media have deteriorated in Greece in recent years. As the situation has not been sufficiently addressed, many concerns remain and issues continue to arise. Bearing in mind that the AVMSD aims to ensure the independence of the national regulatory authorities by the objectives of the Directive, as well as the adequate financial and human resources and enforcement powers to carry out their tasks effectively, it noted several aspects of the Greek media landscape that presented or continue to present challenges.

In 2022, Greece adopted legislation to enhance the transparency of media ownership and create a register for print media and the electronic press, making registered companies exclusively eligible for state advertising.

However, the Parliament noted that Greece has the lowest ranking of any EU country - 107th - in the 2023 World Press Freedom Index by Reporters Without Borders and that the Council of Europe's Platform for the Safety of Journalists had identified two cases of impunity for murder, nine active alerts and two other alerts without reply by the end of 2023. It also referred to several national cases, including the so-called Petsas List scandal, involving the distribution of €20 million of state funds for public health communication campaigns to media outlets, including non-existent websites and personal blogs, while excluding certain media outlets altogether without any justification and using non-transparent criteria. The Parliament also referred to lawsuits filed by the nephew and former Secretary General of the Prime Minister's Office to remove an article implicating him in a national spyware scandal, which numerous international freedom of expression and media organisations condemned as a strategic lawsuit against public participation (SLAPP) aimed at suppressing critical reporting. In addition, a preliminary investigation by the Greek General Directorate of Financial and Economic Crime Unit found that at least 270 funded media outlets were not properly and lawfully registered and that the loss to public funds exceeded EUR 3 million.

Based on such elements, the European Parliament has expressed several concerns about the rule of law in Greece in general, pointing to serious worries about severe threats to democracy, the rule of law and fundamental rights in Greece. While checks and balances are essential for a robust democracy, it is noted with concern that these have come under severe pressure.

The Parliament also expressed specific concerns about media freedom. It expressed deep concern that many journalists face physical threats, verbal attacks, including from high-ranking politicians and ministers, and invasion of privacy through spyware and SLAPPs. According to the Parliament, this is having a chilling effect on journalists. It also insisted that the government has an obligation to take all necessary steps to bring the perpetrators of crimes against individuals, journalists and other media actors to justice, to create a safe environment for all journalists.

Parliament also called on the government to ensure the full independence of its national regulatory authority for the audiovisual sector, as required by the AVMS Directive. It also noted the Commission's conclusion that media regulators lack resources, questioned the objectivity and independence of the Greek National Council for Radio and Television, and expressed concerned about the sudden replacement of the Board of Regulators in September 2023. It called on the Commission to monitor the implementation of the new Media Law No 5005/2022 of 21 December 2022, particularly regarding transparency of media ownership.

Parliament highlighted the threat to media pluralism posed by the fact that media ownership in the country is concentrated in the hands of a small number of oligarchs, resulting in a dramatic under-reporting of specific issues. It also noted with concern the lack of transparency in the distribution of state subsidies to media outlets.

In the light of these elements, the Parliament called, inter alia, on the Commission to make full use of the tools at its disposal to address the breaches of the values enshrined in Article 2 TEU in Greece. It recalled that, in the event of financial measures being adopted, the Commission must ensure that the final recipients or beneficiaries of EU funds are not deprived of these funds.

This resolution will be forwarded to the Council, the Commission, the governments and parliaments of the Member States, the Council of Europe, the Organisation for Security and Cooperation in Europe and the United Nations.

European Parliament resolution of 7 February 2024 on the rule of law and media freedom in Greece (2024/2502(RSP))

https://www.europarl.europa.eu/doceo/document/TA-9-2024-0069_EN.html

The European Commission establishes the European Artificial Intelligence Office

Eric Munch
European Audiovisual Observatory

On 2 February 2024, the members of the European Council unanimously approved the AI Act, after months of fierce negotiations between member states. A week earlier, on 24 January 2024, the European Commission had published a decision establishing the European Artificial Intelligence Office (the Office), which is part of the wider Commission effort to both foster the development of artificial intelligence (AI) in the internal market and ensure that the public interest remains protected.

As a part of the Commission's Directorate-General for Communications Networks, Content and Technology, the newly established Office will be overseeing advancements in AI models and acting as a single governance system for all matters AI in the European Union (EU), including by issuing guidance without duplicating the activities of other bodies, offices and agencies of the EU.

As defined by the Commission decision of 24 January 2024, additional tasks within the remit of the Office will include contributing to the strategic, coherent and effective approach of the EU to international initiatives on AI, fostering actions and policies within the Commission to reap the societal and economic benefits of AI technologies. The Office will also support the accelerated development, roll-out and use of trustworthy AI systems and applications that bring societal and economic benefits and that contribute to the competitiveness and economic growth of the EU.

Moreover, the Office will be tasked with the implementation of certain aspects of the upcoming regulation, such as developing tools, methodologies and benchmarks for evaluating the capabilities of general-purpose AI. It will also be tasked with monitoring the implementation and application of rules applying to these developments, as well as detecting the emergence of unforeseen risks and investigating possible infringements of rules. The Office will cooperate with stakeholders as well as other international organisations and other bodies, offices and agencies of the EU; it will also be involved in cross-sectoral cooperation within the Commission.

Commission Decision of 24 January2024 establishing the European Artificial Intelligence Office

https://ec.europa.eu/newsroom/dae/redirection/document/101625

NATIONAL

ARMENIA

[AM] Adoption of the Action Plan on disinformation

Andrei Richter
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On 27th December 2023, the Prime Minister of Armenia sanctioned, through his decision, the National Concept and the Action Plan dedicated to combating disinformation within the country.

The prime pillar of this strategy is 'strengthening the capabilities of public institutions of Armenia to detect, analyse, and expose disinformation.' Under this pillar, the following activities are listed for implementation:

1. Improving strategic communication within government agencies, strengthening human, financial, and technical resources in their public communication departments;

2. Improving the proactive transparency of government agencies;

3. Instituting a self-assessment and evaluation system for transparency and accountability within government agencies.

A further pillar of the strategy is to elevate the level of knowledge and media literacy concerning media freedom, thus forming public resistance to disinformation.

Specifically, the Concept aims to develop and implement ethical codes of conduct for Public Television and Radio. The remit of the independent regulatory body, the National Television and Radio Commission, is to be expanded, with a mandatory focus on the development of media literacy. The Commission is tasked with ensuring increase in public awareness regarding the media's role and mission, the role and functions of regulatory and self-regulatory bodies, and the significance and regulation of media ownership transparency.

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https://www.e-gov.am/u_files/file/decrees/varch/GV65-3FA5-9437-87B6/1319.pdf

On the Approval of the 2024-2026 Concept of the Fight Against Disinformation of the Republic of Armenia and the Plan of Action Arising from it, Decision of the Prime Minister of the Republic of Armenia, N 1319-L, 27 December 2023

The Concept of the Struggle Against Disinformation: 2024-2026, Appendix № 1 to Decision № 1319-L of the RA Prime Minister

https://foi.am/wp-content/uploads/2023/12/THE-CONCEPT-OF-THE-STRUGGLE-AGAINST-DISINFORMATION-2024-2026.pdf

Action Plan of the Concept of the Struggle Against Disinformation: 2024-2026, Appendix № 2 to Decision № 1319-L of the RA Prime Minister

https://foi.am/wp-content/uploads/2023/12/ACTION-PLAN-OF-THE-CONCEPT-OF-THE-STRUGGLE-AGAINST-DISINFORMATION-2024-2026.pdf

AUSTRIA

[AT] New service centre for artificial intelligence at the RTR-GmbH

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The EU's AI Act will have massive implications for Austria. Still, the government decided not to wait an additional two years up until EU law enters into force but to respond to the challenges of artificial intelligence (AI) at the national level and prepare well ahead. Even before the EU AI Act comes into force, Austria will implement a labelling requirement for AI systems for transparency purposes. A survey on the use of AI applications in the federal ministries has already been carried out for this purpose.

Thus, in December 2023, an amendment to the KommAustria Act and the Telecommunications Act was submitted to the Austrian Parliament, which would designate the Rundfunk und Telekom Regulierungs-GmbH (RTR-GmbH) – the operational support body of the Austrian regulator, KommAustria – as the central service centre for AI. The aim of setting up this AI Service Centre is to build up relevant expertise and provide a wide range of information and advice for AI projects and applications in media, telecommunications and postal services – including via an information portal. This includes, for example, information on the regulatory framework and any effects of AI on cyber security, conducting research and analyses, providing guidelines for the use of AI in the media sector, including best practice models,; advising public and private legal entities and regular exchanges with market participants in the media sector.

The AI Service Centre will be supported by a designated AI Advisory Board, which will also advise the federal government on implementing the EU's AI Act and using AI opportunities. The tasks will include specifically:

• advising on current developments in the field of AI, including ethical and social aspects;

• monitoring the technological development of AI within and outside the European Union; and

• supporting the government in setting strategic goals and developing policy within the framework of the AI Policy Forum.

The board should consist of eleven members (seven of whom have already been appointed) with extensive experience and expertise in the fields of ethics, research, economics, law and technology. The annual budget provided for the Service Centre is EUR 700 000. After Spain and the Netherlands, Austria is the

third country in Europe to introduce such an AI service point.

Austria also plans to implement a "regulatory sandbox" – an experimental field for AI – at the beginning of 2024. The aim is to further test potential regulatory actions in a controlled environment.

Neue Servicestelle für Künstliche Intelligenz bei der RTR

https://www.parlament.gv.at/aktuelles/pk/jahr_2023/pk1428

New service centre for artificial intelligence at RTR

KommAustria-Gesetz,Telekommunikationsgesetz, Änderung (3821/A)

https://www.parlament.gv.at/gegenstand/XXVII/A/3821

KommAustria Act, Telecommunications Act, Amendment (3821/A)

Auftakt im BMF: Österreichische KI-Servicestelle soll bei RTR eingerichtet werden

https://www.rtr.at/medien/aktuelles/publikationen/Newsletter/Newsletter_2023/NL_05_2023/Auftakt_KI-Servicestelle.de.html

Austrian AI service centre to be set up at RTR

GERMANY

[DE] Greater compliance, transparency and monitoring: fourth state media treaty enters into force

Sven Braun
Institute of European Media Law

On 1 January 2024, the amendments to the *Medienstaatsvertrag* (state media treaty – MStV) that were brought in under the *Vierte Medienänderungsstaatsvertrag* (fourth state treaty amending the state media treaty – *4. MÄStV*) entered into force after being ratified by the parliaments of the 16 German *Länder* (federal states). Among other things, the MStV sets out the legal framework for public service broadcasting in Germany. The latest amendments are designed to strengthen the compliance, transparency and monitoring of public service broadcasters.

In order to promote good governance, the amended treaty requires public broadcasters to meet common standards and requirements in the fields of compliance, transparency and monitoring. Firstly, they are obliged to provide the highest possible level of public transparency. For example, without breaking data protection and trade secrecy rules, they must publish information about their organisational structures, statutes, directives and procedural rules on the Internet. Their annual reports must also list the salaries of individual directors-general and directors, broken down into expenses, attendance fees and other non-cash benefits. In particular, benefits either promised or received in relation to the premature or scheduled termination of a director's contract and remuneration for work carried out on behalf of subsidiary and affiliated companies must be disclosed. Payments received for ancillary activities must also be declared, although only if they are related to the recipient's work as a director-general or director and if the sum received exceeds EUR 1 000 per month. The state treaties of the broadcasters ZDF and Deutschlandradio have contained virtually identical transparency requirements regarding the disclosure of director-general and director salaries since 2016, and these will now be replaced by the umbrella provisions of the MStV. As well as these salaries, broadcasters must publish details of collective pay-scale structures and non-collective pay-scale agreements. These transparency obligations should be seen as minimum requirements for all public service broadcasters, subject to stricter rules being introduced by the *Länder*.

Broadcasters are also required to provide and develop a compliance management system that meets recognised standards. They must create an independent compliance body or compliance officer who reports directly to the director-general, the board of directors and, if relevant, the supervisory body. As well as an internal compliance body, each broadcaster must appoint an independent external ombudsperson as a point of contact for confidential and anonymous reporting of legislative and regulatory infringements.

Joint institutions, e.g. shared services such as websites or training centres, and affiliated companies such as production or advertising companies, must provide their supervisory bodies with regular transparency and compliance reports. Broadcasters without a majority shareholding in affiliated companies must at least work towards providing such reports.

The supervisory bodies of public service broadcasters will also be strengthened. In order to provide effective supervision from an organisational and staffing point of view, they must include experts on auditing, business management, law and the media industry or media science. Their members must undergo regular training, funded by the broadcasters. They should have their own offices in order to increase their independence from the broadcaster's other structures. Their members must be independent and should not have any financial or other interests that could jeopardise their supervisory responsibilities. As with the transparency obligations mentioned above, the MStV's provisions on supervision and conflicts of interest should be seen as minimum standards, with state legislators able to impose stricter rules if they so wish.

Vierter Medienänderungsstaatsvertrag

https://www.revosax.sachsen.de/vorschrift_gesamt/20243/45866.html

Fourth state treaty amending the state media treaty

[DE] New Rundfunk Berlin-Brandenburg state treaty enters into force

Dr. Jörg Ukrow
Institute of European Media Law (EMR), Saarbrücken/Brussels

On 14 December 2023, the state parliaments of Berlin and Brandenburg adopted the *Staatsvertrag über den Rundfunk Berlin-Brandenburg* (state treaty on the Berlin-Brandenburg state broadcasting authority – *rbb-Staatsvertrag*), which had been signed by Brandenburg on 3 November 2023 and by Berlin on 17 November 2023. Following the exchange of ratification documents, the treaty entered into force on 1 January 2024.

The new legal framework for Rundfunk Berlin-Brandenburg (Berlin-Brandenburg state broadcasting authority – rbb) replaces the *Staatsvertrag über die Errichtung einer gemeinsamen Rundfunkanstalt der Länder Berlin und Brandenburg* (state treaty on the establishment of a joint broadcasting authority for Berlin and Brandenburg) of 25 June 2002. It takes into account all the subsequent changes to media law applicable across all 16 German *Länder* under the *Medienstaatsvertrag* (state media treaty), which entered into force on 7 November 2020 and has since been amended several times. It also addresses the consequences of the scandals involving rbb that hit the headlines in 2022. The new state treaty should help to counteract structural weaknesses comprehensively and in a pre-emptive way. It should also promote better monitoring, greater efficiency, clearer decision-making processes, an effective compliance system and maximum transparency at rbb. The rbb supervisory bodies will be professionalised in order to boost their respective monitoring powers and ensure more secure decision-making processes in general and in relation to rbb's efficiency in particular. Their members will also need to meet minimum expertise and knowledge requirements. The board of directors will evolve into a panel of experts, with voluntary positions becoming paid roles. Rules on incompatibility and conflicts of interest should ensure that supervisory activities are independent and functional.

Since public broadcasting is funded through the broadcasting levy, supervisory body members and the rbb director-general bear a high level of public responsibility. The state treaty therefore requires them to meet with due diligence obligations and liability standards for the first time. With transparency in mind and in view of rbb's public remit and financing, it lays down numerous publication and disclosure obligations in order to strengthen the legitimacy and public acceptance of public service broadcasting in general. These particularly include the publication of the pay structures for non-collective pay scale employees and the capping of the director-general's salary.

The regional focus of rbb will be strengthened under the treaty, including through the appropriate distribution of the broadcaster's resources and locations. Its remit will also be made more flexible in order to support licence fee stability and public acceptance. For example, to help it respond flexibly to digitisation and changing media consumption, rbb will be given greater freedom to comply with the rules on

how its services should be disseminated.

In accordance with the ZDF judgment of the *Bundesverfassungsgericht* (Federal Constitutional Court) of 25 March 2014, rbb's *Rundfunkrat* (Broadcasting Council) must become more socially diverse in order to represent the views and experiences of disabled people and members of the LGBTQ+ community.

With the strict director-general principles being replaced by a directorial system, rbb's management structure will become collegial in form.

The new board of directors will comprise of the director-general and members nominated by the director-general and appointed by the *Rundfunkrat* for a maximum term of five years. It will play a part in making important decisions such as determining the fundamental aspects of programming strategy.

To protect it from corruption and improve transparency, rbb will also undergo regular corruption checks (risk analysis) and adopt an anti-corruption code of conduct.

Staatsvertrag über den Rundfunk Berlin-Brandenburg vom 3. November 2023 und 17. November 2023

https://bravors.brandenburg.de/sixcms/media.php/68/GVBl_I_27_2023-Anlage.pdf

State treaty on the Berlin-Brandenburg state broadcasting authority of 3 and 17 November 2023

Gesetzesdokumentation des Berliner Abgeordnetenhaus

https://www.landtag.brandenburg.de/sixcms/detail.php?id=brandenburg_01.c.367500.de

Legislative documents of the Berlin state parliament

[DE] Parliamentary debate on law implementing Digital Services Act

Dr. Jörg Ukrow
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On 18 January 2024, the *Bundestag* (German federal parliament) debated the so-called *Digitale-Dienste-Gesetz* (Digital Services Law), which was tabled by the federal government to implement the Digital Services Act (DSA) at national level, for the first time. While the DSA, which will apply across the EU from 17 February 2024, regulates matters including due diligence obligations for online services in the battle against disinformation and hate speech on the Internet and their enforcement at EU level, the government bill, known as the DDG-E, lays down the relevant responsibilities in Germany.

The DDG-E begins by proposing the amendment of national legislation. Individual provisions of current national law which will largely disappear as a result of the harmonising effect of the DSA are incorporated into the DDG-E, partly amended and adapted to the concept of 'digital services'. These include provisions of the *Telemediengesetz* (Telemedia Act – TMG) that implement EU directives such as the Audiovisual Media Services Directive (AVMSD) and the E-Commerce Directive.

The DDG-E also contains provisions required to implement the DSA. Under Article 12(1), for example, the authority responsible for the supervision of providers and enforcement of the DSA in Germany within the meaning of Article 49(1) DSA is, "subject to paragraphs 2 and 3", the *Bundesnetzagentur* (Federal Network Agency). The *Bundesnetzagentur* will work closely with the supervisory authorities in Brussels and other EU member states. Article 12(2) DDG-E provides for an exception in the field of media supervision, stating that the *Bundeszentrale für Kinder- und Jugendmedienschutz* (Federal Office for the Protection of Children and Young People in the Media) is responsible for enforcing (1) the specific provisions of Article 14(3) DSA governing the general terms and conditions of intermediary services primarily directed at or predominantly used by minors, and (2) structural preventive measures under Article 28(1) DSA, "excluding measures taken under the *Jugendmedienschutz-Staatsvertrag* (State Treaty on the Protection of Minors in the Media) in the version of 14 December 2021". Responsibility for the latter measures will be assumed by the bodies designated under the media law provisions of the *Länder*, i.e. the *Landesmedienanstalten* (state media authorities), which have delegated it to the *Kommission für Jugendmedienschutz* (Commission for the Protection of Minors in the Media – KJM).

The DDG-E also regulates the establishment, resourcing, independence and management of the digital services coordinating body to be created within the *Bundesnetzagentur*. The *Bundesnetzagentur* will therefore act as the Digital Services Coordinator under Article 49(2) DSA. Provision is also made for collaboration with various national authorities and the establishment of an advisory board for the Digital Services Coordinator.

The subsequent sections of the DDG-E set out the fines and penalties applicable for infringements of the DSA, as well as powers and procedures under the DSA. The government bill emphasises that “the scope for sanctions provided under the DSA for breaches of the DSA is fully covered by this bill” and stipulates that platform operators can be fined up to 6% of their annual turnover.

Entwurf für ein zur Durchführung der Verordnung (EU) 2022 / 2065 des Europäischen Parlaments und des Rates vom 19. Oktober 2022 über einen Binnenmarkt für digitale Dienste und zur Änderung der Richtlinie 2000/31/EG sowie zur Durchführung der Verordnung (EU) 2019/1150 des Europäischen Parlaments und des Rates vom 20. Juni 2019 zur Förderung von Fairness und Transparenz für gewerbliche Nutzer von Online-Vermittlungsdiensten und zur Änderung weiterer Gesetze (Digitale-Dienste-Gesetz, DDG)

https://dserver.bundestag.de/btd/20/100/2010031.pdf

Bill implementing Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act) and Regulation (EU) 2019/1150 of the European Parliament and of the Council of 20 June 2019 on promoting fairness and transparency for business users of online intermediation services and amending other laws (Digital Services Law, DDG)

DENMARK

[DK] Danish Act on Cultural Contribution stipulating a 2% revenue payment for VOD service providers, plus an additional 3% if investment in new Danish content is below 5%

Terese Foged
Lassen Ricard, law firm

On 19 December 2023 the Danish Parliament passed a bill on Certain Media Service Providers' Contribution to Promote Danish Culture (the Act on Cultural Contribution). However, due to a procedural irregularity, the EU Commission had not been notified of the legislation in time, which is why the bill did not receive Royal Assent, and the legislative process must be repeated.

According to the Act, providers of on-demand audiovisual media services must make an annual payment to the Danish state of 2% of their turnover in Denmark stemming from the on-demand service and an additional 3% if the investment in new Danish content is below 5%.

The explanatory notes refer to the European Audiovisual Observatory report "Investing in European works: the obligations on VOD providers" of September 2022, which provides an overview of the introduction of financial obligations for VOD services by EU member states in relation to the Audiovisual Media Services Directive (AVMSD).

According to Article 13(2) of the AVMSD, financial contributions imposed on media service providers established in another member state that target the member state's territory must be proportionate and non-discriminatory. The explanatory notes to the Danish Act on Cultural Contribution emphasise that the contribution rates of 2% or 5% are proportionate, generally follow the level for such rates in other EU member states, and that the contribution is justified as Denmark is a small language area and the market for Danish content similarly of limited size.

The net proceeds of the contributions are expected to be divided, with 20% going to support public service purposes (documentaries and series) and 80% being used for film-funding purposes (feature productions and series), to be finally decided when the proceeds are known. Media service providers that pay the contribution may subsequently apply for funding for the production of new Danish audiovisual content from these national aid schemes. The Danish Ministry of Culture assesses conservatively that the total annual cultural contribution will be about DKK 98 million (EUR 13 million).

The obligation to pay the cultural contribution is imposed on all on-demand media service providers established in Denmark or in another EU member state if the on-

demand media service is directed at a Danish audience. Only on-demand content is encompassed, and in the case of mixed services, the contribution only concerns the on-demand content, not the linear content, including integrated catch-up as part of the linear service. Sports and news programmes are exempted. Media services with a yearly turnover below DKK 15 million (EUR 2 million) or a small audience (less than 1% of the total number of users of on-demand media services) on the Danish market are also exempted.

Furthermore, on-demand media services offered in the course of public service activity are exempted from the payment, i.e. both services from Danish public service broadcasters such as DR and the regional TV 2 stations and services offered in the course of public service activity from providers established in another EU member state.

As regards investment in new Danish content, the explanatory notes set out that this is to be understood broadly as encompassing films, series and documentary genres, including reality, comedy and drama, and investments in new productions, but not sports or news. In addition, the acquisition of rights to exploit new productions counts as investment in new Danish content, whereas investment in rights to already existing content, for example the acquisition of production companies' so-called back catalogues, does not. An investment is considered to be in Danish content if 75% of the production material for European films, series and documentaries is in Danish and more than 50% of the production budget is spent in Denmark or more than 50% of the production is physically filmed in Denmark. The investments may be distributed as an average over a three-year period.

Media service providers must provide annual reports of their Danish turnover and investment in new Danish content (confirmed by a statement from an independent auditor) to the Danish Ministry of Culture's Agency for Culture and Palaces, so that the agency can decide on the turnover subject to cultural contribution and charge the media service provider for the contribution.

The procedural irregularity means that a bill for the Act is expected to be reintroduced, with adjustments following the EU Commission remarks. There is now a public consultation on the adjusted parts with a deadline set to 1 March 2024. A bill is expected to be put forward in April 2024 allowing for the Act to enter into force on 1 July 2024.

Lov om visse medietjenesteudbyderes bidrag til fremme af dansk kultur (kulturbidragsloven)

https://www.ft.dk/ripdf/samling/20231/lovforslag/l70/20231_l70_som_vedtaget.pdf

Act on Certain Media Service Providers' Contribution to Promote Danish Culture

Forslag til Lov om visse medietjenesteudbyderes bidrag til fremme af dansk kultur (kulturbidragsloven

https://www.ft.dk/ripdf/samling/20231/lovforslag/l70/20231_l70_som_fremsat.pdf

Bill for Act on Cultural Contribution

SPAIN

[ES] Spain takes important steps to protect minors on the internet and social media

Azahara Cañedo & Marta Rodriguez Castro

In the face of social concern about the increasing uncontrolled access of children and young people to adult content, Spain is making legal and practical progress in the protection of minors on the Internet. Firstly, it was the Spanish Data Protection Agency (*Agencia Española de Protección de Datos* – AEPD) that introduced an age verification system in December 2023 to ensure that any person accessing adult content is authorised to do so. This is in line with the General Law on Audiovisual Communication (Spanish Law 13/2022), which obliges video-sharing platforms to set up age verification systems for content that could be harmful to minors. In addition, the decalogue of principles accompanying the system stipulates that the system must a) ensure that no profiles of people can be created based on their navigation, b) guarantee the exercise of parental authority and c) guarantee the fundamental rights of all people when accessing the Internet. To achieve this, the AEPD recommends that the system should have a defined governance framework.

The technical demonstrations carried out by the AEPD confirm that it is possible to process the age attribute on the user's device without revealing the identity of the person or the status of the minor to the websites. In this sense, the Spanish authorities are committed to a pioneering system in Europe that combines the protection of children and the welfare of minors with the fundamental right of all citizens to data protection. At the operational level, the verification takes place in two steps. Firstly, the user must have an age verification application installed on the device, so that when adult content is received or accessed, it is filtered by default while the application determines whether the user is "authorised to access" or not. Secondly, to verify age, the user needs a QR code, provided by an official state body responsible for the digital certification of citizens, such as the *National Coinage and Stamp Factory* (*Fábrica Nacional de Moneda y Timbre – FNMT*). With this QR code, the user can prove to the verification application that he/she is over the required age to access adult content. An important aspect is that the entire age verification process is carried out without leaving the user's device or accessing external resources.

On the other hand, on 9 January 2024, the National Commission for Markets and Competition (*Comisión Nacional de los Mercados y la Competencia* – CNMC) launched a public consultation on the age verification systems used by video-sharing platforms in Spain to protect minors from accessing pornography and violence. This is in line with a proposed state pact to protect minors online and on social media, signed by six Spanish civil society organisations – *Asociación Europea para la Transición Digital* (AETD), Save The Children, *Fundación ANAR*, iCMedia, *Dale Una Vuelta*, UNICEF – with the institutional support of the AEPD in

June 2023. This pact, which will be presented to the Spanish National Congress on 13 February 2024, is a reminder of the negative impact that the use of the Internet and social media can have on minors, not only because they are still in a developmental phase, but also because these online products are designed for adults. Therefore, the pact calls for fifteen consensus actions aimed at recognising the problem, educating towards responsible digital citizenship and affective-sexual education, and demanding the responsibility of all actors involved, including the industry. In this sense, the document denounces the commercialisation of minors' data through its collection, the use of opaque algorithms, and the creation of profiles for sale to third parties for advertising purposes.

In this context, Pedro Sánchez, the President of the Spanish Government, announced in an interview in *El País*, the country's most widely circulated newspaper, the implementation of a national agreement to protect minors on the Internet. The government's plan is based on three main lines of action: 1) the adoption of a comprehensive law to protect minors online; 2) the development of a multidisciplinary strategy in the areas of education, digital skills and equality; and 3) the creation of technical devices to prevent minors from accessing pornographic content.

Proposal for a state pact to protect minors on the Internet and on social media

Press release – AEPD announces an age verification system to protect minors from accessing adult content on the Internet

Decalogue of principles. Age verification and protection of minors from inappropriate content

Press release – The CNMC supports the proposed state pact for the protection of minors on the Internet and on social media

General Law 13/2022 of 7 July on Audiovisual Communication

[ES] The legal regime on content creators and influencers under criticism

Pedro Gallo Buenaga & Mª Trinidad García Leiva
Diversidad Audiovisual / UC3M

The Spanish Ministry of Economy, Trade and Enterprise (MINECO) unveiled a draft royal decree in December 2023 outlining criteria for identifying users of special relevance on video-sharing platforms such as YouTube or Twitch. This is a legal regulation that will establish obligations for certain users, commonly known as influencers, content creators, or vloggers. If these actors adhere to the outlined requirements, they will be considered as a particular type of audiovisual communication service provider according to the Spanish General Law on Audiovisual Communication, which transposed the European Audiovisual Media Services Directive in 2022.

The law introduces two crucial criteria for users to be considered of special relevance in its Article 94.2: a substantial income derived from their activities, and certain level of audience engagement. However, until the release of the draft royal decree, these criteria had not been clearly articulated, delaying the enforcement of this article of the General Law on Audiovisual Communication. According to the specific parameters established in the draft royal decree, the gross annual income generated by content creators to be considered users of special relevance must be higher than EUR 500 000. Additionally, they must have a number of followers equal to or greater than 2 000 000, along with a minimum of 24 videos published per year, regardless of their length.

Following the publication of these criteria, the independent state body responsible for ensuring the proper functioning of the markets in Spain, the National Markets and Competition Commission (CNMC), has expressed some notable concerns. The CNMC highlights reservations about the high-income threshold and follower count, expressing worries that these parameters may exclude content creators who significantly impact consumers. Furthermore, the CNMC notes the dynamic nature of the influencer segment, suggesting that a universal threshold might pose challenges in terms of implementation and effectiveness, especially considering variations in the relevance of influencers across different platforms.

In the same critical vein, the Association of Communication Users (AUC) and the Commercial Television Association (UTECA) argue for a significant revision of the gross revenue and audience figures. They propose that both criteria should not be applied simultaneously and advocate for a lowered threshold. UTECA specifically recommends considering users with at least 100 000 followers on all platforms and a minimum annual turnover of EUR 100 000 as users of special relevance.

Once the final royal decree is established, the classification of user of special relevance will force influencers to comply with the General Law on Audiovisual Communication in terms of content, advertising, and the protection of minors. Non-compliance could result in penalties of up to EUR 1.5 million.

MINECO – Audiencia e Información Pública sobre el proyecto de Real Decreto por el que se regulan los requisitos para ser considerado usuario de especial relevancia a efectos de los dispuesto en la Ley 13/2022, de 7 de Julio, General de Comunicación Audiovisual.

https://portal.mineco.gob.es/es-es/ministerio/participacionpublica/audienciapublica/Paginas/Audiencia-informacion-publica-proyecto-RD-regulan-requisitos-considerado-usuario-especial-relevancia.aspx

MINECO – Hearing and Public Information on the draft royal decree regulating the requirements to be considered a user of special relevance for the purposes of the provisions of Law 13/2022 of 7 July, General Audiovisual Communication

CNMC – Informe sobre el proyecto de Real Decreto por el que se regulan los requisitos a efectos de ser considerado usuario de especial relevancia según lo dispuesto en el Artículo 94 de la Ley 13/2022, de 7 de julio, General de Comunicación Audiovisual

https://www.cnmc.es/sites/default/files/5056299.pdf

CNMC – Report on the draft royal decree regulating the requirements for the purpose of being considered a user of special relevance in accordance with Article 94 of Law 13/2022 of 7 July, General Audiovisual Communication

AUC – Observaciones al proyecto (revisado) de Real Decreto para regular a los usuarios de especial relevancia como prestadores de servicios de comunicación audiovisual en el entorno digital.

https://www.auc.es/download/observaciones-al-proyecto-revisado-de-real-decreto-para-regular-a-los-usuarios-de-especial-relevancia-como-prestadores-de-servicios-de-comunicacion-audiovisual-en-el-entorno-digital/?wpdmdl=15056&refresh=65b13162b3ef31706111330

AUC - Comments to the (revised) draft Royal Decree to regulate users of special relevance as providers of audiovisual communication services in the digital environment.

UTECA – UTECA pide la regulación de los "influencers" con 100.000 seguidores y una facturación anual de 100.000€

https://uteca.tv/wp-content/uploads/2024/01/UTECA-PIDE-LA-REGULACION-DE-LOS-INFLUENCERS-CON-AL-MENOS-100.000-SEGUIDORES-Y-100.000-E-DE-FACTURACION-002.pdf

UTECA – UTECA calls for the regulation of "influencers" with 100 000 followers and an annual turnover of EUR 100 000

FRANCE

[FR] C8 punished by ARCOM for failing to control programme content

Amélie Blocman
Légipresse

In a decision of 17 January 2024 and in accordance with Article 42-1 of the Law of 30 September 1986, the *Autorité de régulation de la communication audiovisuelle et numérique* (the French audiovisual regulator – ARCOM) fined the C8 television channel EUR 50 000 for failing to meet its obligations to respect human rights and control programme content during an episode of the programme *Touche pas à mon poste* broadcast on 30 January 2023. During the disputed sequence, entitled "20-minute people", the programme presenter and pundits discussed a recent controversy relating to videos of a 14-year-old girl published on one of her social network accounts. Close-up shots of several videos of the girl were shown for a significant period of time, with one pundit commenting on her physical appearance in particularly violent, crude and derogatory terms. “Because it’s the new generation, we have the right to be sluts?” said the pundit, commenting on the girl’s behaviour in the videos. These remarks were considered likely to infringe the girl’s right to respect for her honour and reputation. The sequence therefore breached the provisions of Article 2-3-4 of the broadcaster’s licence agreement regarding a person’s right to respect for their honour and reputation, especially as the person concerned in this case was a minor.

Furthermore, the videos of the girl and still images taken from them were repeatedly broadcast during the programme in order to spark further debate in the studio. Although some of the pundits were more measured in their comments, the fact remains that their remarks helped to rekindle the debate rather than tone it down. Finally, while the presenter said at the end of the programme: “Let’s remember … and, and, I think you’re going a bit far. Let’s remember that […] is a minor, so take it easy all the same”, his belated comments did not expressly condemn the infringements of the girl’s honour and reputation. ARCOM therefore decided that this sequence also breached Article 2-2-1 of the broadcaster’s licence agreement since it had failed to adequately control its programme content.

The sanction took into account both the nature and seriousness of the offences and the sanctions previously imposed on the broadcaster for breaches of the same obligations.

Décision n° 2024-42 du 17 janvier 2024 portant sanction pécuniaire à l'encontre de la société C8, JO du 23 janvier 2023.

https://www.legifrance.gouv.fr/download/pdf?id=teMfyg7X5c4QpZf9347_Q9ssGFIunvqE3ykKIENWwzE=

Decision No. 2024-42 of 17 January 2024 fining the company C8, OJ of 23 January 2023.

[FR] CNews fined EUR 50 000 for breaching obligation to exercise honesty and rigour in the presentation and processing of information

Amélie Blocman
Légipresse

In a decision of 17 January 2024, the *Autorité de régulation de la communication audiovisuelle et numérique* (the French audiovisual regulator – ARCOM) fined the CNews television channel EUR 50 000 for breaching its obligations to exercise honesty and rigour in the presentation and processing of information and to ensure that different viewpoints are expressed on controversial issues. During the programme *Face à l'info* broadcast on 26 September 2022, reference was made to an international ranking of the world's safest cities published by the website Numbeo, which collects data from its users. The programme presenter introduced the subject by saying: "All this is happening in the context of a decline in security in France. France is ranked bottom of all European countries … France is descending into a state of insecurity: reactions?" All the pundits in the studio then expressed similar views, while a banner appeared on the screen with the words " *Insécurité en France: le grand déclassement*" [Insecurity in France: the big decline].

Since the rankings that were described had no scientific basis whatsoever and were not based on official data, the broadcaster should have exercised caution rather than presenting them as established facts. Neither the detailed methodology behind the rankings nor its shortcomings were mentioned on air. The information was therefore presented in a manner that led viewers to believe that the rankings were based on established figures, which was not the case.

Furthermore, the people present in the studio all bemoaned France's place in the rankings and agreed that France, and Paris in particular, were more dangerous than other cities and countries in the world. As a result, there was a clear imbalance in the discussion of the subject, especially as it was based solely on a questionable list of rankings that had been presented as a proven fact. Insecurity is a highly sensitive topic of general public interest. It raises controversial questions and therefore requires broadcasters to ensure that different viewpoints are expressed. ARCOM therefore concluded that the broadcaster had infringed Article 2-3-7 of its licence agreement and Article 1 of the audiovisual regulator's decision of 18 April 2018, which required broadcasters to ensure that different viewpoints were expressed on controversial issues.

Décision n° 2024-43 du 17 janvier 2024 portant sanction pécuniaire à l'encontre de la Société d'exploitation d'un service d'information (SESI)

https://www.legifrance.gouv.fr/download/pdf?id=teMfyg7X5c4QpZf9347_Q-

PkObGgr_40PWvP0zRxzaw=

Decision No. 2024-43 of 17 January 2024 fining the Société d'exploitation d'un service d'information (SESI)

[FR] Microsoft and Google ordered to delist 90 websites broadcasting sports competitions for which Canal Plus holds audiovisual exploitation rights

Amélie Blocman
Légipresse

The Canal Plus Group holds the exclusive rights to broadcast the French rugby championship, known as the "Top 14", on French soil, as well as live Premier League football matches in France and Monaco, and in other territories on a non-exclusive basis. It also holds exclusive rights to broadcast some Champions League matches, with the rights to other matches held by the beIN company.

Having obtained a court ruling on 19 September 2023 that around 90 websites accessible in France were streaming live matches in numerous competitions more or less systematically and free of charge, in particular rugby and football matches to which it held exclusive broadcasting rights and/or neighbouring rights, the Canal Plus Group, under Articles L. 333-10 of the Sports Code and L. 216-1 of the Intellectual Property Code, filed a summons under the accelerated procedure against the companies Microsoft and Google as providers of online search engines, in order to prevent their users accessing the aforementioned websites on French soil. According to Article 333-10 of the Sports Code, the president of the judicial court can, in particular, order “all proportionate measures likely to prevent or put an end to this infringement, against any person likely to contribute to remedying it”.

The court observed that, even though most of the websites concerned were accessible in English, it was easy for French-speaking users to use them. These sites committed “serious and repeated” infringements, within the meaning of Article 333-10 of the Sports Code, of the Canal Plus Group’s rights to the sports competitions concerned by providing a service, one of the main purposes of which was the unauthorised broadcasting of sports competitions. There was therefore sufficient evidence to show that the sites concerned enabled Internet users to watch sports competitions to which the audiovisual group held exclusive exploitation rights without permission. The Canal Plus Group was therefore entitled to request measures to prevent or put an end to the infringement of its rights to the Premier League, Champions League and Top 14.

The court ordered Microsoft and Google to take all necessary measures within three days to prevent their users accessing the sites identified, and those that had not yet been identified on the date of the decision, on French territory (including overseas municipalities and regions) until the date of the last match in each of the three competitions, in particular by delisting sites that could be found using domain and associated subdomain names. Microsoft and Google were ordered to inform the Canal Plus Group when they had taken these measures and of any difficulties they encountered. Meanwhile, the plaintiff was asked, while the measures were in place, to inform ARCOM (the French audiovisual regulator) of the addresses of other sites that were illegally broadcasting matches in the

competitions concerned.

TJ Paris, 21 décembre 2023, n° 23/14669 et 23/14720, Canal Plus c/ Microsoft et Google (2 décisions dans le même sens)

https://justice.pappers.fr/decision/22019de75425a901c4853709e5b4bd7152020933?q=23%2F14669+&date_decision_min=2023-12-21&date_decision_max=2023-12-21&juridiction%5B%5D=tribunal+judiciaire+de+paris

Paris Judicial Court, 21 December 2023, Nos. 23/14669 and 23/14720, Canal Plus v. Microsoft and Google

UNITED KINGDOM

[GB] The Media Bill passes House of Commons approval and awaits House of Lords scrutiny

Julian Wilkins
Wordley Partnership and Q Chambers

On 30 January 2024 the Media Bill (the Bill) passed its third reading in the House of Commons, having been introduced to parliament in November 2023. The Bill is aimed at protecting Public Service Broadcasters (PSBs) such as the BBC, ITV, Channel 4, Channel 5, STV and S4C from unfair competition from less regulated streaming services and online providers. It will be considered by the House of Lords inthe remaining stages before it can become law by receiving Royal Assent later this year, after which the regulator Ofcom will consult about implementing the legislative changes.

The Bill reduces the regulation for commercial radio stations, relaxing requirements such as music formats, local broadcasting hours and networking, allowing broadcasters flexibility to update or adapt their services without consent from Ofcom. The Bill also ensures that UK radio services appear on voice-activated devices such as smart speakers. The Bill requires that a listener's station of choice must be reliably provided in response to a voice command; also, smart speaker platforms must provide free, unfettered access to radio stations licenced by Ofcom. Platforms will be prevented from overlaying advertising and other content onto radio services. Further, broadcasters can request a default route for delivery of their stations to listeners on smart speakers, such as BBC Sounds, and TuneIn.

The Bill ensures that relevant services within TV genres are available on UK terrestrial channels including free access to “crown jewel" sports events such as the FIFA World Cup, the Olympic and Paralympic Games, the Grand National and the Wimbledon finals.

The Bill’s measures allow PSBs to have greater autonomy over scheduling through more flexible rules on the types of programmes they are required to show, allowing each PSB to focus more on the content it is uniquely positioned to deliver. However, the Bill also ensures that an “appropriate range of programme genres” is available on PSB services, such as religious, science and arts programming. A specific requirement for PSBs to continue to broadcast news and children’s programming is included. Quotas for independent, original and regional productions are retained, but PSBs will be given greater flexibility as to how they deliver these obligations. Online programming will now count towards meeting their public service remit, rather than just through linear TV channels. In addition, Ofcom receives new powers, where appropriate and proportionate, to require PSBs to provide more of a particular type of programming if audiences are being underserved.

The Bill further confirms S4C's position as a multi-platform Welsh-language content provider across the UK and beyond, ensuring, for example, that S4C Clic is available on different platforms. The new framework will ensure that indigenous languages, including Welsh, are part of the new public service remit for television in the UK. The Bill will enable S4C and the BBC to agree to alternative arrangements that contribute to S4C fulfilling its public remit.

Furthermore, laws which threatened to force newspapers to pay both sides' costs in any legal proceedings, even if they won, will be repealed via the Bill. This will revoke laws such as Section 40 of the Crime and Courts Act; while this clause has never actually been brought into force, the Media Bill takes away the risk of its implementation.

Channel 4 will have the freedom to make (rather than just to commission) and own its content to boost its long-term sustainability. However, the proportion of programmes made by independent TV producers across the UK has to be 35%. The Bill will ensure that apps such as BBC iPlayer, ITVX, Channel 4 and My5 and programmes are easy to find on smart TVs and similar devices.

Mainstream video-on-demand (VOD) services consumed in the UK like Netflix, Amazon Prime Video and Disney+ will have to follow similar Ofcom content rules to those currently in place for traditional broadcasters. A new Ofcom-regulated VOD Code for major streamers such as Netflix, Amazon Prime Video and Disney+ will better protect children and the most vulnerable TV and radio audiences. Currently, on-demand services, except BBC iPlayer, are not covered by Ofcom's Broadcasting Code, which sets appropriate content standards for harmful or offensive material as well as for accuracy. Some on-demand services are not regulated in the UK at all. The Bill, once law, will instruct Ofcom to consider the age of a programme when drawing up the VOD Code following concerns that without this change, requirements such as due impartiality currently applied to traditional broadcasters could constitute an undue burden for streaming platforms if applied to their entire back catalogue content.

Those with sight or hearing impairments will be able to enjoy more shows as new quotas on subtitles, audio description and signing will be set for on-demand services. Streaming platforms will have to provide subtitles on 80% of their programmes, while 10% must have audio description and 5% signed interpretation.

Media Bill

https://bills.parliament.uk/bills/3505

[UK] Government announces initiatives to assist regulation of AI and the House of Lords introduce the Artificial Intelligence (Regulation) Bill

Julian Wilkins
Wordley Partnership and Q Chambers

On 6 February 2024, the UK Government published its consultation response to the AI Regulation White Paper detailing initiatives supporting individual regulators to provide tools and develop skills to address the risks and opportunities of AI. Key regulators are required to publish their plans about AI risks and opportunities by 30 April 2024. Many regulators have already published proposals; the Information Commissioner's Office, for example, has updated data protection laws applying to AI systems. Ofcom and the Competition and Markets Authority therefore have until the end of April to publish plans to manage the technology, including AI-related risks, identify current expertise, and publish plans for regulating AI over the year. The government's approach gives regulators autonomy to respond rapidly to emerging risks but also to enable developers to innovate. The government measures include financial support, including GBP 10 million to upskill regulators to address AI. The funding helps regulators develop research and examination tools to tackle risks and opportunities in relevant sectors like media and telecoms.

Given the pace of technological development, the UK Government wishes to avoid premature legislation implementing "quick-fix" rules that risk becoming outdated or ineffective, preferring to allow sector regulators to adapt their regulations to address AI risks in a targeted way.

The sum of GBP 90 million has been allocated for nine new UK research hubs and a US partnership to develop responsible AI. The hubs will support British AI expertise to harness the technology in different industries. The UK has committed an investment of GBP 9 million through the government's International Science Partnerships Fund, bringing together researchers and innovators in the UK and the United States to focus on developing safe, responsible, and trustworthy AI.

Funding to the tune of GBP 2 million from the Arts and Humanities Research Council (AHRC) will support new research projects that will help to define what responsible AI looks like across sectors such as education, policing and the creative industries. These projects are part of the AHRC's Bridging Responsible AI Divides (BRAID) programme.

GBP 19 million will support 21 projects to develop innovative, trusted and responsible AI and machine learning solutions to accelerate the deployment of these technologies and drive productivity.

A further GBP 100 million will fund the world's first AI Safety Institute to evaluate the risks of new AI models. This builds upon the International Scientific Report on Advanced AI Safety, unveiled at the UK November 2023 AI summit, which will also help to build a shared evidence-based understanding of AI's development and potential.

The government's response suggests targeted binding requirements on the small number of organisations that are currently developing highly capable general-purpose AI systems, to ensure that they are accountable for making these technologies sufficiently safe.

Meanwhile, in the House of Lords, a Private Members' Bill has been introduced entitled Artificial Intelligence (Regulation) Bill (the Bill). The purpose of the Bill is to regulate AI through a statutory AI Authority whose function would include ensuring a consistent approach amongst regulators, coordinating relevant legislation such as privacy, consumer protection and safety laws. Other functions include the appointment of independent AI auditors and supporting testbed or sandbox initiatives to help AI innovators to launch new technologies.

Under the Bill, the AI Authority would regulate AI applications to ensure a number of qualitative criteria are met including safety, security, robustness, fairness, accountability and governance. Furthermore, any business that develops, deploys or uses AI should ensure thorough and transparent testing, as well as legal compliance, including in relation to data protection, privacy and intellectual property. The Bill would regulate against discrimination whilst AI applications would have to be inclusive by design.

Within the Bill's framework it would allow a relevant regulator to construct regulatory sandboxes for AI whereby an innovative proposition was tested in a real market situation provided there were identifiable consumer protection safeguards.

The Bill's provisions include transparency whereby the person involved in training AI must supply to the AI Authority a record of all third-party data and intellectual property used in that training. The public must be aware whether a product or service involves AI so the consumer can give or withhold consent before use or purchase. The AI Authority must ensure long term that they engage with the public about the risks and opportunities associated with AI, and promote interoperability with international regulatory frameworks.

The Bill had its first reading on 22 November 2023 and now awaits its second reading in the House of Lords.

A pro-innovation approach to AI regulation: government response

https://www.gov.uk/government/consultations/ai-regulation-a-pro-innovation-approach-policy-proposals/outcome/a-pro-innovation-approach-to-ai-regulation-government-response

Artificial Intelligence (Regulation) Bill

https://bills.parliament.uk/bills/3519

GEORGIA

[GE] Innovative method to fund PSB

Andrei Richter
Comenius University (Bratislava)

The Parliament of Georgia has adopted amendments in the 2005 broadcasting law (see: IRIS 2013-8:1/23) that would soon change the method of funding the country's national and regional public broadcasters. Currently, the law stipulates that Georgian Public Broadcaster (GPB) is to obtain at least 0.14% of the national GDP. With the dramatic growth of the Georgian GDP since 2022, the funding for GPB has jumped from GEL 69.6 million in 2021 to 110.3 million (or EUR 38.2 million) in 2024. The note to the bill explained the proposed change by saying that the current increase has not been conditioned by the actual needs of the broadcaster.

The principle to stay shall be that the GPB's budget will not decrease year-to-year. As of the start of 2026, though, the method of funding for the GPB – still from the national budget – will be based on the fixed amount of GEL 64 multiplied by the number of employed individuals in the previous year as per data officially published by the National Statistics Service of Georgia. Also, the share of the budget to be allocated to the regional Public Broadcaster of Adjara in Batumi shall gradually increase from 16% in 2024 to 21% in 2026.

Prior to the approval of the bill, the European Broadcasting Union and two international CSOs called on the Parliament to refrain from altering the funding mechanism and level, as it "jeopardizes the development and progress of this crucial democratic institution", particularly in the context of the country's integration into the European Union.

მაუწყებლობის შესახებ" საქართველოს კანონში ცვლილების შეტანის თაობაზე

https://matsne.gov.ge/ka/document/view/6003234?publication=0

Law of Georgia "On Amendments to the Law of Georgia 'On Broadcasting'", 15 December 2023, Nr. 4025-XIIIმს-Xმპ, officially published on 27 December 2023

EBU Leads Calls for Georgian Parliament to Safeguard the Funding and Sustainability of Public Service Media, 18 November 2023

https://www.ebu.ch/news/2023/11/ebu-leads-calls-for-georgian-parliament-to-safeguard-the-funding-and-sustainability-of-public-service-media

IRELAND

[IE] Reddit challenges designation as video-sharing platform by Irish media regulator

Eric Munch
European Audiovisual Observatory

Following the publication on 10 November of its Designation Decision Framework for video-sharing platform (VSP) services, the Irish media regulator *Coimisiún na Meán* (the Media Commission) issued a series of notices of designation to services established in Ireland that it estimates fall under the designation of VSP.

Pursuant to section 139H(3)(a) of the Broadcasting Act, 10 such services (Facebook, Instagram, YouTube, Udemy, TikTok, LinkedIn, X, Pinterest, Tumblr and Reddit) were notified of their designation as VSPs between 22 December and 29 December 2023. As foreseen by the Designation Decision Framework, a service has the possibility of providing the Media Commission with additional elements if they consider that their designation as a VSP service should be overturned.

On 15 January, Reddit, one such service launched High Court proceedings to challenge its designation as a VSP. The self-described “network of communities where people can dive into their interests, hobbies and passions” is an aggregation of discussion forums offering many features to its users, among which is the possibility for users to share content such as external links, images and videos.

A spokesperson for Reddit is quoted by the daily news service Irish Legal News as saying, “Reddit is a predominantly text-based discussion platform, and we believe that links to videos uploaded to other platforms should not be within scope of the EU legislation at issue, which is targeted at video hosting platforms like YouTube and TikTok.” He also observed that Reddit was hoping to obtain clarification from the court on questions of interpretation, as the designation of Reddit as a VSP could have “broadly sweeping implications for the internet”.

Reddit challenges designation as video-sharing platform

https://www.irishlegal.com/articles/reddit-challenges-designation-as-video-sharing-platform

Coimisiún na Meán designates Video-Sharing Platform Services

https://www.cnam.ie/coimisiun-na-mean-designates-video-sharing-platform-services/

ITALY

[IT] Italian Communications Authority releases guidelines on influencers to ensure compliance with rules and principles governing audiovisual media services

Marco Bassini
Tilburg University

On 10th January 2024, the Italian Communication Authority (AGCOM) issued, by resolution no. 7/24/CONS, some long-awaited guidelines to urge compliance with the Audiovisual Media Services Code ('TUSMA', Legislative Decree no. 208/2021) by influencers ('Guidelines'). The resolution also established a technical group of experts.

The release of the Guidelines follows the increase in the online dissemination of content by various subjects having control over the creation, fabrication or organisation of the same, commonly known as 'influencers'.

According to the Guidelines, this notion extends to those who provide services similar or comparable to audiovisual media services, when the following conditions are met:

1. The service operated constitutes a service pursuant to Articles 56 and 57 of the Treaty on the Functioning of the European Union;

2. The main goal of the service lies with the provision of content created or selected by an influencer to inform, entertain or educate, which are likely to generate revenues either directly, by commercial agreements entered by providers of goods or services, or indirectly, by content monetisation agreements entered by the relevant online platform or social media;

3. The influencer has editorial responsibility over the content, including control of the creation, selection or organisation;

4. The service is available to the public, targets a significant number of users in the Italian territory, has a substantial impact on a fair share of the audience and the content is disseminated through online video-sharing platform or social media services;

5. The service allows users to access content upon their request;

6) The service has a stable and actual connection with the Italian economy;

7) The content is offered in Italian or explicitly targets residents in the Italian territory.

However, AGCOM has acknowledged that the definition of the scope of application regarding influencers may need more clarity in some circumstances.

Therefore, it has been clarified that the Guidelines target the influencers that fulfil these requirements:

1. Having at least one million followers, as a sum of subscribers across online platforms and social media, where influencers disseminate their content

2. In the year preceding the survey have published at least 24 pieces of content matching the characteristics defined in the Guidelines.

3. Have an average engagement rate in the last six months equal to or higher than 2% either an online platform or social media.

Given the nature of their activity, AGCOM found the following principles and provisions directly applicable to influencers:

• The general principles under Article 4 of the Audiovisual Media Services Code;

• The general principles on freedom of information, where applicable;

• The provisions on the protection of copyright pursuant to Article 32 of the Audiovisual Media Services Code;

• The provisions safeguarding the fundamental rights of individuals, the provisions protecting minors and those protecting sports values;

• The provisions on commercial communications established by Articles 43, 46, 47 and 48 of the Audiovisual Media Services Code.

According to the Guidelines, compliance with these principles and rules imply that, among others, content disseminated by influencers:

• Shall not incite or provoke to commit crimes or condone their commission;

• Shall protect human dignity and shall not include any expression likely to spread, incite, promote or justify and trivialize violence, hatred or discrimination against individuals and groups, and shall not offend human dignity;

• Shall not contain elements likely to justify the perpetrators of crimes or blame the victims of violence, hatred, discrimination and offence of human dignity;

• Shall respect the rules on the protection of minors, in particular by avoiding content likely to seriously harm the physical, psychological or moral development.

Finally, the Guidelines also call for the adoption of one or more codes of conduct that may more accurately define technical measures and arrangements to ensure compliance by influencers with the Audiovisual Media Services Code in light of the peculiarities of their activity.

Italian Communications Authority, Resolution No. 7/24/CONS on 'Guidelines aimed at ensuring compliance by influencers with the provisions of the Audiovisual Media Services Code and establishing a special technical group'

MOLDOVA

[MD] New mechanism to suspend adopted television licences

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The state of emergency in Moldova, temporarily established by the parliament on 20 January 2022, reintroduced on 24 February 2022, and extended several times thereafter, ended on 31 December 2023. During this period, the Commission for Emergency Situations (CES), chaired by the prime minister, adopted two decisions on the suspension of the broadcasting licences of TV stations in Moldova due to the threat they posed to national security under the state emergency (see IRIS 2023-1:1/5).

In the meantime, on 29 December 2023, the Council for the Promotion of Investment Projects of National Importance (the Council), a government agency, informed the national media regulator, the telecom authority and the audiovisual service providers in the country, that the suspension of licences for six television stations (previously targeted in the suspension directives of the CES) should continue. According to the document, the restrictions were imposed “for the period necessary to provide information and documents” requested, because the agency found that the six media entities had made “investments in areas important for the security of the state”.

The relevant mechanism for the decision of the Council on the temporary suspension of television licences outside a state of emergency is new. It was provided through the last-minute government amendments to laws that were supposed to “ensure the integrity and functionality of the electricity market”: they were debated (in the second reading), adopted and enacted on 22 December 2023, and published the next day.

A number of civil society media organisations in Moldova issued a statement in which they noted that the recently legislated powers held by the Council “have significant potential to be used to the detriment of press freedom”. The statement criticised the lack of transparency demonstrated by the authorities in the legislative process and called on the national authorities to ensure that “any restriction on freedom of expression is allowed only to protect a legitimate interest as provided by the law and only when the restriction is proportional to the situation that prompted it, maintaining a fair balance between the protected interest and freedom of expression, as well as the public’s right to be informed.”

Lege pentru modificarea unor acte normative

https://www.parlament.md/ProcesulLegislativ/Proiectedeactenormative/tabid/61/Leg

islativId/6730/language/ro-RO/Default.aspx

The law for the amendment of certain normative acts, 22 December 2023, No. 414

NETHERLANDS

[NL] Media Authority imposes fine on ESPN over gambling advertising

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On 8 January 2024, the Dutch Media Authority (*Commissariaat voor de Media*, CvdM) issued a significant decision, imposing a fine on ESPN , a sports broadcaster, for numerous violations of the rules governing gambling advertising. This action follows the new legislation on gambling advertising coming into force in 2023 (see IRIS 2023-7/20) and previously in 2021 (see IRIS 2022-2/15). The CvdM stated that it attached “great importance” to compliance with these regulations, as they are designed to “protect minors”. Seeing advertising for gambling can lead to a “positive attitude among minors towards these products and services” and “allows young people to start gambling earlier and possibly become addicted to it”.

The decision begins by highlighting that the CvdM 'continuously monitors compliance' with the gambling advertising regulations. These regulations are laid down in the Media Act 2008.Advertisements for online remote gambling may not be broadcast between 06:00 and 21:00. Advertisements for other games of chance, such as lotteries, may not be broadcast between 06:00 and 19:00. The period from 1 July 2022 to 31 December 2022 saw investigations into whether advertisements for games of chance were broadcast during these restricted hours on television channels under Dutch jurisdiction, encompassing both public and commercial media institutions.

Crucially, the CvdM foundthat ESPN had broadcast two advertisements for remote games of chance and four for other games of chance during the prohibited times. The same violation was also involved in a previous investigation in 2021, for which ESPN received a warning. The CvdM also took this earlier warning into account when deliberating the imposition of a fine. The Commission also took into account that, given its programming, ESPN should have taken appropriate measures in advance and set up work processes to prevent these violations.

The Commission noted that ESPN indicated that various measures had now been taken to prevent future violations as much as possible. The advertisments are now labelled, so that ESPN employees are better able to recognise gambling advertisements. In the event of shifts in programming, it can therefore be checked whether the gambling advertisements shift to unauthorized times. There have also been improvements made to ESPN's internal programming system that alert operators about such shifts. The final director and the teams within ESPN have been instructed to carefully check the gambling advertisements. The Commission took these measures into account as “fine-reducing circumstances”, and imposed a final fine of EUR 12 000 on ESPN.

Commissariaat voor de Media, Sanctiebeschikking, Kenmerk: 936550 / 957147, 8 januari 2024

https://www.cvdm.nl/wp-content/uploads/2024/01/Sanctiebeschikking-kansspelreclame-ESPN-3.pdf

Dutch Media Authority, Sanction Decision no 936550 / 957147, 8 January 2024

[NL] Netherlands Authority for Consumers and Markets publishes draft DSA guidance for providers of online services

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On 18 January 2024, the Netherlands Authority for Consumers and Markets (*Autoriteit Consument & Markt*) (ACM) published important draft Guidelines on the EU's landmark Digital Services Act (DSA) (see, for example, IRIS 2023-3/18 and IRIS 2023-5/2). Notably, this follows the ACM being designated as the national Digital Services Coordinator in the Netherlands under the DSA under recent Dutch legislation (IRIS 2023-8/16).

The draft Guidelines have been developed by the ACM to ensure that "market participants falling under the DSA are adequately prepared" for the DSA becoming directly applicable across the EU on 17 February 2024.

The 48-page Guidelines document is divided into several important sections, with guidance sections for (1) intermediary service providers, (2) hosting service providers, (3) online platform providers, and (4) B2C online marketplace providers. It primarily targets intermediary service providers that have their principal place of business in the Netherlands or whose legal representative resides or is established in the Netherlands, regardless of where the recipients who use these services are located.

Firstly, in relation to intermediary service providers, the Guidelines provide in-depth guidance on a range of important issues, including what the DSA requires under Article 14 DSA on terms and conditions, and notably, the form of terms and conditions "aimed at minors".

Secondly, for hosting service providers, the Guidelines aim to clarify the rules of Article 16 DSA' on implementing notice-and-action mechanisms and those of Article 17 on the obligation to provide a state of reasons for imposing restrictions due to illegal content.

Thirdly, in relation to online platform providers, the ACM provides guidance on key provisions of the DSA applicable to online platforms, including Article 22 DSA on trusted flaggers, whereby platforms must prioritise and promptly address notices of illegal content from trusted flaggers. The ACM clarifies that the DSA "does not preclude [platforms] from considering notices submitted by entities not granted trusted flagger status by a DSC similarly to those from trusted flaggers, or from collaborating with other entities". The Guidelines also cover the DSA's rules on internal complaint handling systems, out-of-court dispute resolution, the ban on dark patterns, transparency in advertising and recommender systems, and the protection of minors. Finally, the Guidelines provide additional guidance to B2C

online marketplace providers, including on the issues of traceability of traders, and right to information for consumers.

As for future steps, a consultation on the draft Guidelines is open until 16th February 2024, after which the final Guidelines will be adopted.

Netherlands Authority for Consumers and Markets, Consultation version of DSA Guidelines: Due diligence obligations for digital services, 18 January 2024

https://www.acm.nl/system/files/documents/acm-publishes-for-consultation-the-draft-guidelines-regarding-the-dsa-for-providers-of-online-services.pdf

PORTUGAL

[PT] Strategical plan for the promotion of media literacy approved in Portugal

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Universidade do Minho

In November 2023 the Government approved a national plan to promote media literacy in various sectors of society. Although there is a natural focus on pre-university schools, the document also established guidelines that include informal and lifelong education.

The purpose is to enable citizens to better deal with informative content, and to fight misinformation and dissemination of false content. This is the first time a national plan has been launched in this field.

Starting with the acknowledgement that there is a deficit in Portugal regarding access to and reading the news, the legislative piece creating the national plan also recognizes that media nowadays have a central role in leisure, commercial exchanges, social relations and in interacting with State administrative services.

Thus, media literacy is a central skill for today's citizens in an increasingly complex media and digital world.

The national plan, which will be implemented by an inter-ministerial commission, aims to enhance the effective integration of media literacy into school curricula in all teaching levels and cycles, as well as the aggregation or creation of educational programs and resources in non-formal and informal lifelong education contexts. To accomplish this purpose the plan also includes the promotion of training programs aimed at teaching and non-teaching staff at schools.

Regarding society in general, the plan determines the organisation of events that prioritise direct contact with media outlets and their professionals, to strengthen citizens' trust in the media. Particularly relevant is the fact that the implementation of the plan will have to foresee ways to promote critical and hate speech-free participation in different public forums, particularly in sports-related arenas, namely through awareness campaigns.

A comprehensive programme of action must be presented by the committee in the forthcoming months, and the development of this programme is to be monitored by an accompanying committee. This committee comprises representatives from media sector organisations (including the Journalists' Union) and public administrative bodies. It is required to include five literacy and media experts, one of whom will chair the body.

This plan is in accordance with the new steps outlined in the transposition of the revised Audiovisual Media Services Directive, which established new obligations for the public broadcaster and video-sharing platforms. Furthermore, the media regulatory agency is now mandated to submit a triennial report on the evolution of media literacy skills in Portugal to the Government and the European Commission.

While this represents the first national initiative undertaken by a government concerning media literacy, numerous initiatives are already underway, led by scholars and media organizations.

Additionally, a reference book (in its second revised edition) was published in December by the Ministry of Education to aid pre-graduate schools in implementing targeted activities in this field

For further information on media literacy initiatives in Portugal, please consult the YouthWiki website, Europe's encyclopaedia of national youth policies.

Resolução do Conselho de Ministros n.º 142/2023, de 17 de novembro

https://diariodarepublica.pt/dr/detalhe/resolucao-conselho-ministros/142-2023-224427490

Council of Ministers Resolution no. 142/2023, of 17th November

Law no. 27/2007, of 30 July, Law on television and on-demand audiovisual services, amended by Law no. 74/2020, of 19/11)

YouthWiki, Portugal

https://national-policies.eacea.ec.europa.eu/youthwiki/chapters/portugal/68-media-literacy-and-safe-use-of-new-media

Pereira, S., Pinto, M. & Madureira, (2023). Referencial de Educação para os Media (Versão atualizada). Lisboa: Ministério da Educação

https://www.dge.mec.pt/sites/default/files/Noticias_documentos/referencial-epm-versaoatualizada-dez2023_11dez.pdf

Pereira, S., Pinto, M. & Madureira, (2023). Reference for Media Education (Updated version). Lisbon: Ministry of Education

SLOVENIA

[SI] Draft Law on Media addresses transparency, media concentration, pluralism, hate speech and artificial intelligence

Deirdre Kevin
COMMSOL

On 12 December 2023, the Slovenian Ministry of Culture published a draft Law on Media for consultation, which is intended to update the current Law on Media. The deadline for comments on the Draft was 31 January 2024. It is intended that the new Law on Media will reflect the forthcoming European Media Freedom Act and the EU Artificial Intelligence Act.

Key areas of change include (among others): increasing transparency of ownership of media outlets and transparency of financing of media outlets via a central database; improving the procedures regarding media mergers; regulating state advertising; expanding the use of state aid for promoting media pluralism; establishing a National Council for Media: introducing provisions on removal of hate speech; and provisions on mandatory labelling for AI-generated content.

The proposal expands the definition of media (Article 3) to include: 'newspapers and magazines and their electronic versions, radio programmes, television programmes and other audiovisual media services, online media portals, services of online influencers, internet radio, podcasts, etc.' Definitions for state advertising and political advertising are also included under Article 3. The Draft proposes creating a new National Media Council to replace the National Broadcasting Council (Article 30). It would be an independent expert body tasked with protecting public interest in the media. It would comprise seven distinguished media experts or managers proposed by the government and appointed by the National Assembly. Functions of the new Council would include, analysing the state of media pluralism, giving opinions on ownership concentration, debating media legislation, and drafting annual reports on the state of the media.

In relation to media concentration, ownership restrictions currently only apply to daily newspapers, radio and TV. New rules will consider the media market as a whole regardless of the type of outlet (Article 20). Concentration would be subject to the same rules that govern corporate takeovers, whereby the regulator would have to consider over a dozen media-specific criteria in its evaluation. In general, the law would prohibit any concentration that poses a risk to public interest. The Agency for Protection of Competition will request a preliminary opinion from the National Media Council on assessing the consequences of concentration in the media for the public interest in the field of media (public interest test). If television or radio broadcasters programmes or audiovisual media services are involved, the Agency for Protection of Competition also obtains a preliminary

opinion from the Agency for Communication Networks and Services (AKOS).

A database is to be established, pooling data collected by several authorities, including among others the Ministry of Finance and other Agencies dealing with public law records and services, with a key aim being the disclosure of the beneficial owners of media (Article 16). The database will also include certain information on financing such as revenues from public funds and state advertising. Regarding state advertising, the new law follows the principles of the European Media Freedom Act (EMFA), which requires greater transparency of state advertising. Therefore, state institutions (ministries, agencies, municipalities, etc.) will have to regularly report on all media expenditures: advertisements, campaigns and other leases of media space

Regarding state aid and funds for media pluralism, the new rules broaden the types of projects to be funded, including promoting media literacy, digital transition, the development of new media content, products, tools and distribution channels, science journalism, access to digital media services, and support to media start-ups (Article 14). Annual funding equalling 4% of the licence fee for public broadcaster RTV Slovenia will be set aside for such funding. Strict exclusion criteria are proposed: media which already receive the majority of their finance from public funds will not be eligible for this kind of aid, nor will outlets owned by local communities or political parties. To qualify, an outlet must have at least three staff members, full-time or freelance. In addition, applicants should have fulfilled legal, financial and contractual obligations. Applicants are also restricted where they have found to be in violation of the prohibitions of incitement to discrimination, violence and war, as well as inciting hatred and intolerance, and those media outlets found to have violations with regard to employment rights will also be restricted with regard to applying for funds.

Article 34 introduces provisions for the removal of hate speech. Separately, Article 36 requires that online publications that allow for public comments are obliged to formulate rules for comments and to make them available and easily accessible. These should specify the rules on illegal content, including hate speech, and explain the complaint handling procedure.

In addition, the Draft introduces the regulation of media content created by artificial intelligence (AI), requiring that content in the creation of which generative AI has been used be labelled appropriately (Article 49). The media would also be required to inform audiences about how they use generative AI, and it would be prohibited to publish AI-generated content without transparency. The bill contains a ban on deep fakes, the exception being in comedy and satirical shows, and in youth and educational shows if the purpose is to improve media literacy. Even in such cases, deep fakes would have to be labelled appropriately

The Draft Bill also introduces a mandatory share of Slovenian music, whereby, television and radio stations will have to play at least 20% of music in the Slovenian language, with the share rising to 25% for local, student, and non-profit outlets, and 40% for the public broadcaster RTV Slovenija (Article 23).

Predlog zakona o medijih v javni obravnavi

https://www.gov.si/novice/2023-12-12-predlog-zakona-o-medijih-v-javni-obravnavi/

Slovenian Ministry of Culture: Proposal for the Draft Law on Media is under public consultation

Predlog predpisa - Zakon o medijia

https://e-uprava.gov.si/si/drzava-in-druzba/e-demokracija/predlogi-predpisov/predlog-predpisa.html?id=16268

Government of Slovenia: Draft Law on Media

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