IRIS newsletter

IRIS 2024-3

A publication
of the European Audiovisual Observatory

European Audiovisual Observatory

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

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Web Design:

Coordination: Cyril Chaboisseau, European Audiovisual Observatory
ISSN 2078-6158

EDITORIAL

Reading the many important developments that the present Newsletter reports on, the following words of Nelson Mandela spring to mind: “Remember to celebrate milestones as you prepare for the road ahead”. Celebrations are indeed in order as several long-awaited milestones were reached at EU level regarding the Regulation on Political Advertising, the Anti-SLAPP Directive, the EMFA and the AI Act.

Another milestone was also reached with the full entry into force of the DSA package. Applicable to VLOPs and VLOSEs since August 2023, the DSA started applying to all other online intermediaries in the European Union in February 2024. In parallel, the obligations placed upon gatekeepers under the DMA came into force in March 2024.

However, this is as much of a milestone as it is a starting point, as the implementation and thorough oversight by the European Commission and the DSCs are bound to raise questions and introduce new challenges. In February, the Court of Justice issued its inaugural order on the enforcement of the DMA, addressing the European Commission's designation of Bytedance as a gatekeeper.

In this edition of the Newsletter, you will also discover many other developments at national level, in the EU and beyond, from legal reforms to case law and decisions by administrative bodies, that will certainly help you prepare for the road ahead.

I hope you enjoy the read!

Maja Cappello, Editor

European Audiovisual Observatory

Table of content

INTERNATIONAL

COUNCIL OF EUROPE

FRANCE

European Court of Human Rights: Tariq Ramadan v. France

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

The European Court of Human Rights (ECtHR) has decided that a criminal conviction in France of the Swiss public intellectual and Islamologist Tariq Ramadan was not a violation of his right to freedom of expression under Article 10 of the European Convention on Human Rights (ECHR). Ramadan was convicted for having disseminated information about the identity of the alleged victim of a rape (X) for which he was facing trial in France. Ramadan had revealed X's identity in a press release, during a TV interview and in a book. The ECtHR dismissed his complaint under Article 10 ECHR as manifestly ill-founded and therefore inadmissible.

In 2019, X, who was also a civil party in the proceedings against Ramadan, brought a criminal complaint against Ramadan for publication of her identity, since French law punishes the publication of information about the identity of victims of sexual aggression without the written consent of the victim (Article 39 quinquies of the Freedom of the Press Act of 29 July 1881). During his defence in court, Ramadan pointed out that X's surname and first name had already been disclosed some months earlier on the Internet site *LeMuslimPost* and in various media sources in France, Belgium, Switzerland and Luxembourg. He also added that X had created a blog under the pseudonym "Christelle" and that she had disclosed a photograph of her face on her Twitter account and her Facebook page, associating it with her pseudonym. Ramadan's conviction by the Paris *tribunal judiciare* for breach of Article 39 quinquies of the French Press Law was confirmed in 2022 by the Paris Court of Appeal. The Court sentenced him to a moderate fine and a reduced amount of damages; although Ramadan had knowingly chosen to disseminate X's identity without having obtained her written consent, her identity had not been revealed by him, since X's identity had been disclosed or disseminated previously by numerous media sources and X herself had contributed to her own identification. Ramadan was sentenced to a fine of EUR 1 000 and EUR 1 500 for damages, also taking into account that X had failed to produce supporting documents enabling the court to assess the impact of the events on her personal life and health. On 7 February 2023, the Court of Cassation dismissed Ramadan's appeal on points of law. Ramadan lodged an application with the ECtHR in June 2023, complaining that his conviction under

Article 39 quinquies of the Freedom of the Press Act amounted to a violation of Article 10 ECHR.

The ECtHR had no problem accepting that Ramadan's conviction was provided by law. Article 39 quinquies of the Freedom of the Press Act provides indeed that "the dissemination, by any means and in any medium whatsoever, of information on the identity of the victim of sexual assault or abuse, or of an identifiable likeness of that victim" is punishable by a fine of EUR 15 000, while this provision does notapply in circumstances "where the victim had given her written consent". Ramadan had undoubtedly been in a position to foresee that by mentioning X's name in a press release, an interview and a book, he would thereby be "disseminating" her identity within the meaning of Article 39 quinquies of the Freedom of the Press Act. Nor could he have been unaware that the condition for such dissemination had not been fulfilled since he had not been in possession of any written authorisation from X to that effect. The ECtHR also agreed with the French court's finding that X was indeed to be regarded as a victim within the meaning of Article 39 quinquies of the Freedom of the Press Act. The ECtHR also accepted that the conviction was an interference with Ramadan's freedom of expression for "the protection of the reputation or rights of others", as the legitimate aim pursued was to protect the dignity and private life of the victim of a sexual offence and avoid pressure on him or her. Next, the ECtHR observed that in disseminating X's identity, Ramadan had not intended to take part in a debate on an issue of public interest, but had wished to defend himself publicly against accusations that he had committed sexual offences. Therefore the French authorities enjoyed a wide margin of appreciation in relation to the interference at issue with Ramadan's right to freedom of expression.

Finally, the ECtHR came to the conclusion that Ramadan's conviction had constituted a proportionate means of achieving the aim of protecting X's rights and reputation. It referred to the French court's finding that the dissemination of X's name had not been necessary for the exercise of Ramadan's defence rights or for securing his right to a fair trial, and that he had been at liberty to express his views on the acts of which he had been accused, provided he refrained from disseminating the name of X. The ECtHR took into account that the Court of Appeal had taken the approach that the interference with Ramadan's freedom of expression was acceptable only if the choice of penalty took into account the circumstances in which the dissemination had taken place, together with the victim's own conduct. The ECtHR found that the French courts in this case struck a fair balance between Ramadan's rights under Article 10 and X's rights under Article 8 ECHR. Indeed, a person's reputation forms part of his or her personal identity and psychological integrity and therefore falls within the scope of his or her private life within the meaning of Article 8 ECHR. On the other hand, the publication complained of and the information about the identity of X had not contributed to a debate in the public interest. The ECtHR saw no reason to question the assessment of the domestic courts, which had weighed Ramadan's rights and those of X in the balance and had relied on relevant and sufficient grounds. It also noted the moderate nature of the sums which Ramadan had been sentenced to pay in fines and damages, and which had been decreased on appeal, in particular to take account of the fact that X had played a part in her

own identification. Having regard to the respondent State's wide margin of appreciation, the ECtHR concluded, unanimously, that Ramadan's complaint under Article 10 ECHR was manifestly ill-founded, and therefore inadmissible.

Decision by the European Court of Human Rights, Fifth section, in the case Tariq Ramadan v. France, Application No. 23443/23, 7 January 2024

https://hudoc.echr.coe.int/eng?i=001-230997

RUSSIAN FEDERATION

European Court of Human Rights: Podchasov v. Russia and Škoberne v. Slovenia

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

A judgment of 13 February 2024 in the case of *Podchasov v. Russia* deals with the right to privacy as protected under Article 8 of the European Convention on Human Rights (ECHR) in relation to the retention of communications data and content by Internet service providers, the protection of encrypted messages and access by law-enforcement authorities and security services to such data and content. The judgment in *Podchasov v. Russia* is highly relevant for all member states of the ECHR, also in relation to the earlier case law of the European Court of Human Rights (ECtHR) on deploying bulk or secret surveillance (see *Big Brother Watch and Others v. the United Kingdom*, IRIS 2021-7:1/20). Another judgment of the ECtHR issued just two days later, on 15 February 2024, in the case of *Škoberne v. Slovenia*, also deals with the issue of retention of communications data in light of the right to privacy. In both cases the ECtHR found a violation of Article 8 ECHR. This contribution focusses on the Russian case, highlighting the users' rights to privacy and freedom of expression.

The applicant in the Russian case is Anton Valeryevich Podchasov. He is a user of Telegram, a messaging application used by millions of people in Russia and worldwide. Telegram does not have end-to-end (client-client) encryption by default, but instead uses a custom-built server-client encryption scheme in its default "cloud chats". It is, however, possible to switch to end-to-end encryption by activating the "secret chat" feature. In June 2017, Telegram Messenger LLP was listed as an "Internet communications organiser" (ICO) in a special public register, based on section 10 of the Federal Law on Information, Information Technologies and Protection of Information (Information Act), introduced in 2014. This entailed an obligation for Telegram to store all communications data for a duration of one year and the content of all communications for a duration of six months, and to submit those data to law-enforcement authorities or security services in circumstances specified by law, together with information necessary to decrypt electronic messages if they were encrypted. Podchasov and 34 other persons challenged before a court a disclosure order by the Federal Security Service (FSB) requiring Telegram to disclose technical information which would facilitate the decryption of communications in respect of Telegram users who were suspected of terrorism-related activities. The plaintiffs argued that the provision of encryption keys as required by the FSB would enable the decryption of the communications of all Telegram users. It would therefore breach their right to respect for their private life and for the privacy of their communications. After receiving the encryption keys, the FSB would have the technical capability to access all communications without the judicial authorisation required under

Russian law. They also argued that the Russian law lacked guarantees against the potentially unjustified disclosure of their personal information. After a district court and the Moscow City Court rejected the complaints as inadmissible and after the refusal of two requests for cassation appeal, Podchasov lodged an application with the ECtHR, relying on Article 8 ECHR.

The ECtHR found that although there was no evidence that the authorities had accessed Podchasov's data stored by Telegram, he did have a claim that he was the victim of an interference with his rights under Article 8 ECHR. It was indeed impossible for an individual or a legal person to know for certain whether their data had been accessed. The ECtHR noticed furthermore that in the present case, personal data were stored for the purposes of allowing the competent national authorities the opportunity to conduct targeted secret surveillance of Internet communications. The issues relating to the storage of personal data and to secret surveillance are therefore closely linked in the present case. The crucial question in the light of Article 8 ECHR is whether the domestic law contained adequate and effective safeguards and guarantees to meet the requirements of "quality of law" and "necessity in a democratic society", in order to justify the interference with Podchasov's right to privacy. The ECtHR reiterated that confidentiality of communications is an essential element of the right to respect for private life and correspondence, as enshrined in Article 8 ECHR. Users of telecommunications and Internet services therefore must have a guarantee that their own privacy and freedom of expression will be respected. This guarantee however cannot be absolute and must yield on occasion to other legitimate imperatives, such as the prevention of disorder or crime or the protection of the rights and freedoms of others.

With regard the obligation for ICOs to retain communications data and content, the ECtHR was struck by the extremely broad formulated duty provided by the contested legislation and it found that the interference with the right to privacy was exceptionally wide-ranging and serious. Precisely because of the seriousness of the interference, the ECtHR examined with particular attention whether the domestic law provided adequate and sufficient safeguards against abuse relating to access by law-enforcement authorities to the Internet communications and related communications data stored by ICOs pursuant to the Information Act. It observed that the manner in which access to the stored data is organised in Russia, gave the security services technical means to access stored Internet communications and communications data without obtaining prior judicial authorisation. The ECtHR found that such a system, which enables the secret services to directly access the Internet communications of each and every citizen without being required to show an interception authorisation to the communications service provider, or to anyone else, was particularly prone to abuse. The ECtHR found that the domestic law did not at all provide for adequate and sufficient safeguards against such abuses.

As regards the requirement to submit to the security services information necessary to decrypt electronic communications if they are encrypted, the ECtHR observed that international bodies have argued that encryption provides strong

technical safeguards against unlawful access to the content of communications and has therefore been widely used as a means of protecting the right to respect for private life and for the privacy of correspondence online. In the digital age, technical solutions for securing and protecting the privacy of electronic communications, including measures for encryption, contribute to ensuring the enjoyment of other fundamental rights, such as freedom of expression. Encryption, moreover, appears to help citizens and businesses to defend themselves against abuses of information technologies, such as hacking, identity and personal data theft, fraud and the improper disclosure of confidential information. The ECtHR gave due consideration to this approach in assessing the measures at issue which may weaken encryption. It appeared that in order to enable decryption of communications protected by end-to-end encryption, such as communications through Telegram's "secret chats", it would be necessary to weaken encryption for all users. These measures allegedly cannot be limited to specific individuals and would affect everyone indiscriminately, including individuals who pose no threat to a legitimate government interest. Weakening encryption by creating back doors would apparently make it technically possible to perform routine, general and indiscriminate surveillance of personal electronic communications. Back doors may also be exploited by criminal networks and would seriously compromise the security of all users' electronic communications. The ECtHR furthermore took note of the dangers of restricting encryption described by many experts in the field, and it found that the requirement to decrypt encrypted communications, as applied to end-to-end encrypted communications, cannot be regarded as necessary in a democratic society.

As the legislation at issue permitted the public authorities to have access, on a generalised basis and without sufficient safeguards, to the content of electronic communications, it impaired the very essence of the right to respect for private life under Article 8 ECHR. The Russian authorities have therefore overstepped any acceptable margin of appreciation in this regard. Unanimously the ECtHR concluded that there had been a violation of Article 8 ECHR.

Judgment by the European Court of Human Rights, Third Section, in the case of Podchasov v. Russia, Application No. 33696/19, 13 February 2024

https://hudoc.echr.coe.int/eng?i=001-230854

Judgment by the European Court of Human Rights, First Section, in the case of Škoberne v. Slovenia, Application No. 19920/20, 15 February 2024

https://hudoc.echr.coe.int/eng?i=001-230885

EUROPEAN UNION

Artificial Intelligence Act

Justine Radel-Cormann
European Audiovisual Observatory

Following a previous article on the provisional agreement on the Artificial Intelligence Act (AI Act) at interinstitutional level (IRIS 2024-1:1/9), the co-legislative procedure to adopt the Act is ending. On 13 March 2024, the European Members of the Parliament (MEPs) backed the regulation by 523 votes in favour to 46 against and 49 abstentions. The text is now to be adopted by the Council of EU.

The AI Act will enter into force twenty days after its publication in the official journal. As a regulation, the text is directly applicable to the legal order of member states of the European Union, provided the 24 months of implementation period, except for bans on prohibited practises, which will apply six months after the entry into force date; codes of practice (nine months after entry into force); general-purpose AI rules including governance (12 months after entry into force); and obligations for high-risk systems (36 months).

The text lays down harmonised rules on artificial intelligence for the placing on the market, the putting into service and the use of AI systems in the European Union. The text is based on a risk-based approach, imposing obligations on the AI system depending on the risk level.

Transparent measures shall be developed for copyright-protected content when feeding the machines: detailed summaries of the input training the machine must be published, and comply with EU copyright law.

As to the text and data mining exception (TDM), Recital 105 provides that TDM techniques may be used extensively for the retrieval and analysis of content, which may be protected by copyright and related rights. The use of copyrighted content requires the authorisation of the rightsholder. Besides, rightsholders may choose to reserve their rights over their works to prevent TDM. Where the right to opt-out has been expressly reserved in an appropriate manner, providers of general-purpose AI models need to obtain an authorisation from rightsholders if they want to carry out TDM over such works.

The creation of generated/manipulated content (deep fakes) shall be labelled as such.

European Parliament legislative resolution of 13 March 2024 on the proposal for a regulation of the European Parliament and of the Council on laying down harmonised rules on Artificial Intelligence

https://www.europarl.europa.eu/doceo/document/TA-9-2024-0138_EN.html

European Parliament's press release

https://www.europarl.europa.eu/news/en/press-room/20240308IPR19015/artificial-intelligence-act-meps-adopt-landmark-law

Statement by Council of Europe's Secretary General on the finalisation of the Convention on AI

https://www.coe.int/en/web/artificial-intelligence/-/artificial-intelligence-human-rights-democracy-and-the-rule-of-law-framework-convention

EMFA: Parliament adopts the regulation

Justine Radel-Cormann
European Audiovisual Observatory

Following a previous article on the provisional agreement on the European Media Freedom Act (EMFA) at interinstitutional level (IRIS 2024-1:1/7), the co-legislative procedure to adopt the EMFA is reaching its end. On 13 March 2024, the European Members of the Parliament (MEPs) backed the EMFA by 462 votes in favour to 92 against, and 65 abstentions. The Council of the European Union will now adopt the EMFA after the Parliament's first reading.

The EMFA will enter into force twenty days after its publication in the official journal. As a regulation, the text is directly applicable to the legal order of member states of the European Union, taking into account the implementation period.

The EMFA aims to protect media independence and forms of intervention in editorial decisions should be banned.

This landmark text protects journalists against intrusive measures from authorities (e.g. office searches). Authorities may use spyware following judicial authorisation in the course of an investigation of serious crimes. A coalition of 21 media sector organisations (representing journalists, media freedom and civil society groups, and public service media) deplore this possible use of spyware.

The governance and independence of public service media are important: key appointments in the structure should go through transparent and non-discriminatory procedures, with safeguards against dismissals (e.g., it is impossible to dismiss a member before the end of the contract).

To ensure transparency of ownership, all news and current affairs outlets shall publish information about their owners in a national database.

State financial support and funds received from state advertising should be reported as well.

Finally, measures were introduced to prevent major online platforms from restricting/deleting independent media content. Media providers will be informed prior to content deletion or restriction, allowing 24 hours for a response. Only after the media provider's reply, or in its absence, can the platform take action if the content remains non-compliant.

European Parliament legislative resolution of 13 March 2024 on the proposal for a regulation of the European Parliament and of the Council establishing a common framework for media services in the internal market (European Media Freedom Act)

https://www.europarl.europa.eu/doceo/document/TA-9-2024-0137_EN.html

European Parliament's press release

https://www.europarl.europa.eu/news/en/press-room/20240308IPR19014/media-freedom-act-a-new-bill-to-protect-eu-journalists-and-press-freedom

CJEU rules on TV advertising time limits

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In a decision of 3 February 2024 in case C-255/21 (Reti Televisive Italiane) concerning the interpretation of Article 23(2) of the Audiovisual Media Services Directive (AVMSD) and the limits it imposes on broadcasting time for advertising, the Court of Justice of the European Union (CJEU) ruled that announcements promoting radio programmes shown on television channels belonging to the same broadcasting group do not, in principle, constitute promotion of the television broadcaster's "own" programmes.

The decision followed supervisory measures taken by the Italian broadcasting authority AGCOM against Reti Televisive Italiane SpA (RTI), an Italian audiovisual media services provider and owner of television channels Canale 5, Italia 1 and Rete 4. In 2017, AGCOM sanctioned RTI for breaches of a national law limiting time devoted to television advertising. When calculating the relevant airtime, it had taken into account promotional announcements for the R101 radio station that had been broadcast on RTI's television channels. The radio station concerned and RTI both belong to the Mediaset group. RTI claimed that the announcements promoting the radio station should be categorised as self-promotion (i.e. advertising for its own programmes) and therefore excluded from the hourly broadcasting time devoted to advertising.

Article 23(1) of the AVMSD states that the proportion of television advertising spots and teleshopping spots within the periods between 6.00 and 18.00 and between 18.00 and 24.00 must not exceed 20% of the respective period. According to paragraph 2(a) of the same article, these limits do not apply to announcements made by the broadcaster in connection with its own programmes and ancillary products directly derived from those programmes or with programmes and audiovisual media services from other entities belonging to the same broadcasting group.

In a request to the CJEU for a preliminary ruling, the Italian Council of State submitted several questions, which were examined together, in order to establish whether Article 23(2) of Directive 2010/13 should be interpreted as meaning that the concept of "announcements made by the broadcaster in connection with its own programmes" includes announcements made by a broadcaster promoting a radio station belonging to the same group of companies as that broadcaster. The CJEU ruled that Article 23(2) of the AVMSD must be interpreted as meaning that "the concept of 'announcements made by the broadcaster in connection with its own programmes' does not cover promotional announcements made by a broadcaster for a radio station belonging to the same group of companies as that broadcaster, except where, first, the programmes which are the subject of those promotional announcements are 'audiovisual media services' within the meaning

of Article 1(1)(a) of that directive, which implies that they are dissociable from the principal activity of that radio station and, second, that broadcaster has ‘editorial responsibility’ for those programmes within the meaning of Article 1(1)(c) of that directive.”

The CJEU justified this interpretation by stressing that radio broadcasting services, which consisted of programmes made up of sound content without images, were different from the audiovisual programmes of a television broadcaster. They therefore did not fall under the concept of "programme" within the meaning of the AVMSD unless they were dissociable from the principal activity of the radio station and could therefore be classified as "audiovisual media services" . In order for a programme to be considered as the television broadcaster’s "own programme", the broadcaster must also have editorial responsibility for it. This meant the exercise of effective control both over the selection of the programmes and over their organisation by a natural or legal person with the power to make a final decision as to the audiovisual offer. Since the rules on maximum time for advertising broadcasts per hour pursued different objectives from those pursued by the competition rules, the criterion of editorial responsibility for the programmes concerned should be taken into account when interpreting the concept of "own programmes" rather than the fact that both broadcasters belonged to the same group of companies.

The CJEU's decision has indirect legal effect, including in areas outside the field of Italian media regulation, and may result in legislative amendments in other EU member states.

Urteil des EuGH in der Rechtssache C-255/21, ECLI:EU:C:2024:98

https://curia.europa.eu/juris/document/document.jsf;jsessionid=78CCC1855225A4D0ACE4235B0346D0CF?text=&docid=282263&pageIndex=0&doclang=DE&mode=lst&dir=&occ=first&part=1&cid=3771081

Judgment of the CJEU in case C-255/21, ECLI:EU:C:2024:98

https://curia.europa.eu/juris/document/document.jsf;jsessionid=78CCC1855225A4D0ACE4235B0346D0CF?text=&docid=282263&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=3771081

CJEU fines Ireland for failing to transpose the revised AVMSD

Eric Munch
European Audiovisual Observatory

On 29 February 2024, the Court of Justice of the European Union (CJEU) imposed fines on Ireland for failing to notify the full implementation of the revised Audiovisual Media Services Directive (AVMSD). Several countries – Czechia, Romania, Slovakia, Spain and Ireland – had been referred to the CJEU by the European Commission on 19 May 2022 for failing to fully transpose the AVMSD within the required time frame. Since then, all except Ireland have notified the European Commission of the full transposition of the AVMSD.

The CJEU ruled that, by failing to communicate the laws, regulations and administrative provisions necessary to comply with Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU in view of changing market realities, to the European Commission by the expiry of the period laid down in the reasoned opinion, Ireland had failed to fulfil its obligations under Article 2 of Directive 2018/1808.

It also declared that by failing to adopt the provisions necessary to transpose into its national law the provisions of the revised AVMSD, and by failing to notify the measures to the Commission, Ireland "persisted in its failure to fulfil its obligations".

As a consequence, the CJEU ordered Ireland to pay the Commission a lump sum of EUR 2 500 000 and, should the infringement persist at the date of delivery of this judgment, "as from that date and until that Member State has put an end to that infringement, a daily penalty payment in the amount of EUR 10 000".

The CJEU noted, however, that it had taken into account in its ruling the fact that Ireland had communicated to the Commission, on 2 March 2023, legislation partly transposing the revised AVMSD, "which led the Commission to adapt the form of order sought".

The ruling also notes that Ireland had conceded in its rejoinder that it had not yet transposed obligations contained in Article 6a(1) and (3) of the AVMSD relative to ensuring that audiovisual media services "do not make available to minors content which may impair their physical, mental or moral development", as well as those contained in Article 28b(1) relating to the taking of appropriate measures by video-sharing platform providers under their jurisdiction to protect the general public from "programmes, videos or audiovisual commercial communications containing incitement to violence or hatred or which constitute an activity which is a criminal offence under EU law".

In a press release, the Irish Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media noted that Ireland accepted the judgment and would study it in detail, noting also that the fines imposed were "significantly lower than the maximum levels that were open to the Court to impose". While it doesn't oppose the ruling, the Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media adds that the need to establish a new regulator to oversee the implementation of the AVMSD's transposition into Irish law had played a part in making the transposition process longer.

Press release – Statement in relation to fines imposed by the Court of Justice of the European Union

https://www.gov.ie/en/press-release/0bbdb-statement-in-relation-to-fines-imposed-by-the-court-of-justice-of-the-european-union/

Judgment of the Court (Ninth Chamber) of 29 February 2024 – European Commission v. Ireland

https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62022CJ0679

CJEU: first pronouncement on the application of the DMA

Amélie Lacourt
European Audiovisual Observatory

On 9 February 2024, the Court of Justice of the European Union published an order in a case opposing Bytedance to the European Commission.

On 5 September 2023, the European Commission designated Bytedance, which provides the entertainment platform TikTok through local subsidiaries, as a gatekeeper under Article 3 of the Digital Markets Act (DMA). The Commission based its decision in particular on the fact that the applicant met the quantitative thresholds and that it had not demonstrated the existence of circumstances which would render the conditions for the designation of a gatekeeper not met.

Following the designation, Bytedance brought an action for annulment of the Commission's decision and applied for interim measures. It seeks in particular the suspension of the operation of the Commission's decision pending the Court's ruling in so far as the contested decision imposes on Bytedance:

• obligations relating to new features, products or services which it may offer (in respect of Article 5 and 6 DMA) and at the very least obligations under Article 5(2) DMA)

• an obligation to submit to the Commission an independently audited description of techniques for the profiling of consumers applied by TikTok (Article 15 DMA) and, at the very least, to disclose publicly any of those techniques (Article 15(3) DMA)

To order suspension of operation of an act and other interim measures, the order must be justified prima facie, in fact and in law, and be urgent in that, in order to avoid serious and irreparable harm to the applicant's interests, it must be made and take effect before a decision is reached in the main action.

In order to meet these criteria, Bytedance alleged an irreparable breach of confidentiality. According to the applicant, it would have to disclose detailed confidential information regarding its commercial strategy and publish detailed information concerning the way in which it profiles TikTok users, which would otherwise not be in the public domain. Disclosing this information would "significantly harm its business" and "provide rivals with the opportunity […] to learn how TikTok engages in the profiling on consumers", thereby weakening its competitive position. However, the Commission considered that, in any event, the complainant had failed to prove that its claim satisfied the requirement of a prima facie case and had not shown that there was a risk of disclosure of confidential information. The Commission also noted that Article 15(1) of the DMA only requires that information be communicated to the Commission and, indirectly, to

the European Data Protection Board. The Commission further noted that the same is true for Article 15(3) DMA, as it merely requires the gatekeeper to publish "an overview", prepared by the gatekeeper itself, which may also "take account of the need to respect its business secrets". The Commission therefore considered that the applicant had failed to demonstrate that the alleged serious and irreparable harm is probable or imminent.

In order to demonstrate that the condition of urgency was met, Bytedance also relied on alleged irreversible market changes due to the barriers to entry and expansion imposed by the Digital Markets Act. According to the applicant, Articles 5 and 6 DMA would prevent it from using its TikTok platform, preventing it for example to use TikTok's data insights to offer new products and services, and to encourage its users to focus on its products. Bytedance further reported that the exact impact of Article 5(2) could not be quantified but that recent developments and TikTok's experience showed that the impact was likely to be particularly significant. In this respect, the Commission emphasised that the alleged harm is purely hypothetical. While the applicant assumed that it would be required to request and obtain consent of users in order to be able to rely on their data, it did not specify the circumstances in which Article 5(2) would apply and therefore whether the data would fall within the category of "personal data". Moreover, the Commission recalled that this provision does not prohibit the combination and cross-use of the end user's personal data, but merely makes those actions subject to the prior consent of the user. Finally, it added that the harm to which the applicant refered to is purely financial. The interim measures sought in this regard are justified where, in the absence of such measures, the applicant would be placed in a position which would jeopardise its financial viability before the final judgment, or where its market share would be substantially affected in the light, inter alia, of the size and turnover of its undertaking and, where relevant, the characteristics of the group to which it belongs. The Commission considered that the applicant failed to assert, let alone establish, the serious and irreparable nature of the financial harm which it may suffer.

The Commission considered that Bytedance failed to prove that the condition relating to urgency was satisfied, without it being necessary to rule on whether there is a prima facie case or to carry out a weighing of interests.

The General Court therefore ordered that the application for interim measures be dismissed.

Order of the President of the General Court, 9 February 2024, Case T-1077/23

https://curia.europa.eu/juris/document/document.jsf?text=&docid=282703&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=6144268

European Parliament adopts proposed regulation on the transparency and targeting of political advertising

Ronan Ó Fathaigh
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On 27 February 2024, the European Parliament adopted, by 470 in favour to 50 against (and 105 abstentions), the proposal for a regulation on the transparency and targeting of political advertising. This much-anticipated proposed regulation was first published by the European Commission in November 2021, and had been planned to enter into force by April 2023, a year before the 2024 elections to the European Parliament, to be held on 6-9 June 2024 (see IRIS 2022-1/12). However, the legislative procedure moved slower than planned, and in February 2023, amendments were adopted by the parliament on the proposed regulation (see IRIS 2023-4/28). Now, in February 2024, the parliament, sitting in plenary session, has adopted the proposed regulation. Following this adoption, the Council also needs to formally adopt the text, before it is then published in the Official Journal of the European Union.

The purpose of the regulation is to lay down harmonised transparency rules for the provision of political advertising, and crucially, rules on the use of targeting techniques and ad-delivery techniques that involve the processing of personal data. The parliament's adopted text runs to 178 pages, and the regulation is divided into five main chapters: Chapter I sets out important definitions; Chapter II contains transparency and due diligence obligations for political advertising services; Chapter III sets out rules related to targeting and ad delivery of online political advertising; and the final chapters relate to supervision, enforcement and application. Crucially, the parliament's adopted text contains some notable amendments to the Commission's original proposal, which include the following.

First, a notable provision on editorial content (Article 1(2)) has been added, which provides that "political opinions" and other "editorial content", that are subject to "editorial responsibility" shall not be considered political advertising "unless specific payment or other remuneration" is provided for by third parties.

Second, there are now a number of explicit exceptions to the definition of political advertising, including that political advertising does not include "presenting candidates in specified public spaces or in the media which is explicitly provided for by law and allocated free of charge, while ensuring equal treatment of candidates".

Third, and crucially, a new Article 5 on "Provision of political advertising services in the Union" has been added. It provides under Article 5(2) that in the last three months preceding an election or referendum organised at EU level or in a member state, political advertising services pertaining to that election or referendum "shall only be provided" to a sponsor, or service provider acting on behalf of a

sponsor, who declares him or herself to be: (a) a citizen of the EU; or (b) a third country national permanently residing in the Union and having a right to vote in that election or referendum; or (c) a legal person established in the Union which is not ultimately owned or controlled by a “third country national”. The parliament’s press release stated that this provision is designed to “limit foreign interference in European democratic processes" by prohibiting "sponsoring ads from outside the EU ... in the three-month period before an election or referendum”.

Fourth, Article 13 now requires the Commission to establish a “European repository for online political advertisements” which is a “public repository for all online political advertisements published in the Union” and will include a functionality “enabling public access” to online political advertisements.

Fifth, under Article 18, targeting techniques or ad-delivery techniques that involve the processing of personal data for online political advertising shall be permitted “only” when certain conditions are fulfilled, including that the data subject has provided “explicit consent” to the processing of personal data “separately for the purpose of political advertising”, and when those techniques do not involve using special categories of personal data (e.g, ethnicity, religion, sexual orientation). Finally, the regulation will enter into force on the 20th day following its publication in the EU Official Journal. However, it will only apply “18 months from the date of entry into force”. Notably, Article 5(1) shall apply as from the date of its entry into force (which provides that political advertising service providers “shall not restrict the provision of their services to a ‘European political party’, or a political group in the European Parliament, solely on the basis of its place of establishment”).

Press Release, European Parliament legislative resolution of 27 February 2024 on the proposal for a regulation of the European Parliament and of the Council on the transparency and targeting of political advertising, European Parliament, 27 February 2024

https://www.europarl.europa.eu/news/en/press-room/20240223IPR18071/parliament-adopts-new-transparency-rules-for-political-advertising

European Parliament, European Parliament legislative resolution of 27 February 2024 on the proposal for a regulation of the European Parliament and of the Council on the transparency and targeting of political advertising, 27 February 2024

https://www.europarl.europa.eu/doceo/document/TA-9-2024-0090_EN.pdf

European Parliament legislative resolution of 27 February 2024 on the proposal for a regulation of the European Parliament and of the Council on the transparency and targeting of political advertising (COM(2021)0731 – C9-0433/2021 – 2021/0381(COD))

https://www.europarl.europa.eu/doceo/document/TA-9-2024-0090_EN.pdf

European Parliament vote on the anti-SLAPP Directive

Amélie Lacourt
European Audiovisual Observatory

In April 2022, the European Commission published a legislative proposal for a Directive on the protection of journalists and human rights defenders from manifestly unfounded or abusive court proceedings, now commonly referred to as the anti-SLAPP Directive. The Commission's proposal aimed at providing safeguards for natural and legal persons who engage in public participation on matters of public interest against manifestly unfounded or abusive court proceedings, which are initiated to deter them from public participation.

The prevalence of SLAPPs (strategic lawsuits against public participation) has been identified as a matter of serious concern in some member states in the context of the 2020 and 2021 Rule of Law Reports. While many SLAPPs occur in the domestic context and do not have cross-border implications, they can have a cross-border nature, adding an extra layer of difficulty and costs if this is indeed the case.

The European Parliament's Committee responsible for this file is the Committee on Legal Affairs (JURI) as lead committee, with the Civil Liberties, Justice and Home Affairs (LIBE) Committee associated under Rule 57 of the Rules of Procedure (RoP). In June 2023, JURI adopted the report by rapporteur Tiemo Wölken.

In June of the same year, the EU Council approved a General Approach which became the basis for trilogue negotiations with the parliament.

At the end of November 2023, the co-legislators, the EU Council and the European Parliament, found a compromise on the proposal for the anti-SLAPP Directive. The compromise text provides in particular:

- a broad definition of cross-border cases and of "matters of public interest", including, for instance, EU values,

- an explicit rule on the burden of proof which makes it clear that it lies with the claimant, and not the defendant,

- a compromise version of the rule on reimbursement of costs incurred by the SLAPP victim,

- and that member states will have to provide information for SLAPP victims and publish judgments of the highest courts in SLAPP cases in an electronic format.

The file was then sent back to each institution respectively, leading to a vote on the text by JURI on 24 January 2024 and by the European Parliament on 27 February during a plenary meeting. The text is now awaiting the Council's

position.

Initiative against abusive litigation targeting journalists and rights defenders, Legislative Train Schedule, European Parliament

https://www.europarl.europa.eu/legislative-train/theme-a-new-push-for-european-democracy/file-initiative-against-abusive-litigation-targeting-journalists-and-rights-defenders

European Parliament legislative resolution of 27 February 2024 on the proposal for a directive of the European Parliament and of the Council on protecting persons who engage in public participation from manifestly unfounded or abusive court proceedings ("Strategic lawsuits against public participation") (COM(2022)0177 – C9-0161/2022 – 2022/0117(COD))

https://www.europarl.europa.eu/doceo/document/TA-9-2024-0085_EN.html

Update on the DSA package

Amélie Lacourt
European Audiovisual Observatory

DSA

Applicable to very large online platforms (VLOPs) and very large online search engines (VLOSEs) since August 2023, the Digital Services Act (DSA) started applying to all other online intermediaries in the European Union on 17 February 2024. Under Article 49(2) of the DSA, platforms which are not designated as VLOPs or VLOSEs are to be supervised at national level by Digital Services Coordinators (DSCs), in contrast to VLOPs and VLOSEs which are supervised by the European Commission itself. The DSCs are independent regulators that will work with the Commission to ensure the correct application of the DSA in their respective areas of competence.

The European Board for Digital Services, an independent advisory group envisaged in Article 47 of the DSA, met for the first time on 19 February 2024. The board will ensure that the DSA is applied consistently, and that users across the EU enjoy the same rights, regardless of where the online platforms are established. The meeting covered in particular the draft Guidelines for Providers of VLOPs and VLOSEs on the Mitigation of Systemic Risks for Electoral Processes (draft Election Guidelines). A consultation was open for a month until 7 March 2024. These guidelines aim to present VLOPs and VLOSEs with best practices and possible measures to mitigate systemic risks on their platforms that may threaten the integrity of democratic electoral processes. They are to be adopted in March.

On 15 February 2024, the European Commission also adopted the Implementing Act on a data-sharing platform envisaged under Article 85 of the DSA: the AGORA platform. It will support communications between the DSCs, the European Commission, and the European Board for Digital Services.

DMA

The Digital Markets Act (DMA) aims to regulate unfair practices by companies that act as gatekeepers, i.e. large online platforms that provide an important gateway between business users and consumers. Potential gatekeepers had to notify their core platform services to the Commission by 3 July 2023 if they met the thresholds established by the DMA. Following their designation, gatekeepers had six months to comply with the requirements, the obligations starting to apply on 7 March 2024.

In 2023, six companies were designated as gatekeepers for 22 core platform services (Alphabet, Amazon, Apple, ByteDance, Meta, Microsoft). However, ByteDance, which operates TikTok, challenged this decision before the Court of

Justice of the European Union. In February 2024, the Court dismissed the platform's request to suspend the Commission's decision designating it as a gatekeeper. On 1 March 2024, Booking, ByteDance and X notified their potential gatekeeper status to the Commission.

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)

https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32022R2065

Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act)

https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32022R1925

Guidelines for Providers of VLOPs and VLOSEs on the Mitigation of Systemic Risks for Electoral Processes

https://ec.europa.eu/newsroom/dae/redirection/document/102324

Order of the President of the General Court, Case T-1077/23 R, 9 February 2024

https://curia.europa.eu/juris/document/document.jsf;jsessionid=D8D13BFCC37D8EABA81AFE359A4982FF?text=&docid=282703&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=1110788

NATIONAL

AUSTRIA

[AT] The end of official secrecy (*Amtsgeheimnis*) and a new right to freedom of information

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On 12 February 2024, Austrian legislators took the last remaining step to remove a historic and blatant obstacle to freedom of information. From September 2025, Austria will have a constitutionally guaranteed right to information for citizens vis-à-vis the state, together with the necessary rules for its enforcement. Both the National Council and the Federal Council of the Austrian Parliament gave the green light for a corresponding amendment to the Constitution and an accompanying Freedom of Information Act with the required two-thirds majority. The new legal regime is to end the decades-long era of official secrecy (*Amtsgeheimnis*), which was detrimental to the enjoyment of fundamental freedoms by Austrian citizens and left Austria languishing in the bottom 10 countries in global rankings assessing the quality of access to information.

The legislative process was extraordinarily long and took about 11 years from the first initiative. Up until now, all federal, provincial and municipal administrative bodies were subject to the constitutional duty of confidentiality with regard to all kinds of information they may have obtained while undertaking their administrative tasks (so-called *Amtsverschwiegenheit* – official secrecy). Now, with the amendment to the Federal Constitution Act (B-VG) and the enactment of a new federal law on access to information (Freedom of Information Act – IFG), this principle of official secrecy as a rule has been abolished, and the obligation to provide information introduced. (Other types of information held in the possession of administrative organs, sucha as commissioned research reports, expertise, etc., did not fall under this category even before the new legislation.)

The exception under the general principle of freedom of and access to information is "secrecy for compelling reasons", such as, *inter alia*, foreign policy reasons, national security, the protection of public order and security. Also, preparatory materials for decisions should be kept confidential together with information necessary for avoiding significant economic or financial losses or damage to public organs.

Public access to information (online)

After the entry into force and the period for preparation, all kinds of "information of general interest" will have to be (proactively) published on the Internet – under

a central metadata Information Register – and kept available free of charge by the bodies of:

- the federal legislature (the National Council and the Federal Council);

- the federal and provincial administration (federal ministries, provincial governments, etc.), and local municipalities with at least 5 000 inhabitants;

- the judiciary (including the regular and administrative courts, the Supreme Administrative Court and the Constitutional Court);

- the Court of Auditors (*Rechnungshof*); and

- the Ombudsman Board (*Volksanwaltschaft*).

Obligation to provide access to information

The new rules also guarantee access to information held by several bodies, both public and private. Public bodies at the federal level (*Bund*), the provinces (*Länder*), municipalities (*Gemeinden*) and associations of municipalities (*Gemeindeverbände*), self-governing organisations established by law (*Organe der gesetzlich eingerichteten Selbstverwaltungskörper*), and other legal entities and natural persons, insofar as they are entrusted with the management of federal or state administrative tasks are obliged to provide access to information. Private bodies – subject to the control of the Federal Court of Audit or a provincial court of audit – are also required to meet the legal obligation of information provision. This category includes foundations, funds and institutions as well as companies under direct or indirect state control or ownership (minimum 50% share of capital/stock/equity).

While the new legislative package was hailed as a historic and fundamental milestone for the democratic accessibility of the Austrian public sphere, criticism remained about some further problematic details. Freedom of information civil society and advocacy NGOs – Epicenter.works, Forum Informationsfreiheit and Saubere Hände – referred to issues with the potential for subordination of the new rules to other laws "cancelling freedom of information" and the insufficient judicial oversight of the information provision process (only the procedural file is to be sent to the court, but not the requested information). In the coming years, it remains to be seen how Austrian journalists, the media and civil society actors will take advantage of the new rights and freedoms to the benefit of the Austrian public.

Bundesgesetz, mit dem das Bundes-Verfassungsgesetz geändert und ein Informationsfreiheitsgesetz erlassen wird

https://www.parlament.gv.at/gegenstand/XXVII/I/2238

Federal Act amending the Federal Constitutional Act and enacting a Freedom of Information Act

Informationsfreiheit – Expert:innen warnen vor Fehlern auf letzten Metern

https://www.informationsfreiheit.at/2024/01/18/informationsfreiheit-expertinnen-warnen-vor-fehlern-auf-letzten-metern/

Freedom of information – experts warn of mistakes in the final metres

BELGIUM

[BE] Implementation of the Digital Services Act (DSA)

Olivier Hermanns
Conseil Supérieur de l'Audiovisuel Belge

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) is fully applicable since17 February 2024 (Article 93).

Although all aspects of an EU Regulation are binding on and directly applicable in all member states, its application requires the member states to adopt various measures. In this case, for example, they are required to designate "one or more competent authorities to be responsible for the supervision of providers of intermediary services and enforcement of this Regulation" and a digital services coordinator (Article 49).

The notion of intermediary services is central to the Regulation and can include audiovisual services. The regulation of intermediary services therefore falls within the remit of both the federal authority and the Belgian federated entities (the "communities"), which are responsible for broadcasting.

These various authorities have therefore recently adopted measures designed to implement various provisions of the Digital Services Act in Belgium. These measures are the result of a political agreement reached at the end of 2023, under which the *Institut belge des services postaux et des télécommunications* (Belgian postal and telecommunications authority – IBPT) will take on the role of coordinator for digital services for the Kingdom. The federal government has tabled a bill to this effect.

The other competent supervisory authorities will be designated by the respective political authority.

In particular, the communities have adopted the necessary legislative measures in order to designate the competent authorities in accordance with Article 49 of the Regulation.At the time of writing, only the decree of the German-speaking Community has not yet been published in the Belgian Official Journal. However, it was already approved on 14 December 2023 by the parliament of this community.

These laws designate the respective audiovisual media regulators as competent authorities. They are the *Vlaamse Regulator voor de Media* (Flemish Regulator for the Media — VRM) for the Flemish-speaking Community, the CSA for the French-speaking Community and the *Medienrat* (Media Council) for the German-speaking Community. A federal bill should be adopted to designate the IBPT as the

competent authority at federal level.

A cooperation agreement was drafted by the federal authority and the communities to regulate the collaboration and the exchange of information between the federal and federated competent authorities as well as with the coordinator for the Kingdom's digital services. It also defines the tasks of this coordinator for digital services. Finally, it governs the Kingdom's representation on the European Digital Services Committee referred to in Article 61 of the regulation. The agreement is due to be approved shortly by the respective parliamentary assemblies.

Note de politique générale

https://www.lachambre.be/FLWB/PDF/55/3649/55K3649019.pdf

General policy note

Programmdekretvorschlag 2023, Parlament der Deutschsprachigen Gemeinschaft Belgiens

https://pdg.be/desktopdefault.aspx/tabid-4632/8158_read-71086/

Draft 2023 programme decree, Parliament of the German-speaking Community of Belgium

Decreet van 26 januari 2024 tot wijziging van het decreet van 27 maart 2009 betreffende radio-omroep en televisie tot gedeeltelijke uitvoering van de digitaledienstenverordening

http://www.ejustice.just.fgov.be/eli/decret/2024/01/26/2024001001/justel

Decree of 26 January 2024 amending the Decree of 27 March 2009 on radio and television broadcasting, partially implementing the regulation on digital services

Décret du 15 février 2024 modifiant le décret du 4 février 2021 relatif aux services de médias audiovisuels et aux services de partage de vidéos et mettant partiellement en œuvre le règlement sur les services numériques

https://www.ejustice.just.fgov.be/cgi/article_body.pl?language=fr&caller=summary&pub_date=2024-03-08&numac=2024001713%0D%0A#top

Decree of 15 February 2024 amending the Decree of 4 February 2021 on audiovisual media services and video-sharing services and partially implementing the regulation on digital services

Projet de loi mettant en œuvre le règlement (UE) 2022/2065 du Parlement européen et du Conseil du 19 octobre 2022 relatif à un marché unique des services numériques et modifiant la directive 2000/31/CE, portant modifications du livre XII et du livre XV du Code de droit économique et portant modifications de la loi du 17 janvier 2003 relative au statut du régulateur des secteurs des postes et des télécommunications belges, DOC 55 3799/001

https://www.lachambre.be/FLWB/PDF/55/3799/55K3799001.pdf

Draft law implementing Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a single market for digital services and amending Directive 2000/31/EC, amending Books XII and XV of the Code of Economic Law and amending the Law of 17 January 2003 on the status of the regulator of the Belgian postal and telecommunications sectors, DOC 55 3799/001

CYPRUS

[CY] Draft Bill on the Regulations of Video Sharing Platform Services established in the Republic of Cyprus

Antigoni Themistokleous
Cyprus Radiotelevision Authority

The December 2021 amendment of the Law on Radio and Television Organisations 7(I)/1998 transposed the Audio Visual Media Services Directive 2018/1808/EU into national law of the Republic of Cyprus (RoC). Upon the transposition and the enactment of the new law, the Cyprus Radio Television Authority (CRTA) became the competent authority for securing and enforcing compliance of Video Sharing Platform (VSP) providers under its jurisdiction with the regulatory provisions. It is reminded that some of the biggest, in terms of revenues and users, VSP providers that distribute adult entertainment content are established in the RoC and thus fall under the jurisdiction of the CRTA.

Part IXA of the Law 7(I)/1998 pertains to the provisions applicable to VSP Services; precisely, Article 32F(1) provides for the obligation of VSP providers to take appropriate measures to protect (a) minors from programmes, user-generated videos and audiovisual commercial communications which may impair their physical, mental or moral development; (b) the general public from programmes, user-generated videos and audiovisual commercial communications containing incitement to violence or hatred, public provocation to commit a terrorist offence, offences concerning child pornography, and offences concerning racism and xenophobia. Article 32G extends the CRTA's competence to impose administrative sanctions, including financial ones, to VSP providers in case of violations of the Law.

Exercising its powers as derived from Article 51 of the Law 7(I)/1991, the CRTA decided to proceed with drafting Regulations on VSP Services in order, among others, to examine potential violations of the Law by VSP providers and impose sanctions.

The Draft Bill on the Regulations of VSP Services has sections on:

- The obligation of the providers to submit to the CRTA a Notification Form [based on Article32(E)(7) of the Law] and explicates the procedure for examining and evaluating this Form by the CRTA.

- The classification of the VSP Services into different categories based on the submitted Notification Form and the content (including user-generated videos) distributed by each VSP Service.

- The examination and evaluation of the appropriateness of measures taken by the VSP providers as per their obligation stipulated in Article 32F of the Law

7(I)/1998 (as amended).

- The examination of potential violations of the Law and Regulations by VSP providers. This section details the step-by-step procedure to be followed when the CRTA examines, either ex officio or after information it receives, potential violation of the Law and Regulations by VSP providers under its jurisdiction.

On the 20 December 2023, the CRTA opened the public consultation on the Draft Bill on the Regulations of VSP Services, which lasted until the 30 January 2024. Stakeholders, among others, the VSP providers established in the RoC, the Commissioner for Children's Rights, the Office of the Commissioner for Personal Data Protection, were invited to express their opinion on the Draft Bill.

The collection and analysis of the data and the findings expressed in the context of the public consultation is the next step so that the Draft Bill on the Regulations is finalised. Following this, the Draft Bill will be submitted to the Law Office of the RoC for examination and vetting and then to the Standing Committee on Internal Affairs for discussion, before they are considered by the Plenary of the House of Parliament for approval through vote. Upon their publication in the Official Gazette of the Republic, the Regulations are put into enforcement

Law consolidating and reviewing the Laws regulating the establishment, installation and operation of Radio and Television Broadcasters, Number 7(I) of 1998

https://crta.org.cy/assets/uploads/pdfs/FINAL%20CONSOLIDATED%20LAW%20up%20to%20Amendment%20197(I).2021.pdf

Οι περί Υπηρεσιών Πλατφόρμας Διαμοιρασμού Βίντεο Κανονισμοί του 2023

https://crta.org.cy/assets/uploads/pdfs/DimosiaDiabouleusiKanonismoiGiaVSPs.pdf

The Video Sharing Platform Services Regulations 2023

GERMANY

[DE] Media authority's complaint about RTL split-screen advertising upheld

Sven Braun
Institute of European Media Law

On 7 February 2024, the *Verwaltungsgericht Hannover* (Hanover Administrative Court – VG Hannover) rejected an appeal by the television broadcaster RTL against a complaint lodged by the *Niedersächsische Landesmedienanstalt* (Lower Saxony state media authority – NLM). The complaint concerned an alleged breach of the requirement for clear visual separation of advertising and programme content during "split-screen" advertising broadcast during an RTL television programme.

"Split-screen" advertising for a smartphone, in which editorial content and advertising were shown at the same time, was broadcast during an episode of RTL casting show "*Das Supertalent*" on 11 December 2021. Shortly before the start of a commercial break, the TV show's studio audience was shown. On the left-hand side of the screen, an advertising panel appeared, containing information about the advertised smartphone and an advertising label. The advert showed front and rear views of the smartphone, with the casting show audience visible on the smartphone screen. The studio audience could also be seen outside the advertising panel. The *Kommission für Zulassung und Aufsicht* (Commission on Licensing and Supervision – ZAK), an organ of the 14 German state media authorities responsible for granting licences to and monitoring national private broadcasters, representing the relevant state media authority, in this case the NLM, decided that RTL had breached the requirement for visual separation of advertising and programme content. On 6 July 2022, on the basis of the ZAK's decision, the NLM filed a complaint against RTL for breaching Article 8(4) of the *Medienstaatsvertrag* (state media treaty), which authorises split-screen advertising as long as it is clearly separate from programme content and labelled as advertising. RTL appealed to the VG Hannover against the NLM's decision. Sharing the NLM's view that there had been inadequate separation of advertising and programme content, the court rejected RTL's appeal. Since the decision is not yet final, RTL is entitled to lodge a further appeal.

Pressemitteilung der Niedersächsischen Landesmedienanstalt vom 8. Februar 2024

https://www.nlm.de/aktuell/pressemitteilungen/pressemeldungen/verwaltungsgericht-hannover-bestaetigt-beanstandung-von-werbeverstoss-bei-rtl

Lower Saxony state media authority press release of 8 February 2024

Pressemitteilung des Verwaltungsgerichts Hannover vom 5 Februar 2024

https://www.verwaltungsgericht-hannover.niedersachsen.de/aktuelles/pressemitteilungen/split-screen-werbung-bei-das-supertalent-229303.html

Hanover Administrative Court press release of 5 February 2024

[DE] Federal Supreme Court submits questions to CJEU on ‘communication to the public’

Felix Engleitner
Legal trainee at the Institute of European Media Law

Under a decision of 8 February 2024 in case number I ZR 34/23, the first civil chamber of the German *Bundesgerichtshof* (Federal Supreme Court – BGH) submitted three preliminary questions to the Court of Justice of the European Union (CJEU), requesting clarification of whether a retirement home operator who retransmits radio and television programmes received via a satellite receiver to the home’s residents via a cable network is "communicating to the public" within the meaning of copyright law and should therefore enter into licensing agreements. The three questions were as follows:

(1.) Do the residents of a commercially operated retirement home, whose rooms are equipped with television and radio connections to which the retirement home operator retransmits radio and television programmes received via its own satellite receiver simultaneously, unchanged and in full through its cable network, constitute "an indeterminate number of potential recipients" within the meaning of CJEU case law dealing with the definition of "communication to the public"as referred to in Article 3(1) of Directive 2001/29/EC?

(2.) Is the definition used by the CJEU to date, according to which “in order to be treated as a ‘communication to the public’, the protected work must be communicated using specific technical means, different from those previously used or, failing that, to a ‘new public’, that is to say, to a public that was not already taken into account by the copyright holders when they authorised the initial communication to the public of their work” still valid, or is the technical means used only relevant in cases in which content originally received via a terrestrial, satellite or cable service is retransmitted to the open Internet?

(3.) Is there a "new public" in the sense of the aforementioned definition if the operator of a commercially run retirement home retransmits radio and television programmes received via its own satellite receiver simultaneously, unchanged and in full through its cable network to the television and radio connection points provided in residents’ rooms and, when determining whether this is the case, is it relevant whether (a) the residents are able to receive the radio and television programmes in their rooms by terrestrial means, i.e. without using the cable connection and (b) the copyright holders have already been paid for consenting to the original broadcast.

In the case heard by the BGH, the German collecting society GEMA had lodged a claim against a commercially run retirement home that provided radio and television programmes in residents’ rooms. These programmes were received via the defendant’s own satellite receiver and retransmitted simultaneously, unchanged and in full through its cable network to the residents’ rooms. GEMA had sought an injunction against the defendant to prevent it from transmitting the

programmes, claiming that this was a case of "communication to the public" without the consent of the copyright holders. The first-instance court had upheld the claim, which had then been thrown out by the appeal court.

According to Article 267(1)(b) and (3) of the Treaty on the Functioning of the European Union (TFEU), the court of a member state can, and a court of last resort such as the BGH must, submit to the CJEU questions on the interpretation of secondary EU law such as Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society, if it considers that a decision on such questions is necessary to enable it to give judgment.

The courts agreed that "communication" of the radio and television programmes was taking place in this case. In its application, the BGH explained in detail why it needed answers to the questions submitted.

The first question sought clarification of whether the programmes were being communicated to "an indeterminate number of potential recipients" and were therefore the subject of public communication. Two further criteria had to be met for this to be the case: there must be "a large number of people" and no "specific people". The BGH shared the appeal court’s view that, with 88 single rooms and three double rooms in the retirement home, the numerical threshold was reached in this case. It therefore focused on the question of "specific people". Whether the programmes were communicated to specific members of a private group rather than an indeterminate number of potential recipients required clarification under EU law. The fact that the retirement home residents formed a highly homogenous group with a relatively low level of turnover did not, according to the BGH, mean that the programmes were only being communicated to "specific people", since the services provided by the retirement home were, in principle, available to anyone and limited only by the building’s physical capacity.

The second question asked whether a different technical means always had to be used to communicate the work in order for "public communication" to take place, or whether this was only necessary in certain cases. If the technical means used to communicate the work was not covered by the consent originally given by the copyright holders, the existence of a "new public" would be irrelevant because the communication would be unauthorised. Elsewhere in its previous case law, however, the CJEU does not refer to this requirement for consent, other than in cases of communication to a "new public".

The third question aimed, in essence, to clarify whether the retirement home residents constituted a "new public" because they received the radio and television programmes in their rooms, i.e. alone or in a private or family group, and the defendant, which was not the original broadcaster, made them available to the residents as part of its commercial operation of the retirement home.

Beschluss des BGH (Az. I ZR 34/23)

https://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=en&nr=136437&pos=0&anz=1

Federal Supreme Court decision (case I ZR 34/23)

[DE] Broadcasting Commission adopts key aspects of public service broadcasting reforms

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The *Rundfunkkommission* (Broadcasting Commission) of the 16 *Länder*, which are responsible for media regulation in Germany, adopted the key aspects of public service broadcasting reforms at a closed meeting in Bingen am Rhein on 25/26 January 2024.

The meeting was held a few days after the publication of a report by the *Zukunftsrat* (Future Council), an independent panel of experts set up by the *Länder* to consider the future development of public service broadcasting. The Future Council had been tasked with developing a long-term vision for the future of public service broadcasting and its acceptance beyond the current decade, as well as making recommendations for reform. The Broadcasting Commission believes the report's proposals will strengthen its efforts to forge ahead with fundamental reforms to public service broadcasting. Some of the Future Council's recommendations have already been implemented, in particular through the third and fourth state treaties amending the state media treaty.

At the meeting, it was highlighted once again that free and diverse media – private and public – are crucial for social coexistence and democracy. The *Länder* consider that public service broadcasters play a key role in providing factual information, culture, advice, education and entertainment, thereby stimulating social dialogue and illustrating the huge diversity of opinions, perspectives and everyday realities in Germany.

The *Länder* agree with the Future Council's conclusion that the services offered by public service broadcasters should be accepted, used and valued by licence fee payers. They believe that public acceptance is dependent on quality of service, as well as economical use of licence fee revenue. With a view to carrying out the necessary reforms to public service broadcasting, they agreed on four main spheres of action:

1. Confirmation of public service remit and offering. This will include a shift towards more digital and participatory on-demand formats through the reallocation of human and financial resources, as well as improved services for young people, educational skills development and media literacy activities. The regional remit of the *Arbeitsgemeinschaft der öffentlich-rechtlichen Rundfunkanstalten der Bundesrepublik Deutschland* (German Association of Public Service Broadcasters – ARD) will be made more visible. Fulfilment of the public service remit will become measurable through legally defined quality benchmarks and criteria, and will be regularly monitored. Public service sports reporting will reflect the full breadth of sport, even when there are no commercial marketing opportunities. Investment in sports rights will be proportionate to overall

programming expenditure and take the situation of the private sports rights market into account. In addition, much greater emphasis will be placed on non-linear media, with linear special-interest channels either merged or closed down and an audit of radio and online services.

2. More efficient organisation and structures. The ARD, ZDF and Deutschlandradio will be obliged to work together. Multiple structures will need to be dismantled. As a first step, an independent, joint organisational entity involving the ARD, ZDF and Deutschlandradio will be set up to deal with technical matters and to develop and operate a joint technical platform. Within the ARD, efficient organisation will replace time-consuming coordination. Whether this should lead to the creation of an *ARD-Anstalt* (ARD umbrella authority), as proposed by the Future Council, was left open by the Broadcasting Commission's decision.

3. Good governance, management and supervisory structures. The *Länder* will strengthen elements of a shared management structure for the state media authorities, as recently established for Saarländische Rundfunk and Rundfunk Berlin-Brandenburg, with a particular focus on guaranteeing the public service remit. For management and leadership positions within public service broadcasting that are not covered by collective agreements, a remuneration system will be developed in line with the public sector salary structure.

4. Reform of the procedure for setting the broadcasting licence fee. The *Länder* also want to examine the procedure for setting the licence fee, taking the Future Council's proposals into account.

The *Länder* will ask the *Kommission zur Ermittlung des Finanzbedarfs der öffentlich-rechtlichen Anstalten* (Commission for Determining the Financial Requirements of Broadcasters – KEF) for a special report measuring the efficiency gains and savings potential of the proposals. They hope to present a new state treaty that includes these reforms in autumn 2024.

Beschluss der Rundfunkkommission

https://rundfunkkommission.rlp.de/fileadmin/rundfunkkommission/Dokumente/Beschluesse/RFK_25.-26-1-24_Eckpunkte_zur_Reform_des_oeffentlich-rechtlichen_Rundfunks.pdf

Broadcasting Commission decision

Bericht des Zukunftsrates

https://rundfunkkommission.rlp.de/fileadmin/rundfunkkommission/Dokumente/Zukunftsrat/ZR_Bericht_18.1.2024.pdf

Future Council report

SPAIN

[ES] CNMC appointed as Digital Services Coordinator in Spain

Azahara Cañedo & Marta Rodriguez Castro

The Spanish National Markets and Competition Commission *(Comisión Nacional de los Mercados y la Competencia*, CNMC) has been appointed by the Ministry for Digital Transformation and Public Service as the Spanish Digital Services Coordinator.

This decision aligns with the requirements of the Digital Services Act (DSA), which demands the appointment of an independent authority with no ties to external influences, and with sufficient autonomy to manage its budget.

The CNMC is already responsible for supervising the audiovisual market (among other areas such as energy, postal services and transport) and for overseeing RTVE's (Corporación de Radio y Televisión Española) compliance with its public service mission, due to the lack of a specific media authority in Spain. In addition to its current activities, the CNMC will take on the tasks of the Digital Services Coordinator, which revolve around ensuring that digital intermediaries and online platforms comply with the DSA. Thus, the CNMC is now responsible for requesting access to the data and algorithmic moderation and recommendation systems used by digital platforms, carrying out inspections where necessary and, finally, imposing fines in the event of infringements.

The CNMC will also be responsible for the certification of "trusted flaggers", reliable and independent entities with expertise in the detection, identification and notification of illegal content. Trusted flaggers can notify illicit content to the Digital Services Coordinator, and due to their special status, their reports will be prioritised.

El Ministerio para la Transformación Digital y de la Función Pública designa a la CNMC como Coordinador de Servicios Digitales de España

https://www.cnmc.es/prensa/coordinador-servicios-digitales-20240124

The Ministry for Digital Transformation and Public Services designates the CNMC as the Digital Services Coordinator in Spain

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) (Text with EEA relevance)

https://eur-lex.europa.eu/eli/reg/2022/2065/oj

FRANCE

[FR] *Conseil d'État* reviews ARCOM's powers to monitor pluralism and independence of information

Amélie Blocman
Légipresse

A few days before the *Autorité de régulation de la communication audiovisuelle et numérique* (the French audiovisual regulator – ARCOM) launched a call for applications for frequency allocations, with the licences held by 15 national television services, including CNews, due to expire soon, the *Conseil d'État* (Council of State) issued an important decision strengthening the regulator's powers to monitor audiovisual media services' compliance with their obligations concerning the honesty, pluralism and independence of information.

The Reporters Without Borders (RSF) association had asked the *Conseil d'État* to annul ARCOM's decision rejecting its application for a formal notice to be issued to the company responsible for the TV channel CNews, requiring it to meet its obligations as a "news-based service" as set out in its licence agreement, and to respect the principles of honesty of information, pluralism and independence of information.

Regarding the company's compliance with its obligations as a "news-based service", the *Conseil d'État* pointed out that CNews's licence, issued in 2019, stated that the service "is devoted to news" and "offers programmes that are continually updated in real time and cover all areas of current affairs". It observed that the service, in the form of news bulletins and studio broadcasts, offered news-based programmes covering all areas of current affairs, and that the channel regularly updated its programmes by displaying rolling news banners and summarising the main news headlines. The *Conseil d'État* therefore ruled that ARCOM had not incorrectly applied the provisions of the Law of 30 September 1986 by refusing to issue the channel with a formal notice on the grounds that, despite the role played by discussion programmes in its programming, it had not infringed its obligations as a news-based service.

The *Conseil d'État* also considered that insufficient evidence had been provided to support the claim that the channel had failed to meet its obligations regarding honesty of information.

In support of its request for a formal notice to be issued to the channel regarding its obligations concerning pluralism of information, RSF had alleged that the channel had failed to ensure that sufficiently diverse viewpoints were expressed in its programmes, in particular during debates on controversial issues.

The *Conseil d'État* noted that ARCOM, before refusing to issue the formal notice requested, had only assessed respect for pluralism of information by measuring

the airtime allocated to political figures. However, France's highest administrative court stated that, under Articles 1, 3-1 and 13 of the Law of 30 September 1986, ARCOM was responsible for ensuring respect for the pluralistic expression of schools of thought and opinion in radio and television programmes, in particular news programmes. It was therefore required to assess broadcasters' compliance with this obligation in the exercise of their editorial freedom by taking into account, across all their programmes, the diversity of schools of thought and opinion expressed by all participants during the programmes broadcast.

Finally, RSF had claimed that the channel's main shareholder had interfered in its programming in contravention of its independence obligations. The *Conseil d'État* stated that, under Article 3-1 of the Law of 30 September 1986, ARCOM should guarantee the honesty, independence and pluralism of information, ensure in particular that broadcasters' licence agreements guaranteed respect for Article 2bis of the Law of 29 July 1881, and ensure that the economic interests of the shareholders of audiovisual communication service providers and their advertisers did not infringe these principles. These obligations are set out in Article 2-3-8 of the channel's licence agreement, which concerns editorial independence.

In this case, the *Conseil d'État* judged that ARCOM had incorrectly applied the provisions of the 1986 law by stating that it could only take action if a specific breach could be established during a specific programme. It ruled that, in view of their nature, ARCOM could assess a broadcaster's compliance with its obligations regarding the independence of information not only by focusing on a given programme, but also by examining its overall operating conditions and programming.

ARCOM was instructed to review RSF's request that it issue a formal notice to the channel's operator, requiring it to meet its obligations with regard to pluralism and independence of information, and to issue a new decision within six months.

CE, 13 février 2024, n° 463162, Association Reporters sans frontières

https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwjmy7uRhduEAxX58QIHHZZ3A4UQFnoECA8QAQ&url=https%3A%2F%2Fwww.conseil-etat.fr%2FMedia%2Factualites%2Fdocuments%2F2024%2Ffevrier-2024%2F463162.pdf&usg=AOvVaw2GDXySqrrVVd9bj5eT0Xdh&opi=89978449

Conseil d'État, 13 February 2024, No. 463162, Reporters Without Borders

[FR] Respect for children’s image rights on the Internet: provisions of the law of 19 February 2024

Amélie Blocman
Légipresse

Designed to improve the protection of the image rights of children whose parents publish photographs and videos of them on social media, the law “guaranteeing respect for children’s image rights” was published in the Official Journal on 19 February. This practice, known as ‘sharenting’, carries various risks, including online identity fraud, blackmail, cyberstalking, child prostitution and child pornography.

The Child Influencers Act of 19 October 2020 was a first step in protecting the image rights of children who appear in videos posted on social networks. However, the dangers created by sharing images of children go far beyond the world of influencers. Under the new law, a parent has the legal right to challenge the other parent’s use of their child’s image. To this end, the law amends several articles of the Civil Code concerning parental authority, clarifying the conditions for the joint exercise of children’s image rights and offering guidance on how to deal with conflicts of interest in the exercise of such rights.

The new law adds the notion of privacy to the definition of parental authority (amending Article 371-1 of the Civil Code). It states that “parents shall jointly protect their children’s image rights” and that “parents shall involve the child in the exercise of their image rights in accordance with their age and degree of maturity”, as required by the 1989 UN Convention on the Rights of the Child. If a child’s parents disagree, the family law judge may prohibit either of them from “publishing or disseminating any content concerning the child without the other parent’s permission” (Article 373-2-6 of the Civil Code). In cases of serious breaches of a child’s dignity or moral integrity, the law even provides for the possibility of forced delegation of parental authority.

Finally, the law stipulates that the *Commission Nationale de l’Informatique et des Libertés* (the French data protection authority – CNIL) can launch summary proceedings to request any measure to protect a child’s rights if a request to delete personal data is not carried out or responded to (amendment of Article 21 of the French Data Protection Act of 6 January 1978).

Loi n° 2024-120 du 19 février 2024 visant à garantir le respect du droit à l'image des enfants, Journal officiel du 20 février 2024

https://www.legifrance.gouv.fr/download/pdf?id=wSCtx11Gzpq9uWOcYXc7s1sDFihSq-tW46KWa2ISZzs=

Law No. 2024-120 of 19 February 2024 guaranteeing respect for children's image rights, Official Journal of 20 February 2024

[FR] Senate adopts bill on support for the French film industry at first reading

Amélie Blocman
Légipresse

Tabled by Céline Boulay-Espéronnier, Sonia de La Provôté and Jérémy Bacchi on 17 September 2023 and adopted by the Senate on 14 February 2024, the bill on support for the French film industry was drawn up on the basis of a report by the same authors entitled "Cinema fights back: between resilience and cultural exception, an important art form with a future" (IRIS 2023-7:1/24). The bill aims firstly to make cinema operators' lives easier by simplifying the management of unlimited-access cinema passes. Nearly 25 years after the passes were launched, Articles 1 and 2 of the bill abolish the automatic approval mechanism applied by the *Centre national du cinéma et de l'image animée* (National Centre for Cinema and the Moving Image – CNC), while preserving and strengthening the guarantees for the relevant stakeholders. This should create new momentum for the passes, which tend to be used by people who watch an above-average number of French and art-house films.

The bill also creates a flexible model of distribution obligations to act as a safety net for cinemas. These obligations would force distributors to reserve part of the art-house film distribution plan for sparsely populated areas.

Finally, the bill requires film producers who receive CNC funding to respect minimum remuneration rules for authors, as well as environmental obligations. An amendment was adopted, stating that "sanctions will be imposed on line production companies that, on the one hand, fail to fulfil their prevention-related obligations and, on the other, are involved in a shoot during which physical or mental harm has been caused, resulting in a criminal sanction. Such a company should pay back to the CNC all financial support it has received."

The bill also aims to bolster measures to combat piracy, especially of films. Such measures would be sped up by introducing three changes: limiting the time between court decisions and requests to block mirror sites; simplifying the procedure conducted by the *Autorité de régulation de la communication audiovisuelle et numérique* (the French audiovisual regulator – ARCOM), which remains at the heart of the process; and expanding the list of people who can request that sites are blocked.

The bill has been submitted to the National Assembly for examination.

Proposition de loi visant à conforter la filière cinématographique en France, adoptée en première lecture par le Sénat le 14 février 2024

https://www.assemblee-nationale.fr/dyn/16/textes/l16b2218_proposition-loi

Bill on support for the French film industry, adopted at first reading by the Senate on 14 February 2024

UNITED KINGDOM

[GB] The House of Lords Communications and Digital Committee publishes its report on AI large language model

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On 2 February 2024, the House of Lords Communications and Digital Committee (a Lords Select Committee that considers the media, digital and creative industries) published its inquiry report on large language models (LLMs) and generative AI. The Committee forecasts AI development trends over the next three years, contrasting them with the regulatory stance outlined in the government's March 2023 AI White Paper. It criticises the government's disproportionate emphasis on AI safety, warning of missed opportunities. Priority recommendations highlighted in the report include support for innovation, robust regulatory supervision, proactive risk mitigation, and copyright protection.

More specifically, the Committee's report covers a broad range of topics regarding the future impact, regulation, innovation, and ethical considerations of LLMs and generative AI. It highlighted that LLMs were projected to have transformative impacts akin to the invention of the internet, advising the UK to brace for a period of "heightened technological turbulence" (para. 28) to leverage opportunities effectively.

Ensuring equitable market competition is paramount for the flourishing of businesses in the dynamic LLM sector. Mid-tier enterprises stand to gain from leveraging a combination of open and closed-source technologies. The government was advised to prioritise fair market competition as a policy objective, refraining from favouring open or closed models disproportionately, and to collaborate with regulatory bodies to oversee competition in foundation models. To mitigate the risk of regulatory capture, bolstered governance measures were recommended, including red teaming, increased training to enhance expertise and soliciting external feedback in policy formulation processes (para. 49).

The Committee underlined that LLMs possess significant potential to benefit the economy and society, emphasising the importance of responsible development and deployment (para. 65). Recognising the advantages, it urged managing disruptions in the labour market and mitigating digital exclusion. It cautioned that the government ought to strike a better balance between innovation and risk, avoiding an overly narrow focus on high-stakes AI safety (para. 80).

Regarding risk management, the Committee noted that LLMs pose security concerns by facilitating existing malicious activities rather than introducing

entirely new risks. The government, in collaboration with the industry, should swiftly scale up existing cyber security measures. Despite advancements in understanding AI risks and global cooperation, the absence of a standardised assessment framework impedes a more accurate evaluation of the magnitude of these risks. Aligning an AI risk taxonomy with the National Security Risk Assessment was advised. While catastrophic risks within three years were deemed improbable and “apocalyptic concerns about threats to human existence [were] exaggerated (para. 23), monitoring next-generation capabilities and fostering responsible development remain crucial (paras. 140-141). Societal risks, including discrimination and bias, require robust mitigation strategies (para. 161), and clarity on data protection laws regarding LLM processes is imperative.

Moreover, the Committee recommended that the UK carve its own path in AI regulation, avoiding direct emulation of EU, US, or Chinese models, fostering technology diplomacy, and serving as a global example. Although international regulatory alignment and cooperation are vital, challenges and delays are anticipated. Extensive legislation solely targeting LLMs was deemed premature due to the technology's novelty and uncertainties: “the technology is too new, the uncertainties too high and the risk of inadvertently stifling innovation too great” (para. 187). Instead, the priority should be to establish strategic guidance for LLMs and swiftly implement adaptable regulatory frameworks conducive to innovation.

The report critiqued the slow pace of implementing the AI White Paper’s proposals, stressing the importance of empowering existing regulators with standardised powers and resources for the success of AI governance initiatives. In addition, the Committee stressed the importance of respecting copyright laws and treating rightsholders fairly in the development and use of LLMs. Despite the complexity of applying copyright law to LLM processes, the fundamental principles remain clear: to reward creators, prevent unauthorised use of works, and foster innovation. The Committee took the view that the current legal framework was inadequate in achieving these goals (para. 246). If uncertainty regarding copyright protections persists, the government was urged to consider updating legislation to ensure it remains technologically neutral and future-proof. Measures such as empowering creators, transparency in data usage, and promoting good practice through collaboration with licensing agencies and data repository owners were recommended to safeguard copyright principles.

Of note, an Intellectual Property Office (IPO) working group convened earlier in June 2023 to establish and formalise best practices for the use of copyright, performance, and database material in AI applications, including data mining. Despite initial plans for a legislative solution (which were withdrawn in March 2023), progress towards a voluntary code proved challenging. In its response to the AI White Paper consultation, the government confirmed that the UK IPO was unable to establish a voluntary code of practice between AI developers and rights holders regarding the use of copyrighted materials for AI training (CP 1019, para. 29). The House of Lords Committee’s recommendation to return the process to the Government if no code is produced is therefore timely and the publication of

its report may provide an additional impetus to reach a resolution.

Overall, the Committee underlined the need for a balanced and proactive approach to managing the development and deployment of LLMs, ensuring they maximise societal benefits while mitigating associated risks. It called for strategic investment in innovation, clear and adaptable regulatory frameworks, and international cooperation to responsibly navigate the intricate landscape of AI development. The UK government has two months to respond to the report.

HL Paper 54, Large language models and generative AI

https://publications.parliament.uk/pa/ld5804/ldselect/ldcomm/54/54.pdf

AI large language models have started a global discussion about the future of technology and our society (enhanced report summary)

https://ukparliament.shorthandstories.com/large-language-models-comms-digital-lords-report/index.html?utm_source=committees.parliament.uk&utm_medium=referral&utm_campaign=large-language-models-comms-digital-report&utm_content=launch-news-story

Department for Science, Innovation and Technology, A pro-innovation approach to AI regulation: government response (Command Paper 1019)

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

ITALY

[IT] Protection of minors: AGCOM intervenes to remove videos from TikTok

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Following an intervention by the Italian Communications Authority (AGCOM), the video-sharing platform TikTok, based in Ireland, has proceeded to remove several videos from its platform, all related to the so-called "French scar". The videos identified involve challenges (or so-called challenges) related to the phenomenon known as the "French scar" where very young participants intentionally bruise themselves and create red marks by squeezing the skin of their cheeks around the cheekbones. The purpose behind this practice is to pretend to have been involved in a physical altercation and to appear tough, demonstrating one's courage.

This represents the first case implemented by AGCOM in accordance with the new regulation on video-sharing platforms, as per Resolution No. 298/23/CONS, which was introduced into the Italian legal system through Article 41, paragraph 7, of the Consolidated Text on Audiovisual Media Services (TUSMA). Under this new regulation, which came into effect on 8 January, AGCOM has the power to limit the circulation of programmes, user-generated videos, and audiovisual commercial communications on a video-sharing platform, directed at the Italian public, if such content proves harmful to the psycho-physical development of minors, incites hatred, or harms consumers, or in the presence of an urgent situation due to the risk of serious, imminent, and irreparable harm to users' rights (see IRIS 2024-1:1/13).

In accordance with this provision, AGCOM initiated the procedure, leading to TikTok's voluntary removal of the videos concerned within the five-day time frame stipulated by the aforementioned regulation.

Comunicato stampa, tutela dei minori, agcom fa rimuovere diversi video sulla piattaforma tiktok

https://www.agcom.it/documents/10179/33202197/Comunicato+stampa+16-02-2024/2f84652f-bf95-47a7-bd10-1f44d21895c6?version=1.0

AGCOM press release on TikTok

NETHERLANDS

[NL] Final decision issued on broadcaster Ongehoord Nederland's recognition as a public broadcaster

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On 19 December 2023, the newly appointed Secretary of State for Culture and Media issued a high-profile final decision, refusing a request by the Stichting Nederlandse Publieke Omroep (Dutch Public Broadcasting Foundation - NPO) to withdraw the recognition of the broadcaster Ongehoord Nederland (ON!) as a public broadcaster. This follows the previous Secretary of State for Culture and Media issuing a provisional decision in November 2023, also refusing the NPO's request to withdraw the recognition of Ongehoord Nederland as a public broadcaster (see IRIS 2024-1/16).

The notable procedure followed the NPO having imposed three separate fines on the broadcaster, including a 131,000 EUR fine in April 2023 for "systemic violation" of the NPO Journalistic Code in relation to the broadcaster's news programme; a 84,000 EUR fine in July 2022 for an earlier systematic violation of the NPO Journalistic Code, and a 56,000 EUR fine in December 2022 for a "lack of cooperation" (IRIS 2023-6/16). Subsequently, the NPO requested the *Commissariaat voor de Media* (Dutch Media Authority) to take further enforcement action against the broadcaster, which the Authority refused in April 2023 (IRIS 2023-6/16) while in July 2023, the Board of Directors of the NPO issued a decision, upholding the financial sanction imposed on the broadcaster (IRIS 2023-8/17).

Crucially, in April 2023, the NPO's Board of Directors formally requested the Secretary of State for Culture and Media withdraw the recognition of the broadcaster, based on a "lack of willingness to cooperate" on the part of the broadcaster.

The then-State Secretary considered the request and issued a provisional decision on 27 November 2023, rejecting the request. The State Secretary noted that it had "never happened that a minister had to consider a request for withdrawal", and revoking the permit was a "very serious measure" and the government "must therefore be particularly cautious in doing so".

The State Secretary noted that "cooperation is indeed difficult due to Ongehoord Nederland's attitude". However, according to the State Secretary, there was "insufficient legal basis to make such a far-reaching decision". The State Secretary stated that the "journalistic code is not about collaboration, but about quality requirements that a broadcaster must meet" and added that "I have not observed such a manifest and structural lack of willingness to cooperate that this justifies the severe remedy of withdrawal. I would like to emphasize that I cannot

pass judgment on the content of ON's programming. It is essential that we protect journalistic freedom, in all its manifestations and extremes".

Following the provisional decision, both the NPO and Ongehoord Nederland were given the opportunity to make submissions. In the final decision of 19 December 2023, a newly appointed Secretary of State for Culture and Media upheld the provisional decision. The State Secretary stated that the NPO had not offered any new facts, circumstances or reasons to arrive at a different assessment. The final decision added that "[a]lthough I realise that the rejection of the request means that the NPO must continue to collaborate with a broadcaster that "it believes shows insufficient willingness" to cooperate, that interest "does not outweigh the interest of Ongehoord Nederland to retain its recognition and to show the promised improvement." Crucially, the State Secretary noted that during the oral hearings, Ongehoord Nederland "explicitly expressed its willingness to restore relations" and collaborate within the public broadcasting system. The State Secretary expected Ongehoord Nederland "to demonstrate this willingness in practice".

Staatssecretaris van Onderwijs, Cultuur en Wetenschap, Definitief besluit verzoek NPO tot intrekking voorlopige erkenning Ongehoord Nederland, 19 december 2023

https://www.rijksoverheid.nl/ministeries/ministerie-van-onderwijs-cultuur-en-wetenschap/documenten/besluiten/2023/12/19/definitief-besluit-verzoek-npo-tot-intrekking-voorlopige-erkenning-ongehoord-nederland

State Secretary for Education, Culture and Science, Final decision on NPO request to withdraw provisional recognition Ongehoord Nederland, 19 December 2023

https://www.rijksoverheid.nl/ministeries/ministerie-van-onderwijs-cultuur-en-wetenschap/documenten/besluiten/2023/12/19/definitief-besluit-verzoek-npo-tot-intrekking-voorlopige-erkenning-ongehoord-nederland

[NL] Minister provisionally designates Digital Services Coordinator

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On 11 February 2024, the Minister for Economic Affairs issued an important Ministerial Decision, "provisionally" designating the Autoriteit Consument & Markt (Netherlands Authority for Consumers and Markets – ACM) as the national Digital Services Coordinator in the Netherlands under the EU landmark Digital Services Act (DSA) (see, for example, IRIS 2023-3/18 and IRIS 2023-5/2).

Notably, the Dutch government published the Digital Services Act Implementation Bill in July 2023, which included provisions designating the ACM as the Digital Services Coordinator and designating the Autoriteit Persoonsgegevens (Dutch Data Protection Authority – AP) as a further competent national authority, with competence to supervise certain rules under the DSA concerning advertising on online platforms, and advertising targeting children (see IRIS 2023-8/16).

And under Article 49(3) DSA, member states are required to designate national Digital Services Coordinators by 17 February 2024. However, as explained in the Decision, the bill is still making its way through Parliament and will not be in force by the deadline of 17 February 2024. As such, the Minister issued a Decision "provisionally" designating the ACM as the national Digital Services Coordinator.

Crucially, the designation is limited to only implementing certain parts of the DSA. These include provisions on receiving contact details of legal representatives established in the Netherlands of providers of intermediary services established outside the Union (Article 13(4) DSA. Further, under the designation, the ACM will function as a contact point for the Digital Services Coordinators of other Member States and the European Commission in the context of mutual assistance (Article 57 DSA) and, in that capacity, can exchange information necessary for the proper implementation of the DSA. In addition, the ACM will be part of the European Board for Digital Services and can participate in decision-making therein (Article 61 DSA). The European Board for Digital Services advises the Digital Services Coordinators and the European Commission on consistent application of the DSA.

Notably, the provisional designation does not relate to implementation tasks from the DSA that involve the "exercise of public authority". This is because the "granting of public authority takes place by or pursuant to a formal law". This means that based on this Decision, the ACM cannot implement the supervision of compliance with the DSA in the form of deploying supervisory powers or by taking enforcement action. It will also not have the power to make decisions with legal effects in the implementation of the DSA, such as certifying out-of-court dispute settlement bodies (Article 21 DSA) or awarding the status of "trusted flagger" (Article 22 DSA) or "vetted researcher" (Article 40 DSA). The ACM can only perform these tasks once the implementing law has entered into force.

Finally, given the provisional nature of the Decision, it will expire at a time to be determined by the Minister of Economic Affairs and as soon as the Digital Services Act Implementation Bill has been passed into law.

Besluit van de Minister van Economische Zaken en Klimaat van 11 februari 2024, nr. WJZ/ 45119378, tot voorlopige aanwijzing van de Autoriteit Consument en Markt als bevoegde autoriteit en digitaledienstencoördinator in de zin van Verordening (EU) 2022/2065 van het Europees Parlement en de Raad van 19 oktober 2022 betreffende een eengemaakte markt voor digitale diensten en tot wijziging van Richtlijn 2000/31/EG (digitaledienstenverordening)

https://open.overheid.nl/documenten/a406d64c-b496-4247-a9dd-b452c03dbc2d/file

Decision of the Minister of Economic Affairs and Climate of 11 February 2024, no. WJZ/ 45119378, provisionally designating the Netherlands Authority for Consumers and Markets as competent authority and digital services coordinator within the meaning of 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)

A publication
of the European Audiovisual Observatory

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