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EDITORIAL

We are only four months into 2024 and legislators and media watchdogs already have their hands full. Across the Atlantic, the presidential election season has provided fertile ground for verbal confrontation and the spread of disinformation. Lately, the US Bureau of Cyberspace and Digital Policy developed a democratic roadmap to build civic resilience to the global digital information manipulation challenge.

On our side of the pond, the European Commission published Guidelines for providers of VLOPs and VLOSEs on the mitigation of systemic risks for electoral processes, and the French media regulator adopted a recommendation ahead of the upcoming European elections. As Germany recently came across a deepfake video featuring the Federal Chancellor, all this also reminds us that soft scepticism and hard skills are key to assessing the veracity of images and videos.

Video-sharing platforms have also been in the spotlight recently, with the Munich District Court ruling on TikTok's liability for users uploading copyrighted films to the platform and Italy handing its first sanction to X for prohibited online gambling advertising. The last few weeks have also been turbulent for Telegram, which faced a temporary suspension in Spain after being sued for allegedly enabling piracy.

This edition of the newsletter also covers legal and regulatory developments in Belgium, Cyprus, Italy, the Netherlands, the United Kingdom and Ukraine.

Enjoy the read!

Maja Cappello, Editor

European Audiovisual Observatory

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INTERNATIONAL

COUNCIL OF EUROPE

REPUBLIC OF TÜRKIYE

European Court of Human Rights: Dede v. Türkiye

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

In a judgment of 20 February 2024 the European Court of Human Rights (ECtHR) once more found a violation by Türkiye of a citizen's right to freedom of expression under Article 10 of the European Convention on Human Rights (ECHR). This time the reason was not because of criticising the government's policy or the alleged support of or incitement to terrorism. The applicant in *Dede v. Türkiye* was dismissed from his job because he had criticised in a professional email the management style and practices of the chairman (H.K.) of the board of directors of Takasbank's main shareholder. The Court's judgment confirms the horizontal effect of the application of Article 10 ECHR in the employment relationship (see also IRIS 2000-4/1, IRIS 2008-6/1, IRIS 2009-9/1 and IRIS 2015-1/1). It also confirms the state's responsibility in upholding interferences with the (online) right to freedom of expression of employees (see also IRIS 2020-1:1/4).

Based on his experiences as an IT expert employed within Takasbank, Dede had criticised H.K. for being aloof from his employees, for having cancelled financial aid allocated to them, for having an authoritarian management style akin to micromanagement and for showing favouritism in recruitment. Dede expressed his opinions on H.K. in an email that was sent to a limited group of persons within the company. He was dismissed by his employer, who found that the email's content was derogatory, untrue and made fun of H.K., while it also contained insulting and defamatory statements overstepping the limits of acceptable criticism of H.K. Dede lodged a claim before the Turkish courts for wrongful dismissal, relying in particular on his right to freedom of expression. After the Employment Tribunal found in his favour, the Regional Court of Appeal concluded that Dede's dismissal was lawful; although the expressions used in Dede's email did not contain any insults or threats, they had nevertheless overstepped the limits of acceptable criticism and had caused a nuisance in the workplace. The Court of Cassation upheld that decision and the Constitutional Court found that there had been no interference with Dede's rights that amounted to a violation. Subsequently, Dede lodged an application with ECtHR arguing a violation of his rights under Article 10 ECHR.

First the ECtHR observed that the interference with Dede's freedom of expression corresponded to the legitimate aim of protecting the reputation of H.K. as well as the rights of others, in particular the employer's interests in maintaining peace

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and harmony in the workplace. The ECtHR however noted that, in reaching the conclusion that Dede's email had caused a nuisance which had disturbed peace and order in the workplace, the national courts did not appear to have conducted a sufficiently detailed examination of the content of the email in question, of the context in which it had been sent, of its potential scope or impact, of its alleged negative consequences for the employer or the workplace, or of the severity of the sanction imposed, which were all factors that needed to be taken into account according to the jurisprudence of the ECtHR in cases concerning the right to freedom of expression of employees. The ECtHR found that the email did not contain any language that was insulting or vulgar toward H.K., although some statements were provocative and somewhat offensive, but without amounting to wanton denigration. It further emphasised that Dede had criticised the alleged shortcomings in the company's management in his email, while such criticisms were undoubtedly a matter of interest to the company concerned. The email had been sent by Dede only internally, to a small group of recipients within the company, namely the human resources team concerned and the head of the department in which Dede worked. Accordingly, the impact of the email on the employer and the workplace must have been very limited. The ECtHR concluded that the national authorities had not sought to ascertain through a detailed analysis whether Dede's email had created a nuisance in the workplace or had had a negative impact on the employer. Therefore the ECtHR found that the national authorities had failed to take into account all the relevant facts and factors in finding that Dede's actions had been such as to disturb peace and harmony in his workplace, having regard to the email's content, the professional context in which it was sent and its potential effects and impact on the workplace. Hence, the grounds adduced to justify Dede's dismissal could not be regarded as relevant and sufficient. Finally the ECtHR observed that, as to the severity of the sanction, Dede's dismissal was the heaviest sanction that could be applied, namely immediate termination of employment; the possibility of applying a lighter penalty had not been considered at the national level.

The overall conclusion of the ECtHR is that the national authorities had not convincingly demonstrated in the reasoning of their decisions that, in rejecting Dede's claim of wrongful dismissal, a fair balance had been struck between his freedom of expression and his employer's right to protect the company's legitimate interests. Therefore the ECtHR unanimously concluded that there had been a violation of Article 10 ECHR.

Arrêt de la Cour européenne des droits de l'homme, deuxième section, rendu 20 février 2024 dans l'affaire Dede c. Türkiye, requête n° 48340/20

https://hudoc.echr.coe.int/eng?i=001-231082

Judgment by the European Court of Human Rights, Second Section, in the case of Dede v. Türkiye, Application no 48340/20, 20 February 2024

https://hudoc.echr.coe.int/eng?i=001-231082

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EUROPEAN UNION

European Commission initiates procedures under the DSA

Justine Radel-Cormann
European Audiovisual Observatory

The Digital Services Act (DSA), enacted in October 2022, regulates intermediary services, particularly focusing on very large online platforms (VLOPs) and very large online search engines (VLOSEs). Following its implementation, the European Commission (EC) designated key VLOPs and VLOSEs in April 2023, including Bing, Google Search, LinkedIn, Meta, Snapchat, TikTok, YouTube, and X.

One of the EC's powers under the DSA is the authority to request for information (RFI) from VLOPs and VLOSEs to assess their compliance with the Regulation's obligations. Article 67 of the DSA outlines this investigatory power.

Recent actions by the EC show the use of RFIs to assess the services' compliance with the DSA.

On 1 March 2024, the EC sent an RFI to Meta, focusing on areas such as advertising practices, recommender systems, and risk assessments related to new features such as ad subscription options (Articles 26, 27, 34, and 35 of the DSA).

On 14 March 2024, the EC directed separate RFIs to LinkedIn and other major platforms (Bing, Google Search, Facebook, Instagram, Snapchat, TikTok, YouTube, and X). The request to LinkedIn specifically sought detailed information regarding compliance with the prohibition of presenting advertisements based on profiling using special categories of personal data (Article 26(3) of the DSA). Meanwhile, the requests to the other platforms aimed to gather detailed information regarding compliance with the risk assessments obligation related to generative AI and the spread of false information (Articles 34 and 35 DSA).

According to the DSA's provisions, each undertaking must respond within a specified timeline to the EC's requests for information. Failure to provide accurate, comprehensive, or transparent information may lead to penalties, as outlined in Article 74(2) of the DSA.

The EC will evaluate the responses received and determine the appropriate next steps in ensuring compliance and addressing any potential violations of the DSA.

Digital Services Act

https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex:32022R2065#d1e3513-1-1

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Commission sends requestion for information to Meta under the DSA

https://digital-strategy.ec.europa.eu/en/news/commission-sends-request-information-meta-under-digital-services-act-1

Commission sends request for information to LinkedIn under the DSA

https://digital-strategy.ec.europa.eu/en/news/commission-sends-request-information-linkedin-potentially-targeted-advertising-based-sensitive-data

Commission sends request for information to 8 platforms under the DSA

https://digital-strategy.ec.europa.eu/en/news/commission-sends-requests-information-generative-ai-risks-6-very-large-online-platforms-and-2-very?pk_source=ec_newsroom&pk_medium=email&pk_campaign=Shaping%20Europe%27s%20Digital%20Future%20-%20Weekly%20newsletter

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Guidelines for providers of VLOPs and VLOSEs on the mitigation of systemic risks for electoral processes

Amélie Lacourt
European Audiovisual Observatory

On 26 March 2024, the European Commission published guidelines for Very Large Online Platforms and Search Engines (VLOPs and VLOSEs) to mitigate systemic risks online that may impact the integrity of elections. These guidelines come in the specific context of the 2024 European Parliament elections and provide clarification on the obligation for these services to carry out risk assessments and to implement risk mitigation measures, as provided for in Articles 34(1)(c) and 35 of the Digital Services Act (DSA) respectively.

The public consultation launched by the Commission in February 2024 received 77 replies including from civil society organisations, VLOPs and VLOSEs, business associations, public authorities, EU and non-EU citizens and academics, who largely welcomed the initiative.

The measures and best practices are recommended to be taken before, during and after electoral events. They include:

- The reinforcement of their internal processes

- The implementation of election-specific risk mitigation measures tailored to each individual electoral period and local context

- The clear labelling of political advertising

- The adoption of specific mitigation measures linked to generative AI for example by clearly labelling content generated by AI, adapting terms and conditions accordingly and enforcing them adequately

- Cooperation with EU level and national authorities, independent experts, and civil society organisations, including the European Digital Media Observatory (EDMO) hubs and independent fact-checking organisations

- The adoption of specific measures, including an incident response mechanism

- The assessment of the effectiveness of the measures

According to the European Commission’s press release, “VLOPs and VLOSEs which do not follow these guidelines must prove to the Commission that the measures undertaken are equally effective in mitigating the risks. Should the Commission receive information casting doubt on the suitability of such measures, it can request further information or start formal proceedings under the Digital Services

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Act".

The guidelines further emphasise that "in view of several elections planned in the Union in the months to come, including the upcoming 2024 elections to the European Parliament taking place from 6-9 June 2024, it is important that the draft guidelines are adopted and enter into force as soon as possible. (…) The draft Commission Communication from the Commission on Guidelines for providers of VLOPs and VLOSEs on the mitigation of systemic risks for electoral processes will be formally adopted by the Commission later, when all language versions are available. It is only from that moment that the Communication will be applicable. The intention is to adopt the Communication before 26 April 2024. The text of the draft Commission Communication is enclosed as Annex to this Communication.

Public consultation on draft guidelines for Providers of Very Large Online Platforms (VLOPs) and Very Large Online Search Engines (VLOSEs) on the Mitigation of Systemic Risks for Electoral Processes

https://ec.europa.eu/newsroom/dae/redirection/document/103868

Communication to the Commission Approval of the content of a draft Communication from the Commission on Guidelines for providers of Very Large Online Platforms and Very Large Online Search Engines on the mitigation of systemic risks for electoral processes pursuant to the Digital Services Act

https://ec.europa.eu/newsroom/repository/document/2024-13/C_2024_2121_1_EN_ACT_part1_v3_wSnHsDzSYI6Lm9YQuikNXr8xOw_103910.pdf

Annex to the Communication to the Commission Approval of the content of a draft Communication from the Commission on Guidelines for providers of Very Large Online Platforms and Very Large Online Search Engines on the mitigation of systemic risks for electoral processes pursuant to the Digital Services Act

https://ec.europa.eu/newsroom/repository/document/2024-13/C_2024_2121_1_EN_annexe_acte_autonome_cp_part1_v3_tpHHZgYyBGFMF8J5rE0OR1GdOis_103911.pdf

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NATIONAL

BELGIUM

[BE] Investment obligation for streaming and video-sharing platforms

Lien Stolle
Ghent University

At the end of February, the Flemish Parliament approved a proposal for a decree by Flemish Minister of Media Benjamin Dalle. This decree aims to revise Flemish regulations on radio broadcasting and television, to strengthen and reinforce the Flemish audiovisual sector. It achieves this goal by requiring financial contributions from streaming and video-sharing platforms to produce Flemish audiovisual content. A key focus is updating and aligning the existing investment obligations applicable to service distributors and private broadcasters offering non-linear television services. Moreover, the decree extends these obligations to providers of video sharing platform services. The regulation thereby targets media players falling under the competence of the Flemish community or offering services in the Dutch-speaking region or the bilingual Brussels-Capital region.

The idea is that all media players generating revenues in Flanders based on the exploitation and distribution of audiovisual content should also contribute to the financing of local productions. By fostering the growth of the local audiovisual sector, the aim is to ensure the quality, diversity, and pluralism of the media landscape. This would allow high-quality local content to thrive amid the influx of foreign programs. As such, additional financial support to the Flemish audiovisual sector is introduced, providing much-needed relief after a trend of declining budgets, more difficult financing, smaller profit margins and consequently, a possible decline in the quality of Flemish content, all due to various factors.

As previously noted, the decree primarily builds upon existing obligations within the Flemish territory for service distributors such as Telenet and Proximus and providers of non-linear services such as Netflix and Streamz. Notably, there is a significant increase in their contribution rate. Firstly, a service distributor (*dienstenverdeler*) which provides one or more broadcasting services (and thus not limited to their own) to the public can now opt for a fixed amount of EUR seven million or the payment of EUR 3 per subscriber in the Dutch language area. Secondly, when it concerns a private broadcaster offering non-linear television services (*particuliere omroeporganisaties die niet-lineaire televisiediensten aanbieden*), they can opt for a payment of a fixed amount of EUR seven million , or the payment of an amount equal to between two and four percent of their turnover, depending on the size of this turnover. The choice is between directly contributing financially to the production of audiovisual works or making an

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equivalent financial contribution to the Flemish Audiovisual Fund (VAF).

Moreover, the obligation has now been extended to video sharing platforms such as TikTok and YouTube. Thus, providers of video sharing platform services (*aanbieders van videoplatformdiensten*) are now subject to an annual fee of either a fixed amount of EUR seven million, or the payment of an amount equal to between two and four percent of their turnover, depending on the size of this turnover.

The decree also contains several additional changes and clarifications, particularly regarding penalties for noncompliance, the determination of turnover relevant to determining financial contributions, reporting requirements to VAF and the exclusion thresholds applicable to investment obligations. The decree will take effect on 1 January 2025.

Flemish minister Dalle also expressed his intention to put this initiative on the European agenda, possibly encouraging other EU member states to consider similar obligations.

Memorie van Toelichting, Parl. St., Vl. Parl., 1933 (2023-2024) – Nr. 1

https://docs.vlaamsparlement.be/pfile?id=2022919

Explanatory Memorandum, Parl. St., Vl. Parl., 1933 (2023-2024) - No. 1

Tekst aangenomen door de plenaire vergadering van het ontwerp van decreet tot wijziging van het decreet van 27 maart 2009 betreffende radio-omroep en televisie, wat betreft het stimuleren van de audiovisuele sector door financiële bijdragen aan de productie van audiovisuele werken, Parl. St., Vl. Parl., 1933 (2023-2024) – Nr. 7

https://docs.vlaamsparlement.be/pfile?id=2039979

Text adopted by the plenary of the draft decree amending the Decree of 27 March 2009 on radio broadcasting and television, as regards stimulating the audiovisual sector through financial contributions to the production of audiovisual works, Parl. St., Vl. Parl., 1933 (2023-2024) - No. 7

Recours en annulation totale ou partielle du décret de la Communauté flamande du 1er mars 2024 « modifiant le décret du 27 mars 2009 relatif à la radiodiffusion et à la télévision, en ce qui concerne la promotion du secteur audiovisuel par le biais de contributions financières à la production d'oeuvres audiovisuelles »

https://www.ejustice.just.fgov.be/cgi/article.pl?language=fr&sum_date=2024-10-30&lg_txt=f&pd_search=2024-10-30&s_editie=&numac_search=2024009836&caller=&2024009836=&view_numac=2024009836n

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Actions for total or partial annulment of the decree of the Flemish Community of 1 March 2024 "amending the decree of 27 March 2009 on radio and television broadcasting, with regard to the promotion of the audiovisual sector through financial contributions to the production of audiovisual works"

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CYPRUS

[CY] Designation of Digital Service Coordinator in the Republic of Cyprus

Antigoni Themistokleous
Cyprus Radiotelevision Authority

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 (the Digital Services Act – DSA), a landmark piece of legislation and a new world-leading regulatory framework, entered into force on 16 November 2022. Within the context of the DSA and in order to ensure efficient enforcement of the same, each member state had to designate a Digital Services Coordinator (DSC) – a national authority, independent of government that is in charge of all matters relating to the application and enforcement of the DSA. DSCs help the European Commission to monitor and enforce obligations contained in the DSA. The designation of national DSCs is provided in Article 49 of the DSA.

The Council of Ministers of the Republic of Cyprus designated the Cyprus Radio Television Authority (CRTA) as the DSC in the Republic of Cyprus; the decision was taken on 2 February 2024 and published in the Official Gazette of the Republic on 1 March 2024. The CRTA issued a public announcement about its designation as the Cypriot DSC, noting also that the adoption of the relevant legislative framework is still pending.

In addition, the Council of Ministers designated the CRTA, the Office of the Commissioner for Electronic Communications and Postal Regulation (OCECPR), the Ministry of Energy, Commerce and Industry, and the Office of the Commissioner for Personal Data Protection as competent authorities for the implementation of the DSA. It further decided to designate as a competent authority any other department/office/service that may be deemed necessary through the provisions of the DSA.

Moreover, the Council of Ministers decided:

- that the Ministry of Energy, Commerce and Industry in cooperation with the Deputy Ministry of Research, Innovation and Digital Policy should take, as soon as possible, the necessary steps and finance a techno-economic study as referenced in paragraph 5 of their proposal to the Council of Ministers.

- to approve the establishment of a working group, consisting of a representative of the coordinator and a representative of each competent authority, which will be the transitional body for the implementation of said regulation (the DSA) and for cooperation with the competent EU institutions, from the first day of the implementation of the DSA, that is 17 February 2024 until the implementation of the recommendations of the aforementioned techno-economic study.

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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

Ορισμός της Αρχής Ραδιοτηλεόρασης Κύπρου ως Εθνικού Συντονιστή για την εφαρμογή του Κανονισμού (ΕΕ) 2022/2065 σχετικά με την ενιαία αγορά ψηφιακών υπηρεσιών (Digital Services Act)

https://crta.org.cy/assets/uploads/pdfs/Anakoinosi1.3.2024.pdf

Appointment of the Cyprus Broadcasting Authority as National Coordinator for the implementation of Regulation (EU) 2022/2065 on the Digital Services Act

Επίσημη Εφημερίδα της Κυπριακής Δημοκρατίας, Παράρτημα Τέταρτο, Μέρος Ι: Αποφάσεις Υπουργικού Συμβουλίου

https://www.mof.gov.cy/mof/gpo/gazette.nsf/CB630292099C4768C2258AD30030C2DF/$file/4854%201%203%202024%20PARART%CE%99MA%204o%20MEROS%20I.pdf

Official Gazette of the Republic of Cyprus, Annex Four, Part I: Decisions of the Council of Ministers

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GERMANY

[DE] Berlin District Court grants injunction against distribution of deepfake video of Chancellor Olaf Scholz

Felix Engleitner
Legal trainee at the Institute of European Media Law

On 13 February 2024, the *Landgericht Berlin II* (Berlin District Court II) granted a federal government application for injunctive relief against the publication of an AI-generated video in which Federal Chancellor Olaf Scholz appeared to discuss measures to ban the *Alternative für Deutschland* (Alternative for Germany – AfD) political party.

The case concerned two essentially identical videos produced by the same organisation but distributed via different social networks. In the AI-generated videos, Olaf Scholz talks about the possible banning of the AfD and urges German citizens to report relevant information that might support such a move on a website, to which a link is provided in the video. While the images show a genuine address made by the Chancellor, the soundtrack features an AI-generated voice similar to that of Olaf Scholz. In the first video, Olaf Scholz appears with the federal eagle in the background, while the eagle does not appear in the second, which begins by displaying the name of the organisation that made the video as well as containing background music.

The federal government applied for injunctions against both videos, which were produced by the *Zentrum für Politische Schönheit* (Centre for Political Beauty – ZPS), an association of artists. At the government's request, the ZPS deleted the first video, but then uploaded a new version. The government demanded that this second video should also be deleted and, when this request was rejected, applied for urgent legal protection against its publication. The Berlin District Court II upheld this urgent application.

The legal question that arises in this case is whether the federal government's naming rights are limited by freedom of expression or artistic freedom. Every person and authority has a right to a name under Article 12 of the German Civil Code (BGB). By analogy with Article 1004 BGB, if this right is infringed, a claim can be made for the infringement or harmful act to be stopped. However, such a claim may be limited by freedom of expression or artistic freedom, which are protected under the German constitution.

In the urgent procedure, the court issued a decision based on the facts presented. Only a limited amount of evidence could be put forward because of the need to reach an interim decision as quickly as possible, in order to bring a provisional end to the situation and its consequences.

The court left open the question of whether the videos were works of art because the government's naming rights would take precedence in any case. Satire

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needed to be recognisable for the viewer, which was not the case here. The very close similarity to the “Federal Chancellor’s voice and way of speaking”, together with the use of the federal eagle in the first video, would give the impression that this was a genuine public address. Regarding the second video, the court held that the additional display of the words “*Politische Schönheit Originals”* (Political Beauty Originals), the background music and the asynchronous lip movements were not sufficient to dispel the impression that this was an official address by the Federal Chancellor. The videos did not appear satirical, but were designed to give the impression of an official address. The court stressed that criticism of political parties was not forbidden, and its decision did not change this. Rather, the decision was based on the fact that the distribution of fake news could undermine trust in the federal government’s public relations work and in reporting in general.

Berichterstattung von Legal Tribunal Online (LTO) vom 25. Februar 2024

https://www.lto.de/recht/nachrichten/n/lg-berlin-ii-15o579-23-olaf-scholz-bundeskanzler-deep-fake-afd-verbot-zentrum-politische-schoenheit/

Legal Tribunal Online (LTO) report of 25 February 2024

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[DE] Federal Government Commissioner for Cultural and Media Affairs presents German film support reform bill

Dr. Jörg Ukrow
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On 12 February 2024, the Federal Government Commissioner for Cultural and Media Affairs (BKM), Claudia Roth, presented a bill on measures to support the German film industry (FFG-E). The bill is designed to reform the German film support system by making it more efficient and transparent while reducing the related administrative burden.

The first of the bill's six sections deals with the structure and organisation of the *Filmförderungsanstalt* (Federal Film Board – FFA). According to Article 1(1), the FFA, a federal institution established under public law, is a national body set up to support the structure of the German film industry and the creative and artistic quality of German film-making as a condition for its success in Germany and abroad. Its remit remains essentially unchanged under the new bill. However, the bill explains that the advice that it provides to the federal government should cover issues relating to technological advances affecting the film and cinema sector, including in the field of artificial intelligence. It also requires the FFA to ensure that the industry becomes more environmentally sustainable.

Under Article 3 FFG-E, the FFA can, in order to fulfil its remit and subject to the agreement of the supreme federal authority for cultural and media affairs, also provide additional funding and invest in other institutions. It can also enter bilateral and multilateral cooperation agreements with the film support bodies of other countries and the German *Länder* in order to support international film projects.

According to Article 4 FFG-E, which deals with services provided to other institutions, the FFA will manage all federal government support for the film industry with effect from 1 January 2025, when the bill will enter into force. The FFA will, against the reimbursement of the expenses incurred, take responsibility for all federal government film and media support. This particularly includes the cultural film support provided by the BKM, but may also cover other types of media support, such as for the gaming industry.

Articles 5 to 25 FFG-E describe the role of the FFA administrative council, executive committee and CEO. The composition of the administrative council should reflect current developments in the film industry, and its size should remain manageable in order to ensure it can operate efficiently. Its members, who are independent, are appointed for a five-year term by the supreme federal authority for cultural and media affairs. According to Article 10(2) FFG-E, it will take funding decisions on a proposal from the CEO pursuant to Article 3(2) FFG-E, unless they fall under the CEO's remit. One objective of the new legislation is to give the executive committee a purely supervisory role in order to make the

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division of responsibilities within the FFA clearer. Funding decisions that were previously taken by the executive committee will therefore, in future, be taken by either the CEO (up to the sum of EUR 150,000) or the administrative council (for higher amounts). The administrative council can delegate these decisions to newly established funding committees in accordance with Article 13 FFG-E. Meanwhile, the permanent funding committees previously regulated in Articles 20 *et seq*. FFG are abolished.

The executive committee will continue to supervise the CEO. Article 21 FFG-E states that the CEO should have at least one deputy, be appointed by the administrative council for a five-year term and, like all FFA employees, not be active in the film industry. According to Article 22 FFG-E, the CEO implements the decisions of the administrative council and executive committee, and represents the FFA in and out of court. Article 38 FFG-E, included in order to reflect similar provisions that apply to other public institutions, requires the FFA to publish the annual salaries of the CEO and their deputy, including any significant remuneration they receive for outside activities.

The FFA will appoint a diversity committee in accordance with Article 26(1) FFG-E. The committee will advise the FFA on issues related to diversity, inclusion and anti-discrimination pursuant to Article 30 FFG-E. In particular, it will take measures relating to the training and composition of the FFA staff, organs and funding committees, and help draw up guidelines on incentives to increase diversity.

With regard to film support, Article 46 FFG-E states that the production of accessible versions of supported films must be significantly improved. Paragraph 1 of the article stipulates that an accessible version of all supported films should be available by the time they are released in each exploitation window. The same obligation applies to film distributors, but only for the windows for which they hold the exploitation rights. Funding for film digitisation should only be granted if at least one accessible version of the film is produced by the time it is released in cinemas. As regards the screening of accessible versions in cinemas, the use of mobile applications has become a popular solution, enabling viewers to watch on their own devices. Article 46(2) FFG-E therefore creates the possibility of using an app to meet the obligation to provide an accessible version. These apps must themselves be accessible within the meaning of Article 4 of the *Behindertengleichstellungsgesetz* (Disability Equality Act).

The support system for film production created under the *Filmförderungsgesetz* (Film Support Act) is completely reformed in Articles 61 *et seq*. FFG-E. In future, it will be solely founded on an automatic, performance-based funding model that will replace the current system of selective decisions made by a specially appointed funding committee. Since production subsidies will be linked to the economic and cultural success of their previous films, successful film producers will be automatically rewarded. In order to ensure new films can access funding more quickly and reliably, automatic production subsidies will be the only type of funding available under the *Filmförderungsgesetz*. The abolition of selective project film funding will release more funds for automatic production subsidies.

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Meanwhile, the lowering of viewer thresholds will significantly broaden access to production subsidies, so more producers will be able to benefit in future. Scriptwriters and directors will also share in the success of films they have written or directed.

The Film Support Act's provisions on film promotion support are also overhauled in the new bill. Primarily in order to increase administrative and funding efficiency, as well as planning security for applicants, Articles 101 *et seq*. FFG-E make provision for a new, entirely performance-based reference film funding system that will be better resourced. Distribution project funding and video and sales funding are abolished. However, in order to acknowledge the importance of the success of German films abroad, alternative funding strategies will be devised outside the FFG.

The cinema funding provided for in Articles 113 *et seq*. FFG-E is largely unchanged. The main difference is that, here also, funding decisions will no longer be taken by a committee. Instead, funding will only be granted if certain conditions are met and the necessary funds are available. Although it is still project-based, cinema funding will therefore become automatic and the system will be more transparent, efficient and predictable.

The fourth section of the FFG-E deals with the financing of the FFA. According to Article 121(1), the FFA will continue to receive most of its funding from a film levy paid at different rates by various subgroups of film industry stakeholders, as described in Articles 122 *et seq*. FFG-E. For cinemas, the bill moves away from a screen-based charge to a cinema-based fee in order to reflect more accurately cinema operators' financial capacity. The main change is the removal of preferential treatment under Articles 130 to 132 FFG that enables different types of television companies to pay up to 40% of their contributions in the form of media services. The growing importance of video-on-demand for income streams and film promotion has, in the BKM's opinion, led to direct competition between video-on-demand service providers and television companies. Allowing only one of these categories to pay part of the levy in the form of media services is therefore no longer justified. The BKM does not think it is feasible to allow both categories to pay part of the charge in the form of media services because this would create a considerable disparity between the payments made by cinemas on the one hand and the cash payments made by television companies and video-on-demand providers on the other. In view of the increased importance of the home entertainment industry for film sales, the BKM does not believe this is justified. The BKM's conclusions are the subject of continuous debate, especially in the light of the principle of equal treatment enshrined in Article 3(1) of the *Grundgesetz* (Basic Law – GG).

Referentenentwurf des Filmförderungsgesetzes vom 4. März 2024

https://www.kulturstaatsministerin.de/SharedDocs/Downloads/DE/2024/2024-03-04-referentenentwurf-ffg.pdf?__blob=publicationFile&v=5

Film support bill of 4 March 2024

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[DE] Munich Appeal Court rules on IPTV retransmission rights for TV programmes

Sven Braun
Institute of European Media Law

On 2 February 2024, the *Oberlandesgericht München* (Munich Appeal Court) upheld RTL Deutschland's claim that DVB-C cable retransmission rights for free TV programmes can be licensed separately from IPTV or OTT distribution rights.

RTL Deutschland licensed its DVB-C cable retransmission rights separately from IPTV or OTT distribution rights. According to an RTL press release issued on 21 February 2024, NetCologne, a regional telecommunications service provider and cable network operator in the Cologne/Bonn region, had claimed that this practice was unlawful. In a legal dispute dating back to 2015, NetCologne had argued that the rebroadcasting of TV programmes in closed IPTV networks was a form of cable retransmission and RTL Deutschland was therefore obliged to license IPTV retransmission rights under the same conditions as cable retransmission. However, according to RTL, the court held that they should be considered separately and could therefore be regulated in separate contracts under different conditions. Broadcasters were also not obliged to conclude contracts for IPTV retransmission. The contractual conditions under which RTL was required to pass on the signals accompanying programmes unchanged, in particular HbbTV signalling, were also not objectionable. There was no right of appeal.

Pressemitteilung von RTL Deutschland vom 21. Februar 2024

https://media.rtl.com/meldung/Sender-von-RTL-Deutschland-erwirken-wegweisendes-Grundsatzurteil-zu-Weitersenderechten-von-TV-Programmen/

RTL Deutschland press release, 21 February 2024

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[DE] Munich District Court rules on TikTok's duty to negotiate licences seriously

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On 9 February 2024, the *Landgericht München I* (Munich District Court I) decided that the digital platform TikTok had failed to take its legal obligation to negotiate copyright licences seriously. As a result, TikTok can be held liable if users upload copyright-protected films to its platform in contravention of copyright law.

Users had uploaded copyright-protected content onto the TikTok platform without holding the necessary exploitation rights, which are managed by the company Nikita Ventures. Nikita Ventures had reported this to TikTok and offered to license the content in return for payment. TikTok responded by blocking the reported content, although protected content initially remained accessible. Both parties then began negotiating a licence in January 2022. TikTok requested further information, which Nikita Ventures provided immediately. In the court's opinion, the subsequent negotiations were largely conducted unilaterally by Nikita Ventures, partly because TikTok did not suggest a price. The parties were unable to agree a licence by July 2022.

Consequently, Nikita Ventures filed a complaint against TikTok in which it claimed injunctive relief, information and compensation on the grounds that the disputed films had been made available to the public. TikTok claimed exemption from liability under Article 1(2) sentence 1 of the *Urheberrechts-Diensteanbieter-Gesetz* (Act on the Copyright Liability of Online Content-Sharing Service Providers – UrhDaG). The UrhDaG, which primarily transposes Article 17 of the Digital Single Market Directive (2019/790/EU), states that platform operators are not liable under copyright law for an act of communication to the public if they block unauthorised usage and conclude licensing agreements with the rightsholders. However, the Munich District Court ruled that TikTok did not qualify for an exemption under Article 1(2) sentence 1 UrhDaG because it had failed to meet its obligation to conclude licensing agreements in accordance with Articles 4(1) sentence 1 and 4(2)(1) UrhDaG. This provision requires service providers to "undertake their best efforts to acquire the contractual rights of use for the communication to the public of copyright-protected works" and to block reported content expeditiously.

The court considered that TikTok had failed to undertake "best efforts", within the meaning of Article 4(1) sentence 1 UrhDaG, to acquire the rights offered by Nikita Ventures. In principle, licence negotiations, including in accordance with the guidelines contained in Article 17 of Directive 2019/790/EU and Article 36 of the *Verwertungsgesellschaftengesetz* (Act on the Management of Copyright and Related Rights by Collecting Societies – VGG), which implements Directive 2014/26/EU, should be conducted fairly and expeditiously. Pursuant to Article 16 of Directive 2019/790/EU and Article 36 VGG, both parties should also provide

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each other with all the information required, reply without delay to enquiries made by the other party and inform them about what information they require in order to make a contractual offer. Rightsholders should clearly list the works and other protected material that form part of their catalogue. In return, service providers should provide information about the criteria they use to identify and pay for content that is used. In the case at hand, TikTok's conduct and the fact that the rightsholder was the only party that had provided any information suggested that TikTok did not want to expeditiously reach an outcome that was in the interests of both parties.

The court considered it irrelevant whether TikTok had also breached its obligation to block content in order to qualify for the liability exemption under Articles 4 and 7 to 11 UrhDaG. To be released from liability, TikTok needed to have met all the conditions cumulatively, which was not the case here. Rather, the rightsholder's share in added value, which the legislation aimed to protect, would mean nothing if a platform operator could choose between agreeing a licence and blocking content and then resort to qualified blocking (Article 7 UrhDaG) and simple blocking (Article 8 UrhDaG) if the requirement to obtain a licence was not met.

The claim against TikTok for injunctive relief, information and compensation was therefore granted. The amount of compensation is yet to be determined, and will depend on information to be provided by the platform about the use of the disputed film excerpts.

The decision is not yet final.

Landgericht München I, Urteil vom 09.02.2024, Aktenzeichen 42 O 10792/22

https://openjur.de/u/2481878.html

Munich District Court I judgment of 9 February 2024, case No. 42 O 10792/22

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SPAIN

[ES] Telegram's future in Spain in doubt after lawsuit filed by dominant Spanish audiovisual groups

Azahara Cañedo & Marta Rodriguez Castro

In a decision dated 22 March 2024, the judge of the Spanish National Court, Santiago Pedraz, ordered the blocking of Telegram in Spain. This decision followed a lawsuit filed a few months previously by various dominant Spanish audiovisual groups, such as Atresmedia, Mediaset and Movistar Plus. The latter claim that the instant messaging service hosts and enables the distribution of pirated audiovisual content via the platform.

The decision was made after Telegram failed to respond to several requests for information from the judge. In the order, the judge argued that it was a necessary, appropriate and proportionate measure to which there was no alternative. Judge Pedraz explained that last July, the Spanish National Court had asked the authorities of the Virgin Islands – where Telegram is based – for help in obtaining technical data to identify the users who had committed the infringements. However, there was no cooperation and this information never arrived, so the investigation could not proceed while the acts of piracy continued.

In this context, Judge Pedraz decided to order the Spanish telecom providers to block Telegram in the country as part of proceedings for continued infringement of intellectual property rights. Pedraz explained that the measure has legal support in the Spanish Criminal Procedure Law which establishes that in the investigation of criminal offences committed via a communication technology, the court may, as a first step, decide to provisionally suspend the services offering the content. However, the order did not mention the possible harm that this decision could cause to the users of the platform, estimated at 8.5 million, which corresponds to around 18% of the Spanish population.

Without any legal requirement being imposed on the telecommunications companies, social reactions in the country were not long in coming and the measure was widely criticised as disproportionate for failing to differentiate between those who make legitimate use of the platform and those who promote illegal downloading. FACUA, one of the main consumer associations in Spain, pointed out the potential damage that the court decision will cause to users, as well as to the companies, organisations and entities that legally distribute content through Telegram. The President of the General Council of Professional Associations of Computer Engineering of Spain (*Consejo General de Colegios Profesionales de Ingeniería Informática de España*) also warned of the unprecedented nature of the event. Even some political representatives commented on the matter. For example, the lawyer of the Pirates of Catalonia party (*Pirates de Cataluña*) announced that they would take the suspension to the

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Court of Justice of the European Union.

Following the uproar, Judge Pedraz decided on 25 March 2024 not to proceed with the suspension. In his own words, after the publication of the suspension agreement, a well-known fact has come to light that this judge cannot ignore, namely its possible impact on multiple users. It was then that he asked the General Information Office of the National Police (*Comisaría General de Información de la Policía Nacional*) for a report on the nature of Telegram and the possible effects of the suspension imposed in order to assess whether the measure was proportionate or not.

After receiving the report, the judge concluded that blocking Telegram would clearly harm the users of the platform, recognising that the vast majority of them have no connection to illegal activities. He also recognised that the suspension would prevent some of them from carrying out their professional work. In this sense, Judge Pedraz states that the police report emphasises the negative economic impact on Spanish companies. In addition, the judge recognises that the measure is not ideal, as users can use proxies and VPNs that allow them to hide the real location of their devices and pretend that the request to access the service comes from outside Spain. In this way they can "access Telegram and continue to consume or publish such content".

All in all, the future of Telegram in Spain is up in the air while the investigation is still ongoing. This is not the first case in which Telegram has been identified as a platform through which new avenues for copyright infringement can be created. For example, there were complaints in Italy, it was removed from the App Store in 2018 due to a case of child pornography (IRIS 2020-6:1/15), and it was blocked in Brazil for not cooperating in an investigation against neo-Nazi groups.

El juez Pedraz ordena bloquear Telegram de forma cautelar a raíz de una denuncia de Mediaset, Atresmedia y Movistar Plus

https://elpais.com/tecnologia/2024-03-22/el-juez-pedraz-ordena-bloquear-telegram-de-forma-cautelar-a-raiz-de-una-denuncia-de-mediaset-atresmedia-y-movistar-plus.html

Judge Pedraz orders Telegram to be blocked as a precautionary measure following a complaint by Mediaset, Atresmedia and Movistar Plus

FACUA considera desproporcionado el bloqueo cautelar de Telegram por alojar sin permiso contenidos protegidos por derechos de autor

https://facua.org/noticias/audiencia-nacional-ordena-bloqueo-telegram/

FACUA considers the precautionary blocking of Telegram for hosting copyrighted content without permission disproportionate

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FRANCE

[FR] ARCOM issues European election recommendations

Amélie Blocman
Légipresse

On 6 March 2024, the *Autorité de régulation de la communication audiovisuelle et numérique* (the French audiovisual regulator – ARCOM) adopted a recommendation concerning the European elections taking place on 9 June this year, supplementing its decision of 4 January 2011 on the principle of political pluralism on radio and television during election periods. The recommendation applies to all radio and television services except Arte and the parliamentary channels, whatever their mode of transmission and electronic communication process, from Monday 29 April 2024 until election day. It does not apply to services only accessible online and devoted to the election propaganda of candidates or the political parties and groups that support them.

The fairness principle applies for the six-week period leading up to the election. The broadcasters and services concerned must send to ARCOM, by electronic means, a breakdown of the airtime they allocate to candidates and their supporters, starting on 15 April. All programmes are included (news bulletins and magazine shows, as well as other types of programme). The recommendation states that “reports, commentaries and presentations concerning the elections must be measured and truthful at all times”. As regards coverage of non-election news, radio and television services continue to apply the decision of 22 November 2017 concerning the principle of political pluralism.

On the same day, ARCOM also adopted recommendations on the fight against the manipulation of information on online platforms. These recommendations apply to the so-called very large online platforms and search engines that are now subject to the Digital Services Act (DSA), which fully entered into force on 17 February 2024. The operators concerned, designated by the European Commission, now have to meet additional obligations, primarily linked to the identification and mitigation of systemic risks.

In conjunction with the European Commission guidelines published on 26 March 2024, ARCOM recommended various good practices in order to mitigate the risks of online disinformation during election periods, taking into account the specific characteristics of French electoral law: the setting up of dedicated teams with adequate resources, the designation of operational points of contact, more transparent moderation, the identification of political advertising, etc. It pointed out that “ARCOM does not intend to intervene in specific cases concerning individual moderation measures for online platforms”.

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Recommandation n° 2024-01 du 6 mars 2024 de l'Arcom aux services de radio et de télévision en vue de l'élection des représentants au Parlement européen les 8 et 9 juin 2024

https://www.arcom.fr/sites/default/files/2024-03/Arcom-Recommandation-du-6-mars-2024-aux-services-de-radio-et-television-en-vue-de-election-des-representants-au-Parlement-europeen-les-8-et-9-juin-2024.pdf

ARCOM Recommendation No. 2024-01 of 6 March 2024 to radio and television services in view of the European Parliament election of 8 and 9 June 2024

Préconisations de l'Arcom relatives à la lutte contre la manipulation de l'information sur les plateformes en ligne en vue des élections au Parlement européen du 6 au 9 juin 2024

https://www.arcom.fr/actualites/elections-europeennes-2024-les-regles-fixees-par-larcom

ARCOM recommendations concerning the fight against the manipulation of information on online platforms in view of the European Parliament elections from 6 to 9 June 2024

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[FR] Access to pornographic websites for minors: *Conseil d'Etat* submits three preliminary questions to CJEU

Amélie Blocman
Légipresse

Two Czech-based pornographic website publishers asked the *Conseil d'État* (Council of State) to annul Decree No. 2021-1306 of 7 October 2021 on methods for implementing measures to prevent minors accessing sites with pornographic content, particularly the provision that gives the president of ARCOM (the French audiovisual regulator) the power to implement the procedure provided for in Article 23 of the Law of 30 July 2020, i.e. to issue a formal notice ordering publishers to take all possible steps to prevent minors accessing pornographic content within 15 days.

Firstly, the *Conseil d'Etat* rejected the argument that the decree was unlawful because it did not describe the nature and characteristics of suitable technical measures to be taken by publishers to ensure that pornographic content could not be seen by minors, but left it to the publishers to choose appropriate measures, merely stating that measures that only required users to state that they were adults were not suitable.

It also dismissed the claim that the provisions of the law and of the disputed decree infringed the principles of proportionality, legal certainty, the right to a fair trial and freedom of expression enshrined in the Declaration of the Rights of Man and of the Citizen and the European Convention on Human Rights.

The applicants also referred to the E-Commerce Directive (2000/31/EC) of 8 June 2000 and the Google Ireland Limited judgment of 9 November 2023 (C-376/22), according to which the directive, by establishing the so-called "country of origin" principle under which information society services are governed by the law of the member state in which they are established, prevents other member states from imposing general rules within the directive's "coordinated field" in terms of access to or the exercise of digital services.

Firstly, the applicants argued that the provisions of the disputed decree ignored the directive's objectives insofar as they established a procedure designed to enable an administrative body to issue a formal notice to an online communication service provider in order to put an end to a criminal offence. The *Conseil d'Etat* notes that the disputed provisions do not, in themselves, lay down any rule concerning the substance of the relevant obligation. They cannot therefore be regarded as restricting, for reasons falling within the "coordinated field" defined by Directive 2000/31/EC, the freedom to provide information society services, since the directive does not affect the possibility, for a court or administrative authority, in accordance with member states' legal systems, to require a service provider to bring an end to or prevent a violation.

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The applicants also claimed that the disputed provisions force service providers established in other member states to put in place technical measures to prevent minors accessing the content that they distribute. The *Conseil d'Etat* states that, taking into account the terms of the directive as interpreted in the Google Ireland Limited judgment of 9 November 2029 (C-376/22), the answer to this depends on the responses to three questions submitted to the Court of Justice of the European Union (CJEU).

It therefore stayed the proceedings relating to the publishers' applications until the CJEU had answered the following questions.

Firstly, should provisions of a general and abstract nature that describe certain behaviour as constituting a criminal offence subject to prosecution be regarded as falling within the "coordinated field" defined in Directive 2000/31/EC when they are equally likely to apply to the conduct of an information society service provider as to that of any other natural or legal person? In particular, do criminal law provisions designed to protect minors fall within this "coordinated field"?

Secondly, should the obligation for online communication service providers to take measures to prevent minors accessing pornographic content that they distribute be regarded as falling within the "coordinated field" defined in Directive 2000/31/EC, which only harmonises certain legal aspects of the services concerned, even though, if this obligation concerns the exercise of an information society service's activity insofar as it relates to the service provider's conduct or the quality or content of the service, it does not concern any of the matters governed by the harmonisation provisions of Chapter II?

Finally, if the answer to the previous questions is positive, how should the demands resulting from Directive 2000/31/EC be reconciled with provisions on the protection of fundamental rights in the European Union, more specifically the protection of human dignity and the best interests of children, if the mere adoption of individual measures taken in regard to a given service does not appear likely to guarantee effective protection of these rights? Does European Union law contain a general principle authorising member states, especially in urgent situations, to take measures – including general, abstract measures applicable to a category of service providers – to protect minors from violations of their dignity and integrity, derogating where necessary, in relation to service providers governed by Directive 2000/31/EC, from the principle enshrined in the directive that they should be regulated by their country of origin?

CE, 6 mars 2024, n° 461193, Webgroup Czech Republic et a.

http://www.conseil-etat.fr/fr/arianeweb/CE/decision/2024-03-06/461193

Conseil d'Etat, 6 March 2024, No. 461193, Webgroup Czech Republic et al.

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[FR] C8 ordered to respect human dignity and control its programmes

Amélie Blocman
Légipresse

During the programme *Touche pas à mon poste* broadcast on C8 on 5 February 2024, a female studio guest spoke about a rape that she said she had suffered. Clearly vulnerable, she was questioned for around 20 minutes about a highly traumatic episode in her life. Even when she found it difficult to continue speaking, the programme presenter and pundits continued to ask her questions, some of which were intrusive, for around six minutes. Despite the guest's obvious despair and distress, the editor failed to cut the interview short or even stop it temporarily to give her time to compose herself.

The *Autorité de régulation de la communication audiovisuelle et numérique* (the French audiovisual regulator – ARCOM) considered that interviewing someone who was clearly distressed and vulnerable in this way, without taking any precautions, especially in a programme broadcast during peak viewing hours, contravened the broadcaster's obligation to respect human dignity, which applied even if the person had consented to the questioning. Moreover, the images of her naked, bruise-covered body with her private parts slightly blurred, along with the intrusive questions she was asked in a blunt and forthright manner throughout the 20-minute sequence, were humiliating. Finally, even though the guest was visibly traumatised, the people in the studio continued to question her, asking her to reveal details of the attack, her addictions and her private life, which amounted to a form of indulgence in accounts of her suffering.

ARCOM ruled that the broadcaster had breached Articles 1 and 15 of the Law of 30 September 1986 and Article 2-3-4 of the channel's licence agreement, under which it "must not broadcast any programme that infringes human dignity as defined by law and case law" and that is must "ensure in particular that restraint is applied to the transmission of images or words that are likely to humiliate people […] and avoid indulging in accounts of human suffering".

ARCOM also noted that the broadcaster, even though it had invited the guest to appear in the programme in question and must have been aware that she was extremely vulnerable, decided to broadcast the interview live during peak viewing hours, immediately after showing a video depicting the difficulties she had experienced. It also took into account the images that had been knowingly broadcast and the decision to continue the interview even though the guest was so traumatised she could hardly speak. The broadcaster had therefore breached its licence agreement by failing to control programme content.

ARCOM therefore issued a formal notice to C8, requiring it to comply, firstly, with Articles 1 and 15 of the Law of 30 September 1986 and, secondly, with its licence agreement.

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Décision n° 2024-205 du 13 mars 2024 mettant en demeure la société C8

https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000049295519

Decision No. 2024-205 of 13 March 2024 issuing a formal notice to C8

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UNITED KINGDOM

[GB] New communications offences enacted by the Online Safety Act 2023

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The Online Safety Act 2023 (OSA) introduced a range of measures intended to improve online safety in the UK, including duties on internet platforms about having systems and processes in place to manage illegal and harmful content on their sites. On 31 January 2024, Part 10 of the Act came into effect, introducing a series of new criminal offences which represent a significant leap forward in tackling complex challenges surrounding online communications safety.

Section 179 of the OSA establishes the criminal offence of *sending false communications* and seeks to target, among others, internet trolls. It is now deemed an offence if an individual (a) sends a message containing knowingly false information; (b) intends, at the time of sending, to cause non-trivial psychological or physical harm to a likely audience; and (c) lacks a reasonable excuse for sending the message. Recognised news publishers and broadcasters are exempt. The offence does not apply to public screenings of cinema films either. It can be committed by individuals outside the UK if they are habitually resident in England, Wales, or Northern Ireland. Penalties include imprisonment for up to six months, a fine, or both. It is hoped the new offence will help clamp down on disinformation and election interference online.

Section 181 establishes the criminal offence of *sending threatening communications*. This is committed when an individual sends a message containing a threat of death, serious harm (e.g. bodily injury, rape, assault by penetration), or serious financial loss, with the intent to instil fear in the recipient that the threat will be carried out (whether by the sender or someone else). In cases of threats involving financial loss, a defence is available if the threat was used to support a reasonable demand, and the sender reasonably believed it was an appropriate way to reinforce that demand. This offence applies to individuals residing in England, Wales, or Northern Ireland, even if the sender is located outside the UK. Penalties include up to five years of imprisonment, a fine, or both. In March 2024, Essex law enforcement achieved a significant milestone by obtaining one of the earliest convictions under the new OSA, resulting in an eight-month jail sentence for Karn Statham. Statham harassed a woman by sending threatening messages and making repeated visits to her address after being instructed to cease contact.

A new criminal offence under section 183, dubbed "Zach’s law", aims to protect people from "*epilepsy trolling*". The campaign against such conduct began when eight-year-old Zach, who has epilepsy, was raising funds for the Epilepsy Society.

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Trolls inundated the Society's profile with images and GIFs meant to induce seizures in people with epilepsy. While Zach was unharmed, others with the condition reported seizures after engaging with the fundraiser online. The Act creates the offence of deliberately sending or showing flashing images to individuals with epilepsy with the intent to cause harm, defined as inducing a seizure, alarm, or distress. Particular conditions (specified in the Act) must be met before a conviction is secured, both in respect to *sending* and *showing* flashing images electronically. Recognised news publishers, broadcasters, public screenings of cinema films as well as healthcare professionals cannot be guilty of this offence (which can similarly be committed by individuals outside the UK if they are habitually resident in England, Wales, or Northern Ireland). Penalties include imprisonment for up to five years, a fine, or both.

Moreover, section 184 outlaws *encouraging or assisting serious self-harm*. To be guilty of this offence, an individual must perform an act intended to encourage or assist serious self-harm in another person, whether through direct communication, publication or sending (or giving) items with stored electronic data. Serious self-harm encompasses actions leading to grievous bodily harm, including acts of omission such as encouraging someone to neglect their health regimen. The identity of the person harmed need not be known to the offender. The offence can occur regardless of whether self-harm is carried out and it is irrelevant who created the content in question (it is the *sending* that matters). The offence is punishable by imprisonment for up to five years, a fine, or both, and likewise, it applies to individuals habitually resident in England, Wales, or Northern Ireland, even if they are outside the UK.

Cyber-flashing on dating apps, AirDrop and other platforms will also result in perpetrators facing up to two years in prison. Section 187 of the Act introduces a new offence under the Sexual Offences Act 2003 pertaining to the sending of photographs or films of a person's genitals to another individual. A person (A) is deemed to commit the offence if they intentionally send or provide a photo or video of another person's genitals to another individual (B) under the following conditions: either A intends for B to view the genitals and experience alarm, distress, or humiliation; or A sends or provides such material with the aim of obtaining sexual gratification and is reckless as to whether B will experience alarm, distress, or humiliation. "Sending" covers sending through any means, including electronic methods, showing it to another person, or placing it for someone to find. A conviction for this offence could also lead to inclusion on the sex offenders' register. In February 2024, an Essex Police team secured the UK's first cyber-flashing conviction, with Nicholas Hawkes pleading guilty to sending explicit images via WhatsApp to cause distress. On 19 March 2024, Hawkes was sentenced to 66 weeks in prison. He was also made subject to a restraining order for 10 years and a Sexual Harm Prevention Order for 15 years. .

Finally, the OSA repeals the legislation first introduced to tackle 'revenge porn' offences (sections 33-35 of the Criminal Justice and Courts Act 2015) and introduces a set of *intimate image sharing offences*. Specifically, section 188 of the OSA introduces a new *base* offence of sharing of intimate images without

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consent, carrying a penalty of imprisonment for up to six months. This applies when an individual intentionally shares an image portraying another person in an intimate context without their consent and without a reasonable belief in consent. Two *more serious* offences are established on top of that, both reflecting the offender's higher culpability and carrying greater penalties: namely (a) intentionally causing alarm, distress, or humiliation to the person in the image; and (b) seeking sexual gratification from the act (these are outlined in sections 66B(2) and (3) of the Sexual Offences Act 2003). *Threatening* to share an intimate image of a person has also been made an offence where the perpetrator either intends to cause fear that the threat will be carried out or acts recklessly in doing so (this is found under section 66B(4) of the aforementioned 2003 Act). The new offences also fall under the sexual offender notification requirements. These new intimate image offences are also designed to tackle "deepfakes" and "down-blousing" (i.e. capturing images typically of a person's chest area, from a downward angle, often without their knowledge or consent). They also come with various exemptions (outlined under section 66C of the Sexual Offences Act 2003), e.g. where the photograph or film involves a child and is of a kind normally shared among family and friends.

While there is some overlap between existing offences, the new offences consolidate previous ones or address gaps. For example, the intimate image sharing offence widens the meaning of the photographs or films, from "private sexual" to "intimate" and makes it easier for those caught sharing such content online without the other person's consent to be prosecuted, as it removes the requirement for any harm to be intended to the subject of the photograph or film. The updated guidance of the Crown Prosecution Service aims to delineate the appropriate charge for each circumstance. The introduction of the new offences is anticipated to fortify protections against online misconduct.

DSIT Press Release, Cyber-flashing, epilepsy-trolling and fake news to put online abusers behind bars from today

https://www.gov.uk/government/news/cyberflashing-epilepsy-trolling-and-fake-news-to-put-online-abusers-behind-bars-from-today

Crown Prosecution Service press release, Illegal sexual behaviour online including sharing and threatening to share intimate images and cyber-flashing targeted in new CPS guidance

https://www.cps.gov.uk/cps/news/illegal-sexual-behaviour-online-including-sharing-and-threatening-share-intimate-images

BBC News, WhatsApp image sender becomes first convicted cyber-flasher

https://www.bbc.co.uk/news/uk-england-essex-68279259

Essex Police press release, Colchester: Man sentenced under new Online Safety Act

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https://www.essex.police.uk/news/essex/news/news/2024/march/online-safety-act-sentencing/

Crown Prosecution Service press release, Prison sentence in first cyber-flashing case (19 March 2024)

https://www.cps.gov.uk/east-england/news/prison-sentence-first-cyberflashing-case

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ITALY

[IT] For the first time, AGCOM imposes a fine of more than one million euros on social network X for prohibited online gambling advertising

Francesco Di Giorgi
Autorità per le garanzie nelle comunicazioni (AGCOM)

The Italian Communications Authority (AGCOM) has, for the first time, sanctioned the Twitter International Unlimited Company, owner of the video-sharing platform X, for violating the ban on gambling advertising, pursuant to Article 9 of the Dignity Decree, imposing a fine of EUR 1 350 000.00.

In particular, following numerous reports of alleged violations of the ban on online gambling advertising, AGCOM initiated and concluded a sanctioning procedure finding nine violations, one each for nine individual accounts, all marked with the blue tick. These violations related to content of an advertising communication nature linked to sites that offer gaming and betting activities with cash winnings.

AGCOM also found that only seven of the nine accounts were blocked directly by the platform during the procedural phase and therefore issued an access inhibition order for the other two accounts.

Finally, the authority adopted an inhibition order for all further illicit content uploaded, after the notification, by the nine accounts.

This sanction (65/24/CONS) follows those already adopted in relation to offences connected to the ban on online gambling advertising, as part of AGCOM's enforcement activities against Google Ireland Limited (with sanctions equal to EUR 450 000.00 under Resolution No. 275/22/CONS; EUR 2 250 000.00 under Resolution No. 317/23/CONS; and EUR 750 000 under Resolution No. 50/24/CONS) and for violations committed by the VSP service YouTube – see IRIS 2022-8:1/4; Twitch Interactive Germany Gmbh – see IRIS 2024-1:1/12 (with a fine of EUR 900 000.00 under Resolution No. 317/23/CONS for the VSP service Twitch); and Meta – see IRIS 2023-3:1/14 (with penalties of EUR 5 580 000.00 under Resolution No. 422/22/CONS and EUR 750 000 under Resolution No. 331/23/CONS).

Delibera n. 65/24/CONS "Ordinanza-ingiunzione nei confronti della società twitter international unlimited company per la violazione della disposizione normativa contenuta nell'art. 9, comma 1, del decreto-legge 12 luglio 2018, n. 87 convertito con legge 9 agosto 2018, n. 96 (cd. Decreto dignità) Contestazione n. 11/23/dsdi - proc 27/fdg"

https://www.agcom.it/documentazione/documento?p_p_auth=fLw7zRht&p_p_id=101_INSTANCE_FnOw5lVOIXoE&p_p_lifecycle=0&p_p_col_id=column-1&p_p_col_count=1&_101_INSTANCE_FnOw5lVOIXoE_struts_action=%2Fasset_publisher%2Fview_content&_101_INSTANCE_FnOw5lVOIXoE_assetEntryId=33640860&_1

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01_INSTANCE_FnOw5lVOIXoE_type=document

Resolution No. 65/24/CONS "Order-injunction against the company twitter international unlimited company for the violation of the regulatory provision contained in Article 9, paragraph 1, of Decree-Law No. 87 of 12 July 2018, converted by Law No. 96 of 9 August 2018 (so-called Dignity Decree) Complaint No. 11/23/dsdi - proc 27/fdg"

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[IT] Italy adopts a legislative decree amending the Italian audiovisual media services code following the opinions rendered by the Council of State and the ad hoc committees of the Chamber of Deputies

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Portolano Cavallo

The Italian government has recently approved a legislative decree poised to amend the provisions laid down in Legislative Decree No. 208 of 8 November 2021 ("AVMS Code"). The legislative decree at-issue has not yet been published in the Italian Official Gazette and, therefore, this article focuses on the opinion rendered by the Italian Council of State on the amendments proposed.

On 19 December 2023, the Council of Ministers preliminarily approved the legislative decree ("Corrective Decree"), which is poised to supplement and correct the provisions laid down in the AVMS Code. In addition to being passed to the pertinent commissions of the Chamber of Deputies, the Corrective Decree was also presented by the Ministry for Enterprises and Made in Italy (MIMIT) before the Advisory Section for Regulatory Acts of the Council of State for its opinion. The Council of State's opinion was rendered on 27 February 2024 and presents interesting insights, especially regarding the provisions regulating the investment obligations in European works and works of Italian original expression.

At the outset, the Council of State noted that the objective of simplification and certainty of rules has been "*undoubtedly achieved*". Indeed, the Corrective Decree has overcome the excessive rigidity that characterizes the (Italian) sub-quota system by (i) eliminating the regulatory powers attributed to the MIMIT and the Ministry of Culture (MIC) under the AVMS Code, to vary the percentages of the sub-quotas and introduce new sub-quotas; and (ii) establishing fixed investment quotas.

Notwithstanding the above, the Council of State noted that on one hand, the simplification and rationalisation of the investment obligations seem to have been achieved through the new provisions that the Corrective Decree is poised to introduce. On the other hand, the impact analysis seems deficient as it lacks a proper assessment of the proportionality of the investment obligations applicable to on-demand audiovisual media service providers.

At the outset, the Corrective Decree is poised to set a 20% investment obligation for on-demand providers in European works (as detailed in the AVMS Code starting from 2024). However, the Council of State observed that the documentation currently provided does not account for an assessment of the proportionality of such obligation in relation to the objective of incentivising the market and ensuring, at the same time, the protection of European works.

Moreover, such a measure does not take into account the opinion rendered by the Italian Communications Authority (*Autorità per le Garanzie nelle Comunicazioni*)

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which, on the contrary, suggested decreasing the investment obligation in European works for on-demand providers, also in light of the investment obligations set in other Member States of the European Union which are significantly lower than the one envisaged in the Italian legal framework.

In addition, the Corrective Decree is poised to introduce a 60% sub-quota (i.e. of the 20% quota set for European works) investment obligation in works of Italian original expression. In this respect, the Council of State noted that it would be "*useful to integrate the impact analysis of the regulation with an assessment of the proportionality of such measure in light of the case law of the Court of Justice of the European Union* (CJUE, C-222/07) *which considers provisions aimed at protecting the linguistic diversity to be compliant with EU Law, thereby justifying a restriction on the freedom to provide services, in as much as they are proportionate*".

In light of the above, the Council of State invited the government to supplement the impact assessment of the new provisions to properly assess the proportionality of the measures that the Corrective Decree is poised to introduce with the objective pursued.

The Chamber of Deputies has suggested reducing the primary quota for European works (from 20% to 16%) but an increase in the sub-quota for works of Italian original expression (from 50% to 70%) aimed at increasing the overall investments in Italian works.

Whether the Italian government has concretely taken into consideration the opinions detailed above will have to be assessed after the publication of the Corrective Decree in the Italian Official Gazette.

Consiglio di Stato, Sezione Consultiva per gli Atti Normativi, Numero: 00275/2024

https://portali.giustizia-amministrativa.it/portale/pages/istituzionale/visualizza/?nodeRef=&schema=consul&nrg=202400118&nomeFile=202400275_27.html&subDir=Provvedimenti

Council of State, Advisory Section for Regulatory Acts, Number: 00275/2024

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[IT] AGCOM public consultation on the methods of verification of the age of majority by website managers and video-sharing platform suppliers

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Autorità per le garanzie nelle comunicazioni (AGCOM)

The Italitan Communications Authority, AGCOM, has launched a public consultation on the specifications and requirements of the age assurance system, which will have to be implemented by providers of video-sharing platforms that disseminate images, videos and services for adult users in Italy.

This is a new measure provided for by a national law (Legislative Decree 123/23 converted into Law 159/23) which is added to other instruments aimed at protecting minors on the Internet. In fact, in November 2023, guidelines came into force (Resolution No. 9/23/CONS) for operators both on smartphones and on websites; these guidelines provide for the implementation of parental control systems in contracts agreed between consumers and operators.

The text (61/24/CONS) put out for consultation was prepared by AGCOM following the preliminary opinion of the Guarantor for the Protection of Personal Data.

The objective of the provision is to ensure a level of security appropriate to the risk, minimising the personal data collected and respecting its confidentiality as much as possible.

The approach proposed by the authority is technologically neutral, extendable to all content that requires age verification, leaving the subjects responsible for carrying out age guarantee processes reasonable freedom of evaluation and choice, in compliance with certain general requirements.

Among the main requirements established by the authority is, first and foremost, "proportionality" on the basis of which it is established that the person responsible for implementing the age guarantee system for access to content must use a tool that is as non-invasive as possible.

Likewise, the "protection of personal data" is fundamental for AGCOM; therefore, the age verification system must comply with the data protection rules and principles established by the GDPR Regulation (data minimisation, accuracy, storage limitation, etc.).

As regards age verification, AGCOM deems it appropriate that sites and platforms subject to the age guarantee obligation do not carry out age verification operations directly, but rely on solutions from "independent third parties", who will provide the required proof of age to the web service provider (such as a bank, a telephone operator, a public body or private entity). Likewise, it is envisaged that at the request of the user, the third party will provide the latter with "proof of age" in a certified manner and that the user will subsequently send said proof to

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the site or platform he or she wishes to access.

With specific reference to "security", AGCOM has provided that the age verification system must take into account possible cyber attacks with respect to which it must provide sufficient IT security measures to mitigate the risks and avoid attempts at circumvention.

Regarding "functionality", the text put out for consultation provides that age verification systems are easy to use and are not an obstacle to accessing content on the Internet.

Finally, AGCOM has stipulated that the service provider must provide a channel to receive and "manage complaints" promptly, in the event of incorrect decisions on age.

Delibera n. 61/24/CONS "Avvio della consultazione pubblica di cui all'art. 1, comma 4, della delibera n. 9/24/CONS volta all'adozione di un provvedimento sulle modalità tecniche e di processo per l'accertamento della maggiore età degli utenti in attuazione della dalla legge 13 novembre 2023, n. 159"

https://www.agcom.it/documentazione/documento?p_p_auth=fLw7zRht&p_p_id=101_INSTANCE_FnOw5lVOIXoE&p_p_lifecycle=0&p_p_col_id=column-1&p_p_col_count=1&_101_INSTANCE_FnOw5lVOIXoE_struts_action=%2Fasset_publisher%2Fview_content&_101_INSTANCE_FnOw5lVOIXoE_assetEntryId=33778802&_101_INSTANCE_FnOw5lVOIXoE_type=document

Resolution No. 61/24/CONS "Initiation of the public consultation referred to in Article 1, paragraph 4, of Resolution No. 9/24/CONS aimed at the adoption of a measure on the technical and process modalities for ascertaining the age of majority of users in implementation of Law No. 159 of 13 November 2023"

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NETHERLANDS

[NL] NPO withdraws two fines issued against broadcaster Ongehoord Nederland

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Institute for Information Law (IViR)

On 28 March 2024, the *Stichting Nederlandse Publieke Omroep* (Dutch Public Broadcasting Foundation – NPO) issued a significant decision, withdrawing two fines previously imposed on the broadcaster Ongehoord Nederland. This follows a high-profile decision by the Secretary of State for Culture and Media in December 2023, refusing the NPO's request to withdraw the recognition of Ongehoord Nederland as a public broadcaster (see IRIS 2024-3/13). The two fines had been imposed on the broadcaster for "systematic violation" of the NPO Journalistic Code, and for a "lack of cooperation" with the NPO (IRIS 2023-6/16). The NPO stated that, in order to give the broadcaster "more room to meet" the requirements of the NPO Journalistic Code and thereby "achieve improved cooperation", the NPO decided to revoke the sanctions imposed on the broadcaster.

The procedure began in 2023, when the NPO imposed three separate fines on the broadcaster, including a EUR 131 000 fine in April 2023 for "systemic violation" of the NPO Journalistic Code in relation to the broadcaster's news programme, a EUR 84 000 fine in July 2022 for an earlier systematic violation of the NPO Journalistic Code, and a EUR 56 000 fine in December 2022 for a "lack of cooperation" (IRIS 2023-6/16). Crucially, in April 2023, the NPO's board of directors formally requested that 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. However, in the decision issued in December 2023, the Secretary of State noted that it had "never happened that a minister had to consider a request for withdrawal", that revoking the permit was a "very serious measure" and that the government "must therefore be particularly cautious in doing so". The Secretary of State refused the NPO's request and also noted in the decision that the "journalistic code is not about collaboration, but about quality requirements that a broadcaster must meet" adding, "I have not observed such a manifest and structural lack of willingness to cooperate that this justifies the severe remedy of withdrawal." Crucially, the Secretary of State noted that during the oral hearings, Ongehoord Nederland "explicitly expressed its willingness to restore relations" and collaborate within the public broadcasting system. The Secretary of State expected Ongehoord Nederland "to demonstrate this willingness in practice".

As such, in its March 2024 decision withdrawing the second and third fines, the NPO explicitly emphasised that it expects the broadcaster to continue to "adhere to the journalistic code and continue to implement improvement plans" and "choose an attitude that contributes to cooperation with all other parties within

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public broadcasting”. Finally, the NPO announced that the first fine will remain, and that it has initiated court proceedings, so the courts can determine the “scope of the NPO's authority when making decisions" under the Media Act.

NPO trekt twee opgelegde boetes aan Ongehoord Nederland in, 29 maart 2024

https://www.villamedia.nl/artikel/npo-trekt-twee-opgelegde-boetes-aan-ongehoord-nederland-in

NPO withdraws two fines imposed on Ongehoord Nederland, 29 March 2024

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[NL] The Authority for Consumers and Markets permits KPN acquisition of telecom provider Youfone

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On 21 March 2024, the *Autoriteit Consument en Markt* (the Netherlands Authority for Consumers and Markets – ACM) issued a significant decision, granting an acquisition licence for Dutch telecom provider KPN to acquire rival telecom provider Youfone Nederland. This followed a decision by the ACM in September 2023 that the acquisition needed "further investigation", as the acquisition "could result in a loss of significant competitive pressure" in the budget segment of the market for mobile telecommunication services, and "could lead to higher prices or a reduced selection for consumers" (see IRIS 2023-9/16). However, following the investigation, the ACM has now granted a licence for the KPN takeover of Youfone, finding that "competition will not be reduced significantly as a result of the acquisition".

KPN's services consist of offering electronic communications services via its fixed and mobile networks, including telephony, data, internet, and television services; Youfone Nederland meanwhile is a mobile network operator that uses KPN's network, and offers mobile telecommunications services, internet, television, and telephony services. Youfone is a "small yet fast-growing provider of sharply priced mobile plans", primarily targeting consumers, and which are known as "no-frills plans". The ACM's investigation followed KPN's notification in June 2023, asking the ACM for permission for the takeover of Youfone Nederland.

In its March 2024 decision, the ACM stated that it had analysed the acquisition's consequences for mobile services and particularly the "more economically priced services". The decision held that "even post acquisition, consumers will still have sufficient options", as next to Youfone, "numerous other providers are active, offering competitively priced mobile plans". Moreover, an economic study had revealed that "consumer prices are not expected to change significantly", and the acquisition of Youfone was "therefore not expected to produce any negative effects". In addition, the ACM concluded that the acquisition "does not significantly affect KPN's incentive to provide access to other mobile providers without networks of their own (so-called mobile virtual network operators – MVNOs) to its network". The ACM investigation did show that MVNOs "face considerable switching barriers, and that they have not switched during the past ten year". Crucially, however, the ACM stated that "[n]onetheless, it appears they have been effective at threatening to switch networks", and such threats "ensure that MVNOs are able to secure better terms in the negotiations with KPN".

Finally, and notably, the ACM did emphasise that its "sees considerable switching barriers for MVNOs" and that it will continue to "keep a close watch" on the market for mobile telecommunication services.

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Autoriteit Consument en Markt, KPN krijgt vergunning voor overname Youfone (eindmededeling), 25 maart 2024

https://www.acm.nl/nl/publicaties/kpn-krijgt-vergunning-voor-overname-youfone-eindmededeling

Netherlands Authority for Consumers and Markets, KPN receives permit for Youfone takeover (final announcement), 25 March 2024

Autoriteit Consument en Markt, KPN mag Youfone overnemen, 21 maart 2024

https://www.acm.nl/nl/publicaties/kpn-mag-youfone-overnemen

Netherlands Authority for Consumers and Markets, KPN may take over Youfone, 21 March 2024

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RUSSIAN FEDERATION

[RU] Ban on advertising revenues for “foreign agents”

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Amendments to the federal statutes on “foreign agents”, on advertising and on the mass media were adopted by the State Duma on 28 February and signed into law on 11 March 2024. They introduce a complete ban on advertising in the “information resources” of legal and physical entities listed by the Russian authorities as “foreign agents” (see IRIS 2022-10:1/7). The ban includes advertising in the media outlets published by these “foreign agents”, their social media channels, blogs and individual web pages. The administrative fine for Russian businesses for the violation may amount to RUB 500 000 (or about EUR 5 000). A second violation within 12 months will result in the forced closure of the media outlet, as well as criminal liability for the offenders including deprivation of liberty of either the “foreign agent” or the advertiser, or both if they happen to be in the Russian jurisdiction. There are about 500 active “foreign agents” on the list.

According to an evaluation of the advertising market, the new restriction would decrease advertising revenues of “foreign agents” by some 80%.

The amendments entered into force on 22 March 2024.

О внесении изменений в статью 11 Федерального закона "О контроле за деятельностью лиц, находящихся под иностранным влиянием" и отдельные законодательные акты Российской Федерации), officially published by Rossiyskaya gazeta daily on 13 March 2024

https://rg.ru/documents/2024/03/13/document-zapret-reklamy-u-inoagentov.html

Federal Statute of 11 March 2024, No. 42-FZ “On amending Article 11 of the Federal Statute ‘On control over the activity of persons under foreign influence’ and individual legal acts of the Russian Federation

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UKRAINE

[UA] Co-regulation body for audiovisual media established

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According to the recently adopted Statute of Ukraine “On the Media” (See: IRIS 2023-1:1/6 and IRIS 2023-5:1/15) (Chapter VII, Art. 92-96), “joint media regulation is a combination of functions and means of state regulation and industry self-regulation. These ensure the involvement of media actors in developing and determining the requirements for the content of information disseminated by the media, as well as to prevent censorship and abuse of freedom of speech” (Art. 92).

On 6 March 2024, the first institution of joint media regulation, officially titled “Co-regulatory Body for Audiovisual Media”, was established at the meeting of its founders representing private and public audiovisual media entities. The institution has been established in the legal form of a public association. The meeting approved the by-laws of the new entity, the governing bodies, and applied for its registration to the Ministry of Justice of Ukraine.

To ensure the implementation of the goals stated in the Statute of Ukraine “On the Media”, the Co-regulatory Body for Audiovisual Media intends to “develop and approve codes (rules) for creating and disseminating information, ensuring the functioning of the mechanism for providing opinions, as well as conducting analytical, expert, research, educational and methodological activities”, as stated in the Protocol of the founding meeting. In particular, it will form expert panels (“collegiums”) that will review complaints on violations of the relevant codes/rules.

The Co-regulatory Body for Audiovisual Media will work under the patronage of the national media regulator, the National Council, which vets the codes (rules) and expert panels, proposed by the former. The opinions of the expert panels are not mandatory for the National Council. Among the “co-regulatory bodies”, still to be established in line with the Statute “On the Media”, are those for online media and video-sharing platforms (Art. 93). The Co-regulatory Body for Audiovisual Media is to be funded by its founders. It may also apply for other sources of funding in line with the national regulation of the activity of public associations. The premises for the meetings of the expert panels are to be provided by the National Council.

ПРОТОКОЛ №1 установчих загальних зборів громадської спілки «Орган спільного регулювання у сфері аудіовізуальних медіа-

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сервісів»

https://webportal.nrada.gov.ua/wp-content/uploads/2024/03/Protokol-1-ustanovchyh-Zboriv-zasnovnykiv-GO_RED.pdf

Protocol No 1 of the founding meeting of public association "Co-regulatory Body for Audiovisual Media", Kyiv, 6 March 2024.

ЗАКОН УКРАЇНИ Про медіа

http://www.golos.com.ua/article/367279

Statute of Ukraine "On the Media", 13 December 2022, No. 2849-IX

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UNITED STATES OF AMERICA

[US] Department of State publishes Democratic roadmap to build civic resilience to the global digital information challenge

Eric Munch
European Audiovisual Observatory

On 18 March 2024, on the occasion of the Third Summit for Democracy Multi-Stakeholder Roundtable in Seoul, US Secretary of State Antony Blinken announced a new Democratic Roadmap to build civic resilience to the global digital information challenge. The roadmap, developed by the U.S. Department of State's Bureau of Cyberspace and Digital Policy (CDP) is meant to assist global policymakers, civil society and the private sector in providing a global response to tackle the challenge of information integrity while remaining consistent with democratic values, freedom and expression and international human rights law.

In its preamble, the roadmap goes over the evolution of the lexicon surrounding information manipulation while underlining the fact that the challenges posed by it are not new. Recent dynamics in the global digital information sector, fuelled in no small part by the rapid development of generative AI, however make 2024 a crucial year, with important elections taking place or anticipated in 40 countries representing approximately 40 percent of the global population. In that context, the roadmap highlights the need for citizens to have access to "accurate sources of information to form opinions and participate in free and fair elections" and develop the skills to "critically assess the digital information that will influence the exercise of their fundamental freedoms".

The roadmap urges the various actors to follow four steps. Firstly, they should highlight the importance of the digital information manipulation challenge as a threat to the functionality and vitality of society. Doing so will help limit eroding the people's trust in democratic values and institutions on a global scale.

They should also recognise that building information integrity can be consistent with freedom of opinion and expression, in line with Article 19 of the Universal Declaration of Human Rights and Article 19 of the International Covenant on Civil and Political rights, which both establish the right for everyone to seek, receive and impart information.

Reinforcing the private sector digital platforms' ability to strengthen civic resilience is also key to promote information integrity. The roadmap identifies five areas in which said platforms can enhance transparency and communication: algorithmic promotion and demotion of content, privacy policies, use and sharing of user data, political advertising and the labelling of content produced by generative AI.

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Lastly, all actors should prioritise efforts to address generative AI and mitigate the risks they pose, particularly in the context of the elections taking place globally in 2024. The roadmap provides a series of best practices for all actors (governments, private sector companies, journalists, civil society, researchers and academics).

Democratic Roadmap: Building Civic Resilience to the Global Digital Information Manipulation Challenge

https://www.state.gov/roadmap-info-integrity/

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