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EDITORIAL

After the winter, the return of sunnier days often feels like freedom: we are finally free from the cold, from the rain and from the gloom of early nightfall. This month’s Newsletter, however, highlights another kind of freedom: freedom of expression.

In the Netherlands, the courts upheld freedom of expression by refusing to remove a public broadcaster’s investigative programme, emphasising that commercial companies must tolerate greater scrutiny when subjected to critical journalism. Meanwhile, in France, the Conseil d’Etat overturned the Prime Minister's ban on TikTok in New Caledonia, deeming it a disproportionate restriction on freedom of expression. On the international stage, the European Court of Human Rights ruled that Azerbaijan had violated Article 10 ECHR by refusing to grant broadcasting licences, and the EU General Court dismissed claims that the restrictions targeting Russian outlets violated internet service providers' rights under EU law, since they were proportionate responses to Russia's aggression and adequately justified by the Council.

Beyond these cases, there are other intriguing topics to explore: new Council of Europe tools to combat hate speech, Italy’s first authorisations for FAST channels, or the UK sanction over age verification failures.

And if you have a little more time, you can delve into our very last publication on independent productions or our new tables on the independence of public service media.

Enjoy the read!

Maja Cappello, Editor

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INTERNATIONAL

COUNCIL OF EUROPE

AZERBAIJAN

European Court of Human Rights: radio licensing process in Azerbaijan not prescribed by law

Tarlach McGonagle
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In a judgment of 18 February 2025, the European Court of Human Rights (Third Section) held unanimously that there had been a violation of Article 10 of the European Convention on Human Rights (ECHR) in the case of *Objective Television and Radio Broadcasting Company and Others v. Azerbaijan*. The case involved the refusal by the National Television and Radio Council (NTRC) to grant the applicants a broadcasting licence following a call for tenders.

In 2010, the NTRC announced a call for tenders for a broadcasting licence for the 103.3 FM radio frequency. The announcement set out a list of required documents to be submitted as part of any bid for the frequency, but it did not specify any preferences for the types of programmes to be broadcast. Three bids were received; the applicants' bid was unsuccessful. The NTRC informed the bidders orally about the decision. The applicants requested a copy of the NTRC's formal decision and received, in response, a letter explaining that the winning bid – a "purely news radio station" – would be a "novelty" vis-à-vis the existing radio and television offer. The letter included a relevant excerpt from the minutes of the NTRC meeting at which the outcome of the tender was decided.

In its consideration of the case, the European Court of Human Rights (the Court) recalled that the third sentence of Article 10(1) ECHR, expressly allows states to regulate broadcasting on their national territories by means of licensing schemes. The granting of licences may be subject to criteria such as: "the nature and objectives of a proposed station, its potential audience at the national, regional or local level, the rights and needs of a specific audience and the obligations deriving from international legal instruments". The licensing process must provide sufficient guarantees against arbitrariness in the application of licensing criteria, including proper reasoning by the licensing authority of its decisions denying a broadcasting licence. The Court referred to relevant existing case-law in this regard, in particular, *Glas Nadezhda EOOD and Elenkov v. Bulgaria* (IRIS 2008-1:1/1) and *Meltex Ltd. and Movsesyan v. Armenia* (IRIS 2008-8:1/1).

In this case, the Court was not convinced that the NTRC had provided the applicants with (i) a duly reasoned decision (ii) within the time limit provided by law (15 days). The Court found that the NTRC's letter to the applicants stating that the successful station would be a novelty did not amount to a duly reasoned

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decision. The appended copy of its decision in the form of an extract from the minutes of the meeting "contained no reasoning at all". The Court also found that the NTRC had not indicated a prior preference for a news station in the call for tenders, which made it unforeseeable for bidders that this would later be the decisive criterion for the selection process. For the Court, by deciding at a later stage in the procedure to heavily favour a single factor in awarding the licence, the NTRC had "apparently exercised very wide, virtually unlimited discretionary powers".

As to the selection criteria outlined by the relevant national law, eg. technical capabilities, staffing potential and broadcast concept, the Court found that it was not clear which specific standards or indicators were used for the assessment or what weighting was given to each of the criteria. All in all, the Court concluded that the interference did not meet the ECHR requirement of lawfulness, as the failure of the licensing authority to provide duly reasoned decisions does not ensure adequate protection against arbitrary interference by a public authority with the right to freedom of expression.

The Court proceeded to consider other allegations by the applicants pertaining to the licensing process and outcome. First, it noted, critically, that NTRC members are appointed directly by the president and "apparently without any public consultative process or prior nomination or selection procedures". This practice is not in line with Council of Europe Committee of Ministers' Recommendation Rec(2000)23 to member states on the independence and functions of regulatory authorities for the broadcasting sector. There was furthermore an undeclared conflict of interest due to a family relationship between a member of the NTRC and a member of the successful bidder. The business activities of the same NTRC member, and those of her immediate family, also raised questions about whether her NTRC membership was compatible with those business activities as some of them were in the media sector. The Court referred again to Recommendation Rec(2000)23 in this regard.

In light of all these considerations, the Court concluded that the interference with Objective TV's right to freedom of expression was not "prescribed by law", thus amounting to a violation of Article 10 ECHR, without any need to examine the other requirements of Article 10(2) (legitimate aim and necessary in a democratic society).

Objective Television and Radio Broadcasting Company and others v. Azerbaijan, No. 257/12, 18 February 2025 – ECLI:CE:ECHR:2025:0218JUD000025712

https://hudoc.echr.coe.int/eng?i=001-241829

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COE: MEDIA DIVISION

Council of Europe publishes tools to facilitate the implementation of CM/Rec(2022)16 on combating hate speech

Cesare Pitea
Council of Europe

The Council of Europe has published a compilation of promising practices on combating hate speech at national level and a self-assessment tool to prevent and combat hate speech focusing on the implementation of relevant aspects of Recommendation CM/Rec(2022)16 on combating hate speech. The two documents, prepared by an expert, were endorsed by the Steering Committee on Media and Information Society (CDMSI) and the Steering Committee on Anti-Discrimination, Diversity and Inclusion (CDADI).

The compilation highlights a range of promising practices by governments and other key stakeholders, including media service providers and media regulators, consistent with the recommendation during its early implementation period, with a view to offering concrete guidance for further developing "good practices" that fulfil the recommendation's aims and objectives.

The self-assessment tool identifies actionable points across all key objectives relevant to the implementation of CM/Rec(2022)16. Intended to prompt reflective and critical conversations, it is organised into seven chapters in line with the recommendation. Within the context of each chapter, a key objective and relevant action areas are identified, to be read in conjunction with the related part of the recommendation and its accompanying explanatory memorandum. A series of reflective prompts under each action point is there to guide users towards a critical appraisal of their existing practice, with suggested follow-up measures highlighted beneath these. In this framework, the relevant self-regulatory or regulatory bodies are encouraged to develop and implement a code of ethics for journalists and media outlets. Such a code should include guidelines for reporting on sensitive issues related to hate speech and encourage responsible journalism that respects diversity and avoids stereotyping, with regular training sessions for media professionals on these topics.

Compilation of promising practices on combating hate speech at national level

https://rm.coe.int/prems-135524-gbr-2530-compilation-of-promising-practices-on-combating-/1680b1ba50

Self-assessment tool to prevent and combat hate speech

https://rm.coe.int/prems-193324-gbr-2530-lay-out-of-the-self-assessment-tool-a5-indd-rev/1680b2d3fe

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Recommendation CM/Rec(2022)16

https://rm.coe.int/prems-083822-gbr-2018-recommendation-on-combating-hate-speech-memorand/1680a70b12

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EUROPEAN UNION

EU: EUROPEAN COMMISSION

Commission Decision on the processing of personal data for the purpose of supervision, investigation, enforcement and monitoring under the DSA

Amélie Lacourt
European Audiovisual Observatory

On 31 March 2025, the European Commission adopted Decision (EU) 2025/628, establishing internal rules for the European Commission's handling of personal data during supervisory, investigative, enforcement and monitoring activities under the Digital Services Act (DSA). The decision aims to provide a balance between effective regulatory enforcement and individual data protection rights. It addresses in particular the rules to be followed by the Commission to inform data subjects of the processing of their personal data (Article 4), as well as the restriction of certain rights of data subjects (Article 3), under the General Data Protection Regulation (GDPR).

The scope of the decision is set out in Article 2. The decision applies to personal data processing involving various categories of individuals, including suspects, victims, whistleblowers, informants, witnesses, staff of a business undertaking and natural persons whose personal data is contained in the documents or other media collected as part of supervision, investigation, enforcement and monitoring pursuant to the DSA. The categories of personal data include identification data, contact details, case involvement data and case-related data.

As outlined in Article 3, the decision also permits restrictions on data subjects' rights, in particular regarding the right of access and the right to the rectification, erasure and communication of personal data breaches, if the exercise of these rights would:

- jeopardise the Commission's supervisory, investigative, enforcement, and monitoring activities;

- adversely affect the protection of the data subject or the rights or freedoms of others;

- jeopardise the Commission's cooperation with member states.

When the conditions for restrictions no longer apply, the Commission must lift them and inform the affected individuals of the breach and about their rights (the possibility of lodging a complaint with the European Data Protection Supervisor or of seeking a judicial remedy in the Court of Justice of the European Union) and reasons for previous restrictions (Article 8).

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Restrictions must respect fundamental rights and freedoms laid down by the Charter of Fundamental Rights of the European Union. Restrictions must be necessary, proportionate and justified on a case-by-case basis. The Commission must therefore document its reasoning for imposing restrictions and periodically review their necessity. Periodic reports are also required under Article 7 to ensure transparency and accountability.

Safeguards to prevent abuse and unlawful access to or transfer of personal data are established in Article 9. They include technical and organisational measures such as:

- a clear definition of roles, responsibilities, procedural steps and access rights;

- a secure electronic environment;

- thesecure storage and processing of paper documents;

- due monitoring of restrictions and a periodic review of their application.

The decision will take effect on 21 April 2025.

Commission Decision (EU) 2025/628 of 31 March 2025 laying down internal rules concerning the provision of information to data subjects and the restrictions of certain data-subjects' rights in relation to the processing of personal data by the Commission for the purpose of supervision, investigation, enforcement and monitoring under Regulation (EU) 2022/2065

https://eur-lex.europa.eu/eli/dec/2025/628/oj/eng

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EU: GENERAL COURT

ECJ dismisses claims that Council decisions and regulations targeting Russian outlets violate internet service providers' rights under EU law

Eric Munch
European Audiovisual Observatory

On 26 March 2025, the General Court delivered its judgement in case T-307/22 opposing A2B Connect BV, BIT BV and Freedom Internet BV, three information society operators established in the Netherlands, to the Council of the European Union.

The case concerns the European Union's restrictive measures against Russia following its actions destabilising Ukraine, particularly after the illegal annexation of Crimea in 2014 and the full-scale invasion of Ukraine in 2022. The applicants challenged specific EU Council decisions and regulations that restricted broadcasting and advertising by certain Russian media outlets accused of spreading propaganda supporting Russia’s military aggression.

The applicants sought annulment of Council Decision (CFSP) 2022/351 and Council Regulation (EU) 2022/350 (adopted on 1 March 2022), which prohibited broadcasting content from certain Russian media outlets and Council Decision (CFSP) 2022/884 and Council Regulation (EU) 2022/879 (adopted on 3 June 2022), which extended the prohibition to advertising in content produced by these media outlets.

The applicants argued that these measures violated their rights under EU law, including their rights to freedom of expression and information, the proportionality principles and the obligation to provide sufficient reasoning for the measures. With regard to the admissibility of the complaint, the Council contended that the applicants lacked standing under Article 263 TFEU to challenge these acts because they were not directly affected by the contested measures.

The General Court examined whether it had jurisdiction to review decisions adopted under Article 29 TEU. While CFSP decisions are generally outside the Court's purview, exceptions exist for monitoring compliance with Article 40 TEU and reviewing legality under Article 275 TFEU.

With regard to admissibility, the Council and Commission claim that the applicants, as internet service providers, are not directly concerned by the first contested regulation, because they have only an indirect obligation to block access to the websites of the media outlets subject to the restrictive measures at issue. Under Article 263 TFEU, individuals must demonstrate direct and individual

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concern or that they are part of a closed class affected by the act. The Court found that the applicants were not directly listed in the contested acts and had failed to show how their rights were specifically infringed.

Concerning proportionality and freedom of expression, the Court acknowledged that freedom of expression is a fundamental right but emphasised that it can be restricted to safeguard public order and security. It upheld the Council's argument that prohibiting Russian propaganda was necessary to counter threats posed by disinformation during wartime.

The Court also ruled that the Council had sufficiently justified its actions by citing threats posed by Russian state-controlled media outlets to EU public order and security.

Finally, the General Court dismissed the action as inadmissible due to the applicants lacking standing under Article 263 TFEU and because they had failed to demonstrate direct or individual concern regarding the contested measures.

Even in the event that it had been admissible, the Court found no substantive grounds to annul the measures, holding that the restrictions on broadcasting and advertising were proportionate responses to Russia's aggression and that the Council had adequately explained its reasoning for adopting these measures.

JUDGMENT OF THE GENERAL COURT (First Chamber, Extended Composition) – Case T-307/22

https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62022TJ0307

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NATIONAL

BELGIUM

[BE] CSA decides not to sanction broadcaster for failing to meet its obligations to broadcast French-speaking Belgian works in 2023

Eric Munch
European Audiovisual Observatory

In a decision of 27 March 2025, the *Collège d'autorisation et de contrôle* (authorisation and supervision panel) of the *Conseil supérieur de l'audiovisuel* (audiovisual regulatory body – CSA) announced that it did not consider it appropriate to sanction the broadcaster Be TV SA for "failing to fulfil its obligations to broadcast audiovisual works of French-speaking Belgian origin, in breach of Article 4.2.2-1, § 1 of the decree on audiovisual media and video-sharing services".

In its decision, the panel stated that, in its opinion no. 100/2024 of 5 December 2024 on the fulfilment of the obligations of Be TV SA for the production of its linear and non-linear television services during the 2023 financial year, it had noted that the broadcaster had not complied with its obligation to offer a minimum of 10% of French-speaking Belgian audiovisual works in its non-linear television service. It had found that only 4.99% of the broadcaster's eligible catalogue had comprised French-speaking Belgian audiovisual works.

During its hearing before the panel on 10 February 2025, the broadcaster said it was committed to protecting Belgian cinema. It said this support was demonstrated in particular by its role as co-producer of more than 465 Belgian films since 2014 and by the fact that it had founded the Magritte film awards ceremony. It also said it was one of a small number of broadcasters to offer a weekly programme dedicated to cinema, including Belgian cinema, and that its VOD catalogue gave pride of place to Belgian films by highlighting them in several places, including a "Made in Belgium" section.

On account of the pay-per-view nature of its service, the broadcaster claimed that this support was motivated by editorial rather than financial reasons, as evidenced by the fact that Belgian films and shorts were not particularly profitable and that it faced tough competition from other platforms.

The broadcaster did not dispute the infringement but pointed out that it was economic rather than structural in nature and could be explained by three reasons. Firstly, the COVID crisis had drastically reduced film production in 2020 and 2021, significantly reducing the number of recent films available in 2023. Secondly, its takeover by Orange in 2023 had put a heavy strain on its staff,

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making them less available to edit the catalogue. Thirdly, the general increase in the number of films in the catalogue, designed to counter the decline in TVOD, had inevitably reduced the proportion of Belgian films in the catalogue. The broadcaster added that it had managed to increase the ratio of French-speaking Belgian audiovisual works in its catalogue since 2024, in particular by increasing the number of older Belgian films and including Belgian short films, and had consistently exceeded the required 10% in all four quarters of the year.

The panel noted that the circumstances cited by the broadcaster had made it "particularly difficult" to meet the quota for 2023. In view of these circumstances, the broadcaster's declared commitment to Belgian cinema, its good track record and the efforts it had made from 2024 onwards to meet its obligation once again, the panel decided it was not appropriate to sanction Be TV SA.

In its decision, the panel also noted that "the obligation imposed by decree in the form of a proportion rather than a volume is also likely to disadvantage broadcasters who offer a large number of films in their catalogue".

Oeuvres européennes - Contrôle annuel 2023 : Décision Be TV SA

https://www.csa.be/document/oeuvres-europeennes-controle-annuel-2023-decision-betv/

European works: Annual inspection 2023: Be TV SA decision

https://www.csa.be/document/oeuvres-europeennes-controle-annuel-2023-decision-betv/

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GERMANY

[DE] ARD and ZDF continue extensive film funding under 15th film/television agreement

Christina Etteldorf
Institute of European Media Law

In mid-February 2025, *Zweite Deutsche Fernsehen* (ZDF) and the regional public broadcasters that form the *Arbeitsgemeinschaft der öffentlich-rechtlichen Rundfunkanstalten der Bundesrepublik Deutschland* (ARD) announced that they would continue their extensive voluntary film funding programme. Together with the German *Filmförderungsanstalt* (Film Support Agency – FFA), which is responsible for film funding in Germany, ARD and ZDF have each signed the *15. Film/Fernsehabkommen* (15th film/television agreement).

According to Article 132 of the *Filmförderungsgesetz* (Film Support Act), public broadcasters are obliged to pay a film levy amounting to 3% of their costs for the broadcasting of cinema films from the year before last. This is included in the funding provided by the FFA. However, the public broadcasters also participate voluntarily in film funding through corresponding fixed-term agreements, through which they add a significant top-up to mandatory funding. This year, ZDF is providing the FFA with a total of EUR 7.8 million in cash payments, media services and co-production funding. ARD will provide a total of around EUR 9.3 million euros, meaning that the mandatory film levy will be voluntarily increased to EUR 5.5 million for a further year. For the first time, there will be a shift in favour of co-production funding, which will be increased to EUR 4.8 million. This will also ensure sufficient programme coverage for the public broadcasters. As in 2024, the media services budget will remain at EUR 1.5 million.

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[DE] AfD's urgent appeal against Berlin-Brandenburg media authority election advert ban unsuccessful

Sandra Schmitz-Berndt
Institute of European Media Law

On 13 February 2025, the *Verwaltungsgericht Potsdam* (Potsdam Administrative Court) rejected an urgent appeal by the Brandenburg division of the *Alternative für Deutschland* (Alternative for Germany – AfD) party against an order by the *Medienanstalt Berlin-Brandenburg* (Berlin-Brandenburg media authority – mabb) prohibiting the unrestricted distribution and making available of one of the party's election commercials (case no. VG 11 L 74/25).

During the Brandenburg state parliament election campaign in September 2024, AfD Brandenburg, assisted by AI, had created an election advert entitled "*Wochenmarkt oder Drogenmarkt (...)*" (Weekly market or drugs market (...)) and distributed it on social media. The ad had depicted people with dark skin in threatening poses and contained, among other things, a warning about foreign infiltration. The mabb had therefore initiated a supervisory procedure under media law and examined whether the advert violated the *Jugendmedienschutzstaatsvertrag* (state treaty on the protection of minors in the media – JMStV). The *Kommission für Jugendmedienschutz* (Commission for the Protection of Minors in the Media – KJM), a body of the state media authorities, is responsible for assessing possible breaches of the JMStV and acts on the mabb's behalf in such cases. It concluded that the commercial could impair the development of children and young people under 16 pursuant to Article 5 JMStV because it used sweeping stereotypes and thereby fuelled prejudices against people with dark skin, which in turn could establish a basic mistrust among children. Specifically, the advert was likely to impair the development of children or young people into independent and socially responsible individuals. Under threat of a fine of EUR 1,500 per video, an immediately enforceable injunction was issued on 15 January 2025, preventing the continued distribution or making available of the advert. In order to stop under-16s from watching it, the KJM thought it would be sufficient to impose barriers that were commonly used to block access by children. According to Article 5(3) JMStV, providers could fulfil their obligation to prevent access by using technical means, including age verification systems. However, since such systems could not stop users of the social media channels in question distributing the advert, its distribution via these channels should be avoided altogether.

In the above-mentioned decision, the administrative court denied the party the requested emergency legal protection. It saw no reason to doubt the expert assessment of the KJM. Weighing up the interests of the protection of minors on the one hand and the fundamental right to freedom of expression and party privilege on the other, it did not consider the mabb's decision disproportionate and therefore did not consider there to be any particular interest in suspending the ban. AfD Brandenburg intends to take further action to contest the ban and has lodged an appeal against the decision with the *Oberverwaltungsgericht*

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Berlin-Brandenburg (Berlin-Brandenburg higher administrative court). The decision in the main proceedings is still pending.

VG Potsdam, 13.03.2025 - 11 L 74/25

https://dejure.org/dienste/vernetzung/rechtsprechung?Gericht=VG%20Potsdam&Datum=13.02.2025&Aktenzeichen=11%20L%2074%2F25

VG Potsdam, 13.03.2025 - 11 L 74/25

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[DE] Federal Supreme Court suspends proceedings on social networks' liability for memes with identical content pending ECJ ruling

Christina Etteldorf
Institute of European Media Law

In a decision of 18 February 2025, the *Bundesgerichtshof* (Federal Supreme Court – BGH), Germany's highest civil court, suspended proceedings concerning the liability of social networks for content that is identical or similar to content that has already been declared illegal by a court. The BGH wants to review the European Court of Justice's decision in case C-492/23 (Russmedia Digital and Inform Media Press), which also deals with the questions referred for a preliminary ruling as to whether providers of hosting services are obliged to check the legality of content before publishing it and whether they must take protective measures to prevent copying and redistribution.

The proceedings concern a legal dispute between a well-known German politician and the Facebook social network over a meme created by users and distributed on the platform. The meme shows a photo of the politician with her full name and the quote "Integration starts with you, as a German, learning Turkish". However, the politician never actually said these words. The original meme was removed from Facebook at the politician's instigation because it was indisputably a dissemination of false facts. However, as is typical on social networks, the meme and slightly modified versions of it were re-uploaded numerous times immediately after the initial post. The politician took legal action and her claim was upheld by the lower courts. The *Landgericht Frankfurt* (Frankfurt regional court), in a decision later confirmed by the *Oberlandesgericht* (higher regional court) on appeal, ordered Facebook to refrain from disseminating any content that was "identical and similar in essence" to the meme reproduced in the court decision. Facebook, which would therefore have to search its platform for similar memes and remove them, lodged an appeal against this decision with the BGH. The Frankfurt court allowed the appeal due to the fundamental importance of the question of whether and under what conditions a hosting provider is obliged to check and take action with regard to similar content. Facebook claimed to be exempt from liability under provisions of the e-Commerce Directive that were still relevant at the time of the decision but are now contained in the Digital Services Act. Its main argument was that the instruction to remove content that was "similar in essence" was too vague and technically impossible to implement. It also claimed that the decision disregarded the risk to users' freedom of expression, since filtering content to such an extent might lead to "overblocking".

The proceedings before the ECJ now centre on the question of whether a hosting service such as Facebook, if it is legally obliged to remove a post, can also be obliged to remove posts that are identical or similar in essence, or whether this would amount to an imposition of monitoring obligations prohibited by the e-Commerce Directive (and the DSA). However, as this concerns a fundamental

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question of EU law and an affirmative answer would have significant consequences in terms of platforms' obligations, the BGH initially suspended the proceedings in order to await the ECJ's decision in another pending case. The request for a preliminary ruling submitted by a Romanian court in case C-49/492/23 concerns an online marketplace operator's liability for user content. Without the plaintiff's consent, a third party had placed in the online marketplace an advert offering sexual services and containing the plaintiff's photo. This advert had also been redistributed by other users after being removed. The Romanian court, which wanted to place extensive liability on the marketplace operator, asked the ECJ, among other things, whether a hosting service was obliged to take protective measures to prevent or restrict the copying and retransmission of the content of adverts published through it. In his opinion of 6 February 2025, Advocate General Szpunar said this was not the case. Nevertheless, he added that the hosting provider should take appropriate organisational and technical measures to ensure the security of processing of personal data vis-à-vis third parties, which had also been raised in the order for reference.

Urteil des LG Frankfurt 2-03 O 188/21

https://www.rv.hessenrecht.hessen.de/bshe/document/LARE220002783

Judgement of the Frankfurt Regional Court 2-03 O 188/21

Schlussanträge des Generalanwalts in der Rs. C-49/492/23

https://curia.europa.eu/juris/document/document.jsf?text=&docid=295080&pageIndex=0&doclang=DE&mode=lst&dir=&occ=first&part=1&cid=8945122

Opinion of the Advocate General in Case C-49/492/23

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FRANCE

[FR] Conseil d'État upholds ARCOM decision not to renew NRJ 12 and C8 licences

Amélie Blocman
Légipresse

NRJ 12 and C8 asked the *Conseil d'Etat* (Council of State) to annul the decision taken by the *Autorité de régulation de la communication audiovisuelle et numérique* (French audiovisual regulator – ARCOM) not to renew their digital terrestrial television licences on the grounds that it had exceeded its powers. They also requested the annulment of ARCOM's decision to grant licences to Ouest-France TV and CMI France, as well as its decision not to allocate all the frequencies mentioned in the call for applications after the Canal Plus group announced it was removing its pay-TV channels from DTT and withdrawing the applications of its four channels that had been among the 15 pre-selected.

With regard to the decision not to award all the licences mentioned in the call for applications, the *Conseil d'Etat* pointed out that the withdrawal of the four channels announced by the Canal Plus group had been a new development for ARCOM, occurring six days before its decision to award the frequencies, and that it had not been in a position to assess at such short notice the economic consequences that the immediate award of four additional licences to free DTT channels might have on the balance of the sector. Consequently, it had not infringed the provisions of the Law of 30 September 1986 by not immediately increasing the number of licences granted to such channels and by issuing only 11 of the 15 licences mentioned in the call for applications.

However, the *Conseil d'Etat* considered that ARCOM should launch a new public consultation and impact study without delay, in accordance with the conditions set out in Article 31 of the Law, in order to decide whether the economic situation of the sector favoured the launch of a call for applications for the four licences that had not been awarded or whether, on the contrary, the process should be postponed for two years, renewable once, from the expiry of the existing licences concerned.

With regard to ARCOM's assessment of the applications, the *Conseil d'Etat* noted that under Articles 29 and 30-1 of the Law of 30 September 1986, it was ARCOM's responsibility to assess the comparative merits of the applications received in the light, in particular, of their contribution to pluralism and diversity of operators and to the production and distribution of French and European works, their impact on competition, the prospects for their financing and their ability to comply with their legal obligations. Contrary to what the applicants had suggested, these provisions thus defined criteria that were objective, transparent, favourable to competition, non-discriminatory and proportionate. They therefore did not infringe the objectives of Article 45 of the aforementioned Directive of 11 December

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2018[PG1] .

In the present case, ARCOM had authorised the broadcasting of the services BFM TV, CMI TV, CNews, CStar, Gulli, LCI, OFTV, Paris Première, TFX, TMC and W9 in its decisions of 11 December 2024. It was clear from the documents in the files that, in the light of the applications received and the other existing DTT channels, many of which were general-interest channels, ARCOM had sought to select channels that would increase the diversity of the types of programmes and content offered and that it had therefore favoured, in particular, applications with a specific theme, such as news, music, documentaries or regional representation, or targeting a specific audience, such as young people, through dedicated formats.

In the case of C8, which enjoyed a high audience share on DTT, was not a traditional terrestrial channel, and, according to ARCOM, offered a large volume of live, original programmes that were not as diverse as those of its competitors, the *Conseil d'Etat* considered that the regulator was legally entitled to take into account the channel's repeated breaches of its legal and contractual obligations committed in recent years, particularly with regard to respect for human rights, protection of minors and control of its programmes. These failings cast doubt on the channel's ability to meet its obligations. Finally, since its creation 20 years previously, the channel had suffered chronic and significant losses, while the growth plan set out in its application was not consistent with its past results or the future outlook for the advertising sector.

With regard to NRJ 12, ARCOM noted that it planned to devote most of its airtime to TV dramas, including many repeats, and entertainment, genres that were already well represented on DTT, as well as teleshopping, to which the channel already devoted more than 1,000 hours per year. In addition, its commitment to broadcast original programmes was substantially inferior to that of other candidates. Lastly, the forecast growth in advertising revenue for NRJ 12, which had only posted a positive net result in one financial year since its creation, contrasted with both the decline in its audience share, including among the young audience that it targeted, and the outlook for the advertising sector.

The *Conseil d'Etat* also ruled that, taking into account the specific features of each project and its comparison of all the applications, ARCOM had not acted illegally when assessing the merits of the applications from CMI TV, OFTV, TFX, TMC and W9. The requests submitted by C8 and NRJ 12 were rejected.

While the nine channels that were already present on DTT and had their frequencies renewed remain accessible, C8 and NRJ 12 ceased broadcasting on 1 March. Viewers will be able to access the two new channels, T18 and OFTV, from 6 June and 1 September 2025 respectively.

CE, 19 février 2025, n° 499823, 500009, Sociétés NRJ 12 et NRJ Group, C8

https://www.conseil-etat.fr/fr/arianeweb/CE/decision/2025-02-19/499823

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CE, 19 February 2025, no. 499823, 500009, NRJ 12 and NRJ Group, C8

https://www.conseil-etat.fr/fr/arianeweb/CE/decision/2025-02-19/499823

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[FR] Prime Minister’s TikTok ban in New Caledonia overturned as disproportionate infringement of freedom of expression

Amélie Blocman
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La Quadrature du net, the Ligue des droits de l'homme, residents of New Caledonia and others asked the *Conseil d’Etat* (Council of State), on the grounds of abuse of power, to annul the French prime minister’s decision of 14 May 2024 to interrupt access to the online public communication service TikTok in New Caledonia due to exceptional circumstances. The prime minister lifted this measure on 29 May 2024. At the same time, a decree issued by the Council of Ministers on 15 May 2024 declared a state of emergency in New Caledonia with effect from the same day. This ended 12 days later, in accordance with the provisions of Article 2 of the Law of 3 April 1955 relating to the state of emergency.

The *Conseil d’Etat*, recalling the applicable legal framework, stated that, in view of the infringements of the freedom of communication of thoughts and opinions, freedom of expression and all the other rights and freedoms fostered by an online public communication service, in particular the right to private and family life and freedom of trade and industry, the administrative authority could not decide, other than in cases provided for by law, to interrupt access to such a service. However, it could resort to such a measure in exceptional circumstances if it was essential to meet the needs of the moment. In this context, a complete interruption of the service in question could only be lawfully imposed on a temporary basis, provided that there was no technical means of immediately taking alternative measures that were less intrusive of the rights and freedoms in question, and that the ban was imposed for a period not exceeding that required to seek out and implement such measures.

In the present case, the provisions of Article 11(II) of the Law of 3 April 1955, which allow the Minister of the Interior to take any measure to block any online public communication service that incites or glorifies acts of terrorism, did not in principle prevent the prime minister from implementing, as from 15 May 2024, simultaneously with the state of emergency, the decision taken the previous day to block access to TikTok for reasons other than the fight against terrorism, provided that in view of the exceptional circumstances in New Caledonia, none of the other measures provided for by the Law of 3 April 1955, nor any measures that could be taken under ordinary law, were likely to meet the needs of the moment.

At a time when New Caledonia was experiencing particularly serious public order disturbances, TikTok was used to disseminate content that incited the use of violence and spread very rapidly thanks to the algorithms it used. The prime minister, having established that the use of this service was likely to aggravate

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the situation and compromise the restoration of public order, was entitled, in view of the exceptional circumstances prevailing at the time, and in the absence of other technical means immediately available, to suspend the TikTok service for a specified period not exceeding that necessary to find and implement, where appropriate in conjunction with the service provider, alternative measures making it possible to achieve the objective sought and less prejudicial to the rights and freedoms in question, such as, in particular, the blocking of certain network functions. Under the contested decision, however, the service was completely interrupted for an indefinite period, linked solely to the continuation of public disorder, without being conditional on the impossibility of implementing alternative measures. The applicants were found to be justified in arguing that the prime minister had thereby disproportionately infringed freedom of expression, freedom to communicate ideas and opinions and freedom of access to information.

Since the applicants were entitled to request its annulment, the prime minister's decision of 14 May 2024 suspending access to TikTok in New Caledonia was therefore annulled.

Conseil d'État, 1er avril 2025, n° n°494511,494583, 495174, La Quadrature du net et a.

http://www.conseil-etat.fr/fr/arianeweb/CE/decision/2025-04-01/494511

Conseil d'Etat, 1 April 2025, no. 494511,494583, 495174, La Quadrature du net et al.

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UNITED KINGDOM

[GB] Ofcom sanctions OnlyFans provider £1.05m over age verification failings

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On 27 March 2025, the UK's communications regulator, Ofcom, imposed a financial penalty of GBP 1.05 million on Fenix International Limited, the company behind OnlyFans, following an investigation into its age assurance practices. The penalty stems from Fenix's failure to provide accurate and complete responses to two statutory information requests concerning its age verification systems on the adult content platform.

Following an investigation launched in May 2024 under the video-sharing platform (VSP) framework (introduced in 2020 by Part 4B of the Communications Act 2003), Ofcom determined that Fenix had twice submitted inaccurate information in response to formal data requests concerning the platform's age assurance systems, namely tools designed to prevent access by users under 18 to restricted material, including pornography.

Specifically, the company had misrepresented the "challenge age" setting (used to flag potentially underage users) as 23, when in fact it had been set to 20. To clarify the concept of "challenge age", one might compare it to the practice used at a nightclub entrance: anyone who appears younger than a certain cautious threshold age, e.g., 23, is required to present identification before entry, whereas those clearly appearing older may enter freely. Likewise, OnlyFans' facial estimation technology sets a similar threshold. Prospective users estimated to be younger or equal to this set "challenge age" must provide additional verification to confirm they are above the minimum age of 18. The elevated threshold is intended to catch those who may be mistakenly judged as over 18 by the technology, adding a buffer of caution to protect minors. In this case, the failings at issue affected Ofcom's regulatory oversight and resulted in the inclusion of incorrect data in the authority's first transparency report on VSPs in October 2022 (see IRIS 2023-1:1/18).

The investigation focused on Fenix's compliance with duties under sections 368Y(3)(b) and 368Z10(6) of the Communications Act, which require VSP providers to supply complete and accurate information within a reasonable time frame when requested by the regulator. Ofcom concluded that Fenix had failed to meet these obligations, thereby undermining its ability to assess and report on OnlyFans' safeguarding measures for underage users.

As a result, on 26 March 2025, Ofcom imposed a financial penalty of £1.05 million on Fenix. This figure reflects a 30% reduction in recognition of the company's acceptance of the findings and its decision to settle the case. In assessing the

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severity of the penalty, Ofcom considered the prolonged duration of non-compliance, the size and resources of the provider, the impact on regulatory processes (including the additional work to issue a note of correction for the error), and the delayed reporting of the contravention (it took Fenix over two weeks to self-report the issue to Ofcom).

Previously, in February 2025, Ofcom had decided to close parts of its initial investigation, including issues relating to the implementation of age assurance measures under section 368Z1(2) of the 2003 Act and broader cooperation duties under section 368Y(3)(c) of the same. Although it is unclear why no findings on these issues were made, Ofcom has nevertheless reserved the right to reopen these lines of inquiry should further evidence arise.

Overall, although the VSP regime has now been repealed (see IRIS 2023-6:1/25) and will ultimately be superseded by the new regime introduced by the Online Safety Act 2023 (OSA), this enforcement action highlights Ofcom's commitment to ensuring transparency and accountability in the online audiovisual environment, particularly with respect to measures aimed at protecting minors from harmful content in digital spaces. Notably, the OSA equips Ofcom with wide-ranging powers to compel the provision of information necessary for fulfilling its online safety functions, with potential criminal liability for non-compliance, including for senior management. With this in mind, the £1.05 million fine against the OnlyFans provider signals that regulated entities are expected to respond to statutory requests with accuracy and urgency.

This case also draws attention to Part 5 of the OSA, which introduces a dedicated framework for online pornography services, mandating the use of "highly effective" age assurance mechanisms. Given that Ofcom launched a targeted enforcement programme in January 2025 to evaluate such measures, the outcome of this investigation indicates a growing regulatory focus on platforms falling within this scope. Following its earlier £1.875 million sanction against TikTok in July 2024 for inadequate responses concerning its parental control safety features, Ofcom continues to show that compliance failures, especially those linked to child safety, are likely to be met with firm regulatory consequences.

Ofcom fines provider of OnlyFans £1.05 million

https://www.ofcom.org.uk/online-safety/protecting-children/ofcom-fines-provider-of-onlyfans-1.05-million?utm_medium=email&utm_campaign=Ofcom%20fines%20provider%20of%20OnlyFans%20105%20million&utm_content=Ofcom%20fines%20provider%20of%20OnlyFans%20105%20million+CID_51c74d6cd6d3ff2e3bbb058d30ff9a5a&utm_source=updates&utm_term=Visit%20our%20news%20centre

Enforcement programme to protect children from encountering pornographic content through the use of age assurance

https://www.ofcom.org.uk/online-safety/protecting-children/enforcement-programme-to-protect-children-from-encountering-pornographic-content-through-the-use-of-age-assurance/

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TikTok fined £1.875 million for providing inaccurate data on safety controls

https://www.ofcom.org.uk/online-safety/protecting-children/tiktok-fined-1.875m-for-providing-inaccurate-data-on-safety-controls

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[GB] Geo News violates Ofcom Boradcasting Code by excluding election candidates and failing to list all names

Julian Wilkins
Wordley Partnership

Ofcom received three complaints regarding the Geo News current affairs programme "Aapas Ki Baat" (the programme), which aired on 25 June 2024, in the run-up to the UK General Election on 4 July 2024. The complaints concerned interviews with Labour Party and independent candidates from the Birmingham Ladywood, Hall Green, and Moseley constituencies, while failing to include other candidates from those constituencies. The opportunity to take part in the programme was not offered to all the candidates, and a full list of candidates standing for election in each featured constituency was not listed. These failures were found to be a breach of Rules 6.9 and 6.10 of Ofcom's Broadcasting Code.

The licence for Geo News is held by Geo TV Ltd (the Licensee). Geo News is an Urdu news and current affairs channel aimed at the Pakistani community in the UK. Ofcom's decision and the Licensee's response to the complaints are based on a revised translation of the programme's transcript as the broadcast language was in Urdu.

The programme included interviews with Labour and other independent parliamentary candidates but a number of other political party candidates such as Conservative, Liberal Democrats and the Green Party were not given the opportunity to be interviewed for the programme. Further, during the programme there was no summary list of candidates standing in the respective parliamentary constituencies listed in the programme. However, during the interviews there were incidental references to various other political parties standing in the election.

Rule 6.9 of the Ofcom Broadcasting Code states:

If a candidate takes part in an item about his/her particular constituency, or electoral area, then the broadcasters must offer the opportunity to take part in such items to all candidates within the constituency or electoral area representing parties with previous significant electoral support or where there is evidence of significant current support. This also applies to independent candidates. However, if a candidate refuses or is unable to participate, the item may nevertheless go ahead.

Rule 6.10 of the Ofcom Broadcasting Code states:

Any constituency or electoral area report or discussion after the close of nominations must include a list of all candidates standing, giving first names, surnames and the name of the party they represent or, if they are standing independently, the fact that they are an independent candidate. This must be conveyed in sound and /or vision.

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The Licensee explained that due to the small size of the production team (three in total) and the pressure they were under, the producer “mistakenly assumed that a list of all the other candidates” had been included in the programme. The Licensee also stated that the names would have appeared on screen had it not been for a technical error and the challenges of the day.

The Licensee further argued that Rules 6.9 and 6.10 were not applicable, as this was an inadvertent technical issue rather than a deliberate violation of the rules. The Licensee claimed that, given the steps, including further training by its production team, taken to prevent future errors and the negligible audience impact, there was no breach of impartiality or fairness during the election period, and that the matter should be considered resolved. The Licensee claimed that the audience was null and the error and any harm was "purely theoretical".

Ofcom acknowledged the breach was not deliberate and that the Licensee had taken steps to avoid a repeat of the violation of the Broadcasting Code. Also, Ofcom took account of the provisions of Article 10 of the European Convention on Human Rights relating to freedom of expression. Ofcom also noted that the Licensee had in other broadcasts included a full list of candidates in a constituency.

However, Rule 6 of the Broadcasting Code had been introduced to comply with section 93 of the Representation of People Act 1983 (as amended) to ensure all candidates were properly represented in any broadcast or at least had the opportunity.

The Licensee had on this occasion omitted political parties and their candidates with significant political support. The purpose of the Broadcasting Code, including rule 6.9 and 6.10, was to prevent any political party gaining an unfair advantage over other candidates contesting the same election irrespective of audience size. Rules 6.9 and 6.10 were basic requirements during the coverage of a political election, and as a consequence, Ofcom ruled that the Licensee had indeed violated Rules 6.9 and 6.10.

Ofcom Broadcast and on Demand Bulletin, issue 517

https://www.ofcom.org.uk/siteassets/resources/documents/about-ofcom/bulletins/broad-bulletins/2025/517/aapas-ki-baat-geo-news-25-june-2024-19.00.pdf?v=391992

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[GB] Ofcom imposes £150,000 penalty on Word Network for airing potentially harmful religious programming

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On 11 March 2025, the UK's communications regulator, Ofcom, imposed a financial penalty of £150,000 on Word Network Operating Company Inc. for serious breaches of the UK Broadcasting Code. The decision follows the broadcast of two episodes of Peter Popoff Ministries on The Word Network in May 2023, which included repeated claims that a product called "Miracle Spring Water" could cure serious illnesses and resolve financial problems. Ofcom concluded that these programmes breached rules relating to harm and offence, religious exploitation, and undue promotion. In addition to the fine, Ofcom directed The Word Network not to repeat the offending programmes and to broadcast a summary of Ofcom's findings.

The nature of the breach

The programmes in question, aired on 9 and 10 May 2023, featured televangelist Peter Popoff and included multiple direct invitations for viewers to request free "Miracle Spring Water". The broadcasts displayed prominent on-screen QR codes and contact numbers alongside testimonials from individuals claiming miraculous health recoveries and financial windfalls attributed to the water or Popoff's ministry. Ofcom identified these claims as potentially harmful and unsubstantiated. Among the more concerning statements were assertions that the water had cured lung cancer, diabetes, and brought about recovery from drug addiction, or led to unexpected financial gains. These messages were not challenged or qualified in any way, and no medical or financial disclaimers were provided.

Broadcasting Code violations

The broadcasts at issue breached three specific provisions of the Broadcasting Code: first, Rule 2.1 (Harm and Offence), namely that broadcasters must apply generally accepted standards to protect the public from harmful material. Ofcom found that the unqualified medical and financial claims presented a high risk of harm, particularly to vulnerable audiences. The implication that "Miracle Spring Water" could serve as an alternative to conventional treatment or financial planning was deemed especially problematic. Second, Rule 4.6 (Religious Programming), namely that religious content must not improperly exploit the audience's susceptibilities. Given the religious framing of the messages and the authority attributed to Popoff as a religious figure, Ofcom found a significant risk that vulnerable viewers might be manipulated by unchallenged claims into taking ill-advised actions; and third, Rule 9.4 (Commercial References) which prohibits the promotion of products or services in programmes, irrespective of whether

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they are offered in return for payment or not. The programmes here clearly promoted the "Miracle Spring Water" through visual and verbal references, constituting undue promotion even though the product was ostensibly free.

The contraventions of Rules 2.1, 4.6 and 9.4 represented particularly serious failures of compliance. The regulator's decision is grounded in its duties under the Communications Act 2003, which requires the regulator to further citizens' interests in relation to communications matters and consumers' interests in relevant markets. The ruling also reflects Ofcom's responsibilities as a public authority under the Human Rights Act 1998, including balancing the broadcaster's rights to freedom of expression (Article 10) and religion (Article 9) with the imperative to protect public health and prevent exploitation. Ofcom found that the content in question went beyond protected religious expression, crossing into claims that could cause real-world harm to viewers' physical health or financial well-being.

Ofcom's responses to the licensee's representations

The Word Network, a US-based broadcaster holding a UK licence, submitted that its audience understands the "Miracle Spring Water" as symbolic, i.e., a spiritual tool, not a medical treatment or cure. It argued that viewers would not see the water as a substitute for professional advice. Ofcom rejected this view, underlining that the broadcasts presented the product in unequivocal, literal terms, often reinforced by Popoff himself, and offered no disclaimers or alternative viewpoints. Viewers, especially those facing health or financial hardship, could reasonably understand the claims as fact-based, not merely faith-based.

The Word Network also claimed it lacked creative or editorial control over the Popoff programmes and was unaware of past regulatory actions concerning similar content. Ofcom dismissed this argument, stating that as a licensee, The Word Network is fully responsible for content broadcast under its UK licence. Moreover, previous decisions involving Popoff's programming (with some involving similar claims) were publicly available and should have been considered by the Network.

Sanctions, remedial actions and cooperation

Ofcom imposed three separate sanctions: (a) a £150,000 financial penalty, determined to reflect the seriousness of the breaches, ensure deterrence, and incentivise future compliance; (b) a direction not to repeat the programmes to prevent future harm to viewers; and (c) a direction to broadcast Ofcom's findings to inform audiences and acknowledge the breach publicly.

Ofcom considered revoking the licence but opted against it, noting that although two programmes were in violation, these were The Word Network's first breaches of the Code and that the network had since taken steps to prevent recurrence.

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The financial penalty was set with regard to Ofcom's Penalty Guidelines, the seriousness and nature of the breaches, the potential for viewer harm (actual or potential, incl. any increased cost incurred by consumers), and the licensee's failure to take adequate steps to prevent or mitigate the risk. While the financial gain from the broadcast was limited, Ofcom noted that the promotional nature of the content meant it could result in indirect financial benefits to Peter Popoff Ministries.

After the Breach Decision, The Word Network took several steps to improve compliance, including negotiating content changes with Peter Popoff Ministries; terminating the contract relating to the Ministries series; and implementing new broadcast software to prevent UK transmission of specific global content. However, Ofcom expressed concern over the broadcaster's initial unwillingness to provide requested contractual information and its limited understanding of UK regulatory standards. The broadcaster only submitted key documents after receiving a formal Direction from Ofcom.

Ofcom's ruling emphasises the regulator's strict approach to unsubstantiated claims in religious and health-related programming. It is particularly relevant for broadcasters that carry third-party religious content or operate from outside the UK jurisdiction but hold UK licences. The decision also reflects Ofcom's increased scrutiny of material that targets potentially vulnerable audiences (whether due to health, economic hardship, or religious belief) and the importance of applying due editorial oversight even to paid or externally-produced content. Broadcasters are reminded through this decision that religious expression does not override the requirement to protect audiences from harm or exploitation, and that promotional content must be clearly separated from editorial programming.

Overall, the ruling against The Word Network marks a significant enforcement action under the Broadcasting Code and reaffirms Ofcom's expectation that broadcasters take full responsibility for the content they transmit and ensure compliance, particularly when handling sensitive issues like health, faith, and personal finances.

Ofcom Decision on Word Network Operating Company Inc

https://www.ofcom.org.uk/siteassets/resources/documents/about-ofcom/bulletins/content-sanctions-and-adjudications/sanction-decision-the-word-network-operating-company.pdf?v=392397

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ITALY

[IT] AGCOM grants first authorisations for FAST channels

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On 19 March 2025, AGCOM (Italy's Communications Authority) issued the first two Italian authorisations for the provision of audiovisual media services via alternative communication networks (excluding digital terrestrial and satellite broadcasting) to Fast Channel Network S.r.l. for the channels "Soap Latino" and "Soap Turco".

These are free, linear television channels classified as FAST (Free Ad-Supported Streaming Television) channels, which operate over the Internet protocol (IP) and are, therefore, exclusively accessible via Internet-connected TVs.

The authorisation process was conducted in accordance with Article 4 of the regulation adopted under Resolution No. 295/23/CONS. This regulation governs the issuance of authorisation titles for the provision of audiovisual and radio media services via satellite, alternative electronic communication networks, and on-demand services. Specifically, it stipulates that FAST channels must obtain authorisation based on each individual programming schedule they offer.

The newly introduced regulation underwent a consultation process and aims to establish a uniform framework for all media service providers, regardless of the transmission medium. However, it still recognises the intrinsic differences between audiovisual content providers and radio broadcasters, thereby incorporating this new category of media services within its regulatory scope.

In particular, under Article 4 of the regulation, FAST channels must be authorised based on their specific programming schedules. Consequently, all audiovisual media service providers operating FAST channels, including those already available on Italian smart TVs, will be required to obtain specific authorisation from AGCOM for each programming schedule they offer.

This regulatory development marks a significant step forward in the free streaming market, aligning FAST channels with other regulated television services and laying the foundation for their structured growth in Italy.

Moreover, this decision underscores the innovative role of FAST channels in audiovisual content consumption and the necessity of integrating them within the broader regulatory framework governing audiovisual media services.

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Delibera 80/25/CONS "Autorizzazione per la fornitura di servizi di media audiovisivi lineari su piattaforma internet alla società Fast Channels Network-FCN S.r.l. (Servizio di media audiovisivo SOAP LATINO)"

https://www.agcom.it/provvedimenti/delibera-80-25-cons

Resolution 80/25/CONS 'Authorisation for the provision of linear audiovisual media services on an Internet platform to the company Fast Channels Network-FCN S.r.l. (SOAP LATINO audiovisual media service)'

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LUXEMBOURG

[LU] Audiovisual media service failed to comply with due diligence obligation

Justine Radel-Cormann
European Audiovisual Observatory

Luxembourg-based company CLT-UFA S.A., Hungarian Broadcasting Division, notified the on-demand audiovisual media service RTL+ (VOD) to the Luxembourg authorities, thereby granting jurisdiction to the country's regulator.

RTL+ broadcasts programmes in Hungary, including the scripted reality show Való Világ.

On 18 July 2024, RTL+ broadcast an episode of the Való Világ programme in which a male contestant engaged in unwanted physical touching, including of a female contestant's private parts, reflecting clear physical coercion of the female contestant. The male contestant, who persisted in his actions despite clear verbal protests from the victim, was subsequently excluded from the programme.

On 9 August 2024, the Media Council of the Hungarian media regulator (NMHH) lodged a complaint with the *Autorité Luxembourgeoise Indépendante de l'Audiovisuelle* (Luxembourg Independent Authority for Audiovisual Media – ALIA), alleging that, by broadcasting this episode of Való Világ, RTL+ had failed to comply with the Hungarian law on freedom of the press and basic rules governing media content.

As regards the provider's obligations, in particular with regard to respect for human dignity, Luxembourg law applies to the case since CLT-UFA S.A. and RTL+ are under the jurisdiction of the Luxembourg authorities. The programme in question was therefore examined under the Luxembourg law on electronic media, Article 26bis of which requires audiovisual media service providers to respect and protect human dignity, prohibiting any content that incites violence or hatred on any of the grounds set out in Article 21 of the EU Charter of Fundamental Rights.

RTL+ cited the fact that the female contestant had reacted playfully to the male contestant's actions and that the programme had been broadcast to a small audience (at 2am) of adult subscribers. Finally, it argued that the contestant's exclusion should not be interpreted as an implicit recognition of an infringement of human dignity, but rather as an internal sanction for the programme's failure to comply with its own rules.

The ALIA handed down its decision on 17 March 2025. It stated that the incident amounted to degrading treatment within the meaning of Article 3 of the European Convention on Human Rights and Article 4 of the EU Charter of Fundamental Rights. Treatment is degrading when it is likely to arouse in the victim a feeling of

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fear, anguish and inferiority capable of humiliating and debasing the victim, which was the case here.

In addition, the episode conveyed an unhealthy image of relations between men and women. The broadcast trivialised such behaviour, reinforcing stereotypes that suggested that physical coercion and lack of consent were tolerable or harmless for women, who were reduced to the status of sexual objects.

RTL+ had breached its duty of care by failing to censor this scene, by broadcasting it and by making the episode available on its VOD service.

Consequently, the broadcast of this episode constituted an attack on human dignity within the meaning of Article 26bis of the Luxembourg law on electronic media. The ALIA ordered CLT-USA S.A. to pay a fine of EUR 25,000.

Décision DEC009/2025-P026/2024 du 17 mars 2025 du Conseil d'administration de l'Alia

https://alia.public.lu/wp-content/uploads/2025/03/D009-2025_P026-2024_RTL_ValoVilag12_ECsite.pdf

Decision DEC009/2025-P026/2024 of 17 March 2025 of the ALIA board of directors

https://alia.public.lu/wp-content/uploads/2025/03/D009-2025_P026-2024_RTL_ValoVilag12_ECsite.pdf

Loi du 27 juillet 1991 sur les médias électroniques

https://legilux.public.lu/eli/etat/leg/loi/1991/07/27/n1/consolide/20240805

Law of 27 July 1991 on electronic media

https://legilux.public.lu/eli/etat/leg/loi/1991/07/27/n1/consolide/20240805

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NETHERLANDS

[NL] Court refuses to order removal of broadcaster's investigative programme

Ronan Ó Fathaigh
Institute for Information Law (IViR)

On 19 March 2025, the Rechtbank Den Haag (District Court of The Hague) delivered an important ruling on investigative journalism reporting on commercial companies. The Court refused an application to prevent further broadcast of an episode of a public broadcaster's investigative programme on a Dutch-based company involved in the international oil industry, holding that such a commercial company must tolerate a "greater level of criticism" when it is the subject of "critical" investigative-journalism reporting.

The case arose on 16 March 2023, when the investigative current affairs programme Zembla, of the Dutch public broadcaster BNNVARA, broadcast an episode investigating an alleged international network that was evading international sanctions placed on the Iranian government. The programme delved into a Dutch-based oil company. Prior to the broadcast, the broadcaster sent detailed questions to the company, seeking comment on its financing, but received no response, and proceeded with the broadcast. Following the broadcast, the company initiated legal proceedings against BNNVARA, seeking to have the programme removed from the public broadcaster's website, prohibit its further publication, and sought damages over allegations that it violated sanctions legislation.

The District Court first set out that the case involved two conflicting rights: the broadcaster's right to freedom of expression under Article 10 of the European Convention on Human Rights (ECHR), and the company's right to protection of its reputation, guaranteed under Article 8 ECHR. The Court also emphasised that it had taken into account that the case involved reporting by the media, and in the context of freedom of expression, the media is of "special significance". The media has an important social function, in particular as a "public watchdog" that exposes matters and "contributes to the public's right to receive (critical) information". Further, the Court recognised that the issue that the programme sough to highlight – "sanction evasion" - is a matter of public interest, and there must be "ample room" for the broadcaster to address this subject.

Crucially, the Court then turned to specific allegations made, and noted that the programme had not stated that the company was "guilty of violating the sanctions law". However, the programme did "clearly link" the company to "sanctions evasion", and the question for the Court was whether these statements had a "sufficient factual basis". Importantly, the Court ruled that the broadcaster "had a sufficient factual basis for the position it took" in the broadcast, and its conclusions were based on "various sources", including

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interviews with security and sanctions law experts, who “each have a great deal of knowledge” of international sanction evasion. The Court also noted that the broadcaster provided “sufficient scope for a response to the broadcast, with “all core findings from the investigation” presented to the company “prior to the broadcast” and the company was “given sufficient time to respond to them”. Further, the programme had provided “sufficient nuance” in the broadcast, making it clear to the viewer “that the issue is complicated and nuanced”, and it is therefore not “immediately certain” there were violations of sanctions legislation. Finally, the Court emphasised that as a commercial enterprise that is “active in (among others) the international oil and gas industry”, the company must tolerate a “greater level of criticism” when it is the subject of “critical” investigative-journalism reporting.

As such, the Court held that the broadcast did not act unlawfully against the company, and dismissed the application. The Court also ordered the company to pay the legal costs of the broadcaster.

Rechtbank Den Haag, ECLI:NL:RBDHA:2025:4367, 19 maart 2025

https://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:RBDHA:2025:4367

District Court of The Hague, ECLI:NL:RBDHA:2025:4367, 19 March 2025

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[NL] The Dutch Media Authority publishes draft Policy Rule on the qualification of on-demand commercial media services

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On 4 March 2025, the Dutch Media Authority (*Commissariaat voor de Media*) published the draft 2025 Policy Rule on the qualification of on-demand commercial media services (draft 2025 Policy Rule). It will replace the previous policy rule adopted in 2022 (2022 Policy Rule).

Both the 2022 Policy Rule as well as the draft 2025 Policy Rule are based on the Dutch Media Act of 2008 (the Act), which was amended in 2020 in the course of the implementation of revised Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in member states concerning the provision of audiovisual media services (Audiovisual Media Services Directive). Recital 3 of the revised Audiovisual Media Services Directive noted that channels or any other audiovisual services under the editorial responsibility of a provider can constitute audiovisual media services in themselves, even if they are offered on a video-sharing platform which is characterised by the absence of editorial responsibility. Accordingly, the 2022 Policy Rule established that in addition to more conventional media institutions making audiovisual media content available on their own platforms (for instance, Netflix and Disney+), on-demand commercial media services may also be provided by those offering such content via third-party video platform services, such as YouTube and TikTok (video uploaders). A service qualifies as an on-demand commercial media service if, in addition to falling within the definition of Article 3.29a of the Act, it also meets the criteria set out under the policy rule. Article 3.29b of the Act also stipulates that all providers of on-demand commercial media services must notify the Media Authority when they start, change or terminate the provision of their service. However, the 2022 Policy Rule established that video uploaders must register their media service with the Media Authority and will be actively supervised by it only if they answer all questions in the decision tree included in the annex to the policy rule in the affirmative. This exemption was aimed at relieving small-scale, non-professional video uploaders from extensive administrative or financial obligations. The questions included in the decision tree of the 2022 Policy Rule were as follows:

1. Do you have an account on YouTube, TikTok or Instagram?

2. Do you have at least 500,000 followers or subscribers on one of those accounts?

3. On your account with 500,000 or more followers or subscribers, have you posted at least 24 videos in the past 12 months?

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4. Do you earn money, do you receive products or services, or do you obtain any other advantage as a result of the creation and/or posting of videos on your account?

5. Does the advantage referred to in step 4 accrue to a business that you have registered with the Chamber of Commerce?

The draft 2025 Policy Rule aims to amend the decision tree by eliminating the question concerning the number of followers or subscribers. As a result, a larger group of video uploaders with their media service will fall under the active supervision of the Media Authority. However, video uploaders with fewer than 100,000 followers or subscribers will be exempted from reporting obligations as well as the obligation to pay supervisory fees on a yearly basis. Such video uploaders must comply with all other relevant obligations under the 2008 Media Act. The upcoming amendments seek to ensure a more level playing field within the Dutch media landscape.

The Dutch Media Authority also announced a public consultation to seek input from stakeholders in the field of audiovisual media services. The insights collected will be used to revise the draft policy rule before publication in the Government Gazette (*Staatscourant*).

Beleidsregel kwalificatie commerciële mediadiensten op aanvraag 2025

https://www.cvdm.nl/nieuws/commissariaat-opent-consultatie-van-beleidsregel-kwalificatie-commerciele-mediadiensten-op-aanvraag-2025/

2025 Policy Rule on the qualification of on-demand commercial media services

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