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EDITORIAL

Audiovisual regulation is akin to Newton's third law of motion: technology and market forces act, and the legislator reacts. And of course, there is a bit of a lag in between. There has been a lot of action since the AVMSD was last amended, and the reaction from Brussels is now keenly awaited. As a first step, the Council of the EU has adopted conclusions on the assessment of the legal framework for audiovisual media services and VSPs.

The protection of minors will certainly be one of many burning topics in the hands of EU legislators. While waiting for concrete proposals, the European Commission has published draft guidelines to ensure minors are adequately protected online.

This worry is also reflected in member states' initiatives, like in Italy, where AGCOM has adopted new age verification mechanisms for websites and VSPs disseminating adult content, and in Germany with the publication of reports from youth media protection agencies documenting high numbers of reviews and complaints about content harmful to minors.

Other related topics keep national legislators, regulators and stakeholders busy: in Belgium, the digital services coordinator, along with other authorities, just unveiled their inaugural joint report on the implementation of the DSA. Meanwhile, Spain's media regulator reported on how audiovisual media services are meeting their obligations to promote European works. In France, a new dialogue has started between generative AI developers and cultural rightsholders, aiming to find a path to foster innovation and protect creatives.

Enjoy the read!

Maja Cappello, Editor

European Audiovisual Observatory

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COUNCIL OF EUROPE

European Court of Human Rights: Conviction for wilful dissemination of “untrue information” relating to Covid-19 violates the right to freedom of expression

Tarlach McGonagle
Institute for Information Law (IViR), University of Amsterdam

The European Court of Human Rights (Third Section) has held, unanimously, in its judgment in *Avagyan v. Russia* of 29 April 2025 that a conviction for the wilful dissemination of “untrue information” about the existence of Covid-19 cases amounted to a violation of the right to freedom of expression under Article 10 of the European Convention on Human Rights. The conviction was the outcome of administrative-offence proceedings concerning comments on Instagram questioning the existence of Covid-19 cases in a particular region in Russia.

In May 2020, the applicant, Mariya Anatolyevna Avagyan, posted a comment on her Instagram account, which she mainly used to promote the services of her nail salon and which at that time had 2 600 followers. The comment claimed that there had not been any reported or diagnosed cases of the coronavirus in Krasnodar or in its surrounding region. The comment included the line: “Think about why our government would need this”. The comment received one like and elicited one comment, which refuted the applicant’s claim, stating that confirmed cases of Covid-19 did exist, even though some individuals denied this. The commenter called on others to “make informed decisions and to consider the safety of their loved ones”. Ms. Avagyan replied that people were afraid to speak up about this matter and suggested that money was to “be had” by reporting the coronavirus as the cause of death on official death certificates.

The Krasnodar police printed out her comments and charged her with disseminating untrue information on the Internet, an offence under Article 13.15(9) of the Code of Administrative Offences (CAO). Article 13.15(9) CAO reads:

The dissemination of socially important information which is known to be untrue, through the media and information and communication networks, under the guise of reliable reports, which has created a risk of harming life or health or property, instigating mass disorders, undermining public security, interfering with, or preventing, the operation of critical infrastructure, transportation links, social services, credit institutions, power plants, industrial or communication facilities ... shall be punishable by an administrative fine of between RUB 30 000 and RUB 100 000 ...

The trial was held before a justice of the peace, who ruled that the applicant was responsible for disseminating untrue information, holding that she had failed to put forward any evidence to disprove the existence of Covid-19 in Krasnodar and the Krasnodar Region. The court fined the applicant RUB 30 000 (approximately EUR 390). The applicant's appeal was summarily dismissed by the district court.

The European Court of Human Rights affirmed that it had jurisdiction to examine the application as the facts giving rise to the alleged violations of the Convention had occurred prior to 16 September 2022, the date on which the Russian Federation ceased to be a Party to the Convention.

The Court made some observations about the specific context of the Covid-19 pandemic and its implications for freedom of expression and information. The Court reaffirmed that democratic society requires open public debate, "particularly during times of crisis when transparency and accountability are paramount". It pointed out that during the early stages of the Covid-19 pandemic, "information about the virus was still emerging and subject to rapid change". Such circumstances create challenges for ensuring that public debate is nourished by accurate and reliable information. Even if restrictions on freedom of expression are deemed legitimate and "necessary in a democratic society" in the "unprecedented context of a public health emergency", such restrictions must be strictly construed and the need for such restrictions must be established convincingly.

In its assessment of the facts, the Court attached importance to a number of considerations, which the domestic courts had taken into account insufficiently, or not at all: the applicant's comment seemed to be in response to a news article about alleged irregularities in the reporting of Covid-19 cases and deaths; the applicant did not seem to be deliberately disseminating false information, but rather expressing "criticism of a perceived lack of transparency in official reporting"; the applicant's small number of followers on Instagram and the minimal engagement with her comment – and the prompt refutation of her claims; the unlikelihood – due to its limited dissemination – that the comment would cause any serious risks for the public.

The Court also set much store by the fact that the applicant was not a journalist and did not present herself as a source of authoritative information on the Covid-19 virus or pandemic. Rather, she mainly used her Instagram account to promote her nail salon services. The Court therefore found that "holding her to the same standards of verification as professional media would place an unreasonable burden on participation in public debate".

The Court was critical of the domestic courts for not seeking to establish the existence of key elements of the offence under Article 13.15(9) CAO in the present case (i.e., "(a) that the information was "known to be untrue"; (b) that it was "socially important"; (c) that it was presented "under the guise of reliable reports"; and (d) that it created specific risks to public health, safety or infrastructure"). The Court was particularly critical of how the domestic courts had shifted the burden of proof to the applicant. The courts required the applicant to

provide evidence to disprove the existence of coronavirus infection, instead of the authorities having to prove the deliberate falsity of the claim. This, in effect, “transformed the offence […] into one of strict liability for unproven statements”. In this connection, the Court also pointed to a “structural deficiency in the proceedings”: “the absence of a prosecuting party at trial, where the court assumes the role of a prosecutor”. This meant, the Court observed, that no party was tasked with proving the constituent elements of the offence, which in turn led the courts to shift this burden onto the applicant.

The Court found that while “combating disinformation during a public health emergency may be a valid objective, sanctioning individuals for expressing scepticism about official information or calling for greater transparency does not advance this aim”. It added that the Russian courts’ application of Article 13.15(9) CAO in the present case seemed more calculated to discourage public debate than to protect public health.

The Court also noted that the fine imposed represented a significant financial burden for the applicant, as a small business owner, and would likely have a chilling effect on the exercise of freedom of expression.

In a joint concurring opinion, Judges Ktistakis, Kovatcheva and Đurović contended that the Court should have taken a stronger stance in clearly reaffirming that “State authorities should not act as arbiters of ‘truth’ in public debates”, and regretted that this opportunity had not been seized. The crux of their separate opinion is that they “are not persuaded that the power to sanction allegedly 'untrue' statements, even when justified by the need to protect public health, can be said to pursue a legitimate aim” under Article 10(2) of the Convention.

Avagyan v. Russia, No. 36911/20, 29 April 2025. ECLI:CE:ECHR:2025:0429JUD003691120

https://hudoc.echr.coe.int/eng?i=001-242859

European Court of Human Rights: a new judgment underscores the wide margin of appreciation for regulating parliamentary privilege

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In its judgment in *Green v. the United Kingdom* of 8 April 2025, the European Court of Human Rights (Fourth Section), gave lengthy consideration to the scope and nature of parliamentary privilege/immunity in relation to the disclosure of confidential information that is subject to *sub judice* rules. A key question was whether the positive obligations of States Parties to the European Convention on Human Rights, pursuant to Article 8 of the Convention, require specific *ex ante* and *ex post* controls on parliamentary speech. The Court ultimately found that such a requirement does not exist at this point in time and that Article 8 had not been violated.

The applicant was a prominent businessman at the relevant time. The Telegraph Media Group intended to publish "details of serious allegations of sexual harassment and bullying made against the applicant by former employees". The applicant had previously settled actual and potential employment proceedings with former employees and those settlements were subject to non-disclosure agreements. The Court of Appeal granted an interim injunction preventing publication by *The Telegraph*. Having "examined in detail the balance to be struck between the Article 8 and Article 10 rights at issue in the case", the Court of Appeal "concluded that publication would cause immediate, substantial and possibly irreversible harm to all of the claimants, including the applicant". In the House of Lords, despite the existence of this interim injunction, Lord Hain disclosed the applicant's name under parliamentary privilege. The disclosure caused serious harm to the applicant's (financial and general) reputation, thus interfering with his right to respect for his private life.

In its assessment of the merits of the case, the European Court of Human Rights followed its by now well-established approach to the right to respect for private and family life under Article 8 of the Convention. In addition to the "primarily negative undertaking" of non-interference with individuals' right to privacy, states also have a positive obligation to ensure that this right is effective in practice. States have a wide margin of appreciation in choosing the measures they take to fulfil their relevant positive obligations. This is all the more so specifically concerning the notion of "respect", which is "not clear-cut", and due to the diversity of practices and situations obtaining in the different Council of Europe member states and the absence of a Europe-wide consensus. Insofar as states' positive obligations under Article 8 have implications for the right to freedom of expression, as guaranteed by Article 10, a fair balancing of the competing rights and interests must be conducted.

In this regard, it is important to consider the type of expression at issue. The Court recalled that "in a democracy Parliament is a unique and fundamentally important forum for political debate, and the right to freedom of speech therein enjoys an elevated level of protection". Very weighty reasons are therefore required to justify interference with freedom of parliamentary expression. The Court also recalled that the rule of parliamentary immunity, designed to safeguard freedom of expression in parliament, is also an important safeguard for the separation of powers between the legislature and the judiciary. The Court then explained in some detail why the regulation of the ins and outs of parliamentary immunity is in the first place a matter for national parliaments themselves, and national authorities. There is accordingly a wide margin of appreciation for states as to how they regulate parliamentary immunity. Indeed, extensive comparative research carried out by the Court revealed a range of different approaches across the 41 Council of Europe member states surveyed.

The Court focused centrally on the question whether the positive obligation under Article 8 to ensure the effective protection of the right to respect for private life requires states to implement *ex ante* and *ex post* controls to prevent members of parliament from revealing information that is subject to privacy injunctions. The Court was very conscious – and wary – of the wider implications of such a requirement, beyond the circumstances of the present case.

The UK Parliament has adopted a *sub judice* rule – a "rule limiting comment or disclosure relating to judicial proceedings, in order not to prejudge the issue or influence the jury" (Oxford Dictionary of Law). Under this rule, members of the House of Lords are required to give the Lord Speaker at least twenty-four hours' notice of any proposal to refer to a matter which is *sub judice*. This can be seen as a form of *ex ante* control on the power to use parliamentary privilege to discuss proceedings which are active before the domestic courts. As the Court also noted, the UK Parliament has in the past repeatedly considered and rejected proposals to implement further controls along the lines of those sought by the applicant. It further noted that there did not seem to be any clear signs that a different approach was now needed. In the absence of strong reasons to do so, the Court was reluctant to substitute its view for that of the national authorities, and in particular the parliament, as the latter are better positioned to assess the need to restrict the conduct of members of parliament.

In its existing case law, the Court has pronounced on the freedom of expression of members of parliament mainly in contexts before they were elected or when they were speaking outside of parliament. The Court held that for it "to find that a speech in Parliament, by a Member of Parliament, fell outside the scope of his or her parliamentary activity would be unprecedented, and would run counter to the operation of parliamentary privilege in the majority of member States". In the specific matter of the regulation of parliamentary immunity, the Court spelt out, clearly and firmly, its deference to the autonomy of national authorities and in particular national parliaments. The accordingly wide margin of appreciation afforded to states on such matters led the Court to find that "as things currently stand", the rule on parliamentary privilege did not exceed the margin of appreciation and there were no sufficiently strong reasons to justify "requiring it or the respondent State to introduce further *ex ante* and *ex post* controls on

freedom of speech in Parliament".

Green v. the United Kingdom, No. 22077/19, 8 April 2025. ECLI:CE:ECHR:2025:0408JUD002207719

https://hudoc.echr.coe.int/eng?i=001-242635

European Court of Human Rights: new judgment reaffirms the principle of non-obstruction of journalistic work

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The European Court of Human Rights has found a violation of a freelance journalist's right to freedom of expression as a result of an assault by police officers and the confiscation of his camera while filming a demonstration that turned violent. The Fifth Section of the Court delivered its judgment in the case of *Hayk Grigoryan v. Armenia* on 3 April 2025.

On 17 July 2016, an armed group stormed and seized a police building in Yerevan; took police officers hostage; and made political demands, including for the Armenian President to resign. In the days that followed, protest rallies in connection with the seizure of the police premises were staged across the capital. On 19 July, the applicant, Hayk Grigoryan, was present at one of the protests, in his capacity as a freelance journalist, and he and another journalist, T.Y., filmed it. At one point violence erupted and demonstrators and the police clashed.

In video footage, the applicant can be seen filming the confrontation. No press card can be seen although he alleged that he did have a press card when he started filming. The applicant can be seen approaching three police officers who were surrounding a man sitting on the ground, to film them from close up. The applicant was then accosted by four other police officers, one of whom can be heard saying, "Who are you filming, huh?" and another says, "I have not deleted [it] yet; I will delete [it]...". The images also show some of the police officers grabbing the applicant, striking and kicking him, and the applicant shielding his head with his hands. It is unclear in the footage if the blows actually landed on the applicant. One police officer can then be seen taking the applicant's camera, opening it and walking away. T.Y. shouts several times that the applicant is a journalist, demanding his release. The applicant and T.Y. can be seen pleading with the police to return his camera immediately, but they only do so some time later – after the intervention of a senior police officer. That evening, the applicant presented to a medical centre, where he was examined and treated: a laceration to his upper lip required suturing; the bruising on his lip later developed into scars.

The authorities opened a criminal investigation on 23 July 2016 and subsequently interviewed the applicant and T.Y. in mid-2016, but the first police officer involved in the alleged assault on the applicant was not interviewed until early 2022. These delays were incurred despite the availability of the video evidence of the incident; testimonies by the applicant and T.Y.; and medical documents confirming the applicant's injuries. The investigation period had to be extended and the

investigation had not been concluded when the applicant lodged his complaint at the European Court of Human Rights.

There was some discussion about whether the applicant had exhausted domestic remedies. The Armenian Government contended that domestic remedies had not been exhausted, given that the criminal investigation had not yet been concluded when the applicant lodged his application in Strasbourg. However, the possibility for the applicant to successfully claim compensation for non-pecuniary damage was directly linked to the outcome of the criminal investigation and the conviction of the police officers in question. This possibility (to which the government referred in its arguments about non-exhaustion) was therefore not an effective remedy for the applicant and the Court accordingly declared the case admissible.

In its consideration of the merits of the case, the Court reiterated that issues may arise under Article 10 of the European Convention on Human Rights (ECHR) when measures taken by public authorities prevent journalists from doing their work or adversely affect the exercise of their functions (see also the Grand Chamber judgment in *Pentikäinen v. Finland* (2016), IRIS 2016-1:1/2).

More specifically, in the circumstances of the case, the Court emphasised that the police officers should reasonably have known – notwithstanding the absence of a press card – that the applicant was a journalist, or in any case that he was pursuing an activity relating to freedom of expression and information. The applicant and his colleague had informed the police that he was a journalist and the verbal reaction of the police officers moreover indicated an awareness of his filming activities. The Court also emphasised that the applicant was grabbed, dragged and assaulted (by at least one police officer) and that his camera was confiscated and only returned some time later after the intervention of a senior police officer (and, as alleged by the applicant, after the video footage had been deleted, although he was later able to retrieve the footage).

Having regard to these circumstances, the Court concluded that the police officers' actions "effectively disrupted and impeded the applicant's journalistic work and thus amounted to an interference with his right to freedom of expression". For the Court, the circumstances were already "sufficient to conclude that the attack on the applicant and the seizure of his camera while he was filming, seriously hampered the exercise of his right to receive and impart information". The Court therefore did not consider it necessary to establish whether the police officers had also deleted the video footage from the applicant's camera or had seized his mobile phone. No reasonable justification or explanation was given for the police officers assaulting the journalist or taking his camera.

The Court's finding of a violation of Article 10 was unanimous; it was a clear reaffirmation of states' obligation to refrain from obstructing journalistic activities.

***Hayk Grigoryan v. Armenia*, No. 9796/17, 3 April 2025. ECLI:CE:ECHR:2025:0403JUD000979617**

https://hudoc.echr.coe.int/eng?i=001-242528

EUROPEAN UNION

EU Ministers' priorities for the audiovisual sector and young creatives

Justine Radel-Cormann
European Audiovisual Observatory

Many significant developments for the cultural sector emerged from the recent meeting of EU ministers for education, youth, culture, and sports, held on 12 and 13 May 2025. The Council of the EU adopted conclusions on assessing the legal framework for audiovisual media services and video-sharing platform services, in anticipation of the upcoming evaluation of the Audiovisual Media Services Directive (AVMSD). Additionally, the Council adopted conclusions on supporting young artists and cultural and creative professionals as they begin their careers.

Key priorities for the audiovisual sector:

Ministers called on the European Commission to review the scope of the AVMSD, particularly whether professional content creators on video-sharing platforms (VSPs) should be included under the directive.

The Council emphasised the need to ensure robust protection for minors on these VSPs and called for clarification of how the AVMSD and the Digital Services Act interact in this area.

Given the increasing volume of content hosted by VSPs, the Council recommended evaluating whether current AVMSD rules are sufficient to protect the public from potentially harmful content. Addressing the spread of disinformation and foreign information manipulation was also highlighted, with suggestions to strengthen prominence measures and consider public support for media service providers.

Ministers discussed the accessibility of events of major societal importance, questioning whether existing AVMSD rules (currently applicable only to broadcasters) remain adequate in light of the rise of other media services (often with restricted or paid access). Cross-border issues and enhanced cooperation between national regulatory authorities, especially concerning video-sharing platform providers, were also identified as areas for further attention.

Supporting young artists:

The Council’s conclusions recognise the challenges faced by young artists and cultural and creative professionals entering the labour market, such as precarious working conditions, unpredictable income, weak negotiating positions, and limited access to social security. To address these issues, the Council encourages both Member States and the Commission to evaluate the current framework and

promote initiatives—such as Creative Europe—that support young creatives.

Council conclusions on the assessment of the legal framework for audiovisual media services and video-sharing platform services

https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52025XG02954&qid=1749201423252

Council conclusions on supporting young artists and cultural and creative professionals in starting their careers

https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:C_202503165

European Commission draft guidelines on protection of minors online

Amélie Lacourt
European Audiovisual Observatory

On 13 May 2025, the European Commission published Draft Guidelines on the protection of minors online. The guidelines stem from Article 28 DSA and aim to assist providers of online platforms accessible to minors to put in place appropriate and proportionate measures to ensure a high level of privacy, safety, and security of minors, on their platforms.

These guidelines were developed following extensive research and consultations with various stakeholders, including children via the Better Internet for Kids (BIK+) online platform, as well as providers of online platforms, and experts from civil society and academia. The Commission and the Digital Services Coordinators also collaborated in developing these guidelines, through the European Board for Digital Services and its working group on the protection of minors.

A non-exhaustive list outlines the measures that all platforms (with the exception of micro and small enterprises) can implement to protect minors using a default privacy-by-design approach. The guidelines also adopt a risk-based approach, acknowledging that different platforms pose varying risks to minors. This enables platforms to tailor their measures to their specific services, thereby avoiding the imposition of unnecessary restrictions on children's rights to participation, information and freedom of expression.

The measures outlined in the guidelines cover:

- Risk review

- Service design, including age assurance, registration, account settings, online interface design, other tools, recommender systems, search features, commercial practices and moderation.

- Reporting, user support, and tools for guardians.

- Governance, including terms and conditions, monitoring and evaluation, transparency.

The draft guidelines are open to final public feedback from all stakeholders, including children, parents and guardians, national authorities, online platform providers and experts, until 10 June 2025. The guidelines are expected to be published by the summer of 2025.

In parallel, a white label age-verification app will be launched by the Commission in summer 2025, until the EU Digital Identity Wallet is available at the end of 2026. Member states will be able to implement the app, which online service

providers can then use to verify that users are over 18 without revealing any further identity information. The aim of the project is to develop an EU-harmonised privacy-preserving age verification solution.

Article 28 - Draft guidelines for public consultation

https://ec.europa.eu/newsroom/dae/redirection/document/115476

European Commission opens proceedings against pornographic platforms

Amélie Lacourt
European Audiovisual Observatory

On 27 May 2025, the European Commission opened formal proceedings against four pornographic platforms: Pornhub, Stripchat, XNXX, and XVideos. Breaches of the Digital Services Act (DSA) in relation to the protection of minors online are suspected of having been committed by the platforms.

The risks detected relate in particular to the following:

- Appropriate and proportionate measures to ensure a high level of privacy, safety and security for minors, in particular with age verification tools to safeguard minors from adult content.

- Risk assessment and mitigation measures regarding any negative effects on the rights of the child and the mental and physical well-being of users.

If proven, failure to comply with these requirements would constitute infringements of the DSA. The Commission will continue to gather evidence, sending additional requests for information or conducting interviews or inspections. Further enforcement steps, such as interim measures and non-compliance decisions, may also be taken. The Commission can also accept commitments made by Pornhub, Stripchat, XNXX and XVideos to address the issues raised during the proceedings.

The European Board for Digital Services (EBDS) has welcomed the European Commission's action against the four platforms. Member states in the EBDS have also launched a coordinated action to protect minors from pornographic content on smaller platforms and to ensure consistent application of the DSA across the EU. Relevant national competent authorities will exchange on enforcement approaches, methodologies and best practices, particularly in identifying pornographic platforms and evaluating existing age verification measures on those platforms.

It should be noted that in parallel to these proceedings, the Commission announced the termination of the designation of Stripchat as a Very Large Online Platform (VLOP) due to the number of average monthly active recipients in the EU being lower than the relevant threshold for an uninterrupted period of one year. General obligations, including on the protection of minors, however, continue to apply. Compliance with the DSA will become the responsibility of the competent national Digital Services Coordinator: the Cyprus Radio Television Authority.

Commission opens investigation to safeguard minor pornographic content under the DSA

https://digital-strategy.ec.europa.eu/en/news/commission-opens-investigations-safeguard-minors-pornographic-content-under-digital-services-act

European Commission preliminarily findings: TikTok's ad repository in breach of DSA

Amélie Lacourt
European Audiovisual Observatory

Following the formal proceedings initiated on 19 February 2024 to evaluate potential breaches of the Digital Services Act (DSA) by TikTok, the European Commission issued its preliminary findings on 15 May 2025, stating that TikTok appeared to be in violation of the Act. An in-depth investigation, involving the analysis of internal company documents, testing of TikTok's tools, and interviews with experts in the field, led the Commission to find that the platform had failed to fulfil its obligation to publish an advertisement repository. The Commission considers that TikTok's advertisement repository does not enable the public to comprehensively search for advertisements based on key criteria, thereby limiting the usefulness of the tool.

Transparency regarding advertisements is crucial, including for researchers and civil society to detect scam advertisements, hybrid threat campaigns, coordinated information operations, and fake advertisements, particularly in the context of elections.

When proceedings were opened in 2024, the Commission also addressed the negative effects stemming from the design of TikTok's algorithmic systems, such as 'rabbit hole effects' and behavioural addiction. Other issues raised included age assurance, TikTok's obligation to ensure a high level of privacy, safety and security for minors, and data access for researchers. The investigation into these topics continues.

Commission preliminarily finds TikTok's ad repository in breach of the Digital Services Act

https://digital-strategy.ec.europa.eu/en/news/commission-preliminarily-finds-tiktoks-ad-repository-breach-digital-services-act

European Commission publishes Communication on the AI Continent Action Plan

Eric Munch
European Audiovisual Observatory

On 9 April 2025, the European Commission published a Communication on the AI Continent Action Plan.

The Communication outlines a set of actions to achieve the goal of becoming a global leader in AI and a leading AI continent. It highlights the need for ambition, speed and foresight identified at the European Union level to shape the future of AI to enhance the block's competitiveness, its safeguards and advances of democratic values, as well as protecting its cultural diversity.

To become an AI Continent, the EU has identified a need to accelerate and intensify efforts in five key domains.

First, the EU's public AI infrastructure needs to be scaled up to allow innovators and researchers to train and fine-tune AI frontier models. This includes strengthening the network of AI factories and establishing resource-efficient Gigafactories. These Gigafactories will foster scientific collaboration around powerful and unique infrastructures, bringing together researchers, entrepreneurs and investors to tackle ambitious and forward-looking projects in areas like healthcare, biotechnology, industry, robotics and scientific discovery. Private-sector investment in cloud capacity and sustainable data centres must be facilitated and scaled up. Second, there is a need for further action to ensure more access to high-quality data for AI innovators. Third, further development of AI algorithms and their adoption in the EU's strategic sectors need to be stimulated. Fourth, the EU's already strong AI talent base needs to be reinforced, by closing existing gaps, further developing excellence in AI education, training and research, by attracting more women to AI, by raising awareness of AI among the wider society and public administration and by attracting and retaining talent from outside the EU. Fifth, there is a need to facilitate compliance with the AI Act, particularly for smaller innovators.

The Communication further details the efforts to be made in each of the aforementioned key domains, supported by the InvestAI initiative. The initiative will mobilise EUR 200 billion for investment in AI in line with the political priorities of the Competitiveness Compass.

The AI Continent Action Plan

https://digital-strategy.ec.europa.eu/en/library/ai-continent-action-plan

NATIONAL

AUSTRIA

[AT] New legislative push for independent broadcasting

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On 27 March 2025, the National Council (Nationalrat) adopted, with the votes of the ÖVP, SPÖ, and NEOS parliamentary parties, an amendment to the ORF Act (ORF-Gesetz), which was subsequently approved by the Federal Council (Bundesrat) on 10 April 2025. The legislative amendment entered into force on 1 April 2025.

The legislative amendment was adopted in response to a 2023 ruling by the Austrian Constitutional Court (Verfassungsgerichtshof), which found certain provisions concerning the composition of the ORF Foundation Council (Stiftungsrat) and the Audience Council (Publikumsrat) to be unconstitutional. The core changes include:

- Reduction of Government-Appointed Mandates: The number of members appointed to the Foundation Council by the Federal Government has been reduced from nine to six.

- Strengthening of the Audience Council: The Audience Council will henceforth delegate nine members (previously six) to the Foundation Council.

- Qualification Requirements: Appointments of government-nominated members to the Foundation Council must now consider professional qualifications and ensure balanced representation with respect to gender and disciplinary backgrounds.

- Safeguarding Institutional Independence: The premature replacement of Council members by incoming governments is no longer permissible.

The reconstituted ORF Audience Council held its inaugural meeting on 5 June, during which it delegated nine of its members to the Foundation Council. The reconstituted ORF Foundation Council will convene for its constitutive session on 17 June.

The composition of the ORF Foundation Council, the organisation’s principal governing body, is determined as follows: six members are appointed by the Federal Government, six by the parliamentary groups represented in the National Council, nine by the provincial governments (Länder), nine by the ORF Audience Council (Publikumsrat), and five by the ORF Staff Council (Betriebsrat). ORF

Foundation Council appoints the organisation’s senior management - including the Director General, programme directors, and regional directors - by simple majority vote. The next appointment round is scheduled for mid-2026. The Council also adopts the annual ORF budgets and programming schedules and takes decisions of fundamental corporate significance. In the absence of a statutory determination, the level of the ORF household contribution is set by resolution of the Foundation Council.

Currently, however, the amount is set by statute: the household broadcasting levy (Haushaltsabgabe) is fixed at €15.30 per month and will remain frozen until the end of 2029. In addition, a statutory revenue cap has been introduced, stipulating that average annual proceeds from the levy may not exceed €710 million during this period. These provisions are intended to ensure financial planning stability, but they also impose budgetary constraints on the ORF.

The ORF Audience Council (Publikumsrat) comprises 28 members. Fourteen members are directly nominated by institutional stakeholders, including the churches, chambers, the Austrian Trade Union Federation (ÖGB), the Main Association of Austrian Social Security Institutions, and the Austrian Academy of Sciences. The remaining 14 members are appointed by the Federal Government based on shortlists (lists of three nominees each) submitted by civil society organisations representing various sectors of society, including universities, the education sector, the arts and culture, sports, youth, school students, senior citizens, persons with disabilities (who must be represented by a person with a disability), parents and families, ethnic groups (Volksgruppen), tourism, motorists, consumer protection organisations, and environmental organisations. The Audience Council (Publikumsrat) is mandated to represent the interests of the viewing public vis-à-vis the ORF, its executive management, and its staff. Its principal statutory competence lies in the delegation of nine members to the ORF Foundation Council

The ORF Act prohibits individuals who are active or former politicians, party officials, or staff of ministerial cabinets or parliamentary groups from serving on the both Councils for a period of four years following the end of their political functions. Also excluded are shareholders and employees of media companies, including ORF staff—except for the five seats reserved for representatives of the ORF Staff Council. Foundation Council members perform their duties independently of their nominating bodies and are bound by law to act in the interest of the economic well-being of ORF. All members of the ORF Audience and Foundation Councils must submit declarations of eligibility that explicitly refer to the political incompatibility provisions set out in Sections 20 and 28 of the ORF Act. However, prior to the appointment of the governing bodies, several withdrawals occurred: Two members already appointed to the Audience Council by the Federal Government stepped down after their political affiliations became public. A further two political functions were revealed only after the constitutive meeting of the ORF Audience Council on 5 June and have since likewise led to resignations.

The legal consequences of a breach of incompatibility provisions remain unsettled. The ORF Act does not explicitly regulate such cases, and there is no established case law.

Although the current reform is considered a necessary step toward reinforcing the independence of the ORF, several political parties—most notably NEOS—are calling for a more comprehensive reform process. Such a process, they argue, should be conducted with public participation and address additional areas such as digital transformation and institutional transparency.

By contrast, the FPÖ has voiced criticism that the reform does not go far enough, reiterating its demand for the abolition of the household levy in favor of direct funding of the ORF through the federal budget.

In sum, the legislative amendment represents a significant step in Austrian media policy, aiming to reinforce compliance with §4 of the ORF Act, which mandates that the public broadcaster operate independently and without political or economic interference. Its long-term implications for the ORF's autonomy and funding remain subject to continuous evaluation.

Beschluss des Nationalrates: Bundesgesetz, mit dem das Bundesgesetz über den Österreichischen Rundfunk geändert wird

https://www.parlament.gv.at/dokument/XXVIII/BNR/21/fname_1675113.pdf

Resolution of the National Council: Federal Act amending the Federal Act on Austrian Broadcasting

VfGH: Teile der Bestellung und Zusammensetzung von ORF- Stiftungs- und Publikumsrat sind verfassungswidrig

https://www.vfgh.gv.at/medien/ORF_Gesetz_Gremien.php

Constitutional Court: Parts of the appointment and composition of the ORF Foundation Council and Audience Council are unconstitutional

BELGIUM

[BE] First annual activity report on DSA implementation in Belgium

Olivier Hermanns
European Audiovisual Observatory

Belgium's digital services coordinator (DSC) and other authorities responsible for the implementation of Regulation (EU) 2022/2065 (Digital Services Act – DSA) recently published their first joint report, covering the year 2024. The Belgian DSC is the *Institut belge des services postaux et des télécommunications* (Belgian postal and telecommunications authority – IBPT), which is also one of the competent authorities alongside the *Vlaamse Regulator voor de Media* (Flemish media regulator – VRM), the *Conseil supérieur de l'audiovisuel* (Higher Audiovisual Council – CSA) and the *Medienrat* (Media Council).

The year 2024 can be seen as a transitional year, since the legal framework adopted by Belgium for the implementation of the DSA did not come into force until 9 January 2025.

In accordance with Article 55 of the DSA, the report comprises a main document drawn up by the DSC and four annexes reflecting the activities of each competent authority within the meaning of Article 49(1) of the DSA. It provides information on the number of complaints received under Article 53 of the DSA, together with an overview of the action taken, the number and subject of orders to act against illegal content and orders to provide information, and the action taken in response to these orders.

In 2024, 38 complaints were received by the DSC, ten of which were deemed admissible. Three of these were filed by users established in another Member State. The other seven were lodged by users established in Belgium against providers established in Ireland and were therefore forwarded to the Irish DSC. According to the report, the number of complaints could rise sharply in the future.

In addition, the DSC received one order under Article 9 of the DSA (orders to act against illegal content) and none under Article 10 (orders to provide information). The report suggests that the low number of orders received may be due to a lack of transparent and harmonised methodology or an automated sharing system.

Belgium has jurisdiction in particular over the Telegram online platform, whose legal representative is established in Brussels and whose average monthly number of active recipients is less than 45 million. The IBPT received an order from the Estonian DSC aimed at removing Russian channels that remained available on Telegram even though they were banned under Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of

Russia’s actions destabilising the situation in Ukraine.

No trusted flaggers (within the meaning of Article 22 of the DSA) were appointed and no applications to be an accredited researcher or out-of-court dispute settlement body were received in 2024.

The report highlights the progress made in 2024 in implementing the DSA in Belgium, while also highlighting the challenges ahead. Cooperation between the competent authorities and increased awareness among stakeholders will be essential to ensure effective enforcement and a safe online environment for users.

Rapport annuel d’activités relatif à l’application du Règlement (UE) 2022/2065 sur les services numériques (DSA) en Belgique 2024

https://www.ibpt.be/consommateurs/publication/rapport-annuel-dsa-2024

2024 annual activity report on the implementation of Regulation (EU) 2022/2065 on digital services (DSA) in Belgium

https://www.ibpt.be/consommateurs/publication/rapport-annuel-dsa-2024

GERMANY

[DE] Berlin Administrative Court rejects application for interim legal protection of porn platforms against state media authority blocking order

Sandra Schmitz-Berndt
Institute of European Media Law

In two decisions dated 24 April 2025, the *Verwaltungsgericht Berlin* (Berlin Administrative Court) (case nos. VG 32 L 25/25 and VG 32 L 26/25) rejected urgent applications by Cyprus-based Aylo Freesites Ltd for interim legal protection against blocking orders relating to its German-language telemedia services 'Pornhub' and 'Youporn'. The blocking orders were based on a decision taken by the state media authorities' *Kommission für Jugendmedienschutz* (Commission for the Protection of Minors in the Media – KJM) in a longstanding investigation that has also resulted in measures to restrict access to the platforms concerned.

In 2020, the *Landesanstalt für Medien Nordrhein-Westfalen* (North Rhine-Westphalia state media authority – LfM NRW) had ruled that the applicant was in breach of the *Jugendmedienschutz-Staatsvertrag* (State Treaty on the Protection of Minors in the Media –JMStV) due to the pornographic and harmful content on its platforms, issued a complaint and prohibited future distribution of the content outside closed user groups. This ruling, which was immediately enforceable, was followed by several years of legal proceedings. Aylo Freesites Ltd.'s initial action for its annulment was unsuccessful. Its appeal against the rejection of this urgent application was also dismissed by the *Oberverwaltungsgericht Nordrhein-Westfalen* (North Rhine-Westphalia Higher Administrative Court) in the last instance. No decision has yet been made in the latest appeal proceedings. In December 2023, an application to the LfM NRW to revoke the initial ruling failed. The appeal against this and an urgent appeal are still pending. Since, despite its immediate enforceability, the ruling was subsequently ignored and the imposition of a EUR 65,000 fine against Aylo Freesites Ltd. also had no effect, the state media authorities decided to take joint action against Germany-based access providers in order to prevent the distribution of pornographic content. An urgent application filed as a preventive measure to stop a blocking order was rejected by the *Verwaltungsgericht Düsseldorf* (Düsseldorf Administrative Court) as inadmissible because the applicant could reasonably be expected to wait for any such orders to be issued and then defend itself before the courts.

In decisions dated 2 April 2024, the *Medienanstalt Berlin-Brandenburg* (Berlin-Brandenburg media authority – mabb) ordered access provider Tele Columbus AG to block access to the aforementioned pornographic telemedia content in Germany. The mabb was competent because the registered office of the access provider, which complied with the request, was in Berlin. The applicant filed an action against the mabb's decisions in October 2024, before applying for interim legal protection in January 2025. The Berlin Administrative Court dismissed both

of these applications regarding the blocked content as inadmissible. It found that the applicant did not need legal protection because it would not gain any legal or factual advantage from such protection. After all, the applicant was already obliged by the initial, immediately enforceable ruling not to distribute its telemedia offering. Even its pending action against the ruling and application for its annulment did not change its obligation to comply with it. The blocking orders against which the two current proceedings are directed were based solely on the applicant's continued refusal to comply with the initial ruling. The court also found that the application for legal protection was contrary to the principle of good faith and rules prohibiting the abuse of procedural rights. It emphasised that the continued and persistent disregard of child and youth protection provisions, to which the legal system attached paramount importance, was reprehensible. The blocking order did not go beyond the LfM NRW's original ruling, which had prohibited the dissemination of the telemedia services concerned, even though the applicant had been offered alternative measures such as age verification or removal of the disputed content. In this regard, the court held that the applicant had disregarded the original ruling for years and that its promise to obey the law in future was speculative and unsubstantiated. With its decisions, the Berlin Administrative Court made it clear that urgent legal protection should not be granted in the event of continued and persistent refusal to comply with applicable law.

The decision follows a series of other court rulings on the enforcement of child and youth protection regulations against international platforms that host pornographic and harmful content and are based in another EU member state, and shows that blocking orders can also be issued against German access providers in the event of infringements.

Link zur Pressemitteilung der Medienanstalt Berlin-Brandenburg vom 28.04.2025

https://www.mabb.de/uber-die-mabb/presse/pressemitteilungen-details/verwaltungsgericht-berlin-findet-klare-worte-gegenueber-pornoplattformen-sperrverfuegung-der-mabb-wird-gerichtlich-bestaetigt

Link to the press release of the Berlin-Brandenburg media authority of 28 April 2025

https://www.mabb.de/uber-die-mabb/presse/pressemitteilungen-details/verwaltungsgericht-berlin-findet-klare-worte-gegenueber-pornoplattformen-sperrverfuegung-der-mabb-wird-gerichtlich-bestaetigt

[DE] Federal Administrative Court: No right to information on origin of COVID-19 pandemic

Sandra Schmitz-Berndt
Institute of European Media Law

In its decision of 14 April 2025, the *Bundesverwaltungsgericht* (Federal Administrative Court – BVerwG) rejected an application from a newspaper publisher (the applicant) for information concerning the origin of the COVID-19 pandemic to be disclosed by the *Bundesnachrichtendienst* (Federal Intelligence Service – BND). By way of a temporary injunction, the applicant had submitted a list of questions to the BND, asking when the BND had informed the Federal Chancellery of its findings on the origin of the virus, as well as whether and, if so, when this information had been classified as "secret" by the intelligence services. It had also asked for information about the possible security clearance of a virologist and his access to classified information.

The court had no doubt that there was a high level of public interest in the subject of the reporting; the requested information was highly topical and had high news value, justifying the issue of an order in summary proceedings. However, the court subsequently concluded that there were grounds for refusing to disclose the requested information. Nevertheless, the court began by considering the derivation of the right to information, since such a right was not enshrined in positive law, but was a constitutional right derived from the fundamental right of freedom of the press (Art. 5(1)(2) of the *Grundgesetz* (Basic Law)) and also applied to audiovisual media. This right allowed press and other media representatives to request information from public authorities in response to sufficiently specific questions, provided that the requested information was available and its disclosure did not conflict with the interests of public bodies or private individuals. The constitutional right to information therefore required the press's interest in information to be weighed against the opposing legitimate interests in each individual case.

In the present case, the Federal Administrative Court concluded that there were legitimate grounds to withhold the information with regard to all the questions asked.

These grounds were primarily based on the need to protect the BND's functionality. The intelligence services' functionality was recognised both as limiting the parliamentary right to information and as a reason for refusing to provide information under the press laws of the individual *Bundesländer.* The same applied to the constitutional right to information. The Federal Administrative Court regularly held that the interest in keeping BND operational processes confidential took precedence over the press's interest in information. However, the passage of time could be taken into account if it was no longer possible to draw conclusions about current intelligence service operations from the requested information. In the present case, the Federal Administrative Court assessed the list of questions on the use of the BND's findings on the origin of the SARS-CoV-2

virus as a whole. In order to answer these questions, the BND would have had to comment on the alleged operational processes and their results, which would have made it possible to draw conclusions about its intelligence sources. This could have jeopardised its intelligence work. Such a leak of information could also have jeopardised the BND's future intelligence work in cooperation with foreign intelligence services.

Furthermore, the protection of Germany's foreign interests could also be an overriding factor, as most recently decided by the Federal Administrative Court in 2024 in relation to a claim for information under press law regarding the BND's assessment of the military situation in Ukraine. The maintenance of foreign relations fell within the competence of the federal government, which had a broad scope of discretion that was largely excluded from judicial review. The BND had clearly demonstrated to the court that disclosing information on the alleged BND findings could have had serious economic and political repercussions for diplomatic relations with the People's Republic of China.

Although there had therefore been no obligation to disclose the requested information, the Federal Administrative Court also specifically commented on the questions regarding the named virologist and a possible infringement of the general privacy right protected by Article 2(1) of the Basic Law. It was true that information on the virologist's security clearance and his possible job of checking the BND's findings did not concern his private life, but only his social sphere. However, the disclosure of information could have had consequences for his privacy, since he had already been harshly criticised on social media in relation to his professional activities and his advisory work for the previous German government. The Federal Administrative Court emphasised that his personal rights therefore took precedence over the interest in information and meant that the requested information did not need to be disclosed.

Link zur Entscheidung des BVerwG vom 14.04.2025

https://www.bverwg.de/140425B10VR3.25.0

Link to the Federal Administrative Court's decision of 14 April 2025

https://www.bverwg.de/140425B10VR3.25.0

[DE] Youth protection organisations report high numbers of checks and complaints regarding content harmful to minors

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Institute of European Media Law

On 28 April 2025, the *Kommission für Jugendmedienschutz* (Commission for the Protection of Minors in the Media – KJM) published its 11th activity report, which documents a significant increase in the number of cases relating to the protection of children and young people from harmful content over the past two years. Hate, incitement and disinformation are described as the dominant themes, particularly in online media. Shortly afterwards, on 13 May 2025, the *Freiwillige Selbstkontrolle Multimedia* (voluntary self-monitoring body for multimedia service providers – FSM) also published statistics on illegal telemedia content reported to its complaints office in 2024. These figures were also high, especially with regard to content harmful to minors, such as depictions of child sexual abuse. The annual report of the joint body for the protection of minors across all the *Bundesländer* (jugendschutz.net), which was published on 20 May 2025, confirms this picture and documents, among other things, a doubling of registered offences in 2024 compared with the previous year.

The KJM's 11th activity report covers the period from March 2023 to February 2025 and primarily documents the three areas of application of the *Jugendmedienschutzstaatsvertrag* (Interstate Treaty on the Protection of Minors in the Media – JMStV) that form much of the KJM's remit, as well as its further involvement in international dialogue and public relations work, for example. During the reporting period, the KJM issued 901 opinions on indexing procedures. German youth protection legislation stipulates that certain media and telemedia that seriously endanger the development of children and young people can be 'indexed', i.e. checked by the *Bundeszentrale für Kinder- und Jugendmedienschutz* (Federal Centre for the Protection of Children and Young People in the Media – BzKJ) and then, if necessary, included in the list of media harmful to minors. This results, among other things, in enforceable distribution and advertising bans or restrictions. The KJM's opinion must be obtained and taken into account as part of the BzKJ's checking process. The KJM decided in favour of indexing in the majority of cases examined during the reporting period. The main risks to minors were the depiction of sexualised violence against children, pornography, extremism and discrimination. The activity report also refers to the close cooperation with the voluntary self-regulatory bodies, which is firmly anchored in German youth media protection law and took place intensively between 2023 and 2025, as well as the procedures carried out for technical youth protection measures, which the KJM assessed positively. These included the use of facial age estimation tools with the help of facial recognition software.

However, the report on checks carried out by the KJM is particularly interesting, documenting a significant overall increase in the number of checks. In

broadcasting, however, there was a sharp decrease in the number of cases, which fell from 26 in the 2021–2023 reporting period to just six in the current period. In the online sector, i.e. telemedia, on the other hand, the number of cases increased five-fold from 99 (2021–2023) to 553. Most of these cases concerned criminal offences against minors linked to incitement to hatred (such as incitement against minorities), the use of symbols of unconstitutional organisations (such as swastikas) and Holocaust denial, i.e. mainly content from the field of political extremism. Hate, incitement and disinformation were the main problem areas during the reporting period. However, the KJM does not (only) attribute the rapid rise in cases to an actual increase in problematic content, but also and primarily to the fact that better coordinated cooperation between supervisory bodies and the use of technical tools are making supervision more effective. In particular, it mentions the KIVI tool (an AI-supported tool used as an aid for monitoring social media) and cooperation with the *Zentrale Meldestelle für strafbare Inhalte im Internet* (Central Reporting Centre for Criminal Content on the Internet). However, the number of enquiries and complaints also more than trebled, with the KJM receiving 2,212 enquiries and complaints in writing or by telephone (of which 1,780 related to the protection of minors in telemedia). Most concerned traditional websites (1,350 complaints) and tended to focus on the topics of eroticism/sex, (incitement to) violence or (incitement to) hate.

However, the FSM's statistics for 2024, which were published on 13 May 2025 by the voluntary self-regulatory body involved in telemedia supervision under the JMStV, show even higher complaint figures. With 25,536 reports, the FSM complaints office recorded the second-highest number of complaints since it was founded in 1997 (30,573 the previous year). A total of 8,529 complaints concerned pornographic content, which was the most common type of complaint. Alarmingly, however, the second most common related to depictions of child sexual abuse (8,077 cases, 46%[PG1] of complaints). The FSM highlights the phenomenon of so-called ICAP (Invite Child Abuse Pyramid) sites as particularly striking. By sharing links to depictions of abuse, users of these sites collect points in order to gain access to new content. Such links were found in large numbers on social media, among other places. The FSM immediately forwards information about such content stored on German servers to the *Bundeskriminalamt* (Federal Criminal Police Office – BKA) and informs the host provider in a notice-and-takedown procedure. Where child sexual abuse images are hosted abroad, the complaints office informs the host provider and forwards the report to the competent partner hotline in the international complaints office network, INHOPE.

Meanwhile, jugendschutz.net, which was set up by the federal government, federal states and state media authorities to protect children and young people on the Internet, in particular by monitoring telemedia services (including through an online reporting mechanism), recorded 17,630 infringements in its annual report. The fact that this is more than double the average number of cases over the previous three years (7,291 in 2021–2023) is primarily attributed to the enormous increase in cases related to sexual violence, which accounted for 89% of cases. The report records 14,567 cases of child pornography and 825 cases of youth pornography, as well as an increase in political extremism, which only

accounted for 7% of the total number of offences, but rose from 852 cases in the previous year to 1,245. In contrast, fewer cases were reported in the areas of general pornography and violence. In over 9,700 cases, jugendschutz.net notified providers and self-regulatory bodies of infringements and demanded that they be removed quickly, which led to the deletion or blocking of the content in 99% of cases. In particularly serious cases, such as those that concerned sexual violence, it involved law enforcement authorities, the KJM and the BzKJ.

[PG1]I think 46% is wrong.

Pressemitteilung und 11. Tätigkeitsbericht der KJM

https://www.kjm-online.de/presse/pressemitteilungen/kommission-fuer-jugendmedienschutz-kjm-veroeffentlicht-11-taetigkeitsbericht/

Press release and 11th activity report of the KJM

https://www.kjm-online.de/presse/pressemitteilungen/kommission-fuer-jugendmedienschutz-kjm-veroeffentlicht-11-taetigkeitsbericht/

Pressemitteilung und Statistik 2024 der FSM

https://www.fsm.de/mitteilung/beschwerdestelle-jahresstatistik-2024/

FSM press release and statistics 2024

https://www.fsm.de/mitteilung/beschwerdestelle-jahresstatistik-2024/

Jahresbericht 2024 von jugendschutz.net

https://www.jugendschutz.net/fileadmin/daten/publikationen/jahresberichte/jahresbericht_2024.pdf

jugendschutz.net annual report 2024

https://www.jugendschutz.net/fileadmin/daten/publikationen/jahresberichte/jahresbericht_2024.pdf

SPAIN

[ES] National regulator assesses the level of compliance with European works quotas and prominence

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

New data has been published on how audiovisual media services fulfil obligations on European works (quotas and prominence) in Spain. The regulator, the CNMC (*Comisión Nacional de los Mercados y la Competencia*), has released the monitoring report for the 2022-2023 period. As the authority responsible for overseeing compliance, the CNMC assesses national requirements under the Audiovisual Media Services Directive (AVMSD). The report covers a transitional period in Spanish regulation: it reflects both the application of the earlier General Audiovisual Communication Law of 2010 and the current version, which entered into force in July 2022. The 2022 law maintained existing quotas: 51% of annual broadcasting time for linear services must be reserved for European works, including specific shares for works in the languages of Spain, from independent producers, and produced within the past five years. For catalogue-based on-demand services, the law adds an obligation of at least 30% of the catalogue consisting of European works, half of which must be available in Spanish and/or co-official languages (e.g. Catalan, Basque, Galician, Valencian), reserving a percentage for each of them. In addition, these works must be given due prominence in the services' user interface. In relation to the latter obligation, the report highlights robust compliance among domestic providers. Video-on-demand services such as RTVE Play, Mitele and Atresplayer not only met the 30% minimum share of European works required in catalogues but often exceeded it significantly – some reporting levels above 90%. Many also fulfilled the new requirements to include works in Spain's co-official languages. By contrast, several large transnational services operating in Spain under the jurisdiction of other EU member states – such as Netflix, Disney+, Prime Video and HBO Max – submitted only partial data. While nominally meeting the 30% quota under the AVMSD, these services showed limited efforts to ensure prominence, and few had dedicated tools for surfacing European productions. It should be noted that the CNMC included data from these international providers for comparative purposes, even though they are not subject to Spanish jurisdiction. As a result, while they are bound to comply with the minimum 30% quota for European works, the conditions and deadlines for implementation are defined by the transposing legislation of their country of establishment. This jurisdictional limitation poses challenges for Spanish authorities in ensuring consistent application of prominence obligations across the national market. Quota compliance remains strong overall, but the CNMC flagged persistent challenges around the discoverability of European content. The prominence mechanisms checked include the percentage of European works on the homepage, the percentage of works in which the country of origin is properly identified, whether the user is

allowed to search by the nationality of the work, or if sections dedicated to European works exist. While national services are generally in compliance, greater scrutiny and cooperation are needed to ensure transnational services meet not just the letter but the spirit of European audiovisual legislation.

Informe COE/DTSA/074/24 sobre la Cuota de Obra Europea (2022-2023)

https://www.cnmc.es/sites/default/files/5921717.pdf

Report COE/DTSA/074/24 on the European Work Quota (2022-2023)

FRANCE

[FR] EUR 300,000 fine imposed by ARCOM on C8 halved

Amélie Blocman
Légipresse

C8 lodged an appeal with the *Conseil d'Etat* (Council of State) against the EUR 300,000 fine imposed on it by the *Autorité de régulation de la communication audiovisuelle et numérique* (the French audiovisual regulator – ARCOM) in respect of an episode of the programme "Touche pas à mon poste" broadcast on 5 October 2022. The host, Cyril Hanouna, had made offensive remarks about the Mayor of Paris, who had not been present in the studio at the time, in response to the decision not to install giant screens for the World Cup in Qatar. In particular, he had asked her to "keep her mouth shut" and "hunt rats at night instead of spouting rubbish". The presenter had also said she belonged to a "band of morons" and told her to "stop pissing us about". ARCOM considered that, by broadcasting these remarks, the channel had breached its obligations under its licence to respect the rights of individuals with regard to their honour and reputation, and to control its programmes.

The *Conseil d'Etat* noted that ARCOM had been right to consider that the host's comments constituted attacks on the name of not only the office of Mayor of Paris but also the current incumbent, Anne Hidalgo. Since the regulator had not based its decision on Article 33 of the Law of 29 July 1881, which punished insults in the press or by any other means of communication, the applicant company could not claim that ARCOM had lacked jurisdiction on the grounds that it had implicitly considered the comments insulting.

In addition, the sequence had not been humorous in nature, but had been characterised by the repetition of aggressive and coarse language, the accumulation of which made it violent, even hateful, towards the mayor, damaging her image and honour. By broadcasting it, C8 had therefore failed to fulfil its obligations under its licence. Furthermore, these comments had been neither tempered nor toned down by the programme's other participants, demonstrating a lack of control over programme content. In these circumstances, ARCOM's decision had not infringed Article 10 of the European Convention on Human Rights, which protected freedom of expression. The argument that the contested penalty was contrary to the principle of non-accumulation of sanctions was also rejected.

The *Conseil d'Etat* pointed out that under the terms of Article 42-2 of the Act of 30 September 1986, "The amount of the financial penalty must be commensurate with the seriousness of the breaches committed and the benefits derived from the breach, but may not exceed 3% of the turnover excluding tax in the last complete financial year, calculated over a period of twelve months. This maximum is increased to 5% in the event of a further infringement of the same obligation. (...) Where the infringement constitutes a criminal offence, the amount of the financial

penalty may not exceed that provided for the criminal fine”. When challenging the proportionality of the fine, the applicant company could not usefully argue that it had exceeded the EUR 12,000 ceiling set under Article 33 of the Law of 29 July 1881 for the punishment of insults. However, the *Conseil d’Etat* concluded that, given the content and circumstances of the breaches in question, the EUR 300,000 fine imposed on C8 had been excessive and should be halved to EUR 150,000.

Conseil d'État, 6 mai 2025, n° 476367, Société C8

https://www.conseil-etat.fr/fr/arianeweb/CE/decision/2025-05-06/476367

Conseil d'Etat, 6 May 2025, no. 476367 - C8

https://www.conseil-etat.fr/fr/arianeweb/CE/decision/2025-05-06/476367

[FR] Launch of consultation between developers of generative AI models and cultural rights holders

Amélie Blocman
Légipresse

On 2 June, Rachida Dati, the French minister of culture, and Clara Chappaz, the French minister for artificial intelligence and digital technology, chaired the launch meeting of the consultation cycle between representatives of generative AI model developers and representatives of rights holders in the cultural and media sectors.

Open until November, this consultation cycle, which will be co-piloted by Marc Bourreau, professor of economics, and Maxime Boutron, counsel at the *Conseil d'État* (Council of State), is designed to promote mutual understanding of the respective challenges for these two ecosystems, highlight common interests and identify best practices, reconciling respect for copyright and related rights with access to quality data for the development of generative AI models.

This cycle will be structured around a number of meetings, the purpose of which will be to deepen the discussions around the exploitation of data from the cultural and media sectors, identify best practices for negotiating licensing agreements (a number of players have paved the way by signing initial agreements, an approach that those involved think should be encouraged), study the feasibility of the various possible remuneration arrangements and identify ways of improving opt-out mechanisms so they are more visible and more readily taken into account by third parties.

However, the ministers added that the consultation was not intended to put forward new proposals on subjects covered by European negotiations and work, such as the relationship between business secrecy and the transparency obligation set out in the AI Act, or the single opt-out register.

The stakeholders involved in the consultation were invited to draw on all the ongoing discussions, in particular the work of the *Conseil Supérieur de la Propriété Littéraire et Artistique* (Higher Council for Literary and Artistic Property – CSPLA) on the remuneration of cultural content used by AI systems, the final reports of which are expected in early summer.

Ministère de la Culture, 2 juin 2025

https://www.culture.gouv.fr/fr/presse/communiques-de-presse/lancement-de-la-concertation-entre-les-developpeurs-de-modeles-d-ia-generative-et-les-ayants-droits-culturels

Ministry of Culture, 2 June 2025

https://www.culture.gouv.fr/fr/presse/communiques-de-presse/lancement-de-la-concertation-entre-les-developpeurs-de-modeles-d-ia-generative-et-les-ayants-droits-culturels

IRELAND

[IE] Irish media commission de-designates Reddit as a video-sharing platform service under its jurisdiction

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On 23 May 2025, the Irish national media regulatory authority, *Coimisiún na Meán* (the Media Commission) de-designated Reddit as a video-sharing platform (VSP) service. The de-designation does not come as an indication that the initial designation of the service was incorrect, but due to the fact that service provider of Reddit is no longer under the jurisdiction of Ireland, and therefore not subject to the Media Commission's online safety codes.

Reddit had been designated as a VSP services at the end of 2023, when the Media Commission issued a series of notices to services established in Ireland that it estimated fell under the VSP designation (IRIS 2024-7:1/4).

On 15 January 2024, Reddit had launched High Court proceedings to challenge its designation as a VSP service, which sided with the Media Commission on 20 June 2024, confirming the service's designation.

The High Court had indicated that Reddit's arguments with regard to jurisdiction were based on a misunderstanding of the framework governing the determination of jurisdiction under the OSMR Act, which provides that the Media Commission has jurisdiction over Ireland-based subsidiary undertakings of VSP service providers not established in the EU, as is the case with Reddit. The judge further indicated that the provision of links to videos hosted on other platforms could still be considered user-generated videos within the meaning of the revised AVMS Directive. Given the presence of "native" video content hosted directly on Reddit, it was not necessary to further assess if the provision of links was sufficient to designate Reddit as a VSP.

The Media Commission notes that Reddit's service to users in the EU is now provided by a Dutch entity, which would make it fall under the jurisdiction of the Netherlands and its national media regulatory authority, the *Commissariaat voor de Media*.

Reddit de-designated as Video-Sharing Platform Service

https://www.cnam.ie/reddit-de-designated-as-video-sharing-platform-service/

ITALY

[IT] AGCOM adopts new age verification mechanisms for websites and VSPs disseminating adult content

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Portolano Cavallo

On 12 May 2025, the Italian Communications Authority (AGCOM) adopted the new technical and procedural measures that website operators and video-sharing platforms which disseminate adult content in Italy must adopt to verify the age of users (Regulation).

The Regulation was adopted pursuant to Article 13-bis of Law Decree No. 123 of 15 September 2023 which provides that “minors are prohibited from accessing pornographic content, as it undermines their dignity and compromises their physical and mental well-being, constituting a public health issue”. That same provision then expressly required AGCOM to identify the technical and procedural measures needed for age verification mechanisms.

It is worth noting that the adoption of the Regulation was preceded by a public consultation launched by AGCOM on 6 March 2024. Various operators, including social media platforms, web operators and social institutions participated in the public consultation and contributed to shaping the final text of the Regulation.

With reference to the scope of application of the Regulation, it is interesting to note that it also applies to website operators and video-sharing platforms that disseminate adult content (images and videos) in Italy, whether established in Italy or, under certain conditions, in another member state.

In particular, the Regulation identifies specific criteria (only one of which needs to be met), based on which a given provider established in another member state is deemed to disseminate content aimed at the Italian public. Such conditions include, by way of example, the prevailing use of the Italian language within the online service or the fact that the online service reaches “a significant average number of unique monthly users in Italy”.

Of additional relevance, as specified in the same Regulation, is the fact that all operators falling within its scope of application are identified in a list collected and updated by AGCOM and communicated by the latter to the European Commission.

Delibera 96/25/CONS recante “Adozione delle modalità tecniche e di processo per l'accertamento della maggiore età degli utenti in attuazione della legge 13 novembre 2023, n. 159”.

https://www.agcom.it/sites/default/files/provvedimenti/delibera/2025/delibera%2096-25-CONS.pdf

AGCOM Resolution No. 96/25/CONS laying down the "Adoption of technical and procedural methods for verifying the age of users in accordance with Law No. 159 of 13 November 2023".

https://www.agcom.it/sites/default/files/provvedimenti/delibera/2025/delibera%2096-25-CONS.pdf

[IT] AGCOM launches new public consultation on the prominence of audiovisual and radio media services of general interest

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Portolano Cavallo

On 13 May 2025, the Italian Communications Authority (AGCOM) launched a public consultation aimed at reviewing the guidelines on the prominence of audiovisual and radio media services of general interest (SGIs).

It it worth remembering that the Italian AVMS Code provides that adequate prominence must be given to audiovisual and radio media services of general interest provided through any platform. The Italian AVMS Code then assigns to AGCOM the task of defining, by means of specific guidelines, the criteria for qualifying a service as a service of general interest, as well as the methods and criteria that various operators (e.g. manufacturers of equipment capable of receiving radio or television signals) must conform to in order to ensure compliance with the provisions on prominence.

AGCOM enacted the provision in 2024. However, following its initial implementation, AGCOM identified the need to review the guidelines. Indeed, AGCOM noted that, based on the guidelines adopted in 2024, more than 700 commercial services could be qualified as SGIs whose prominence had to be ensured.

In light of such an intricate framework, AGCOM called for the rationalisation of the way in which the SGIs present themselves with the aim of promoting their accessibility and visibility to users. In a nutshell, compared to the current guidelines, through public consultation, AGCOM proposes:

(i) to re-shape the range of audiovisual and radio media services that can be defined as being of “general interest”;

(ii) to reduce the portion of space on the homepage used to give prominence to SGIs;

(iii) that Smart-TVs, DTT (Digital terrestrial television) and satellite decoders, dongles, set-top boxes, car radios, in-car infotainment and other devices allowing access to SGIs are required to comply with prominence obligations, but the following devices are expressly excluded: smartphones, tablets, personal computers and games consoles;

(iv) that the SGI apps should not necessarily be pre-installed on devices; and

(v) that the guidelines should only apply to those devices commercialised six months or more after the publication of the list of SGIs.

It is worth noting that the guidelines expressly state that users may at any time customise the home page and that commercial agreements are allowed between audiovisual media service providers and device manufacturers in order to secure a prominent position on the home page.

Operators interested in participating in the public consultation must submit their contributions by 12 June 2025.

Delibera 110/25/CONS recante "Consultazione pubblica sulla revisione delle linee guida in materia di prominence dei servizi di media audiovisivi e radiofonici di interesse generale".

https://www.agcom.it/sites/default/files/provvedimenti/delibera/2025/110_25_CONS.pdf.

AGCOM Resolution No. 110/25/CONS establishing the "Public consultation on the revision of guidelines on the prominence of audiovisual and radio services of general interest".

https://www.agcom.it/sites/default/files/provvedimenti/delibera/2025/110_25_CONS.pdf.

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