New rules on the designation of local broadcasters

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EDITORIAL

According to Greek philosopher Heraclitus, the only constant in life is change. And, in the words of Charles Dickens, change begets change.

In the audiovisual sector, technological and market developments are a constant that usually beget regulatory intervention, as this newsletter amply shows. Just to mention three examples: The European Commission has presented a set of initiatives aimed at making Gigabit connectivity available to all citizens and businesses across the European Union by 2030. In Switzerland, the Swiss Media Commission is calling for the restructuring of media support in Switzerland in view of the radical changes to media production, distribution and usage in the digital era. In Germany, the Broadcasting Commission has adopted a decision on public broadcasting reforms in Germany, in which it laid down some key elements of the necessary overhaul of rules governing German public broadcasters.

Beyond the introduction of new rules, necessary change is effected by putting those rules into practice, like in Italy, where the board of the Italian Communications Authority has agreed for the first time to fine a social media platform. Taking up new responsibilities is also part of change, like in the UK, where Ofcom has published a call for evidence regarding the protection of children which will help in the preparation of codes of practice and guidance as part of Ofcom’s future role as online safety regulator.

Change is certainly an important part of life. There is something, however, that remains unchanged, and that is our commitment to bring you these, and many other interesting news items in our monthly newsletter.

Have a nice read!

Maja Cappello, Editor

European Audiovisual Observatory

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COUNCIL OF EUROPE

FRANCE

European Court of Human Rights rules on C8 (Canal 8) v. France

Amélie Blocman
Légipresse

The European Court of Human Rights has recently dealt with two applications concerning two sanctions imposed against the television channel C8 by the *Conseil supérieur de l'audiovisuel* (French audiovisual regulator — CSA) and confirmed by the *Conseil d'État*, following content broadcast in the programme "*Touche pas à mon poste*". In the first of the disputed clips, broadcast on 7 December 2016, the programme's host had been shown playing a game with one of its female pundits in which, with her eyes closed, her hand had been placed on part of his body and she had been asked to identify the part of his anatomy. After placing her hand on his chest and arm, he had placed it on his trousers, over his groin. As a result, the CSA had suspended all advertising during and for the 15 minutes before and after the programme for two weeks.

The second clip, broadcast on 18 May 2017, had shown the same presenter playing a joke in which he had spoken on the telephone to people replying to a fake, sexually suggestive advertisement that he had posted under a false identity on a dating website, and talked to them in a manner that stereotyped homosexual people, using personal and, in some cases, sexually explicit language. The CSA had fined the channel EUR 3 Million for this.

The applicant, French company C8, had complained to the Court about a violation of Article 10 of the European Convention on Human Rights.

In its assessment of the need for interference, the Court noted firstly that the video sequences in question had been purely entertainment-oriented and had not included any message, information, opinions or ideas nor contributed to a debate on a matter of public interest. Broadcast on a commercial television channel, they had been designed to attract the widest possible audience in order to generate advertising income. The respondent state had therefore had a wide margin of appreciation in deciding whether it was necessary to sanction the applicant company in order to protect the rights of others. The applicant company had enjoyed procedural safeguards before both the CSA and the *Conseil d'Etat*. The right to humour did not mean that anything was permitted, and anyone who claimed the benefit of freedom of expression also took on "duties and responsibilities".

The Court saw no reason to depart from the assessment of the CSA and the *Conseil d'État*, which had been asked to set aside the sanctions, since it had been based on relevant and sufficient grounds.

The Court noted that the CSA's decision to sanction the applicant had been based on the fact that the company, through "*Touche pas à mon poste*", had breached its regulatory obligations on a number of previous occasions and had disregarded subsequent warnings and enforcement notices. In addition, the programme was particularly popular with younger viewers, so much so that a considerable number of minors and young adults had thus been exposed to material which trivialised damaging portrayals of women and homosexual people.

Finally, turning to the severity of the sanctions imposed, the Court noted that they should be seen in the light of the applicant company's annual turnover (the parties disagreed on the size of the losses caused to the applicant by the first sanction. If, as the applicant claimed, it had lost EUR 13 Million, the Court noted that such a sum "only represents around 8.7% of its 2016 turnover" for 2016, while the second sanction represented 2%). In the Court's opinion, the financial nature of the sanctions was particularly apt, in this case, to the strictly commercial purpose of the conduct which they punished, and their severity had to be put into perspective by considering the scale of sanctions in place under the Law of 30 September 1986. Indeed, under these provisions, the CSA could have taken even harsher action by suspending, shortening or revoking the company's broadcasting licence.

In conclusion, since the footage complained of had not contained any information, opinions or ideas within the meaning of Article 10 of the Convention, had not in any way contributed to a debate on a matter of public interest and had been not only detrimental to the image of women but also stigmatising of homosexual people and an invasion of private life, the Court came to the conclusion – having regard also to the impact of the footage (on younger viewers in particular) and to the applicant company's repeated regulatory breaches, the procedural safeguards which it had enjoyed in the domestic order and the wide margin of appreciation to be afforded to the respondent state – that the sanctions imposed on the applicant company on 7 June and 26 July 2017 had not infringed its right to freedom of expression.

On the same day, ARCOM fined the C8 channel EUR 3.5 Million for failing to control the content of its programmes and violating its obligation to respect human rights following comments made by the same presenter during the same programme.

CEDH 9 février 2023, no 58951/18, et 1308/19, Affaire C8

https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-222892%22]}

ECHR, 9 February 2023, application nos. 58951/18 and 1308/19, C8 case

LITHUANIA

European Court of Human Rights (Grand Chamber): Macatė v. Lithuania

Dirk Voorhoof
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The Grand Chamber of the European Court of Human Rights (ECtHR) has delivered a judgment concerning restrictions on literature about same-sex relationships written specifically for children. The ECtHR found that measures taken against a children's book of fairy tales had intended to limit children's access to information depicting same-sex relationships as essentially equivalent to different-sex relationships. According to the ECtHR, the fairy tales had not contained sexually explicit content, nor had they promoted same-sex families over others. On the contrary, the fairy tales in the book had advocated respect for, and acceptance of, all members of society in this fundamental aspect of their lives, namely a committed relationship. The Grand Chamber of the ECtHR found, unanimously, that restricting children's access to such information had not pursued any aim that could be accepted as legitimate to justify the interference with the author's right to freedom of expression and information as guaranteed under Article 10 of the European Convention on Human Rights (ECHR).

The case of Macatė v. Lithuania concerned a children's book of six fairy tales, two of which depicted marriage between persons of the same sex. Following its publication, the distribution of the book was temporarily suspended, and was later resumed after the book had been marked with a warning label stating that its contents could be harmful to children under the age of 14. The author of the book complained about the measures imposed in respect of the book, relying on Article 10 ECHR in conjunction with Article 14 (prohibition of discrimination). After long and multiple judicial proceedings at domestic level which were finally unsuccessful, the author lodged a complaint with the ECtHR. The author subsequently died and her mother and legal heir expressed the wish to pursue the proceedings on her behalf. Jurisdiction was relinquished in favour of the Grand Chamber, as the case was considered to raise serious questions affecting the interpretation of the Convention. Written comments were submitted as third-party interventions by the Háttér Society and jointly by Professor David Kaye, the European Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA-Europe) and ARTICLE 19. The judgment contains 30 pages of information about domestic law and practice in Lithuania, international material from the Council of Europe, the European Union and the United Nations and comparative law and practice.

First the Government submitted that the author had not suffered a significant disadvantage and that the application should therefore be rejected under Article 35 § 3 (b) ECHR. The Government contended that the impugned measures had

not precluded the author from disseminating her ideas or participating in public debate. In particular, the book had not been banned from distribution (only temporarily suspended by the first publisher) and the warning labels were only advisory, as children's parents, guardians or teachers could simply disregard them. Moreover, a second edition had been published and distributed without any restrictions. The ECtHR found that this objection could not be upheld, as the case concerned serious questions regarding respect for human rights as defined in the ECHR.

Next, the ECtHR explained why both the temporary suspension of the distribution of the book by the Lithuanian University of Educational Sciences, and its subsequent marking with warning labels, while the impugned measures were examined and endorsed by the domestic courts, were to be considered as interferences by public authorities with the right to freedom of expression and information, resulting directly from the domestic legislation as provided in the Minors Protection Act. The ECtHR observed that the distribution of the book had been suspended for one year, during which time it was recalled from bookshops. The fact that the book remained available in public libraries and, for some time, online, did not prevent that recalling the book from bookshops had certainly reduced its availability to readers. The ECtHR also explained why the warning labels, although only having an advisory function, were likely to have dissuaded a significant number of parents and guardians from allowing children under the age of 14 to read the book, especially in the light of the persistence of stereotypical attitudes, prejudice, hostility and discrimination against the LGBTI community in Lithuania. Therefore, the ECtHR considered that the marking of the book as being harmful to the age group for which it was intended affected the author's ability to freely impart her ideas. The restrictions imposed on a children's book depicting various minorities, in particular its labelling as harmful to minors under the age of 14, also affected the author's reputation and were liable to discourage her and other authors from publishing similar literature, thereby creating a chilling effect.

After accepting that the measures against the children's book had a legal basis within the meaning of Article 10 § 2 ECHR, the ECtHR focussed on the question whether the measures based on the Minors Protection Act had had a legitimate aim. As regards, firstly, the allegedly sexually explicit nature of one of the two fairy tales, the Government referred to the findings of the Vilnius Regional Court, which had held that the passage about the princess and the shoemaker's daughter sleeping in each other's arms on the night after their wedding depicted carnal love too openly for children. The ECtHR however was unable to see how the passage in question could have been regarded as sexually explicit. Therefore the ECtHR could not subscribe to the Government's argument that the aim of the impugned measures was to protect children from information which was sexually explicit. The ECtHR also considered that the Government's allegation that the author was seeking to "insult", "degrade" or "belittle" different-sex relationships found no support in the text of the book. It observed that the children's book contained characters of diverse ethnicities, with different levels of physical and mental ability, living in various social and material circumstances, who were all depicted as caring and deserving of love. The ECtHR was of the opinion that the

aim of the measures taken against the author's book was to bar children from information depicting same-sex relationships as being essentially equivalent to different-sex relationships.

The Grand Chamber fully endorsed the finding in Bayev a.o. v. Russia (20 June 2017) in which the third section of the Court had held that a legislative ban on "promotion of homosexuality or non-traditional sexual relations" among minors did not serve to advance the legitimate aims of protection of morals, health or the rights of others, and that by adopting such laws the authorities had reinforced stigma and prejudice and encouraged homophobia, which was incompatible with the notions of equality, pluralism and tolerance inherent in a democratic society. It observed however that the present case was the first one in which the ECtHR had been invited to assess restrictions imposed on literature about same-sex relationships aimed directly at children and written in a style and language easily accessible to them. On the basis of a more extensive analysis of the content of the book and the context of the case and being aware that in all decisions concerning children, directly or indirectly, their best interests were a primary consideration, the ECtHR found that the measures against the children's book had had no legitimate aim. According to the ECtHR there is no scientific evidence or sociological data suggesting that the mere mention of homosexuality, or open public debate about sexual minorities' social status, would adversely affect children. In a similar vein, various international bodies, such as PACE, the Venice Commission, ECRI, the European Parliament and the UN Independent Expert on sexual orientation and gender identity, had criticised laws which sought to restrict children's access to information about different sexual orientations, on the grounds that there was no scientific evidence that such information, when presented in an objective and age-appropriate way, might cause any harm to children. On the contrary, the bodies in question had emphasised that it was the lack of such information and the continuing stigmatisation of LGBTI persons in society which was harmful to children. Moreover, the ECtHR observed that the laws of a significant number of Council of Europe member States either explicitly included teaching about same-sex relationships in the school curriculum, or contained provisions on ensuring respect for diversity and prohibition of discrimination on the grounds of sexual orientation in teaching. Legal provisions which explicitly restrict minors' access to information about homosexuality or same-sex relationships were present in only one member State (Hungary).

Finally the ECtHR noted that it had repeatedly held that pluralism, tolerance and broadmindedness were the hallmarks of a democratic society. It made clear that equal and mutual respect for persons of different sexual orientations was inherent in the whole fabric of the ECHR. To depict, as the author had in her writings, committed relationships between persons of the same sex as being essentially equivalent to those between persons of different sex indeed advocated respect for and acceptance of all members of a given society in that fundamental aspect of their lives. Therefore the ECtHR found that where restrictions on children's access to information about same-sex relationships were based solely on considerations of sexual orientation – that was to say, where there was no basis in any other respect to consider such information to be inappropriate or harmful to children's growth and development – they did not pursue any aim that could be

accepted as legitimate for the purposes of Article 10 § 2 ECHR, and were therefore incompatible with Article 10. On those grounds the Grand Chamber concluded, unanimously, that the measures taken against the author's book had sought to limit children's access to information depicting same-sex relationships as essentially equivalent to different-sex relationships, and that labelling such information as harmful had not pursued a legitimate aim under Article 10 § 2 ECHR. There had accordingly been a violation of Article 10 ECHR. A majority of twelve to five found that there was no need to examine separately the author's complaint under Article 14 ECHR, taken in conjunction with Article 10.

Judgment by the European Court of Human Rights, Grand Chamber, the case of Macatė v. Lithuania, Application no. 61435/19, 23 January 2023

https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-222072%22]}

RUSSIAN FEDERATION

European Court of Human Rights: OOO Mediafokus v. Russia

Dirk Voorhoof
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In a judgment of 17 January 2023, the European Court of Human Rights (ECtHR) found that the wholesale blocking of access to a new website of an online media company on the grounds that its content "mirrored" the proscribed content on its former website amounted to a violation of the right to freedom of expression and information as guaranteed under Article 10 of the European Convention on Human Rights (ECHR). Although judgments of the ECtHR have minimal impact on the practices of the Russian authorities, the judgment in OOO Mediafokus is also relevant for other member states of the ECHR, as the Court's judgment provides for extra guarantees to protect freedom of expression in the digital environment (see also IRIS 2020-8/11). A blocking order referring to the entire domain name of a website only, rather than identified specific problematic webpages is to be considered as an arbitrary interference by the authorities, while a blocking order of a new website simply because it "mirrors" the content of another (blocked) website at least requires a clear and foreseeable legal basis. The ECtHR also emphasised that authorities had to give website owners an opportunity to remove the offending content before a blocking decision took effect.

The applicant company, OOO Mediafokus, is the owner of the online magazine Ezhednevnyy Zhurnal at www.ej.ru. Since March 2004 it has been publishing research and analysis by political scientists, economists and journalists, many of whom have been critical of the Russian authorities. In 2014 the Prosecutor General requested the telecoms regulator Roskomnadzor to block access to the company's website and its "mirrors" once they were identified. In 2015, OOO Mediafokus created a new website at www.ej2015.ru; the content of the original website was not moved to the new website. In 2017, Roskomnadzor informed the company's web hosting service provider that access to the website www.ej2015.ru had been restricted on the basis of the Prosecutor General's blocking request of March 2014 as the new website was a "mirror" of the original one and contained "calls for extremist activities". As the URL addresses of pages containing offending material were not specified, OOO Mediafokus asked Roskomnadzor to identify the web pages containing "calls for extremist activities". Roskomnadzor replied that they had detected content on the new website which was "identical" to the content of the old website and fell within the scope of the Prosecutor General's blocking request of March 2014, but gave no details as to the nature or location of the offending content. OOO Mediafokus' judicial complaints were dismissed, first by the Taganskiy District Court in Moscow, and subsequently by the Moscow City Court. Both the Moscow City Court and the Supreme Court of Russia, respectively, refused OOO Mediafokus to lodge

a cassation appeal.

The ECtHR disagreed with the findings of the Russian authorities. First, the ECtHR noted that the domestic law allowed the authorities to block websites featuring specifically listed offending content, but also enabled the website owners to have access restored once the offending content had been taken down. However, for that possibility to be realistic, the offending content had to be clearly identified, otherwise the owner of the website would not know which content had to be removed in order for access to be restored. The ECtHR observed that the 2014 request by the Public Prosecutor to block the new website had not refered to any allegedly illegal content that had only appeared in 2015 on the new website. Accordingly, it had not complied with the legal requirement that the blocking measure must specify the location of the web page permitting illegal content to be identified.

Furthermore, in so far as the blocking measure targeting the new website relied on the reference to “mirror” websites in the text of the 2014 request, the ECtHR observed that the term “mirror website” had not been defined in any legislation. Hence, the domestic law did not provide for the possibility of blocking websites simply for being “mirrors” of another, and there were no legal criteria for establishing that one website was another's "mirror". In the absence of such criteria, the domestic courts’ finding that the new website should be blocked solely on the basis that it shared a similar name and the same owner with the previously blocked one did not have a clear and foreseeable legal basis.

Finally, the ECtHR refered to previous cases against the Russian Federation finding that Russian law contained no procedural safeguards capable of protecting website owners from arbitrary interference. Russian law did not provide for any form of participation in the blocking proceedings and did not give them an opportunity to remove the offending content before the blocking decision took effect. Nor did it require the authorities to assess the impact of the blocking measure, to justify the necessity and proportionality of the interference with the freedom of expression online, and to ascertain that the blocking measure strictly targeted the unlawful content and had no arbitrary or excessive effects, including those arising from blocking access to the entire website (IRIS 2020-8/11). It followed that the blocking order was not “prescribed by law” because the OOO Mediafokus’ new website had been blocked on the basis of an arbitrarily applied concept of “mirror” websites and without the identification of any offending content. There had therefore been a violation of Article 10 ECHR, without the need for the ECtHR to examine whether the interference had also pursued a legitimate aim which was “necessary in a democratic society”.

Judgment by the European Court of Human Rights, Third Section (sitting as a Committee) in the case of OOO Mediafokus v. Russia, Application no. 55496/19, 17 January 2023

https://hudoc.echr.coe.int/eng?i=001-222319

EUROPEAN UNION

EU: COUNCIL OF THE EU

EU bans Russian Arabic services

Amélie Lacourt
European Audiovisual Observatory

On 25 February 2023, the Council of the European Union adopted its tenth package of sanctions against Russia since the beginning of the war against Ukraine.

This package contains a number of additional measures and sanctions, including:

- the addition of 87 individuals and 34 entities to the sanction list, who, in support of the war, spread propaganda, deliver drones used by Russia in the war or publish disinformation,

- tighter EU export bans and restrictions on sensitive dual-use and advanced technologies that contribute to Russia's military capabilities and technological enhancement,

- the freezing of Russian banks assets.

In particular, the EU imposed an additional ban on two Russian media outlets, namely RT (Russia Today) and Sputnik services broadcast in Arabic. According to the Commission, both outlets are state-owned and/or under the Kremlin's influence and disseminate disinformation and war propaganda of the sanctioned regime, therefore aiding Russia's war efforts. This decision follows the previous suspension of Russian media outlets on 1 March 2022 and 6 June 2022.

According to Lyngsat, a number of satellites recently ceased to broadcast RT’s Arabic channel.

Official Journal of the European Union, L 059I, 25 February 2023

https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L:2023:059I:TOC

EU: EUROPEAN COMMISSION

European Commission provides non-binding guidance within the scope of the Digital Services Act for online platforms on publication of user numbers in the European Union

Justine Radel-Cormann
European Audiovisual Observatory

On 1 February 2023, the European Commission (EC) published non-binding guidance on the requirements to publish user numbers in accordance with the Digital Services Act (DSA) provisions: “Questions and Answers on identification and counting of active recipients of the service under the Digital Services Act” (DSA).

The DSA is of importance for the audiovisual industry since it will catch some of the video-sharing platforms present in the European territory, either as online platforms or as "very large online platforms" (VLOPs) (the latter categorisation leading to the application of different obligations).

The DSA entered into force on 16 November 2022, and will apply from 17 February 2024. The non-binding guidance aims to help with the calculation of active users, which is required by two of the DSA Articles:

- Article 24(2) requires online platforms to publish on their website, by 17 February 2023, information on the average monthly active recipients of their services in the Union, and at least once every six months thereafter.

- Article 33 sets criteria to define VLOPs and “very large online search engines" (VLOSEs). VLOPs and VLOSEs shall comply with additional obligations, when they have a number of average monthly active recipients of the service in the Union equal to or higher than 45 million. According to the EU, they pose a great risk in the dissemination of illegal content and societal harms.

The Q&A document lists different questions the EC has received in the last few months dealing with the above-mentioned Articles, and gives non-binding answers. Most of the questions and answers deal with the understanding of “active recipient”, for which Recital 77 of the DSA already provides for some guidance:

- When does a recipient of an online platform service need to be considered “an active recipient”?

- Do users that click on a link by mistake or that make superfluous visits to the platforms need to be counted as “active recipients” of the service?

Regarding the first question, recipients engaging with the online platform in the previous six months are active recipients. Engagement means the recipient is exposed to content disseminated on the online platform (i.e., by viewing or listening to content), that being said, it can include different types of recipients: consumers, business users and traders.

For the second question, Recital 77 of the DSA provides an answer: "the concept of active recipient of the service should not include incidental use of the service by recipients of other providers of intermediary services that indirectly make available information hosted by the provider of online platforms through linking or indexing by a provider of online search engine".

More detailed information dealing with the methodology for calculating the number of average monthly active recipients of the VLOPs and VLOSEs may be provided in the future by the EC thanks to delegated acts (Article 33(3) of the DSA).

European Commission, Question and Answers on identification and counting of active recipients of the service under the DSA

https://ec.europa.eu/newsroom/dae/redirection/document/93451

Regulation (EU) 2022/2065 of 19 October 2022 on a Single Market for Digital Services (Digital Services Act)

https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32022R2065&qid=1675759669913

EU: EUROPEAN COMMISSION

European Commission Proposals on Gigabit connectivity

Amélie Lacourt
European Audiovisual Observatory

In line with the Digital Decade Policy programme, the European Commission presented, on 23 February 2023, a set of initiatives aimed at making Gigabit connectivity available to all citizens and businesses across the European Union by 2030.

Among the initiatives, a proposal for a “Gigabit Infrastructure Act”, which would replace the Broadband Cost Reduction Directive, from 2014. The proposal addresses the costs and administrative burdens associated with the deployment of Gigabit networks and looks specifically at:

- procedures for obtaining access to existing physical infrastructures;

- coordination between electronic communications operators and operators of other networks like gas, water, electricity, and transport, all of whom should make information on their on-going or planned civil works available;

- digitalisation and simplification of permitting procedures, by requiring that permit requests be dealt with under four months, unless national law provides otherwise. Any refusal must be justified based on objective, transparent, non-discriminatory and proportionate criteria;

- the installation of fibre in new or substantially renovated buildings, which will be eligible for the voluntary "broadband-ready" label.

These measures constitute an additional step towards improved connectivity and reflect on the need to overcome the challenge of slow and costly deployment of Gigabit networks by enabling smarter, more flexible and innovative services, products and applications. In accordance with the EU legislative procedure, it is now up to the European Parliament and Council of the EU to examine the proposal. Once both institutions agree on the text, it will be directly applicable in all member states. Until then, the Broadband Cost Reduction Directive remains in force.

In addition to the proposed Act, the Commission also published a draft Gigabit Recommendation on the regulatory promotion of Gigabit connectivity, replacing the Access Recommendations (that is: the Next generation Access Recommendation from 2010 and the Non-discrimination and Costing Methodology Recommendation from 2013). The draft is principally aimed at National Regulatory Authorities and provides guidance as to the conditions for accessing the network infrastructures of operators with significant market power (SMP). With

this, the Commission seeks to encourage faster deactivation of legacy technologies, and therefore allow for more sustainable competition and accelerated Gigabit networks developments.

Its adoption now awaits the opinion that is to be delivered by BEREC (the Body for European Regulators).

A consultation on the future of the connectivity sector and its infrastructure, also launched on 23 February, should allow the Commission to determine the most appropriate actions to be taken to achieve its objective. The consultation aims at gathering the views of the organisations, businesses and citizens on the electronic communications sector and its evolution. More specifically, it covers:

- The types of infrastructures to be used;

- The amount of investment needed for the coming years, including the possible requirement for all players benefitting from the digital transformation to fairly contribute;

- The affordability of connectivity for consumers and the progress towards a more integrated Single Market

All interested parties may submit a contribution by 19 May 2023.

Decision (EU) 2022/2481 of the European Parliament and of the Council of 14 December 2022 establishing the Digital Decade Policy Programme 2030 (Text with EEA relevance)

https://eur-lex.europa.eu/eli/dec/2022/2481/oj

Gigabit Infrastructure Act Proposal

https://ec.europa.eu/newsroom/dae/redirection/document/93925

Gigabit Connectivity Recommendation

https://digital-strategy.ec.europa.eu/en/library/gigabit-connectivity-recommendation

Consultation, the future of the electronic communications sector and its infrastructure

https://digital-strategy.ec.europa.eu/en/consultations/future-electronic-communications-sector-and-its-infrastructure

Directive 2014/61/EU of the European Parliament and of the Council of 15 May 2014 on measures to reduce the cost of deploying high-speed electronic communications networks Text with EEA relevance

https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014L0061

2010/572/EU: Commission Recommendation of 20 September 2010 on regulated access to Next Generation Access Networks (NGA) Text with EEA relevance

https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32010H0572

2013/466/EU: Commission Recommendation of 11 September 2013 on consistent non-discrimination obligations and costing methodologies to promote competition and enhance the broadband investment environment

https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32013H0466

NATIONAL

BELGIUM

[BE] VRM issues first warnings to influencers for violating rules on commercial communication

Dr. Valerie Verdoodt
Ghent University

On 22 November 2022, the Vlaamse Regulator voor de Media (Flemish Media Regulator — VRM) issued, for the first time, warnings to influencers for violating the rules on commercial communication under the Flemish Media Decree (Article 53).

With the transposition, in 2021, of the revised Audiovisual Media Services Directive into the Flemish Media Decree, channels and profiles on platform services such as YouTube, Instagram and Tiktok can be considered audiovisual media services or broadcasting services (as per Article 2, 26° of the Flemish Media Decree). This means that content creators, vloggers and/or influencers offering an audiovisual media service and who are based in Flanders must comply with the rules for audiovisual media service providers in the Decree. The Content Creator Protocol (CCP) subsequently published by the VRM clarifies how to post compliant videos on platforms such as YouTube, Instagram, TikTok and others. Specifically, the protocol requires content creators, influencers and vloggers based in Flanders to: (1) label commercial communications with 'advertisement' or 'publicity' at the beginning of the description; (2) tag partner(s): @partner; and (3) indicate within the platform that a video contains commercial communication.

Following these changes, the VRM employed Social Media Watchers for its research cell to monitor the activities of content creators, influencers and vloggers based in Flanders on video-sharing and social media platforms, in order to assess their compliance with the rules. The VRM always assesses on a case-by-case basis whether commercial communications are easily recognisable as such. Based on indications that commercial communications were not easily recognisable as such in videos posted by three popular Flemish influencers (Sarah Puttemans, Maximiliaan Verheyen and Steffie Mercie), the VRM's research cell launched an investigation. Over a period of one month, the research cell monitored the videos that were published by these influencers, on their YouTube, Instagram and TikTok accounts and found several potential violations of the rules on commercial communication.

After reviewing the investigation report and hearing the influencers' arguments, the General Chamber of the VRM concluded that all three influencers had published videos that did not mention the use of commercial communication. In addition, the influencers had uploaded videos that did make some mention of the

presence of commercial communication, but that this was insufficient to be considered easily recognisable as such. In these videos, the disclosure was either not clear and/or placed in such a way that viewers on the social media platforms could not perceive it. The VRM also stated that the mere use of the feature provided by video-sharing platforms to indicate the commercial nature of a video was insufficient to make the commercial communication easily recognisable as such. Additionally, the VRM concluded that the viewer could not sufficiently recognise the presence of commercial communication on the basis of the words "contains paid promotion", "paid partnership" or "paid partner", nor from the abbreviation “ad”. For videos published as a series of stories (e.g. on Instagram), mentioning the word ‘advertisement’ only at the beginning of the series was also insufficient according to the VRM, as for the stories that followed, the commercial communication contained therein was no longer clearly recognisable. The VRM clarified that the obligation to make commercial communication clearly recognisable applied at all times and the mention ‘advertisement’ had therefore to be present in all videos, including in a series of stories which contain commercial communication. Based on these findings, the VRM issued separate warnings for the three influencers.

From these first three decisions by the General Chamber of the VRM, it is clear that the sanction (i.e. a warning) takes into account the fact that these rules are new for content creators, influencers and vloggers (even though they have been extensively informed about them) and that this was the first time that the VRM had sanctioned non-compliance.

VRM, Content Creator Protocol, 2022

https://www.vlaamseregulatormedia.be/nl/content-creator-protocol

VRM, Content Creator Protocol, 2022

VRM t. SARAH PUTTEMANS Beslissing nr. 2022/554C, 14 november 2022

https://www.vlaamseregulatormedia.be/nl/beslissingen/2022/waarschuwing-voor-sarah-puttemans

VRM, SARAH PUTTEMANS Decision No. 2022/554C, November 14, 2022

VRM t. MAXIMILIAAN VERHEYEN, Beslissing nr. 2022/037, 14 november 2022

https://www.vlaamseregulatormedia.be/nl/beslissingen/2022/waarschuwing-voor-maximiliaan-verheyen

VRM, MAXIMILIAN VERHEYEN, Decision no. 2022/037, November 14, 2022

VRM t. STEFFI MERCIE, Beslissing nr. 2022/036, 14 november 2022

https://www.vlaamseregulatormedia.be/nl/beslissingen/2022/waarschuwing-voor-steffi-mercie

VRM, STEFFI MERCIE, Decision No. 2022/036, November 14, 2022

BULGARIA

[BG] Bulgarian Supreme Court to provide clarity on compensation for copyright infringements

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By resolution dated 15 December 2022, the *Върховният касационен съд* (Bulgarian Supreme Court of Cassation — SCC) opened interpretative case No. 3/2022 concerning the interpretation of certain questions regarding compensation for copyright infringements which cause confusion and disagreement between the lower courts and practitioners. The case was opened upon a request of the *Висшия адвокатски съвет* (Bulgarian Supreme Bar Council) and will be decided by the General Assembly of the Civil and Commercial Chambers of the SCC.

In short, the questions raised are:

1. which market should be considered when determining the amount of damages in cross-border cases (i.e. where the infringement does not take place in the country of residence of the author);

2. whether the compensation for infringement includes any attorney fees made prior to the litigation, but as part of the actions for out-of-court settlement; and

3. whether an author must prove the amount of non-material damage, if the copyright infringement has been proven.

In more detail:

1. The first question concerns copyright infringements which have occurred in a country other than the author's country of residence. In such instances, determining the leading pricing market is a crucial factor in calculating the amount of material damages in the form of lost royalties. This issue has caused quite some confusion and disagreement among courts and legal practitioners in the past. The SCC will provide much-needed clarity and guidance on the matter.

2. The second question relates to the inclusion of attorney fees in the compensation sought in court for copyright infringement. It is established that compensation for copyright infringement should cover both material and non-material damage. However, the question of whether out-of-court attorney fees made in pursuit of a settlement agreement with the infringing party should be included is much debated. The SCC's decision will be instrumental in establishing a clear framework for determining the appropriate level of compensation in these cases.

3. Finally, the court will consider the issue of non-material damage. In cases of copyright infringement, an author may be entitled to compensation for both material and non-material damage. However, the question of whether an author must prove the amount of non-material damage or whether it is automatically due if the infringement is proven has yet to be resolved. The SCC in this case will provide a clearer understanding of the obligations of authors and copyright holders in proving non-material damage.

The SCC's decision is eagerly anticipated by all stakeholders as it will establish clear and consistent guidelines for determining the appropriate level of compensation in case of infringements. It will also help promote the growth and development of the creative industries and will serve as a deterrent against future infringements.

Resolution of the Supreme Court of Cassation, Sofia, 15 December 2022

BELARUS

[BY]: Waiver on copyrighted objects from “unfriendly countries”

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On 17 January 2023, the Statute of the Republic of Belarus that introduces the bypassing of possible economic measures of foreign states as to the use of copyrighted objects in Belarus entered into force. The statute refers to certain categories of copyrighted published objects whose use in Belarus is forbidden by the rightsholders and/or collective societies from foreign countries. These foreign countries are enumerated for their “unfriendly actions” in relation to Belarusian individuals and/or legal entities in the Regulation of the Council of Ministers of Belarus from April 2022. They include all the countries of the EU, the UK, the US and others.

The categories of objects include computer programmes, audiovisual works, musical works, and broadcasting programmes. The statute allows for their use without seeking permission. The fee for the use of the works shall be determined by the Council of Ministers. Thereafter the user shall transfer the required amount in Belarusian Roubles to the relevant bank account opened by the Patent Office. If the rightsholders or collective societies fail to withdraw the fees within three years of the payment, the money will be transferred to the national budget as revenue.

The use of works conducted under the procedure will not be recognised as a violation of intellectual property rights.

Закон Республики Беларусь “Об ограничении исключительных прав на объекты интеллектуальной собственности”, 3 января 2023 года, № 241-Z

https://www.alta.ru/tamdoc/23bl0241/

Statute of the Republic of Belarus “On limitation of exclusive rights to the intellectual property objects”, 3 January 2023, No 241-Z

Постановление Совета Министров Республики Беларусь «О перечне иностранных государств, совершающих недружественные действия в отношении белорусских юридических и (или) физических лиц», 6 апреля 2022 года, N 209

https://pravo.by/document/?guid=12551&p0=C22200209&p1=1&p5=0

Regulation of the Council of Ministers of the Republic of Belarus "On the list of foreign states that are engaged in unfriendly actions in relation to Belarusian legal entities and/or individuals", 6 April 2022, N 209

SWITZERLAND

[CH] Swiss Media Commission favours structural change for media support

Christina Etteldorf
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In a position paper published on 10 January 2023 with the title "*Zukunft der Schweizer Medienförderung - Impulse für eine technologieneutrale Unterstützung privater journalistischer Angebote*" (The future of Swiss media support – impulses for technology-neutral support of private journalistic offerings), the *Eidgenössische Medienkommission* (Swiss Media Commission – EMEK) called for the restructuring of media support in Switzerland. In view of the radical changes to media production, distribution and usage in the digital era, media support could no longer be based on the current technology- and genre-oriented system. The EMEK therefore proposed a technology-neutral support system that dealt with all media services equally, whatever form they took.

The Media Commission's proposal was based on the fact that, as a result of digitisation, adequate funding of journalism in Switzerland could not be fully guaranteed, while the reduction in journalistic work and diversity over the last 25 years had been empirically documented. However, without journalistic media, direct democracy could not function in a federal, multilingual country such as Switzerland. The current system of support for private media, including newspaper distribution subsidies and the allocation of radio and television licence fee revenue to private broadcasters, was unsuitable because it was linked to specific technologies, media genres and distribution channels. In order to future-proof media support, the EMEK therefore proposed a content-oriented system and three different types of funding measures.

Firstly, it recommended general measures designed to strengthen the industry as a whole. These included support for the initial training and further training of media professionals, subsidiary financial support for self-regulation by the *Presserat* (Press Council), support for a news agency in the three national languages (German, French and Italian) providing basic assistance subject to certain conditions (e.g. funded by the industry, guarantee of editorial independence, etc.), support for media research and measurement for the capture of essential data, long-term support for the infrastructure of journalistic services and the creation of funds for investigative research and reporting on topics of public interest. The EMEK also called for tax concessions, but since these were fiscal instruments, they were not covered by the position paper.

Secondly, the Media Commission proposed a number of practical measures to support the running of private and, in particular, regional journalistic services that were linked to a change in the support system. It advocated a technology-neutral

support model that would benefit all private journalistic offerings (text, audio and video) aimed at the general public (i.e. not specialist publications) through a single support system, giving supported media the freedom to distribute their content through any channel of their choice. The fact that different costs were associated with different distribution channels could be countered, for example, by paying a standard minimum proportion of the operating costs. The EMEK also suggested various possible ways of defining eligibility conditions, which might be linked to four criteria, for example: input (e.g. minimum level of investment in editorial work), output (e.g. minimum quota of in-house productions), outcome (e.g. minimum reach) and impact (e.g. minimum number of views).

Finally, the EMEK also called for support for projects run by private media providers, including start-up funding for local media startups and innovation funding.

However, it also stressed the continued importance of public service broadcasting and the need to continue providing adequate financial resources to the SRG SSR services.

In the EMEK's opinion, the proposed changes also offered an opportunity to pass the responsibility for distributing funds to a politically independent body such as a foundation, an independent media regulator or an advisory council. This was necessary in order to keep the media support system away from government control and, more generally, to prevent political interference with editorial decisions.

Positionspapier der EMEK

https://www.emek.admin.ch/inhalte/D_Papier_10.1.2023_FINAL.pdf

EMEK position paper

GERMANY

[DE] Broadcasters allowed to delete social media comments

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In a ruling of 30 November 2022, the *Bundesverwaltungsgericht* (Federal Administrative Court –BVerwG) decided that public broadcasters were entitled to delete comments posted by users in their online forums if the comments were unrelated to their programmes. This applied whether the content was unlawful or not. The court based its decision on the definition of public broadcasters' telemedia-related remit set out in German media law. The case concerned users' comments on programme-related content posted on the Facebook page of Mitteldeutsche Rundfunk (MDR), which the broadcaster had deleted without giving a reason.

Like many other public service broadcasters, MDR has its own page on the Facebook social network, on which it publishes a variety of content related to its programmes. Registered Facebook users are able to comment on these posts. However, each time something is posted, MDR provides a link to its "Rules for posting comments" (Netiquette), which are published on its website. These state, *inter alia*, that users' comments will only be published if they relate to the original post and if they are both serious and relevant to the subject. MDR also reserves the right to delete comments and states that it will not enter into any discussion about deleted comments.

The plaintiff in the case was a Facebook user who had posted a comment that MDR had deleted without giving a reason. Further comments by the user, in which he had complained about MDR's deletion policy and so-called "censorship", had also been deleted. The user had asked the courts to rule that the deletion of 14 of his comments was unlawful. The lower-instance courts had only upheld his complaint in relation to one of his comments. Following his appeal to the BVerwG, only one further comment was deemed to have been unlawfully deleted.

The BVerwG agreed with the lower-instance courts: although the deletion of comments infringed the plaintiff's freedom of expression, which was protected under the *Grundgesetz* (Basic Law), it was justified on the grounds of the specific obligations incumbent on public broadcasters under German media law in application of the so-called *Beihilfekompromiss* (state aid compromise) signed between the Federal Republic of Germany and the European Commission in 2007. Under Article 11d of the *Rundfunkstaatsvertrag* (state broadcasting treaty – RStV), which had applied at the time and was now Article 30 of the *Medienstaatsvertrag* (state media treaty), the distribution of telemedia (essentially online media) was part of the public broadcasting remit (the so-called "telemedia remit"), but was limited to specific offerings in order to protect private media and the press in view of the fact that public broadcasters were funded through licence fee revenue. The

article stated, *inter alia*, that telemedia could be offered if they served to provide content from a specific programme, including background information, and supported, accompanied and updated the programme thematically or contextually, i.e. they were related to the programme. The services offered on the MDR Facebook page were based on this provision and the Netiquette required comments to be programme-related. Therefore, according to the BVerwG's decision, Article 11d RStV was a suitable justification for an infringement of freedom of expression and the deletion of comments that were unrelated to the programme. The court therefore extended the telemedia remit and the criterion of programme relevance to the comments section of public broadcasters' social media pages. The weighing up of conflicting interests, which would normally be required in such cases, was therefore unnecessary. The comments could be deleted for the simple reason that they were unrelated to the programme, regardless of whether their content was unlawful and without the need to provide a reason. The action was therefore only upheld in relation to two comments that had actually been relevant to the programme and should therefore not have been deleted.

BVerwG 6 C 12.20 - Urteil vom 30. November 2022

https://www.bverwg.de/de/pm/2022/75

Federal Administrative Court, 6 C 12.20 - ruling of 30 November 2022

[DE] Broadcasting Commission decision on public service broadcasting reforms

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On 20 January 2023, the *Rundfunkkommission* (Broadcasting Commission) adopted a decision on public broadcasting reforms in Germany, in which it laid down some key elements of the necessary overhaul of rules governing German public broadcasters. The Broadcasting Commission comprises representatives of the State and Senate Chancelleries of the *Länder*, which are responsible for media policy and legislation, acts as a permanent forum for the discussion of issues relating to media policy and lays the ground for future regulation in the form of state treaties. It decided to focus on three main aspects of the proposed reforms, which have been in the pipeline for some time: “Shaping digital transformation and increasing quality”, “Enhancing public service broadcasting structures and cooperation and ensuring licence fee stability” and “Further improving good governance”.

In its decision, the Broadcasting Commission began by emphasising that public service broadcasting continued to play an important role for democracy and society. However, it could only fulfil that role if the public had confidence in its structure and content, which therefore needed to be attractive, reliable and fact-based, however it was distributed. It was true that the *Dritte Medienänderungsstaatsvertrag* (third state treaty amending the state media treaty), which was currently undergoing ratification by the individual state parliaments, had taken important steps in terms of digitisation, public dialogue and strengthening the governing bodies of the public service broadcasters. However, compliance, transparency and supervision needed to be improved further in order to future-proof public service broadcasting from content-related, financial and technical points of view. This should be achieved through the proposed *Vierte Medienänderungsstaatsvertrag* (fourth state treaty amending the state media treaty), the main elements of which were laid out in the decision.

The reforms on “Shaping digital transformation and increasing quality” were designed to increase regionality, pluralism and journalistic quality. At the same time, however, services also needed to be more attractive and innovative, and the German broadcasters’ existing joint platform strategy could not achieve this on its own. The Broadcasting Commission therefore recommended going a step further by including 3sat and ARTE in a European platform. A number of recent events within individual broadcasting companies in Germany, relating to their use of licence fee revenue, had been the subject of considerable public debate and criticism. The decision therefore proposed, in particular, revising the state treaties in relation to the streamlining of organisational structures, the joint bodies of the ARD, the subsidiaries of broadcasting companies and supervisory structures. Existing management structures should also be scrutinised in accordance with good governance principles and payroll budgets should be stabilised, in particular by adopting appropriate salary structures for staff exempt from collective pay

agreements, such as broadcasting company executives. In addition, the use of licence fee revenue should be monitored more closely by the *Kommission zur Ermittlung des Finanzbedarfs der Rundfunkanstalten* (Commission for Determining the Financial Requirements of Broadcasters – KEF) and audit offices.

However, the Broadcasting Commission considered the creation of public-oriented conditions for public service broadcasting as the responsibility not only of the legislator, but also of the broadcasters themselves. It therefore expected them to step up their efforts to forge ahead with the reform process and make use of the restructuring opportunities provided under the *Dritte Medienänderungsstaatsvertrag*. This particularly included the possibilities that would be available, once the new state treaty was in force, to create greater programming flexibility by shifting from linear to online services. Moreover, existing structures should be replaced with centres of expertise, duplicate structures within the broadcasting companies should be abolished and programme frames should be designed with regional diversity in mind. The broadcasters should also develop a joint, common controlling system in order to increase the efficient use of resources.

Finally, the Broadcasting Commission decided to create what it called a "*Zukunftsrat*" (future council), which would act as an advisory body and develop further recommendations for the future of public service broadcasting and its acceptance.

Beschluss der Rundfunkkommission, 19./20. Januar 2023

https://www.rlp.de/fileadmin/rlp-stk/pdf-Dateien/Medienpolitik/Beschluesse_der_Rundfunkkommission/Beschluss_der_RFK_vom_20.1.23_zur_Reform_des_oeffentlich-rechtlichen_Rundfunks.pdf

Broadcasting Commission decision, 19/20 January 2023

[DE] No additional fee for broadcasting licence renewal

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In a decision of 28 December 2022, the *Verwaltungsgericht Berlin* (Berlin Administrative Court – VG Berlin) upheld a complaint filed by a national broadcaster against the imposition of an administration fee for the renewal of its broadcasting licence by the relevant state media authority. The court did not believe the fee was justified insofar as it covered not only the administrative costs incurred but also an additional sum charged because the broadcaster had gained an advantage as a result of the administrative work carried out.

The plaintiff has held a broadcasting licence, which is required to broadcast nationally in Germany, since 1992. In 2013, with the initial licence approaching its expiry date, its application for the licence to be renewed was accepted by the relevant state media authority, which set a new expiry date in accordance with legislative provisions. However, in 2014, the media authority informed the broadcaster that, following a change in the law, television broadcasters could now be granted an indefinite national broadcasting licence. Following an exchange of information and a procedure involving the *Kommission für Zulassung und Aufsicht* (Commission on Licensing and Supervision – ZAK), a central organ of the 14 state media authorities that grants national broadcasting licences, the relevant state media authority decided that the expiry date set in the 2013 decision to grant a licence should be removed. However, an administration fee of EUR 60,000 was levied for the 2013 licence, primarily to cover the expenses of the relevant state media authority organs, i.e. the ZAK and the *Kommission zur Ermittlung der Konzentration im Medienbereich* (Commission on Concentration in the Media – KEK). The broadcaster lodged a complaint against the state media authority responsible for implementing the ZAK's decision. The VG Berlin upheld the complaint on the grounds that there had been no effective legal basis for imposing such a fee. In accordance with Article 35(11) of the *Rundfunkstaatsvertrag* (state broadcasting treaty – RStV), which had applied at the time of the decision and was now Article 104(11) of the *Medienstaatsvertrag* (state media treaty), the competent state media authorities were entitled to levy an adequate proportion of the costs on those involved in the procedure. The details were governed by concurrent statutes of the state media authorities.

The VG Berlin held that the regulations on costs that were based on this provision, in connection with the cost index of the relevant state media authority, had not met the requirements of the RStV, which had applied at the time, and were therefore null and void. This was because the regulations made provision for a fee to be charged in recognition of a specific economic, legal, intangible or actual advantage gained by the broadcaster as a result of administrative work carried out by a public body. In this case, an advantage had been gained in the sense that the licensing requirement of Article 20 RStV had been removed, enabling the broadcaster to generate income from the sale of advertising, for example.

However, this was not covered by Article 35(11) RStV, which should be interpreted as meaning that administrative costs could only be covered through the imposition of a reasonable administration fee. The state media authorities could not extend the scope of Article 35(11) by adopting their own regulations in order to charge an additional fee. Although the state media authorities' performed a unique function as independent regulators, only the legislator could impose such a rule because such a fee would infringe the broadcaster's fundamental rights.

VG Berlin 27. Kammer (27 K 343.16), 28. Dezember 2022

https://gesetze.berlin.de/perma?d=JURE230039586

Berlin Administrative Court, 27th chamber (27 K 343.16), 28 December 2022

SPAIN

[ES] Spanish government moves forward in approving measures to improve the labour conditions of artists

Azahara Cañedo & Marta Rodriguez Castro

The Spanish government's efforts on labour protection for artist workers continue to bear fruit. Since the creation of the Interministerial Commission for the development of the Artist's Charter in July 2021, the industry agrees that progress has been made. The Commission, chaired by the Minister of Culture and Sports of Spain, aims to provide workers in the cultural and creative industries with a legal framework that better suits the particularities of their labour conditions. Specifically, in terms of taxation, labour protection, social security and retirement benefits.

The approval of the Artist's Charter is a result of the historical demands by artists that were accelerated by COVID-19. Thus, it has been included as one of the actions within the Component 24 of Spain's recovery and resilience plan, which refers to the re-evaluation of the cultural industry. Based on the idea that culture is often one of the main areas damaged by social and economic crisis, the goal is to change the productive model and correct the structural weaknesses of the cultural and creative industries.

The first package of legislative measures was approved in March 2022 through the enactment of *Real Decreto-Ley 5/2022* (Royal Decree-Law 5/2022). The regulation, which had the unanimous support of the Spanish Congress of Deputies, introduced three essential modifications to the labour situation of artists. First, regarding the target of the law, it broadened the concept of "artistic activity" to include the performing, audiovisual and musical arts. Moreover, it adapted to the new productive reality by incorporating technical and auxiliary staff as part of the workforce, even though they do not belong to the fixed structure of companies in the industry. Second, a new contractual regime was created to fulfil the particularities of a profession characterised by the intermittent nature of its activity: the artistic employment contract. Germane to this, the regulation also includes measures to discourage the excessive use of temporary contracts. Third, and last, the Royal Decree-Law provides for a reduced contribution for self-employed artists with an income under EUR 3,000.

Recently, in January 2023, the second package of measures was approved through the *Real Decreto-Ley 1/2023* (Royal Decree-Law 1/2023). The main lines of action revolve around unemployment benefits, retirement pensions and self-employed contribution rate. First, a special unemployment benefit for the artistic and cultural workforce is created, taking into account the long periods of inactivity that characterise the craft. Second, the Decree-Law establishes compatibility income from both the artistic activity and the retirement pension. Prior to this

legislation, it was only possible to do so if the artistic income derived from intellectual property rights. Moreover, from now on, the compatibility also extends to technical and auxiliary staff, in line with what was already approved in the Royal Decree-Law 5/2022. Third, and for the first time, self-employed artists are included among the groups that are expressly declared to be covered by the Special Social Security Scheme for Self-Employed or Self-Employed Workers (Régimen especial de la Seguridad Social de los trabajadores por cuenta propia o autónomos). Moreover, in the case of self-employed artists with an income under EUR 3,000, a fixed and reduced contribution rate is established, which will be reviewed on an annual basis. These measures will enter into force on 1 April 2023.

The Royal Decree-Law 1/2023 also provides for a number of actions that may be of interest for the development of the Spanish cultural and creative industries. With regard to labour, it provides for the creation of both a working group to promote measures to recognise the intermittent work of artists and self-employed workers in the cultural industry, and a commission to evaluate and recognise occupational illnesses arising from the specific activities of the industry. Furthermore, Article 35 calls for the establishment of local agreements between the various social and economic actors in the territory, which in practice could boost local cultural and creative industries.

Finally, on 25 January 2023, in accordance with the *Real Decreto 31/2023* (Royal Decree 31/25), a reduction in personal income tax (IRPF) for artist workers came into force. On the one hand, employed artists reduce their minimum IRPF deduction from 15% to 2%. On the other hand, the self-employed artists' personal IRPF deduction is reduced from 15% to 7%.

Official website of the Spanish Ministry of Culture and Sports on the Artist's Charter

https://www.culturaydeporte.gob.es/en/destacados/estatuto-del-artista.html

Official website of the Spanish Ministry of Culture and Sports on the Artist's Charter

https://www.culturaydeporte.gob.es/en/destacados/estatuto-del-artista.html

Real Decreto-ley 1/2023, de 10 de enero, de medidas urgentes en materia de incentivos a la contratación laboral y mejora de la protección social de las personas artistas

https://www.boe.es/diario_boe/txt.php?id=BOE-A-2023-625

Royal Decree-Law, 1/2023, of 10 January, on urgent measures regarding incentives for hiring artists and improving their social protection

Real Decreto 31/2023, de 24 de enero, por el que se modifica el Reglamento del Impuesto sobre la Renta de las Personas Físicas,

aprobado por el Real Decreto 439/2007, de 30 de marzo, para dar cumplimiento a las medidas contenidas en el Estatuto del Artista en materia de retenciones.

https://www.boe.es/buscar/doc.php?id=BOE-A-2023-2023

Royal Decree-Law, of 24 January, which modifies the Personal Income Tax Regulations, approved by the Royal Decree-Law 439/2023, of 30 March, in order to enforce the measures included in the Artists' Charter in terms of deductions

Real Decreto-ley 5/2022, de 22 de marzo, por el que se adapta el régimen de la relación laboral de carácter especial de las personas dedicadas a las actividades artísticas, así como a las actividades técnicas y auxiliares necesarias para su desarrollo, y se mejoran las condiciones laborales del sector.

https://www.boe.es/buscar/doc.php?id=BOE-A-2022-4583

Royal Decree-Law 5/2022, of 22 March, which adapts the special employment relationship regime for persons dedicated to artistic activities, as well as to the technical and auxiliary activities necessary for their development, and improves working conditions in the sector

Real Decreto 639/2021, de 27 de julio, por el que se crea y regula la Comision Interministerial para el desarrollo del Estatuto del Artista

https://www.boe.es/diario_boe/txt.php?id=BOE-A-2021-12611

Royal Decree-Law 639/2021, of 27 July, which establishes and regulates the Interministerial Commission for the development of the Artist's Charter

FRANCE

[FR] ARCOM fines C8 for failing to control programme content and violating human rights

Amélie Blocman
Légipresse

On 9 February 2023, ARCOM (the French audiovisual and digital communications regulator) fined television channel C8 EUR 3.5 Million following remarks made during its programme "*Touche pas à mon poste*" broadcast on 10 November 2022.

French MP Louis Boyard (of the 'La France Insoumise' political party), a former pundit on the programme, had been invited to talk about the reception of migrants on board a humanitarian ship. When he began discussing the unequal distribution of wealth and the activities in Africa of Vincent Bolloré, shareholder of the Canal+ group, which triggered an initial volley of responses by presenter Cyril Hanouna (the subject of a formal notice issued by ARCOM), the latter interrupted him, causing him to accuse the presenter of infringing his freedom of expression. The guest was then called an "*abruti*" (moron), "*tocard* " (loser), "*bouffon*" (fool) and "*merde*" (shit) before leaving the studio. The discussion continued after the MP had left, when he was referred to as a "*mange-merde*" (shit-eater).

In a letter of 24 November 2022, the ARCOM director general referred the case to the independent rapporteur in accordance with Article 42-7 of the Law of 30 September 1986. The rapporteur informed C8 that it would be the subject of a sanction procedure because several formal notices had already been issued to the channel for violations of its obligations to control the content of its programmes (Article 2-2-1 of its licence agreement) and respect human rights (Article 2-3-4 of its licence agreement).

With regard to the obligation to respect human rights, ARCOM ruled that the words used had been offensive and that the use of multiple insults had been highly aggressive. They had therefore infringed the guest's right to respect for his honour and reputation. This sequence, which had lasted more than nine minutes, had therefore breached Article 2-3-4 of the broadcaster's licence agreement.

Concerning the obligation to control programme content, the decision stressed that the insults directed at the guest in a prolonged and repeated manner had primarily been spoken by the presenter himself, and that no other person on the set had tried to temper or tone down his remarks. On the contrary, all the pundits who had spoken had supported the presenter. ARCOM considered that the broadcaster had therefore failed to control the content of the programme, despite its obligation to put effective measures in place. This sequence had therefore also breached Article 2-2-1 of the broadcaster's licence agreement.

In view of the nature and extent of these infringements and the formal notices previously issued for violations of the same obligations, ARCOM imposed a fine of EUR 3.5 Million on the C8 company, i.e. 3.65% of its 2021 turnover. This money will be allocated to the *Centre national du cinéma et de l'image animée* (National Centre for Cinema and the Moving Image — CNC) in accordance with Article L. 116-5 of the Cinema and Animated Image Code.

On the same day, the European Court of Human Rights dismissed a claim by C8 that a previous EUR 3 Million fine imposed by the CSA (ARCOM's predecessor as the French audiovisual regulator) in 2017 had violated its freedom of expression protected by Article 10 of the European Convention on Human Rights.

Décision no 2023-63 du 9 février 2023 portant sanction pécuniaire à l'encontre de la société C8

https://www.legifrance.gouv.fr/download/pdf?id=3moJtl8Gesxg05r_oq87F4Pqi02HBCGCO3as8ZOHa38=

Decision no. 2023-63 of 9 February 2023 imposing a fine against C8

Arrêt du 9 février 2023, affaire C8 (CANAL 8) c. FRANCE, (requêtes nos 58951/18 et 1308/19)

https://hudoc.echr.coe.int/fre#{%22documentcollectionid2%22:[%22GRANDCHAMBER%22,%22CHAMBER%22],%22itemid%22:[%22001-222892%22]}

Judgment of 9 February 2023, case of C8 (Canal 8) v. France (application nos. 58951/18 and 1308/19)

[FR] C8 warned after televised altercation between Cyril Hanouna and MP Louis Boyard

Amélie Blocman
Légipresse

ARCOM (the French audiovisual and digital communications regulator) has issued a formal notice to the television channel C8, urging it to guarantee the independence of information following comments made during the programme "*Touche pas à mon poste*" broadcast on 10 November 2022. French MP Louis Boyard (of the 'La France Insoumise' political party), a former pundit on the programme, had been invited to talk about the reception of migrants on board a humanitarian ship. When the MP began discussing the unequal distribution of wealth and, in the same context, the activities in Africa of Vincent Bolloré, a C8 shareholder, he was interrupted by the programme presenter, who said, among other things: "You know you're in the Canal group here. You want to talk about the Bolloré group. You know you're in the Bolloré group here. […] What the fuck are you doing here? What the fuck are you doing here? What the fuck are you doing here? […]". Asked by the MP why he was not being allowed to criticise a shareholder of the channel, the presenter and some of the programme's pundits became aggressive towards him and insulted him. During this sequence, which lasted over nine minutes, the presenter said in particular: "I don't even know what you're talking about […], you're not here for that […]. Why did you come? Why did you come? […]. Why did you take the money when you were a pundit? Why did you come? […]. It didn't bother you to take money when you were here […]. I don't even know what you're talking about. […]. I don't bite the hand that feeds me, and you shouldn't bite the hand that fed you […]".

ARCOM began by pointing out that, pursuant to Article 42 of Law no. 86-1067 of 30 September 1986 and Article 4-2-1 of the channel's agreement with the *Conseil supérieur de l'audiovisuel* (CSA, ARCOM's predecessor as the French audiovisual regulator) of 29 May 2019, it was entitled to issue a formal notice to C8, urging it to respect its obligations. In particular, Article 2-3-8 of the agreement required "the broadcaster to respect decisions of the *Conseil supérieur de l'audiovisuel* concerning the honesty and independence of information and news programmes". Article 4 of the CSA's decision of 18 April 2018 concerning the honesty and independence of information and news programmes states that: "The provider of an audiovisual communication service must ensure that information and news programmes are produced under conditions that guarantee independence of information, in particular with regard to the economic interests of its shareholders and advertisers."

In the case at hand, ARCOM ruled that the guest had been expressly prevented from criticising a shareholder of the Canal+ group, to which the C8 channel belongs. It therefore considered that the programme had not been produced under conditions that guaranteed independence of information with regard to the economic interests of a shareholder.

Since the broadcaster had therefore failed to respect Article 2-3-8 of its licence agreement and the aforementioned provisions of Article 4 of the decision of 18 April 2018, to which it referred, ARCOM issued a formal notice to C8, urging it to comply with the aforementioned stipulations. The same day, the audiovisual regulator fined C8 EUR 3.5 Million for insulting comments broadcast during the same programme. Meanwhile, the European Court of Human Rights dismissed a claim by C8 that a previous EUR 3 Million fine imposed by the CSA in 2017 had violated its freedom of expression protected by Article 10 of the European Convention on Human Rights.

Décision n° 2023-64 du 9 février 2023 mettant en demeure la société C8, JORF du 11 février 2023

https://www.legifrance.gouv.fr/download/pdf?id=3moJtl8Gesxg05r_oq87F5dOjmBpmRbjVjXPIpbydpI=

Decision no. 2023-64 of 9 February 2023 issuing a formal notice to C8, OJ of 11 February 2023

Arrêt du 9 février 2023, affaire C8 (CANAL 8) c. FRANCE, (requêtes nos 58951/18 et 1308/19)

https://hudoc.echr.coe.int/fre#{%22documentcollectionid2%22:[%22GRANDCHAMBER%22,%22CHAMBER%22],%22itemid%22:[%22001-222892%22]}

Judgment of 9 February 2023, case of C8 (Canal 8) v. France, application nos. 58951/18 and 1308/19

UNITED KINGDOM

[GB] Ofcom launches media literacy evaluation tookit

Eric Munch
European Audiovisual Observatory

On 7 February 2023, Ofcom released an evaluation toolkit for media literacy intervention, in the context of its "Making Sense of Media" programme – the goal of which is to “help improve the online skills, knowledge and understanding of UK adults and children” according to Ofcom. The programme is one of the measures put in place by Ofcom in accordance with its statutory duty to promote media literacy and to carry out research into media literacy matter, as set out respectively in sections 11 and 14(6)(a) of the Communications Act 2003.

With this toolkit, the regulator aims to provide those who conduct media literacy interventions with the ability to evaluate their own projects, and share their results with others, in order to help make future projects more effective. The document is designed in a user-friendly way and its contents are organised in a simple structure: a quick overview of the concept and importance of evaluation, and its three key phases – summarized as preparing, doing and sharing, with each part of the document featuring definitions and fictional examples illustrating the situations and concepts described, in addition to links to other reports, articles and tools.

The toolkit details the benefits of approaching the evaluation using the concept of theory of change. This approach allows to identify the initial assumptions which led to the creation of the media literacy initiative and to define its objective. The evaluation therefore aims at testing those assumptions and determining whether the initiatives taken are conclusive. It also provides many tips to design efficient evaluation questions and to gather and analyse relevant data all while minimising bias and respecting legal, ethical and safeguarding considerations.

In the last section of the report, Ofcom makes a strong case for the sharing of the information gathered through the evaluation process as a means to benefit other media literacy initiatives and participate in raising their quality.

The toolkit itself is accompanied by two online, searchable libraries listing media literacy initiatives and media literacy research.

A toolkit for evaluating media literacy interventions

https://www.ofcom.org.uk/research-and-data/media-literacy-research/approach/evaluate/toolkit

Ofcom's Making Sense of Media programme

https://www.ofcom.org.uk/research-and-data/media-literacy-research

[GB] Ofcom launches second call for evidence as part of future role online safety regulator

Eric Munch
European Audiovisual Observatory

On 10 January 2023, Ofcom published a call for evidence regarding matters anticipated to be included in their second consultation, scheduled for publication in autumn 2023 on the topic of the protection of children from legal content that is harmful to them.

As part of Ofcom's future role set out by the Online Safety Bill – still at report stage in the House of Commons at the moment of launching the call for evidence – as online safety regulator, Ofcom will publish codes of practice setting out the measures that platforms can take to protect children online and guidance regarding how platforms should assess the risks of harm to children. This call for evidence – in addition to the results of the first call for evidence published on 6 July 2022 – will help Ofcom in the preparation of the abovementioned codes of practice and guidance, in addition to providing valuable information to be used in the context of their media literacy work.

The call for evidence is directed towards stakeholders with an interest or expertise in protecting children online, with a focus on:

- draft guidance on how services should conduct a child's access assessment;

- draft guidance on how services likely to be accessed by children are to undertake their children's risk assessment;

- draft guidance on how services hosting online pornographic content can comply with their duties to ensure that children cannot normally access that content;

- draft codes of practice explaining how services can comply with their duties to protect children from harmful content.

The call for evidence is scheduled to remain open for 10 weeks from publication, until 21 March 2023.

Call for evidence: Second phase of online safety regulation

https://www.ofcom.org.uk/consultations-and-statements/category-1/call-for-evidence-second-phase-of-online-safety-regulation

Call for evidence: First phase of online safety regulation

https://www.ofcom.org.uk/consultations-and-statements/category-1/online-safety-regulation-first-phase?SQ_VARIATION_240428=0

Online safety: Ofcom's roadmap to regulation

https://www.ofcom.org.uk/online-safety/information-for-industry/roadmap-to-regulation

GREECE

[GR] The implementation of the Digital Single Market Directive 2019/790 into Greek legislation: Law no 4996/2022

Charis Tsigou
PhD Copyright Law, Media Law Expert , TMK Law Firm Senior Partner, National Council for Radio and Television

On 24 November 2022, Directive 2019/790 (DSM Directive) was incorporated into the Greek legal order by virtue of Part B of Law 4996/2022, which amends Law no 2121/1993 on copyright and related rights in various areas.

Law no 4996/2022 generally follows the provisions set by the DSM Directive. However, in specific areas the Greek legislator adopts favourable measures that enable right holders to maintain a certain degree of control over the exploitation of their work. Law no 4996/2022 provides for several exceptions to copyright and related rights in order to facilitate text and data mining for the purpose of scientific research (Articles 8 and 9), the use of protected works in digital, cross-border teaching activities (Article 10), and the preservation of cultural heritage (Article 11). In the field of teaching activities, the new Article 21, paragraph 2 (b) of Law no 2121/1993 (as amended by Article 10 of the Law no 4996/2022) stipulates that the right to digitally reproduce, communicate or make available to the public a protected work cannot exceed 5% of the work as a whole nor can it be more than one article legally published in a newspaper or magazine, one poem or one artwork (including photographs). Moreover, right holders and editors have a right to an equitable remuneration depending on the extent of the above-mentioned use, as well as the value of the reproduced works (new Article 21, paragraph 5 of the Law no 2121/1993). Article 8 of the DSM Directive provides for the use of out-of-commerce works by cultural heritage institutions for non-commercial purposes according to a non-exclusive licence issued by a collective management organisation. Article 13 of Law no 4996/2022 restricts the scope of this exception only to works that have been out-of-commerce for at least ten years, calculated from 1 January of the year following their publication. Collective licenses with an extended effect issued by a collective management organisation (Article 12 DSM) can cover the use of protected works within the Greek territory but, according to Article 14 of the Law no 4996/2022, audiovisual works are excluded.

The new related right accorded to publishers receives detailed attention by the Greek legislator. According to Article 18 of Law no 4996/2022, the authors of works incorporated in a press publication (mostly journalists) are entitled to 25% of the publisher's annual revenue in the case where the publisher employs less than 60% of the authors through regular employment contracts or 15% in case the number of regularly-employed authors exceeds the above threshold (new

Article 51B paragraph 4 of the Law no 2121/1993). Moreover, a procedure of negotiation between publishers and online platforms has been adopted to facilitate the swift achievement of an agreement on remuneration. In case of failure of the negotiations, a mediation process is foreseen by the approval of the Telecommunications and Postal Commission (EETT), which may also request economic data from the parties in order to determine such remuneration (new Article 51B paragraphs 5 and 6 of Law no 2121/1993). Otherwise, remuneration is to be determined by the courts (new Article 51B paragraph 7 of the Law no 2121/1993).

Article 17 of the DSM on the use of protected content by online content-sharing service providers is transposed without any changes. Articles 18 to 22 of the DSM are also incorporated into the Greek legislation by Articles 21 to 27 of Law no 4996/2022. Their scope of application covers both authors and performers. A single exception has been inserted in favour of producers. According to Articles 25 paragraph 4 and 27 paragraph 6 of the Law no 4996/2022, the right of revocation does not apply to cinematographic and audiovisual works.

Law no 4996-2022, 24 November 2022

Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC

https://eur-lex.europa.eu/eli/dir/2019/790/oj#:~:text=Directive%20%28EU%29%202019%2F790%20of%20the%20European%20Parliament%20and,Directives%2096%2F9%2FEC%20and%202001%2F29%2FEC%20%28Text%20with%20EEA%20relevance.%29

IRELAND

[IE] BAI announces funding for programmes in Irish language and programmes related to climate changes and climate action

Eric Munch
European Audiovisual Observatory

The Broadcasting Authority of Ireland (BAI) announced the results of Rounds 46 and 44 of its Sound & Vision 4 scheme (respectively on 30 November and 19 December).

At the request of Minister Catherine Martin, the BAI launched an Irish language-focused round of funding – Round 46. It was specifically tailored for projects supporting the development of new radio and television programmes in the Irish language, with the notable requirement of demonstrating gender equality (set at a minimum threshold of 50%) in leadership roles amongst performers and the creative production team. Five radio and ten television projects were granted funding, for a total of just under €2 million. Among those, a third are bilingual programmes (with at least 30% of the broadcast output in Irish language, as per BAI guidelines for bilingual programmes), with the rest being fully in Irish language.

Round 44, co-funded by the Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media and by the Department of Environment, Climate and Communications, was dedicated to programmes related to climate change and climate action. The BAI awarded just under €5 million in total to 25 applicants – ten of which for radio projects and the remainder for television projects (accounting for most of the envelope, €4.1 million). Successful applications included a majority of documentary and entertainment projects but also included education projects.

The Sound & Vision scheme, financed by the TV licence fee, has awarded more than €40 million in funding since its creation in 2020.

BAI announces funding of €2m under Sound & Vision Scheme

https://www.bai.ie/en/bai-announces-funding-of-e2m-under-sound-vision-scheme/

BAI announces funding of €5m under Sound & Vision Scheme

https://www.bai.ie/en/bai-announces-funding-of-e5m-under-sound-vision-scheme/

ITALY

[IT] First fine from AGCOM against a social media platform (Facebook - Meta)

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

The board of the Italian Communications Authority (AGCOM) has agreed, unanimously, to fine Meta Platforms (Meta, which owns Facebook, Instagram, and WhatsApp) EUR 750,000 for the infringement of the gambling advertising prohibition introduced by the "Dignity decree".

This is the first fine given by AGCOM to a social media platform (last August, AGCOM adopted its first sanction against the video sharing platform "YouTube", see Iris 2022-8/4).

The Authority considered that Meta had conducted a clear infringement of the Italian Law prohibiting the diffusion of advertising content relating to gambling.

As duly explained in the decision, Meta was considered to be responsible for the lack of provisions prohibiting advertisement of games with cash prizes in the Facebook service General Terms and Conditions.

Indeed, the investigation found that the Company had been allowing its business customers to promote, including through targeted advertising, such content to Italian customers.

The Authority considered that Meta could not be granted a general liability exemption under Article 14 of the E-commerce Directive (now merged into Article 6 of the Digital Services Act "DSA") which excludes liability when a provider does not have actual knowledge of illegal activity or information and, as regards claims for damages, is not aware of facts or circumstances from which the illegal activity or information is apparent.

AGCOM noted in its decision: "*Meta cannot in any way invoke the liability exemption clause being, on the other hand, widely "informed" of the sponsored content conveyed on the Facebook digital platform to the point of allowing its dissemination*".

In addition to the fine, the Authority ordered Meta to prevent each author of the sponsorships covered by the provision from disseminating and uploading similar infringing content (so-called notice & stay down), in full alignment with the most recent decisions of the Court of Justice of the European Union.

Delibera n. 422/22/CONS

https://www.agcom.it/documentazione/documento?p_p_auth=fLw7zRht&p_p_id=10

1_INSTANCE_FnOw5lVOIXoE&p_p_lifecycle=0&p_p_col_id=column-1&p_p_col_count=1&_101_INSTANCE_FnOw5lVOIXoE_struts_action=%2Fasset_publisher%2Fview_content&_101_INSTANCE_FnOw5lVOIXoE_assetEntryId=29274820&_101_INSTANCE_FnOw5lVOIXoE_type=document

Decision n. 422/22/CONS

[IT] Italy adopts new Regulation on programming and investment obligations in favour of European Works

Ernesto Apa & Eugenio Foco
Portolano Cavallo

On 14 December 2022, the *Autorità per le Garanzie nelle Comunicazioni* (Italian Communications Authority — AGCOM) adopted the new Regulation on programming and investment obligations in favour of European works and works by independent producers, through Resolution No. 424/22/CONS. The regulation further details the provisions contained in Legislative Decree No. 208/2021 (the AVMS Code).

The programming and investment obligations for linear audiovisual media service providers are set forth, respectively, under Articles 4 and 5 of the Regulation.

Under Article 4 of the Regulation, the programming quotas are applicable only to linear providers subject to Italian jurisdiction. In particular, the latter must reserve more than 50% of their airtime for European works (excluding news, sports events, television games, advertising, teletext and teleshopping). A third of the main quota for European works (i.e., 16.6% of the airtime) must be reserved for audiovisual works of Italian original expression. In addition, the same provision further envisages quotas for minors: 2% of airtime must be devoted to programmes specifically directed towards minors, and 10% to programmes suitable for viewing by minors and adults.

Article 5 of the Regulation devises investment obligations applicable both to linear providers established in Italy, and to linear providers authorised in other EU Member Sates that make their services available in Italy. Broadcasters must reserve 12.5% of their annual net revenue made in Italy to European works produced by independent producers, of which 50% (i.e., 6.25% of annual net revenues) must be reserved for works of Italian original expression produced anywhere by independent producers in the last 5 years. In addition, Article 5 also envisages a 3.5% quota to be reserved for Italian cinematographic works produced anywhere by independent producers, 75% of which will have to be recent.

Articles 6 and 7 outline, respectively, the programming and investment obligations applicable to on-demand providers.

Under Article 6, non-linear providers subject to Italian jurisdiction must reserve 30% of their catalogue (calculated on the number of titles) to recent European works, half of which (i.e. 15% of catalogue) must be reserved for works of Italian original expression produced anywhere by independent producers in the last five years.

Under Article 7, non-linear providers (including providers authorised in another Member State who direct their services towards Italy) must reserve progressively

17% (in 2022), 18% (in 2023) and 20% (from 1 January 2024 onwards) of the net annual revenue generated in Italy for the production, co-production, purchase or pre-purchase of European works produced by independent producers. Half of this quota must be reserved for works of Italian original expression produced anywhere by independent producers in the last five years. An additional sub-quota (10% of the main investment quota) must be reserved for cinematographic works of Italian original expression produced anywhere by independent producers in the last five years.

The Regulation also envisages the possibility for all audiovisual media service providers to request exemptions (Article 8) and derogations (Article 9) from the programming and investment obligations set forth above.

AGCOM Delibera n. 424/22/CONS "Regolamento in materia di obblighi di programmazione ed investimento a favore di opere europee e di opere di produttori indipendenti"

https://www.agcom.it/documents/10179/28826746/Allegato+22-12-2022/946cbb07-0769-4b65-8579-bbde8c4a7662?version=1.0

AGCOM Resolution No. 424/22/CONS "Regulation on programming and investment obligations for European works and works of independent producers"

LATVIA

[LV] Electronic Communications Law comes into force in Latvia

Ieva Andersone, Linda Reneslāce, Krišjānis Knodze
Sorainen

On 27 July 2022, the new Electronic Communication Law (ECL) which transposes the European Electronic Communications Code (EECC) entered into force in Latvia.

Specifically, by transposing the EECC, the new ECL:

- enhances the deployment of 5G networks by ensuring availability and competition for investments

- benefits and protects end-users by: ensuring access to the network, guaranteeing better cybersecurity, increasing the level of protection of citizens in emergency situations, and increasing the transparency of service providers, as well as benefiting end-users in other ways

- adds additional types of services to be regulated

Services subject to the ECL

According to the ECL, an electronic communication service is a service, usually provided for remuneration, which consists of the transmission of signals using electronic communication networks and which covers one of the following services: an internet access service, an interpersonal communications service, or another service which wholly or mainly consists of the transmission of signals. As required by the EECC, the ECL implements new concepts in electronic communication services like interpersonal communication services, and number-independent and number-dependent interpersonal communication services. As a result, the electronic communication services subject to the ECL are defined more broadly compared to the previous regulation.

Thus, number-independent service providers, for example, WhatsApp, are also considered electronic service providers. These providers do not connect to a public switched telephone network like number-based providers, but work with an internet connection. By taking into account the development of number-independent actors, the EECC also places certain obligations on them; however, the scope of obligations is not as wide as it is for number-based providers.

Specifically, obligations apply to number-independent service providers in cases where public interest requires the application of obligations to all types of services. In particular, these are requirements regarding security provisions,

cooperation with the regulator, transparency towards customers and data protection requirements. Therefore, ECL places certain obligations not only on number-based service providers but also on number-independent service providers.

Secondary legislation

The new ECL also delegates powers to the Cabinet of Ministers and Public Utilities Commission of Latvia (PUC) to issue secondary legislation to supplement the rules of the ECL. For example, the Cabinet of Ministers has to determine the procedures for managing numbering, establishing and maintaining the numbering database; and, for example, the PUC must issue rules on informing end-users on increased tariff calls and rules on information to be included in the electronic communication service contract summary.

The secondary legislation was adopted during 2022 and is now in force. Until then, the secondary legislation issued on the basis of the previous Electronic Communications Law remained in force.

Challenges regarding data retention requirements applicable to electronic communications service providers

The EECC was meant to be transposed into national legislation by 21 December 2020. However, the majority of EU member states, including Latvia, failed to transpose Directive 2018/1972 establishing the European Electronic Communications Code in time.

The new ECL was finally accepted in Latvia in its final reading on 2 June 2022. However, the law did not enter into force until 27 July as it had failed the final phase: presidential proclamation. The president sent the law back to the Saeima (Parliament of Latvia) emphasising that the initial version, and specifically, Sections 99, 100 and 101 of the ECL regarding the retaining of service users' data and data transfer to supervisory authorities, carried risks to the right to privacy and was incompatible with EU law and established EU case law: i.e., the provisions mentionedan obligation on network operators, when providing number-dependent services and internet access services, to retain certain personal data for a period of 18 months and to provide this data to supervisory authorities upon their request.

According to the Transitional Provisions of the ECL, the Cabinet of Ministers was obliged to submit another draft law to ensure the compliance of these articles with EU law and established EU case law. The deadline for submitting the draft law was set as 31 December 2022.

However, at the moment of writing this article, the draft law has not been submitted to Parliament.

Electronic Communications Act

Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code

https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32018L1972

MOLDOVA

[MD] Channel with programming from Moscow sanctioned

Andrei Richter
Comenius University (Bratislava)

The national media regulator, the Audiovisual Council of Moldova (CA), has sanctioned the television station "REN Moldova" with six fines totaling 30,000 Moldovan Lei (about EUR 1,500) and a public warning.

The violations were found by the CA during the monitoring of the programming of REN Moldova between 9 and 15 January 2023. They related to the non-compliant placement of advertising in the main “Evening News” bulletin, as well as the failure to indicate the sources of images in the news that had not been produced by the broadcaster itself, and an absence of a link between the images and the narrative of the news, thus violating the provisions of Article 13 (“Truthfulness of Information”) paragraph 5 subparagraphs (b) and (e), as well as of Article 66 (“Advertising and Teleshopping”) paragraph 3 of the Audiovisual Media Services Code (CSMA).

In accordance with the CSMA, the sanctioned media service provider is obliged to broadcast the text of the decision in the 48 hours following the date of adoption of the decision, with sound and/or visual image, at least three times, during peak audience hours, including at least once during the main news programme.

REN Moldova rebroadcasts programming of the Russian national TV channel REN-TV, owned by the National Media Group and which has been under EU economic sanctions since December 2022.

Meanwhile, the CA has announced that it will monitor several other channels that rebroadcast Russian TV programming.

"REN MOLDOVA" sanctioned by the CA with fines in the amount of 30,000 Lei for placing advertising in the news and not indicating the sources of the images, Press release of the CA. 3 February 2023

NETHERLANDS

[NL] New government-wide strategy on disinformation

Ronan Ó Fathaigh
Institute for Information Law (IViR)

On 23 December 2022, the Dutch government announced a significant new strategy on disinformation, which will involve three different government ministries. The new strategy on disinformation was contained in a Letter to Parliament on behalf of the Minister for Internal Affairs and Kingdom Relations (Binnenlandse Zaken en Koninkrijksrelaties), the State Secretary on Kingdom Relations and Digitisation (Koninkrijksrelaties en Digitalisering), the Minister of Justice and Security (Justitie en Veiligheid), and the State Secretary for Culture and Media (Cultuur en Media). Crucially, the government emphasised that the overarching principle of its policy is that "identifying what is and what is not disinformation and fact-checking are primarily not government tasks".

The letter begins by stating that an effective approach to disinformation requires a government-wide strategy in which fundamental rights, such as freedom of expression and freedom of the press, are paramount. In this regard, there are two main strands to the government's strategy on countering disinformation, namely (a) strengthening public debate, and (b) reducing the influence of disinformation. First, on strengthening the public debate, the letter notes that a diverse media landscape is important to limit the influence of disinformation; and the government is committed to maintaining confidence in and pluralism of Dutch media, as this "contributes to limiting the breeding ground for the negative effects of disinformation on society". As such, there have been recent government polices to strengthen local public broadcasting and investigative journalism (IRIS 2023-2/12). Further, the government is strengthening citizens' resilience to disinformation, with a number of new polices, including the Ministry of the Interior towards intensifying public communication about the existence of disinformation. While the State Secretary for Culture and Media is working with the Media Literacy Network on an awareness-raising process to increase knowledge and skills about the value of journalism in society.

Second, on reducing the influence of disinformation, there will be a number of new strategies, which are based on the view that every government ministry and State authority must be able to respond appropriately when disinformation affects their policy area. These include, for example, in the run-up to municipal elections and European Parliament elections, the organisation of exercises by the Ministry of the Interior and Kingdom Relations with other ministries on how to respond quickly and proportionately to disinformation campaigns. Further, the National Coordinator for Security and Counterterrorism (NCTV) will work to develop expertise in the field of communication in the event of disinformation in relation to national security crisis.

Finally, the letter states that at the end of 2023, the various ministries involved will inform Parliament about the progress of the implementation of the new strategy.

Minister van Binnenlandse Zaken en Koninkrijksrelatie, Kabinet pakt desinformatie aan, 23 december 2022

https://www.rijksoverheid.nl/regering/bewindspersonen/hanke-bruins-slot/nieuws/2022/12/23/kabinet-pakt-desinformatie-aan

Minister for Internal Affairs and Kingdom Relations, Cabinet tackles disinformation, 23 December 2022

[NL] New rules on the designation of local broadcasters

Ronan Ó Fathaigh
Institute for Information Law (IViR)

On 1 February 2023, the *Commissariaat voor de media* (Dutch Media Authority) published an important new Policy Rule for the designation procedure for local broadcasters. The Media Authority drew up the new Policy Rule to provide municipalities and (potential) local broadcasters with more clarity and guidance during the designation procedure. This is the procedure to be followed when determining whether an applicant (partly on the basis of advice from a municipal council) receives a designation as a local broadcaster from the Media Authority. The policy rule came into effect on 1 February 2023.

Under the Media Act 2008, the Media Authority designates local public media institutions. In practice, according to the Media Authority, “there has been a need for clarification and updating of the designation procedure for some time”. For example, in the areas of the method of assessing applications and the consequences of mergers of local public media institutions. As such, a number of policy changes have been made under the new Policy Rule. First, the Media Authority will announce in the Government Gazette when a designation procedure is to be opened and the deadline for the submission of applications. Second, there is a new deadline for submission for all applications, namely six months prior to the expiry of the current designation. Applications submitted to the Authority after this date will, in principle, be rejected. If the application is on time, but not complete, a recovery period of two weeks is offered. Third, in the event of several applications having been submitted for the same municipality and that municipality does not issue a preference recommendation, the Media Authority will designate one of the applicants as the local broadcaster by drawing lots by a civil-law notary. Fourth, in the case of a merger, in which one municipality merges into another municipality, the designation of the local broadcaster for the municipality that continues to exist remains in force. Finally, the Media Authority will ask municipalities to draw up assessment criteria for the situation in which multiple applications are submitted no later than 11 months before the expiry of a designation of a local broadcaster. These criteria can be used by applicants to tailor their applications, and will be applied by municipalities when comparing multiple applicants.

Finally, the Media Authority noted that during the preparation of the Policy Rule, the Ministry of Education, Culture and Science started implementing the government's new policy to strengthen local public broadcasting (see IRIS 2023-2/12). The intention is that the Media Act will be amended in 2025 on the basis of the outcome of this policy. Until then, the Media Authority will apply the rules that currently apply to the processing of applications for designation as a local broadcaster. The new Policy Rule seeks to provide clarity about the designation procedure until the Media Act is amended.

Commissariaat voor de media, Nieuwe beleidsregel aanwijzingsprocedure lokale omroepen, 1 february 2023

https://www.cvdm.nl/actueel/nieuwe-beleidsregel-aanwijzingsprocedure-lokale-omroepen

Dutch Media Authority, New policy rule for the designation procedure for local broadcasters, 1 February 2023

POLAND

[PL] UKE has announced an EU ban on the broadcasting and distribution of Russian TV channels

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According to an announcement on the UKE (Office of Electronic Communications) website, a ban on four Russian TV channels (NTV Mir, Rossiya 1, REN TV, Pervyi Kanal) became effective in Poland on 2 February 2023.

The above-mentioned ban results from *Council Implementing Regulation (EU) 2023/180 of 27 January 2023 implementing Regulation (EU) 2022/2474 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine* published on 30 January 2023. As a result, service providers are obliged to block access to information distributed by the banned Russian TV channels which covers the distribution of content by any means, such as cable TV, satellite TV, Internet TV, online platforms or video-sharing applications, whether new or pre-installed.

It is worth mentioning that since 1 March 2022, according to *Council Regulation (EU) 2022/350 of 1 March 2022 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine* it has been forbidden to broadcast two Russian channels - Russia Today and Sputnik.

At the same time the President of UKE indicated that the implementation of this obligation falls within the exceptions set out in Article 3(3) of *Regulation (EU) 2015/2120 of the European Parliament and of the Council, with regard to access to the open internet*. Article 3(3)(a) states that the use of non-standard traffic management measures is possible to, inter alia, ensure compliance with Union legislative acts.

Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015 laying down measures concerning open internet access and amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services and Regulation (EU) No 531/2012 on roaming on public mobile communications networks within the Union

https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32015R2120

Council Regulation (EU) 2022/350 of 1 March 2022 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine

https://eur-lex.europa.eu/legal-content/EN/TXT/?toc=OJ%3AL%3A2022%3A065%3ATOC&uri=uriserv%3AOJ.L_.2022

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Council Implementing Regulation (EU) 2023/180 of 27 January 2023 implementing Regulation (EU) 2022/2474 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine

https://eur-lex.europa.eu/eli/reg/2023/180/oj

Zakaz nadawania programów przez NTV/NTV Mir, Rossiya 1, REN TV, Pervyi Kanal

https://www.uke.gov.pl/akt/zakaz-nadawania-programow-przez-ntvntv-mir-rossiya-1-ren-tv-pervyi-kanal,465.html

Broadcasting ban on NTV/NTV Mir, Rossiya 1, REN TV, Pervyi Kanal

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