

In partnership with the Trinity College School of Law, the Coimisiún na Meán is publishing an essay on the topic of EU media regulation prepared by the top student taking the module EU Media Regulation, as part of the postgraduate LL.M programme in Trinity College. This initiative is designed to promote public debate about media policy and practice. The 2024 winning essay is titled 'Balancing Counter-Propaganda Measures with Safeguarding Freedom of Expression and Information Amidst the Russia-Ukraine Conflict'. It was written by Victoire Nataf and is edited by Dr Ewa Komorek, adjunct assistant professor, Trinity College.

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**Balancing Counter-Propaganda
Measures with Safeguarding Freedom
of Expression and Information Amidst
the Russia-Ukraine Conflict**

Edited by:

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Introduction

‘In another unprecedented step, we will ban in the EU the Kremlin’s media machine. The state-owned Russia Today and Sputnik, as well as their subsidiaries will no longer be able to spread their lies to justify Putin’s war and to sow division our Union. So we are developing tools to ban their toxic and harmful disinformation in Europe’¹.

Just three days after Russia's invasion of Ukraine, Ursula von der Leyen, President of the European Commission, addressed the public, announcing a series of restrictive measures in response to the attack on a European country. These sanctions include banning the broadcasting of certain Russian media within the European Union. As former US Secretary of Defence Donald Rumsfeld once stated, 'the struggle is not only on the battlefield, but also a test of wills, and the fight will be won or lost in the court of public opinion'². Indeed, the conflict between Russia and Ukraine extends beyond the battlefield; it also unfolds on the information front.

This decision is significant, as Russia Today and its subsidiaries are known for being channels established in Europe to disseminate Russian propaganda. Prior to Brexit, Russia Today held a license in the United Kingdom. Even before the Ukraine invasion, it had faced several statutory sanctions from Ofcom, the UK’s communications regulator, notably for lack of due accuracy and impartiality, particularly in its coverage of the poisoning of Russian spy Sergei Skripal and his daughter, which contravened UK broadcasting rules.³ On February 24, 2022, Russian President Vladimir Putin made his official announcement of the war declaration on Ukraine, carefully avoiding the words 'war' or 'invasion' and instead referring to it as a ‘special military operation’.⁴ Predictably, these exact same terms were echoed on official

¹ President Von Der Leyen, ‘Statement on further measures to respond to the Russian invasion of Ukraine’ (European Commission – Statement, Brussels, 27 February 2022).

² Donal Rumsfeld, ‘Guerre médiatique’ (La Libre Belgique, 1st March 2006), < <https://www.lalibre.be/debats/opinions/2006/03/02/guerre-mediatique-RK6AB7DMBJCUTJRH2EPPHELBCY/> > accessed on 18 April 2024.

³ Mark Sweney, ‘RT loses challenge against claims of bias in Novichok reporting’ (*The Guardian*, 27 March 2020) < <https://www.theguardian.com/media/2020/mar/27/rt-loses-challenge-bias-novichok-reporting-russia-today-ofcom> > accessed on 18 April 2024.

⁴ Rebecca Suner, ‘Comment les medias russes couvrent la guerre en Ukraine’, (*Brut*, 7 March 2022) < <https://www.brut.media/fr/international/comment-les-medias-russes-couvrent-la-guerre-en-ukraine-92b1dbfd-ee34-45a1-b9b7-1ae5c1edde1c> > accessed on 18 April 2024.

Russian channels, including Russia Today.⁵ In response to this obfuscation and the subsequent misinformation, the twenty-seven countries of the European Union agreed to ban the two Russian media outlets on all platforms. This decision, announced on February 27, was formalized through the publication of Regulation 2022/350 in the Official Journal of the European Union.⁶ To preempt accusations of censorship against Russian media outlets established in Europe, the EU Council presented this decision as an ‘economic sanction’. This approach purportedly does not impede journalists from performing their work but rather target the distribution mechanisms used by these media entities.⁷

While European public opinion strongly disapproved of the invasion, the ban on certain Russian media outlets has sparked numerous criticisms within the European Union. Critics have questioned both the legality of the Regulation and the Council's competence to adopt such restrictive measures, which are seen as unjustified infringements on freedom of expression and information within the European Union.⁸ These freedoms are protected under the Charter of Fundamental Rights of the European Union (EU Charter)⁹ and the European Convention on Human Rights (ECHR)¹⁰, which notably safeguard media freedom and pluralism against interference from public authorities.¹¹

In this delicate context, the challenge of balancing the protection of these freedoms with maintaining European public order necessarily arises.¹² It is partly on these grounds that Russia Today France (RT France), targeted by the ban, initiated annulment proceedings before the European Union General Court (General Court) as of March 8, 2022. However, the Court

⁵ *Ibid.*

⁶ Council Regulation 2022/350 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilizing the situation in Ukraine [2022] OJ L 65.

⁷ Alexandre Piquart, Aude Dassonville, ‘Guerre en Ukraine: l'Europe suspend les médias d'Etat russes RT et Sputnik’ (*Le Monde*, 2 March 2022) < https://www.lemonde.fr/economie/article/2022/03/02/guerre-en-ukraine-l-europe-suspend-les-medias-d-etat-russes-rt-et-sputnik_6115791_3234.html > accessed on 18 April 2024.

⁸ Dirk Voorhoof, ‘EU silences Russian state media: a in the wrong direction’ (*Inform's blog*, 8 May 2022) < <https://inform.org/2022/05/08/eu-silences-russian-state-media-a-step-in-the-wrong-direction-dirk-voorhoof/> > accessed 18 April 2022.

⁹ *Ibid.*

¹⁰ European Convention on Human Rights [1950].

¹¹ Respectively: EU Charter, Article 11 ; ECHR, Article 10.

¹² Viktor Szép, Ramses Wessel, ‘Balancing restrictive measures and media freedom: *RT France v. Council*’ (2023 Common Market Law Review Vol 60 Issue 5 1384.

rejected these arguments and upheld the legality and legitimacy of the Council's regulation banning the broadcast of Russia Today in Europe.¹³

Therefore, this essay aims to explore this decision in depth. Firstly, by examining its practical implications to understand how media can wield significant influence during conflicts while also addressing concerns about conflict coverage being viewed as propaganda or misinformation – a critical issue in European media law, given the differing regulatory approaches (I). Secondly, it seeks to analyze the balance between freedom of expression and information and the safeguarding of European public order from Russian media propaganda, as adjudicated by the General Court (II). Finally, this essay will evaluate the objective legal legitimacy of this ban and the General Court's decision, in light of fundamental rights and European media law (III).

I. The Use of Media Propaganda as a Strategic Tool in the Russo-Ukrainian Conflict

Propaganda has taken various forms throughout history, tracing its origins back to ancient times. Initially, the term 'propaganda' was employed to describe the spread of Catholic ideology to non-Christians, specifically through the Congregatio de Propaganda Fide (Congregation for the Propagation of the Faith) established by Pope Gregory in 1622.¹⁴ Long before the formalization of the term, however, propaganda existed in different guises. In ancient Greece, playwrights utilized drama as a means of conveying political, social, and moral messages to the population, already demonstrating the state's intent to manipulate and shape public opinion.¹⁵

The emergence of audiovisual media markedly amplified the impact of propaganda, facilitating rapid and extensive dissemination of information. Moreover, the international community recognized the pivotal role of media during times of conflict. For instance, in the aftermath of World War I, propaganda became deeply embedded in American society, as the US government utilized advertising to sway public opinion towards supporting the war effort.¹⁶

¹³ T-125/22 *RT France v. Council* [2022] EU:T:2022:483.

¹⁴ Viktor Szép, Ramses Wessel (n 12) 1384.

¹⁵ Lina Mai, 'When Is Fake News Propaganda?' (*Facing Today*, 29 January 2018) <<https://facingtoday.facinghistory.org/when-is-fake-news-propaganda->> accessed on 15 April 2024.

¹⁶ *Ibid.*

Despite international efforts to regulate propaganda, notably through the 1936 International Convention Concerning the Use of Broadcasting in the Cause of Peace, its global application ultimately fell short. The Convention aimed to prohibit the use of broadcasting for propaganda and the dissemination of false news, recognizing it as a threat to international peace and security. However, its effectiveness was limited, as key propagandist nations of the war, such as Germany, Italy, and Japan, were not parties to the agreement, underscoring the ongoing challenges in regulating propaganda on a global scale.¹⁷

The influence of public opinion through media manifests through misinformation, disinformation, and propaganda. Misinformation refers to the unintentional sharing of incorrect information, while disinformation, defined by the European Commission, involves deliberately spreading false or misleading content to deceive or gain economic or political advantage, potentially causing public harm.¹⁸ Propaganda, according to the Cambridge Dictionary, is the dissemination of one-sided information, ideas, opinions, or images, with the aim to influence opinions. The extent to which these concepts overlap is a subject of debate. For instance, some scholars do not clearly differentiate between propaganda and disinformation, defining propaganda as the use of irrational arguments to promote or undermine a political ideal, and considering disinformation as a form of propaganda intended to cause harm.¹⁹

European Commission President Von der Leyen characterized Russia Today's broadcasts as 'disinformation' in her statement, yet we will see that distinguish the two is not always straightforward.²⁰ In the context of Russia Today's coverage of the Ukraine war, the content is clearly false and misleading. However, Russia has a history of establishing an information ecosystem aimed at disseminating disinformation as a strategic component of its warfare, in order to influence the consumption of information by other nations. Therefore, as Professor Lendvai points out, this state-driven propaganda strategy meets intention, financial

¹⁷ *Ibid.*

¹⁸ European Commission, 'Tackling online disinformation' (*Shaping Europe's digital future*, 2022) < <https://digital-strategy.ec.europa.eu/en/policies/online-disinformation> > accessed on 16 April 2024.

¹⁹ National Endowment For Democracy, 'Note d'Information: Distinguer la désinformation de la propagande, de la mésinformation et des fake news' (2017) accessible: <https://www.ned.org/wp-content/uploads/2017/10/distinguer-la-desinformation-de-la-propagande-de-la-mesinformation-et-des-fake-news.pdf>

²⁰ President Von der Leyen (n 1).

capabilities meet misrepresentation of facts, and the actor, the Russian state, deliberately produces false content, blurring the line between disinformation and propaganda.²¹

Propaganda emanating from within Russia itself aims to justify the war, as evidenced by reports of restricted access to media outlets disseminating so-called ‘deliberately false information’ on the armed conflict in Ukraine.²² Even more, on March 4th, 2022, Russia criminalized the dissemination of disinformation concerning its armed forces.²³ This state-powered mechanism manipulates media narratives entirely, leading to a deterioration of trust and a shift towards the consumption of foreign resources, while using media as a weapon of warfare.²⁴ This domestic propaganda has resulted in significant public support in Russia, as indicated by polling conducted in February 2023, where 59% of respondents expressed support for Putin's decision to launch a new offensive on Kyiv, with only 26% opposed.²⁵

However, Russia also employs an international propaganda strategy, as scholarly analyses have shown its implementation of various models to infiltrate the internal affairs of foreign countries, ranging from Ukraine before the war, through the 2016 US elections, to interventions in Georgia and Belarus.²⁶ Indeed, according to the EU Council, alongside Russia's terrestrial invasion of Ukraine, the Russian Federation embarked on an ‘international campaign of media manipulation and distortion of facts in order to enhance its strategy of destabilization of its neighboring countries and of the Union’ and this propaganda ‘has repeatedly and consistently targeted European political parties, especially during election periods, as well as targeting civil society, asylum seekers, Russian ethnic minorities, gender minorities, and the functioning of democratic institutions in the Union and its Member States’.²⁷

²¹ Gergely Ferenc Lendvai, ‘Media in War: An Overview of the European Restrictions on Russian Media’ (*European Papers*, 24 January 2024) < [²² Björnstjern Baade, ‘The EU’s “Ban” of RT and Sputnik’ \(*Verfassungsblog*, 8 March 2022\) < <https://verfassungsblog.de/the-eus-ban-of-rt-and-sputnik/> > accessed on 15 April 2024.](https://www.europeanpapers.eu/en/europeanforum/media-in-war-overview-of-european-restrictions-on-russian-media#:~:text=On%201%20March%202022%2C%20the.restricted%20in%20the%20European%20Union.></p>
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²³ *Ibid.*

²⁴ Gergely Ferenc Lendvai (n 22) 1238.

²⁵ Re:Russia, ‘Russian Field: Support for Non-Support of Peace and War’ (*Polls Analytics*, 9 March 2023) < <https://re-russia.net/en/analytics/059/> > accessed on 15 April 2024.

²⁶ Gergely Ferenc Lendvai (n 22) 1238.

²⁷ Council Regulation 2022/350 (n 6) para 6.

In response to the pervasive wave of propaganda and due to the interference caused by these state-owned Russian channels in the public order and security of the European Union, the Council has implemented stringent measures. The Council has prohibited the ‘broadcasting’ or ‘enabling, facilitating, or otherwise contributing’ to the broadcast of any content from Russia Today and its subsidiaries²⁸, by any means, including through cable, satellite, internet service providers, or video-sharing platforms.²⁹ However, the regulation does not explicitly define the concept of broadcasting, instead, one must refer to the Audio-Visual Media Services Directive (AVMSD)³⁰, which specifies that it pertains to a ‘linear audiovisual media service’³¹.

These measures may seem stringent as they impose a broad ban rather than targeting specific content. However, the regulation justifies these measures for two primary reasons: to foster peace and to safeguard the public order and security of the Union. Indeed, the EU Council emphasizes that these actions are necessary to counter the destabilizing effects of Russian propaganda, which has been consistently used to manipulate public opinion. Furthermore, the Regulation was adopted under Article 215 of the Treaty on the Functioning of the European Union (TFEU). This article empowers the Council to implement necessary measures for enforcing restrictive measures taken under Article 29 of the Treaty on European Union (TEU) to ensure their uniform application across all EU Member States.³² The decision to invoke Article 215 underscores the gravity of the situation and the EU’s commitment to maintaining its internal security and stability against external threats.

Just seven days after the Council's Regulation was published, RT France filed an annulment action with the General Court on four different grounds, which can be subdivided into two subcategories: the Council's incompetence to adopt restrictive measures in the field of

²⁸ Council Regulation 2022/350, Annex XV: the list of legal persons, entities or bodies referred to in Article 2 are Russia Today English, Russia Today UK, Russia Today Germany, Russia Today France, Russia Today Spanish, Sputnik.

²⁹ Council Regulation 2022/350 (n 6) Article 2.

³⁰ European Parliament and Council Directive 2018/1808 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual services [2018] L 303/69.

³¹ AVMSD, Article 1 (e).

³² EUR-Lex, ‘General framework for EU sanctions’ (2023) <https://eur-lex.europa.eu/EN/legal-content/summary/general-framework-for-eu-sanctions.html>

audiovisual broadcasting and infringements of the EU Charter.³³ Regarding violations of the EU Charter, RT France argued that the Regulation failed to uphold the right to freedom of expression and information³⁴, freedom to conduct business³⁵, the principle of non-discrimination on grounds of nationality³⁶, and the rights of defence³⁷.³⁸ However, the General Court concluded that these restrictive measures against Russian TV channels did not infringe upon the right to freedom of expression and information. Therefore, this outcome necessitates a closer examination of how the Court balanced the right to freedom of expression with the need to safeguard European public order, followed by an evaluation of the legitimacy of this balance.

II. The Right to Freedom of Speech and Information, a Fundamental and Absolute Right?

Freedom of expression and information are universally acknowledged as essential cornerstones of democratic societies and as indicators of the state of democracy within a country. As aptly stated by Josep Borrell, Vice-President of the European Commission, ‘if the information is bad, democracy is bad’.³⁹ Consequently, these rights are safeguarded both at the European Union level, under Article 11 of the EU Charter, and at the European level, under Article 10 of the ECHR. These provisions underscore the significance of media freedom by asserting that the media must operate without undue interference from governmental bodies, thereby promoting media pluralism. They uphold the principle that diverse viewpoints and information sources are essential for a vibrant democracy.

³³ T-125/22 *RT France v. Council* (n 13) para 45.

³⁴ EU Charter, Article 11.

³⁵ EU Charter, Article 16.

³⁶ EU Charter, Article 16.

³⁷ EU Charter, Articles 41 and 48.

³⁸ We will set aside the question of the competence of the Council, the rights of the defence and freedom of conduct business in this essay. The infringement of freedom of expression will be discussed in further detail in Section 2.

³⁹ AP, ‘EU officials defend move to ban RT and Sputnik amid censorship claims’ (*Euronews*, 8 March 2022) < [9](https://www.euronews.com/my-europe/2022/03/08/eu-officials-defend-move-to-ban-rt-and-sputnik-amid-censorship-claims#:~:text=European%20Union%20officials%20on%20Tuesday,%2Dled%20%E2%80%9Cinformation%20war%22.> accessed on 18 April 2024.</p>
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The importance of access to information within the Community legal order has been consistently emphasized by the EJC.⁴⁰ Democracy thrives on informed citizen consent, which necessitates governmental transparency and citizen participation in democratic processes based on accurate information.⁴¹ Therefore, the media plays a vital role in facilitating this right. In the case *Jersild v. Denmark*, the ECtHR highlighted the essential role of the media in disseminating information and ideas of public interest, describing the press as the ‘public watchdog’ responsible for imparting such information and acknowledging the public's right to receive it.⁴² Furthermore, the ECHR stated that politically sensitive opinions are afforded the highest level of protection under human rights law, even if they ‘offend, shock, or disturb the State or any sector of the population’.⁴³ This interpretation is also recognized at the European Union level, as evidenced in the decision *Tietosuojavaltuutettu v. Satakunnan Markkinapörssi*, where the Court affirmed that freedom of expression encompasses the expression of opinions and the freedom to receive and impart information, regardless of whether the information offends or pleases the state.⁴⁴

Even though the ECtHR offers a very high standard of protection for freedom of expression and information, this right is not unlimited, as stipulated in Article 10 (2), which provides for a series of restrictions to this principle, particularly in cases involving national security, territorial integrity, public safety, and the prevention of disorder or crime (...).⁴⁵ All Article 10 cases before the ECtHR follow a structure four-stage analysis: determining whether there is interference with freedom of expression (1), assessing if it is prescribed by law (2), evaluating if there is a legitimate aim (3), and finally, determining if it is proportionate and necessary in a democratic society (4).⁴⁶ In the case of *RT France v. Council*, the ECJ followed a similar structured approach.

⁴⁰ C-336/07 *Kabel Deutschland Vertrieb und Service GmbH & Co. KG v. Niedersächsische Landesmedienanstalt für privaten Rundfunk* [2008] para 33.

⁴¹ David Banisar ‘The Right to Information and Privacy: Balancing Rights and Managing Conflict’ (*World Bank Institute Governance Working Paper*, 10 March 2011)

<https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1786473> accessed 15 April 2024.

⁴² *Jersild v. Denmark* no 15890/89 (ECtHR, 23 September 1994) para 31.

⁴³ *Handyside v. The United Kingdom* no 5493/72 (ECtHR, 7 December 1976) para 49; Björnstjern Baade (n 23).

⁴⁴ C-73/07 *Tietosuojavaltuutettu v Satakunnan Markkiapörssi and Satamedia* [2008] C:2008:727.

⁴⁵ ECHR, Article 10 (2).

⁴⁶ *Centro Europa 7 S.r.l. and Di Stefano v Italy* (ECtHR, 7 June 2012) para 135.

Firstly, it determined whether the interference with the right of freedom and expression was prescribed by law. The Court cited Article 29 of the TEU and Article 215 of the TFEU as providing the legal framework for the Council's adoption of restrictive measures. The Court emphasized that these Treaty provisions were sufficiently foreseeable for the parties involved, serving as legal bases for the adoption of measures that could adversely affect or limit freedom of expression.⁴⁷

Subsequently, the restrictive measures were evaluated to ensure they respected the essence of freedom of expression. The 'temporary' ban, which is reversible upon review, was deemed compliant as it did not fundamentally question freedom of expression.⁴⁸ Moreover, the Court has specified that the broadcasting prohibition hinges on two cumulative conditions: Russia's continuous propagation of propaganda (1) in support of military aggression of Ukraine (2). Consequently, even if the assault ceased but the dissemination of propaganda persisted, there would be no grounds to maintain the measures. Finally, in addition to the clear time limit established, the essence of freedom of expression was upheld as RT could continue its activities other than broadcasting within the EU, such as research and interviewing, while still broadcasting outside the EU, including to French-speaking countries. These measures ensure freedom of expression, albeit in a limited manner, according to the General Court.⁴⁹

The restriction also had to meet an objective of general interest recognized by the EU. In this case, safeguarding the public order and security of the European Union, which was threatened by Russia's systematic propaganda campaign that could undermine the foundation of democratic societies and is considerate as an integral part of modern warfare tactics by the General Court, was deemed a legitimate objective to preserve peace.⁵⁰ This objective was aligned with Article 21(2) (a) of the TEU and the Council Decision objectives, which aim to safeguard the Union's values, fundamental interests, security, independence, and integrity.⁵¹

⁴⁷ T-125/22 *RT France v. Council* (n 13) para 149.

⁴⁸ T-125/22 *RT France v. Council* (n 13) para 154.

⁴⁹ T-125/22 *RT France v. Council* (n 13) para 157.

⁵⁰ T-125/22 *RT France v. Council* (n 13) para 162.

⁵¹ T-125/22 *RT France v. Council* (n 13) para 161.

Lastly, the restriction had to be proportionate. Evidence showed that RT France was under permanent control, directly or indirectly, of the leaders of the Russian Federation as its share of capital owned by TV Novosti which is entirely financed by Russian State.⁵² The ownership structure and lack of editorial independence demonstrated RT France's alignment with the Russian government's agenda. Moreover, content broadcasted by RT France concerning military aggression in Ukraine echoed language used by the Russian government, further underscoring its lack of editorial independence.⁵³ Therefore, the Court found that the limitation of freedom of expression and information was appropriate and necessary for achieving the objectives of general interest pursued by the European Union.

Considering that the restrictive measures pertaining to the Russian media outlets Russia Today and Sputnik within the European Union were deemed justified and proportionate, the Court rejected this argument in seeking the annulment of the Council Regulation and upheld the ban.

III. Examining the Debated Aspects of *RT France v. Council*

RT France has already appealed the decision of the General Court to the ECJ. This decision was made in a sensitive geopolitical context, and the fact that the Tribunal chose to apply Article 151(2) of the Rules of Procedure of the General Court, allowing for expedited proceedings and referral to the Grand Chamber, underscores the significance of the matter at hand.⁵⁴ While the decision reflects the traditional jurisprudence of the ECJ and the ECtHR, it has sparked numerous criticisms, particularly regarding allegations of a disproportionate infringement upon freedom of expression and information (A) and analyze the potential lingering questionable aspects of the ban (B).

⁵² T-125/22 *RT France v. Council* (n 13) paras 171-172.

⁵³ T-125/22 *RT France v. Council* (n 13) paras 179-186.

⁵⁴ T-125/22 *RT France v. Council* (n 13) para 31.

A. Challenges to Principles of Freedom of Expression

The General Court's approach to the restrictions imposed on the activities of an entire media house in the RT France case drew significant criticism for various reasons.

As it was the first instance of such restrictions, the General Court had to indirectly rely on ECJ case law and seek guidance from the ECtHR.⁵⁵ While the Court referred to the *NIT s.r.l. v Moldova* decision⁵⁶ several times, it overlooked significant differences between that case and the singular situation involving RT France.⁵⁷ Notably, the *NIT* case notably entailed the revocation of a broadcasting license by an independent regulatory body due to recurrent violations of broadcasting standards, underscoring the significance of ‘procedural safeguards’.⁵⁸ These safeguards include the necessity for any ban or license withdrawal to be decided upon by an ‘independent body’ and for the affected media outlets to be provided with prior notice to ensure compliance, as emphasized by the ECtHR in *OOO Flavus and others v. Russia*, which stressed that prior notice offers ‘the opportunity to remedy the supposed breach by removing the offending content’.⁵⁹

The Council's decision to impose a six-month ban on RT France, later extended, raises concerns about its alignment with these procedural safeguards.⁶⁰ Firstly, the Council comprises political officials who are neither independent nor specialists in media regulation, raising doubts on whether the first condition is fulfilled. Secondly, as previously discussed, the Regulation was swiftly enacted following Russia's declaration of war on Ukraine, making it highly unlikely that RT France was provided with prior notice.⁶¹

⁵⁵ Michal Riha, ‘Freedom of Speech, Propaganda and EU at War: Case of Russia Today France’ (2024) *The Lawyer Quarterly* Vol. 14 No. 1 118.

⁵⁶ *NIT s.r.l v The Republic of Moldova* no 28470/12 (5 April 2022).

⁵⁷ Ronan Ó Fathaigh, Dirk Voorhoof, ‘Freedom of Expression and the EU’s Ban on Russia Today: A Dangerous Rubicon Crossed’ (2022) *Communications Law* Vol 27.

⁵⁸ *Ibid.*

⁵⁹ *OOO Flavus and Others v. Russia* nos 12468/15, 23489/15 and 19074/16 (23 June 2020)

⁶⁰ *Ibid.*

⁶¹ *Ibid.*

Furthermore, the *Verlag Han-Bredow Institut* conducted a survey following the European Union's restrictive measures against Russia Today and Sputnik channels in Europe. The survey included a series of questions on Content Governance and Media Policy after the Council's Decision in March 2022, submitted to Member States (Belgium, France, Ireland, etc.) as well as third countries (South Africa, Argentina, Iceland, etc.).⁶² The study reveals that participants lament the lack of a clearer and more harmonized legal framework within the European Union regarding the regulation of disinformation, which would prevent the adoption of restrictive measures, often more extreme, during times of war.⁶³ Moreover, concerns arise regarding the potential long-term consequences of these restrictions, driven by legitimate war-related and political goals.⁶⁴ Some express apprehension that online censorship in response to Russian aggression could establish dangerous precedents for future conflicts.⁶⁵

B. Ongoing Concerns Arising from RT France v. Council

Dr. B. Baade underscores several legal justifications for this contentious decision.⁶⁶ Firstly, despite the absence of harmonized regulation of propaganda in EU law, two international legal bases exist: Article 20 of the International Covenant on Civil and Political Rights, and as we already mentioned, Article 2 of the International Convention on the Use of Broadcasting in the Cause of Peace.⁶⁷ These widely ratified instruments categorically prohibit advocating aggression, thereby establishing a foundational principle of EU law against propaganda of war.⁶⁸ Secondly, the AVMSD provides another legal foundation, previously invoked in cases of misinformation during the Russia-Ukraine conflict in 2014.⁶⁹ Article 3 of the AVMSD, known as the 'country of origin principle', empowers Member States to suspend

⁶² Global Digital Human Rights, 'Governing Information Flows During War: A Comparative Study of Content Governance and Media Policy Responses After Russia's Attack on Ukraine' (2022) <https://www.ssoar.info/ssoar/bitstream/handle/document/78580/ssoar-2022-susi_et_al-Governing_Information_Flows_During_War.pdf?sequence=5&isAllowed=y&lnkname=ssoar-2022-susi_et_al-Governing_Information_Flows_During_War.pdf>

⁶³ *Ibid.*

⁶⁴ *Ibid.*

⁶⁵ *Ibid.*

⁶⁶ Björnstjern Baade, 'The EU's "Ban" of RT and Sputnik' (*Verfassungsblog*, 8 March 2022) <<https://verfassungsblog.de/the-eus-ban-of-rt-and-sputnik/>> accessed on 15 April 2024.

⁶⁷ *Ibid.*

⁶⁸ The International Convention on the Use of Broadcasting in the Cause of Peace has been ratified by all EU Member States.

⁶⁹ Commission Decision on the compatibility of the measures adopted by Lithuania pursuant to Article 3 (2) of Directive 2010/13/EU (2017) against RTR Planeta. <[file:///Users/victoirenataf/Downloads/1_en_act_part1_v2_42897%20\(1\).pdf](file:///Users/victoirenataf/Downloads/1_en_act_part1_v2_42897%20(1).pdf)>

broadcasts if they clearly violate the directive's rules on incitement to hatred or pose a serious risk to 'public security, including national defense'.⁷⁰ Moreover, Article 6 of the AVMSD authorizes the suspension of television broadcasts that incite hatred based on specific criteria. Consequently, when audiovisual programs transcend propaganda and veer into hate speech territory, thereby threatening public security, the receiving Member State may intervene with broadcasts from another country, provided it adheres to specific procedural conditions.

A noteworthy case is the European Commission Decision concerning Lithuania's measures against RTR Planeta.⁷¹ In 2015, Lithuania suspended the rebroadcasting of RTR Planeta due to alleged incitement to hatred, particularly concerning its coverage of the ongoing military conflicts involving Russia and ambiguous threats of destruction against the Baltic States. In doing so, the Lithuanian Authorities referenced the definition of incitement to hatred in connection with broadcasting across EU Member States, as provided by the *Mesopotamia Broadcast and Rok TV* decision: 'any ideology which fails to respect human values, in particular initiatives which attempt to justify violence by terrorist acts against a particular group of persons'⁷². This decision was subsequently affirmed as compatible with EU law by the Commission in February 2017. However, in a parallel scenario involving Rossiya RTR, procedural missteps were observed. Specifically, the Latvian authorities failed to notify the broadcaster and the Commission in writing of the alleged infringements. Furthermore, Latvia neglected to adhere to the circumvention procedure outlined in Article 4(2).⁷³ In conclusion, while the AVMSD can be wielded effectively to block propaganda programs, it must be meticulously applied in instances of hate speech, adhering strictly to the prescribed procedural steps.

However, debates persist around certain aspects of this decision. Before the General Court pronounced its judgment, Dr. B. Baade highlighted that RT's dissemination of misleading disinformation, rather than outright falsehoods, blurs the line between truth and

⁷⁰ AVMSD, Article 3.

⁷¹ Commission Decision on the compatibility of the measures adopted by Lithuania pursuant to Article 3 (2) of Directive 2010/13/EU (2017) against RTR Planeta. < <https://merlin.obs.coe.int/article/8305> >

⁷² C-244/10 *Mesopotamia Broadcast A/S METV v Bundesrepublik Deutschland* [2011] EU:C:2011:607 para 42.

⁷³ Commission Decision on the compatibility of the measures adopted by Lithuania pursuant to Article 3 (2) of Directive 2010/13/EU (2020) against Rossiya RTR < <https://digital-strategy.ec.europa.eu/en/news/decision-latvia-suspend-broadcast-tv-channel-rossiya-rtr-compatible-eu-law> >

manipulation.⁷⁴ According to the author, RT was presenting technically accurate information in a manner that led to incorrect conclusions.⁷⁵ While this practice is not explicitly prohibited, political opinions, even if unsettling, benefit from a high standard of protection under European human rights law.⁷⁶ Therefore, he argued that it would be difficult for the Court to justify banning entire media outlets from broadcasting for spreading misleading disinformation. Nevertheless, following the General Court's decision, he noted that the RT France case addresses this challenge.⁷⁷ Instead of leaving it to readers to determine what could constitute war propaganda, the judgment provides evidence by scrutinizing specific statements from the broadcasts, their precise dates, and above all, their context, which is crucial when regulating speech. For instance, it emerges that RT's reports and discussions with guests aimed to portray the attack as legitimate self-defense or even as a humanitarian intervention to prevent an alleged genocide orchestrated by a Ukrainian government compared to a Nazi regime.⁷⁸

Finally, the General Court's rationale for rejecting the RT France's petition based on the temporary nature of the contested measures appears misleading. These measures are intended to remain in effect until the cessation of aggression against Ukraine and until Russia, along with its affiliated media, cease propagandistic actions against the European Union and its Member States. While verifying the cessation of aggression may prove straightforward in the future, determining the end of propagandistic actions is more intricate, particularly in the absence of harmonized regulatory frameworks. Propaganda inherently entails political and subjectivity, heightening the likelihood that allegations against Russian media entities will persist even following the conclusion of hostilities, particularly amidst an increasingly prevalent context of information warfare.

⁷⁴ Björnstjern Baade (n 23).

⁷⁵ *Ibid.*

⁷⁶ See Section II on this point.

⁷⁷ Björnstjern Baade, 'EU Sanctions Against Propaganda for War' (2023) Available at SSRN: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4436427

⁷⁸ T-125/22 *RT France v. Council* (n 13) paras 180-185.

Conclusion

The decision rendered by the General Court appears to draw its justification from a multifaceted analysis, including the prevailing political landscape and the strategic propaganda efforts of Russia. It also finds support in legal principles, underscored by the Court's meticulous application of the four-step proportionality assessment. Nonetheless, there remains a possibility that certain adjustments may be deemed necessary, particularly in light of the appeal filed by RT France and the subsequent potential for review by the European Court of Justice.

Of particular note is the thorough examination conducted by the General Court regarding Russia's dissemination of war propaganda, contrasting with the 2017 case of *Kiselev v. Council* and highlighting the Court's commitment to rigorous scrutiny in matters of significant gravity.⁷⁹ This precision seems prompted by the lack of harmonization within the European Union's legal framework concerning propaganda. While indirect references can be found in legislative instruments such as the Digital Services Act, the Media Freedom Act, and the AVMSD directive, a more comprehensive approach appears to be lacking.

Nevertheless, the primary objective appears to be the thorough justification of this unprecedented and stringent prohibition of media outlets within the European Union. Despite the potential necessity of such measures given the current circumstances, it is undeniable that they significantly restrict both freedom of expression and the dissemination of information. This raises pertinent questions regarding the fundamental principle of media pluralism, underscoring the importance of individual autonomy in choosing sources of information, regardless of their inherent biases or partiality.

In alignment with these concerns, Pierre Auriel, a prominent scholar in French public law, argues that the Union has implemented substantial restrictions on freedom of expression and press to defend European democracies. Over the past decade, concerted efforts have been made to strengthen the pillars of European democracies and public discourse. The exclusion of RT and Sputnik is seen as a reflection of these ongoing efforts, marked by its unprecedented scale yet firmly in line with the overarching goal of protecting democratic values.

⁷⁹ T-262/15 *Domitrii Konstantinovich Kiselev v. Council of the European Union* [2017] EU:T:2017:392.

Ultimately, while European media laws aim to bolster individual liberties and rights, they also serve to uphold the European Union and its foundational values. This is achieved through carefully balancing the restriction of freedom of expression when deemed necessary, ensuring a delicate equilibrium between safeguarding democratic principles and addressing threats to societal cohesion.

Bibliography

Primary sources :

Primary legislations:

- European Convention on Human Rights [1950]

European Union legal sources:

European legislations:

- Charter of Fundamental Rights of the European Union [2012] OJ C326
- Council Regulation 2022/350 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilizing the situation in Ukraine [2022] OJ L 65
- European Parliament and Council Directive 2018/1808 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual services [2018] L 303/69 (AVMSD)

Judgments of the European Court of Justice or General Court:

- T-125/22 *RT France v. Council* [2022] EU:T:2022:483
- C-336/07 *Kabel Deutschland Vertrieb und Service GmbH & Co. KG v. Niedersächsische Landesmedienanstalt für privaten Rundfunk* [2008]
- C-73/07 *Tietosuoja- ja valtuutettu v Satakunnan Markkijärjestö ja Satamedia* [2008] C:2008:727
- T-262/15 *Domitrii Konstantinovich Kiselev v. Council of the European Union* [2017] EU:T:2017:392.

Judgements of the European Court of Human Rights:

- *Jersild v Denmark* no 15890/89 (ECtHR, 23 September 1994)

- *Handyside v. The United Kingdom* no 5493/72 (ECtHR, 7 December 1976)
- *OOO Flavus and Others v. Russia* nos 12468/15, 23489/15 and 19074/16 (23 June 2020)
- *NIT s.r.l v The Republic of Moldova* no 28470/12 (5 April 2022).
- *Centro Europa 7 S.r.l. and Di Stefano v Italy* (ECtHR, 7 June 2012)

Secondary sources:

Journal articles:

- Viktor Szép, Ramses Wessel, ‘Balancing restrictive measures and media freedom: *RT France v. Council*’ (2023 *Common Market Law Review* Vol 60 Issue 5)
- Michal Riha, ‘Freedom of Speech, Propaganda and EU at War: Case of Russia Today France’ (2024) *The Lawyer Quarterly* Vol. 14 No. 1 118.

Conference papers

- President Von Der Leyen, ‘Statement on further measures to respond to the Russian invasion of Ukraine’ (European Commission – Statement, Brussels, 27 February 2022).
- Ewa Komorek, ‘Lecture 2: History of EU regulation of audiovisual media’ (2024).

Working papers:

- Gergely Ferenc Lendvai, ‘Media in War: An Overview of the European Restrictions on Russian Media’ (*European Papers*, 24 January 2024) <[>](https://www.europeanpapers.eu/en/europeanforum/media-in-war-overview-of-european-restrictions-on-russian-media#:~:text=On%201%20March%202022%2C%20the,restricted%20in%20the%20European%20Union.>>- David Banisar ‘The Right to Information and Privacy: Balancing Rights and Managing Conflict’ (<i>World Bank Institute Governance Working Paper</i>, 10 March 2011) <
- Global Digital Human Rights, ‘Governing Information Flows During War: A Comparative Study of Content Governance and Media Policy Responses After Russia’s Attack on Ukraine’ (2022) <<https://www.ssoar.info/ssoar/bitstream/handle/document/78580/ssoar-2022->>

[susi et al-Governing Information Flows During War.pdf?sequence=5&isAllowed=y&lnkname=ssoar-2022-susi et al-Governing Information Flows During War.pdf](https://www.lalibre.be/debats/opinions/2006/03/02/guerre-mediaticue-RK6AB7DMBJCUTJRH2EPPHELBCY/)

Websites:

- Donal Rumsfeld, ‘Guerre médiatique’ (La Libre Belgique, 1st March 2006), < <https://www.lalibre.be/debats/opinions/2006/03/02/guerre-mediaticue-RK6AB7DMBJCUTJRH2EPPHELBCY/>>.
- Mark Sweney, ‘RT loses challenge against claims of bias in Novichok reporting’ (*The Guardian*, 27 March 2020) < <https://www.theguardian.com/media/2020/mar/27/rt-loses-challenge-bias-novichok-reporting-russia-today-ofcom> >.
- Rebecca Suner, ‘Comment les médias russes couvrent la guerre en Ukraine’, (*Brut*, 7 March 2022) < <https://www.brut.media/fr/international/comment-les-medias-russes-couvrent-la-guerre-en-ukraine-92b1dbfd-ee34-45a1-b9b7-1ae5c1edde1c> >.
- Alexandre Piquart, Aude Dassonville, ‘Guerre en Ukraine: l’Europe suspend les médias d’Etat russes RT et Sputnik’ (*Le Monde*, 2 March 2022) < https://www.lemonde.fr/economie/article/2022/03/02/guerre-en-ukraine-l-europe-suspend-les-medias-d-etat-russes-rt-et-sputnik_6115791_3234.html >.
- Dirk Voorhoof, ‘EU silences Russian state media: a in the wrong direction’ (*Inform’s blog*, 8 May 2022) < <https://inform.org/2022/05/08/eu-silences-russian-state-media-a-step-in-the-wrong-direction-dirk-voorhoof/> >.
- Lina Mai, ‘When Is Fake News Propaganda?’ (*Facing Today*, 29 January 2018) < <https://facingtoday.facinghistory.org/when-is-fake-news-propaganda-> >.
- Björnstjern Baade, ‘The EU’s “Ban” of RT and Sputnik’ (*Verfassungsblog*, 8 March 2022) < <https://verfassungsblog.de/the-eus-ban-of-rt-and-sputnik/> > accessed on 15 April 2024.