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Fighting Fire with Fire: A critical examination of the European Union's ban on Russian state media'

Edited by: Dr Ewa Komorek, adjunct assistant professor, Trinity College Dublin

Introduction

The European Union's response to Russia's 2022 invasion of Ukraine, banning several Russian media outlets, represents one of the most significant regulatory efforts to counter propaganda in recent memory.¹ Yet, the question arises: was this the right response? This essay argues that the EU's ban on Russian media outlets, while perhaps normatively defensible, was ultimately a misstep. Through a critique of the legal basis of the ban and an examination of Russian circumvention tactics around the ban, the essay contends that a more sustainable response lies not in expanding regulation, but in investing in media literacy as a long-term safeguard against propaganda.

This argument is broken down in three parts. Firstly, this essay argues the ban rests on murky doctrinal waters. Using Jurgen Habermas's theory of communicative action², this essay argues that the judgement of the General Court of the EU, which validated the ban in *RT France v. Council* ('*RT France*')³, was riddled with legal uncertainty. Not only does this raise doubts of the ban's legal legitimacy, but it also undermines the democratic legitimacy of the EU.⁴ In making this argument, the essay separates the intended normative outcome or desirability of the ban from the legal doctrine used to implement and validate the ban, focusing on the latter.⁵ The main concerns are (a) the General Courts articulation of the legal basis of the ban and (b) the selective application of ECtHR jurisprudence.

Secondly, this essay argues that the ban has had limited effectiveness. The country-of-origin principle within the Audio-Visual Media Directive (AVMSD) has provided Russia with alternative forums to circulate propaganda despite the ban on Russian media outlets.⁶ While the 2018 amendment to the AVMSD provides a procedure for exceptions to the country-of-

¹ András Koltay, 'Censorship as A Tool Against State Disinformation: The Freedom of Expression Implications of the Russia-Ukrainian War' (2024) 10(1) *Journal of International Media and Entertainment Law* 3.

² Jurgen Habermas, *Theory of Communicative Action* (1 edn, Polity 1986)

³ T-125/22 *RT France v. Council* [2022] EU:T:2022:483 ('*RT France*')

⁴ Igor Popovic, 'The EU Ban of RT and Sputnik: Concerns Regarding Freedom of Expression' (2022) EJLT <<https://www.ejiltalk.org/the-eu-ban-of-rt-and-sputnik-concerns-regarding-freedom-of-expression/>> accessed 16 April 2025.

⁵ This concept is derived from Jeremy Waldron's argument in relation to judicial review. See Jeremy Waldron, 'The Core of the Case Against Judicial Review' (2006) 115 *Yale Law Journal* 1346.

⁶ Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 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 media services (Audiovisual Media Services Directive) in view of changing market realities [2018] OJ L303/69, Article 2.1

origin principle, evidence suggests the pace at which Russia is circulating propaganda appears to be outpacing the effectiveness of this procedure.⁷ This essay provides empirical evidence to highlight the various circumvention tactics employed by Russia since the EU's implementation of the ban.

This brings the essay to its third point. If the decision in *RT France* reveals the ban rests on murky legal doctrine, and if it has not effectively prevented the spread of propaganda, how can legal bodies like the EU combat the threat of propaganda? This essay answers this question by arguing the EU should not attempt to regulate its way around propaganda. Instead, the EU should invest in strategies to improve media literacy to equip citizens with the cognitive tools necessary to critically evaluate the content they consume.⁸ This shift in focus would offer a form of 'individual immunisation' against the harms of propaganda, whilst maintaining the EU's normative commitments to media freedom and the freedom of expression.⁹

1. Context

1.1 The EU ban on Russian media outlets

On 1 March 2022, the day after Russia's invasion of Ukraine, the EU adopted Council Decision (CFSP) 2022/351 ('Decision')¹⁰ and Council Regulation (EU) 2022/250 ('Regulation')¹¹. The Decision and Regulation implemented restrictive measures prohibiting the broadcasting, and enabling or facilitating the broadcasting, of 'any content' produced by Russia Today (RT) and Sputnik.¹² All licenses, authorisation, transmission and distribution arrangements associated with RT and Sputnik were suspended.¹³ The Decision and Regulation also prohibits media service operators from broadcasting the content of banned Russian media outlets through

⁷ Ibid.

⁸ Tabea Böing, 'EU-wide Bans of Russian Media Outlets – More than a Political Signal?' *PRIF Blog* (17 July 2024) < <https://blog.prif.org/2024/07/17/eu-wide-bans-of-russian-media-outlets-more-than-a-political-signal/> >

⁹ Elda Brogi et al 'EU and media policy: conceptualising media pluralism in the era of online platforms. The experience of the Media Pluralism Monitor' in Pier L. Parcu and Elda Brogi (eds) *Research Handbook on EU Media Law and Policy* (Edward Elgar Publishing Limited 2021) 30.

¹⁰ Council Decision 2022/351, 2022 amending Decision 201/512/CFSP concerning restrictive measures in review of Russia's actions destabilising the situation in Ukraine ('*Decision*')

¹¹ Council Regulation 2022/350, 2022 amending Regulation 833/2014 concerning restrictive measures in view of Russia's actions destabilizing the situation in Ukraine ('*Regulation*')

¹² Ibid.

¹³ Foo Yun Chee, 'EU Bans RT, Sputnik over Ukraine Disinformation' *Reuters* (2 March 2022) < <https://www.reuters.com/world/europe/eu-bans-rt-sputnik-banned-over-ukraine-disinformation-2022-03-02/> >

transmission or distribution by any means' through 'cable, satellite, IP-TV, internet service providers, internet video-sharing platforms or applications'.¹⁴ Since 2022, the ban has been extended to more Russian media outlets, including Rossiya 24, TVCI, NTC, Pervyi Kanal, Rossiya 1 and Ren TV, as well as RT Arabic and Sputnik Arabic.¹⁵

According to the EU, the ban was in pursuant to Article 29 of the Treaty of the European Union (TEU)¹⁶, and on Chapter 2 on the EU's Common Foreign and Security Policy (CFSP).¹⁷ Article 29 allows the Council to adopt a decision outlining the approach the Union will take to a particular foreign policy matter and stipulates that member states shall conform its national policies to the Council's position.¹⁸ Once the Council makes a Decision in application of Article 29 involving the 'interruption or reduction, in part or completely, of the economic and financial relations with one or more third countries'¹⁹, it may adopt necessary measures as per Article 215 Of the Treaty of the Functioning of the European Union (TFEU).²⁰

As per the Decision and Regulation, the media ban comes in response to Russia engaging 'in a systemic, international campaign of media manipulation and distortion of facts in order to enhance its strategy of destabilization of its neighbouring countries and of the Union and its Member States'.²¹ According to the EU, Russia had used the banned media outlets to disseminate propaganda to European audiences. The EU considered Russia to be in permanent direct or indirect control of the banned media outlets.²² The EU stated that the Decision and Regulation was needed to manage the 'significant and direct threat to the Union's public order and security' and was 'essential and instrumental in bringing forward and supporting the aggression against Ukraine, and the destabilisation of its neighbouring countries'.²³ The Decision and Regulation outlined that the ban would remain in place until Russia's ceases its

¹⁴ Decision (n 10); Regulation (n 11).

¹⁵ Council Decision 2022/C 219 1/03 O.J.

¹⁶ TEU, article 29.

¹⁷ Björnstjern Baade, 'EU Sanctions Against Propaganda for War – Reflections on the General Court's Judgement in Case T-125/22 (RT France) 2023 83(2) Heidelberg Journal of International Law 257.

¹⁸ TEU, article 29; Dirk Voorhoof, 'EU silences Russian state media: a step in the wrong direction' *Informs Blog* (2022) <<https://biblio.ugent.be/publication/8755115>>

¹⁹ TEU, article 29.

²⁰ TFEU, article 215.

²¹ Council Decision 2022/2478 O.J. (L 322/614) <<https://eur-lex.europa.eu/legalcontent/EN/TXT/?uri=uriserv%3AOJ.LI.2022.322.01.0614.01.ENG&toc=OJ%3AL%3A2022%3A322I%3AFULL.>>

²² Ibid.

²³ Ibid.

aggression against Ukraine and the media outlets ceases the broadcasting of propaganda.²⁴ On the matter of whether the EU had the competence to adopt the ban as a restrictive measure, the Regulation stated the measures ‘fall within the scope of the Treaty and, therefore, in particular with a view to ensuring their uniform application in all Member States, regulatory action at the level of the Union is necessary’.²⁵

2. The ban rests on murky legal doctrine

In March 2022, RT France lodged an action for annulment in the General Court, alleging that the Decision and Regulation was contrary to EU Law.²⁶ The key pleas made by RT France were that the Decision and Regulation was not provided by law²⁷, violated their right to be heard prior to the imposition of the restrictive measures (guaranteed under Articles 41 and 48)²⁸, infringed the freedom of expression and information (guaranteed by Article 11 of the Charter, which corresponds to Article 10 of the European Convention on Human Rights (ECHR)).²⁹ On the 27th of July, the General Court held that the EU had a legal basis for implementing the measures on the basis of Article 29 and Article 215, and that although the ban had restricted the freedom of expression of RT France, this restriction was proportionate and therefore Article 11 of the Charter/Article 10 of the ECHR had not been violated.³⁰ This section identifies some problematic features of the General Court’s judgement.³¹ Drawing from Habermas’s communicative action theory, it argues that resting the EU’s ban on such uncertain legal analysis reduces the confidence in the ban being a viable method to combat propaganda. While the General Court may have provided a decision that may be normatively defensible, i.e. countering foreign propaganda during an armed conflict, it failed to provide grounded reasoning for the legal basis of the ban and misapplied key ECtHR jurisprudence.

2.1 Habermas’ communicative action theory

²⁴ Ibid.

²⁵ Council Regulation (EU) 2022/250 amended Regulation (EU) No 833/2014.

²⁶ *RT France* (n 3); Lonardo Luigi, ‘Censorship in the EU as a result of the war in Ukraine. Case T-125/22 RT France v Council’ (2023) 48(6) *European Law Review* 707.

²⁷ *RT France* (n 3) para 105.

²⁸ Ibid para 65.

²⁹ Ibid 116.

³⁰ Ibid.

³¹ There are numerous issues with the General Courts decision. Covering all of them is beyond the scope of this essay.

Habermas's theory of communicative action provides a useful framework for evaluating the shortcomings in the General Court's judgment.³² Habermas developed a theory of communicative action to understand what constitutes legitimate legal and political decision making. The core of the theory is that democratic legitimate legal decision making only arises when legal decisions are made on a rational basis attained through 'grounded reasoning'.³³ Principles such as 'shared knowledge, mutual trust, and agreement among participants' are fundamental to this theory.³⁴ This is to ensure that affected parties understand and accept the rational basis behind legal decisions. In the context of EU's ban on Russian media outlets, and the subsequent *RT France* decision, the question is thus whether the General Court made rational arguments in legitimising the Decision and Regulation.

2.2 Ambiguous legal basis

A key argument of *RT France* was that the media ban could not be enacted as a restrictive measure under Article 29 TEU and Article 215(2) TFEU, and thus violated the principle of conferral under Article 5(3) TEU.³⁵ *RT France* argued that it was for the French authorities, not the Council, to regulate their content.³⁶ The European Federation of Journalists shared this concern, arguing 'the interference is based on a false interpretation of EU rights and authority'.³⁷

The General Court disagreed and found that the broadcasting ban was legitimately based on Article 29 TEU and Article 215 TFEU.³⁸ There is academic consensus that the Council enjoys wide discretion in determining what issues fall within the CFSP, and the restrictive measures necessarily required by the CFSP.³⁹ However, literature also highlights that usually in order to fall within the CFSP, the restrictive measure adopted needs to demonstrate an external 'centre

³² Habermas (n 2)

³³ Muhammad Nabil Rahdiga et al, 'European Union's Security Policy in the Digital Age. A Study on the Ban on Russian Media in Response to New Disinformation Threats' (2024) 3(12) *Journal of Social Research* 1, 5.

³⁴ *Ibid* 5.

³⁵ TEU Article 29; TFEU Article 215(2); TEU Article 5(3); Baade (n 17)

³⁶ *RT France* (n 3)

³⁷ Paolo Rosà, 'Fighting disinformation with censorship is a mistake' (2022) *Osservatorio balcanico caucaso transeuropa* (2022) < <https://www.balcanicaucaso.org/eng/Areas/Ukraine/EFJ-Fighting-disinformation-with-censorship-is-a-mistake> >

³⁸ *RT France* (n 3) para 242.

³⁹ Friedrich Erlbacher, 'Art. 215 TFEU' in Manuel Kellerbauer and Johnathon Tomkin (eds) *The Treaties and the Charter of Fundamental Rights: A Commentary* (Oxford: OUP, 2019) para 11; Aurel Sari, 'Art 29' in Hermann-Josef Blanke and Stelio Mangiameli (eds) *The Treaty on the European Union (TEU); A Commentary*. (Berlin, Springer 2013) para 13.

of gravity’.⁴⁰ External restrictive measures are distinguished from internal measures based on the fact they are ‘directed *outwards* against internal threats in order to exert economic pressure on state or non-state actions outside the Union, not *inwards* in order to avert an international danger to public order or security’.⁴¹ Blaade argues this distinction is necessary to ensure the Council does not impose intrusive media regulations which would stretch the foreign policy competences within the CFSP framework and ‘excessively affect Member States’ cultural competences within the framework of Article 167(4) and (5) TFEU’.⁴² As stated by the CJEU in *Bin Laden and Others*, Article 215(2) TFEU provides a legal basis when ‘in light of both its objectives and its content, the contested regulation relates to a decision taken by the Union under the CFSP’ and the target of the restrictive measure ‘affect fundamentally the Union’s external activity’.⁴³ Thus, Blaade argues that the only way in which the Decision and Regulation could be legitimately based on Article 29 and Article 215(2) is that its justification was to exert pressure on Russia, rather than averting an internal danger within the EU.⁴⁴

Lonardo argues the General Court did not follow the standard approach of applying the external centre of gravity test. While the General Court mentioned that the restrictive measures were linked to Article 3(5), 21, 23 of the TEU, these relate to EU external action broadly, and do not specifically relate to the CFSP. The General Court erred in not drawing clearer lines between the ban and the external nature of the measure, an important distinction underlying Article 215(2). By making a clearer distinction, the General Court could have eased concern by outlining the narrow legal basis for the ban, emphasising that the EU may not direct a restrictive measure on an internal threat. A clearer legal articulation of the external centre of gravity of the Decision and Regulation would have eased concern that the Decision and Regulation was beyond the scope of EU competences and concern that it could be applied to EU member states in the future. As per the Habermas’ theory, the issue is that the General Court did not arrive at its conclusion through a clearly articulated legal reasoning process, and in doing so created a murky doctrine which may be relied upon in the future. Lonardo and Blaade both separately agree that the General Court erred by not delving deeper into why the principle of conferral provided the EU power ‘to adopt the restrictive measure through its external competency,

⁴⁰ Baade (n 17) 5.

⁴¹ Ibid 4.

⁴² Ibid.

⁴³ C-130/10, *EP v. Council (restrictive measures against bin Laden and others)* (2012) ECLI:EU:C:2012:472, para 61 and 74.

⁴⁴ Ibid.

rather than internal competency'.⁴⁵ The lack of legal precision by omitting discussion on the doctrine relating to external and internal restrictive measures creates legal uncertainty and an absence of clear 'rational grounds'. Following Habermas' theory, this undermines the legitimacy of both the ban.

2.3 Selective application of ECtHR case law

A second fundamental issue with the General Court's decision was how the court appeared to selectively apply past ECtHR jurisprudence to confirm the validity of the Decision and Regulation.⁴⁶ The core issues were the General Court's application of jurisprudence in relation to procedural safeguards and proportionality. The General Court relied heavily on the case of *NIT S.R.L v the Republic of Moldova* which involved a Moldovan media regulator revoking the license of a broadcaster due to a lack of 'balance, fairness and objectivity'.⁴⁷ However, the General Court seemed to overlook a deciding factor in this case: the media regulator implementing the ban was a 'specialist body which was established by law' which had a decision making process free of 'political pressures and interference'.⁴⁸ This situation is markedly different from the facts of the *RT France*, where the ban was implemented by the European Council in a highly politically contested environment.⁴⁹ The inconsistent application of ECtHR principles on procedural safeguards weakens the legal certainty of the General Courts decision. It is arguable that the General Court's judgement signals that legal protections may vary depending on context or convenience of a future media ban, rather than being grounded in consistent, objective legal standards. Following Habermas' theory, this inconsistency undermines the legitimacy of both the General Court's decision and of the Decision and Regulation itself.⁵⁰

As argued by Ó Fathaigh and Voorhoof, another key shortcoming in the General Court's judgement was its failure to consider *Association Ekin v. France*.⁵¹ In this case, a ban on a

⁴⁵ Lonardo (n 26) 8; Baade (n 17) 5.

⁴⁶ Ronan ó Fathaigh and Dirk Voorhoof, 'Freedom of Expression and the EU's Ban on Russia Today: A Dangerous Rubicon Crossed' (2022) 27(4) Communications Law 186.

⁴⁷ *NIT s.r.l v The Republic of Moldova*, Application no 28470/12 (2022) ('*NIT S.R.L v the Republic of Moldova*')

⁴⁸ *Ibid* para 205.

⁴⁹ Victoire Nataf, 'Balancing Counter-Propaganda Measures with Safeguarding Freedom of Expression and Information Amidst the Russia-Ukraine Conflict' (2024) Comisiún na Meán <https://www.cnam.ie/app/uploads/2024/07/CnaM_Trinity-essay-2024_Victoire-Nataf-002.pdf>

⁵⁰ Habermas (n 2)

⁵¹ *Association Ekin v France*, App no 39288/98 (ECHR, 2001)

Moldavian media company was found to have violated Article 10 of the ECHR because the ban was preceded by insufficient procedural guarantees. The ECtHR pointed to an absence of prior court review, no recourse to automatic judicial review, and the publisher not being entitled to submit objections before the ban was implemented.⁵² In this case the ECtHR affirmed the high standard of scrutiny well-established in previous ECtHR jurisprudence regarding bans on the media and infringements on the freedom of expression. Ó Fathaigh and Voorhoof argue that the General Courts failure to apply this precedent is concerning.⁵³ If the high-threshold test affirmed in *Association Ekin v. France* had been applied by the General Court, it is likely the Decision and Regulation would have been found to violate Article 10 ECHR/Article 11 TEU because the Decision and Regulation was also not subject to prior court review, it did not have automatic recourse to judicial review and RT and Sputnik were not able to object to the ban before it was implemented.⁵⁴

Habermas' communicative action theory suggests that to be a legitimate decision-making organ in a democratic society, decisions must be made through effective deliberation that reflects consistent application of legal standards.⁵⁵ The General Court failed to achieve this in *RT France*, articulating a judgement that does not clearly articulate the specific legal basis for the ban (external action under Article 215(2)), and applies ECtHR jurisprudence concerningly selective manner, selecting rulings that supported the General Courts position. This lack of grounded reasoning, both in terms of legal clarity and selective interpretative approach, undermines the principle of legal certainty. The flaws in the judgement cast doubt on the legal validity of the ban and, as per Haberman's theory, weakens the institutional and decision-making legitimacy of the EU.

3. Ineffectiveness of the ban in halting Russian propaganda

Alongside the problematic legal reasoning of the General Court, research has highlighted the ineffectiveness of the ban in preventing the consumption of Russian propaganda in Europe.⁵⁶ Research has shown that Russia employs strategies to sidestep the ban, revealing a digital

⁵² Ibid para 58.

⁵³ Ó Fathaigh and Dirk Voorhoof (n 46) 12

⁵⁴ Ibid.

⁵⁵ Habermas (n 2)

⁵⁶ Institute for Strategic Dialogue, 'Two Years On: An Analysis of Russian State and Pro-Kremlin Information Warfare in the Context of the Invasion of Ukraine' 2024 < https://www.isdglobal.org/wp-content/uploads/2024/02/Two-Years-on_ISD.pdf>

media landscape where traditional regulatory tools are not keeping pace. One of the key legal and technical challenges lies in the country-of-origin principle, established under the AVMSD, which continues to allow Russian propaganda to re-enter EU media spaces through alternative routes.⁵⁷

3.1 *Circumventing the ban: country of origin principle*

Designed to support the free flow of information within the EU's internal market, the country of origin principle under Article 2.1 of the AVMSD stipulates that media services are regulated by the laws of their country of establishment, not the country of reception.⁵⁸ The country of origin principle ensures audio-visual media services are clear on the regulations they must follow. In practice, however, it has created enforcement gaps, particularly when exploited to bypass more stringent regulations. The revised AVMSD of 2018 strengthened the country of origin principle and established reformed anti-circumvention procedures to prevent the exploitation of favourable media regulations.⁵⁹ It introduced procedure for exceptions to the country of origin principle when a State assesses that a media service provider is inappropriately using the principle to evade the regulations of the State of reception.⁶⁰

3.2 Alternative platforms

Despite the simplification, Kokoly argues that the exception procedure is inadequate in preventing regulatory arbitrage as it has now slowed the ability of Russian media outlets to publish content on platforms not directly subject to the ban.⁶¹ For example, RT France, although banned as an official broadcaster, has had its content redistributed thousands of times through unofficial links on platforms like Facebook and Youtube.⁶² A report by the Institute for Strategic Dialogue (ISD) revealed that after Youtube blocked Russian state media channels following the ban in 2022, a channel called 'Dig Deep Documentary' emerged, reporting RT

⁵⁷ Audiovisual Media Services Directive (n 6).

⁵⁸ Ibid, article 2.1.

⁵⁹ Zsolt Kokoly, 'The Anti-Circumvention Procedure in the Audio-visual Media Service Directive' (2019) 8(1) The Anti-Circumvention Procedure in the Audio-visual Media Directive 45.

⁶⁰ Ibid.

⁶¹ Institute for Strategic Dialogue (n 56).

⁶² Christiern Santos Okholm et al, 'Blocking the information war? Testing the effectiveness of the EU's censorship of Russian state propaganda among the fringe communities of Western Europe' (2024) 13(3) Internet Policy Review 5.

content, stripped of its branding, about the Ukraine war.⁶³ The link to Dip Deep Documentary was shared on RT social media cites to promote viewership.⁶⁴ The ISD investigation also uncovered network called Bloß mit Biss operating on TikTok and Youtube.⁶⁵ Bloß mit Biss, a sub-outlet for the German arm of Sputnik, amassed millions of viewership since October 2022, highlighting the ease at which banned Russian-state affiliated media outlets can circumvent the bans. Furthermore, Okholm et al's study revealed the 'increase of pro-Russian content and disinformation on Telegram'⁶⁶, a 'cloud-based mobile and desktop messaging app'.⁶⁷ Despite Telegram banning RT France and other channels subject to the ban, Okholm et al found that pro-Russian channels continued to be in the top 50 most consumed channels.⁶⁸ Telegram is privately owned and has less stringent content moderation policies, and therefore was utilised by Russia to continue the spread of Russian propaganda.⁶⁹

While media services like Facebook and Youtube have an obligation to prevent the broadcasting of Russian propaganda, it is clear that banned Russian content continues to be regularly reposted, in what has been described as a 'never-ending game of whack-a-mole'.⁷⁰ It is also difficult to for these media services to identify state-sponsored propaganda content. For example, an ISD investigation in 2023 revealed what appeared to be a target pro-Russia content campaign 'of at least 64 accounts on X likely using content generated by ChatGPT to undermine support for Alexey Navalny (the jailed Russian opposition leader, who passed away in 2024), as well as his associate Maria Pevchikh and their organisation, the Anti-Corruption Foundation (ACF)'.⁷¹ The ISD investigation failed to find conclusive evidence to attribute the content to the Russian state, highlighting the arduous task of identifying banned content.

3.3 Domain cloning

⁶³ Institute for Strategic Dialogue (n 56) 11.

⁶⁴ Ibid.

⁶⁵ Ibid.

⁶⁶ Ibid 16.

⁶⁷ Telegram webpage < <https://telegram.org/>>

⁶⁸ Okholm (n 62) 11.

⁶⁹ Ibid.

⁷⁰ Ukrinform authors, 'Russian propagandists create mirror sites to dodge EU sanctions – media' *Ukrinform* (23 November 2023) < <https://www.ukrinform.net/rubric-society/3790871-russian-propagandists-create-mirror-sites-to-dodge-eu-sanctions-media.html>> Upmanyu Trivedi, 'Youtube Forced to Play a Game of Legal Whack-a-Mole with Russia' *Insurance Journal* (30 October 2024) < <https://www.insurancejournal.com/news/international/2024/10/30/799082.htm>>

⁷¹ Institute for Strategic Dialogue (n 56) 11.

Further highlighting the ineffectiveness of the ban, Balint et al. reveal how Russia has established at least 12 alternative domains and subdomains linked to RT France, many of which are hosted under Russian registrars like RU-Centre.⁷² These mirror websites often carry identical content to the original RT France platforms but are registered using slight URL variations or through shell companies to obscure their origins.⁷³ During a specific study period, RT DE (part of the RT network based in Moscow) shared links to these websites on Facebook over 1,600 times.⁷⁴ These workarounds not only undermine the ban's intent but also make enforcement nearly impossible without greater cross-platform collaboration.

The core issue with the ban's ineffectiveness is that the AVMSD is based on a nation-state-centric model, while propaganda crosses borders and is deliberately designed to outpace regulatory efforts. The country of origin principle provided Russian media with a means to circumvent the ban, undermining its effectiveness. Despite service providers being expected to take proactive steps to prevent content from banned media outlets being on their sites, it is increasingly difficult for service providers to do so efficiently. Moreover, the procedure for exceptions to the country of origin also appears too slow to counter the spread of Russian propaganda. By leveraging legal ambiguities and exploiting gaps between national regulatory agencies, Russia has effectively transformed a pillar of EU media policy into a weakness.

4. Investing in media literacy

Balint et al have argued that, in order to address Russia's circumvention of the ban, the EU should expand its scope.⁷⁵ This view appeared to have resonated with EU policy developments, evidenced by the European Council's decisions in December 2023 and February 2024 to expand the ban to include Sputnik Arabic and RT Arabic due to Russia's attempts to disseminate content via proxy channels.⁷⁶ While such measures may seem necessary, they risk descending into a perpetual and reactionary game of regulatory 'whack-a-mole', as propaganda

⁷² Institute for Strategic Dialogue (n X); Kata Balint et al, 'RT Articles are Finding their Way to European Audiences – but how?' *ISD Media* (20 July 2022) <https://www.isdglobal.org/digital_dispatches/rt-articles-are-finding-their-way-to-european-audiences-but-how/>

⁷³ Institute for Strategic Dialogue (n 56) 11.

⁷⁴ Christiern Santos Okholm et al, 'Blocking the information war? Testing the effectiveness of the EU's censorship of Russian state propaganda among the fringe communities of Western Europe' (2024) 13(3) *Internet Policy Review* 1; Iryna Subota 'How RT France Content Remains in the EU Information Space Despite Sanctions (A Case Study of France and Belgium)' *Centre for Democracy and Rule of Law* (26 February 2025)

⁷⁵ Balint et al (n 68).

⁷⁶ Al Mayadeen English, 'EU Sanctions 96 Firms in Russia, bans RT Arabic, Sputnik Arabic' *Al Mayadeen* (25 February 2023) <<https://english.almayadeen.net/news/politics/eu-sanctions-96-firms-in-russia-bans-rt-arabic-sputnik-arabi>>

actors continue to develop increasingly sophisticated methods of evading restrictions. Concerns also persist regarding their legal foundation, particularly when weighed against the EU's normative commitments to freedom of expression and media pluralism.⁷⁷ As Irene Khan, UN Special Rapporteur on the freedom of expression rightly observed: 'the banning of a media outlet is a severe restriction on freedom of expression and rarely justified'.⁷⁸ Given that the ECtHR has consistently described the freedom of expression and media freedom as the cornerstone of democratic identity, the EU should resist the impulse to ban media.⁷⁹

There is increasing recognition that as opposed to censorship, media literacy should be central to the EU's response to Russian propaganda.⁸⁰ Rather than seeking to eliminate propaganda, a near-impossible feat in an open and interconnected information environment, the focus should be on equipping citizens with the cognitive tools necessary to critically evaluate the content they consume. The European Commission itself has acknowledged the importance of this shift, promoting media literacy as a means to 'counter disinformation and help users navigate the digital environment'.⁸¹

Murrock et al argues a compelling example of this approach is IREX's 'Learn to Discern' (L2D) program, originally piloted in Ukraine.⁸² Reaching over 15,000 individuals across age groups, the initiative sought to develop participants' ability to differentiate between fact and opinion, detect manipulation, and assess source credibility. Murrock et al argue L2D was effective: participants demonstrated sustained improvements in their critical evaluation of media, broadened their information sources, and reported a stronger sense of agency in their

⁷⁷ Ian Browne and Douwe Korff, 'The EU ban on Russian media: some worrying implications' *Ianbrown*

⁷⁸ Irene Khan, 2022 Report of the Special Rapporteur on freedom of expression to the UN Human Rights Council on Disinformation and freedom of opinion and expression during armed conflicts, A/77/288 (2022) <<https://documents.un.org/doc/undoc/gen/n22/459/30/pdf/n2245930.pdf?token=Oh0OUINvfnWApwBSgx&fe=true>>

⁷⁹ *Handyside v. United Kingdom*, Application no 5493/72 (1976).

⁸⁰ Pier Luigi Parcu and Maria Alessandra Rossi, 'Policy Changes to Strengthen the protection of media freedom and media pluralism in the EU' in Pier L. Parcu and Elda Brogi (eds) *Research Handbook on EU Media Law and Policy* (Edward Elgar Publishing Limited 2021); Elda Brogi et al 'EU and media policy: conceptualising media pluralism in the era of online platforms. The experience of the Media Pluralism Monitor' in Pier L. Parcu and Elda Brogi (eds) *Research Handbook on EU Media Law and Policy* (Edward Elgar Publishing Limited 2021) 30.

⁸¹ Parcu and Rossi, (n 80); European Commission, 'Final Report of the High Level Expert Group on Fake News and Online Disinformation' (12 March 2028) <<https://digital-strategy.ec.europa.eu/en/library/final-report-high-level-expert-group-fake-news-and-online-disinformation>>

⁸² Erin Murrock et al, 'Winning the War on State-Sponsored Propaganda: Results from an Impact Study of Ukrainian News Media and Information Literacy Program' (2018) 10(2) *Journal of Media Literacy Education* 53.

media consumption practices.⁸³ This model of intervention is supported by Brogi et al, who argue digital and media literacy constitutes a form of ‘individual immunisation’ against the harms of online disinformation.⁸⁴ Rather than positioning the public as passive recipients of media content, media literacy empowers them as active agents capable of navigating complex media landscapes. Media literacy is future-facing, preventative solution that doesn’t infringe on the freedom of expression, a normative right the EU professes to value. Yet, despite its promise, Parcu and Rossi complain that media literacy remains woefully underdeveloped across the EU.⁸⁵ Their concern is validated by the 2020 Media Pluralism Monitor, which finds that over two-thirds of EU Member States either lack formal media literacy policies or possess frameworks that are insufficiently robust.⁸⁶

Furthermore, because the country-of-origin principle holds audio-visual media services responsible for ensuring that Russian propaganda is not shared, Böing argues the EU should invest in developing in-built debunking mechanisms to support media services.⁸⁷ Efforts should be put towards helping consumers of media distinguish between what is propaganda and what is not. A targeted approach, such as partnering with independent fact-checking organisations, would be a strong antidote to propaganda. One example is the Reporters Without Borders’ Propaganda Monitor, an investigative project designed to shed light on the mechanics of propaganda, informing the public of where and how propaganda is spread. For example, the Propaganda Monitor released a recent article titled ‘International Reporters: the new website where foreign propagandists spread Russian disinformation’.⁸⁸ This initiative shows how strategic efforts can help media platforms challenge propaganda head-on and enable audiences to better recognise and reject manipulative content. These examples highlight that censorship is not the only tool available to the EU in combating propaganda.

⁸³ Ibid.

⁸⁴ Brogi et al (n 9) 30.

⁸⁵ Parcu and Rossi, (n 80)

⁸⁶ Ibid 441.

⁸⁷ Böing (n 80)

⁸⁸ RSF, ‘International Reporters: the new website where foreign propagandists spread Russian disinformation’ *Reporters without Borders Propaganda Monitor* (05 March 2022) <<https://rsf.org/en/international-reporters-new-website-where-foreign-propagandists-spread-russian-disinformation>>

Conclusion

The EU's decision to ban RT France may have been defensible in principle, but the General Court's reliance on ambiguous legal justifications and selective case law undermines both the legitimacy and coherence of its ruling. As demonstrated through the lens of Habermas' communicative action theory, legal decisions must be rooted in transparent, rational argumentation to sustain public trust and democratic legitimacy. Coupled with the empirical evidence showing that such bans are easily circumvented, it becomes clear that blanket bans alone on media are unsuitable means to counter modern propaganda. A sustainable response lies not in reactive censorship, but through strengthening democratic resilience through improving media literacy.

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