



INSIGHT

THE RUSSIAN WAR AGAINST UKRAINE  
AND THE LAW OF THE EUROPEAN UNION

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MEDIA IN WAR:  
AN OVERVIEW OF THE EUROPEAN RESTRICTIONS  
ON RUSSIAN MEDIA

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**ABSTRACT:** The ongoing Russia-Ukraine conflict has triggered a multitude of media regulation challenges within the EU. With the Russian state propaganda machinery continuing to work in full swing, it has become increasingly critical for the EU to regulate media content to prevent the dissemination of disinformation, harmful and misleading information and state propaganda. This *Insight* seeks to explore the EU's reaction to the Russian coverage of the war through the example of the *RT* case. The study aims to provide a theoretical background to Russian propaganda as a premise for the case study. The focus of the *Insight* is the examination of the *RT* suspension and the *RT France* case via the broader understanding of "propaganda" restrictions using the case law of the CJEU and the ECtHR. The study also aims to introduce a scholarly critical viewpoint with regard to imposing stringent restrictive measures against a media outlet and the effectivity thereof. The main argument of the *Insight* is that the nuanced and contextual understanding of media in war is not only a legal necessity but an effective societal tool, too, especially in the Russo-Ukrainian war.

**KEYWORDS:** European Union – media law – media regulation – Russian propaganda – Russo-Ukrainian war – RT

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## I. INTRODUCTION. RUSSIAN PROPAGANDA IN STATE AND ONLINE MEDIA: DISINFORMATION MACHINERY IN FULL SWING

### I.1. CONCEPTUAL PREMISE: A BRIEF COMPARISON BETWEEN PROPAGANDA AND DISINFORMATION

Before analysing the media restrictions concerning Russia's media presence in Europe, it is mandatory to first lay down the conceptual basis of what Russian *propaganda* is and discover propaganda as a state action in the context of disinformation. On the one hand, propaganda, a word historically used to describe spreading the Catholic faith to non-Christian groups of people,<sup>1</sup> is – though no new concept – of a somewhat ambiguous conceptual nature.<sup>2</sup> The Cambridge Dictionary proposes that propaganda stands for “information, ideas, opinions, or images, often only giving one part of an argument, that are broadcast, published, or in some other way spread with the intention of influencing people's opinions”.<sup>3</sup> On the other hand, disinformation, as the second key concept in the differentiation between the two terms, is generally understood as “an attack on the integrity of knowledge”,<sup>4</sup> or – under the definition of the Cambridge Dictionary – “false information spread in order to deceive people”.<sup>5</sup> The two descriptions may be deemed similar, however, it can be stated that both definitions lack the complexity of the more profound understanding of *action* of propaganda and the *harm* inherent to disinformation and other perspectives; including the methods of spreading both propaganda and disinformation, the harms and detriments on a global, societal level associated with propaganda and the disinformation and their close interconnectivity, especially when propaganda is disseminated by a governmental/state entity under a disinformation campaign. In this short segment, the most prevalent conceptual element, the relation between propaganda and disinformation, will be discussed as a premise for the overview of the *RT* case and the General Court's argumentations in said case.<sup>6</sup>

First, a crucial theoretical differentiation is to be made. While propaganda does not inherently or deliberately transpire into – colloquially put – harmful fake news, meaning purposefully misleading information,<sup>7</sup> disinformation is traditionally understood as a phenomenon of immanently and deliberately deceptive nature.<sup>8</sup> Yet, in the context of Russian state

<sup>1</sup> FW Dillistone, 'Christian Propaganda' (1940) *The Expository Times* 246.

<sup>2</sup> A Hyzen, 'Revisiting the Theoretical Foundations of Propaganda' (2021) *International Journal of Communication* 3479.

<sup>3</sup> Cambridge Dictionary, *Propaganda* dictionary.cambridge.org.

<sup>4</sup> M Pérez-Escobar, D Lilleker and A Tapia-Frade, 'A Systematic Literature Review of the Phenomenon of Disinformation and Misinformation' (2023) *Media and Communication* 11.

<sup>5</sup> Cambridge Dictionary, *Disinformation* dictionary.cambridge.org.

<sup>6</sup> Case T-125/22 *RT France* ECLI:EU:T:2022:483.

<sup>7</sup> J Brannon, 'Propaganda about Propaganda' (2017) *Critical Review* 1.

<sup>8</sup> D Fallis, 'What is Disinformation?' (2015) *Library Trends* 401.

media, this critical differentiation seems to blur as disinformation becomes a purpose or media tactic spread via the most effective tool for propaganda: media.<sup>9</sup> This unique nature of propaganda can be derived from the deviation from the traditional examination of disinformation, the content-oriented disinformation understanding shifting to actor-oriented disinformation. Content-oriented disinformation stands for the prohibition of information based on the fact that the content in question is clearly and obviously false. Yet, scholarly research also introduces the aforementioned actor-oriented disinformation, which concerns the creator or disseminator of disinformation (the status of the actor involved in spreading disinformation) – basing the prohibition of disinformation on the actor (a state, in the present context Russia), rather than the content itself.<sup>10</sup> One of the principal considerations regarding the “banning” of RT Russia, on a theoretical level, is the deliberation whether the prohibition of services of the channel constitutes a content-based or an actor-based approach. As presented in the *RT* case analysis, the content *RT* produced during the reporting of the war against Ukraine is clearly untrue content-wise, however, Russia is historically prone to create, as an actor, an information ecosystem where it spreads disinformation as a strategy with the intent to infiltrate other groups or nations’ information and media consumption as well. Consequently, one cannot opt for an approach with absolute certainty, as both the content and the actor may have been justly subject to prohibition, as state strategy met intent, financial capabilities met misrepresentation of facts, and actor (Russia) deliberately produced fake content and the fine line between the conceptual basis of disinformation and propaganda becomes blurred.

## 1.2. DISINFORMATION MACHINERY IN FULL SWING: RUSSIAN PROPAGANDA IN STATE AND ONLINE MEDIA

Before examining the specific case of the banning of the *RT* channel, it is critical to lay down the fundamental basis – as a premise – of the study: why are Russian media outlets, both traditional and online, detrimental to European democratic values? To answer this polemic, a theoretical background is provided to understand the implications of Russian propaganda in connection to European values such as freedom of expression and media freedom.

The Russo-Ukrainian war had been going on for more than a year at the time of the writing of this study. Despite well-documented, objective and independent reports on the extensive and exceedingly grave losses of the Russian army,<sup>11</sup> nearly 60 per cent of the

<sup>9</sup> Cf. UA Mejias and NE Vokuev, ‘Disinformation and the media: the case of Russia and Ukraine’ (2017) *Media, Culture & Society* 1027.

<sup>10</sup> United Nations High Commissioner for Refugees, *Using Social Media in Community Based Protection* www.unhcr.org, Factsheet 4: Types of Misinformation and Disinformation 230; S Oates, ‘Russian Media in the Digital Age: Propaganda Rewired’ (2016) *Russian Politics* 398.

<sup>11</sup> At the time of writing, estimated and confirmed casualties of the Russian army, according to public data, amounted to 23,286. Mediazona, *Russian casualties in Ukraine* en.zona.media. See also: I Liadze, C Macchiarelli, P Mortimer-Lee and P Sanchez Juanino, ‘The Economic Costs of the Russia-Ukraine War’ (2022) *World Economy* 1.

Russian population would be in favour of “a new offensive against Kyiv if Vladimir Putin announced it tomorrow” and 89 per cent of Russians somewhat agree that the country’s leadership knows what decisions to make in difficult situations.<sup>12</sup> Dergacheva rightly derives the above results from the extraordinary effectiveness of Russian propaganda.<sup>13</sup> Though scholarly reception on said effectiveness has proved that Russia has implemented a plethora of models to infiltrate foreign countries’ internal affairs;<sup>14</sup> from Ukraine before the war,<sup>15</sup> through the US elections in 2016<sup>16</sup> to Georgia<sup>17</sup> and Belarus<sup>18</sup> to Ukraine before the war, no effective measures has been taken thus far to monitor and put up a more holistic fight against Russian political manipulation and disinformation.

It is significant to accentuate that the ineffectiveness of measures is two-fold. On the one hand, Russia has been traditionally known for its absolute control and near-absolute ownership of media outlets.<sup>19</sup> This state-powered mechanism allows for (1) the total manipulation of media tendencies,<sup>20</sup> (2) the deterioration of trust and consumption of foreign resources, and (3) the usage of media as a tool of war. On the other hand, Russia has implemented a new form of media manipulation system as well; there are several propagandistic Telegram groups affiliated with the government,<sup>21</sup> furthermore, new forms of digital technologies have been introduced as well, such as deepfakes, where creator deliberately create falsified audiovisual content, mostly with the use of someone else’s face (cf. Zelensky’s deepfake-manipulated speech in March 2022).<sup>22</sup>

<sup>12</sup> Russian Field, ‘Support For Non-support Of Peace And War’ (9 March 2023) Re:Russia re-russia.net.

<sup>13</sup> AC Dergacheva, ‘Why is Russian Domestic War Propaganda so Effective?’ (2022) *Global Journal of Cultural Studies* 1.

<sup>14</sup> S Oates, ‘When Media Worlds Collide: Using Media Model Theory to Understand How Russia Spreads Disinformation in the United States’ (2018) *Proceedings of the American Political Science Association Annual Meeting* 1.

<sup>15</sup> L Peisakhin and A Rozenas, ‘Electoral Effects of Biased Media: Russian Television in Ukraine’ (2018) *American Journal of Political Science* 535.

<sup>16</sup> Y Golovchenko, M Brown, G Eady, I Yin and JA Tucker, ‘Cross-Platform State Propaganda: Russian Trolls on Twitter and YouTube during the 2016 U.S. Presidential Election’ (2020) *The International Journal of Press/Politics* 1.

<sup>17</sup> A Keshekhvili and E Kharbediam, ‘Countering Russian Propaganda: A Study of Social Media Verification Practices in Georgian Media Countering Russian Propaganda’ (2019) *IAMCR Proceedings* 1.

<sup>18</sup> O Manaev, N Rice and M Taylor, ‘The evolution and influence of Russian and Belarusian propaganda during the Belarus presidential election and ensuing protests in 2020’ (2021) *Canadian Slavonic Papers* 371.

<sup>19</sup> E Vartanova, ‘The Russian Media Model in the Context of Post-Soviet Dynamics’ in DC Hallin and P Mancini (eds), *Comparing Media Systems Beyond the Western World* (Cambridge University Press 2012) 119.

<sup>20</sup> G Gosztonyi, *Censorship from Plato to Social Media: The Complexity of Social Media’s Content Regulation and Moderation Practices* (Springer International Publishing 2023) 157-162.

<sup>21</sup> A Salikov, ‘Telegram as a Means of Political Communication and its use by Russia’s Ruling Elite’ (2019) *Politologija* 83.

<sup>22</sup> GF Lendvai, ‘Deepfake a szólásszabadság tükrében: Reflexiók a jog perspektívájából’ in P Aczél and Á Veszelszki (eds.), *Deepfake: a valótlán valóság* (Gondolat Kiadó 2023) 121-125; B Allyn, ‘Deepfake video of Zelensky could be ‘tip of the iceberg’ in info war, experts warn’ (16 March 2022) NPR [www.npr.org](http://www.npr.org); G

In the Russo-Ukrainian war, however, as can be deduced from the above, the Russian regime initiated a notorious, unparalleled media manipulation campaign. This campaign is structured on two fundamental stands: (1) the use of traditional disinformation means such as Morelli's principles (e.g. the forming of public opinion via building expectations to achieve the victorious case; presenting oneself as a victim; continuous minimisation of losses)<sup>23</sup> and (2) the platformisation of propaganda.<sup>24</sup> The (1) aspect will be examined through the *RT* case in the present paper. To put Morelli's principles into practice, a prevalent example of such disinformation campaign is the labelling of Ukraine as a Nazi-state supported by the "Nazi" West; Ukrainian residents of Russian origin are victims under a "violent Nazi regime" and the *casus belli* subsequently becomes the saving of the allegedly oppressed Russian people.<sup>25</sup> The aggression against Ukraine is, therefore, justified by a false narrative, which also becomes the lead narrative in public discussion – after all, which nation would choose not to save their own citizen? During the war, however, Morelli's principles, especially victimisation and minimisation of losses, need less theoretical and deductive analysis: lost Russian soldiers are "blameless" victims of war,<sup>26</sup> and there are no objective reporting on losses on the Russian side (Ukraine claimed in September 2022 that 55.000 soldiers have been killed, Russia claimed that only circa 6000 died).<sup>27</sup>

The "singling-out" of *RT* is to be underlined particularly. If the traditional media system standard is taken into account (the complex interconnection between media markets, political parallelism, journalistic professionalisation and a clear role of the state), the Russian media and, therefore, the Russian state outlets are far from using the same professional standards and ethical codes that Nordic or other Western European media systems have instituted.<sup>28</sup> As Vartanova discusses, after the emergence of President Putin, "Russian media, especially nationally distributed TV channels, have been increasingly used by the state as tools to support the vertical power system, create a unified national identity, and minimise politically incorrect debates".<sup>29</sup> *RT* (formerly known as *Russia Today*) is the critical component of the aforementioned system. As Elswah and Howard

Gosztanyi and GF Lendvai, 'Deepfake: A Multifaceted Dilemma in Ethics and Law' (2023) *Journal of Information Ethics* 109.

<sup>23</sup> AC Dergacheva, *Global Journal of Cultural Studies* cit.

<sup>24</sup> D Geissler, D Bär, N Pröllochs and S Feuerriegel, 'Russian propaganda on social media during the 2022 invasion of Ukraine' (2022) *EPJ Data Science* 1.

<sup>25</sup> 'The Evil West' (23 February 2017), *DisinfoReview* us11.campaign-archive.com.

<sup>26</sup> R Forst, 'The Russian victim myth: here's the history behind it' (25 March 2022), *The Conversation theconversation.com*.

<sup>27</sup> G Dagorn, 'War in Ukraine: Why it is so hard to estimate the number of dead?' (26 September 2022), *Le Monde* www.lemonde.fr.

<sup>28</sup> DC Hallin and P Mancini, *Comparing Media Systems* (Cambridge University Press 2004).

<sup>29</sup> E Vartanova, 'The Russian Media Model in the Context of Post-Soviet Dynamics' cit.

describe it, RT is the most richly funded, well-staffed, formal organisation in the world,<sup>30</sup> producing, disseminating, and marketing news in the service of the Kremlin and also one of the leading organisations in the global political economy of disinformation.<sup>31</sup> RT has been sanctioned in several European countries, from Lithuania and Latvia<sup>32</sup> to the United Kingdom,<sup>33</sup> and is even considered by the United States as an agent of a foreign government.<sup>34</sup> Still, the services of RT are accessible in a multitude of languages (such as Spanish, French, German or Arabic) and almost all European countries.<sup>35</sup>

## II. THE *RT* CASE

### II.1. DISINFORMATION MACHINERY IN FULL SWING – RUSSIAN PROPAGANDA IN STATE AND ONLINE MEDIA

“In this time of war, words matter. We are witnessing massive propaganda and disinformation over this outrageous attack on a free and independent country. We will not let Kremlin apologists pour their toxic lies justifying Putin’s war or sow the seeds of division in our Union“.<sup>36</sup>

On 1 March 2022, the Council of the European Union adopted a Council Regulation (“CoR”),<sup>37</sup> which stipulated that due to the hybrid warfare launched by Russia,<sup>38</sup> the operation and the broadcasting of certain state-affiliated Russian media outlets are to be restricted in the European Union.<sup>39</sup> The CoR referred to the Charter of Fundamental Rights, in particular to art. 11, which sets the basis for the provisions regarding freedom of expression and dissemination of information. In this regard, the CoR stipulated that as

<sup>30</sup> B Nosova, ‘Russian War in Ukraine: Communication Narratives in the Speeches of World Leaders in the Mainstream Media’ (2023) *Current Politics and Economics of Europe* 233.

<sup>31</sup> M Elswah and PN Howard, “‘Anything that Causes Chaos’: The Organizational Behavior of Russia Today (RT)’ (2020) *Journal of Communication* 623.

<sup>32</sup> E Vartanova, ‘The Russian Media Model in the Context of Post-Soviet Dynamics’ cit.

<sup>33</sup> J Jackson, ‘RT sanctioned by Ofcom over series of misleading and biased articles’ (21 September 2015) *The Guardian* [www.theguardian.com](http://www.theguardian.com).

<sup>34</sup> N Pisnia, ‘Why has RT registered as a foreign agent with the US?’ (15 November 2017) *BBC* [www.bbc.co.uk](http://www.bbc.co.uk).

<sup>35</sup> Cf. S Hutchings, M Gillespie, I Yablokov, I Lvov and A Voss, ‘Staging the Sochi Winter Olympics 2014 on Russia Today and BBC World News: From soft power to geopolitical crisis’ (2015) *Participations: Journal of Audience & Reception Studies* 630.

<sup>36</sup> Quote by Ursula von der Leyen in European Commission, Press release of 27 February 2022, Statement by President von der Leyen on further measures to respond to the Russian invasion of Ukraine [ec.europa.eu](http://ec.europa.eu).

<sup>37</sup> 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.

<sup>38</sup> Recital (5) Regulation 2022/350 cit.

<sup>39</sup> Recital (10) and (11) Regulation 2022/350 cit.

long as the aggression against Ukraine is maintained and until Russia's associated media outlets continue to push pro-war and pro-Russian propaganda outlets and channels such as RT and Sputnik are suspended from operating in the EU.<sup>40</sup> Suspension or restriction in this context means the absolute prohibition for operators to broadcast or to enable, facilitate, or otherwise contribute to broadcast any content.<sup>41</sup> The decision was further supported via the Treaty on EU<sup>42</sup> and the Treaty on the Functioning of the EU,<sup>43</sup> allowing for the implementation of necessary restrictions on non-state entities.

On 4 May 2022, the EU announced another ban on three further Russian media outlets.<sup>44</sup> Curiously, at the time of the announcement, von der Leyen did not mention specifically the channels to be suspended, however, according to anonymous reporters, the outlets in question were all state-affiliated broadcasters, respectively, RTR Planeta, Russia 24 and TV Centre.<sup>45</sup> Said reports were officially confirmed via the adoption of Council Regulation 2022/879 of 3 June 2022 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine. This regulation imposed, however, a measure that broadened the relatively narrow scope of the provisions; until the aggression ceases, all restrictive measures on said Russian media are to be maintained.<sup>46</sup>

## II.2. RT FRANCE'S APPEAL

Seven days after the initial restrictive provisions, on 8 March 2022, one of the restricted and suspended affiliates of RT, RT France, lodged an appeal against the ban claiming that the Council of the European Union had no competence in imposing restrictive measures.<sup>47</sup> On 27 July 2022, the General Court (hereinafter "GC") rejected the applicant's appeal in its entirety.

RT France based their argumentation on the violation of fundamental rights enshrined in the EU Charter of Fundamental Rights, namely: (1) the violation of freedom of expression, (2) the violation of the freedom to conduct a business, and (3) the violation of the rights of defence.<sup>48</sup> The GC thus had to make a judgment whether the imposition of the suspension of operation was in conformity with the Charter. The GC used the four-part test (legality,

<sup>40</sup> *Ibid.*; Annex XV Regulation 2022/350 cit.

<sup>41</sup> Art. 2f Regulation 2022/350 cit.

<sup>42</sup> Art. 29 TEU.

<sup>43</sup> Art. 215 TFEU.

<sup>44</sup> Reuters, 'EU to ban three Russian state-owned broadcasters - von der Leyen' (4 May 2022) Reuters [www.reuters.com](http://www.reuters.com).

<sup>45</sup> C Gijs, 'Commission pitches ban on 3 more Russian broadcasters' (4 May 2022) Politico [www.politico.eu](http://www.politico.eu).

<sup>46</sup> Recital 7 Regulation 2022/350 cit.

<sup>47</sup> Ó Fathaigh and D Voorhoof, 'Freedom of Expression and the EU's Ban on Russia Today: A Dangerous Rubicon Crossed' (2022) Communications Law 186.

<sup>48</sup> Art. 11, 16, 41 and 48 of the EU Charter of Fundamental Rights.

examination of the essence of freedom of expression, legitimate aim with regard to general interest and proportionality).<sup>49</sup> As for the legality of the restriction, the GC established that due to the nature of the financing of RT, which is almost entirely funded by the Russian government, and also having made reference to the aforementioned Treaties, the interference was indeed prescribed by law.<sup>50</sup> The highlighting of the Russian government may also be understood in the context of the aforementioned actor-based approach against fake information – the GC did not underline the problematic content, but rather opted for the accentuation of the fact that due to the status of the actor (Russia) the interference may be justified. The GC also highlighted the narrow scope of intervention – which may also be closely connected to freedom of expression as a central issue at hand; as mentioned above under Section II.1., not all forms of news reporting and broadcasting were to be suspended, for instance, research and interviews still could have been conducted by RT France.<sup>51</sup> In this regard, therefore, it can be stated that freedom of expression (or rather, the essence thereof) has not been restricted in an absolute sense. The GC also stated that the interference pursued the interest of public order and security as provided in the Treaty on the European Union.<sup>52</sup> This particular aspect will be highlighted more thoroughly in Section III, as freedom of expression and the restriction of the operation of a media outlet is no *novum* before European jurisdictional entities. The key issue, therefore, was to justify whether the restriction of the media outlet was proportionate – as a matter of fact, the least restrictive measure possible to be applied. To analyse this exceedingly complex issue, the GC provided a lengthy list of how and via which means RT France disseminated propaganda, from claiming that Ukraine had “provoked” the attack to stating that “jihadists had landed on the front-line” a number of pro-Russian disinformation has been mentioned in the judgment.<sup>53</sup> One particularly critical form of disinformation was the legitimisation of the aggression “for the protection of Donbas and as a response to Western threat”.<sup>54</sup> RT France also made severe accusations against NATO and the EU, claiming that the above entities purposefully described the aggression as war instead of the Russian-approved “intervention” term.<sup>55</sup> In view of the systematic propaganda dissemination and the justification of war, the GC found that the interference was proportionate.<sup>56</sup> However, the result of “proportionality” test remains ambiguous. Questions may rightly arise; is the full-scale shutdown of operation the least restrictive measure possible? Or is the allowance of reporting for research purposes a “leeway”? As Judit Bayer points out, information warfare can be considered a soft political

<sup>49</sup> *RT France* cit.

<sup>50</sup> *Ibid.* paras. 151–154.

<sup>51</sup> *Ibid.* para. 157.

<sup>52</sup> *Ibid.* paras. 163–167.

<sup>53</sup> *Ibid.* paras. 174–185.

<sup>54</sup> *Ibid.* para. 185.

<sup>55</sup> *Ibid.* para. 180.

<sup>56</sup> *Ibid.* para. 214.



influence;<sup>57</sup> the question for future practices is whether the answer to such a soft political influence is a total prohibition of services.

### III. “FOR THE FIRST TIME IN MODERN HISTORY, WESTERN EUROPEAN GOVERNMENTS ARE BANNING MEDIA”:<sup>58</sup> POLEMICS WITH THE BANNING OF RT AND SPUTNIK

Despite the universal condemnation of the war waged against Ukraine, European organisations and scholars have made crucial points on why the suspension of RT is questionable. The principal and most vital aspect with regard to the suspension of RT is whether an EU-wide suspension of a media outlet that is allegedly disseminating Russian state propaganda is lawful and can be justified.

Concerning the legitimacy of the banning of RT, the CoR's wording has to be examined. As Baade highlights, the term used in the aforementioned provision (“broadcasting”) can be interpreted in the context of the Audiovisual Media Services Directive<sup>59</sup> (hereinafter: “AVMSD”);<sup>60</sup> the AVMSD's reference to linear audiovisual media service can and should be understood in a conceptual harmonisation with the term “broadcasting”.<sup>61</sup> Nonetheless, this perspective proposes that the legality of the ban on RT may be understood in a narrow interpretation of the term “broadcasting”. Interestingly, the CoR expressively sets forth that no provision shall prevent RT or Sputnik and their staff from carrying out other activities in the Union than broadcasting, such as research or interviews. However, the author accentuates that suspending RT and Sputnik solely on the basis of the dissemination of propaganda is as lawful as it is problematic.<sup>62</sup> In this regard, it is essential to raise the issue of freedom of expression and the restriction thereof under a legitimate interest. A useful contribution to this discourse may be the citing of the *Kiselev* case, where the European Court of Justice has established that propaganda is a form of freedom of expression protected in the European legal framework, however, if legitimate aims are duly presented propaganda may and should be restricted.<sup>63</sup> In 2014, after the Crimea-crisis, Kiselev, a prominent figure in Russian state propaganda and head of the RS and RT channels, was subjected to a number of restrictive measures following the

<sup>57</sup> J Bayer, ‘The European response to Russian disinformation in the context of the war in Ukraine’ (2024) *Hungarian Journal of Legal Studies* (forthcoming).

<sup>58</sup> European Federation of Journalists, *Fighting disinformation with censorship is a mistake* europeanjournalists.org.

<sup>59</sup> Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services.

<sup>60</sup> B Baade, ‘The EU's “Ban” of RT and Sputnik’ (8 March 2022) *Verfassungsblog* verfassungsblog.de.

<sup>61</sup> art. 1 (1) (e)–(f) of Directive 2010/13 cit.

<sup>62</sup> B Baade, ‘The EU's “Ban” of RT and Sputnik’ cit.

<sup>63</sup> Case T-262/15 *Kiselev* ECLI:EU:T:2017:392.

Council of Europe's decisions intended to fight against Russian actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine.<sup>64</sup> Though Kiselev argued that propaganda may be protected and that the restrictions interfered with his journalistic work and freedom of expression, the Court decided that when weighing the legitimate aim of safeguarding Ukraine's territorial integrity and the protection of propaganda as speech, the former shall serve as a legitimate objective to restrict freedom of expression. To provide a different perspective to the Kiselev case, the *Kaptan* case may be cited. The ECtHR judgment specifically mentioned that "seizing" material which advocates and glorifies violence does not violate the ECHR and can be understood as a form of justified restriction on freedom of expression.<sup>65</sup> The case concerned the seizing of propaganda material disseminated and produced by the Kurdish Workers' Party (PKK); the material advocated for violence against Turkish authorities and people. The issue at hand was whether seizure of material, as restriction on freedom of expression, may be justified. The ECtHR ruled that though the seizure of the PKK's materiel amounted to a rigorous restriction on the involved party's freedom of expression, such "harsh" restriction shall be justified if it is used to support aggressive and violent propaganda against a certain group of people. As a third perspective, the protection of propaganda as a form of freedom of expression can also be approached from a different viewpoint, namely, as a form of political opinion. In this context, the ECtHR has a fascinatingly rich case law where it has been numerously established that opinions, reports and information of a political nature enjoy a heightened level of protection of freedom of expression,<sup>66</sup> particularly if said expression or opinion is formed or expressed concerning questions of public interest.<sup>67</sup>

The European Federation of Journalists highlighted that the interference is based on a false interpretation of EU rights and authority as media regulation does not fall within the competence of the EU.<sup>68</sup> The organisation also referred to a number of ECtHR cases where the Court had mentioned the severity of banning a media outlet. Popovic described the CoR as a regulation with several pitfalls, stating that the scope of the restriction is too broad and that RT viewers should be able to watch and follow their preferred media no matter how bizarre and disinformation-filled the content presented by the given media outlet is.<sup>69</sup>

<sup>64</sup> Y Miadzvetskaya, 'How to draw a line between journalism and propaganda in the information wars era?' (College of Europe, Case Notes 2-2018).

<sup>65</sup> ECtHR *Kaptan v Switzerland* App n. 43874/98 [12 April 2001].

<sup>66</sup> ECtHR *Müller and Others v Switzerland* App n. 10737/84 [24 May 1988] para. 27; ECtHR *Teslenko and Others v Russia* App n. 49588/12, 65395/12, 49351/18 and 50424/18 [5 April 2022] para. 133.

<sup>67</sup> ECtHR *Castells v Spain* App n. 11798/85 [23 April 1992] para. 43; ECtHR *Wingrove v the United Kingdom*, App n. 17419/90 [25 November 1996] para. 58.; ECtHR *Stoll v Switzerland* App n. 69698/01 [10 December 2007] para. 106.

<sup>68</sup> European Federation of Journalists, Fighting disinformation with censorship is a mistake cit.

<sup>69</sup> I Popovic, 'The EU Ban of RT and Sputnik: Concerns Regarding Freedom of Expression' (30 March 2022) EJIL: Talk [www.ejiltalk.org](http://www.ejiltalk.org).

Concerning the *RT* case, Fathaigh and Voorhoof underlined the faultiness of the GC's judgment as it failed to apply the suitable ECtHR precedent on the blocking of media outlets,<sup>70</sup> in particular the *OOO Flavus and Others*, where the judgment declared that the "wholesale blocking" of media outlets violated art. 10 of ECHR, as it is an extreme measure and renders inaccessible large amounts of content which has not been identified as illegal.<sup>71</sup>

#### IV. *QUO VADIS* PROPAGANDA REGULATION?

As seen above, the *RT France* case, as well as the RT channel suspension, has faced a grave controversy among journalist organisations as well as legal scholars and experts. A significant issue, however, is the assessment of digital media propaganda sponsored by the Russian government. In this regard, the European Union, via enacting the Digital Services Act (hereinafter: "DSA"),<sup>72</sup> can finally take up the challenges caused by "state-sponsored trolls"<sup>73</sup> on very large online platforms such as Twitter and Facebook<sup>74</sup> by enforcing the obligations on the given platform.<sup>75</sup> A particularly significant aspect of the DSA will be transparency reports by platforms and the risk assessment of systematic problems on very large online platforms.<sup>76</sup> Will Twitter, for instance, finally enact a more scrutinous agenda against Russians who actively engage in the manipulation of elections by using the platform? The question remains unanswered, and the fact that Twitter took a step in the opposite direction, as it pulled out of the European Union's voluntary code to fight disinformation,<sup>77</sup> leaves little to no room for optimism concerning the future of war-related propaganda. As for RT, numerous questions may arise as to what will happen with the media outlet in the European Union and beyond and its affiliates after a possible resolution or consolidation in the war as RT France declared bankruptcy in April 2023<sup>78</sup> and RT DE (the German affiliate of the main outlet) was banned in February 2022.<sup>79</sup>

<sup>70</sup> Ó Fathaigh and D Voorhoof, 'Freedom of Expression and the EU's Ban on Russia Today: A Dangerous Rubicon Crossed' cit.

<sup>71</sup> ECtHR *OOO Flavus and Others v Russia* App n. 12468/15 23489/15, 19074/16 [23 June 2020] para. 37.

<sup>72</sup> Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act).

<sup>73</sup> Cf. J Aguerri et al., 'The fight against disinformation and its consequences: Measuring the impact of "Russia state-affiliated media" on Twitter' (22 April 2022) SocArXiv Papers osf.io.

<sup>74</sup> European Commission, 'Digital Services Act: Commission designates first set of Very Large Online Platforms and Search Engines' (25 April 2023) EUC digital-strategy.ec.europa.eu.

<sup>75</sup> A Koltay, 'Censorship as a Tool Against State Disinformation: The Freedom of Expression Implications of the Russian-Ukrainian War' (2023) Journal of International Media & Entertainment Law 2.

<sup>76</sup> art. 15, 24, 34 and 35 of Regulation 2022/2065 cit.

<sup>77</sup> F Gillett, 'Twitter pulls out of voluntary EU disinformation code' (28 May 2023) BBC www.bbc.com.

<sup>78</sup> L Kayall, 'RT France declared bankrupt by French court' (8 April 2023) Politico www.politico.eu.

<sup>79</sup> Deutsche Welle, *Russia's RT blocked by German regulators* www.dw.com.

