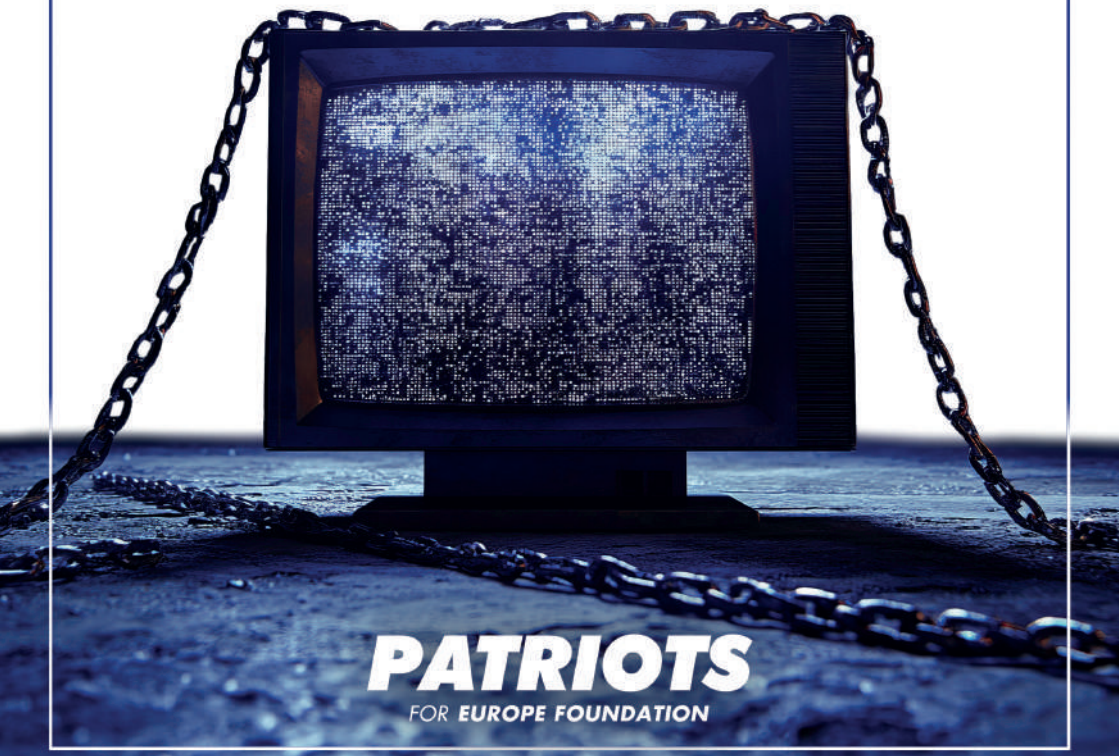
The studies

of the **PATRIOTS FOR EUROPE FOUNDATION**

European audiovisual regulators

The legal review of Maître Pierre GENTILLET



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Study conducted by
Maître Pierre Gentillet

Legal review

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The Patriots for Europe Foundation is a European political foundation composed of individual members from several European Union member states. Opposition to any transfer of national sovereignty to supranational bodies and/or European institutions is one of the core principles that unites the members of the Foundation.

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INTRODUCTION

The regulation of audiovisual media represents a significant contemporary challenge for European democracy. The advent and propagation of broadcasting channels are subjecting extant legal standards to scrutiny, as is the augmentation of participants, to the advantage of democratic pluralism.

Nevertheless, this development requires national laws to rise to a twofold challenge: guaranteeing free access to information while safeguarding the conditions for orderly, pluralistic public debate that is not hijacked by private or foreign interests, especially when the aims are clearly hostile to European democratic systems.

Therefore, audiovisual regulatory legislation remains an intensely contested and fragile area of friction between freedom of expression and the protection of public order in the realm of information.

However, within the European Union, this regulation is no longer exclusively national. Since the 1990s, and even more so with the directives of 2010 and 2018, followed by Regulation (EU) 2024/1083, known as the '*European Media Freedom Act*', the European Union has gradually built a common regulatory framework structured around objectives that are, at least in appearance, those of media freedom, independence and pluralism.

In light of these developments, the 2024 regulation established a new authority: the *European Board for Media Services* (EBMS). However, it contains stringent and alarming provisions on tackling 'disinformation'. This issue will be returned to in due course in the present study.

For several decades now, and with increasing momentum over the last ten years, European Union law has had a significant influence on national audiovisual regulations.

This prompts the following question: does European media regulation serve to protect pluralism, or is it instead detrimental to it? In other words, does this European regulatory convergence, based on *a priori* consensual principles, risk producing a veneer of pluralism, in which the most vigorous opposition, because it is 'divisive', is sidelined on the grounds that it contradicts the ideology at work within the European Commission?

The technical and subtle vocabulary of European law is indicative of a more profound political divide: that between an openness to public debate, allowing for dissent and political disagreement, and a regulated and politicised approach, where diversity is accepted provided it remains compatible with the dominant norms of public discourse.

The primary concern does not lie in the presence of rules, which are indispensable for establishing a normative framework for democratic expression, but rather in their subjective interpretation by European bodies that lack direct democratic accountability.

The present study aims to highlight this tension. The ambition is to present, compare, and analyse the extant regulatory framework and authorities within the European Union, focusing on the points of convergence and divergence, the strengths and limitations of each national model (Germany, Belgium, Italy, and Poland). This will be followed by an examination of the

influence of European law in the audiovisual sector, based on the French case (ARCOM).

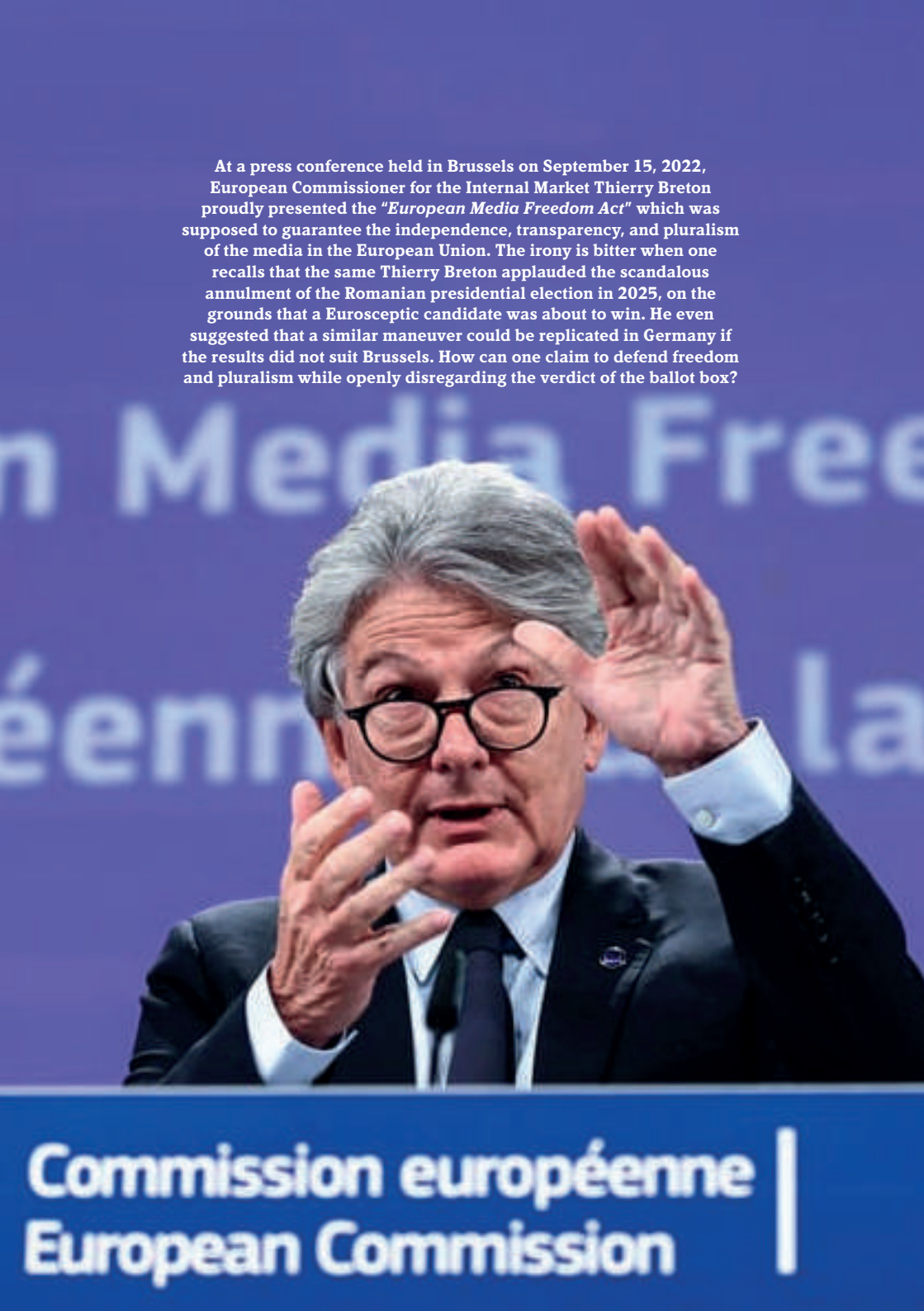
This approach is all the more necessary given that the European Union, under the guise of promoting media freedom, is seeking to develop increasingly intrusive regulatory engineering, where concepts such as 'disinformation', 'incitement to hatred' and 'divisive content' are becoming operational political categories, despite the lack of any solid definitions.

The objective of this study is therefore twofold:

On the one hand, provide a brief overview of a series of audiovisual regulatory systems in Europe, focusing on audiovisual regulators (rather than a study of regulatory law itself, which could, however, be the subject of another study at your request).

On the other hand, to study certain aspects of European law on audiovisual regulation, in particular the most recent texts, such as Regulation EU 2024/1083, some provisions of which may be perceived as detrimental to the principle of plurality and freedom of expression in the European territory.

At a press conference held in Brussels on September 15, 2022, European Commissioner for the Internal Market Thierry Breton proudly presented the *"European Media Freedom Act"* which was supposed to guarantee the independence, transparency, and pluralism of the media in the European Union. The irony is bitter when one recalls that the same Thierry Breton applauded the scandalous annulment of the Romanian presidential election in 2025, on the grounds that a Eurosceptic candidate was about to win. He even suggested that a similar maneuver could be replicated in Germany if the results did not suit Brussels. How can one claim to defend freedom and pluralism while openly disregarding the verdict of the ballot box?



The studies

OVERVIEW: CASE STUDY OF SEVERAL REGULATORY AUTHORITIES IN THE EU

THE REGULATION OF EUROPEAN MEDIA

In the European context, where the subject of media regulation is becoming an increasingly significant issue for European democracies, a review of the various audiovisual control systems in place reveals the various ways in which each country attempts to balance the imperatives of freedom of expression, diversity of opinion and the preservation of a number of requirements necessary for democracy, such as the fight against media concentration. As in Germany, Belgium, Italy and Poland, the role of audiovisual regulatory authorities is at the heart of political issues.

By examining various instances of audiovisual regulation throughout Europe, with a particular emphasis on Germany, Belgium, Italy and Poland, it is possible to identify a plurality of regulatory approaches towards access to information by different states. It is evident that regulatory authorities, whether centralised or federated, assume an indispensable role within the power structure that determines media organisation and the balance of power.

But at what cost does this regulation succeed in preserving freedom of expression without drifting into overly intrusive centralisation, or in preventing the concentration of media power in the hands of a few large groups? The following comparative overview will explore these tensions, highlighting the specific features of each national system.

The German case

The German audiovisual regulatory structure is quite unique due to the federal institutional system. The German Basic Law directly addresses audiovisual regulation in Articles 70 et seq.:

> *"(1) The Länder have the right to legislate, except in matters where the Basic Law assigns legislative power to the Federation.*
>
> *(2) In legislative matters, the powers of the Federation and the Länder are determined by the provisions of this Basic Law on exclusive and concurrent powers."*

Under this division of powers, matters relating to audiovisual broadcasting are not the exclusive responsibility of the central government but are shared with the Länder.

Thus, with the notable exception of Berlin and Brandenburg, each Land has its own supervisory authority, making a total of 14 independent administrations dedicated specifically to these issues.

The scope of these authorities' control primarily encompasses radio and television channels within their respective federal states. These authorities fulfil a dual role: on the one hand, they ensure plurality within the media landscape and, on the other, they prevent concentration within a few private groups.

However, this latter task is carried out in coordination with the Commission on Media Concentration (*Kommission zur Ermittlung der Konzentration im Medienbereich,* KEK). This is an independent body in Germany responsible for monitoring concentration in the audiovisual sector.

The primary mission of this independent commission is to scrutinise and evaluate power dynamics in the audiovisual

sector in order to prevent any monopolistic capture of public opinion by a private media outlet.

The fundamental criterion that underpins its capacity for intervention is the concept of dominant influence in law; this legal notion enables the sanctioning of any company whose economic weight and audience reach a level sufficient to disrupt the balance of informational pluralism.

The KEK is thus endowed with normative and binding powers, enabling it to impose restrictions on media groups and, where necessary, to refuse broadcasting licences when the concentration thresholds defined by the Media Act are exceeded.

In Germany, the radio sector is highly diversified in terms of ownership (unlike France, for example). In 2020, Germany had around 500 radio stations, of which 431 were privately owned and 69 were public.

In contrast, the phenomenon of concentration appears to be less widespread in the context of television. In 2023, 365 television channels held a national broadcasting licence for Germany. As is the case in France, public broadcasting is well represented. In 2018, the state channel ZDF had the largest audience share of 14.6%.

In 2023, public broadcasters dominated the television market share in Germany. ZDF was the broadcaster that attracted the largest audience share, with 14.6% of the total. This was followed by ARD Dritte (the regional channels of ARD) with 13.8%, and ARD Das Erste with 11.9%[1].

The five most popular TV channels in Germany in 2023 can be ranked as follows:

1 Statista Research Departement, « Market share of television channels in Germany in 2023 », 13 jan. 2025, https://www.statista.com/statistics/380528/tv-channels-audience-market-share-germany/

1. **ZDF** (public channel): 14,6 %
2. **ARD Dritte** (public channel): 13,8 %
3. **ARD Das Erste** (public channel): 11,9 %
4. **RTL** (private channel): 8,1 %
5. **Sat.1** (private channel): 4,5 %

German public channels are overrepresented in terms of television audience share. Nevertheless, private channels, despite their smaller market share, continue to play an important role in the German media landscape.

In terms of the regulations that govern media ownership in Germany, the legal provisions are intended to prevent media companies from exerting excessive influence on public opinion.

Each Land reaches an agreement with the central authorities on the rules governing broadcasting (*Rundfunkstaatsvertrag*, replaced in 2020 by the *Medienstaatsvertrag*, hereinafter referred to simply as MSTV).

Each agreement therefore sets out, in specific terms, the relationship with the central authorities and the rules governing diversity of opinion in the Land's media. In accordance with Article 60 of the MSTV, a report on the diversification of control of commercial companies that have invested in audiovisual media is to be published every three years.

Article 60(6) of the MSTV stipulates that the regulatory authorities of the Länder are obliged to publish a report on developments in media concentration and all measures adopted or planned to ensure diversity of opinion in the audiovisual media, either every three years or at the request of the Länder. Ultimately, this report is required to evaluate the practical implementation of the provisions set out in the MSTV, proposing amendments where relevant.

The objective of this initiative is to oversee and preserve the diversity of opinion within the German media landscape, with the aim of ensuring that concentrations of media ownership do not compromise the variety of perspectives that are presented to the public.

The MSTV sets out a series of rules to be followed by audiovisual media, including the following:

Ensuring diversity of opinion

This diversity must be ensured in particular through the establishment of an advisory board on programming. The composition of this body is such that its members are directly appointed by the operator, yet they are required to hail from diverse social strata. This is done in order to ensure a breadth of opinion.

In practice, however, this choice is questionable, since it is the operator itself that appoints the members of this committee and thus, based on their public or private statements, determines its general ideological orientation. Similarly, the ZDF (*Zweites Deutsches Fernsehen*) channel also has an advisory board responsible for monitoring the quality and diversity of its programmes. In accordance with the MSTV, this board regularly makes recommendations to improve coverage of important events and maintain a high level of editorial quality.

Critics, predominantly from right-wing political parties such as the AFD, assert that ZDF exhibits a biased political orientation, favouring left-wing or liberal opinions over other perspectives, particularly those originating from the nationalist or conservative right. According to them, this is said to result in a paucity of plurality in media debates.

ZDF is frequently the subject of criticism on account of its failure to offer a sufficient platform for the expression of conservative and alternative voices. This particular critique is fuelled by political actors such as the AfD, but also by political observers who advocate for greater representation of Germany's political diversity in public media.

This criticism is also shared by the CDU. For example, during a programme entitled '*Schlagabtausch*', members of the CDU and FDP expressed their dissatisfaction with the composition of the audience, which they considered to be 'unilaterally left-wing'. They criticised the ZDF channel for inviting mainly students from 'left-wing universities', which, in their view, led to a distorted representation of public opinion[2].

Finally, it should be noted that the MSTV requires operators to grant airtime to independent third parties. If the operator's audience share exceeds the 10% limit, it is required to allocate at least 260 minutes of airtime per week, including a minimum of 75 minutes during prime time.

These criticisms echo others concerning the appointment process for the advisory board on programming. Since appointments are made directly by the operator, there is constant suspicion. The adoption of regulations, for instance at the European level, to modify this system and guarantee strict separation between the appointment of programming boards and the channels they are responsible for monitoring, may be a valuable course of action.

2 Welt, « *Studenten aus „eher linken Unis" im Publikum – CDU und FDP empören sich über ZDF* », 7 feb. 2025, https://www.welt.de/politik/deutschland/article255367216/ZDF-Schlagabtausch-Studenten-aus-eher-linken-Unis-im-Publikum-CDU-und-FDP-empoeren-sich.html

The rule of independent thirds

In accordance with the principle of plurality of opinion, the MSTV stipulates that any media company with a minimum audience share of 10% is obligated to allocate airtime to independent third parties within a period of six months from the emergence of such a situation.

Failure to comply with this rule may result in a warning or even an administrative penalty from the KEK.

It is impossible to control more than 30% of television audiences

In accordance with Article 60(2) of the MSTV, no company is permitted to hold positions that would result in control of 30% of audience share through its audiovisual channels.

If an audiovisual company exceeds this 30% threshold, the Land regulatory authority offers it the following three options:

- Either modify its position in the media markets to lower this threshold (thus giving it freedom in terms of resources and therefore in terms of the operators to whom it can sell its audience share);
- Either directly relinquish part of its shares so that the 30% audience share threshold is no longer exceeded;
- Either take strict measures to ensure diversity of opinion on its broadcasts (this last condition being assessed very rigorously by the KEK).

In conclusion, the structure of German audiovisual regulation fits into the logical dynamic of a federal system in which the principle of Länder autonomy coexists with central regulatory authority. The MSTV serves as a mediating entity

between the respective powers guaranteed by the Länder constitutions and the necessity to regulate the national media landscape. Consequently, the German broadcasting law system is characterised by a commitment to safeguarding the integrity of public order in the domain of information, while ensuring pluralism, a principle often challenged by economic concentration. However, as we have seen, these regulatory mechanisms are open to criticism.

The case of ZDF, which has been accused by right-wing political parties such as the AfD of ideological drift towards the left, highlights the ambivalent role of public media in a modern democracy. These accusations of bias reflect a fundamental concern: that of the latent power of the media in shaping public opinion.

In this setup, allowing for a variety of ideas through state control mechanisms seems like a good way to keep democracy going without making regulation too intrusive for the Land. The challenge confronting Germany, as with any democracy, lies in its capacity to regulate without compromising the fundamental objective of freedom of information.

The Belgian case

The legal structure of Belgian regulatory bodies is similar in many respects to that of its German neighbour. Due to its federal nature, Belgium coordinates audiovisual regulation in consultation with the federated entities, i.e. the Flemish Community, the French Community and the German-speaking Community.

In this context, each federal state has its own regulator, which ensures moderation tailored to the cultural characteristics of each region. In contrast to the approaches adopted in countries such as France and Germany, where a centralised regulatory framework governs the nation as a whole, Belgium has opted for a decentralised model, entrusting its three federal communities with the responsibility for formulating and implementing their own regulatory policies.

Within the jurisdiction of the Flemish Community, the regulation of media is overseen by the *Vlaamse Regulator voor de Media* (VRM), an autonomous regulatory body established in 2005. The VRM is responsible for ensuring media plurality, monitoring compliance with legal obligations and sanctioning infringements. It has powers similar to those of the French CSA, adapted to the specific characteristics of the Flemish Community.

The German-speaking Community is subject to the regulatory oversight of the Medienrat, an authority that performs functions analogous to those of the CSA and the VRM, with adaptations made to align with the particular characteristics of this community.

At federal level, telecommunications are regulated by the Belgian Institute for Postal Services and Telecommunications (IBPT), which ensures the proper functioning of the telecommunications market and the protection of users.

For our study, we will focus on audiovisual regulation law in the French Community.

Regulation in the French Community

In the French Community, the regulatory authority is the *Conseil supérieur de l'audiovisuel* (CSA), established in 1987 as an advisory body within the administration of the French Community.

In reality, from 1987 to 1997, the CSA lacked effective supervisory powers. It was not until the decree of 24 July 1997 that supervisory and sanctioning powers were granted. Subsequent to this, the CSA has evolved into an autonomous administrative authority.

The decree of 27 February 2003[3] confirmed this development and granted it legal status, thereby expanding its scope of action, particularly in judicial matters.

It is also noteworthy that European law has exerted a direct influence on Belgian legislation regulating audiovisual media. In this regard, the decree of 27 February 2003 transposes European Directive 2001/29/EC on audiovisual media services into Belgian law. This decree grants the CSA extensive powers in the field of media regulation and introduces measures to protect citizens' rights and guarantee diversity and plurality of information.

The CSA is made up of two bodies:

- **The Licensing and Supervisory Board:** the decision-making body responsible for granting broadcasting licences to private service providers, monitoring compliance with legal and contractual obligations, and imposing penalties for breaches.
- **The Advisory Board:** an advisory body composed of 30 members from different social and professional categories in the audiovisual sector, representing different ideologi-

3 Le CSA en quelques mots, https://www.csa.be/le-csa/

cal and philosophical tendencies. Its mission is to deliver opinions or make recommendations on any matter within its competence[4].

The members of these entities are selected by the government of the French Community and their term of office is renewable for a period of five years.

The CSA is responsible for regulating audiovisual media. Its powers are structured as follows:

- **Issuing authorisations:** the CSA grants authorisations to radio stations. It receives registrations from television services. In the event of breaches of the obligations laid down in the decree, it may impose fines and administrative penalties on operators, up to and including suspension of authorisation;
- **Public protection:** the CSA ensures that content is suitable for minors (with preventive measures where necessary), that human dignity is preserved and that programmes can be adapted for people with disabilities;
- **Regulation of broadcasters:** the CSA monitors compliance with ethical and legal obligations by public television, as well as all local television stations and private radio stations;
- **Guarantee of pluralism:** the CSA is committed to ensuring that the audiovisual sector as a whole reflects the plurality of political opinion in Belgium.

This last point is particularly concerning given that, in its latest annual report[5], the CSA noted serious difficulties with regard to respect for media pluralism.

The aforementioned report highlights the extreme concentra-

4 REFRAM, CSA Belgique, https://www.reframe.org/Les-membres/CSA-Belgique

5 CSA, « Le CSA publie son évaluation du pluralisme des médias en FWB », 20 jun. 2024, https://www.csa.be/124947/le-csa-publie-son-evaluation-du-pluralisme-des-medias-en- fwb

tion of media outlets in the Wallonia-Brussels region. In this geographical area, four operators account for 78% of the audience share: RTL Belgium, RTBF, TF1 and AB. The CSA adds to this concern that, in radio, four broadcasters also account for up to 86% of the audience: RTL Belgium, IPM, RTBF and NRJ Group.

However, the CSA points out that its role is merely to identify such concentrations and that it does not have the power to impose sanctions. This power is reserved for a federal authority, the Belgian Competition Authority (BCA)

This extreme concentration is all the more problematic because some channels are strongly criticised for practising a form of open censorship of certain opinions deemed unacceptable. One channel recently stood out in this regard: the Belgian French Community Radio and Television (RTBF).

The limits of pluralism: RTBF as an example

The RTBF's reporting on right-wing Belgian political figures, or such international figures as Donald Trump, gives rise to a number of legal questions, particularly with regard to plurality of opinion and the concept of freedom of expression.

For example, RTBF did not hesitate to openly take a stand against Donald Trump, sparking controversy.

RTBF's refusal to broadcast live the inauguration speech of the re-elected President of the United States was justified on the following grounds: *"It has been noted on multiple occasions that Donald Trump has made remarks that could be considered racist, far-right, xenophobic and hateful. It has been decided that the speech shall be broadcast with a slight delay, in order to allow time for analysis. This is a practice that has been followed for many years. This approach is instrumental in preventing the trivialisation of such remarks. This is certainly not a case of censorship,"*

said Aurélie Didier, deputy editorial director of news at RTBF[6].

Notwithstanding the absurdity of such remarks, the news director is thereby assuming the prerogative to delineate what constitutes racist or hate speech, as if she were a member of the judiciary.

Above all, however, RTBF failed to fulfil its obligations in terms of neutrality, impartiality and diversity of viewpoints, which are all the more important given that it is Belgium's main public broadcaster.

Several complaints were lodged with the French Community Broadcasting Authority (CSA) concerning the delay applied to the broadcast. After reviewing the complaints, the CSA decided to dismiss them, finding that RTBF had not committed any obvious error of judgement 'in applying the law and its management contract'. It also pointed out that the choice to broadcast live or delayed is a matter of editorial freedom, which RTBF explained transparently.

This decision is all the more questionable given that it appears to be in flagrant opposition to the CSA's mission to respect pluralism.

The neutrality and impartiality of public media are essential principles, and RTBF must ensure that all political voices are represented, including those it considers to be far right.

The manner in which the US president's speech was subject to pre-emptive commentary prior to its broadcast can be regarded as a manifestation of a paternalistic editorial decision-making process.

By filtering the words of a political leader based on his political

6 Le Figaro, « En Belgique, la diffusion en différé du discours d'investiture de Donald Trump par la RTBF vire au scandale politique », 24 jan. 2025, www.lefigaro.fr/international/en-belgique-la-diffusion-en-differe-du-discours-d-investiture-de-donald-trump-par-la-rtbf-vire-au-scandale-politique-20250124

affiliation, RTBF and CSA appear to lend legitimacy to the idea that certain voices, in this case those of the far right, must be 'framed' or 'contextualised' in order to be acceptable to the public. It is evident that such treatment is not extended to other political groups, which often results in the perception among viewers that certain opinions must be regulated, framed and mediated to prevent the dissemination of potentially subversive ideas.

Such a decision is therefore in clear violation of the principle of respect for pluralism, which presupposes equality between different political opinions and therefore their equal treatment by television and radio broadcasters.

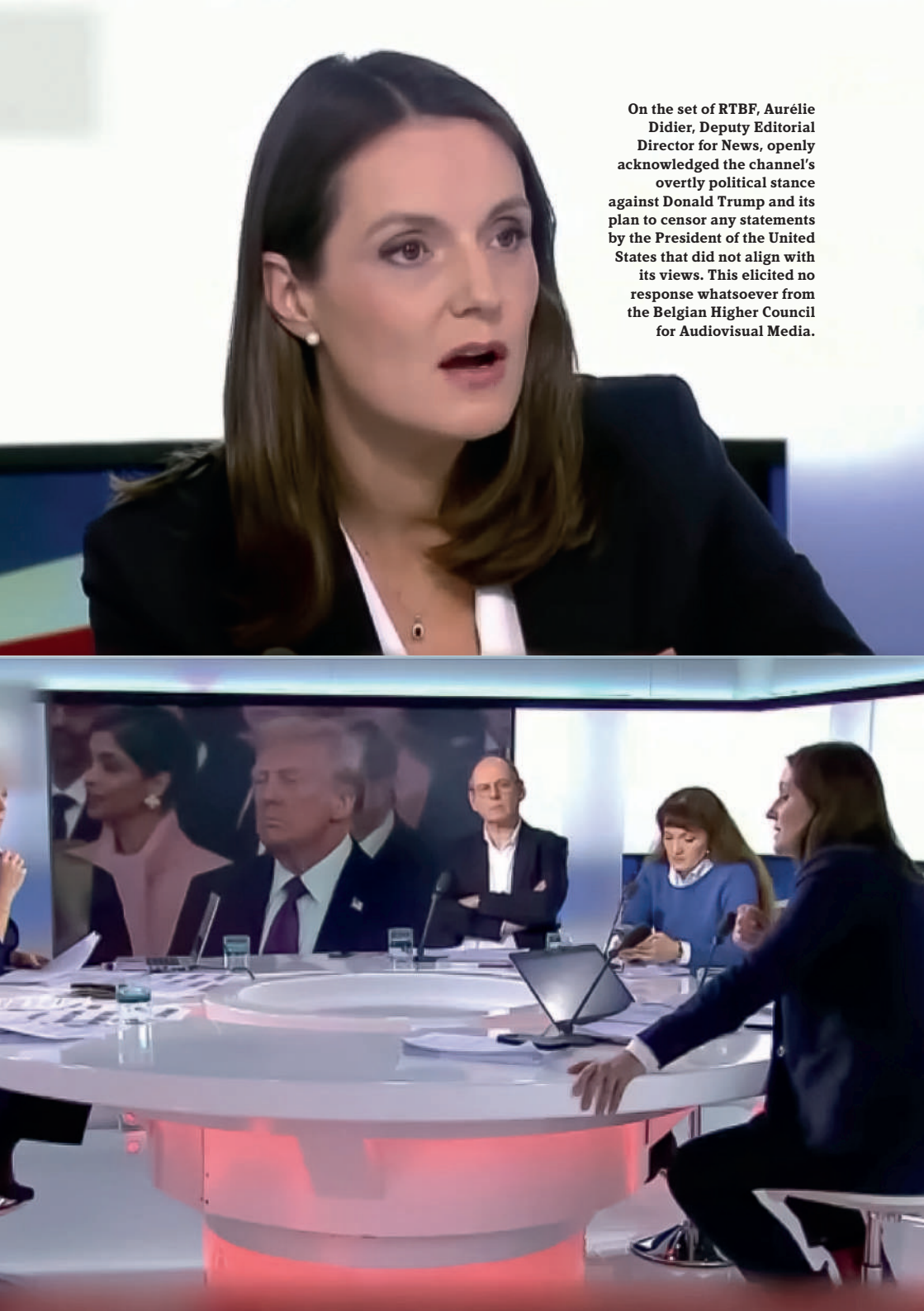
In addition to this particular instance of regulated coverage of the US president's speech, RTBF has publicly acknowledged the implementation of a 'cordon sanitaire' with regard to the Belgian far right.

The argument put forward by RTBF, namely that it is necessary to maintain this cordon sanitaire in order to protect democratic values and prevent the influence of extremist ideas, must, however, be examined in the light of fundamental legal principles relating to freedom of expression and political diversity.

RTBF claims to be directly responsible for this cordon sanitaire[7], which has been practised, for example, against the *Vlaams Belang* party, without receiving any criticism from the CSA. Referencing a publication by the *Centre for Socio-Political Research and Information*, RTBF directly states that it seeks to "*prevent far-right parties or representatives from having free speaking time on live television or radio, which automatically excludes them from live studio or debate programmes*".

In addition to considering itself capable of defining politically who is or is not far-right, RTBF publicly defends this censorship of

7 RTBF Actus, « Quand et pourquoi le cordon sanitaire a-t-il été instauré ? », 20 oct. 2024, www.rtbf.be/article/quand-et-pourquoi-le-cordon-sanitaire-a-t-il-ete-instaure-11452279



On the set of RTBF, Aurélie Didier, Deputy Editorial Director for News, openly acknowledged the channel's overtly political stance against Donald Trump and its plan to censor any statements by the President of the United States that did not align with its views. This elicited no response whatsoever from the Belgian Higher Council for Audiovisual Media.

political ideas deemed unacceptable. No sanctions were imposed by the CSA, and the article remains available on RTBF's website.

In principle, as a public broadcaster, RTBF should ensure, in line with democratic and therefore pluralistic principles, that all political parties have a place in the media, particularly during election campaigns or political events of national importance.

This decision gives rise to significant questions concerning implicit censorship and the limits on the dissemination of political speech in the name of protecting public order or preventing hate speech.

The RTBF's status as a public body adds to the legal complexity of these decisions. As an institution funded by public money, the RTBF is under an even greater ethical responsibility to respect pluralism. This means that it cannot allow moral or ideological judgements to take precedence over the right to information.

While regulating audiovisual content is a necessary requirement in a democracy, RTBF, as a public broadcaster, should avoid introducing bias in the broadcasting of political discourse, even when it comes from the 'far right' or public figures such as Donald Trump. The plurality of opinions is a fundamental principle in any democracy, and RTBF must strive to ensure impartial and balanced coverage, without resorting to preventive commentary that could be perceived as a form of censorship.

Given the absence of any action on the part of the CSA, it is reasonable to question whether the French-speaking region of Belgium can still be considered a true democracy in accordance with French standards or those of the European Union, a point we will return to later.

In conclusion, Belgium, as a federal state, has assigned the regulation of audiovisual media to its federated entities, thereby ensuring that regulation is tailored to the cultural and linguistic specificities of each community. Regulatory bodies such as the CSA in the French Community, the VRM in the Flemish Community and

the Medienrat in the German-speaking Community have been established to ensure plurality of opinion and compliance with legal obligations by stakeholders in the audiovisual sector.

The Italian case

In contrast to the preceding cases, the Italian architecture for controlling audiovisual activities appears to be more centralised, a feature that can be attributed to its state structure. Belgium and Germany are federal republics, whereas Italy has opted for a more moderate system, a decision that is perhaps influenced by the regional nature of its state.

As a result, audiovisual control is ensured by a single authority: the *Autorità per le Garanzie nelle Comunicazioni* (hereinafter referred to simply as 'AGCOM'). Since the law of 31 July 1997, this independent administrative authority has been responsible for monitoring:

- Telecommunications;
- Print media;
- Radios;
- Television.

Its control extends to all these sectors, both public and private.

AGCOM consists of two committees (one for networks and one for services and products), with a total of eight members.

Unlike France, for example, politicisation is accepted in the face of the supposed technical nature of regulation. The president of AGCOM is appointed by the President of the Republic, on the recommendation of the Prime Minister. The composition of the other members is determined in accordance with the numerical

strength of the parliamentary groups, with the selection process conducted by special committees of the Italian Parliament.

Let us pause for a moment on this crucial point. AGCOM, the Italian regulatory authority, exemplifies an institutional paradox: it is presented as an independent authority, yet it remains subject to political logic. The critique articulated is not founded upon any misconduct or deviation, but rather upon the fundamental nature of its appointment process. Its composition does not guarantee any supposed technocratic neutrality, but merely reflects the direct influence of the political forces at play. This proximity to political institutions has led to AGCOM being described as 'semi-independent'.

But this is precisely where the uniqueness of the Italian model lies. Contrary to the French illusion of sacrosanct regulation (ARCOM), which claims to escape political contingencies under the guise of technical neutrality in order to better conceal them, AGCOM fully embraces its political nature. Its parliamentary roots, far from being a source of mistrust, can also provide a basis for relative legitimacy, tending to promote better representation of the political currents running through Italian society. Consequently, it is not so much independence from politics that guarantees balance, but rather the dynamic internal opposition of powers, thereby ensuring greater plurality than the illusion of a disembodied technocracy.

Nevertheless, the Italian media landscape has long been criticised for excessive capital concentration, which tends to discredit the idea of good representation of different currents of opinion.

AGCOM is not empowered to impose sanctions in cases of concentration or abuse of a dominant position in the audiovisual market. It can only issue recommendations. The authority with the primary responsibility for this issue is the *Autorità Garante della Concorrenza e del Mercato* (Competition and Market Authority).

At the height of his influence in the 1990s and 2000s, the media owned by Silvio Berlusconi through Mediaset accounted for approximately 30 to 35% of the television audience share in Italy. When adding the influence he exerted over the public RAI channels while in power, it is estimated that he could directly or indirectly control around 80 to 90% of the national television audience.

AGCOM's mission is to:

- Establish the register of operators;
- Determine network prices and access;
- Check that communication network operators do indeed allow interconnection and network access;
- Assign broadcasting licences;
- Ensure that operators comply with the legislation;
- Monitor and publish audience figures.

In fact, AGCOM's activities are focused more on monitoring than on controlling the audiovisual sector.

In reality, the legislative framework endows it with only limited powers to impose sanctions. The scope of action in this area appears to be relatively confined to the protection of minors, advertising and the promotion of political pluralism. Without delving into the specific sanctions imposed by AGCOM, it is evident that these measures are comparatively less stringent than those observed in the other countries under scrutiny here.

The Polish case

The National Broadcasting Council (*Krajowa Rada Radiofonii i Telewizji*, abbreviated to KRRiT) is the Polish authority responsible for the regulation of audiovisual communications.

Established by Articles 213 to 215 of the Polish Constitution, the National Broadcasting Council enjoys a highly protective legal status. Unlike other countries in Europe, such as France's CSA, its existence is not guaranteed by a simple law but directly by the supreme constitutional text.

Thus, Article 213 states:

> *"The National Broadcasting Council is the guardian of freedom of expression, the exercise of the right to information, and the public interest in the field of broadcasting and television."*

It should be noted that guaranteeing freedom of expression is the first mission listed. Although this article appears at first glance to be a simple statement of the respective duties of an audiovisual regulatory authority, there is clearly tension between the protection of fundamental freedoms, such as freedom of information, and the preservation of public order.

The term 'guardian' is essential to Article 213. It means that the role of the National Council is not simply to be a technical expert and legal arbiter, but a real political actor (all the more so given its composition) and holder of effective power in the media sphere.

According to this article, the KRRiT's mission is to intervene to ensure that opinions can be freely expressed in order to maintain the democratic system.

The primary objective is to ensure the stability of a democratic system in which public discourse does not serve as a catalyst for division and where the prerogatives of the State are not undermined by an excessive concentration of information power in the hands of private entities.

Article 213 stipulates that the KRRiT is responsible for curbing this phenomenon, a role that is all the more essential at a time when private media influence is increasingly seen as being as decisive as political influence. Excessive media concentration could, in fact, disrupt the balance of information and public opinion.

The regulation of media concentration in Poland by the KRRiT is therefore necessary to preserve democratic order against monopolistic control of public opinion.

The composition of the KRRiT is also guaranteed by Article 214 of the Polish Constitution:

> *"1. The members of the National Broadcasting Council are appointed by the Sejm, the Senate and the President of the Republic.*
>
> *2. A member of the National Broadcasting Council cannot belong to any political party or trade union, nor can they engage in any public activity that is incompatible with the dignity of their office."*

Here again, as in the Italian case, the politicisation of the members of the body responsible for audiovisual control is accepted, to the benefit of plurality of opinion. By constitutionally guaranteeing that members are appointed by the Chambers and the President of the Republic, the Polish state is prioritising the representativeness of opinions over apparent and delicate technical neutrality.

Furthermore, it should be noted, and this is more stringent than in the previous case, that it is the constitution itself that stipulates that there must be no political conflict of interest for members when declaring incompatibilities of principle for the exercise of their functions.

However, it is regrettable that the scope of this incompatibility is not broader. Indeed, in order to combat the appropriation of the public domain by private companies, the constitution could have stipulated a general incompatibility between sitting on the KRRiT and any other position, including private corporate ones (e.g. company director, member of a company's board of directors, etc.).

Apart from the aforementioned constitutional provisions, it is primarily the Radio and Television Act of 29 December 1992 that sets out the rules governing the KRRiT's operations. This Act has been amended several times, notably by the amendment of

12 October 2012 and the Act of 1 November 2021, which increased its regulatory powers.

A close examination of the law's details reveals that the first articles of the constitution are confirmed, particularly in relation to the key point that differentiates Poland from Western concepts of press control. The law of 29 December 1992 stipulates that the control of radio and television broadcasting is determined through consultation with the Prime Minister.

The KRRiT has the power to impose sanctions in order to assert its authority and competence.

Firstly, it may decide to issue a formal notice or warning to audiovisual operators in the event of a breach of legal rules, such as the broadcasting of programmes that do not comply with standards of pluralism or the protection of minors.

It may then impose fines on the aforementioned parties for the same reasons, which it shall determine at its discretion based on its assessment of the seriousness of the offence.

If the parties concerned still fail to comply with the KRRiT's orders, it may impose heavier penalties such as a temporary broadcasting ban.

Finally, it has the power to withdraw the audiovisual licence in the event of repeated breaches by the operator.

The KRRiT ensures that broadcasts comply with the advertising time limits imposed by law. Furthermore, if these rules are breached, the KRRiT may decide to impose financial penalties or additional restrictions on the broadcasting of advertising content.

In summary, the KRRiT is endowed with a wide range of powers to impose sanctions, ranging from fines to revoking licences, with a view to ensuring media regulation and compliance with

democratic standards in Poland. The purpose of these provisions is to strike a balance between the right to freedom of expression and the need to preserve a pluralistic and diverse media landscape, while preventing abuse or domination by certain media groups.

In conclusion, this initial comparative analysis of audiovisual regulatory systems in Germany, Belgium, Italy and Poland highlights the dilemmas faced by these different countries in managing the media landscape. Far from being limited to the technical management of broadcasters, these regulators actually perform an essential political function, which is assumed to a greater or lesser extent depending on the system in place.

The issue of media pluralism, which lies at the heart of every national audiovisual regulatory framework, raises real challenges: how can we guarantee diversity of opinion without infringing on the freedom of those who wish to express themselves? How can we protect public order and democratic stability without falling into the trap of censorship or manipulation of information? Through a variety of systems, from the German federal approach to Italian centralisation, via the complex balance of federal entities in Belgium and Poland, we can see that each state is attempting to find a different answer to these questions, with differences mainly based on each country's legal and state traditions. For example, Poland does not pay much attention to the lack of politicisation of its regulatory authority, but on the other hand, it guarantees in its constitution that the authority will, through its political composition, ensure the pluralistic expression of Polish society, a black mark under nearly 50 years of communist rule, when only one opinion, the communist opinion, was tolerated.

Moreover, the organisation of the regulatory system is subject

to variation according to state tradition. In Germany, the federal nature of the state is a fundamental aspect that underpins the establishment of diffuse control, Land by Land, of the audiovisual sector.

However, despite their differences, these regulations share the same underlying objective: to preserve democratic space. They all aim, albeit to varying degrees (e.g. Italy), to prevent a small number of players from dominating the media landscape and distorting the balance of public debate. However, regulation combined with respect for political plurality is not always upheld in practice. The real concentration of the media in a few private groups and the practise of '*cordons sanitaires*' show that the legal provisions for audiovisual regulation are still insufficient.

This overview of European audiovisual regulators demonstrates that media regulation is more of a political act than a purely technical one.

The studies

CASE STUDY: **ARCOM**

THE REGULATORY AUTHORITY FOR AUDIOVISUAL AND DIGITAL COMMUNICATION

Originally called C.S.A (*Conseil Supérieur de l'Audiovisuel*), the A.R.C.O.M (*Autorité de Régulation de la Communication Audiovisuelle et Numérique*) was set up by Law No. 89-25 of 17 January 1989. The inaugural article proudly proclaimed the following principle in its opening paragraph:

> *"Audiovisual communication is free.*
>
> *The exercise of this freedom may be subject only to such restrictions as are necessary to ensure respect for the dignity of the human person, for the freedom and property of others, for the pluralistic nature of the expression of ideas and opinions, and for the protection of public order, national security, and public service, by the technical constraints inherent in the means of communication, and by the need to develop a national audiovisual production industry."*

It is noteworthy that even prior to the presentation of the institution (ARCOM), the principle of freedom of communication is articulated, along with the highly liberal framework within which it must be exercised.

ARCOM's structure and legal framework

Since the enactment of the law of 15 November 2013 on the independence of public broadcasting, ARCOM has functioned as an independent public authority (ARCOM, 2013). In addition to the specific prerogatives, which will be discussed at a later point, this status confers upon it a legal status separate from that of the State.

ARCOM is constituted as a collegial institution, comprising nine members who are appointed by decree of the President of the Republic for non-renewable six-year terms. One-third of the members are replaced every two years.

ARCOM members, although appointed by presidential decree, are selected by several different authorities:

- Three are appointed by the President of the National Assembly;
- Three are appointed by the President of the Senate;
- One is appointed by the Vice-President of the State Council;
- One is appointed by the first president of the Court of Cassation;
- One is appointed by the President of the Republic.

Among these members, the president of ARCOM must be chosen by the President of the Republic.

ARCOM's president

Unlike other members, the president is directly granted a number of specific powers by law. These are listed in Article 4 of the

Decree of 4 March 2014, which stipulates, among other things, that he or she:

> *"1° Represents the Authority in court and acts on its behalf;*
>
> *2° Appoints employees to positions other than that of managing director, sets compensation and benefits, and establishes employee representative bodies;*
>
> *3° Has authority over all service personnel. Sets the organisation of services and the rules for managing contract staff, after consulting the relevant staff representative bodies;*
>
> *4° Signs all documents relating to the Authority's jurisdiction;*
>
> *5° May compromise under the conditions set out in Article 3(10) and Articles 2044 to 2058 of the Civil Code, and grant ex gratia concessions under the conditions set out in Article 14;*
>
> *6° Is responsible for authorising revenue and expenditure;*
>
> *7° May create revenue and expenditure regulations under the conditions set out in Article 18;*
>
> *8° Approves contracts, agreements and tenders on behalf of the Authority;*
>
> *9° Keeps track of commitments."*

The aforementioned article provides a detailed and comprehensive breakdown of the powers granted to ARCOM's president, giving him/her an important role. As a result, he/she is the most important, if not the central, figure in the institution. Let us briefly analyse the various powers of ARCOM's president.

First and foremost, the president's primary role is that of representation. He/she embodies ARCOM within the legal system. This power is neither insignificant nor minor, as he/she has the

right to take legal action on behalf of the institution, which has legal standing. It is through the authority of the president that ARCOM expresses itself in court, defends its decisions and asserts its rights. This capacity gives him/her the status of sole interlocutor with the courts and third parties.

In addition to this representative role, the president has administrative powers. In this sense, he/she has the power to sign all acts relating to the ARCOM's powers and thus commits the institution to all its decisions. It is therefore not a purely symbolic presidency, as is the case in other public institutions, but a real authority in the formalisation and therefore the enforceability of the ARCOM's enactments.

In addition, the President has management authority over the institution's services, human resources and finances. In this capacity, he/she has discretionary power to appoint staff (with the exception of the Chief Executive). He/she also sets the remuneration and allowances of those appointed.

Consequently, he/she has hierarchical and supervisory authority over all ARCOM departments.

In financial matters, the president is responsible for authorising revenue and expenditure, a role that extends beyond mere management and is tantamount to budgetary decision-making power. This prerogative is accompanied by the power to enter into contracts, agreements and procurement on behalf of the institution, which gives him/her the autonomy he/she needs to ensure the smooth running of ARCOM.

The President's ability to grant discretionary remissions also reflects this flexibility, allowing him/her to adapt the institution's position in line with financial requirements.

Finally, the law grants him/her oversight of accounting commitments, thereby ensuring his/her control over the provisions

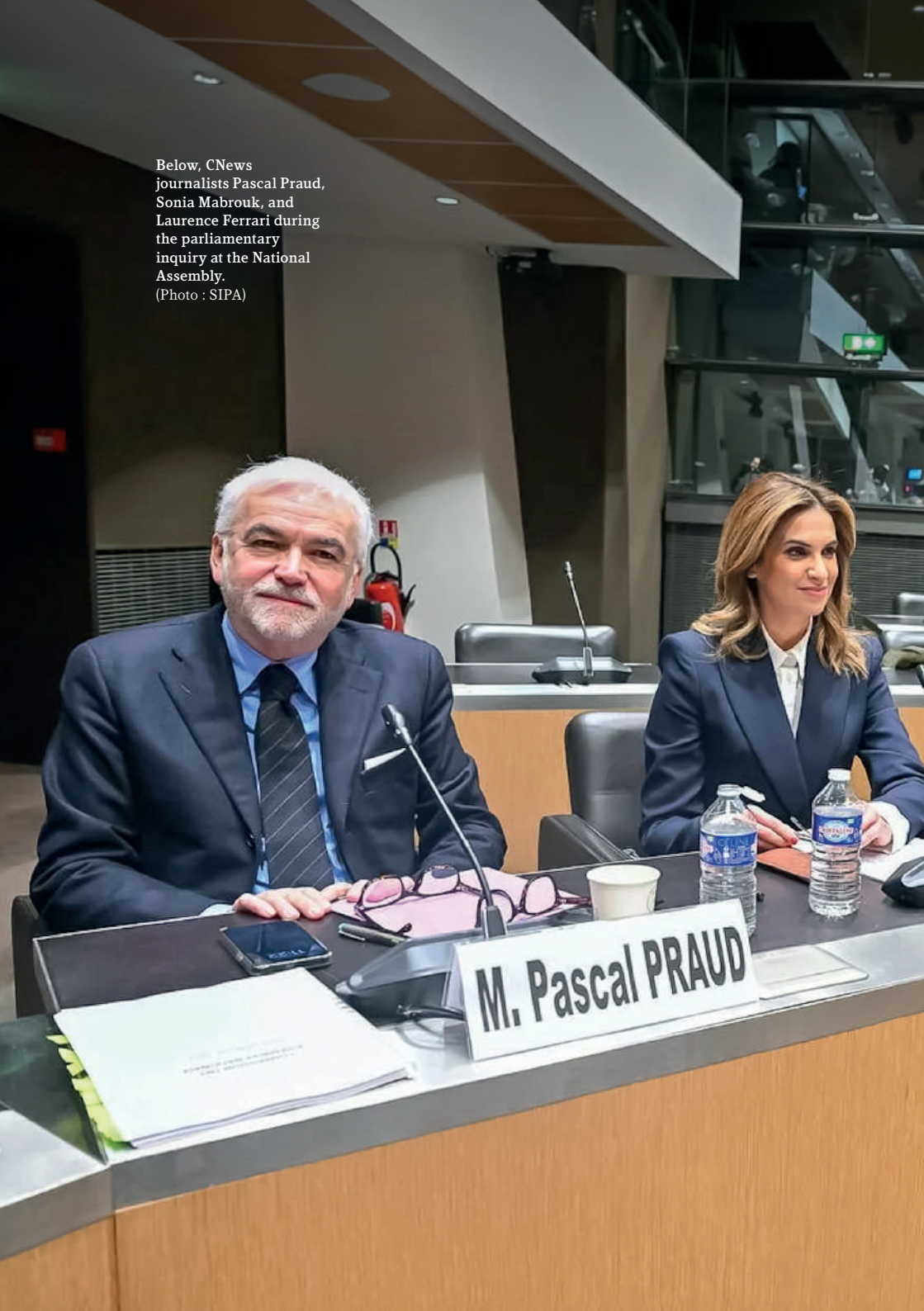
imposed by ARCOM. In addition, he/she has the power to establish revenue and expenditure regulations, which further strengthens his/her importance in the general administration of the Authority's finances.

It is evident that a significant proportion of the powers bestowed by the law and its implementing decrees confer upon the ARCOM president a pivotal role, with the objective of ensuring unity of direction and, consequently, authority, within an institution that must assert its independence and the sovereignty of its decisions in relation to both political and private actors.

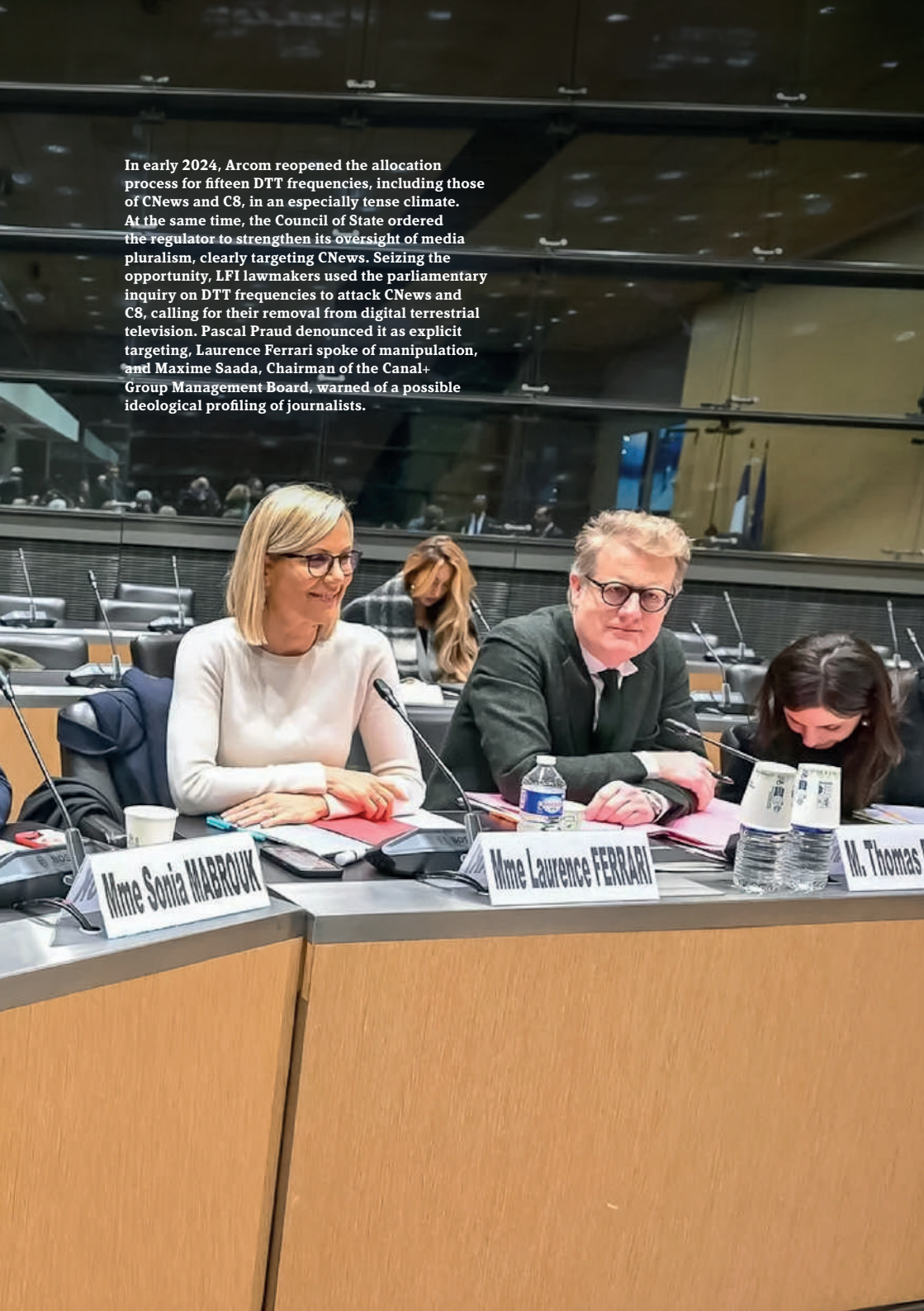
This concentration of power, which might appear unconventional within the context of a collegial institution, is intended to enhance efficiency. By conferring upon a single individual the capacity to make the majority of decisions that have a bearing on the institution, the legislators sought to ensure the actions of ARCOM were more consistent and more readily comprehensible to the public.

However, this model is not without its limitations. While the president enjoys significant autonomy, he/she must work with employee representative bodies in accordance with the provisions of ordinary law, which naturally moderates his/her power to organise services. In addition, certain specific financial decisions remain subject to the budgetary and accounting rules applicable to public institutions. These modest safeguards ensure that the exercise of these powers, although centralised, remains subject to internal and external oversight, thereby reinforcing the democratic nature of the institution.

In conclusion, the legislator has sought to give the president of ARCOM a powerful and driving role around which the main administrative and financial decisions are made, making him or her the key player in the institution.



Below, CNews journalists Pascal Praud, Sonia Mabrouk, and Laurence Ferrari during the parliamentary inquiry at the National Assembly.
(Photo : SIPA)



In early 2024, Arcom reopened the allocation process for fifteen DTT frequencies, including those of CNews and C8, in an especially tense climate. At the same time, the Council of State ordered the regulator to strengthen its oversight of media pluralism, clearly targeting CNews. Seizing the opportunity, LFI lawmakers used the parliamentary inquiry on DTT frequencies to attack CNews and C8, calling for their removal from digital terrestrial television. Pascal Praud denounced it as explicit targeting, Laurence Ferrari spoke of manipulation, and Maxime Saada, Chairman of the Canal+ Group Management Board, warned of a possible ideological profiling of journalists.

ARCOM's managing director

The managing director of ARCOM is mentioned directly in the texts (Decree No. 2014-382 of 28 March 2014). The appointment is made directly by decree of the President of the Republic, upon the recommendation of the President of ARCOM.

Unlike the latter, his/her duties are purely managerial and administrative, relating to the smooth running of the institution. Article 5 of the aforementioned decree specifies his/her powers as follows:

> *"The services of the Audiovisual Authority are managed by a managing director, under the authority of the President.*
>
> *(...)*
>
> *The President may delegate to the managing director the power to sign all documents relating to the functioning, exercise of the duties and representation of the Audiovisual Authority in court and in civil matters and, within the limits of his/her powers, to any employee of the Audiovisual Authority under the supervision of the managing director.*
>
> *In matters falling within his/her competence, the managing director may delegate his/her signature within the limits he/she determines and designate officers authorised to represent him/her. The managing director may, by delegation from the President, keep accounts of expenditure commitments under the conditions laid down in the accounting and financial regulations."*

In this capacity, he/she has, concurrently with the president, hierarchical authority over the entire administration of the institution. In practice, he/she assists the president in all of his or her duties and ensures that ARCOM meetings are conducted properly, without, however, having any voting rights or specific powers of intervention. He/she may, however, be invited to give his/her opinion on decisions taken.

Member responsibilities

- ### Incompatibilities

The appointment of ARCOM members implies that they must comply with a number of ethical principles throughout their term of office. In this regard, Article 5 of the Law of 30 September 1986 establishes a clear incompatibility:

> *"The members of the Audiovisual and Digital Communications Regulatory Authority shall perform their duties on a full-time basis. Their duties shall be incompatible with any elected office."*

The prohibition is formulated in absolute terms. A strict obligation of exclusivity is therefore imposed on ARCOM members throughout their term of office.

However, this prohibition in principle does not appear to encompass low-paid activities undertaken by associations (the term 'compensated' would likely be more appropriate in this context). However, they are obliged to disclose the existence of such activities in accordance with the provisions of the law of 11 October 2013 on transparency in public life.

In addition, ARCOM members are required to comply with several prohibitions set out in the Intellectual Property Code. Thus, pursuant to Article 5 of the Law of 30 September 1986, they may not:

> *"directly or indirectly perform functions, receive fees, except for services rendered prior to taking office, hold an interest or have an employment contract with a company in the audiovisual, film, publishing, press, advertising or electronic communications sector."*

This comprehensive prohibition, particularly with regard to capital ownership, is welcomed as it helps to dispel any suspicion of favouritism in the allocation or renewal of broadcasting

licences. Failure to comply with this rule may result in a five-year prison sentence and a fine of €500,000 for the offending member. Furthermore, such a breach may provide a foundation for a vote to exclude the member from the ARCOM board, a decision that is to be made by majority vote.

- **Professional secrecy**

The obligation of professional secrecy is a very serious responsibility for ARCOM members, as it is punishable by criminal penalties, as expressly stated in Article 8 of the Law of 30 September 1986:

> *"Members and agents of the Authority are bound by professional secrecy with regard to facts, acts and information that come to their knowledge in the course of their duties, under the conditions and subject to the penalties provided for in Article 75 of the Criminal Code."*

However, it is possible to make an exception to this rule in cases where the law provides for it (e.g. Article L.141-3-1 of the Code of Financial Jurisdictions, i.e. in the case of a request from the Court of Auditors in the context of its audits and investigations).

ARCOM's remit

Authority to allocate broadcasting licences

Broadcasting rights are allocated by decision of ARCOM. ARCOM also has the power to decide on their renewal.

The attribution follows a call for applications, in accordance with the rules of the General Code for Public Authorities (Article L.2111 et seq.). The public call for applications is used to

ensure equal treatment between different applicants and to provide transparency for citizens.

However, in the case of licence renewals, there is no call for applications. In accordance with Article 28-1 of the Law of 30 September 1986 on freedom of communication, licence holders are entitled to have their broadcasting licence renewed for a period of five years, once for television and twice for radio. However, this measure does not apply if the financial situation of the holder does not guarantee that the broadcast licence will be used under financial conditions deemed satisfactory by ARCOM.

The procedure for the renewal of a broadcast licence requires the broadcaster to notify ARCOM of its intention to extend the use of the licence for a further five years at least one year prior to the expiry of the five-year period. In the year preceding the expiry date, ARCOM is responsible for publishing a reasoned decision that determines the renewal of the licence.

In addition to five-year authorisations, ARCOM may also grant temporary authorisations (Article 28-3 of the Law of 30 September 1986). Unlike the former, these are exempt from prior tender procedures. Despite a positive decision by the Constitutional Council confirming the validity of such an exemption, there are grounds for caution regarding this exemption in light of the rules on transparency and pluralism in public broadcasting.

With regard to calls for applications for the five-year operation of radio services, these shall comply with Article 29 of the Law of 30 September 1986, which stipulates in particular that:

> *"For the geographical areas and categories of services it has previously determined, the Authority shall publish a list of available frequencies and a call for applications. It shall set the deadline for the submission of applications.*

> *Applications must be submitted either by a company, a foundation, an association registered under the French law of 1 July 1901 on associations, or a non-profit association governed by local law in the departments of Bas-Rhin, Haut-Rhin and Moselle.*
>
> *These declarations shall indicate, in particular, the purpose and general characteristics of the service, the frequency or frequencies that the applicant wishes to use, the technical characteristics of the broadcasts, the estimated expenditure and revenue, the source and amount of the planned financing, and the list of directors, the composition of the management body or bodies, and the articles of association of the legal entity submitting the application.*
>
> *(...)*
>
> *At the end of the period specified in the second paragraph above, the Authority shall draw up a list of candidates whose applications are admissible."*

The tender process is initiated by ARCOM with the publication of a list of licences to be awarded and a call for applications. It is important to note that applicants for licences may be of a wide variety of legal forms, including associations, civil or commercial companies, or foundations.

The application submitted by applicants for the broadcasting licence must include a number of items, listed in Article 29, notably the proposed broadcast frequency, a description of the project, a provisional statement of expenditure and revenue, the composition of the administrative bodies and various documents detailing how they operate (e.g. articles of association). After submission, additional changes may be made provided that "*they do not have the effect of replacing the initial application with a different one.*[8]"

8 C.E, 28 feb. 1996, n°142469, Syndicat national des radios privées

Following a thorough review, ARCOM draws up a list of accepted applications. As with any administrative decision that causes prejudice, this decision may be appealed before an administrative court on the grounds of abuse of power.

With regard to calls for applications for the five-year operation of television services, Articles 30 and 30-1 of the aforementioned law govern the procedure. Article 30-1 states:

> *"I.-The Audiovisual and Digital Communications Regulatory Authority shall define categories of services and issue a call for applications covering the entire metropolitan territory for services intended for national audiences. For services intended for local audiences, the geographical areas shall be determined in advance by the Audiovisual and Digital Communications Regulatory Authority.*
>
> *The latter sets the deadline for submitting applications and publishes the list of frequencies that may be allocated in the area concerned, together with information on the areas in which broadcasting stations may be located and the apparent radiated power.*
>
> *This list should, within technical and economic constraints, aim to take into account the various modes of reception of digital terrestrial television, and in particular to promote the development of personal mobile television, a mode of broadcasting television services intended to be received on the move by terrestrial means using radio resources mainly dedicated to this purpose, and the various innovative television broadcasting standards."*

It should be noted that applications may be submitted by organisations with a legal form distinct from that referred to in Article 29 of the aforementioned law.

Thus, Article 30 states that applications may be submitted to ARCOM by local semi-public companies, commercial companies, cooperative societies serving the public interest, public cultural cooperation institutions and associations.

Unlike the procedure for allocating radio frequencies, public hearings of applicant operators are mandatory. Upon review of the applications, it appears that the selection criteria are also more stringent, based in particular on:

- Relevance of the editorial project, with an emphasis on cultural diversity and innovation,
- Financial soundness of the proposed project, with ARCOM assessing resources and the economic model,
- Compliance with legal obligations by the candidate, particularly with regard to diversity, youth protection and political pluralism.

Once selected, the applicant signs an agreement with ARCOM specifying any public service obligations and financial commitments.

In contrast to radio broadcasting, the licences issued are valid for a more extended period. If the ARCOM examination is successful, the licence is granted for a renewable period of 10 years.

Let us now consider the famous assessment criteria on which ARCOM bases its decisions to grant broadcasting authorisations. These criteria can be grouped into five main categories, which are:

1. The broadcaster's experience in audiovisual and communication activities;
2. Funding and prospects for exploitation, particularly in view of expected or promised advertising partnerships;
3. The local nature of the programmes produced (with a

view to promoting French audiovisual production rather than simply purchasing foreign programmes).

4. The applicant's interests in advertising companies or press publishers;
5. Respect for pluralism, and in particular freedom of expression and representation of political and other opinions, and in this respect the applicant's independence in the conduct of its programmes with regard to its shareholders.

With regard to the latter group, which is one of the most debated, a number of clarifications have been provided in the case law of the *Conseil d'État* and the *Conseil constitutionnel*.

Respect for pluralism in the allocation of public frequencies is in fact a democratic necessity that the French Constitutional Council describes as an objective of constitutional value[9].

The French Constitutional Council has repeatedly stated that the free communication of thoughts and opinions, enshrined in Article 11 of the 1789 Declaration of the Rights of Man and of the Citizen, presupposes that audiovisual media guarantee the expression of all political views, with a commitment to honest reporting on the part of service providers.

From this perspective, the Constitutional Council considers that the law of 30 December 1986 must meet this constitutional requirement of 'pluralistic expression of currents of opinion[10].'

Similarly, the Council of State ensures that this principle of pluralism is upheld and does not hesitate to extend it to socio-cultural movements.

9 Conseil constitutionnel, 27 Jul. 1982, DC 82-141
10 Conseil constitutionnel, 18 Sept. 1986, n°86-217 DC

Power of supervision

As previously stated, ARCOM is endowed with regulatory powers that enable it to sanction any transgressions against the principle of respect for pluralism[11].

Pursuant to Article 1 of the Law of 30 September 1986, ARCOM's primary mission remains to ensure political pluralism in radio and television programming.

This obligation is further reinforced during election periods. In such instances, ARCOM issues recommendations to all radio and television media companies under its jurisdiction, with the objective of ensuring equal speaking time for the various political parties participating in the election.

During election campaigns, broadcast media must treat all candidates equally, with strict respect for fairness in terms of airtime, regardless of the political or media influence of the parties concerned. This obligation extends to coverage of the entire campaign, not just specific periods, and must be observed on all radio and television channels broadcasting election programmes.

In this context, ARCOM plays a central role, as it is also responsible for ensuring that speaking time is allocated fairly among the various candidates during the official campaign period, based on criteria defined by the Electoral Code, in particular the rules laid down in Article L. 163-1 of the Electoral Code, which states, in particular:

> *"During the three months preceding the first day of the month of general elections and until the date of the ballot when the results are final, major online platforms and major online search engines, within the meaning of Article 33 of Regulation (EU) 2022/2065 of the European Parliament and*

11 For several examples, see CE, 22 nov. 2002 n°215315 ; CE, 12 jan. 2005, n°252461

> *of the Authority of 19 October 2022 on a Single Market for Digital Services and amending Directive 2000/31/EC (Digital Services Regulation), shall be required, in view of the public interest at stake in ensuring that citizens are well informed during election periods and of the integrity of the electoral process, to make available to users, in the register provided for in Article 39 of that Regulation:*
>
> *1° Fair, clear and transparent information on the identity of the individual or the corporate name, registered office and corporate purpose of the legal entity and of the entity on whose behalf it claims to act, if applicable, which pays the platform remuneration in return for the promotion of information content relating to a debate of general interest;*
>
> *2° Fair, clear and transparent information on the use of personal data in the context of promoting information content related to a debate of general interest;"*

According to the aforementioned article, the allocation of speaking time must take into account, in particular, the parliamentary representation of the parties, the results of the most recent elections, and the proportion of elected representatives in local or national assemblies. Consequently, it is essential that parties and candidates who do not enjoy the same institutional or media presence be allocated speaking time that, while respecting the principle of equality, allows each candidate to be heard by the French public.

Finally, ARCOM must ensure that these rules are applied rigorously and independently, particularly with regard to possible exceptions. For example, during debates or special programmes, the Authority may allow adjustments to be made to the allocation of speaking time, but only under strict control to ensure equal treatment.

In this particular context, the Authority has the power to impose sanctions on media outlets that violate the rules established to ensure that equal access to airtime is effectively respected throughout the electoral process. This is of paramount importance for ensuring fair electoral competition.

ARCOM's supervisory powers also extend to the protection of minors.

In this context, it has the power to take binding decisions that are legally enforceable, with a view to:

- Regulate television programmes designed for young children (under 3 years of age),
- Restrict the broadcasting of television programmes between 10 p.m. and 6 a.m. for audiences under the age of 16;
- Establish a list of criteria 'ensuring the adequacy of technical procedures used to control access to programmes likely to impair the physical, mental or moral development of minors, in accordance with the objectives of protecting children and young people[12].'

In addition, ARCOM has, since the law of 22 December 2018, the power to monitor the manipulation of information. In this spirit, Article 12 of the aforementioned law states:

> *"The Audiovisual Authority contributes to the fight against the dissemination of false information likely to disturb public order or undermine the integrity of any of the elections mentioned in the first paragraph of Article 33-1-1 of this law.*
>
> *Where necessary, it shall issue recommendations to the*

12 CE, 9 feb. 2005, n°265869

> *online platform operators referred to in the first paragraph of Article L. 163-1 of the Electoral Code with a view to improving the fight against the dissemination of such information.*
>
> *It ensures that online platform operators comply with the obligation to implement the measures provided for in Article 11 of Law No. 2018-1202 of 22 December 2018 on combating information manipulation."*

This provision raises questions and causes concern.

The article refers to ARCOM's mission to '*combat the dissemination of false information likely to disturb public order.*' This reference to 'public order' is particularly problematic. Its use in such a broad context, and above all in the absence of a clear definition of what constitutes 'false information', opens up a dangerous grey area. Such a lack of precision raises fears of abuse, whereby legitimate information could be classified as 'false' or 'disruptive to public order' simply because it goes against certain opinions or interests.

Under this law, the information published in the 1990s by the journalist Pierre Péan on the double life of François Mitterrand, who was then president, could very likely have been sanctioned for 'disturbing public order'.

Similarly, the rhetoric of political parties considered too right-wing in the 1980s, warning of Islamisation or demographic change due to state inaction on immigration, would probably have met the same fate.

Furthermore, the aforementioned article also refers to the '*votes referred to in the first paragraph of Article 33-1-1*'. It therefore seems clear that the stated objective of this measure is to guarantee the integrity of the electoral process by preventing misinformation from influencing public opinion and undermining the transparency of the elections.

While the need to protect elections from manipulation is indisputable, it is essential that this regulation be carried out in accordance with the principles of neutrality and impartiality. However, ARCOM, as the audiovisual regulatory authority, must ensure that no intervention in the field of information undermines the plurality of opinions, thereby guaranteeing that restrictions on the dissemination of information are proportionate and justified. By giving ARCOM the power to sanction an opinion considered 'false', there is a risk that the institution's primary mission could be seriously undermined.

Indeed, the assignment of responsibility for determining what constitutes 'false information' is a subjective and potentially political interpretation, which could undermine freedom of expression prior to judicial review. Permitting the regulation of content in a preventative manner could, indisputably, engender a soft form of censorship, despite the intentions of legislators to the contrary.

In conclusion, the ambiguous wording of this article gives rise to concerns regarding a potential adverse impact on freedom and plurality of opinion, which ARCOM is tasked with protecting under Article 1 of the law establishing it.

To conclude, however, it should be noted that other areas of regulatory intervention also fall within ARCOM's remit (in the fields of health, sport, gambling, etc.). For the sake of clarity and readability of this study, we will not provide an exhaustive list here.

We will now examine the scope of the sanctioning powers granted to ARCOM by legal and regulatory provisions.

ARCOM's disciplinary powers

Firstly, Article 42 of the Law of 30 September 1984 empowers ARCOM to issue a formal notice to any operator who contravenes the aforementioned rules.

Strictly speaking, however, the formal notice is not directly a sanction but rather a prerequisite for any coercive measure. This point is directly confirmed by a decision of the Constitutional Council[13].

Nevertheless, any formal notice constitutes an act that causes prejudice and, as such, may give rise to an appeal for misuse of power within two months of its notification by ARCOM[14].

Administrative fines

Firstly, in accordance with Article 42-2-2 of the aforementioned law, ARCOM may impose administrative fines on audiovisual operators in the event of non-compliance with rules on pluralism, advertising or child protection.

These fines are set and imposed by the Authority and may amount to up to 3% of the broadcaster's annual turnover depending on the seriousness of the violation, as specified in Article 42-2-2 of the Communication Code.

Furthermore, the law provides for additional fines in the event of repeated infringements, such as those provided for in Article 42-2-3, allowing ARCOM to increase fines depending on the recurring nature of the infringements.

13 Conseil constitutionnel, 13 dec. 2013, QPC n°2013-359
14 Conseil d'État, 11 dec. 1996, n°163553

ARCOM may also adjust fines in proportion to the broadcaster's turnover, as specified in Article 42-2-2 of the aforementioned law. This mechanism obviously makes fines fairer but, above all, more dissuasive depending on the size of the broadcaster.

Suspension or withdrawal of the broadcasting licences

Article 42-3 of the Act of 30 September 1986 grants ARCOM the power to suspend or withdraw broadcasting licences.

This is the most severe penalty that the Authority can impose on a broadcaster. This decision must be justified by serious violations, such as repeated breaches of pluralism or endangering minors. This particularly serious measure is justified by the need to ensure that the broadcaster complies with the standards prescribed by the Audiovisual Regulatory Authority.

Banning the broadcast of programmes

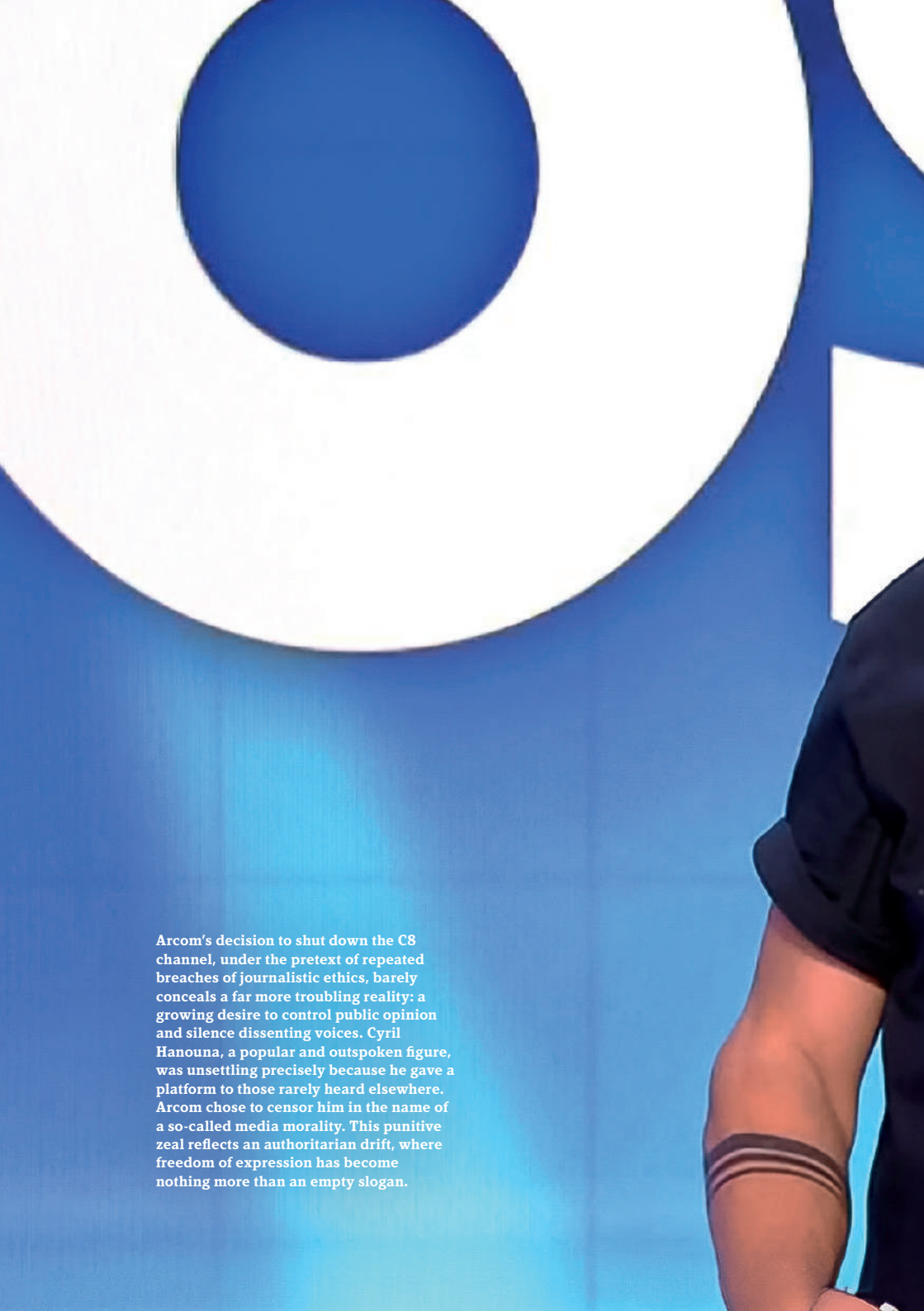
Pursuant to Article 42-4 of the Law of 30 September 1986, ARCOM may prohibit the broadcasting of programmes that do not comply with certain legal provisions, for example concerning the protection of minors.

An alternative option is to temporarily suspend certain programmes until the broadcaster has made the necessary changes to enable them to be broadcast.

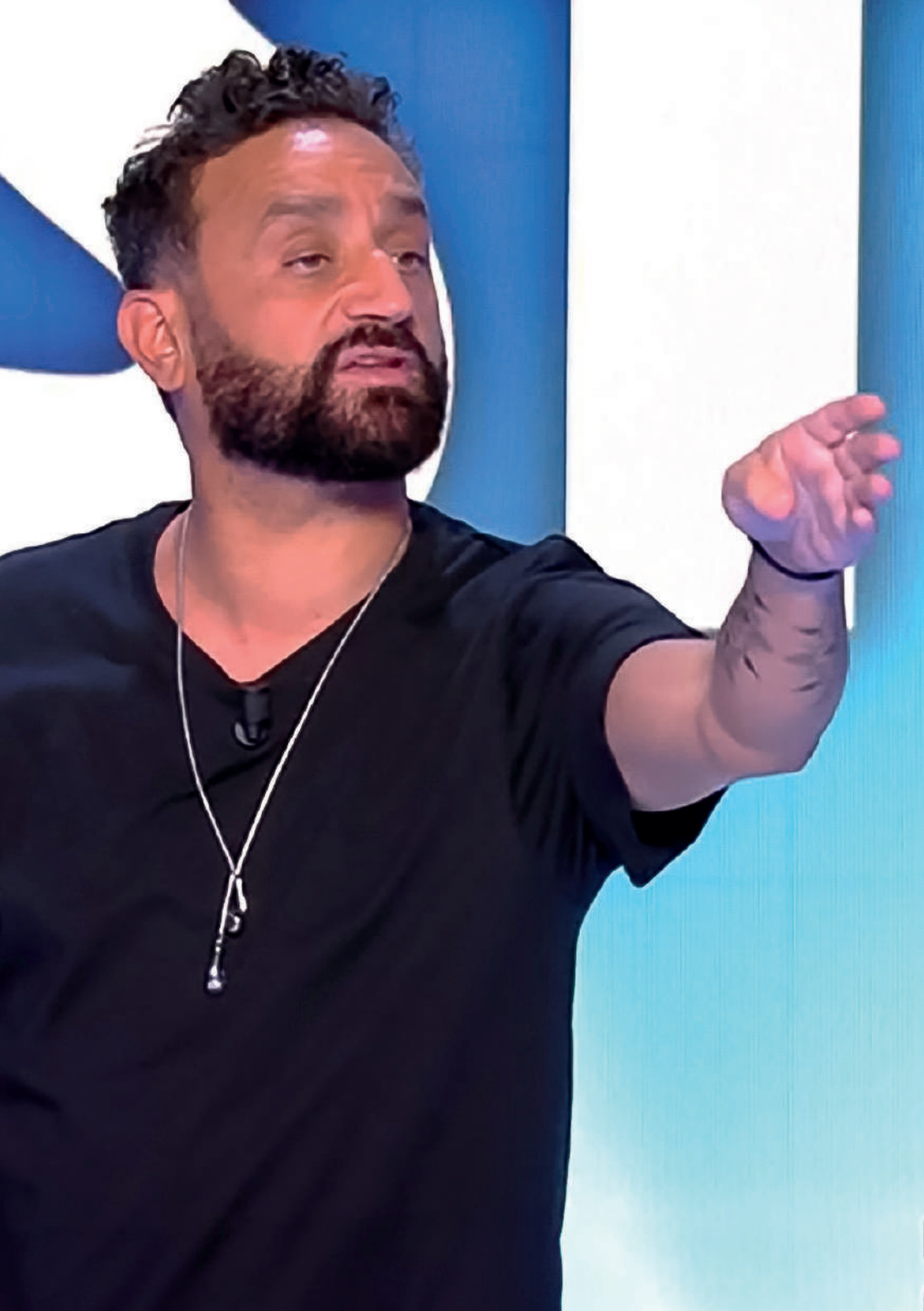
Publication of sanctions

In addition to all the penalties mentioned above, ARCOM may also decide to publish the sanction. This measure is provided for in Article 42-5 of the Law of 30 September 1986.

This allows the public and other operators to be informed of any breaches identified by the Authority. It is evident that such publications serve as a deterrent, compelling relevant broadcasters and other parties accountable for compliance to rigorously adhere to the stipulated requirements set forth by ARCOM.



Arcom's decision to shut down the C8 channel, under the pretext of repeated breaches of journalistic ethics, barely conceals a far more troubling reality: a growing desire to control public opinion and silence dissenting voices. Cyril Hanouna, a popular and outspoken figure, was unsettling precisely because he gave a platform to those rarely heard elsewhere. Arcom chose to censor him in the name of a so-called media morality. This punitive zeal reflects an authoritarian drift, where freedom of expression has become nothing more than an empty slogan.



The studies

HOW EUROPEAN LAW AFFECTS THE REGULATION OF AUDIOVISUAL BROADCASTING

A GENUINE POWER OF INJUNCTION OVER NATIONAL REGULATORS

Since the first harmonisation attempts in the 1980s, European Law has become an essential field for understanding the evolution of national audiovisual regulation. This evolution has been achieved through sustained and increasing regulation – directives, regulations, charters – with a view to establishing the terms and conditions for the dissemination of content, the rules governing capital ownership of audiovisual markets and the requirement to respect a number of fundamental rights, in particular respect for media pluralism, the representation of minorities and the protection of young audiences.

This movement, driven by a desire for legal integration of the internal market, inevitably leads to a decrease in national powers, or at least to significant European regulatory oversight. As we shall see, certain European institutions now have real power to issue injunctions against national regulators. This is the case, for example, with the creation of the *European Board for Media Services* established by the Regulation of 11 April 2024.

The following sections examine the tools and effects of this European dynamic in the audiovisual field over the last three decades. This chapter looks at three legal frameworks that are key to understanding the evolution of audiovisual regulation:

- *The Charter of Fundamental Rights of the European Union*, a general proclamation but regularly referred to in European case law;
- Directive 2010/13/EU, known as the 'Audiovisual Media Services Directive', is the most important directive on audiovisual regulation, governing, for example, rules on the protection of minors, representation, diversity, advertising, etc.
- And finally, the Regulation of 11 April 2024, known as the European Media Freedom Act, which marks a new stage in regulatory harmonisation by establishing a legally binding framework for all Member States and creating a European coordination authority with enhanced powers.

The objective of this study is not to call into question the stated objectives of these instruments – protection of freedoms, integrity of the public space, fight against interference – but rather to examine their actual scope, areas of ambiguity and consequences for the balance between regulatory framework and national autonomy.

This is the context for the present analysis: to understand the logic and structure of European law on audiovisual regulation, assess how it interacts with national jurisdictions and, where appropriate, identify its technical, legal and institutional limitations.

Impact of the Charter of Fundamental Rights of the European Union

The Charter of Fundamental Rights of the European Union (CFREU) plays an important guiding role in audiovisual regulation, particularly in the case law of the Court of Justice of the European Union.

The text was adopted in 2000, but it was not until the adoption of the *Treaty of Lisbon* in 2009 that it gained real legal force, thereby conferring the Charter with genuine effectiveness.

This charter is an invaluable reference document and an essential legal and even philosophical basis for upholding principles such as freedom of expression, the right to information and respect for pluralism in the media.

One of the most frequently cited articles of the Charter in European case law is Article 11, which enshrines the right to freedom of expression and information, stating that:

> *"1. Everyone has the right to freedom of expression. This right includes freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.*
>
> *2. Media freedom and pluralism are respected."*

This provision is intended to apply directly to the law governing the regulation of audiovisual media, in particular by guaranteeing plurality of voices in the public sphere and ensuring that European regulations respect this balance between regulation and freedom of broadcasting.

While the CFREU establishes media freedom as a principle, it also recognises that this right must be regulated. Accordingly, Article 52 of the Charter stipulates that the rights and freedoms it guarantees may be subject to limitations, provided that such limitations are deemed necessary and proportionate to the objective being pursued. For instance, in the context of audiovisual law, this could entail the protection of minors from the dissemination of certain inappropriate images.

This reference to a restriction that is 'necessary and proportionate' is typical of the reasoning of the Court of Justice of the European Union with regard to respect for fundamental rights and freedoms.

In short, the Charter of Fundamental Rights is a reference point for European audiovisual regulation, not only to protect citizens' freedoms, but also to provide a framework for reconciling these freedoms with other objectives of general interest.

It is in light of this charter that we must now analyse the various European directives and the case law of the Court of Justice of the European Union.

Directive 2010/13/UE

The first attempt at audiovisual regulation on a European level was the 1989 adoption of Directive 89/552/EEC, also known as the 'Television without Frontiers' Directive. The objective of the initiative, which was formulated with a certain degree of ambiguity, was to establish a general framework for all national regulatory authorities within the European Union with a view to gradually aligning their internal regulations with these principles.

This directive underwent numerous revisions until a substantial overhaul in 2010 (Directive 2010/12/EU). Nevertheless, it established the foundations for significant guarantees that all national regulators were obliged to comply with, including the freedom to retransmit programmes and adherence to certain minimum rules pertaining to public order, notably the protection of minors.

Directive 2010/13/EU, also known as the Audiovisual Media Services Directive (AVMSD), is the most important piece of legislation governing media regulation in European law. It covers a wide range of areas, including the protection of minors, on-demand services, advertising regulation, and requirements relating to 'diversity', inclusion and the protection of minorities.

Article 2 of this directive thus establishes the general framework by stipulating that:

> *"Each Member State shall ensure that all audiovisual media services provided by media service providers within its jurisdiction comply with the rules of law applicable to audiovisual media services intended for the public in that Member State."*

Compliance with this Directive requires that Member States treat audiovisual media services produced in any other Member State in the same way, in accordance with the European principle of non-discrimination.

Case law, and in particular the Court of Justice of the European Union, has clarified that the directive does not aim *"to achieve complete harmonisation of the rules relating to the areas to which it applies, but lays down minimum requirements for broadcasts originating in the Union and intended for reception within its territory*[15]*."*

15 CJCE, 5 mar. 2009, aff. C-222/07, UTECA

As part of this study, we will analyse the impact of this directive on national audiovisual regulators, particularly in France, where the Regulatory Authority for Audiovisual and Digital Communication (ARCOM) plays a central role.

The goals of Directive 2010/13/UE

In accordance with its preamble, Directive 2010/13/EU sets out a number of objectives for audiovisual regulation, including the following:

1. **Standardise audiovisual monitoring rules:** i.e. harmonise national rules at European level, particularly with regard to programming, the protection of minors, advertising, etc.
2. **Guarantee freedom to provide services:** namely, allowing the provision of audiovisual services by national or foreign (but from a Member State) press companies within the European territory;
3. **Pluralism and European diversity:** to guarantee the principle of pluralism of political opinions and European cultural diversity.

Note: Lastly, it should be pointed out that this text was revised by Directive 2018/1808, in particular to take account of the growth of online video content and streaming platforms.

Article 3 of the Directive establishes the fundamental principle of freedom to provide audiovisual media services in any EU Member State, subject to compliance with the content obligations and regulatory rules laid down in this Directive.

This rule allows media companies with audiovisual broadcasting licences to establish themselves and broadcast freely throughout all Member States of the European Union.

They remain, however, bound by the specific rules of the law of the State in which they broadcast.

With regard to common obligations, the Directive imposes the following requirements on audiovisual media service providers as immediately applicable constraints:

- **Advertising:** Directive 2010/1 regulates advertising in audiovisual media services. Restrictions apply in particular to advertising aimed at children, unhealthy food products and gambling services. National regulators are required to check the compliance of such content prior to broadcast.
- **Inclusion:** Article 7a stipulates that broadcasters must promote access to their programming for persons with disabilities, as an objective to be achieved by all means, including through the introduction of subtitling and visual assistance. The Directive requires national regulators, and in France ARCOM, to ensure that these provisions are implemented.
- **Protection of minors:** Article 27 of the Directive lays down strict rules to protect minors from the dissemination of inappropriate content. Here again, the Directive requires national regulators to ensure compliance with these requirements.

As previously indicated, Directive 2010/13 requires national regulators, and in the specific case of France, ARCOM, to monitor content broadcast by television channels.

It is therefore incumbent upon the national audiovisual regulatory authority to ensure that programmes comply with standards on the protection of minors, advertising, countering online hate speech and respect for copyright.

Furthermore, under the 2018 revision of the AVMS Directive, ARCOM must ensure compliance with obligations relating to the production of European content. Video-on-demand platforms must invest a percentage of their turnover in the production of European content. ARCOM monitors compliance with these quotas and may impose penalties in the event of non-compliance.

In addition, the Directive provides for a cooperation mechanism between national regulatory authorities. ARCOM must therefore collaborate with other European regulators to ensure consistent regulation and prevent 'forum shopping' by audiovisual media service providers seeking to avoid stricter regulations.

This cooperation takes the form of information exchange, joint decisions and efforts to ensure uniform application of the Directive across the EU.

Criticism

This directive raises several challenges that we believe should be addressed.

Firstly, Articles 6 and 9 of the aforementioned directive are particularly open to interpretation in an ideologically unfavourable sense.

Thus, Article 6 stipulates that:

> *"Member States shall ensure, through appropriate measures, that audiovisual media services supplied by providers within their jurisdiction do not contain:*
>
> *a) incitement to violence or hatred against a group of persons or a member of a group based on any of the grounds referred to in section 21 of the Charter;"*

The definition of incitement to hatred is strongly criticised by many legal experts for being too vague. Hatred is a moral concept and therefore highly subjective. This provision therefore gives ARCOM significant power in France, as it can impose sanctions on the basis of what is referred to as 'incitement to hatred' without ever providing a legal definition of the term.

Consequently, on 9th July 2024, ARCOM imposed a substantial fine on the CNEWS channel for breaches of its obligations, par-

ticularly with regard to 'incitement to hatred'. This action was taken as a result of the use of the phrase 'immigration kills' by two guests on the channel's talk show.

ARCOM notes that:

> *"The use by two guests of the phrase "immigration kills" is likely to portray people of immigrant origin as a whole as a deadly risk factor. Such stigmatisation, which reduces immigrants to dangerous individuals (...), is likely to incite hatred towards them on the grounds of their race, nationality or ethnic origin and to encourage discriminatory behaviour towards them on the grounds of their race, nationality or origin.[16]"*

Leaving aside the fact that the guests in question never said 'immigrants kill' but rather 'immigration' (i.e. the unprecedented demographic phenomenon that Europe has been experiencing for several decades), it is clear that ARCOM's assessment is particularly biased and subjective.

Worse still, the objective pursued by Article 2 of the 1986 Act, namely respect for the principle of pluralism, is being set aside in favour of ideological considerations. More specifically, what is at issue here is the prohibition, by means of the imposition of a fine, of the expression of an opinion that would be considered to be identitarian.

Another similar issue arises in Article 9 of the Directive:

> *"1. Member States shall ensure that audiovisual commercial communications provided by media service providers under their jurisdiction comply with the following requirements:*

16 BFMTV, « CNews écope d'une amende cumulée de 80.000 euros pour «manquements» à ses obligations », 10 jul. 2024, https://rmc.bfmtv.com/actualites/people-culture/c-news-ecope-d-une-amende-cumulee-de-80-000-euros-pour-manquements-a-ses-obligations_AN-202407100238.html

> *(...)*
>
> *c) audiovisual commercial communications::*
>
> *i) do not violate human dignity;*
>
> *ii) do not discriminate on the basis of sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation, nor promote such discrimination;"*

In practice, this provision prohibits advertisers, under penalty of sanctions imposed by the national regulatory authority, from disseminating communications that openly favour a product of French origin by comparing it to a product of another nationality.

In the name of the principle of non-discrimination based on nationality, the principle of national preference applied at the commercial level is simply banned by European law.

The European Regulation of 11 April 2024: progress and concerns

Officially enacted on 7 May 2024, the *European Media Freedom Act* is probably one of the most important pieces of legislation on audiovisual regulation ever adopted by the European Parliament.

This text was adopted against the backdrop of the Russian-Ukrainian war, and is specifically aimed at combating foreign interference and preventing the rise of extremism in Europe.

The European Commission initially initiated the drafting of this regulation in 2022. It presented a first draft on 16 September 2022, which was reviewed several times by the European Parliament.

The two stated objectives remain the fight for media pluralism and media independence, in a context of supposedly increasing interference. The interference highlighted by the Commission is twofold: foreign and domestic. On the latter point, the Commission deplored excessive state interference in public television, particularly in certain Eastern European countries.

In Poland, for example, the Commission was concerned about a draft law, which was not adopted, that would have banned non-European ownership of national media. Similarly, in Hungary, the national regulator was accused of colluding with the government, in particular by not renewing the licences of media outlets critical of Viktor Orbán's policies.

Another risk highlighted by the Commission, and clearly present in this regulation, is the extreme concentration of both public and private audiences of audiovisual media by private actors. This point was regularly and publicly criticised by the then French European Commissioner, Thierry Breton, who denounced the '*high concentration of media capital in the hands of a handful of owners.*[17]'

17 Le Figaro, « Création d'une «salle de rédaction européenne» par seize agences de presse », 29 nov. 2021, www.lefigaro.fr/medias/creation-d-une-salle-de-redaction-europeenne-par-seize-agences-de-presse-20211129

The creation of a European Board for Media Services (EBMS)

The EBMS is the major innovation introduced by the European Regulation of 11 April 2024. Article 8 of the aforementioned text establishes this new authority:

> *" 1. The European Board for Media Services (hereinafter referred to as 'the Media Board') is hereby established.*
>
> *2. The Media Board shall replace and take over the tasks of the European Regulators Group for Audiovisual Media Services (ERGA) established by Article 30b of Directive 2010/13/EU."*

Thus, unlike the previous set-up, the EBMS is an independent institution and not just a group of national regulators, which is de facto a group without legal status.

As provided for in Articles 10 and 12 of this Regulation, the EBMS consists of one representative from each Member State's regulatory authority. Each representative has one vote and decisions are taken by a qualified majority: two-thirds of the members present have voting rights.

Note: In some countries, such as Germany, there are several regulatory authorities due to the federal or regional structure of the institutions. In such cases, Article 10 provides that the Member State must designate only one of the representatives to have the right to vote.

The EBMS is presented in the European regulation as a coordinating rather than a regulatory authority at European level. Its role is to ensure the consistent application of the rules on audiovisual media services in all Member States. Articles 12 and 13 of the Regulation give it a number of powers, including:

- **Advising the European Commission:** upon request, the EBMS may provide opinions and guidelines on issues relating to audiovisual media services, prior to any new regulations being initiated by the European Commission;
- **Facilitating cooperation:** It serves as a platform for discussion and coordination at European level with all other national regulators. This space therefore allows for better coordination of the regulations and directives issued by each national authority in their respective areas of competence.
- **Developing guidelines:** the EBMS may draw up guidelines to assist national regulators in interpreting and applying European law, including the provisions of this Regulation.

In short, the *European Board for Media Services* plays a crucial role in promoting consistent and effective regulation of audiovisual media services within the European Union by facilitating cooperation between national authorities and advising the European Commission on relevant issues.

Combating disinformation and foreign influence

The European Regulation of 11 April 2024 sets out an objective, which was hotly debated in Parliament, to combat both foreign interference and disinformation. This mission is set out in the first considerations of the aforementioned text:

> *"However, the internal market for media services is not sufficiently integrated and suffers from a number of market failures that are exacerbated by digitisation. Firstly, global online platforms serve as gateways to media content, following business models that tend to eliminate intermediaries for access to media services and amplify divisive content and disinformation. These platforms are also key providers of online advertising, which takes financial resources away*

> *from the media sector, affecting its financial viability and, consequently, the diversity of content on offer.*
>
> *(...)*
>
> *Thirdly, the proper functioning of the internal market for media services is undermined by providers, including those controlled by certain third countries, who systematically engage in disinformation or manipulation of information and interference, and who use the freedoms offered by the internal market to abusive ends, thereby jeopardising the proper functioning of market dynamics"*

Several comments on this objective are in order.

Firstly, it is worth noting the extraordinary and worrying remark about 'divisive content'. This passage betrays a curious, even sectarian, conception of pluralism, which remains an objective stated in the aforementioned regulation.[18]

By definition, a democracy, to which the European objective of respect for pluralism is linked, implies the presence of conflicting opinions, which clash and therefore automatically and politically divide. Where there is only consensus, there is no real debate and, by definition, the level of democracy is lowered.

In a democratic system, genuine pluralism cannot exist without effective opposition between conflicting opinions. Dissension, far from being an anomaly, is the most logical form of expression in democratic life, with division being its tangible manifestation.

Where dissenting voices are disqualified in the name of the

18 In particular, Article 1 states: *'This Regulation lays down common rules for the proper functioning of the internal market for media services and establishes the European Board for Media Services,* ***while preserving the independence and pluralism of media services.'***

supposed unity of 'public debate', there is no longer any space for confrontation, but rather a neutralised stage, subject to the hegemony of a discourse presented as indisputable.

The same applies to the professed fight against disinformation, or 'fake news'.

Simply setting a goal is not enough to guarantee its validity, let alone its truth. What criteria can be given to a judge to assess what constitutes true or false information?

The crux of the problem is the incredible claim by European legislators to a monopoly on truth. Any definition of disinformation, in order to be legally effective, requires a sovereign authority to distinguish between true and false, not in a scientific sense - which is always provisional - but in a political and normative sense. This is an extremely dangerous claim.

The case of François Mitterrand is instructive: for a long time, the press was accused of libel when it reported on the statesman's private life or his past involvement with the Vichy regime. Should these publications have been banned in the name of combating misinformation? And if so, would this not have sacrificed historical truth on the altar of political expediency?

When the *Pentagon Papers* revealed the US government's lies about the Vietnam War, the White House publicly denounced a misleading press campaign that needed to be countered. But the truth of the facts reported by journalists eventually came to light and was recognised, precisely because a free press was able to publish what the government had tried to hide.

The fact is that political truth never immediately coincides with official truth. The very idea of fake news becomes a functional category that serves a power seeking to delegitimise what it finds inconvenient, not through debate but through disqualification.

Finally, with regard to foreign interference, the power conferred by the European Regulation is even clearer, as it grants the EBMS a right to alert, as indicated in Article 17:

> *" 1. Without prejudice to Article 3 of Directive 2010/13/EU, the Media Board shall coordinate, at the request of the national regulatory authorities or bodies of at least two Member States, the relevant measures taken by the national regulatory authorities or bodies concerned in relation to the dissemination of media services originating outside the Union or provided by media service providers established outside the Union which, regardless of their means of dissemination or access, are directed at or reach audiences in the Union, or access to such services, where, taking into account, inter alia, the control that third countries may exercise over them, those media services are harmful or pose a serious and grave risk to the public.*
>
> *2. The Media Board, in consultation with the Commission, may issue opinions on measures referred to in paragraph 1 whose preparation is deemed appropriate. Without prejudice to their powers under national law, the competent national authorities concerned, including national regulatory authorities or bodies, shall make every effort to take account of the Media Board's opinions."*

In practice, this means that the EBMS has the power to issue injunctions against national authorities such as ARCOM when it finds that services provided by non-European media constitute a serious and grave risk to public security, which could, for example, qualify as foreign interference.

This system raises two major issues.

The first issue relates to the infringement of national sovereignty, particularly in that the EBMS, an unelected body attached to the Commission, has the power under this regulation to issue injunc-

tions to national regulators. This means that the EU can compel a Member State to censor a foreign media outlet on the basis of an assessment with which that State does not necessarily agree.

This is a form of regulatory interference that is all the more questionable because it is based on grounds that are not detailed in the Regulation. At no point does the text specify the objective criteria for determining whether editorial content undermines this security. We are therefore faced with a discretionary power of interpretation transferred to a supranational body, to the detriment of the sovereignty of the Member States.

The second issue is substantial. This measure directly infringes on the freedom of information guaranteed by Article 11 of the Charter of Fundamental Rights of the European Union and Article 10 of the European Convention on Human Rights.

It cannot be ignored that certain foreign channels or websites, which are often the target of this type of regulation (RT, Sputnik, etc.), have significant audiences in Europe. Their administrative ban, imposed without any prior judicial decision or real opportunity to be heard, amounts to the simple removal of a point of view from public debate under the guise of security or prevention of foreign interference.

This approach carries a risk of political abuse: what is to prevent a European media outlet that is alternative and critical of Brussels policy from being targeted on the pretext of external influence or disinformation? At present, the text does not contain sufficient safeguards against this type of overreach.

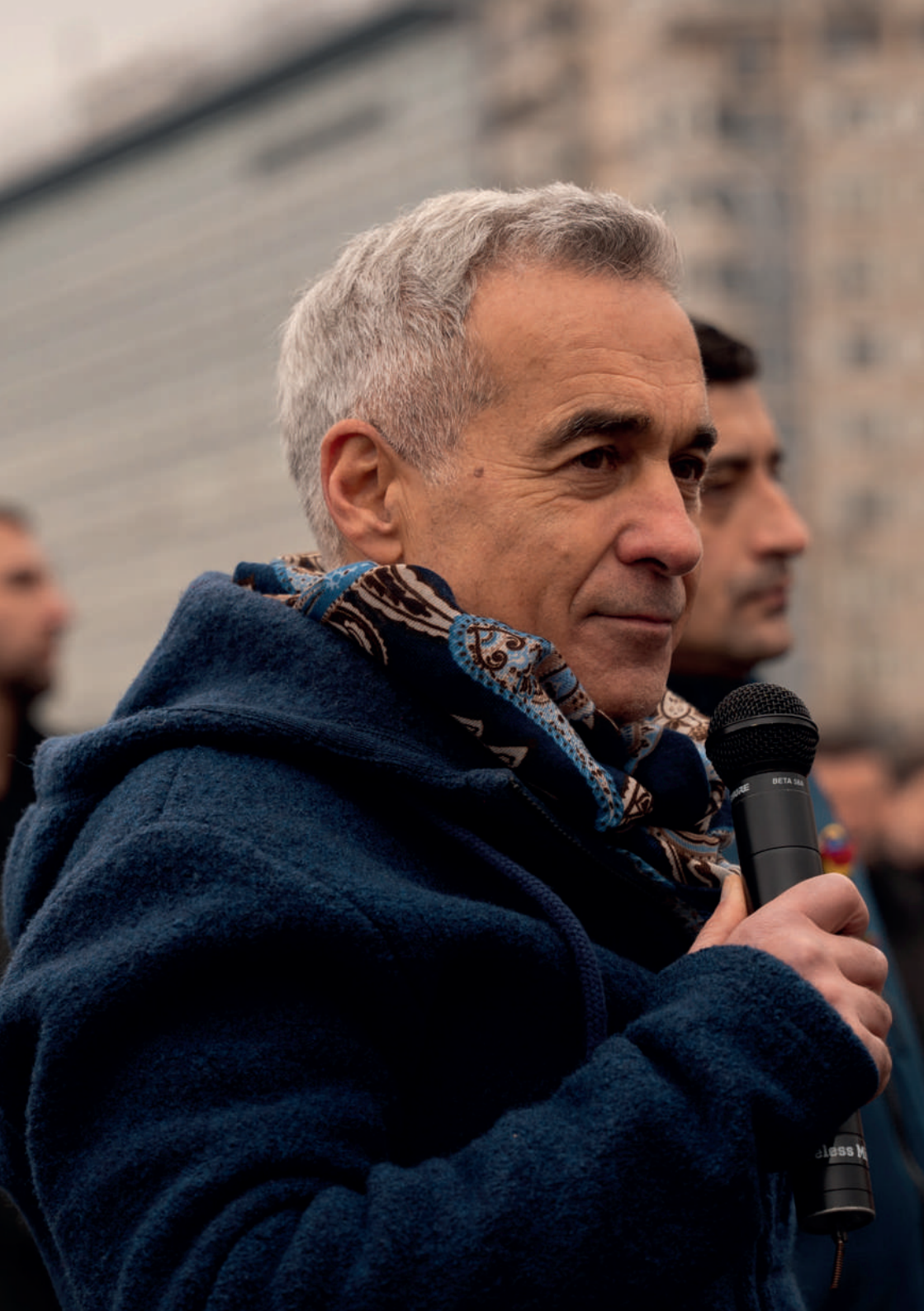
In conclusion, the study of European audiovisual regulation highlights a clear trend towards regulatory centralisation by the European Union.

Firstly, it results in the weakening of the principle of subsidiarity in favour of increased regulatory intervention, frequently

justified by ambiguous concepts such as 'incitement to hatred', 'disinformation' and 'divisive content'. These concepts, which are either poorly defined or not defined at all in law, leave room for political and ideological interpretations that expose regulation to a high risk of subjectivity and indirect censorship.

Moreover, the European Board for Media Services, among other bodies, is contributing to the expansion of the European Union's capacity to enforce its decisions, particularly through entities that do not possess democratic legitimacy but nevertheless wield direct and indirect powers of injunction over national regulatory authorities.

The study's findings suggest that European audiovisual regulation is more likely to promote procedural conformity than to ensure effective pluralism. This is evidenced in the increasing perception of dissent, an inherent feature of any democratic society, as a problem that needs to be curtailed.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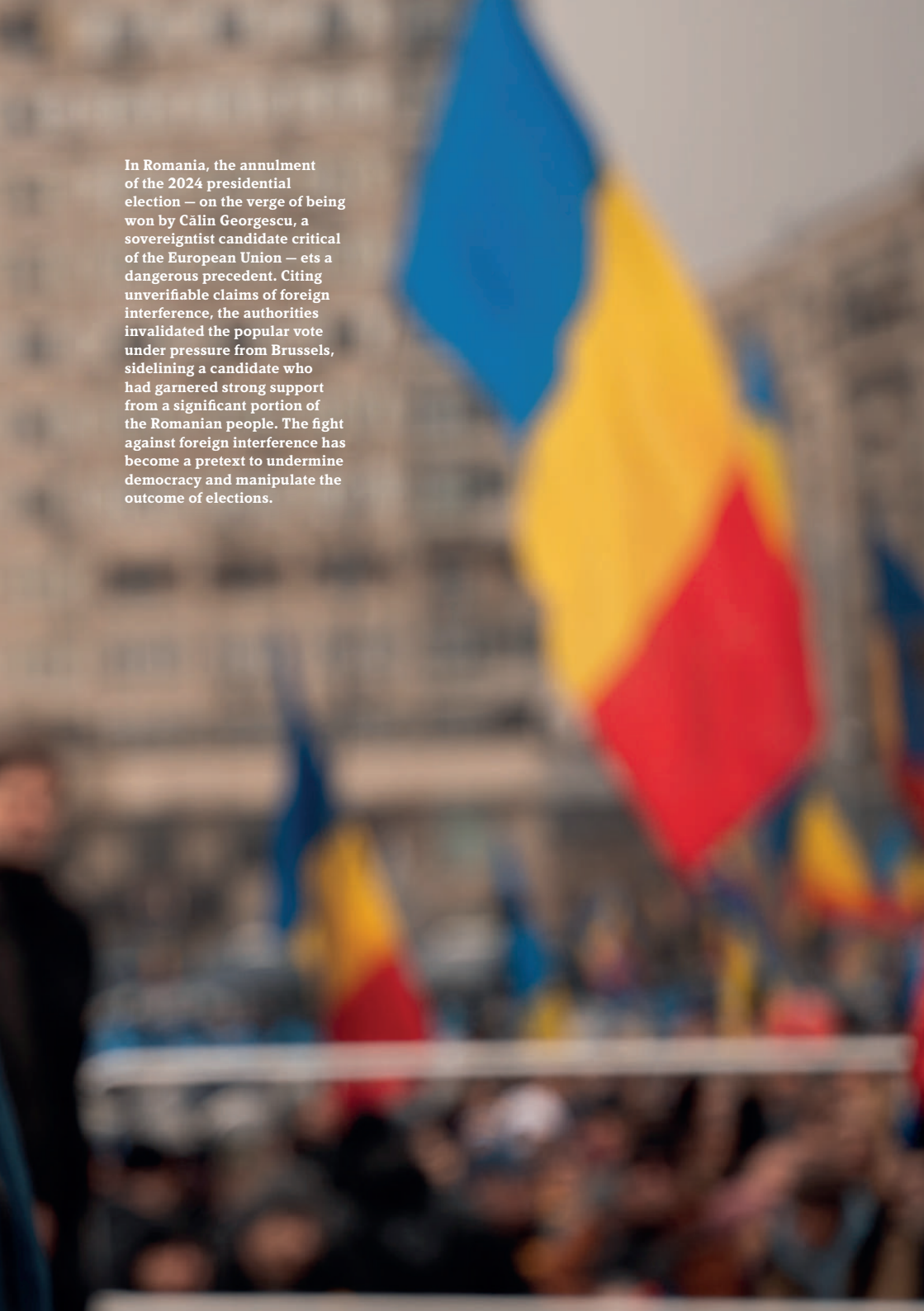

In Romania, the annulment of the 2024 presidential election — on the verge of being won by Călin Georgescu, a sovereigntist candidate critical of the European Union — ets a dangerous precedent. Citing unverifiable claims of foreign interference, the authorities invalidated the popular vote under pressure from Brussels, sidelining a candidate who had garnered strong support from a significant portion of the Romanian people. The fight against foreign interference has become a pretext to undermine democracy and manipulate the outcome of elections.

The studies

CONCLUSION

PROPOSALS FOR REFORM AT THE EUROPEAN LEVEL

Call for a review of Regulation (EU) 2024/1083 (European Media Freedom Act)

As previously stated, Regulation (EU) 2024/1083, also known as the *European Media Freedom Act*, represents a significant instrument in the ongoing process of centralisation of power within the European Union in the domain of audiovisual regulation. Despite its apparent liberal overtones, this Regulation is, in fact, precipitating a worrying shift towards supranational regulation of the media landscape, thereby further eroding the Member States' room for manoeuvre, in disregard of the principle of subsidiarity enshrined in Article 5 of the Treaty on European Union and of respect for the sovereignty of the Member States.

The main reform of this Regulation is the creation of a *European Board for Media Services* (EBMS), a body responsible for issuing opinions, guidelines and even binding recommendations to national regulators, particularly in the areas of combating disinformation, monitoring 'divisive content' and warning against foreign interference. This committee, which reports to the European Commission, is composed of representatives of national authorities but has no links with national parliaments and no obligation of transparency towards citizens.

This Media Board presents several challenges, particularly with regard to:

1. **Respect for regulatory sovereignty:** the EBMS has indirect powers of injunction over national regulators, particularly with regard to the suspension or restriction of media considered to be of 'risk', without a sufficiently defined legal basis or prior judicial review.
2. **Conceptual opacity:** the key terms in the regulation – 'divisive content', 'disinformation', 'interference' – are not given any serious legal definition, paving the way for subjective, and therefore political, interpretations of freedom of expression.
3. **The weak legitimacy of an unelected body:** the lack of accountability of the EBMS to a democratically representative body raises questions, particularly with regard to the review of decisions made.

In view of the findings outlined above, it is recommended that the Commission be requested to reconsider Regulation No. 2024/1083 with a view to making the following amendments:

- Establish a system for reviewing the decisions of the EBMS and subject some of its decisions, depending on their importance, to the approval of a committee of the European Parliament.
- Introduce a national sovereignty clause allowing each parliament of a Member State affected by a decision of the EBMS to refuse its application, upon referral by the State or a dedicated committee within each national parliament.

Adopt a regulation or European directive clearly defining the concepts of 'disinformation' and 'incitement to hatred'

These terms, often used in European texts and in the practice of audiovisual regulators, remain very vague and leave room for subjective and potentially arbitrary interpretations.

We therefore suggest drafting precise, restrictive definitions that preserve individual freedoms as a matter of principle, in order to avoid ideological abuses under the guise of regulation.

We therefore suggest the following definitions:

- **Disinformation:** The intentional dissemination by an identified actor, of false factual information, presented as verified, with the clear purpose of misleading the public about an objectively verifiable current event and disrupting the normal functioning of public debate or a democratic process.
- **Incitement to hatred:** Public statements addressed to a wide audience, explicitly calling for acts of violence or discrimination against an individual or group designated on the basis of characteristics protected by the law of the Member State, in a direct, intentional and unequivocal manner.

Acknowledge 'conflictual pluralism' as a democratic standard

Specifically with a view to protecting freedom of expression, and particularly opinions deemed dissident or populist by European institutions such as the European Commission, a regulation or at least a resolution could be adopted in order to:

- Clarify the *Charter of Fundamental Rights of the European Union* by including the obligation for Member States to guar-

antee the presence of minority or dissident political views in the audiovisual sector for a minimum audience share.

- Prohibit so-called '*cordons sanitaires in the media*' against public broadcasters or broadcasters receiving public funding within the European area, as is the case in Belgium, for example.

PROPOSALS FOR REFORM IN FRANCE

Remove the status of independent authority and transform ARCOM into a High Authority attached to Parliament

Today, ARCOM is not subject to any real direct parliamentary oversight, although it exercises decisive power over information, the allocation of speaking time and the definition of authorised content in order to counter 'hate speech' or 'disinformation' through guidelines.

Bringing ARCOM under the supervision of Parliament would enable its general guidelines, operations and appointments to be subject to more democratic and transparent scrutiny each year. Furthermore, due to the political representation within Parliament, greater care would be taken to ensure that political sensibilities are more accurately reflected in public broadcasting.

Make its deliberations public and subject to a systematic right of appeal before a specialised court

It should be noted that ARCOM publishes some of its deliberations, particularly when they concern decisions on appointments.

However, publication is not systematic and it might be useful to enhance transparency by extending it to all rulings (except where justified by legitimate reasons such as the protection of sensitive data).

Create a counter-assessment procedure open to sanctioned broadcasters, with diverse external guidance

In the event that a broadcaster is subject to sanctions by ARCOM, it is entitled to contest such a decision by way of an appeal to an administrative court, provided that the decision in question is deemed to be disadvantageous to the broadcaster. However, it should be noted that there is no internal procedure in place that would allow for a second opinion to be requested prior to the final decision made by ARCOM.

The proposal herein entails the establishment of a review process, whereby the sanctioned broadcaster would be entitled to request a reassessment of its case by a panel of independent experts. This would serve to promote impartial and pluralistic analysis prior to the determination of a second and final sanction internally.

Create a mechanism with effective powers to monitor pluralism in the public media

Today, pluralism is too often invoked in a formal way, without really rigorous controls to objectively assess ideological imbalances in the content being broadcast.

In accordance with the proposal to bring ARCOM under parliamentary supervision, it is therefore suggested that a pluralistic audit committee be established, composed of members appointed by the parliamentary groups, with the objective of carrying out an independent, transparent and annual assessment of the extent to which news programmes reflect pluralism.

Based on quantitative indicators (speaking time, diversity of guests, ideological spectrum represented), this audit committee would be responsible for providing insight into the actual political representativeness of public broadcasting.

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